

**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY  
LAKE ALICE CHILD AND ADOLESCENT UNIT INQUIRY HEARING**

**Under** The Inquiries Act 2013

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

**Royal Commission:** Judge Coral Shaw (Chair)  
Ali'imuamua Sandra Alofivae  
Mr Paul Gibson

**Counsel:** Mr Simon Mount QC, Ms Kerryn Beaton, Mr Andrew Molloy,  
Ms Ruth Thomas, Ms Finlayson-Davis, for the Royal  
Commission  
Ms Karen Feint QC, Ms Julia White and Ms Jane Maltby  
for the Crown  
Mrs Frances Joychild QC, Ms Alana Thomas and Tracey Hu  
for the Survivors  
Ms Moira Green for the Citizens Commission on Human  
Rights  
Ms Susan Hughes QC for Mr Malcolm Burgess and Mr  
Lawrence Reid  
Mr Michael Heron QC for Dr Janice Wilson  
Ms Frances Everard for the New Zealand Human Rights  
Commission  
Mr Hayden Rattray for Mr Selwyn Leeks  
Mr Eric Forster for Victor Soeterik  
Mr Lester Cordwell for Mr Brian Stabb and Ms Gloria Barr  
Mr Scott Brickell for Denis Hesseltine  
Ms Anita Miller for the Medical Council

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

**Date:** 28 June 2021

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**TRANSCRIPT OF PROCEEDINGS**

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

2 **[10.09 am]**

3 **CHAIR:** Tēnā tātou katoa, nau mai hoki mai ki te ra mutunga o tēnei huihui ngā. Welcome to  
4 everybody to the last of the hearing days of the Lake Alice inquiry, an important day where  
5 we hear from each of the important parties with their closing submissions. Madam  
6 Registrar, do you have the list of -- thank you. We have Mr, I know your name is Hayden  
7 but I've forgotten your surname. Mr Rattray. Mr Rattray beaming in from Australia on  
8 behalf of Selwyn Leeks. Good morning Mr Molloy.

9 **MR MOLLOY:** Good morning ma'am, I'm going to hand straight over to my friend Ms Feint.

10 **CHAIR:** Thank you, Ms Feint for the Crown.

11 **CLOSING SUBMISSIONS BY THE CROWN**

12 **MS FEINT:** E ngā Kaikōmihana, e te mana whenua o tēnei rohe Ngāti Whātua ki Ōrākei, e ngā  
13 mōrehu tū kaha e ngā wiki kua tāuri ake nei, e te iwi o Ngāti Apa, te mana whenua o te  
14 rohe e tū i ngā whare o Lake Alice, e rau rangatira ma, tēnā rā koutou katoa

15 **CHAIR:** Kia ora.

16 **MS FEINT:** First of all, the Crown wishes to thank the survivors for the evidence that they have  
17 provided over the last two weeks, to the survivors we salute your courage, tenacity and  
18 humanity. We know that this hearing has not been easy. We know that giving evidence  
19 has been extremely difficult and traumatic. I can assure you that it has been distressing to  
20 listen to as well and I say that as a mother and I think everyone who has children can't help  
21 thinking of their own children at the age that these children were when they went to Lake  
22 Alice and thinking how innocent they should have been.

23 The survivors, to the survivors you spoke of unimaginable horrors that no child  
24 should have to go through. We've heard that there was a culture of fear operating in the  
25 Lake Alice Child and Adolescent Unit. I said in opening that the Lake Alice Child and  
26 Adolescent Unit represents a dark chapter in the nation's history. To reiterate, the Crown  
27 considers that the treatment of children at the unit was completely unacceptable.

28 The Crown is not here to defend the conduct of Dr Leeks, or any practises that  
29 amounted to punishment under the guise of medical treatment. It is obvious that the Crown  
30 got many things wrong. The Crown has much to apologise for and indeed already has  
31 apologised to survivors for what happened at the unit. I'm referring there to the apology  
32 that the Prime Minister, Helen Clark, and the Minister of Health, Annette King, gave to  
33 survivors at the time of the 2001/2002 settlement.

34 And we've heard in evidence that some survivors have said that they reject that

1 apology and that's understandable. But it was nonetheless extended by the Crown in a  
2 genuine effort to say sorry for the appalling way that children were treated at the unit.

3 The evidence is abundantly clear that the authorities failed to protect the children  
4 sent to Lake Alice, many of whom were State wards. The Crown had a duty, both a legal  
5 and moral duty to ensure that all children in State-run institutions were safe and cared for  
6 and that any medical treatment was appropriate. It failed to discharge that duty.

7 So the Crown wishes to make some brief remarks on some themes that have  
8 emerged over the course of the hearing and these are somewhat half-formed thoughts. We  
9 have submitted a request for an extension to file formal written closing submissions, and  
10 the main reason for that is simply that it takes quite a long time to get instructions from  
11 each of the State agencies that is participating.

12 **CHAIR:** For the record, Ms Feint, that extension is formally granted, because I think it's  
13 important that these submissions aren't rushed and that each of the agencies has an  
14 opportunity to put forward their views which we will receive later, so thank you for that.

15 **MS FEINT:** I appreciate that indication, Madam Chair. I should say I do appreciate that the  
16 agencies have turned around their comments on this, on what I'm saying today very quickly  
17 indeed. So I have instructions to go as far as I'm going in these submissions. It would be  
18 really helpful to the Crown if the Commissioners could ask questions of things that you'd  
19 like a response from the Crown on, so even if I can't answer those questions today, we will  
20 be able to take those questions into consideration when we file written submissions.

21 **CHAIR:** Thank you.

22 **MS FEINT:** So, many survivors have said in evidence that one of their main concerns is to ensure  
23 that what happened at Lake Alice could not happen again, and I think that's everyone's  
24 concern, it's certainly the Crown's concern as well. The Crown is confident that that is the  
25 case, because there's been very significant change since the 1970s. The 1970s were in  
26 many ways a very different era. There have been significant changes since then in societal  
27 norms, in psychiatry and psychiatric institutions, and in law and policy that governs  
28 medical treatment and patient rights.

29 In his written evidence provided to the Royal Commission, but not heard at this  
30 hearing, I understand, due to space constraints, the current Director of Mental Health at the  
31 Ministry of Health, Dr John Crawshaw, explained how institutionalisation of psychiatric  
32 patients was the norm right up until the 1970s. He said that people were often placed in  
33 institutions for reasons that would not be acceptable today and treated in ways that would  
34 not be acceptable today.

1           And it's from his evidence that I drew that line that I said in my opening  
2           submissions that the role for this Royal Commission is to draw the line between what was  
3           acceptable medical treatment back then and is not today, and what was abuse simply put  
4           both then and now.

5           **CHAIR:** Can I just ask you a question and referring back to something you said before. And that  
6           is the absolute truth that all survivors, indeed I think every citizen of this country wants to  
7           ensure that what happened won't happen again.

8           But I just want to get some clarification on what you mean by that. What is it that  
9           you are undertaking will not happen again? We have the very obvious use of, well,  
10          admission of children without any psychiatric illness into a mental institution, we have the  
11          use of ECT or shock therapy, we have Aversion Therapy, we have the use of drugs,  
12          inappropriate use of Paraldehyde, etc.

13          So those are the obvious ones that have come out in this hearing, but I'm sure that  
14          there are people out there who see that abuse of children, vulnerable adults, goes beyond  
15          those specific things. So I think it's important that when you say "we insist it won't happen  
16          and we're sure of it" that we know what we're talking about.

17          **MS FEINT:** Yes, I accept that's a good question and certainly all of the things that you identified  
18          must never happen again. Children ought not to be treated in cruel, inhuman and degrading  
19          ways. I would add to your list, treatment without informed consent.

20          **CHAIR:** Yes.

21          **MS FEINT:** Because it's clear that that was not obtained in Lake Alice.

22          **CHAIR:** What about the powerlessness of people who are in institutional care, particularly those  
23          with learning disabilities, psychiatric disabilities and others, the ability to -- the  
24          voicelessness of those people, that's something that I believe is probably still an issue for  
25          today. So that's why I think we need to be really clear about what it is that you are saying.  
26          And again, if you want to put that in written submissions later, because I appreciate I've  
27          thrown it to you, but I think that's an open question for us all.

28          **COMMISSIONER ALOFIVAE:** Ms Feint, can I just add to that, that there are also systems  
29          issues that have come up throughout this hearing that would really assist the Commission  
30          and get more clarity around the integrated or the lack of integration where something starts  
31          and finishes around accountability would be very helpful as well.

32          **MS FEINT:** Yes, absolutely agree that that's a complex issue that needs to be addressed.  
33          I suppose reflecting on those questions, it's easy to say Lake Alice could never happen  
34          again because... it's unattractive to think of a hierarchy of horrors, but it represented the

1 pinnacle of the most extreme treatment delivered to children in this country. But as the  
2 Chair has indicated, there are still issues today, systemic issues, and we've seen that with  
3 the various inquiries into Oranga Tamariki.

4 So these are difficult and complex issues to grapple with. There have been  
5 significant systemic and structural changes in psychiatry, for instance, through the  
6 deinstitutionalisation of many who were formerly kept in psychiatric hospitals, but there's  
7 also been a significant change in human rights norms and societal norms that makes  
8 people's rights as patients much clearer.

9 So that was something I was going to come on to discuss and thinking about the  
10 ability to make complaints and to give voice to the powerless that is available today that  
11 was not available back then, those are all significant improvements. And as to the framing  
12 of rights in both health legislation and human rights legislation like the New Zealand Bill of  
13 Rights Act.

14 So I'm coming on to discuss that now, but I'll just -- just to step back to where we  
15 were, as well as Dr Crawshaw's evidence, we also heard frank evidence from Dr Janice  
16 Wilson who said in her evidence that even until the 1990s she was aware of complaints  
17 from patients that the practises of some nursing staff in psychiatric hospitals was abusive  
18 and she referred, for instance, to administering medication as punishment, as a means of  
19 controlling patients.

20 In our written submissions we will flesh out the legal framework much more fully  
21 because the Commission has asked us to do that. But just by way of overview, a person did  
22 not have to have a psychiatric illness as we would understand it today to be admitted to a  
23 hospital under the Mental Health Act 1969. So that was the legislation in force when the  
24 Lake Alice Unit was open. And under that legislation, a person could be admitted to a  
25 psychiatric hospital as either a committed, a special or informal patient.

26 Committed and special patients were compulsory detained. They had to be over the  
27 age of 10 and mentally disordered in terms of the Act. That included requiring care and  
28 treatment for, and this is the wording of the section, "any psychiatric or other disorder".  
29 And a great deal of emphasis was placed on the skill and experience of medical  
30 practitioners who did not even have to be psychiatrists to assess whether those criteria were  
31 met. And so I think you'll agree that's very broad language to be classifying people as  
32 eligible for admission to a psychiatric hospital.

33 Therefore an informal patient could be admitted to or treated pursuant to an  
34 arrangement with the superintendent and that applied even if they were not mentally

1           disordered. There was no age restriction to that, you just needed agreement, and we heard  
2           in evidence that Dr David Baron explained that adolescents were often referred to  
3           psychiatric hospitals with what he called disturbed behaviour such as getting upset, angry,  
4           difficult or acting out. And many of the examples that would have struck the Commission  
5           I'm sure that we heard about in evidence for which people were given Paraldehyde, for  
6           instance, was nothing more than what you might term adolescent behaviour.

7           **CHAIR:** You could just about have every teenager in the country --

8           **MS FEINT:** Precisely.

9           **CHAIR:** -- meeting that criteria.

10          **MS FEINT:** Absolutely. So, as I've touched on already, that, compared to today's standards, there  
11          was back then insufficient protection of patient rights in the law in the 1970s. The Mental  
12          Health Act of 1969 provided an indemnity for medical professionals and the Crown as well  
13          in providing treatment, unless that person had acted, to quote, "in bad faith or without  
14          reasonable care". And that presents a reasonably high threshold to taking either civil or  
15          criminal proceedings against a medical professional or staff member in the hospital.

16                 And we know from legal authority that that indemnity was based on the policy  
17                 assumption that we would now say is outdated, that medical professionals needed to be  
18                 protected against the groundless or vexatious claims of mental health patients.

19                 It's also the case that informed consent to treatment was not an express statutory  
20                 requirement under the Act. It's a little unclear, I understand, in terms of the common law,  
21                 whether it was a legal requirement at that time. But nonetheless, whatever the case in  
22                 theory, we heard from Dr Baron that informed consent was often not obtained in practice. I  
23                 think you'll recall he said even with compulsory treatment orders, frequently they lapsed  
24                 and they just carried on.

25                 There were also insufficient mechanisms in the 1970s to monitor and protect patient  
26                 rights. And as I've touched on already, although the legal framework in place today  
27                 explicitly protects patient rights, and I'm thinking, for example, of the Code of Health and  
28                 Disability Services Consumers' Rights, and the ability to complain about breaches of that  
29                 code to the Health and Disability Commissioner.

30                 And as the Solicitor-General pointed out in her evidence, human rights long  
31                 recognised that international law are now enshrined in the New Zealand Bill of Rights Act,  
32                 which includes the right not to be subjected to torture or to cruel and degrading treatment or  
33                 punishment.

34                 A further issue with the Lake Alice Unit was that it lacked proper systems of

1 supervision, with the unit operating largely separately from both the Lake Alice Psychiatric  
2 Hospital and the Palmerston North Hospital Board. Dr Leeks was the principal child  
3 psychiatrist in charge at the unit and he was there on secondment from the Palmerston  
4 North Hospital Board two days a week.

