

DR OLIVER SUTHERLAND - AFFIRMED**EXAMINED BY MS SPELMAN**

CHAIR: Good morning, Dr Sutherland. The Inquiries Act 2013 requires me to ask you as we commence (witness affirmed).

MS SPELMAN:

Q. Tēnā koe Dr Sutherland. If I could just first ask you to refer to your written statement in the folder in front of you. I understand you have prepared a statement for the Royal Commission and that there's a signed copy, signed on the last page of that brief just in the folder in front of you?

A. Yes.

Q. If you could confirm the statement is correct to the best of your knowledge and belief?

A. It is.

Q. Thank you. Before we begin with questions, Dr Sutherland, if you would like to begin by just telling us a little about who you are and where you're from?

A. (Opening in Te Reo Māori). Kia ora. Ngāti Whatua, te haukainga o tēnei rohe, tēnā koutou. Tā Anand, tēnā koe e te rangatira, he mihi tino nui tēnei kia koe koutou ko ngā mema o te komehana. Tēnā koutou katoa, Talofa lava. Koutou katoa kua tae mai nei i tēnei rā, tēnā koutou katoa. I just want to take the opportunity at the beginning to acknowledge the support over the years, some them are represented here from the Polynesian Panther Party, from Nga Tamatoa, from the Citizens Association for Racial Equality, Auckland District Māori Council, all of those were at the forefront of the struggle in the '70s to get justice for children in the Courts and I want to acknowledge them.

I want to pay my respects to those who were members of some of those groups and who are not with us today, who were in the vanguard of the struggle, particularly, in no particular order, Syd Jackson and Hana Jackson of Nga Tamatoa, Eruera Nia, Ranginui Walker, Betty Wark, Agnes Tuisamoa, Eddie McLeod, Helen Kesha, Vape Kupenga they were all people in the 70s who I drew strength from and we worked together on these issues and it's almost 50 years ago and it's nice to have this opportunity to acknowledge them.

It is 50 years ago and I want to start by thanking Jacinda Ardern and the present government for the fact we even have an Inquiry. I recall those 9 years of the past government when they refused and refused to hold a Royal Commission into these events and so I want to thank Jacinda Ardern, I want to thank the present government and I want to thank the Minister Tracey Martin for her efforts on behalf of this Royal Commission. And to you Sir Anand, I want to thank you for the role you've played in the past couple of years. I am sorry to see you are going but I acknowledge the work you've done and I wish you well in the future, kia ora.

The last group I want to acknowledge are the survivors network. There are represents of the survivors here and I want to pay my respects to them for the willingness that they have shown to relive the past and to support the future. Kia ora.

Q. Kia ora. Kei te mihi ki a koe. Dr Sutherland, I know on the desk before you there's also another document which is the manuscript of the book you've written as a submission to the Royal Commission?

A. Yes, that's correct. My evidence today is a sort of brief version of the 170 page version which is actually my full submission and I understand it's been taken as my

full submission. And so I know that you have that, Sir Anand. There's a signed copy here and it's certainly what I want to put forward as my submission.

- Q. Thank you. And if that full submission could be produced as Exhibit 4. Madam Registrar does have copies to be handed up to Commissioners of that, although they have received it in advance as well.

Yellow folder produced as Exhibit 4

CHAIR: Thank you.

MS SPELMAN:

- Q. I understand, Dr Sutherland, that book will shortly be available to all once it has been published; is that correct?
- A. Yes, I hope so, I hope so. Some of you might get a free copy, not many of you. It's in the hands of a publisher, Roger Steele of Wellington now, I hope that will happen eventually but I wanted it to come to this Commission first because this is the place for whom it was originally written.
- Q. Thank you.
- A. You've asked me a bit about my background, shall I get into that? The evidence I'm going to give draws on my experience from 1969 when I joined the Nelson Māori Committee, Nelson Race Relations Action Group and then after that in 1973 the Auckland Committee on Racism and Discrimination.

There are very extensive archives thank goodness of the work we did back then and that's what my submission is based on.

During those years, together with particularly my colleague Ross Galbreath who is here and others from ACORD, we were deeply involved into a series of investigations into and campaigns against the treatment of children, especially Māori children, by the social

justice, by the Police, by the Social Welfare system and the health systems. Today my focus is principally going to be on the judicial and Social Welfare systems and the way in which they treated children in the 70s and early 80s.

From 1970 to 1986, I personally advocated on behalf of scores of children whose cases I drew to the attention of one Cabinet Minister after another. It didn't matter whether they were Labour or National, they weren't really interested. The notes of my interviews with all those children and my correspondence is in the ACORD archives in the Auckland City Library. They are what I will draw on in this submission.

We also instigated a number of inquiries over that 15 year period, Ombudsman inquiries, an inquiry by the Human Rights Commission, judicial and other official Inquiries and again you have those papers have been given to you and they are part of the evidence that I draw on.

So, what I want to do here is summarise what's in this larger document. I want to provide an insight into the bigger picture of what was happening to children when they got into the hands of the Police, then the justice, then the Social Welfare or whatever. I want to provide that bigger picture when they were incarcerated and then what happened to them when they were incarcerated and how they got out of that.

Q. Dr Sutherland, just at this point -

CHAIR: Can I intervene just for a moment to ask you as you speak, if you will keep your eye on the stenographer in front of you, she is working at very high speed. If you would be good enough to just keep an eye on the pace so that she can keep up with you.

A. Yes, I would be glad to do that and I will slow down certainly.

CHAIR: There are also the signers to be involved in that picture. Thank you.

MS SPELMAN: Thank you, Chair.

Q. Dr Sutherland, just before you begin speaking to us about that judicial processes that you want to outline, I just wonder if you could tell us a little bit about the formation of ACORD, as I know ACORD features heavily in the work that you're going to go on to describe, how that group came to be established?

A. It happened in 1972, a meeting of the New Zealand Race Relations Council when the Polynesian Panther party and Sid Jackson and others challenged the Pākehā who were there to deal with institutional white racism. That was what they saw needed to be challenged, needed to be campaigned against. But they said don't leave it to us. So, there was some of us who were there, a few Pākehā, and we got ourselves together and actually several of us are here today from that time and we formed a group called the Auckland Committee on Racism and Discrimination and we chose the name carefully because we wanted the word racism to be in there right from the beginning because that was the focus of what was to be our campaigns over the years. And from 1973 onwards, ACORD pursued those campaigns, all the time being supported by, monitored by, a group of Māori and Pacific Island leaders who kept us on the right tracks.

Q. Thank you and we might have to slow you down even a little more just to make sure we're not going too fast but thank you for that.

And I believe you were going to begin by telling us about some of the issues with racism in the judicial process in terms of Social Welfare?

A. Yesterday we heard about the pipeline and kids getting into the pipeline and ending up inevitably progressing to the end of the pipeline which was probably prison at one time or another. And getting into the pipeline usually required the Police. I want to draw your attention to a particular study that was done by Ross Hampton, a researcher for the Justice Department. He studied thousands of files of the Police, Auckland Police Youth Aid, and what he found out was that there was a marked bias against Māori boys in particular when youth aid officers were deciding who to prosecute or who not to prosecute. And he said that they, the Police discriminated against Māori boys by sending a disproportionate number of them to Court, thus inflating their crime rate compared with that of non-Māori children.

What he found was that through looking at these thousands of case histories, was that racial bias and the decision to prosecute, it remained evident, even when class and the seriousness of offence were taken into account. In other words, the system was biased against Māori boys and disproportionate numbers of them were pushed into the system. Girls as well but it wasn't quite as bad, at least in his study for girls.

After that, then there's the question of being arrested and being bailed, if I am progressing through the judicial system. What we were aware of at the time in the Children's Courts, was that children were often held in Police cells before they got into Court even. There was rarely a parent present, there was never lawyers present, no advocate was present. Social Welfare officers might have been present but basically they and the Police persuaded the children to plead guilty. And so, the concept of the child having any rights and the

concept of the child having access to a lawyer was unheard of, and certainly for State wards.

So, in the Nelson Māori Committee we became aware of what was happening in the Nelson Courts and when children as young as 13 could be held for a day or two or three days in the Police cells and at the mercy of the police officers who were supervising them.

So, Magistrates at the time seemed to place great reliance on the advice of social workers and seemed ready to remand young Māori particularly into prison or into Social Welfare custody.

So, we saw what was happening and we setup our own Legal Aid Scheme. We didn't have any particular experience of the judicial system but we knew enough to know that representation by a lawyer was essential. And so, we established this scheme which aimed at getting free legal representation for every Māori and Pacific defendant in the Nelson Courts and certainly particularly the Children's Courts because you need to know although we've had a duty solicitor scheme for years and years, there was no duty solicitor scheme then, there was nothing. If you are a 13 year old boy in the cells of the Nelson Police Station there was no way you could do that and you went straight into Court without any assistance.

