

**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY
STATE INSTITUTIONAL RESPONSE HEARING**

Under The Inquiries Act 2013

In the matter of The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions

Royal Commission: Judge Coral Shaw (Chair)
Dr Anaru Erueti
Ali'imuamua Sandra Alofivae
Paul Gibson
Julia Steenson

Counsel: Mr Simon Mount QC, Ms Kerryn Beaton QC, Dr Allan Cooke, Ms Katherine Anderson, Ms Anne Toohey, Ms Tania Sharkey, Mr Michael Thomas, Ms Ruth Thomas, Ms Kathy Basire, Mr Winston McCarthy, Ms Julia Spelman, Ms Alice McCarthy and Ms Natalie Coates for the Royal Commission

Ms Rachael Schmidt-McCleave, Mr Max Clarke-Parker, Ms Julia White for the Crown

Ms Victoria Heine QC for the Office of the Children's Commissioner

Ms Sally McKechnie for Te Rōpū Tautoko, the Catholic Bishops and congregational leaders

Mr David Stone for the New Zealand State Abuse Survivors Charitable Trust

Venue: Level 2
Abuse in Care Royal Commission of Inquiry
414 Khyber Pass Road
AUCKLAND

Date: 15 August 2022

TRANSCRIPT OF PROCEEDINGS

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23 **OPENING STATEMENT BY OFFICE OF THE CHILDREN'S COMMISSIONER**

24 **MS HEINE:** Madam Chair, Commissioners. I will explain for those who can't see me, I have,
25 with some help from my hairdresser, brown blonde shoulder-length hair, blue eyes and
26 today I'm wearing a cream jacket with shiny buttons.

27 It's my pleasure to present some brief opening statements on behalf of the Office of
28 Children's Commissioner today. The OCC welcomes the opportunity to engage with this
29 Commission. As the Commissioners will know but others in the room may not, the Office
30 of Children's Commissioner is an independent Crown entity, it has its own legislation, and
31 that means that it is not subject to ministerial direction.

32 It has a range of statutory functions, broadly relating to investigation, complaints,
33 monitoring and advocacy for those under the age of 18. As is clear, the State care and

1 protection system has failed to serve the interests of mokopuna, significant changes are
2 necessary.

3 The OCC has and will continue to advocate for mokopuna, to ensure that their
4 voices are heard as well of those of their whānau and that those voices are valued, acted
5 upon, so as to finally address, prevent and eliminate abuse of mokopuna in care.

6 And whilst acknowledging the past, the OCC wishes to use the opportunity to give
7 oral evidence next week to provide the Commission with future focused recommendations
8 for systemic change, such recommendations being centred around and drawn from the
9 voices of thousands of mokopuna who have spoken to the OCC over many years.

10 Next week, the Commission will hear from three witnesses, Her Honour Judge
11 Frances Eivers, who is the current Children's Commissioner. She's held that position since
12 November 2021 and follows in a long lineage of distinguished Children's Commissioners.
13 Ms Fiona Cassidy, who is the current Executive Director of the OCC and has held that
14 position since March 2022. She will principally address the Commission on the funding
15 challenges which are a key part of the evidence that you will hear from the OCC. And
16 finally, Ms Glenis Philip-Barbara who was appointed as the first Assistant Commissioner
17 Māori in November 2020. She finished her tenure as ACM in July 2022 and she will
18 appear next week under summons.

19 Those witnesses will, if required and to the extent that they can speak to the past,
20 but inevitably their ability to do so is circumscribed by the length of time that they've
21 worked for the office and the length of time that they've been in their particular roles. So in
22 anticipation of this problem, the Section 20 response which the OCC filed, we've
23 endeavoured to make that as comprehensive as we can, and that draws on discussions with
24 past staff and past Commissioners. So I'm hoping that that will be a useful repository of
25 historical material.

26 Subject to any direction from the Commission as to specific areas of interest, there
27 are four key themes that the OCC witnesses wish to speak to. The first of those is funding.
28 The OCC has never been adequately funded to carry out its wide-ranging statutory duties
29 and functions fully and effectively. This has meant that over the 33 years of its existence,
30 adequate and effective oversight of State care of mokopuna has been limited.