5 It appears in practice Dr Leeks was largely unaccountable to anyone and there is an  
6 exchange of correspondence in the records that the Commission has where Dr Pugmire, the  
7 superintendent of the Lake Alice Hospital, when these complaints start surfacing, he writes  
8 to Dr Mirams, who is the Director of Mental Health at the Department of Health then,  
9 asking for clarification and confirmation that his role and responsibilities did not extend to  
10 the Child and Adolescent Unit.

11 **CHAIR:** He being Dr Pugmire?

12 **MS FEINT:** Yes.

13 **CHAIR:** Seeking to distance himself from the actions of others.

14 **MS FEINT:** I agree, Madam Chair, that's how the correspondence reads. We have also heard  
15 from Dr Baron that the 1970s was a period of great change in the psychiatric profession,  
16 with there being what he described as being quite a division between the old school  
17 psychiatrists who focused on drug and physical therapies, and the younger ones who were  
18 much more interested in the psychology of their patients, and I think he said in evidence  
19 who wanted to relate to them as humans.

20 Patients had a lot more freedom to operate, or as Dr Baron said, a lot of unspoken  
21 power, and their practice was not subject to the same degree of oversight from colleagues  
22 or professional bodies. And I'm not entirely sure whether that's just the case in practice or  
23 whether it was also the case in law, but that's another issue that we'll have to look at more  
24 closely.

25 **CHAIR:** Yes, that would be helpful to have that teased out in submissions.

26 **MS FEINT:** Dr Baron also agreed that within the profession there was reluctance to openly  
27 challenge its own members. He talked about there being an establishment who came down  
28 hard on anyone who stepped out of line, and he agreed that the way that psychiatrists  
29 responded to the initial complaints about Dr Leeks smacked of the medical profession  
30 protecting their own.

31 So moving on to consider what the Crown response was once complaints surfaced  
32 in the mid-1970s concerning the events at the unit. There was a range of responses from  
33 the Government in very short order.

34 So first of all, Dr Mirams, the Director of Mental Health at the Department of



1 Health, referred complaints regarding the use of ECT, or electric shocks as Aversion  
2 Therapy, to both the New Zealand Medical Association and the New Zealand Police. There  
3 was the 1977 Commission of Inquiry that was conducted by Mr Mitchell, but which failed  
4 to penetrate the issues, I would suggest.

5 There was then a much more hard-hitting report by the Ombudsman, Sir Guy  
6 Powles, also in 1977, which recommended that the use of unmodified ECT on children and  
7 young persons as a mode of treatment should be discontinued.

8 The Police secured convictions for sexual abuse of both a former nurse in 1972 and  
9 a former patient in 1974, and then in 1977 following Dr Mirams' referral, they considered  
10 those complaints concerning the use of ECT on the children.

11 **CHAIR:** That was the Police considered them?

12 **MS FEINT:** Yes, and they concluded at that stage that there was insufficient evidence to  
13 prosecute, which was because of the psychiatric opinion that they got from Dr McLachlan,  
14 and I'll come back to that shortly. And that combination of events resulted in the  
15 Government deciding to close the unit, I understand that was in late 1977, and by early  
16 1978 it had been completely shut. So it was only open for a relatively short period, six or  
17 seven years.

18 The New Zealand Medical Council also investigated Dr Leeks in 1977. The Ethics  
19 Committee had considered, of the New Zealand Medical Association, had considered  
20 Dr Mirams' complaint, and although they accepted Dr Leeks' explanation in relation to  
21 three of the four complaints, they referred to the fourth complaint which concerned the  
22 so-called group therapy incident where a number of boys were invited to give electric  
23 shocks to the boy that had abused them.

24 The Ethics Committee considered that that conduct constituted "grossly unethical  
25 conduct likely to bring the reputation of the medical profession into disrepute." And so the  
26 Medical Association didn't have the power to act against Dr Leeks, but it referred that  
27 complaint to the Penal Cases Committee of the Medical Council, and that was the most  
28 serious step it could take.

29 And after hearing from Dr Leeks and obtaining an expert opinion from Professor  
30 Roberts, the Medical Council apparently dismissed the complaint. I say "apparently"  
31 because there's no written record of what was decided. But we do know that shortly after  
32 that hearing in November 1977, Dr Leeks left the country for Australia clutching in his  
33 hand a Certificate of Good Standing that had been provided by the Medical Council. So we  
34 can assume that the Penal Cases Committee did not proceed further with the disciplinary

1 proceedings, they had the power to refer those proceedings to the Medical Council itself.

2 **CHAIR:** This is a tiny detail, who actually issued The Certificate of Good Standing? Was that the  
3 Medical Council itself or was it the Penal Committee?

4 **MS FEINT:** I understand it was the Medical Council. So like Dr McLachlan's opinion, Professor  
5 Roberts produced an opinion that we have examined over the course of the hearing, and it  
6 largely exonerated Dr Leeks, albeit that it expressed some concerns about aspects of his  
7 practice. But you'll recall it ended with that strange statement that he had sympathy for  
8 Dr Leeks because many of us in the medical profession would have also been in his shoes  
9 of having conducted practises that were no longer acceptable.

10 And it's curious to note that Dr Lipton, who provided evidence in this Inquiry but  
11 has not been heard, says in his evidence that Professor Roberts' opinion was reasonable,  
12 which is interesting and I would have liked to have asked him what he meant by that.

13 If I may extrapolate on that point for a moment, it seems to me that although  
14 psychiatrists today are clear that Dr Leeks' practises were completely unacceptable, the  
15 reaction of various professionals in the 1970s I think was more nuanced, and we've heard  
16 evidence from Dr Baron that things were a lot more free-wheeling, as he put it, which  
17 makes it a little difficult to gauge without expertise exactly what the position was in the  
18 1970s.

19 And so I had wondered whether it would be helpful for the Royal Commission to  
20 have an expert report from someone who has expertise in the history of psychiatry and who  
21 could consider the range of evidence before you, because there is the spectrum of opinions,  
22 and assist the Commission in reconciling or explaining those views. It puts the  
23 Commission in a difficult position when you've got half a dozen consultant psychiatrists  
24 who have given evidence but they all say slightly different things.

25 **CHAIR:** Yes.

26 **MS FEINT:** Then we have the written opinions from the 1970s which are different again.

27 **CHAIR:** Is the Crown volunteering to do that for us?

28 **MS FEINT:** I was not. We were asked, to be honest, and we -- the response at that time was that  
29 we thought it was important that, for the sake of --

30 **MS KEMP:** Independence.

31 **MS FEINT:** -- being independent and being seen to be independent that the Commission  
32 commission that report. I don't know whether that's happened or not but it seems to me it  
33 would be helpful for your wider psychiatric inquiry as well.

34 **CHAIR:** Yes, I appreciate that suggestion, it's something we'll take up with counsel later on, but

1           thank you for that. I agree, if it's going to be at all, it should be independently obtained.

2 **MS FEINT:** Yes, those were my instructions at the time and I think there's sense in it.

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

4 **MS FEINT:** I wanted to turn now to look at the Police response to the allegations of criminal  
5           offending, because that formed a significant part of the Crown response and there was a lot  
6           of evidence about the various Police investigations.

7           So starting with 1977. Following on from Dr Mirams' referral, the New Zealand  
8           Police first inquired into the complaints that there had been electric shocks administered to  
9           patients at the unit, and initially we heard from Detective Superintendent Fitzgerald that  
10          Detective Inspector -- I always get the ranks wrong, but his name was Mr Butler, the  
11          detective investigating the allegations interviewed Dr Leeks, he interviewed some of the  
12          staff and he interviewed the complainant.

13          You will recall we stepped through the timeline that the Police provided and he  
14          provided an initial report suggesting that there was insufficient evidence to prosecute. And  
15          he was overruled in that conclusion by the Deputy Commissioner down in Wellington who  
16          concurred with the Police's legal advice, provided by Neville Trendle, that an expert  
17          medical opinion should be sought.

18          That expert opinion by Dr McLachlan completely exonerated Dr Leeks, considering  
19          that the treatment methods were undertaken with "genuine therapeutic intent" and could not  
20          be regarded as "improperly motivated or unprofessional".

21 **CHAIR:** Just help me there, was that all focused on the breach or possible breach of the Mental  
22          Health Act?

23 **MS FEINT:** Yes, looking at the section 112 charge of ill-treatment of patients.

24 **CHAIR:** Which was in terms of successfully prosecuting anybody who was vulnerable to the  
25          indemnities?

26 **MS FEINT:** Yes, but my understanding is that indemnity applies no matter what charge is  
27          proffered.

28 **CHAIR:** Whether criminal, whether Crimes Act or whatever?

29 **MS FEINT:** Yes, yes.

30 **CHAIR:** Thank you.

31 **MS FEINT:** And I think I'm right in saying that that would still apply. We've certainly done  
32          some work on that and that's another thing that we'll tease out more in closing submissions.

33          So the only issue that Dr McLachlan had in his opinion with events at the unit was  
34          he was wary of suggestions that there had been nurses at the unit using Aversion Therapy

1 when, or using electric shocks when Dr Leeks was not there, and he thought that was  
2 improper, but he said there's insufficient evidence to proceed further with that. And he also  
3 thought that the group therapy incident was -- he called it badly judged.

4 But nonetheless, even with those qualifications, he concluded that there had been no  
5 unethical or unprofessional conduct and that the treatments used constituted medical  
6 treatment. And so he concluded that there was no evidence to support charges of ill-  
7 treatment of patients within the criminal provisions of section 112 of the Mental Health  
8 Act.

9 Faced with that opinion, the Police, unsurprisingly, concluded that there was  
10 insufficient evidence to prosecute. It is respectfully submitted that that decision was  
11 reasonable at the time, given the strength of the expert opinion. And although Counsel  
12 Assisting suggested, when questioning the Police, that they should have gone further at that  
13 point and perhaps sought a second opinion, as Dr Baron pointed out, and I think  
14 Mr Fitzgerald might have said as well, there was considerable trust placed in doctors at that  
15 time, far more so than today.

16 I also don't think it would have been as obvious then as it is now, and you've got to  
17 remember we're looking back with the benefit of not only hindsight but also the extensive  
18 evidence before this Inquiry that Dr McLachlan's opinion was open to challenge by other  
19 psychiatrists.

20 I don't agree that he was necessarily disqualified because he knew Dr Leeks. You  
21 will recall there were questions about his impartiality, but under law the test of bias has to  
22 be higher than simply having a professional or even personal friendship with someone.  
23 You will recall from the *Saxmere* case that the fact that the judge and counsel in that case  
24 knew each other and were long-standing friends and owned a farm together, did not  
25 disqualify them, but the disqualifying trigger was the fact that they had pecuniary interests  
26 together. And the counsel owed the judge money, or the other way around, and that was  
27 the high level at which bias is found. And as the Supreme Court said in that decision, in a  
28 country as small as New Zealand, if you disqualified each other because you knew people  
29 in a professional capacity, then there wouldn't be any expert opinions provided at all.

30 But nonetheless, I concede that Dr McLachlan's opinion was open to challenge by  
31 other psychiatrists, and an interesting nuanced point that I picked up and made me wonder  
32 about, is that he says in that opinion that he attended the Medical Council hearing, the  
33 disciplinary hearing against Dr Leeks. So I assume he would have been privy to the  
34 discussions there and perhaps discussed the matter with Professor Roberts as well who had

1 also provided his expert opinion. And it's a great pity we don't have the records of that  
2 hearing to know exactly what happened.

3 The second Police investigation regarding the use of electric shock so-called  
4 treatment took place between 2002 and 2010. You will have heard the Police concede that  
5 there was not a great deal of activity in the investigation between the years of 2002 and  
6 2006. It was at that point that former Assistant Commissioner Malcolm Burgess took over,  
7 he was a very experienced detective and he ran the investigation over that 2006 to 2010  
8 period.

9 He explained in evidence that he considered in 2009 that there was enough evidence  
10 to lay charges in respect of seven of the complaints that he was investigating. So he had  
11 taken what he called a conservative or rigorous approach and looked for complaints that  
12 were corroborated by the medical records or staff or other evidence, so that you had more  
13 than one source of evidence.

14 **CHAIR:** Ms Feint, I'm sorry to interrupt you, it's just drawn to my attention that your half hour is  
15 up. I appreciate that's a difficult situation to be in. Can I just ask how much longer you  
16 anticipate being, because we have Mr Rattray on tap and online waiting. Do you have a  
17 sense of how long?

18 **MS FEINT:** I'm probably just over halfway through, so --

19 **MR RATTRAY:** I won't be using the 45 minutes allocated to me so I have no issue if Ms Feint  
20 would eat into some of my time.

21 **CHAIR:** That's very gracious of you Mr Rattray. Mr Molloy?

22 **MR MOLLOY:** Ma'am, I think Mr Rattray actually has about 15 minutes that we've allocated this  
23 morning having heard from him.

24 **CHAIR:** You've rejigged it. Okay, so Ms Feint I think the evidence from Mr Burgess is all very  
25 clear in our minds, I think we've heard all of that, so I don't think you need to go through  
26 analytically of that. It is very helpful to have the various investigations highlighted with  
27 just a note and you can fill in the details in your written submissions, so maybe I can invite  
28 you just to truncate that somewhat.

29 **MS FEINT:** I will. Perhaps if I stop extrapolating from my written notes I might move rather  
30 faster as well.

31 **CHAIR:** All right.

32 **MS FEINT:** So, we heard Mr Burgess considered there was sufficient evidence to support  
33 charges, but when he asked for legal advice about whether the public interest test had been  
34 met, Ian McArthur of Police Legal concluded there was neither evidential sufficiency nor

1 public interest and therefore concluded a prosecution would not be successful, and a second  
2 opinion from Pip Hall QC concurred with Mr McArthur's advice.

