

**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'imuaamua Sandra Alofivae
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Ms Sally McKechnie for Te Rōpū Tautoko, the Catholic Bishops and congregational leaders

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

Venue: Level 2
Abuse in Care Royal Commission of Inquiry
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AUCKLAND

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TRANSCRIPT OF PROCEEDINGS

INDEX

NEW ZEALAND POLICE

Questioning by Mr Clarke-Parker	96
Questioning by Ms Spelman	102
Questioning by Ms Basire	141
Questioning by Ms Spelman	171
Questioning by Commissioners	186

Hearing opens with Ka Waiata and karakia tīmatanga by Ngāti Whātua Ōrākei

[9.48 am]

CHAIR: Nau mai hoki mai ki tēnei tūmatanui tēnā koutou, tēnā koutou, a rā tēnā rā tātou katoa.

Before I open the hearing to counsel, can I just acknowledge some people who are in the room, particularly the survivors of abuse in care and their network and their representatives who have been attending regularly. I just want to acknowledge first that you have been attending, that you do come and go and it's quite obvious that some of this is very painful for you, and in spite of that, you maintain a presence here, a vigil, if you like, and just to say that the Commissioners have noticed and appreciate your attention, your close and quiet attention to the evidence. So, thank you for your presence.

Good morning. I'll invite Ms Spelman now to open.

MS SPELMAN: Tēnā rā tātou, e mihi ana ki te pou whakawairua Matua Wyllis nāu i whakatūwhera tēnei nohoanga kia tika ai te mahi e whai ake nei, tēnā koe, otirā ki a rātou o Ngāti Whātua Ōrākei, e noho tonu ana mātou i raro i tō mana, tēnā koutou. Ki ngā purapura kua whetūrangitia e mihi ana, ki ngā purapura ora ki konei ā-ipurangi, ki te kāinga e whakarongo mai ana, mai i tēnei uri o Ngāti Hikairo ki Kāwhia, tēnā koutou katoa. E te tēpu ngā Kaikōmihana tēnā koutou, huri noa ki te whare, tēnā koutou, tēnā koutou, tēnā rā tātou katoa.

Good morning, everyone, my name is Julia Spelman, I'm one of the Counsel Assisting the Royal Commission. I'm a woman in my early 30s of Māori and Pākehā descent. Today I'm wearing a black dress with a very bright pink jacket and I have brown hair.

I'm joined today by my Counsel Assisting colleague, Ms Basire, and together we will be doing the questioning of Police.

But first, Madam Chair, I will be passing over to the Crown who will begin with the evidence-in-chief.

CHAIR: And before we do that, I'll take the affirmation, but before I even do that, thank you for reminding me, I have not introduced myself to those who cannot see. My name is Coral Shaw, the Chair of the Commission, I am elderly, I have white chin length hair and I wear glasses.

So, let's, first of all, take the affirmation then I'll invite Mr Clarke-Parker.

NEW ZEALAND POLICE

ANDREW COSTER AND TANIA KURA (Affirmed)

CHAIR: Good morning, Mr Clarke-Parker.

1 **QUESTIONING BY MR CLARKE-PARKER:** Good morning, tēnā koutou katoa, ko Max
2 Clarke-Parker ahau. And for those who can't see me, I am Pākehā, I have brown hair, a
3 beard, and today a purple tie. Tēnā kōrua.

4 Beginning with you, Commissioner Coster, may I please have you just give your
5 full name and description.

6 **MR COSTER:** Andrew David Coster, I'm a male Pākehā, approaching 50, wearing a grey suit,
7 with brown hair, short back and sides.

8 **MR CLARKE-PARKER:** And Deputy Commissioner Kura.

9 **MS KURA:** Kia ora, I'm Tania Ruth Kura, I'm female, part Māori, other side of 50, and I'm
10 wearing a black jacket and a black dress with bright orange flowers.

11 **MR CLARKE-PARKER:** Thank you. And you are the Deputy Commissioner for Leadership
12 and Capability.

13 **MS KURA:** I am.

14 **MR CLARKE-PARKER:** Commissioner Coster, you have prepared a written brief of evidence
15 for this hearing and that's been submitted to the Commission and that will be taken as read.
16 But you also have a short summary of that brief in front of you that you will read through
17 now?

18 **MR COSTER:** I have.

19 **MR CLARKE-PARKER:** Thank you, and please go ahead.

20 **MR COSTER:** Tēnā koutou katoa. E ngā mana whenua o tēnei rohe, Ngāti Whātua ki Ōrākei,
21 tēnei te mihi. E ngā mōrehu katoa i to mamae, i tō māia, i tō manawanui, kei te mihi, kei te
22 mihi, kei te mihi. Ki ngā Kaikōmihana tēnā koutou. Ki a koutou katoa kua huihui mai nei,
23 kia ora. Ko Andrew Coster tōku ingoa, ko au te Kaikōmihana o Nga Pirihimana o Aotearoa,
24 nō reira, tēnā koutou, tēnā koutou, tēnā koutou katoa.

25 I'd first like to acknowledge the courage of those survivors who have appeared
26 before the Commission. It's clear many have suffered greatly. It's also apparent that some
27 have received inadequate service from Police. This has been difficult to hear.

28 As Commissioner of New Zealand Police, I know this is a vastly changed
29 organisation from the one I joined 25 years ago. We don't always get it right, but our
30 people serve their communities with empathy, compassion and professionalism and I'm
31 proud to be their boss.

32 The following statement is a summary of my brief of evidence. It touches on the
33 major themes, and I'll be pleased to go into detail on any point the Commission wishes to
34 know further about.

1 **CHAIR:** Before you carry on, can I just ask you to keep an eye on the pace, we have a
2 stenographer and the signers who need to keep up with you

3 **MR COSTER:** Of course.

4 Before I address the questions, the Commission has asked, I wish to make some
5 general comments on evidence the Commission has heard.

6 I acknowledge that Police has historically had relatively few policies, processes and
7 procedures aimed at supporting the Deaf community and people with disabilities to engage
8 with us. Police continues to work on the gaps which have existed and how we have
9 engaged with some Deaf and disabled survivors of abuse.

10 We recognise we can do more to improve services and relationships with disabled
11 people.

12 A recent disability stocktake has led to work to improve our services for disabled
13 communities.

14 I acknowledge that Māori are disproportionately represented across the criminal
15 justice system. I accept there are serious questions to answer in relation to Māori and
16 Pasifika experiences of policing in New Zealand.

17 Police strongly supports efforts to shine a light on these issues as part of the
18 Waitangi Tribunal's ongoing Justice System Kaupapa Inquiry.

19 We have initiated a major research programme, Understanding Policing Delivery,
20 focused on whether and to what extent bias exists at a system level in Police's operating
21 environment. The research will explore who Police stop and speak to and how Police
22 engage with them, decisions around the use of force and prosecution decision-making.
23 We're taking care to ensure the research gives us actionable insights that enable us to
24 quickly make changes as opportunities present.

25 Further, I acknowledge the lack of a clear statutory framework for vetting, which
26 creates uncertainty about what information can be considered as part of the process. Police
27 is an entry point to the criminal justice system and sometimes State care. With this comes
28 the responsibility of ensuring our actions are fair, equitable and in the best interests of the
29 community.

30 The Commission has asked Police to comment on the following topics: Te Tiriti o
31 Waitangi, priority groups, Māori, Pacific, and disabled people, monitoring, oversight and
32 safeguarding, entry into care, particularly in relation to surveillance and charging decisions
33 of youth, complaints, referrals and criminal justice, staffing, funding and resources, lessons
34 learned.

1 Te Tiriti o Waitangi. Police is committed to honouring Te Tiriti and upholding its
2 principles as New Zealand's founding document. One of our six core values is commitment
3 to Māori and Te Tiriti. We have established mechanisms and processes supported by our
4 Māori, Pacific and Ethnic Services, or MPES, to govern our relationships with tangata
5 whenua and provide feedback on our strategies and where there is room for improvement.

6 These include the Commissioner's Māori Focus Forum, which brings together
7 Kaumatua and kuia to provide input at a strategic level to the Police Executive.

8 Māori responsiveness managers and Māori advisory groups are active in Police
9 districts operating at the highest levels of district decision-making.

10 Iwi liaison officers lead initiatives to support Māori communities and enhance
11 cultural capability in Police.

12 The Māori Wardens programme brings expertise to Police and gives the wardens
13 valuable support and resources. Recruits are exposed to Māori culture, tikanga, and
14 language from their first days at the Royal New Zealand Police College.

15 The Turning of the Tide, launched in 2012 and refreshed in 2019 as Te Huringa o te
16 Tai, is our prevention strategy for working with and for Māori communities. This work is
17 guided by a Deputy Chief Executive Māori within the senior Police Executive.

18 Priority groups. As well as tangata whenua, Pacific communities influence policy
19 and service delivery through the Commissioner's Pacific Advisory Forum, Pacific liaison
20 officer roles and the establishment of Pacific staff networks.

21 We built relationships by engaging with eight Pacific community reference groups
22 under the Ministry of Pacific Island Affairs Pacific Capacity Building Programme and
23 established Police Pacific Peoples advisory groups.

24 From 2008 leadership and management commitment were strengthened through an
25 annual national Pacific fono, later sponsored by an Assistant Commissioner. It has a strong
26 and growing membership.

27 Recruitment and representation. We understand the need to reflect the communities
28 we serve, so we focus recruitment efforts among Māori, Pacific and ethnic communities.
29 Beyond recruitment we are working to increase diversity at all levels of our organisation.

30 Disabled people. In 2021 Police undertook a disability stocktake to enhance
31 understanding of our current situation and identify future opportunities. Its findings
32 concluded that Police is an inclusive employer, but community engagement was often
33 reliant on individual staff rather than national leadership. It found our property portfolio

1 included some buildings without disability access or facilities and that Police held data did
2 not meet the required standard.

3 We have initiated a range of work to ensure we improve our services to disabled
4 communities. We recognise that we can do better.

5 Monitoring, oversight and safeguarding. Police as a care provider. Police's role as
6 a care provider is limited. Our facilities are primarily to hold people awaiting court
7 appearance or bail with some short-term exceptions. Programmes are underway to address
8 the requirements of the present and to redesign Police custody in partnership with iwi for
9 the future.

10 Monitoring of people in Police custody. Monitoring of a person in custody begins
11 at the time of arrest or detention and continues until they are released or custody is
12 transferred. On arrival, a person's details are recorded in the Electronic Custody Module
13 and an evaluation of their mental and physical health is made. The level of monitoring
14 from constant to every two hours depends on the perceived risk. Any concern about a
15 person's welfare triggers a call for medical assistance.

