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**SONJA COOPER AND AMANDA HILL - AFFIRMED**

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**EXAMINED BY MR MOUNT**

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**CHAIR:** Ms Cooper and Ms Hill, make yourselves comfortable. There's the initial statement to be made in terms of the Inquiries Act with which you will be familiar. (Witnesses affirmed).

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**MR MOUNT:**

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Q. Good morning. To complete our formalities, in front of you in the folder you should have a copy of your written brief of evidence. On page 49 of that brief, I think you both signed. Can I ask you first to confirm that apart from any Corrections that you make as we go through the brief, it is true and correct to the best of your knowledge and belief. Firstly, Ms Cooper?

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**MS COOPER:** It is.

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**MR MOUNT:** And Ms Hill?

10.07 20

**MS HILL:** It is.

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**MR MOUNT:**

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Q. The way we are going to do this is to invite you each to develop certain sections of the brief and where necessary you will expand on them, and I may have some questions for you as we go.

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We spoke earlier about the need to keep an eye on our sign interpreters and our transcriber.

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The other formality, is that we will at certain points be seeing photographs on the screen. We will have a hard copy of those photographs to produce as a formal exhibit. I am not sure if that hard copy is ready yet, most likely we will do that after the break.

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Ms Cooper, I think you will get us underway with paragraph 1?

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1 **MS COOPER:** (Opening in Te Reo Maori). Sonja Cooper.

2 **MS HILL:** Amanda Hill.

3 **MS COOPER:** We just wanted to start by thank you to the  
4 Commission for giving us the opportunity to be  
5 heard today. Cooper Legal, we're both partners in  
6 the firm. It is a small law firm based in  
7 Wellington. Our core work is helping people make  
8 civil claims against the State and faith-based  
9 institutions for abuse they suffered in care as  
10.09 10 children or as vulnerable adults.

11 Today we will talk about a number of themes that  
12 have arisen out of our work. First of all, the  
13 beginnings of the civil claims against the State for  
14 abuse in psychiatric hospitals and Social Welfare care.  
15 We will also talk about how those claims grew and how the  
16 State responded, and that was with a mixture of listening  
17 forums and also fierce and uncompromising defence in the  
18 Court.

19 We want to talk about how state mechanisms, such as  
10.09 20 the Courts and Legal Aid, played a role in the claims  
21 process.

22 We want to then talk about how the role of our human  
23 rights law, both national and international, played a  
24 part in progressing the civil claims.

25 We will touch briefly, and it will be only briefly  
26 in this part of the hearing, on the settlement processes,  
27 both current and past, and why they're not fit for  
28 purpose.

29 Q. Just pause there, apart from saying your pace is  
10.10 30 excellent, thank you. As you know, the Commission will  
31 be coming back to the topic of redress, including  
32 settlement processes, in March, so you will leave further  
33 detail for March?

34 A. Absolutely. We could probably talk for some days about

1 the settlement processes and hopefully we will get an  
2 opportunity to talk at length but this is really just to  
3 set the scene.

4 We wanted to talk about the disadvantages  
5 experienced by many survivors, and they include less  
6 access to information, particularly information about  
7 themselves, fewer resources to obtain help, often poor  
8 literacy or mental health and economic circumstances  
9 which pressured them to accept compensation and  
10.11 10 settlements which do not reflect in any way their  
11 experiences.

12 And briefly I think at this stage, what we see as  
13 the way forward for the claims process as part of a  
14 larger truth and reconciliation process.

15 First of all, I just want to address the language  
16 we're going to use. Often we talk about victims of abuse  
17 but we want to talk about the people that we meet and  
18 work with in a way that we think and hope is empowering.  
19 We're going to use the term "survivors" and nga morehu or  
10.12 20 care leavers to discuss the people who experienced abuse  
21 in care.

22 We want to put those people in the centre or what we  
23 talk about today and what we do as a firm but we know  
24 that every experience is different and just as survivors  
25 cannot speak with one voice, we can't speak to all of  
26 their experiences today.

27 We acknowledge obviously those care leavers who have  
28 already speak to the Commission and will speak to you, we  
29 don't and cannot stand in their shoes.

10.12 30 During the course of our evidence today we will talk  
31 a lot about civil claims. These are the claims that we  
32 take which are in tort, which is part of law obviously,  
33 or the human rights legislation. Mainly our claims are  
34 guess government departments which were responsible for

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1 the care of children and vulnerable adults. Most of our  
2 claims are directed to the government because it is  
3 liable for the actions of people it employed or  
4 contracted, and that's something we'll talk about in our  
5 evidence, to do its work.

6 We also work on claims against faith-based  
7 organisations and other organisations which provide  
8 services to children and vulnerable adults. We don't  
9 take claims against individual government employees and  
10.13 10 we don't take criminal claims either.

11 One of the things I think that's important about  
12 language, and we heard it a little bit in the Crown's  
13 opening statement by Wendy Aldred, is that the State will  
14 often refer to itself as the Crown which suggests that it  
15 is a single entity. But the responses that we have  
16 experienced by different parts of the Crown have been  
17 very different and there is no single Crown response to  
18 abuse of those who have been in care.

19 The Ministry of Social Development, or MSD, is the  
10.14 20 government department for all civil claims for abuse in  
21 the care of Child Welfare, as it first was, that was up  
22 until 1972, Social Welfare 1972-1989, then Child, Youth  
23 and Family Services and it had various names during that  
24 period which was the entity caring for children up until  
25 the creation of Oranga Tamariki in April 2017.

26 When we first did our evidence, Oranga Tamariki was  
27 saying it would be responsible for all claims for  
28 children who were in care from January 2008 but it had no  
29 process to do it and although we had several meetings,  
10.15 30 nothing developed.

31 We took the position that because Oranga Tamariki  
32 didn't come into being until 1 April 2017, that legal  
33 responsibility lay with the Ministry of Social  
34 Development. As I say, in the two months since we have



1 written this brief, MSD and Oranga Tamariki have now  
2 agreed with us and now the Ministry of Social Development  
3 will deal with all claims up until people came into the  
4 care of Oranga Tamariki from 1 April 2017. So, we now  
5 know there is a single process to deal with claims up  
6 until the being of Oranga Tamariki.

7 Q. Pausing there. For those later reading the transcript,  
8 that means an update to paragraph 7?

9 A. It is.

10.16 10 Q. Thank you. I do note, it is a sad fact that Oranga  
11 Tamariki will be a defendant in its own right eventually  
12 as survivors continue to come forward and I just comment  
13 there, in my day-to-day practice as a youth advocate I  
14 would say that virtually every young person I act for in  
15 the Youth Court has a potential claim already at this  
16 stage, which is a very depressing thing to say.

17 The other two main defendants that we deal with are  
18 the Ministry of Education and the Ministry of Health.  
19 The Ministry of Education deals with civil claims by  
10.16 20 people who were abused in some State or special  
21 residential schools, so Waimokoia, McKenzie and Salisbury  
22 Schools are some examples. Sometimes the Ministry of  
23 Education is jointly responsible for a claim. For  
24 example, Campbell Park School or Owairaka, as known by  
25 our older clients was a special school near Oamaru, which  
26 was one by people employed by both the Ministry of  
27 Education and Social Welfare.

28 The Ministry of Health responds to claims about  
29 abuse for people in psychiatric hospitals, so that  
10.17 30 includes Porirua Hospital, Kingseat, Lake Alice, only  
31 where that abuse happened before 1993. And very  
32 recently, and again one wonders if that's a challenge, a  
33 response to the Royal Commission, the Ministry of Health  
34 has said it will deal with claims of abuse in general

1 hospitals, again so long as that happened prior to 1993.  
2 After that date, we start dealing with the individual  
3 DHBs, and that's problematic.

4 Who do we represent? Currently, we have around 1250  
5 clients, about 1400 open files and growing. This  
6 difference reflects the fact that some people have  
7 multiple claims. For example, a client who was in CYPs  
8 care, may also have been in a special residential school.  
9 Some clients, particularly our older clients, may have  
10.18 10 been a State ward who was placed into somewhere like  
11 Campbell Park, run by the Ministry of Education, and may  
12 also have had faith-based care as well, so they may have  
13 gone through orphanages or into a Catholic school, for  
14 example. So, some clients may have as many as three  
15 claims.