And we knew that there were disproportionate numbers of Māori that were being sent through the system, so we wrote to the Minister of Justice complaining about, from the statistics, complaining about the disproportionate effect the system was having on Māori. And what we got back was, and I quote "Implications that Māori appearing before the Magistrate's Court in New Zealand and getting less than justice are not correct. We have the best of British justice for all".

So, that was how the Ministers and that was how the judicial system saw it. It was the best of British justice for all and it was a totally Pākehā system.

We also wrote to the Minister of Justice about the failure to have any lawyers for the children in Court. And we asked whose job is it to get legal assistance for the children. And Sir Roy Jack wrote back in January 1972 and he said, "While there's no direct responsibility on the Magistrate or the Police or the Child Welfare Officer to obtain legal representation, they are all concerned that defendants should have every opportunity to be legally represented if they wish".

So, of course it was therefore up to the child.

Q. Dr Sutherland, perhaps particularly when you are reading those quotes if I could ask you to read them a little slower for the benefit of the signers and stenographer.

A. I'm sorry, yes. At that stage, we began arguing for a duty solicitor scheme and the government, the Labour Government at the time, Dr Finlay was the Minister of Justice slowly started to work towards it.

But in actual fact, and in our submission, we said that all children should be accompanied by a lawyer when being questioned by the Police and all children on whatever charge should be represented by counsel whenever they appear in Court.

Q. When you're speaking of children, Dr Sutherland, I know we'll come to some detailed statistics later but what sort of age range are we talking about there?

A. Well, the children's Courts were mostly dealing with children perhaps from the age of 10 years upwards but as I'll mention shortly, actually younger children than 10 were appearing before the Courts facing criminal charges. So that, it was impossible for those children to

represent themselves. Māori children even more so. Whakamā in the circumstances of the Court.

The duty solicitor scheme did get off the ground in 1974. It didn't go very far, didn't go as far as we wanted and didn't give us the guarantees that we wanted for the children, particularly for the children going through the Courts.

I want to turn now to what happened when they got to Court. The Courts were very intimidating. There was a Judge looking stern and there was a Policeman in uniform and then there might have been a Social Welfare officer and then there was the poor 13 year old or 12 year old or 10 year old standing there.

If they were not bailed and in the case of many State wards they weren't bailed, then they would be remanded in one form of custody or another. Now, what sort of custody you got depended where you were in the country. If you were in Auckland, you could be remanded, unless you'd been bailed you could be remanded in Social Welfare custody and you went off to a children's home. Or you could be remanded in Police custody. That was a bit of a misnomer because Police custody meant Mt Eden prison. That was Police custody in Auckland.

A child in Nelson who was going to be remanded in custody, well those options weren't there. Nelson didn't have any prisons or Social Welfare homes and so, the only place to lock them up was the Police cells again back in the Nelson Police cells, no separate sells for children, no separate facilities, and with Police who probably didn't even want to look after them.

Others might have gone to a psychiatric hospital or a psychiatric ward and I'll mention some of those later.

There aren't very many statistics for remands in Social Welfare custody but in a report that Sir Guy

Powles did a little later, he found of 878 children on remand in Social Welfare custody in 1975, 51% were Māori. It gets worse for the remands in penal institutions, if we look at Mt Eden in particular. The national figures in 1974 were 269 children, 53% were Māori; and 1975, 320 children, it was going up, 57% Māori, getting worse. 1977, 356 children remanded to a penal institution. 63% were Māori. Things were getting increasingly worse.

That was the remand situation. In a sense being punished already because as I will explain later, it was no easy life in the remand cells in Mt Eden prison.

We haven't even got to sentencing. Now we get to sentencing and I've drawn together a lot of statistics and you have them in front of you. They come from the published annual New Zealand justice statistics and we analysed 10 years' worth of those statistics from 1967 to 1976.

What we found in those 10 years, 116,595 children went through the Courts. That's 116,000 children. Of them 41% were Māori. But when you looked at the sentences that they got, you discovered that those who got the softer sentences being fined or getting periodic detention, they were more predominantly the non-Māori. And the statistics showed absolutely clearly that when you get to the more heavy sentences, which were detention centre, they don't exist now but they exist the at the time and some of you will remember the detention centres, 3 months' hard training at Waikeria mostly or Social Welfare custody or Borstal which was the worst, then the figures for Māori crept right up to nearly 60% of the children sent to Borstal were Māori in that 10 years.

So, the pattern was similar for boys and girls. Almost in every category, girls were worse, received heavier sentencing than boys did. So, it was very clear

that Māori children received these heavier sentences and actually, any Māori child before the Court was more than twice as likely to be sent to a penal institution for sentence as a non-Māori child, almost twice as likely. Whereas the non-Māori child was more likely to be fined or admonished and discharged.

- Q. Dr Sutherland, in terms of the clear pattern that that shows, I understand that you expressed a view on what that meant, this is looking at paragraph 8 of your brief, at the Auckland branch of the Association of Social Workers in 1976 about what that showed. Would you share that with us?
- A. Well, yeah, I spoke to the social workers looking at these figures which nobody could dispute and which were never disputed because they came from the Justice Department's own research. And I said, and I quote, "It seems that Social Welfare officers simply feel because they're unable to control the Māori or other Polynesian child, he should be held in Mt Eden. But surely the social worker's failure to control or perhaps relate to the child is more their problem. A problem of the system which was a system based on a wholly Pākehā concept of crime and offending and welfare and punishment".

I just want to remind you of the ages of the children that were appearing before the Courts because if you look at those 10 years' worth of justice statistics, I mentioned there were 116,000 children. Some of them were under the age of 8, they were infants but they were brought before the Court facing charges of one sort or another. There were 8 year olds, there were 45 x 9 year olds, 662 x 10 year olds. And then if you look at the sort of charges that they were facing. They could involve burglary, theft, conversion, of course, offences against a person, and particularly vagrancy. And I want

to focus a bit more on vagrancy because it came up in some the later cases we investigated. This was, in most cases, being idle or disorderly or being a rogue and a vagabond. Well, 56 children between the ages of 10 and 13 would face Court, 45% of them were Māori and they were being charged with being a rogue and vagabond or being idle and disorderly.

It was, I think, the figures were extraordinary. Nobody was looking at those figures in the 70s but when you see them they jump out from the statistics.

And I just want to mention, if I might, the impact on Māori in particular. It doesn't really matter what statistics you look at, whether it's who was in remand in Social Welfare custody, the majority certainly of the 14 year olds and even of the 15 year olds, the majority were Māori and it was up to 73% of 14 year old girls.

Look at the adult prisons on remand. I mentioned the figures there. They were up to 60% of those children held in adult prisons on remand were Māori.

The sentencing gets even worse.

- Q. Just to note, I think you're currently at page 8 of your brief, just in terms of the numbers you are referring to.
- A. Yes, the tables are the figures. The heavier sentences, as I mentioned before, were either being sentenced to prison, Borstal or detention centre. And again, Māori children in general were the majority in those cases but particularly more Māori girls, and there were figures, the 15 year old Māori girls in the period 1974-1976, 15 year olds, 100% of those Māori girls, 100% of the girls sent to Borstal were Māori, not one Pākehā in that whole group. The figures were extraordinary. And I think they were profoundly disturbing because what it meant was, and if you take the totality of what I've been talking about, any Māori who got into trouble at the beginning of the

pipeline and then was brought before the Court was much more likely to be taken away from home, much more likely to be locked up if he or she was Māori.

And the disparities were worse for the younger ones and worse for the girls. So, that, I hope, gives you a bit of a picture of just the totality of what was happening to children in the Courts where nobody was looking except the Social Welfare officers, nobody was looking when the 8 year olds were dragged through the Courts to face some charge or another.

Q. In terms of the statistics, Dr Sutherland, it's clear from what you've told us the extreme disproportionality in terms of Māori children. I know the statistics don't go into this in great detail but what was your experience in terms of looking at the numbers for Pasifika children going through during that same time period?

A. Yeah, that was the trouble with the statistics, the Pacific children were just added in with the Pākehā children, so it was Māori and non-Māori. So, there was no real data at all on that. The feeling we had was that they would be over-represented but I think not to the same extent as the Māori children.

Q. And we might come to some of the particular stories in terms of children that you have recounted shortly.

Before we move on, is there anything else you want to share with the Commission in terms of the statistics during that period?

A. No, I think it's time to have a look at what was happening to the children when they got into the clutches of the Justice Department and when they got into the clutches of the Social Welfare, we need to focus on that.

Q. Yes. Should we begin, Dr Sutherland, perhaps by looking at the Police cells which I understand was the first work

that you were involved with, visiting children held in the cells. Can you tell us about that?

- A. When I was on the Nelson Māori Committee, we took testimony from a number of children who appeared in the Police cells. We were given the right to go in and talk to those children and arrange lawyers for them. So, we found out a little bit about what was happening to them.