16 Entry into care. Before any action that could lead a child or young person towards
17 care, Police must consider the principles of Section 208 of the Oranga Tamariki Act 1989,
18 including: unless the public interest requires otherwise, criminal proceedings should not be
19 instituted against a child or young person if there is an alternative means of dealing with the
20 matter.

21 Before deciding to lay charges, Police will consider the appropriateness of a
22 warning, alternative action, or a family group conference. Alternative actions include
23 Te Pae Oranga, which applies an iwi Māori led framework to the community justice panel
24 approach.

25 Decisions about charging are guided by the Solicitor-General's prosecution
26 guidelines, particularly whether there is enough evidence to convict and whether it is in the
27 public interest to prosecute. The way the guidelines are applied may be different where the
28 accused is a young person.

29 The Commission has identified public surveillance of young people leading them
30 into State care as an area of interest. Police patrol public areas, and intelligence functions
31 access a range of information sources to inform deployment. Helping ensure decisions are
32 supported by robust evidence and analysis.

1 Police works closely with organisations which work with children, like Oranga
2 Tamariki and its predecessors, to ensure efficient information sharing and a consistent
3 approach.

4 Complaints, referrals and criminal justice. Handling of complaints. The handling
5 of allegations of abuse of children, young people, Deaf or disabled people or people with
6 mental health conditions has evolved over time. This includes significantly improved
7 management of complaints to ensure interviewing techniques are accurate and reliable
8 while reducing re-traumatisation.

9 Improved investigative practices have brought national consistency and a more
10 consistent level of service to victims.

11 Complaints of abuse. Police does not have a universal policy on allegations of
12 abuse in care. All abuse reports are thoroughly investigated in accordance with child
13 protection investigation policy and adult sexual assault investigation policy. Police does
14 not have a specific policy for approaching potential victims to seek disclosures. This is
15 assessed case-by-case. Such approaches are treated with caution to avoid retraumatisation.

16 Investigators may publicise a dedicated 0800 number and e-mail address to
17 encourage potential victims to come forward of their own accord.

18 Specialist child witness interviewing. Since 2007, Police has substantially reformed
19 investigative interviewing, policy and practice. The SCWI model follows the PEACE
20 framework developed in the United Kingdom and aligns with international best practice
21 protocols. An evaluation of interviews with children in New Zealand published in 2016
22 identified both strengths and opportunities for improvement. Police and Oranga Tamariki
23 have both made changes, including increased supervision of their interviewers.

24 Receiving and investigating complaints made by vulnerable adults. Police aspires
25 to bring humanity to every policing interaction. Police are trained to be sensitive to the
26 vulnerabilities of persons with whom they interact, adjusting the process to meet the
27 circumstances. A flexible, empathetic approach is considered most appropriate.

28 Prosecution decisions. There are obstacles to securing convictions for sexual
29 violence offending, particularly historical offending against people who were children at
30 the time. Corroborating evidence can be hard to find, and complainants may be reluctant to
31 disclose what happened to them or engage in a trial process.

32 Charging decisions are commonly made in conjunction with the Crown Solicitor
33 and in line with the Solicitor-General's prosecution guidelines.

1 It's not unusual for Police to believe a complainant, but not be able to lay charges.
2 Such decisions do not mean a case has not been properly investigated, or that the offending
3 has not been treated seriously by Police. Police decisions not to prosecute allegations of
4 sexual violence are reviewed by the national adult sexual assault and child protection team,
5 helping ensure national consistency.

6 Staffing. Training for interaction with vulnerable people. Police training on
7 responding to situations involving vulnerable people occurs at induction to the organisation,
8 initial recruit training and in ongoing workplace learning. Recruits are trained in engaging
9 with people experiencing mental distress, including awareness of suicide indicators and
10 how to respond to threatened or attempted self-harm.

11 There is cultural and awareness training, not directed at children or vulnerable
12 people, but designed to help all staff empathise and engage with different cultures. In
13 addition, the Child Protection Protocol signed between Police and Oranga Tamariki in
14 January 2022 outlines the requirement for Police to access Regional Disability Advisors
15 through Oranga Tamariki where necessary.

16 We are committed to ensuring conscious and unconscious bias are not factors in
17 decision-making and have introduced training accordingly.

18 Vetting of caregivers and support workers. Police's vetting service is one of its
19 general functions under Section 9 of the Policing Act 2008. The aim is to contribute to
20 public safety, particularly the protection of vulnerable people and to national security by
21 providing vets for employers and others to assess the suitability of individuals for sensitive
22 roles.

23 In 1991 there were 24 organisations and relevant organisations who could request a
24 Police vet. Today the Police Vetting Service deals with more than 15,000 approved
25 agencies who collectively request more than 600,000 vets annually. The lack of a clear
26 statutory framework for vetting creates uncertainty about what information can be
27 considered as part of the vetting process.

28 The growth of the NIA, or National Intelligence Application database, and
29 increased information sharing between Government departments means what can be
30 considered Police information is growing significantly and includes information that is
31 subjective and has not been tested, for example, in court.

32 Notification of safety concerns. Responsibility for re-vetting staff members or
33 volunteers lies with the employer or voluntary body. The Children's Act has a requirement

1 that children's workers are re-vetted every three years but there is no formal enforcement or
2 audit process to ensure bodies subject to the Act comply with this.

3 Finally, lessons learned. Police has had the opportunity to learn lessons from a
4 number of internal and external sources. For example, the Commission of Inquiry into
5 Police Conduct, or COI, led by Dame Margaret Bazley, led to a vast range of changes to
6 adult sexual assault investigation practices.

7 In 2019, the Solicitor-General's prosecution guidelines in respect of sexual violence
8 allegations were updated by Crown Law to give victims the right to request a review of a
9 decision not to prosecute. Those guidelines have been incorporated into Police policy and
10 practice.

11 Police is currently working on a cross government initiative developing a longterm
12 strategy to ensure a sustainable sexual violence network is available to all New Zealanders.
13 Police is aware that there are more lessons to be learned in this space and to that end we
14 keenly await the Commission's final report and recommendations. Thank you.

15 **MR CLARKE-PARKER:** Thank you, both, and I'll now hand you over to Counsel Assisting for
16 questioning.

17 **CHAIR:** Tēnā koe, Ms Spelman.

18 **QUESTIONING BY MS SPELMAN:** Tēnā koe.

19 Tēnā kōrua. Just to begin with some timeframes, Commissioner Coster, you joined
20 Police in 1996; is that right?

21 **MR COSTER:** That's correct.

22 **MS SPELMAN:** And were appointed in your current role in 2020.

23 **MR COSTER:** Correct.

24 **MS SPELMAN:** And Deputy Commissioner, you joined the Police in 1987?

25 **MS KURA:** Yes.

26 **MS SPELMAN:** And also 2020 came into this new role.

27 **MS KURA:** I did.

28 **MS SPELMAN:** Thank you that's some helpful timeframes as we move through today.

29 I want to begin with the Police role in entries or pathways into care that you have
30 just discussed, Commissioner, and as you'll be aware, the Royal Commission is
31 investigating the circumstances that led to individuals being taken into or placed into care
32 and the appropriateness of such placements.

1 In your statement, Commissioner, and just now, you made reference to Section 208
2 in terms of the principle about not going ahead with criminal proceedings if there's an
3 alternative. Now, that section that you refer to is from the 1989 Act, isn't it?

4 **MR COSTER:** Originally.

5 **MS SPELMAN:** Yes, and so that's something in terms of current Police practice that Police
6 would approach matters in that way?

7 **MR COSTER:** Yes.

8 **MS SPELMAN:** Considering an alternative before going ahead with criminal proceedings?

9 **MR COSTER:** Correct.

10 **CHAIR:** Just Keep an eye on speed, please, we have a long road to travel and we don't want to
11 exhaust our people.

12 **MS SPELMAN:** Understood, thank you.

13 Just looking back then before 1989 to the period that the Commission is looking at,
14 1950 through to 1999, the previous legislation, the Children and Young Persons Act 1974
15 and its predecessor, the Child Welfare Act 1925, to your knowledge was that same
16 provision present in the previous legislation?

17 **MR COSTER:** I don't believe so, but I obviously have no working knowledge of the previous
18 legislation having not had to use it.

19 **MS SPELMAN:** Sure.

20 **MR COSTER:** What I would say is the 1989 Act represented a step change in the way we deal
21 with Youth Justice issues, and what we have seen as a consequence of that change is an
22 ongoing reduction in youth offending over a 30-year period. So notwithstanding current
23 challenges, it has set us on a good path.

24 **MS SPELMAN:** Sure, and just for now I'm just going to stick with that period before 1989, we
25 can come to the current and the more recent years a bit later. But looking back again, pre-
26 1989, when that provision didn't exist, would you accept that there wasn't such an
27 imperative for Police to consider alternative action and that that was part of the change that
28 came in the 1989 Act?

29 **MR COSTER:** I think that's fair.

30 **MS SPELMAN:** In terms of more generally, the period 1950s to the 1970s, we know that,
31 looking back, it's obviously going back some time now, research has characterised that
32 period as one of moral panic more generally, there's lots of research about concerns of
33 youth delinquency. Would you accept that as a general characterisation of that period?

34 **MR COSTER:** It seems to be a feature of every generation unfortunately.

1 **MS SPELMAN:** Sure. And during that period, I suppose the more criminalising approach, and
2 I say that compared to perhaps current practice with alternative action, would you say that
3 was something that was approached not just by Police but that was a general attitude in
4 terms of politicians and Social Welfare and the other agencies that operated during that
5 1950s to 1970s period?

6 **MR COSTER:** I think that's a fair statement. No first hand knowledge though.

7 **MS SPELMAN:** Looking back, I suppose to someone who does have first hand knowledge, Tā
8 Kim Workman, who obviously was a police officer back at that time and you'll be aware
9 he's given evidence at previous Royal Commission hearings, so I just want to read you a
10 brief quote from what he said previously in terms of that particular period and then ask for
11 your comment on it.

12 So Tā Kim described that time as:

13 "The whole culture of Police was geared towards enforcement, catching people
14 doing stuff and punishing them in the naive belief that that would prevent them from doing
15 it again."

16 I'm not asking you in terms of your first hand experience, but as Commissioner of
17 Police looking back on the organisation that you've inherited, does that generally accord
18 with your understanding of that time?

19 **MR COSTER:** I have huge respect for Tā Kim and he is speaking from first hand experience.

20 I certainly couldn't contradict him, and I think it's fair to say the journey the organisation
21 has been on has seen it shift very significantly from a singular focus on enforcement to a
22 much broader focus on prevention and on taking actions that will prevent future harm.

23 **MS SPELMAN:** Sure. Just one other legislative point just in terms of the context for this period.
24 In the 1974 Act, so the one we were just speaking about, the predecessor to the 1989 Act,
25 there was another section, Section 12, which included broad powers for Police to pick up
26 essentially unaccompanied children in public places and if a parent or guardian could not be
27 found to deliver them into the custody of the Director-General of Social Welfare.

