ABUSE IN CARE ROYAL COMMISSION OF INQUIRY
STATE INSTITUTIONAL RESPONSE HEARING

Under	The Inquiries Act 2013
In the matter of	The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions
Royal Commission:	Judge Coral Shaw (Chair) Dr Anaru Erueti Ali'imuamua Sandra Alofivae Paul Gibson Julia Steenson
Counsel:	Mr Simon Mount QC, Ms Kerryn Beaton QC, Dr Allan Cooke, Ms Katherine Anderson, Ms Anne Toohey, Ms Tania Sharkey, Mr Michael Thomas, Ms Ruth Thomas, Ms Kathy Basire, Mr Winston McCarthy, Ms Julia Spelman, Ms Alice McCarthy and Ms Natalie Coates for the Royal Commission Ms Rachael Schmidt-McCleave, Mr Max Clarke-Parker, Ms Julia White for the Crown Ms Victoria Heine QC for the Office of the Children's Commissioner Ms Sally McKechnie for Te Rōpū Tautoko, the Catholic Bishops and congregational leaders Mr David Stone for the New Zealand State Abuse Survivors Charitable Trust
Venue:	Level 2 Abuse in Care Royal Commission of Inquiry 414 Khyber Pass Road AUCKLAND
Date:	23 August 2022

TRANSCRIPT OF PROCEEDINGS

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[9.02 am]

CHAIR: Ata mārie ki a koutou katoa, nau mai hoki mai, welcome everybody to today's hearing, welcome back to our witnesses. We've got some different faces in the room, which is good to see, and I think Ms Boyles is here. As Ms Boyles will -- is it proposed that she will be subbed in and out?

MS SCHMIDT-McCLEAVE: That's right, Madam Chair.

CHAIR: Okay, so perhaps she's the only new person in the room.

MS SCHMIDT-McCLEAVE: She is.

CHAIR: I don't know, Ms Boyles, whether you were around when I gave the affirmation yesterday? Did you say "yes" over the line?

MS BOYLES: I was online via Zoom and I did say "yes".

CHAIR: Excellent. I will accept that you have accepted the affirmation.

MS BOYLES: I'm just as wired as the rest of you.

CHAIR: That's fine. Thank you for that, that clarifies that matter. And now I'll leave the matters to Dr Cooke. Good morning, Dr Cooke.

DR COOKE: Good morning. Good morning, Commissioners. Good morning, everyone. For those of you who are watching today, I am going to identify myself. Essentially the same physical outline as yesterday, which is that I'm one of the more -- older people in the room, I have white hair, I'm wearing glasses, I have a blue suit on, a white shirt with a green bluey tie.

CHAIR: And I omitted to do the same and to give the opportunity to the Commissioners to do the same so apologies to everybody, let's start again on that. Just for those who cannot see, I'm Coral Shaw, the Chair of the Commission. I am elderly, I have chin-length white hair, I'm wearing glasses and a navy jacket and a grey top. I'll just ask my fellow Commissioners to introduce themselves the same way. Paul?

COMMISSIONER GIBSON: Kia ora, Paul Gibson, I'm a middle-aged Pākehā man, greying, wearing a dark suit. I am blind with some peripheral vision and I sit here listening to a computer through one ear, one headphone ear. Kia ora.

CHAIR: Ali'imuamua Sandra Alofivae?

COMMISSIONER ALOFIVAE: Talofa lava, everybody. Thank you, Judge Shaw, for saying my name. I am a middle-aged Pacific woman of Samoan Chinese descent, I have shoulder-length black hair which is curly, and some days curlier than others, and I wear glasses. Today I have a red and white dress on, very, very big red flowers and a black jacket.

CHAIR: Dr Andrew Erueti.

COMMISSIONER ERUETI: Tēnā koutou katoa, e mihi ana ki ngā purapura ora e mātakitaki mai ana me ngā kaiwhakautu, tēnā koutou. I'm Anaru Erueti, wearing a -- greying hair, middle-aged, striped tie, blue suit, white shirt, and occasionally a mask on my face.

CHAIR: Kia ora and Julia Steenson.

COMMISSIONER STEENSON: Ata māric tātou ko Julia Steenson tōku ingoa. My name is Julia Steenson, I'm one of the Commissioners and I am wearing a black jacket, a white top, my hair is pulled back in a ponytail today and I have bright orange earrings on of Māori design. Kia ora tātou.

CHAIR: Kia ora, now we can properly get underway. Thank you.

DR COOKE: I think we should also invite our witnesses to identify themselves.

CHAIR: Absolutely, yes.

MR TE KANI: Mōrena tātou, Chappie Te Kani tōku ingoa, ko ahau Te Tumu Whakarae o Oranga Tamariki. My name is Chappie, I'm the Chief Executive of Oranga Tamariki. I have short black hair, I have a beard, I'm wearing a black suit with a white shirt and a crimson tie, mōrena.

CHAIR: Mōrena.

MS ATTRILL: Mōrena koutou ko Paula Attrill tōku ingoa. Today I've got on a white shirt, I still have the greying short hair and I wear glasses.

MS DICKSON: Mōrena koutou katoa, ko Nicolette Dickson tōku ingoa. I'm the Deputy Chief Executive quality practice and experiences. I'm a Pākehā 40 something year old woman with shoulder length blonde hair. Today I'm wearing a black jacket with a grey and black top.

CHAIR: We have two witnesses or three in the back, haven't we. Have you got access to a microphone there?

MS SCHMIDTMcCLEAVE: Yes, I was going to suggest Ms Boyles introduce herself, then perhaps if I quickly introduce myself too. Ko Rachael Schmidt McCleave tōku ingoa, ko rōia mō te Karauna. Mōrena anō, ngā Kaikōmihana, I am a middleaged Pākehā woman with brown hair and brown eyes and today I'm wearing a bluegrey shirt and a black jacket and a coral and red necklace, kia ora.

CHAIR: Ms Boyles.

MS BOYLES: Tēnā koutou, my name is Claudia Boyles, I'm the Chief Advisor of disability for Oranga Tamariki. I'm a Pākehā woman, 57 years old. I have brown hair that's being very quickly overtaken by grey hair, it's curly, and I'm sporting a TiLite manual wheelchair.

CHAIR: Kia ora.

MR WHITCOMBE: Mōrena koutou, ko Peter Whitcombe tāku ingoa. My name is Peter and I'm the Tumu Tauwhiro, Chief Social Worker for Oranga Tamariki. I'm a tall Pākehā male, I'm in my early 40s, I'm wearing a grey suit today with a blue and green shirt on. Kia ora.

CHAIR: Kia ora.

MS AIOLUPOTEA-AIONO: Kia ora tātou, talofa lava. My name is Aiolupotea Sina Aiono, I am a middle-aged Samoan woman with brown eyes and black hair tied up in a respectful faapatu (bun). I'm the Chief Advisor Pacific, kia ora.

CHAIR: Kia ora. Anybody else? Matua Hauraki.

KAUMATUA HAURAKI: Tēnā koutou, Doug Hauraki, Tumu Tikanga for Oranga Tamariki. I have less hair than I had yesterday, it's grey, what is there. I'm wearing a grey suit, a black checkered shirt and a black and white striped tie.

CHAIR: Tēnā koe matua. Now we are all ready to go -- one more, sorry, Ms Chase. Sorry, you got lost in the thing.

MS CHASE: Mōrena koutou katoa, ko Frana Chase tōku ingoa. Kia ora, I'm Frana Chase and I'm the Director of Transformation of Oranga Tamariki for Te Oranga o te Whānau. And today I have all black on and I have brown, blackish hair pulled back in a ponytail and blue eyes. Kia ora rā.

CHAIR: Kia ora, kia ora koe. This time.

QUESTIONING BY DR COOKE: Oranga Tamariki and its predecessors as an institution, in order to operate and carry out its work, does so by administrative policies, doesn't it?

MR TE KANI: Yes.

DR COOKE: And those administrative policies are there to guide and direct good practice?

MR TE KANI: Yes, they are.

DR COOKE: And the current website is an extensive document that details policies that would be followed by social workers when they carry out their work, both in care and protection, residences, adoption, across the spectrum of the work that is undertaken by Oranga Tamariki?

MR TE KANI: That is correct, yes.

DR COOKE: And these policies, let's call them "manuals" just for want of a generic word, are currently online but for many years of course were paper-based, weren't they?

MR TE KANI: For many years they were, yes.

DR COOKE: And those manuals had gone by a number of names and we've had, for example, there's the field officer's manual, wasn't there, if we go back many years?

MS DICKSON: Yes.

DR COOKE: And they covered everything that a social worker or a Child Welfare officer would need to do in the course of his or her work?

MS DICKSON: Largely, yes.

DR COOKE: Yes, and they were pretty much a bible for Child Welfare officers, social workers, etc, in carrying out their duties, weren't they?

MS DICKSON: They certainly set the expectations and how you'd carry out your role, yes.

DR COOKE: So using a sort of a phrase like they were the bible for what you do and what you didn't do would be an acceptable phrase?

MS DICKSON: I think so, yes.

DR COOKE: And generally the idea was that those documents which were in place throughout the period of scope would have provided the framework, the template for good social work practice?

MS DICKSON: Yes, in addition to core social work skills and knowledge that the social workers bring into the role but, yes, in terms of in the context of the practice in the organisation.

DR COOKE: If we go back to the manuals that were in place back in the 50s, 60s and into the 70s, 80s perhaps, they presumably would have been written mainly in Wellington at the Head Office of the organisation, one imagines?

MS DICKSON: Yes.

DR COOKE: And they would have been written by social workers within the Head Office who I imagine were primarily Pākehā New Zealanders?

MS DICKSON: Historically. Not the case now, but historically.

DR COOKE: Just looking at the historical perspective for the assistance of the Commissioners --

MS DICKSON: Yes.

DR COOKE: So because of that, it would be fair to say, wouldn't it, that the cultural dynamic that you now have would not have been in place and reflected in those manuals?

MS DICKSON: That would be accurate.

DR COOKE: Yesterday, we spent some time exploring themes of the failure to provide safe care and the obligations around providing safe care. Can we bring up MSD 001761-002.

CHAIR: I'll say this only once, it applies every day, and that is that for those watching on livestream and those in the room, the documents that are being brought up will not be visible to you, unfortunately, and that's for reasons of privacy of names and other matters, but counsel will tell us what the document is and read out the relevant portion that he's referring to so that you know what's going on as well.

DR COOKE: What's going to come up is an extract from the policy manual applicable. Its context is the 1925 Act, and we're going to be looking at three paragraphs, J1, J2 and J3 on the same page. On J1, you'll see that it says:

"An order committing a child to the care of the Superintendent makes the Superintendent the legal guardian of the child 'to the exclusion of all other persons' so that the parents lose their legal rights over the child. No court order can of itself affect the emotional and other bonds between the child and his family and most of our wards eventually return to their families or at least hope to. Apart from the few instances in which a family is known to have an actively harmful influence on the child, family ties should be encouraged and parents should be consulted (or at least informed) about actions concerning their children."

That's a fairly fundamental statement of principle, isn't it, in terms of both what the legal obligations are and of the expectations that the policy has of making sure, to the extent possible, that children remain connected with their families?

MS DICKSON: Yes.

DR COOKE: Yes, and you would accept that the evidence that's been presented to this Commission over the -- many of the survivor evidence is that those aspirations were not met?

MS DICKSON: I would accept that, yes.

DR COOKE: If you look at J2:

"The responsibilities of guardianship imposed by a committal order are heavy and require the Superintendent, through officers in the field, to see that the child enjoys an environment which is more suited to his needs than the home from which he was removed. As these responsibilities affect every aspect of the child's life, his supervising officer must know a great deal about him and his family."

So that again reflects the tremendous responsibility the State assumed when it removed the child and took that child into its care?

MS DICKSON: It certainly does, yes.

DR COOKE: And that's a continuum, isn't it, as we discussed yesterday?

MR TE KANI: Yes.

DR COOKE: And the statement that the child enjoys an environment which is more suited to his needs than the home from which he was removed reflects that notion that we spoke of about, if a child comes from a home life that is deleterious, the idea is that the State is going to provide a safer, better environment for that child?

MS DICKSON: That should be the expectation, yes.

DR COOKE: Again, you would not disagree when I say that the evidence we've heard and which you've acknowledge tells us that on many occasions that did not occur?

MS DICKSON: I would agree with that statement.

DR COOKE: In J3, it says:

"In discharging these responsibilities, the principle governing our actions is that we try to do what we think a wise parent would do in like circumstances."

Which is -- and I'll intervene here, but that's essentially the same point, isn't it, that the State here, when it's carrying out its duties, is doing so in the position of the wise parent, and the wise parent -- you would agree that the wise parent is one who takes actions that would ensure a child is safe in every respect?

MS DICKSON: Yes.

DR COOKE: You would agree with that?

MS DICKSON: Yes.

DR COOKE: Because we're not talking about the actions of an unwise parent, are we?

MS DICKSON: Correct.

DR COOKE: And it goes on:

"Just as a parent must sometimes withhold privilege, so must we. While we are frequently guided by a child's wishes, we cannot and should not always give effect to them."

Again, I assume in today's social work world that children are heard but they're not necessarily decision-makers, is that the --

MS DICKSON: The expectations are much clearer now about the extent to which children should participate in decisions and the obligation to let them know if you cannot realise their wish and why. But, essentially, it is as it was at the time.

DR COOKE: So again we have a continuum of social work policy and of strategy and of practices that should be followed?

MS DICKSON: Yes.

DR COOKE: When we looked at some of the survivor experience yesterday and also some of the questions, we did so in terms of themes of poor vetting, unapproved caregivers, disconnection from whānau, etc. There are some themes that I'm going to continue on that, but I'm going to start just by getting into slightly more detail around the notion of attachment for children in care and we briefly discussed this yesterday and I think you've made some acknowledgements about the importance of attachment, yes?

MS DICKSON: Yes.

DR COOKE: And you've also spoken about the significance of attachment for children where there is disconnection and severance occurs between a child and his or her whānau. You agree with that?

MS DICKSON: Yes.

DR COOKE: Can we bring up -- and just in terms of preparation for today, are you familiar with the expert report of Dr Calvert?

MS DICKSON: I have reviewed most of that, I also have read Dr Cargo's report on attachment.

DR COOKE: I'm going to refer to Dr Cargo's report in particular but that again should be seen in the context as well as what Dr Calvert has written. So if we could bring up MSC0007998, this is the report of Dr Tania Cargo. If we just scroll down that first page, you'll see that it's "The impact on attachment when mokopuna are removed from whānau, hapū, iwi and placed in foster care" and I'd like to go to page 11, please. And just scroll down so we get that final paragraph, "The primary role".

Here, Dr Cargo on this page, and as we'll see, is talking around -- about children, the role of children in Māori families and Māori culture. And you'll see there in the middle of the page, if you can just bring that up, please, "The primary role of whānau". Then again, this will be something that you're familiar with, isn't it?

CHAIR: Just read it out, please.

DR COOKE: "The primary role of whānau is the transmission of culture, knowledge, values and skills to the mokopuna so they grow up with connection."

MS DICKSON: Yes.

DR COOKE: There's agreement behind the premise of that statement, isn't there?

MS DICKSON: Absolutely.

DR COOKE: If we could go over to the next page and the reference to the last paragraph. Here, she's citing from Mason Durie (a kaumatua and leader in mental health) who tells us that while attachment between a child and mother is important, he also says that attachment to whenua is the first step into the development of a secure identity:

"The marae provides the only tangible link with earthly identity. Marae is the place to stand. This is where Māori return to. This is where their Māori identity begins. Every time you return to the marae your identity is strengthened."

And again, that's agreed too, isn't it, as being --

MS DICKSON: It absolutely is. I just want to acknowledge I'm speaking as a Pākehā New Zealander, but this is absolutely -- I absolutely agree with this and it's a very helpful articulation.

DR COOKE: But you're also here speaking, not only as a Pākehā New Zealander, but as your role within Oranga Tamariki which extends across the cohort of children who are in care --

MS DICKSON: Of course.

DR COOKE: -- and includes Māori, Pasifika, everyone, doesn't it?

MR TE KANI: Absolutely, I'm just wanting to be clear that I'm not claiming expertise in Te Ao Māori or --

DR COOKE: Well, if it would be more appropriate that your Chief Executive responds to these questions --

MS DICKSON: I'm comfortable responding to them, I just wanted to provide that context in answering.

DR COOKE: And can we now go on to the next page and it will be the portion that is at the bottom of the page and that runs over to the next. Dr Cargo here is exploring this notion between Māori and western views of attachment, and you'll be familiar with that. She says:

"Perhaps the first difference between Māori and western understandings of attachment is that the mokopuna belongs to a collective whānau unit. They grow up with multiple attachment relationships. There are also relationships with whaea and mātua. There are relationships with tuakana and teina. There are relationships with taua. The next important difference is that mokopuna have important attachment relationships with whenua.

In western views of attachment, only person to person relationships are considered, but for Māori, these relationships are element that mokopuna seek closeness to for comfort and protection from. These relationships are important and are strengthened through repeated visits to these important places."

And she says:

"Finally, attachment within Te Ao Māori is centred around wairuatanga, the spiritual connection. Every part of Te Ao Māori is connected to the spiritual world. Karakia begins and ends many daily activities. Reference is made to ancestral stories. These repeated experiences reinforce culturally important values, beliefs and knowledge. The use of te reo Māori supports the development of a strong cultural identity because it is through the language that culture is maintained. Attachment for mokopuna is all about

interconnectedness to whenua, whānau, wairua and te reo Māori. These attachments occur in the past, present and future.

Western ideas of attachment theory and research are likely to have inflicted harm, especially for cultures who have always had collective and communal parenting values."

So, again, it's the same question that I've posed to you, that around the acceptance of those statements that Dr Cargo is telling us underpin the Māori world.

MS DICKSON: Absolutely, I think it's a very clear and helpful articulation.

DR COOKE: And again, it comes back to that notion, I will give you a quote in a minute, but it comes back to that survivor experience that for many of those survivors, they lost those absolutely fundamental aspects to their well-being to themselves, didn't they?

MS DICKSON: Most certainly they did.

DR COOKE: And you would agree that -- do you want to tell us about the consequences for those survivors, or those who experienced that, what the impact that you are aware of has resulted in?

MS DICKSON: So I think it's multi-faceted, I think we heard some of that yesterday, loss of language, loss of identity, a sense of not knowing who they are, the experience that was shared yesterday about a belief of belonging to a cultural identity that wasn't their own isn't a singular experience, I've heard that experience from young people themselves, ruptured family relationships, no place to stand, distress and shame that comes from not being able to impart that identity and knowledge into your own children, as some first comments.

DR COOKE: And you would agree that one of the consequences as well, and a common consequence, would have been the pathway that these tamariki and rangatahi took, which was a journey from care into the criminal justice system, from a foster home into a residence into the adult criminal justice system?

MS DICKSON: I think the evidence is clear that's been a pathway for many.

MS ATTRILL: Dr Cooke, if I could just comment in regards to that, it wasn't just a pathway into the criminal justice system that failings in this area resulted in, it was a pathway into serious mental health difficulties, physical health difficulties, I mean challenges and harm across the full range of a person's being resulted from the disconnection that occurred at the point at which children were taken from their families and their connection to whenua and everything else wasn't maintained. It's broader than just a path -- in saying that, I'm not minimising the path --

CHAIR: Sorry, I just have to slow you down, please. We want to capture every word of this, but we can't if you go too fast. Thank you.

MS ATTRILL: Apologies.

DR COOKE: One of the other consequences would be the fact that we see multi-generational intakes of tamariki and rangatahi into care, isn't it?

MS DICKSON: Very much so, and that was my experience as a social worker.

DR COOKE: Your experience as a social worker, I think as I understand it, was centred for some time in South Auckland?

MS DICKSON: Yes.

DR COOKE: And you sought your experience --

MS DICKSON: Sorry, to correct that, I practised mainly in Northland, actually, but I managed and worked in South Auckland.

DR COOKE: But in managing and working in South Auckland, there are -- I'm trying to think of the number of sites in South Auckland, but --

MS DICKSON: There are 8 or 9.

DR COOKE: 8 or 9 sites just in South Auckland and they are amongst the busiest in the country, aren't they?

MS DICKSON: A number of them certainly are.

DR COOKE: Yes. And you would be able to say through your experience at management level in those sites that what you have just described to us would have been a day-to-day occurrence of your everyday work?

MS DICKSON: In terms of the intergenerational.--

DR COOKE: Intergenerational.

MS DICKSON: Seeing families that have been impacted in -- yes.

DR COOKE: You also would have come across families where members of those whānau would have been either in prison or have passed through the prison system and they had also been in care?

MS DICKSON: Yes.

DR COOKE: And their children were again the subject of intervention?

MS DICKSON: Yes.

DR COOKE: And picking up on Ms Attrill's point, the consequences that she described, you would have seen in your day-to-day work as a manager in South Auckland?

MS DICKSON: Yes.

DR COOKE: Can we bring up WITN0815001 at page 11. This is a witness statement of a female survivor who was in care, in foster care and suffered -- we're not going to go any further

into this but suffered. Her story is typical of children, young people who were in the care of the State. This is what she says:

"We can never get back what we have lost, the love and care of our parents. We can never retrieve what we had, a loving, closeknit family with parents who loved us. We will never be truly siblings again because we are all too damaged. We will never know what it is would have been like to grow up connected to our extended family, our whenua or marae because we lost all that the day we were removed from our parents' care."

So in that short paragraph, those couple of sentences, it brings home to us, doesn't it, the magnitude of loss that can occur for a person who was taken into care and was not given the opportunity to maintain all of those necessary connections and links that we've just been talking about?

MS DICKSON: I don't have words to acknowledge the extent of grief and loss in that experience as described. It's deep and very, very real.

DR COOKE: I'm now going to take us through some survivor statements. In order for preparation this morning we've had to cut back on the number so, again, as I said yesterday, these are -- the ones we're going to give you are but some of those that we have. So there may be some survivors out there who may expect us or want to hear a story that they recognise. If you don't hear that story, then I'm sorry for not being able to bring it today, but that's part of our reality.

So can we bring up ORT 0078058. This is a memo, an internal memo and it concerns the failure, placement of children with unapproved and unvetted caregivers which gave rise to the actual abuse of children in the care of the State and two tamariki, 15 and 16, were placed with a man who was not approved as a foster parent.

CHAIR: Just noting this is 1992.

DR COOKE: 1992. The document begins, if we could just bring up the first paragraph there. Maybe I'll read it, here we go, the first two paragraphs there because it sets the context quite nicely:

"I regret to advise that the service may be exposed to some publicity in relation to two placements made in Christchurch and the expected criticisms will be difficult to defend.

On this date in 1992, a 40-year-old separated man appeared in Christchurch court charged with indecent assault on a 15-year-old boy. The boy concerned had been on weekend leave from Kingslea, was placed with a man with the consent of Kingslea and his

city social worker. Also with the man was a 16 year old boy placed by a different social worker."

So that again indicates the issues that arose back in our scope period with placements occurring and where it would appear that appropriate measures were not taken to check out and vet a particular placement. Then the memo is saying the living situation of the man wasn't adequately vetted or was not vetted at all and it's in a one bedroom flat. The boy would have been on the floor. It was nevertheless encouraged to agree to the placement.

So, again, I don't want to we're- going to move on but that -would.-

MS DICKSON: I can see the body of the memo, which suggests that it fell short of the kind of approval assessment process you would expect.

DR COOKE: Just on this point, I imagine social workers themselves taking children into their care on whatever basis would be dealt with separately, in a quite different way than if it was going to be a caregiver placement?

MS DICKSON: Sorry, do you mean if a social worker was to assume the care of a child?

DR COOKE: Yes.

MS DICKSON: Yes, and generally it's been not encouraged as a practice.

DR COOKE: I was going to go down that pathway but I think time's going to prevent me. So the next one I want to go to is WITN081 - sorry, can we go to this one, go to MSD 0007806, paragraph 7.93. This is a survivor who was in care for many years, and you'll just see there that he was placed with unapproved caregivers -of his- 24 placements, 11 of these were with unapproved caregivers. And you would agree that we're seeing a theme, aren't we, of placements that were occurring that were clearly not vetted and were otherwise unsatisfactory because the caregivers were people who were- not approved?

MS DICKSON: Yes.

DR COOKE: Can we go to -- just up to para 7.1 and this is a placement that this particular survivor and his sister had, which caused various problems, that:

"...DSW was likely to have breached its duty of care when recruiting the caregivers by failing to take reasonable care when deciding on this placement. It failed to follow its own internal recruitment procedure or carry out an assessment that made any background checks. This was also a practice failure."

CHAIR: Just to be clear, I take it, Dr Cooke, this is a report from MSD on a redress claim?

DR COOKE: Yes.

CHAIR: So these are findings by MSD about practice failures by social workers?

DR COOKE: Yes, we've been very careful of course to make sure that we're just referring to those where it says this is an accepted failure of practice.

CHAIR: Right.

MS SCHMIDT-McCLEAVE: I wonder, Madam Chair, if Dr Cooke could also orient the timing when he introduces these documents for the benefit of the witnesses.

