

**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'imua Sandra Alofivae
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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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TRANSCRIPT OF PROCEEDINGS

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14 **Lunch adjournment from 1.21 pm to 2.07 pm**

15 **CHAIR:** Kia ora mai tātou, welcome back for the final session of this hearing. Just before we
16 start, you will notice that there are cameras in the room and that's by the consent of the
17 people who are being filmed and photographed, but just to let you know that is something
18 that we have permitted for this occasion. Kia ora Ms Toohey.

19 **MS TOOHEY:** Kia ora. Tēnā koutou katoa. Ko Ms Toohey tōku ingoa, my name is Anne
20 Toohey and I'm one of the Counsel Assisting the Commission. You'll see, Commissioners,
21 that we have Mr Hughes, the Public Service Commissioner, and other representatives of the
22 Public Service Commission with us and I'll let my friend, Ms Schmidt-McCleave, introduce
23 those witnesses to you.

24 **MS SCHMIDT-McCLEAVE:** Kia ora anō. Tēnā koutou katoa. Commissioners, we have with
25 us this afternoon Mr Peter Hughes, the Public Service Commissioner. To his right, Ms
26 Heather Baggott, Deputy Public Service Commissioner and Deputy Commissioner
27 leadership diversity and inclusion, and to Ms Baggott's right, Ms Hannah Cameron, Deputy
28 Commissioner strategy and policy. I'll hand them over to you, Madam Chair, to administer
29 the oath. Thank you.

30 **PUBLIC SERVICE COMMISSION**

31 **PETER HUGHES, HEATHER BAGGOTT, HANNAH CAMERON (Affirmed)**

32 **MS SCHMIDT-McCLEAVE:** Mr Hughes has prepared a written brief of evidence which the
33 Commissioners have. He does wish to make a brief opening statement and I am going to
34 ask him to clarify one paragraph of his written brief. But before we do that, I will just hand

1 over to Mr Hughes and Ms Baggott and Ms Cameron to introduce themselves visually,
2 thank you.

3 **MR HUGHES:** Kia ora koutou katoa, my name is Peter Hughes. For those listening, I am an
4 older Pākehā man with grey hair, wearing a blue suit today.

5 **MS BAGGOTT:** Tēnā koutou katoa. He uri ahau o Maniapoto me Te Āti Awa nō Te Rohe Pōtae
6 ahau ki Pou Turuki mō Te Kawa Mataaho, ko Heather Baggott tōku ingoa. Kia
7 everybody, I'm Heather, Heather Baggott. I am mid-40s, female, green eyes, fair of Pākehā
8 and Māori descent and I'm wearing a brown jacket today. Kia ora.

9 **MS CAMERON:** Tēnā koutou, ko Hannah Cameron tōku ingoa, my name is Hannah Cameron. I
10 am a European woman, slightly younger than Heather -- she said I could say that -- in my
11 mid 40s, brown hair, brown eyes and with a light pink jacket.

12 **MS SCHMIDT-McCLEAVE:** (Te reo Māori) Mr Hughes, just before I ask you to give your
13 opening statement, can I ask you to refer to paragraph 2.3 of your full written brief of
14 evidence.

15 **MR HUGHES:** Yes.

16 **MS SCHMIDT-McCLEAVE:** You'll note there that paragraph talks about the inter-agency
17 group set up by the Crown response and lists the ministries which that inter-agency group
18 includes. We had a question this morning about the Ministry For Pacific People, and the
19 fact they weren't specifically mentioned in that paragraph. Can you confirm that is an
20 oversight and that they are a member of that inter-agency group?

21 **MR HUGHES:** Yes, I can, they are a full member. We have also omitted the Education Review
22 Office. I apologise to both agencies.

23 **COMMISSIONER ALOFIVAE:** Fa'afetai lava.

24 **MS SCHMIDT-McCLEAVE:** Thank you, Mr Hughes. I will hand over to you to read your
25 opening statement that you have prepared for the Commissioners and I'll just remind you
26 that we have signers and Katherine, our stenographer, so if you could speak slowly, that
27 would be appreciated. Tēnā koe.

28 **MR HUGHES:** Thank you. I want to start by acknowledging all of the survivors who have
29 shared their stories of terrible pain and suffering and of courage in the face of adversity that
30 we've heard through the course of this Royal Commission of Inquiry. And I also want to
31 acknowledge them for having relived those stories so that we might learn from them.
32 I think that is incredibly generous and incredibly courageous.

33 In hearing those stories, I echo and completely support the Crown's
34 acknowledgments and those of individual agencies over the last two weeks, all of them.

1 The State did not always ensure children, disabled people, deaf people and those with
2 mental health conditions were safe when in State care. Children, disabled people, deaf
3 people and those with mental health conditions experienced abuse in a range of settings
4 controlled by the State. The State did not always stop abuse in State care when it was
5 disclosed and reported. Māori, Pacific, disabled people and deaf people were particularly
6 negatively impacted, either by being over-represented in services, or through the services
7 not meeting their distinct needs. And record-keeping issues, such as gaps in recording and
8 the loss of some records, have meant that the number of children, particularly the number
9 of Māori and Pacific children in State care during the period in question, is unlikely ever to
10 be known.

11 I've been called today as a witness as Public Service Commissioner in that role, but
12 Commissioners will know that from 2001 to 2011, I was the Chief Executive of the
13 Ministry of Social Development. So before I speak to my current role, I want to speak to
14 that previous experience and in particular I want to acknowledge that the Ministry in my
15 time did not always get things right.

16 I want specifically to acknowledge the evidence of survivors from the State Care
17 and Protection system about their experiences of redress. As Chief Executive responsible
18 for that organisation, through those claims I saw the harm and the trauma that those
19 survivors had experienced earlier as a result of their time in State care. I want to
20 acknowledge that harm here today and I want to recognise the courage of those survivors,
21 some of whom will be here today in pursuing their claims.

22 You've already heard from a number of witnesses, including survivors, about those
23 stories and made findings in relation to them. I want to say that I accept those findings in
24 full and I am not here today to contest them in any way whatsoever. What happened to
25 those who were abused in care should not have happened and I deeply regret that it did.

26 I also acknowledge that in attempting to assess and settle those claims, we did not
27 get everything right. In particular, the Royal Commission has highlighted the experiences
28 of Mr Keith Wiffin, Mr Paul White and Mr Earl White in attempting to seek redress for
29 their claims.

30 The Commission has found that Crown Law and the Ministry of Social
31 Development, which I led, through their actions and inactions lost sight of the human
32 beings at the centre of the claims and caused them further harm and distress. I accept
33 the Commission's findings in relation to those cases in full. What happened to Mr Wiffin,
34 Mr Paul White and Mr Earl White should not have happened and I deeply regret that it did.

1 I apologised to each of them at the time for the failure of the State to protect them from
2 abuse while in care and also for the further harm the Ministry of Social Development
3 caused them in managing their claims.

4 I repeat those apologies here today. In addition, I sincerely and unreservedly
5 apologise for the other failings identified subsequently by the Commission in its redress
6 report.

7 I'd like now to make some comments relating to my current role as Public Service
8 Commissioner. The purpose of the Public Service Act is set out in the new Public Service
9 Act that we now have, passed in 2020. That purpose is to support constitutional and
10 democratic government in New Zealand, to enable both the current and successive
11 governments to develop and implement their policies, deliver high quality and efficient
12 Public Services, support the Government to pursue the long-term public interests, facilitate
13 active citizenship and act in accordance with the law.

14 Now, in order to operate effectively in our communities and make a difference, the
15 Public Service, in my view, needs to have the trust and confidence of New Zealanders.
16 Trust is the foundation upon which the legitimacy of public institutions and a properly
17 functioning democracy rest. Trust is built by having services that are reliable and
18 responsive. It is also built in particular by the way we behave and the integrity and the
19 motivation of public servants.

20 In this role as Public Service Commissioner, I have a critical role to play in ensuring
21 that the system has integrity, accountability and transparency and all of that is needed to
22 maintain the trust and confidence of New Zealanders.

23 I'd like to make some specific acknowledgment of shortcomings of the Public
24 Service in three areas which have had a direct impact on survivors that the Commission has
25 heard from.

26 Firstly, the arrangements put in place in the reforms, the Public Service reforms, of
27 the late 1980s brought into the Public Service private sector models and a corporate
28 philosophy. The focus was placed on accountability at individual Chief Executive level
29 and the system, in my view, lost cohesion. As a result, the Public Service has not always
30 worked together in the way that it should and has not been joined up as it should be around
31 children, young people and their families and communities.

32 Secondly, it is critical that the Public Service reflects and understands the
33 communities it serves. A diverse workforce has the experience and expertise to contribute

1 to the design and delivery of policies and services and other initiatives meant to improve
2 the lives of all New Zealanders.