28 Now,-- it's not a quiz on the legislation, but simply to set up that context for the
29 period that we're talking about, I think you would accept that back then there were much
30 more general powers for Police to do that sort of enforcement on the streets, picking up
31 children in a way that perhaps wouldn't be done today?

32 **MR COSTER:** I certainly know practice has changed. Obviously, the current Act has provision
33 for Police to take into care kids who are at risk unaccompanied, but the provision is
34 different and I'm certain the practice is different.

1 **MS SPELMAN:** Thank you. So, in practical terms then, and again I'm asking about the 1950s to
2 1970s sort of historic period, in practical terms the way that children came, I suppose, many
3 times into care was Police picking them up on the street and bringing them to the Children's
4 Court, sometimes a Police action, sometimes an action of Social Welfare, but in terms of a
5 pathway to coming before the court, Police had a role in that?

6 **MR COSTER:** Yeah, I can't agree with the suggestion that it was the dominant route, I just don't
7 know the answer to that, but I certainly accept that it is a route by which people may enter
8 the system of care.

9 **MS SPELMAN:** In terms of that route, whether it was the dominant one or not, that really was
10 the Police, in terms of Police role, entry into care, it was who and how the Police were
11 policing that we're focused on in terms of what would be the Police role of pathways into
12 care.

13 **MR COSTER:** I imagine, similar to today, that Police would come across circumstances where
14 young people were at risk, also in family circumstances and that there would have been
15 routes for young people into care that weren't only about being found unaccompanied, or
16 offending in a public place. So, I think it's certainly a route, but it's quite hard for me to put
17 a finger on exactly at that time what was happening and what was the dominant path for
18 young people and Police's involvement.

19 **MS SPELMAN:** Sure. So looking back to that period, we also heard in a previous hearing from
20 Dr Oliver Sutherland who, as you may be aware, did a lot of work during this time period
21 with children and young people who were held in Police cells and brought before children's
22 courts, and he makes reference to studies from that time, a study by Ross Hampton of the
23 Justice Department research section looking at 1973 and Auckland Police officers when
24 deciding who to prosecute, and the finding was that when deciding who to prosecute,
25 Police:

26 "... discriminated against Māori boys by sending a disproportionate number of them
27 to court, thus inflating their crime rate in comparison with that of non--Māori children."

28 **MR COSTER:** I certainly accept that there are a disproportionate number of Māori boys who
29 went to court and sadly that continues to be the circumstance in the criminal justice system
30 today. What I can't prove out in terms of what was occurring at that time is the cause of
31 that and the statement includes both elements, so that's, in terms of today's practice, one of
32 the areas where we really focus through our understanding, policing delivery programme of
33 work which is about trying to dig in to what is the reason for the disproportionate
34 representation and what role might Police have at that.

1 **MS SPELMAN:** I'll just ask you, Commissioner, we will come later on today to talk about the
2 current work and in particular that project, but at the moment I would appreciate it if you
3 would just stay with me in this historical part because it's important that we go through this
4 particular time period.

5 **MR COSTER:** Of course.

6 **MS SPELMAN:** There will be time to talk about that project later.

7 **MR COSTER:** Yes.

8 **MS SPELMAN:** So, you've said that the quote I read you about the numbers, you're not sure in
9 terms of the cause of that, essentially.

10 **MR COSTER:** I can't speak to causation, I've got no,-- there's nothing in front of me that helps
11 me with that, and obviously other people have given testimony on it, but I just can't speak
12 to exactly what was occurring there from anything that's available to me.

13 **MS SPELMAN:** Sure. I'll just read you one more quote from someone who was there at the time
14 and who has given evidence about it, from Dr Sutherland. So, he said in 1979 that in
15 addition to the bias that he says could be seen by Police at the decision to prosecute stage,
16 that:

17 "... racist attitudes among police officers towards Māori children and young people
18 were legendary."

19 Now, bear in mind I'm obviously asking about an historical period, but what's your
20 comment on that in terms of Police as a historical organisation?

21 **MR COSTER:** It's very difficult for me to comment on that. You know, even within our current
22 workforce, officers who were working at that time are few and far between, if they even
23 exist. So, I can't add anything to what's in front of the Commission on that, either to agree
24 or disagree.

25 **MS SPELMAN:** Okay. We might return to that topic a bit later on today. In terms of the types of
26 issues or offences that young people and children were being picked up for and brought to
27 court at the time, we've heard evidence from a number of people about the types of offences
28 being quite low level, for example things like truancy, stealing lollies, vagrancy, those sorts
29 of offences and I'm asking you, again looking at that period historically, not what the
30 current practice is, but just would you acknowledge that that's quite different back then, that
31 Police were exercising their authority in terms of quite low level crimes in the way that's
32 perhaps not done these days?

33 **MR COSTER:** As we've acknowledged, the 1989 Act was a really significant shift in practice, it
34 really, as I understand it, turned things on their head in terms of how we approached

1 offending by young people. In terms of the mix of offences that were being dealt with, I'm
2 sure that that featured as part of it, but I can't speak with any confidence to what the mix
3 was.

4 **MS SPELMAN:** I'd just like to turn now to one example from a survivor who gave evidence in a
5 previous hearing, their experience as a Samoan child in Auckland in the late 1960s, 70s
6 period. And what he says about his experience then is this, I quote:

7 "The Police used to pick on us. I had enough. I could be walking down the street
8 and Police would just pick on me. I would be with two white fellas and if there were two
9 of us darkies the cops would pull us up and leave the white guys alone. That's what it was
10 like. It got to the stage where I think because I was being picked up so many times by the
11 Police and labelled as a criminal it became normal. They would see you on the street and
12 ask you if you had any money, then you would be under arrest for vagabond or something."

13 And again, I appreciate that you weren't a police officer at this particular time,
14 stopping this particular boy, but what's your comment in terms of survivors who had those
15 experiences and what that might mean about how they feel towards Police?

16 **MR COSTER:** That's an incredibly sad account and it's someone's experience that I certainly am
17 not here to disagree with, and I won't. What I can't really speak to confidently is to what
18 extent that was reflective of Police practice at the time and what was going on there but,
19 you know, I certainly understand, even based on my own experience, that different
20 communities come from quite different starting points in terms of their relationships with
21 Police, and there's a deep history that sits behind that.

22 **MS SPELMAN:** I should say, of course, Deputy Commissioner, if you want to contribute on
23 these questions, feel free; is that a question that you'd like to comment on?

24 **MS KURA:** No, I agree with the understanding what was happening at the time, although joining
25 Police in 1989 I have a little bit more context, joining in 1987 at least before the new Act
26 came in, it was absolutely a change for the organisation, quite a significant change and lots
27 of -it- really challenged the way we practised in 1989 when the new Act came in.

28 **MS SPELMAN:** Also, in terms of that former period, what were some of the practices that
29 stopped after the 1989 Act?

30 **MS KURA:** I think it was the inclusion of whānau, the fact that if I and- it's remembering a while
31 back, is -the- being- more cognisant of that this isn't just a single person, to be more
32 inclusive of understanding where the family may fit for a person, and equally about
33 including other agencies in any decisions that were made. So those are just some things
34 I remember from the time of the change when the new Act came in.

1 **MS SPELMAN:** Thank you. One other part of the new 1989 Act was a principle that criminal
2 proceedings should not be instituted against a child or young person solely in order to
3 provide any assistance or services needed to advance the welfare of the child or young
4 person or his or her family, whānau or family group. Deputy Commissioner, is that
5 previous practice something that would occur, Police in an effort to get services for a
6 family would use what powers they had, which essentially was bringing them to court in a
7 hope that they might get some help that they needed?

8 **MS KURA:** I don't think I can comment across -consistently across the country what might have
9 happened, but if I think of my early days, we may have done some things where it was
10 make a decision about a single child- but I can't comment on general practice.

11 **MS SPELMAN:** I suppose you would both accept, it seems, that was enough of a practice that a
12 principle was brought in in the new 1989 Act to stop that practice if it was occurring.

13 **MR COSTER:** I just don't know the origin to that, I imagine it may be covered in the
14 parliamentary debates at the time, but it's certainly a principle that has persisted and a
15 recognition that children in Care and Protection aren't well served by Youth Justice
16 proceedings.

17 **MS SPELMAN:** There are just a few other aspects I want to touch on in terms of Police practice
18 that may have contributed to children and young people entering into State care. So once
19 we get to the point where a child is brought to the Children's Court or the Children and
20 Young Persons Court, or perhaps actually before that when they're still at the police station,
21 we've heard evidence, again from Dr Sutherland, at the time that there were many Police
22 interviews that took place of children without legal representation, without a family
23 member being present, and in his evidence that amounted to Police coercively obtaining
24 confessions from these children, and I'll just read you a brief quote, again from his evidence
25 at a previous hearing:

26 "Children were often held in Police cells before they got into Court even. There
27 was rarely a parent present, there were never lawyers present, no advocate was present.
28 Social Welfare officers might have been present but basically they and the Police persuaded
29 the children to plead guilty."

30 **MR COSTER:** I just can't offer anything particularly on that. I know that the practices around
31 guardians being present, around legal involvement also shifted very significantly with the
32 1989 Act and I assume that without those safeguards there was a risk of things occurring
33 without those protections. But in terms of what the standard organisational practice was, I
34 can't say.

1 **MS SPELMAN:** I suppose, perhaps, Commissioner it's a similar point to the one you made earlier
2 which is that you weren't there and can't speak to the first hand experience, but you're not
3 disagreeing with the evidence that's been given in terms of the experience of Dr Sutherland
4 as an advocate for many, many children across the country during that period?

5 **MR COSTER:** I'm not in a position to agree or disagree, I just can't add anything to that,
6 unfortunately.

7 **MS SPELMAN:** Would you accept that based on today's standards, having children, some
8 younger than eight years old, even, being interviewed without a legal representative or a
9 family member would be something the Police would --

10 **MR COSTER:** Just would never occur today.

11 **MS SPELMAN:** And it shouldn't have happened back then either.

12 **MR COSTER:** That's hard, I think we can sit today, and we can say that's the case and with a lot
13 of confidence we can say that. What I can't really speak for is the views of the community
14 that existed at that time. And so, there are lots of things that today are obvious good
15 practice to us but may or may not have been obvious good practice back then.

16 **MS SPELMAN:** I suppose this is a hindsight question, so instead of asking you put yourself in
17 the shoes, I'm asking for your --

18 **MR COSTER:** Without a doubt today we know that that is just not the right thing to do.

19 **MS SPELMAN:** Sorry, Deputy Commissioner, it looked like you had something you were adding
20 there.

