ROYAL COMMISSION OF INQUIRY INTO HISTORICAL ABUSE IN STATE CARE AND IN THE CARE OF FAITH BASED INSTITUTIONS

WITNESS STATEMENT OF DR OLIVER SUTHERLAND

DATED: 4 October 2019

[1] In addition to this statement, I have presented the manuscript of my book Justice and Race: a Memoir to the Royal Commission as my full submission for this hearing. The memoir is drawn from the archives of the Nelson Māori Committee, the Nelson Race Relations Action Group and the Auckland Committee on Racism and Discrimination (ACORD) which were active from 1970 to 1986.

[2] During those years, together with my colleague Ross Galbreath, I was deeply involved in a series of investigations into, and campaigns against, the treatment of children, especially Māori children, by the police, justice, social welfare and health systems. My focus here will principally be on the judicial and social welfare systems.

[3] From 1970 to 1986, I personally advocated on behalf of scores of children whose cases I drew to the attention of a series of Cabinet Ministers and others. The notes of my interviews and meetings with these children and their care givers are held in the ACORD archives in the Auckland City Library. They are the case histories which I will detail in this submission. ACORD also instigated a number of Ombudsman, Human Rights Commission, Judicial and other official inquiries into the abuses revealed by these cases.

[4] My intention here is to summarise key aspects of my full submission to provide an insight into the lives of those children passing through the judicial system and incarcerated in various institutions administered by the State in the 1960s, 1970s, and 1980s. It is a backdrop to the stories of children whose individual testimonies, as victims, you will hear in coming months.

Judicial Process in the 1970s and 1980s

[5] During this period, at different points in the police and judicial processes, decisions were made without regard to the rights of children and which illustrated racial bias.

Police Decision to Prosecute

[6] There was a marked bias against Māori boys in particular. The results of a study by Ross Hampton of the Justice Department Research Section in 1973 showed that Auckland Police Youth Aid officers, when deciding who to prosecute 'discriminated against Maori boys by sending a disproportionate number of them to court' thus 'inflating their crime rate in comparison with that of non-Maori children'.[1]

[7] Hampton had found from his study of thousands of Children's Court records that 'racial bias in the decision to prosecute remained evident … even when class and seriousness [of offence] were taken into account'.

[8] My view, as expressed at the time during a speech to the Auckland Branch of the Association of Social Workers in 1976, was that "it seems that social welfare officers simply feel that because they are unable to control a Maori or other Polynesian child, he should be held in Mt Eden. But, surely their failure to control or probably more accurately to relate to the child is their problem? A problem of the system. A system based on a wholly pakeha concept of crime and offending and welfare and looking after children."[2]

Arrest and Bail: the Fight to Establish a Duty Solicitor Scheme

[9] Many children were taken into custody prior to court and were kept in police cells for several days. There were rarely parents present or any other support available to the child to navigate the system. Child welfare officers were sometimes present but often they or the

[1] See Ross E. Hampton, *Delinquency and social processes: labelling theory applied to the police decision to prosecute*, M.A. thesis, University of Auckland, 1973; Ross E. Hampton, Labelling theory and the police decision to prosecute juveniles, *The Australian and New Zealand Journal of Sociology,* Vol. 11, No. 3, pp. 64 – 66.
[2] See Oliver Sutherland, an address to the Association of Social Workers, *Social workers in a racist society – part of the problem or part of the solution?*, August 1976, AL Series 1.43.

Police advised the child to plead guilty. The concept of the child having rights or needing to have access to a lawyer or support was unheard of; children were rarely represented – certainly not state wards.

[10] The Nelson Māori Committee (of which I was secretary) became aware of the plight of Māori children, in one case as young as 13 years,[3] who had been apprehended by the police and who, after a night in the police cells, appeared in the Nelson Children's Court, and pleaded guilty, unrepresented by a lawyer and unassisted by any child welfare officer. Other children were held on remand in the police cells for several days. Part of the issue was that during the 1970s, magistrates placed great reliance on the advice of social workers, who seemed ready to recommend a remand in prison or police cells for so many young Māori or other Polynesian defendants.

[11] While our committee had no legal training or experience of the court system, especially for children, we knew enough to know that representation by a lawyer was essential, and so established what we called a 'legal aid scheme' which aimed at arranging free representation for every Māori and other Polynesian person appearing in the Nelson Magistrate's and Children's Courts. At the time there was no duty solicitor or public defender scheme anywhere in the country.

[12] Our view was that the courts and particularly the children's courts, were discriminating against Māori children or young persons. In a letter to the Minister of Justice, Sir Roy Jack, on 20 January 1972, we asked 'if the onus is not on the magistrate to see that a child is properly represented, then who is it upon? The Child Welfare Officer?' The Minister replied '… while there is no direct responsibility on the Magistrate, the police or a Child Welfare officer to obtain legal representation for persons appearing before the Children's Courts, they are all concerned that defendants should have every opportunity to be legally represented if they wish'.[4] In other words, it was up to the child to arrange his/her own lawyer.

---

[3] This 13-year-old boy had already been questioned by the Police in the absence of his parents, child welfare officer or lawyer. After over 24 hours in the Nelson police cells, he appeared in court where he was represented by our lawyer, Brian Smythe. Author's collection

[4] ORWS, Secretary, Nelson Māori Committee, to Minister of Justice, 20 January 1972; Sir Roy Jack, Minister of Justice to ORWS 30 March 1972; reprinted in *Maori Organisation on Human Rights Newsletter, Special Bulletin,* May, 1972; O.R.W. Sutherland, Legal Representation for Children, *CARE Magazine, July, 1972.* p 5-6.

[13] By mid-1972 we were advocating for the establishment of a national duty solicitor scheme. Our submission strongly supported the case for a duty solicitor to be present at every court in New Zealand whenever that court was in session and urged that two measures should be taken immediately: (1) all children should be accompanied by a lawyer when being questioned by the police; (2) all children on whatever charge should be represented by counsel whenever they appear before a Justice of the Peace or Magistrate.

[14] The Minister's response was: 'Implications that Maoris appearing before the magistrate's courts in New Zealand are getting less than justice are incorrect … we have the best of British justice for all'.[5] The response of Ngā Tamatoa's Syd Jackson to the Minister was as quick as it was unequivocal: 'White racism [is] the basis of our law'.[6]

[15] A national duty solicitor scheme of sorts finally got off the ground in July 1974; this was more than two and a half years after the Nelson Māori Committee's initiative. The proposal Dr Finlay had finally put to Cabinet, and which would guarantee legal advice to defendants but not representation, fell far short of what ACORD and Ngā Tamatoa believed was necessary.[7] ACORD argued that what was proposed would not remove discrimination from the courts and that it overlooked the particular needs of Māori and other Polynesian children and their parents. Ngā Tamatoa said that the scheme '[did] nothing to attack the basic problem of the institutionalised racism which continues to exist in the whole of the judicial system, and which ensures that we remain the jail fodder in this society'.

Court: Remand and Sentencing

[16] Children were often remanded in custody pending either sentencing (if they pleaded guilty) or pending a hearing (if they pleaded not guilty). Children might be kept in custody in police cells, social welfare homes, adult prison, psychiatric ward, or psychiatric hospital.

---

[5] Nelson Evening Mail 1 August 1972.
[6] Evening Post 2 August 1972.
[7] New Citizen 27 June 1974 p 1, 3.

[17] There are few statistics for remands in social welfare custody, however the figures that are available further reinforce the over-representation of Māori. In 1975, of the 878 children in social welfare custody, 51% were Māori.[8]

[18] Remands in a penal institution were similarly skewed. In 1974, of the 269 children remanded to a penal institution, 53% were Māori.[9] In 1975, of the 320 children remanded in custody to a penal institution, 57% were Māori.[10] In 1977, of the 356 children remanded in custody to a penal institution, 63% were Māori.[11]

[19] For sentencing, children could be sent to prison, borstal, a detention centre or a social welfare home. If they received a non-custodial sentence, they could be given probation, a fine or periodic detention.

[20] The Justice Statistics for the year 1970, substantiated, we said, 'the extreme concern we have previously expressed regarding the treatment received by Māori child offenders in the judicial system'.[12] We also said 'the present system in which the child is rarely represented by counsel, the parents (if present) are sometimes abused into silence by the Magistrate, and the Child Welfare Officer and the Magistrate go into a huddle and settle the case between themselves, must end'.