CHAIR: The timing of the?

MS SCHMIDT-McCLEAVE: Of the practice failings that are being brought to the attention.

CHAIR: So it's not the timing of the decision, it's the timing of when the failures took place?

MS SCHMIDT-McCLEAVE: That's right, thank you.

CHAIR: All right.

DR COOKE: Yes, if I can, I will. Thank you. I mean there's a context to this, we can immediately see because it uses the word DSW.

CHAIR: Yes. So the date range for that would, what, be up to about 1989?

DR COOKE: Yes, and I can give that information -- well, we'll be able to get it from going to the document itself if we need to later on.

CHAIR: Yes.

DR COOKE: This is a social work manual document, MSD 001767-00005. It's a 1984 social work manual. We want to go to pages 44 to 46 and the chapter is P2.17. Here, we have its heading, "Limitation on multiple placements in private foster homes", A, "The dangers inherent in multiple placements of foster children". And it tells us that:

"Before making foster placements, we have to be clear about the general specific short and longer term needs of the child which are to be addressed and the purpose of the proposed placement in relation to those needs."

And it goes on and talks about the quality that's required of foster parents. What's in that document of course, as indicated by the heading, that the care needs to be made around selection, vetting of children, the matching of children with foster parents and of course the risk of multiple placements.

I wanted to talk about multiple placements just briefly. Because we know that if a child has -- who's taken into care has a multiplicity of placements, that contains inherent risks for that child, doesn't it?

MS DICKSON: Yes, in terms of stability and -- yes, definitely.

DR COOKE: So not only a child may -- sorry, the stability is in terms of home life in the first instance, and if a child is moved, there may be instability arising because of a need to change school?

MS DICKSON: Certainly.

DR COOKE: There will also be possible instability around whether or not whānau, family connections can be maintained?

MS DICKSON: Yes, those arrangements would have to be reset and that would be disruptive, yes.

DR COOKE: And that becomes particularly difficult if children are placed in foster placements or in residences that are located at a geographic distance from where their whānau lives?

MS DICKSON: Definitely.

DR COOKE: And we know, don't we, that over the course of this Commission's scope and, subsequently, that many children have been placed at a distance and their needs and their family's needs to maintain that contact have not been realised?

MS DICKSON: That's accurate, yes.

DR COOKE: Is the question of multiple placements something like how long is a piece of string? That it's inevitable, isn't it, that when a child's taken into care, he or she has to experience inevitably more than one placement?

MS DICKSON: Can I just check whether you're asking in the historical or the current context, because that is an area that practice has changed.

DR COOKE: I'm talking about generally at the moment, that where a child is taken into care and it doesn't matter-- it generally wouldn't matter, it seems, whether it's an emergency placement or one that has had the benefit of some planning, but ordinarily it would mean that a child is likely to have more than one placement only?

MS DICKSON: The only comment, I think there are certainly numbers of circumstances where the first placement isn't the enduring placement. The only thing I would say is that in our practice, which has moved away from non-kin foster care to whānau care, finding care within whānau early has reduced the number of placement changes, particularly for younger children. I don't know if, Paula, you wanted to add anything to that?

DR COOKE: I'm going to take you to some examples and we've already had some, but you would agree that a child's experiences of multiple placements such as with -- sometimes 20, 30 plus, and I'm sure that even at times, over a period of a child's journey through care, there could be a tremendous number. Are you aware of the highest, the highest number of placements that is recorded for a child in the care of the State?

MS DICKSON: I couldn't tell you that, sorry.

CHAIR: I was just thinking then, does Oranga Tamariki or its predecessors keep records of the number of placements of children?

MS DICKSON: I can speak to our current --we can't provide that at a whole of population level but in a child's individual case record in the current case management system, you would be able to see each individual placement.

CHAIR: I think that applies in the past as well from what we've seen that, generally, a file will record where they went, but what I'm thinking about is the wider systemic recording so that you can get trends and patterns. Is there anything at all in your data collection that would enable that to happen?

MS DICKSON: Again, it's subject to the very real limitations that that would require an individual exploration of each case record.

CHAIR: So really the answer is that there hasn't been any systematic collection of that data beyond the evidence on the child's personal file?

MS DICKSON: Not to my knowledge.

MS ATTRILL: Judge Shaw, I'm aware of situations in the last decade or so where we have at points in time deliberately looked at the number of placements children in care have had with a view to understanding those children that have had multiple placements, taking a closer look at what's happening for those children, why isn't there stability in their caregiving situation. So we have at points in time examined the issue of multiple placements. That has been in the last 10 to 15 years when we've had an information system that's been able to give us a basic level of information about placement changes.

CHAIR: Thank you.

DR COOKE: The impact of multiple placements for a child, and that's -- this is where the -- I'll go back. We know that many children are often removed abruptly or have been removed abruptly from their homes, and there's immediately then a severance of family relationships and of attachment, isn't there?

MS DICKSON: Yes.

DR COOKE: We know as well that many of those children would then go into more than one foster home?

MS DICKSON: Yes.

DR COOKE: They may go into a family home?

MS DICKSON: That's one care environment.

DR COOKE: They could be in a multiplicity of care environments, couldn't they, any particular child could go from a foster home, could go to a family home, could go to a residence?

MS DICKSON: Yes.

DR COOKE: The reality or the consequence for the child of that is a complete inability to form any secure family connected relationship with an adult, isn't it?

MS DICKSON: Yes, that's certainly something I've heard directly from young people.

DR COOKE: And your records would be redolent of that, wouldn't they?

MS DICKSON: Yes, I think so.

MS ATTRILL: Dr Cooke, if I could just add a comment. In my view, it goes beyond that in terms of impact for the children. I mean attending a school regularly is one of the key ways children form friendships, participate in the activities that all of our children enjoy, sporting, cultural or other, and the greater instability in their lives in terms of where they're living, the less ability they have to develop those friendships, maintain those friendships and do things that everyday kids in New Zealand -- most children in New Zealand enjoy, it goes beyond the attachment to a significant caregiver for the children, and as Nicolette has said, we've heard from young people about the catastrophic impact of instability in their lives.

DR COOKE: My focus I guess has been looking at the long-term impacts on those children, of course that's one, but more around what -- their loss of connection with whānau and what happens to them as they move into their adolescence and into their own adulthood and you would agree, I guess, that statistics would show an inability to form good, solid adult relationships?

MS DICKSON: Yes, I wouldn't want to discount those who, despite the tremendous things they've overcome, have actually, you know, not had that experience, but yes, it is definitely the experience for many.

DR COOKE: Let's go to WITN0865001. This is a survivor statement and I want to go to paragraph 9. This is a female survivor who gave evidence at the foster hearing.

CHAIR: She was a ward of the State in 1984, I think -- no, sorry, 1974, when she was two years old.

DR COOKE: "I had 36 different placements through my journey in care from 18 months old until I turned 19", which was when she left care. "I have been fortunate that I have had my files for quite a long time so I've spent a lot of years processing and reading between the lines. From what I can gather, a number of placements broke down for the simple fact that I was unable to form a bond with the parents and they struggled with that."

So that's there in part to show the instability that would have occurred for this person during her entire childhood from 18 months until she turned 19 and then was able to

leave care. That again says in a few short sentences exactly what you've acknowledged today, isn't it?

MS DICKSON: Yes, and, again, I don't have words to describe the depth of that impact, of that experience.

DR COOKE: Can you go to ORT 0084100. I want to go to the last paragraph on page 10. This is a 14-year-old- who had been in care and who had suffered tremendous, terrible experiences and who took her own life. But the -- what we're told, CYP are seeking an emergency placement pending a family group conference. She tells the social worker this will be her 17th placement and states she does not want to go into a home and, three days later, she took her life.

CHAIR: 1994.

DR COOKE: There's no suggestion that the sole reason for what subsequently occurred is the fact that there may have been another placement because there were, as you would expect there, a multiple dynamics of concern that were operating for this young woman. But it would appear that, certainly, as on this day, there are statements being made that things are getting pretty fraught.

MS DICKSON: Yes, and before I respond, can I just acknowledge the grief and loss for this whānau, that's a terrible experience and tragedy. But, yes, I accept the premise of what you're saying in terms of what her experience would be at this point.

DR COOKE: Go to WITN0896001. I want Paragraphs 109 to 11 there-- we go. This is again another survivor experience and I have to find out -- we'll get you the timing of that in a minute, but we want to -- I'm raising this because it shows the -- it's one of the impacts as well, looking back on what happens when you're in State care:

"When you go through 20 changes in your young life, living in different homes, you can't tell me that you'll be the person who you could have been.

I never knew in advance where I was going to go. When I arrived somewhere, I never knew how long I was going to stay there. Even now, packing a bag to go away still brings up that anxiety.

Every home you go into, you do things differently, and it changes from one home to another. What is normal in one family is not normal to someone coming into that family. In one family, you wash your hair once a week, in another it's every day. How and when you change your sheets differs from one family to the next.

With these changes comes changes to schooling. During intermediate, I had three school changes in a two-year period. I think you lose some of your anchors of support

when you have changes there, as well as changes with where you are living and with social workers. I remember three or four social workers within a short period of time."

This is from a survivor who was born in 1968 sorry1957, so we're talking of that-- gives you the context. But, again, that experience of placements, of the impact of changing homes, of schooling, different rules, uncertainty about how to behave, what to expect, is typical, isn't it?

MS DICKSON: I think it's a really profound explanation of the loss of agency that results from multiple placements and, you know, development by agency I mean that ability as you develop to take more control of your own life, and if that's uncertain, then that opportunity is lost to you and I agree that that is a consequence of multiple placements.

DR COOKE: Go to WITN0342001 and paragraph 8. This is a witness statement. The theme of this evidence is that placements often end due to social workers failing sorry reacting to the child's behaviour and they're not able to perhaps deal with the issues that give rise to behaviours or there's a failure to understand what is going on. So, here's a person who says he was sexually abused in most of the homes he was in during that time, "I was also physically abused. The homes were often wealthy white people". He talked about he-- goes on to say, "There was a house with nine bedrooms. The foster parent made a leather saddle for me and put a bridle in my mouth and would rape me. He did this in one of the bedrooms and in his office". He goes on to talk about further sexual abuse taking place and the consequential behaviours that arose. At paragraph 10:

"I was in a constant state of terror. My anxiety was always, 'Will he use oil? Will it hurt?' I was so relieved when they used oil rather than raping me dry."

He goes on at paragraph 11:

"I would defecate in my pants and then hide my underpants. I look at photos of me back then and I'm smiling, but behind that was terror."

Then he talks about, at para 12:

"During this time I had a lot of trouble in these homes. I took off a lot and did petty theft which resulted in the break down of the placements. The authorities didn't understand what was happening to me in these placements and why I was acting the way that I was. I was given tranquillisers during this time and, as you will see from my social worker's notes, these only made me worse. At one point, the social worker even made a note, 'The time has come for [person] to be cut down to size and made to realise that the world does not revolve around him. Wondered about getting the local police to frighten the boy or for him to spend some time in an institute to get him into line'."

He then says:

"They sent me to the Ōrākei Boys' Home in 1970 and then to Holdsworth in Whanganui in 1971."

So it gives us the time context. So that's presenting that to you in the context of what was happening to a child in care, an inability on the part of social workers to understand what was going on, perhaps not knowing about sexual abuse, and as a result of that, it's the child who then suffers further instability because the social workers decide the way to deal with this is to move the child and not to -- and are unable to address the problem.

MS DICKSON: Yes, and I think this is a -- I find this a deeply distressing account both in terms of the experience and the response that the young person received. I don't think it just speaks to stability, I think it speaks to you need consistent relationships with adults to be able to tell people when things aren't okay and that wasn't the experience for this young person, clearly.

CHAIR: Could I just make a comment here. Number one, first, it's worth noting that this was a Māori boy, and it's also worth noting that he had 13 placements in 12 months. My question there is, would you not expect that in good social work practice, that would raise a red flag why the multiplicity of changes here?

MS DICKSON: Absolutely, definitely, and also some of the behavioural things that are described as behaviours should be a motivation to ask more questions and understand the experiences that might be resulting in those behaviours.

CHAIR: Yes, thank you.

DR COOKE: Can we bring up -- we're going to bring up MSD 001761-00002, which is the field officer's manual from 1957, which is a long time ago, but it's been presented to you as how social workers were looking at children at that time and on the basis that it's in the manual so, therefore, it is indicative of a policy that is motu-wide. And you'll see from it when I go through it, that it's comparing a child to a dog:

"It's difficult to know just how much information about a child to give people who are considering looking after him. On the one hand, if one 'gives a dog a bad name', it may give an undeservedly bad impression, and on the other hand, if one doesn't tell the truth about weaknesses and difficulties they are likely to experience, they can legitimately complain. Once again, the best policy is frankness tampered with discretion. It's never permissible to gild the lily unduly, but it is reasonable and fair to attempt to put unpleasant facts into perspective and to give the most favourable interpretation of them which is

reasonable in the circumstances. Direct questions from foster parents should be answered directly. Officers must remember too that they become accustomed to certain character traits and behaviour patterns and tend to forget that the foster parent will, at the outset anyway, view that differently."

So is the example there of -- which is what the context is about in comparing first of all a child to a dog, would you see that as being appropriate?

MS DICKSON: I think it's a shameful way to describe the kind of information that social workers should have been sharing with caregivers. It's appalling.

DR COOKE: Just on that point, bringing it to a modern context, because one of -- again it comes through from the evidence that we've heard and it's -- I believe it's quite a contemporary concern, it comes from caregivers, is the extent to which caregivers are told about the demands of parenting a particular child. Do you agree that that's a problem area?

MS DICKSON: I would say it has been, in very recent practice, a problem area where the absence of information was more typically the challenge caregivers had. So they certainly weren't provided with -- and again, generally speaking, they certainly weren't provided or assisted to have the information that would help understand the needs of tamariki and respond to them. Into the future, I know we'll talk about that at a different point, but the care standards spoke deliberately to that experience, both by speaking to what caregivers should expect and how tamariki should be understood through their own plan and assessment.

DR COOKE: But it would be fair to say, wouldn't it, that there have been many instances over the years, and I use that as a continuum, of children with significant needs being placed with caregivers and that caregiver is not told about the actual real demands of parenting that child?

MS DICKSON: Yes, that's a very real and common experience.

DR COOKE: It's also -- there's also evidence, and I think it's in some relevant social work literature, perhaps some of the work of Emily Keddell for example probably addresses this, which is those caregivers at times have had difficulty in getting the necessary assistance from Oranga Tamariki in order to then address those behaviours that they find challenging?

MS DICKSON: Yes.

DR COOKE: And the next consequence of course is that the placement fails?

MS DICKSON: Yes.

DR COOKE: And the child has to go somewhere else?

MS DICKSON: Yes.

DR COOKE: And the cycle continues?

MS DICKSON: Yes.

DR COOKE: Can we go to WITN0896001. This is a survivor statement again and you'll see that -- I can tell you that the survivor at the time of making this statement was 64 years of age and was born in 1957. She was taken out of her father's care who was a convicted sex offender. She was placed in foster care but her father was allowed to have access with her and that allowed her to be repeatedly sexually abused by him. And if we look at paragraph 30 which is up here, she says:

"I spent a lot of time being scared at [space]. Looking back, I realised that I was always scared about my father coming to see me because he would sexually abuse me. My father was for some reason allowed the right to take me out to stay with him in Whanganui, or out unsupervised for a few hours at a time when he visited. His visits were monthly."

And that would be -- one would hope that would be a one-off practice, but certainly in the case of this person, it appears to have been something that went on for some time. You would agree that that is again an instance of bad social work practice?

MS DICKSON: Yes.

DR COOKE: This is the same survivor and we're going to bring up another statement that she's made. You'll see this is a note of 21 October 1969 and it's about the cessation of the visits to the father and we want to go to paragraph 11 which I think is at the end. You'll see this is from the social worker to a manager:

"I agree with the recommendation to restrict [Mr Father's] contact with the children and to supervise any future contact. If you agree, the father will be advised accordingly. Although we had considered the possibility of something like this happening -- which was the abuse -- it was thought that -- and this is a sibling's presence -- would be a sufficient safeguard."

You would agree, wouldn't you, that there's a degree of naivete and bad practice relating to that?

MS DICKSON: Oh, naive optimism is what I would describe it as. Exactly that.

CHAIR: I think we can record that the witness is speechless.

DR COOKE: I want to talk now about visiting practices in the time I've got available. And if we can bring up MSD 001761-002, we want to go -to this- is the field officer's manual 1957 and its- page 67, J1.197 and it's going to tell us that dependent on the factors, at least every four months, a visit should take place and the child should be seen personally during that period.

Visiting children regularly is good social work practice, isn't it?

MS DICKSON: Absolutely.

DR COOKE: Has there been -- here we say it's every four months. Are you able to tell us whether it's always written into policy as to the frequency of visits?

MS DICKSON: There is policy about the frequency of visits. That policy has changed and I'm happy to talk about some of the transitions very briefly.

So in recent past -- I mean four months is clearly a very long time in the life of a child. At different times, we've described a minimum of eight weeks, which is still a very long time in the life of a child. The expectation now is that there will be an individual assessment of the frequency of visiting needed depending on the child's age, their circumstances, and often we would expect visiting to occur much more frequently than eight weeks.

DR COOKE: Was eight weeks specifically stated in policy?

MS DICKSON: I believe it was, yes.

DR COOKE: Because that was the mantra for a long, long time, wasn't it?

MS DICKSON: Yes.

DR COOKE: Over recent years?

MS DICKSON: Yes, and it was the measure in the recording system.

DR COOKE: And did the same principle apply to residences?

MS DICKSON: Yes, I believe so. I'll just check with -- yes, for the field frontline social worker to visit the young person in residence, yes.

DR COOKE: And with evidence that has come before the Commission through survivors, and I don't have time to bring it all up, but a lot of those survivors say: (a) they weren't visited at all, or (b) they were visited but incredibly sporadically, and (c), that the visits, when they did occur, took place in front of the caregiver, that everything was a bit of a set-up, that the process was such, and these are adults looking back, but the process was such that it was simply unsafe and they were unable to tell anything around what was actually going on in the home. Do you accept that was the experience of survivors and others in care?

MS DICKSON: Yes, I do, and it runs contrary to what has been best practice for the period of my time, which is that you would absolutely be expected to afford a child time alone away from their caregiver to create a safe environment, so when that doesn't happen, that impacts the potential safety of children.

DR COOKE: Because the need for children, whether you're a social worker or you're anyone else who's working with children and you have to interview or meet with, get children's views,

as lawyers have to do, some lawyers have to do, you have to make sure that the process has integrity, don't you?

MS DICKSON: Yes.

DR COOKE: And you have to make sure that you're able to interact and communicate with that child having regard to the specific circumstances of that child?

MS DICKSON: Yes.

DR COOKE: Not all children have English as a first language?

MS DICKSON: That's right.

DR COOKE: Not all children have the language development that a same-age peer might have?

MS DICKSON: That's right.

DR COOKE: That in order to engage with that child, the social worker really must have a -- develop a rapport with that child?

MS DICKSON: A relationship's critical, yes.

DR COOKE: And of course we also know, don't we, over the years, and this includes recent years, that the demands and pressures on social workers are such that often a child's going to have a multiplicity of social workers through his or her journey through care?

MS DICKSON: Yes, that has certainly occurred much more frequently than we would hope.

DR COOKE: And that's a continuum, isn't it?

MS DICKSON: Yes.

DR COOKE: That's still happening?

MS DICKSON: Yes.

DR COOKE: And that would mean of course that it becomes even more difficult for the child to be able to say, "I can speak to this person"?

MS DICKSON: Yes.

DR COOKE: Another dynamic there for some children is going to be the fact that, "Why should I talk to this social worker? Because even if it wasn't this particular social worker, it was another social worker who took me away from mum and dad". That's another reality, isn't it?

MS DICKSON: I think that's right, and also when children have had experiences of telling adults, social workers, that something's happened and not been believed, that's another reason children clearly will not feel safe to share what's happening to them.

DR COOKE: Yes. With the policy that you've got today, and you've just told us it's a --

MS DICKSON: It's based on an assessed need.

DR COOKE: Based, yes, on an assessed need. Sometimes, an assessed need arises -- almost a squeaky wheel syndrome, that if you get a caregiver and/or a child where there are some problems, there will be visits, right? Another situation, and we know this is back when -- in my lifetime of eight-weekly visits, if there's -- everything seems okay on the surface, there are no visits or the visits are sporadic. You would agree that that's occurred?

MS DICKSON: Yes, and I don't want to go too far into the future but that was why the assessment of need and frequency of visiting was codified in the care standards.

DR COOKE: So if the social worker does an assessment and says little Johnny's placed with so and so and that's going really well and I've got some feedback from the school and again no concerns are coming out, does that mean that in fact that child may not be visited because the assessment says there's no need to when everything's kei te pai?

MS DICKSON: There would be very few where there would -- I think you might have a longer frequency or interval of visiting but there would be not a situation that I can think of where you would say there is no need to visit.

DR COOKE: It then comes back to the question of what kind of frequency would then occur in a placement that is otherwise going okay?

MS DICKSON: So the guidance we provide, it's not one factor, it's multi-factorial, so age and development of the child, the degree of stability in the care arrangement, the kind of communication and needs, there's a whole range of things. The only real situation where you might extend a little bit the period of visiting would be where essentially everyone was in agreement that this was, by all intents and purposes, but for the discharge of specific orders, that child's permanent and enduring home situation.

DR COOKE: So it would still mean, wouldn't it, that for a child who's currently in care and under an order, that child, if it's under 7, may only be visited once every six month and that's for the purpose of preparing a court report because, otherwise, everything's going okay and the assessment says it's fine?

MS DICKSON: No, that would not be the usual practice now. That would not be what the guidance would lead a social worker to routinely assess as the frequency of visiting.

DR COOKE: What would be the minimum -- because I'm trying to get you to say a specific, you see. What would be -- how often would a child who's in care who's under 7 be visited by a social worker?

MS ATTRILL: I was just going to offer some evidence that as well as what Nicolette's been talking about in terms of the frequency of visits and how we determine that, that the other element of our practice these days, and again I don't want to sort of go too far forward in

terms of the process of the Commission and our appearance, but something that is significantly different than what we have had in the past is the focus on providing support to caregivers, so there's, in my view, a two-pronged approach to ensuring stability, safety and that children are in, you know, caregiving situations where they're having their needs met. So we have a caregiver recruitment and support service whose sole purpose is to assess, approve and, critically, support caregivers and how they're taking care of children. So there's two separate social work views on a caregiving situation that we have in place now, for very important reasons, that wasn't so much formalised in the past.

DR COOKE: Colloquially, is that where we have a situation where we have the caregiver social worker and we have the child social worker?

MS ATTRILL: Yes.

DR COOKE: But they have different roles and responsibilities, don't they?

MS ATTRILL: They do, but one thing they have in common is a responsibility to have a shared understanding of the situation for the child in that caregiving whānau, so that they are required to work together to ensure that the child's needs are being met and the caregivers are receiving the required support to be able to meet the child's needs in that care environment.

DR COOKE: By moving away from eight-weekly visits, is that because that's something that's physically unattainable because of work constraints for social workers?

MS DICKSON: That is not what sits behind the change at all. What was expected and is anticipated, and we are seeing in more cases than not, is that the assessed need would be more frequent than eight-weekly.

DR COOKE: I want to finish on this last point, even though I have much more to do but I'm going to finish. I want to come back and ask you about multiple placements. And is there a policy paradigm somewhere that tells us where -- what's acceptable in terms of a child's journey through care of the number of placements that he or she may have, and where it tips over into being unacceptable, or is that --

MS DICKSON: I think the policy and guidance orientation is towards -- in current state, is towards working with whānau as early as possible to find an enduring care arrangement within whānau as the first option and, certainly, everything would discourage multiple care arrangements for all the reasons we've canvassed today.

DR COOKE: So if a child is placed with whānau, in order to minimise future placement change and risk, it has to then be underpinned by necessary support, doesn't it?

MS DICKSON: Definitely.

DR COOKE: And this is future-looking in part, or is it present and future-looking, is the Chief Executive Oranga Tamariki in a position to make sure that those whānau who take on responsibility for their children are going to be adequately supported in every way so that there isn't stress on the placement and the caregivers then say, "We're not able to cope"?

MS ATTRILL: So one of the really important things that changed in the 2019 reforms was the introduction of a set of care standards. Those care standards place an absolute obligation on the Chief Executive to understand the needs of children through comprehensive assessment and to take steps to ensure those needs are met. Closely associated with that is an absolute obligation to be supporting the people caring for children in care to provide safe, stable loving care. We also made some changes to the principles of the legislation to introduce notions of stability and strengthen safety and included the word "loving" in the legislation, which was, in my view, a significant step forward in terms of a signal of what children deserve and are entitled to receive in care.

MS DICKSON: And to the point of adequate support for whānau, I would say it's a feature of our fairly recent past that we did not provide the same degree of whānau, support to whānau care, and that is very much an expectation that care will be commensurate, whether you're in whānau care or non-whānau care, and it's behind some of the work that Ms Chase, Frana referenced yesterday in terms of whānau care partnerships, how that support is provided is almost as important as what that support is and that's a fundamental principle behind the whānau care partnerships or the iwi Māori organisations.