31 The OCC has shared its frustrations about inadequate funding with the Government,
32 but increased funding has not been forthcoming and there is background to those requests
33 in the Section 20 response.

1 While OCC believes that it has achieved considerable success with the limited
2 funding available, much more needs to be done and can be done with adequate resourcing.
3 And I note that the present funding structure also sees the OCC as an independent Crown
4 entity reliant on funding being sought on its behalf from other agencies. So instead of
5 being able to make its own bid for funding in the yearly budget cycle, it goes through other
6 agencies. It has no -- as I understand it, it has no direct voice.

7 The second key theme is independence. As stated by both the OCC and many
8 across the children's rights sector, the State cannot monitor itself. That is a non-sequitur.
9 On multiple occasions, the OCC has called for the necessity of an adequately funded entity
10 that is independent from government to carry out monitoring functions. Regrettably,
11 present government policy has gone in the other direction, with the Oversight Bill currently
12 before the house. The proposals in that bill are a long way away from the independent
13 oversight that mokopuna in care need and deserve, and even further from a future where by
14 Māori for Māori approaches are embedded.

15 A third key theme, complaints. A functional mokopuna- and whānau-centred
16 complaints system has never existed and is urgently needed. The OCC has repeatedly
17 highlighted its concerns with the current complaints system, including access to complaints
18 mechanisms, remedy and redress. An effective complaints system must be mokopuna- and
19 whānau-centred, it must be accessible, it must be independent, it must respond to
20 mokopuna within their timeframes, and it must be subject to robust oversight.

21 Fourthly, by way of themes, Māori. The current system does not have Te Tiriti at
22 its foundation. As we know and we've heard again today, there is significant
23 overrepresentation of mokopuna Māori among those experiencing poor outcomes in
24 poverty statistics, care systems and Youth Justice. The long-term implications and costs of
25 that are not only for those individuals personally, but for society as a whole, as we heard
26 from the representatives of SAGE this morning, there are wider issues here beyond simply
27 the impact on individuals.

28 In particular, there is a disproportionate number of mokopuna Māori in State care
29 and one of the papers in the bundle that will be put to the witnesses next week talks about I
30 believe the prison -- that once a person gets into State care they get on a trajectory, which
31 never ends particularly well.

32 The OCC has long held concerns about the way the Care and Protection system is
33 failing Māori, and has called for by Māori for Māori approaches across the system. And
34 Ms Philip-Barbara talks or will talk next week a little bit about how in her view some of

1 those changes could be implemented, building on what we're starting to see in other areas
2 within the State sector.

3 So these key themes feed into the OCC's six future-focused recommendations for
4 systems change and they're set out in the Section 20 response. Those are that Te Tiriti must
5 be the foundation; by Māori for Māori approaches must be prioritised; appropriate training,
6 guidance and support is critical for all adults involved in delivering care for mokopuna in
7 the State system; mokopuna and whānau voices must be listened to; a functional complaints
8 system has never existed and is urgently needed; and a well-resourced and truly
9 independent monitor is needed.

10 The OCC is grateful for the opportunity to provide a written response to the
11 Commission and to give oral evidence next week. This process has allowed the office to
12 reflect on its practice and journey over the last 33 years, including identifying the barriers
13 faced, the successes achieved, and the continued need for evolution and improvement to
14 better serve our most vulnerable.

15 The OCC hopes that the Commission will benefit from its evidence and draw on the
16 insights and recommendations provided. It further hopes that when the recommendations
17 eventually made by the Commission are produced they will lead to transformational and
18 sustainable change so that those failed by the system are no longer required to repeat their
19 stories again and again and again. And we have heard in very powerful terms from SAGE
20 representatives this morning just how hard that is.

21 So those are the opening remarks on behalf of the OCC. I haven't filed a written
22 statement, but can do so if that would be of assistance to the Commission. I can file that
23 later in the week.

24 **CHAIR:** Only if you wish -- it has been very competently transcribed, so unless you particularly
25 want to I think we can take the transcription as your record.

26 **MS HEINE:** Thank you, ma'am. Finally, I will be here next Thursday the 25th with my clients.

27 With respect, could I seek leave to be excused until that time, Your Honour?

28 **CHAIR:** Yes, of course, thank you very much. Thank you for your submission.

29 Mr Stone, do you wish to make any opening remarks?