---

[8] Guy Powles *Draft report – Children and Young Persons on Remand in Penal Institutions* (unpublished) 5 April 1977. AL Series 3.36.
[9] Guy Powles *Draft report – Children and Young Persons on Remand in Penal Institutions* (unpublished) 5 April 1977. AL Series 3.36.
[10] Guy Powles *Draft report – Children and Young Persons on Remand in Penal Institutions* (unpublished) 5 April 1977. AL Series 3.36.
[11] M P Smith, *Study of young persons remanded to a penal institution*, Study Series, Department of Justice, 1979, 31 pp., AL Series 3.46.
[12] Press Release, Nelson Māori Committee 1973, AL Series 3.36.

[21] The following table shows the sentences imposed on children during the 10 years from 1967 - 1976:[13]

Sentences imposed	**Fine**	**Per. dten**	**Det. ctr**	**Soc. Welf.**	**Borstal**	**Total**
Number of children	24,466	1,511	1,416	10,661	2,311	**116,595**
Percentage of children who were Māori	29.1%	35.9%	48.7%	53.3%	59%	**41%**

[22] These figures include both boys and girls. The pattern is similar for both but the proportions of Māori among the girls are, in almost every category, even higher than among the boys. It is very clear that Māori children received heavier sentences than non- Māori children. Any Māori child before the court was more than twice as likely to be sent to a penal institution (detention centre, borstal or prison) as a non- Māori child, while the latter was more likely to be fined or simply admonished and discharged.[14]

Statistics

[23] The following data is drawn principally from the annual N.Z. Justice Statistics.[15]

[24] Children in Court between 1967 – 1976

(a) Total: 116, 595; c.11,000/year 41% Māori

[13] ACORD, *Children in State custody* November 1979, revised 1981, AL Series 3.351.
[14] *N.Z. Justice Statistics, 1967 - 1976,* Department of Statistics, New Zealand.
[15] Also from ACORD's publications: Submissions on the Children and Young Persons Bill (1974) and Children in Prison (1976), Children in State custody (1979 revised 1981) , Ombudsman's Inquiry into children in prison (1977), and Mel Smith's report on Children in adult prisons (1979)]

(b) In one particular year, 1974, there were 10,438 children of which 45% were Māori. (Powles 1977)

[25] The ages of these children appearing in court during the five years 1967 – 1971:[16]

(a) 6 x under 8 years old

(b) 9 x 8 years old

(c) 45 x 9 years old

(d) 662 x 10 years old (i.e. over 100 per annum)

[26] The types of charges these very young children faced in court included burglary, theft, conversion, offences against the person, and vagrancy. These included children under the age of 8. For the charge of vagrancy (being idle and disorderly, being a rogue and vagabond), 56 children between the ages of 10 – 13 faced court, of which 45% were Māori. The statistics highlight the racism towards Māori.

[27] Percentage of Māori in Social Welfare custody on remand 1/4/75 – 31/12/75[17]

Age	14	15	16
Boys	63%	55%	45%
Girls	73%	53%	47%

[16] See Table 1, ACORD Submissions on the Children and Young Persons Bill (1974) – drawn from N.Z. Justice Statistics 1967 - 1971.

[17] Guy Powles *Draft report – Children and Young Persons on Remand in Penal Institutions* (unpublished) 5 April 1977. AL Series 3.36.

[28] Percentage of Māori in Adult Prisons on remand (1974 - 1975)[18]

Age	14	15	16
Boys	45%	60%	48%
Girls	67%	38%	60%

[29] Percentage of Māori sentenced to prison, borstal or detention centre (1974 - 1976)[19]

Age	15	16	17
Boys	68%	55%	43%
Girls	100%	60%	56%

[30] Girls sentenced to borstal from Children's Court (1967 - 1971)[20]

Year	1967	1968	1969	1970	1971	Total
Non-Māori	10	4	7	13	7	41
Māori	9	7	11	23	14	64
% Māori	47%	64%	61%	64%	67%	61%

[31] The trends displayed by these figures are profoundly disturbing. A child who got into trouble and was brought before the court was much more likely to be taken away from home and family and locked up if he or she was Māori. The disparity was even worse for the younger

[18] Guy Powles *Draft report – Children and Young Persons on Remand in Penal Institutions* (unpublished) 5 April 1977. AL Series 3.36.
[19] NZ Justice Statistics 1974 – 1976.
[20] ACORD submission presented to Royal Commission on Courts February 1977, AL Series 3.67. Data from NZ Justice Statistics 1967 – 1971.

ones and worse still for girls – to the extent that every one of the twenty 15-year-old girls sent to borstal in the three years 1974 – 1976 was Māori.

Abuses in Institutions: Police Cells, Social Welfare Homes, Adult Prisons

[32] By 1974, both ACORD and I had high public profiles and our efforts to gain justice for children in the courts was well known amongst Māori and Pacific community groups who sent to us a steady stream of parents concerned over the treatment of their children by the Police, Department of Social Welfare and the courts. It was a time when children suffering alleged abuse or neglect at home, or who had run away from home, could be taken into the care of the State as 'wards of the State'. In this way many ended up in one or other of the 'social welfare homes' that were administered by the Department. Other children who had been arrested by the police or prosecuted by way of a police summons, had to face the Children's Court usually, as we repeatedly said, without legal representation. They could be held before or after their hearing on remand in one of these social welfare homes; or in 'police custody' which meant police cells or, in the larger centres, an adult prison. By the mid-1970s the police, rather than social workers, were the major source of admissions and the children incarcerated were predominantly male and disproportionately Māori.

[33] In this part of my submission, I will quote a number of cases. All were children interviewed by me; or their evidence was given and recorded at the ACORD Inquiry into Social Welfare Homes in 1978.

Police Cells

[34] On behalf of the Nelson Māori Committee, I took testimony from a few children who were held in custody in police cells.

[35] One such case was that of 16-year-old GRO-B who, at 8.30 in the morning of 5 January 1973, an hour before appearing in court, was arrested on a charge of being idle and disorderly. While standing naked in the showers of the police station he admitted this, and another charge of being in possession of an offensive weapon. No lawyer, welfare officer or parent was with him when he was instructed by a police officer to strip and take a shower. He made his

'confession' being prodded, he later told me, with a police baton. Regardless of the circumstances in which it was made, the confession – which later proved to be false – convicted him. Even though his mother was in court, he was remanded to the police cells for another four days before sentencing. The questioning by police of a boy naked, alone and in the cell block was, John Hippolite and I said 'inhuman and uncivilised … we do not consider that evidence obtained in such circumstances should be admissible let alone be the sole basis for a conviction'.[21]

[36] Less than a fortnight later GRO-B a 13-year-old Māori boy who had just left primary school, was arrested in Nelson for burglary and being idle and disorderly. When I saw him in the cells of the Nelson police station he had already been questioned in the absence of his parents, a child welfare officer or lawyer. Because he was so young I asked if I could bail him out and have him stay with me, as his friend was already doing. The police refused, but once they were aware that we had arranged for him to be represented, the original charges were dropped and a single charge of unlawfully being on enclosed premises substituted. As I later wrote 'this primary school boy who was seen entering an open cricket pavilion spent over 24 hours locked in the cells of the Nelson police station'.[22]

[37] The two cases typified the treatment meted out to miscreant children in smaller towns and cities in the country. Like GRO-B, GRO-B was held in a cell, sharing facilities with adult prisoners.

Social Welfare Homes: Overview

[38] During the 1970s there were about twenty homes throughout New Zealand. The following details are about experiences of children held in some of those homes.[23] Thousands of children passed through those homes each year. For example, in 1978 there were 4225 admissions, including over 1000 to Owairaka.

---

[21] Oliver Sutherland & John Hippolite, Nelson Race Relations Action Group and Nelson Māori Committee, author's collection.
[22] Ibid.
[23] See ACORD/Nga Tamatoa/Arohanui Inquiry Report 1978; Human Rights Commission Inquiry Report 1982.

[39] Over the years from 1974 to 1978 we assembled dozens of case histories many of which we forwarded to the Ministers of Social Welfare and Justice as evidence of the ill-treatment of children in State care. We had compiled a horrendous picture of physical and mental assaults; of extreme deprivation of liberty; of inhuman and degrading treatment and punishments; of forced sexual examinations; and of unhygienic and culturally offensive practices and routines.

