

**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 Alofiavae
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
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AUCKLAND

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TRANSCRIPT OF PROCEEDINGS

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16 **Adjournment from 11.27 am to 1.52 pm**

17 **CHAIR:** Good afternoon, everybody, and welcome back to our first session of witnesses at this
18 hearing.

19 Ms Toohey.

20 **MS TOOHEY:** Good afternoon. Ko Anne Toohey tōku ingoa. I am one of the counsel. For
21 those who cannot see me, I am a middle-aged Pākehā woman with naturally blonde hair
22 and I'm wearing a cream jacket with a black check through it. I'm one of the Counsel
23 Assisting the Commissioners as the Commissioners are aware.

24 With us this afternoon we have the witnesses for the Ministry of Social
25 Development and there will be some evidence-in-chief so I will invite my learned friend
26 Ms Schmidt-McCleave.

27 **CHAIR:** I'll do that when I've affirmed the witnesses. Good afternoon to each of you and
28 welcome to the Royal Commission. I'm just going to give you one statement and I'll ask if
29 you will agree with it.

30 **MINISTRY OF SOCIAL DEVELOPMENT**

31 **DEBBIE POWER, BARRY FISK AND ARRAN JONES (Affirmed)**

32 **QUESTIONING BY MS SCHMIDT-McCLEAVE:** Tēnā koutou ano. I'd like to introduce the
33 Commissioners to our three witnesses and then what I propose to do is have the Chief
34 Executive, Ms Power, has a written statement she would like to read out and then I'm

1 hoping in the time available Mr Fisk and Mr Jones will also have very brief statements that
2 they would like to give to the Commission.

3 So at this end of the table, Commissioners, we have Debbie Ann Power, the Chief
4 Executive of the Ministry of Social Development; next to Debbie we have Mr Barry Fisk,
5 the General Manager of Te Kāhui Kahu at the Ministry of Social Development; and at the
6 end, Mr Arran Jones, the Executive Director of the Independent Children's Monitor. Tēnā
7 koutou katoa.

8 Tēnā koe, Ms Power. Your full name is Debbie Ann Power?

9 **MS POWER:** [Nods].

10 **MS SCHMIDT-McCLEAVE:** And you're the -- I'll just remind you to say "yes" or "no" for the
11 stenographer.

12 **MS POWER:** Yes.

13 **MS SCHMIDT-McCLEAVE:** Thank you. And you're the Chief Executive of the Ministry of
14 Social Development.

15 **MS POWER:** Yes.

16 **MS SCHMIDT-McCLEAVE:** And you were appointed to this role in February 2019 for a term
17 of five years.

18 **MS POWER:** Yes.

19 **MS SCHMIDT-McCLEAVE:** Now, the Commissioners have received your written brief of
20 evidence and have a copy of that.

21 What Ms Power intends to do is speak to that but in a slightly reordered fashion and
22 what we can do following this hearing is provide a copy of what Ms Power's going to give
23 to the Commissioners so you can match it to her written brief.

24 So I will hand over to you, Ms Power, to read out your statement.

25 **MS POWER:** Thanks, Rachael.

26 **CHAIR:** And if I could just remind you, if you haven't already, to be slow, for your signers and
27 our transcriber.

28 **MS POWER:** Tēnā koutou. Ka mihi ki te mana whenua, e ngā mana nui o te Kōmihana Karauna
29 e tau nei. E ngā mōrehu o tēnei kaupapa tēnā koutou katoa. Ko Debbie Power tēnei e mihi
30 ana, nō Te Tai Tokerau ahau, tēnā koutou, tēnā koutou, tēnā koutou katoa.

31 I am the Chief Executive of the Ministry of Social Development, I was appointed to
32 this role in February 2019 for a term of five years.

33 Prior to becoming the Chief Executive of the Ministry, I held a position of the
34 Statutory Deputy State Services Commissioner and Chief Executive at the State Services

1 Commission between August '15 and February 2019. In this role I was accountable for
2 supporting the Commissioner with Chief Executive appointments and performance
3 management.

4 I started my career, my Public Service career in 1980 as a frontline case manager at
5 the then Department of Social Welfare. I've held a range of senior roles in the Ministry,
6 including Deputy Chief Executive Service Delivery between 2012 and 2015, Deputy Chief
7 Executive Office of the Chief Executive, 2010 to 2012, and Regional Commissioner for the
8 Northland region 2001 to 2005.

9 In these earlier roles I oversaw a range of significant projects, including the
10 implementation of welfare reform and the movement of social housing needs assessment
11 from Housing New Zealand to the Ministry.

12 I hold an Executive Master's in Public Administration from Victoria University of
13 Wellington.

14 To begin, I wish to make some overarching comments. Understanding the role of
15 the Public Service is critical to understanding the evidence you are to hear. Public Service
16 is part of the Crown, but departments and agencies cannot act unilaterally of Government,
17 except where independence is specifically provided for in statute.

18 Under the Public Service Act 2020, the Public Service supports constitutional and
19 democratic government and enables the current and successive governments to develop and
20 implement their policies.

21 Under the Act, the role of the Public Service in relation to the Treaty is to support
22 the Crown in its relationships with Māori under Te Tiriti o Waitangi by developing and
23 maintaining the capability of the Public Service to engage with Māori, and to understand
24 Māori perspectives in specific matters relating to employment of public servants.

25 The Public Service is not a treaty partner in its own right, but supports the Crown as
26 a whole in this role.

27 On behalf of the Ministry, I wish to acknowledge the numerous accounts given by
28 survivors of immense suffering and tremendous courage in the face of adversity. The
29 Ministry has listened carefully to survivors' evidence and I would like to recognise the
30 bravery and courage of survivors in providing their evidence to this Commission.

31 Although the role in the care system that the Ministry performs today is in relation
32 to the particular functions I will explain, the Ministry remains committed to continually
33 improving that work to better support the care system operated by Oranga Tamariki. This
34 is reflected by the monitor and the accreditation processes in place.

1 I want to specifically acknowledge the evidence provided by survivors about their
2 experience of redress. Although I understand that it is not within scope of this hearing and
3 therefore not in the scope of my evidence, the evidence has been heard and I acknowledge
4 that the Ministry's redress system has not always got things right for claimants.

5 This was covered in detail at the Commission's State Redress Hearing, and evidence
6 was provided by my colleagues, Simon MacPherson as to the establishment and history of
7 the Ministry's redress system for responding to historic claims of abuse, Linda
8 Hrstich-Meyer as to how the Ministry has responded to and assessed historic claims
9 including current processes, and Garth Young as to the range of issues and practices
10 relating to the historic claims process.

11 The Ministry is committed to the cross-agency work taking place to support the
12 Crown response to the Royal Commission's redress report He Purapura Ora, he Mâra Tipu
13 and to improve redress for survivors.

14 I want to reiterate and support the acknowledgments set out on behalf of the Crown
15 in the opening statement provided by Crown counsel today. In addition, I have considered
16 the acknowledgments specifically put to the Ministry by the Commission and would like to
17 respond to those.

18 I acknowledge that it is not within the scope of our current historic claims process to
19 take into account a person's loss of culture or cultural disconnect while in State care. As
20 was discussed in detail at the State Redress Hearing, MSD's claims process was developed
21 in response to litigation and required us to apply a legal framework to claims. However, no
22 matter what the legal position is, what is clear from the evidence we have heard through the
23 work of the Commission is that loss of culture for survivors is hugely significant.

24 Cultural considerations haven't formed an integral part of the way in which we've
25 gone about the historic claims redress processes over the years. We will consider as part of
26 the Crown engaging on this question how these key aspects will need to be a part of the
27 new redress process.

28 I recognise that across the board disabled people, Deaf people, and people with
29 mental health conditions face additional barriers to access many services. I acknowledge
30 that more needs to be done in this area. While the MSD redress system can be accessed in
31 a number of ways in writing, by e-mail, with advocates through representation, it has not
32 gone far enough. For example, not all of our documents are in an accessible format. I
33 understand the importance of accessibility and it is a focus for the cross-agency work on
34 any redress system.

1 I am responsible for the strategic oversight of the Ministry whose role and functions
2 are: Funding for community service providers, employment support, income support
3 including payments, entitlements and New Zealand superannuation, social housing
4 assessments and services, access to concessions and discounts for senior citizens, families
5 and low income New Zealanders, student allowances and student loans, information,
6 knowledge and support for families and communities, campaigns that change antisocial
7 attitudes and behaviour, and services to uphold the integrity of the welfare system and
8 minimise the debt levels of the people we work with.

9 The Ministry also has functions outside of its core business, including Te Kāhui
10 Kahu historic claims and the Independent Children's Monitor.

11 To supplement the evidence I give, the following witnesses will be appearing on
12 behalf of the Ministry to address issues of accreditation and the monitor: Barry Fisk, the
13 General Manager of Te Kāhui Kahu and Arran Jones the Executive Director of the
14 Independent Children's Monitor.

15 With the establishment of Oranga Tamariki Ministry for Children in 2017, and the
16 resulting transfer of Child, Youth and Family functions from the Ministry to Oranga
17 Tamariki, the Ministry has several relatively confined areas in which it engages with or
18 relates to people who were or are in State and in the care of the State: Managing claims of
19 abuse or neglect for people who were in the care, custody or guardianship of the Child
20 Welfare Division, the Department of Social Welfare, or Child, Youth and Family, the
21 historic claims process, and these matters were subject of the Ministry's evidence at the
22 Commission's State Redress Hearing; providing social services accreditation on behalf of
23 the Ministry For Pacific People, the Ministry of Housing and Urban Development, Ministry
24 of Justice, Department of Corrections, Ministry of Social Development, and Oranga
25 Tamariki; hosting the monitor within the Ministry on an interim basis. After the Oversight
26 Bill is passed, the monitor will sit as an independent unit within the Education Review
27 Office; working with other agencies in the wider social sector to support government
28 priorities and improve the well-being of New Zealanders.

29 Oranga Tamariki was established on 1 April 2017 and took on the responsibilities
30 and functions of the previous organisations that held its present day function. As the
31 Ministry is no longer involved with the delivery of the care system and does not provide
32 care services, Oranga Tamariki will be giving evidence to the Commission about the care
33 system.

1 **MS SCHMIDT-McCLEAVE:** And if I could just jump in there, Ms Power, and note for the
2 Commissioners that Mr Fisk has given a full brief of evidence on accreditation. He does
3 wish at the end of Ms Power's evidence just to make a couple of short paragraph
4 statements, so Ms Power, if you could keep reading from 5.2. Thank you.

5 **MS POWER:** Accreditation provides assurance that organisations can safely deliver social
6 services to their community. It is like a warrant of fitness check for social service
7 providers. Being accredited shows that an organisation has strong and safe business
8 practices.

9 Changes to the system of accreditation have occurred because the Ministry's role
10 and function of accreditation has increased since 2015. The Ministry's current accreditation
11 function has evolved from approving and accrediting third party providers on behalf of the
12 Ministry and Oranga Tamariki to accrediting on behalf of six agencies: Ministry For
13 Pacific Peoples, Ministry of Housing and Urban Development, Ministry of Justice,
14 Department of Corrections, Social Development and Oranga Tamariki.

15 The Ministry's accreditation process for assessing the suitability of third party
16 providers is run by Te Kāhui Kahu. While Te Kāhui Kahu is an independent government
17 business unit which was established in August 2021, it is hosted by the Ministry, which
18 means that the Ministry provides Te Kāhui Kahu with corporate services such as IT
19 systems, human resources, payroll and property.

20 Te Kāhui Kahu assesses third party providers against specified accreditation
21 standards within its accreditation framework. There are processes in place for accreditation
22 to be removed by Te Kāhui Kahu and ways for Te Kāhui Kahu to respond where issues or
23 concerns about an organisation's accreditation are raised.

24 **MS SCHMIDT-McCLEAVE:** Again, if I can just stop you there to note that Mr Jones has also
25 given a full brief and he talks about the position prior to 2019. So Ms Power, if you could
26 just start reading again from 6.3 and complete your final comments. Thank you.

27 **MS POWER:** The subsequent 2017 review of the independent oversight arrangements for the
28 Oranga Tamariki system and children's issues recommended the need for greater oversight
29 of New Zealand's child protection system, specifically: System level advocacy for all
30 New Zealand children and young people; oversight and investigation of complaints of
31 matters related to the application of the Oranga Tamariki Act 1989 and/or children in the
32 care or custody of the State; and independent monitoring and assurance of the operations
33 and obligation delivered under the Oranga Tamariki Act 1989 and associated regulations.

1 In response, Cabinet agreed that the Ministry be appointed the independent monitor
2 from 1 July 2019 to establish the monitoring function with the then in principle agreement
3 that it be transferred to the Office of the Children's Commissioner once a robust monitoring
4 function is established and a new legislative framework is in place. This was then
5 superseded by a Cabinet agreement on 10 May 2021 that the monitor would be established
6 as a departmental agency within ERO.

7 The monitor operates independently from the Ministry's core business. The
8 Ministry's role is to design and establish the framework for the independent monitoring of
9 compliance within the National Care Standards Regulations, information that is disclosed
10 on abuse or neglect in State care, and how Oranga Tamariki is responding, specifically,
11 National Care Standard Regulation 69 and 85. And establish the broader monitoring
12 frameworks and conduct full monitoring for a period from December 2020 to refine the
13 operation of the function before it is transferred.

14 The Government agreed to a phased approach to implementing the necessary
15 changes to develop and establish the monitoring function. The current monitoring
16 arrangements are set under the existing legislative framework, under the Oranga Tamariki
17 Act 1989. Future arrangements are relying on the passing of the Oversight Bill.

18 Once the Oversight Bill is passed, the monitor will be hosted by ERO. I understand
19 that the monitor will remain operationally independent, led by statutory officer who will
20 also be its Chief Executive.

21 As the Chief Executive of the Ministry, I wish to again acknowledge the
22 experiences shared by survivors of abuse throughout the Commission's inquiry. The
23 opportunity for the Ministry to hear direct from those who have suffered such harm is
24 significant and I am committed to learning from their experiences as well as from the work
25 of the Commission.

26 The Commission has provided a pivotal opportunity for all Crown agencies,
27 including MSD, to reflect on our role in the lives of tamariki, rangatahi, and their whānau.
28 The Ministry's overarching purpose is to help New Zealanders to be safe, strong and
29 independent and I am committed to ensuring that the Ministry achieves this purpose in the
30 work we undertake. Thank you.

31 **MS SCHMIDT-McCLEAVE:** Ngā mihi ki a koe, Ms Power. I just will spend a couple of
32 moments with Mr Fisk and Mr Jones. So turning to you, Mr Fisk, tēnā koe. Your full
33 name is Barry John Fisk.

34 **MR FISK:** Barry John Fisk, that's correct.

1 **MS SCHMIDT-McCLEAVE:** And you're the General Manager of Te Kāhui Kahu?

2 **MR FISK:** I am.

3 **MS SCHMIDT-McCLEAVE:** And the Commissioners have a copy of your full written brief, so
4 we don't need to go through that in detail, but if you have it in front of you, could you just
5 read your paragraphs at part 2 of that brief.

6 **MR FISK:** The Ministry wishes to make overarching comments about the accreditation system.

7 I would like to begin by acknowledging the work of the Royal Commission and in
8 particular the survivors who have come forward to share their experience.

9 It's a privilege to lead a unit that can provide an independent assessment of the
10 suitability of providers to deliver safe, quality services. New Zealanders have a reasonable
11 expectation that when they access services funded by the Government that these services
12 have met standards that give them confidence to use them.

13 The assessments we complete can cover the breadth of the social sector where a
14 provider or a legal entity who holds multiple contracts for different across multiple
15 agencies attains on accreditation. This provides transparency for the government and
16 communities and it place the organisation Te Kāhui Kahu in a unique position of having a
17 whole-of-system view across the sector.

18 The process of accreditation is completed on a regular review cycle based on risk.
19 This means that at the time an organisation is accredited it is judged to be fit for purpose
20 and appropriate for the service it offers. It does not mean that accreditation monitors the
21 quality and performance of services. This is the responsibility of the ministries or
22 departments who contract for those services.

23 It is my hope that our work continues to refine, modernise and introduce Te Ao
24 Māori in our approach to accreditation will lead to improved outcomes for all whānau and
25 families, individuals, community, especially Māori.

26 **MS SCHMIDT-McCLEAVE:** Thank you, Mr Fisk, and Commissioners. At part 3 Mr Fisk sets
27 out the scope of his evidence, and if the Commissioners are happy to take the remainder of
28 his brief as read.

29 **CHAIR:** Yes, certainly.

30 **MS SCHMIDT-McCLEAVE:** Thank you.

31 Mr Jones, if we could just turn now to your evidence and again, the Commissioners
32 do have a copy of your written brief. But your full name is Arran Scott Jones?

33 **MR JONES:** That's correct.

1 **MS SCHMIDT-McCLEAVE:** You're the Executive Director of the Independent Children's
2 Monitor.

3 **MR JONES:** Also correct.

4 **MS SCHMIDT-McCLEAVE:** If you also could read out for the Commission your position
5 statement at part 2.

6 **MR JONES:** Tēnā koutou katoa. Ko wai au? Nō Te Papaioea ahau, kei Whanganui a Tara ahau e
7 noho ana. Ko Arran Jones tōku ingoa, he Tumu Whakarae Ahau ki te Mana Whakamaru
8 Tamariki Motuhake. Before addressing, as described, I'll just make my opening
9 statements. I'd like to begin by acknowledging the work of this Commission and in
10 particular those who have come forward to share their experiences.

11 When tamariki and rangatahi are removed from whānau and brought into care, it
12 must only be out of the utmost necessity. It must only be to improve their lives and always
13 with a view to their eventual return home, and it is heart-breaking when this is not the case.

14 Personally, it is a privilege to lead the establishment of the monitor and make a
15 contribution to the improvement of the quality of care, and in time the Oranga Tamariki
16 system more generally.

17 Sustained monitoring, increased transparency and the sharing of insights will
18 influence change. Highlighting good practice will show others what can be done.
19 Transparency over areas that demand improvement will help direct effort. Sustained and
20 consistent monitoring will drive accountability.