I just want to highlight a couple of cases. One was a boy who was 16 years old, he was arrested, taken to the Nelson Police cells and then he was told by the Police Officer to take a shower before he went to Court. When he was stark naked standing in the showers, he was questioned about the charge of having an offensive weapon. There was no lawyer, there was no welfare officer, there was nobody. There was a Police Officer who jabbed him with a baton and the boy was standing naked. He gave a confession. He said that he had done it. It later transpired the confession was false but he went to Court and was initially convicted.

Then when he'd been convicted, before they could decide on his sentence, he was sent back to the Police cells again for another 4 days. And the feeling we had at the time, and we said so to the Justice Minister, was that the questioning by Police by a boy naked and alone in the Nelson police cell blocks was inhuman and uncivilised and that we couldn't believe that a confession obtained in such circumstances would be accepted by the Court, let alone to be the sole basis for his conviction but it was.

Just a few days later, there was another boy, he was 13, he'd just left primary school, he'd come up to Nelson with some other mates and was arrested on burglary and being idle and disorderly. Again, when I saw him in the Nelson Police cells, he'd already been questioned by the

Police, no lawyer of course, no Social Welfare officer and because he was so young I tried to get him out on bail but it was refused. When we got him a lawyer, the charges were changed and he was not facing such a serious charge.

But 13 year olds were being held in the Police cells at the mercy of the Police then and so those two examples. It will be happening throughout the country in every town where there was a Court but where there was no a welfare home or a prison for the children to be remanded to in custody, they had to be held in Police cells, from Kaitaia down to Bluff.

COMMISSIONER SHAW: There's a detail that I think should be spoken rather than just left in your brief of evidence, Dr Sutherland. The nature of the - the matters that led the Police to pick these children up in the first place, could you put those on the record for us, please? For example, the boy Victor T, what was he actually arrested for?

A. Yeah, he was arrested because they found him in a cricket pavilion, an open cricket pavilion. He was just in Nelson passing through with a couple of older mates and they found him in a cricket pavilion. When we got him a lawyer, they changed the charge because of course they couldn't sustain the original one. So, without a lawyer it would have all just appeared before the Court, the Magistrate would have believed it and the boy would have been dealt with accordingly.

COMMISSIONER SHAW: Thank you.

A. You took that out of my main submission.

COMMISSIONER SHAW: I did. I just think it needs to be stated publicly so that people can hear.

A. That was the case of that first boy, the 16 year old who was questioned naked. I mean, again in that case if we

hadn't got him a lawyer, the original charge would probably have stood, in which case he would have been charged with having an offensive weapon which was a more serious charge.

So, I just - and thank you Judge for sounding me out on that.

COMMISSIONER SHAW: I just think these details add much to the force of your submission?

A. Really what they showed was what was happening to children who got into trouble in smaller towns, and Nelson was an example. What happened to them in Auckland, of course, in a sense was much worse and we will come on to that.

I guess we're moving on to the Social Welfare homes?

MS SPELMAN:

Q. Yes, thank you.

A. So, now we get on to the Social Welfare homes, such as in Auckland Owairaka, Allendale, Bollard and Wesleydale. During the 70s, there were 20 homes throughout New Zealand, 20 of these Social Welfare homes. The following details I am going to give you are about experiences of children held in some of these homes. There were thousands of children who went through them every year. For example, in 1978, this is in answer to a Parliamentary question, there were 4,225 children admitted to Social Welfare homes in New Zealand, including over 1,000 to Owairaka here in Auckland.

Q. So, Owairaka, Dr Sutherland, what sort of home was that?

A. Owairaka was a home for boys aged 14-17 years. And, we made our first complaint to the Minister of Social Welfare set, Bert Walker, in April 1978. And detailed the case of a particular boy, perhaps one of the very first cases that was brought to our attention. Kevin in January '78 was held for 10 days in a secure cell at

Owairaka and his parents and the boy outlined his story to me. He was never charged with anything, he was a State ward. So, I want to quote from what I wrote to the Minister, "He was immediately placed in what the Department of Social Welfare termed 'secure care' which is in fact solitary confinement, in a cell about 3 metres by 2 metres. The only clothes he was allowed to wear was a t-shirt and football shorts, no underpants, no singlet, no socks, no shoes. For the first four days he had to wear his t-shirt and football shorts at night as well as during the day. He was issued with pyjamas on the 5th day. In the secure cells all meals were taken in the cell, sitting on the bed beside his toilet. And the only time he mixed with the other boys was at physical training, PT, three times a day which totalled one hour. And even then the boys were not permitted to talk to each other. So, he was locked alone in his cell for 23 hours a day for 10 days. He and other boys in solitary were very embarrassed by the lack of underpants during PT and because he was only allowed shoes for one of the three PT sessions during the day, he got badly blistered feet." It seemed so horrific to us because the boy suffered this for 10 days, that we wrote to the Minister and demanded that he suspend the principal and staff of the home and have a full and public Inquiry into what was going on at Owairaka.

The routine practices at Owairaka started in secure. On admission, every child had to strip in front of staff, get deloused and then given a t-shirt and shorts. They would be sent straight to secure for days, weeks or, as I'll mention later, months in secure. 23 hours a day in solitary confinement with one little window.

There was the toilet in the cell, all meals were eaten in the cell. And a rag and a cleaner was passed

from cell to cell, single rag, single bottle of cleaner, for them to clean out their toilets, flushing toilet that they had in the cell, and then they cleaned that out with a rag and then handed it onto the boy in the next cell. There was no concept of cleanliness.

The boys were not permitted to speak to each other but they were not permitted to speak to staff, all of whose communications were conveyed to the boys by nods of the head. And I'll come back to the nodding system shortly.

So, I'm going to mention one or two cases. I want to start first of all with a 9 year old boy, Craig.

Q. This is at paragraph 43 of your brief?

A. Paragraph 43. After persistent truancy because he was running away from school and there were problems at home, he was incarcerated, initially for three months in ward 12 of Auckland Public Hospital. This was principally an observation ward for adult psychiatric patients run by the Auckland Hospital Board. It had no special or separate facilities for children and especially not for a 9 year old. He was there for 3 months but the ward admitted children because there was nowhere else for them to go into Auckland. According to his mother, while he was in ward 12 he had a lot of drugs pumped into him and he became very lethargic and fat and didn't want to do anything. When he was discharged from 3 months in ward 12, he was sent to Owairaka, 10 year old at this stage. They weren't supposed to take anyone under the age of 14 but perhaps Wesleydale was full, who knows. So of course, he'd been admitted to Owairaka through the same process of secure cells.

He spent 5 weeks at Owairaka and of those 5 weeks, 3 weeks were in secure. He was 10. He couldn't do pushups because he was so fat and lethargic from the drugs he had

been given, so his mother explained the PT instructor decided he would help him along, 'he took his sandshoe and really belted my son's buttocks until you couldn't get a pin between the massive bulk bruising'. Taken out of secure he ran away immediately, he ran home. His mother complained to Arthur Ricketts who was the principal of Owairaka who was apologetic and said it shouldn't have happened.

There was another boy, Cruise, who spent three days in secure before sentencing three more days after. He said on arrival he was deloused and stripped. "I was too scared to say I didn't want to get undressed in front of them". Then he described the nodding system and I want to detail that because no vocal communication was allowed between staff and boys, let alone between the boys. And so, what Cruise said was 'When you have a shower he comes to the door and after you finish your shower, he looks at you, then he nods his head. You say "thank you Sir". Then you shake your towel out and you go like this (and he pulled the waist band of his shorts forward) and he checks you. And then you stand outside the door and he goes like that again, gives you a nod, and you say "thank you, Sir". And then you go back to your room and you stand outside your door while he does that again, he gives you a nod and you say "thank you Sir" and then you're allowed back into your cell for the next 23 hours'.

- Q. Dr Sutherland, I'm just getting a message from our stenographer if when reading those quotes if you could do them a little slower.
- A. I will. I spoke to a mother who went and visited her boy at Owairaka. She said "it's the coldest place I've ever been into for a parent who's already distressed because her son has done something wrong and I'm shown into a

visiting room and my son comes in bare-footed, shorts and single and we sit down. You are not allowed to take fruit or sweets or food, you're only allowed to take comics or readable things. One day he was upset and crying. I'd never seen him cry before. I felt he had been too long in secure. He asked me to see about him going up to the main part of the home. He was only 14." In fact, after running away, as a punishment he was incarcerated in secure continuously for two months before he was sent to Kohitere. During that two months he saw no teacher, no welfare officer, nor was he allowed to see his sister and brother, you were only allowed to see your parents, you weren't allowed to see your siblings. The mother said, she spoke to staff and one of them said to her it's a wonder your boy hasn't gone up the wall, he's been there too long.

I could go on. I want to talk a bit about some of the other punishments.