3 The Public Service workforce has not reflected the make-up of our society and it
4 has not fostered workplaces that are inclusive of all groups. In my view, if you are looking
5 for an antidote to bias and prejudice in organisations or in institutions, it is diverse and
6 inclusive workforces.

7 Thirdly, one of the Public Service's most important roles is to support the Crown in
8 its relationships with Māori under Te Tiriti o Waitangi, the Treaty of Waitangi. The Public
9 Service has not always maintained the focus that we should have had on developing and
10 maintaining capability to engage with Māori and to understand Māori perspectives.

11 Time and again, throughout my career, I have seen how good people can lose their
12 way in big systems and in organisations and in institutions. I strongly believe, I strongly
13 believe that most people work in the Public Service because they care and they want to
14 make a difference. That is why they are here.

15 As Public Service leaders, we need to preserve, protect and nurture the spirit of
16 service to the community that our staff bring to their work and that spirit of service, for me,
17 is about three things: it's about putting the needs of others first and about being totally
18 focused on the needs of others. It's about bringing the right attitude to that and approaching
19 our work in everything that we do with humility. We must always remember that, as public
20 servants, we stand with the might of the State at our back. And it's about having a higher
21 purpose, something bigger than ourselves. It's about using our skills, knowledge and
22 experience to make things better for New Zealanders, their families and their communities.

23 As leaders, we need to support our staff to give full expression to their spirit of
24 service with the right policies, systems and processes and with strong leadership and with
25 good culture. And all of that is what our new Public Service Act now requires of us. As
26 head of the Public Service, I am totally committed to leading this change. Thank you very
27 much.

28 **MS SCHMIDT-McCLEAVE:** Tēnā koe, Mr Hughes. I will now pass you to Counsel Assisting
29 Ms Toohey, who will have some questions for you.

30 **QUESTIONING BY MS TOOHEY:** Thank you, Mr Hughes, and thank you for your attendance
31 today before the Commission. I just want to reflect, firstly, on the overall picture that
32 you've provided about your own role and the Public Service in general. You've outlined in
33 your brief, which the Commissioners have, that you are the employer directly, as I
34 understand it, of the chief executives and that is, for the main part, of the agencies who

1 have given evidence before the Commission over the last couple of weeks, except for, of
2 course, the Commissioner of Police and the Ombudsman.

3 **MR HUGHES:** Yeah.

4 **MS TOOHEY:** And I think earlier on, in an earlier period, your predecessors would have also
5 directly employed public servants.

6 **MR HUGHES:** Yes.

7 **MS TOOHEY:** Within I think the scope period of the Commission which began in 1950, and I
8 think, have I got this right, up until 1988 --

9 **MR HUGHES:** Yes.

10 **MS TOOHEY:** -- the State Services Commissioner actually directly employed staff, including the
11 staff who would have worked in care settings that we've been discussing in evidence in the
12 hearing.

13 **MR HUGHES:** That's correct.

14 **MS TOOHEY:** I think also you are the Chair of the Social Wellbeing Board that the Commission
15 has heard something about, which involves, again, many of the agencies who have
16 appeared in this hearing, the Ministry of Social Development, Oranga Tamariki, health,
17 education and Police. Have I got that generally right?

18 **MR HUGHES:** That's correct. I'm also the Chair of the Family Violence and Sexual Violence
19 Executive Board.

20 **MS TOOHEY:** Yes, and just while we're discussing that, that is, as I understand it, a joint
21 venture.

22 **MR HUGHES:** Yes.

23 **MS TOOHEY:** Have I got that right, which is something slightly different to the Oranga
24 Tamariki action plan that we heard about.

25 **MR HUGHES:** It's an Executive Board under the new Public Service Act, which I'm happy to
26 explain further at a later time, if you want.

27 **MS TOOHEY:** Yes, we can come to that a bit later, but, generally, that body has its own
28 funding --

29 **CHAIR:** I'm sorry, Ms Toohey, I'm getting signals that I'm not quite sure what they are. I think it
30 might be if you could bring your microphone closer to your mouth, please, Mr Hughes.

31 **MS TOOHEY:** Just to finish that subject, Mr Hughes, I think that joint venture, we heard from
32 Mr Te Kani, has separate funding, is that right, to try and end sexual violence and family
33 violence at an overall level?

1 **MR HUGHES:** Yes. Well, funding is appropriated to the joint venture agencies, but the joint
2 venture also does hold some funding. So executive boards under the Public Service Act
3 can be appropriated funding, can employ their own staff and have all the reporting
4 requirements of a government department, including parliamentary reporting, which is
5 pretty important. So it's a new form of entity in our Public Service.

6 **MS TOOHEY:** And my understanding is that the genesis of that was that a calculation was done
7 of the overall economic and social cost of family violence and sexual violence and that that
8 is what resulted in the generation of the allocation of funding to the agencies for their part
9 in it? Have I got that, broadly, right?

10 **MR HUGHES:** No. It probably goes back to the family violence task force, which I also chaired
11 for quite a long period, so successive governments have been concerned about family
12 violence, sexual violence and so it's a concern to bring all of the agencies together so that
13 there can be a concerted effort in relation to those issues.

14 **MS TOOHEY:** Yes, and my understanding from Mr Te Kani is that the Social Wellbeing Board
15 and the Oranga Tamariki action plan is not a joint venture under the Public Service Act.

16 **MR HUGHES:** No.

17 **MS TOOHEY:** We can come back to that a little later.

18 **MR HUGHES:** Sure.

19 **MS TOOHEY:** Just again in terms of your overall role, I think you have noted in your brief that
20 under the Public Service Act, you provide leadership of the Public Service, including its
21 agencies and workforce and by oversight of the overall performance and integrity of the
22 system.

23 **MR HUGHES:** It might be -- I actually have three roles under the Public Service Act. It might be
24 helpful to distinguish between the three of them. So under the Public Service Act, I am the
25 Chief Executive of the Public Service Commission, which is a department of State, I am its
26 Chief Executive. I am the Public Service Commissioner, which is a statutory role. I am a
27 statutory officer appointed by the Governor-General on the recommendation of the Prime
28 Minister, so it's a statutory role and I have certain powers and duties and responsibilities in
29 that role.

30 Under the Public Service Act, I am also head of service. The Public Service
31 Commissioner role dates right back to 1912 and it relates to the fact that in New Zealand,
32 we have a politically neutral independent Public Service and so the Public Service
33 Commissioner sits for some functions between ministers and chief executives, particularly
34 staffing matters, performance management and review matters.

1 The head of service role dates back to the Better Public Services working group,
2 which I was on and I now can't remember the date but I think it was around 2010, where
3 there was an identified need for somebody to provide leadership across the Public Service
4 agencies. Under the Public Service Act, responsibility sits with chief executives. They are
5 responsible for the functions that they lead and manage, but following on from the reforms
6 of the 90s, it became increasingly clear that there was a need for the Public Service to work
7 together, particularly to solve big issues, big problems in our country and that's where that
8 role comes from. So it's a whole of system leadership role.

9 **MS TOOHEY:** Thank you. And in your brief, you also noted one of your functions, statutory
10 functions, as the Public Service Commissioner is to review the design and operation of the
11 system of government agencies in order to advise the appropriate minister, for example, on
12 possible improvements to the delivery of services, so something of an overall advisory role
13 as to the system of government.

14 **MR HUGHES:** Yes, that's part of the Commission's policy advice role.

15 **MS TOOHEY:** You would understand, Mr Hughes, that the work of the Royal Commission over
16 the past several years has been effectively lifting the lid on how the Public Service has
17 failed children in State care, which has culminated in this hearing over the last two weeks.
18 And I think you will agree with me that in addition to the failings that you have
19 acknowledged within your brief, some of the current issues that have been discussed are
20 quite concerning.

21 **MR HUGHES:** Yes.

22 **MS TOOHEY:** There are two matters I want to discuss with you, first, very briefly, the failings
23 that have been acknowledged by you and by other chief executives during the hearing as to
24 the scope period, which is 1950 to 1999, and you've apologised this morning for some of
25 that with respect to survivors.

26 In your role as the head of the Public Service, are you able to respond and comment
27 on the failings by public servants, rather than the system, that have occurred over the
28 decades of the scope period, both in terms of perpetrating abuse, as we've heard, and failing
29 to safeguard children in care?

30 **MR HUGHES:** So I am the person that currently holds the role of head of the Public Service and
31 I acknowledge your statements about the changes in that role over time, so I am the person
32 that needs to own the leadership of the Public Service going back to 1950 and I'm very
33 happy to do that.

1 Public Service chief executives have attended the Commission hearing over the last
2 two weeks and have identified, through their acknowledgments, a range of failings across
3 the Public Service and I endorse all of those, and I support those chief executives in
4 acknowledging those failings. As Public Service Commissioner, my expectation of chief
5 executives, when mistakes are made or failures occur, is that they will own them, fix them
6 and learn from them, and I'm proud of the fact that they have fronted the Commission and
7 acknowledged failings that occurred and mistakes that were made because that is the start
8 of that process.