3 So Mr Burgess was left with the position of having to decide, although he had  
4 intended to proceed with the investigation with a view to prosecuting and extraditing  
5 Dr Leeks, because the tests in the prosecution guidelines were not met, he was forced to  
6 conclude there was no reasonable prospect of conviction and therefore he was not able to  
7 proceed.

8 And I just thought it was important to point out there that the conclusion that there  
9 was insufficient evidence was not because the complainants weren't believed, they were,  
10 but because it was considered that the criminal intent of Dr Leeks may not have been able  
11 to be proved beyond reasonable doubt, and that's a technical and difficult issue of criminal  
12 law, and it's a little bit unfortunate that the complainants have been told over and over again  
13 there's insufficient evidence and they've said "We've given plenty of evidence." And that's  
14 certainly the case, but that's not the reason for thinking a prosecution would not be  
15 successful. Certainly at that point in terms of the information before the investigation at  
16 that time, because that could change if further information is before the Police.

17 And I go on to say that the legal advice that had been provided placed reliance on  
18 the statements of Lake Alice staff, but it's less clear whether the complex issues concerning  
19 psychiatric treatment and so-called Aversion Therapy had been fully considered or  
20 understood.

21 I think it's difficult to take that point further without hearing from either  
22 Mr McArthur or Mr Hall and testing their evidence. It's a bit unfortunate that they weren't  
23 called for cross-examination on those issues, although they did provide written statements.  
24 But as Detective Superintendent Fitzgerald pointed out, trial by expert in relation to the  
25 prosecution of medical professionals can be a somewhat fraught exercise. So we simply  
26 don't know whether a prosecution would have been successful at that time.

27 The Police properly acknowledged that there were failings in their investigation  
28 over that period. Both Mr Burgess and Mr Fitzgerald acknowledged that complex mass  
29 allegations need to have a full investigation team assigned so that the scope of all the  
30 allegations can be properly inquired into. And instead they had a part-time team of one  
31 person. And that acknowledgment was supported by the apology from the New Zealand  
32 Police to the Lake Alice survivors for failing to give the investigation the priority it needed,  
33 and I'll skip over that because we've already heard that this week.

34 You've also heard that there were three survivor complaints investigated by the

1 Police in the 2018/2019 period, and following those complaints and the release of the  
2 UNCAT report on Mr Zentveld's communication there was a full scale investigation into  
3 the Lake Alice Unit launched in 2020. And that is still ongoing, as the Royal Commission  
4 well knows.

5 I'll touch briefly now on the Crown's response to the civil litigation and this will be  
6 fresh in the Commission's minds since we heard from the Solicitor-General, Ms Una  
7 Jagose, just yesterday.

8 So the civil litigation brought by both Leoni McInroe and then the separate class  
9 action represented by Grant Cameron & Associates were successful in forcing the Crown to  
10 consider how to respond to the claims of abuse, albeit that Ms McInroe's proceedings in  
11 particular took far too long to be resolved. You will have heard the apologies that the  
12 Solicitor-General made yesterday to Ms McInroe for the unnecessary delays she faced, the  
13 legalistic approach that included a meritless strikeout application and the fact that she was  
14 not always treated with dignity or empathy by Crown Law.

15 Ms Jagose did not accept that Grant Cameron's criticism of Crown Law in the class  
16 action was warranted, however. Pointing out that the Crown was entitled to consider its  
17 risk and liability before determining how to proceed, and although the settlement was  
18 reached in four years, which is less than ideal, but I would suggest to you is faster than  
19 litigation would have been, there were delays on both sides, as Grant Cameron fairly  
20 acknowledged under questioning.

21 It was clear that a high level political response was required for the survivors of  
22 Lake Alice, since there was at least a moral obligation on the Crown, if not also a legal one,  
23 to resolve the claims, and litigation through the courts would have been a difficult, stressful  
24 and expensive process. It was also a risky one as there were significant legal barriers that  
25 would have had to be overcome in the courts, and Grant Cameron frankly acknowledged  
26 those barriers in giving evidence.

27 And we can tease this out more in closing submissions, but in brief you'll be aware  
28 those barriers included the limitation time bars, the Mental Health Act immunity and the  
29 ACC jurisdictional bar, which caught all claims after the 1 April 1974 start date.

30 The settlements entered into by the Government in the early 2000s, and in the years  
31 since, were intended as a genuine effort to apologise for Crown wrongdoing, and to provide  
32 financial support that would enable the survivors to get on with their lives. It's abundantly  
33 clear from the evidence that those settlements apparently were not enough for many  
34 survivors.

1 Survivors have also spoken of the need for accountability, but also for rehabilitation  
2 and support. And you'll recall Mr Zentveld mentioned a wellness package that had been  
3 intended to be rolled out at one point, but was then abandoned when there was a change of  
4 Government.

5 A particular grievance of survivors concerns the lack of parity between round 1 and  
6 round 2 settlements in relation to legal fees, which the Solicitor-General acknowledged  
7 yesterday that Mr Zentveld was right to challenge.

8 We've also heard that evidence presented at the hearing has highlighted inadequate  
9 record-keeping practises, which has hampered the work of this Inquiry, and that's a point I  
10 think we can come to more in closing submissions.

11 I'm almost there. I just wanted to touch on the United Nations Convention Against  
12 Torture. So that was ratified in December 1989 and the Crimes of Torture Act was passed  
13 as domestic legislation the same year to make torture a crime here. Before the UNCAT  
14 Committee in relation to Mr Zentveld's communication, the Crown did not contest that the  
15 threshold of reasonable cause to believe that acts of torture had occurred at Lake Alice had  
16 been met. The Committee agreed and found that the State was therefore obliged to conduct  
17 a prompt, impartial and independent investigation.

18 When asked directly whether the Crown accepts that what happened at Lake Alice  
19 constituted torture, the Solicitor-General demurred somewhat, indicating the need to tread  
20 carefully due to her constitutional role, and the fact that these matters are currently the  
21 subject of a Police investigation.

22 However, her analysis was that the use of electric shocks appear to meet the  
23 elements of torture. Certainly there's no contest that they caused severe suffering and pain,  
24 or that they were administered by State actors. But as the Solicitor-General pointed out, the  
25 key question is, what was the purpose of those treatments and whether the purpose was  
26 punishment.

27 If the factfinder, whether that be a court or this Royal Commission, found that the  
28 purpose was indeed for punishment, then the Solicitor-General accepted that the legal test  
29 of torture at international law would be met.

30 The Crown accepts that whether or not the Royal Commission considers these acts  
31 meet the legal definition of torture, there can be no doubt that they certainly meet the  
32 definition of cruel, inhuman and degrading treatment.

33 I wanted to turn now to the evidence that we heard about the majority of the patients  
34 at the Lake Alice Unit being Māori and Pasifika and just to make some acknowledgments



1 that Māori and Pasifika children were not properly respected in the way that they were  
2 cared for at the unit.

3 So we've heard that many of the patients at the unit were Māori and some witnesses  
4 said that Māori children were singled out for punishment. It's clear that in the context of  
5 the 1970s there was little or no thought given at the unit to respecting and preserving the  
6 mana and tapu of tamariki Māori. We heard from survivors the devastating impacts that  
7 their experiences at the unit had on their mauri and their cultural identity, dislocating them  
8 from their whānau, hapū and iwi. Nor was there any provision made in legislative policy  
9 and practise settings to Kaupapa Māori standards of care or to upholding the Crown's  
10 obligations under Te Tiriti o Waitangi. The Crown accepts this was institutional racism.

11 There were patients from various Pacific Islands in the unit, because there was little  
12 or no attention devoted to considering the difficulties that Pasifika patients faced in the  
13 totally alien environment that neither recognised nor respected their culture, their  
14 languages, or their relationships with their families.

15 As Commissioner Alofivae pointed out when Mr Hake Halo gave evidence, his  
16 difficulties appeared to stem initially at least from not understanding English. And it  
17 appears that his adoptive mother, his grandmother had never had his admission explained  
18 properly to her in her own mother tongue.

19 The Crown accepts that those experiences show that institutional racism was also an  
20 issue for Pasifika patients.

21 So finally in closing, the Crown welcomes the findings and recommendations of the  
22 Royal Commission of Inquiry. I want to assure the survivors that the Crown is committed  
23 to this Royal Commission of Inquiry. The Government established the Royal Commission  
24 of Inquiry in the first place for the purpose of having an independent inquiry into these  
25 important issues in order to uncover the truth of abuse in State care and to make findings  
26 and recommendations to the Crown about how the Crown systems and care of children can  
27 be improved.

28 The Crown team has been present throughout the Inquiry, both at the hearing and  
29 listening on the AVL link to listen to the concerns of survivors and to support the work of  
30 the Commission. And I've been asked in the adjournments by some of the survivors is it  
31 true, is the Crown really taking this seriously? And I realise when I was asked that question  
32 that of course they have no reason to trust the Crown and therefore seem surprised that the  
33 Crown was even present, and they asked me to explain what the Crown Secretariat was.

34 So the Crown Secretariat is the body that's, I suppose you could say the Crown team

1 is a simpler word, I'm not sure what Secretariat means myself, but it coordinates the various  
2 Crown agency input into the Crown's response, and that includes, as you will have heard,  
3 the Ministry of Health, the Ministry of Education, the Police, Crown Law, and so on,  
4 Oranga Tamariki and a number of other Crown departments.

5 So the Crown Secretariat is a permanent full-time body that's coordinating the  
6 Crown's response. The Crown agencies have disclosed, I'm told, some 250,000 documents  
7 to this Commission and the Crown has decided to waive legal privilege in most of its  
8 documents.

9 This means that the public can see documents that would normally be confidential,  
10 even if they do not show the Crown in a favourable light, and you'll be aware from the  
11 evidence that many of them do not. But it's really important that daylight is shed on the  
12 truth so that this Commission is fully informed. And noting that the Lake Alice case study  
13 is one important strand of the Commission's inquiry into psychiatric care, the Crown will  
14 continue to contribute to the important work of this Inquiry, providing what information it  
15 can.

16 The Crown expects the Royal Commission to make findings and recommendations  
17 concerning Lake Alice and it will consider those recommendations very carefully indeed.

18 So before I close, Madam Chair, I just wanted to ask whether you had any further  
19 questions for me?

20 **CHAIR:** I'll start with Commissioner Gibson. Do you have any questions for the Crown?

21 **COMMISSIONER GIBSON:** Yes thanks Ms Feint. Just checking I'm being heard?

22 **CHAIR:** Yes you are.

23 **COMMISSIONER GIBSON:** Reinforcing what Judge Shaw said at the beginning that in terms  
24 of checking that this isn't happening again, I think we're yet to be convinced that for many  
25 of the most vulnerable members of our community, vulnerable adults, children with  
26 learning disabilities, for example, in the places that they are and their voices not being  
27 heard, we want some serious follow up on assurances around that.

28 Secondly, a question or a series of questions. Really appreciating your concessions  
29 around the institutionalisation, institutional racism against Māori occurred, institutional  
30 racism against Pasifika people occurred. Do you and the Crown understand the concept of  
31 ableism, institutional ableism and did that occur in the mind of the Crown at Lake Alice?

32 **MS FEINT:** I thought you might ask me that, I thought about this last night. I am aware of the  
33 concept of ableism, I'm aware of that in the context that the Waitangi Tribunal is currently  
34 undertaking an inquiry into people with lived experience of disability. So I have a high

1 level knowledge of those issues. I decided not to say anything in oral submissions today  
2 because I need to take instructions on that issue and be better informed about it before I can  
3 convey the Crown's view. So I will undertake to add that to the list of issues that we  
4 address in the closing submissions.

5 **COMMISSIONER GIBSON:** Thanks. That's all my questions.

6 **CHAIR:** Thank you.

7 **MS FEINT:** Thank you very much.

8 **COMMISSIONER ALOFIVAE:** No further questions from what I asked before about the  
9 systems and the overlapping issues there, thank you.

10 **CHAIR:** And I've asked my questions as I've gone, so thank you indeed, Ms Feint, for those  
11 submissions, very helpful and we look forward to receiving the written submissions when  
12 they follow. Thank you.

13 **MS FEINT:** Otirā, aku mihi whakamutunga ki ngā mōrehu katoa. E ora tonu ana me ngā mōrehu  
14 kua wehi ki te po, nā te ngākau iti tēnei mihi ki a koutou mo ō koutou māia me te kaha ki te  
15 kōrero. Ko tō tātou nei tumanako kia tau te rangimārie ki runga ia koutou katoa. Tēnā  
16 koutou, tēnā koutou, tēnā ra koutou katoa.

17 **CHAIR:** Tēnā koe Ms Feint. And that brings us to you -- just a moment. We've just been handed  
18 an updated version of your written closing address, Mr Rattray.

19 **MR RATTRAY:** Thank you, it's not my practice ordinarily to write those addresses as a result I  
20 had to rush it this morning, so I hope that the document you have will assist.

21 **CHAIR:** You won't know this, Mr Rattray, but as a judge all through my career I always called  
22 for bullet points and on the basis that it was a quick and simple way of making some good  
23 points, so you've done that unwittingly but in my view appropriately, so thank you. We  
24 now invite you to make your address on behalf of Selwyn Leeks.

25 **CLOSING SUBMISSIONS ON BEHALF OF MR LEEKS**

26 **MR RATTRAY:** Thank you. This Commission was established pursuant to the Inquiries Act  
27 2013. It has substantial powers and important duties conferred upon it under that Act.

28 Pursuant to section 10 of that Act it has a duty to act fairly, under section 11 it has  
29 no power to determine legal or regulatory liability but it has a discretion to make findings  
30 of fault or recommendations that further steps be taken to determine liability.