There was a boy called Raymond who had been a State ward and he had been in Owairaka. He said it's all quite true about the ill-treatment, the PT etc. "We used to be waked at 2.00 a.m. in the morning to do press-ups. This would be if another boy had absconded. All boys had to be punished if a boy had absconded. I hadn't committed any crime except being a State Ward but because I had a brother there, I was singled out for humiliation. I remember having to kneel and cut the lawn with shears. I was hit across the small of the back with a cane for being too slow. On one occasion an innocuous comment had been interpreted by staff as being smart, I had to run around outside until I dropped and then I was put in solitary."

I just want to refer, it's not in my evidence but you've been given a copy of it, an ex-staff member called

Frank Ryan gave evidence later on to Archbishop Johnston who was looking into this stuff. He had been a House Master at Owairaka and he gave corroborating detail. He said, "Punishment was not restricted from", I am quoting from page 1 of the letter, "Punishment was not restricted to the cane. It consisted also very frequently of PT. There was a boy who had been caned by the House Master and then received PT from 6.00 p.m. until 10.30 p.m. and on several occasions the boy had faulted and then he had been slippered by the staff member who later on apparently was reprimanded for it. Slippering was a term used when a large rubber squeegee of the type found in milking sheds was applied to the boy's buttocks at the whim of a staff member".

I want to summarise the Owairaka situation, if I can. All meals were given in the cell, sitting beside the toilet. If there was sometimes overcrowding, there could be two and sometimes there were more boys put in a cell. And they all had to sit there with a single toilet between them and eat their meals sitting on the edge of their bunks which were on either side of the toilet.

Bed wetting was common, inevitably bed wetting was common amongst the traumatised children and for John, one boy who told his story to *The Evening Standard*, he said, "I was the youngest and I got in trouble from everyone". He couldn't stop wetting his bed so he had to wear an electrified cattle arrangement attached to his penis, "even a drop of urine in the cap would trigger the senses and gave me an electric shock. One day they must have got fed up with me, the dial on the belt was meant to be set at a maximum of 3 for just a mild shock but one night the dial was turned up to say, 10 and I got a hell of a shock" and he remembers a staff member rubbing his nose

in the bedding that he wet which he furtively had tried to hide.

There was one cell at Owairaka called Cell 7. It was the punishment cell, it was in a secure block, as if secure wasn't bad enough, Cell 7 was worse, you couldn't look at all out the window. The mattress was taken out during the day and so you were left to spend all day sitting or lying on the bare bed springs or on the concrete floor and that could last for up to a week.

- Q. I am conscious, Dr Sutherland, there's some more you'd like to share in terms of other children's homes. Could we perhaps move on to Wesleydale, if you want to summarise firstly what sort of home that was?
- A. Two things in Wesleydale I want to stress, wxssas the punishments, they had the same secure cells and that sort of thing but these were younger boys. One staff member gave evidence to the Human Rights Commission Inquiry later. It was common for staff to hold a boy down while a senior House Master strapped him repeatedly on the body. One 11 year old boy would not bend over after receiving 6 strokes on the buttocks, 3 staff held him down while the fourth administered further strokes until he was severely bruised on the thighs the buttocks and the jaw.

That witness who was a staff member, an ex-staff member said he'd seen boys receive 15-20 strokes with the strap. On other occasions a cricket bat had been used instead of the strap. One boy spoke to the Human Rights Commission and said that he had, after he'd absconded, he'd been hit with 12 strokes on the backside with a cricket bat until his buttocks bled.

And then the staff member said to the Human Rights Commission, "When you get a lot of absconding and strapping doesn't work, you try the boxing match." And

he said he thought it was the cruellest thing he'd ever seen done. It was called the golden fist. We thought it was the most barbaric practice of what happened at any home, punishment metered out to one boy who was the absconder by another boy chosen by the staff to administer the punishment. It was an arranged boxing match. When a boy ran away all the boys in Wesleydale were taken off privileges and had to build up a negative feeling towards the absconder. When the absconder was brought back, the boxing match was arranged and everybody stood around and the boy was beaten until he couldn't stand up or got a fat lip or was crying uncontrollably.

That happened regularly in Wesleydale.

The last thing I will say about Wesleydale, and I'll quote again from Frank Ryan, an ex-staff member, he gave me a - are you going to put it up on the screen? It was a memo that was sent around the night staff at Wesleydale by the Deputy Principal.

- Q. Dr Sutherland, what we can see on the screen is the memo you are referring to, obviously the handwritten memo but you're going to read that for us?
- A. This had to be signed off, as you can see by the different night staff. "It seems a number of boys are being allowed to go to the toilet during the night. This should not happen. An earlier memo pointed out we would prefer a boy to wet his bed rather than be allowed to go to the toilet. All sorts of trouble starts from this kind of thing, smoking, absconding, stealing. Please ensure the boys are kept in their beds until the day staff arrive at 7.00 a.m.".
- Q. So, this was an official directive to the staff?
- A. Yes, it was. We could talk about the girls homes?
- Q. Yes, thank you. I note you are at paragraph 53 of your brief at this stage.

A. In some respects, things were much the same at the Girls' Home. There was a secure block and all admission was through secure but I want to quote from a girl called Tina who described the admission procedures.

"You were stripped of your clothes, stripped of your privacy when you arrived, you were deloused, you had nit goo and a Dettol bath and then you were put in a cell with very small bed, rubber mattress and a toilet. You were given 4 squares of toilet paper for the day. We wore pyjamas all day even for cleaning out our cells. They often didn't fit too well which was demoralising. Worse was the compulsory venereal disease check. You were moved into another cell and told to take everything off except your top. Then you were put onto a bed and into stirrups like when you have a baby. The old bag, that's the doctor, the old bag shoves your legs around wherever she likes. She didn't say thank you, she didn't say please, just undress, get up there, spread your legs out. Tina noted that some girls who were kicking and struggling were held down by straps. It was a procedure described by all the ex-inmates of the girls' homes. One girl who was 13 wouldn't take the test. "I was put in secure and I wouldn't agree to it. In the end 3 or 4 staff came and took me and I was strapped down for it."

I just want to read a submission that was made by one of the house mistresses of Bollard Girls' Home, particularly about the VD testing. "If a girl refused", this is from Linda B -

Q. That is the image that we have on the screen, the statement of Linda B.

A. "If a girl refused the test, she was to refer the girl to a senior house mistress who would talk to the girl. If the girl still refused, she was not allowed any privileges so she was not allowed to work in the kitchen,

play softball with the other girls or go on outings such as to the beach. If a girl was adamant that she had no sexual contact whatsoever, she was a virgin, they were still given the test and persuaded in the same manner. Girls as young as 11 years old were subjected to an internal examination."

It mostly happened at Bollard. Van loads of girls from the Weymouth Girls' Home, Allendale Home, were often brought to Bollard for the test. They were all herded into one room and left to wait for the test. There was no preparation given to the girls in terms of what to expect. And girls often told how the test frightened them, upset them. The doctor was cold and clinical and barely said hello. And if a girl's test was positive, she was confined to her bed for 6-14 days. VD checks were also given to any girl who ran away and to any girl who was allowed out on some sort of day leave and the girls saw them as punishment and they hated them.

Q. In terms of the girls homes you have been referring to, can I just clarify this is Bollard Girls' Home, Allendale Girls' Home, Strathmore Girls' Home, and Weymouth?

A. That's right.

Q. This was homes for girls aged between 10-17 years?

A. Yes. Well, Bollard was 14-16, I think. Allendale was for the younger ones but I think Strathmore in Christchurch took all age groups.

What emerged, a lot of this got publicity at the time. We made sure it did. So, stories kept coming out from Christchurch, from Wellington, from Epuni, from children who wanted to reveal their stories. So, the pattern was clear across the country in terms of the secure cells, the VD testing, punishments and so on, although I think Wesleydale was the only home that had the boxing matches.

- Q. Dr Sutherland, I know you want to speak to us about the particular Human Rights Commission report and findings. Before we move to that, was there anything else you wanted to mention in terms of the girls' homes?
- A. Well, just about the use of secure. You see, it was a punishment within a punishment. The staff of the homes had the power to incarcerate children, this was not something ordered by the Courts. This was something that was a routine practice done by staff and yet the children could be taken from the open part of the institution and put into the secure, 23 hours solitary confinement, with no judicial oversight. No oversight of any sort actually. Nobody from the Social Welfare Department.

And there was an ex-staff member from Weymouth who said that the length of incarceration as a punishment in secure was determined by the Senior House Master. And I quote, "There are sorts of 'sentences' of different times in secure. For a hostel misdemeanour, three days; absconding, one week; absconding a second time, two weeks. They are in their cells most of the day, one or two hours out. Physical assaults occurred: I have seen girls struck in the home, and I have slapped them myself. Tensions build up and it does happen".

- Q. Thank you. I understand that ACORD made a complaint to the Human Rights Commission about these practices in 1979, could you tell us a bit about that?
- A. Yeah. What had happened, we'd held our own Inquiry in '78. We had asked repeatedly for the government to hold Inquiries into these revelations, so we decided to hold our own Inquiry, together with Nga Tamatoa and Arohanui in 1978 and we had 30 or so witnesses come along, many of the cases I've talked about.