21 **MS KURA:** I do think about the practice that we had before the new Act and there would be
22 things that we definitely wouldn't do now that we may have done, and I can't think of it
23 being a systemic written "this is how you do things", but for children who may have been
24 on their own or in situations where you might have come across somebody on the street, the
25 fact that we didn't talk to, maybe seek advice from family, is something that comes to mind
26 when you raise the situation now.

27 **MS SPELMAN:** I suppose you could accept without accepting the details, that if this type of
28 practice was, for example, widespread or perhaps just routine, that that could have had a
29 real influence on how many children were coming into court and subsequently entering
30 State care if they were being dealt with without the protections of their whānau or a legal
31 representative, is that a fair summary?

32 **MR COSTER:** Potentially.

33 **MS SPELMAN:** Another contributing cause we've heard about from many different sources in
34 this Inquiry to, particularly, Māori children and young people coming into care in great

1 numbers during that time period, is the general stereotyping of Māori during that time in the
2 broader society and officials linking Māori juvenile offences to perceived defects in their
3 home life including culture and traditions of Māori communities. And some have also said
4 that this amounted to State policies promoting and maintaining the intentional dismantling
5 of whānau with Police being one part of that strategy. I appreciate that's a broad question,
6 but I would like you to comment on it.

7 **MR COSTER:** I certainly can't say with any confidence what sat by, --sat behind practices that
8 failed to recognise the intrinsic value of Māori culture. But I can certainly say that as an
9 organisation, even in the time I've been in, we're in a fundamentally different place in terms
10 of our valuing of Tikanga Māori and valuing of what that can do to support young people
11 who are at risk, and indeed adults who are having difficulty. And I fully recognise that
12 insider knowledge did not form part of our practice for the vast majority of the period we're
13 talking about.

14 **MS SPELMAN:** Thank you. I'd like to move on now to the topic of abuse while in Police care,
15 and I note, Commissioner, that you've described this as, in terms of- perhaps- "care
16 provider" is not quite the right phrase in the context of Police, but Police having a limited
17 role as a care provider.

18 Now, just to check before we go on, that you're both familiar with the scope of what
19 the Royal Commission is looking at in terms of abuse in relation to Police, which includes
20 Police cells, Police custody, so of course that's while being under arrest perhaps on the
21 roadside, being transported in a Police car, Court cells, where of course we know Police are
22 custodial officers, and abuse on the way to or from or between State care facilities. So,
23 would you accept that's a slightly broader role than perhaps what you've described in terms
24 of, in your statement, as simply a holding facility between arrest and bail?

25 **MR COSTER:** Yeah, I guess that was a reference to a place where people stop and are in care,
26 but absolutely, our duty of care starts from the time that someone comes into our custody
27 through to the time that they are handed over to another carer and that's an area where we
28 have evolved considerably and continue to evolve.

29 **MS SPELMAN:** Sure. So, in addition to, I suppose, the physical Police facilities and cells,
30 there's also all of that on the street and in cars and while someone's in Police custody, you
31 accept that's all part of what we're talking about?

32 **MR COSTER:** Of course, of course.

33 **MS SPELMAN:** Great. Another aspect we've heard about is, I suppose, a more informal use of
34 Police, which is Social Welfare essentially requesting or using Police as their enforcement

1 arm in terms of uplifts or interventions and I'll just for your context give you another quote
2 from Tā Kim Workman who's featuring heavily today. So, about that point Tā Kim said in
3 his previous evidence:

4 "The Child Welfare officers often attempted to involve Police in their operational
5 processes which created considerable tension between the two agencies. Child Welfare
6 officers had a tendency to portray Youth Aid and the Police as 'the enforcers' when it came
7 time to remove a child from a family, even though they may have initiated the process."

8 So that is, I suppose, a slightly additional or informal role that the Police also played
9 here, but that does again broaden the scope of what we're talking about when Police were
10 put perhaps in the unenviable position of having to help your colleagues from Social
11 Welfare, Child, Youth and Family, and the present day Oranga Tamariki.

12 **MR COSTER:** Yeah. Certainly, Police assistance was and is still called for in some
13 circumstances. I can't speak to the prevalence of that and certainly Tā Kim is better placed
14 than I am to speak to the frequency of that.

15 **MS SPELMAN:** I suppose it just broadens out what we're thinking of, doesn't it, in terms of the
16 Police being involved not just as a Police initiated action of arrest, but actually being called
17 in as the strong arm and then having often quite a lot to do with these children and whānau
18 who were being brought into State care, both historically and today?

19 **MR COSTER:** Yeah, as I say, I can't speak to how commonly that occurred but to the extent that
20 occurred, then clearly it's relevant.

21 **MS SPELMAN:** I want to raise with you just a couple of examples of this, and I'm dealing with
22 this in this topic of abuse by Police because that's how it has been described in evidence
23 that the Royal Commission has heard. So, this example is from survivors who gave
24 evidence as a whānau group at a previous hearing, and they're talking about a period in
25 1964, being at home and they describe this as "the day we were ripped from our parents".
26 And I'll just read you a little bit of this for your comment:

27 "On a date in 1964 a swarm of people came to our house in the early hours of the
28 morning, like thieves they invaded our home. I watched in sheer horror as two uniformed
29 strangers manhandled my mum. She was grasping hold of cupboard handles in the kitchen
30 for dear life, I watched as they slammed my mum down to the floor on her back. One of
31 them dropped knee first on to my mum's stomach to pin her down, the other one quickly
32 shackled her hands together with handcuffs. They stood up and grabbed a handcuff each.
33 I remember they both laughed like they had achieved a great feat and dragged her out the

1 door. I went into shock after this. I was five and a half years old, and I had never seen this
2 sort of violence in my entire childhood."

3 Now, these witnesses who gave this evidence are now in their later ages and this
4 experience from their childhood is obviously very vivid for them in terms of the impact that
5 it's had, and that extension of the risk for and at times the actual abuse of people by Police
6 in that enforcement role for Social Welfare. What's your comment on the experience of
7 those who experienced Police service in that way?

8 **MR COSTER:** Obviously that's a terrifying account and from the experience of that person it's
9 very hard to defend it and I won't try to. Obviously, what isn't available to any of us is
10 what information those officers were acting on. Police's role in those situations when
11 called on to assist is really about making the situation safe for the exercise of a statutory
12 function by another agency. And so, our actions will turn around the information that's
13 been provided to us, but clearly if that's how it played, I can't defend that and I won't
14 attempt to, but just to make our role clear, we are not the ones to initiate actions to remove
15 children, but we do support it and clearly it's our job to do that fairly and professionally.

16 So, that kind of situation is not one that would ever have been acceptable.

17 **CHAIR:** Ms Spelman, you might be coming to this and if you are I'll leave it. Is there any,- what
18 underpins that relationship between the Police and, today, Oranga- Tamariki and do you
19 know anything about what preceded it? Is it statutory, is it a memorandum of
20 understanding? Do you know what the arrangement is?

21 **MR COSTER:** It's a memorandum of understanding that brings the two agencies together around
22 our respective statutory functions, and clearly it has gone under, you know, our practices
23 around that have been very much under the microscope as a result of more recent reports
24 and investigations of this, and practice has shifted considerably, including on our part to the
25 extent possible trying to mobilise appropriate staff to deal with uplift situations, including
26 iwi liaison officers who are much, I suppose they're our experts in being culturally
27 equipped to deal with those situations, and to the extent possible Police will take a backseat
28 role to ensure safety for all rather than a hands on role.

29 **CHAIR:** How much of what you've just said is enshrined in the memorandum of understanding?
30 That's one question. And the other question, maybe for you, Deputy Commissioner, before,
31 say, before 1986, was there a formal arrangement or how did it work?

32 **MR COSTER:** Certainly, the current MOU speaks to roles and responsibilities in terms of that
33 business of uplifting children, and that's something that we --

34 **CHAIR:** Does it speak to bringing in the iwi liaison officers, for example, or is that just --

1 **MR COSTER:** I believe it does, but clearly we can produce a copy of those documents.

2 **CHAIR:** I've put you on the spot, so if you could produce it that would be handy.

3 **MR COSTER:** Absolutely, we will do that. I can't speak to whether something existed back in
4 this period,-- you might know the practice, Tania.

5 **MS KURA:** No, I wasn't involved, as a constable I wasn't aware of a memorandum of
6 understanding. However, the supporting another agency, whether it be Child, Youth and
7 Family or another agency was common practice because the request may come through a
8 Senior Sergeant to direct you to go and support somebody else, just like the same with
9 Court, so I wasn't aware of a memorandum of understanding, but I was aware that the
10 practice was that if we were called upon, we helped.

11 **CHAIR:** It might be useful, I think, if we were to ask if you could provide perhaps any
12 arrangements, if we don't already have it. Do we know if we have them already?

13 **MS SPELMAN:** I'll just check, we don't have it in the bundle for this hearing, but I'll just check if
14 we can bring that up.

15 **CHAIR:** Something we can do later.

16 **MR COSTER:** We can confirm in a break on that.

17 **CHAIR:** Good, thank you.

18 **COMMISSIONER ERUETI:** Can I briefly ask too, in that memorandum of understanding is
19 there clarity about the role and responsibility of different agencies when it comes to child
20 offending? So, OT and Police?

21 **MR COSTER:** Child offending is a combination of statutory provision and policy and practice,
22 so slightly different from Care and Protection side, and it's very dependent on the age of the
23 young person as well. It's actually quite a complicated set of arrangements for who's
24 responsible for what and depends on the seriousness of the offending. It's tricky to
25 navigate, but we have our Youth Aid experts who do that on our behalf.

26 The short answer is there's a bit more to that one than uplifts, which sit very clearly
27 in the Care and Protection arena, led by Oranga Tamariki supported by us with an MOU
28 that sits around that.

29 **MS SPELMAN:** I just want to follow up with one more question on the topic raised by our Chair.
30 So you mentioned, Deputy Commissioner, that general practice of a request would come
31 through from someone senior and the officers on the ground would go and do that, and this
32 may be clear, but just to clarify, there wasn't at that time a role for Police in terms of acting
33 as a check on the decision-making of that other agency, for example in this particular case
34 where there were eight children under 10 years old living and the children were uplifted

1 due to a perception that they weren't being cared for, that wouldn't be something that Police
2 would have an evaluative function or any sort of monitoring or check function of whether
3 in fact that uplift should be carried out?

4 **MS KURA:** I don't recall that practice as such, I recall it being a support for safety was the
5 function that we had in my particular experience.

6 **MR COSTER:** I would add to that that even today it's not Police's role to second guess Oranga
7 Tamariki's statutory decision-making. However, if an uplift is to be conducted, Police will
8 be part of the planning and a key question there would be, what's an appropriate manner for
9 this to be undertaken in, and if there have been situations of abuse then clearly we may
10 have some visibility of what those are from our statutory perspective.