16 Our clients vary in age from 18 at the youngest, to  
17 80. The claims in the main cover the period from the  
18 1950s through to the present time, although the majority  
19 are for abuse that happened during the 1970s and 1980s.

10.19 20 However, as I'm going to note, the number of claims  
21 after 1980 is growing.

22 Of our client group currently, about 17 are under  
23 the age of 22 and over 135 clients are under the age of  
24 30, and around 300 were in care after 1999. And they are  
25 theoretically at the moment excluded from the expressed  
26 Terms of Reference, so that's important to note.

27 We estimate that already we've settled around 1100  
28 claims against the Ministry of Social Development,  
29 Education and Health, as well as faith-based  
10.20 30 organisations. To date, our clients have been paid  
31 settlements totalling \$22, 775,000 which does include a  
32 contribution to legal costs. While no amount of money  
33 can heal some wounds, we would say that no survivor to  
34 date has received adequate compensation for the harm that

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1 has been done to them. We say that unapologetically.

2 Of course, the figures that we can say do not  
3 include payments made to those who are self-represented  
4 or from the small number of other firms who have done  
5 this work, only the State and the churches can provide  
6 that information.

7 It's important to say that most of our clients are  
8 vulnerable in some way.

9 The vast majority are either beneficiaries or low  
10.21 10 wage earners in precarious economic positions. Around  
11 40% of our clients at any given time are prison inmates.  
12 Almost all of them experience mental distress or ongoing  
13 psychological and other effects from their childhood or  
14 adult care. As has been noted already during the course  
15 of this hearing, our clients are disproportionately  
16 Maori.

17 Q. Ms Hill.

18 **MS HILL:** Thank you. I want to address the Commission  
19 on what State care means and talk about some of the  
10.22 20 terms that we use in the course of the civil  
21 claims.

22 In our work, we talk a lot about legal status, the  
23 legal status of a person who is in care. Because their  
24 legal status defines their relationship particularly with  
25 the State and how they could be treated.

26 So, many children came under the pursue of Social  
27 Welfare while they still lived at home. Sometimes this  
28 was due to notification of abuse or neglect or poverty,  
29 or because a child had committed offences. Many Maori  
10.22 30 children were prosecuted for the misdemeanour of stealing  
31 milk money. Many Pakeha children were not.

32 The Courts have held that if Social Welfare received  
33 a notification of concern about a child, such as physical  
34 or sexual abuse, a duty of care arose between Social

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1 Welfare and the child to investigate it.

2 And preventive supervision was an administrative  
3 mechanism developed by Social Welfare in their words "to  
4 prevent children becoming casualties". So, it often  
5 involved regular visits to a home by social workers,  
6 emergency financial assistance and visits to a child's  
7 school.

8 So, preventive supervision was different to legal  
9 supervision. Legal supervision was imposed by a Court,  
10.23 10 often in response to a child not being properly  
11 supervised by their parents or for offending.

12 At times, Social Welfare would receive reports or  
13 notifications of abuse or concern about a child and  
14 failed to act. Sometimes, the reports piled up about a  
15 child or their family, particularly about abuse in home  
16 environments, and still nothing happened.

17 This is still a major problem today. In contrast,  
18 other children, particularly Maori children, were removed  
19 from their families, sometimes for years, often just  
10.24 20 because the family was too poor.

21 So, I need to emphasise right now, that State care  
22 wasn't just being taken away and being put somewhere  
23 else. State care can mean being at home with their  
24 family and it was just as important to look at that time  
25 and look at what was happening for a child and their  
26 family before they're removed. It's not just about the  
27 institutions and the foster placements.

28 So, many children came into care by way of complaint  
29 action. So, that was a complaint by either Social  
10.25 30 Welfare or the Police that a child was not under proper  
31 control or that they were living in a detrimental  
32 environment. That would often pave the way for a child  
33 to be placed in care and then under the guardianship of  
34 the Director of Social Welfare.

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1           Much like an adult, a child could be remanded in  
2 care while a complaint went through the Court system and  
3 they could be taken and put into care at that point.

4           Sometimes children were voluntarily placed in care  
5 by their parents or caregivers. Sometimes that was for a  
6 month, sometimes a year, sometimes up to two years.

7           There were differences in the way a child under a  
8 voluntary agreement could be treated while they were in  
9 care, and we will talk about Secure Units a little later  
10.26 10 in our evidence but a child under voluntary agreements  
11 could be placed in institutions, family homes or foster  
12 care in the same way as a State Ward.

13           And a State Ward is the common term up until 1989  
14 for a child placed under the guardianship of the  
15 Director-General of Social Welfare.

16           Being a State Ward meant that Social Welfare had  
17 total control over a child. Social Welfare controlled  
18 where they could live, where they went to school, where  
19 they could work when they got older, how much money they  
10.26 20 were able to earn and where they could travel. A person  
21 was often discharged from guardianship at the age of 17  
22 but could remain a State Ward until they were 20.

23           Many children who were under the care or custody of  
24 Social Welfare were also placed in faith-based  
25 institutions by Social Welfare and so sometimes the line  
26 of responsibility for a child was blurred.

27           After 1989, the whole scheme changed and there are  
28 plenty of historians and sociologists who will talk about  
29 the changes that brought about the Children, Young  
10.27 30 Persons and Their Families Act 1989. And we will call  
31 that the 1989 Act.

32           That was a drastic departure from the earlier  
33 Children and Young Persons Act 1974. It brought in new  
34 language, new principles and new schemes for dealing with

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1 children in care. And it separated, some would say quite  
2 arbitrarily, the ideas of Youth Justice and Care and  
3 Protection. And in our experience, those two things are  
4 intertwined.

5 The 1989 Act provided a scheme for the Family Court  
6 to deal with Care and Protection issues with the ability  
7 to place a child in the custody or guardianship of Social  
8 Welfare, not in CYPS by that time obviously. And Youth  
9 Justice provisions went through the Youth Court. And  
10.28 10 that mainly dealt with children between the ages of 14  
11 and 16 who had committed offences, although as Sonja will  
12 tell you in her role as a youth advocate, the 1989 Act  
13 continues to criminalised younger children in certain  
14 circumstances.

15 Decisions were made, and are still made, by Family  
16 Group Conference or FGCs. The plans drawn up by FGCs  
17 often had a range of activities and outcomes for a child.  
18 Children and young people could be sent to programs, put  
19 into care, placed with whanau or made to do community  
10.29 20 work and so on. And some children never saw the inside  
21 of Youth Court if they could complete their plans.

22 So, these changes were considered to be quite  
23 revolutionary at the time and it meant the Family Court  
24 and Youth Court worked together but often not very well  
25 together, I would say, and often had quite disparate  
26 outcomes.

27 So, while the 1989 Act was considered to be world  
28 leading and extremely progressive, in our experience the  
29 social workers on the ground took a long time to catch  
10.30 30 up. Children in care in the transitional period between  
31 the late 1980s and the first few years of the 1990s, they  
32 really fell through the gaps. In our experience, social  
33 workers struggled to adjust, resources were not  
34 available. Almost always the records for people in care

1 during that time period are incomplete and inadequate.

2 Important aspects such as FGCs were not used  
3 properly, although that's still a problem now.

4 Another important change which happened after the  
5 1989 Act, of course, was the introduction of the  
6 New Zealand Bill of Rights Act 1990 and that came into  
7 force on 25 September 1990. And from that date, children  
8 in care had additional rights under that legislation, and  
9 we say the State had additional responsibilities which  
10.31 10 overlaid the 1989 Act and we will talk more about the  
11 Bill of rights Act later in our evidence.

12 One of the important aspects of the 1989 Act was an  
13 approval scheme which allowed CYPS to use third party  
14 programs or organisations to care for children. The  
15 approval scheme was triggered by section 396, and so  
16 often to shorthand things I call them section 396  
17 programs.

18 So, this meant that third party organisations, which  
19 could be incorporated societies, iwi organisations or  
10.31 20 charities, had to meet a certain level of approval to  
21 provide services and in return they were paid by bed  
22 nights, however many nights a young person was in care.