31 Section 17 sets out the process for designating a person a core participant and  
32 confers important rights on people so designated. Section 17(3) relevantly states that  
33 "Every person designated a core participant has the right to give evidence and make  
34 submissions to the Inquiry."

1 Section 14(2) imports the principles of natural justice and mandates the  
2 Commission must comply with those principles. Section 14(3) states "if an inquiry  
3 proposes to make a finding that is adverse to any person, the inquiry must, using whatever  
4 procedure it determine, be satisfied that the person (a), is aware of the matter on which the  
5 proposed finding is based, and (b), has had an opportunity at any time during the course of  
6 the Inquiry to respond to those matters."

7 When I opened before the Commission on behalf of Dr Leeks I submitted that as a  
8 core participant in this Inquiry Dr Leeks has the right to give evidence and to make  
9 submissions. But he is, by virtue of his age and cognitive capacity manifestly incapable of  
10 doing either. Dr Leeks is neither aware of the matters before the Inquiry nor cognitively  
11 capable of responding to them.

12 I maintain those submissions. If those submissions are correct, the consequence is  
13 that the Commission cannot make findings adverse to Dr Leeks, nor make  
14 recommendations that further steps be taken to determine liability.

15 But this Commission is about much more than the alleged conduct of Dr Leeks. In  
16 fact I would submit the true focus of the Commission is and should be on the myriad  
17 failings of a system that, among other failings, has allowed such serious allegations to go  
18 untested for near on half a century.

19 One of the undeniable themes of this Commission has been that justice delayed is  
20 justice denied; a maxim the common law has always recognised to be axiomatic. A denial  
21 of justice is an injustice, and it's not just an injustice to a complainant or an alleged victim  
22 or a survivor, and I use those words interchangeably, it's an injustice to an accused, it's an  
23 injustice to all.

24 And the remedy to that injustice can't itself be another injustice. It can't, I submit,  
25 be to prosecute a 92-year-old man unfit to instruct lawyers, unfit to participate in an  
26 interview with Police, a man whose cognitive functioning is suggestive of Alzheimer's  
27 disease and whose functional decline supports a diagnosis of dementia, a man with heart  
28 disease, chronic kidney disease and cancer.

29 It would be impossible for a criminal trial of these allegations to be conducted fairly  
30 now. There are a number of reasons for this, but chief amongst them is that Selwyn Leeks  
31 is simply unfit to be tried.

32 The remedy for the survivors of Lake Alice, who have, in view of the evidence  
33 before this Commission, been denied justice, must be, in my submission, damages. Those  
34 damages properly quantified may well be substantial. Damages payable by the State and

1 referable, at least in part, to the fundamental rights that have been denied to the survivors.

2 And I say that in full knowledge of the fact that Dr Leeks is presumed innocent at  
3 law, and in view of the fact that he has, when he was cognitively capable of doing so,  
4 always ardently maintained his innocence. It is not to the point I submit whether Dr Leeks  
5 is guilty or innocent of anything. The survivors of Lake Alice had the right to expect that  
6 their allegations would be taken seriously, investigated properly, and brought to court and  
7 prosecuted efficiently and appropriately.

8 Now there are legitimate arguments on both sides of that issue. If the Commission  
9 finds that there were systemic failings in this regard, it is those failings, in addition to other  
10 perhaps more obvious systemic and regulatory failings in the 1970s, that the Commission  
11 must make findings about and it is those failings globally, in my submission, that the  
12 survivors of Lake Alice should be compensated for.

13 In order for the Commission to make those findings, it need not make findings  
14 adverse to Dr Leeks. The Commission can, I submit, if it were so minded, say to the  
15 survivors of Lake Alice that they have been heard and that they have been believed. And  
16 the Commission can do that without making findings adverse to Dr Leeks.

17 In short, I submit to the Commission that it can perform its functions -sorry, in  
18 short- I submit to the Commission that it can perform its duties, undertake its functions and  
19 exercise its powers under the Inquiries Act 2013 without making findings adverse to  
20 Selwyn Leeks and that, in view of the report of Dr Lucas and the reality of Dr Leeks'  
21 present circumstances, it must. Thank you.

22 **CHAIR:** Thank you very much, Mr Rattray. I can just say to those listening that we did have a  
23 few blips of the electronic nature as you were speaking, but I'm sure that the submission  
24 will be put up on the website, is that correct, who can I ask about that? Who's a technical  
25 person here?

26 **MR MOLLOY:** Certainly wouldn't put myself in that category, ma'am, but yes, I think the  
27 submissions are going to be posted.

28 **CHAIR:** So if you didn't catch everything they will be on the website so that you can read them,  
29 and I can assure you that Mr Rattray read the submissions word for word, so he didn't add  
30 anything or subtract anything, so what you'll be reading is exactly what he said. That's just  
31 by way of assurance on the communication line.

32 Mr Rattray, may I thank you on behalf of the Commission, you were here at the  
33 beginning and your submissions are accepted, I don't say accepted as to substance, but well  
34 accepted as being extremely helpful to us in this Inquiry and we fully accept our need and

1 our responsibility to be fair to all those involved. If we were not that then we would not be  
2 being the independent body that we were set up to be.

3 So would you please accept our thanks for being Selwyn Leeks' advocate in very  
4 difficult trying circumstances, and thank you very much indeed. If you wish to continue to  
5 listen you're most welcome, if you have other business to go about, we say farewell to you.

6 **MR RATTRAY:** Thank you Your Honour, I'll continue to listen via the AVL link.

7 **CHAIR:** Thank you. I think at this moment are we allowed to have a break? CCHR, it's just  
8 we've moved on so far. I wonder if we might take an early morning adjournment and then  
9 we'll hear from CCHR after that, does that suit you Ms Green?

10 **MS GREEN:** Yes, it does.

11 **CHAIR:** All right then we'll take the adjournment thank you.

12 **Adjournment from 11.20 am to 11.48 am**

13 **CHAIR:** I'll just get my list of orders. So now Ms Green, there she is.

14 **CLOSING SUBMISSIONS BY CITIZENS COMMISSION ON HUMAN RIGHTS**

15 **MS GREEN:** Good morning, Madam Chair and Commissioners. I'm introducing the submissions  
16 on behalf of the Citizens Commission on Human Rights. Before we begin, I do want to  
17 acknowledge again Mr Mike Ferriss, Mr Bruce Gibson, and Mr Victor Boyd who you heard  
18 from just about two weeks ago when they gave their evidence at this hearing.

19 Now Mr Mike Ferriss is going to speak to the submissions that have been filed and  
20 I want to acknowledge Mr Steve Green from the Citizens Commission who is here giving  
21 support. So I would like to introduce Mr Mike Ferriss.

22 **CHAIR:** Morning Mr Ferriss.

23 **MR FERRISS:** Kia ora, good morning. Thank you for this opportunity. I'll be giving CCHR's  
24 closing comments. So we want to thank all of the survivors of Lake Alice from the Child  
25 and Adolescent Psychiatric Unit for their bravery in speaking out at this Commission. For  
26 letting the people of New Zealand and indeed the world know of the horrors you endured at  
27 Lake Alice. A small portion were represented here. We would like to thank all the  
28 survivors and all those who have been lost to us.

29 This Royal Commission is your vindication, the recognition that you were right, that  
30 you were punished, that you were tortured, and that you were mercilessly drugged and  
31 raped. It was never your imagination, it was never because there was something wrong  
32 with you, it was never deserved, it should never have happened.

33 That the system failed you is without question. The mental health professionals,  
34 staff and agencies failed and even harmed you is also beyond doubt. The worst culprit, the

1           psychiatrist Selwyn Leeks, has finally been exposed as a torturer. That may provide some  
2           solace but not yet justice.

3           Since the Royal Commission started, CCHR New Zealand has received an  
4           international outpouring of support from groups and individuals who pay tribute to your  
5           courage, from Australia, England, Germany, the United States, to name but a few.

6           We'd like to also thank the Commissioners, the legal team, the researchers and staff  
7           for your work, and the real willingness to listen to the stories of the survivors and to show  
8           the compassion that you have. You've also validated our work for which we thank you  
9           very much.

10          This Royal Commission has enabled us for the first time in nearly 50 years to  
11          understand what happened at Lake Alice and the subsequent shocking cover-ups and  
12          denials by State and mental health agencies. A lot of the information that has been brought  
13          to light has been revealing and is confirmed that what we thought was atrocious was, but  
14          even more so.

15          We'd also like to thank the United Nations Committee Against Torture who  
16          recognised that imprisoning children in the conditions of Lake Alice and forcing electric  
17          shocks and drugs upon them were indeed acts of torture. It is a recognition that we hope  
18          the health ministry and Government will reinforce in the future. Especially under the  
19          proposed changes to the Mental Health Act.

20          I'd like to say thanks to Tom Fitzgerald and his Police team doing the new  
21          investigation. It's not an easy one to grapple with, we know this. And there's been a lot of  
22          trust placed in you to do the right thing, so we are grateful to have you on the job.

23          A special thanks to Oliver Sutherland, Ross Galbreath, Robert Ludbrook and  
24          members of the court who were right there with us trying to pry open the Lake Alice can of  
25          worms. Judge Mitchell had been hoodwinked by psychiatric mumbo jumbo at the  
26          magistrate's inquiry, we knew it. It took 45 years to really open that can. What do we see?  
27          Strip away the psychiatric terminology and you see children being tortured in the guise of  
28          treatment.

29          Another special thanks goes to Paul Zentveld for your tenacity and tireless efforts to  
30          get this exposed, it's a real pleasure to work alongside you, Paul. Few people can wear the  
31          label "legend", but I'm sure you can.

32          We point out that in 45 years there's been no one step up and say they were helped  
33          at Lake Alice children's unit, not one. It wasn't therapeutic.

34          I'm not aware of anyone from the psychiatric profession or their professional body

1 attending this hearing. Given that Dr Selwyn Leeks was widely accepted within the  
2 psychiatric profession and even held in high esteem, I find that somewhat remarkable.

3 Perhaps we should not be too surprised when we read the recently unearthed  
4 psychiatric opinion of Dr DG McLachlan who gave his report for the Police in December  
5 of 1977, which we've heard a little bit about now. He held a high position, Director of  
6 Psychiatric Services, Wellington Hospital. He was a proponent of unmodified ECT and  
7 thus he not only went into bat for Dr Leeks, he endorsed his use as an ECT machine to  
8 children's body parts and made excuses for his use of unmodified ECT to their heads. To  
9 McLachlan it did not matter there was no consent for this treatment, all of his colleagues he  
10 believed disagreed with the Ombudsman's views on ECT without consent as being an  
11 assault, because he had so many misconceptions on psychiatric work.

12 The Auckland Medico-Legal Society publication of 1978, its president Dr Culpan,  
13 he didn't want comprehensive consent processes concerning psychiatric treatment,  
14 especially for electroconvulsive treatment, which was becoming an issue in light of the  
15 Lake Alice cases. Certainly the rights of psychiatric patients was virtually unheard of until  
16 CCHR and ACORD came along exposing electric shocking of children at Lake Alice.

17 Is it any wonder then that the psychiatric profession circled their wagons at this time  
18 to fight off marauding activists for human rights, so it was that we were made the problem,  
19 not the shocking and abusive treatment of Dr Leeks and some of the Lake Alice staff.

20 This was 1977, the year of New Zealand's first Telethon which raised \$3 million for  
21 mental health. I believe psychiatrists did not want their profession denigrated with  
22 allegations of ill-treatment- and child abuse at the time of their big PR campaign. They still  
23 do not want it now. Not when it's only us-- and it's not only us saying psychiatric treatment  
24 without consent constitutes punishment and torture.

25 Dr McLachlan's report for the Police shows how he and Dr Leeks and Mr C James  
26 of Rainey, Collins, Armour and Booch solicitor for the Medical Defence Union were at the  
27 Penal Cases Committee of the Medical Council on 23 November 1977 hearing, along with  
28 Medical Council staff, they faced a 19-year-old young man who was still dealing with his  
29 Lake Alice ordeal. The charges of improper use of an ECT machine by Dr Leeks were  
30 dismissed. This was where he had four or five boys shock another boy.

31 The problem behind the complaint, it was considered, was how it was prompted by  
32 another person, who we understand was Victor Boyd from CCHR. From the young man's  
33 point of view, the hearing was not dealing with the facts of the case and he felt it was a  
34 cover up. He also felt betrayed that Dr Leeks turned up because he was intensely afraid of



1 him and he agreed to attend the hearing only if Dr Leeks would not.

2 I think it's important this is pointed out to the Commission, because rather than  
3 investigate the practice of Dr Leeks like the Magistrate's Inquiry, the Medical Council were  
4 misdirected to the problem being "outside pressure" as Dr McLachlan put it. It certainly  
5 appears Dr McLachlan was there to support Dr Leeks at the hearing. He was in no way  
6 independent nor objective when he supplied his opinion to the Police in 1977.

7 Throughout this Lake Alice saga there's been similar scenarios play out, with the  
8 Medical Council and the Police. The survivors of Lake Alice Children's Unit were not  
9 believed really until now. They had no rights.

10 **CHAIR:** Sorry, Mr Ferriss, I should have raised this at the beginning. You have a very  
11 comprehensive submission, which we --

12 **MR FERRISS:** I'm not going to read all of it.

13 **CHAIR:** I was going to ask you that, we don't want to close you down or stop you, but I think it's  
14 important if you make your best points. We've got this, we've read it already, and it will go  
15 up on the website so that everybody can read it. So if I could ask you perhaps to do some  
16 summaries from now on. For example, coming on to the part describing the tortures and  
17 the like, you know we've heard that.

18 **MR FERRISS:** Sure.