Social Welfare Homes: Owairaka (boys 14 – 17 years)

[40] We made our first complaint to Bert Walker, Minister of Social Welfare on 7 April 1978 in a letter which detailed the case of 13-year-old state ward, GRO-B, who in January 1978 was held for 10 days in a 'secure cell' at the Owairaka Boys Home. GRO-B and his parents outlined for me GRO-B's story which began when he was picked up by police in Kaikohe and then taken to Owairaka.[24] He was not charged.

[41] He was, we wrote, 'immediately placed in what the Department of Social Welfare terms "secure care" which is in fact solitary confinement, in a cell about 3m x 2m. The only clothes he was allowed to wear were a T-shirt and football shorts – no underpants, no socks no shoes. For the first four days he had to wear his T-shirt and football shorts at night as well as during the day. He was issued with pyjamas on the fifth day. All meals were eaten in the cell and the only time he mixed with the other boys was at physical training (PT) three times a day totalling one hour per day. Even then the boys were not allowed to talk. He was therefore locked alone in his cell for 23 hours per day for 10 days. He and other boys in solitary were considerably embarrassed by the lack of underpants during PT. Because he was only allowed shoes for one of the three daily sessions Kevin got badly blistered feet'. In our accompanying letter to the Minister we demanded that he 'suspend the Principal and staff of that home immediately and initiate a full, public inquiry into its administration'.

[42] Routine practices at Owairaka included:[25]

---

[24] ORWS to Minister of Social Welfare 7 April 1978, AL Series 3.164. See also Pauline Ray, *Turning the key on the young offender, Listener*, 6 August 1978, for a full interview with Kevin O and his parents.
[25] Justice and Race, p 51 – 54.

(a) On admission, children would have to strip in front of staff, delouse, and only be given t-shirt and shorts (no underwear or pyjamas) to wear.

(b) Every boy would then be sent straight to secure for days, weeks or months. They would spend 23 hours in solitary confinement with one hour of physical training a day. The cells had one small window, toilet in cell, all meals eaten in cell, rag and cleaner for cleaning toilet passed from cell to cell; no access to education. The boys would not be permitted to speak to each other or to staff, all of whose communication were conveyed by nods of the head.

[43] Some cases illustrate the mistreatment of boys in more detail.

(a) GRO-B (9 years old) – After persistent truancy led to problems at home, this nine year-old boy was incarcerated for three months in Ward 12 at Auckland Public Hospital. This was principally an observation ward for adult psychiatric patients, run by the Auckland Hospital Board. It had no special or separate facilities for children, especially not one as young as GRO-B The Ward admitted children because of the 'sparseness of child and adolescent psychiatric services'.[26] During GRO-B 's stay in Ward 12, he had, according to his mother, 'a lot of drugs pumped into him, so he became very lethargic and fat and didn't want to do anything'. Once he was discharged from the hospital, GRO-B – now aged 10 years - was sent to Owairaka. He stayed in secure for a week before going to court where he was made a state ward. He was returned to Owairaka where he stayed for the next five weeks, three of which were in secure. He was not able to perform the physical training to the satisfaction of the staff 'because [he] was so fat and lethargic due to this drug: he couldn't do push-ups: so the P.T. instructor decided he would help him along. He took his sandshoe and really belted my son's buttocks, till you couldn't get a pin between the massive pulp-bruising'. Taken out of secure, GRO-B immediately ran away home. When his mother saw his swollen and bruised buttocks she rang the Principal, Arthur Ricketts, 'who was very apologetic and said that it shouldn't have happened'.

[26] Professor Warwick Brunton to ORWS 10 December 2017, author's collection.

(b) GRO-B had spent three days in secure in Owairaka on remand for sentence and three more days after. On arrival he was deloused and stripped; 'I was too scared to say I didn't want to get undressed in front of them'. He described the 'nodding system': 'When you have a shower he comes in the door after you have finished your shower. He looks at you then he nods his head. "Thank you Sir". Then you shake your towel out and you go like this (pull waistband of shorts forward) so he checks you; and you stand outside the door again and he goes like that again (nod). You go "Thank you sir" and you go back to your room and stand outside your door and he does that again (nod) and you go inside the door'.[27]

(c) GRO-B described visiting her son in Owairaka: 'It is the coldest place I have ever been into for a parent who is distressed because her son has done something wrong…I am shown into a visiting room and my son comes in barefooted in shorts and a singlet and we sit down. You're not allowed to take fruit or sweets or food, only comics and readable things … One day he was upset and crying – I'd never seen him cry before. I felt he had been too long in secure. He asked me to see about him going up into the home. He was only 14'. In fact her son, after running away, had been incarcerated in secure continuously for two months in February and March 1978 awaiting a transfer to Kohitere. He saw no welfare officer or teacher during that period nor was he allowed to see his sister or brother. GRO-B recounted an occasion when staff said to her that 'it's a wonder that your son hasn't gone up the wall…he's been in there too long'.

(d) GRO-B was a state ward for 15 years from when he was 18 months old. He explained that in 1950, Owairaka housed boys aged from five to 15 years. He first went to Owairaka in the early 1950s when he was aged six or seven. He told the ACORD Inquiry: 'It is all quite true about the ill-treatment, the P.T. etc. We used to be waked at 2am to do press-ups. I hadn't committed any crime, except being a state ward: but because I had a brother there we were singled

[27] See David Cohen, *Little criminals: The story of a New Zealand boys' home*, Random House, 2011, pp. 195 – 197.

> out for humiliation. I remember having to kneel and cut the lawn with shears. I was hit across the small of the back with a cane for being too slow'. On one occasion, an innocuous comment had been interpreted by staff as 'being smart': 'I had to run around until I dropped, then was put in solitary'.

[44] In Secure, all meals given in cell sitting on bed beside toilet. Children were often not provided with underwear. Visits were restricted and physical training for one hour a day was the only reprieve from solitary confinement.

[45] Bed-wetting was common amongst the traumatised children. For GRO-B a story reported in the Evening Standard in 1978, he was first incarcerated at Owairaka as an 8 year old:[28] 'I was by far the youngest and so I got in trouble from everybody'. Staff who, he said, regarded him as 'an animal' made him wear an electrified cap arrangement attached to his penis: 'Even a drop of urine in the cap would trigger the sensors to give me an electric shock. But one time they must have got fed up with me. The dial on the belt was meant to be set at a maximum of three, for just a mild shock. But one night … the dial was turned right up to, say, 10 and I got a hell of a shock'. He recalled a staff member 'rubbing his nose in his wet bedding which he would furtively try to hide'.

[46] Punishments were administered for misdemeanours such as being cheeky, stealing smokes, and especially for absconding. Children could be put in secure for days or weeks for persistent absconding.

[47] Children were forced to do physical training or work (including mowing sports fields to the point of exhaustion) as punishment. This included running on blistered feet and being hit with a cane if they stopped.

[48] Children were routinely subjected to physical punishment: caned on the back, buttocks and legs; punches to the head or body. Cell 7 was a particular cell in the eight cell secure block at Owairaka with one tiny 15cmx15cm window too high up to look out. It was used for 'incessant talkers, loud talkers, or misbehaving or bad attitude. GRO-B described cell 7 as the

[28] Evening Standard 27 April 1978.

punishment cell: 'one bloke was refusing to do P.T because of the blisters on his feet. He was beaten up and put in cell 7. When he came out he still showed signs of it.'[29]

[49] During the day everything including the mattress would be removed from cell 7 and children could be locked in solitary confinement for days.

Social Welfare Homes: Wesleydale (boys 10 – 14 years)

[50] Absconding's led to the heaviest punishments at Wesleydale – strappings by staff and arranged boy-on-boy boxing matches. One ex-staff member told the Human Rights Commission Panel during their Inquiry in 1980 that 'it was common for one staff member to hold a boy down while a senior housemaster strapped him repeatedly on the body … one 11 year-old boy would not bend over after receiving six strokes on the buttocks … three staff held him while a fourth administered further strokes until he was severely bruised on the thighs, buttocks and the jaw'. The witness said that he had seen boys receive 15 to 20 strokes with the strap.30 On other occasions a cricket bat replaced the strap. One boy stated that while in Wesleydale he had been punished by having 12 strokes on the backside with a cricket bat. A boy with whom he had absconded was hit so hard his buttocks bled 'until there was blood on his legs'31. But, one ex-staff member said, 'when you get a lot of absconding and strapping doesn't work, then you can always try the boxing match … I think it is one of the cruellest things I've seen done'.