11 The complexity that you can get in these situations is what do we know about the
12 circumstances. Unfortunately today, we may have situations where firearms are present,
13 where methamphetamine is being used, and so there's actually quite a lot of planning that
14 may need to go into how to safely effect an uplift. Presumably, there were versions of
15 those kinds of difficulties going back to this period, but it's a little difficult to speak to what
16 the practices were around that.

17 **MS SPELMAN:** Is it fair to say that it's not a role Police would want to be doing but they only do
18 it if requested and if it's considered to be necessary from a safety perspective?

19 **MR COSTER:** Absolutely.

20 **MS SPELMAN:** So, from the Police's view it would be much better if there were other ways to
21 deal with those type of uplift situations that didn't require the presence of uniformed police
22 officers?

23 **MR COSTER:** Absolutely.

24 **MS SPELMAN:** And I suppose that situation, we have seen very recently, and I know, Deputy
25 Commissioner, in terms of the Hawke's Bay uplift at the time when you were District
26 Commander, we see some of these same themes and issues of the presence of uniformed
27 police officers perhaps aggravating a situation due to some of the history that Police have
28 with particular communities?

29 **MS KURA:** If I think about the Hawke's Bay incident, I also am aware that we used plain clothes
30 officers to try and balance, we used connections with iwi leaders as well, Police connected
31 to those people as a part of trying to understand the circumstances, and I know that our
32 people that were involved in those situations were really mindful of "can I seek some
33 advice and some support from senior leaders about what the best practice is now".

1 So, if I think about the situations in the 1980s compared to that baby uplift, our
2 people did question a lot more about why here and why now, but that doesn't mean we have
3 the statutory obligation to override that or anything like that. So, I think the officers these
4 days will add or question, not because they have to, but because they know it's the right
5 thing to do.

6 **MR COSTER:** And a strength we would bring as an organisation now is the strong relationships
7 we enjoy right across the country with iwi. So, our people are very creative about how to
8 try and resolve situations in a way that deescalates, and so we're much less likely to turn up
9 at a home with a show of force than we ever have been in the past. And we continue to try
10 and work on that, and I think our people are really smart actually about how they're trying
11 to resolve some of these very difficult situations we face.

12 **MS SPELMAN:** It's an interesting point in terms of accountability and decision-making, and
13 I just would like you to clarify, is what you're saying that Police do now have a role in
14 acting as a check on the power of Oranga Tamariki, informally as you've said, by asking
15 those sorts of questions and pushing back on what the planning is? Because that does
16 sound quite different to the historical position.

17 **MR COSTER:** For me, and I think what Deputy Commissioner Kura was speaking to is we have
18 a role in making sure that the manner of any uplift in which Police is involved is
19 appropriate. It's not our place and nor should it be to second guess statutory decision-
20 making of another agency. So, we need to be able to play our part in a way that reflects our
21 values, our legal responsibilities, and so that speaks to manner of uplift more than whether
22 an uplift is or isn't the appropriate thing to do.

23 **MS SPELMAN:** I'd like to turn now to a different section of this abuse by Police topic, and you'll
24 appreciate that there's been a lot of evidence about this and I'm just selecting particular
25 examples to highlight a broader point. So, there are two examples that have come through
26 in evidence which are quite similar to each other, although from different time periods.
27 And it's about assault by Police for people who are in Police custody as suspects in order to
28 obtain a confession.

29 So, in the first example, the evidence that was heard was that, I'll just read this part
30 to you:

31 "While I was in Police custody police officer handcuffed my hands behind my chair
32 and hit me around the head with a phone book. He used a phone book so it wouldn't leave
33 marks. While he was hitting me with the phone book I could see stars and he kept doing it
34 until I admitted and confessed to the crime. I agreed with him to make him stop."

1 Now again, I'm not asking you to comment on whether that practice was widespread
2 or not, that's something that of course the Commission can make its own findings about

3 **CHAIR:** Do we have the age of that person?

4 **MS SPELMAN:** 15 at the time.

5 **CHAIR:** Thank you.

6 **MS SPELMAN:** But I do want you to comment on that in terms of obviously that is a fairly
7 widespread allegation in terms of historical, the more, it's still an allegation in current days
8 of course, but historically a much heavier handed approach from Police in terms of use of
9 force, excessive force, when manhandling, rough handling, all those sorts of words. Would
10 you accept that that was considered more common, more acceptable back then in terms of
11 that 1970s, 1980s sort of practice?

12 **MR COSTER:** It's hard to imagine that violence to that extent has ever been acceptable, although
13 I accept that situations like that have happened. What does appear to have been acceptable
14 and in fact we still get community members reflecting positively on what they would think
15 of as the good old days where the community cop turned up and gave them a kick up the
16 pants and sent them on their way.

17 And so, without a doubt, as a community and as an organisation we have shifted
18 considerably in our views about the use of force to resolve situations. And I can certainly
19 say today there are high levels of accountability for any actions that overstep the line and
20 we do charge our people when they use force beyond what's permitted by legislation.

21 **MS SPELMAN:** I suppose I just want to drill into this I suppose, ask it from a different way, and
22 this might be better for you, Deputy Commissioner, just because of you starting earlier in
23 the Police. So, I take your point, Commissioner, that this sort of straight-out assault would
24 never be acceptable at an official level. But what I'm asking about is more the culture at
25 that time in terms of within perhaps constables, more junior, inexperienced Police and what
26 they were taught and what they saw and how they behaved at that time, which you'll
27 appreciate is quite a separate point to the official Police line which I'm sure back then
28 hopefully would have been "don't assault citizens".

29 **MR COSTER:** Even by the time I joined I feel like that culture wasn't where you're talking about,
30 but...

31 **MS SPELMAN:** New Zealand was a different place in the 1970s and 1980s, and I'm sure you'll
32 both appreciate that our survivors who are here are very interested in your honest
33 assessment of this time.

1 **MS KURA:** So, I joined in 1987 and I actually went to Canterbury, I was in Christchurch, and for
2 me there were some instances of knowing, not that I saw, but knowing that potentially
3 somebody had been assaulted for a confession. And I do recall thinking to myself, I don't
4 know about violence, it's not within my remit, that's not how I've been brought up, it's not
5 something I know about; if I have to do that to get a confession from somebody it's not the
6 organisation for me. What I probably realised, well, what I realised is actually that's not a
7 widespread thing that everybody did but when you first start that was something that did
8 surprise me, that I had heard that that had happened, I didn't see that behaviour, but I
9 had - other- people would talk about it.

10 **MS SPELMAN:** I should make clear, of course, it's not at all directed, any allegations towards
11 you personally, Deputy Commissioner.

12 Just, interestingly, another example which is strikingly similar of this practice which
13 is from a woman survivor who was a child --as a Māori child had abuse in care but this is
14 about an experience as a young adult which of course is within our scope as well. And she
15 describes being interrogated at the Auckland police station by detectives, so not junior
16 police officers, and she said:

17 "When I was at the police station they put us in separate rooms, first came in and
18 said to me..."

19 Wanting her to sign a statement, essentially, it's quite long so I'll just paraphrase this
20 section. So, trying to get her to sign a statement, swearing back and forth, and then one of
21 the detectives coming back in and saying:

22 "There's ways that we can make you talk, you know, either you're going to talk or
23 your co-offender's going to talk and I was, like, what are you fucking talking about? He
24 goes, well, we can hit you in places, we can hit you in places where you won't bruise.
25 Well, that's exactly what they done, started hitting me with the phone book in my stomach
26 on the sides of me where I wouldn't bruise and then came back in with a statement from the
27 guy and forcibly tried to make me sign it. Yeah, nah, I didn't sign it, I got bashed around,
28 got sent to Mt Eden Prison and after the medical found out that I was hapū with my son."

29 So, it is similar, that allegation, in terms of quite strategic violence from Police not
30 only to obtain a confession as the motive, but actually in terms of assaulting someone in
31 such a way where it would be difficult to detect. Is that level of thinking around the abuse
32 something that you remember when you spoke earlier, Deputy Commissioner, about what
33 you heard as a young police officer?

1 **MS KURA:** Not to the full extent that you talk about there, but for me in a general sense yes, that
2 there was conversation. But as a relatively, -as a very new constable, you listen and you
3 watch and you try to understand what the culture is and how you might fit, I guess,
4 is -the and- so for me it was always looking and trying to find out and to listen to see what
5 the cues were to the organisation and the insights that you might get. So, I had definitely
6 heard- of those stories in those early 80s, sorry in the late 80s.

7 **MS SPELMAN:** I suppose for police officers who may have engaged in that sort of practice, is it
8 fair to say that for them as young or perhaps not that young police officers, there were
9 strong internal rewards around things like arrests, convictions, processing cases through in
10 terms of how to succeed and get ahead in the Police and do well as a police officer, is that
11 what's behind, do you think, some of this behaviour?

12 **MS KURA:** Maybe, I couldn't say exactly, and I think that basic human rights have always
13 existed and so for me the rewarding of that type of behaviour in the promotion or going to
14 become a detective seems quite perverse in a whole lot of ways, but if I think about it might
15 be that a person got to be a senior in an incident car, or in an i-car, or they might have been,
16 I'm not so sure that it was across everybody, but there might have been some times that that
17 happened.

18 **MS SPELMAN:** Sorry, I should clarify, I don't mean rewarding the abuse, I mean rewarding
19 police officers who have higher arrest rates, who work on cases where convictions are
20 secured who generally meet that part, I know those aren't the only expectations of police
21 officers, but who meet those particular expectations, that type of behaviour would be
22 rewarded internally?

23 **MR COSTER:** Certainly, what we value in frontline staff has shifted considerably over time.
24 And if we go back to sort of the dominant expectation on Police at this time was about
25 enforcement, was about prosecuting offenders for crimes, was about solving crimes, and
26 where that's your dominant lens for success, then obviously, you know, there's desire within
27 the organisation to achieve those outcomes.

28 We have to be clear, though, that doesn't always translate into bad practice, and
29 certainly by the time I joined, you know, we may have had bad actors, but there was no
30 sense that that was the dominant way of behaving or that those bad actors, you know, went
31 from being detectives who behave like that to being senior leaders who behaved like that.

32 So, you know, my sense was, by the time I joined anyway, what we saw was
33 predominantly the right things occurring, but still within the mix of that you would have
34 bad things occur. For me, the hardest aspect of all of this is trying to put a finger on how

1 dominant was bad behaviour like that and to what extent was it accepted, and I don't think
2 it's very easy to say that even for an officer working at that time, you know, back then I'm
3 not sure how big we were, probably an organisation of somewhere between 6 and 8,000
4 staff spread across hundreds of locations around the country trying to put your finger on
5 what is the culture, well, actually, there isn't one consistent thing that occurs, particularly
6 then where we were much less connected than we are today. So, at some level you can
7 have things exist within particular stations, that may or may not be representative of what
8 was happening across the country.