19 **CHAIR:** And it's open, so can I leave that to your discretion to perhaps make your best points  
20 through?

21 **MR FERRISS:** Yeah, sure.

22 **CHAIR:** Thank you.

23 **MR FERRISS:** The next one really, when the legal space allows a practitioner to treat a person  
24 without consent, and the psychiatrist is allowed to electric shock people and administer  
25 drugs and call it therapeutic, this makes it difficult for Police to define ill-treatment and ill-  
26 intent.

27 So as we've heard in this hearing, the children were subjected to ill-treatment,  
28 electric shocks to the head of a 10-year-old boy while fully awake and moving them down  
29 his jawline is torture, not treatment. I think after listening to the testimonies at the Royal  
30 Commission, we understand what child torture might be.

31 Placing electrodes on the genitals and applying a current is a known form of torture,  
32 whether by a Gestapo officer or a psychiatrist. And there's medical expert opinion that  
33 notes that that is not treatment at any time.

34 Electric shocks to the legs of children for running away is not Aversion Therapy, it

1 smacks of psychiatry's old diagnosis of drapetomania given to black slaves of America's old  
2 south for running away. It's punishment in the guise of therapy.

3 I believe that the psychiatric body does not want a line drawn across their legal right  
4 to treat people against their will, even in this most egregious case of abuse. And the  
5 Government do not want to be seen as protecting a torturer either, not for 45 years. So I  
6 believe there are vested interests who wanted this to remain out of the public eye and  
7 certainly off the world stage.

8 So moving on. Had the Crimes of Torture Act in 1989 been available in the 1970s,  
9 perhaps the torture of the Lake Alice children would have been properly investigated and  
10 possibly averted. Even though Dr Leeks had justified its use to authorities as therapeutic  
11 behaviour modification, Aversion Therapy. That was a lie.

12 Some of the recommendations, some of the things going forward, we have the  
13 World Health Organisation guidelines. On June 10 this year came the timely release of the  
14 World Health Organisation's "Guidance on Community Mental Health Services Promoting  
15 Person-Centred and Rights-Based Approaches." It suggests that, or it recommends that  
16 includes the rights to freedom from torture or cruel, inhumane or degrading treatment or  
17 punishment, and prohibits coercive practises, such as forced admission and treatment,  
18 seclusion, restraint, as well as the administering of antipsychotic medication,  
19 electroconvulsive therapy and psychosurgery without informed consent.

20 It says the "Coercive practices are pervasive and increasingly used in services  
21 around the world, despite the lack of evidence that they offer any benefits and the  
22 significant evidence that they lead to physical and psychological harm, even death."

23 Another reference, July 2018, Human Rights Council report on mental health and  
24 human rights also calls on Governments to recognise that forced psychiatric treatment,  
25 including ECT, "as practises constituting torture or other cruel, inhuman or degrading  
26 treatment or punishment."

27 The World Health Organisation Resource Book on Mental Health, Human Rights  
28 and Legislation 2005, "There are no indications for the use of ECT on minors, and hence  
29 this should be prohibited through legislation."

30 Children are too young to consent and therefore any use of electroconvulsive  
31 therapy on minors constitutes torture and should be prohibited under New Zealand's Mental  
32 Health Act.

33 This has been enacted in Western Australia where ECT on a child under 14 years is  
34 prohibited, it is considered so serious that it is now a criminal offence to violate this.

1           The Commission heard from Ms Sharyn Collis who alleged that Dr Leeks not only  
2 tortured her with electric shock but also sexually assaulted her numerous times. When she  
3 complained to staff she was told she was lying or that it was the drugs she was prescribed  
4 confusing her.

5           So the Medical Council, quite apart from failing in its duty to take actions of serious  
6 allegations against Dr Leeks and therefore has failed to alert the Victorian Medical  
7 Practitioners Board, essentially he moved to Australia in 1978, there seems to be some kind  
8 of deal he struck with the New Zealand Medical Council, so he continued his practice and  
9 then within a year, as reported by the media in Australia, Dr Leeks sexually assaulted one  
10 or more other patients which continued until at least 1980. That was not made known for  
11 another 27 years when the person came forward in 2006 with a civil suit.

12           That victim asserted that Dr Leeks sexually abused her during consultations in 1979  
13 or 1980. She said that when she stopped her visits he urged her not to disclose what he'd  
14 done, telling her "You're a long-term psychiatric patient and no one will believe you."

15           Sound familiar? Authorities and Dr Leeks' colleagues could have stopped this from  
16 happening in Australia had it been properly investigated here first.

17           So we've heard apologies from the Medical Council, the Police, Crown Law, and  
18 earlier from the Prime Minister, former Prime Minister. But the fact remains that it took  
19 Paul Zentveld, on the behalf of Lake Alice survivors and CCHR, to recognise the injustice  
20 of the action- of- the inaction and we took this to the United Nations to force authorities to  
21 finally act. It should never have gotten to this.

22           Police and all agencies must dispense with the idea that because a person has sat in  
23 front of a psychiatrist that patient is unstable, incompetent and should never be believed.  
24 They should recognise that the person could be seriously damaged and influenced by the  
25 treatment given them.

26           Dr Leeks' words to his Australian victim was she would not be believed if she spoke  
27 out about his sexual assault because she was a psychiatric patient. When Dr Leeks was  
28 questioned by the Police in the late 1970s about his abuse of children, he dismissed this  
29 saying the children he treated were feral and psychotic and were future murderers and  
30 thieves. Society would realise one day that he was ahead of his time.

31           Some of the witnesses also had said that, for example, Alan Hendricks testified that  
32 his father, a nurse at Lake Alice, had him involuntarily detained there when he did not have  
33 a mental illness of any kind. No one believed him. That was one of the most common  
34 statements made throughout this hearing.

1 Lake Alice exemplifies everything that is wrong with the mental health and child  
2 institution system. Dr Barry Parsonson put it into perspective when he compared the use of  
3 ECT as a form of Aversion Therapy, that involved electrodes being placed on a person's  
4 groin or genitalia, to techniques used by the Nazi secret Police. During this hearing we  
5 could all be forgiven if we had thought for a moment that we were sitting in the Nuremberg  
6 medical trials of 1946, not the Royal Commission of Inquiry into abuse in care in  
7 New Zealand in 2021.

8 We reject Brian Stabb's evidence that in terms of electric shock being an organised  
9 punishment did not happen. We also reject his assertion that the ECT machine was not  
10 displayed to patients as a threat. We also reject his statement to the effect that psychiatrists  
11 were considered omnipotent in wards at the time and staff had to do as they were told.  
12 Conscience and the need to protect the children should have trumped such self-serving  
13 concerns. He and others had a duty to care.

14 Mr Stabb said he was under the impression that any sort of whistleblowing would  
15 result in his prosecution. There were professional organisations that he could have gone to,  
16 albeit as we now know ineffective ones. If there was more professionals who were  
17 speaking out at the time, they perhaps could have stopped this, rather than leaving it to the  
18 victims of the abuse to talk to members of CCHR and ACORD.

19 It should be noted that when the members of CCHR first toured Lake Alice in  
20 January 1976, the children took them aside to talk to them for fear of the nurses punishing  
21 them for speaking out. We heard from some of the staff that they were following orders.  
22 But following orders at Lake Alice meant harming children. Take away the hospital setting  
23 and the psychiatric jargon and what do you see? Ill-treatment and torture.

24 So we believe that the Crimes of Torture Act must be amended as needed to ensure  
25 Police can easily prosecute practices that are coercive and inhuman, degrading and torture.

26 In retrospect, those staff who were complicit either by directly contributing by  
27 delivery of electric shock and drugs as punishment to children, or failing to report it, should  
28 be prosecuted.

29 Juan E Mendez, special rapporteur on torture or other cruel or inhuman, degrading  
30 treatment or punishment reports on this framework of the healthcare setting.

31 The Committee Against Torture interprets State obligations to prevent torture as  
32 indivisible, interrelated and interdependent with the obligation to prevent cruel, inhuman or  
33 degrading treatment or punishment, because conditions that give rise to ill-treatment  
34 frequently facilitate torture.

1           Ensuring special protection of minority and marginalised groups and individuals is a  
2 critical component of the obligation to prevent torture and ill-treatment. Both the  
3 Committee Against Torture and the InterAmerican Court on Human Rights have confirmed  
4 that States have a heightened obligation to protect vulnerable and/or marginalised  
5 individuals from torture, as such individuals are generally more at risk of experiencing  
6 torture and ill-treatment.

7           So we see the need for accountability for protecting children further by mandating a  
8 requirement for an employee, worker, healthcare professional, including psychiatrists,  
9 psychologists, doctors, social workers, therapists, nurses etc, to report any observed  
10 incident of child abuse. The failure to address Lake Alice patients' concerns for nearly half  
11 a century shows the stakes for failing to report child abuse must be made much higher; and  
12 that is, criminal penalties for failing to do so.

13           We've heard about psychotropic drugs and the use of Paraldehyde injections, that  
14 left children like zombies for days, administered at Lake Alice as punishment for mild  
15 misbehaviour at Lake Alice. Child drugging today in New Zealand, according to a 2020  
16 study, the practice of giving mind-altering psychotropic drugs to children in this country is  
17 alarming.

18           The number of New Zealand children and youths aged 0 to 17 prescribed a  
19 psychotropic drug increased more than 63% between 2008 and 2016 alone. And  
20 antipsychotics, which is some of the most mind-numbing of the psychotropics, increased by  
21 105% and antidepressants that carry warnings of suicidal ideation and risk of suicide  
22 increased by over 78%. You'll find a lot of those drugs are used throughout the State care  
23 system of children.

24           So what needs to change? We heard from Malcolm Richards. He said "My first  
25 hope is that we are listened to and taken seriously, unlike past treatment. I know the  
26 Government settled with us, but they did not find out what really happened to us. Our  
27 voices were not heard and no one was held to account. They gave us money and tried to  
28 bury it." He called for electric shock to be banned.

29           The United Nations health expert issued a report in 2017 calling for a revolution in  
30 mental health care around the world, to end decades of neglect, abuse and violence. We  
31 have the opportunity to do something with this Royal Commission.

32           You have allowed New Zealand, and indeed the world, to learn of the savageries  
33 that have marked the country's mental health system. Now you have the power to restore  
34 its humanity. Ensure that Dr Leeks and all those who assisted him are recommended for

1 prosecution, ensure the system is made accountable and please ensure the victims get the  
2 true vindication they deserve.

3 True commensurate compensation for the crimes committed against them and the  
4 decades of cover up that exacerbated their pain and trauma is needed. Real redress for the  
5 harm that has been done must include rehabilitation and recompense, then perhaps true  
6 healing for them can occur.

7 So that's my submission.

8 **CHAIR:** Thank you Mr Ferriss. I'm going to ask the Commissioners, would you mind, if they  
9 had questions, if they directed them to you?

10 **MR FERRIS:** Sure.

11 **CHAIR:** Commissioner Gibson, do you have anything would you like to ask of Mr Ferriss?

12 **MR FERRISS:** No further questions, really appreciate your submission, thank you.

13 **CHAIR:** Thank you.

14 **COMMISSIONER ALOFIVAE:** The same, very appreciative of the Commission, thank you.

15 **MR FERRIS:** Thank you very much.

16 **CHAIR:** That is the submission on behalf of CCHR?

17 **MR FERRISS:** Yes.

18 **CHAIR:** Then I will thank you, and thank you for putting so much work and effort. I think you  
19 win the prize, if I might say so, for the number of footnotes, it's a remarkable number of --

20 **MR FERRISS:** There's a few cooks in the kitchen I've got to tell you.

21 **CHAIR:** Thank you to the ringawera, the cooks in the kitchen who did the work. But on a serious  
22 note, I think it's important that the Commission acknowledges CCHR and the extraordinary  
23 efforts that it has gone to since the 70s to keep this flame alive on behalf of the survivors,  
24 it's been an extraordinary effort.

25 I have seen from the documents that you have been vilified, rejected, treated as  
26 outsiders and in spite of all of that, you have maintained steadfastly the desire to see justice  
27 done, and so I think we are privileged that you have taken this opportunity to come, address  
28 us, provide us with the evidence, and also to support Mr Zentveld and others who have  
29 been along. I think it's very, very important that your presence has made a big difference to  
30 this hearing and we acknowledge that and thank you, and all the cooks in the kitchen, for  
31 your immense hard work. Thank you so much.

32 **MR FERRISS:** Much appreciated, thank you very much. **[Applause]**

33 **CHAIR:** Appreciated by others as well quite obviously. Very well, Human Rights Commission.  
34 You're fine to be there as long as you turn the microphone on, Mr Hancock. Welcome to

1 the Commission Mr Hancock.

2 **CLOSING SUBMISSIONS BY THE HUMAN RIGHTS COMMISSION**

3 **MR HANCOCK:** Thank you. Tēnā koutou e ngā Kōmihana, tēnā koutou katoa. Ko John  
4 Hancock ahau, ko te tumuaki kaitohu ture, mo te kahui tika tangata, mauri tangata, mauri  
5 ora. May it please the Commission, my name is John Hancock and I'm appearing for the  
6 Human Rights Commission to speak to the submission that we've provided in our capacity  
7 as a participant in this Inquiry.

8 **CHAIR:** Just so you know as a newcomer, that everything you are saying is being typed up and  
9 signed and if you could keep your speed adjusted to take account of that.

10 **MR HANCOCK:** Thank you ma'am.

11 **CHAIR:** Thank you.

12 **MR HANCOCK:** Firstly, I wish to acknowledge the courage of the Lake Alice survivors in  
13 providing evidence to this Inquiry, and whose efforts over the years in seeking recognition  
14 of the human rights violations they suffered and redress and accountability from the State  
15 has led to where we are today. And I also want to acknowledge all of those who have  
16 supported them.