21 It is my hope that the monitor's work in partnership with the Children's
22 Commissioner and the Ombudsman will improve the experience of care so that tamariki
23 and rangatahi can feel safe, be safe and have every opportunity to live their best lives.

24 It's important to note that the Oversight of Oranga Tamariki System and Children
25 and Young People's Commission Bill, the Oversight Bill, is currently before Parliament,
26 and in developing the functions of the monitor will provide, through the Bill, oversight of
27 the whole of the Oranga Tamariki system. It will also provide for greater advocacy for all
28 children and young people in New Zealand and also a creation of a new Children and
29 Young People's Commission.

30 The Oversight Bill is currently through its second reading and I look forward to its
31 passing so that we can continue with our journey. Ngā mihi.

32 **MS SCHMIDT-McCLEAVE:** Thank you, Mr Jones, and you've addressed the Bill in more detail
33 in your written statement so if Commissioners are happy for that also to be taken as read?

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

1 **MS SCHMIDT-McCLEAVE:** Ngā mihi ki a koutou, if you can just remain there for questions
2 from my friends Ms Toohey and Mr McCarthy and Dr Cooke and then the Commissioners,
3 thank you.

4 **CHAIR:** Thank you.

5 Ms Toohey.

6 **QUESTIONING BY MS TOOHEY:** Tēnā koe, Ms Power. I just want to start with some
7 snapshots of the scale of abuse that the Ministry received through the Historic Claims Unit.
8 I'm going to take you through what is by no means a complete picture of some spreadsheets
9 from information that the Ministry has provided to the Commission.

10 If we could start with MSD 0015420. This is a summary, Ms Power, of abuse
11 claims made to the Ministry relating to some key residences that the Commission has
12 drawn out from the responses. And I'm just going to ask you some questions about this so
13 that we can get a sense of the scale of allegations that were made to the Ministry.

14 Just looking at the first line there, the residence Kohitere, that is recording that 228
15 complainants came forward to the Ministry with a total of 812 allegations of abuse, 550
16 being physical, 134 sexual, and 102 emotional. Do you see that there in the first line?

17 **MS POWER:** [Nods].

18 **MS TOOHEY:** We can see similarly for the next two lines in relation to Epuni and Hokio the
19 numbers of complainants' abuse allegations and the type of abuse that was perpetrated.

20 And do you agree with me, Ms Power, that these are very high numbers of
21 allegations of abuse within these residences?

22 **MS POWER:** Yes, I would.

23 **MS TOOHEY:** And perhaps if we scroll down the page to Whakapakari, are you familiar with
24 that provider of care as a third party provider to the State, accredited by the Ministry under
25 396 of the Oranga Tamariki Act, and you can see there that 40 complainants came forward
26 with 176 allegations of abuse, 99 physical and 21 sexual, 42 emotional, to the Ministry; and
27 similarly, Moerangi Treks, another third party 396 provider, eight complainants with 49
28 abuse allegations, 30 physical and four sexual.

29 And if we go back and look at the entire page, there is no provider on this page of
30 care with less than two allegations of sexual abuse?

31 **MS POWER:** [Nods].

32 **MS TOOHEY:** Thank you. I just want to go now --

33 **CHAIR:** Just make sure that you voice your response, please, so that we can get it recorded.

34 **MS POWER:** Yes.

1 **MS TOOHEY:** I just want to go now please to a different spreadsheet which is MSC 0008283.
2 And these are, again, screenshots that have been prepared by Commission staff from
3 information provided to the Ministry to the Commission. And the first -- these have been
4 filtered per person who's alleged to be a perpetrator of abuse, and do you see the first
5 named person, that's number 1 at the top, the first person named, and then at the bottom of
6 that page in the corner we have 48 of 442 records, and that's indicating, Ms Power, that
7 there were 48 allegations of abuse against that first person named.

8 I just want to take you through the first line first, demonstrating physical abuse, you
9 can see there the period is 1949 at Ōwairaka, the next line is sexual abuse in the same year,
10 and then if we scroll down these entries all relating to the first person named, you can see
11 they all relate to Ōwairaka Boys' Home, and if we go to the end we get to 1988.

12 So this information, Ms Power, I think you'll agree, reflects that there were
13 allegations made to the Historic Claims Unit against this one person committing a range of
14 the types of abuse, physical, sexual, and emotional, for a period spanning 1949 to 1988, 39
15 years. Do you agree with that?

16 **MS POWER:** Yes.

17 **MS TOOHEY:** And do you agree with me, Ms Power, as a general proposition that that one
18 example of that first person named in the spreadsheet demonstrates why we need a very
19 robust system of monitoring and oversight of State care?

20 **MS POWER:** Yes.

21 **MS TOOHEY:** I want to take you now to page 14, I'm not going to go through each of these
22 perpetrators of abuse, but if we go to page 14, a person named at number 9. So on the next
23 page we can see at the bottom left of that table again the number of allegations, so 25
24 allegations against this person. And once again, if we just undertake a similar exercise
25 starting at the top at line 14 there, the first allegation is 1968, at Epuni, of a sexual nature,
26 and then as we scroll down we see allegations of, once again, sexual, physical and
27 emotional abuse spanning all the way through until 1978, a ten-year period.

28 And you would have familiarised yourself, I imagine, with this spreadsheet prior to
29 the hearing, Ms Power. Do you agree with me that across a range of institutions, there are
30 individuals who are alleged by survivors to have committed abuse over quite lengthy time
31 periods across a range of institutions nationally throughout New Zealand?

32 **MS POWER:** That's what the spreadsheet indicates, yes.

33 **MS TOOHEY:** And that's what the Historic Claims Unit heard from survivors of abuse?

34 **MS POWER:** Yes.

1 **MS TOOHEY:** I just want to go now to third party providers, so to MSC 0008284. This is a,
2 again, this third party service provider that we alluded to earlier of Moerangi Treks and
3 Eastland Youth Rescue. So if we see there in the bottom left there are 49 allegations in
4 relation to this provider, and if we start at the top they range from 1993, if we just see that
5 date, but remaining on that page, if we look at line 2795, you can see there a person, who I
6 will refer to as Person B, is alleged to have committed physical abuse from 1997, and that
7 same person, Person B on the next page, features quite heavily throughout 1997 in terms of
8 an alleged perpetrator of abuse; do you see that?

9 **MS POWER:** Yes.

10 **MS TOOHEY:** Then we come to Eastland Youth Rescue Trust, a separate organisation, and
11 Mr McCarthy will be asking questions in relation to this, but do you see there that there are
12 -- first of all, there are 42 allegations, as we can see, of abuse in that third party provider
13 and then if we go back to the main document, we can see that at the top line and throughout
14 that page that same Person B is alleged to have committed abuse at Eastland from 1998,
15 and that continues down to 1999.

16 Do you agree with me that, once again, this demonstrates the need for oversight, the
17 fact that one person is alleged to have committed abuse in one organisation that is
18 contracted to the State, and then a second?

19 **MS POWER:** Yes.

20 **MS TOOHEY:** The last spreadsheet I want to refer you to is MSC 0008286 and you'll see there
21 that this relates to Whakapakari, another third party provider. And if you look at the
22 bottom corner again, you'll see there are 176 allegations of abuse in relation to
23 Whakapakari and if we have a look at the top line, 1988, are you familiar with the person,
24 the first person named there as the person who ran this care provider?

25 **MS POWER:** Yes.

26 **MS TOOHEY:** And that person's name features frequently throughout this document, do you
27 agree, right through to the very end of the document in 2003?

28 **MS POWER:** Yes.

29 **MS TOOHEY:** And once again, this third party provider is continuing to provide services to the
30 State from 1988, at least on these documents, through to 2003?

31 **MS POWER:** Yes.

32 **MS TOOHEY:** Thank you.

1 I now want to move to a different subject, Ms Power, and that relates to what the
2 Ministry did as a result of hearing about claims of abuse against current staff of Child,
3 Youth and Family and now Oranga Tamariki.

4 So if I understood your evidence correctly, Child, Youth and Family were within
5 the Ministry of Social Development until 2017; is that right?

6 **MS POWER:** That's correct.

7 **MS TOOHEY:** There's one particular individual that I want to ask you about who I will refer to
8 as Person A. And if we could bring up document ORT 011834.

9 So if we have a look at this document, it says at the top "Employment Historic
10 Claims" and it's got "Allegations against current staff". If we go down to, I think, page 3,
11 the first entry on that page, the person I'm referring to as Person A. My understanding from
12 this document is that Person A was named to the Ministry of Social Development as
13 someone who was known to be a perpetrator of abuse by Cooper Legal. Is that your
14 understanding?

15 **MS POWER:** That's my understanding.

16 **MS TOOHEY:** And that he was -- the allegations are summarised in this table as being physically
17 abusive and it's listed there that this person would beat up boys when they were doing
18 physical training, would kick, punch and clothesline boys, set up fights between boys, and
19 so on, that's listed there.

20 My understanding from the evidence that the Commissioners received earlier from
21 Garth Young is that after the Ministry got this general information from Cooper Legal, they
22 made attempts to deal with it by getting further information and also involving the Police,
23 but that for various reasons, they couldn't take it any further at that time.

24 Have I summarised that fairly?

25 **MS POWER:** Yes, I think so, yeah.

26 **MS TOOHEY:** After that, did the Ministry then receive, rather than from Cooper Legal, from
27 actual claimants to the Historic Claims Unit, claims in relation to physical abuse by
28 Person A?

29 **MS POWER:** Yes.

30 **MS TOOHEY:** If we just bring up the spreadsheet in relation to that, which is MSD 0015421, and
31 we can see that this relates to Person A as per the top of the spreadsheet, and at the bottom
32 left we can see there are 26 allegations of abuse. My understanding from information
33 provided to the Commission is that two of those allegations in relation to sexual abuse

1 could be discounted by the Ministry as having been capable of having been occurred for
2 various reasons; is that right?

3 **MS POWER:** Yes, I understand that's true.

4 **MS TOOHEY:** And that leaves 24 allegations. And then in that column that says "Did
5 allegations meet criteria", you can see some say yes, and there's one there on that page that
6 says no, can you just explain what that refers to?

7 **MS POWER:** That relates to the criteria as it relates to historic claims process. So people make a
8 claim, we have a look at it and we accept it for the purposes of historic claims that that
9 behaviour happened.

10 **MS TOOHEY:** My understanding also from evidence given by Ms Hrstich-Meyer to the
11 Commission earlier, is that sometimes claims were looked into in some more detail by the
12 Ministry and sometimes they were accepted to actually have happened. And certainly in
13 one of the documents provided to the Commission it appears that the Ministry accepted a
14 claim that one, at least one claimant was physically abused by Person A.

15 Do you agree, having reviewed the documentation prior to today, that that's what
16 occurred?

17 **MS POWER:** Yes, all I would add is in the context of accepting a historic claim, not in relation to
18 a finding of fact as it relates to employment matters, that's the distinction.

19 **MS TOOHEY:** Yes, in that document it also refers to the Ministry having accepted claims of
20 physical abuse by Person A against three other claimants. So four claimants the Ministry
21 accepted physical abuse occurred for the purpose of settlement, and there were a total of 14
22 claimants to the Ministry in relation to Person A and my understanding is a total of 18
23 claimants were paid compensation in relation to some form of abuse by Person A; is that
24 right?

25 **MS POWER:** I'm not aware of that number, I'm sorry, I'd have to come back to you, but I accept
26 the earlier premise.

27 **MS TOOHEY:** The information provided to the Commission, actually that was updated at 1.55
28 pm today, is that Person A, after the 2006 information we looked at earlier that showed that
29 Person A was a current staff member then, that this person was re-employed on 1 July 2009
30 and was transferred to a different Youth Justice facility on 8 June 2015, employment
31 checks were done in 2009 and that person remains employed now at a Youth Justice
32 facility.

33 When did the Ministry of Social Development act on these allegations of physical
34 abuse in relation to Person A as a current employee?

1 **MS POWER:** In relation to the first comment that you've made about the updated information,
2 I'm not aware of that information, so I'm sorry about that, I can't respond to that. What I
3 can say is that we did make referrals in relation to Person A to Oranga Tamariki, some
4 general information in 2019 and then in 2020, 2021 more specific referrals.

5 **MS TOOHEY:** What about earlier, Ms Power, when Person A was an employee of Child, Youth
6 and Family within MSD, what was the process then in relation to receiving on the one hand
7 through the Historic Claims Unit allegations of physical violence by that person and in
8 another part of the Ministry, that person is providing care directly to young people? What
9 did you do when he was an employee of Child, Youth and Family within the Ministry about
10 that? What was the process undertaken?

11 **MS POWER:** So as I understand the process is when -- at that time period we would have had a
12 historic claims process and we would have had -- Child, Youth and Family would have
13 been part of MSD. So in order to refer information over, clearly there was a time period
14 where we could not get the information that we needed and it went on far too long before
15 anything was resolved.

16 So again, we went back to Cooper Legal to say was there more information, but in
17 relation to how we deal with allegations of abuse for current staff members, we have two
18 processes, one if the claimant is prepared to go to Police we can go to Police, otherwise
19 then we do a referral. Now, in this case it clearly didn't happen until 2019, which was way
20 too late.

21 **MS TOOHEY:** Would the Ministry accept that this represents a major failing in relation to
22 safeguarding children in care?

23 **MS POWER:** I think what I would say is in the current environment now we would be looking at
24 different, well, we wouldn't -- I guess what I would say is we didn't do our best work at that
25 time in relation to dealing with that particular complaint, and that is hugely unfortunate.

26 **MS TOOHEY:** I think you'll be aware that the Historic Claims Unit actually interviewed
27 Person A in 2013 in relation to some of the allegations. Were you aware of that?

28 **MS POWER:** I'm not aware -- I'm aware that some interviews were done; sorry, I'm not clear that
29 that was specifically in relation to Person A.

30 **MS TOOHEY:** Mmm.

31 **CHAIR:** Could I ask a question of clarification, when you say "referral", what do you mean? You
32 were saying complaints are received, the complainant didn't want to refer but you did refer,
33 to whom did you refer?

1 **MS POWER:** I guess what I'm saying is, when an allegation is made, if a complainant wishes to
2 go to the Police then they could go to the Police. Otherwise we would do an assessment in
3 relation to if the person is currently employed, what their role is, and talk to Oranga
4 Tamariki in relation to if they are currently still employed.

5 **CHAIR:** So the referral is to Oranga Tamariki?

6 **MS POWER:** Yes.

7 **CHAIR:** Is it a referral or just a -- what do you mean by a referral?

8 **MS POWER:** We would notify them that concerns were raised in relation to an existing staff
9 member.

10 **CHAIR:** Right, okay. And basically hand over to them for investigation or who then held
11 responsibility for looking into that?

12 **MS POWER:** I'm unsure about that in relation to the past, I can only talk about it in the current.
13 So in the current, we would hand that responsibility over to Oranga Tamariki and it would
14 be their responsibility to work through the resulting process, because it becomes then an
15 employment matter, and the relationship in terms of the employment matter is between the
16 person and their employer.

17 **CHAIR:** Doesn't it become an abuse matter?

18 **MS POWER:** I guess it depends -- I guess there are two tests, one is in relation to the test in
19 relation to historic claims, and the other test is in relation to the relationship, the
20 employment relationship between the staff member and the organisation who is their
21 employer.

22 **CHAIR:** Those two are linked though, aren't they?

23 **MS POWER:** They are linked but they're not necessarily the same test or one needs to uphold one
24 process for the other process, if that makes sense.

25 **CHAIR:** Are you saying one test trumps the other test? No? I'm just trying to work out what
26 the -- what is prevailing here, is the protection of the child prevailing or is it the protection
27 of the employment status that's prevailing?

28 **MS POWER:** I think it's complicated, to be honest. So you have -- absolutely we would want the
29 protection of the child to be at the centre. All I'm simply saying is we also have an
30 employment process that we must go through, and if people -- if allegations are made
31 against current staff members, their employer is required to put those allegations to them
32 and go through a process. Now, that doesn't mean to say we don't care or want to protect
33 the child who is at the centre of that, I'm not saying that at all. Absolutely they're both

1 absolutely important, I'm just saying, they're different -- they have to go through different
2 processes. And I'm talking about historical claims versus current, right?

3 So you absolutely have to protect the child, that is absolutely first and foremost,
4 I want to make very clear about that. But there's still a process that has to go through that
5 you have to put an allegation to an existing staff member and that relationship and
6 employment relationship is between the employer and the person.

7 **CHAIR:** So what are the steps, granting all of that, what are the steps in the meantime while that
8 employment process is taking place, what steps are taken to preserve, as you quite rightly
9 say, the most paramount consideration and that's the protection of the child?

10 **MS POWER:** I think it would depend upon what the allegation was, I think it would depend
11 about -- depend on what processes were put in place, but I mean you would, in the first
12 instance, remove the -- potentially remove the person from the location or the role. But
13 again, this is all hypothetical.

14 **CHAIR:** Yeah, sure.

15 **MS POWER:** But you would make sure that the child had all the supports that they needed, that
16 they were clear that, you know, this was not their fault, that we put in whatever processes
17 around the child, and their whānau, to make sure that they were safe. At the same time, we
18 would make a judgment or the employer would make a judgment about the severity of the
19 allegation and making sure that that separation happened in order to make sure that the
20 child was safe, absolutely you would do that. That's a given.

21 **CHAIR:** And that's your current practice?

22 **MS POWER:** I'm saying that's what would hypothetically happen if that happened, yes.

23 **CHAIR:** Thank you for clarifying that.

24 **MS TOOHEY:** Ms Power, I'm sorry about putting you on the spot with that additional
25 information, I only got it just before lunch.

26 **MS POWER:** Yes, that's all right.

27 **MS TOOHEY:** There is one further question I think that the Commission could benefit from
28 some clarity on, which is when Person A was an employee of Child, Youth and Family, and
29 the Ministry was getting an historic claim, so that wouldn't involve a referral through to a
30 different organisation because it's the same Chief Executive, isn't it, the same organisation?

31 **MS POWER:** At that time, yes.