DR COOKE: I had another question but I've forgotten what it was.

COMMISSIONER ERUETI: I can ask a question. We did discuss this yesterday, didn't we, with the informal care arrangements with Māori that frequently they just don't have access to the supports that they need?

MS DICKSON: Yes, so in those three types of care that I spoke of, without orders, whānau caregivers who are approved by Oranga Tamariki, and then care providers, we absolutely know those informal arrangements are still not supported to the extent that they should be, but there is work being done to look at that issue.

CHAIR: I think we must end because of our timeframes. Have you come to the end?

DR COOKE: Yes, I have.

CHAIR: Reluctantly, I sense, Dr Cooke, that you've come to the end of your question time?

DR COOKE: Yes, it's the never-ending gift.

CHAIR: If I can just make it clear that if there are matters that are outstanding that you have not been able to put, the witnesses are willing to receive those in writing and respond?

MR TE KANI: Of course.

CHAIR: Good, thank you very much. We'll take 15 minutes.

Adjournment from 10.32 am to 10.52 am

CHAIR: Tēnā koe, Ms Toohey.

QUESTIONING BY MS TOOHEY: Tēnā koutou, tēnei te mihi ki ngā Kaikōmihana, tēnei te mihi ngā Kaiwhakaatu o te Karauna, tēnei te mihi ki ngā purapura ora, tēnā koutou katoa. Ko Anne Toohey tōku ingoa, I'm one of the Counsel Assisting the Commission. Mōrena.

CHAIR: Are you going to describe yourself?

MS TOOHEY: Yes, of course, sorry. For those who cannot see me, I'm a middle-aged Pākehā woman wearing a white jacket with a black check and I have curly blonde hair that's not coping with the Auckland humidity.

Mr Te Kani, as the Chair indicated at the outset of yesterday, part of the purpose of this hearing is to provide the State with an opportunity to hear and answer for the evidence that the Commission has received in relation to the abuse that was suffered in care and much of the topics that I will be asking you and your colleagues about relate to abuse that was suffered in State residential care and in 396 providers such as Whakapakari and Moerangi Treks. So by way of road map, in this first session today, I will discuss with you the experiences of children entering into care, the culture of violence that survivors experienced in residential care and, later today, the experience of solitary confinement and sexual abuse. There will be some survivor accounts, and for those survivors listening, the Commission is grateful to those who have consented to their accounts being used.

So, first of all, the first subject today is the topic of entry into care, and I think the legislation back in the scope period for the Commission allowed for children to be taken into care because they were termed "not under proper control". And although I appreciate you're recently with Oranga Tamariki, Mr Te Kani, are you familiar with the fact that many children went into care in the scope period of the Commission on that basis, that they were deemed not under the proper control of their parents?

MR TE KANI: I'm aware of that, yes.

MS TOOHEY: It was -- do you agree with me that that power was liberally exercised by the State during the scope period?

MR TE KANI: It is a broad power or broad discretion, yes.

MS TOOHEY: And the reasons that the Commission have received for children going into care include truancy, stealing milk money, which is being what was called a juvenile delinquent

out on the streets of Auckland on a Saturday night. Are you familiar with those accounts that have been given to the Commission?

MR TE KANI: I am with familiar with those accounts, yes.

MS TOOHEY: To be fair, you did acknowledge in evidence yesterday that alternatives to care weren't properly considered within the scope period of the Commission?

MR TE KANI: That's correct, yes.

MS TOOHEY: On another point that you acknowledged yesterday, do you -- you accepted that there was structural racism within the predecessor of Oranga Tamariki. Did that extend to the fact that vastly disproportionate numbers of tamariki Māori were taken into care?

MR TE KANI: That would be the conclusion, yes.

MS TOOHEY: That's a legacy that your organisation today is still left with, the disproportionate number --

MR TE KANI: Yes.

MS TOOHEY: -- of tamariki Māori? Before we go to some examples of survivor experiences of going into care, I just want to highlight, as Dr Cooke did this morning, some of the rules about entry into care and this is document ORT 0000036, which is the residential workers manual from 1975. It's quite hard to read. Perhaps if I just read part of it out. And the reason that I want to highlight this, Mr Te Kani, is to suggest that even back in 1975, some of these rules were what we might consider today quite trauma-informed. So a child or a young person should always know why he is being detained and what is likely to happen to him:

"He should as early as possible be given an opportunity to talk about what is of immediate concern to him and to learn about the activities of the institution and of what will be expected of him. It is as well to remember that the interviewing and assessing process is very much a two-way affair and that the child or young person will have formed very definite impressions about the staff member by the time the admission procedure is complete."

Do you agree with me that even the modern standards is actually a reasonable procedure for admission into care?

MR TE KANI: In the current day standards, that's reasonable, yes.

MS TOOHEY: Just going on to the next one about reception into care. This is F1.04 of the manual:

"Children and young persons will react in different ways when being admitted. Some may be upset and emotional, some may be fearful and apprehensive and some may

appear to be quite happy and even blasé. All, however, will experience feelings of uncertainty and some degree of apprehension. The initial interview should be quiet and objective and should try to put the child or young person at ease. Any unnecessary information required from the new admission should be obtained in a friendly, unhurried way, and the reasons for it should be explained."

Once again, that seems all right on the current standards?

MR TE KANI: Yes, it does.

MS TOOHEY: I now want to talk about the experience of one of the survivors who has provided evidence to the Commission. This is -- I won't bring this up on the screen, but the reference number is EXT 0019888. And this was a survivor who went into care at the age of 11 and he had explained in his evidence that he had found school boring, he was smarter than the other kids and he was often truant. And at paragraph 13, he said:

"I remember the day I was uplifted like it was yesterday. I was 11 years old, my parents owned a dairy and I used to help out in their shop. One morning, these people turned up at the shop at about 9.30 am to take me away. There were two Child Welfare officers. My mum was very distraught, she tried to stop them. She was asking what was going on and why. I got called into the back of the shop where mum and dad were talking to the officers. They told me that I had to go with them, that I was going to be taken to another place, they didn't tell me where or why. I was terrified. I'd never been apart from my family. I started screaming, struggling and fighting them. They put their hands on me to subdue me and I remember being down on the ground. The two of them couldn't remove me so they said they were going to call the police. No police came, but instead a couple more Child Welfare officers turned up. There were four of them, all men, they tied my hands behind my back with something, then a doctor turned up and injected me in the buttocks. I remember them carrying me out to the back of the car, I remember lying on the backseat of the car with a man on either side of me. I remember going over the Remutakas and looking out of the window at the sky, so I knew they were taking me a long way away from my family."

And he goes on in a couple of paragraphs to explain that he kept asking, once he got to Epuni Boys' Home, where his family was and when he was going home and that they wouldn't tell him anything.

And just to explain some context about what happened later for this witness, he ended up spending 40 years in prison, and I'll come back to that fact tomorrow, but just so you peg that survivor's experience.

Do you accept that that example of removal into care was never acceptable, even back in the early 70s when this occurred?

MR TE KANI: I accept that reflects the experience of many survivors that the Commission's heard and that it's not acceptable.

MS TOOHEY: And that when we consider the manner of that removal, that that would have been a highly traumatic experience for that individual?

MR TE KANI: Yes.

MS TOOHEY: That in modern day experience would probably require some professional assistance to overcome?

MR TE KANI: Yes, indeed.

MS TOOHEY: All right, I want to now turn to the experience of some of our female survivors and how they entered into care. The witness number is WITN0412001. So this is an account from 1976, we'll go to paragraph 83. Just by way of background, this was a young Māori girl who was aged 13 or 14 when she went into care. Her parents had died when she was 6 and she had suffered abuse in various care settings, some with her own whānau, some in care settings. And at school one day in Northland, she punched a girl in defence, she said, of another girl, and this is her account of what happened next.

CHAIR: In 1976?

MS TOOHEY: Yes, in 1976. At paragraph 83:

"No one ever asked me what happened or for my version of events. An hour after I was pulled out of class, Social Welfare turned up. I had my period at the time but wasn't allowed to go and get my bag with my sanitary products."

It goes on at 86:

"Social Welfare turned up maybe an hour later. I asked the social worker if I could get my bag but she didn't let me either. She told me that I wouldn't need my bag where I was going.

The next thing I knew, I was heading to the airport with the social worker. No one told me where I was going. I also wasn't allowed to say goodbye to my sister who I was living with at that time.

I remember crying and wanting to know what was happening. I got on the plane by myself. I didn't know where the plane was going. I remember the social worker asking a man on the plane to keep an eye on me."

At 91:

"We arrived in Auckland and the man who the social worker had asked to keep an eye on me followed me out. Another man picked me up, he didn't even say hello, he just told me to follow him and get in the car.

He took me to Bollard and dropped me off around the back. I remember going up the drive and thinking, 'What is this place? What is going on?'"

It goes on at 97:

"I saw the bars over the windows and thought I must be in jail. The only place I had seen bars over windows before was in jails on TV."

And then it goes on to explain what happened at paragraph 100, which relates to the practice at the time of compulsory vaginal examinations:

"A lady examined me but I don't know whether she was a doctor. The other two women in the room held my legs down. The examination was very painful. They used metal tongs. They kept poking and prodding me even though it hurt so much."

And at 102:

"After the examination, I was thrown into a cell. There were rules about our behaviour in the cells. We had to stand at the foot of our bed every time a staff member came to the window to look in. I refused to stand up or engage for three days."

And it goes on at 105:

"The cell had a little silver toilet, a bed and there may also have been a sink, that was all we had. It had a light but no window except the internal one that the staff used."

Just in relation to that experience of that survivor, once again, do you accept that what is being described as happening there wouldn't have been acceptable under the workers manual that we looked at before, at the time, let alone now?

MR TE KANI: No, I agree. Absolutely devastating to read.

MS TOOHEY: Just one more account of this and this is WITN0160001. This is a witness statement relating to Strathmore, which was a girls' home in the South Island in Christchurch, and this is at paragraph 70, page 8. While that comes up, I'll just -- this is a witness who is a Māori woman. So she's put there at paragraph 70, I think this was in the early 70s again:

"Every time you left the building and went outside the institution you had to have a medical examination. Whether you went on day leave or had run away, you had to get one on return.

The medical examinations were the worst thing about Strathmore. There was a man called Dr" -- his name is redacted -- "who did my examinations the first time I was at

Strathmore. There was also a senior female staff member present but I cannot remember her name. We used to say the doctor was just a dirty old man. We also used to think the female staff member got off on holding us down. It sounds bad but that's how we felt."

Then at 75:

"I remember the female staff member would hold me down and if you moved at all, she would put straps over your legs where the stirrups were so you couldn't move. I always had the straps. Then the doctor inserts this big steel thing inside you."

Then if we go down to 81, there's another doctor named there that she records, "He was touching parts of my body down there that he should not have been. Looking back, I knew it was wrong", and then at 83, "When that doctor and the earlier one put the lubrication in, they used their fingers. It wasn't until years later I learned that it wasn't a necessary part of the procedure."

And at 84, she records that the second doctor touched her clitoris during the examination.

Once again, I think you'd accept that that would never be an acceptable manner of conducting a medical examination on females?

MR TE KANI: No, I agree.

MS TOOHEY: And just in terms of this practice, I just want to bring up some state documents about this practice of these examinations. This is MSD 0015161, which is a letter from the principal of Bollard, which is a girls' home here in Auckland, to the Director of Social Welfare on 26 February 1979. This is at page 6. They're discussing, you'll see at paragraphs 3 and 4, the fact of what they call VD checks or venereal disease, and you'll be aware that that was the basis on which these vaginal examinations were carried out. Is that your understanding, Mr Te Kani?

MR TE KANI: Yes.

MS TOOHEY: And it records at paragraph 4 that there had been complaints from staff about the doctor who had been conducting these examinations at Bollard. If we go to paragraph 5, it records there that:

"That doctor's methods have always been suspect and open to criticism, some of which are using stirrups for an examination, a complete lack of bedside manner, abrupt and sarcastic remarks to girls showing a complete lack of tolerance or understanding, non-lubrication of the speculum and rough methods which have not been warranted."

Do you accept that this is demonstrating that there was some awareness by the state in 1979 that the manner in which these examinations were being carried out was not acceptable?

MR TE KANI: On the basis of reading that information, yes.

MS TOOHEY: And then I just want to bring up another document, ORT 0006334, page 38, and this is a letter to the Director of Social Welfare on 26 November 1982, again in relation to this subject, and you'll see there that it's -- if we go to page 2, paragraph 3 in relation to the medical examinations. It notes there:

"We have had extensive discussion with senior health officers and accept their advice that medical examinations and any part of a medical examination cannot be compulsory, nor can punishments ensue from a refusal to undergo an examination. I appreciate this may appear to be contrary to the good care and control of the children admitted, but I must accept the legal and medical opinion that where a child or young person is capable of giving informed consent but withholds that consent, an enforced medical examination is in fact assault."

Do you accept that position on behalf of Oranga Tamariki and its predecessor organisations, that the administration of medical examinations, where they occurred without the consent of girls, were in fact assaults?

MR TE KANI: With the qualifier that I'm not a medical expert, but on the basis of what I've read, I would agree with that statement.

MS TOOHEY: I appreciate that you yesterday acknowledged abuse that took place in State care. Has Oranga Tamariki given any consideration to any apology on behalf of the State for the forced medical examinations that were perpetrated on young girls in State care?

MR TE KANI: No, we haven't on behalf of the State, no.

MS TOOHEY: I want to now talk about a slightly different subject and that is entry into care for a different reason, which is neurodiversity. You'll appreciate that until 1989, all of the residences that the Commission has heard evidence about were both Youth Justice and care and protection facilities, you're aware of that?

MR TE KANI: Yes.

MS TOOHEY: There are obviously some that were just for a Youth Justice purpose, but many were mixed.

The Commission has heard evidence from a lot of survivors that a large number of them believe that they are neurodiverse, as we would call it today, and we had -- there's some expert evidence in the bundle which I don't need to bring up, but I'll just summarise it

for you. It's from a child psychiatrist, Dr Enys Delmage. This is MSC0008159 and the reference is page 7, paragraph 2. He notes:

"Tamariki children who find themselves in secure care settings require bespoke treatment and greater levels of support due to higher rates of neurodevelopmental challenges. Rates of intellectual disability are as high as 40% in some studies. At the time of our scope period, no one tested for neurodiversity. Those diagnoses are more recent."

I think my questions on this are probably better directed to Ms Boyles.

MR TE KANI: Kei te pai.

CHAIR: Would you like to come forward or are you comfortable being examined where you are?

MS BOYLES: I'm comfortable here, thank you. And just for the record, it's Boyles with an S on the end.

MS TOOHEY: We had some evidence yesterday, Ms Boyles, about the fact that Oranga Tamariki are currently researching or contemplating research into the incidence of neurodiversity and disability in care. Do you have any idea of the number of disabled and neurodiverse tamariki in care at the moment?

MS BOYLES: No.

MS TOOHEY: Can you perhaps update us on the study that was mentioned in the evidence provided by Oranga Tamariki into the prevalence of FASD in the Youth Justice population? That's foetal alcohol syndrome.

MS BOYLES: I'm not familiar with that story -- with that research, sorry. It could be that Nicolette is familiar with it.

CHAIR: Are any other witnesses aware of that research?

MR WHITCOMBE: I am aware of the research but I wouldn't want to quote the specific figure that was in that research, only to say that rates were extremely high.

MS DICKSON: I'm not aware of the specific study but I do know that, generally, it's accepted to be in the range of about 50%, so it is high.

MS TOOHEY: Do you mean 50% for neurodiversity or foetal alcohol?

MS DICKSON: Foetal alcohol.

MS TOOHEY: I think what was mentioned in the evidence provided by Oranga Tamariki, which was in notice to produce 418 at para 18.63 for my friend, is that a study was being contemplated rather than being carried out. Does Oranga Tamariki accept that there is quite a lot of work to be done here to identify the cohort of children in State care who suffer from neurodiversity and foetal alcohol syndrome?

MS BOYLES: Absolutely, yes.

MS TOOHEY: And is there steps being taken to improve the data around this, around disability and neurodiverse people in care?

MS BOYLES: Yes, there is.

MS TOOHEY: Can you tell us what that is?

MS BOYLES: Sure, so we know that there is a significant undercount of disabled children and young people in care, and at the moment we're looking at how we use CYRAS, our case management system, and the flags that we put in there to record different characteristics of a person. So we can do a bit of work with what we've already got is what I'm trying to say. Beyond that, we have a disability data and research programme that's nearing approval as a project, and we're also doing work to evaluate whether our services are having the impact that we want them to have in high needs, high and complex needs.

Can I also explain that part of the problem with neurodiversity is that children often don't get a diagnosis until they're maybe seven or eight years old, and so up until that time, they may not be getting services because they don't have a diagnosis. It's not right in my opinion for diagnosis to be the thing that drives services. We should be able to see a need and meet that need without having to have a medical diagnosis, but that's the way it is at the moment.

MS TOOHEY: Are you also confident that Oranga Tamariki has sufficient resources to provide diagnoses for children who are neurodiverse, given how difficult that is for people even in the general public to obtain that?

MS BOYLES: When children enter and get a gateway assessment, they are assessed then for signs of neurodiversity. So, yes.

MS TOOHEY: I want to ask now about a slightly different topic still in relation to disability, Ms Boyles, which is examples that the Commission has heard from survivors who were removed from their parents by the State because their parents had a mental health condition, were deaf or disabled. One such survivor, I don't need to bring this up, but it's WITN0656001, who narrates a story of 1964 and explains at paragraph 36 and 37 that:

"This witness' file states my father was a violent alcoholic. I have no memory of my father being a violent alcoholic towards my mother or us children or anyone else for that matter, he was a gentle, loving man. My file states that the neighbours made complaints about our family because of yelling and screaming, however my father was deaf and there was always a lot of yelling and screaming so he could hear us."

In principle, do you agree that instead of removing a child from the care of a disabled or deaf person, that they should be provided with support so that they can care for their children?

MS BOYLES: Yes, absolutely. We are signatories to the UN convention on the rights of disabled persons, which says we shouldn't remove a child for disability, either because of the child's disability or for the parents' disability and we agree with that.

MS TOOHEY: At a recent hearing for disability, deaf and mental health institutional care, evidence was provided by Dr Olive Webb, a psychologist, and she stated in her evidence:

"I would have to say that in my practice, my private practice, a common referral is from Oranga Tamariki who say, 'I have this mother who has an intellectual disability and therefore is not capable of raising her child and will you please write a report that says that so that we can then take a without notice order and remove this child at birth', and in many cases I might add that request for the assessment has come in the 7th, 8th or 9th month of pregnancy."

Does Oranga Tamariki accept that this is still a current practice, removing children from disabled parents?

MS BOYLES: I don't doubt that it's -- that we get reports of concern from people who don't think that disabled people will make good parents. My understanding is I talked to the regional disability advisor, actually, where Dr Webb practices, and there have been instances where we have provided support to a disabled parent so that they could in fact keep their child and be safe with that child and make good decisions and so forth. So I think our current practice is that we don't do that, we don't request removal and we don't remove children for those reasons.

MS TOOHEY: Thank you, Ms Boyles. I want to turn back to the residences now and I want to bring up document ORT 0003181. This is a letter from a representative of ACORD, you're familiar with that organisation, who held something of a private hearing in the late 1970s in relation to children in State care. And if we could just highlight the next page. Sorry, back to page 1 under qualifications of staff, if we could call out that paragraph.

CHAIR: I think perhaps we should be better oriented on this. You talked about private hearings and things like that, but it's obvious this is from ACORD, isn't it?

MS TOOHEY: Yes, this is a letter from ACORD who later held some hearings and it's dated 17 April 1978 and it's a letter to the Minister for Social Welfare.

CHAIR: I misheard, I thought you said from a representative of the court and I could not think what on earth you were talking about, but that was me not hearing you properly. Now I'm with you, sorry.

MS TOOHEY: Sorry, Madam Chair.

This is recording that the New Zealand Herald had carried an advertisement for an assistant housemaster at Ōwairaka to work in the reception unit, which is a secure unit:

"It went on to state that a person with a service background or work with young people would be most suitable. There was no mention of any academic qualifications. We were very concerned at the emphasis given to a service background and have investigated the background of the present staff as at January 1978."

Then if we go to the next line, if we can just highlight the table, you'll see there that's outlining the staff and it sets out the service background, many of them Air Force, Navy, Navy, Navy Air Force, Air Force, Army, Navy, only one person had a tertiary education. Of the other staff named there, only one person had managed to get School Certificate, let alone university entrance.

Do you accept that staff at the residences in the 1960s and 1970s were often recruited from a service background, a military background?

MR TE KANI: I'm not across all of that information, Ms Toohey, but from the basis of the information you've provided me, that would seem the case.

MS TOOHEY: I can take you to other documents and reports, but would you accept from me that a lot of the evidence the Commission has received does reflect that a number of staff were from that kind of -- had been in military service?

MR TE KANI: I acknowledge that, yes.

MS TOOHEY: And this might be a question for Mr Whitcombe, but the social worker qualification is really quite a recent event, am I right about that?

MR WHITCOMBE: I think the social work qualification has been around for some decades now, but in the case of it being a requirement for residential care, there have been different iterations of what is required over the years.

MS TOOHEY: Yes. The evidence the Commission has received certainly reflects that there were very few staff employed in residential care who actually were qualified as social workers. Do you accept that's the case in the scope period that we're talking about?

MR WHITCOMBE: I absolutely accept that is the case.

MS TOOHEY: I just want to take you now to the culture of the homes that was perhaps explained somewhat by the background and lack of qualifications of the staff who were

asked to care for children in State care. First, I want to go to the report of the Human Rights Commission in 1982, and this is CRL0023868. So this is the report of the Human Rights Commission on representations by that organisation we mentioned a moment ago, ACORD, and this is 1 September 1982. If we go to page 13 on the right-hand side there, if we call that out, "The nodding system" at top:

"This is the evidence the Human Rights Commission heard back in the early 1980s, that a number of boys and previous staff members described a system of unspoken commands or instructions which they experienced in Ōwairaka Boys' Home. The Commission was told that this practice had been used extensively in the secure block. It involved the staff member requiring the boys to respond to instructions conveyed by a nod of the head rather than the spoken word. Associated with complaints against the system were those claiming that boys were not allowed to speak from cell to cell or to sing or to even enquire the time of day. All these factors, it was asserted, contributed to what was described to the Commission as a realm of silence."

That's a discussion about Ōwairaka, but do you accept that that nodding practice was in fact widespread throughout residential care in New Zealand in the 1960s and 1970s?

MR WHITCOMBE: On the basis of the information that you've provided, I absolutely accept that was the culture within that residence and it just strikes me as completely dehumanising.

MS TOOHEY: I just want to go to another practice. Again, as to what happened on entry into care, and if I can bring up PXT0016039. This relates to a more recent experience at the Hamilton Boys' Home in 1987. And I'll just start reading it, it will come up in a moment, paragraph 53:

"At Melville as at Rosendale, I had a number of first experiences. Back then, to a 13-year-old boy, things that are now commonplace and do not bother me in the slightest were new and scary. For instance, I had to strip naked while I was searched. I was given a brief run down of the place by staff. Threats of violence took place immediately from the admitting staff who made it clear to me that if I stuffed up, I would get hurt in some way."

And that was another witness who I'll come to again tomorrow who ended up with a substantial criminal history.

This practice of strip-searching, and I can take you to other examples, but do you accept that that too was a dehumanising practice?

MR WHITCOMBE: I do.

MS TOOHEY: What about now? Is this happening now?

MR WHITCOMBE: So within the care and protection residences within the last year, I want to be completely clear that there have been no strip searches. In the Youth Justice residences, the last strip search that occurred was in September 2021 and in the course of 2021, there was one other strip search. What we have done is establish scanners in each of the residences, walk-through scanners, as part of the admission process, and strip searches do remain a feature of the 96 residential care regulations, but there's a hard test put on them in terms of if they are ever to be used in the future.

MS TOOHEY: I want to now go to --

COMMISSIONER ERUETI: May I just ask if these scanners are in both the care and protection and the Youth Justice residences?

MR WHITCOMBE: No, they're not. They're just in the Youth Justice residences.

MS TOOHEY: I want to go now to some of the initiation procedures within the homes and this document is CRL0149435, which is notes -- these are notes from interviews with former staff at Kohitere Boys' Training Centre and this interview was held in November 2007, but relates to Kohitere in the period 1970 to 1980. This is at page 2:

"It was known that new arrivals would get a stomping on their second night, a blanket thrown over them and beaten. Most would have been through a boys' home already and would know that this awaits them. If you took the beating and didn't tell anyone, then you were more likely to be left alone."

That interview demonstrates, I think you would accept, Mr Te Kani, that staff were aware of violence inflicted by children to other children in residential care?

MR TE KANI: Yes.

MS TOOHEY: And presumably did nothing to stop it?

MR TE KANI: You can presume that, yes.