23 So, CYPS was able to place children who may be in  
24 their direct custody with other providers, and that still  
25 happens today.

26 The scheme under section 396 provides for complaints  
27 to be investigated and annual reviews of an organisation  
28 and their ability to care for children. While this  
29 sounds a good in theory, the practice occasionally went  
10.32 30 horribly wrong. The division between frontline social  
31 workers dealing with children in these programs and the  
32 organisation which did the approving, was significant and  
33 there was often no communication between the two. So,  
34 the Community Funding Agency, which was the organisation

1 tasked with reviewing these organisations, often did it  
 2 on paper, making sure they had the right policies and  
 3 procedures and guidelines but never really met the  
 4 children and sometimes didn't meet the staff. And so,  
 5 the social workers on the frontline receiving direct  
 6 reports of concern would be dealing with that separately.  
 7 Sometimes the two systems didn't meet in the middle. And  
 8 so, an organisation again and again was approved because  
 9 they met the policies and procedures but did not - but no  
 10.33 10 account was taken of the individual complaints, so there  
 11 was a real disconnect then.

12 And when complaints weren't dealt with properly,  
 13 further abuse was inevitable. And I'll talk more about  
 14 Whakapakari, Moerangi Treks, the Eastland Youth Rescue  
 15 Trust and the Heretaunga Maori Executive as some examples  
 16 later in our evidence. Using these organisations at  
 17 times has caused the Ministry of Social Development to  
 18 say we're not liable for that, that's separate, they're  
 19 contractors, even where the children are in their direct  
 10.34 20 custody or under their supervision and where it was able  
 21 to approve or suspend the approval of the organisations.  
 22 This was a position that the Ministry had for quite a  
 23 long time and it meant that for a group of survivors, the  
 24 settlement of their civil claims was affected by that  
 25 because large chunks of their experience were discounted.  
 26 And so, they settled their claims based on that and  
 27 settled their claims poorly sometimes. And since then,  
 28 the Ministry has changed its position and has, while not  
 29 expressly but for the purposes of settlement, has  
 10.34 30 accepted responsibility for many third party  
 31 organisations, leaving that earlier group of people  
 32 disadvantaged.

33 Q. I take it, there's no way for that first group who  
 34 settled many years ago to reopen their change, despite



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1 the change in the Crown's approach?

2 **MS HILL:** They have signed full and final settlements.

3 Obviously, it would be open to the Commission to  
4 recommend that that could be re-opened, and that's  
5 certainly something that we would support.

6 Q. Ms Cooper.

7 **MS COOPER:** Thank you. I will just make sure the light  
8 is glowing.

9 I am now going to talk about our experience with  
10.35 10 faith-based institutions.

11 So, the experiences of people placed in faith-based  
12 institutions were often very different from those who  
13 were in State care. Very young children were sometimes  
14 placed in orphanages or foster homes run by faith-based  
15 institutions. Some examples of this included The Next,  
16 which was in Hamilton and was run by the Salvation Army,  
17 or we've got Catholic based orphanages such as the Star  
18 of the Sea or the Home of Compassion.

19 We're looking back typically quite far back in time.  
10.36 20 So, we look as far back as the Infants 1908, there  
21 anybody who had a child in care under the age of 6 had to  
22 be licensed as a foster parent. And then under the Child  
23 Welfare Act 1925, any child could be detained in an  
24 institution, which did include some private institutions,  
25 including faith-based institutions.

26 We had clients who were placed as sibling groups in  
27 what the man home in Masterton or Bramwell Booth Home in  
28 Temuka, run by the Salvation Army. The Salvation Army  
29 also ran Hodderville which was a home for boys in  
10.37 30 Putaruru in Auckland and it also dealt with the Auckland  
31 trust for women and children who ran Brett Home, Stoddard  
32 House and smaller cottage style institutions.

33 Q. I think you accidentally said the Auckland Trust, was  
34 that the Anglican Trust?

1 **MS COOPER:** The Anglican Trust, yes. The Anglican  
2 Diocese of Waiapu ran Abbotsford Home in Waipukurau  
3 and that operated for many years. I think it's  
4 important, and I referred to that earlier to say  
5 the cross-over between State care and church care  
6 because a lot of State wards ended up in these  
7 placements.

8 Families also placed children there privately and  
9 paid maintenance if they had the funds.

10.37 10 Where a child was placed in a faith-based  
11 organisation by the State, their board was paid to the  
12 institution for the care of the child. Social workers  
13 were supposed to visit regularly, although that often  
14 fell by the wayside, particularly if the placements were  
15 remote, and Hodderville I think is probably a good  
16 example of that.

17 Then the psychiatric hospitals, patients going into  
18 psychiatric hospitals either went in there as voluntary  
19 boarders or informal patients, or as committed patients  
10.38 20 under the relevant mental health legislation. We also  
21 have clients who were admitted under the Criminal Justice  
22 Act, so that's when they've been remanded by the Courts  
23 on a criminal charge for assessment.

24 Informal patients, which was something we need to  
25 test through the Courts ultimately had the right to  
26 refuse medical treatment, which is something we say all  
27 the way through.

28 At this point, I want to set out what our clients  
29 told us through the years about what happened to tell in  
10.39 30 care. We've had to take a broadbrush here.

31 Dealing first with psychiatric hospital, this is  
32 children and adults. I should say predominantly our  
33 clients were children.

34 By far the most common complaints in psychiatric

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1 hospitals were of severe physical assaults. And that was  
2 not only at the hands of other patients but also at the  
3 hands of staff and that included being punched, kicked,  
4 hit. One thing I vividly remember from Porirua Hospital  
5 was a young boy particularly talking about a favourite  
6 punishment called the concrete pill. And this is where  
7 four staff members would hold a teenage boy by each of  
8 their limbs, haul them up and then drop them on the  
9 concrete. And that was a common treatment of young boys  
10.40 10 at Porirua Hospital in the 1970s particularly.

11 Our clients were also sexually violated and abused  
12 by staff and other patients.

13 Many were given what we call unmodified ECT. So,  
14 unmodified ECT is where you're given electroconvulsive  
15 treatment without any anaesthetic. So, the usual way of  
16 getting ECT is with anaesthetic and a muscle relaxant to  
17 stop any pain but a lot of our clients talked about  
18 getting it without either of these, so they did  
19 experience pain.

10.40 20 They were also given ECT as punishment. Again, this  
21 is mainly teenagers that we are talking about.

22 Teenagers again mainly but this also happened to our  
23 vulnerable adult clients, were pulled into the ECT rooms  
24 to watch other patients being given ECT to frighten them  
25 and were told, you know, this is what will happen to you  
26 if it you don't do what we tell you.

27 Clients talk about being given painful injections as  
28 punishment. One particularly painful injection was  
29 Paraldehyde which was so poisonous it actually had to be  
10.41 30 administered through a glass needle that was very thick.  
31 Again, a lot of clients were given that regularly to  
32 punish them.

33 Again, they complain about being put in seclusions  
34 rooms. The seclusion rooms were fairly barren awful

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1 circumstances.

2 Others, particularly children, were placed in  
3 psychiatric criminal wards with adult patients who were  
4 severely disabled and unwell and terrifying for teenagers  
5 to get them to do what they were told.

6 Up there, we've got a photo of Rotu Ward. This is  
7 one of the dormitories in Porirua Hospital. This just  
8 gives you an example of a psychiatric hospital ward  
9 during the timeframe our clients would have started to go  
10.42 10 into Porirua Hospital. You can see how barren it is.

11 There were other complaints that we've had of  
12 traumatic incidents, such as being actually hosed down by  
13 nursing staff, being threatened with a lobotomy and being  
14 told they would never leave the hospital. I interviewed  
15 a client last week in his mid 70s, who actually described  
16 to me having a hose pushed up his rectum for four or five  
17 days and water flushed through it, purportedly to see if  
18 he had any drugs but it was a torture and a punishment  
19 for him.

10.43 20 The picture that's now up there is I think the  
21 outside view of F Ward, which is also at Porirua  
22 Hospital. This is again a kind of bigger picture of  
23 Porirua Hospital. F Ward was the women's ward, the  
24 criminal ward, and again a number of our clients, teenage  
25 girls, were put in F Ward as punishment. When we are  
26 here again on Thursday, the client who is evidence I will  
27 be talking to will talk about her placement in F Ward as  
28 a 14 year old and the terrifying things that happened to  
29 her there.