32 **MS TOOHEY:** So I've been through the case studies that were provided on Friday by the
33 Ministry of Social Development in relation to these claimants, and they date back to
34 assessments in 2015, one was 2013. So these are times when Person A is employed within

1 the Ministry of Social Development. So can you explain why nothing was done by the
2 Ministry in relation to one of its staff who is alleged to have committed so much physical
3 violence against children in care?

4 **MS POWER:** I can't answer that question based on what I've seen. What I can say is clearly it
5 took too long for us to get to a resolution to be able to progress it.

6 **MS TOOHEY:** I just want to move on to a different topic now, Ms Power, and that's just to
7 explore a little bit more about the Beattie Report that you referred to in your evidence,
8 which we can bring up on the screen, MSC 0008447. And my understanding from the
9 report generally is that it was essentially commissioned by the Ministry in order to identify
10 ways in which independent oversight of Oranga Tamariki could be strengthened after that
11 organisation was set up in 2017; is that right?

12 **MS POWER:** That's correct.

13 **MS TOOHEY:** If we can go to -- I think it's page 21, paragraph 1. If you see the second
14 paragraph there, which begins "To that end", and it talks there about, so this is in the
15 Beattie Report, the recommendation was "consideration to one Commission", and there had
16 been reference to the Office of the Children's Commission, so one Office of the Children's
17 Commission with two full-time statutory commissioners, a Children's Commissioner and a
18 Commissioner Care and Protection with separate roles and statutory responsibility. And
19 both roles would be publicly notified, etc.

20 I just had a question for you, Ms Power, which you might be able to answer given
21 your background with the Public Service Commission in particular. The Office of the
22 Children's Commissioner, that's an Independent Crown Entity, isn't it?

23 **MS POWER:** That's right.

24 **MS TOOHEY:** Can you explain how that differs from a government department?

25 **MS POWER:** An Independent Crown Entity or an ICE as it is commonly referred to, is
26 independent, which means it has the ability to advocate or provide commentary, so it's
27 not -- it's independent of Government policy, if that makes sense, yeah.

28 **MS TOOHEY:** Right. And we heard this morning from the lawyer for the Office of the
29 Children's Commissioner that funding for an Independent Crown Entity is difficult because
30 they can't petition the Government separately for funding, that that has to come from other
31 Government agencies. Do you know anything about that?

32 **MS POWER:** I think that Independent Crown Entities have a direct relationship, or the
33 commissioners or the chairs or whatever role they are, have a direct relationship with

1 ministers, so are entirely within their, you know, ability to talk to ministers about whether
2 or not they feel they have sufficient resources.

3 Of course in this case the Ministry of Social Development is also the monitor for the
4 Children's Commissioner, so we can have a role to advise as well, but there's nothing
5 stopping a commissioner or the head of an Independent Crown Entity talking to the
6 responsible minister about their level of resources or funding.

7 **MS TOOHEY:** Does the Ministry of Social Development seek funding for the Office of the
8 Children's Commissioner in its vote from Parliament or not?

9 **MS POWER:** We do. We can -- that's exactly our role because the funding -- because of our role
10 as the monitor, yes.

11 **MS TOOHEY:** If we just go to the bottom of that page -- sorry, just up above the earlier part, the
12 page above. And here we have the comment at the final paragraph, if I can call that out,
13 that: "The importance of the quality of systematic monitoring can't be understated, it must
14 provide credible evidence-based assessments, be a respected source of independent advice
15 and add value to Oranga Tamariki as well as contributing to a learning system of
16 improvement in practice, service and delivery." And then on the next page: "It must also be
17 a trusted source of independent reporting that provides assurance to Ministers, Parliament
18 and the public".

19 Do you agree with me that that's a central theme throughout this report, is the need
20 for independence and independent monitoring?

21 **MS POWER:** Yes.

22 **MS TOOHEY:** The recommendation in the report to have monitoring undertaken by a separate
23 commissioner is different to the arrangement, isn't it, with the Independent Children's
24 Monitor that's actually transpired?

25 **MS POWER:** That's right. And I think Ms Beattie was clear in her report that she was making a
26 recommendation but that further analysis or acceptance by ministers was still the next steps.

27 **MS TOOHEY:** Yes, yes. I just want to ask you some questions, though, practically about how
28 the Independent Children's Monitor works, though, and its level of independence. You
29 mention in your evidence that it's an independent Government business unit. What exactly
30 does that mean?

31 **MS POWER:** I might just pass to Arran Jones at this point, if it pleases you, just to talk about that
32 aspect of it.

33 **MS TOOHEY:** Thank you.

1 **MR JONES:** Yeah, look, I think there's two parts to this. The first is how we operate currently
2 within the Ministry of Social Development, and then the second part is what is proposed in
3 the Oversight Bill in the future for the monitor.

4 In terms of the first, Debbie's already discussed or mentioned the independence of
5 us within the Ministry of Social Development, we consider ourselves to be, although part of
6 MSD, we are effectively see ourselves as adjacent to them, and we have a great deal of
7 operational autonomy in terms of how we operate.

8 Then in terms of the reports that we've already published, those reports go direct to
9 the Minister for Children. The first time he sees those reports is in their final form, and
10 then those reports go to the agencies that have statutory care responsibilities for children so
11 they can reply, and then we publish those reports on to our website.

12 So that is the current operation of the monitor.

13 **MS TOOHEY:** As public servants though, do you agree with me that there are limitations on the
14 amount of public criticism that can be levelled by public servants? The Independent
15 Children's Monitor staff are public servants, are they not?

16 **MR JONES:** That's correct.

17 **MS TOOHEY:** So my understanding is that public servants can only criticise the Public Service
18 publicly using a protected disclosure through the Protected Disclosures Act?

19 **MR JONES:** Yeah, I'm not quite -- in terms of the function of the monitor, you're thinking about,
20 I think, a specific set of circumstances, if something was to arise and we were to become
21 privy to it, as opposed to our general practice of how we monitor the system; is that
22 correct?

23 **MS TOOHEY:** No, I'm asking about the level of independence in terms of being able to publicly
24 criticise the Government, in the same way that the Ombudsman or the Office of the
25 Children's Commission would be able to. I think you'd agree with me there's not quite the
26 same latitude for public servants.

27 **MR JONES:** There are a couple of things I'd point out. I think it's really important to see the role
28 of the monitor within the oversight system, which was proposed by Sandy Beattie in her
29 report. We are part of a system working together and so while the monitor is currently a
30 departmental agency and that's what its proposed future is also, we also work with the
31 Office of the Children's Commission and her role as an advocate and her freedom to do
32 that.

33 We also work with the Ombudsman who has a very high independence status and
34 their ability to complete investigations and to handle complaints.

1 So I think it's really important to see the whole of the oversight system working
2 together.

3 The second point is, and as I mentioned, the future for the monitor. The Bill that's
4 currently before the house has specific provisions in it to safeguard the independence and I
5 think this speaks to the point that you're raising here, and clause 16A of that Bill sets out
6 currently that "A minister of the Crown must not direct the monitor to stop carrying out an
7 activity or prevent the monitor from carrying out an activity that the monitor considers
8 necessary to enable them to perform or exercise their functions, duties or powers under this
9 act."

10 This clause is very unusual, but it helps promote and protect the independence of
11 the monitor and our ability to report fairly what we hear in communities and the data and
12 information that we gather.

13 **MS TOOHEY:** If I could just go back to you, Ms Power, just in relation to the reference in the
14 Beattie Report to the Ombudsman, the Ombudsman is different again, is an officer of the
15 Parliament, perhaps an even greater degree of independence, would you agree, than the
16 Office of the Children's Commissioner?

17 **MS POWER:** Yes.

18 **MS TOOHEY:** If we have a hierarchy we could see the Ombudsman is at the top in terms of
19 independence, the Office of the Children's Commissioner under that and then public
20 departments under that again?

21 **MS POWER:** I think it's the legislative framework that's also important. As Arran has already
22 said, part of the proposal in the Oversight Bill is to ensure that the monitor can continue.

23 Your comment in relation to a Public Service agency criticising an individual and
24 the scope of that, I mean, the monitor, if they found that there was an issue in relation to an
25 individual would be talking to the employer again about that individual. I'm not sure that --
26 I wasn't quite sure what you were talking about when you were talking about to "criticise an
27 individual".

28 So, sorry, I just didn't quite understand what you were meaning by that, because the
29 monitor in the course of their work, if they found that there was an issue in relation to an
30 individual, be it a current staff member, a person delivering a programme, would be talking
31 to either the employer about that concern, or to the funder of that programme. The
32 monitor's role is to look at the care system in its entirety.

33 Sorry, I just didn't quite understand.

1 **MS TOOHEY:** I might have used the wrong term, I was meaning to indicate that public servants
2 cannot publicly criticise the Public Service, another Government department. Because that
3 really is my question for you, Ms Power, in terms of oversight of, for example, MSD and
4 Oranga Tamariki in terms of the example of Person A, who is overseeing you in terms of
5 that particular failing that we discussed before? Where is the oversight of the Ministry?

6 **MS POWER:** So, well, in the current context if a Chief Executive has -- does not deal with
7 particular issues, then there's always the employer of the Chief Executive which is the
8 Public Service Commissioner. So ultimately our employment is subject to -- he appoints,
9 so -- and our performance, no matter in whatever aspect, we're accountable to him.

10 If in failing our duty to deliver for ministers, then we have also a relationship with
11 ministers, but it's not an employment relationship. So oversight of agencies, arguably, is
12 with the Public Service Commissioner.

13 **MS TOOHEY:** Does that include the system, when it's the system that's failing between public
14 departments? Is there oversight of that from the Public Services Commissioner?

15 **MS POWER:** I would argue that that is arguably in scope.

16 **MS TOOHEY:** Thank you.

17 Commissioners, I have no further questions for this witness. The proposal is for
18 Mr McCarthy to now ask questions of Mr Fisk, if that is suitable to you.

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

20 **MS TOOHEY:** Thank you, Ms Power.

21 **CHAIR:** Tēnā koe, Mr McCarthy.

22 **MR McCARTHY:** Tēnā koe, ma'am. Good afternoon, Mr Fisk.

23 **MR FISK:** Afternoon.

24 **QUESTIONING BY MR McCARTHY:** My name is Winston McCarthy, I'm one of the lawyers
25 assisting the Commission. Just for audio description purposes, I am quite tall, of Māori and
26 Samoan descent. Like many, my hair is greying and I'm wearing a charcoal suit.

27 Mr Fisk, did you want to provide an audio description?

28 **MR FISK:** Yes, I am not as tall as you but also have greying hair and I'm wearing a dark suit.

29 **MR McCARTHY:** When I was reading your evidence I was struck by the phrase "warrant of
30 fitness", you're comparing the accreditation service to a warrant of fitness. Just so I'm clear
31 in my mind, Te Kāhui Kahu is responsible for providing the initial accreditation for
32 external agencies to be funded within the care system; is that correct?

33 **MR FISK:** Not just the care system but --

34 **MR McCARTHY:** In the broader context, but for our purposes what we're interested in --

1 **MR FISK:** Yeah, for this purpose the warrant of fitness as I describe it helps others understand
2 that we are saying this organisation is fit for purpose, and I think I may have made
3 comments in my testimony also that the service quality and the monitoring of that service
4 delivery, those contracted services is the responsibility of the Ministry or the Department
5 that has that contract.

6 **MR McCARTHY:** We'll come back to that point, but just the second aspect, like a warrant of
7 fitness in the real world, these usually expire.

8 **MR FISK:** Yes, they do.

9 **MR McCARTHY:** And you're responsible for reaccrediting.

10 **MR FISK:** Every two years.

11 **MR McCARTHY:** You just spoke before about quality and performance, and you're responsible
12 for warranting strong and safe business practices. At what point does quality and assurance
13 reflect on strong and safe business practices?

14 **MR FISK:** It's a combination of things in my view. There's the responsibility of the organisation
15 to act in the interests of its service recipients and consulting with them. So, for example,
16 it's incumbent on the service provider to actually make sure that the service recipients, the
17 child, the young person's views are taken into account, and that exists even though the
18 responsibilities for care have now transferred, but that's the responsibility.

19 But equally, the running of an organisation in an appropriate fashion, so good
20 governance, proper employment contracts, performance appraisals, complying with the rule
21 of law are all things that make an organisation fit for purpose. If you don't have those
22 things in place, then you will -- there will be a greater chance of service failure without
23 those things.

24 **MR McCARTHY:** So you'd agree that it's important for the warranting process to be robust?

25 **MR FISK:** Yes.

26 **MR McCARTHY:** To ensure that unfit organisations aren't funded in the care system.

27 **MR FISK:** Correct.

28 **MR McCARTHY:** And you'd also agree that if an unfit organisation manages to be accredited,
29 there could be serious consequences just like the warrant of fitness in the real world.

30 **MR FISK:** Correct, yes.

31 **MR McCARTHY:** In tab A of your evidence you outline the whakapapa or history of Te Kāhui
32 Kahu.

33 **MR FISK:** Yeah.

1 **MR McCARTHY:** And what I propose to do today is examine the accreditation process that was
2 active during our scope period.

3 **MR FISK:** Yes.

4 **MR McCARTHY:** So the New Zealand Community Funding Agency, during our scope period
5 during the 1990s, they were responsible for approvals as opposed to accreditation.

6 **MR FISK:** Yes, that's right. And "approval" is a word used in section 396 of the Act, so that is
7 the correct terminology.

8 **MR McCARTHY:** Am I correct in saying that today, Te Kāhui Kahu, while not involved in
9 approvals, the accreditation process, if they don't pass the accreditation process, that would
10 preclude them from being funded within the care system?

11 **MR FISK:** No, that's not the case today, because Oranga Tamariki is now responsible for section
12 396 itself, so it approves organisations for care and it contracts with those organisations for
13 care and it ensures through the care system that quality standards are met.

14 **MR McCARTHY:** I'm aware that the approval function has moved.

15 **MR FISK:** Yes.

16 **MR McCARTHY:** But you describe contracts, are you saying that if you didn't accredit a third
17 party provider, they would still be able to contract with Oranga Tamariki?

18 **MR FISK:** Prior to the transfer of the delegation, that might be the easiest way for me to explain,
19 that is correct, without accreditation/approval the organisation should not be able to
20 contract.

21 And if it helps, that applies to all organisations that we accredit.

22 **MR McCARTHY:** So the New Zealand Community Funding Agency, which was one of your
23 predecessor organisations, they were responsible for approvals. What was the role of then
24 Child, Youth and Family in the accreditation/monitoring process?

25 **MR FISK:** Well, at various stages they were together, but you could say that Child, Youth and
26 Family, when Community Funding Agency and Child, Youth and Family were apart, there
27 was Care and Protection and Youth Justice components to Child, Youth and Family.

28 **MR McCARTHY:** So we've set out the framework and now we're going to look at particular
29 examples.

30 So we are going to look at Moerangi Treks. Now, Moerangi Treks was one of the
31 settings that the Community Funding Agency approved?

32 **MR FISK:** That's correct.

33 **MR McCARTHY:** And you note in your evidence that it was approved in 1997.

34 **MR FISK:** Mmm-hmm.

- 1 **MR McCARTHY:** At paragraph 7.7 of your evidence --
- 2 **MR FISK:** Let me grab that -- yes, I've got that now.
- 3 **MR McCARTHY:** -- you say there that the approval process for Moerangi Treks was completed
4 prior to allegations of any abuse being made.
- 5 **MR FISK:** That's correct.
- 6 **MR McCARTHY:** If we could bring up our first document, and that's document MSD 0002979
7 for the record, and if we scroll down to the first page of the -- page 4. And if we could just
8 call out the first paragraph.
- 9 **MR FISK:** Yes, I have that.
- 10 **MR McCARTHY:** So it says there: "At various times over recent years, questions have arisen
11 over the care of some clients placed on the Moerangi Treks programme."
12 So this document, I probably should have addressed it before, it's a joint report --
- 13 **MR FISK:** That's correct.
- 14 **MR McCARTHY:** -- prepared by Community Funding Agency and...
- 15 **MR FISK:** Yes.
- 16 **MR McCARTHY:** And this was completed in 1998, so this was a few months after the initial
17 approval.
- 18 **MR FISK:** That's correct.
- 19 **MR McCARTHY:** So you'd agree that it's safe to say there were issues prior to Moerangi Treks
20 being approved?
- 21 **MR FISK:** Indeed.
- 22 **MR McCARTHY:** One specific example of allegations being raised is contained in my next
23 document, and that's document EXT 0015888. So as you can see, this is an internal Child
24 and Young Person Services memorandum. Do you see the date of the document?
- 25 **MR FISK:** Yes, I do.
- 26 **MR McCARTHY:** This was two years prior to the approval, wasn't it?
- 27 **MR FISK:** Mmm-hmm.
- 28 **MR McCARTHY:** In the highlighted paragraph, I'll just call that out, it sets out here, doesn't it,
29 that "Palmerston North CYFS received a report from South Auckland Child Youth Persons
30 Service and that allegations were raised regarding assaults on a boy by both staff and
31 residents on the programme." So it would appear that the accreditation process in this
32 instance did not -- it took place in a vacuum of this information.
- 33 **MR FISK:** That would seem to be the case.

1 **MR McCARTHY:** And during opening statements today, Keith Wiffin, he asked two questions
2 that he wanted us to examine, he asked how did this happen and he also asked what has
3 been done to ameliorate things in the interim.

4 **MR FISK:** Sure.

5 **MR McCARTHY:** So I understand you weren't there at the time, we're just interpreting historical
6 documents.

7 **MR FISK:** Correct.

8 **MR McCARTHY:** But from the evidence we have a received, it seems that there were issues in
9 communications between different agencies.

10 **MR FISK:** That would be my take on it. The predecessor organisations rather largely used
11 manual paper systems, there was no systemic ability, or there was no systemic sharing of
12 files or information.

13 **MR McCARTHY:** So today, what mechanisms are in place to ensure that information that comes
14 to Oranga Tamariki is passed through to Te Kāhui Kahu?