[51] The 'Golden Fist' was, perhaps, the most shockingly barbaric practice, at any Home, revealed to the Panel. It was a punishment meted out to one boy, the absconder, by another who was selected by staff for the job. Once a boy had run away, all the boys at the Home were taken 'off privileges' until he was found (i.e. they were denied morning and afternoon teas, supper, rest periods etc). In this way a feeling of anger was built up against the absconder. When he was eventually caught, staff ordered a fist fight ('boxing match') between him and

---

[29] Human Rights Commission, *Report of the Human Rights Commission on representations by the Auckland Committee on Racism and Discrimination: Children and Young Persons Homes administered by the Department of Social Welfare*, 1 September 1982, pp 26 - 27, AL Series 3.349.
[30] HRC Report 1982, AL Series 3.345, pp 36 – 37.
[31] Ibid; ACORD, *Child abuse in welfare homes*, February 1982, AL Series 1.42.

the boy who was the best boxer at the Home. Other staff and boys then assembled and watched this beating of the absconder, which continued until he fell down and could not or would not get up.[32] One ex-staff member explained that the boxing match was stopped at the point of submission: 'when the child is crying, he's got a bloody nose, or he's going to have a thick lip for a couple of days then they stop it'.[33]

[52] A former staff member of Wesleydale, Frank Ryan, provided details of bedwetting that occurred following the issuing of the following memorandum to three night supervisions in march 1974 by the then Deputy Principal of Wesleydale:[34]

(a) It seems a number of boys are being allowed to go to the toilet during the night. This should not happen. An earlier memo pointed out that we would prefer a boy to wet his bed rather than be allowed to go to the toilet. All sorts of trouble start from this kind of thing – e.g. smoking, absconding, stealing etc. Please ensure that boys are kept in their beds till day staff arrive at 7am.

Social Welfare Homes: Bollard Girls' Home; Allendale Girls Home; Strathmore Girls' Home (Girls 10-17 years)

Punishments – Venereal Disease Testing

[53] GRO-B, who was in Bollard in 1974 described the admission procedures: 'You were stripped of your clothes and stripped of your privacy when you arrived. You are de-loused – with nit goo and a Dettol bath … then put in a cell. It was very small, with a bed, rubber mattress and a toilet. You were given four squares of toilet paper for all day. We wore pyjamas all day, even for cleaning out our cells. They often didn't fit too well, which was very demoralising'. Worse was the compulsory venereal disease check: 'you were moved into another cell and told to take everything off except your top. Then you were put onto a bed and into stirrups like when you have a baby. The old bag shoves your legs around how she

[32] Human Rights Commission *Report* pp. 34 – 36; ACORD, *Child abuse in welfare homes*, February 1982, AL Series 1.42.
[33] Human Rights Commission *Report* p. 36; see also Elizabeth Stanley, *The road to hell. State violence against children in post-war New Zealand,* Auckland University Press, 2016, pp. 84-85.
[34] Memorandum signed "T Waetford" 6 March 1974, Photocopy of an original handwritten memo, appended to the submission by Frank Ryan to Archbishop Johnston 16 October 1982, AL Series 3.357.

likes. She didn't say thank you; she didn't say please: Just 'undress!' get up there; spread your legs out, etc'. GRO-B noted that some girls who were 'kicking and struggling' were held down by straps. It was a procedure that was described by all the ex-inmates of girls' homes. One, who was aged 13 years at the time, 'wouldn't take the VD test. I was put in secure but I still wouldn't agree. In the end three or four staff came in and I was taken and strapped down for it'.[35]

[54] As well as being given on admission, VD checks were again given to all girls who had run away or been out on day leave: 'the girls see them as punishment, and hate them. They were given 100% to every girl, whether sexually active or a virgin'.

[55] The evidence of one ex-staff member of the Bollard Girls Home (1976 – 77), GRO-B provided further detail regarding VD testing.[36] After stripping, delousing and a 'savlon bath' all girls went into the secure unit cells routinely for between one and 14 days. While there they underwent VD testing. GRO-B confirmed that girls who were unwilling to have the test were coerced into it by a denial of privileges, regardless of their age (she recalled one girl aged 11) or previous sexual activity. She stated 'van loads of girls from Weymouth and Allendale homes were brought to Bollard for the test. They were all herded into one room to wait for the test. There was no preparation given to the girls as to what to expect'. They universally found the doctor cold and clinical.

Punishments – Use of Secure

[56] GRO-B spoke to her experience at Allendale Girls' Home: 'What they say is true. I spent most of my time in secure, in solitary confinement. There was a bed and a pan and a non-opening window. You got out for a bath or shower. Meals were brought, and those were the only times you saw anybody. We had no comics. I was in for two months at a time. Every time I got a chance I ran away. I was 12 the first time, and had no sexual experience. I was given a VD check.' With some regret she noted that 'There was a lot of ganging up on each

[35] Report of ACORD Inquiry 1978 pp 15 – 16.
[36] Linda B, Statement to Human Rights Commission Inquiry 1980, AL Series, 3.342.

other. That's the only thing I regret or feel ashamed of, having to gang up and beat shit out of another woman'.[37]

[57] Treatment of the girls held at Weymouth Girls' Home was discussed by an ex-staff member, Colin Jones, who said that the length of incarceration in secure was determined by the Senior Housemaster: 'there are sort of "sentences" of different times in secure. For hostel misdemeanours, three days; absconding, one week; absconding a second time two weeks. They are in their cells most of the day, one or two hours out. Physical assaults occurred: I have seen girls struck in the home, and I have slapped them myself. Tensions build up in institutions and it does happen'.[38]

Human Rights Commission Report/Findings

[58] ACORD made a complaint to the Human Rights Commission in 1979 that the State was in breach of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in relation to treatment of children by the Department of Social Welfare in residential homes. The Human Rights Commission held hearings throughout 1980 and finally issued their report in 1982.

[59] The report stated: 'After considering all the information put before it during this inquiry and the representations made, the Commission is of the opinion that some practices and procedures are of such a nature that they raise serious and substantial questions regarding this country's "better compliance" with the standards set out in Articles of United Nations Covenants on Human Rights, as ratified.' By then listing each of the 'allegations … that are of particular concern', the HRC was going as far as ever it would to find breaches of those covenants. The Report spelled them all out:

<u>The International Covenant on Civil and Political Rights</u>

(a) Article 7 (which refers to cruel inhuman or degrading treatment or punishment)

[37] Report of ACORD Inquiry into Social Welfare Homes 1978.
[38] Ibid.

(i) The 'nodding system' of non-verbal commands that was in practice at the Owairaka Boys' Home Secure Block.

(ii) The arranged boxing matches which occurred at Wesleydale Boys' Home.

(iii) The physical exercising and physical treatment.

(iv) The punitive long-term use of 'Cell 7' at Owairaka Boys' Home.

(b) Article 9 *(Which refers to the right to liberty and security of person)*

(i) The confining of children and young people to Secure Blocks in the absence of legal rules or regulations governing the grounds for or duration of that detention, coupled with the lack of practicable means of seeking independent judicial or other review of that detention.

(c) Article 10 *(Which refers to humane treatment and respect for the inherent dignity of the human person)*

(i) All those practices and procedures mentioned under Article 7.

(ii) The admission procedures at Owairaka Boys' Home.

(iii) Venereal disease testing procedures at Bollard Girls' Home.

(iv) Toilet facilities in Secure Block Cells particularly when shared.

(v) Isolation in Secure Block Cells.

(d) Article 27 *(Which refers to the rights of minorities)*

(i) The lack of recognition, overt or otherwise, of differing cultures and ethnic backgrounds in the administration of some Homes.

The International Covenant on Economic, Social and Cultural Rights

(e) Article 12 *(Which refers to the right of everyone to the highest attainable standard of physical and mental health)*

(i) The standards of the physical and mental environment as described in the Secure Blocks at Owairaka Boys' Home and Bollard Girls' Home.

(f) Article 13 *(Which refers to the right of everyone to education)*

(i) The lack of 'education facilities', more particularly in Secure Blocks.

[60] This list of 'allegations of particular concern' was comprehensive and left no doubt that testimony from the ACORD witnesses had had an impact on the three Commissioners - Pat Downey, Peg Hutchison and Hiwi Tauroa – as well as on their lawyer, Carrick Morpeth.