MS TOOHEY: Another aspect of that culture was what's referred to as the kingpin culture. I think you'll be generally familiar with that, there was even a movie about it. I'll take you to one of the contextual witnesses, who is Professor Elizabeth Stanley, and this is WITN1248001. Professor Stanley wrote a book called "The Road to Hell" which relates to State care within the scope period and interviewed a number of witnesses, and at paragraph 10, she talks about this -- sorry, paragraph 13. The culture of a -- she talks about:

"The culture of a kingpin hierarchy that maintained physical violence and dominance, which was also highly damaging. Physical assaults by children reflected battles for power and this institutional hierarchy (the kingpin system) was used to designate some children as dominant and others as subordinate. Kingpins controlled others..."

I could take you to many witness statements and I'm happy to take you to one in the first instance, but do you accept that the kingpin system was commonly known about in State care in the 1960s and 1970s?

MR TE KANI: We accept that, yes.

MS TOOHEY: And again, just going to what the staff knew about this, I want to take you to an interview with former staff, this is MSD 0002047. This is dated 23 March 2011, but again it's discussing Kohitere in the 1970s. And at page 13 -- it's not quite the right quote but I'll just read to you the quote that I wanted to put to you:

"The kingpin culture at Kohitere was very big and used by staff positively and negatively. I challenged [a senior staff member] at one stage about him legitimising the kingpin structure by making some of the more violent kingpins members of the student council and that legitimised their power around I believed it was inappropriate."

That again is evidence that the Commission has received from a number of survivors, that the staff were using the kingpins in the homes to control the behaviour of other children, and based on that account from a former staff member, it does appear, doesn't it, that that was the case, at least at Kohitere in the 1970s?

MR TE KANI: At least at Kohitere, yes.

MS TOOHEY: And do you accept that that culture that is being described in those accounts and the stompings and the strip-searching is all contributing to a culture of violence within State residential care in the scope period?

MR TE KANI: What I acknowledge is there's clearly a culture from the evidence we've read and the evidence I've also considered around Kohitere which would suggest that aggression, assault and violence was a form of behaviour that was used to control tamariki inside the residence.

MS TOOHEY: I want to take you now, just before the break, to an example of -- a later example of physical abuse within Whakapakari, which I think you'll be aware is a provider of residential care to the State under section 396 of the Oranga Tamariki Act.

MR TE KANI: Yes.

MS TOOHEY: Whakapakari was on Great Barrier Island, you're familiar with that?

MR TE KANI: Yes.

MS TOOHEY: The first example I want to take you to is from a witness, WITN0302001. Just while we bring that up, to give you some context, this witness was sent to Whakapakari in 1989. We're just going to go to paragraph 49. The witness has been discussing some experiences that he had which we'll go to tomorrow, but this part relates to physical abuse:

"On another occasion, two white boys, a Māori boy and myself were taken to a flat grassy section by a creek by the camp supervisor. I remember being pulled out of the shed and taken away from the camp. Here, he made us dig our own graves. The holes were deep and we were made to get in and lay face down. We weren't allowed to look and he threatened to shoot us. The supervisor started shooting into the air and we were screaming, begging for our lives and freaking out. It was horrifying.

When we tried to get out of the holes, he would just kick us and beat us back in. I thought this was going to be the end of my life. I don't know what any of us had done to deserve that treatment."

Then if we go to paragraph 55:

"There was a little island off Whakapakari that was called Alcatraz where we would be sent I think as punishment. Groups of boys would be left there together. I liked being out there because I was away from the supervisor.

There were many beatings while at Whakapakari, both by other boys and by the supervisor. Sometimes he would line us up and beat us. I recall a group named the flying squad who were a group of kids who used to beat people up. There were never any beatings from [he names a staff member]. I think that the supervisor used to orchestrate all the beatings and rapings. There always seemed to be two or three older kids that were under his direction. He created a sick culture at Whakapakari like a fight and rape club. I still wonder whether he learned to be the way he was."

Once again, Mr Te Kani, just in terms of that example, do you have any comment on the abuse that the witness is describing?

MR TE KANI: Only that it's deeply distressing to read. It's their truth, it's their kōrero, so I want to acknowledge that and -- although I'm not familiar with the facts of this particular case, it reflects what I've read about other examples of what happened at Whakapakari.

MS TOOHEY: Yes. I did have another couple of examples.

Is that a convenient time to take the break?

CHAIR: Yes, we started 5 minutes late, are you all right for another 5 minutes or so? Yes, thank you.

MS TOOHEY: I just want to bring up another document, CRL0021030. This is a record of an interview with another family on 20 August 1998 and this relates to a young person who had been at Whakapakari and in fact had suffered an injury while there, an injured finger, and had been told to lick it and when he returned home, the infection had become so severe he needed admission to hospital. That's the background to this account, and then if we go

to page 2 and we call out the second paragraph. This is just recording the conditions at Whakapakari:

"In relation to complaints about the physical environment, the family considered that there were substandard conditions in the dining area. There was an open drain in front of the cooking area which was covered by roofing iron but which was frequented by rats. We were told that rats had been known to get into tents and this boy's torch was gnawed by them."

If we go on to the next paragraph. You'll be aware that this was sort of a camping situation on this facility, that sleeping bags were left out in the air but got wet. People frequently have colds and flus, one person caught pneumonia, and it goes on

One of the issues with Whakapakari is that it is so remote from any source of help for a child in that facility, do you accept that? And remote also from inspection by social workers of this facility. Are there now, today, section 396 providers who are operating in remote areas?

MR TE KANI: I'll come back to you with that information just to be absolutely sure, Ms Toohey.

MS TOOHEY: I think you'd agree with me, though, that the remoteness and the lack of actual on the ground checking of what was going on --

MR TE KANI: Absolutely.

MS TOOHEY: -- might be factors that failed to safeguard these children?

MR TE KANI: We'll agree with that.

MR WHITCOMBE: Absolutely.

MS TOOHEY: I just want to come to another example which relates to a similar programme, Eastland Youth Trust in 1998, and just to explain the background of that programme, that was set up by somebody who had also run Moerangi Treks, which was in the Ureweras. Again, are you familiar with that as quite a remote programme again, a similar set-up with camps and a sort of a horseback kind of experience for children?

MR TE KANI: I'm familiar with this, yes.

MS TOOHEY: And that the Moerangi at least was shut down after complaints of abuse?

MR TE KANI: Yes, I'm aware of that, yes.

MS TOOHEY: If we bring up WITN0827001. This is at paragraph 47. So this is this child's experience of going to Eastland:

"On my first day at Eastland, I was sitting smoking a cigarette after being dropped off by my escort. A staff member arrived and stubbed the cigarette out on my head, burning me. He was verbally abusive towards me and made me take my shoes off. He

forced me to run through the bush in bare feet to the camp with him driving behind me. It took hours to get to the camp and my feet were really cut up by the time we got there."

And then if we just go down at 49:

"If there was no work to do, the staff forced me and the other boys to carry rocks either as physical training or as punishment for misbehaviour. I had to run down the river in my bare feet, fill up my backpack with rocks and run back again."

It goes on at 50:

"I was regularly hit by a staff member who punched me and hit me with sticks or tree branches. He would threaten me that if I stole anything from him, he would hunt me down and kill me. He told boys that he would tie them to the back of his horse and drag them up to the bush and leave them there."

At 51:

"That staff member would also threaten to rape boys. I was so terrified of him that I really believed that he would do it."

He talks at 53 about another boy running away, a staff member brought him back and tied him up, tipped diesel all over him and hit him with a burning branch. The boys had to untie him and throw him in the creek to stop him from burning.

If we go down to 58, he got injuries, a knife wound to his eye, he also got hit after a staff member tied him to a horse and made the horse bolt. He never got any medical attention.

Do you accept that this too is describing a culture of violence within these providers?

MR TE KANI: I would acknowledge some of the actions here are violent, yes.

MS TOOHEY: Do you have any other comment on the abuse that's described in these paragraphs?

MR TE KANI: Just to reiterate our view, our position that it's heart-wrenching to read, very difficult, without knowing the full facts of every situation. It is concerning, I guess from our perspective, as we read this information, what might look like the lack of transparency and accountability and openness.

MS TOOHEY: Is that an appropriate time?

CHAIR: Yes, can I just bring this point home a little bit, Mr Te Kani.

MR TE KANI: Yes.

CHAIR: You said that some of this appeared to be violent. Would you agree that every one of these examples that Ms Toohey has read out to you is completely unacceptable behaviour to any human being, let alone a child in care?

MR TE KANI: Yes, I acknowledge it's inhumane, yeah.

CHAIR: It is inhumane.

MR TE KANI: It is inhumane.

CHAIR: I didn't want to think that you were somehow --

MR TE KANI: Minimising it, no, that's not my intention.

CHAIR: I didn't think it was, that's why I wanted to clarify it. All right, thank you, we'll take our 15 minutes and come back at just after 12.05 pm.

Adjournment from 11.52 am to 12.07 pm

CHAIR: Thank you, Ms Toohey.

MS TOOHEY: Kia ora anō. I want to go now to current day. Epuni is now operational as a care and protection residence, have I got that right, in Lower Hutt?

MR TE KANI: Yes.

MS TOOHEY: I want to take you to the Children's Commissioner report, I think from last year, in relation to Epuni. This is MSC0008240 and this is at page 7 that I'm going to refer to. The heading is "Staff were unable to keep children and young people safe from their peers" and the findings were:

"Children and young people said they continued to feel unsafe at Epuni. Most of this was due to the inability of staff to protect them from intimidation and assaults by individuals and groups of other children and young people. Children and young people described being anxious, scared and powerless as a result of previous incidents where staff had failed to protect them. We heard about children and young people being assaulted by another young person multiple times. Children and young people told us about other children and young people being incited to undertake assaults on others."

Then if we just go to page 9 and I'll ask you for a comment:

"We also heard of staff using other young people as a threat to physically hurt other children and young people."

Just in terms of that report of the Office of the Children's Commissioner, do you agree with me that this is reporting exactly the same problems that we've been discussing this morning at residential care throughout the 1970s and 1980s in 2021?

MR TE KANI: First of all, I want to acknowledge the work of the Office of the Children's Commissioner and this report. What I can say quite clearly in this particular case in this

report, we know of every circumstance that they've reported on. We have a number of processes in place to not only understand it, but to rectify any concerns about harm or, as reported in the OPCAT report, the set of recommendations for us to make the improvements as they're brought to our attention. But in understanding -- let me re-clarify. We are in the position where we understand the details of what's happened in the cases there, not acceptable, not acceptable. I wouldn't say it's the same as what the Commission has seen today in terms of the testimony evidence presented before it in relation to Kohitere or Eastlands as providers. Nonetheless, that doesn't minimise the points and observations made by the Office of the Children's Commissioner or even our view of what we understand to be the harm attributed to some of those behaviours.

I do want to ask the team to add some points, if that's okay, Ms Toohey?

MS TOOHEY: Certainly, of course.

MR WHITCOMBE: Kia ora, and I too would want to just start by acknowledging or welcoming the opportunities that we have through the role of the OPCAT reporting through OCC to reflect on our practice and make improvements. I do want to provide some context and in no way want to minimise the experiences, certainly for the young people at that time. They need to feel safe, they need to feel protected and they were clearly saying to us that they weren't feeling that way at that time.

A report of concern was made at that time and there was a plan put in place to respond to the worries that were there that the OPCAT report has identified. I can talk you through aspects of that plan, if that would be useful?

MS TOOHEY: I think, can I just take you to another example first and then provide you with an opportunity to comment if that's suitable?

MR TE KANI: Ka pai.

MS TOOHEY: During last year, 2021, a video was published of an assault by staff on a child at a Christchurch care and protection residence. I'm sure you're familiar with it. The response of Oranga Tamariki, if I have this right, was to temporarily shut down that residence while it tried to resolve the issues?

MR TE KANI: Yes.

MS TOOHEY: We've all seen that video and I think you'll agree with me that it's highly disturbing?

MR TE KANI: Yes.

MS TOOHEY: Were the media reports correct that one of the staff members involved in assaulting the child was not a qualified social worker but was a youth, called a youth worker?

MR WHITCOMBE: That's my understanding, yes.

MS TOOHEY: And was it also correct that this all came to light because a staff member blew the whistle, effectively, and showed the media that video that they had taken from CCTV footage within the residence?

MR TE KANI: That's what we understand, yes.

MS TOOHEY: Part of that assault continued on the young person after that person was taken into a secure room, the solitary confinement room, is that right? That's how it appears in the video.

MR TE KANI: Yes.

MS TOOHEY: Just this picture that recent events is providing from the report into Epuni and the video that was shown is that, and I appreciate you might have detail about some of the individual circumstances, but stepping back from the individual circumstances, do you agree that this gives the appearance of a culture of violence continuing in residential care in New Zealand?

MR TE KANI: I fully acknowledge that what we all saw in the video that appeared in the newsroom article was entirely disturbing, which is why, at the time, the then Chief Executive acted decisively to temporary shut down Te Oranga so that he and us all can feel assured about the safety of the tamariki there. To this day, Te Oranga is still not operational. So that's a hallmark difference, in my view, from what we've seen, what the Commission has seen, to where we are today.

MS TOOHEY: You both mentioned, Mr Whitcombe and Mr Te Kani, about child safety and I appreciate you have a legislative mandate in relation to that, but does Oranga Tamariki strive for something more than the bare minimum of child safety? What about nurturing children who are in State care, is there any plan or goal to provide something more than just not being assaulted?

MR TE KANI: I'll make some introductory comments and I know the team will have some views on that. Ms Toohey, of course our aspiration is for all our tamariki to be loved and cared in State care, of course that's our aspiration and that's our vision and that's our goal. I know from not just the many social workers I've talked to, but also the whānau who are caring for tamariki in the hands of the State have that aspiration and goal too.

What we're all committed to and we work towards, and I'm not saying by any means we're perfect. As I mentioned yesterday, we've got work to do to regain the trust and confidence of the public and our communities in the work that we do. So I acknowledge that. But that said, I do want to speak to the people I know who are working towards a higher aspiration, a higher vision.

I think the other point I'll make before asking Nicolette and Peter to make some comment too is a constant message from those youth in care, our youth advisory group is -- they want to be inspired, they want their experiences in State care to be more than just responding to their need, they actually want a system of which we are shepherds and kaitiaki to inspire them, lift them, help them reach their full potential that they're entitled to as tamariki in Aotearoa.

So we share that vision, we share that commitment, we know we've got work to do, but I'll hand over to Peter and Nicolette.

MR WHITCOMBE: I'll just lead off and, you know, going back to the examples that you've given us of the past and the present examples that you've alluded to around Te Oranga and Epuni, in both of those situations, there's been independent investigations into those matters and there's had to be accountability for the things that have not been right and we have wanted to set a really clear and high standard and bar for care on the accountability for things when they are not right.

Those investigations also did not show a context of widespread violence and abuse like those characterised earlier, and I don't want our staff who are working in those residences characterised in the same way. We have a range of mechanisms that oversight, that support, that give tamariki voice, that -- where they aren't isolated and not heard. There are many eyes, and they are really important functions for young people to be able to access.

I want to also go to the aspiration, absolutely, and I'm pleased you raised it, about the aspiration we have to have for our children and young people far beyond safety, and I think that that has been a criticism of us in the past, that we have strived to achieve safety but not achieved beyond that. You know, the healing, recovery, restoration, connection, belonging that we want for tamariki.

Every tamariki does have what's called an "all about me" plan, and they are a plan specific and unique to that child and goes to their specific strengths and needs and puts supports in place for them.

As Chief Social Worker, I'm involved right now in the Prime Minister's Oranga Tamariki awards for tamariki in care and the aspiration that young people themselves hold and the things that they're achieving is phenomenal, I wanted to make those comments.

MS DICKSON: If I could just add two comments, one is about the safety issue, one is about the aspiration.

In relation to safety, what I would say is starkly different than in the past is the degree to which we recognise and act on concerns of safety now. So we have a very deliberate process, we introduced a process as Oranga Tamariki to report on and monitor every allegation of abuse in care to make sure that, firstly, it was properly recorded; secondly, it was properly investigated; thirdly, that the appropriate support and therapeutic care was put around that. We have made a deliberate choice, it wasn't required, we made a deliberate choice to report on that because we think it's critically important to report publicly twice a year. We think it's critically important, exactly for the reason that you've said, these incidents make it seem nothing has changed to some people and that is why there is a need, I think, to be absolutely transparent, in the way that allegations of abuse in care are recognised, reported and identified, and that is critical, because the cultures of the institutions we've talked about today were a culture of closing that down, of disbelieving, of not taking action, of condoning, and that's absolutely not the standard that was applied in relation to the concerns raised through Epuni, through Te Oranga, or any allegation of abuse in care.

The last thing I just wanted to add was just to build a little bit on what Peter said just about the environments and residences today. So again this is not discounting the incidents that we've talked about, but you talked about that range, that higher aspiration and so I think about some of the therapeutic environments that one of the professional -- one of your expert witnesses spoke about, the kind of sensory spaces, the kind of trauma-informed practices that are now being built into the DNA of some of our residential settings. I think about the kind of programmes to help overcome that disconnection from culture we talked about this morning.

Individualised health assessments, so the kind of practices you talked about this morning which are abhorrent have been replaced by specialised skilled medical professionals coming into these settings and undertaking individualised health assessments to meet needs.

So this is not about denying the reality of abuse still occurring in care, it is about owning that, though, and being accountable to it and making sure every time that happens, there is an appropriate response.

CHAIR: Can I just interrupt for a moment. Just to refer all of you -- thank you for that explanation of the differences from the past and we've heard that. We had a witness last week, Dr Crawshaw, from the Department of -- the Ministry of Health.

MR TE KANI: Ministry of Health.

CHAIR: Whatever its new name is, and he made some very powerful comments about institutions and institutions in a wide sense, so there's the Kohitere institution, there's the Epuni institution, there's the large family home institution. What he said about that was this: that all institutions of these sorts have an inherent violence in them. Violence is inherent in the institution.

I think he was saying not because the people who are running them want that to happen, but the very nature of putting people together in groups under the care and the supervision of adults has in it an inherent power structure which can be inherently violent.

His view was that all institutions should be closed down. I wanted to ask you if you had a view or an opinion on that?

MR TE KANI: Yes, Madam Chair. So we have a very clear view that the care and protection residences need to be closed down. So that is a stated organisational view, it's also the view of the Government as articulated in the future direction plan. We are now on the process of working out a way to do that that's safe, given the nature of our tamariki currently in the residences, to ensure that we meet their needs but, equally, recognising that we need to move to a model of care which has more support for those whānau of tamariki that has particular high, complex needs.

So that's our direction, that's our stated position, that's what --

CHAIR: Thank you for that.

COMMISSIONER ERUETI: Are there any views for Youth Justice residences as well, Mr Te Kani?

MR WHITCOMBE: Yes, there are, and recently the Ministerial Advisory Board's report, review into both care and protection and Youth Justice residences was released, and we have accepted all of the recommendations in that report. And it really calls us to, from the ground up, rethink what are the core responsibilities that we have, what is the right workforce with the right training and skills that need to be in place and what are the right environments. And I think the point made earlier that you were making in terms of the

inherent violence when you bring significant groups of young people like this together and the power structures that exist within that, you know, those statements are real, and how we reduce our numbers of young people first going into facilities like that, and we've already done a range of work to try and reduce that and numbers are much lower than they used to be. But also, once they are there, how we make sure they're not in large groups, you know, that there are the smaller, more home-like, more community-centred facilities available. That's the future that we want to achieve.

MS DICKSON: Just to add, I mean there are some slightly different imperatives in a Youth Justice setting in terms of public interest and safety, but even there, there's a number of community remand homes now which offer a much less restrictive environment but still satisfy the balance between public safety and managing things like bail conditions, restrictions that are necessary as a result of alleged offending, without the exposure to the harmful impact of a large, institutional arrangement.

COMMISSIONER ERUETI: That report, the review you just spoke about, Mr Whitcombe, could you give me the name of that again?

MR WHITCOMBE: It was commissioned by the minister, the Ministerial Advisory Board's review of care and protection and Youth Justice residences and it came about off the back of the Te Oranga issues that were raised, amongst some others, and the minister wanted assurance on the safe running and operation of our residences.

COMMISSIONER ERUETI: I assume that report raised many of the kaupapa that we've been talking about here about a culture of bullying and violence and so forth?

MR WHITCOMBE: Yeah, it certainly raised issues around safety, certainly, and thus the drive to really rethink the staffing, the qualifications, the training, the environments from the ground up.

COMMISSIONER ERUETI: If we were to look for these ideas and proposals in section 7AA and your reports, you refer to a shift with the care and protection residences community-based homes, but where would we look for the reforms that you're discussing?

MR TE KANI: We can provide the reports that we've mentioned. The Ministerial Advisory Board report into the residences is public, so we can provide that.

COMMISSIONER ERUETI: But your reforms is what I'm -- your ideas for making, replacing them with smaller homes and so forth, where would we find those?

MR WHITCOMBE: Yeah, we can provide you with that and we're partway down that path of achieving some of those things.

COMMISSIONER ERUETI: They're not yet in the public domain though, they're still --

MR WHITCOMBE: We will provide those to you.

COMMISSIONER STEENSON: Sorry, just on that, so with the group homes being devolved, have you got an idea of what size and how they will look like? Because obviously devolving them to various community organisations and making sure that they don't replicate the institutional flavour, is there specifications around that that will be part of that information you can provide?

MS DICKSON: I might just make some comments and I wonder if Ms Chase might have something to add here. One of the things that -- when we are looking at those homes and often they're in partnership again with community, with iwi Māori, it's very much about designing from the kind of journey and experience that we want tamariki, rangatahi and their whānau really to have, so thinking quite differently about how the physical space supports a model and approach to care.

Inherent in that is working with tamariki, rangatahi, whānau to understanding what that kind of environment would look like for them and I just wonder, Frana, if you wanted to share some of your recent experience in that space?

MS CHASE: I suppose before I get down to the detail of the actual physical builds of the whare, I just want to talk about how, for context, the response to exiting out of residences is more about tamariki being connected to their culture, their identity, to their whakapapa, to their whenua. And so the design of the new way of working is in partnership with the whānau, hapū and iwi towards those tamariki whakapapa first.

And then within that, our Chief Executive has integrated a whole lot of programmes of work out of silos into one programme called Te Oranga o te Whānau, and Te Oranga o te Whānau stretches from preventing tamariki from coming into State care in the first place to actually, through the continuum, ensuring that if there's a report of concern, that their hapū and iwi know about that in the first place, to help prevent, that if there is a whānau hui, if there's an FGC that a hundred sets of eyes are around them. And then for tamariki currently that are in State care, that those tamariki will be supported by their whānau as a section 396.

So, ideally, whānau caregivers in their own whare supported properly and well to care for tamariki so that they're not in institutional-like settings but more in their own kainga and supported properly. From time to time, though, there will be times when they need some other place to be and so we have built -- we have got some capital funding to build responses and initially that was to build 16 Youth Justice residences and 10 care and protection specialist group homes, but we actually made a decision that before we built

many more than what we'd committed to, that we would be engaging properly with the iwi in each area so that where the whare are physically built has got a cultural connection and so that it's not -- you know, it's got that cultural connectedness right from the start, so those cultural narratives are built right through.

So we have just -- I think very soon will be the very first one that has been built at Claude Road in Manurewa, and we're working with iwi and mana whenua, they had lots of input into what it would look like, but also the most important critical component is that we don't intend to operate them, Oranga Tamariki won't be operating them, they'll be operated in partnership with our whānau, hapū and iwi.

So the principle is that Māori will be designing their own care response for their own tamariki, so that that accountability about -- for whakapapa rests with us to support and enable them, but for them, you know, they're the safe sets of hand, they're the safe sets of eyes. And so, yeah, that's, sorry, very long and probably fast. Kia ora.

COMMISSIONER STEENSON: Thank you. Can you just help me to understand, though, what that's -- it sounds great, it does sound great, but how do we know that there's still safety mechanisms for those places, for the children going into those places? And I understand that there is a community element to it?

MS CHASE: So all of the current iwi that have been approved -- so for the past 3 years, we've been building up from no section 396 iwi partners to 15. Over the past three years, they have built their own model of care based on their own tikanga, their own whakapapa and they have to still adhere to the section 396 approvals and monitoring status. They'll be bound by -- my colleagues talked about the care standards and so they have their own policies and procedures around how they will uphold the care standards from their perspective. So those mechanisms are there for assurance.

But the main one is that instead of having like non-kin care by staff, these are actually whānau with whakapapa to -- so there's different level of accountability and safety.

COMMISSIONER STEENSON: Thank you.

COMMISSIONER ALOFIVAE: Can I just ask a follow-up question to that, Ms Chase. So there are a number of family homes already in existence that Oranga Tamariki use and own, part of your asset base. Are some of those homes being repurposed for what you've just been explaining to us?

MS CHASE: That's not the intent currently. First of all, what we want to do and the focus has been on the new builds.

COMMISSIONER ALOFIVAE: So they're new builds, not necessarily using your existing stock?