15 **MR FISK:** So there's a range of relationship meetings that take place, but perhaps the most
16 important, the most important thing that's in place now is that we share a resource directory
17 from which accreditation information is placed, assessments are kept, and flags of concern
18 that Oranga Tamariki have and we have are examined before any contracting arrangements
19 are entered into. So we have a way of sharing information now using technology that
20 simply didn't exist in that time.

21 **MR McCARTHY:** Thank you for that, that answers my question. I did have one sort of further
22 question. The operation of that system that you just described would be dependent on
23 humans doing their jobs, that's correct, isn't it?

24 **MR FISK:** Yeah, as in all things.

25 **MR McCARTHY:** There's another question that I'll come back to as we go through the different
26 organisations. When accrediting, first accrediting organisations to be introduced into the
27 care system, to what degree do you examine the track record or the background of the
28 organisation and the other contexts in which it operates?

29 **MR FISK:** So there's a -- today?

30 **MR McCARTHY:** Today.

31 **MR FISK:** Today there's an extremely thorough investigation, if you want to use that word,
32 "evidence collecting" would perhaps be a better one, and this may take some time, it takes
33 somewhere between -- it takes three months between an organisation, putting in an

1 application for accreditation and then it being approved and sometimes they don't get
2 approved because there is insufficient evidence to allow us to form a view.

3 **MR McCARTHY:** So a proposed organisation, would it need a track record of success before
4 being accredited?

5 **MR FISK:** Often times they're new organisations, so in the current set up I've got 2,000
6 organisations that we accredit, we probably get 350 new applications a year, so the rest of
7 the organisations that we're talking about are re-accreditations.

8 **MR McCARTHY:** Okay. Now, we discussed before Moerangi Treks was approved in 1997 and
9 allegations surfaced subsequent, quite shortly afterwards.

10 **MR FISK:** Indeed.

11 **MR McCARTHY:** We're talking four to five months.

12 **MR FISK:** Mmm-hmm.

13 **MR McCARTHY:** If we could bring up the document we looked at before, MSD 0002979 again.
14 And we'll just stay on this page. So this is a letter that accompanied the report investigating
15 the allegations of abuse.

16 **MR FISK:** Correct.

17 **MR McCARTHY:** Can you see the date in the left-hand corner?

18 **MR FISK:** Yes, I can.

19 **MR McCARTHY:** And on page 4 there's a couple of highlighted dates there in the third
20 paragraph.

21 **MR FISK:** 28 November?

22 **MR McCARTHY:** Mmm-hmm, yes, and 17 December.

23 **MR FISK:** Yes.

24 **MR McCARTHY:** This background is setting out the background of the investigation that took
25 place by the Community Funding Agency, and Child, Youth and Family. Now, if you
26 recall, the first date was May, so it appears that there was around five months between the
27 allegations being raised and a report being completed.

28 **MR FISK:** That's right.

29 **MR McCARTHY:** I've read your complaints policy in one of the tabs of your brief of evidence.
30 What would your expectation be today in terms of timelines of an investigation of this sort?

31 **MR FISK:** My expectation, and this is my experience, my expectation is once a complaint's
32 made, then the agencies that have an interest or contracting arrangement with that provider
33 come together as per that complaints arrangement, a plan is developed on how to manage
34 that, the agency, in this case if it was a care service, they would be the responsible agency

1 to go and do the initial investigation. If it was appropriate they would do that with the
2 Police. Subsequent to that investigation, we would examine the output of that and then
3 determine, we take an independent view of whether the standards that applied to that
4 organisation had been breached.

5 Now, if they had been breached, then we would look to impose corrective action,
6 required action which may lead to a suspension.

7 **MR McCARTHY:** So timeframe wise?

8 **MR FISK:** Well, it's hard for me to say, but I would have thought that this would be something
9 that would take less than a month. Our part would be subsequent to, you know, for
10 example the Oranga Tamariki and Police example. I have want one to bring to mind which
11 is about a school care provider and that was dealt with by Oranga Tamariki and the Police
12 within a week and we had dealt with our part of the investigation within ten days.

13 **MR McCARTHY:** Another feature of this investigation was it appeared that the children
14 remained at Moerangi Treks while the investigation took place. Would you be involved in
15 deciding whether children remained with allegations or would that be Oranga Tamariki?

16 **MR FISK:** That's the responsibility of Oranga Tamariki.

17 **MR McCARTHY:** So I'll put those questions to them, okay.

18 Could you go to page 7 of the report. So if we can scroll down a little bit. So you
19 see there it says that there have been five incidents that have been corroborated by more
20 than one of the clients in the programme, and do you see the named individual in the first
21 highlighted paragraph?

22 **MR FISK:** Yes, I do.

23 **MR McCARTHY:** So that is Person B that my friend Ms Toohey spoke of before.

24 **MR FISK:** Yes, it is.

25 **MR McCARTHY:** So it says that, point 1, there was a physical assault, bashed her on the head,
26 point 2, there was a rope around the neck, if you can scroll down to the next page, again it's
27 Person B, these are uncorroborated, so there's only one witness to them, but again, the use
28 of bolt cutters to assault someone, and the same Person B telling other boys to beat up
29 another boy.

30 This isn't the sort of person that you'd want around children, is it?

31 **MR FISK:** No, but that's a question you'd need to address to social workers who would place
32 children in those places, but my opinion is no.

1 **MR McCARTHY:** I guess the question I'm putting to you is, if you're aware that this person,
2 Person B, had done these things, you wouldn't accredit the organisation that they worked
3 for, would you?

4 **MR FISK:** No, if I had that knowledge, no.

5 **MR McCARTHY:** I think that's an important part, because what we're going to turn to next is
6 examining Eastlands. But before we do that we're just going to go back to the first page of
7 this document.

8 If you could call out the highlighted bit.

9 There it says as a result of the investigation, the report that we just read, the
10 approval has been suspended.

11 **MR FISK:** Correct.

12 **MR McCARTHY:** That is on 29 May 1998.

13 So if we can bring up document MSD 0002986. So this is another Child, Youth and
14 Family internal memorandum. Do you have the document in front of you?

15 **MR FISK:** Yeah, I'm just getting it out of my tab.

16 **MR McCARTHY:** If we just call out the yellow highlighted part.

17 So this document is dated 15 October 1998.

18 **MR FISK:** Mmm-hmm.

19 **MR McCARTHY:** So is that around five months after the report we just read?

20 **MR FISK:** Yes.

21 **MR McCARTHY:** Have you read the highlighted paragraph?

22 **MR FISK:** Yes.

23 **MR McCARTHY:** So you can see there that this new organisation called Eastlands was managed
24 by Person B --

25 **MR FISK:** Indeed, yes.

26 **MR McCARTHY:** -- who we spoke to before, and it says also that they received a full approval
27 from the Community Funding Agency.

28 **MR FISK:** Yes.

29 **MR McCARTHY:** So it would appear that the approval person, the responsible approver was,
30 we're interpreting obviously, but if I had to guess, perhaps wasn't aware of what occurred in
31 the investigation.

32 **MR FISK:** I would most certainly believe so.

1 **MR McCARTHY:** So going back to today, what processes are in place to ensure that internal
2 silos within your organisation do not preclude the sharing of crucial information like we've
3 just seen here?

4 **MR FISK:** Yeah, sure, so we go back to my description of the IT system and the two flags that
5 allows the things to occur, but not only that, each accreditation report that we write goes to
6 the organisation for whom we contract, because you'll be aware from my testimony that
7 I effectively work for these agencies, so all of the reports go to the appropriate agencies for
8 whom we are doing the accreditation on behalf of.

9 So both at the system level, if you like, technology level, and then the referral of the
10 reports and the provider, I might add, gets a copy of the report too.

11 **MR McCARTHY:** I've been advised we're going to take a break, if that's okay.

12 **MR FISK:** Sure.

13 **MR McCARTHY:** But we'll come back and examine that.

14 **CHAIR:** Yes, it's 3.30 which is the time designated for tea to be drunk, so I think we'll take a
15 break now, 15 minutes, is that the time allotted? Yes, it is, so we'll take a 15-minute break
16 and return for your questioning again, thank you.

17 **Adjournment from 3.27 pm to 3.46 pm**

18 **CHAIR:** Just before we commence, just a word for the audience in the room, you will not be
19 seeing the documents that are being referred to. It was explained earlier that the documents
20 can't easily be redacted, and there are a whole lot of privacy issues arising out of other
21 things appearing on the page, and for that reason I'm sorry that we won't be showing those
22 either on the screen or on the livestream, but counsel will, wherever they can, read out the
23 relevant parts that they're referring to. Thank you.

24 Yes.

25 **MR McCARTHY:** We left off discussing the approval of Eastlands and it appeared to be almost
26 like a Phoenix organisation, would you agree with that sort of characterisation?

27 **MR FISK:** I think the papers tend to indicate that the organisation was called -- the paperwork
28 that I've read indicates Eastlands is described as "formerly Moerangi Treks".

29 **MR McCARTHY:** So if Moerangi Treks was suspended, and Eastlands was approved, would it
30 be fair to say that Eastlands arose once Moerangi was suspended?

31 **MR FISK:** That's possible.

32 **MR McCARTHY:** I think it's more than possible, I think it's apparent, wouldn't you say?

33 **MR FISK:** Happy to agree, I guess all I'm saying is I can't see that off the paperwork, but I agree
34 with your assertion.

1 **MR McCARTHY:** We were discussing before the "how" question and one of the possible
2 explanations was a lack of internal communication.

3 **MR FISK:** Yes.

4 **MR McCARTHY:** Another possible explanation might be the need for these specific type of
5 programmes, so the evidence we've received suggests that there's a desperate need to find a
6 place to place children. Is there still a desperate need to find suitable organisations today?

7 **MR FISK:** You'll need to address that question to Oranga Tamariki. Providing foster care is, I
8 think, folks know it's hard to do, but again, it's outside of my jurisdiction if you like.

9 **MR McCARTHY:** But you'd posit that whether there is desperate need or not, that doesn't factor
10 into your accreditation process.

11 **MR FISK:** No, part of the reason I take an independent view is that I then, my staff and I am not
12 subject to pressure along the lines of "No, no, no, you can't close that organisation, it's the
13 only organisation in place X that delivers this service."

14 **MR McCARTHY:** One final explanation that I wanted to explore with you was related to the
15 nature of the programme itself. So we discussed previously how Moerangi Treks was a
16 programme set up in Te Urewera as a programme for Māori boys, and from the documents
17 we've received it seems that there was a reluctance to challenge these types of organisations
18 because there wasn't a level of cultural competence or cultural expertise within the
19 accrediting organisation.

20 So my question for you is, is there a level of cultural expertise within your
21 organisation as an accrediting entity?

22 **MR FISK:** My answer to that is that it is an evolving and improving situation. For example, I've
23 appointed a national manager for Māori to increase our cultural competence and capability.

24 So we are taking active steps to do that. Have we got it to the place that I'm satisfied? No.

25 **MR McCARTHY:** Obviously the types of organisations you'll be accrediting are quite diverse.

26 **MR FISK:** Yes.

27 **MR McCARTHY:** I imagine some organisations would be working with Pasifika peoples?

28 **MR FISK:** Yes.

29 **MR McCARTHY:** And neuro diverse or people with disabled backgrounds?

30 **MR FISK:** Yes.

31 **MR McCARTHY:** What level of expertise do you have in your organisation in regards to these
32 sort of populations?

33 **MR FISK:** So we have, with the exception, in my view, of enough Māori accreditation assessors,
34 in all other respects the workforce represents the community in which it resides.

- 1 **MR McCARTHY:** So the community in which it resides or the community that it serves?
- 2 **MR FISK:** Both, because our staff live in, they live in the communities that providers are. So, for
3 example, I have staff from Kaitaia down to Invercargill.
- 4 **MR McCARTHY:** But you would agree that the people using social services aren't representative
5 of the general demographics of New Zealand, would you agree with that?
- 6 **MR FISK:** Oh, I see, yeah no, no, that is true.
- 7 **MR McCARTHY:** We've talked about the possible reasons why or how Eastlands was
8 accredited, and there was a resultant abuse that arose from this. I've included a witness
9 statement in the bundle but for time purposes I'll just read out the types of things that
10 happened due to this.
- 11 **MR FISK:** Sure, yeah.
- 12 **MR McCARTHY:** So in the witness statement the witness said that they saw boys being hit
13 around the head with shovels, boys (inaudible) being tied to horses and having the horse
14 bolt. One boy being set on fire. All that type of abuse in this instance could have been
15 prevented if the accreditation process was robust, you'd agree with that?
- 16 **MR FISK:** The accreditation process certainly did not know about this information. If the
17 accreditation process knew about this, the organisation would not have been accredited.
- 18 **MR McCARTHY:** I guess when we're trying to assign responsibility --
- 19 **MR FISK:** Sure.
- 20 **MR McCARTHY:** -- the responsibility obviously lies with Person B, but would you take
21 responsibility, especially for the abuse that occurred in Eastlands, given the prior
22 knowledge of Person B?
- 23 **MR FISK:** Well, I think the Ministry has said it takes responsibility. It's hard for -- I'm not trying
24 to dodge your question, it's hard for me to say because the accreditation, the statements by
25 your witness that we've just discussed, that information would not have been available to
26 that accreditation or approval process. It would not, in my view at least anyway, that
27 approval process would not have occurred had that information been available.
- 28 **MR McCARTHY:** But this is abuse that happened in Eastlands.
- 29 **MR FISK:** Yes, that's correct.
- 30 **MR McCARTHY:** There was information available about the abuse that happened in Moerangi
31 Treks, wasn't there?
- 32 **MR FISK:** Yeah.

1 **MR McCARTHY:** So if we're looking at the accreditation process, and if it was aware of
2 Moerangi Treks abuse that is very similar to the Eastlands abuse that occurred, there's a
3 degree of responsibility that falls on the accrediting organisation.

4 **MR FISK:** Agreed.

5 **MR McCARTHY:** Now, another programme that has quite extensive interactions with the
6 Community Funding Agency was Whakapakari. Whakapakari was approved in 1994 and
7 its approval continued through until 2004.

8 **MR FISK:** That's correct.

9 **MR McCARTHY:** When we look at -- I probably don't have time to get into the details of each
10 incident that happened at Whakapakari, but what I took overall is that Moerangi Treks, it
11 demonstrates that the initial approval wasn't appropriate and when I look at Whakapakari, it
12 would appear that when we were talking before about the warrant of fitness, when the
13 re-approval or re-accreditation process wasn't appropriate, so today when we look at issues
14 that may arise, what processes are in place to ensure that those issues are addressed and that
15 the organisation is fit and safe for purpose?

16 **MR FISK:** Sure. So I think if we start where you are with the Moerangi Treks and Whakapakari
17 complaint was received, in this case if we go to the key organisation which was Oranga
18 Tamariki, they would carry out their investigation. If there were more agencies involved
19 with that organisation then there'd be a group meeting about that. The appropriate
20 investigation would take place and then we would follow up and decide what action should
21 be taken. We can suspend and what that means is the organisation has no contract, so at the
22 point that I make a decision to suspend and it gets gazetted, that organisation cannot
23 continue to contract with Government.

24 **MR McCARTHY:** Could I stop you there, because I think I may have misstated the question, just
25 so I can be clear.

26 **MR FISK:** Sure.

27 **MR McCARTHY:** There's things that fall into the purview of Oranga Tamariki and you've
28 described the process that happens in that instance. But, for example, things that fall into
29 your purview, does vetting still fall into your purview?

30 **MR FISK:** Yes, so I check on vetting, if you're asking me that.

31 **MR McCARTHY:** If a vetting issue arose when you're going through, and perhaps it didn't rise to
32 the point of suspension, but it needed to be addressed, what processes are in place to ensure
33 that they are addressed?

1 **MR FISK:** Sure. Okay, so our staff visit, they look at the vetting, and matters relating to the
2 Vulnerable Children's Act and Children's workers to make sure the appropriate
3 documentation is available and evidenced. If there are gaps in the vetting the organisation
4 is given six weeks to fix that, if they do not address matters like vetting and other things
5 that are requirements in the standards, then we go from a critical action, for want of a better
6 word, which is time bound, and if that's not resolved, then that does go to suspension, and
7 then they get a period of time to fix that particular failing.

8 **MR McCARTHY:** And I know it's been a limited amount of time Te Kāhui Kahu's been
9 operating but have there been any suspensions or what's the frequency of suspensions?

10 **MR FISK:** We have done seven suspensions in the last 12 months. Of those, two have -- are no
11 longer providing services, one relinquished and one got revoked. The balance that were
12 suspended addressed the issues within the time period and are now back delivering services
13 but on a shorter timescale. So for example, one that I can recall, they're on a six-month
14 cycle not a two-year cycle.

15 **MR McCARTHY:** And going back to our question before about, I know you didn't accept the
16 characterisation of a Phoenix organisation, but one can imagine a scenario where there's an
17 organisation that was suspended, and the director of that organisation may not necessarily
18 be accused of abuse, but they facilitated it within their organisation. What safeguards are in
19 place to ensure that that individual, that those individuals are prevented from starting a new
20 organisation and re-applying for funding?

21 **MR FISK:** I don't know whether I could call them specific safeguards but it's a combination of
22 things. We use the New Zealand business number to actually identify organisations and all
23 the information relating to them, and that gives us all the information about the staff and the
24 directors. But in the end, the most effective way of this, managing this, is our people on the
25 ground. That's the most --

26 **MR McCARTHY:** So the body of the staff that you have --

27 **MR FISK:** Yes, that's the most effective way, there's no particular easy way to systematise this.

28 **MR McCARTHY:** One final question I had was in relation to Te Tiriti, Treaty principles. During
29 the accreditation process, what standards are used to ensure that accredited organisations
30 operate in accordance with Te Tiriti?

31 **MR FISK:** There's a cultural competency standard within the suite of standards and that is used.
32 And that's used for all organisations.

33 **MR McCARTHY:** So a part of that cultural competence would be knowledge of Te Tiriti?

34 **MR FISK:** Yes, and that being designed into services that are being provided.

1 **COMMISSIONER ERUETI:** Can I ask you about -- excuse me, one second -- about having the
2 capacity also to -- for your organisation to determine whether these organisations are
3 meeting that criteria?