9 Owning, fixing, learning has to start with me, it starts and ends with me, so I am
10 happy to own, as Public Service Commissioner, all of the failings that have been identified
11 over the course of the Commission. That's my moral duty.

12 I reiterate my profound regret at the hurt and harm caused to survivors over the
13 whole of that period and the impact of those failings on their lives and life courses and on
14 their families and on their communities.

15 **MS TOOHEY:** Mr Hughes, just turning to your other role as, I think of it as architect or
16 potential -- the potential to have a role as architect of the overall Public Service.

17 **MR HUGHES:** I wish it was that broad.

18 **MS TOOHEY:** I think the Commissioners will be helped by your observations, as the overall
19 head of the Public Service, as to what changes they might wish to recommend to try and
20 address the current failings that we heard about in the hearing. What I propose to do is to
21 take you through some, not all of them, but some of the key issues that have been discussed
22 by the chief executives over the last two weeks, and then perhaps discuss with you what
23 levers and tools you might have at your disposal, as Public Service Commissioner, too, in
24 the overall strategy and design roles that we talked about before.

25 **MR HUGHES:** Sure.

26 **MS TOOHEY:** Just starting with the current picture of abuse in care, Mr Te Kani accepted that
27 abuse in care is current, it hasn't stopped with the end of the scope period in 1999, it's still
28 going on. He also accepted, and this is at page 781 -- perhaps if my friend agrees, I can
29 give her the evidential references at the end, if that's suitable to the Commissioners. So the
30 failure to safeguard children by the State has also continued.

31 The current position is that, as of the end of June 2021, nearly 500 children were
32 harmed in State care and we had evidence this week that a further 273 children have been
33 harmed over the past six months. So that's the position in terms of the overall numbers of
34 children being harmed.

1 We also heard from the Children's Commissioner that seclusion and solitary
2 confinement is ongoing in Youth Justice and Care and Protection residences. I just want to
3 note to you there was some debate from Oranga Tamariki as to whether that is still going
4 on and that's something the Commission will need to resolve, but certainly the Children's
5 Commissioner yesterday gave evidence that is still happening.

6 And further, that in Youth Justice facilities from January 2015 to March 2021,
7 young people were restrained 3,572 times and placed in seclusion or secure care just over
8 6,500 times, and in Care and Protection residences for the same period, children were
9 restrained 1,840 times, and placed in seclusion or secure care just over 2,000 times.

10 We heard from Commissioner Coster that police cells are not appropriate places to
11 keep children and young people but because of resourcing and infrastructure constraints,
12 they sometimes have no choice. So children are still being contained in police cells.

13 We heard that there is structural racism against Pacific people in care and we heard
14 from Mr Te Kani that structural racism has resulted in disproportionate numbers of Māori
15 and Pacific children in care, and I think, Mr Hughes, you'd be well aware of the figures as
16 to those disproportionate numbers.

17 We had evidence from The Secretary For Education, Ms Holsted, acknowledging
18 that the education system has not sufficiently valued Māori cultural understanding and has
19 had consistently low expectations of tamariki and rangatahi Māori and has failed to respond
20 to the identity and language and culture of Māori and that this has harmed Māori and
21 contributed to poor education outcomes over the generations. We also heard that the
22 education system continues to underserve Pacific learners.

23 From the Ministry of Health, there was an acknowledgment that institutional and
24 societal ableism and legislation, policy and systems has contributed to the abuse of disabled
25 people and people with mental health conditions in Health and Disability care settings.
26 And there was a lot of evidence, Mr Hughes, about the fact that there is so much work to be
27 done to properly acknowledge the numbers of disabled and deaf people in care and that that
28 was a consistent theme during the hearing. I think you'll be aware of that, from following
29 it.

30 Of concern, it emerged during the hearing this week that the system of complaints
31 in State care in New Zealand is lacking and it was conceded that there is much work to be
32 done, including that the way in which complaints are recorded and the lack of a central
33 register is problematic and may result in less safeguarding than could otherwise be
34 achieved.

1 Additionally, it has been conceded that on the basis of a report of the Office of the
2 Children's Commissioner -- sorry, the children's monitor, that a no narking culture persists
3 in State residential care facilities, meaning there's a dissuasion from reporting complaints,
4 which is a barrier to complaints, and that has been throughout the scope period. So for 71
5 years, there has been a culture within State care that means that children are reluctant to
6 complain.

7 There has also been evidence that -- you would have seen, I'm sure, Mr Hughes, this
8 week, from the Commission's research that indicates up to a third of children in State care
9 went to prison and that children in State care were five to nine times more likely to go to
10 prison. Mr Te Kani accepted that these findings reflect a trajectory from the State
11 residential care system in the scope period to prison, and the Chief Social Worker,
12 commenting on this report, the Care to Custody Report, said that Oranga Tamariki
13 sometimes refers to the residential care facility model as a "fully funded failure model".

14 In relation to that standard of care that children can expect to receive, the children's
15 monitor noted in evidence last week that the care standards were introduced because the
16 care system was not meeting the needs of its clients. And it was also acknowledged by the
17 Ministry of Social Development that care of vulnerable adults in MSD-funded services has
18 not met the standards today or in the past.

19 I want to move on to a slightly different topic, which is monitoring, and this is still
20 within the concession aspect for your comment shortly, Mr Hughes. The care standards
21 that I've just referred to, Oranga Tamariki conceded in the hearing that it is largely
22 incapable of self-monitoring its own performance against those care standards. It could
23 only provide data for 5% of all of its measures of performance, and it agreed that that was a
24 problem and, further, that that problem is extended because it means that the Independent
25 Children's Monitor cannot, therefore, effectively conduct its external monitoring of Oranga
26 Tamariki's performance.

27 There is another problem, which is that Oranga Tamariki is responsible for
28 overseeing third-party providers which are providers of State care who contract to the State
29 pursuant to section 396, the Oranga Tamariki Act. Oranga Tamariki said that it was not in
30 a position where it could add quite Leah sure that third parties are meeting the care
31 standards due to these monitoring issues.

32 I just want to give you an example, and bear with me, Mr Hughes, for this long
33 introduction for your comment, but I will mention just one example of a third-party

1 provider which persisted until 2004 on Great Barrier Island. Of course, there are
2 faith-based providers who also provide care facilities to the State pursuant to section 396.

3 We've heard in evidence over the past two weeks survivor accounts have been
4 raised of children being forced to dig their own graves by staff who are holding guns, and
5 staff raping children in care with guns by the bed. Children and rangatahi were also taken
6 to a separate small island, that the children called Alcatraz, as a punishment and left there
7 sometimes for days. And just as an aside, Oranga Tamariki accepted in this hearing that the
8 Department of Social Welfare acknowledged that Alcatraz was being used in 1989 but did
9 not take steps to stop funding the programme until 2004, which, I think you'll agree with
10 me, Mr Hughes, underscores the importance of oversight of all provision of care, whether
11 it's directly by the State or by third parties.

12 I just want to come now to some comments I want to seek from you. First on that
13 last point, we heard some evidence from Oranga Tamariki that on some occasions, in
14 addition to contracting with a provider under section 396, they delegate some of their
15 overall statutory responsibilities to those third parties, and I understand that that might
16 actually be under the schedule 6 of the Public Service Act. Without getting into a legal
17 debate, I'd be grateful for any comment from you as to what oversight you might have, as
18 Public Service Commissioner, if a delegation has been provided by Oranga Tamariki of
19 some of its functions.

20 **MR HUGHES:** I'm not aware of that specific provision. I'm quite happy to report separately on
21 that.

22 **MS TOOHEY:** All right. Thank you, that would be good. In terms of those current issues that
23 I've just related to you, Mr Hughes, do you agree with me that, generally, there are lots of
24 things that need to change to safeguard children in care?

25 **MR HUGHES:** Yes, I do.

26 **MS TOOHEY:** And do you also agree that the monitoring and oversight of State care is a key
27 factor in ensuring that children are safe?

28 **MR HUGHES:** I agree that oversight -- I agree that oversight is critical. I'm not sure that I would
29 characterise that as just monitoring.

30 **MS TOOHEY:** What else would you conclude?

31 **MR HUGHES:** Would you like me to respond to all of that now or...

32 **MS TOOHEY:** Certainly.

1 **MR HUGHES:** You've outlined a range of situations, a range of behaviours, a range of
2 performances that are unsatisfactory and unacceptable in 2022 and I do not want to take
3 anything away from that.

4 A range across the full sweep of the list that you've covered, if we are looking at
5 changing those things, we're looking at a range of levers, some of which sit inside the
6 Public Service Department, some of which sit beyond them. We're looking at policy
7 settings, we're looking at regulatory settings and how regulation happens, we're looking at
8 performance management, we're looking at funding, we're looking at staffing and
9 workforce and diversity, we're looking at how other agencies or how agencies work
10 together, or around in behind one agency, we're looking at oversight.