[61] In the last section of its Report, the Commission outlined its 'Conclusions and Recommendations'. It was here that the Commission became weak-kneed. Having acknowledged 'the difficulty of the Department in running residential institutions' the Report stated, presumably on the basis of the evidence of the current managers of the Homes, that 'many, if not all, of the practices and procedures which formed the basis of the representations made by ACORD have been eradicated, and the Department has embarked on a programme of innovative change'. The Commission was, it stated, 'gratified both by the seriousness which the Department accorded the inquiry and by its willingness to reconsider practices and procedures which came to light during these proceedings'.[39]

[62] The Minister of Social Welfare, Venn Young, accepted that the report included some 'pretty hair-raising stuff' but criticised the process of the inquiry. Robin Wilson of the Department of Social Welfare rejected the report entirely as 'based on false complaints'. Arthur Ricketts, principal of Owairaka stated that the report was 'unfair, untrue and biased'.

[39] Human Rights Commission report 1982, pp 123 – 124.

[63] In late 1982 the Minister of Social Welfare commissioned Archbishop Johnston and Merimeri Penfold to investigate current state of affairs in the homes. Their report claimed major recent improvements at the homes. But they were concerned at the continued use of secure, asserting that "solitary confinement cannot…be acknowledged as a suitable form of punishment in the homes". They went on "if secure is to be used therapeutically, no person should be kept in secure for longer than two days unless the decision is ratified by a committee consisting of a non-departmental person and a psychologist". Johnston and Penfold then recommended a set of rules setting out the rights of children in detention which led to the drafting of the Children, Young Persons and their Families (Residential Care) Regulations in 1986 and implementation in February 1987.

[64] At last, following a 7-year campaign by ACORD, the worst abuses and punishments which had been a hallmark of homes such as Owairaka, Wesleydale, Bollard and Allandale were outlawed.

[65] Years later in 1996, in a published history of the Department, ex-Director of Social Work, Auckland, Robin Wilson, who had for years criticised ACORD and rejected all our complaints, was quoted by Bronwyn Dalley as saying 'Some of it was pretty indefensible … I guess the Department shouldn't have allowed it to happen … with hindsight a lot of what [ACORD] said was right'.[40]

Lake Alice Adolescent Unit

[66] The Adolescent Unit of the Lake Alice Psychiatric Hospital was opened in 1972. The Unit, administered by the Palmerston North Hospital Board, adjoined the adult facility and was located 20 or so kilometres from Whanganui.

[67] ACORD first learnt of the existence of this Unit and of the psychiatrist who ran it, Dr Selwyn Leeks, in late 1976 when a Department of Education psychologist, Lynn Fry, approached us about the case of Hake.[41] Before long ACORD's publicity over his case and the

[40] Bronwyn Dalley, *Family matters: child welfare in twentieth century New Zealand,* Auckland University Press, 1998, p. 303.
[41] All of the material regarding this case is held in the restricted file AL Series 3.117.

Commission of Inquiry it prompted, led to major investigations of Dr Leeks' Unit and the use and misuse of electroconvulsive instrumentation and therapy.[42]

GRO-B *(13 years old)*

[68] GRO-B spoke no English when he arrived in New Zealand from Niue aged 6 and was sent to a number of special classes at schools in Auckland. Following minor offending (shoplifting) leading to Children's Court appearances, he was made a state ward and placed in Owairaka Boys' Home. From there he was sent to the Lake Alice Adolescent Unit when he was 13 years old. Within a week Hake received three electro-convulsive therapy (ECT) treatments. Over the next 8 months, he received a further 5 treatments.

[69] GRO-B later described the ECT treatments to me, explaining that while sometimes he was sedated or given an anaesthetic before the shock was administered, on several occasions he had it 'straight': 'It hurts when I have it … Dr Leeks said "you get this for having done this and this wrong" They did this to punish me.'[43]

[70] At the time, no one explained to GRO-B's primary care-giver, his grandmother (who needed a Niuean interpreter) or parents, where GRO-B was being taken or what might happen to him when he got there. The first they heard of his transfer to Lake Alice was when some months after his admission, in late 1975, he wrote a letter home. Written in Niuean, his letter said 'I've been given electric shock by the people Mum. The pain is very bad'.[44]

[71] An Inquiry was undertaken by Magistrate WJ Mitchell in 1977. A school teacher at Lake Alice, Anna Natusch, was a key witness for ACORD in the Inquiry. As I wrote to Sir Guy Powles, who was at that time conducting his own inquiry into a case concerning another child at Lake Alice, 'Anna Natusch, who taught GRO-B and other children at Lake Alice for a year, really blew the whole thing wide open. We had heard the psychiatrist (Dr Leeks) give a super-smooth story about the place. On the other hand Ms Natusch gave details (with names) of ECT used for punishment (e.g. GRO-B – 6 Ds, for bad behaviour, earns an ECT); injections used as threats

[42] In the 1970s Hakenga H was not named publicly, but in recent years – see *New Zealand Herald* 27 October 1991 – Hakenga has identified himself as the Niuean boy involved.
[43] ORWS notes of interview with Hake H, Auckland, 14 December 1976, AL Series 3.117.
[44] Simon Collins, Terrible legacy of Lake Alice, *New Zealand Herald* 27 October 2001.

or punishment; and an example of a 15-year-old girl (name given) who spent five days locked in solitary confinement. Dr Leeks' version of the concrete cell was that it was called "time out". Children, he said, went to it voluntarily and sat there for 10 or 20 minutes' "destimulation". Ms Natusch said that in most cases children were placed there, locked in and left sometimes for hours or days. (Hake was left in as a punishment)'.

[72] Mitchell's report strove to exonerate the actions of all the officials and medical staff who dealt with GRO-B and to blame his family for failing to look after the boy. Regarding whether or not GRO-B's initial shock treatments (November 1975) were administered with or without authority, Mitchell equivocated: 'It is not easy to answer in a straightforward way whether ECT was administered to the boy in this first period with or without authority'.[45] Regarding the administration of later ECTs, Mitchell conceded: 'There was no express authority given either by the family or by the Social Welfare officers for ECT to be administered [during 1976]' but he then went on to exonerate Lake Alice by writing 'I consider that the hospital was entitled to imply in all the circumstances that the treatment should continue if the need arose for it'.[46]

[73] From this distance, GRO-B's case exemplifies all the worst elements of institutional racism prevalent in the 1960s and '70s. GRO-B and his grandmother who had 'whangai-ed' (informally adopted) him at birth, arrived in New Zealand to join the Auckland Pacific Island community in late 1967, neither able to speak English nor in any way familiar with New Zealand social and governmental processes. From the moment of their arrival from Niue their encounters with the education, Police, social welfare and judicial systems were all characterised by misunderstandings and a lack of understanding. This culminated in Mitchell's inquiry and report which demonstrated the glaring failure of the various institutions that dealt with GRO-B and his grandmother, to appreciate the cultural divide between themselves and this troubled Niuean family.

[74] In a later memoir, Anna Natusch reflected on her time at Lake Alice: 'By the time I had seen out my teaching term at Lake Alice Psychiatric Hospital, I was to gain an insight into

---

[45] W J Mitchell S.M., *Report of the Commission of Inquiry into the case of a Niuean boy*, 18 March 1977, New Zealand Government, p. 17, AL Series 1.20.
[46] Ibid, p 22.

Nazism…It is one thing to call an episode in medical history 'a medical experiment' and another thing to tolerate downright cruelty, such as I saw occurring in the psychiatric situation at Lake Alice in the Adolescent Unit … [for ECT] to be administered without anaesthetic upon the children of Lake Alice as a form of aversion therapy, is a horrifying episode in New Zealand medical history'.[47]

GRO-B *D (12 years old)*

[75] The publicity given to GRO-B's case, with which my name was associated, prompted the parents of two other boys, GRO-B and GRO-B to bring them to me to hear about their experiences at Lake Alice.[48] I first met and interviewed GRO-B with their son GRO-B, on 23 April 1977. They outlined GRO-B's story which began in 1970 when, as an 11-year-old, he got into trouble with the police. He was made a state ward that year. Two months later he was sent off to the Social Welfare Boys Home at Hokio Beach, near Levin. After a year at Hokio, GRO-B was transferred to Holdsworth Residential School at Whanganui. No one told his parents of this move. While at Holdsworth, GRO-B was seen by Dr Leeks, visiting from Lake Alice, and was put on the anti-psychotic drug stelazine with a recommendation he be transferred to Lake Alice. After nearly a year at Holdsworth 12-year-old GRO-B was moved to Lake Alice on 28 April 1972. His family was not consulted. In fact, until they received a letter from GRO-B at Lake Alice they had no idea he was there.