MS CHASE: Yes, they're new builds, so they're purpose-built and the engagement around the build starts with iwi and mana whenua right from where will we build, what will it look like, scoping for whenua and all of that, plans right down to the build.

COMMISSIONER ALOFIVAE: Then the same concept, but obviously not with whānau, hapū and iwi but for Pasifika communities and also for our disability community, is there an intention for there to be specialist homes where there might be a strong cultural flavour to suit both those cohorts?

MS CHASE: There would be the intent. Sina and I, we need to -- I've been building Māori capability and capacity and now we have two colleagues who are experts in their fields, and so there's definitely -- we want to create the best for all tamariki.

MS AIOLUPOTEA-AIONO: Oranga Tamariki did have plans for -- to build one specialist home that had a Pasifika flavour. That is currently on hold at the moment but it's certainly the intent that we would have a fale that would reflect our Pacific cultures and flavours and therapeutic approaches and the culture of the home, so that's definitely something that we have been considering as an organisation.

COMMISSIONER ALOFIVAE: So there is hopefully a sizable investment, more than the 1% that we heard yesterday, looking at the graph, that's currently going into Pacific care providers, but we couldn't see any figures from that graph that related to disability care providers and I was wondering if, Ms Boyles, you might know the answer to that?

MS BOYLES: Yeah, so I don't see the disabled community per se as separate to Māori or Pacific. There are disabled Pacific people and disabled Māori people and disabled Pākehā, so we have to work together to make sure that the homes that we build for Māori are accessible, for example, in the same -- and the same for Pacific, I don't see it as a separate community.

COMMISSIONER ALOFIVAE: Thank you.

CHAIR: I think we're drifting away and we don't want to deprive you, Ms Toohey, of your time. Thank you all for those answers.

MS TOOHEY: Thank you.

I now want to move to a different topic, which is the use of solitary confinement. Just to introduce this subject, Mr Te Kani, this solitary confinement or, as Oranga Tamariki call it, the use of "secure", remains in use in New Zealand in both care and protection and Youth Justice facilities?

MR TE KANI: Yes, it does.

MS TOOHEY: You would have -- I expect you'll be familiar with the report that the Royal Commission has been provided with by Dr Shalev?

MR TE KANI: Yes.

MS TOOHEY: That's a very recent report which summarises the evidence that the Commission has received from survivors, summarises the position in relation to international obligations that New Zealand has in relation --

MR TE KANI: Absolutely, yeah.

MS TOOHEY: -- to children and I'm going to shortcut this quite a lot, but if I can go to that report, which is MSC0008160, and just for those listening who are not familiar with Dr Shalev, she is an international expert based in Oxford University in relation to solitary confinement internationally. This is what she said about the design and physical provisions of what is termed "secure". And she says at the foot of page 16:

"To sum up survivors' descriptions of secure rooms in different residences and seclusion rooms in Health and Disability facilities alike paint a consistent picture of barren, austere, prison-like rooms, containing minimal furniture (a bed) and no personal belongings. Having visited solitary confinement rooms and units in prisons, psychiatric hospitals and children's care homes, I can personally attest that secure and seclusion cells were no different to prison segregation (solitary confinement) cells and in some cases they were worse."

Do you accept what has been summarised there by Dr Shalev that the secure units in children's homes in New Zealand within the scope period were very much like a prison cell?

MR TE KANI: I can acknowledge that, yes.

MS TOOHEY: I had a number of accounts to provide to you, but just in the interests of time, some of the evidence that the Commission received was that children had, in children's homes in New Zealand in the residences, a bucket as a toilet in the cell and were made to eat their meals beside the bucket that they had been to the toilet in. Do you have -- I can take you to those accounts, there are many of them, but are you prepared to accept from me that that is the evidence that the Commission has received?

MR TE KANI: I can accept the evidence that you've been presented, yes.

MS TOOHEY: Do you have any comment on that history of treatment of children in solitary confinement in that way?

MR TE KANI: Only that it was inhumane and -- yeah.

MS TOOHEY: One of the witnesses, I'm just going to read this out without bringing it up, WITN0427001, and this relates to Bollard. This is at paragraph 51:

"The secure units were covered with spiders. To make matters worse, the doors were locked. I was told I needed to be there for a week. It's like a jail, there was a bed and a little toilet. No one bothered to come and check on me other than to put food through the sliding door. I was eventually taken out about five days after being in secure. It was frightening being in that cell. You can't yell or call out as all that signals to the staff is that you're a baby, you are being hysterical, which means you need to stay in secure for longer until you settle down."

Do you accept that children were put into these cells for long periods of time, some of them five days, as that witness, and some for far longer. Are you familiar with the evidence? Would it help if I took you to another example?

MR TE KANI: I'm familiar with the evidence and some kōrero from survivors in this regard, yes.

MS TOOHEY: One of them, which I again won't bring up, but it's WITN0245001, this is at page 30 at 175, there is a document recorded on that witness' file in late 1988:

"This is the witness' 10th admission in nine months to secure. He has spent 154 days in secure and 64 days in the open unit. We have been unable to curb his behaviour."

That witness, Mr Te Kani, was one that I referred to earlier, has ended up spending substantial amounts of time in prison. Has the Department done any work on correlation between the amount of time that children were put in secure by the State and their later behaviour, including criminal behaviour?

MR TE KANI: I'll ask my colleagues.

MR WHITCOMBE: Can you please just work through that last part of the question again?

MS TOOHEY: Whether Oranga Tamariki has done any research work to correlate what happened to those children who were put in secure care for lengthy periods such as that witness, 154 days, in terms of their mental health, dying by suicide, entry to prison? Have you done any research work about that?

MS DICKSON: I think what I would say is we would acknowledge those experiences. I would have to go back and check with my colleagues in terms of our evidence centre work whether there's been anything specific done by way of study.

MS TOOHEY: We have some expert evidence that was provided in the bundle, both from Dr Shalev and from Enys Delmage, the psychiatrist I referred to earlier.

MR TE KANI: Yes.

MS TOOHEY: And Enys Delmage, I'll just refer this to you without bringing it up in the interests of time, but let me know if you need me to.

MR TE KANI: We've read it.

MS TOOHEY: You'd acknowledge that there are significant mental health impacts on anyone, but especially children from being locked in solitary confinement?

MR TE KANI: Yes, we acknowledge that, yes.

MS TOOHEY: I want to go now to an example of what happened in relation to children with intellectual disabilities, and just to give a quote from Dr Delmage about children with intellectual disabilities, he said:

"The risks of being managed in secure areas will vary depending on the individual characteristics. For instance, tamariki children with intellectual disability may struggle to understand what is happening to them or what is expected of them in order for the use of the secure area to end."

Just bearing that in mind, I want to take you now to an example which is ORT 0001229-0015 at page 2. Just while that's coming up, I'll explain to you what it is. It's a letter to the principal of Ōwairaka Boys' Home in the mid-1980s, and it relates to a report about a boy who's described at page 2 of that document as being physically handicapped and mentally retarded. That's the section there. So from this letter, it's reporting on what happened. His IQ was 60 to 70:

"Was today found in his room attempting strangulation and from reports would have succeeded had he not been interrupted. This boy had been in the secure unit for 45 days as he absconds immediately if sent out to the open institution. Placement outside Social Welfare institutions seems difficult. He is a chronic attention seeker, is a disrupting influence on other inmates and staff, he is provocative and aggressive but in the main is controllable."

At page 4 of that document, I'll just go there. It's recorded:

"On asking why he attempted this, he stated he wanted to see someone else in the open home and he wanted to get out of secure."

Is Oranga Tamariki currently recording any data around suicide in care and protection residences or Youth Justice residences where secure units are, or at all?

MR WHITCOMBE: Yes, we are.

COMMISSIONER STEENSON: Sorry, can I just ask, does that include attempts?

MR WHITCOMBE: Yes, I have data on self-harm attempts as well.

MS TOOHEY: Are you able to share what that reflects from, say, the last five or 10 years?

MR TE KANI: So I'm able to reflect on what it looks like within the last year in the here and now, and if we were to go back, we would need to do some case file analysis. I do just want to be clear for the Commission that this relates to residences as opposed to the wider care system and we do have limitations from a data perspective around the wider care system and this particular issue of suicide attempts.

So the latest data that I have over the last year from 1 July 2021 to 30 June 2022 is that there were 16 instances of self-harm or suicide attempts within the care and protection residences.

MS TOOHEY: I did notice just on that subject that in Oranga Tamariki's response to the Commission recently, NTP 418, this is at paragraph 6.61 for Ms Schmidt-McCleave, that you noted to the Commission that from 1 April 2017 until 27 February 2022, there had been 32 deaths of children in care of whom 25 identified as Māori, and it was noted that of 32 deaths, 18 were identified as natural causes, which begs the question, what were the causes of the other children who died, what were the causes of death?

MR WHITCOMBE: We can come back to you with that information.

MS TOOHEY: Just going back to secure in the time that we have left, if we -- I just want to summarise to you the experiences of another survivor in relation to his experiences in secure in the 1970s at Ōwairaka. This is EXT 0016024. I'm being quite unfair here to my member of my team by jumping around, but at paragraph -- I'll just read this out to begin with while it's coming up, but at paragraph 45, the witness notes:

"I remember they used to make you clean the toilet in secure with your own toothbrush and then make you use that toothbrush to clean your teeth."

And then at paragraph 49, he describes:

"For me and so many others I know of, it was the sexual abuse that was the worst. A lot of things happened down in the secure unit. I can still hear the screams and cries from other boys when they get taken into the shower block. That's where the abuse happened in the secure shower block."

He known goes on to describe sexual assault of others similarly at Hokio in the secure block. But then at paragraphs 50 and 51, if I just ask you to read that to yourself, I won't read it out, but to summarise what this is, the witness is describing a very serious, I think you'll agree, sexual assault by a group of staff on him at the secure block. I think by three staff. And then at paragraph 53, he notes that his last time in secure at Ōwairaka, he was kept there for three weeks:

"The most important impact in my life from this was that I contracted a sexual disease at this time. Staff never got me to see the doctor because questions would have to be asked about how it happened."

Do you have any comment first on this?

MR TE KANI: Just to first reiterate the courage of bringing this kōrero forward by the survivor, noting there would be many kōrero that reflects this experience, which is terrible and traumatic and quite hard to read.

MS TOOHEY: One of the other aspects of this, Mr Te Kani, is that it appears that secure is an environment back then, and in June last year in Christchurch, where abuse can be perpetrated by staff. Do you agree with me that that appears to be a common theme here between this survivor's experience and the experiences that we saw on the video last year?

MR TE KANI: I do think they're quite specific experiences that are different. That's not to minimise the harm to young persons in the video at Te Oranga, but I wouldn't -- which is reflected in an independent investigation conducted into Te Oranga and a number of internal investigations articulate that Te Oranga was a care and protection residence that was violent.

CHAIR: I think the question is specifically about secure. We talked earlier about how children being held in remote areas such as Whakapakari for example, immediately makes it a dangerous situation because there's no oversight. I think the point being made here is that secure is a bit the same, so it's out of sight of the rest of the institution, it's a closed environment where the hazards and the dangers of being assaulted and harmed are more likely to occur than perhaps the rest of the residence. Do you want to comment on that proposition?

MR WHITCOMBE: Yeah, I do. Just very simply on a couple of matters, the secure units in residences are not -- I don't want them to be conflated with solitary confinement. Young people are able to move around those units, there's outside space, and there are numbers of staff that are in secure units as they are today.

We have CCTV camera footage of the areas throughout secure. The parts of secure that aren't covered are the young person's bedrooms and bathroom and toilet, but that is the only areas that are not covered by CCTV footage.

Any interaction in terms of -- so that CCTV footage is monitored 24/7 in real-time by a staff member on site, and any use of force that occurs is reviewed within that 24-hour period for any excessive use of force or any learnings about the approach that staff had taken, whether it be about de-escalation or anything else.

And then if there have been any concerns about any kind of physical use of force or interaction, there are appropriate processes around reports of concern. We do also have a panel that we've more recently set up over the last year and a half which is a panel made up of VOYCE - Whakarongo Mai representation, of the Ministry of Justice, and other representation, Safety of Children in Care unit, and that team comes together to review any use of force incidents where there might have been a young person hurt and, again, it's a check and balance and provides recommendations back to the General Manager around operational and practice improvements.

CHAIR: You can take another 5 minutes if you need.

MS TOOHEY: Thank you.

Just on that review of the footage, given what happened last year, have you given consideration to an independent unit outside of that residential care facility reviewing the footage so that if there is a culture of abuse happening within one institution, you have a check on that from somebody who has no connection to that physical institution?

MR TE KANI: So there was an independent QC that looked at not only the footage but conducted the investigation.

MS TOOHEY: Sorry to interrupt you, Mr Te Kani, but I meant every day, so that as the footage is being reviewed that Mr Whitcombe just talked about, that somebody is always reviewing what's happening on the footage. Is there any consideration of some other independent check on that, I guess, is my question.

MR WHITCOMBE: I guess the independent check and balance that we do have in place is that use of force panel where any young people who may have been hurt or injured during a restraint process, those are reviewed, the CCTV footage is made available for review for the whole of the panel.

MS TOOHEY: We'll come to that tomorrow, but just to finish this subject off, the Commission heard evidence last week from Iona Holsted, the Secretary of Education, and she outlined that in the education sphere, the use of seclusion is banned because it's regarded as a form of abuse. Why does the Secretary of Education take such a different view than Oranga Tamariki about the continued use of secure in relation to children?

MR TE KANI: I can't speak for the position of the Secretary of Education, but what I can say is we don't take the use of secure rooms lightly. Every time there is a decision to use a secure room, whatever the circumstance, we go through the process we know, it will be monitored, audited, regulated, so we operate within the bounds that we have to. The use of secure

rooms has declined, nonetheless, it will always be our preference not to, but there have been those circumstances unfortunately where we've had to use secure.

MR WHITCOMBE: I just want to again stipulate there's different sets of legislation that we exist under. We're working under the Residential Care Regulations 1996, and I would not want to, again, conflate seclusion or isolation or solitary confinement with use of secure care. Where there are a set of -- young people are required to have recreational and educational activities, they're not locked in their rooms during periods between 8.00 am and 8.00 pm. So it's just really important not to conflate those two things.

MS TOOHEY: Do you consider that the current use is compliant given that the United Nations Committee Against Torture report in relation to New Zealand in 2015 recommended that for juveniles, New Zealand prohibit the use of solitary confinement and seclusion?

MR WHITCOMBE: We have a range of checks and balances and I wonder if Nicolette will talk to some of those that go in and review the decision-making that surrounds use of secure care and whether or not it meets the specific provisions within the care regulations. So I'll just pass over to Nicolette.

MS TOOHEY: Just before you answer, one of the points I would like you to comment on is that it mentions in the evidence, or in NTP 418, the response, that Oranga Tamariki are looking at legislative amendments to downgrade the use of secure care. My question for you is that the legislation appears to be permissive, it doesn't require the use of secure care and care and protection facilities at least. If you could explain some of that, that would be helpful.

MR WHITCOMBE: Just to make the comment that, yes, Oranga Tamariki is working to review the residential care regulations, we commonly understand there's policy work happening, we understand it, we call it bill 2 at the moment, and there are a range of things that we are looking at in terms of secure settings, use of force settings, custodial settings, where we might want to shift and change, but we're just in that policy ledge development phase.

MS TOOHEY: But just to answer that question, the legislation doesn't require you to use solitary confinement or seclusion, you could stop this practice tomorrow if you chose to?

MR WHITCOMBE: I want to be clear, we're not using solitary confinement currently. Regulations 24 and 48 within the residential care regulations do talk to young people being able to go to their rooms but it's for set periods of times for set circumstances and it's monitored and reviewed.

MS TOOHEY: So at night they're locked in a unit but not in their bedroom, is that what you're saying?

MR WHITCOMBE: Yeah, so young people in our units, in our residences, their bedroom doors are not locked.

MS TOOHEY: But they're within a unit that is locked?

MR WHITCOMBE: Yes, that's correct.

MS TOOHEY: Are they allowed out of the unit during the day?

MR WHITCOMBE: During the day, yes.

CHAIR: This might be something we might need to stop because of the timing but this might be something where we might want some more information and, again, would you be prepared to answer some questions about that?

MR WHITCOMBE: Absolutely.

MS SCHMIDT-McCLEAVE: Madam Chair, I was just going to add, as well as the regulations which Mr Whitcombe referred to, there are provisions in the Oranga Tamariki Act, 367 onwards, a group of provisions and there are very strict criteria around the use of what's called secure care, so I just wanted to make sure the Commissioners understood that as well as the regulations.

COMMISSIONER ERUETI: The question was about consistency with UNCAT, not -- I mean Mr Whitcombe said consistency with your regulations, but I don't think you answered that question about --

MR WHITCOMBE: We can come back with a formal answer on that.

CHAIR: I think out of humanity to our transcribers we need to take a break. Just given time imperatives, should we come back at 2.00 pm or do you want to give us a little more latitude, Ms Toohey, and come back at 2.10 pm?

MS TOOHEY: I'm in your hands, Madam Chair.

CHAIR: You know how long you need, don't you, and I suspect we have circumscribed you quite a lot this morning.

MS TOOHEY: After the break we were going to explore some more issues about abuse in care. I think we can cover it if we come back at 2.10 pm.

CHAIR: 2.10 pm. All right, then everybody take 1 hour and we return at 2.10 pm, thank you.

Lunch adjournment from 1.10 pm to 2.10 pm

CHAIR: Welcome back, everybody, to the afternoon session. Ms Toohey.

MS TOOHEY: Kia ora ano. I want to move now to a different topic, Mr Te Kani, which relates to sexual abuse in residential care. And just as a warning for any survivors here or listening online, some of the content might be disturbing. I want to take you first to a document that

the Commission has prepared based on evidence of historic claims made to the Ministry of Social Development.

MR TE KANI: Yes.

MS TOOHEY: This is MSC0008285. The purpose of doing this, Mr Te Kani, is just to provide some context to the number of allegations that were made in various residences. MSD commented on these last week. It's not to show that there were findings of sexual abuse but it does give a picture of how many allegations were made, at least to the Historic Claims Unit. So this table relates to claims to the MSD Historic Unit of sexual abuse by staff at Epuni Boys' Home.

CHAIR: Just say that again, Ms Toohey. These are?

MS TOOHEY: These are tables that have been prepared from information provided by the Ministry of Social Development of how many historic claims they had in relation to Epuni from 1968 to 1977, and if we just look there at the first page, this is a table, if you can orientate yourself to this, there's the name of the person who's alleged to have perpetrated the abuse, being staff members as noted in the next column, and the dates are the date range of the period in which the offences are alleged to have occurred and you can see on this page that's continuing from 1968 to 1972 and then there's a categorisation by the Ministry of Social Development as to how severe in their view that abuse was, ranging there from low, moderate to serious, and then on the right-hand column is the boys' home in which this occurred, in this case Epuni.

If we go over to the next page, there's a continuation of this and I don't expect you to do any maths from the witness box, but would you accept from me that this shows there are 68 incidences of sexual abuse involving 19 different staff and seven more who are unnamed?

MR TE KANI: Yes.

MS TOOHEY: And I want to touch on something that you said in evidence in your brief of evidence, Mr Te Kani, at paragraph 21, which was that you'd met with people who'd left care recently and they reminded you that there are others who haven't come forward to the Commission, and presumably others who haven't gone forward to the Historic Claims Unit, who also have accounts of abuse in care.

So although we have this picture as just one example of Epuni of just one of the homes, do you accept that the true picture of sexual abuse in residential care is going to remain unknown?

MR TE KANI: I accept that, yes.

MS TOOHEY: But it's at least likely to be much bigger than this snapshot?

MR TE KANI: Highly likely, yes.

MS TOOHEY: One other thing I wanted to clarify from your evidence, Mr Te Kani, and this was at paragraph 218 of your brief. You made a comment:

"Oranga Tamariki notes that it was not until the mid-1970s that most jurisdictions around the world formally acknowledged child abuse in legislation and policy. Oranga Tamariki recognises that, historically, conversations about child abuse and children's and young persons' rights were limited or in some areas non-existent. This reflects that social work practice operates within a cultural and historical context. The context includes changing moral attitudes and persuasion, which in turn determines the expected role of the State through regulatory and legislative functions that in turn establish practice standards."

I want to give you an opportunity to explain what you mean by that.

MR TE KANI: Yes.

MS TOOHEY: Because I think you'd accept in the first instance that sexual abuse against children has always been unacceptable legally?

MR TE KANI: Of course.

MS TOOHEY: It's a crime, and even within the scope period, that was recognised as in fact a ground to remove children from homes where they were being sexually abused?

MR TE KANI: Of course.

MS TOOHEY: So what did you mean by this, that child abuse wasn't recognised until the mid-1970s?

MR TE KANI: I'll ask the team to add in after I've made my introductory comments, but irrespective of the timeframe, child abuse and sexual abuse is actually an act that we would all agree shouldn't be condoned. So that's the first -- there's the first point.

Paragraph 218, I can see how it might be interpreted in the way that you've articulated it, but that's not its intention. It's by all means not condoning or excusing in any way the behaviour of staff in that residence for whom those allegations are being made against.

What we're trying to say with that paragraph is in terms of the context at the time on law and policy, it wasn't clearly articulated or recognised, nonetheless, we know what's right or wrong. I'll pass on to Nicolette.

MS DICKSON: So the context I would add is that as a body of knowledge, the full extent of the kind of behaviours that amount to sexual abuse, the kind of contexts in which sexual abuse could occur, wasn't fully understood until that knowledge has sort of matured through the

70s, 80s and 90s. So, yes, all sexual abuse has been inappropriate. What this is saying, though, I think, or what we were trying to convey is that there was sexual abuse which was also inappropriate that wasn't recognised as being abusive. So when I think about some of the witness accounts or, sorry, the survivor accounts, they talk about behaviour which is young people are deemed to be equally culpable for a sexual encounter and activity and now we would absolutely understand that that was predatory and inappropriate adult behaviour. In the context of the time, it wasn't always recognised in that way. That's the context of the comment.

MS TOOHEY: So you mean that -- you're talking about sexual abuse -- or sexual activity between two children in a home?

MS DICKSON: No, no, no, sorry. When I read some of the survivor accounts of sexual abuse by an adult against a young person, it would be described in ways that suggested it was a meeting of equals, that the young person's behaviour was akin to the adult, and that's where I think the historical context has minimised and has suggested that, at times, the young people have been responsible for predatory adult behaviour.

MS TOOHEY: Where have you read that it was consensual?

MS DICKSON: So I'm not saying it's consensual. Some of the documents I saw in the witness bundle, I'd have to go back and have a look, talked about when an incident of sexual assault or abuse had been investigated by social workers or whatever the organisation at the time, a context was attached to it that suggested that somehow the young people were at fault, not the adults, if that makes sense.

MS TOOHEY: You're talking about the response of Social Welfare at the time?

MS DICKSON: Yes.

MS TOOHEY: When a complaint is made about sexual abuse, that the workers, the state workers --

MS DICKSON: Yes.

MS TOOHEY: -- categorised this as -- I think there are some examples that we can come to of that.

MS DICKSON: Yes, so they failed to recognise it for what it was, which was adult inappropriate sexually abusive behaviour.

MS TOOHEY: Which, I just want to give you the opportunity to comment though, has always been criminal?

MS DICKSON: Yes, certainly. So what I'm saying is I think that the attitudes around sexual abuse meant that there was under-identification of criminal sexual abuse at the time, that's the point I'm trying to make. Sorry if that wasn't clear.

MS TOOHEY: Thank you. Let's go straight to a document that I think might illustrate your point, Ms Dickson, which is ORT00006030060. It will take a minute to come up but this is a letter from one staff member at Epuni to the Superintendent Social Welfare in late -- in the late 1960s. And if I just summarise the first paragraph, it summarises that there was a phone call to this person from the manager of the home, indicating that 12 boys were involved in misconduct, it's called, on the part of a staff member in the course of his night supervision. So this is what's called a night watchman at Epuni and it was alleged that he woke boys to go to the toilet, and then if we go to the next paragraph. This is at paragraph 2:

"From the allegations, it would seem that in awakening them, he did so by touching them in the genital area and although there is no evidence he actually masturbated those boys, it would seem that this was his intention."

Then it goes on at paragraph 5 to indicate that the staff member was immediately told that his services were no longer required, but that no Police action had been taken because it appeared from discussions with the boys that no irreparable damage had been done and that:

"I felt in the absence of any real corroborative evidence that this would only serve to bring opprobrium on the institution and possibly give rise to considerable speculation on the part of the public."

Then if we go to the next page, at the bottom, there is a note back from the Superintendent, you'll recognise the name as a senior person within Social Welfare:

"It seems to me you should tell the incident to an appropriate officer in the Police" -- underlined -- "not for the purpose of having an information laid against this man but ensuring that the Police know of it so that something can be done if future employment is found where offences against children are made easier to commit. I think our obligation would end there."

First, in relation to that, what is described there is clearly criminal in nature.

MS DICKSON: Yes.

MS TOOHEY: Do you agree with that? And I think you'd also agree with me that that response is wholly inappropriate?