And we felt we were getting nowhere. It didn't matter which government was in power, it didn't matter

who was the Minister of Social Welfare or Justice, they rejected the complaints. So, we thought, in 1977 the Human Rights Commission was established, and we saw there was perhaps an opportunity to go to that body and lodge a complaint of breaches of the international covenants by the inhuman treatment, the degrading treatment, the shocking treatment of those children.

So, we made a complaint to the Human Rights Commission that the State was in breach of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in relation to the treatment of children by the Department of Social Welfare.

The Human Rights Commission held hearings throughout 1980, and I will refer you to their report of which you've got a copy. After they listened to all the witnesses, and they listened to the children from whatever homes and ex-staff members and current staff members, and they listened to the current apologists for the Department. After considering all the information put before them during the Inquiry they wrote, my paragraph 59, "The Commission is of the opinion that some practices and some procedures are of such a nature that they raise serious and substantial questions relating to this country's better compliance with the standards set out in the Articles of the UN Covenants on Human Rights."

And then the three Commissioners, Pat Downey, he was the original Commissioner, Peg Hutchinson and Hiwi Tauroa, they spelt out the allegations that were of particular concern. They didn't find breaches. They couldn't find breaches but they went as far as they could and they listed the allegations of particular concern for the International Covenant on Civil and Political Rights, Article 7, []which refers to cruel or inhuman or

degrading treatment or punishment. They noted the nodding system. They noted the arranged boxing matches. The physical exercising and the physical treatment. The long-term punitive use of Cell 7 at the Owairaka Boys' Home.

Article 9 which referred to the right of liberty and security.

They referred to the confinement of children and young people secure blocks in the absence of legal rules, regulations, covering the grounds for or the duration of that detention. Coupled with the lack of any practical means of seeking independent judicial review of that confinement in secure block.

Then article 10 which refers to the humane treatment and respect for the inherent dignity of the person.

They listed all those practices that they'd already listed and then also the admission procedures at Owairaka, the venereal disease testing procedures at Bollard, the toilet facilities in the secure cells, particularly when shared, and the isolation in secure block cells.

Then they referred to the rights of minorities, the lack of any recognition at all of differing cultures and ethnic backgrounds in the administration of the homes.

Then they listed allegations of concern relating to the International Covenant on Economic and Social and Cultural Rights, the standards of the physical and mental environment in the secure blocks at the children's homes.

Then they referred to the lack of education facilities because I haven't really mentioned it but there were no teachers or if there were teachers they never went anywhere near the secure blocks where children could be held for up to two months.

That list of allegations of concern that I have mentioned was comprehensive and it left absolutely no doubt that Pat Downey, Peg Hutchinson and Hiwi Tauroa had been really impacted by the evidence that had been put before them.

In the end the Human Rights Commission concluded, I think rather sadly that things had improved. They talked to the staff and if they were right, we were pleased and things had perhaps improved. But they also said the Department had embarked on a programme of innovative change. We never saw it but the Commission was told about it. "The Commission was gratified by the seriousness with which the Department accorded the Inquiry". That was all very well but when the report was made public, it was rejected by the government as being exaggerated.

The Minister of Social Welfare accepted that there was some pretty hair-raising stuff but he criticised the process of the Inquiry. Robin Wilson, who was Head of Department of Social Welfare in Auckland, he rejected the report entirely as being based on false complaints. Arthur Ricketts, who was the principal of Owairaka, stated the report was untrue, unfair, untrue and biased.

So, what the government decided to do, was to have another look at what was going on right there and then and setup an Inquiry into Archbishop Johnson and Merimeri Penfold to look at the current state of affairs in the homes.

Q. Before we turn to look at that Inquiry, I am wondering what the view of ACORD was at that time? You had done your own Inquiry which you said hadn't received much traction and then we had this response from the government effectively rejecting the findings from the

Human Rights Commission; what was the position of ACORD in response to that?

- A. More of the same. We felt really pleased that the Human Rights Commission had acknowledged these allegations of concern but we didn't get any - all we got was a defensive comment from the politicians and from the Department. The Department was rejecting it. Robin Wilson said it was untrue. Well, what he was saying was what we were saying was untrue, the children were untrue. And so, I think we were pretty disillusioned at that stage. So, then when the government took on retired Archbishop Johnston, who as a retired agent Pākehā male couldn't be more different and distant from the children that he was talking about, he had Merimeri Penfold to assist him, they did find and were convinced that there had been some changes but they were not convinced about solitary confinement and they were concerned at the continual use of secure. What they said was solitary confinement cannot be acknowledged as a suitable form of punishment in the homes. They said if it's going to be used therapeutically no-one should be kept in secure for longer than two days unless gratified by a Committee consisting of a non-departmental person and psychologist. Then they recommended a series of rules setting out the rights of children in detention and that was good, that was good, they listened to what Pauline Tapp had said, she was a lawyer, she made submissions to them, and this led to the drafting of the Children's Young Persons and Their Families (Residential Care) Regulations in 1986 and 1987[]. I think at last, we felt that after a 7 year campaign by ACORD, Tamatoa, the Panthers, that the worse abuses in punishments were over.

And just as a rather rye note, would say when Robin Wilson was interviewed a few years later by Bronwyn

Dalley who was writing a history of the Department, for years Robin Wilson had rejected every statement I ever made, said I was making stuff up, in the end he was quoted by Bronwyn as saying, "some of it was pretty indefensible. I guess the Department shouldn't have allowed it to happen. With hindsight, a lot of what ACORD said was right".

So, I suppose that was in 1999 a sort of blatant admission but offered no comfort to the thousands of children who had gone through and suffered those conditions.

Q. I understand, Dr Sutherland, that ACORD was also made aware of what was happening at Lake Alice at that time and you also had some involvement in advocacy in relation to those cases. Could we turn, this is at paragraph 66, just to tell us about your involvement with that work?

A. The Adolescent Unit at Lake Alice Hospital, which was for the criminal insane adults, it had an Adolescent Unit opened in 72 [] administered by the Palmerston North Hospital board, not far from Whanganui.

We first learnt of the existence of it and the psychiatrist Dr Leeks who ran it when a Department of Education psychologist, Lynn Fry, came to us and approached us about the case of Hake. Hake is here, he is here today and he knows I'm going to talk about his case.

A Commission of Inquiry eventually was setup into his case and it led to major investigations of Dr Leeks' unit and the use and misuse of electroconvulsive instrumentation and electroconvulsive therapy.

So, I want to talk about Hake's case. It was the seminal case that blew open the whole dreadful story of what was happening at Lake Alice,

Hake came to New Zealand aged 6 from Niue with his grandmother, who didn't speak English and Hake didn't speak English. He went to a number of special classes in Auckland. He got into a bit of trouble for shoplifting leading to Children's Court and he was made a State Ward and placed in the Owairaka Boys' Home. And from there, he was sent to the Lake Alice Adolescent Unit when he was 13. Within a week, he had received three electroconvulsive therapy treatments within the first week and over the next 8 months he received a further five treatments. Hake later described the ECT treatments to me, he explained that while sometimes he was sedated, given an anaesthetic before the shock, on several occasions he had it "straight", that is the word that was used when you have it without any anaesthetic. He wrote to his mother and said 'It hurts when I have it. Dr Leeks said you get this for having done this and that wrong. They did this to punish me'.

At the time, nobody explained to Hake's primary caregiver, his grandmother, who needed a Niuean interpreter, or to his parents where he was being taken to. They never knew he went to Lake Alice or what might happen to him when he got there. The first they knew was when he wrote a letter home written in Niuean and it said, "I have been given electric shock by the people Mum. The pain is very bad."

So, we publicised the case, front page news it was at the time, because nobody knew that this stuff was happening. And a Magistrate William Mitchell was appointed to undertake an Inquiry. And during that Inquiry, there was a teacher at Lake Alice called Anna Natusch and she gave evidence. She taught Hake for a year at Lake Alice and, as I wrote to Sir Guy Powles, she really blew the whole thing wide open. We had heard the

psychiatrist Dr Leeks give a super smooth story about the place, and that was really his story about the therapeutic use the ECT, the value of it. On the other hand, Ms Natusch gave details with names of ECT used for punishment and she gave as an example Hake, he got six Ds, you got Ds for bad behaviour, six Ds for bad behaviour earnt an ECT. This wasn't therapy, this was punishment. And injections were used as threats of punishment or they might be locked because the Lake Alice unit had a solitary confinement cell that the children could be locked up there.

In Mitchell's report, Robert Ludbrook who is here today was our lawyer and he focused on the issue of consent but there was no consent. And in the end, Mitchell in his report equivocated, the question was whether the shocks were administered with or without authority. Mitchell said it's not easy to find out in a straightforward way whether ECT was administered with or without authority in the first period. When the boy had more ECT later, Mitchell did say there was no express authority given by the family or by the Social Welfare officer for ECT to be administered.