[76] Dr Leeks diagnosed GRO-B as having 'late childhood schizophrenia' and gave him two courses of ECT. Twelve-year-old GRO-B was not asked to give his consent and at no stage were his parents consulted or asked to give a consent. Even afterwards they were not told officially that GRO-B had had electroconvulsive therapy.

[77] GRO-B described his treatment: 'Each 'course' of ECT was like this.

---

[47] Anna Natusch, *Battle against the rulers of darkness: a memoir*, Anna Natusch, Havelock North, 2016, pp. 66 – 69.

[48] 'Hone' and 'Peter' are pseudonyms. This account of their stories is drawn from the restricted file A.L. Series 3.117, which includes the author's hand-written notes of interviews with both boys and their parents.

> On Monday, Wednesday and Friday mornings at about 9am I had an ECT with anaesthetic. Then on the same Friday, I had another ECT at about 5pm – this one was "straight" i.e. no anaesthetic. It really hurts until it knocks you out. This course took one week, then I had a week without it, and then on the third week I had another four , Monday, Wednesday, and two on Friday; just the same, three with the needle and one 'straight'. I was frightened, but you've got no choice. There's a doctor and a couple of nurses there and they hold you down until the shock knocks you out.

[78] After four weeks at Lake Alice, he was discharged and sent home to his parents in Auckland. No one prepared them for GRO-B's return. No one offered an explanation as to what had happened to their son or gave them any counselling to help them cope with any problems that might arise. And, problems there were. The boy started having epileptic fits, at least once a day although he had never had them before. His family were horrified by this: 'We didn't know what to do. We used to rush up to the doctor'. Besides this, GRO-B started to wander; his parents believed that GRO-B was much worse when he came back from Lake Alice'.

[79] Two years later in late 1973, by which time he was 14 years, GRO-B was in trouble again, charged with several burglaries, and was sent to Kohitere, a residential social welfare institution for boys. After four months there he was again admitted to Lake Alice for observation and assessment. However, 'observation and assessment' included heavy doses of stelazine and then 11 ECT treatments in four months – seven in his second month and a further four in the month before his discharge. Hone explained that these followed the same pattern as before, with some given 'straight'. At the same time he was receiving monthly intramuscular injections of 25 mg of the anti-psychotic drug modecate.

[80] It was during this four-month stay at Lake Alice that GRO-B discovered a special sort of punishment, which he described:

> The nurses used to put us all into the day room after school on Fridays. They called out boys whose names were written on a bit of paper. They were the kids who had played up or been naughty, like not listening to the housemasters.

> Those boys were taken to the medical room and the ECT electrodes were placed on either side of their knees. They were given a shock as punishment. We could hear them scream. I knew two or three boys who had it.

[81] Hone was discharged from Lake Alice just before his 15th birthday. Dr Leeks recommended that he have maintenance weekly or fortnightly ECT 'for his hallucinations'. Again he was sent home to his family who, as before, had not been told of his transfer to Lake Alice from Kohitere nor had ever heard officially that he had been given ECT. His father summed up his feelings this way: 'I went up to Social Welfare one day and told them that they treated my boy like a sack of flour. They put a label on him, put him on a delivery truck and drop him off somewhere – we never knew where'.

GRO-B *(13 years old)*

[82] GRO-B spent about a year at Lake Alice from September 1973 until August 1974. He was 13 years old at the time. His incarceration in the Adolescent Unit coincided with that of GRO-B who was a few months older. Like GRO-B, GRO-B was a state ward. While the Department of Social Welfare did tell his mother he had been sent to Lake Alice from Hokio Beach, she had no idea that he had had ECT until she visited him at the hospital. She explained to me: 'When GRO-B told me that they put these electrodes on his head, I thought this is terrible. I was really upset – but what could I do about it? Being a hospital I suppose they have the right to do these things, but I don't know. I only spent about five minutes with the doctor. He told me it was me and my husband's fault how GRO-B was – personal things. But he didn't tell me anything about GRO-B s treatment. Nothing about the electric shocks. When I got home I kept worrying about these boys. Some were so young. I couldn't stop thinking about it. It [Lake Alice Hospital] looked like Belsen, with the big look-out tower and the things they were doing'.

[83] GRO-B described his electric shocks: 'I had seven ECTs for treatment. All 'straight' – no anaesthetic … I would have had the needle, but they didn't want me to. I hated ECT. I saw the doctor turn up the voltage volume switch and it really hurt until it knocked you out. Three or four of them hold you down. Then they lock you in the 'time out' room to come to. You feel

pretty muddled afterwards. No one is there to comfort you or help you. Sometimes I was locked in the 'time-out' room for a whole day alone'.

[84] GRO-B had also had shocks as punishment. He was one of the boys GRO-B had said who had been given it on the legs. His first-hand account to me in 1977 was the first time this appalling punishment had been described in detail. GRO-B explained: 'The nurses had us in the day room and called out the names of those kids who had been bad. They called out my name. The nurses took me out to the medical room. They sat me on a chair. I watched them plug in the machine and then they put the electrodes one on each side on my knee. They gave me a shock – turned it off and on. It jolts you out of the chair. The chair fell over, and I rolled around on the floor until they turned it off. I got it twice on the knee – once for whistling at one of the nurses and once for smoking'.

[85] GRO-B also had ECT on the head once for punishment. According to his account, the ECT was administered 'straight' by the nurses alone without any medical supervision: 'I was fighting with another boy – play fighting. The nurses took me to their office and talked with me. Then they took me to the medical room. They told me they were giving it to me for fighting. That was on Good Friday. I remember, it was a holiday and Dr Leeks wasn't there. No doctor was there'.

[86] GRO-B also described a variation on the knee shocks: 'Two boys got it together. They were made to sit side by side on the edge of the bed upstairs. The nurses put their legs together and put one electrode on the outer knee of each boy – then they turned it on'.

[87] GRO-B noted that while he was there an eight-year-old boy, GRO-B, was given ECT: 'He was the youngest'. GRO-B alleged that on one occasion he saw a nurse throw a needle at GRO-B when the boy refused to have an injection.

[88] GRO-B was discharged from Lake Alice when he was aged fourteen. He told me that he still had nightmares about the place: 'I feel sick looking at an electric plug'. He explained that he had wanted to give evidence into the Mitchell Commission of Inquiry into GRO-B's case: 'I think they only uncovered the top layer'. GRO-B was right. Dr Leeks had presented his use of

ECT to Mitchell as purely therapeutic: the use of the electrodes to deliver shocks to the children's legs or other parts of their bodies – later described by Dr Mirams and other psychiatrists as 'aversion therapy' – was never mentioned.

[89] In May 1977 ACORD lodged a complaint with the Director of Mental Health, Dr Mirams, alleging 'torture' of these children. Dr Mirams refused to shut the Unit down but said that he would investigate the matter himself. He engaged a barrister Gordon Vial who was a District Inspector under the Mental health Act to investigate the allegations.

[90] Prompted by Vial's report, the Police investigated and later stated there was 'no evidence of criminal conduct'. Before the end of 1977 and before the police announced their decision not to prosecute anyone over the punitive use of ECT electrodes, Dr Leeks resigned and moved to Australia. On 20 July 1977 the Department of Health announced that all patients and next of kin would sign consent for possible treatments including ECT. The Hospital Superintendent, Dr Syd Pugmire described the consent forms as 'administrative nonsense'.[49]

Chief Ombudsman's Report on Lake Alice

[91] Meanwhile, the Ombudsman Sir Guy Powles had launched a separate investigation into the treatment of a 15 year old boy at Lake Alice. Sir Guy's report stated that the boy's continued detention was 'unlawful' and that "although the matter is not beyond doubt, there is considerable evidence that both medical and psychiatric procedures were imposed on the boy against his will without his consent and without either the knowledge or consent of his parents or the social workers responsible for his guardianship."[50]

[92] Sir Guy went on to state that "there appears to be a general presumption against the use of ECT on children and adolescents and my own feeling is that the use of this form of treatment in all but the most exceptional of circumstances ought to be eschewed if for no other reason than the difficulties of obtaining consent of young people." Sir Guy's view was that a second, independent psychiatric opinion should be obtained where possible.