4 **MR FISK:** Sure. Yeah, so for example, we do look for specific evidence. We would not be so
5 brave as to suggest that we might ask a Māori or kaupapa Māori organisation to prove to us
6 they were culturally competent, but we are interested in bigger organisations and large,
7 I guess, multi-skilled organisations of which New Zealand has a big number of large
8 organisations, we'd expect them, who are delivering services to Māori, to be able to
9 demonstrate how they were meeting those standards. Similarly for Pasifika, but also for
10 other groups.

11 **COMMISSIONER ERUETI:** This would turn on your organisation having the expertise
12 internally to be able to assess their compliance with those standards. I know you mentioned
13 a national manager for Māori, but you're still taking steps, I think you said.

14 **MR FISK:** Yes, that's correct, to build that capability and capacity.

15 **COMMISSIONER ERUETI:** Thank you.

16 **MR McCARTHY:** I don't have any further questions for you, Mr Fisk, but thank you for your
17 evidence, I'll pass the time to...

18 **MR FISK:** Thank you.

19 **COMMISSIONER ERUETI:** Can I just use this opportunity to quickly follow up on that
20 question. So that question related to current practice. Are you able to talk about prior
21 practice about the degree to which providers were assessed for their compliance with
22 Te Tiriti obligations?

23 **MR FISK:** I reviewed the Community Funding Agency standards. They're not as extensive as the
24 standards that we used today. There was some -- there was some testing in there, but not as
25 much as I think what you're -- you would expect.

26 **COMMISSIONER ERUETI:** Yes, okay.

27 **COMMISSIONER STEENSON:** Can I just ask something for clarification about -- so my
28 understanding of what you've just said is you require larger organisations to prove cultural
29 competency around Te Ao Māori; is that correct?

30 **MR FISK:** I probably didn't represent that well. I simply gave as an example of organisations
31 that deliver a range of services, including to Māori and we would test that with them, but
32 our organisations that we work with are from three-person organisations through to
33 organisations with several hundred staff.

1 **COMMISSIONER STEENSON:** Yeah, I guess that's my question, is that a different standard
2 for smaller providers?

3 **MR FISK:** It is in fact the same standard but it's tough for them, and so we have to be cognisant
4 of that.

5 **COMMISSIONER STEENSON:** For the smaller?

6 **MR FISK:** For the smaller providers, yeah.

7 **COMMISSIONER STEENSON:** Thank you.

8 **CHAIR:** Dr Cooke. Tēnā koe.

9 **QUESTIONING BY DR COOKE:** Tēnā koe, Madam Chair. Tēnā koutou, tēnā koutou, tēnā
10 koutou katoa. Again, I'm one of the Counsel Assisting the Commission, ko Allan Cooke
11 tāku ingoa.

12 Mr Jones, I'm going to be asking you some questions, I'm mindful of the time as
13 well and I'm not going to be able to question you on every matter, of course we could do so,
14 and I'm likely to miss an emphasis and I may likely go down a rabbit hole and if the need
15 arrives we'll follow up that. For those watching, I am possibly the greyest or the
16 whitest-haired of us here today, I am Pākehā and I'm also one of the older ones, and I'm
17 wearing a dark charcoal-y suit with a tie and a white shirt, and glasses.

18 Now, I just want to start with your background because I know that you have been
19 across the Public Service both with MSD and OT, it would appear, in their various
20 incarnations for some years; is that correct?

21 **MR JONES:** Mostly with MSD actually. There was a period of time just for a couple of years
22 where I didn't work for Oranga Tamariki but was involved in the establishment of Oranga
23 Tamariki.

24 **DR COOKE:** And because of that you would be well familiar with the history of Oranga
25 Tamariki, Ministry of Social Development, Child, Youth and Family services, etc.

26 **MR JONES:** That's correct. Actually, before I go on, tēnā koe, Mr Cooke, and also just to
27 explain myself. I am a 50-year-old Pākehā male, salt and pepper beard, wearing a grey
28 jacket and a shirt that looks like an explosion of forests.

29 **DR COOKE:** So we've established that, that you are -- you've told us in your brief that you can
30 speak to the National Care Standards --

31 **MR JONES:** Correct.

32 **DR COOKE:** -- both currently as they've been and as what's going to occur, but you can also
33 come to us with an informed knowledge of, in recent years, the care system.

- 1 **MR JONES:** As much as I can, I don't have a social work background as such, unlike a lot of my
2 colleagues in the monitor, but I do have a high-level understanding, correct.
- 3 **DR COOKE:** Yes. I was particularly noting that you were leading the partnership and
4 programmes work stream in the investing in children programme that established Oranga
5 Tamariki.
- 6 **MR JONES:** That's correct.
- 7 **DR COOKE:** And would you accept the proposition that in order to understand the present and
8 hopefully have a good understanding of what may occur in the future, we have to
9 understand the past?
- 10 **MR JONES:** I would agree.
- 11 **DR COOKE:** Would you agree with the further proposition that the care standards as we now
12 have them were introduced because it was transparently clear that Child, Youth and Family,
13 as it was, or whatever it was called at this time, was failing in its duties in respect of
14 children in its care and custody?
- 15 **MR JONES:** I think it's important that we have very clear, and there's minimum, what I would
16 describe as minimum standards of care, that we have them in place so that people note what
17 to expect. As I say, as a minimum. And also as a measure, so we know that actually if care
18 is being delivered successfully.
- 19 **DR COOKE:** Can we go back to my question, which was the care standards were introduced
20 because there had been a clear failing evidenced over many years, including numerous
21 reports that had been published, and I could go back to the 1988 report of Death of a Child,
22 I think, there's Poweo(?), there is the Mason report, there is the Brown report, there is the
23 Mel Smith report, we had various other reports, they were all indicative of an organisation
24 and an institution that was not meeting its -- the needs of its clients, wasn't it? That's an
25 accurate statement, isn't it?
- 26 **MR JONES:** I would agree, there was improvements to the quality of care that were needed and,
27 you know, we produced our first report on the compliance with those care standards
28 this year, early this year, and what it shows is there is still work to go in terms of improving
29 the quality of care. At the same time, there are also areas that are being delivered well.
- 30 **DR COOKE:** Yes, and we'll come to that. The other aspect just on the history is that the care
31 standards, they were drafted in-house, weren't they, as I understand it?
- 32 **MR JONES:** That's correct, but also in consultation.
- 33 **DR COOKE:** Yes, there was consultation with the New Zealand Law Society, the family law
34 section, and various other stakeholders.

- 1 **MR JONES:** That's correct.
- 2 **DR COOKE:** So they were an internal exercise which was a recognition of what we've just --
- 3 what you've just agreed with me was a failure on the part of Oranga Tamariki to be able to
- 4 meet the needs of its very vulnerable clients?
- 5 **MR JONES:** The representation of what we should expect in terms of care and support for care
- 6 givers.
- 7 **DR COOKE:** And in both of those respects, those matters were not being met, were they?
- 8 **MR JONES:** That's the purpose of the monitor, is to assess whether those standards are being
- 9 met, and --
- 10 **DR COOKE:** And we know, don't we, that prior to the introduction of the care standards, there
- 11 was no equivalent, therefore there was a void, and we also know, as you've told us in your
- 12 report, that even now, that Oranga Tamariki cannot satisfy you that it's meeting the care
- 13 standards themselves.
- 14 **MR JONES:** Look, I'd agree, prior to the care standards being put in place there were no previous
- 15 care standards.
- 16 **DR COOKE:** Yes. And in fact, if we look at the residential area, the only regulatory framework
- 17 were the residential care regulations, weren't they?
- 18 **MR JONES:** To my knowledge, correct.
- 19 **DR COOKE:** As far as for the vast number of children who were in care, those who went into
- 20 foster care, family homes may have been placed with NGOs, there was no regulatory
- 21 framework, was there?
- 22 **MR JONES:** Well, there is to the extent that the Children's Commission had the mandate to
- 23 monitor the Oranga Tamariki Act, or the Child and Young Person's Act as it was then, so
- 24 that -- there was that capacity.
- 25 **DR COOKE:** There was a capacity by a third party, but in terms of a regulatory framework, that
- 26 was around the institution responsible for taking children into care and being responsible
- 27 for their care, there was no framework.
- 28 **MR JONES:** I would agree with that, yes.
- 29 **DR COOKE:** And that's notwithstanding the fact that the Chief Executive has had, where there's
- 30 a sole guardianship order or a custody order, has the responsibility for the safety of
- 31 children, which is a legal responsibility, isn't it?
- 32 **MR JONES:** I think these care standards are a significant milestone in terms of setting standards
- 33 and then measuring performance against them, which is a step towards ensuring that we
- 34 have quality of care.

1 **DR COOKE:** Right. Now, there was a discussion earlier on about independence, and leading into
2 that there's the proposition that I put to you that one of the issues that Oranga Tamariki now
3 has, and this is well known because, for example, the controversies that have followed it
4 since its establishment, which include, for example, the Hastings uplift and various other
5 matters that we know about, pēpē being uplifted on a without notice basis etc, has created
6 major perception problems for it, hasn't it?

7 **MR JONES:** Yeah, I'd agree with that.

8 **DR COOKE:** And would you agree with a further proposition that I would put to you, and I say
9 this as a practitioner at ground level in South Auckland for many years, that there's little --
10 there was little distinction between with the transition from whether it was the Department
11 of Social Welfare, as it was, through to Department of Child, Youth and Family Services
12 and its various incarnations through the 90s, and I think there may have been five or six
13 changes of name, quite a few changes of control, was it a stand-alone organisation, was it
14 within MSD, that kind of thing, and then finally there was Oranga Tamariki. For those who
15 were dealing with it, and particularly for whānau, it was a pretty -- it was a continuous
16 stream, wasn't it, if I use that analogy? There may have been a ripple or too as the name
17 changed and the logo changed, but beyond that, people dealt with social workers, exercise
18 of statutory powers and life continued.

19 That's the reality of it, isn't it?

20 **MR JONES:** The purpose of the organisation stayed the same throughout, so I'd agree on that.

21 The purpose of the organisation is to keep tamariki safe.

22 **DR COOKE:** And now, let's proceed on the premise of course that where we're at now is trying
23 to turn the Titanic around before it hits the iceberg, it may already perhaps be getting very
24 close to the iceberg, if you accept that analogy, that we have a major perception problem,
25 don't we, out in the community towards the institution of Oranga Tamariki?

26 **MR JONES:** I think that's one of the opportunities that the monitor provides. We're here to
27 provide trusted, impartial information both in terms of performance in data but also through
28 listening to the conversations of those in the community and to bring the voices of
29 experience forward into public reporting to provide a view of the experience of care.

30 Sometimes we can get caught up in incidents which can reflect how we might view
31 wider practice. Likewise, things haven't always been as visible as they perhaps could be,
32 and how I see the monitor is an organisation that is to try and make information available
33 that can be a trusted friend of how things are that can perhaps fill some of the voids where

- 1 information has been lacking and also provide assurance around information that is already
2 out in the community.
- 3 **DR COOKE:** I think we're saying the same thing, which is in terms of the work you're doing, and
4 you're the Executive Director -- am I to understand it?
- 5 **MR JONES:** That's correct.
- 6 **DR COOKE:** -- of an institution or a separate or somehow autonomous body within MSD which
7 is the monitor.
- 8 **MR JONES:** That's what I am, the Executive Director of the monitor.
- 9 **DR COOKE:** Yes. Are you the monitor?
- 10 **MR JONES:** No, I'm not the monitor. What you'll see in the Bill that's before the house is it
11 actually establishes the monitor in law as a chief executive and as a statutory officer.
- 12 **DR COOKE:** You're established under Section 447A of the OTT Act, and I haven't got that to
13 bring up, but it does say that the minister must appoint an agency or a body independent of
14 the department to then carry out the various roles.
- 15 **MR JONES:** Yes.
- 16 **DR COOKE:** So there is a monitor established within MSD and you're its Chief Executive.
- 17 **MR JONES:** No, sorry, I'm the Executive Director of the monitor, of the monitoring function, but
18 that does not make me the monitor in law.
- 19 **DR COOKE:** No, I understand that.
- 20 **MR JONES:** The minister has delegated that responsibility to Debbie Power and she is, yeah.
- 21 **DR COOKE:** As a public servant working within MSD, are you subject to directives from
22 Ms Power in terms of your role as the --
- 23 **MR JONES:** Executive Director.
- 24 **DR COOKE:** -- Executive Director?
- 25 **MR JONES:** I haven't received any.
- 26 **DR COOKE:** That wasn't my question. Are you subject to directions, would you be subject to
27 directions from her in carrying out your role?
- 28 **MR JONES:** As part of -- I'm an employee of the Ministry of Social Development, so to that
29 extent yes, but in terms of our arrangement, we've been very careful, and like I said earlier,
30 to ensure that the monitor as it is being established is effectively adjacent to the Ministry of
31 Social Development. Now, of course, we're in this phase of establishing the monitor at the
32 moment and the permanent status of the monitor is the subject of the Oversight Bill that is
33 in Parliament.

1 **DR COOKE:** Yes, I'll come to that. You mentioned that you have an arrangement with
2 Ms Power. That was the word you used. Tell me, is that a written arrangement or is it a
3 verbal arrangement, and what are the parameters of the arrangement?

4 **MR JONES:** So Debbie has formally delegated me the responsibilities to carry out the monitoring
5 of the National Care Standards.

6 **DR COOKE:** And does that include, if we go back to Section 447A, this notion of independence,
7 that you are able to say to her, or to others, in terms of the delegation I have received, I am
8 independent from.

9 **MR JONES:** In terms of -- to say that I'm formally independent of the Ministry of Social
10 Development is not true. I'm an employee of the Ministry of Social Development. The
11 Chief Executive of the new monitor, once it's fully established, will be a Chief Executive
12 and that's quite a different kettle of fish.

13 **DR COOKE:** You tell us in your brief that you are employed in your current role for two and a
14 half years. That's going to end towards the end of this year; is that correct?

15 **MR JONES:** I've just had my contract extended just to cover the period until the departmental
16 agency, if that's what's finalised, goes forward.

17 **MR FISK:** Right, okay.

18 **AUDIENCE MEMBER:** Make the community safer.

19 **DR COOKE:** Again, just sticking with this independence notion for a minute and picking up on
20 what Ms Toohey asked you earlier, there is of course, as you know, some controversy
21 around the oversight legislation, and she alluded to that of course in terms of the -- going
22 back to the Beattie Report, and you will be aware of those matters. Is it within your ability,
23 your capacity today, to be able to offer your view, given your current role, as to the
24 legislative proposals that are in the Bill and whether or not what is proposed is a good idea
25 or not, having regard, for example, to the recommendations of the Beattie Report?

26 And I also note the concerns around what is going to be happening to the Office of
27 the Commissioner for Children.

28 **MR JONES:** Look, the Beattie Report made or put forward a number of options for how the
29 oversight system could be structured. She recommended one for expediency and one in
30 terms of cost that the monitor could be housed within the Children's Commission. We had
31 certainly been working on that assumption for a time.

32 But look, this is a decision for Government to make in terms of how these are
33 structured. What I'm focused on at the moment is getting the monitor ready to deliver its

1 monitoring function across the whole of the Oranga Tamariki system, irrespective of what
2 our status is.

3 And there's another part to it too, we have conversations with the Commissioner and
4 with the Ombudsman's office about how the oversight system will operate as three separate
5 entities. I might want to give you an example of how I see that operating. For example, the
6 Ombudsman's office deals with complaints, they carry out investigations. Sometimes those
7 complaints will show systemic issues and they may make recommendations on how they
8 are best addressed.

9 By the three organisations working together, and sharing that information, which is
10 what is proposed in the Bill, the monitor, because we have kaimahi that go out into
11 communities, speak with tamariki and rangatahi, speak with carers, speak with whānau,
12 speak with agencies, we can help the Ombudsman's office to understand whether those
13 recommendations, one, have been put in place, and two, what is the difference that they are
14 making, and then it is for the Children's Commission, or the Children's Commissioner in
15 her role, if things aren't being improved, then she can be that advocate and she can speak
16 and make recommendations on what needs to change.

17 I think that's a good practical example of how I see the three parts of the oversight
18 system working and we're already discussing about how that operates.

19 **DR COOKE:** I appreciate that. Let's go back a little bit, which is around the controversy or the
20 debate around that tripartite system. Did the monitor and/or you, or were you involved as
21 the Executive Director, put in any policy submission or proposal to your minister which
22 would have gone to Cabinet around the final make up that we now have in the Oversight
23 Bill around that tripartite system?

24 **MR JONES:** The responsibility for the policy work and development of the Bill sits with the
25 DCE for policy within MSD. We were consulted on the practical applications of what was
26 being proposed, but it was not my role to make submissions on the final form.

27 **DR COOKE:** All right, I wonder if we could bring up, we're going to try and bring something up,
28 it's going to be MSC 008450-035. And with luck something may emerge. Can we go to
29 35.

30 **CHAIR:** Just to say that this is the Oversight of Oranga Tamariki System and Children and
31 Young People's Commission Bill, and you're wanting to go to, which part of it?

32 **DR COOKE:** I want to go, in fact it's the previous page by the looks of things. There we go. Can
33 we come in on Section 12 which is the independent monitor established.

34 This is the provision you knew by heart, almost, and you cited it earlier.

1 **MR JONES:** No, it's not the one I cited.

2 **DR COOKE:** I'm going to go to that one, but this is the one that establishes the independent
3 monitor, isn't it?

4 **MR JONES:** That's correct.

5 **DR COOKE:** And as I understand the evidence of your colleague earlier today, you are going
6 to -- it's an independent monitoring agency which isn't in the same category as, for
7 example, the Ombudsman but a next tier down, is it?

8 **MR JONES:** I think -- yeah, look, it's the not a Crown entity, it's a departmental agency, at least
9 that's what's proposed in the Bill. I think what's clear is that it has to be independent of the
10 agencies that it monitors. That's why when this Bill passes, or at least commences, we all
11 have to leave the Ministry of Social Development because they will be one of the agencies
12 that we will be looking at the performance of.