9 **MS SPELMAN:** Sure, and we might again come back to this in another part of the day, but just
10 now I want to ask you very briefly, I'm conscious of my going over time already, about
11 holding children in Police cells as a form of abuse. So this topic of having children held in
12 Police cells is clearly something that's come up many, many times in recent years,
13 historically as well, and in terms of this Inquiry one report in particular that's been
14 considered is a 1997 report from the then Children's Commissioner which comprehensively
15 sets out all the things that probably are easily accepted today in terms of that practice being
16 in breach of children's rights, in breach of our human rights obligations, in breach with
17 respect to Māori children of Te Tiriti obligations.

18 And my understanding, correct me if I'm wrong, is that the Police view generally is
19 that you don't want to hold children in Police cells and you would very much like that
20 practice to stop; is that correct?

21 **MR COSTER:** Absolutely, yeah. I know you've heard from Judge Becroft, and I think he was
22 very appreciative when we acknowledged at an UN hearing on this point that is Police's
23 view we shouldn't have children and young people in Police cells. However, we face a
24 very real practical difficulty as a country which is large geography relative to population.
25 Some people for their own safety, young people for their own safety and the safety of the
26 public do need to be in a secure place and it's not always possible, at least on current
27 infrastructure, to have them somewhere other than a Police cell. So, on rare occasions it
28 still occurs, and we do our level best, certainly with our understanding today, to make sure
29 that those young people are looked after in the best possible way.

30 But those environments are not really suitable for young people, and there's no
31 realistic chance of making them so, given what would be involved in achieving that.

32 **MS SPELMAN:** Sure. And I suppose there's two points within this, isn't there, there's the first
33 one which is that in many respects Police don't have control over when a child is ordered to

1 come into Police custody, you're then stuck with them, essentially, and you have to make
2 the best of that situation. But with --

3 **MR COSTER:** I think most commonly it will occur when Police apprehends a young person
4 who, for whatever reason, needs to be in secure care and it will be the gap between when
5 we pick them up and when they're able to be placed somewhere else.

6 **MS SPELMAN:** Yes, although I suppose the examples that have been highlighted previously by
7 Judge Becroft and indeed by the former Children's Commissioner back in 1977 also
8 referred to examples when there were times where Social Welfare or Child, Youth and
9 Family weren't able to have a place for somebody to go and so instead they had to be
10 ordered by the Court to be held in Police custody for a period. So that is part of that
11 practice as well.

12 But the point, I suppose, that was made back in 1997 is, separate to the fact that
13 Police don't always have control over whether the child is coming into their custody, that
14 once they're there, or knowing that they may be coming, there is a responsibility for Police
15 to ensure that the facilities they're held in are suitable. So, my question is, given we've had
16 this issue in the public forum for 25 years, I don't understand there to have been any work
17 done by Police in terms of making Police cells a place where it wouldn't be so traumatic for
18 children to be held in the times when they are.

19 **MR COSTER:** The nature of Police cells and the other people who come to be in those general
20 areas means that they will never be suitable places for young people, particularly young
21 people who are there for Care and Protection purposes. And --we simply don't see that
22 as-- Police cells as the appropriate place to be investing in order to address that problem.

23 **MS SPELMAN:** What would need to be done to Police cells to make it a more appropriate place
24 for a young person or a child to be held?

25 **MR COSTER:** That's not the way you would set out to solve that problem. It really is looking at
26 how we have other places where young people can go, where they can be cared for.

27 **MS SPELMAN:** Given that the Police, then, has made that decision of over 25 years that's a
28 significant investment resource issue if you were to change or upgrade your facilities, and
29 I take your point that's not the direction you want to go in. I suppose the flip-side of that,
30 then, is what has the Police done to end this practice? What's been the role of Police,
31 separate to the point you made about the UN?

32 **MR COSTER:** I don't think that view has been held by Police for 25 years, not as clearly as I've
33 stated it. So just to be clear, I think clearly some of this was accepted practice at the time
34 that it occurred. Police is working incredibly hard to improve our custody environments

1 not just for young people but for all people who come through them. Clearly, they are
2 places where there's high risk of suicide and they create extra complication for people who
3 often are experiencing one of the worst moments of their life.

4 It's very expensive infrastructure, which is very hard built, you can't just move the
5 walls because they're thick concrete. So that is a significant and longterm programme of
6 work.

7 For young people our focus is on working with Oranga Tamariki about how we can
8 ensure suitable care in the places where that is required around the country, and we
9 carefully monitor the presence of young people in Police cells and work very
10 hard- including- internal escalations when that occurs, and work very hard to make sure
11 that that situation is addressed as fast as possible.

12 **MS SPELMAN:** And, of course, you can't speak to the infrastructure of another agency, but am
13 I right in taking from what you're saying that if the present day Oranga Tamariki and
14 broader infrastructure was in place in a way that makes sense for the large geographic
15 distribution we have of our population, that that will always be preferable than having
16 children in Police cells?

17 **MR COSTER:** Yes.

18 **MS SPELMAN:** In that sense it sounds as though Police probably would support calls that Judge
19 Becroft has made for those particular provisions of the Act to be repealed because without
20 the repeal it doesn't seem as though this practice is stopping even if it has reduced over
21 time, it does still happen today.

22 **MR COSTER:** The bit that's beyond my remit is whether spending tens of millions of dollars on
23 addressing that issue is a better investment than intervening to create safer home
24 environments or intervening to better provide more suitable education for young people
25 who are struggling or the range of other public investments that you might want to make in
26 this area.

27 Those decisions sit with ministers, and we can simply agree that Police cells are not
28 the best place for young people.

29 **CHAIR:** Just a short question from me, Commissioner, I don't expect you to know the answer, do
30 you know if records are kept about the number of children who are kept in custody?

31 **MR COSTER:** Yes, we do capture that through our District Command Centres, so -I would need
32 to check whether that can be wrapped up into a view that we could provide to the
33 Commission, but certainly for our own -real-time- internal purposes we keep a track on the
34 presence of young persons --

1 **CHAIR:** That would be useful, I'm not sure if we have that already, I don't want to put you to any
2 additional work, but if we haven't, I would be interested to know about trends and patterns,
3 let's say from 1989 through to the present about the number of children per annum, or
4 whatever, have been held in custody by the Police for whatever reason.

5 **MR COSTER:** Thank you. We will see, I believe the act of monitoring of this has only been a
6 more recent practice in recent years, but we will check what we can.

7 **CHAIR:** Whatever you can provide would be welcome, thank you.

8 **MS SPELMAN:** Thank you.

9 **CHAIR:** Thank you, Ms Spelman.

10 **MS SPELMAN:** I'd like to turn now to another topic which is Te Tiriti o Waitangi and the
11 obligations of Police. So, we've read, of course, the material you've provided in your brief
12 in your responses and as I understand it the first piece of work that was really done on this
13 was, again, Tā Kim Workman back in 1998 and his work on whakakaupapatanga Te Tiriti;
14 is that correct?

15 **MR COSTER:** Certainly, there was a lot of thinking that occurred around that time which led to
16 the establishment of our Iwi Liaison Officer network and the organisation has grown in
17 maturity from late 90s through to where we are today, so that was certainly the time that it
18 occurred and there were a range of people, I believe, who contributed to that thinking.

19 **MS SPELMAN:** Sure. And in many respects that's earlier than some other agencies, but that sort
20 of mark around the late 90s seems to be when that work really began within Police.

21 **MR COSTER:** I'm just actually looking at my material here. The first Iwi Liaison Officer was
22 appointed in 1996, but I think the real momentum on that was probably more like '99, but
23 yeah, late 90s.

24 **MS SPELMAN:** Sure. You would accept, of course, that the Te Tiriti obligations pre-date that
25 1996 or 1998 date.

26 **MR COSTER:** Of course.

27 **MS SPELMAN:** They go back. Part of that is that Police have an obligation to actively protect
28 Māori who are in Police care.

29 **MR COSTER:** We have a duty to actively protect all people in our care and Te Tiriti is obviously
30 a really important founding document in terms of that duty.

31 **MS SPELMAN:** Sure. Let's perhaps be clear, then. Of course, you have a duty to protect
32 members of the public, that's part of your job, but here I'm asking about specifically your
33 Te Tiriti obligations. So, in terms of those obligation,s you accept that you have an
34 obligation to actively protect Māori who are in Police care.

1 **MR COSTER:** Absolutely, yeah.

2 **MS SPELMAN:** And that the nature of that concept of active protection means active as opposed
3 to reactive or passive, is that how you understand it?

4 **MR COSTER:** Obviously there is a complex interplay between Te Tiriti and statutory
5 frameworks that set up duties for different organisations and then the overlay of other
6 policies. So, to speak to what was the understanding of those duties at the time you're
7 talking about, I think is difficult and I suspect- hopefully you are not asking me to do that.
8 In terms of how we see things today, Te Tiriti- is a really important point of reference for
9 us and that's partly why in our design or thinking about Police custody environments we
10 have been engaging in a conversation with Ngāti Kahungunu about proving out what a
11 better approach into custody might look like with a view not to just getting a person to a
12 court, but with a view to getting them the assistance they need from the moment of that first
13 intervention.

14 That work is in its early stages, but we have signed a kāwenata with Ngāti
15 Kahungunu part of which is thinking about that work.

16 **MS SPELMAN:** Thank you for that answer. In terms of the question that I asked, though, it was
17 about, I suppose, the nature of these obligations being active, being something that Police
18 are themselves thinking about and taking action on as opposed to or in addition to reacting
19 and responding to things as they happen, and I'm just checking --

20 **MR COSTER:** Certainly, that's true of our practice today.

21 **MS SPELMAN:** That's your understanding.

22 Now, I note your hesitation to answer questions about a historical period but I do
23 have some broad questions for you about that. And, I suppose, particularly looking at that
24 1950 to 1999 period which of course is what the Inquiry is doing, what is your
25 understanding of what Police did, if anything, to uphold those particular obligations?

26 **MR COSTER:** My understanding is fairly limited. I note that across all of Government
27 recognition of the importance of Te Tiriti really didn't start until probably mid-70s and has
28 matured slowly since then. So, I believe where Police was at was reflective of where
29 Government as a whole and probably society as a whole was at at that time.

30 **MS SPELMAN:** Sure. So, it's probably fair to say, then, that pre-1990s Police haven't been
31 particularly responsive to tangata whenua in that more historical period.

32 **MR COSTER:** I was responding probably quite specifically to Te Tiriti in terms of its
33 significance but to the best of my knowledge it has been acknowledgment of Te Tiriti that

1 has enabled better relationships with Māori and more appropriate ways of working with and
2 for Māori.