10.44 30 One of the clients that we have describes it was  
31 common to get clouts, kicks up the bottom, verbal abuse  
32 and threats of ECT from nursing staff. "This would  
33 happen if I didn't do my jobs properly, like polish the  
34 floors. It was just an every day experience to witness

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1 staff physically abusing patients". As I say, I will be  
2 speaking to evidence of Beverley Wardle-Jackson on  
3 Thursday who was there at Porirua Hospital and talking  
4 about her experiences there.

5 I then want to talk again and summarise the  
6 experiences of our clients in Social Welfare, and that  
7 goes through the ages, and CYPS care. To be honest, it's  
8 impossible to summarise that but all we can do in this  
9 evidence is give you some examples to demonstrate what we  
10.45 10 say has happened to entire generations of children who  
11 have been placed in the care of the state. We have tried  
12 to reflect the range of experiences and the demographics  
13 of our client group. If we don't talk about an  
14 institution or a placement, it's not because it didn't  
15 happen, it's just because we can't cover everything.

16 First of all, Amanda has referred to family homes  
17 and foster placements. Social welfare family homes were  
18 spread all around the country and they still exist to  
19 this day. The house parents often varied, although some  
10.46 20 remained house parents for a long time. The idea behind  
21 a family home was, as the name suggests, that it was a  
22 family home and there would be five or six children  
23 living in an environment that was intended to be like a  
24 family.

25 Lots of our clients say that the people who ran the  
26 family homes were well meaning but either didn't have the  
27 tools or the skills to cope with what were often groups  
28 of difficult children.

29 One of the common themes is that there was no  
10.46 30 supervision at night-time, and I think that's probably  
31 still the case. And so, physical and sexual abuse  
32 between children was a regular feature of those who  
33 stayed in family homes.

34 Also too, as commented on, the abilities of family

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1 home parents varied a lot. Some had very positive  
2 reports and others had a long history of violence or just  
3 allowing bad things to carry on.

4 A number of family home givers are the subject of  
5 allegations of physical or sexual abuse.

6 One of the things that we noted, and it's still a  
7 common theme today, is that it's common to see the grown  
8 or older children of the family home caregivers acting as  
9 relieving caregivers or, in many cases, acting as  
10.47 10 enforcers of the rules. And clients often tell us the  
11 growing sons and daughters of family home or foster  
12 caregivers would be the ones dishing out violence to keep  
13 the children in line. And I worry about that still.

14 With foster care, there are many foster parents who  
15 are spoken about with appreciation and admiration by our  
16 clients. Unfortunately, long stays at good foster homes  
17 were rare. Like many foster children, including those  
18 who are in care today, children in the foster care system  
19 experienced multiple placements and that impacted  
10.48 20 obviously on their ability to settle, to adjust to  
21 school, to make friends and to feel safe and secure.

22 Sadly, many of our clients talk about the physical  
23 and sexual abuse they suffered at the hands of their  
24 foster parents. And I think what's particularly  
25 disturbing, is that a common theme is that their attempts  
26 to disclose this to their social workers or other people  
27 were met with disbelief and/or punishment for lying. It  
28 was exceptionally rare for a child to be believed and for  
29 action to be taken. Usually, action was taken only if a  
10.49 30 second person, usually not a child, could corroborate  
31 their account. But our experiences were more often than  
32 not complaints went ignored and abuse continued, and for  
33 some clients that abuse went on for years.

34 So then I'll talk about Social Welfare and CYPs

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1 residences, boys and girls homes were spread throughout  
2 the country. Some operated as remand homes, like Lookout  
3 Point or Stanmore, Owairaka, Epuni, others were national  
4 long-term training institutions and probably the most  
5 well-known were Hokio Beach School and Kohitere.

6 Several staff members from different institutions  
7 had been convicted of sexual abuse against children. I  
8 have set out in - we have set out in Appendix A a list of  
9 all the ones that are known to us. That's 28 people that  
10.50 10 we were able to identify who have been convicted of  
11 sexual offending against children in their care, and they  
12 cover a range of placements, so not just State care, they  
13 also cover religious clergy, Salvation Army caregivers.

14 I think what struck me about this, is how many of  
15 the prosecutions are relatively modern. In other words,  
16 they've happened within the last 20 or so years, even  
17 though the abuse occurred potentially decades earlier.

18 And that is something I want to comment on later on  
19 in my discussion about why it takes so long for survivors  
10.51 20 to come forward and talk about their abuse.

21 We know that our list is by no means complete. Even  
22 as late as last week, we were told of an Anglican  
23 archdeacon I think from Nelson who had been prosecuted  
24 for sexual offending, we had no idea he had been  
25 prosecuted until last week but I think there is an  
26 assumption that we know, we actually don't. This  
27 information is very difficult to come by and I know when  
28 we did our trials, the Crown actually wouldn't disclose  
29 this information to us. We actually had to get it  
10.51 30 ourselves. So, even though I think, you know, there  
31 should have been an obligation to disclose that to us, it  
32 was shrouded under legal professional privilege. How  
33 it's privileged, I don't know. And, as I say, we were  
34 told by the Court we had to go and find it ourselves, and

1 so we did.

2 Q. Just pausing there. We won't ask you to go through the  
3 whole list but for those who have got the written  
4 statement, Appendix A is at page 50, I think, and it goes  
5 to two and a half pages of those who have convictions to  
6 your knowledge?

7 **MS COOPER:** Yes. As I say, they cover a range of  
8 placements, you know, sort of Epuni and Hokio, a  
9 few from Heretaunga Maori Executive Amanda will  
10.52 10 talk about, a Girls' Home caregiver, family home  
11 caregiver, Salvation Army, Catholic boarding  
12 schools, Ministry of Education's special residence,  
13 teachers. It covers a wide gambit and, as I say, I  
14 suspect there are a lot we don't know who have been  
15 convicted who should be on that list. Hopefully,  
16 the Royal Commission can get that information.

17 I think one of the points of just showing that there  
18 is this kind of growing list of convictions, is to say  
19 that that really only tells one part of a wider story  
10.53 20 because all too often staff members who were found to be  
21 abusing children were permitted to just resign from their  
22 positions without there being any referral to the Police  
23 or worse, were shifted to another institution and were  
24 allowed to abuse children there.

25 We are going to talk about some of those examples in  
26 this evidence because, you know, in some examples those  
27 staff members were actually promoted.

28 So, we give one example, first of all, of a  
29 caregiver, Mr S who was a staff member at Campbell Park  
10.54 30 School. In January 1970, he was suspended because there  
31 were allegations he'd been sexually abusing boys, so  
32 three different boys at Campbell Park School made  
33 allegations between March and August 1969.

34 Records that we have recorded that S had taken boys



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1 to his home on many occasions, sometimes at night when  
2 his wife wasn't at home, a rubber penis had been found  
3 concealed in the ceiling of his home, a train set was  
4 used by him to get the boys to come to his home. He  
5 showed the boys pornography. He paid one of the boys for  
6 a photo of his sister.

7 And as we commonly see, he denied he'd done  
8 anything.

9 He told the then principal, Mr Walsh, that a number  
10.55 10 of years earlier another boy had made allegations against  
11 him but the then principal, Mr Connor, hadn't believed  
12 him. This is a typical case in which the Police decided  
13 not to press charges because they thought the boys  
14 wouldn't do very well under cross-examination. And he  
15 was allowed to resign from Campbell Park.

16 We also had it brought to our attention that in  
17 1979, as part of a Human Rights Commission Inquiry, a  
18 staff member complaint to the Human Rights Commission  
19 that several staff members had been shifted or promoted  
10.55 20 after allegations had been made against them.

21 I just note up there, this is Campbell Park School  
22 Owairaka which was really isolated and run by both  
23 Ministry of Education and Ministry of Social Development.

24 I know that Oliver Sutherland has already talked  
25 about some of these shifting around of staff members.  
26 We're just going to speak to a couple of examples.