13 **DR COOKE:** You're going to be, as I understand it, you're going to be placed within ERO?

14 **MR JONES:** They will become the host, we will be operationally autonomous from ERO. We
15 like to see it as they provide us with, you know, power, rations.

16 **DR COOKE:** So you'll be in their building.

17 **MR JONES:** No, that's not the case. We have offices in Ōtautahi, in Tāmaki Makaurau and in
18 Whanganui-ā-Tara and they are separate offices from ERO and there are no current plans to
19 be housed or collocated with them.

20 **DR COOKE:** So, essentially, they will be providing admin services to you of various types?

21 **MR JONES:** Yes, as I described to my team, on day 1, ostensibly they won't see a difference in
22 terms of their day-to-day work or how they operate from being hosted by MSD or hosted
23 by ERO, we stand on our own.

24 **DR COOKE:** And if we can go on to one more page, and another one, I want to go to 16A. "The
25 duty to act independently". Again, you're saying to us that this is the reassurance that the
26 public at large has around the integrity of the work that you'll be doing, that you're acting
27 independently when you're carrying out the two primary functions that are set out there.

28 **MR JONES:** That's partly it, but I think in terms of the public at large, what they see is what they
29 experience when we go out and meet with them, and the way that we engage with them and
30 also through our reports.

31 **DR COOKE:** It's important, isn't it, that you are seen in the same way that perhaps the Children's
32 Commissioner is at the present time and the Ombudsman has been for many years, that you
33 are going to be an organisation of integrity, that is going to carry out its statutory duties
34 with transparency and that you will be beholden to none.

1 **MR JONES:** So there are a number of things that we do to ensure that. You know, I could
2 provide a long answer to this but I'm conscious of the time, because there's been a lot of
3 engagement that's been undertaken since 2019 with Māori leaders and providers and with
4 agencies in New Zealand in general about what they are looking for. Having a trusted
5 source of information is crucial and having the transparency, that's why all of reports that
6 we produce will be published, and in fact the main ones will be tabled in Parliament as
7 proposed in the Bill. Along with the agencies that are required to respond to those reports,
8 they are published also.

9 **DR COOKE:** Just finally on the question of independence, and that is the issue of funding. And
10 I know that you've said, I think in your brief, that there aren't any issues around that, is
11 that -- that's the position, isn't it? I think I read that somewhere.

12 **MR JONES:** That's correct. We can operate within our current budget.

13 **DR COOKE:** And within your current budget you're able to go out, I know you've been to places,
14 you've been over the motu, you've been to Gisborne, you have been to various places in the
15 South Island, you've been up north, do you have a programme that's in place for that kind of
16 activity?

17 **MR JONES:** Certainly. We have a plan, we have a three-year plan for how we visit communities
18 right across Aotearoa, and then also a plan which will start in terms of carrying out deep
19 dives in thematics around particular areas of interest, as well as the plan to do the broader
20 monitoring of the whole of the Oranga Tamariki system once the Bill commences.

21 **DR COOKE:** We'll come back to that. I want to now just cover the question of the children that
22 you're going to be looking at. And I wonder if we can bring up ORT 006741-005. It's
23 going to be Regulation 3 of the care standards I think.

24 **CHAIR:** If you could just say what we're looking at here.

25 **DR COOKE:** This is the Oranga Tamariki National Care Standards and Related Matters
26 Regulations. And I want you to look at Regulation 3, clause (1). This covers those
27 children in respect of whom you have jurisdiction, doesn't it?

28 **MR JONES:** Current jurisdiction, correct.

29 **DR COOKE:** Current jurisdiction at the present time.

30 And so you'll see that it applies to children, a person aged under 18 to whom
31 Section 386 of the regulations -- of the Act applies, and then it covers those other people,
32 right? I'm interested, first of all, in 3(1)(a). I haven't got it up on the screen but I went and
33 printed off 386A, it has a heading "Advice and Assistance for Young Persons up to the age
34 of 25". And, of course, this was part of the provisions put into the Act I think back in 2017

1 or 2019, that's designed to ensure that children who leave care are provided with assistance
2 and support, possibly up until the age of 25.

3 Now, although the section provides for advice and assistance for young persons up
4 to the age of 25, the regulation in fact limits the application of 368A to people under the
5 age of 18.

6 **MR JONES:** Yeah, I can probably explain why that's the case.

7 **DR COOKE:** Before you do, can I make this comment, or this observation, because as I would
8 read it, it tells us that there is a significant cohort of vulnerable young people who have
9 been in care and who have transitioned from care and who may need your oversight and
10 guidance, making sure the standards are kept, who are missing from your jurisdiction.

11 **MR JONES:** Look, what Government decided in establishing the monitor is they put in place,
12 I've mentioned it in my brief, a phased approach because what we're doing is establishing a
13 new function. First, they asked us to stand the monitor up and then start monitoring two of
14 the National Care Standards.

15 We produced three reports on those care standards and they relate to allegations of
16 abuse and neglect for tamariki and rangatahi in care.

17 The next stage that they've asked us to do is to monitor the care standards, the whole
18 of the care standards, as described in this regulation.

19 Now, the final part, and I think this is the answer to your question, Mr Cooke, is that
20 what the Bill then allows for is the monitor to expand its scope to look right across the
21 Oranga Tamariki system, including the provision of support which I agree is crucial to
22 rangatahi aged 18 to 25. So we will get to that.

23 And I am impatient, as it sounds that you are, for us to start that monitoring.
24 Because as we travel around the country, meet with providers and communities, what they
25 want us to start monitoring is all the work that is being done to prevent tamariki coming
26 into care in the first place as well as how whānau are supported to keep those tamariki in
27 those homes. And also, how we care for our rangatahi when they leave care to make sure
28 that they can have successful lives.

29 So I am as impatient as you, Mr Cooke, to get to that work.

30 **DR COOKE:** Let's go back to the provision though, and let's talk about the care standards. The
31 care standards, as they read today, and that we haven't -- you're going to tell us they'll have
32 to be amended in order to do what the Bill says.

33 **MR JONES:** No.

34 **DR COOKE:** Because at the moment the care standards say --

1 **MR JONES:** Oh.

2 **DR COOKE:** -- don't they?

3 **MR JONES:** I think I understand what you're saying.

4 **DR COOKE:** Do you understand what I am saying?

5 **MR JONES:** You'll need to allow the care standards -- yeah. I feel like I'm back in law school at
6 the moment. I am doing my best here, but I think you're right.

7 **DR COOKE:** You think I'm right? That's good.

8 So it will also mean, doesn't it, because I know you talked about a staged approach,
9 and I'm going to talk about that, we'll probably come to that now. You're saying the staged
10 approach was in respect of allowing your work to be undertaken.

11 **MR JONES:** You have to learn to walk before you can run, I think is a way to describe that.

12 **DR COOKE:** Because I was going to ask you that question in relation to Oranga Tamariki, and
13 let's go back, the care standards were the subject of, the care standards 2018, and know that
14 negotiation, consultation occurred prior to that because I was involved in it, they were in
15 the process of being drafted and the policy formulated around that, it must have been
16 sometime earlier. You would agree with that? They don't just come out of --

17 **MR JONES:** No, there was probably considerable work, I wasn't involved in it, but there would
18 have been.

19 **DR COOKE:** There were statements made around the time of the care standards coming into
20 play, into force back in 2019, and I remember one expression was "Don't expect too much,
21 it's going to be incremental, not radical and big bang as of 1 July". Now, that was a
22 statement that came out on MSD or OT letterhead at the time, as I recall, but I haven't got it
23 with me so I can't wave it in front of you.

24 But it would seem that the staged approach has also been a reason or a just -- is it
25 being used by OT in some way to enable them not to comply to the extent that you would
26 want in meeting the care standards, their own care standards, which they promulgated and
27 which they -- which are the regulations which came into force back on 1 July 2019.

28 **MR JONES:** I think the best thing in terms of where Oranga Tamariki are with their compliance
29 with the care standards is in our first report on those care standards which is on our website
30 and was published in February, yes.

31 **DR COOKE:** I'm going to come to that.

32 The other thing, given we've spoken about this vulnerable, this issue of potentially
33 vulnerable children who may miss out but who will now be captured by the amendments
34 subject to the care standards being changed, relates to those children who have a neuro

1 disability or of whatever type, and I'm mindful of those children with FASD in particular,
2 because we know that there are far more children in care who have FASD and related
3 disability issues than are formally acknowledged. Do you agree with that?

4 **MR JONES:** That's not an area of my expertise, but I do know it's of concern, yes.

5 **DR COOKE:** This Commission had evidence from an expert called Valerie McGinn, and
6 I couldn't see if her document was on our bundle so I couldn't find it, but I'm going to just
7 relay some of the evidence that she gave.

8 She told us there had been no research here on FASD in Aotearoa and that overseas
9 data is relied on. It's estimated that 30 to 50% of children in State care have FASD.

10 So that is -- she's an expert, she works in this area with the FASD centre and does
11 lots of reports for Oranga Tamariki, for example.

12 That would be a significant cohort of children, wouldn't it?

13 **MR JONES:** Based on how you've described it, yes, it would be.

14 **DR COOKE:** I'm just assuming for the present time that that's a statistic that's -- it's broad, 30 to
15 50%, but even at its lower limit it's a significant statistic. And she talks about the
16 prevalence of FASD in the general population is about 4%, children taken into foster care
17 are of course a higher risk group, and there are significant risks for those children if the care
18 system, Oranga Tamariki, fails in any respect, and you would agree with that?

19 **MR JONES:** What I would agree with is that where children have needs, those needs should be
20 met so they can have the best possible outcomes.

21 **DR COOKE:** And part of that, of course, is through the care standards, is identifying what
22 children need.

23 **MR JONES:** Yes. So, for example, the care standards require that health assessments are made
24 and that those children are connected up with health services so that their needs can be met.

25 **DR COOKE:** And they also require Oranga Tamariki to have children undergo gateway
26 assessments and other various things, don't they?

27 **MR JONES:** Yeah, it puts on minimum standards for what you'd expect to see.

28 **DR COOKE:** Her evidence was also that the response of the Ministry of Health had been to
29 exclude individuals with FASD from all Disability Support Services. She noted that OT
30 had led the way in diagnosing and providing services to many children in care who had
31 FASD but was nonetheless, she said, a drop in the bucket compared to the number of
32 children who were in care and had FASD, and that was a significant burden on OT.

33 And I know from, you know, I'm sure we all know if you work in the area, that
34 FASD in kids in care, whether it's in the care system or in YJ, they are everywhere.

1 **MR JONES:** Is it possible for me to make a statement about how the monitor, through our
2 practice, can address this and other health issues of tamariki? I'm just not sure -- would that
3 be helpful?

4 **CHAIR:** I think that's possibly where you're going -- is that where you're going?

5 **DR COOKE:** I was going to but -- I was going to bring up a document where there's a comment
6 made around that, which is --

7 **CHAIR:** And we don't want to stop you, let's just let Dr Cooke go on and then feel free --

8 **DR COOKE:** Which is BAR 0000720-0033. If you could hone in on the second full paragraph
9 "Developing comprehensive" -- next one down.

10 **CHAIR:** What is this document?

11 **DR COOKE:** This is part of your report and it tells us that developing comprehensive systems is
12 going to require help from other agencies and there's an example here that "matauranga
13 requires information to be made available by Ministry of Education" and we could translate
14 Ministry of Education across to Ministry of Health, I assume, if we're talking about kids
15 and health.

16 **MR JONES:** I think that paragraph refers to -- one of the key findings in our report speaks to
17 collaboration between agencies, because what needs to be remembered is that the monitor
18 in monitoring the care standards as well as when we monitor the whole system isn't just
19 focused on Oranga Tamariki, we're focused on all parts of the system that support tamariki
20 in care or that are in the system. And so that is why it's important for us, when we're in
21 communities, to be listening to, again, tamariki, caregivers, whānau and agencies about
22 how -- what are the barriers to delivering good care, what are the things that are working
23 well, and for us to provide insights around that so we can start to see change. And then
24 what the monitor does is we keep going back.

25 So we go once, we go back again, and we go back to see: have those things been
26 done and are things getting better? And that's our kaupapa.

27 **DR COOKE:** Because one of the -- an issue for many who are involved in this Commission is
28 that -- is the disparity between what happens up here, the theory at the top --

29 **MR JONES:** That's correct.

30 **DR COOKE:** --and what happens down on the ground.

31 **MR JONES:** The approach that the monitor takes, again, is we receive data, performance or
32 assurance information from the Government agencies and then we spend a considerable
33 resource, over half of our kaimahi are focused on going out and engaging in communities.
34 So since January 2001 we have spoken with more than 280 tamariki and rangatahi, over 70

1 whānau members that have tamariki in care, 260 caregivers, 1,500 other people, and this is
2 professionals or people that work for agencies, to understand what is actually happening on
3 the ground, what are the things that are getting in the way, whether they are culture,
4 leadership, people, or tools, and we use that information to develop insights, also as a way
5 of validating the data and information that you get from agencies to make sure what is
6 being said at the centre is actually what you are seeing and experiencing on the ground.

7 **DR COOKE:** How, then, do you ensure that children who are on the ground and need to have,
8 and use a practical example, they may have some sort of -- they may have suffered some
9 brain damage at birth or there's been an accident and they're in a special class at school,
10 they may need a teacher aide, they may need whatever, and of course at the present time
11 there are all sorts of hoops that people have to jump through to make sure that they can get
12 necessary assistance for those children. And sometimes we know, and let's assume as well
13 possibly there may be a mental health issue.

14 Now, I don't know what the experience is elsewhere but here in Auckland if we
15 want to get Child and Adolescent Mental Health involved it's really a wing and a prayer,
16 and everyone's nodding, which is good to see.

17 **MR JONES:** It's not good to see at all, I think it's quite the reverse.

18 **DR COOKE:** It's good to see that there's agreement with it.

19 **MR JONES:** Well, I think, Mr Cooke, that's actually called out in our report in terms of the
20 challenge particularly in mental health services of whānau and caregivers engaging with
21 those services to support tamariki in their care.

22 **DR COOKE:** My question though is, given your role, do you have an active role to play in
23 assisting the break-down of structural divides that exist between, for example, the Ministry
24 of Health, or whoever delivers child and adolescent mental health services, and those
25 responsible for the care of children, like Oranga Tamariki, and/or the Department of --
26 Ministry of Education, do you have a practical role in breaking down those barriers.

27 **MR JONES:** So if I can describe how I see it operating, I think the answer to that question is yes,
28 but it's a bit more complex.

29 So, obviously, what we're doing is developing insights about what is working well
30 because it's just as important to identify good practice for people to follow, as it is to
31 identify the barriers that are preventing quality of care. We then put that information into
32 our reports that we provide to the Minister for Children, which I've described. He then, it is
33 a "he" at the moment, he asks those agencies to respond.

1 So what the monitor does is, we're very interested to see what agencies, and here
2 I talk about Ministry of Education, Health, as well as Oranga Tamariki and others, on what
3 they are doing. And they set that out in their response. It is then the role of the monitor to
4 go back again and say, "You said you would do these things. One, have you done them?"
5 Two, we are back in communities to see if you have done them, are they making a
6 difference, or what else might be in the way that's preventing success, and we report on
7 that, we publish those reports and on it goes.

8 That's how the role of the monitor is there to help drive one, accountability, but also
9 to support change.

10 **DR COOKE:** On that last point which is you're there to drive accountability; you don't have the
11 power to enforce anything, do you?

12 **MR JONES:** No, so Government agencies aren't accountable to the monitor currently, nor would
13 they be under the -- as ascribed in the Bill. Those agencies are accountable to their minister
14 and then the minister out to the citizens of New Zealand, so that is where the accountability
15 lies. Our role is to provide trusted information that others can rely upon to make better
16 decisions, whether those are people in communities, or people at the centre, and likewise,
17 we can rely on my colleagues, the Children's Commissioner, and the Ombudsman to carry
18 out their role as both advocate and as someone that can handle complaints and carry out
19 investigations.

20 That's why it's important, I think, to see the oversight system in its entirety of
21 working together.

22 **DR COOKE:** In your reports, do you have a power of at least recommendation?

23 **MR JONES:** Yes, we can make recommendation if's we choose to.

24 **DR COOKE:** As I think as the Ombudsman can do.

25 **MR JONES:** Yeah, the Ombudsman is free to make recommendations and we could also make
26 recommendations.

27 **DR COOKE:** Have you made recommendations.

28 **MR JONES:** Not to date.

29 **DR COOKE:** Does that mean that the ability to make a recommendation on one or more
30 particular discrete aspects is going to be something that will be reserved for significant
31 matters?

32 **MR JONES:** We're committed to seeing an improvement in the quality of care. At this time I'm
33 not sure that's best served by making recommendations, but if we felt the need to, we could.

1 **COMMISSIONER ERUETI:** Just to be clear about that you don't see this as an advisory
2 function in -- because reading your report you do talk about this issue of there not being a
3 holistic approach towards Care and Protection, the silo effect, and so forth, and you say that
4 you're going to do some future work on this, but is that future work is still kind of gathering
5 data and presenting that to the Minister rather than actually taking it, analysing it and then
6 providing advice to the Minister?

7 **MR JONES:** A couple of things, I think, in terms of as we're building to our fully mature state.
8 One, what we're moving towards is -- and we started off very carefully in terms of the data
9 that we take in, we want to make sure that any information we take we need, and build
10 slowly rather than try and gather more than we require, but we're stepping into a space now
11 where we're not just looking at measuring compliance with the care standards but actually
12 looking at outcomes reporting.

13 So I'm very keen not just to be able to see whether kids are enrolled in school,
14 I want to know whether they are being successful. So we will start to be able to provide
15 data in that sense as we start to grow.

16 Now, the other element that we have at our disposal is the ability to do our own
17 initiative reviews, more deep dives. So, for example, we are at the moment planning to do
18 our first one of these, which is around tamariki and rangatahi that are in custody of the
19 Chief Executive but otherwise have remained with their whānau, or who have returned
20 home to whānau and those orders remain in place.

21 So there, we're going to do a much more deeper dive and analysis of what might be
22 happening in that area and then we will report that to the Minister and publish it.