11 So this is a complicated system. Public Service chief executives in our system of
12 Public Service are responsible for their agencies' role in all of that. They're responsible to
13 their ministers for that. As Public Service Commissioner, I have a role in managing their
14 performance; the Act says I manage their performance on behalf of ministers.

15 Having said that, my expectation of Public Service chief executives is that they will
16 reach for every lever, not just those that they have direct control over, and so where they
17 see policy gaps or regulatory gaps or where they don't have the resources to do the job to a
18 basic standard of acceptability, they will identify that. So we're not passive travellers in
19 this complex system. We're active leaders and we're focused on why it is we're here and
20 the difference we're trying to make and the harm that we're trying to avoid.

21 **MS TOOHEY:** Can I ask you a specific question before you continue on with your answer on
22 that. What would you, as head of the Public Service, expect to see your chief executives
23 fostering by way of institutional culture in their own organisations to prevent abuse in care?
24 What do you think they should be doing?

25 **MR HUGHES:** Number one, to do what the new Act says, which is to ensure -- people work in
26 the Public Service largely because they care and want to make a difference. I really do
27 believe that. These are human service organisations, they're not widget factories, so people
28 join the Public Service because they care and they want to make a difference.

29 Our new Public Service Act says the primary responsibility that we have as Public
30 Service leaders is to allow our staff to give full expression to that. Over the course of my
31 career, I have worked in a rules-bound bureaucracy, a corporatised Public Service and now
32 one that we're trying to make much more client-centred, principles-based and
33 values-driven. And I really do believe that if we can constantly and continually, as leaders,

1 focus our people on why it is they are here, we will have a much better Public Service and a
2 much better opportunity to address some of the issues that you outlined.

3 **MS TOOHEY:** Do you think at the heart of that, rather than just supporting staff and supporting
4 people within the Public Service, do you agree that at the heart of any system that's going to
5 end child abuse, that institutions and different government departments need to put children
6 at the forefront and centre of their work rather than just their staff?

7 **MR HUGHES:** Absolutely. That's what I was very unarticulately trying to say, I was talking
8 about the Public Service as a whole, but absolutely agree with that.

9 **MS TOOHEY:** I just want to go back to the action plan that we were talking about before with
10 Oranga Tamariki. My understanding is that the predecessor or prior to the action plan
11 coming into play, there was a report by the Ministerial Advisory Board in relation to
12 Oranga Tamariki. Do you recall this in September last year?

13 **MR HUGHES:** The Māori Advisory Board? Yes, yes.

14 **MS TOOHEY:** And the board said in its report in September 2021 --

15 **MR HUGHES:** Yeah.

16 **MS TOOHEY:** -- that, they concluded that Oranga Tamariki was not visionary, it lacked strategic
17 direction. It said that Oranga Tamariki needed to be relentlessly focused on improving
18 outcomes for tamariki and their whānau, but it also made this comment, which I'm
19 interested in your overall comment on -- they noted that they were concerned, this is at 55,
20 about the well-being of care and protection staff, but then they reiterated the need to move
21 from judgment to action with all energy focused on urgent improvement. They then said:

22 "Oranga Tamariki has been comprehensively judged already, and far more so than
23 many of its fellow agencies, who, from what we have observed from our experiences in our
24 broader roles, are not all delivering on their obligations to ensure better outcomes for
25 tamariki, particularly for whānau Māori facing multiple stresses. These government
26 agencies are not always particularly visible in providing solutions when they also have
27 obligations to do so. The focus must be on a collective approach to achieving improved
28 long-term outcomes for tamariki and their whānau."

29 **MR HUGHES:** I agree with that. We will not get where we need to be simply by focusing on the
30 performance of Oranga Tamariki as an organisation and its staff. That needs to improve.
31 Leadership in that organisation needs to improve. I have played a role in driving that
32 performance improvement, as Public Service Commissioner, but the system also needs to
33 improve. Two of the most hopeful things that I've seen in relation to the Care and
34 Protection system in my Public Service career are what the action plan now sets out to do

1 and that is to prioritise Oranga Tamariki children and young people for the provision of
2 services across the system. That has not happened before. So that plan says those children
3 and young people will be given priority. That has not happened before and I find that very
4 hopeful.

5 The work that Mr Te Kani is also leading, to build relationships and partnerships
6 with Māori and share decision-making with them, I also find very hopeful. The prospect
7 that we can ever succeed in this system by exercising decision rights over Māori, whānau,
8 hapū and iwi by force of law is destined to fail and so the changes, the system changes that
9 he is leading are some of the most hopeful I've seen in my career.

10 **MS TOOHEY:** Yes. He told the Commission, though, in evidence that there's no additional
11 funding to any of the agencies in order to -- and no actual priority. So, for example, if a
12 child is -- if something isn't done, they might be about to go into care so they might need
13 housing, their parents might need support, they might be living in poverty. There might be
14 various circumstances -- there might be some violence in the home, there could be various
15 circumstances where a child is going to be at risk of going into care.

16 But really the impression from his evidence overall was that while the action plan
17 will assist agencies to try and work together for the benefit of that child, there is no
18 additional funding to each of the agencies to do that, and also there's no priority given to
19 children who might be about to go into care under this action plan. So the understanding I
20 had from his evidence is that it's really a statement of intent to try and work together rather
21 than an allocation of resource or priority to children in this cohort.

22 **MR HUGHES:** I can't comment specifically on that, neither can I comment specifically on
23 funding. That's a matter between Mr Te Kani and his Minister and, ultimately, the
24 Government. But often in these approaches, like the approach we are taking with family
25 and sexual violence, you will start out on a pathway with funding to take you one step at
26 a time.

27 With these approaches very much we're learning our way forward. It sounds like an
28 obvious thing to prioritise access to services for Oranga Tamariki children and young
29 people, but it's not been done before and that is going to be a very challenging thing to
30 achieve. If you think about our health service, for decades our health service has prioritised
31 access to health services based solely on clinical need. We're now saying these children
32 come first and that is going to be a profound shift in the operation of that system, that huge
33 big system of hundreds of thousands of people.

1 **MS TOOHEY:** Do you agree that the problems that Oranga Tamariki is trying to solve here with
2 children are bigger than just one agency?

3 **MR HUGHES:** Yes, absolutely.

4 **MS TOOHEY:** It's poverty, it's --

5 **MR HUGHES:** Yes.

6 **MS TOOHEY:** -- proper treatment of mental health conditions --

7 **MR HUGHES:** Yes.

8 **MS TOOHEY:** -- for children. It's a range of social factors that's bigger than one agency.

9 **MR HUGHES:** Yes.

10 **MS TOOHEY:** Do you see yourself as having any levers or tools available to you, as Public
11 Service Commissioner, to provide any advice to ministers as to the overall system of the
12 Public Service and how it's responding to all of those needs and how it might be improved,
13 because we can see right now that it's failing.

14 **MR HUGHES:** So under the new -- I'm sorry, this is going to sound technical and I do apologise,
15 but it's very important. Under the new Public Service -- the Public Service coming out of
16 the 90s reforms was a collection -- not even a collection, a range of individual agencies all
17 reporting into ministers with very little connection across the system. Over time, as we've
18 tried to improve outcomes, things like family and sexual violence, we've realised that no
19 one agency can do that on their own and that we have to work together. And yet we have
20 not been organised, coming out of the 90s reforms, in a way to do that. In fact, we've been
21 unorganised in a way that has made that almost impossible to achieve.

22 So there are a range of approaches coming out of the new Public Service Act and
23 the Public Service reform process that I am leading, some of them are software, some of
24 them are hardware.

25 On the hardware side, we can now create executive boards of chief executives
26 across agencies where those chief executives will continue to be accountable for the
27 performance of their own agencies, but collectively accountable for the performance of a
28 system like the care system, if we chose to do that.

29 **CHAIR:** How do you do that, Mr Hughes? How do you make them collectively responsible?

30 **MR HUGHES:** So they will operate as a board. There will be a chair of the board. This is a
31 model that has existed, Madam Chair, in the private sector for 100 years and that board
32 chair will be responsible to a designated minister, one minister. Often, that one minister
33 will convene the ministers of the agencies represented on the board, and then we have the
34 system joined up on the political leadership side and on the Public Service side.

1 Under the new Act, money can be appropriated to that board. That's never been
2 able to happen before. So instead of family violence money being littered across a range of
3 agencies -- you know, several years ago, we couldn't even get a view of it. Money can now
4 be appropriated to the board. The board can hire staff. The staff of the family violence
5 joint venture are the staff of the joint venture, not Ministry of Justice staff.