17 The Human Rights Commission's participation in this part of the Inquiry has been to  
18 provide the Royal Commission with a submission on how the human rights and Te Tiriti o  
19 Waitangi framework may be interpreted and applied to their inquiry into the abuses that  
20 occurred at Lake Alice Hospital.

21 The Royal Commission's terms of reference provide that in the course of its work  
22 the Inquiry will consider relevant domestic and international law, including international  
23 human rights law.

24 The Commission's submission, therefore, seeks to assist the Royal Commission by  
25 setting out the relevant international human rights standards on the prevention of and  
26 responses of abuse and rights to redress. And it's an extensive submission, and I won't read  
27 it out this afternoon, because we might be here well past the lunch time adjournment were  
28 I to do so, so I will make a brief submission and if you have any questions following.

29 **CHAIR:** Thank you.

30 **MR HANCOCK:** But our submission is broadly structured as follows: It covers New Zealand's  
31 applicable human rights obligation, in particular the right to protection from torture and ill-  
32 treatment, breaches of human rights and Te Tiriti that the evidence before the inquiry has  
33 identified, and lastly the rights of survivors to remedy and redress for violation of their  
34 human rights.

1 Over the course of these hearings, the survivors have provided evidence of a  
2 multitude of egregious human rights violations they suffered at Lake Alice Hospital. That  
3 human rights violations amounting to torture occurred and were suffered by children and  
4 young people in Lake Alice Hospital does not appear to be in dispute.

5 It is notable that the UN special rapporteur against torture has highlighted that  
6 indefinite detention, the infliction of forced medication or electroshock, the use of restraints  
7 and seclusion, the segregation from family and community contribute to a finding of torture  
8 with respect to detention in a psychiatric context. Indeed, the above factors are prevalent  
9 throughout the evidence of the survivors and are not disputed by the Crown.

10 Given all this, the primary challenge for the Inquiry, therefore, is not whether  
11 human rights violations have occurred, it is instead about accountability and more  
12 specifically, what does a human rights approach to accountability look like when faced with  
13 human rights breaches of this magnitude?

14 So in addressing that, I wish to consider the application of the State's contemporary  
15 human rights obligations to matters that occurred in the past. Much of the evidence before  
16 the Royal Commission regards events that occurred in the 1970s and '80s before the  
17 New Zealand Government ratified many of the international human rights treaties such as  
18 the UN Convention Against Torture, or the UN Convention on the Rights of the Child and  
19 the Convention on the Rights of Persons With Disabilities that are referred to in our  
20 submission.

21 However, the Commission submits this should pose no barrier to the Inquiry  
22 applying the contemporary human rights framework in respect of those events.

23 As the UN Committee Against Torture in its decision in *Zentveld v New Zealand*  
24 stated, I quote, "the prohibition of torture and other ill-treatment was nonetheless  
25 universally accepted as absolute" at the time proceeding New Zealand's ratification of the  
26 Convention Against Torture. And in doing so, the UN Committee referred to relevant  
27 articles in the Universal Declaration of Human Rights and the International Covenant on  
28 Civil and Political Rights, among other things.

29 This, in the Commission's submission, reinforces the fundamental nature of the  
30 human rights concerns that lie at the heart of this Inquiry. Human rights themselves have  
31 been described as fundamental rights which empower human beings to shape their lives in  
32 accordance with liberty, equality and respect for human dignity.

33 This statement on fundamental rights and human dignity leads the preamble to the  
34 Universal Declaration on Human Rights and is reflected throughout the human rights



1 treaties that have built on the Declaration's foundation. In fact. The current human rights  
2 framework builds upon and elaborates those fundamental and core rights.

3 The abuses that took place at Lake Alice are by any measure an affront to human  
4 rights and human dignity. It follows that, in the Commission's submission, that the Royal  
5 Commission's human rights focus on Lake Alice, as provided under its terms of reference,  
6 should have retrospective, contemporary and prospective application.

7 The human rights violations that the survivors have experienced in the past continue  
8 to resonate into the present and must inform the steps for redress and prevention that this  
9 Royal Commission will consider to be applied in the future.

10 So that concludes my opening statement. I can take you through the written  
11 submission, but in the interests of time and other counsel wishing to address the  
12 Commission, I wonder if it's best if you have any questions arising from the Commission's  
13 submission, which is extensive and I understand will be made public, whether I could  
14 address those now rather than going through each point made.

15 **CHAIR:** I think for myself, I'm only speaking for myself not for my fellow Commissioners, I  
16 would prefer, because this has only recently come in to my attention, to give it time,  
17 thought and consideration, and to address any questions that I might have to you through  
18 counsel later. But I'm going to ask my colleagues if there's anything immediately arising  
19 that they would like to ask you. So I'll start with you Commissioner Gibson.

20 **COMMISSIONER GIBSON:** Thanks Mr Hancock. Just one clarifying question. I think, which  
21 you've just, through your introductory statement, a bit clearer; in terms of retrospective,  
22 contemporary and prospective implications, are you saying that to adequately redress past  
23 injustices we need to be preventing them as well? Prevention is part of redress, is that what  
24 you're saying?

25 **MR HANCOCK:** The submission looks at the right to remedy and the right to redress framework  
26 and it looks at the various different elements of that, which include things like  
27 compensation, like guarantees of non-repetition, like satisfaction, all these elements that  
28 need to be taken into account.

29 The point I was wanting to make is that -and this is a point that was being  
30 emphasised by the Crown and by the Solicitor-General- - is that at the time these events  
31 took place in the '70s and '80s, the social norms were different, legal norms were different.  
32 And a point that was made that the Crown advanced in the Zentveld- communication again  
33 was that while the Convention Against Torture wasn't ratified at the time so therefore it  
34 shouldn't be applied.

1           What the Commission is saying is that the contemporary human rights framework  
2 that exists today can help us understand what the benchmark is for human rights when  
3 looking at what happened in the past, when looking at the circumstances of the victims  
4 today. And I would submit strongly that any system for redress is focused on the victims  
5 first.

6           One observation I would have is that there's a tendency for systemic types of  
7 responses to overwhelm sometimes the focus on the individuals whose human rights were  
8 violated. And I think it's really important that the victims' rights remain central to the  
9 recommendations and findings that this Royal Commission makes, so that they're not lost  
10 in the detail of the complexity of the system that we're trying to address through this Royal  
11 Commission Inquiry.

12           So my point is, that to state that human rights norms weren't embedded in our legal  
13 culture or our social fabric at the time, our submission would be that's all very well, but  
14 actually a human rights approach is to look at what is the human rights standards of today  
15 when identifying what went on in the past and what needs to happen in the future, and also  
16 what needs to remediate and vindicate the rights breaches that those have suffered the most  
17 have experienced.

18 **COMMISSIONER GIBSON:** Yeah, thank you, thanks very much.

19 **CHAIR:** If I might say, it also begs the question why not, why were they not enforced at the time.

20           We had the Declaration of Human Rights, it was there.

21 **MR HANCOCK:** Absolutely. And of course, I mean New Zealand took -had- a major part in the  
22 development of the Universal Declaration. We were a member of the United Nations, the  
23 UN Charter upholds and affirms human rights, the ICCPR was open for signature in 1966.  
24 We may not have ratified it until 1978 but it was open to signature, almost a decade before  
25 these atrocities occurred. We ratified the Convention on the Elimination of Racial  
26 Discrimination in 1972, and of course in the submission you'll see that the body of reviews  
27 that the treaty bodies have made in terms of New Zealand's human rights performance in  
28 this area as regards institutional care, has been wanting, not just in terms of the UN  
29 Committee Against Torture, but also the Committee on Rights of the Child and the  
30 Committee on the Elimination of Racial Discrimination have also made those observations.

31           And of course the other factor is that the principles of Te Tiriti in relation to State  
32 care of children have been found to have been breached by the Waitangi Tribunal very  
33 recently too. So that is again another really important and core rights issue that exists at the  
34 heart of this Inquiry, and of course the Crown's admission today that institutional racism

1           existed is very important, I think, very important acknowledgment in coming to terms with  
2           that and looking at what sorts of things can be done to ensure that such institutional racism  
3           does not perpetuate into the future.

4   **CHAIR:** Thank you.

5   **COMMISSIONER ALOFIVAE:** I do have a question, Mr Hancock, but I'm thinking it's  
6           probably better saved to frame it to you properly so that you can respond perhaps in a fuller  
7           sense, but it essentially relates to Aotearoa signs lots of agreements, so not just our  
8           international covenants, but also Treaty statements, you know, like the friendship of treaty  
9           between the different Pacific Islands, and it's really the applicability of our human rights  
10          lens across those documents as well, and what does that actually mean when you enter into  
11          those agreements with the Pacific nations and the impact, of course, that it has on the  
12          flow-on effect for us as different people groups, yeah. So I think we'll frame that up and  
13          send it through unless you're able to offer some preliminary comments now.

14   **MR HANCOCK:** I think the only comment I'd offer now is that that's a complex area and of  
15          course there are those relationships between the State and the territories that are the  
16          dependencies that New Zealand has and they've been before the UN Committee on the  
17          Rights of the Child, for example, the extension of the convention -- protections to Tokelau,  
18          for example, has been an issue that the UN Committee on the Rights of the Child has  
19          considered over the years, and has a position that has been in the past somewhat different to  
20          the position of the New Zealand Government on the application of the convention there.  
21          But yes, it's a complex issue, it's probably best addressed in a written submission.

22   **COMMISSIONER ALOFIVAE:** No problems, thank you Mr Hancock.

23   **CHAIR:** Mr Hancock, I think it's very important that this submission has come at this moment in  
24          the proceedings of the Royal Commission for two reasons. First, as you quite rightly point  
25          out, we are bound, and even if we weren't bound, I think we would place great store on the  
26          human rights dimension of the issues that we are looking at. There's nothing more human  
27          than a child, and there's nothing more worse than child's rights being denied or violated.

28                 So this is a timely submission, it is a weighty submission, and you can be assured  
29          that it will be taken in account. So that's the first thing to acknowledge the submission and  
30          the value that we will place on it.

31                 The second thing and the reason why it's so timely is that you may be aware that  
32          foremost of our thoughts at this moment and our minds and our energies is going into our  
33          redress report that we will be producing by the end of the year. And this issue is inevitably  
34          arising out of here is redress and the fundamental aspects of it and what is required. So

1 I see that your submission has a significant portion on redress and for that we're grateful.  
2 As I say, the human rights dimension towards redress is very important and that's going to  
3 be very helpful.

4 The last thing I want to say, is that the Commission must acknowledge and  
5 recognise the extremely important part that the Human Rights Commission played in  
6 bringing this Commission into being through great difficulty, and again, the persistence that  
7 this issue seems to have engendered in so many organisations. I see that in the Human  
8 Rights Commission who fought valiantly and unsuccessfully for a while but eventually  
9 prevailed.

10 So I wish to acknowledge the role of the Human Rights Commission in bringing  
11 this to being and supporting it with your knowledge and your information. So thank you  
12 very much for that.

13 **MR HANCOCK:** Thank you ma'am.

14 **CHAIR:** Thank you Mr Hancock, nothing more?

15 **MR HANCOCK:** Nothing more.

16 **CHAIR:** Be seated or go wherever you wish. And that leaves us with the voice of the survivors.

17 **MS JOYCHILD:** My friend is going to speak first, Commissioners, then I will speak and then the  
18 survivors will close.

19 **CHAIR:** Tēnā koe Ms Thomas.

#### 20 **CLOSING SUBMISSIONS ON BEHALF OF SURVIVORS OF LAKE ALICE**

21 **MS A THOMAS:** (waiata - karanga, karanga waiata whānau e, unuhia te rito o te harakeke kei  
22 hea, te kō mako e kō. Hakatairangihia, rere ki uta, rere ki tai, Māu e ki mai. He aha te mea  
23 nui, māku e ki atu, he tangata, he tangata, he tangata).

24 E te kaiwhakawa koutou ngā Kaikōmihana e noho ana i to tātou taumata, i āu e  
25 whakarongo ana ki ngā kōrero i roto i ngā wiki kua pahure ake nei, ko tēnei whakataukī nei  
26 e noho ana, e noho mātāmua ana i te hirikapo i roto i aku whakaaro. Me te tika hoki kia  
27 pērā. Ko tēnei whakataukī nei nā te wahine rongonui nō roto mai o Te Aupōuri, nā Meri  
28 Ngāroto roto tēnei kupu rongonui. E kaha whakamahingia ana e te tini, e te mano, me taku  
29 mōhio ake e koutou to Kaikōmihana ngā Kōmihana i roto i o koutou ripoata. Me te tika  
30 hoki ki a noho tēnei whakataukī hei tūāpapa, mo tēnei kaupapa ka mutu mo ngā whāinga  
31 kei mua tonu i te aroaro.

32 Me te pōhēhē pea ō etahi ko tēnei whakataukī nei i kōrero ana mo te tangata.  
33 Engari to nui ngā o tātou karepa i te timo mōhio i tēnei whakataukī. Ko tēnei whakataukī e  
34 kōrero ana mo te tamaiti, ko te rito tēnā, ko te tamaiti ko ngā tamariki, ko te harakeke arā

1 ko te whānau. No reira, i tika ana ki a tīmata tātou i tēnā whakataukī, e tika ana ki  
2 whakamutu tātou i tera whakataukī me te hōhonu o ngā whakaaro ki roto i terā kōrero.