23 Now, whether that would contain recommendations, I don't know until the work's
24 been done. But certainly our approach has been, and is, is that recommendations aren't
25 necessarily helpful. I have concern that the role of the monitor is to be a trusted source of
26 information that does not have an agenda, that our information is helpful for communities
27 as much as it is helpful for Government as much as it is helpful for Government agencies.

28 My concern is, if we start to make recommendations or provide solutions, then we
29 could be seen as having an agenda, I wouldn't want that. Second point is, I think the
30 solutions are best placed to come from the communities themselves, because these are
31 complex problems that we are looking at, and solutions in one community could be
32 different to those in another. And so our role is, as I've explained, we will look for insights,
33 and then we'll go back to see if change is occurring.

34 **COMMISSIONER ERUETI:** Is there no advisory function written into the legislation for you?

- 1 **MR JONES:** There isn't an advisory function spelt out in the legislation. The Children's
2 Commissioner could have that role, particularly when they have, as proposed, a range of
3 commissioners to sit on the board, it would bring expertise and they may well be able to or
4 would want to offer solutions or make recommendations.
- 5 **COMMISSIONER ERUETI:** That's within their advocacy function?
- 6 **MR JONES:** Yeah, off the back of the information that we have in our reports.
- 7 **COMMISSIONER ERUETI:** Thank you.
- 8 **DR COOKE:** Just on this question of getting up to full steam. You're currently at stage 2 you tell
9 us in your brief at paragraph 4.4(b), and the third stage, which is monitoring the whole of
10 the Oranga Tamariki system which is everything, it would appear, is dependent upon the
11 Oversight Bill being passed.
- 12 **MR JONES:** That's correct.
- 13 **DR COOKE:** Are you aware of what the timeframe for that is?
- 14 **MR JONES:** Advice has gone to ministers around the commencement of that legislation. What's
15 in the Bill at present is it commences no later than 1 July 2023 or sooner by order in
16 council.
- 17 **DR COOKE:** So you would anticipate that by July 2023, at least, everything will be up and
18 running?
- 19 **MR JONES:** Provided the Bill passes in its current form, that would be the case.
- 20 **DR COOKE:** When you talked about it's the Oranga Tamariki system, just to be clear around
21 that, that's going to be all children who are in the custody of Oranga Tamariki, all children
22 who are in the custody of a third party NGO such as Open Home Foundation --
- 23 **MR JONES:** They're already monitored by us, Barnardos and Open Home.
- 24 **DR COOKE:** So we have Open Home Foundation who seem to have a large cohort of kids in
25 comparison to Barnardos and Dingwall -- well, Dingwall's out now anyway.
- 26 **MR JONES:** That is correct.
- 27 **DR COOKE:** Barnardos I think are down to two.
- 28 **MR JONES:** Two.
- 29 **DR COOKE:** Right, okay. You're also going to be covering those children who are in the
30 custody of the Chief Executive but who are placed in care, aren't you, with some other
31 contracted provider, who provides -- there may be a care contract, but they don't have
32 custodial status.
- 33 **MR JONES:** At the moment those tamariki are in scope because they are in care, they are in the
34 care of the Chief Executive of Oranga Tamariki, but they are placed with a shared care

1 provider. So as part of our monitoring we meet with those shared care providers and we
2 talk to them about how care is being delivered.

3 **DR COOKE:** If you took the example of Barnardos, who have two children for whom have
4 status, but they would have a large number of children who are in their care under a care
5 contract.

6 **MR JONES:** That's correct.

7 **DR COOKE:** Do you go and talk directly to Barnardos or do you do the talking with Oranga
8 Tamariki.

9 **MR JONES:** No, with the provider of the services, as well as Oranga Tamariki.

10 **DR COOKE:** When it comes to monitoring, is that a checking that the paperwork is in place, ie
11 that they've got a correct manual and the manual's got all the subparagraphs correct, etc, or
12 is it more than that?

13 **MR JONES:** It's more than that. You can't expect the monitoring to be robust if you're just
14 relying on data points like that. That's why we have that balanced model of both receiving
15 the data, are plans in place, how frequent do social workers visit tamariki in care, but also
16 why we invest so much of our effort into meeting with communities and talking to them
17 about the experience. It's one thing to say you may have a plan, it's another one to say does
18 that plan meet your needs and are you getting the services that that plan sets out. So you
19 need to do both.

20 So this is the marrying up of conversations, practical experience, lived experience,
21 with data, because both are important, bringing them together and telling a story.

22 **DR COOKE:** So when you go out into the communities, are you going out into, because there are
23 a wide variety of communities that we can talk about here, do you go out into the
24 community, for example, and speak with caregivers of children who are placed, as one
25 example?

26 **MR JONES:** Yes, yes.

27 **DR COOKE:** Do you go and speak with whānau of children who have been taken from them and
28 are placed in care or have been placed in care?

29 **MR JONES:** Yes, that's correct.

30 **DR COOKE:** And who else do you see? Do you talk to the iwi providers, the -- because I think
31 I saw that you've got 12, I think it said in your paper that you've got -- you're engaged with
32 12 organisations.

33 **MR JONES:** No.

34 **DR COOKE:** Have I missed the plot there.

1 **MR JONES:** Maybe. I think there are the strategic partner, iwi and Māori providers that have
2 strategic arrangements or partnerships with Oranga Tamariki, monitoring of those
3 arrangements is future work under the Bill. I might give an example.

4 So our most recent visit into the community was into the Bay of Plenty and the
5 approach we take, we don't just contact tamariki and rangatahi, what we do to make sure
6 their engagement meets with those young people in the right way, we work through
7 connectors. So, for example, in the Bay of Plenty we worked with Ngāti Awa, Tūmanako
8 Trust key assets, Hapū Ora, Te Kokiri Trust, Raukawa Iwi Services, Manaaki Ora,
9 Whakaatu Whanaunga Trust and the Tauranga Women's Refuge as partners to help us
10 connect with whānau and with caregivers and with tamariki, so they can be there. Because
11 they know these kids and they know these families and they can support them in the
12 conversations with them so that you're not having a stranger-to-stranger conversation. And
13 that is so important for the way that we work, so that we can have careful conversations at
14 the right time and in the right place.

15 So I think in answer to your question, we take what was asked of us from those
16 initial hui way back in 2019, is that we take a 360 degree view of care and we've been very
17 careful to make sure that we try and, with resources, meet with everybody that is close to
18 those lives of tamariki to get their views.

19 **DR COOKE:** Just going back, just to be reassured, I suppose, on a question I asked earlier, is that
20 there are no, in terms of your programme to, get out there and engage with family whānau
21 at all levels, you do not foresee any budgetary constraints that would inhibit your work in
22 that regard?

23 **MR JONES:** No, and as we plan to commence that work, if there were any, then I'd be having a
24 conversation with the Minister.

25 **DR COOKE:** With the Minister, yes, that's looking forward to the next stage in life.

26 **MR JONES:** Yes.

27 **DR COOKE:** Right, okay. Going out there, my friend Mr McCarthy asked some questions of
28 your colleague earlier around making sure that those who work, you, those who work with
29 you, have the -- are qualified in the broadest possible way so that you know what you're
30 talking about when it comes to Te Tiriti, you are able to appreciate and understand, making
31 sure that tikanga is being honoured in real terms. Tell us about those aspects of the work
32 you're doing and how you're complying yourself with those matters.

33 **MR JONES:** Since we were first established in 2019, we've focused on building a strong tikanga
34 foundation. We have engaged with iwi, Māori and community partners from across the

1 country. We have a Kahui group that keeps me and my team honest and that is made up of
2 Māori rangatira. And I rely on their advice and expert guidance.

3 We have been very purposeful in our recruitment, I'm very proud of the fact that we
4 have 50% of our kaimahi whakapapa Māori that are doing the monitoring. And if you have
5 the chance to look at our kawa and our tikanga, it's all on our website, it has been
6 developed very much with a Te Ao Māori lens.

7 I think it's really important, and those that have worked with us in communities will
8 know how it feels when kaimahi from the monitor come out and meet with them. And I
9 have every confidence that we are doing this work in the right way.

10 But also we have our ears and are ready and particularly with Te Kahui to tell us if
11 we are making a misstep.

12 **DR COOKE:** Is that an interactive website?

13 **MR JONES:** Interactive? You can find -- I don't know.

14 **DR COOKE:** What I mean is, can people, could I or could a rangatahi in the Bay of Plenty for
15 example get on to your website and say, "This looks really good" or "I have a question
16 here", can they interact with you in that way?

17 **MR JONES:** So could they contact us?

18 **DR COOKE:** In a meaningful way, is what I'm getting at.

19 **MR JONES:** You can use that website to contact us, it's pretty old school in terms of e-mail, and
20 people do, and we will hope to answer their questions. And people are starting to say,
21 "Please come and speak with me when you are in our community", so that's certainly an
22 invitation there for folk.

23 **DR COOKE:** I wanted to finish just with your report and the comments around Oranga Tamariki.
24 I think if probably BAR 000720-10 is the document. We'll keep that there but before we
25 go, before I start on that, I won't go into the detail around the outcomes, but certainly the
26 summary would be that Oranga Tamariki in its compliance to the outsider would appear to
27 be struggling in many respects. Would you think that that is a fair summary of an outsider
28 who is reading, would be reading your report?

29 **MR JONES:** I think in reading the report there are areas where their performance is strong and
30 there are certainly areas where it is not.

31 **DR COOKE:** I saw a Radio New Zealand headline the other day which talked about "Abuse in
32 care is greater now than it was in 2018", something along those lines. Because the numbers
33 were higher. Now, that could be explained because the age of leaving has gone up or
34 whatever, remember the age went from --

1 **MR JONES:** There could be a range of reasons.

2 **DR COOKE:** A range of reasons. Because one of the concerns has always been that the number
3 -- that children in care, the numbers who are abused, hurt, neglected, is at a -- first of all, it
4 shouldn't occur and secondly, despite everything we know, it is still occurring. So we
5 know that, don't we.

6 **MR JONES:** That's correct.

7 **DR COOKE:** As for Oranga Tamariki, and if we could highlight here's the second-to-last and last
8 paragraphs, so the first paragraph comments in relation to health services that Oranga
9 Tamariki can't report on that, that's a pretty big area, isn't it.

10 **MR JONES:** Yes.

11 **DR COOKE:** And they can't comment as well on whether caregivers are given appropriate
12 training and information about the tamariki they care for, and that's another big area.

13 **MR JONES:** Yes.

14 **DR COOKE:** Given the number of children that are in care and who have to go into alternative
15 care arrangements, not being told that the child who's coming into your care may have all
16 sorts of behaviour issues could be problematic.

17 **MR JONES:** Agree, and that's why the care standards require -- this is one of the standards that
18 needs to be met, yes.

19 **DR COOKE:** And this is one of the standards that would appear caregivers are saying, "We're
20 having trouble around this."

21 **MR JONES:** Yeah, I think this is one thing, there's Oranga Tamariki's data systems and their
22 ability to provide answers to show compliance with those care standards. The other part
23 obviously is the conversations that we have with tamariki that help verify whether the
24 information that we are provided with is accurate, and what you see in this report is that the
25 data that we do have is backed up with the conversations that we have with caregivers and
26 with tamariki.

27 **DR COOKE:** It still begs the question, doesn't it, and I tried to pose this question earlier on, that
28 there has to be doubt about the capacity of Oranga Tamariki in being able to meet the care
29 standards -- its care standards which it put in place as from 2019 but which were a work in
30 progress for some years before then. One would think that they would have had ample time
31 over that -- those period of years to make sure that their systems were in fact in place and
32 ready to go and so by the time of your most recent report, you would not be saying, as you
33 do in the last paragraph, that --

1 **MR JONES:** Those care standards require agencies to have self-monitoring and assurance
2 practices of their own. And yes, I am concerned that they don't yet have them.

3 **DR COOKE:** That last paragraph is a fairly strong one, isn't it.

4 **MR JONES:** That's correct.

5 **DR COOKE:** The lack of data means that you cannot provide the required level of assurance
6 across the care system. You cannot say whether tamariki and rangatahi in care are getting
7 what they need. You cannot say if they are therefore better off because of the regulations.
8 It hampers our ability and that of OT to gain insights into what would help improve the
9 quality of care.

10 If you look at -- you cannot say that children are better off because of the care
11 regulations, when that's the very purpose of those care regulations, is to make life for them
12 better off and for that to be perceivable.

13 **MR JONES:** Although, Mr Cooke, what I would say is there's an old adage which is "what gets
14 measured gets done", and now that we are reporting on these care standards and the
15 compliance, it is my hope that we see an improvement in compliance with those standards,
16 and that is the purpose of why the monitor is here, to provide that transparency.

17 **CHAIR:** Thank you, Dr Cooke.

18 I'm just going to check with our signers and our stenographer, have you got
19 10 minutes more in you? Thank you very much.

20 I'm just going to ask our fellow Commissioners if they have any questions for any
21 of the three witnesses, I haven't asked you if you've got the stamina, but you're there and
22 you can't escape until we say so I'm afraid -- but we'll see if there are any questions for you.

23 **COMMISSIONER GIBSON:** Kia ora, my question is for Ms Power. Looking at the breadth of
24 MSD's responsibility historically and into the future, moving aside from children at the
25 moment, vulnerable adults have been in the care of MSD or have been contracted outside
26 through sheltered workshops, day services, it hasn't been a big focus but what's been
27 learned historically, we have heard through private sessions, abuse in these places, what's
28 been learned historically about the care of vulnerable adults and MSD funded services and
29 then what are the lessons going forward?

30 **MS POWER:** I think we certainly acknowledge that the care hasn't been of the standards that we
31 would expected today, or even in the past, to be honest. I think what you've heard today
32 from both Barry and from Arran and from the responsibilities that CEs have in terms of
33 contracting out services is that we need a robust accreditation process, we need people to be
34 monitored in terms of the services that they provide, we need appropriate mechanisms for

1 people to raise concerns and we need to act, and we need to take action and we need to
2 ensure that we follow up.

3 So one of the things that we must make sure is that when allegations are made that
4 we follow up and that we close the loop on the people who have made that allegations to
5 ensure that they're part of that process.

6 **COMMISSIONER GIBSON:** Just thinking about the vulnerability of this group and what we
7 learned through the disability mental health hearing and the struggles to report, also
8 reflecting in the comment in the evidence and on the response to the Notice to Produce
9 about ableism and -- there wasn't a response from the Ministry itself, it was -- the
10 operational part had been delegated to OT, but there is a role for the Ministry around
11 understanding ableism and the impact it has in terms of policy, contracting or whatever, and
12 being able to respond to the needs of this group of people who are indirectly within
13 provision of MSD.

14 **MS POWER:** I couldn't agree more, I think what we've also seen is the establishment of the new
15 Ministry for disabled people and the remit that they will have to provide advice and
16 advocacy to ensure that agencies make sure that people understand those issues, and that
17 we have processes and practices in place.

18 So I see that as a positive thing, that elevates the importance of this group of people
19 who have often found it difficult to engage, difficult to raise issues, difficult to access
20 services and get their voices and perspectives heard.

21 **COMMISSIONER GIBSON:** The counsel for the Crown in opening talked about the
22 acknowledgment in the past of people in day services doing almost nothing and adults not
23 being paid adequately. Do you see that as ableism and does that still occur in MSD-funded
24 services today? To what degree are you confident about these things?

25 **MS POWER:** I still think there is some outstanding issues that are part of processes that need to
26 be resolved in terms of the way in which we remunerate people and what that means, that's
27 still a question that is outstanding. But in terms of making sure that we value the
28 contribution of people and that they are safe and secure in whatever programmes they
29 participate in, I certainly agree that that needs to be front and centre.

30 **COMMISSIONER GIBSON:** Thanks.

31 **COMMISSIONER ALOFIVAE:** Thank you, can I just pick up where Mr Cooke just left off
32 with Mr Jones and so just to use the example, Mr Jones, that was in your report around the
33 education. So you can measure enrolment, or -- as an indicator?

34 **MR JONES:** Yeah.

1 **COMMISSIONER ALOFIVAE:** But actually the responsibility lies with the Minister of
2 Education as to the regularity of attendance and the quality of education, and so out of that
3 it really speaks about the quality of the educational component of the life of the young
4 person, so we've got that, I just want to park that. Then I look at your outcomes
5 framework, I'm just looking at the one-pager that you have on your website. And I'm going
6 down to your goal of mātauranga, and I think your top indicator there is the only indicator
7 where it might fit, tamariki and rangatahi are engaged in learning and meaningful daily
8 activities.

9 So I appreciate that there's probably a much bigger exercise behind this and this is
10 all you can fit on the one page, so I do accept that, but in terms of being able to make
11 connections and draw the thread around the quality of the journey of the young person in
12 care, that really speaks to the how, right? How do you do integrated services better?
13 Because you could make the same comment about a health issue, social service provision,
14 about housing.

15 So I was interested in your comment that you don't make recommendations, yet the
16 monitor is well positioned to see some very big themes come through in your different
17 localities, in your regions but also nationally. Do you want to respond to that, are you able
18 to comment on that?

19 **MR JONES:** Yeah, I think you're right, as we meet and speak with more people in the system, if
20 you use that word, I don't really like it but you know what I mean, we've got a very robust
21 way of understanding and theming their experiences, so we've built in quite a database of
22 these conversations so we can see where people are speaking to barriers against each of
23 these outcomes. So, for example, in mātauranga, tamariki may be saying to us "School's
24 not good for me" or "education's not good for me", and then in our conversations with them
25 we might be asking "So what is it that is not right?" And that could be "The teachers don't
26 relate to me", it might be "Actually, it's really difficult for me to get to school because
27 I need to catch a bus, I need this and I don't always have the money and I don't know how
28 to ask for it to get there", so there could be practical reasons.

29 So when we look at each of those outcomes we're trying to understand the root
30 cause that's getting in the way of the outcome being achieved. That's why -- I talked before
31 about because it's a complex system there'll be a range of things but what we will do over
32 time is start to see those themes coming up and that's what will generate insights. So it will
33 become a clear insight that in a particular -- it may be just in a community but it may be
34 nationally that there's a real issue for tamariki to be able to get to school. I'm just saying it

1 could be something, right? And that becomes an insight. And then the question is on
2 agencies, so what are you doing to help to make sure that those kids can get to school
3 easily?