MS DICKSON: Yes.

MS TOOHEY: By Social Welfare and that the concern appeared to be the reputation of Social Welfare and the institution, as opposed to the safety of the children, and also that there appeared to be no accountability to the children for what had occurred in terms of a Police investigation?

MS DICKSON: Absolutely.

MS TOOHEY: Fast forward three years at Epuni and we have a witness account of another staff member being investigated for sexually abusing the boys there who was in fact convicted, and this is WITN0080001. At paragraph 13, I'm just going to read part of this to you:

"I will never forget being locked in a room in one of the wings and hearing the boy next door being raped by a staff member, knowing that that was what was happening and wondering when it would be my turn. The staff member was [such a staff member], he was a prolific offender who I believe had been caught offending at a similar institution in Hamilton, he was allowed to leave that institution and get a job at Epuni. This person was a housemaster. He slept on site. The housemasters were all-powerful, they had easy access to children, we had to obey them. If we didn't, we were disciplined. I remember the first time he offended against me. He found a reason to send me to my room. Once in the room, he came in and he abused me sexually. There was no escape. I was trapped in that environment. I was 10 or 11 years old."

I take it, given that that person was convicted of sexual offending at Epuni, that you accept that this happened in the children's home?

MS DICKSON: Yes.

MR TE KANI: Yes.

MS TOOHEY: But that the practice that had given rise to this occurring in the first place, which was his very easy unsupervised access to children at night continued after the 1968 example where the staff member was dismissed. Do you accept that that was a major failing in terms of safeguarding the children?

MR TE KANI: Yes.

MS TOOHEY: Is there anything you want to say to those survivors, and there are so many of them who have come forward to the Commission and are listening online, in relation to sexual abuse, particularly at Epuni, and what occurred with them with the 10 years of sexual abuse that we saw in the other table that has been reported?

MR TE KANI: Just to reiterate my acknowledgment from yesterday, that the State in this particular example did not meet our obligation and duty to keep them safe, and I acknowledge their kōrero and strength in coming forward.

MS TOOHEY: I want to go now to a different example which is Hokio, which is the children's home in Horowhenua, and on that same table, MSC0008285, you'll see there that these are recording instances from 1970 to 1979 at Hokio. Again, these are allegations made to the Ministry of Social Development for historic claims so, again, I think you'd accept it's by no means a full picture, but that this represents some of the allegations of abuse over that period?

MR TE KANI: I acknowledge that, yes.

MS TOOHEY: Again, will you accept from me that these claims raise 26 instances of sexual abuse involving 12 staff?

MR TE KANI: I acknowledge that, yes.

MS TOOHEY: I won't name them, but you'll see there, if you look down at 2065, there is a name written there and that name appears a lot, you'll notice, if we go out again and you can see that name frequently in the table, and I want to talk to you now about that staff member. We're going to go to a survivor's account, WITN0157001, and this is paragraph 102. This survivor records going to Hokio:

"The staff member was sexually abusing a lot of people at Hokio. I was there in 1973. Sexual abuse was frequent, especially by him. They would force you to do things."

And at 103:

"He'll play with your privates and bend over and have sex with you all the way. I cried all the time because of the pain. They made you do things to them", and I won't read out the rest of that. "A couple of times we were taken away, but separately because it was more private. I wasn't the only one it was happening to, that was the thing. I was taken to his house."

Then at 107, with this staff member:

"If you got called into his work area, we'd look at each other because we all knew what was going to happen. We'd watch out, we knew the signs, we'd walk away and know there was nothing we could do for the poor bugger."

Once again, do you have any comment on the extent of that abuse that's described?

MR TE KANI: Again, just to acknowledge the courage and the kōrero of that story coming forward.

MS TOOHEY: I want to go now to another document, ORT0072696. This is at page 6. This is a memorandum from the acting principal of the school to the principal in the mid-1970s, advising that that same staff member had resigned. And if we look at paragraph 3 there, I think this is your point, Ms Dickson.

MS DICKSON: Yes.

MS TOOHEY: So it's recording what had happened with the resignation and it says:

"Acting on rumours 'from several pupils', it was alleged that some boys had been indulging in sexual activities with a staff member. These include mutual masturbation, anal intercourse and other forms of sexual misbehaviour. Most of these incidents occurred in the home of the staff member, which is approximately a mile away from the institution. On occasions, that staff member would make improper suggestions and advances to the boys in concealed areas of the institution."

Although you made that comment before, Ms Dickson, that -- and I think this is the kind of comment that you were referring to?

MS DICKSON: Yes.

MS TOOHEY: This was serious --

MS DICKSON: Yes.

MS TOOHEY: -- sexual offending. I just want to give you the opportunity to comment on that, because this would never have been acceptably characterised as mutual consensual behaviour.

MS DICKSON: I'm sorry if there was any impression that I thought it was mutually consensual behaviour. What I'm saying is that what's so concerning about this account of the events at the time, that it was equalising the behaviour and it was suggesting that sexually predatory criminal behaviour towards young people was somehow their fault. That was the point that I was making. So I'm sorry if I haven't made that point clearer, but that is the context and so, from that perspective, I think there would have been actions towards young people that were not recognised for what they were, which was sexual abuse and criminal behaviour.

MS TOOHEY: I just want to take you now to a vetting issue about that same person and this is NZP0005455. So just to explain to you what this is going to be before it comes up, this is a criminal offence report from the Police relating to that same staff member because he was charged in relation to some of the Hokio offending, but if we have a look at page 3, just at the top half of the page, maybe. Let me call that out so we can read it. This is evidence that the Commission received in relation to this person, indicating that in the late 1960s, so many years before these incidents occurred at Hokio, that this person came to the attention of the Police for sexually touching a 14-year-old schoolboy. I'm not suggesting that the Department of Social Welfare actually knew this at the time that it employed him, but do you agree first that this staff member, knowing that, should never have been employed by

the Department of Social Welfare, knowing that he was alleged to have indecently assaulted a child?

MR TE KANI: If the Department knew that information, yes.

MS TOOHEY: Well, no. No, no, can we just go back. In what circumstances would it be appropriate for the Department to employ someone who had come to the attention of the Police for an indecent assault on a child?

MR TE KANI: To the extent that the Department knew that information.

MS TOOHEY: So that's the issue I wanted to discuss with you, just stepping through that.

MR TE KANI: Yes.

MS TOOHEY: Do you agree with me that in the 1960s and now, we need to have a system where Oranga Tamariki can be made aware of any instance like this before they employ someone, so that they are aware of any safeguarding issues that might make someone unsafe to supervise children?

MR TE KANI: Yes.

MS TOOHEY: The Police Commissioner gave evidence last week in relation to vetting and he said, and this is at page 92 of the transcript:

"I acknowledge the lack of a clear statutory framework for vetting which creates uncertainty about what information can be considered as part of the process."

And there is some more discussion about the pressure the Police are under now in terms of how many organisations require vetting.

What is your understanding and current practice about whether you would receive information like that, and it's not clear whether he was convicted, but we have someone who there is at least an allegation to the Police of sexual offending against a child. Are you confident that now you would get that information in a vet before you employed someone?

MR TE KANI: I'll open up and ask Ms Dickson to follow up on it. What I would hope is, when considering the employment of anybody to Oranga Tamariki, your point, we have all the relevant information about that person, especially if that role is working with tamariki, given the risks.

MS DICKSON: So the provisions for vetting have only been in legislation, as far as I understand it, since the Children's Act in 2014, and certainly the information that the Police provide is broader than convictions, and so complaints may be in some vetting. I couldn't with absolute confidence say that the kind of report that you showed us would always be in, but that's partly -- we're reliant on the information that the Police provide.

MS TOOHEY: Given the Commissioner's comment in evidence that it's a problem that there's a lack of a clear statutory framework, do you think that you too, as an organisation, would benefit from having a clearer statutory framework around vetting and what kinds of information can be provided to Oranga Tamariki?

MR TE KANI: Definitely we hold a clear position that we would love access to all relevant information about a person that's coming before Oranga Tamariki, especially for a role working with our whānau tamariki.

MS TOOHEY: I want to now turn to a slightly different subject, which is just around how some of these allegations about staff members in the 1970s and 1980s began to come out, and I want to just bring up a letter that was written in the early 1980s, this is MSD 0003098. This is a letter that's from a former staff member of the Department of Social Welfare to the Human Rights Commission. You'll see there that he's also copied it to the Department. At page 3, he's recorded in the middle paragraph:

"What concerns me in these situation is the method whereby the Department, particularly Head Office personnel, appear to 'cover up' some situations by transferring the accused staff member to another position (no appeals can be heard on such occasions). The person remains in this new position until the incident is well in the past and facts about the incident are obscured in people's memory, and then these staff are afforded promotion to positions where they in turn can select staff."

And then at page 4, the author concludes:

"I would therefore request your Committee pursue this matter to protect the rights of children in care and to ensure that the method of selection, 'cover up' and promotion in residential care is in the best interests of the children."

Before we go through the examples, are you aware of this practice? Because the Commission has received many examples, which we will take you through some in the next couple of days, but just to shortcut the process, are you aware of this practice of transferring a staff member when allegations of abuse were made to another home, rather than, for example, terminating their employment or reporting the matter to the Police?

MR TE KANI: I'm aware of some instances where, historically, staff members have been transferred to different roles. What I would say is, without diminishing the action, being really clear about the facts in each case and the intention behind why they were doing the move.

MS TOOHEY: Let's go to another document, ORT0082593. This is a letter in the early 1970s from -- I don't want to name the people involved, but to the Director-General. You'll see

the person named at the top, I just want you to note the person named as the staff member. This is one of the staff members raised in the earlier letter to the Human Rights Commission. And if we go to page 1, paragraph 2, I'm just trying to orientate myself to that part there, but the letter stated that a senior position was created at Hokio for a senior staff member from a home in Palmerston North, a girls' home, following an alleged indiscretion with an inmate.

CHAIR: I don't think we're looking at the right paragraph.

MS TOOHEY: I can summarise this for you, that there were four allegations of sexual abuse and three written statements by girls provided, relating to events several years earlier. Sorry, I might just need -- that was the allegation from the letter to the Human Rights Commission that there were allegations of sexual abuse and a recent complaint.

Then if we can just call out the second paragraph. It's recording that inquiries were made by the CIB so the Police were involved, but they were not completed because the credibility of the accusations had not been resolved one way or the other:

"The indications given to me however were that current allegations were unfounded."

So with this in mind:

"The official from Social Welfare, in my presence and at district office, revealed to the perpetrator the nature and extent in general terms of accusations made against him. He was told, among other things, that a transfer would be absolutely but not immediately necessary and that he himself would be given the opportunity of requesting it.

Shortly after that interview, however, I received further information from the CIB, coupled with a request that the Social Welfare official and I call at the station to discuss with the Superintendent and senior detectives the latest situation."

That was that one of the female residents' statements had just been received and differed substantially from what had been conveyed verbally from the Whanganui CIB office:

"Because of its content, the chief detective said he was obliged to have a considerable number of the present inmates of the home interviewed, unless our department was willing to arrange for the principal's immediate removal. Because of the certain disruptive effects that such action would have, the Social Welfare official gave the assurance that the perpetrator would be forthwith removed from duty. It was understood that only one inmate would then be interviewed and that if no further leads were uncovered, the matter would rest there."

Then on page 2, if we just -- in the second paragraph there. So then it was obviously discussed with the staff member:

"I have discussed today the possibility of the perpetrator's request that he should go to Hokio rather than to Kohitere. We agree this would be much more practicable both in terms of the apparent need there is in that institution for relief staff and in terms of it not being inconsistent with a move that he could have made anyway without disadvantage to his career."

And that's signed by the acting assistant director of Social Welfare.

Do you agree with me that's an example of a transfer of a staff member in light of allegations rather than a Police investigation?

MR TE KANI: On the basis of what we've read, yes.

MS TOOHEY: If we just go to another document, witness WITN0157001, and if we go to page 13, paragraph 89. So this is what happened a few years later or shortly afterwards when this staff member was transferred to Hokio. This is the witness' account of what happened to him at the hands of the same staff member:

"There was also this staff member. He was violent towards me and sexually abused me. Once, when I was locked up in the cell at Hokio, he came in and sat on the mattress on the floor next to me. He talked to me as if he was my friend. It started by rubbing my leg and progressed from there. It wasn't just me getting that treatment, you could hear the other boys screaming."

So on the basis of that account, the direct result of the deal that was struck with the Police by Social Welfare was that this staff member was able to sexually abuse other children in a different institution. Do you agree with me that that's what the documentation proves?

MR TE KANI: Yes.

MS TOOHEY: I want to go now back to an MSD table, MSC0008283. This is another compilation of information that's been provided by the MSD of allegations to its Historic Claims Unit in relation to staff and this has been filtered for specific staff.

So at page 12, person number 7, you see the person's name at number 7 as being the same staff member who we've just been discussing. That shows seven allegations of abuse made in historic claims relating to the period 1972 to 1984 at three separate children's homes in New Zealand, Hokio, Epuni, and Stanmore. Do you accept that this is something of a travesty and a failure, a complete failure by Social Welfare to safeguard children in care?

MR TE KANI: On the basis of the evidence presented, yes.

MS TOOHEY: I'm going to take you now to some later examples in the 1980s, and again just bringing up a table, another table from MSD, MSC0008285, which is one we looked at earlier that demonstrates the number of allegations to the Ministry of Social Development. We just need to go to the table for Kohitere. You see there this is a period at number 3 there, illustrating a period between 1980 and 1989 in relation to Kohitere, again with a number of staff members named across the tables, of sexual abuse. And, again, will you accept from me that the table shows that there were 39 instances of sexual abuse raised by survivors in relation to 19 different staff members?

MR TE KANI: Yes.

MS TOOHEY: So the problem of sexual abuse appears to not be slowing down throughout the next decade. And I want to take you to a newspaper article now, NZP0026640. If we just highlight that middle part, this is a newspaper article in the mid-1980s and it records that Social Welfare says it had no way of knowing a man employed at two Auckland boys' homes was a convicted sex offender and that this person in that week had been sentenced to a year's jail for sodomising a 15-year-old boy but that he had in fact been convicted for a similar sex offence in 1964 but had worked at Auckland boys' homes from 1983. It goes on to record that Social Welfare was not allowed to use the Whanganui Computer to check criminal records.

Do you agree that this is yet another example of failure by the Department of Social Welfare to properly vet its staff?

MR TE KANI: I don't know enough of the facts of this particular case, Ms Toohey, but what I can see from the article that you've presented is they didn't have all the information when considering the employment of Mr Watson. To be specific, I don't know, from what I can read, of the nature of his criminal conviction, if that's correct from what I can read.

MS TOOHEY: Perhaps this example highlights that, still now, with a lack of clarity in 2022 from the Commissioner of Police as to what information can be provided to Oranga Tamariki by way of vetting, that that is an area that New Zealand really needs to make sure that we have right?

MR WHITCOMBE: I would agree with that and it goes back to Mr Te Kani's comments about having all of the appropriate information that would give us confidence that we're employing the right people.

MS TOOHEY: Do you experience some difficulties in relation to Privacy Act kind of considerations when you are trying to obtain information in relation to staff?

MR WHITCOMBE: I haven't had issues around that in my role over the last 20 years.

CHAIR: I don't want to take a lot of time. We heard evidence from the education people, Ministry of Education, and we've heard in other contexts, that there's vetting which is like the term of art for getting somebody's list of convictions, previous convictions, but education also go further and they rely on what they call safeguarding, which is getting more background information, and that would include, I believe, things like allegations, things like previous employment history.

Does OT have anything at all of that sort of system in place?

MS DICKSON: We are guided by the requirements in the Children's Act when undertaking suitability checks for staff. Generally, for a children's worker, that would involve -- mostly these things are specified or described at a high level in the legislation -- information from Police, information about prior employment, referee checks that can attest to working with children. I'm not sure that I could say exactly the kind of enquiries that were being referred to in Ms Holsted's evidence.

CHAIR: It sounds like it. The question is, is it happening?

MS DICKSON: Yes.

MR WHITCOMBE: Yes.

COMMISSIONER ERUETI: Are these the same requirements in the Children's Act that we discussed the other day with the ERO and his recommendation was for reform, greater specificity about what the requirements would be so that schools would act consistently and of a high standard?

MS TOOHEY: Perhaps the problem you have is that if something goes to the Police and it's not a conviction, it seems from the Commissioner's evidence that there was a certain amount of discretion in terms of what the Police provide you that might be on the database, is that your understanding?

MR TE KANI: Yeah, that is indeed. So you could have a situation where there's allegations against a particular person and there might not be a conviction and depending on the discretion of the Police vet, and the candidate that might appear before us, we might not well have that information presented to us when making an employment decision.

MS DICKSON: I was going to respond, I do think there is value in considering whether a broader net and more specificity may assist in knowing every potential piece of information that could suggest a risk to a child.

MS TOOHEY: Perhaps including -- I think that was the Commissioner's point, perhaps including in relation to other sources, perhaps not just from the Police, but in other settings where that person might have been employed before like educational settings.

MS DICKSON: Yes, I think that's what I'm acknowledging, so that broader -- not just a single source, potentially.

COMMISSIONER ERUETI: So talking to the ERO about their reforms that are afoot, yeah.

MS TOOHEY: And in that process and in many of these processes that we're discussing where there might be change afoot or Oranga Tamariki might be considering different processes, have you considered involving survivors of abuse in part of your consultation to formulate those policies going forward?

MR TE KANI: We would welcome that, yes.

MS TOOHEY: I just want to go to another couple of examples and I'm just going to go to page 17. This is -- I'm just going to bring up a different kind of example of sexual abuse. This is EXT0016525. This relates to a survivor who gave evidence that she was removed and taken to Bollard Girls' Home and told staff that her father had been sexually abusing her before she was removed. At paragraph 66, this is the witness' statement recording that:

"Although we said we were being sexually abused, this was downplayed as a complaint about unsatisfactory conditions at my father's house and as though we made this complaint just to be moved to our mother's. Seeing it written down", this witness is seeing it on their file, "shows they knew and they could have done something to stop this."

Then at 87, it's recorded by the witness that one report she had reviewed on her file says that:

"I told the psychologist that my father had been sexually abusing me. I also told the psychologist about my father continuing to abuse me during his visits at Bollard. However, this is not recorded in the report."

And she records at 114 that her father was able to come and visit her in Bollard on an unsupervised basis. At 115:

"I knew that my father would try to abuse me so I told the staff what was going to happen before the visit, and I asked if someone could sit in the room with me. They were annoyed because they were under-staffed and they more or less just pushed me into the visiting room where they closed the door."

She goes on to say that after the first visit with other children present in the room, her siblings, that he raped her during subsequent visits to Bollard. That was in the early 1980s.

Do you accept that that represents another safeguarding failure on the part of the Department, to allow visits by someone who the Department knew to have sexually abused the girl?

MR TE KANI: Absolutely, yes.

MS TOOHEY: Finally, I want to go to another example from Whakapakari which is at page 19 and this is witness WITN0302001. This is a witness who was in Whakapakari. We'll just go to paragraph 48.

Just in terms of this paragraph, which I won't read out because it is fairly graphic, but to summarise what it says, I'll just ask that you read this to yourself and to summarise it for those who cannot see what is written there, it is describing this survivor seeing the immediate aftermath of two children coming out of a tent at Whakapakari who reported very graphically a violent sexual assault by staff. In fact it seems to have involved a number of children at once. Do you have any comment on the extent of sexual abuse happening at Whakapakari?

MR TE KANI: Again, just to acknowledge the -- it is difficult to read. To the survivors listening, just to acknowledge it's not okay, the harm that was done to them at Whakapakari.

MS TOOHEY: Just to finish this witness' account at paragraph 60, he describes being taken by a staff member to a camper. The staff member had a gun and said, "Get on the [expletive] bed" and put the gun down on the counter and then proceeded to rape him and another child who he'd taken with him. It's another account of abuse at gunpoint by children at Whakapakari. That account relates to a period in 1990. So, again, not really that historic, is it?

MR TE KANI: No, it's not.

MS TOOHEY: And then just one final account at Whakapakari, which is EXT0018161. This is at paragraph 67. This relates to mid-late 1990s and he describes being, at paragraph 67, being sexually abused a few times by a staff member:

"He came into the showers while I was there and forced me to masturbate him. This happened about six times when I was alone in the showers or I was the last boy left in the showers. He raped me about four times as well. He told me that if I reported it, the abuse would just get worse."

My point, Mr Te Kani, of taking you to that end example is that at the very end of the scope period of the Commission's work, sexual abuse in State care is still violent and horrific. Do you agree?

MR TE KANI: I acknowledge that, yes.

MS TOOHEY: And in fact this provider wasn't shut down until 2004, which is quite a recent period.

I want to now just bring up the final document to show you in this session, which is MSD 0015420. Just to demonstrate, again this is a document that the Commission has prepared from information provided by the Ministry of Social Development of their historic claims, again by no means a full picture, but some measure of the amount of allegations. If you just look at the homes on that page, you can see that Kohitere, there were 134 allegations of sexual abuse, Epuni 208, Hokio 136, Ōwairaka 120, the list goes on and I don't need to take you to all of them, but I do want to ask for your comment in relation to the apparent prevalence of sexual abuse in State care throughout the scope period. Do you accept that sexual abuse of children in State care was a systemic problem?

MR TE KANI: On the basis of the information we've seen, acknowledging it will be under-reported, I think we've established that over the scope period, there is a large number of instances of sexual abuse.

MS TOOHEY: The safety and harm report that you mentioned, Ms Dickson, in relation to -- I think the last report was July 2020 to June 2021.

MS DICKSON: Yes.

MS TOOHEY: That demonstrated that in that year, 486 children in care were harmed, with 742 findings of harm. Have I got those --

MS DICKSON: Which report?

MS TOOHEY: The safety and care report.

MS DICKSON: In which reporting period, sorry?

MS TOOHEY: July 2020 to June 2021.

MS DICKSON: I don't have that data in front of me. I've got the more recent reporting period, sorry.

MS TOOHEY: Certainly. Well --

MS DICKSON: I'm happy to --

MS TOOHEY: That report indicated, if you'll accept it from me and I'll obviously give you a chance to check that, but that 77 children had 88 findings of sexual harm in that year. It seems to still be a problem that children in State care are experiencing sexual abuse.

MS DICKSON: Yes, what I would say is that these findings relate to a much broader range of care arrangements than just residential care. That's not to minimise or -- it's just to contextualise, so it's across the, you know, the 5,000-odd children in care across residential care, whānau care, return to parental care, abuse that may have occurred within a placement

or in a care arrangement or outside of a care arrangement. I'm certainly not suggesting there is not sexual abuse that occurs for tamariki in care today, I just want to give the context that data is comparing a different context.

MS TOOHEY: I think the aggregate finding in that report of all sorts of harm, all of the harm, not just sexual abuse, was that 6% of children with findings of harm, so 6% of that figure of 486 were in residences.

MS DICKSON: Yes, that's correct.

MS TOOHEY: Which the report noted was slightly higher than the overall number of children in care in residences, which is 5%?

MS DICKSON: Yes, slightly, yes.

MS TOOHEY: I just want to give you the opportunity, Mr Te Kani, having traversed a large number of -- large diverse kinds of abuse that was suffered by survivors in State care, again, the question that I asked you earlier today, has Oranga Tamariki given consideration to apologising to the survivors of abuse in State care for the physical abuse, the emotional abuse and the sexual abuse that they suffered?

MR TE KANI: To respond to that, Oranga Tamariki is part of the broader Crown response to this Inquiry. Of course we take in the evidence on board to then think about what the appropriate response is.

MS TOOHEY: I just want to convey to you that if the survivors who have come forward to the Commission, that is, I think I can confidently say, uniformly what they want the most. Some of them are terminally ill. Is there a timeframe in which the State will consider this, give consideration to this?

MR TE KANI: I genuinely can't answer that question right now, but I absolutely acknowledge that the survivors and those who have put their kōrero forward would be wanting a response from the State in that regard.

MS TOOHEY: Commissioners, there's 10 minutes, I wondered if you might have some questions that you wanted to ask at the conclusion of this part of my material for today?

CHAIR: I'm sure that --

MS TOOHEY: Ms Schmidt-McCleave is indicating a timeframe for the national apology for the middle of next year.

MR TE KANI: Okay.

CHAIR: So just to be clear about this, as part of a Puretumu Torowhānui report, the redress report, we recommended that apologies be made to survivors and in response we have

heard that it is proposed that there be a -- maybe you could explain it to us, Ms Schmidt-McCleave, what it is the Crown is proposing to do and when.

MS SCHMIDT-McCLEAVE: Yes, and I did outline this, Madam Chair, in my opening statement --

CHAIR: Yes, but I think it's important to repeat it now.

MS SCHMIDT-McCLEAVE: Yes, absolutely. My understanding is that there is work, there was a press release from the minister in charge last week that the work is progressing towards that national apology which is intended to be given at the conclusion of your processes.

CHAIR: Does that mean once we have issued our final report?

MS SCHMIDT-McCLEAVE: After that, Madam Chair, yes.

CHAIR: So that will be after June 2023?