---

[49] Auckland Star 20 June 1977.

[50] Guy Powles, Chief Ombudsman, *[Confidential] Report of the complaint of Mr and Mrs 'X' in connection with their son 'Y' against the Department of Health and the Department of Social Welfare*. The full report is not in the ACORD archives – the author has obtained it independently.

[93] Sir Guy also made findings about the conduct of the Department of Health and the Department of Social Welfare. He said the Department of Health had "acted unreasonably… by failing to accede to the wishes of the boy and his parents by keeping him at Lake Alice when he was not 'certifiable' under the Act." He said the Department of Social Welfare had paid insufficient attention to the boy's welfare. He concluded that as guardian of the boy, and in discharging its duties in locos parentis in terms of a guardianship order, the 'conduct of the Department was unreasonable.'

[94] Taking all the circumstances of the boy's detention and treatment into account, Sir Guy concluded that 'the cumulative effect of a number of the actions and decisions of officers of the Departments of Health and Social Welfare was, in my opinion, to cause the boy a grave injustice.'

[95] Regarding the administration of ECT, Sir Guy concluded that '(a) the use of unmodified ECT for children and young persons detained in psychiatric hospitals under the Mental Health Act should be discontinued; (b) the use of ECT treatment on children and young persons in psychiatric hospitals under the Mental Health Act should be discouraged in all but exceptional circumstances and where the principles of consent have been fully met.'

[96] By 1978, the Unit which had opened in 1972, was closed.

[97] In 1999, following a successful class action, brought by lawyer Grant Cameron on behalf of scores of victims of Lake Alice Adolescent Unit, the Prime Minister Helen Clark on behalf of the New Zealand Government apologised to the claimants and agreed to a pay-out of $10 million. The Government appointed former High Court Judge, Sir Rodney Gallen, to allocate the compensation. As he said in his report, he could have simply divided up the money and left it at that. He decided, however, to 'read the statements of every claimant involved…submissions made by legal advisers [and] interview 41 of the claimants'.[51]

[98] Having heard 'statement after statement' of the pain associated with the administration of unmodified ECT, of the 'screaming which was plainly audible to other

[51] Justice Sir Rodney Gallen, *Report*, 2001, author's collection; *New Zealand Herald* 14 October 2001.

children in the unit when ECT was administered', of the sight of those who were to receive the treatment being dragged screaming and struggling upstairs to the room where the treatment was carried out, Gallen was left aghast: 'ECT delivered in circumstances such as those I have described could not possibly be referred to as therapy, and when administered to defenceless children can only be described as outrageous in the extreme'. He concluded 'the best summary I can make is that the children concerned lived in a state of extreme fear and hopelessness. Statement after statement indicates that the child concerned lived in a state of terror during the period they spent at Lake Alice'.

Children Remanded to Adult Prisons

[99] Another form of state abuse I want to highlight is that in the 1970s hundreds of children aged 13 to 16 years were remanded to adult prisons each year.

[100] Once ACORD and the media started looking, we found case after case of children being remanded in what was called 'police custody' but which was, in fact, Mt Eden, Mt Crawford, Waikeria or Addington prison.

[101] In February 1976, GRO-B a 15-year-old, was arrested on several charges of house-breaking. By 1 April, when he was finally sentenced, he had been remanded and re-remanded to Mt Eden Prison on four successive occasions, by four separate magistrates, for a total of almost four weeks. In that time, GRO-B shared a cell with a 19-year old alleged rapist for the first week; mixed freely in showers and lavatory block with remand and sentenced prisoners of all ages. In the exercise yard he mixed with prisoners under 21 years.

[102] We drew GRO-B 's case to the attention of the Royal Commission on the Courts (which was under way at the time) stating in our submission 'We challenge anyone to deny that this child was subject to cruel and unusual punishment. Quite apart from being unnecessarily deprived of his liberty for four weeks before being sentenced, he suffered the mental anguish of never knowing when he would be released. On three occasions when he might have been, he faced a new magistrate who threw him back to the cells of Mt Eden'.[52]

[52] ACORD *Submissions presented to the Royal Commission on the Courts by the Auckland Committee on Racism and Discrimination,* February 1977, AL Series 3.67

[103] Based on this case the Ombudsman, Sir Guy Powles, launched a full inquiry into the remanding of children to penal institutions. However, Powles retired having only completed an initial draft report. The draft report included revealing statistics for the years 1974 and 1975. In 1974, 269 juveniles were remanded to adult prisons; of these 53.16% were Māori or other Polynesian. The following year the total had jumped to 320 juveniles and the numbers of Māori or other Polynesian had risen to 57.19%.

[104] Sir Guy Powles' successor George Laking shelved the report after representations by the Department of Justice.

[105] In a press statement dated 8 February we expressed our 'bitter disappointment' at Laking's decision and explained 'Because the investigation was the first ever into this controversial subject and because the report was to provide guidelines for Government action, ACORD has decided to make the factual material of the draft report public'.[53] The Minister of Justice said he deplored the leak of the report and would not take the matter any further. In the meantime, other cases continued to emerge and ACORD kept the matter in the public eye.

[106] In the aftermath of ACORD's unauthorised release of Sir Guy Powles' 1977 report, Mel Smith, who at the time was the Director of the Planning and Development Division of the Department of Justice, researched and published a report on the remanding of juveniles to penal institutions.[54]

[107] Smith's report stated that the number of children remanded in custody had risen from 320 juveniles to 356, with 63.1% being Māori. Smith stated that one boy was held on remand in an adult prison for 44 days and one for 71 days; the average was 10.6 days.[55] The boy held for 44 days was ultimately sentenced to probation.

---

[53] ACORD press statement 8 February 1978, AL Series 3.40.
[54] M P Smith, *Study of young persons remanded to a penal institution*, Study Series, Department of Justice, 1979, 31 pp., AL Series 3.46.
[55] Ibid.

[108] In 1981, ACORD published its report 'Children in State Custody'.[56] It was a collation of 10 years of date and case histories following our frustration with the lack of positive change by the Department of Justice. We wrote 'ten years which have seen thousands upon thousands of children from the age of eight years or even less, dragged through the police stations, the courts, the welfare homes and the adult prisons. A child, once caught up in this machinery of punishment and retribution, is lucky if he or she escapes without going through the whole progression of a criminal career'. We forwarded our report to the new Minister of Justice, Geoffrey Palmer.

[109] For years, now, we had highlighted the discrepancy in the treatment of Māori and non-Māori children. Of the 116,595 juveniles processed between 1967 and 1976, 41% were Māori.[57] Data from the Powles and Smith reports showed trends in remanding which were profoundly disturbing to ACORD. Then, of those receiving the harshest sentence, a two-year term of borstal training, 59% were Māori. In the report we said 'All that is wrong with our system of justice is typified by the scene of a middle-aged, middle-class, male, Pakeha magistrate or judge sitting in judgement on a young Māori woman, and deciding that her background and her family are so bad, so worthless, that she should be taken from them and locked up'. In hard numbers, in the ten years to 1976, 1,363 Māori boys and girls were sent to borstal and another 690 Māori boys to detention centre.

[110] From about 1980, the superintendent of Mt Eden Prison, Syd Ward, had let me visit any juveniles on remand in the prison. The visits gave me an opportunity to check on the physical and mental state of the children and to assess the conditions they were held under, the length of their remand and, of course, to arrange lawyers for those who needed them, to contact whanau on their behalf and so on.

[111] I want to detail some of the abuses suffered by four of the boys that I met at Mt Eden during this period which ACORD drew to the attention of the Secretary of Justice.

---

[56] ACORD, *Children in State custody* November 1979, revised 1981, AL Series 3.351.
[57] Ibid.

GRO-B *(16 years old)*

[112] 16-year-old **GRO-B** had appeared before two Justices of the Peace in the Kaitaia District Court on 20 June 1984, charged with five relatively minor offences. He was remanded without plea for four and a half weeks - until the court sat again in Kaitaia - and he was granted bail: $700 in his own recognisance and two sureties of $500. His mother could not arrange the sureties and he was sent off to Mt Eden on 22 June facing almost five weeks of incarceration. I found him when visiting the prison on 3 July, provided the sureties and he was released after 11 days in custody.[58]

[113] Ultimately, **GRO-B** received a non-custodial sentence of probation.