3 Tera atu o ngā whakataukī e noho mātamua ana i roto i a au, ko te ra i whakahuatia i  
4 au i te wā i kōrero tahi māua ko Mr Rangi Wickliffe. Ko te piko o te māhuri tērā te tipu o  
5 te rākau. Me taku hiahia kia pānui atu, i te whakapākehātanga kia mōhio ai tātou he aha te  
6 ia o erā kōrero. Unuhia te rito o te harakeke kei hea rā te kōmako e kō whakatairangitia.  
7 Rere ki uta, rere ki tae, māu e kī mai he aha te mea nui o te āo, maku ē kī atu he tangata, he  
8 tangata, he tangata.

9 If you remove the centre shoot of the flax, where will the bell bird rest. It will mill  
10 around, fly inland, fly seawards. If you were to ask me what is the greatest thing in the  
11 world, I will tell you it is people, it is people, it is people. Me te whakapākehātanga o te  
12 piko o te mahuri te ra te tipu o te rākau. The way in which the young sapling is nurtured  
13 determines how the tree will grow.

14 And as I set out, myself and Ms Joychild set out in the closing submissions that  
15 have been provided, this whakataukī, both of these whakataukī set the tūāpapa or the  
16 foundation for not just this closing statement, but for how the survivors kōrero has been  
17 progressed throughout this Inquiry. In this context, the whakataukī speaks to the duties and  
18 the obligations we have as a nation to ensure that all children in State care are given the  
19 protection, guidance, and nurture required so that they may grow to be confident, secure  
20 and happy adults.

21 This whakataukī speaks to the obligations we have to ensure their safety in all  
22 aspects of their well-being, so, ma'am, I did want to start with those very important  
23 whakataukī. me taku mōhio ake, and sorry I keep switching into Te Reo Māori.

24 **CHAIR:** Haere tonu, haere tonu.

25 **MS A THOMAS:** Most of the time I give submissions it is in Reo Māori, so he uaua  
26 kia noho pūmau ki te reo pākehā. I know that most of the survivors that presented in these  
27 last weeks are watching the live today. So myself and Ms Joychild really wanted to ensure  
28 that this closing statement is focused on their words, on what we've heard throughout these  
29 last weeks. We also are aware there are a number of legal issues that do need to be dealt  
30 with and we've sought leave to deal with those in comprehensive closing submissions.

31 But this short time we have available is going to be about survivor-focused kōrero  
32 me te tika hoki ki a pērā i tīmata tātou te reo o te mōrehu, me whakahoki ano tātou ki te reo  
33 o te mōrehu, and as Ms Joychild pointed out, after I finish this brief kōrero I'll hand it to  
34 over to Ms Joychild and then Leoni McInroe will finish our proceedings.

1           Following that we have a waiata which I've heard is close to the Chair's heart, Toia  
2 Mai, he whakamōhiotanga noa ki ngā tangata i roto i te ruma, if everybody knows Toia Mai  
3 most welcome to join in, hoia ano mo tēnei wā nei. You have the submissions, ma'am, so  
4 I won't read them fully, but there are just a few sections of this statement that I do want to  
5 say and read out, like I said mainly for the survivors that are watching.

6           The State has failed the children of Lake Alice. And I'm at paragraph 8. The State  
7 failed them prior to their admission to Lake Alice by placing them in care situations that led  
8 them to being abused and assaulted. The State failed them during time at Lake Alice in  
9 failing to protect them from what can only be described as torture at the hands of  
10 Dr Selwyn Leeks and other Lake Alice staff.

11           The State continued to fail these children after they left Lake Alice in ignoring and  
12 trivialising their complaints to the authorities and ultimately failing to hold Dr Leeks to  
13 account and in further re-traumatising them when they attempted to seek redress.

14           I just wanted to point out as well, ma'am, the tables that have been prepared and  
15 filed with our submissions, because I think what is helpful with those is it brings the facts  
16 and the detail for all of our survivors into a, well, an ease of reference for us to refer to.  
17 And in those tables you will see data about admission, punishments that were given at Lake  
18 Alice, as well as information of how long those survivors were in the villas and helpfully  
19 which villas those were. I think there's been a lot of kōrero about villa numbers, 8, 7, 10, so  
20 what we've attempted to do is outline exactly what we are talking about in those sections.

21           So collectively, the survivors we represent have spent 19 years, three months, three  
22 weeks and one day at Lake Alice. They are all in their 50s and 60s now. They have been  
23 living with the effects of this trauma for over 40 years. Their children carry the  
24 intergenerational effects. Many survivors have, through breath-taking tenacity, risen above  
25 the shadow of Lake Alice, but many have not. The survivors were either not diagnosed or  
26 misdiagnosed -- and as I said, that's set out in our table provided -- with psychiatric  
27 disorders. Some were already in State care when admitted, others were referred by parents  
28 unaware of the horrors waiting at Lake Alice.

29           After being discharged and finally escaping Lake Alice, many complained to the  
30 Police or Medical Council, the entities that they thought would investigate and put right  
31 what happened. The survivors taking part in the Inquiry are still only a fraction of the  
32 hundreds of children that have passed through Lake Alice.

33           Through the courage of each survivor, we hope that there is a voice for those who  
34 no longer have one. And at this point I do just want to say that it has been an honour and a

1 privilege for myself and Ms Joychild to represent these survivors that have shown such  
2 courage coming here and sharing their kōrero throughout these weeks.

3 So I go on, ma'am, we go on in these submissions to talk about the evidence of the  
4 survivors and, like I said, I won't read those, but we speak about the admission into Lake  
5 Alice, and the issues with those admissions and that takes us through to paragraph 23.

6 Importantly, what I point out before going on to a next issue is the level of  
7 knowledge as to the abuse these children were exposed to, and furthermore, whether  
8 consent was given for the children to receive ECT and the myriad of drugs is at best  
9 questionable, and as I said, we will provide detailed submissions in our closings for that.

10 Further on, the abuse at Lake Alice is unequivocal, we've heard it all in these last  
11 two and a half weeks from all of the survivors that have presented in front of the Inquiry,  
12 which has included ECT, and in our submissions we go into the punishment, ECT as  
13 punishment, unmodified and modified, where this was given and the effects that this has  
14 had on the survivors at Lake Alice but also long-term effects.

15 The seclusion that these survivors experienced in Lake Alice is also set out in the  
16 submissions. Survivors were put into security wards and we've heard for almost three  
17 months, Mr Symes, Charlie Symes spoke about that without having a shower for three  
18 months. This is what the children were exposed to.

19 We've also heard from many of our survivors about the sexual abuse that occurred  
20 at Lake Alice. Sexual abuse by staff members, sexual abuse by other residents, and what  
21 we've heard is this was systematic and became the norm for many of these children that  
22 went through Lake Alice. Rangi Wickliffe talks about how he was gang-raped by other  
23 residents and Lake Alice staff members. Tyrone Marks was raped by Lake Alice staff  
24 members on his first night at Lake Alice, and it goes on and it goes on and it goes on.

25 Paraldehyde injections, we've heard from many survivors about Paraldehyde which  
26 was one of the drugs freely used by staff at Lake Alice. Paraldehyde was given to children  
27 as punishment. It was dolled out casually for infractions such as running across the stone  
28 garden, or just general misbehaviour. Others were given Paraldehyde for, in the survivors'  
29 opinion, absolutely no reason at all. It was not always given in private rooms and children  
30 would collapse in pain after receiving Paraldehyde in the hallways. And just like the rest of  
31 the abuse, the evidence we've heard from survivors surrounding Paraldehyde and all the  
32 other drugs continues.

33 We set out evidence about nursing staff in there from paragraphs 42 onwards,  
34 I won't go over that, ma'am. I did want to read out these excerpts about the discrimination

1 in Lake Alice. Me taku mihi a hoki ki Ms Feint ki te Karauna mo te ra whakatakatohea,  
2 whakatakatoranga i whakatakoto hea e rātou mo te discrimination i roto i auā waahi rā, e  
3 mihi ana ki a rātou, e mihi ana ki a tātou, e ki ana āe kua pērā tērā whare, kua pērā  
4 Aotearoa, kua pērā te whakamahinga kino nei ki ngā tamariki i roto i a Lake Alice.

5 Brian Stabb described that approximately 80% of the children at Lake Alice were  
6 Māori or Pasifika. Of the survivors we represent, half are Māori and some who are not  
7 have Māori children that have provided evidence to this Commission. All Māori survivors  
8 except one received ECT. Only three Māori survivors did not receive painful and  
9 debilitating Paraldehyde injections.

10 Donald Ku told us about how he thought some of the Lake Alice staff were racist,  
11 and that the Māori children were picked on because of it, and we heard how he would just  
12 be sitting there and the nursing staff would come and beat him up and he thought just  
13 because he was Māori.

14 It's also important to note the psychiatrist's report that we mention here in our  
15 submissions that talk about Mr JJ and it says, "This 12 year old Māori boy is one of a  
16 family of subcultural subnormal children born to an irresponsible Māori mother and an  
17 unstable father". And we put this quote in again to show that systematic racism existed in  
18 Lake Alice, but also in the State broader system as well and that carries on as well, ma'am.

19 We go on then to talk about the ongoing effects, because the ongoing effects are just  
20 as important as what happened in Lake Alice because it's still being felt by our survivors  
21 today. And we've heard about the trauma, the memories of being exposed to the pain and  
22 hearing others exposed to pain at Lake Alice, those memories haunt the survivors every  
23 day, they wake up with nightmares and they live with the trauma and the memories of Lake  
24 Alice every day.

25 Many have spoken about PTSD, memory loss, much of which has led to the  
26 struggles and many survivors contemplating suicide. The relationships and the inability,  
27 should I say, of these Lake Alice survivors to form relationships is very real, not just with  
28 their children and their close family, but their friends, community, society, which has had  
29 ongoing effects for employment. Most of the survivors have talked about just wanting to  
30 enjoy life and that shouldn't be a hard thing, but it is.

31 There was a complete disregard for Māori culture and tikanga that underpins the  
32 very being for Māori children. Given the disproportionate statistics of Māori children that  
33 were at Lake Alice and in State care homes, this is a failing that cannot be ignored. Donald  
34 Ku explains how the loss of his Māori culture ultimately led to the loss of his identity and



1 belonging.

2 I go -- we go on further to talk about the addictions, to talk about the struggles about  
3 employment, turning to a world of crime which most of our survivors did do, and further  
4 we outline the remedies that have been sought by the survivors and many of them have  
5 spoken to those directly in front of the Commissioners in these weeks.

6 What I want to end on, ma'am, before I pass it over to Ms Joychild and I know that  
7 was very, very quick taking through those submissions, so I apologise Tyrone, is the  
8 conclusion in this statement. The survivors have told the Commission what happened at  
9 Lake Alice. They painted a picture of a prison for children that gave an omnipotent  
10 God-like figure free reign to abuse and torture children. Throughout the hearing there has  
11 been comments that what happened at Lake Alice is so shocking that it seems unbelievable.  
12 It is something that seems like it could only happen in a movie.

13 But this is not a movie. This was the reality for the 300-plus children that suffered  
14 because of its existence. This was how children were treated while in State care and this is  
15 New Zealand's history. This Inquiry has provided many opportunities. Importantly it has  
16 provided the survivors with a voice, which I think is perhaps one of the most important  
17 parts of this Inquiry, but it is also providing the Government, the Crown, the Police, the  
18 Medical Council, with the opportunity to finally hear the survivors and do what is right.

19 Hei whakakapi ake i konei, so the Commissioners are aware, at the end of  
20 Mr Marks' evidence he provided an e-mail to myself and Ms Joychild regretting that he  
21 didn't talk about a promise he had made to Karl Perkins. Pēnā Kare tātou te mōhio ki tērā  
22 tangata he mōrehu ia o Lake Alice,, he is a survivor of Lake Alice, he was also one of the  
23 lead singers in the band Herbs. At his tangi, Tyrone promised him that he would tell his  
24 story if he ever got the opportunity to do. Regrettably Tyrone didn't have the opportunity to  
25 do that and so I am left in my final words.

26 Me taku mihi ake, ki a Karl Perkins ka mutu ki tana whānau ake, e mihi ana ki ai ia  
27 mo tona mamae e ngau kino tonu ana i roto i te whatumanawa o tōna whānau hako kua  
28 wheturangitia kē tia, kua iri rā ia ki to tātou rangi, kei konei ia kei roto i te manawa i te  
29 whatumanawa o tona whānau, ki roto i ngā raumahara o ana hoa i haere ngātahi ai ki a  
30 Lake Alice, kei konei mātou e whakaaro nui ana ki ai ia i tēnei wā, me te aroha atu ki ā ia,  
31 ka mutu ki ngā mōrehu katoa o Lake Alice.

32 No reira, ka mātua ahau i konei ngā kupu ka hoa atu au ki taku tuakana i tēnei wā  
33 nei, māna i whakakapi ake i nei kōrero ka mutu, ka hoatu te rākau ki a Ms McInroe, ki a  
34 whakakapi ake tēnei wahanga a tātou.

1 **CHAIR:** Kia ora. Before you go, Ms Thomas, you will note, as you no doubt have, that in front  
2 of us and not behind us is the harakeke. That was one of the very early decisions that the  
3 Commissioners made right when we started. We didn't want the Crown insignia behind us,  
4 we wanted something significant in front of us, and from the whakataukī that you have so  
5 well relied on comes our insignia. I think it's important to acknowledge that, thank you  
6 very much.

7 We'll wait for Ms Joychild and then I'll give the other Commissioners an  
8 opportunity if they wish to ask any questions.

9 **MS JOYCHILD:** Tēnā koutou e ngā Kōmihana. There's not a lot that I'm going to say today,  
10 Commissioners. We heard this morning from the Crown going through each little step and  
11 explaining, you know, what could they do because they had this opinion here and that  
12 opinion here and Police did this and that, there had been apologies; but the thing that's  
13 missing from the Crown is the big picture. And that big picture has to be guided by human  
14 rights. The situation that happened to these children is a massive human rights violation.  
15 New Zealand was fully, as it has been said before, fully aware of the crime of torture and  
16 that it was a human rights crime.