6 The Executive Board has to report to Parliament. They have an annual report. It's
7 transparent. Their performance is transparent. As Public Service Commissioner, when it
8 comes to the work of the board, I hold them collectively responsible for that, not for their
9 individual contributions. So if the board is doing good work, they are all doing good work.
10 If the board has challenges, they all have challenges. So this is quite a profound shift in the
11 system.

12 On the software side --

13 **COMMISSIONER ERUETI:** Is the Social Wellbeing Board an example of --

14 **MR HUGHES:** No, the Social Wellbeing Board is more of a vehicle for achieving alignment and
15 coordination across the social sector at the top level.

16 On the software side, the Public Service Act -- well, prior to the Public Service Act,
17 since I've been in this role, I have worked the chief executives as a team, literally as a team,
18 as you would in any agency. So we go on retreat together, we have weekly meetings, we
19 have team behaviour, we have ways of solving problems together as a team. We have built
20 relationships. Through the Covid pandemic response, you all saw that team in action. The
21 Public Service was at the centre of the Government's Covid response and that team was at
22 the centre of the Public Service response. That's what got us through, that teamwork.

23 I don't recall experiencing that sort of teamwork before in my Public Service career.
24 I don't recall it in the Christchurch earthquakes. That is now legislated for in the Public
25 Service leadership team which is in the Public Service Act.

26 If we want teamwork across the Public Service, it has to start at the top and be
27 modelled down through the system and that's what the Public Service leadership team is
28 doing.

29 So there are a variety of things that we are doing to bring the system back together
30 to get it focused on what it's meant to do and operating in a more agile and responsive way.

31 **CHAIR:** And this morning we heard from the Ombudsman and he described his profound
32 disappointment that the promise of the 1989 Children and Young Person's Act was lost
33 effectively in the bureaucracy and by not being honoured at all. Do you think that this
34 model that you're talking about is one that's going to be able to ensure not only that things

1 get off to a good start but are maintained? Because that seems to be -- the slippage of good
2 intentions, the slippage of action plans, etc, that seems to be a common pattern that we've
3 heard over the years. Do you think that this new way of operating could hold those
4 initiatives stable?

5 **MR HUGHES:** Sure, and I'm sorry to interrupt, I get a little enthusiastic about this. It is in the
6 law. To undo the family violence sexual joint venture would be a heck of a thing. And
7 even if it was undone, I think those chief executives would still keep working together in
8 that way. Because what we are doing is embedding different ways of working, which is
9 very hard when you've had 30 years of being socialised in working in silos vertically up
10 through chief executives to individual ministers.

11 **COMMISSIONER ALOFIVAE:** Thank you, Mr Hughes, just a comment really just coming out
12 of the Covid example that you gave. I think there are some really powerful lessons to be
13 learned there, because you spoke about the Public Service being at the centre, but at the
14 community coal face, what they saw were services being delivered by Māori, by Pacific.

15 **MR HUGHES:** Yes.

16 **COMMISSIONER ALOFIVAE:** So there's something quite profound that can happen.

17 **MR HUGHES:** Yes.

18 **COMMISSIONER ALOFIVAE:** Where there might have been big arguments going on in the
19 background, but the public didn't see that, what they saw was a true Public Service interface
20 with their communities.

21 **MR HUGHES:** Yes.

22 **COMMISSIONER ALOFIVAE:** So it would be interesting later on to hear if there may be some
23 lessons from that for our care to children space.

24 **MR HUGHES:** Sure. I think we need to be clear about what it is we can do as a Public Service
25 and what we can't do and what others can do better and where we need to get out of the
26 way.

27 **COMMISSIONER ALOFIVAE:** Thank you.

28 **CHAIR:** We'll give it back to Ms Toohey.

29 **MS TOOHEY:** Just to cover off that topic, there are levers and tools that are new under the
30 Public Service Act.

31 **MR HUGHES:** Yes.

32 **MS TOOHEY:** They're not being used yet here but that is a possibility.

33 **MR HUGHES:** Absolutely.

- 1 **MS TOOHEY:** Is there a reason to wait for the final report of the Royal Commission or is that
2 something that you, as the head of the State service, would be prepared to start on
3 immediately?
- 4 **MR HUGHES:** I've already discussed with The Secretary For Education, who is the leader of the
5 response chief executives team, about debriefing what we've heard and what we've learned
6 in these last two weeks and thinking about where we can take action now.
- 7 **MS TOOHEY:** And in relation to that, Mr Hughes, we've talked about the Care and Protection
8 system and we've heard that social workers at the moment can do not much more than keep
9 children safe. Mr Te Kani agreed with me that a better goal for the State would be to
10 ensure that children are nurtured and that they are cared for in such a way that parents
11 would, so that they have the best life outcomes possible, as we all do for our children. Do
12 you agree with me that in looking at what levers are available to you, that that's the best
13 goal to have in mind for tamariki and rangatahi children in New Zealand?
- 14 **MR HUGHES:** Absolutely, and that will take a whole range of actors coming together around
15 those children and young people.
- 16 **MS TOOHEY:** Yes. I just want to go back to one more topic before we move on to the last topic
17 and that is the general design of funding and general independence of the monitors,
18 including under the new Act. In my understanding of the Office of the Children's
19 Commissioner -- appreciating, of course, that we have a new law that's about to come
20 in -- is that that is an independent Crown entity and that that is funded effectively within the
21 MSD funding envelope. Am I right about that?
- 22 **MR HUGHES:** I can't assist you with that.
- 23 **MS TOOHEY:** We heard evidence from Judge Eivers, who is the Children's Commissioner, that
24 while the Office of the Children's Commissioner has operational independence from
25 decision-makers within government -- and I think that includes you, doesn't it?
- 26 **MR HUGHES:** Yes.
- 27 **MS TOOHEY:** Resourcing is problematic and that the funding structure has impacted on the
28 Office of the Children's Commissioner's independence. The judge went on to describe that
29 the Office of the Children's Commissioner was unable to secure funding from the Ministry
30 of Social Development to give full effect to its monitoring functions. If it had larger
31 funding, it would have had a direct relationship with Treasury, but because its funding is
32 smaller, it must go through the Ministry of Social Development to have a vote and to get
33 the appropriation from Government for its funding?
- 34 **MR HUGHES:** I'm not sure I agree with that.

1 **MS TOOHEY:** Do you want to comment?

2 **MR HUGHES:** What you're describing will be financial administrative arrangements, but funding
3 comes from the government through an appropriation process and the Children's
4 Commissioner will have a relationship with the relevant minister and that's where I would
5 expect those funding discussions to happen. There is then a budget process and various
6 subordinate budgets will be clustered up in various administrative ways, but the place for
7 that discussion to happen is between the Children's Commissioner and the appropriate
8 minister.

9 **MS TOOHEY:** So if that is not happening in practice, then that might be an issue, do you
10 accept --

11 **MR HUGHES:** I'm happy to assist to sort that out. The Children's Commissioner is independent.
12 I'm not sure I understand how funding would affect that. Funding would affect the scope
13 and range of activities undertaken; I'm not sure I understand how it would affect the
14 independence of the office.

15 **MS TOOHEY:** The overall issue that the Commission might need to deal with, in terms of its
16 final recommendations, is how Oranga Tamariki is monitored and how children in State
17 care are advocated for, because an issue that we have heard over the last two weeks and
18 especially this week, is that you often get a different story when you speak directly to
19 children and the Office of the Children's Commissioner, of course, will have a role and
20 continue to have a role with respect to advocacy. What I'm really asking you about, Mr
21 Hughes, for your comment is a system of government where the body here, the independent
22 Crown entity that is tasked with potentially criticising the Government in terms of
23 advocating for children, must go to the, -- on the evidence we've heard, and I accept that
24 you have a different view as to how it should work - on the evidence we've heard is that the
25 Children's Commissioner must go to the Ministry of Social Development, in other words,
26 the Chief Executive of MSD, in order to secure funding and you can see the problem, that if
27 that is the structure of it, that you have to go to funding--,-- for funding when that --

28 **MR HUGHES:** I would not see the Chief Executive of MSD having any role whatsoever in
29 controlling or limiting the funding available to the Children's Commissioner. She may well
30 have a role for the purposes of the administrative process, which is the putting the together
31 the budget and collating budgets across a sphere of activity. And the simple reason for that
32 is, otherwise, the Treasury and the various ministers would have hundreds of agencies that
33 they would have to deal with.

1 **CHAIR:** Mr Hughes, we don't have time to go into the details, but on the basis of the evidence we
2 heard from the Office of the Children's Commissioner, I think there's an issue for you to
3 look at.

4 **MR HUGHES:** I will sort it out.

5 **CHAIR:** You will sort it out. My goodness, wouldn't it be nice if we could all say that. Thank
6 you, I suggest you look at the evidence of Judge Eivers in particular and have a look at it
7 and see what can be done. We'd be very grateful for that.

8 **MR HUGHES:** Sure. Sure.