GRO-B *(16 years old)*

[114] **GRO-B** was a 16-year-old Māori boy who was remanded to Mt Eden on 29 June 1984 for one week. I saw him there and arranged for lawyer Ross France to represent him. In an affidavit, France wrote: 'It immediately struck me that **GRO-B** was in an extremely bad physical and emotional state … He told me that he had been on remand in Mt Eden for the previous week since his initial court appearance on 29 June 1984. He was most upset about the possibility at having to return there. He said that he had been stood over by a number of older inmates, who had tried to force him to commit sexual acts on them and then assaulted him on a number of occasions when he refused to comply with their demands. They also took items of his clothing, leaving him without enough to keep him warm. He was most agitated by these experiences and said that his cell-mate had given him a razor blade and that he had thought about killing himself. He then showed me the inside of his lower-right arm where there were a number of cuts in the area of the veins. He said that if he had to return to Mt Eden Prison, he could easily get another razor blade and he would kill himself this time'.[59]

[58] ORWS to Secretary for Justice 6 July 1984, and bail bond document, 4 July 1984, AL Series 3.46.
[59] Ross France, affidavit, 7 July 1984, AL Series 3.46

GRO-B *(15 years old)*

[115] GRO-B was held on remand in custody at Mt Eden for two weeks. He was represented by two different duty solicitors: there was no contact between them, neither contacted the family prior to the custody decision being made; and one, at least, did not argue for bail at all.[60]

[116] The conditions 15-year-old GRO-B encountered in prison were disgusting and demeaning. He was not able to wash his clothes, so that by the time he had his second court appearance he had spent two weeks in the same underwear, jeans and sweatshirt, which he was expected to wear to court. It was worse in the cell. Aged 15 years, he was considerably younger than his various cell mates, two of whom were 18 years old and two 19 years. Being so much younger he 'hated the toilet bucket and "held onto his shit" during the fourteen and a half hour period he was locked in his cell (4.30pm to 6am) and then went to the lavatory in the exercise yard 'because I didn't like doing it in front of my cell mate'.

GRO-B *(16 years old)*

[117] GRO-B was a state ward who first appeared in court on 2 August 1984. He was represented by a duty solicitor who unsuccessfully applied for bail and he was remanded to Mt Eden for a week and then again for another week. Although a state ward, the Department of Social Welfare did nothing to assist him in court or while he was in Mt Eden.

[118] It was when I met him in the prison that I first learnt of a particularly inhuman practice at the prison. GRO-B had got into a fight with another boy whose jacket he was trying to take, explaining to me 'I was cold. I was freezing in the exercise yard, and I didn't have any underwear. Still don't because I didn't when I came in and they haven't given me any'. GRO-B 's punishment for fighting, imposed by the Superintendent, was to be locked in solitary confinement for five days in a special punishment cell 'under the floor', called the 'well'. The punishment entailed 23 hours solitary confinement per day in a cell with the usual primitive open toilet bucket. But to add to the punishment, his mattress was taken from the

[60] ORWS to Secretary for Justice 31 July 1984, AL Series 3.46.

cell each morning and given back to him at 4 pm, leaving him to sit or lie on the bare bed or floor all day. He was given one comic to read and he was allowed no visitors. GRO-B 's description of his punishment horrified us – the conditions he suffered in the 'well' constituted, we wrote to Palmer, 'a barbaric and intolerable punishment especially for a boy his age'.[61]

[119] We wrote to Geoffrey Palmer enclosing copies of the letters of complaint we had sent to the Secretary for Justice. They exposed, we said 'a disgraceful treatment of children which should not be tolerated by any sort of caring society'.[62] The letter traversed all the issues that had ever concerned ACORD over the years – and although Mt Eden was the focus, it was just one of the several adult prisons in which children were held.

[120] Within a week, Geoffrey Palmer had ordered an inquiry and the Secretary for Justice announced that he had requested District Court Judge Augusta Wallace to inquire into and report on the circumstances preceding and surrounding the detention and custody of the teenage boys.[63]

The Wallace Inquiry: 1984

[121] Over the course of four days, 42 people appeared before Judge Wallace including the four boys whose cases sparked the inquiry. She also visited the remand cells and facilities at Mt Eden and inspected the punishment cell known as 'the well'.

[122] When appearing before Judge Wallace on behalf of ACORD, recalling the years of campaigning and my many recent and harrowing visits to the boys in the prison, I looked straight at Judge Wallace and said 'It cannot go on. It cannot be tolerated, not for one more day and not for one more child' and then turned away in tears.

[123] In his submission to Judge Wallace, the Director General of the Department of Social Welfare, John Grant, revealed national figures for remands to adult prisons for the years 1982

[61] ORWS to Geoffrey Palmer 30 August 1984, AL Series 3.46.
[62] ORWS to Geoffrey Palmer 2 August 1984, AL Series 3.46
[63] *Auckland Star* 9 August 1984.

(444) and 1983 (425).[64] The numbers had climbed considerably from 1974, 1975 and 1977, when 269, 320 and 356 children respectively were remanded to adult prisons.[65] The new figures showed that they included children as young as 13 years old:

Age	**13**	**14**	**15**	**16**	**TOTAL**
1982	2	5	150	287	444
1983	1	4	142	278	425

[124] In her report, Judge Wallace accepted the evidence given by the boys. The report was critical of the Department of Social Welfare's failure to assist the boys in any way, even though three of the five were state wards. For example, regarding GRO-B Judge Wallace wrote: 'For a state ward with no family and few responsible friends, the Department of Social Welfare did not adequately concern itself with this youth's welfare during his custodial remand'.

[125] She singled out the toilet facilities for particular criticism. Every boy had told her how much he hated having to use a plastic bucket in the shared cell – Wallace wrote: 'For the adolescent, the use of the potty is an embarrassing and degrading experience'. She noted that there was no provision for washing hands, notwithstanding the fact that meals were eaten in the cell.

[126] Judge Wallace highlighted the risks to boys aged 13 to 16 from the older 'youths' with whom they were held: 'At the time these boys were in custody there were at least three or four 18 and 19-year-olds who had been on remand for six to nine months awaiting trial on rape charges'. It was this group, Wallace said, who had sexually harassed and assaulted GRO-B GRO-B She went on 'New inmates were subjected to a degree of intimidation or 'stand-over' tactics by those older and more experienced remandees'. She might have gone on to remind the

[64] J.W. Grant, Director General, Department of Social Welfare, to Judge Augusta Wallace, *Submission by Department of Social Welfare to the Inquiry into the admission of adolescent offenders to Mt Eden Prison*, AL Series 3.46.

[65] Office of the Ombudsman, *Draft report – children and young persons on remand in penal institutions*, AL Series 3.36; M.P. Smith, *Study of young persons remanded to a penal institution*, Study Series, Department of Justice, 1979, 31 pp., AL Series 3.46.

Departments of Social Welfare and Justice that, nationally, these new inmates included boys and/or girls as young as 13 years.

[127] In the end, Judge Wallace noted that everyone who had given evidence was unanimous in the view that adolescents should not be remanded at Mt Eden Prison and she wrote 'I agree with them'. Judge Wallace concluded her report uncompromisingly: 'As a result of the inquiries I have made I am convinced that youths up to the age of 17 years old ought not to be placed on remand in Mt Eden Prison' and she suggested that the secure unit at the Weymouth Girls' Home could be used for such remands instead. It was an innovative idea. Her blunt condemnation of the longstanding practice of remanding children to Mt Eden Prison, and by association to the other adult institutions in the country, was the outcome we had hoped for.

[128] Minister Palmer agreed with her recommendations and accepted them.

[129] It would be another five years until in 1989, with the passage of the Oranga Tamariki Act 1989 that the detention of under 17-year-olds on remand in adult prisons was statutorily ended – 17 years after the Nelson Māori Committee had first launched a campaign against the practice.

Conclusion

[130] I hope that my submission will provide a useful backdrop against which the testimonies you will hear from individual children incarcerated in these institutions in the 1970s and 1980s can be viewed. I am sure that the bigger picture I have presented will validate all their stories and give an idea of the scale of the injustices and abuses perpetrated by the State.

GRO-C