4 It's probably not the best example but I'm just trying to paint a picture of how it
5 operates in practice.

6 **COMMISSIONER ALOFIVAE:** I think it's a good example of a micro --

7 **MR JONES:** It is a very micro, yeah.

8 **COMMISSIONER ALOFIVAE:** -- which is part of a bigger macro which then leads me to my
9 question for Ms Power.

10 So you'd be fully apprised that abuse and neglect in care is not a new issue, that
11 previous administrations have grappled with this issue, and it seems that now ministries like
12 yours, because it's such a big shop, are being asked to do more and more and it's about
13 understanding your core business and the role that your Ministry plays in a bigger universe
14 -- it's a word I often use to kind of describe the system.

15 And when you see these themes that are coming through in your own ecosystem
16 within MSD and all of the bits that you talked about that as the CE you're responsible for,
17 do you think a possible solution or maybe an avenue might be to look at agencies'
18 accountability documents, so the statement of intent and the statement of performance and
19 expectation, and actually that that might be a vehicle across agencies to be able to hold each
20 other accountable, so that when examples like what Mr Jones has raised, actually there is a
21 collective scorecard of some sort where we can -- where successive agencies, you know,
22 can say, we've known about that issue, like the abuse issues, and this is how we've tackled
23 it across agencies as a mandate.

24 I'm just -- it's just something that's really coming to the fore out of the discussion
25 that's been generated this afternoon.

26 **MS POWER:** Thank you for that question. You're absolutely right that I think being able to look
27 at the different roles that agencies play and how that impacts on individuals and their
28 families and their communities is really important, and we've often for a long time talked
29 about siloed approaches etc, etc. I do think and, you know, Arran's talked about this today,
30 but I do think that there is a growing appreciation that if you want to deliver services to or
31 with people in communities, it is best done in a place based, however, you describe that; so
32 I'm not precious about that, but with people who understand the context in which the
33 community operates and the services are needed with people and relationships that are built
34 on trust that really put those families or those individuals at the centre, and being able to

1 demonstrate agencies' contribution to that and be agile and flexible in the way in which we
2 fund.

3 So I absolutely understand the need to make sure programmes are delivered with
4 integrity and appropriately, but they also need to be adjusted for the context in which they
5 are delivered, and I think there's an increasing view that that is the way with which to do
6 that, and it enables agencies to kind of work with trusted partners and kind of at one level
7 get out of the way because it doesn't have to be delivered by an agency all of the time.

8 **MR JONES:** Yeah, and to add to that, what we've seen from visits is actually the success in
9 collaboration between agencies or between NGOs and Government lies in relationships,
10 and extraordinary individuals doing fantastic work. That's why you can make
11 recommendations around systems or things when actually at the heart of it is often people,
12 and so it's about how -- I think what Debbie was saying, sometimes it's about how perhaps
13 the State can be a follower rather than a leader, and actually support what is there. And I
14 guess this speaks back to my point about the risk of making recommendations, because it's
15 actually local conditions and local solutions.

16 **COMMISSIONER ALOFIVAE:** Thank you, no further questions.

17 **COMMISSIONER ERUETI:** Hi, Mr Jones, you could keep going, please. It just seems rather
18 complicated having, I know you talked about the merits of having the three and how you all
19 talk to one another. Just even describing that, about how your function of gathering the
20 data is split from the sort of advisory recommendatory function which will be with -- it
21 seems with the Office of the Children's Commission but I'm not -- how would it be for a
22 child or whānau? Where will they know where to -- how will they navigate the system if
23 these different functions are not -- it's not really clear where they are allocated or why they
24 are separated in this way?

25 **MR JONES:** Yeah, I can't speak in terms of the clarity of it for tamariki and rangatahi. I think
26 there is -- look, it's swings and roundabouts and there are advantages in the various
27 approaches and systems. I think what's important for the three agencies is to be very clear
28 and open and communicate well in terms of what it is that we do. In some ways what's
29 contained in the Bill almost simplifies things in the sense that we have clear responsibility
30 between the three agencies whereas before, if you look at issue of the uplift of pēpē in
31 Hawke's Bay, there you had the Children's Commissioner producing a report, you also had
32 the Ombudsman completing their investigation, and for me, we want to make the best use
33 of the resources that we have available. And I think the three of us working together can do
34 -- I have every confidence that we can do that.

1 And so when I talk to the Children's Commissioner she says, "Okay, so every year,
2 monitor, you're going to produce this report on the care standards". And she says, "I'm
3 going to read that closely", and this is what she will take to do her advocacy work.

4 So the proof will be in the pudding but I have confidence that we can make this
5 work.

6 Also, between us if we get -- it's an open door approach from all three of us, so if
7 rangatahi were to contact us or caregivers or whānau seeking assistance, then we can
8 handshake them to the right part of the oversight system. This has already happened. So
9 we've had complaints raised with our kaimahi doing the monitoring and we've managed to
10 make sure that they connect up with the Office of the Ombudsman, we check back with
11 their whānau to make sure they are connected and their complaint is being handled. So it's
12 about the three of us co-operating and working together.

13 **COMMISSIONER ERUETI:** There's nothing in the Bill that says that you can't provide advice
14 or recommendations, right? That's something you've just imposed upon yourself?

15 **MR JONES:** No, the Bill sets out what is required but that's not to say there aren't other aspects
16 that we could do. We're going to learn about this as we go. This is a new function, albeit
17 the Children's Commission had that ability too, but this is the first time that we have a
18 properly resourced monitoring function in New Zealand and it's almost novel in the world
19 in the way that we do this. And so the legislation, it's got a review period in three years'
20 time to come back and see how is this operating.

21 **COMMISSIONER ERUETI:** Yeah, okay, thank you. The other question I have is whether you
22 have -- I'm only going to ask one more question because of the time -- is whether there is
23 scope, you see any scope within the monitor to bring Māori into the governance table. So
24 the Office of the Children's Commission appointed an assistant commissioner, now they
25 will, under this Bill, they have a board which provides another voice at the table, and
26 I acknowledge what you say about your advisory group and among them the rangatira of
27 advisors, but it's not the same thing as having someone at the table.

28 So there is that, you know, 60% of Māori in care, you're going to monitor not only
29 the National Care Standards but also Section 7AA of Oranga Tamariki which is giving
30 effect to the Te Tiriti responsibilities. There's already this perception of lacking
31 independence; how are you going to generate trust in the monitor if you don't have
32 representation at that governance level?

33 **MR JONES:** Well, you know, there'll be a process for appointing a Chief Executive. That Chief
34 Executive could well be Māori. The other part to this is that when we think about the

1 monitoring of Section 7AA, I'm being very mindful of not telling stories for others. I want
2 them to tell their own story.

3 So if we think about the monitoring of those strategic partnerships that Oranga
4 Tamariki have with iwi and with Māori providers, we are starting to think about how best
5 to do that. I'm very mindful of, actually, this is not the monitor's story so much to tell, this
6 is an opportunity for the providers to tell their story as it is for Oranga Tamariki and
7 perhaps for us to move out of the way of that. I think that's an important facet to it and we
8 can support the telling of that story.

9 So the Bill proposes that we can enter into information sharing arrangements with
10 iwi and Māori providers and so we have started to have conversations about, "Well, if we
11 can get this information, would you be interested in it to help you tell your story?" So I
12 think that's a way that we can work to our obligations under the Treaty.

13 At the same time we do need to make sure we have the competence and the
14 capability within the monitor to be able to do this monitoring as well. And so that is going
15 to be part of our journey.

16 We already work closely with te Kahui, we meet with them every month, we now
17 need to start thinking about the Māori advisory group and how that will function.

18 But I do take on your point, I'm very mindful of it, and it will be part of our journey.

19 **COMMISSIONER ERUETI:** Kia ora, thank you, thank you for your answer.

20 **COMMISSIONER STEENSON:** Tēnā koutou, I'm mindful that I'm dragging the chain here a
21 little bit, so I had questions for all of you but I will slim it right back. And I am going to
22 ask you, Mr Jones, some questions, I think, I've decided out of my questions.

23 It is around the scope of the care system and what that entails.

24 **MR JONES:** There are two bits, so there's the current scope under the care standards and like
25 I said, there's -- we try to look at everything that goes into supporting the lives of tamariki
26 that are in care. So that is why we hold hui with representatives from the Ministry of
27 Education and communities alongside representatives from the Ministry of Health, from
28 Police, we have people from schools, so we're interested in anybody that delivers services
29 -- services, ie support, to tamariki that are in care.

30 **COMMISSIONER STEENSON:** Does it include their whānau? Is it whānau-centric?

31 **MR JONES:** Yes, yes, certainly. So I probably mentioned since January '21 we've met with 70
32 whānau, it's certainly an area where we want to do more. It's probably the most challenging
33 of the groups to engage and connect with.

1 We are about to visit South Auckland and I'm very pleased we will be also visiting a
2 prison to meet with whānau that have tamariki in care and speak with them and about their
3 experiences. So it's certainly something that we have a strong focus on. And that's
4 re-enforced by our te Kahui members to make sure we are engaging and speaking with
5 whānau.

6 **COMMISSIONER STEENSON:** Does it cover things as far as things like housing, because I've
7 heard from providers, service providers that it's hard to get in touch with whānau because a
8 lot of them are homeless and they're living in their cars, for example.

9 **MR JONES:** I think this comes into the second part once we start to monitor and report on the
10 whole of the Oranga Tamariki system. And so not only are we looking at tamariki where
11 there may be a report of concern, so they're at risk of coming into care, and we will be
12 looking at how are the services working for them so that whānau can be supported to keep
13 those kids safe in their care without them having to come into the State care. And that
14 includes the provision of housing support, you know, because like I said, you know,
15 tamariki should be coming into care where it's going to be for their benefit, their lives
16 should improve, but equally there should be opportunities and we should be looking at what
17 are the opportunities to support whānau so those kids don't have to and they can have their
18 best lives with whānau, and if that means healthy safe housing then that's something we'd
19 be looking at.

20 **COMMISSIONER STEENSON:** Okay, so do you also cover, does the scope include faith-based
21 care providers?

22 **MR JONES:** No, not under the -- they don't fall within the care standards, unless those kids are
23 actually in -- the tamariki are actually in their legal guardianship and custody.

24 **COMMISSIONER STEENSON:** Right, and so is there no monitoring under those guises?

25 **MR JONES:** I think yeah, it might be in terms of us considering, it might be something to
26 consider in terms of monitoring the whole of the Oranga Tamariki system and seeing where
27 they fit in there. I might need to come back and perhaps provide you with an answer to that
28 later if that's okay.

29 **COMMISSIONER STEENSON:** That would be great, thank you.

30 Then also, what about vulnerable adults, so yeah, I mean up to 25 you've been
31 talking about, but we know that there are those tamariki with neuro diversity, other
32 disabilities who actually have it for their life time, so I'm just curious to know how far that
33 scope is.

1 **MR JONES:** Yeah, it is just to the age of 25. So that is the extent of our mandate. But obviously,
2 you know, making sure that they have the services they need to give them the opportunities,
3 but we can't follow them into adulthood.

4 **COMMISSIONER STEENSON:** Thank you. And then, I'll make this my last question for you.
5 Data. I'm a advocate for data, so it's great to hear that that's one of your priorities, because
6 it's been sorely lacking, and the way that you are gathering it from qualitative and
7 quantitative methods. But I am a little bit surprised, as my fellow Commissioner was,
8 around reserving recommendations, because I wonder whether if you're just a data provider
9 that's something that Statistics New Zealand does. What's the difference here?

10 **MR JONES:** Okay. I wouldn't describe us as just a data provider, it's about actually differing
11 insights. So when we are going into communities we take an approach of looking at system
12 elements as to what is causing or resulting in success and what is proving a barrier to
13 success, and trying to understand the root causes around why something is happening.

14 So, for example, visiting one community, iwi provider explained they had difficulty
15 forming relationships or strong relationships with Oranga Tamariki social workers. And
16 then when you start to dig into that, the answers are, and it's not, you don't have to dig too
17 far but it's to do with the turnover of staff, and so then the question is what's causing the
18 high turnover of staff, because until you can fix that, you're not going to get the
19 relationships that are going to enable the system to operate as effectively as it can.

20 So those are some of the insights that we hope to be able to provide, which is much
21 more than just data.

22 The other part on the data story is, I think, the story for tamariki in care or for
23 tamariki at risk of care, is not always seen in existing datasets. So part of my drive is to be
24 able to get visibility of these tamariki, these rangatahi in those datasets, and then seeing if
25 there's a gap and, you know, we all know that there will be, is it closing and being very
26 transparent about that, because again, as I said, what gets measured can often be the thing
27 that gets done, and by being able to highlight the fact that work is required and tracking to
28 see whether improvement is happening, that's where I hope that we can influence the
29 system for the better.

30 **COMMISSIONER STEENSON:** Okay, so through the data, which nobody argues with, is great.

31 **MR JONES:** Yeah.

32 **COMMISSIONER STEENSON:** Then the "then what" and then the monitoring of no change,
33 I guess the worry is, what happens if there's no change just with monitoring? Is there a
34 point where you say actually something needs to be done?

1 **MR JONES:** This is, I think I mentioned about reserving the use of recommendations. Issuing
2 large numbers of recommendations I don't think would be helpful, but we reserve the right
3 to do it when we need it. What I would be looking for is that accountability through the
4 ministers to their agencies to saying, "Look, the monitor is reporting that yet again this has
5 not improved. What are you doing to make things better? Because we know the monitor
6 will be there again next year to see whether things have changed."

7 **COMMISSIONER STEENSON:** Thank you, tēnā koe.

8 **CHAIR:** That leaves it for me. I had one question and it's directly on that point, I want to ask it
9 really to Ms Power, I think, although you're all welcome to chime in, and it is about
10 accountability. We've heard about the three branches, the Ombudsman, the Children's
11 Commissioner, and the independent monitor. And on your account each of them is going
12 to be doing as best they can to hear complaints from tamariki, hear the reports, get the data
13 together, make the recommendations. The Children's Commission will do advocacy and
14 the like.

15 So a major picture will be built up and at this stage, based on the independent
16 Children's Commissioner monitor now it's still not a rosy picture. My question is, and I do
17 this on behalf of all survivors, where ultimately does the accountability lie? Because there's
18 been precious little demonstrated to date.

19 So people are working away, we referred to silos, Ms Power, and we all know about
20 that, we know people are breaking it down, but where will the accountability lie? Where
21 will the receiving house for all of this be, where will be the single entity, body, person,
22 God-like figure if you like, who is going to take this and say, "This is wrong, this needs to
23 be changed." Or, "This is wrong, and this person needs to be responsible"?

24 **MS POWER:** I think if we're talking about children in care, the State agency responsible for
25 children in care, the care of those children is currently the agency called Oranga Tamariki,
26 that would be my answer. In relation to ensuring that children in care get the services and
27 support that they need and that the system is monitored sufficiently to ensure that and play
28 that back into the system, I would say it's the independent oversight functions which yes, is
29 currently split between the three.

30 And I do think that the Children's Commissioner being able to advocate for all
31 children in New Zealand and provide that advocacy function is important. I think the
32 monitor's ability to be able to monitor and go about the monitoring function in the way that
33 they've proposed is important, and I think the Ombudsman's ability to investigate is
34 absolutely necessary in the system. And it is about those three functions working together

1 to ensure that those insights and actions get played back into the system and hold both the
2 agency of State, who has the ultimate care of the children, and others, including myself, in
3 terms of to be held to account is the answer. It's not -- it isn't as straightforward as we
4 might like it necessarily to be, but that is the system that I see.

5 And particularly making sure that we are providing the services and support to
6 children in care who are the most vulnerable in New Zealand, whether it be health or
7 education or social services is absolutely the right question.

8 **CHAIR:** I think survivors might say this is all well and good but what's happening is it's feeding
9 back in on itself. Oranga Tamariki is responsible, it's being told that it's not -- this is
10 hypothetical -- it's being told it's not working, things are wrong, complaints are being made,
11 what if it doesn't change, because we have heard generations upon generations of reports
12 saying change, change, change and nothing has changed or not enough has changed. How
13 do we know that this is going to be different?

14 **MS POWER:** I'm not going to sit here and say there is the silver bullet and we can expect a
15 miracle to happen, because as you have said, we have got many survivors whose experience
16 of the system has been very different and I do absolutely want to acknowledge that.

17 What I would say is that our focus has to be on those children and ensuring that they
18 get the services and support that they need, and that there is an oversight function that can
19 help do that, all who report directly to ministers, and so I think there is that accountability
20 line, and we just -- and we do need to do better and we need to be held to account, whether
21 it be through these processes, or others, to make sure where we have not done what we say
22 we're going to do there is a consequence.

23 **CHAIR:** Thank you. Thank you for that. We are well over time, but that's not a criticism, that is
24 a recognition of the big, hugeness of this issue that I know -- I'm sure that counsel would
25 like to have had each of you for a good full day each and that's not possible, I'm sure you're
26 glad they couldn't. But the fact we've gone over is a demonstration of the importance of
27 this topic.

28 Can I thank you each individually and for your organisations because I'm conscious
29 and everyone's referred to it, a vast amount of work has been done by your teams to
30 respond to the numbers of Section 20 notices we've sent out, we're conscious of that and
31 you've prepared your briefs of evidence and we're grateful for that and we're very grateful
32 for your appearance today. So thank you very much indeed.

33 Kua mutu aku mahi i tēnei wā. I'm not really looking at you, Ms Beaton, unless you
34 really wanted to say something, I'm looking beyond you to our kaikarakia.

1 **MS BEATON:** I was just going to say, ma'am that, we're reconvening at 9.45 tomorrow.

2 **CHAIR:** 9.45 we will commence tomorrow. Tēnā koe matua, kei a koe te tikanga.

3 **Hearing adjourned at 5.48 pm to Tuesday, 16 August 2022 at 9.45 am**