27 One example is that documents show a Mr Zygadio had  
28 been shifted from his post as Principal of the Margaret  
29 St Girls' Home in Palmerston North following an  
10.56 30 "indiscretion" with an inmate, with a girl. He was later  
31 promoted to be principal of a boys' home after spending a  
32 number of years in Hokio.

33 In 1978, the principal of Bollard Girls' Home was  
34 hurriedly transferred to Holdsworth School, and this was

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1 another person who had alleged misconduct with a girl and  
2 so he was hurriedly transferred. He was later promoted  
3 to principal of Holdsworth.

4 We're going to give an example of one staff member,  
5 Mr Drake, who was another staff member in our experience  
6 who had many, many allegations made against him. And so,  
7 we've gathered information about his movements over  
8 several years.

9 He began working for Social Welfare in September  
10.57 10 1958, starting at Hokio. He then was promoted and went  
11 to Owairaka for 2 years, back to Hokio and then he went  
12 to Campbell Park.

13 In 1971, he was again promoted and went to  
14 Holdsworth School as an Assistant Principal, and this was  
15 under Mr Powierza who was the Principal. When  
16 Mr Powierza was transferred to Auckland, Mr Drake was  
17 Acting Principal for a few months, so the top of  
18 Holdsworth, until Michael Doolan was appointed as  
19 Principal in late 1975. Mr Drake is a staff member who  
10.58 20 was able to continue in his job until he resigned.

21 During the time he was acting Principal of  
22 Holdsworth, he was investigated because there were  
23 multiple allegations made that he had been sexually  
24 abusing boys. The investigation was done by the  
25 controller of the national institutions, Denis Reilly.

26 If the outcome was documented, it's never been  
27 found. We've certainly never seen it. And the only  
28 reason we really know about it, is because in an  
29 inspection report in March 1975, it was noted that  
10.59 30 Mr Drake "now ... keeps his distance from the boys and  
31 this affects both his work and his job satisfaction".

32 So, the allegations against Mr Drake were again  
33 raised in July 2004 by a client of our firm. Three years  
34 later a team from the Ministry of Social Development and

1 Crown Law interviewed Mr Drake. In the same year, a  
2 Police complaint was laid. At around the same time, the  
3 Ministry of Social Development told the Police that five  
4 other former students of Holdsworth had made allegations  
5 against Mr Drake. The Police Inquiry took about a year  
6 in terms of interviewing other staff members from  
7 Holdsworth, some of whom indicated they had had concerns  
8 about Mr Drake based on what they'd heard from other  
9 children.

11.00 10 The Police only spoke to Mr Drake in April 2009, so  
11 5 years later, by which time he was determined to be too  
12 unwell to make a statement. However, we note rather  
13 cynically, he was well enough to swear an affidavit for  
14 the Ministry of Social Development a few months later.

15 In the course of settling the historic claims, the  
16 Ministry of Social Development has accepted allegations  
17 of sexual abuse by Mr Drake but only at a lower level. I  
18 mean, the allegations against him go right through to  
19 rape but they've only been accepted at a low level. And  
11.01 20 this is in spite of the very strong evidence against  
21 Mr Drake.

22 We then refer to the cook at Hokio, Michael Ansell.  
23 Again, he's an example where complaints were ignored  
24 because, again, there were lots of complaints made by  
25 boys at Hokio that he was sexually abusing boys.

26 Q. Just to pause you there, I think we have a photograph, do  
27 we, of the boys lined up in a semi-Military style in the  
28 1960s?

29 **MS COOPER:** Yes, that's right. I mean, that's something  
11.01 30 that we'll talk to as some of the rigidity around  
31 the boys' homes and some of the punishments,  
32 standing on the line. This would be a good example  
33 of that.

34 Going back to Michael Ansell, one of the things that

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1 came out in discovery, was that if a Police check had  
2 been done before he was hired, it would have shown that  
3 he had convictions for sexual abuse in 1969, prior to  
4 actually working at Hokio.

5 He was eventually convicted of indecently assaulting  
6 boys at Hokio. And, in our view, that abuse could have  
7 been prevented in its entirety.

8 Another staff member at Hokio was disciplined for  
9 assaulting boys and dismissed after he was charged for  
11.02 10 sexually abusing boys. And I think one of the things  
11 that became very clear to us in our work, is that in each  
12 case Police involvement was a last resort, not a first  
13 response. And, in fact, the first response was typically  
14 shift or allow staff members to resign.

15 And these are only some examples of staff being  
16 shifted or complaints not being dealt with properly which  
17 exposed vulnerable children to further abuse.

18 And it also reflects the very long time that Police  
19 would take to investigate historic claims. I think  
11.03 20 certainly back in the 70s, 80s, even 90s, I think it  
21 reflects that they weren't deemed to be important enough  
22 cases.

23 We also want to talk about the more insidious kind  
24 of assaults, sexual assaults, which were often under the  
25 cover of medical examinations. We talk about the doctor  
26 who visited boys at Wesleydale and Owairaka, who was  
27 known by the boys as Dr Cough because he would make the  
28 boys remove their clothes, he'd line them up and see them  
29 individually, he would make them remove their clothes and  
11.04 30 he would touch their genitals. And so, he developed the  
31 name of Dr Cough. These medical examinations were  
32 completely unnecessary but they went on for years and  
33 many of our clients talk about them.

34 We also highlight, and I think Dr Sutherland has

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1 probably already referred to this, the issue of internal  
2 vaginal examinations which were conducted on girls  
3 throughout the country, and in particular at Bollard and  
4 Allendale internal examinations were conducted  
5 purportedly to establish if a girl had a venereal  
6 disease. Girls who refused to be examined were severely  
7 punished, and in fact, I think I vividly remember writing  
8 recently a letter for our client who was held down as a  
9 little girl, held down by a number of staff members, so  
11.05 10 this intrusive vaginal examination could be conducted.

11 So, ACORD made a complaint about this in February  
12 1979.

13 I just note that in recent correspondence that we've  
14 had regarding one of our client's claim, MSD has refused  
15 to accept the allegation that she had an improper vaginal  
16 examination on the grounds that that was the policy of  
17 the day. And I have to say that that is a way in which  
18 liability is frequently avoided on the grounds that that  
19 was consistent with the policy of the day. I think that  
11.06 20 in light of the work that was being done by ACORD back in  
21 the late 1970s, to still argue that does not really have  
22 much credibility.

23 Q. Ms Hill.

24 **MS HILL:** I want to talk about what we've commonly  
25 called a culture of violence at institutions and  
26 placements around the country. And a lot of what I  
27 will say is focused on Social Welfare Institutions  
28 but similar cultures existed, of course, in  
29 faith-based institutions and in psychiatric  
11.06 30 hospitals as well, so the comments are equally  
31 applicable.

32 I have to say, the phrase a culture of violence is  
33 used in MSD's description of some of its own programs and  
34 placements. It's not a phrase that's always been coined

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1 by us, it certainly has appeared in a number documents  
2 about placements and programs used by CYPs.

3 So, there was first a culture of violence and this  
4 was coupled with a prohibition on narking or snitching.  
5 So, the culture, these two things went hand in hand, that  
6 there was violence, you don't talk about the violence,  
7 and if you do talk about the violence you will experience  
8 worse violence.

9 At almost every institution, our clients have  
11.08 10 talked about welcoming or initiation or christening  
11 beatings. A new admission to a residence would be beaten  
12 up by the others, often at the direction of the oldest or  
13 biggest among them. I think for decades that child or  
14 young person has been referred to as the kingpin.

15 These weren't separated from the staff. The staff  
16 encouraged a culture of violence and this kingpin  
17 hierarchy. And they knew that these beatings took place.  
18 Sometimes they would be with staff members present, other  
19 times staff members would walk away.

11.08 20 At Hokio, for instance, the boys always went over to  
21 the sand dunes, no staff members ever went.

22 At Kohitere, sometimes the beatings would be in the  
23 dormitories at night where boys would put hard objects in  
24 a pillowcase and use them as a weapon.

25 At other times, the work boys, the boys out on the  
26 farms, would use their steel capped boots. There were  
27 names for the different levels of boys, depending on what  
28 time you were there, you could be a hard jube or a nark  
29 boy, or there's different levels. You had to work your  
11.09 30 way up because it wasn't just that first beating. You  
31 had to fight to survive. And the kingpin was the one who  
32 was the one out on top and they enforced that kingpin  
33 hierarchy by forcing the violence downhill.