3 But I'm also confident that at a personal level to the extent that community policing
4 and relationships with the community were a feature of what we have always done, that
5 there will have been relationships in place between local iwi and local police officers. And
6 so, I'm reluctant to tar with one brush everything that happened through this period,
7 because I strongly suspect that there were respectful relationships within communities that
8 allowed matters to be resolved without formal criminal justice intervention.

9 That's more a feature, has been a more reliable feature of policing in rural and
10 provincial locations than it has been in our cities.

11 **MS SPELMAN:** I suppose another aspect of the obligations and relationships between Police and
12 Māori is the nature of the individual world view and the collective world view. I think,
13 Deputy Commissioner, you've touched on this a little earlier in terms of that change that
14 came in with the 1989 Act in your experience.

15 On this point, Tā Kim has said that:

16 "Back then the focus was entirely on the individual behaviour of the young offender
17 and the whānau didn't actually figure in the process. The idea of holding a hui with whānau
18 to discuss what happened and to work out how to prevent future offending was anathema to
19 most Pākehā officers."

20 Is that a fair statement of that historical period we're talking about?

21 **MS KURA:** Yes, that would be how that's- why the change with the Act actually brought- those
22 conditions to the fore and asked everyone to think more consciously about how we would
23 do that. It was quite a change.

24 **MS SPELMAN:** In terms of the statistics we've touched on a couple of times, but I haven't gone
25 through them in great detail because I trust you're aware of them from the material that
26 we've given you, but the way that Māori children and young people in particular
27 disproportionately feature in the statistics of this time period, 1950s to 1970s in particular,
28 of charges, of appearing in the Children's Court, of being held in custody, of being
29 sentenced to institutions, in your view is the disproportionality that's shown in that data
30 inconsistent with Te Tiriti?

31 **MR COSTER:** At an outcome level I think we have to assume that it is. From a Police
32 perspective, the work that we now have going under the banner of Understanding Policing
33 Delivery is about understanding what sits behind that, because clearly, it's a complex array

1 of issues that leads to anyone coming to Police attention, and we often are right at the
2 bottom of the cliff.

3 The things that need to come together for a young person to be well, are complex,
4 many and varied and almost entirely sit out of the Police domain. And so but- I think, you
5 know, I think- it's uncontentious that if we have proportionally many more Māori in the
6 criminal justice system than we ought to have, that somewhere something has gone wrong.

7 **MS SPELMAN:** Okay. In terms of -- I know you've raised again the more recent work that
8 Police is doing, and in terms of that and of course Police are also involved in some
9 proceedings before the Waitangi Tribunal on related topics, you would know then that in
10 terms of the articulation of the tribunal of the rights and the Māori right to tino
11 rangatiratanga over taonga, do you accept that that includes whānau and tamariki Māori in
12 that expression of taonga which gives rise to these obligations?

13 **MR COSTER:** I just don't think I'm the best or most appropriate witness to be forming a view on
14 the scope of Te Tiriti, I can --

15 **MS SPELMAN:** Fortunately for you the tribunal has formed that view. What this question is is
16 for you as Commissioner of Police, given that's a view that's been articulated in some detail
17 by the tribunal, who as you perhaps allude to, are the ones appropriately placed to describe
18 that. What I'm asking is, the Police as an organisation, do you accept that, that that
19 articulation of taonga includes whānau and tamariki Māori?

20 **MR COSTER:** I can accept that for any culture our children are taonga, and that needs to shape
21 and inform the way all State agencies treat children. What I can't probably do is speak with
22 confidence to the extent the Treaty describes that and how it relates to children and I think
23 there's an important cultural aspect to that as well.

24 So, I'm certainly not going to contest it, but I don't really feel qualified to speak with
25 confidence on the meaning of the Treaty on this topic.

26 **MS SPELMAN:** It sounds as though you're prepared to accept that as a general point about
27 taonga of all cultures, that that would include children and whānau but not prepared to
28 accept that in relation to Māori in the context of these specific obligations?

29 **MR COSTER:** I think when you posed the question you tied it in with its significance in terms of
30 tino rangatiratanga, which raises a range of questions for me about the role of the State in
31 protecting the wellbeing of young people and how that sits in tension with the concept of
32 tino rangatiratanga under the Treaty and that's just well out of my domain, but at a level of
33 principle for Māori, rangatahi, mokopuna, taonga, well, it's self-evident that they are. And
34 so hopefully that's clear.

1 listening and obviously have had representatives in attendance at previous hearings. I just
2 wondered what some of the particular impacts for Māori that Police have heard and have
3 been struck by, what have some of those reflections been for you in terms of what survivor
4 evidence we've heard to date?

5 **MR COSTER:** Obviously the survivor stories that we've heard have been confronting and have
6 reflected circumstances where the Police response did not provide them with the safety or
7 the protection that they would have expected in the circumstances.

8 I think as it relates to Māori, this is part of a broader issue around the extent to
9 which agency responses are suitable for addressing the issues that exist within Māori
10 communities, and in particular the importance of working in partnership to find solutions.
11 And as I've alluded to, much has changed in that regard in the last 20, 25 years.

12 But it's evident that the responses that occurred during the period in question didn't
13 reflect the needs of Māori communities and didn't reflect what for them would have been
14 the best way to resolve the situations that existed.

15 So, you know, that's confronting and our commitment as to where we are today is to
16 make sure that to the extent possible our practice is in partnership with Māori and is getting
17 us to the most appropriate resolutions for the situations that we face.

18 **MS SPELMAN:** Going forward, just to build on what you've said and thinking about measuring
19 success or measuring progress in these areas, what does successfully honouring Te Tiriti
20 look like for Police?

21 **MR COSTER:** This clearly needs to be multifaceted, because the problems that lead to people
22 coming into contact with Police are so many and varied, you know, across the spectrum of
23 family harm, mental health, youth offending, youth suicide, gangs, there's no one answer
24 that from a Māori perspective is going to address all of those issues, except for that it's in
25 partnership and that it is culturally appropriate. And so the kinds of things that are making
26 a really big difference here, Te Pae Oranga I mentioned in my evidence, is a marae based
27 response to low level offending, supported by infrastructure on marae to intervene in the
28 underlying causes of offending rather than simply respond to symptoms, and as that's been
29 evaluated, we've proven that it works, it's a 22% reduction in harm from reoffending for
30 cases that have gone through Te Pae Oranga as compared to cases that have gone through
31 the mainstream courts. And so, we're expanding that now, including to youth panels to
32 allow a greater range of people to access that response.

33 **MS SPELMAN:** Would you like to see the threshold in terms of offences that can be referred to
34 Te Pae Oranga increased?

1 **MR COSTER:** There's a balancing act to be struck in all of this, the more serious the offending,
2 clearly community demands a response that reflects harm done to a victim. But Police's
3 driving focus is around our mission which is to prevent crime and harm through exceptional
4 policing and as a decision point we're really trying to push towards what are the
5 interventions that will prevent crime and harm.

6 And so that tends to take us to asking the question, is there anything that we could
7 do with this offender to reduce the risk of future harm, and that puts a slightly different take
8 on some of those issues.

9 I would note that the capability to respond in this way on marae has only really
10 come about through the process of Treaty settlements where iwi have been able to build the
11 capital and the, even to some extent the cultural capital, to be able to provide responses on
12 marae. So, policing and the preventative initiatives that we're putting in place have come
13 partly through the vehicle of Treaty settlements that have enabled iwi to, I suppose, be
14 better placed to have those responses in partnership with us.

15 Clearly that's not an unlimited capacity, so we might desire to put a whole lot more
16 through those kinds of services all around the country, we have to work at the pace of the
17 services that exist in a place and the resourcing available to then be able to take referrals
18 from us.

19 **MS SPELMAN:** Sure. So perhaps generally supported provided it could be -the need could be
20 met by the other agencies and the other support that needs to be in place to ensure that
21 something like Te Pae Oranga- is successful.

22 **MR COSTER:** Yes, qualified by unfortunately many of the people that we deal with have
23 become so entrenched in their offending that despite repeated attempts to deal with the
24 underlying causes, the trauma leaves us with few options. And so, the key in all of this is to
25 avoid that escalation early in people's lives at a stage where it's still possible to have that
26 preventative effect.

27 **MS SPELMAN:** In terms of that success, and a future looking question, is it fair to say that other
28 parts of that would look like continuation of the work you're doing on diversity within the
29 Police force, the training that you've referred to to make sure that all your police officers
30 are fully equipped to deal with the people they're serving?

31 **MR COSTER:** Diversity is clearly really important. By itself it's not the answer. If you come
32 from a diverse background but you come into a place where the culture doesn't allow you to
33 express that diversity, then it can be squashed, and so diversity is key, a culture that enables
34 that diversity to be expressed in the right way in the organisation is key, and also

1 recognising that all of our staff need a level of competence regardless of their background
2 to engage with vulnerable people, diverse communities, and at the same time recognising
3 that we put a lot of expectation on our frontline, and we could have them continuously in
4 training and they still probably wouldn't know as much as we'd like them to know about
5 everything that they might come across with the breadth of their jobs.

6 **MS SPELMAN:** That point you've just raised, Commissioner about diversity alone is not enough
7 and it's very dependent on the culture that someone's going into, I wonder, I'm conscious,
8 Deputy Commissioner, this is probably your particular area, and I anticipate that you will
9 both say again that the Police have come a long way from the past. But before we get to
10 that, I do just want to put a couple more historical points you to, because I think it's
11 important context in terms of who was in the Police historically before we move to today.

12 So back in 1950, according to Tā Kim, there was one Māori police officer in
13 New Zealand and this, I should say, we don't need to bring this document up, but just for
14 reference this is CRN 0000157 from the report Hāhā-uri Hāhā-tea Māori Involvement in
15 State Care and a quote from Tā Kim that's within that report.

16 So, he says around that same period, the 1950s, the Commissioner surveyed the
17 Police to see how they felt about recruiting Māori into the Police, and the staff were almost
18 unanimously opposed to the idea. The view is that if you employed Māori the Pākehā
19 would resent being dealt with by Māori and that they might be inclined to let their own
20 people off the hook, so it was decided that Māori were unsuitable for recruitment at that
21 time. And then moving forward to 1965, this is a quote from Tā Kim's evidence at the
22 contextual hearing, which is TRN 0000427, and this is moving forward about 15 years to
23 1965:

24 "Māori police officers were very much in the minority and in 1965 Commissioner
25 Urquhart declared that Chinese, Hindu,- I think he meant Indians--,-- and Pacific Islanders
26 were unsuited to policing and would not be recruited. He stated that apart from Māori
27 policing should only be done by the white races."