9 **MS TOOHEY:** I now want to move to a different topic. I'm conscious of time. I think this will
10 take 15 minutes.

11 **CHAIR:** That's fine. To let everybody know, we're going longer than the programme says. It's
12 important we cover this evidence so we're going to go to 3.30.

13 **MS TOOHEY:** I want to talk to you now about the time that you've spoken about in your opening
14 statement today as Chief Executive of the Ministry of Social Development, which I think
15 was from 2001 to 2011, and acknowledging, of course, the apology and acknowledgment
16 you've given this morning. The first topic relates to evidence the Commission heard at
17 an earlier hearing as to how the historic claims process came about. I just want to bring up
18 the He Purapura Ora redress report, which is MSC0008454. This will come up on the
19 screen in a moment, Mr Hughes, and it's the redress report of the Commission in volume 2.

20 **MR HUGHES:** Yeah.

21 **MS TOOHEY:** And it refers at page 26, paragraph 2, we'll just call up the whole paragraph. It's
22 just recording here the information that MSD had about, if you like, the magnitude of
23 claims, and we'll come to it in a moment but it's page 26. When you were Chief Executive
24 of the Ministry of Social Development, I think that you would have been aware that a
25 lawyer for a number of claimants, Sonja Cooper, provided a document, in the early stages
26 of the historic claims process, detailing a large number of staff. I think you're nodding, you
27 recall it.

28 **MR HUGHES:** [Nods].

29 **MS TOOHEY:** And it detailed what Cooper Legal had learned about the allegations in various
30 children's homes. I think at that time as well, you've described in your evidence -- and
31 certainly we've had other evidence -- that the Historic Claims Unit and there were
32 statements of claim filed, civil claims filed and you would have started to get a picture of
33 the magnitude of the claims and allegations of abuse. Did you do anything, in your role

1 Chief Executive of MSD at that time, to try and establish the true extent of abuse in State
2 care? Was that something you considered doing, rather than just responding to claims?

3 **MR HUGHES:** I'm not sure how we would have done that. I do recall being made aware by
4 Ms Cooper of the numbers -- her view of the numbers coming through the system and I do
5 recall discussing that with ministers at the time.

6 **MS TOOHEY:** You do? Okay. Generally speaking, what was your advice to Government as the
7 scale of advice started -- scale of the abuse that was being alleged started to become
8 apparent?

9 **MR HUGHES:** When Child, Youth and Family was merged into the Ministry of Social
10 Development, my recollection is that was in the middle of 2006. Child, Youth and Family
11 was merged into MSD because there were very serious issues, not the least of which several
12 hundred, 800 unallocated notifications of child abuse and neglect and, in human terms,
13 that's children sitting in a queue waiting for help. Children in that queue were harmed. It
14 took us, from memory, the best part of two years to turn that situation around and, from
15 memory, we reallocated in the first year \$30 million from the MSD baseline into that effort.

16 At the time, there was a Historic Claims Unit in Department of Child, Youth and
17 Family and then in the service line and early on I formed the view that it was not
18 appropriate for it to stay there and that it should be -- because of conflict of interest issues,
19 and also because I felt we were reflexing to defending claims, rather than properly
20 investigating them. So I had the unit moved to a different, separate part of the Ministry of
21 Social Development and we resourced the unit up, and I placed on that senior manager an
22 expectation that we would try and settle claims and not simply defend them through into
23 the litigation process.

24 So I recall discussing that approach with ministers and ministers being positive
25 about it. Subsequently, in 2008, led by MSD, the Crown litigation strategy was changed
26 and the listening service extended. That was, again, part of that approach. With the benefit
27 of hindsight, those were small gains in relation to a very big unfolding problem.

28 **MS TOOHEY:** Yes. Now, I know that you have apologised to the White brothers, but I just want
29 to finish this subject by just bringing up the page in He Purapura Ora the redress report,
30 volume 2, that deals with this, and that's at page 29, I think, of Relativity and page 27 of the
31 report. In terms of that last answer that you gave, Mr Hughes, generally in the redress
32 report of the Commission, there is criticism of the Crown Law litigation strategy. Is that
33 coming up on your screen, Mr Hughes?

34 **MR HUGHES:** Yes.

1 **MS TOOHEY:** I think we're having a bit of a technical issue, here we go. This is it here. For
2 those people who cannot see it, this is the Commission's redress report and findings and
3 you have responded to those this morning. Here in relation to the White brothers' litigation,
4 as you have acknowledged this morning, these findings, it is that the Ministry of Social
5 Development and Crown Law did not comply with the Crown litigation strategy that
6 required them to settle meritorious cases; did not behave as a model litigant and approached
7 and conducted the case in a win-at-all-costs manner, which was unnecessarily adversarial,
8 legalistic and aggressive; instructed private investigators to seek personal information about
9 the White brothers and other survivor witnesses in an overly broad way which did not rule
10 out surveillance.

11 I just want to mention that point particularly, Mr Hughes, because in 2018 or earlier,
12 certainly by 2018, you had commissioned an inquiry in your current role to address public
13 concern generally --

14 **MR HUGHES:** Yes.

15 **MS TOOHEY:** -- about the use by the Crown of external security consultants and that final
16 inquiry referenced this White case --

17 **MR HUGHES:** Yes.

18 **MS TOOHEY:** -- and found that MSD was in breach of the code of conduct issued by the
19 predecessor State Services Commissioner under the State Sector Act at a lower level in
20 Crown Law, and also noted that the inquiry did not see anything to indicate that senior
21 managers with MSD knew about that or directed the potential use of surveillance. Did you
22 know about that, Mr Hughes, the use of surveillance when you were at MSD?

23 **MR HUGHES:** I cannot recall that at all. I can recall once in MSD authorising the use of
24 surveillance and that was in relation to a multimilliondollar benefit fraud where we needed
25 to find the perpetrator. And the fact that I had to authorise that indicates to me that decision
26 rights had,- - I- shifted decision rights because I did not like the practice. So, no, I have no
27 recollection of that whatsoever. That case would have been well in litigation at that point.

28 **MS TOOHEY:** Yes.

29 **MR HUGHES:** But I have to accept the fact that it has been found that MSD staff did, and did not
30 push back on the proposal to use those investigators. I was the Chief Executive; I'd have to
31 accept that.

32 **MS TOOHEY:** The next case study I want to briefly go to in the same way is Mr Keith Wiffin.
33 This is the next case study in the report and at page 47 of Relativity, which is page 45 of the
34 report, there's a similar table summarising the findings of the Commission and you have

1 responded to these this morning, but just so that the public is aware of what the findings
2 were, the findings of the Commission were that Crown Law and the Ministry of Social
3 Development should have promptly concluded that Mr Wiffin's claim was meritorious;
4 were overwhelmingly focused on minimising the Crown's legal liability and lost sight of
5 the human being at the claim; were frequently adversarial and legalistic and aggressive in
6 defending the claim; did not follow the Crown litigation strategy again by failing to settle
7 the meritorious claim; made a completely inadequate settlement offer; failed to disclose
8 Moncrief-Wright's criminal convictions to Mr Wiffin; it should have investigated the
9 circumstances of Mr Moncrief-Wright's transfer between residential homes and potential
10 involvement in offending at a local Catholic Church institution; went through the motions
11 of trying to resolve the claim through an alternative dispute resolution process; had
12 outdated ideas about sexual abuse, especially about the reporting of sexual abuse; should
13 have helped Mr Wiffin make a Police complaint and sought a restorative justice
14 conference; did not behave as model litigants and caused Keith additional trauma through
15 the handling of his claim.

16 I appreciate that you have acknowledged these findings this morning and apologised
17 for them. Can I get your comment, though, on the overall picture of these events and the
18 way in which the State responded to these claims at the time? It suggests that at the time
19 the Crown was litigating, it was responding to protect the State against litigation, rather
20 than looking to actually respond to its failings in safeguarding children against abuse in
21 care. Is that a fair comment, Mr Hughes?

22 **MR HUGHES:** When I first became Chief Executive of MSD, I did not like the way our lawyers
23 were going about their job. The Ministry of Social Development is the agency that deals
24 with vulnerable people facing all sorts of challenges in their lives. At the time, I called a
25 corporate lawyer in and I said I wanted a client-centred and principles-based approach.
26 I didn't like, for example, that we were using limitation approaches. There's a huge power
27 imbalance between a big government department and the clients that we were working
28 with. I did not like the limitation approaches. We were -- for example, with appeals to the
29 social security appeal authority which were not binding in precedent, we would apply the
30 decision in the case but not the collection of cases and I insisted that we apply the decision
31 across cases or appeal it.