But then Mitchell went on to say, to let them off the hook by saying "I consider the hospital was entitled to imply in all the circumstances that the treatment should continue if the need arose for it."

Looking back on it from a distance, Hake's case exemplified everything that was worst of institutional racism prevalent in the 1960s and 1970s. Hake and his grandmother who whangai-ed him or who informally adopted him at birth, they came in 67, they couldn't speak English, they weren't familiar with the social and government processes, they went to Court. There were no interpreters in those days. From the moment of their

arrival in New Zealand from Niue, their encounters with the education, Police, Social Welfare, were all characterised by misunderstanding and a lack of understanding which culminated in Mitchell's report which demonstrated the glaring failure of various institutions that dealt with Hake and his grandmother. Those institutions, their failure to understand the cultural divide between themselves of this troubled Niuean family. Later on Anna Natusch wrote about this in a memoir. She taught at Lake Alice for a year, "By the time I had seen out my teaching term at Lake Alice, I was to gain an insight into Nazism. It is one thing to call an episode in medical history 'a medical experiment' and another thing to tolerate downright cruelty, such as I saw occurring in the psychiatric situation at the Lake Alice Adolescent Unit. ECT to be administered without anaesthetic upon children as a form of aversion therapy, is a horrifying episode in New Zealand medical history".

Q. Thank you, Dr Sutherland. I just wonder, turning to our Chair, I know we're slightly ahead of time but if this might be an appropriate moment to take the morning adjournment?

CHAIR: Yes, I think this is a good time to do that because there are other specific instances in the brief. Madam Registrar, can we take the morning adjournment, please?

Hearing adjourned from 11.20 a.m. until 11.40 a.m.

MS SPELMAN:

Q. Dr Sutherland, just before the break you had shared with us the powerful testimony in relation to your work. I am conscious you have some other case studies in your brief but in the interests of time and the other material we

are going to cover, can you pull out some of the key points you want to make in relation to some of the other case studies?

- A. Yes, sure. The publicity that was given to Hake's case brought forward other parents and children to talk to me. There were two boys who I spoke to and I'll summarise the most significant information that they gave me, and it related, they both were given ECT. In neither case, were the parents consulted. But Hake had had that. What these boys told me was the use of the ECT equipment for punishment. I will just describe what one boy said. He said, "The nurses used to put us all in the dayroom after school on Fridays. They called out the boys whose names were written on a bit of paper. They were the kids who had played up or been naughty, like not listening to the House Masters. They were taken to the medical room and the electrodes were placed on either side of their knees. They were given a shock as punishment. We could hear them scream. I knew two or three boys who had it."

This is the electrodes which are used on the temples for the therapeutic delivery of ECT were being used on the legs to give shocks for absconding or whatever.

A second boy said that that had happened to him. He had had the shocks as punishment. He was one of the ones who have had it on the legs. His account to me was the first time that it had been expressed in detail. His name was called out and he was taken to the medical room. "They sat me on a chair. I watched them plug in the machine. They put the electrodes, one on each side of my knee. They gave me a shock, turned it off and on. It jolts you out of the chair. The chair fell over and I rolled around on the floor until they turned it off. I got it twice on the knee, once for whistling at one of the nurses and once for smoking".

That boy also had ECT on the head as a punishment. Now, according to his account, it was administered straight by the nurses without any medical supervision, "I was fighting with another boy, play fighting. The nurses took me to their office to talk to me. They took me the medical room. They told me they were going to give it to me for fighting. It was on Good Friday, I remember it was a holiday and Dr Leeks wasn't there. No doctor was there".

So, what it shows is there was no medical supervision, there was no pretence that this was therapy. It was just the use of some shocks for punishment.

Later on, we complained to Dr Mirams who was the Director of Health and he got an investigation underway with an Auckland lawyer with Gordon Vial who was the inspector of the mental hospitals. They did believe that possibly there was some criminal behaviour involved in what we called torture of the children. But in the end the Police investigated and nothing came of it, though I think, and I hope, it's still an ongoing story.

Meanwhile, Sir Guy Powles, he launched an investigation into another boy's case and I won't go through that but simply say that what Sir Guy said was "there is considerable evidence that both medical and psychiatric procedures were imposed on the by against his will without his consent or consent of his parents or the social workers responsible for his guardianship".

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

Now, that report was never made public. You got it because I got it and I've passed it on to you but it was

never made public, although Sir Guy, his summary of his report was made public. But again it was denied by the Minister of Social Welfare or Health at the time. By 1978, enough publicity had come out for the unit to be closed and Dr Leeks in 1977 packed up and went to Australia.

I just want to finish my story about Lake Alice by referring to Sir Rodney Gallen's report. In 1999, there was a class action, Hake was part of it, and Helen Clark gave an apology. What Gallen wrote in his report, which again I don't know if it was made public, he said he could have just dolled out the money but rather he read the stories and listened to the stories of the children who had been through Lake Alice. He heard "statement after statement of the pain associated with the administration of ECT, of the screaming which was plainly audible to other children in the unit when ECT was being administered and the sight of those who were to receive the treatment being dragged screaming and struggling upstairs to the room where the treatment was carried out."

I wrote Gallen was left aghast because he said, "ECT delivered in circumstances such as I've described could not possibly be referred to as therapy. And when administered to defenceless children can only be described as outrageous in the extreme. The best summary I can make is the children lived in a state of extreme fear and hopelessness".

It was, if ever there was to be a judgement on what happened at Lake Alice between 1972 and 1978, that was it.

Q. I am conscious, Chair, just for the benefit of those watching, that the Lake Alice evidence we're hearing today from Dr Sutherland is fairly limited but given we

are at our Contextual Hearing, just to note this is something the Commission will be returning to in later investigations.

CHAIR: Yes, we know that, thank you.

MS SPELMAN: Thank you, Sir.

Q. Dr Sutherland, I know you also wanted to share with us today the work that you did in relation to children who were remanded into adult prisons but I will just check with you if there was anything else in relation that Lake Alice before we move on to the next topic?

A. No.

Q. Okay. Turning then to the practice of children being remanded into adult prisons, I understand that was another area ACORD worked on in terms of its advocacy in the 1970s. Can you tell us how you came to be involved?

A. As soon as we got involved with children in the Courts in Auckland particularly they were being remanded in Police custody, and if they were then they ended up in Mt Eden prison in the remand wing. Not everybody would be able to remember how dreadful Mt Eden Prison was in that way. The remand wing was probably the worst. And I publicised a case at the time of a boy called Arapeta, 15 year old arrested on several charges of house breaking. When he was finally sentenced, he'd been remanded and re-remanded to Mt Eden prison on four successive occasions by four different Magistrates for a total of almost four weeks. He shared a cell with a 19 year old alleged rapist, mixed freely in the showers and lavatory block with remand and sentenced prisoners and mixed with prisoners under the age of 21. There were no separate facilities for children.

And we thought, we drew that case to the Royal Commission sitting at the time Sir Justice Beattie and we

challenged anyone to deny this boy was not subject to cruel and unusual punishment.

Guy Powles started an Inquiry into what was happening to the children in prison. There were many cases that were made public but in the end, he didn't make it public because he retired and the Ombudsman who came after him wouldn't but we did release a draft report that we were given in confidence because it contained factual material that we thought was important people should know what Sir Guy had found.

In particular, we were interested in the figures that he gave in relation to the remanding of children, Māori children to Mt Eden prison.

The Justice Department picked up on this and then they published their own report written by Mel Smith who went on to become Secretary of Justice and Ombudsman. He gave some more revealing statistics. I won't go into his report other than to say that he showed that one boy was held on remand in an adult prison for 44 days and another one for 71 days. The boy held for 44 days was ultimately sentenced to probation. He didn't get a custodial sentence. And when Mel Smith investigated the figures, the number of children incarcerated in the prisons had gone up to 356, 63% being Māori.

I want to just conclude this section by talking about some cases that we drew to attention of the new Minister of Justice Geoffrey Palmer because we thought that Palmer might do what Dr Finlay had never done, which was to address this issue squarely and sensitively.

So, there were four cases. I will skim through them quickly. One was a boy in Kaitaia, a distant Court from Auckland with a Judge who went round every month. He was in Court for - a State ward, he was in Court for a relatively minor offence, remanded for 4.5 weeks, given

bail, except his mother couldn't come up with the bail, so nobody could come up with the bail, so he was shipped off to Mt Eden from Kaitaia for the 4.5 weeks that he would have to wait until the Judge went back to Kaitaia and he went go back up to the Kaitaia for the case to be heard.

I found him in Mt Eden Prison. By this stage I was allowed into Mt Eden, the Superintendent would let me go in and see any of the boys in there from the Children's Court because they didn't particularly want the children in Mt Eden anyway. So, I went in and saw the boy, George, I found him a lawyer and we got him out on bail straight away.