34 Initiation meetings rolled into regular beatings and

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1 regular violence. And sometimes, discipline was kept by  
2 the kingpins at the direction of staff. Kingpins were  
3 privileged, they were given sometimes more food, more  
4 freedom, but their job was to keep the younger ones in  
5 line on behalf of the staff members.

6 And if you disclosed, if you narked, then further  
7 violence would inevitably follow and virtually every  
8 client we have spoken to who has been in these homes can  
9 name the kingpin and can say I don't want to be a nark.  
11.10 10 And that culture is still there now.

11 In kingpin hierarchies, they have existed in one  
12 form or another since the institutions have opened. It  
13 is a form of survival. They are not a thing of history.  
14 So, on the Whakapakari Programme on Great Barrier Island  
15 which closed in 2004, the kingpin hierarchy was  
16 formalised, they were called the Flying Squad. And the  
17 Flying Squad would be the two or three oldest and biggest  
18 boys appointed by the staff and part of their job was to  
19 chase boys who tried to run away and to beat them and  
11.11 20 drag them back to the main camp, throw them on a boat and  
21 take them to a smaller island called Alcatraz.

22 I have a still here from a movie, when the photos  
23 come up. Was it up? I wasn't looking. There we go.  
24 Just going backwards a bit from Whakapakari back to  
25 Kohitere, in 1985 a movie was made at Kohitere, in fact  
26 there were three movies. This one is the most well-known  
27 and it's called kingpin. In 1985, a group called Moro  
28 Productions made this movie using boys that were being  
29 held at Kohitere at the time. That is a still there of a  
11.12 30 guy, he's beating up on a young fella, a newer guy, and  
31 if you watch the movie, you can watch it, a part of it on  
32 the New Zealand on screen website, the bit you can't hear  
33 in the movie is him saying, "Don't be a hard jube, don't  
34 try and be a hard jube", don't try and be above your

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1 station.

2 So, the movie shows a little of what life was like  
3 at Kohitere at that time.

4 I was talking about the Flying Squad and Alcatraz.  
5 And the other part of those Flying Squad boys, the other  
6 part of their job was to go to Alcatraz, which was a  
7 little rock off the main camp Great Barrier Island, in a  
8 shelter, and boys were taken there as punishment. And  
9 the Flying Squad's job was to stay there with the boys  
10 being punished and supervise them but obviously  
11 supervision meant beating them regularly during that  
12 period of time.

13 At certain times at Whakapakari, there was a second  
14 tier of top boys. So, they were the deputies and they  
15 were called Junior Leaders. These are referred to in  
16 people's records, Junior Leaders. I've made the Flying  
17 Squad, it is a really good thing. One of the big driving  
18 factors about the Flying Squad was they got more food.  
19 At Whakapakari there was never enough food for the boys,  
20 so one of the factors driving the Flying Squad was  
21 hunger.

22 So, these are phrases regularly used in reports back  
23 to CYPS. In one set of records, a Whakapakari staff  
24 member described the Junior Leaders as being like tribal  
25 policemen.

26 So, it was commonly understood in the institutions  
27 and programs that if you disclosed abuse you'd be further  
28 punished. That environment has been perpetuated for so  
29 many years that it's still part of our clients' lives now  
30 in prison where narks are still beaten in prison and you  
31 don't talk to the Police or to the authorities. And in  
32 our current residences, our children in care now.

33 In 2017, the Children's Commissioner issued a report  
34 State of Care 2017, and in it they use the phrase



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1 "snitches get stitches", and that's 2017. In a photo  
2 that might pop up or might have already popped up, there  
3 we go, that's a boy standing on the line. That was a  
4 regular punishment, that's at Hokio, I think, at Epuni.  
5 Standing on the line was a regular punishment in the  
6 institutions. I wanted to use that photo to demonstrate  
7 the wide ranging psychological abuse that was present in  
8 institutions.

9 We talk a lot about physical and sexual abuse  
11.15 10 because these are the - they are what people understand  
11 more about what abuse really means. But psychological  
12 abuse and emotional abuse were just as harmful and just  
13 as prevalent.

14 So, children in care were told that they were  
15 useless, that they'd end up in prison, that they would  
16 never amount to anything, that their parents didn't love  
17 them, that nobody wanted them, that they were worthless  
18 and nobody cared what happened to them. And so many of  
19 our clients heard that for so long and they talk about  
11.16 20 how they absorbed that and it became part of their own  
21 self-belief.

22 And standing on the line, punishments like that,  
23 that wouldn't just be for 5 or 10 minutes, that would be  
24 for hours. And that would be in the rain and that would  
25 be while staff members and other boys would continuously  
26 verbally and sometimes physically abuse them. And I  
27 think Arthur Taylor when he gave evidence last week  
28 talked about standing on the line. There's different  
29 variations of things like that around the institutions.  
11.17 30 Standing facing a corner. Holdsworth had a dog box, you  
31 had to sit in the dog box. So, lots of these things  
32 where you were isolated and on show as part of your  
33 punishment.

34 And part of the psychological abuse and part of the

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1 enormous impact of Institute care is solitary  
2 confinement. There's different words for solitary  
3 confinement, seclusion is one that's used in the mental  
4 health context a lot. Solitary confinement or secure  
5 care. And some of the photos that will come up will show  
6 you a secure room at Hokio, for instance. There you go.  
7 And there's nothing in the secure rooms at Hokio, they  
8 were just two little lock up cells.

9 So, this was a significant part of institutional  
10 life at the boys and girls residences. Most remand  
11 centres in all national institutions had Secure Units of  
12 some sort. And so, being placed in secure meant 23 hour  
13 a day lock down. And in a lot of the boys' homes that  
14 one hour out was for extreme physical training. The  
15 photo up there, that's just thrashed up and gone again,  
16 there you go, is a boy inside a cell at Epuni. That  
17 looks quite well furnished, so I don't think it's a  
18 secure unit cell. I think that's your average, every day  
19 room.

11.18 20 So, there's nothing in secure unit cells. The  
21 bedding and the mattresses were taken out during the day  
22 and a boy had nothing but bare concrete, shorts and  
23 t-shirt. As I say, 23 hours on your own, meals in your  
24 cell, no-one to talk to, no school work, no activities.  
25 And punctuated by this really harsh physical training,  
26 carrying things while duck walking, really heavy things  
27 for often really little kids, duck walking, push ups, sit  
28 ups, running, all while being verbally abused and  
29 physically abused by staff.

11.19 30 After 1989, the standard in time for secure care was  
31 about 3 days and then you have to go through a particular  
32 process. But before 1989, there weren't really any rules  
33 about the use of secure. And so, lots of children were  
34 put in secure as a matter of course. It doesn't matter

1 why they were being put in an institution, they did 3  
2 days in secure, just to sort of introduce you to the  
3 environment. And that was later found to be a breach of  
4 policy, that they couldn't do that but they kept doing  
5 that for years.

6 And other children were left in secure care for  
7 extraordinary amounts of time. One of our clients spent  
8 a total of 99 days in one stretch in the secure unit at  
9 Owairaka.

11.20 10 In 1986, regulations came into force, the Children  
11 Young Persons (Residential Care) Regulations 1986. The  
12 intention behind those regulations was to provide a bit  
13 more structure about the use of secure. So, those  
14 regulations required things like daily reviews of a  
15 resident's placement in secure. That education or  
16 recreation had to be provided. That they shouldn't be  
17 regularly confined to their rooms and so on. In our  
18 experience, those regulations were routinely ignored.

19 Importantly, if a child was placed in an institution  
11.21 20 under a voluntary agreement, right back at the beginning  
21 I explained children had been put in care voluntarily,  
22 those children could not be put in a secure unit.  
23 Unfortunately, that wasn't clear for a number of years  
24 and children in voluntary care were held in secure and  
25 there was no lawful basis for that.

26 And that was only clarified when a document was sent  
27 out and circulated to institutions in February 1987 and  
28 that confirmed there was no legal basis to detain  
29 children in secure when they were there under voluntary  
11.22 30 agreements but time and time again we have seen that  
31 happen after 1987. Despite the circular, children went  
32 into secure because I think once they got there, no-one  
33 looked at what their legal status was, they were just  
34 another kid in the institution.