32 When Child, Youth and Family came to MSD, I found a similar approach on the
33 legal side of it. For a period, we maintained two legal teams -- we're talking hundreds of
34 lawyers -- while we went through the merger process. We were also bound up by the

1 Crown litigation strategy by the fact that there were multi-agencies in this litigation
2 process.

3 In retrospect, I think I was naive about my ability to effect change rapidly to all of
4 that and I have to accept that MSD staff contributed to all of these things, as you have
5 found.

6 **MS TOOHEY:** Just a final question or opportunity, really, for you to comment, Mr Hughes, not
7 just about MSD but now reverting back to your role as the overall steward, the overall
8 architect or overall head of the Public Service, can you comment on what confidence the
9 public can have that the State will act to safeguard children in State care and also to nurture
10 them going forward?

11 **MR HUGHES:** Public Service chief executives have listened very carefully to the evidence of
12 survivors presented to the Royal Commission. 14 of them have fronted up at the Royal
13 Commission and have made various acknowledgments. I'm proud of them for doing that.
14 That is not an easy thing to do and they did that. That is the start of change. We are a
15 team; we will work as a team to steward the system to a better place. There are more tools
16 available with the new Public Service Act that I believe will make a difference and I
17 believe that the focus that we're trying to build, which is on the individuals and families and
18 communities we serve, will also make a difference as well. I'm very proud to lead the
19 Public Service and the people in it and I'm very proud of their commitment but I don't
20 underestimate the challenge.

21 **MS TOOHEY:** Kia ora. Thank you, Mr Hughes. I've got no further questions.

22 **CHAIR:** Thank you, Ms Toohey. I'll just see if there are any questions at all for Mr Hughes.

23 **COMMISSIONER GIBSON:** Kia ora. Thank you, Mr Hughes. Looking back over the time,
24 we'd expect chief executives to be in touch with their communities, to be knowing the
25 issues, to be aware of what's going on, especially when it's something as critical as abuse
26 and neglect. Apart from those who have been convicted of abuse directly, who's been held
27 to account?

28 **MR HUGHES:** Accountability, the accountability I expect from chief executives is that when
29 failures occur, we will own them, fix them and learn from them, and that is my
30 commitment that we will do that. What has happened here is a result of a range of things,
31 not simply what has happened in the Public Service. I absolutely own the Public Service
32 contribution to it, but there are a range of factors here and we need to address all of them
33 and the Public Service will play its part in doing that.

1 **COMMISSIONER GIBSON:** You've acknowledged there were failures, including in your own
2 agency when you were Chief Executive. Now, as Public Services Commissioner, what
3 would be your response, what levers would you use to chief executives who were in charge
4 of agencies who are making failures of that scale today?

5 **MR HUGHES:** My responsibility as Public Service Commissioner is to back those people to do a
6 good job and when they don't, to help them do a better job and where very significant
7 failures happen, to hold them to account. And I believe I have a track record of having
8 done that in my time as Commissioner.

9 **COMMISSIONER GIBSON:** Would you say what we now look back on, there were significant
10 failures in the day?

11 **MR HUGHES:** There's no doubt that there's significant failures in New Zealand and the Public
12 Service has been part of that, but not all of it.

13 **COMMISSIONER GIBSON:** Another line of questioning; I think you made a statement that
14 diversity and inclusion in the Public Service is an antidote to racism, ableism,
15 discrimination.

16 **MR HUGHES:** Yes.

17 **COMMISSIONER GIBSON:** How many disabled chief executives do you employ at the
18 moment?

19 **MR HUGHES:** At this point in time, we don't employ any that identify as disabled.

20 **COMMISSIONER GIBSON:** That's the answer, I think, and --

21 **MR HUGHES:** We will be appointing a disabled person to head the new Ministry.

22 **COMMISSIONER GIBSON:** And do you have a Chief Adviser Disability, or a senior person
23 within your agency within the Public Services Commission at the moment on disability
24 issues?

25 **MR HUGHES:** No. We are a very small organisation, we don't have chief advisers in those sorts
26 of roles. Over the last five years, the Public Service has made huge progress on diversity
27 and inclusion. We now --

28 **COMMISSIONER GIBSON:** But is there somebody specifically in your agency with a lead role
29 around disability issues, a disabled person?

30 **MR HUGHES:** There are staff that have that advice role but there's not a chief adviser. We don't
31 have those sorts of roles in the Commission.

32 **COMMISSIONER GIBSON:** Okay, thanks.

33 **COMMISSIONER ALOFIVAE:** Talofa, Mr Hughes, ladies. We've heard a lot of evidence from
34 a range of survivors, and I won't go over them because I think you're very familiar with the

1 impacts, but one of the things that comes through so profoundly clearly from Māori, Pacific
2 and disabled is that if you're not visible, you're not counted. If it's not recorded in data, it
3 can't be measured. And we heard from our population ministries this morning, TPK and
4 Ministry for Pacific Peoples, about the great work that they're doing, them and their teams,
5 under your leadership, and one of the things that was really clear was their extensive reach
6 into their communities and how they're able to galvanise them in a way that is familiar to
7 them, around their values, around how they operate, Māori can be Māori, Pacific can be
8 Pacific, and my question is really around the value, so the public value of your population
9 ministries and the significant value add that they have to the system overall.

10 And what we understand from our survivors, some who are here and many who are
11 listening, is just how difficult it is for them, for Māori and Pacific, but I'll just talk about
12 Pacific, to actually come forward to be able to have a voice. And if they don't have
13 representatives, at all of your decision-making tables, in the hierarchy of your all of system
14 approach, it means that their voices can't be heard in a corporate way that can actually
15 really have some influence. The voice of our survivors here really influence the way how
16 we operate. I was just wondering if you might have a comment around that reflection and
17 something that we're hearing very clearly from our communities.

18 **MR HUGHES:** The chief executives of all of the population agencies are on the Public Service
19 leadership team, including the Ministry for Ethnic Communities. I appointed that Chief
20 Executive to the Public Service leadership team under the Act. I will be appointing the
21 Chief Executive of the Ministry for Disabled People to the Public Service leadership team
22 under the Act. I absolutely agree with what you are saying.

23 Independently of that, as the ultimate system leader, I meet with the heads of the
24 population agencies on a regular basis. Every second month, I meet with the Chief
25 Executive of Te Arawhiti and the Chief Executive of Te Puni Kōkiri in our leadership roles
26 across the system to back them in their leadership.

27 **COMMISSIONER ALOFIVAE:** But actually coming down into -- so your joint venture, there's
28 a whole lot of different models and fully appreciate that they are at those tables, but
29 actually being able to have a mandate -- we're just talking about our State care space
30 children in care, and there's a whole ecosystem around that. So the pathway into care has
31 been through Youth Justice, care and protection, health concerns, the whole gamut.

32 Knowing what you now know today as a result of what's been uncovered, is there a
33 sharper focus that could perhaps be afford today those population ministries to kind of

1 really lift the visibility and bring those voices of the community, of those particular sector
2 groups to the table in a way that you haven't heard before?

3 **MR HUGHES:** The population agencies have a primary role in bringing those voices to the table.
4 In a way, they're like central agencies in the system and that is how I have tried to work
5 with them and that is why they're on the Public Service leadership team and that is why, in
6 all the various forums that we have operating across the system, they're present, including
7 the executive boards we set up under the Act. I think we have to power them up. If that's
8 what you're saying, I totally agree with that. I think they're little organisations but
9 they have system-wide roles and we need to see them as system-wide leaders.

10 **COMMISSIONER ALOFIVAE:** Yeah, and I think to see the magic, really, of what they can do
11 and the power of voices, of how survivor voices have been so influential for us, it's about
12 having the mandate and making them accelerate that in a way that really brings a value, a
13 huge value to actually re-shaping the system, which is aspirational, which is what we've
14 heard a lot of. So thank you for that.

15 The second point really relates to the Oranga Tamariki action plan. We're very
16 excited, we've heard a lot of things about it, but we've also heard that still not quite ready,
17 lots of things in the pipeline, hasn't come together. When we asked Oranga Tamariki how
18 many kids in care, I think they said about maybe 4,500 -- I stand to be corrected on that
19 number but it's around that figure -- but a greater population of children perhaps at risk of
20 need and support is about 117,000.

21 My question is, given that those numbers are not big necessarily, compared to the
22 population of 1.7 million children, I think it is in Aotearoa, do you think the public who are
23 listening, do you think they have a right to expect that we would see some significant
24 change sooner rather than later around bringing those action plans -- I mean, I agree with
25 you, that's a complete step change if children are now going to get the priority. But what
26 we've heard is that they don't operate in a vacuum. If you are not empowering and gearing
27 up the whānau, it's still going to be marginal in terms of how successful it can be.

28 **MR HUGHES:** Those action plans are agreed and are owned by the relevant chief executives. To
29 my mind, that's 50% of the distance already travelled. What we've got to do is resource
30 them and drive them really hard. There is an element of us learning our way forward, so it
31 is going to take time, but, no, those numbers are not huge in the scheme of things and we
32 ought to be able to make a difference.