MS SCHMIDT-McCLEAVE: Yes, that's right.

CHAIR: Okay, thank you. I'm just going to check with the Commissioners about whether they've got any questions?

MS TOOHEY: Perhaps we could take an early break, then.

CHAIR: Yes, we could. I've just got one question. This relates to the foster -- I know we've done residences, but just a -- no, perhaps I won't ask it at this point because I need to get a quotation, so I'll just leave it at that.

That's good, we get an early break. So we'll come back at 3.35 pm, thank you.

Adjournment from 3.20 pm to 3.39 pm

CHAIR: Nau mai hoki mai, we're back for the final session of the day. Over to you, Dr Cooke.

QUESTIONING BY DR COOKE: Thank you. I understand that Commissioner Gibson may want to ask a couple of questions?

COMMISSIONER GIBSON: Yes, thanks. This is for Ms Boyles or Mr Te Kani, apologies if I'm not looking at the right person. Starting from -- is it fair to assume that you believe all children belong in families?

MR TE KANI: Yes, Claudia's looking at me to answer too.

COMMISSIONER GIBSON: I noted in the acknowledgments yesterday there was an acknowledgment of ableism but not structural ableism in the same way that there was structural racism acknowledged. Is there a reason for that?

MS BOYLES: It's in your acknowledgments, is there --

COMMISSIONER GIBSON: There was not an acknowledgment of structural ableism.

MS BOYLES: I don't know what reason there would be for that. I believe there is structural ableism.

COMMISSIONER GIBSON: Just looking at how blatant it was, if you like, in 1989 Act, I think the words from section 141 and covering the next few sections was that there are children -- referred to children too disabled to belong in families.

MS BOYLES: Sorry, I don't know the exact words either, but there was like "very disabled" or something like that was the language in section 141.

COMMISSIONER GIBSON: Would that be an example of structural ableism in the sense that it's embedded in the legislation and it features throughout the practice of Oranga Tamariki and its preceding organisations?

MS BOYLES: Yes, and that section has been removed.

COMMISSIONER GIBSON: As of 2019, is that right?

MS BOYLES: Yes, that's right.

COMMISSIONER GIBSON: So there was that structural ableism at least until that point, would that be fair?

MS BOYLES: Yes.

COMMISSIONER GIBSON: This group of children, they would be the -- we've seen so many reports, the data on abuse, this group of children would be the ones who would have the least opportunity to complain if there was any form of abuse, would that be true?

MS BOYLES: Yes, that's true.

COMMISSIONER GIBSON: And there were less statutory protections as well as practice protections around them?

MS BOYLES: Less statutory protections, yes. I don't know about practice protections.

COMMISSIONER GIBSON: Do we know what data OT and its predecessors have on these kids, what happened to them in care through that amount of time as far as abuse and neglect went?

MS BOYLES: I don't believe we do insofar as we don't really have data on disabled children generally, so I'm not sure how we could have -- how we could have data on what's happened to them if we don't even know that they're there.

COMMISSIONER GIBSON: Do we have data, do we have the stories on what's happening to these kids who otherwise, pre 2019, would have been under this part of the Act, what's happening to them now?

MS BOYLES: Yes, we have -- Oranga Tamariki is now the only provider for high needs children, so the pathway for high needs children to come into care is exactly the same as any other

child, that was the removal of 141 -- that was the result of that. So we do you know, yes, where they are and how they're being looked after.

COMMISSIONER GIBSON: And are we starting to pick up data on abuse and neglect for this group of children as well as all disabled children?

MS BOYLES: Yes.

COMMISSIONER GIBSON: Do we have anything from the last year, the last two or three years?

MS BOYLES: I don't have that to hand, I'm sorry.

COMMISSIONER GIBSON: Their path out of Oranga Tamariki care, does that give them an opportunity to become citizens, support to make their own decisions, is there any specific support around them to exit out?

MS BOYLES: That's a bit of a practice question. Nicolette?

MS DICKSON: Sure. So, the same supports for transitioning young people that I talked about yesterday are available to all young people, and particular consideration would be given to any support that might be required around disability related needs. I'm not sure that goes as far as it could in terms of ensuring completely equitable support.

COMMISSIONER GIBSON: Thanks. Just moving on to data, and I think almost like an intuition to collect and a curiosity about it. A few years ago, Dr Ian Lambie reported that in the Australian Youth Justice system, 89% of kids had neurodisability, neurodiversity and he said he wouldn't expect too much to be different here. I hear things about that it's almost ready to sign off a data collection plan. What's the intensity given the size of this group and the predominance in Youth Justice for the work to be done around data collection?

MS BOYLES: So we do recognise that there's an urgent need for better data collection, particularly around disability and neurodiversity. We do have the issues that I described earlier about things like diagnosis and some of the children who we count at the moment because they get Disability Support Services where they're eligible for those services, that wouldn't include children who are covered by ACC for example. So we need to collect our own data about these children and in the notice to provide we talk about the urgency of that and that we need it now. We also talk about -- just to say, in the NTP 18.27 to 18.9, we describe a time when we didn't have ethnic data and data on Māori and Pacific, and it's taken us a while to collect that data, but we've turned that around and I think we need to do the same thing for disability data. It's possible we can do it, we did it before.

COMMISSIONER GIBSON: Do we assume that once we've data, we've got needs assessment, we've got diagnosis, that there will be needs that are identified and met, do we have the

development of the workforce that the confidence that there is that capability out there to meet the needs of these children?

MS BOYLES: It needs to go hand in hand. I think what better data will tell us is what the need is and the magnitude of it, and will also help us forecast what we need to be able to provide. But it's not going to do the work for us, we actually have to have the workforce to deliver what we need.

COMMISSIONER GIBSON: In the absence of that data and those needs assessments and those diagnosis and the support, does that mean that some kids are getting some significant needs that are neglected at the moment?

MS BOYLES: Yes, I believe that's true. And I think it's more because we don't understand it and we don't know about it than it is an intentional neglect.

COMMISSIONER GIBSON: But neglect does go on now and that seems a long, slow path away from the -- neglect still continues for this group of people in the OT system, would that be fair?

MS BOYLES: Yes, I think that is fair.

COMMISSIONER GIBSON: And, also, when children are diagnosed or assessed, to me an important need is to affirm all the components of their identity. Is there any understanding about how we can make disabled kids proud of who they are and what that means for them?

MS BOYLES: Absolutely. So one of the pieces of work we're doing at the moment is the development of a disability strategy and we want to do that alongside people who are care experienced, disabled Māori people, disabled Pacific people, who can help us think about that vision, you know, what we ought to be able to expect from Oranga Tamariki for disabled children, what should a social and rights-based model result in in 10 years' time, in 20 years' time if we applied it well.

COMMISSIONER GIBSON: Moving on to disabled parents, I think Dr Webb articulated to some extent that in the disabled community there's been resistance to supporting some disabled parents, particularly disabled mothers to retain their children. I think you gave an example, one example of good practice. To what extent are there policies, practice guidelines about how to support disabled parents, how widespread is that example structured into the organisation at the moment of how to support?

MS BOYLES: So the guidance is something that's being worked on as part of the practice shift and the guidance that goes along with that. The Regional Disability Advisors in each region provide that support at the moment to social workers, and to be honest they're an amazing bunch of people with a lot of knowledge, but we could use 30 more of them.

They're flat out all the time, it's a busy job, but they absolutely provide that kind of support and knowledge.

COMMISSIONER GIBSON: I think disabled mothers feel they could do with some more support in various directions as well.

Just a final question for Mr Te Kani, there is a lot of, "This is in development, this is underway". It seems all quite late and also noticing, just from what I'm reading, is there an intent to have a permanent Chief Advisor Disability in the organisation?

MR TE KANI: Yes.

COMMISSIONER GIBSON: I didn't see the sort of workforce diversity around disability articulated through the RTP, compared with other groups. Is there that intent to build a diverse workforce?

MR TE KANI: Sorry, just got a bit of a frog in my throat, but absolutely the intent is to make permanent the Chief Advisor Disability role. That's an absolute commitment for the organisation for the obvious reasons, and then part of our workforce development strategy for the organisation, of course we'll be thinking about diversity there as well, and those are all parts that are currently underway.

COMMISSIONER GIBSON: And to try and reflect almost an adult version of the children's base across the organisation?

MR TE KANI: That would be an aspirational vision, yes.

COMMISSIONER GIBSON: Thanks.

CHAIR: Yes, Dr Cooke.

DR COOKE: I just want to have a couple of follow-up questions, if that's okay, to that, and it's going to be addressed to both Ms Boyles and perhaps Ms Dickson and Mr Te Kani.

Under the law, as it used to be with section 141 children, that was a process that was facilitated by an FGC, wasn't it?

MS DICKSON: Yes.

DR COOKE: And as a result of that, there was no need to go to the Family Court, as there is now, to get orders in relation to children who would be in need of what we would say care and protection on the grounds of being profoundly disabled?

MS DICKSON: That's correct.

DR COOKE: And as a result of that, as has been acknowledged, there were no safeguards in place, either by the court itself -- which is a safeguard, you would agree?

MS DICKSON: Yes.

DR COOKE: Or by the appointment of a lawyer for the disabled child who would be the subject of the extended care agreement. So I'm aware of some concern that was expressed at the time, whether or not those conferences could be used as vehicles, arrangements between parents who were unable to cope and thought, "This is one way of relieving some of the stress and pressure on us", we'll sign an agreement so that our child is taken into care by a way that's relatively easy in comparison say to a more formal application. Have you heard of that concern?

MS DICKSON: I'm just reflecting on your question, sorry.

DR COOKE: A bit of a shortcut is what I was suggesting, through the FGC process.

MS DICKSON: I think from my experience, and I'm just talking of my own experience, I think what became quite fraught was whether it was the disability related needs that were driving the journey into care or whether there was pressure to see parents as not meeting their needs.

DR COOKE: You spoke of supports that are available to those children who are -- like yesterday, who are the subject of status, custody orders and the like, and how they can be entitled to support up until the time they reach 25.

If a child was the subject of a section 141 agreement, would that child, for example, be entitled to that kind of support by virtue of there having been an FGC agreement, or are they excluded because there was no formal custodial status?

MS DICKSON: My answer would be that the provisions didn't co-exist but I'm going to ask my colleague to confirm that.

MS BOYLES: That's correct.

MS ATTRILL: Yes, that's correct. Section 141 was repealed around -- at the same time as the obligations against the Chief Executive in accordance with the care standards were introduced, so there was a swapping out of the two sets of arrangements.

MS DICKSON: So there weren't transitions obligations in the way they now exist to the old age group at the same time.

DR COOKE: So there's at least a theoretical number of children who would have been the subject of those arrangements who would not be eligible for that assistance -- there could be some children who were the subject of 141 agreements who, had they been taken into care once that 141 had been discharged, they then would have been eligible for support, they would be now, but that's a group who are not?

MS DICKSON: Sorry, I'm not trying to be difficult, I'm not quite sure I understood the question.

DR COOKE: I'll leave it for present purposes.

MS CHASE: Kia ora, I think I might be following it. It sounds like the whole incentive around having a custody order, whether it's for a disabled child or any child, means that having custody status following a discharge, you would be able to get permanency support services or some kind of additional support, and you're saying that there's a group of tamariki that, disabled or not, will miss that opportunity, having had an agreement out of it in another way, is that right?

DR COOKE: That's right, yes.

MS ATTRILL: Sorry, if I could just offer one more comment. One of the as- I understood it at the time, one of the reasons that section 141 was repealed was because the children who were subject to those agreements were not afforded the same safeguards as all other children who were in out- of- home family care, so there was a very important consideration to ensure that their rights were upheld,- and their interests were front and centre of decisions about them.

DR COOKE: And that was the point I was initially making.

Just in terms of disability and the role of Oranga Tamariki, and I'm thinking of those children who had a custodial status, and it was clear as they aged through the care system that they would have to have a continuing legal status but under the protection of Personal and Property Rights Act and for many years there was a lacuna in the law, as it were, because under the PPPR Act, you couldn't get an order until you were 18, but custody orders ended when a child was 17. So there was a year when theoretically no agency was there to stand or to come in and help families of those children.

For those of us who were involved at that stage, that was a matter of significant frustration in getting Oranga Tamariki to act because they often had custodial status, parents were not engaged and at times -- I know for example I had to get wardship orders, for example. Would you agree that that was a time when Oranga Tamariki was struggling to be able to know what to do with children who fell within, who were within that category?

MS DICKSON: Yes, and I think it reflects a broader issue that young people left custody at a younger age than adult services were routinely available to them, so there was this -- I don't know the best word, no man's land, I suppose, in terms of where that support overlapped.

DR COOKE: And these young people today who leave care at the age of 18 and may end up under the PPPR Act, they're often going to go into care provided by a disability service, aren't they, CCS, an organisation such as that, there may be engagement as well in Auckland with having to get Te Kura involved?

MS DICKSON: Some may, some may benefit from the provisions of remaining in care so they may have continuity of the care arrangement beyond 18.

DR COOKE: Do you have any statistics on that, as the children who are able to remain in the care placement that they were in under that particular provision?

MS DICKSON: I don't have it to hand but I'm sure we could provide it.

DR COOKE: Is there any ballpark figure of children who have elected to -- who are disabled and have elected to stay?

MS DICKSON: I don't have that to hand, I'm not sure if any of my colleagues do, no.

DR COOKE: There's been talk of formal engagement with various iwi authorities to provide, as part of that partnership and relationship. Do you have similar relationships or engagements with providers in the disability sector for that group of children who are going to be within that sector for the balance of their lives?

MS DICKSON: I'll just check if Ms Boyles wants to respond to that?

MS BOYLES: No, no arrangements outside of our usual.

DR COOKE: Would you agree that that's because of the numbers of children who are in care, coming through the care system who have a disability, there may be FASD, and often these things all go together as we know, that there is -- if you don't have that engagement, it's going to mean there is yet still another chasm in the provision of service for an important and significant cohort of children?

MS DICKSON: In part, I would reflect back to the point Ms Boyles made earlier about children and young people aren't one part -- a part of one community or another or have one part of their identity, so there are -- as Ms Boyle said, there are children and young people who have disabilities who are Māori, who are Pacific, so it's a combination of factors, yes.

DR COOKE: But you would know, as I know through the work that I do, and I'm working in the Family Court on a daily basis, whether it's under the AT Act or the PPPR Act, I'm coming across children with disabilities from all sectors of society and from all cultures.

MR TE KANI: Yes.

DR COOKE: So that's the reality which I'm talking about.

MS DICKSON: Yes.

MR TE KANI: Yes.

DR COOKE: Are you able at the moment, just while we're on this point of disability, are you able to tell us how many -- were you familiar with the report that Valerie McGinn provided to the Commission?

MS DICKSON: I've reviewed many of the reports but I may not have reviewed that one.

DR COOKE: You know who Valerie McGinn is?

MR TE KANI: Yes, I certainly do.

DR COOKE: She's been at the forefront of work in this area and working for a number of sites across the motu.

MS DICKSON: Yes.

DR COOKE: Her and her team are assessing children to see whether they have FASD.

MS DICKSON: Yes.

DR COOKE: Do you have any statistics or could you get statistics on the number of referrals that have been made to people like Dr McGinn, and she's not the only one, her and her team at the FASD centre, and there are others, of children who are being assessed to see whether they have FASD?

MR TE KANI: I think it would be difficult to do that within our existing data reporting and case management system.

DR COOKE: Is that something you should be capturing in terms of the care standards or are the care standards deficient in that respect?

MS DICKSON: So it's not the care standards are deficient. We've been quite open in our monitoring of the care standards that there are some aspects of the care standards we cannot yet evidence at a population level, so we supplement that by doing quite robust case file analysis, and that would be identified in that for a sample group. I could provide that but I don't have that to hand.

DR COOKE: Since section 141 was repealed, do you have any statistics on the number of children who have been the subject of formal application who would otherwise have been 141 children?

MS DICKSON: Off the top of my head I don't know that I could say that we have that data.

COMMISSIONER ALOFIVAE: I was just going to ask a question, if I can, Mr Cooke, just to Ms Dickson.

In terms of just trying to be able to get some figures around neurodiversity because the evidence of Dr McGinn is that, actually, this is an actual pathway into care for a number of children, not just Māori Pacific but young people in general, whether there's a process perhaps with the Justice Department, the courts, where we would be able to get like a baseline figure, because all Youth Justice files are dealt with either in the Youth Court or in the Family Court, to be able to track those figures down if it was too difficult, simply because of the case management system that you run to do it internally?

MS DICKSON: I'm going to defer to my colleague who knows more about the Youth Justice space.

MS CHASE: Of neurodiversity, I'm aware that Mr Phil Dunham led a project for that and I have asked in the background for us to be sent an update. He has since left us, but there is a project team that was working on the neurodiversity, so we've sent for that and perhaps we could provide it overnight or tomorrow.

CHAIR: Another thing to add to our shopping list of information.

MR WHITCOMBE: Yeah, the comment that I'd make around neurodiversity and, for example, educational outcomes or issues with education and then the flow-on effect of disengagement in school and what that means for a pathway into care, I think is really relevant in light of the Youth Justice population and the proliferation of neurodiverse issues that they face. So on that account, I would agree with the pathway, because of the early lack of response of support and then what that eventuates into.

MS BOYLES: Can I just say that speaks a lot to Oranga Tamariki's role in prevention that I think we are still clarifying, you know, preventing children coming into care from any direction, but for my part, in terms of disability, relinquishment has to be one of the most heart-breaking things I've come across. I can't imagine thinking that you can't care for your own child and that the State can do a better job because of a disability and maybe because there's something you're not getting the support for, and then when the child's turned over, all the support mechanisms just turn on. And I think, yeah, it's horrible and we are working on that aspect of Oranga Tamariki's role in amongst the rest of the system, how do we prevent that.

COMMISSIONER ALOFIVAE: I think that talks to a much broader issue which I think Mr Cooke will get to, it's around your Oranga Tamariki, the action plan and the role that you play, but also the role of other agencies. But I'll hand it back to Mr Cooke.

DR COOKE: Yes, it won't be today. Thank you.

I'm going back to the discussion that we had this morning, but it's going to be on the perspective of complaints within the care and protection area. I'm going to start -- I'm not able to bring it up on the screen but it's a document that's in the bundle. For some reason it's missing, it hasn't been loaded on, but it's WITN0888001 and it's a statement from a Māori male survivor at the foster care hearing who was born in December 1958, was 62 at the time of the statement and he entered care in 1963 at the age of 5.

I'll just give you some brief detail on it. He was a child who had been whāngai'd and took on the name of that family. When he was at the age of 5, that care provision

ended and he went into formal care. This was down -- he was living then down the line, he was taken to Auckland by train. At another station, a child comes onto the train and our survivor is told that they have the same name, Christian name and surname. This child is Pākehā. They were told they were half-brothers. The survivor's -- our survivor's Christian name was then changed by his social worker and that was the name by which he seemingly was known for many years, without any formality.

He was then placed in foster care and there are a number of concerns, so I'm going to briefly go through them because they provide the context to the final quote that I'm going to give you.

The concerns were, when he was placed, he found that -- he went to eat at the kitchen table with the family and when he first did that, he was punched in the head and told not to. The next night, he had a dog chain put on him and he was chained to the dinner table but his food was placed in a bowl on the floor for that survivor and the family dog. He had to compete with the dog for the food. He was made -- in another instance he was made to sleep in a tin shed, there was an old man lying on a bed in that shed where this young survivor had to sleep, and a couple of days later that person died within -- they were in the same -- that was where he was.

He describes having beatings nearly every day, or every day, with sticks, jug cords, with a fire shovel. He was told on many times, as he was being hit, to dance and dance when given these hidings, and this seems to have occurred for the entertainment of others. The caregiver had a pit that he describes as being filled with dog shit and eel guts and on one occasion, for eating a nectarine, the survivor was given a hiding and thrown into this hole which was then filled with dirt and shit up to his shoulders. The dog urinated on his head and the dog attempted to have sex with his head on that occasion.

So that's part of the narrative to this survivor's statement, and on page 6 of the statement at paras 50 and 52, he says this about the visits:

"My social worker visited me fortnightly. I would make a complaint to him every time about the hidings I was getting. Every time the foster parents had an excuse about why I had marks on me, the social worker always believed them. I did not tell the social worker about the sexual stuff" -- which I haven't referred to -- "just the hidings. I also told the teachers at school but I was getting into trouble there as well and getting canings from them. I don't know if the social worker told the foster parents but I would always get a hiding afterwards for trying to complain to him", the social worker. "After a while, I stopped complaining because I knew it would not work."

Again, I would invite your comments around the statement that was made by that survivor about his experience of his interactions with his then social worker.

MR WHITCOMBE: I'll comment on that. That's not the -- I have listened to that survivor's statement before and it strikes me as just horrific. It should never have happened and in terms of the social worker's inaction and disbelief, it was completely unacceptable.

DR COOKE: I'm going to -- I meant to ask you this at the beginning, I'm going to go through another couple of case studies which bring out a number of themes which you won't be surprised at and which are redolent of the themes that cover the experience of survivors over the period of the Commission.

MR WHITCOMBE: Sure.

DR COOKE: And I'm wondering if, at the end, when we finish, I wonder if you would then be in a position to tell me if you think that any of the events that I've described, any of those themes would still be continuing today and would be of concern. I also say that in the context of in the last session when I think Mr Te Kani was being cross-examined or questioned, he gave some statistics about -- Ms Dickson gave statistics around the prevalence of sexual abuse occurring throughout the current care domains, which I understand to be current statistics, and I would note there that, as I understand it, 6% of those occurred in residences, because that was the focus of the question, which leaves 94% of that abuse occurring across other domains where the Chief Executive has custodial status. That's correct, isn't it?

MR TE KANI: Yes, it is.

MS DICKSON: It's across a range of care arrangements in both inside and outside of care placements.

DR COOKE: Yes, but they are situations where the Chief Executive has a formal responsibility?

MS DICKSON: Yes.

DR COOKE: Which is a custodial responsibility?

MR TE KANI: Yes, it is.

MS DICKSON: Yes, absolutely. Quite right.

DR COOKE: I just wanted to make sure that point was absolutely clear.

Now let's turn to WITN0865001. We can bring this up and I'll go through it. It's about complaints. So the first one is -- this is a witness who was known as Ms ED and gave -- spoke at the foster hearing. Paragraphs 76 to 79 which I'll take you through is her reporting of the abuse and how that was disbelieved by social workers and the Police. She said she didn't think anyone would believe her and -- this is she's being told by another

person -- you'll see from the context that it was a discussion with somebody else, two women:

"And I said, 'Yes, they will, because he" -- who's the caregiver -- "did it to me as well'. We didn't know that while we were living at the same home together, Mr ... was doing it to both of us. We never spoke about it, I never told her, she never told me. It was only after I'd moved out that she said, 'Dad's been raping me', and I knew she was telling the truth because of what he had done to me. The first person I told was another foster parent."

She was taken from that first place and went to the second foster place and she said:

"I needed to talk to her and I said that this other person told me this about dad, I still called him dad at that stage. When I told this, she said, 'How dare you make those accusations?' I was marched over to the other house, the social workers were called and he was there too. 'Say to him what you said to me'. They all said it didn't happen."

This person was dragged out and she was crying:

"When I said he did it to me too, they asked me why we would jeopardise ourselves like that, especially if we wanted to live together. We were ostracised and called liars and sluts. We were absolutely disbelieved. It was clear everyone was on their side from the beginning."

Just on that, is that a -- if an allegation such as that is made, there's a process that's in that narrative that's very concerning, isn't there?

MS DICKSON: Yes.

DR COOKE: What would you identify as being concerning?

MS DICKSON: Firstly, the first statement that was made in terms of conveying a sense of disbelief in the allegations. Secondly, putting the young person in the situation of being confronted in front of her abuser with the allegations, dragging another young person into that situation, and then again, this was the point I was trying to make earlier, the labelling of a young person's behaviour suggesting that it was something in relation to -- you know, the reference to liars and sluts and whether that's implying a level of promiscuity and somehow, you know, discounting any veracity in the allegations.

DR COOKE: Thank you. Para 78:

"The social workers took us to the police station to give a statement. There was no talking in the car on the way, there was stone cold silence. It was while we were at the station that a social worker threatened us with being sent to Wellington and never seeing each other again."

Again, that's a message, isn't it, implicit to these young women that they're not being believed, and that if they carry on in this way, they're going to be separated?

MS DICKSON: Yes.

DR COOKE: Do you see that?

MS DICKSON: Yes, definitely.

DR COOKE: Then you see in 79:

"The Police pretty much made up their mind, probably before they'd even taken our statements, that nothing was going to happen with it. That's what it felt like, like it was a token thing, we'd better do the right thing and do a statement but it was never going anywhere. The policeman kept saying, 'Why are you making up these lies?'"

Would you accept that that would have been a prevalent attitude by authorities at that time?

MS DICKSON: I don't want to speak for another agency but, yes, I do think that that was the view of a broad range of professionals at times.

DR COOKE: And you would know from your experience that it would include social workers, police, etc, as being typical of the agencies involved that would take that view. That would be a fair comment, wouldn't it?