17 So when we look at the piecemeal, haphazard approach that was taken from the  
18 beginning to when these things first came out, 1994 onwards, it's absolutely pathetic and  
19 hopeless and a massive failing on the part of our pre-eminent legal advisor to this  
20 Government to create the human rights framework to deal with this case. And that's never  
21 happened; it didn't happen from the beginning, and this technical approach to human rights  
22 such as, "well, the convention wasn't ratified until 89, this happened in the 70s", it is not  
23 good enough. The human rights, well, the Human Rights Commission and Act itself was  
24 1977, just at the end of the period of the Child and Adolescent Unit. But for the future we  
25 must have full training, full understanding and full commitment to the human rights  
26 obligations that the Government has made within, absolutely inculcated within the Crown  
27 Law Office.

28 So while it may be appropriate in some situations to keep the Police and the  
29 prosecution and the civil separate, this was not such a case. This needed the Crown to  
30 cooperate together on dealing with shocking, shocking allegations. It was not enough to  
31 privately settle on a figure plucked out of the air which the complainants had absolutely no  
32 negotiating ability with, and then walk away, and then give an apology. The apology only  
33 talked about inappropriate behaviour, no admission of liability, was sent by letter to each  
34 person. It did mean something to some people, but it didn't to many. It's a huge failing of,

1 and it comes back to the lack of a human rights structure. That is the answer for the future,  
2 that was the failing at the time.

3 Once again, ma'am, like other presenters, we're happy to answer any questions that  
4 you might want to put about the survivor situation. We will be guided by Mr Molloy as to  
5 how much depth you want us to put into our submissions, in part 2; you have part 1 which  
6 is the data about the plaintiffs. Part 2 was looking at the evidence of other parties.

7 Just briefly, the Medical Council, absolute disgrace what happened there. You  
8 know, the boys being boys, the closing ranks, the collegiality; the report from  
9 Mr McLachlan smacks of all of those things. And although my friend has rightly pointed  
10 out the law on bias, I think it's pretty obvious reading it what was going on here.

11 This was the time where there was also the unfortunate experiment where there was  
12 enormous omnipotent power being held by specialist medical practitioners. That was not  
13 right then. Just because it happened in the 70s and it doesn't happen now, does not mean to  
14 say that it was right that it happened there, and that there should have been systems in place  
15 so that the real voices of the children could be heard when such serious allegations were  
16 made.

17 The decision-making was full of racial prejudice, prejudice against people from  
18 poor families, prejudice against children, vulnerable children who, as one said, "What else  
19 were we going to do if we didn't steal, how were we going to live?" That does not make  
20 any of what happened in the past right or acceptable or excusable for that time.

21 So that's all I want to say, ma'am.

22 **CHAIR:** Thank you Ms Joychild. I'll just check to see if my fellow Commissioners wish to ask  
23 any questions that can't be dealt with in writing. So Mr Gibson, do you have anything that  
24 you would like to ask of Ms Fairchild? Fairchild, I did it again.

25 **MS JOYCHILD:** No problem.

26 **CHAIR:** It is a problem, my memory. Sorry.

27 **COMMISSIONER GIBSON:** Not a question but acknowledgment again to the survivors, the  
28 pain, the truth of what's come forward, we acknowledge that. It's been hard for many of us  
29 to hear, it's been hard for Aotearoa to hear but it's the necessary to hear. In the evenings  
30 I went back home and picked up a guitar and played Long Ago, Beautiful Children,  
31 Sensitive to a Smile written by a Lake Alice survivor. Kia ora.

32 **CHAIR:** Thank you.

33 **COMMISSIONER ALOFIVAE:** Not a question, Ms Thomas and Ms Joychild, but again,  
34 I stand with my fellow Commissioners. Just reiterating our sincere and heartfelt thanks

1 around the evidence that's been presented, the care in which you've presented the evidence,  
2 just the courage. I think there aren't enough words to really describe the levels of  
3 appreciation for the courage that it took for our survivors to come forward to formally place  
4 it on the record, and the graphs and the data that you've provided has been incredibly useful  
5 as well and very well placed, so thank you very much.

6 **MS JOYCHILD:** Ma'am, I forgot one thing. Something Tyrone Marks told me later, sorry,  
7 Rangi Wickliffe told me later that he had forgotten to say that was very important, is that he  
8 was speaking for all the lost souls of Lake Alice, the ones who are now in gangs, in prison  
9 with huge extensive records, the ones who are dead, the ones who are dead by suicide, they  
10 haven't been heard at this hearing, but Rangi says that his story is their story.

11 **CHAIR:** Thank you, thank you for that.

12 **MS JOYCHILD:** And ma'am, now Leoni McInroe, who didn't have the opportunity to, although  
13 she had spoken earlier, to present evidence is going to close for the survivors along with  
14 Dave Shaw. Leoni, if you come up.

15 **CHAIR:** Please come forward.

16 **MS JOYCHILD:** Could all the survivors come forward.

17 **CHAIR:** If you wish. Welcome back Leoni.

18 **MS McINROE:** Thank you. Kia ora. On 14 June 2021 in this very room the children of Lake  
19 Alice began to speak. Whakarongo mai, whakarongo mai, listen to me, hear me. So our  
20 story began, formally and finally taking our rightful place in the history of Aotearoa. Sorry.

21 **CHAIR:** Do not apologise.

22 **MS McINROE:** Today I would like to acknowledge with deep gratitude this Royal Commission  
23 of Inquiry, this Royal Commission of Inquiry. While not a perfect process, it has  
24 nonetheless worked extremely hard and diligently to assist us in telling our story. The  
25 darkness and shame we have carried has begun to lift in the light of exposing the truth of  
26 what we suffered at the hands of so many for so long.

27 This hearing may be for some the healing balm to gently move forward. But this  
28 hearing must create change.

29 Commissioners, Counsel Assist, the wider team of this Inquiry, too many for us to  
30 name individually, but I extend our gratitude to you, to you all. Throughout this hearing  
31 you have treated the children of Lake Alice with genuine care, kindness, value and dignity.  
32 The depth and width of your investigations and work is acknowledged, thank you.

33 I would like to extend grateful acknowledgment to the enduring support and work  
34 of CCHR, your commitment to supporting our claims and raising important issues on our

1 behalf for over 40 years has proved to be a strong and solid rock for many to lean on.

2 Thank you.

3 A very special and important acknowledgment goes to Frances Joychild QC, Alana  
4 Thomas and Tracey Hu. You have worked tirelessly. There are few words to adequately  
5 summarise the enormous workload that you have undertaken on behalf of the children of  
6 Lake Alice. Not only those that you have represented, but the representation of all the  
7 children of Lake Alice. It is very obvious your unwavering commitment, empathy and  
8 compassion extended to all of the children of Lake Alice. Thank you, thank you for  
9 walking beside us during this important part of our journey.

10 Finally, and most significantly and substantial acknowledgments must go to the  
11 children of Lake Alice; those that gave evidence in whatever form, your courage, your  
12 bravery, your honesty and strength.

13 In closing I would like to quote the words of Andrew Molloy spoken in this room at  
14 the beginning opening statements of this hearing. The children of Lake Alice, known or  
15 unknown, alive or in memory, wherever you are, whakarongo mai, whakarongo mai, finally  
16 our voice has been heard. Kia ora.

17 **CHAIR:** Tēnā tātou katoa. Mr Shaw.

18 **MR SHAW:** Commissioners, this will be hard for me because I want to speak as a 14 year old  
19 child who went to Lake Alice to observation, that was what my adopted parents told me.  
20 What I went through, the stories, I've always said I was one of the lucky ones in the sense  
21 of it wasn't -- the experiences weren't as bad as some of the others. I can remember coming  
22 out, no assistance, no contact with Lake Alice at all.

23 Late 70s, Hake's name comes up on the news, I turned around and said what  
24 happened wasn't right, but who am I to question it because I am now an 18 year old with a  
25 psychiatric history. Hake, I thank you for what you did back then. My story carries on  
26 through crime, which is the effects of what happened. I was lucky in the sense I could call  
27 myself Libran, I have the sense of social justice, I was able to do rehabs during the 90s, but  
28 I always consider myself as one of the children of Lake Alice.

29 So I understand the whole situation with things, but I now stand beside you today as  
30 Dave Shaw, a survivor along with the others of Lake Alice, and I know from what I've  
31 heard sitting here for the first two days and the last two days, that we have been heard, there  
32 is discussion of what should be done, what should have been done and what will be done.

33 So I thank everyone for the opportunity for what has happened over the last few  
34 weeks, thank you very much.

1 **CHAIR:** Thank you, I'm so glad you've had a voice, thank you. Anybody else who wishes to say  
2 anything?

3 **MR ZENTVELD:** Okay looks like I'm lucky last. As we were children, every day we were  
4 calling and dreaming someone would save us, daily, then and now no-one believed us and  
5 no-one cared. Why did we have to struggle to become adults and learn to fight back; there  
6 was no empathy from our Government and citizens. Thank you, ngā mihi nui.

7 **CHAIR:** Thank you.

8 **MR HALO:** Just want to say thank you to you, the judges and the broader people here who  
9 helped out our problems that we've been fighting for and hoping for for a very long time  
10 now. All I want to say is for short is that I just praise the Lord for this because I strongly  
11 believe that whatever happened that time to me in Lake Alice is not from you but from Him  
12 alone upstairs. Because I come from a strong family from -- who serves the works of the  
13 Lord, ministers, my great grandfather is a minister, he's also a soldier in World War I, and  
14 like those gifts he praised the Lord also, because when I came out of Lake Alice straight  
15 into a church from the helping of my brother, and from that church he took me up and they  
16 took me up to the Islands and from there I met my great grandfather that was in the war, he  
17 was still alive, and he really praised the Lord for that and thanked the Lord for that, and  
18 saying it is a blessing from the fear that he never thought he would see me again, because  
19 of all of these stories heard back in the Islands, and he really praised the Lord for that.

20 But when the only problem was, is when I came back, I came back only two to three  
21 days and the story followed that he has left this life and I now strongly believe that that was  
22 a gift from God just waiting for him to see me and saying a proper farewell to my great  
23 grandfather and him to me.

24 And I just praise the Lord for those things, but now I'm still helping other people's  
25 in whatever I do with in prayers who ring up in the church or visiting the sick and helping  
26 other peoples in the work, doing the work of the church as well as the only oldest member  
27 in the church ever since from 1978 to right up to today that I am still in there, just like how  
28 my ways of doing the works.

29 And that's all I have to say in praising the Lord for giving me this health back of  
30 mine that I may be able to be with you fellas just like you've see my problems, you've seen  
31 what I'm going through, but I praise the Lord it's nothing more serious and thank you all for  
32 all your help and support and please hear our words today.

33 **CHAIR:** Thank you Hake.

34 **MR HALO:** I say all this, amen.

1 **CHAIR:** Amen, I just want to acknowledge that Hake of anybody has sat here longer and for  
2 more days than anybody else.

3 **COMMISSIONER ALOFIVAE:** Hake, can I just acknowledge just the peacefulness about you,  
4 Hake, and the strength that's really driven you together with your other survivors, and so  
5 sitting here as a Pacific person I actually -- I fully understand the context in which your  
6 comments are made and in which they're couched, others may not and they might  
7 misconstrue them, but the strengths that have sustained you through your whole journey,  
8 Hake, have come from the belief in your family and the belief in your God in leading you,  
9 and just the enormous support that you offer to your fellow Lake Alice brothers and sisters,  
10 I think is not lost on them.

11 Thank you for standing together and supporting one another. Often we don't  
12 understand why we go through things, but there's a light that's been brought into this room  
13 because of courage, your collective courage and because of the ability that we have as a  
14 Commission to actually look at this matter very, very closely. So thank you very much.

15 **MR HAKE:** Thank you Commissioner, thank you.

16 **SPEAKER:** You've just read out my life history. Broken relationships, marriages, three beautiful  
17 children. Daughter says she knows about mental health but if she's watching --

18 **CHAIR:** Just pull the microphone down, we want to hear every word you say.

19 **SPEAKER:** Sorry. My daughter knows all about mental health but, yeah, I wish she'd come to  
20 me, been estranged too many -- too long, yeah. Just thank you. My life history.

21 **CHAIR:** Thank you. [**Waiata Toia Mai**]. Thank you for indulging me. Tēnā tātou katoa. Kua  
22 mutu ki konei tēnei huihui ngā tū matanui o te Kōmihana, kua waihoa māku ngā kupu hei  
23 whakakapi i ngā whakahaerenga. I just want to repeat, if it needs repetition, I think it does,  
24 to thank the survivors of Lake Alice. I say no more.

25 I would like to end with acknowledgment to Ms Thomas with the words that she  
26 delivered at the very beginning of this hearing. They are fitting, and they ask us to ask the  
27 question who takes responsibility? Mā wai e taurima te marae i waho nei, ma te tika, ma te  
28 pono, me te aroha e. Who will take responsibility? Mā wai ra e taurima e ngā hara me ngā  
29 mamae o rātou ma. Who will take responsibility for the evil and for the pain of the Lake  
30 Alice survivors? That is what this hearing is about. [**Check Te Reo**] no reira, huri noa i to  
31 tātou nei whare, tēnā koutou, tēnā koutou, ara tēnā ra tātou katoa. Kei a koe e pa.

32 **Hearing closes with waiata and karakia mutunga by Ngāti Whātua Ōrākei**

33 **Hearing concluded at 1.24 pm**

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