33 **COMMISSIONER ALOFIVAE:** Thank you, Mr Hughes, malie lava.

1 **COMMISSIONER STEENSON:** Tēnā koe, tēnā koutou. So I think my first question is a
2 follow-up question from my colleagues around the diversity, because you've talked about
3 the leadership and the diversity. I'm just wondering around the cultural competency, do
4 you think the Public Service sector currently has the right settings with regard to cultural
5 competency? We've heard a range of views on this.

6 **MR HUGHES:** Frankly, no, but we are making progress. I'm going to ask Heather to talk to this
7 because this is her leadership responsibility.

8 **MS BAGGOTT:** This is an area,- kia ora- koutou. This is an area where the Chief Executive
9 team, the Public Service leaders have put some dedicated focus on for the last few years
10 and so they've agreed a number of priorities that they're focused on, on diversity inclusion,
11 but also on Māori-Crown relations. For the first time in our history, every Chief Executive
12 and agency has a dedicated diversity inclusion plan and a plan for building their
13 Māori-Crown capability, and they report progress against that plan in their an annual report.
14 So that's a form of transparency and accountability. So, on one hand, the Māori-Crown
15 plans, they have been developed closely with Te Arawhiti, who've developed a framework
16 around particular priorities that they should focus on. That's a bit of a start but it enables
17 everyone to be focusing on the same things and learning as we go.

18 On our diversity inclusion plans, there are five priority areas every agency, every
19 Chief Executive has committed to and one of those things is cultural competency. So we've
20 made a very strong start and the fact that all agencies are working together, we're able to
21 share resources, learn as we go, as we can build our base going forward.

22 **MR HUGHES:** On the diversity and inclusion side, for example, another area of focus is
23 unconscious bias and all public servants are receiving training in unconscious bias. We're
24 most of the way through that.

25 **COMMISSIONER STEENSON:** Thank you. Then my second question is a follow-up as well,
26 because it does speak to accountability that we've heard from survivors. We've heard
27 survivors talk to us about the fact that they've had people who have been in charge of places
28 and people tasked with their care and they've been abused in those places by those people.
29 Then they've seen the leaders of those people be promoted and so they struggle to have
30 trust in integrity in the system and we see that unfolding and manifesting in many ways.
31 Do you have any comment on how that can be addressed?

32 **MR HUGHES:** Well, my role is to appoint chief executives of agencies and in the appointment
33 of -- I take that role very seriously and I want people in those roles who can provide strong
34 leadership, including moral leadership, and I want people in those roles who will be trusted

1 and respected. That's the contribution that I can make and have been making while I'm in
2 this role.

3 We've also, as a Commission, issued guidance and standards around speaking up in
4 agencies, to make it easier for people to bring wrongdoing to the fore and to support people
5 to do that. We also have issued guidance in standards that enable wrongdoing that is
6 known across the system to be made known to other parts of the system so we don't have
7 people who have done bad things migrate their way across the system and get promoted up
8 through it. I have to say that has been a real battle, the way our system is configured, to get
9 that in place and hold it in place.

10 **COMMISSIONER STEENSON:** Kia ora, you can imagine all the survivors listening will want
11 to know that that's being addressed. Kia ora.

12 **COMMISSIONER ERUETI:** Tēnā koe, Mr Hughes, koutou ma. My question is about the
13 redress scheme that we've recommended in our report. That's going to require to
14 implement a real joined-up approach clearly, not only with agencies but also with
15 faith-based institutions. It doesn't seem to be proceeding at the pace that we would have
16 expected, so I just wanted to know from you about your confidence and the outcome.

17 **MR HUGHES:** I'm not sure where that is at at the moment. I would imagine it's still subject to
18 some Government decision-making. Once Government's completed that, we will
19 implement it and we will back it with joined-up teamwork across the agencies at the Chief
20 Executive level. That's my commitment.

21 **COMMISSIONER ERUETI:** Ka pai. My other question is about your view, as leader of the
22 Public Service, about by Māori for Māori in this domain and you talked about shared
23 decision-making.

24 **MR HUGHES:** Yeah.

25 **COMMISSIONER ERUETI:** But I wonder also whether that includes to you giving Māori space
26 to make decisions independently, including the exercise of delegated functions under
27 legislation.

28 **MR HUGHES:** That really is a matter for ministers, in terms of where decision rights sit in the
29 system, but I go back to our experience through Covid. I think it's really important we are
30 not romantic about what it is we can and cannot do in the Public Service and that we are
31 prepared to step back and let others take responsibility and make a difference where they
32 can do a better job.

33 **COMMISSIONER ERUETI:** You did say that you were prepared to get out of the way, I think it
34 was.

1 **MR HUGHES:** Yes.

2 **COMMISSIONER ERUETI:** Lastly is Te Tiriti. We've seen over the past few weeks the many
3 and varied ways in which it's applied in different agencies --

4 **MR HUGHES:** Yes.

5 **COMMISSIONER ERUETI:** -- and that can make sense, it varies according to context.

6 I wondered if you had a view for the need for some sort of supra code of standard, if you
7 like, for Te Tiriti and international human rights standards that could sit above the Public
8 Service to guide it.

9 **MR HUGHES:** The Treaty, for the very first time in our history, is directly referenced in the new
10 Public Service Act. So that has not occurred in any of the other previous legislation going
11 right back to 1912. The Public Service Act says that it is the responsibility of the Public
12 Service to support the Government as the Treaty partner. So that gives us a reference point
13 and a clarity that we've not had before.

14 We're working with Te Puni Kōkiri and Te Arawhiti as a Public Service leadership
15 team on how we give effect to that, because you're right, we want one approach to that
16 across the Public Service.

17 **COMMISSIONER ERUETI:** Do would you also envisage some higher law, for example, a
18 constitutional reform that would give recognition to Te Tiriti --

19 **MR HUGHES:** Commissioner, I think you are well above my pay grade.

20 **COMMISSIONER ERUETI:** We'll leave it there.

21 **MR HUGHES:** I do have a view but it would not be appropriate for me to --

22 **COMMISSIONER ERUETI:** Okay. Kei te pai. Kei te pai. Thank you.

23 **CHAIR:** Above all, in all the hearings that we've had so far and through these two weeks as well,
24 the word "cost" has kept coming to mind,-- human cost, whānau, hapū, iwi, community
25 cost, - and I'm talking here about emotional, poverty, all of- those indicators, but also the
26 cost, what do we spend abusing these children? What was it that we were spending in
27 incarcerating them, effectively, in residences and the rest? You can't answer that. I don't
28 think anybody can answer it.

29 And then what have we spent as a nation in dealing with the social problems that we
30 now know were caused very much -- not fully but very much by reason of that treatment.
31 What did we spend in imprisonment rates, drug and alcohol, mental health, the rest?

32 Do you accept, Mr Hughes - and maybe this is for your political masters, I'm just
33 putting it out there so that maybe they can hear this,- that it's time to stop spending at, that
34 old cliché, the bottom of the cliff and that if all those dollars had been poured into the

1 support at the beginning, the nurturing, as Ms Toohey says, of children and their families,
2 that we could have avoided all that cost. Are you able to accept that as a matter of
3 principle, without going too far outside your pay rate? -- that it's time to stop spending at,
4 that old cliché, the bottom of the cliff and that if all those dollars had been poured into the
5 support at the beginning, the nurturing, as Ms Toohey says, of children and their families,
6 that we could have avoided all that cost. Are you able to accept that as a matter of
7 principle, without going too far outside your pay rate?

8 **MR HUGHES:** I think that is the founding proposition for the Social Wellbeing Board. We are
9 spending a huge amount of money through the various government departments that
10 operate on the social side of the Public Service responding to problems that today we know
11 how to avoid.

12 **CHAIR:** And that, in large part, were caused by the state, through the abuse that we've heard of.

13 **MR HUGHES:** I think the challenge is how you shift, tilt the balance of that and I do have to say
14 that's easier said than done, but we do have to do it, I agree with you.

15 **CHAIR:** Yes, and it's got to be more than an aspiration doesn't it? It's got to be an action.

16 **MR HUGHES:** Yes, it does. I can sit here and say every single one of those chief executives
17 would own that.

18 **CHAIR:** That's a fine thing to hear. Thank you, Mr Hughes. On behalf of the Commission, may
19 I thank you for coming, for preparing your evidence, for responding to the section 20
20 notices in such detail and for being so frank. I think it must be acknowledged that I'm sure
21 that the apologies that you rendered in relation to your time at MSD has been well received
22 by those who were listening. So thank you very much indeed and I apologise that we've
23 gone over time but it indicates the importance which we hold your evidence, so thank you.

24 It's time we had a well overdue break. Can we just take a short break, maybe just
25 until 4 o'clock and then we'll come back and do our concluding parts. Thank you.

26 **Adjournment from 3.54 pm to 4.07 pm**