MS DICKSON: Here we're talking in the context of the time of --

DR COOKE: Oh, yes.

MS DICKSON: Yes.

DR COOKE: If we can go to ORT0073200, this is a letter dated 28 July 1988 and it is from the social worker to the director regarding abuse allegations from Ms ED. If we start at para 3(a), this is what the social worker says:

"As the social worker involved in visiting both these homes on the intensive foster care scheme, I feel that the following information and concerns must be addressed with regard to the allegation.

The complainant has a long history of untruthfulness and sexual fantasising and she has been previously sexually abused by a member of her natural family."

You would accept the inference that comes out of that, wouldn't you, that it's implicitly an untrue allegation, she's probably a damaged teenager because she's suffered sexual abuse, and as a result of that, allegations are probably being made, etc, that are untrue. You would accept that?

MS DICKSON: Yeah, and it's a deeply troubling conclusion to reach.

DR COOKE: At paragraph 5, this is a family -- again, this is from the social worker:

"...that have fostered for the Department for 37 years and I feel the possibility of collusion ought to be eliminated in order to ensure that the case is not prejudiced. Therefore I would recommend the children be placed in separate homes and that contact be limited until the investigation has been completed."

The context of that is that the people to be separated are the two complainants, aren't they, so it's a matter therefore of those two women being seen as the problem, as the issue, and we have to separate them in order to have an investigation in respect of a well-regarded foster family who have been doing it for 37 years. Do you agree with that?

MS DICKSON: That's certainly the suggestion in the way it's written, yes.

DR COOKE: It would be inappropriate, in your view, that these women, who were the only supports they had, who had been in care together, would have been separated for that reason?

MS DICKSON: Did you say would it?

DR COOKE: It would be inappropriate.

MS DICKSON: Yes, yes.

DR COOKE: So we go to ORT0073187 and this is a letter from a social worker to the director. It's a visit by a social worker to another child fostered by the parents against who the allegation was made, okay? So it's simply saying, if you go to paragraph 2, and we're talking about a different -- you'll understand that this is a different person, but she had been in that same foster placement.

MS DICKSON: Yes.

DR COOKE: The social worker was saying:

"She told me that at the time she lived with the caregivers, she herself was not subject to any overt sexual advances by the ex foster parent. On reflection, she said the only time that she could recall there may have been anything untoward in his behaviour was when they used to have play fights and he would sometimes place his hand close to her lower body region. She said that she felt that because she was older when she went to stay there, she was not subject to any sexual overtures from him."

The comments there would, on the face of it, raise a degree of concern, wouldn't they?

MS DICKSON: Yes.

DR COOKE: If we go back, can we just bring it back up again, Zita, at the second paragraph, she said in relation to these women that we're talking about:

"She does not believe they'd be lying about the allegations that they have made. She did not think that the two girls would have any reason to make up something like this. She also said that the foster father used to spend a lot of time with the first of these women."

I suppose that her -- for what it's worth, I was going to say, that this previous -- this woman's advice around these two women would be -- should be accorded a degree of credence, do you think?

MS DICKSON: Yes, in a fulsome investigation you would take those perspectives as part of the information you would be drawing on to understand what occurred.

DR COOKE: Thank you. I would like you to bring up ORT0073139. This is a letter to the Assistant Director-General from the Director in Christchurch and you'll see it's dated 29 August 1990, so we're talking about again a time that's not so far away for some of us, and as you read it, you'll see there's a favourable impression being given of the foster parents and there are references to -- I've studied the file, there's no doubt that they were valued and trusted foster parents, 180 children over 38 years, there was an award made, the allegations have caused great upset that the Department hasn't placed children with them since, there's a statement that the matter's not been handled well by the Department, and you'll see that the writer of that is at a loss at what to do other than apologising for lapses by the Department as to how the caregivers can be helped and perhaps the best way is to make a payment of money.

So I just wanted to provide -- use that to provide some context and then we go on. The next one's going to be ORT00739091. And you'll see this is -- it's dated 27 September 1990 and it's about these same foster parents. You'll see that, here, there's a representative from an NGO, which is the foster care federation, and the person from the foster care federation was there in that formal role as chairperson and she was also a friend of the caregivers and she was there to support them. If you just scroll down to -- you'll see there was a lengthy visit it talks about:

"Both the caregivers and the lady from the foster care federation gave me in considerable detail their versions of events from the day the allegations were made up until the present. Most of this has been summarised in previous memos but it's obvious that the file is devoid of quite a lot that went on in 1988 at the time of the allegations. What stands out" -- and just move on -- "there is nothing on the file saying anything about the Police inquiry into the allegations. It's commonly understood the case against the caregiver could not be proved."

When one looks at that in the context of the time, it would appear that they're talking of having established the case to a level that would satisfy the Police. Would you agree with that?

MS DICKSON: Yes.

DR COOKE: Are you familiar with this file?

MS DICKSON: I haven't read this particular document, no.

DR COOKE: You would agree, wouldn't you, that the fact that something may not satisfy the Police to the level that they would want either for making -- bringing a prosecution, or if a prosecution was brought, that a conviction is or isn't entered. It does not in itself establish that a complaint made by a young person in care is not a correct complaint?

MS DICKSON: Yes, there's a different evidentiary test, yes.

DR COOKE: It would presumably, if you're looking back on this, you would -- do you think from your knowledge that the approach then being taken in the very late 80s into 1990, that that would be a typical approach being taken by the Department when they're investigating allegations of abuse? If you can't say, don't say.

MS DICKSON: I'm not sure I could say it to be honest.

DR COOKE: If we go down, it also says:

"There's no documented evidence of any senior officer of the Christchurch office initiating an inquiry into the caregiver's suitability to foster or any departmental follow-up to the Police inquiry."

Again, that would be of concern, wouldn't it? That if --

MS DICKSON: Yes, that's saying there was no inquiry into their suitability following the Police inquiry, yes.

DR COOKE: And it would suggest, wouldn't it, when one reads the -- if you take the opportunity to just read the balance of the letter, that it would tell us there hasn't been a proper inquiry, that there's a degree of sympathy coming through that letter for the foster parents, isn't there?

MS DICKSON: Yes.

DR COOKE: For example, the whole experience has been traumatic for them, they cited incidents where the social workers then snubbed them, they felt let down and discredited.

MS DICKSON: Yes.

DR COOKE: Their health and family life has suffered from this experience and it's taken away a lot from their quality of life, etc. It's worth just noting at the end what they said they wanted as a result, if you just move to the next page, Zita. They wanted their credibility

restored and feel this should be by way of a letter saying the matter's been resolved. They should have their status approved as foster parents, restored, and that they're entitled to some monetary compensation for suffering and the loss of credibility. Of course that's supported by the foster care federation and that goes back to the question I asked earlier, that the sense coming through here is one of these are good people, this could not have occurred, we have to find a way through it?

MS DICKSON: Yes.

DR COOKE: Can we go to ORT0073109. This is a letter from the southern regional office to the lawyers acting for the caregivers and it's a letter formally apologising for the way the abuse allegation made by the complainant had been handled, and assuring them that the allegation did not impact their fostering opportunities. You'll see there that they say that there's been a full review carried out, that the Department handled the matter badly, and that there's a formal apology being issued for that mismanagement.

In the middle paragraph, it says this:

"The current DSW procedures put in place sometime after your case had provided for a coordinated investigation, but in this instance there was no communication from DSW to the caregivers following Police decisions not prosecute."

So it would appear -- and the Department paid for the legal costs. So it does appear, doesn't it, that as I've said earlier, this is matter where the initial investigation wasn't handled correctly in terms of addressing the allegations that had been made, but a subsequent investigation, probably on a retrospective basis, has come to a conclusion that these people have been hard done by. That's the inference that comes out, isn't it?

MS DICKSON: Yes.

DR COOKE: All right. I want to go now to ORT0056076. This is a letter dated 4 November 1988 from the case social worker to the manager and it's a social worker here responding to concerns that have come from the foster care federation representative and the social worker herself is making what appear to be very brave statements for someone in her position. So if you'll see there at the second paragraph beginning, "For myself, I believe". This is the social worker:

"For myself, I believe caregivers of children who have been sexually abused (or alleged to have been) first and foremost need to have a good background knowledge in sexual abuse. They can then understand the need to believe the child and accept the need for an investigation of any allegation and that such allegations to be treated seriously."

That would appear to be a good expression of practice?

MS DICKSON: Absolutely.

DR COOKE: And if you'll see the next bit:

"The importance of believing the child and actively supporting her/him cannot be stressed enough as it is in the context of everyday living, ie in the caregiver's home that the child's fears, anxieties and worries come out."

Again, you wouldn't disagree with that?

MS DICKSON: No, I think that's absolutely correct.

DR COOKE: If we go down, I'll just take you through the balance of it. If you go to the next paragraph, the one saying, "First, I consider". Here, she's talking about the welfare of her client who is the survivor:

"As I've previously stated, it's in the context of everyday living that the child's fears come out. They need to be able to talk about these in a supportive environment. For example, on several occasions, while out, the young women concerned have come across the alleged offender and members of his family. These meetings were distressing to them and need to be discussed. I believe it is far more appropriate for the social worker involved to have named the alleged offender in the first instance, rather than the child/young woman involved naming them in the course of any conversations held with caregivers."

Would that be a process that you would endorse?

MS DICKSON: I think the tenor of this is that she was considering the best way -- sorry, the social worker was considering the best way of addressing concerns and creating a space for the children to share any concerns, so --

DR COOKE: Yes, in a safe way?

MS DICKSON: Yes, so that would be the focus, is creating the safest way for a child to be able to share anything that was happening to them. The end bit I think is a bit of a judgment call depending on the circumstances.

DR COOKE: Yes. I just want to have a quick look to see if there's anything else that's of relevance for present purposes.

If you bring up the second "In this case". The social worker says:

"In this case, I believe it clear that my client should never have been placed with the caregivers. In a discussion with this caregiver, myself, the foster care and other DSW staff, the caregiver herself stated that she could not believe this allegation was being treated seriously and that my client was being believed. I feel that such views as held by her led to her misinterpretation of comments made, ie by saying to my client that I believed her, this was taken as myself stating the alleged offender was guilty."

Do you want to comment on that?

MS DICKSON: I think in good practice a starting point is to acknowledge and believe a child when they make a disclosure as a starting point for then fully assessing and investigating that situation, but it starts with the premise that it may well have occurred, could have occurred, probably occurred, rather than a premise that it probably didn't occur.

DR COOKE: Can we go to the last paragraph on -- yes, "While in this case". Again, I just want to bring this up. It just reiterates the point made earlier about there may be a Police investigation but that may have a particular emphasis. I want to bring it up because it shows the social worker is attuned to the nuances of a case such as this, isn't it?

MS DICKSON: Yes.

DR COOKE: Isn't she?

MS DICKSON: Yes.

DR COOKE: Yes, thanks.

MS DICKSON: And if I'm correct about the time period, this would be post-1989, so the --

DR COOKE: She wrote this in 1988.

MS DICKSON: Right.

DR COOKE: And if we can go to the second to last paragraph on page 3. It's for a child in care and this probably fits in with the themes that you've heard earlier today:

"Additionally, for a child in care, they are often already labelled as a delinquent and it is very easy to dismiss what they are saying. In my client's case, there was an onslaught upon her credibility. I'm told by a number of my colleagues that she was a liar, untrustworthy, that she was no innocent, and given to sexual fantasising. When looking for an alternative placement, I was advised to warn the new caregivers that it would be likely she would make false allegations against male members of the household."

So we have themes coming through there, don't we, that are redolent of numerous experiences of children in care and also of perceptions of children in care, delinquent girls, promiscuous, out there to make complaints that are not founded, etc.

MS DICKSON: Yes.

DR COOKE: If a social worker today had that same experience, I'm almost going to call him or her a whistleblower, would that person be in a protected position to be able to make a charge against, say -- when I say a charge, I mean a complaint about a practice that's occurring that he or she has concerns about? How would that be dealt with?

MS DICKSON: I think what I would start by saying is that we have processes now that would encourage people to be open about any very broad range of concerns but any concerns that

they had about actions that were not okay, including by senior staff. That would be my starting point.

DR COOKE: If there is a case, let's assume it's a case not dissimilar from this, one imagines there would be some sort of triage process taking place in the office, wouldn't there, there would be an analysis, an assessment of what's going on?

MS DICKSON: Sorry?

DR COOKE: If there's a case such as --

MR WHITCOMBE: Are you referring to the report of concern process that would follow an allegation?

DR COOKE: You have someone who's in care and there's an allegation that's being made similar to this --

MS DICKSON: Absolutely. I thought you were referring to reviewing a concern from --

DR COOKE: No.

MS DICKSON: Absolutely, so a report of concern would be started which would initiate an investigation, there would be an investigation under the protocols that are jointly held with Police, it would follow that process and certainly there would also be a concurrent -- part of the process would also be understanding and assessing the well-being impacts for the young person, so it's not just about whether or not something happened, although that's an important part of the investigation. It's also about the well-being, safety, ongoing needs for a young person as a result of what's occurred.

DR COOKE: If the situation was to occur today and the allegation was made, how do you think it would be handled? What would happen to the complainant? If you were the social worker and you were responsible, what would you do about it?

MS DICKSON: So there are usually a couple of processes going on. There are some -- caregivers have rights to a natural justice process too, so the investigation that I've just described would be one part of the process, ensuring at the right time and taking into account the safety of the child, at some point the allegations would be put to the caregiver. There would be an outcome of an investigation, and then, irrespective actually of the finding, that would initiate a review of the caregiver's circumstances.

DR COOKE: Would it be unlikely that the complainant would be returned to that placement in the event of such an allegation having been made?

MS DICKSON: So in a case of sexual abuse?

DR COOKE: Yes.

MS DICKSON: Yes, I think -- what I would say is in allegations more generally, we have taken a more nuanced view of assessing the circumstances. It used to be any time there was an allegation, a child would be removed from that care arrangement and so that in itself could have an impact, so it's more of an assessment of what is safest for that young person and what would enable that investigation to be done in the most appropriate way.

DR COOKE: And there would be a different -- there's a differentiation therefore between sexual abuse, for example, and physical abuse?

MR TE KANI: Yes.

DR COOKE: And presumably in relation to physical abuse, there would be a gradation of severity around the nature of the abuse?

MS DICKSON: Yes, and the extent to which we would call it safety planning, you can wrap a safety plan around the situation.

DR COOKE: And such planning would be important in terms of the current practices and where you want to go around making sure that children who are going to be returned to their family or placed with family members, and I use family members to be incredibly generic in this respect, that those children are safe?

MS DICKSON: Yes.

DR COOKE: That's right, isn't it. I want to go now to the final example, which is ORT 000238400003. This is a letter addressed to the Director General of Social Welfare. I've highlighted the portion, it's in relation to an allegation from a foster child against his foster father and it says there are two other allegations that have been made against the foster father.

CHAIR: Just give the timeframe, something about 79?

DR COOKE: Yes, June 79, there are some consequences of this that will come out later. You'll see there that he says:

"Unfortunately I have to report that there have been two incidents where similar allegations have been made against this person by European youths with whom they were fostering."

And it talks:

"I'm given to understand that both these youths were devious, untruthful and manipulative boys."

So we have some powerful language in there, don't we?

MS DICKSON: Yes.

DR COOKE: And of course the allegations, it says here:

"One of them later recanted the allegations stating he'd made it because this person found out about a theft that had been committed, there was an apology given, and there were friendly contacts maintained with the foster parents. The second allegation was made in June 79, made by a boy who was seen as well capable of manipulating and lying his way out of situations which he found not to his liking. Unfortunately, both of these youth's files have been transferred to other districts and I have no means of checking on any notes made at the time of the allegations."

That's probably indicative of issues at the time, but it's a worry around how local offices would know of what's occurring in relation to allegations against particular foster carers, isn't it?

MS DICKSON: Yes.

DR COOKE: So would it be right that if there's an allegation made on a file say at the North Shore office, and the youth's files then gets transferred to Paeroa, back in the day, there would be no way, for example, that the Takapuna caregiver who was of concern, they wouldn't know there that the previous allegations had been made?

MS DICKSON: Back in the day, prior to a centralised case management system, I imagine that's a very real risk.

DR COOKE: And you'll see just in the final paragraph the author saying that the temporary placement was arranged when the author was totally unaware that the allegations had been made in the past. So we're able to move on. If we go to page 3, last paragraph, you'll see there that there's a report here from the Henderson Police that they would be unable to proceed with a prosecution. The evidence consists only of two entirely conflicting statements and there's no supporting or corroborating evidence available. There was anger expressed by the caregivers about the abrupt removal of the children and you'll see that there's been a reference made -- a complaint made to the local MP.

On page 4, the next page, para 2, there's then a suggestion, we're talking here about three other children who have been in this placement, they were going to be permitted to return because it would appear from the experience of the home that they were not at risk with these foster parents. They regarded the home as their home and that at their respective ages, which I'll give you in a minute, having given and received acceptance in this placement, they were unlikely to settle happily anywhere else and they'll suffer from concurrent distress and disturbance if they were removed, that such a disruption would prove.

Those boys at the time were I think in their mid-late teens and one was I think entering adolescence but that's more or less their age. I wanted to raise this because what we now know is that this particular foster father was later convicted for indecent assault on young boys 20 years after the date that that letter was written. If we bring up the statement of the witness, which is WITN0168001, at page 10, para 73, he says this:

"There was a high profile case against [this person]. He had abused many children in his care while he was a foster father up to the 1990s. When the Police started investigating the case against him in the 1990s, I got a call from a detective who was pursuing the prosecution. He said, 'Do you remember a chap called...?' It took me a while to realise who he was talking about. I felt sick and thought, 'Oh, my God, I thought this was all in the past'. At the same time, I was pleased to know he was going to get justice. I went to Auckland to give evidence. A copy of my statement is annexed. It made me feel very sick having to do that. I saw him for the first time in many years and did not want to be there.

He was eventually convicted and sentenced in 2000. The Court of Appeal decision is... Everything came to light during that case. As part of the investigation, the Police found peepholes in the ceiling of the bedroom where he would watch us kids. This is scary to learn. I found that out when he went to court."

If we could go to page 10, para 72, the same page. He's made a complaint:

"After I made the complaint, Social Welfare took me back to get my stuff from the foster home where I had been abused. I remember telling them, 'No, I feel unsafe going back there', but they made me go back to the house anyway."

We wanted to use those two case studies, as it were, to give -- to highlight some of the experiences around vetting, around complaints, children not being listened to, etc, the perceptions that are held of children, those things. Again, they are indicative of many of the evidence of survivors that we've heard and that you have heard as well, right?

MS DICKSON: Yes.

DR COOKE: And I know you say that you acknowledge what you've heard and you acknowledge the stories that have been told, that's correct, isn't it?

MR TE KANI: Yes, it is.

DR COOKE: I confess to some difficulty in understanding at times what acknowledgment means, but I assume it's a word that's chosen carefully as meaning that you have heard, you understand and there's empathy and sympathy and possibly a belief in what has been -- in what you have heard and what the survivors have said, would that be correct?

MR TE KANI: Yes.

MR WHITCOMBE: Yes.

DR COOKE: I'm wondering now, if we go back to the beginning of the session and we talked about -- you talked about the statistics, of course, that are current and still present, which tells us that there is a continuing theme from the time 1950 to 1999 and beyond, whether you think in terms of what we've heard today, not only from what we've just heard in this little session, but from the other survivors' statements, whether you can tell these Commissioners that those experiences no longer are happening in 2022?

MS DICKSON: So I want to be clear and I've acknowledged that we absolutely are clear and open about the fact that abuse absolutely regrettably does still occur in care. What is different, and I can talk to the processes in addition to the investigation process I've described, which is the way any report of concern for a child in or out of care would be dealt with, we've added additional protections to make sure that we look very closely any time there is an allegation of abuse in care. And I can talk through some of that work, it's work that sits within my team, it's the work that leads to the annual reporting, the bi-annual reporting, but probably the more important aspect to it from my perspective is that there is a, in real-time, review of any report of concern for a child where there's been abuse in care.

The first thing is to determine whether an appropriate decision has been made about whether the concern is assessed or investigated, the second thing is to have an independent experienced practitioner who's part of my team review the entirety of the investigation to ensure that it's being done appropriately, to ensure that support's being provided to the child, to the children involved, to ensure there's been a fair process to the caregiver, that is still important, and will pick up the phone and have a conversation with the social work team if they see things that are not being addressed through the investigation.

DR COOKE: We have an event occurring at site level?

MS DICKSON: Yes.

DR COOKE: But you're not at the site level, are you?

MS DICKSON: No.

DR COOKE: You're in Wellington or in Auckland? Here and there?

MS DICKSON: Yes.

DR COOKE: You're hot-desking between the two cities?

MS DICKSON: My team, they're essentially a Wellington based team, yes.

DR COOKE: So your team is a Wellington based team?

MS DICKSON: Yeah.

DR COOKE: How many are in your team?

MS DICKSON: So I've got a large team, but in that particular area, looking specifically at allegations of abuse in care, we currently have four staff.

DR COOKE: We often hear stories about caseloads of social workers. Would you describe that your staff have caseloads?

MS DICKSON: So they're not the social workers for the children, I wouldn't describe that as a caseload, no, to be honest.

DR COOKE: I'll reframe it this way, then. What I was wanting to ask you, how many complaints would they be dealing with, how many notifications are they dealing with at this time?

MS DICKSON: The data that we reported on, extrapolated out but-- I'd have to --

DR COOKE: You'd have an idea, wouldn't you, as the manager?

MS DICKSON: I know how much it is per month but it's -- yeah, it's --

DR COOKE: What would it be per month?

MS DICKSON: It's the corresponding number to the numbers that we looked at in terms of the abuse in care numbers that we report. I don't have them right in front of me, I can find them.

DR COOKE: Could you give some figures -- I think there were some figures that -- Ms Toohey gave you some figures --

MR WHITCOMBE: Yes, so the figures would be in the last reporting, six-month reporting period, there were 412 instances of abuse for 273 children. So what Ms Dickson is saying is if you extrapolate that out over the six-month period, it gives you a sense of the 273 children that the team has a line of sight across.

DR COOKE: Divided by four staff?

MS DICKSON: Yes.

DR COOKE: And is that a -- do those notifications of concern come from particular areas?

MS DICKSON: They are all reports of concern for all children in care irrespective of where they are.

DR COOKE: I was really wondering if there were any particular geographic areas where they come from?

MS DICKSON: More, is it?

DR COOKE: Yes, are there more from -- in proportion from Tāmaki Makaurau as opposed to Canterbury?

MS DICKSON: There's variety in terms of the numbers of children in care.

DR COOKE: Are you able to tell us about the nature of the allegations that have been made, are they do-- they cross the gamut of sexual abuse, physical abuse, emotional, psychological?

MS DICKSON: Yes, and within each abuse type, there would be a broad range of the very serious abuse that would meet the threshold for prosecution, through to certainly- I wouldn't want to say -lowlevel- concerns but concerns that are less. Probably not meet the threshold of a criminal act but are no less something that we would be concerned about and would be able to make findings about.

DR COOKE: When there's an internal complaint made around possibly abuse or if a person's not happy with an adult who makes the complaint or even a child, if the complainant is then unhappy with the outcome of their complaint, what's the next process?

MS DICKSON: So there's a couple of pathways, so at any time, not even necessarily waiting until the end of a complaint, there are other avenues outside of Oranga Tamariki such as the Ombudsman to make a complaint to. If it was a complaint reviewed by Oranga Tamariki and there was, you know, that it wasn't resolved and there was -- the concerns weren't resolved, there is the option of a complainant taking the matter to the Chief Executive's complaints panel.

CHAIR: Dr Cooke, before we go any further, we've hit 5 o'clock. How much longer do you anticipate going?

DR COOKE: I was playing it a bit by ear at the moment.

CHAIR: Were you now. How long is your ear?

DR COOKE: I'd be quite happy to --

CHAIR: Take instructions from Ms Toohey.

DR COOKE: I have taken instructions from Ms Toohey, which I'm always happy to do, and I think we could finish now because we all need to reflect on where we're at.

CHAIR: Really the only reason I was asking is if we're going to go any longer, we'd take a break.

DR COOKE: No.

CHAIR: So on instructions from your learned friend, we might stop. Is this a moment -- was there a last question or do you want to round off?

DR COOKE: No, I was just doing some tutuing.

CHAIR: On the basis that tutuing means we're all getting tired; I think we should step. I'm just double checking that we've got our kaikarakia in the house?

COMMISSIONER ERUETI: Can I also check, Mr Cooke, we're returning to complaints apropos in the morning?

DR COOKE: Yes, it can only be tomorrow.

CHAIR: That's right.

COMMISSIONER ERUETI: Just making sure we're doing that.

CHAIR: So thank you to the witnesses for today and the bad news is you're back again tomorrow at 9 o'clock in the morning, for which we are very grateful.

So we'll close the day off with our waiata karakia. Kei a koe matua.

Waiata Purea Nei and karakia mutunga by Ngāti Whātua Ōrākei

Hearing adjourned at 5.07 pm to Wednesday, 24 August 2022 at 9.00 am