1 And that same document confirmed that children who  
2 were admitted temporarily or informally or under a  
3 warrant or under the Criminal Justice Act, they couldn't  
4 be kept in secure either but the same problems arose.

5 I want to draw the Commission's attention to a  
6 report called Thinking Outside the Box: A Review of  
7 Seclusion and Restraint Practices in New Zealand. That  
8 was done by Dr Sharon Shalev in 2017. It dealt with the  
9 use of solitary confinement and secure in not injuries  
10 CYPs residences but mental health institutions and  
11 anywhere elsewhere people could be detained. One of the  
12 things it emphasises, is the extraordinarily adverse  
13 impact that solitary confinement has on any person's  
14 mental health but on a child or a vulnerable person,  
15 someone with mental illness, for example, solitary  
16 confinement is devastating. So, I really commend that  
17 report to you.

11.23

18 There was a photo up that showed an obstacle course  
19 at Hokio. It may have already thrashed up. There it is.  
20 We have included that one, it is a rather wholesome  
21 looking photo but the reality was that the physical  
22 training, the punishment physical training, was extremely  
23 harsh at all of the institutions that we looked at.

11.24

24 Q. Just for the record, it shows a log across a stream?

25 **MS HILL:** Yes, boys clambering across a log and there  
26 will be staff members somewhere there making sure  
27 that the boys go as hard and fast as they can.

28 I want to turn to the issue of practice failures,  
29 and that is a phrase that we use a lot in our work and  
30 it's shorthand, I guess, for social work practice  
31 failures.

11.24

32 So, of course, social workers and state agencies,  
33 and social workers who work for faith-based institutions  
34 as well, they were governed all the time by practices,

1 policies, manuals, guidelines. No matter how far back we  
2 go, there was always rules and policies.

3 Q. This is something that Judge Henwood talked about on  
4 Tuesday last week?

5 **MS HILL:** Absolutely, yes.

6 Q. I recall her saying there were some very good policies  
7 but they weren't always followed?

8 **MS HILL:** Yes.

9 Q. I think she took the Commissioners through the set of  
10 practice failures identified in CLAS.

11 **MS HILL:** Yes.

12 Q. It might not be necessary for you to go through all of  
13 them in 82.

14 **MS HILL:** That's fine, I'm happy to skip over those.

15 What I wanted to emphasise is understanding  
16 practice failures is vital. And to do that, you  
17 have to be able to understand not only the policies  
18 in place but the records of an individual survivor,  
19 and be able to match that with their experiences.  
20 Part of the work that we do, is helping our clients  
21 understand what practice failures are and  
22 understand what their records show about what their  
23 social workers were doing. So, it's a much more  
24 intricate thing to be dealing with than physical or  
25 sexual abuse but it is so important because if a  
26 job is not done right or in accordance with a  
27 policy, then inevitably further harm follows.

28 Up on the screen there is actually another still  
29 from the movie Kingpin, it has a boy being restrained by  
30 a staff member after he's put his hand through a window.  
31 That is to, sort of, sometimes boys did not act in their  
32 own interests and harming themselves was one way to get  
33 out of bad situations.

34 Sonja mentioned earlier about the sort of fall back

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1 phrase the Ministry of Social Development has used  
2 previously about this was the practice of the day. I  
3 strongly encourage people to not feel like that's okay.  
4 That even the practice and policy of the day doesn't make  
5 something right and it doesn't make something lawful.  
6 So, we need to be very careful about allowing ourselves  
7 to be lulled by that.

8 I want to talk more about third party caregivers and  
9 programs. I touched a little on this earlier and I  
11.27 10 talked earlier about the section 396 approval scheme. We  
11 have already identified that the approval scheme was  
12 faulty and I think still is faulty in some ways.

13 **CHAIR:** It may be suitable, Mr Mount, just as this new  
14 passage begins, for us to take, albeit slightly  
15 early, the morning adjournment.

16 **MR MOUNT:** Certainly, Sir, thank you.  
17

18 **Hearing adjourned from 11.28 p.m. until 11.45 a.m.**  
19

20 **MR MOUNT:**

21 Q. Ms Hill, we were at third party caregivers.

22 **MS HILL:** Yes. I would like to summarise some of the  
23 experiences we have heard about in these programs.  
24 We also need to acknowledge that some of the  
25 organisations that we're talking about still exist  
26 today and we need to acknowledge that some of them  
27 do extraordinary work and invaluable work and we  
28 acknowledge START Taranaki and Challenge 2000, and  
29 organisations like that, who provide care and  
11.47 30 support to Tamariki in a really meaningful way.

31 Throughout the 1990s and the 2000s, the number of  
32 programs and organisations providing care, they expanded  
33 greatly, and some of them were very small, some were  
34 nationwide, and there were so many different ones. One

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1 of the photos we have for you shows the New Zealand  
2 Legionnaires Academy which ran out of South Auckland  
3 which ran along Army sort of lines. There were some  
4 fairly brutal account out of that organisation.

5 Q. These are people in Military style clothing with flags  
6 and so on?

7 **MS HILL:** Military style, yes, ran along a Military  
8 academy type of line. The next photo, that's  
9 Alcatraz, that is the small island that boys who  
10 played up at Whakapakari were placed on. There's  
11 no shelter, there's no fresh water, there's no food  
12 except what they could get out of the ocean, and  
13 boys would be placed on Alcatraz, its proper name  
14 is Whangara Island but all the boys called it  
15 Alcatraz and they would be placed there for weeks.

16 Programs that I highlighted earlier, Whakapakari,  
17 were run on Great Barrier Island. That started out in  
18 1986 and there's a litany of complaints, all documented  
19 between 1989 and when CYPS stopped using the programme in  
11.48 20 1994. These ranged from serious sexual assaults where  
21 one young woman became pregnant to a supervisor who was  
22 charged with unlawful sexual connection, rat infested  
23 huts, poor hygiene, ongoing physical assaults by  
24 supervisors. And at the end, the allegations became too  
25 much after years of CYPS saying don't place children  
26 there unless there's significant change, they had  
27 continued placing children there. The critical mass  
28 became too much and CYPS went in and took all the boys  
29 off the island in one fell swoop. But what it also meant  
11.49 30 is that a number of allegations of serious sexual abuse  
31 just faded away, they were never investigated because the  
32 programme was shut.

33 Moerangi Treks run in the really isolated parts of  
34 Ruatoki and the Ureweras, from memory, really hard bush

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1 programs. What we heard out of that were boys being  
2 chained up, urinated on, made to stand in the river for  
3 hours while things were thrown at them, dragged behind  
4 horses, and, yeah, being shot at with firearms, beaten  
5 with rifles. Moerangi, again several investigations,  
6 boys continued to be placed there. Eventually, the  
7 programme, their approval was suspended and one of their  
8 key staff members who had serious allegations against him  
9 was allowed to start a programme down the road on the  
11.50 10 same property called Eastland Youth Rescue Trust. So, a  
11 man who's under investigation is able to start up again,  
12 take on more boys and almost immediately the allegations  
13 started again. Eastland Youth Rescue Trust culminated in  
14 one boy being hospitalised, his injuries were so severe,  
15 and that programme lasted less than a year. It should  
16 never have been opened at all.

17 The last programme I mention is the Heretaunga Maori  
18 Executive, much more recent. So, the first complaints  
19 about Heretaunga Maori Executive came up in 2004. When I  
11.51 20 was talking earlier about the two streams, the approvals  
21 on paper and the frontline complaints, this is where the  
22 disconnect really shows. Because they had their  
23 paperwork in order, they were approved most years. Even  
24 in the years where they were told they had homework to  
25 do, they were still allowed to keep children there.

26 Three different caregivers were convicted of  
27 physical assaults from Heretaunga Maori Executive. And  
28 it was only when the last person was convicted, Peter  
29 Kursell, only when he was convicted and the manager of  
11.52 30 the programme said, no, those boys are lying, that CYPs  
31 stopped placing children there. That is what it took. I  
32 will pass you over to Sonja to talk about the Ministry of  
33 Education.