There was another boy, Robert, I saw a week later. We got a lawyer, Ross France, who represented him. I wanted to quote from what Ross France wrote in an affidavit, "Robert told me he had been on remand in Mt Eden for the previous week. He was most upset about the possibility of having to return there. He said he had been stood over by a number of older inmates who had tried to force him to commit sexual acts on them and then assaulted him on a number of occasions when he refused to comply with their demands. They took his clothing, leaving him without enough to keep warm. He was agitated and threatened to commit suicide. He said if he had to return to Mt Eden he would get another razor blade and would kill himself".

There was another boy called Paul. I will use his example to exemplify how disgusting the situations were that these children were held in.

He was not able to wash his clothes, so by the time he had his second Court appearance he spent two weeks in the same underwear, jeans, sweatshirt but it was worse in the cell. Aged 15, he was considerably younger than the

cell mates that he shared with, two of whom were 18 and two were 19. Being so much younger he "hated the toilet bucket and held onto his shit during the 14.5 hour period he was locked in his cell from 4.30 p.m. to 6.00 a.m. and then he went to the lavatory in the exercise yard with adult remand prisoners because I didn't like doing it in front of my cellmate".

And they had to eat in the cells, they had a plastic bucket that they shared.

The last case was a boy called Spencer. He suffered all those same things but he got into a fight and Mt Eden Prison had a punishment cell for remand prisoners, mostly for adult remand prisoners, it was called The Well. It was under the floor. It entailed 23 hours solitary confinement per day. So, 23 hours solitary confinement but to add to the punishment his mattress was taken from the cell each morning and given back at 4.00 in the afternoon, leaving him to lie or sit on the bare bed or floor all day with one comic to read, he was allowed no visitors.

And we wrote to the Minister and said this constituted barbaric and intolerable punishment, especially for a boy of his age.

Within a week, Geoffrey Palmer setup an Inquiry and Judge Augusta Wallace inquired into the four cases and others, she went to the prison, she looked at the punishment cell, The Well, and in the end she concluded, she accepted the evidence given by the boys. She was critical of the failure of Social Welfare, I mean these were State wards, they were supposed to come under the purview of the Department of Social Welfare. They never saw a social worker.

Q. Can I ask, Dr Sutherland, in your time when you were visiting these boys and effectively facilitating legal

representation, were there any social workers that you saw or knew of going into the prison?

- A. None. They didn't see the Chaplin, they didn't see the social worker, Māori Affairs, I don't know whether they had social workers, Ngati Whangai might have assisted then, they saw nobody, they saw nobody. In fact, I arranged bail for some. They wereailable, one of them was, I got him out because I signed the surety. That's what Judge Wallace was very critical of, the Department of Social Welfare's failure to assist the boys even though three of them were State wards. She singled out the toilet facilities with particular criticism. Every boy told her how much they hated having to use a plastic bucket in a shared cell. For the adolescents, she wrote, "The use of a potty is an embarrassing and degrading experience". She noted there was no running water in the cells in the remand cells at Mt Eden, nowhere for the children or the remand prisoners, but these were children, to wash their hands.

And then of course, she accepted Robert's evidence that he had been sexually harassed and assaulted. She went on to say new inmates were subject to a degree of intimidation or stand-over tactics by the older more experienced remandees. She went on to say in Mel Smith's report, he found in his statistics that there were children of the age of 13, boys and girls aged 13 who were remanded in one or other of the country's prisons, perhaps not Mt Eden but maybe Mt Crawford or Addington. Judge Wallace said she agreed with everybody that children should not be remanded in Mt Eden anymore and she suggested from that moment they should be held at the secure facility at Weymouth Girl's Home and Geoffrey Palmer agreed with her recommendations and passed them on.

But it would be another 5 years until, that was in 84, Gussie Wallace's report, not until 1989, with the passage of the Oranga Tamariki Act that the detention of under 17 year olds actually came to an end, was statutorily ended. 17 years after John Hippolite and me of the Nelson Māori Committee had started our campaign in 1970.

I want to conclude, and I am concluding now, with something that was brought to my attention just a week ago. You are not the first Royal Commission to look into the mistreatment of children. There was a Royal Commission in 1900 into the Stoke Industrial School in Nelson, my turangawaewae. It was run by the Catholic Church. 224 boys from aged 9-15 years. Now, a Royal Commission was established because some people from the Nelson community complained about the treatment of the children in the Stoke institution. And particularly they complained about the flogging which was administered as thrashing on the hands with a piece of supplejack. In some cases the Commission said with great severity, up to 40 strokes, 20 on each hand. Previously, there had been flogging on the body which verged on cruelty. Then there was the flogging. Then the cell punishment, the children were locked in solitary confinement in a totally bare tiny dingy cell with just a tin potty for periods ranging from 3 days to 3 months. Does it sound familiar? This was 1900. And then during this confinement, the thrashing on the hand would continue. Then there were lengthy periods of painful kneeling. We've heard about lengthy periods of cutting the lawns of the Owairaka Boys' Home with a pair of shears and there was inadequate clothing. So, 75 years later, that was 1900[], 75 years later I am reminded of the canings, strappings and the flogging at the Owairaka Boys' Home and the solitary

confinement. I am reminded of the fact that nothing changed; it was the Catholic Church in 1900 and it was the State in 1975.

I leave all this with you. I just hope that my submission will provide a backdrop against which the testimonies that you are going to hear from the children that I have been talking about, incarcerated in these institutions in the 70s and 80s and before, I want that to be a backdrop with which you can view them.

I've given a bigger picture, I hope, which I hope will validate their stories and just give an indication of the scale of the injustices and the scale of the abuse and the scale of the racism that was the hallmark of those institutions in the 70s and 80s. Kia ora.

Q. Kia ora, Dr Sutherland. Chair, I don't have any further questions for Dr Sutherland. I have had some discussion with my learned friend Ms Skyes who may have some questions.

CHAIR: Thank you. Ms Skyes, do you wish to ask Dr Sutherland some questions?

MS SKYES: Since Mr Sutherland's evidence was made available to us, there's a number here from Nga Tamatoa and who were involved in ACORD that contacted me. So, when we got the brief on Sunday we were fortunate to have the assistance of Professor Kelsy who was also very much involved with ACORD and I have now managed to get some original documents, some of which were referred to by the witness, some haven't been. What we would like to do is have those placed on the record of Inquiry for your future use and your leisure. They are quite fragile, they are originals, so we thank the Commission staff for photocopying them for us. They haven't been made available for other counsel

yet but if we are going to use them, that's an appropriate first step.

I will turn to Māori, we can't thank Oliver enough for the work he's done for te ao Māori. He has been fearless and courageous ever since he and John Hippolite began their journey for justice and we hope the information that he's brought will be assisted by the information that others have collated for this Commission. He is an inspiration for the kinds of justices that Nga Tamatoa, certainly today we have, represented Rebecca Evans and Hilda Halkyard-Harawira and Donna Awatere, they have come here to stand in solidarity with him and we can't again say enough for his efforts to ensure that Māori children are treated with respect and as the taonga that they are. If I could make that statement at this time and ask, there is a yellow folder which will ultimately be placed on the record for everybody's perusal.

CHAIR: Thank you. Ms Spelman, do you have a view about the proposal made by Ms Skyes that you would like to offer?

MS SPELMAN: Yes, Sir. I support that and have had some discussions with Ms Skyes about those documents which I have now handed to Madam Registrar and I can make those available electronically to the other counsel, Sir.

CHAIR: Thank you. Are there any other counsel wishing to cross-examine? No. There being nothing, may I then ask my colleagues, are there any questions any would like to have of Dr Sutherland?

* * *

DR OLIVER SUTHERLAND
QUESTIONED BY COMMISSIONERS

COMMISSIONER ERUETI: Tēnā koe Dr Sutherland, ka nui te mihi ki a koe, e hoa. I have a couple of brief questions. One, I wanted to ask about Lake Alice and the work that ACORD carried out, the investigative work they carried out during that time. It seemed from your brief of evidence that a large number of the children that ended up in Lake Alice were coming from residences, social homes in the area. I think you speak of Hokio and Holdsworth and Kohitere. Was that a pattern that you saw through your investigation?

A. It was. I didn't highlight it too much in what I said but certainly from, I mean they came from Owairaka, the psychiatric hospitals in Auckland but they sent them down to that unit at Lake Alice, and from Hokio, Kohitere, Epuni, I am sure if you talked to children from some of those other institutions, they knew that going to Lake Alice was a possibility. In fact, I think it's in my main evidence. Dr Leeks visited some of the homes and saw some children and I think that was a bit of a pathway for them through to his unit.

COMMISSIONER ERUETI: Yes, you do refer to that in your evidence. I also wondered whether, in your experience in your work with ACORD, whether these children were sent to Lake Alice specifically because they were difficult, the homes characterise them as being too difficult to handle, to control, and the move was to punish them?