34 Q. Just for the transcript, the written statement which will



1 be available to everybody has as Appendix B from page 53  
2 more detail about these recent complaints?

3 **MS COOPER:** Yes, it does. Ministry of Education  
4 residential special schools sadly are a growing  
5 area of work for us. Most of our work arises out  
6 of two residential schools, Waimokoia School and  
7 McKenzie, both of which are now closed. I just  
8 want to talk about Waimokoia School which has had  
9 different names. So, it started its life as  
11.53 10 Mt Wellington residential school, then it moved to  
11 Bucklands Beach and it was known briefly as  
12 Bucklands Beach Residential School before it was  
13 renamed as Waimokoia School.

14 The residential schools in the 1980s through to  
15 2000s, they were not for children of intellectual  
16 disability which Campbell Park was, these were for  
17 children who had adjusted or emotional disturbance of  
18 some sort.

19 Just by way of example, Waimokoia School, we have  
11.53 20 children from the 1970s through to the 2000s. They have  
21 complained about physical and sexual abuse by staff,  
22 sexual and physical abuse between children. We are  
23 talking about children who were between the ages of 7 and  
24 13, so we're talking about little children. And often  
25 the sexual and physical abuse between residents, and I  
26 have to say that's kind of a residential school problem,  
27 went undetected or was ignored by staff, multiple  
28 complaints about excessive use of physical restraints by  
29 staff, children complaining, and we're talking about  
11.54 30 7-13 year olds, being locked for long times in the Time  
31 Out rooms. And at Waimokoia School the clients describe  
32 this as a concrete box which smelled of urine. At  
33 Waimokoia School they were also confined in a small box  
34 under the dormitory and there were just other excessive

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1 and cruel punishments that the children were subjected  
2 to.

3 Waimokoia School is an example of numerous  
4 complaints by the Education Review Office, so starting in  
5 2005 and I think the ERO complaints continued through to  
6 2008 until it was eventually closed down by the Ministry  
7 of Education in January 2010. Between 2008 and 2010,  
8 three former Waimokoia School staff members were  
9 prosecuted but were later acquitted of several charges of  
11.55 10 physical abuse against children in about 2007.

11 Then in 2009, a former staff member was brought to  
12 trial in relation to multiple charges of sexual abuse  
13 against several children at Waimokoia School between 1984  
14 and 1988. That trial had to be aborted because the staff  
15 member's health was failing and he died in August 2009  
16 before there was a retrial.

17 And then in 2010, we have another staff member,  
18 Graham McCardle, who also taught at a state school and he  
19 was convicted of multiple charges of sexual and physical  
11.56 20 abuse of children at Waimokoia School in the 1980s.

21 That's an example of a special residential school  
22 and, as I say, we have many claims against Waimokoia  
23 School, we also deal with the health and support for the  
24 deaf and we dealt with more recently Westbridge. Those  
25 claims are continuing.

26 In terms of the faith-based institutions, I think we  
27 just wanted to highlight some of the more major  
28 allegations. For example, with the Catholic Church we  
29 wanted to highlight Marylands School which was run by the  
11.56 30 St John of God Brothers and that was in Christchurch.  
31 That's a situation where allegations came to light, a  
32 raft of convictions followed, Brother Bernard McGrath was  
33 convicted of 21 charges in 2012, he was extradited back  
34 to Australia. And then another Brother Maloney was found

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1 guilty of 7 charges in 2008 after being extradited here  
2 from Australia. Another Brother was given a stay of  
3 proceedings because he was too unwell to stand trial.

4 I wanted to note Brother McGrath because after he  
5 spent time at Marylands, he worked with street kids in  
6 Christchurch in conjunction with an organisation called  
7 the Hebron Trust, and in that context he abused a large  
8 number of street kids, I think probably all boys that we  
9 know of and some of his convictions relate to this time  
11.58 10 period and I have to say that group is still very slowly  
11 coming forward. They have been incredibly damaged by  
12 their abuse by this Brother.

13 In terms of Catholic institutions, we heard about  
14 severe physical abuse that's carried out by priests and  
15 nuns, as well as sexual abuse by priests and nuns. I  
16 think for a lot of our clients, the abuse is really about  
17 psychological abuse, tied to their beds, having their  
18 hair shaved off, being deprived of food or being made to  
19 dress in the same uniform, and it was a uniform, being  
11.58 20 deprived of school, you know, a bit like the whole  
21 Catholic laundries, some of the girls for example were  
22 made to do ironing and do slave labour essentially for  
23 hours on end and were deprived of an education.

24 We note here that there were expectant mothers,  
25 teenage parents in particular, so they were in Catholic  
26 or Anglican institutions. Again, we are aware that they  
27 were subjected to quite cruel treatment. They had their  
28 babies taken away from them. Off then they felt forced  
29 or were forced to sign papers giving up their children  
11.59 30 for adoption even though they didn't want to adopt them.  
31 That is something I hope that story will be heard by the  
32 Royal Commission.

33 Where children were brave enough to disclose the  
34 abuse, they were often shamed or punished. We know of

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1 some clients who were told particularly, it is a big  
2 thing for a Catholic to be told you are going to hell.

3 I think one of the things we noticed that often  
4 blurred lines between the State and the church, for  
5 example at Hokio, and I don't think it was just Hokio,  
6 possibly Kohitere and Epuni actually, a Catholic priest  
7 was allowed to have access to the boys. He was allowed  
8 to take them out of Hokio on picnics and other  
9 activities. And there were many clients who were  
12.00 10 sexually abused by this Catholic priest on these  
11 activities.

12 One of our clients disclosed this to his local  
13 priest in Wellington and that priest was incredulous. He  
14 said that the best thing that the client could do was to  
15 confess, make his peace with the church and that he was  
16 damned and not fit to be a Catholic. That still  
17 resonates with that client to this day and he is in his  
18 60s, particularly because the priest went on to make  
19 similar comments to the boy's family.

12.01 20 So now I want to talk about how this work started  
21 for us. I started my life in New Zealand's big law  
22 firms, had a small stint at a small law firm before  
23 deciding to setup on my own in March 1995. It's fair to  
24 say at that stage these claims were almost unheard of and  
25 that's because we use the term "historic", that's because  
26 often the claims related to events decades before and  
27 there was a general view held by lawyers and Judges that  
28 you couldn't bring them, they were stale claims and you  
29 couldn't do anything about them.

12.01 30 And of course in New Zealand we had other legal  
31 barriers that we will talk briefly about as well.

32 In August 1995, I had the privilege of being  
33 appointed as a District Inspector of Mental Health in the  
34 Wellington region. Through that work, I started to come

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1 into contact with adults who have been locked up in  
2 psychiatric hospitals for many years who had been abused  
3 in psychiatric care, having started their life in  
4 psychiatric care as teenagers and who were also State  
5 wards. So, they had come into psychiatric hospital under  
6 the care of the State.

7 Other clients came to me from various sources, one  
8 was a colleague who became a Judge, she referred clients  
9 to me. Another one was apparently referred to me by his  
12.02 10 hairdresser, I don't know why. But anyway, people came  
11 to me from various sources and they were people who had  
12 suffered abuse in Social Welfare care. So, they were  
13 people who had suffered abuse in foster care or at that  
14 stage, that early stage, I think there was not much in  
15 terms of residences or they'd been taken into adoptive  
16 families where they'd suffered abuse.

17 This was a very new area of law, as I've said, so I  
18 kind of thought, well, what do I do? I have to say, I've  
19 always been somebody who thinks where there's a wrong it  
12.03 20 should be able to be remedied through the law. I was to  
21 find that's not necessarily the case. But anyway, in  
22 those early days I was gung-ho and wanting to change the  
23 world, so I found that I had to start taking claims  
24 because the State wasn't prepared to engage with them on  
25 an out of Court process.

26 So, my early years were spent in the High Court and  
27 also the Court of Appeal, just trying to get the law to  
28 establish that adults who had suffered abuse as children  
29 could actually bring legal claims. And that work, I have  
12.04 30 to say, in those early days was eventually successful.

31 I just note there that part of this was also around  
32 the developing psychiatric understanding that abuse  
33 caused the same kinds of impacts as war veterans had  
34 suffered. So, this also kind of dovetailed with