A. I think that could have been the case. I mean, most children did not go to Lake Alice, the naughty ones, the ones alleged to be naughty. So that, there was something about the behaviour of the ones who ended up at Lake Alice. Maybe they were just too difficult to control, maybe they ran away, they just ran away too often. It's hard to know what was going through the minds of the managers of those welfare homes and their interaction with the Health Department but I think it must have been the case that the staff say at Owairaka, they would know, well, "if he's that bad let's send him down to Lake Alice and Dr Leeks will fix him". I mean, I think it was probably as crude as that.

COMMISSIONER ERUETI: Kia ora. A question about the - it's at the beginning of the pipeline as you describe it, and your work is mostly from the 1970s on until mid 1980s, it seemed from your experience it was mostly that first point of contact where children are being apprehended is by the Police. They are prominent. I am trying to get a sense of the context. So, you have emphasised that disproportionate with the majority cases of Māori being apprehended and brought before the Courts. The context is Māori in an urban setting after being shifted from their tribal area. In an urban setting, there seems that there is a vigilant Social Welfare service in apprehending children in the 1960s. And then in the 70s and 80s we see a shift towards the Police apprehending children. Is that how you would characterise the context?

A. It's a bit of a complicated question, I think. What was happening, was children could end up at Owairaka any time day or night. If the cops picked them up because they were wandering around town, they might deliver them there

if they were a State Ward. Or if they thought they were into some misbehaviour, then they would pick them up and then they would make that decision whether to prosecute them or not.

I mean, so I think there was always the option for children to end up in the Social Welfare homes in the 50s and 60s. But you're saying in the 70s, maybe there was more, it was more a result of the Police and sort of misdemeanour pathway. That might be the case, I don't know. You'd need to talk to people who knew more about what was happening actually in terms of the entrance into the Social Welfare because a lot of the children in those homes, they were not there because they had done anything criminal, they were there because they were alleged to be not under proper care and protection, NUPC or whatever it was. Perhaps the majority were like that. They were all jumbled in together. It didn't matter. This is the 1900 Royal Commission and that was one of the issues back then that was being complained about, was that at that Stoke school kids from the Courts and kids whose parents had died or something were all jumbled in together and all got the same treatment.

COMMISSIONER ERUETI: You have a clear mixing of children from the Care and Protection and those with the Justice background in homes?

A. There were, yes.

COMMISSIONER ERUETI: Can I also ask about your - ACORD's - investigation into the homes about - you explained to us about abuse and neglect that you recorded but the circumstances that allowed this to happen. For example, oversight, accountability.

A. What I haven't talked about today or in my main submission much, was for instance to look at Owairaka, the majority of the staff were ex-Army and we found

advertisements for staff for House Masters at Owairaka that said a military background would be a benefit. And the whole place was run on military lines. They got these people who were probably thrown out of the Army and they became a House Master at Owairaka, so that there was a culture amongst the House Masters of punitive militaristic ways of dealing with children. These were children who were distressed. It was the last, sort of, treatment that they needed and the nodding system was probably the ultimate example of it. Speech was not allowed.

COMMISSIONER ERUETI: Kia ora. It seems also that throughout the 1970s that you have a shortage of beds in homes in Auckland?

A. Yes.

COMMISSIONER ERUETI: Vast numbers of children coming in and high turnover.

A. Yes.

COMMISSIONER ERUETI: Can you explain the circumstances that were leading to this?

A. Well, there were just too many children coming in. I mean, again I can't remember if it's included in my main evidence but at the Girls' Home, they ran out of secure cells and so they used the art room and they would cram up to 7 or 8, they just dragged in mattresses. The art room could be locked, so it was a sort of standard, it was an extra secure cell but there could be 6 girls in there and one toilet bucket because it was an art room, it didn't have a built in lavatory or anything, so they just had a bucket and they would be kept in there.

So, the homes were swamped because what was happening, I suppose, was that the Courts were busy channelling the children off to the welfare homes and the Social Welfare just had to take them. They

couldn't - unless they were bailed but if they were State wards and there was nowhere for them to go, they had to go to the homes. So, if it was crowded, it was simply because the numbers were too great and the facilities were too limited. If you were going to lock up kids, I don't advocate that at all but, I mean, if you're going to, you need enough cells I suppose and they just ran out of cells.

COMMISSIONER ERUETI: Kia ora.

CHAIR: Thank you, Dr Erueti.

COMMISSIONER GIBSON: Thank you, Dr Sutherland, you've painted a pretty comprehensive picture of what's gone on over the years and how, I suppose, underwhelming the response has been at times when the issues have come to light. The challenge about some Inquiries which exonerated people, Inquiries that have become weak-kneed and it is a challenge for us to act on this.

You made the comment, I think, around Lake Alice's justice issues still to be resolved. In the mix of things, a failure of a number of individuals, systems failures, practice of the day, what kind of things do you still think need to come out of this and be resolved?

A. For Lake Alice, there's got to be an Inquiry. There's never been an Inquiry. Into this case or that case or whatever, the comprehensive picture of what happened, how were staff allowed to give shock treatment to children with no doctor there? Use the electrodes on the head? How did that happen? These are the unanswered questions. Where are the bloody staff? They're still alive, some of them, these people. I think Dr Leeks is still alive. I think Dr Marims might be. Some of the nurses, they were called. That's what needs to happen. I mean, it's not your job to do it, it's the job of a specific Inquiry

into a terrible, terrible period in the treatment of children in the country.

COMMISSIONER GIBSON: Thank you.

COMMISSIONER ALOFIVAE: (Speaking in Samoan)

Dr Sutherland, thank you very, very much for the meticulous way in which you've outlined some of those examples and the details around numbers, in particular around Māori. I'd like to ask you some questions around the Pasefika numbers if that's possible. You made the comment earlier that actually they weren't well recorded or they might have been lumped in with Tauivi and maybe with Māori as well?

A. Yes, when you look at the Justice Department's statistics, I have a copy here, there is no mention of Pacific children at all, absolutely none. So, you can't, we weren't able to get any picture of the scale of the impact of these punishments or treatments on Pacific children.

COMMISSIONER ALOFIVAE: Okay. But the fact that you had the fabulous support of both Nga Tamatoa and the Polynesian Panthers give us a great sense of hope there was a lot of activity going on back in the day. Because you said they were also monitoring your work around what was going on?

A. Yeah, that's right. We did and I don't know, sort of, where all of that detail ended up. What I do know is in a number of the case histories there are Rarotongan children, there were Samoan children, Pākehā of course, Nuean, plenty of Pacific children in the system at that time. But in terms of you're asking me to quantify it, you know I can't do that and that would be a whole research topic in itself, probably something that should be done.

COMMISSIONER ALOFIVAE: Thank you. And (speaking Samoan) to Hake and his family, because at para 73, you've summed it up really well and it's my sense actually that that was the experience of many Pacific early arrivers in New Zealand around the disjointed system and lack of appreciation around the cultural divide between things Pākehā and things Pacific. Was that your sense also of the young Pacific people that were coming through into your purview?

A. Well, it was and particularly for their parents. The '70s, as you know, was a time of []arrival from the Pacific and the Pacific communities were growing but there was no evidence that any of the systems wanted to acknowledge that or understand the particular needs, so there were no interpreters in the Courts. Interpreters didn't come in, you will see that in my main submission, we did a big sort of campaign to get interpreters in the Courts but that didn't come in until the late 70s. So, with cases like Hake's, I used that as an example because the education system didn't understand him. He wasn't stupid, far from it. And none of the systems understood him and they couldn't communicate with his main caregiver who was his grandmother. Mitchell spoke to his parents and said there's no need, and complained I was making a fuss about interpreters and Mitchell said "no need because I can talk to the parents". The point was Hake's caregiver was his grandmother, there was no understanding of that.

COMMISSIONER ALOFIVAE: Thank you. I want to refer to your table in your para 71 which is where you highlighted the number of 116,595 of which 41% of those children were Māori. This might be a sensitive question and please feel free you don't

have to answer but can I flip it? Had those children, because you made the comment that irrespective of who was in government it seemed that nobody really cared or wanted to take up the travesty of the statistics you were putting before them. Had those kids been of what I would refer to as Palangi decent or European decent, do you think you might have had a different response?

- A. I'm sure we would have, I'm sure we would have. The point was, these figures were not, stark as they are, they were not a secret. They were published by the government themselves. Anybody could have bloody well analysed them and done the analysis we did and thought what are the implications of this? So, you're right, if the thing was flipped the other way, I'm sure there would have been an outcry.

COMMISSIONER ALOFIVAE: Thank you, Dr Sutherland, no further questions.

COMMISSIONER SHAW: Dr Sutherland, I have no question for you but I was struck by the fact that you said at the beginning of your evidence that no-one is looking and I want to thank you for looking. Thank you.

- A. Thank you.

CHAIR: Thank you, Dr Sutherland. The example shown by your tenacity over the years is remarkable. Thank you.