28 So, before we speak about today and the work that obviously is squarely within
29 your domain, I just want you to both reflect on that, because obviously that whakapapa is
30 very important in terms of the organisation that you're leading today. So, what are your
31 comments on that fairly recent history?

32 **MS KURA:** I guess if I think about 1950 1965 it's surprising that I'm still in the Police, isn't it, in
33 2022 if the whakapapa hasn't changed and we haven't had a changing journey? Sad, is
34 probably the way that I would think about those statements, is that it's sad that for the

1 judgments, the discrimination that was exhibited by some of our leaders that don't have the
2 foresight that we have today, is probably how I feel about it.

3 **MS SPELMAN:** And perhaps another aspect of that is that Tā Kim spoke about at the time was
4 that Police culture is representative in some senses of broader New Zealand society and so,
5 by and large, Kim said the racism that exists within the Police also exists within our larger
6 society as a reflection of that.

7 Does that accord with your view, Deputy Commissioner?

8 **MS KURA:** Yeah, I think so, I think about probably from a personal level, my parents as a
9 Pākehā mother, Māori father, what they would have experienced, so I think that
10 that's- back- in those days it would have been exactly what they experienced.

11 **MS SPELMAN:** So, you alluded just before to the journey and the way that's come, is that
12 something going forward in terms of Police upholding its obligations that you see is the
13 force being representative of the communities that it's serving?

14 **MS KURA:** Absolutely. I think that -- I think when I joined in 1987 there was about even 10%
15 women and now when we've just hit 25%, significantly different environment for I think
16 our people to be able to thrive in when you can work with somebody else who looks like
17 you, who thinks like you, who has similar values to you, it means that you have the courage
18 to do some things that might want to challenge status quo, that might want to be forward
19 thinking, so I think the diversity is a key for us but it has to be in an environment where you
20 feel safe to be able to express who you really are.

21 **MS SPELMAN:** And bearing in mind the progress that's been made, where do you see things in
22 terms of how much more there is to do?

23 **MS KURA:** How long is a piece of string? There is as much as -I think we have to be aligned
24 with society, we can't go beyond what is potentially sitting in our communities, because we
25 find -that -I think about recently in my experience iwi check points during Covid, quite
26 interesting about how that divided New Zealanders and the way that they thought about
27 how Police should be involved in that particular activity. We thought about it from a safety
28 perspective, from about how we keep everybody safe and yet our communities may well
29 have had a lot of trouble and it probably divided our organisation in some ways too about
30 why are we policing in this way, we haven't done this before, but we were willing to
31 actually consider- more than one view and think about doing things differently.

32 **COMMISSIONER STEENSON:** Can I just ask a question of clarification. You were talking
33 about how that was reflective of society, so the views within the Police, the culture. Would
34 you say that rather than society views, that was actually those who held power's views?

1 **MS KURA:** I'm not sure about that.

2 **COMMISSIONER STEENSON:** Because I'm sure Māori who were part of society would have
3 wanted to have been recruited, for example.

4 **MS KURA:** But I also think that there would have been Pākehā that -and I think about my own
5 family, actually, the ability to even think that that was a possibility probably didn't exist
6 either. So,- I do think a little bit about you don't know what you don't you know, or what
7 you can't dream about, and so being forced to do something different that you don't know is
8 possible, I do think we were reflective of society.

9 **COMMISSIONER STEENSON:** I guess what I'm getting to, so that reflection of society was in
10 fact a reflection of the power that was held in parts of society and not held in others?

11 **MS KURA:** I'm not sure I understand that.

12 **MR COSTER:** I don't want to speak for you, Tania, but it seems to me that even for Māori in the
13 organisation at that time, the way of working was, and the way things were was somewhat
14 accepted, not by all, and not in every respect, but the views that exist within Police largely
15 reflect the dominant views within society. Of course there are always people who see a
16 different possibility and who come from a very different place.

17 But it seems as though society at that time was pretty homogenous in the way it
18 responded to things, you know, in the majority, not in all communities.

19 As Tania has alluded to, we, --the way I'd say it, it's hard to outperform the
20 community that surrounds you, and when you push the boundary on that it creates tension
21 and it creates pushback, it doesn't make it the wrong thing to do, but to some extent what
22 occurred inside of policing in this time, it wouldn't have occurred if society had condemned
23 it.

24 **COMMISSIONER STEENSON:** I guess my question is a slightly different way of looking at it.
25 If Māori, for example, had been in positions like Government and were able to see
26 possibilities for themselves and have tino rangatiratanga in those spaces, then- and- a say,
27 then that would have been somewhat a different reflection on society. But I take your
28 point, that because they didn't even feel they had that, to me that kind of gives me the
29 answer, thank you.

30 **MS SPELMAN:** I'll just stick with this point in a different way, so we've spoken about the
31 make-up of Police and obviously historically been a predominantly Pākehā organisation,
32 that changing over time, so that's the inwards culture. And I hear your acceptance of that
33 point about the general reflection of what's in society anyway. But going, I suppose, a layer
34 deeper than that, the way that, again in the evidence from the contextual hearing Tā Kim

1 described it, was that you take the general racism in society, and of course police officers
2 are also members of society, but then within the closed culture of Police which perhaps
3 particularly at that time had values around loyalty and conformity, uniformity, Tā Kim said
4 in his experience:

5 "... was that within that closed culture there was reinforcement of practices around
6 the treatment of offenders or of members of the public that sort of scaled that level of
7 racism up some notches."

8 And in particular he refers to a few examples, one of them being the Dawn Raids
9 which of course targeted Pacific communities which he described as "incomprehensibly
10 racist".

11 So, I wonder if - we've- got the general point about Police being a reflection on
12 society, but what about that deeper point of within Police culture racist views perhaps
13 being, if not encouraged, but allowed or reinforced or intensified. What's your comment on
14 that? And I ask that about historical and we'll turn secondly to the future.

15 **MR COSTER:** There are aspects of policing that -clearly we're dealing with the most problematic
16 behaviours in society and we are at the sharp end of those interactions, and that can, you
17 know, it's been well studied internationally that that can lead to a level of animosity
18 between people that you don't see in other contexts. When you are interacting with
19 someone who may be angry or drug or alcohol affected or mentally unwell and there's
20 violence involved, at a human level that leads to ways of interacting that have to- be
21 amongst the least healthy ways that people can interact. So that is just a reality of the
22 nature of policing.

23 Issues like Dawn Raids, for example, you know, again reflected attitudes that
24 existed in the community at that time, that was a government policy that clearly had it not
25 been something that was accepted by the community as unlikely to have occurred and
26 Police was the vehicle, or one of the vehicles through which that policy was affected, one
27 of the things we're really emphasising in our strategy today is to bring humanity to every
28 interaction, and it's about the idea of trying to see the people in front of you as human
29 beings even though if in the moment they may not be behaving like one, trying to
30 understand what's happening at a human level to drive someone to behave in the way that
31 they are.

32 That's a pretty different conversation to have inside a Police organisation, I doubt
33 you'll find any other Police organisation that has that in their strategy. But it's a recognition
34 that law enforcement interactions can tend to dehumanise in a way that other settings don't.

1 And so, I don't think we'll ever change the nature of the interactions per se in terms of the
2 context, but we can change the way our people approach those things and think about them,
3 and that's got to sit inside of the culture in the organisation.

4 **MS SPELMAN:** Thank you for that answer. I'm not sure it did deal with this question though,
5 which is just about that historical culture in the time period that Tā Kim's talking about, and
6 the perhaps more closed culture back then that Police had as opposed to now where there
7 seems to be a lot more interaction and working with communities, and whether that culture
8 did serve to scale up the level of racism that was present.

9 **MR COSTER:** I really can't speak to that. Tā Kim lived it, he's bringing his experience, I simply
10 can't say that. Maybe you have --

11 **MS KURA:** Yeah, I kind of -I think about it as that,- -I think that the closed culture as you talk
12 about was more prevalent earlier in my career than it was certainly later, and having a
13 contrary view was quite difficult in the 80s and 90s than it was later on-, so in that setting I
14 would understand why that could happen.

15 **MS SPELMAN:** Okay. I suppose another way of looking at this is considering, and again this is
16 at the historical, and I'll ask about the present in a moment, but about the level of structural
17 racism that existed, or whether or not it did exist within Police in that period we're talking
18 about. And I'm thinking about this in relation to the Waitangi Tribunal who, as you know,
19 last year had an inquiry into Oranga Tamariki which examined many of the issues that are
20 also now being examined in relation to Police here. And as part of that the Crown in those
21 proceedings, and I'm looking here to the report He Pāharakeke MSC 0008144 at page 177.

22 It's widely known, of course, that the Crown made particular concessions as part of
23 those proceedings in relation to Oranga Tamariki. And what that was, the Crown conceded
24 that:

25 "Structural racism is a feature of Oranga Tamariki and its predecessors, and has
26 resulted from various legislative policy and system settings over time. The Crown
27 acknowledges that this has had adverse effects for tamariki Māori, whānau, hapū and iwi
28 and has detrimentally affected the relationship between Māori and the Crown. Further, the
29 Crown acknowledges the role that poor practice, lack of engagement and poor cultural
30 understanding have played to create distrust throughout the Care and Protection system."

31 And clearly this hearing and those concessions were fairly fundamental when they
32 happened. And I just wondered in terms of your Police leadership whether that was
33 considered by Police. That concession made by Oranga Tamariki in relation to Police's
34 history, was that something that was considered by your leadership when it happened?

1 **MR COSTER:** I'm not aware that it was specifically, it may have been but I'm not aware that it
2 was. Clearly, we've started our own piece of work aimed at looking at structural inequality
3 inside of justice, specifically Police's role in that. It will be considered by the Waitangi
4 Tribunal.

5 **MS SPELMAN:** Thank you. Were you still? --

6 **MR COSTER:** I was just going to say, issues connected with policing will clearly be considered
7 as part of the Waitangi Tribunal's criminal justice kaupapa inquiry which Police is a key
8 part. So, yeah, that's all I can say on that.

9 **MS SPELMAN:** Sure, and the very same issues here in this forum, in this Inquiry that we're also
10 dealing with now.

11 A related aspect of that is accountability for you as Police Commissioner. In terms
12 of that, and your different functions within your role, who, if you could describe for us how
13 and to whom you're accountable?

14 **MR COSTER:** I'm operationally independent in terms of Section 16 of the Policing Act 2008.
15 However, I'm accountable to the Minister of Police for the administrative function of the
16 organisation. So, I have a split there in terms of my functions.

17 **MS SPELMAN:** And in terms of that administrative side, budget and number of police officers,
18 that sort of thing?

19 **MR COSTER:** Yes.

20 **MS SPELMAN:** But decisions about how and where Police are used and deployed, that's for you
21 to make independently.

22 **MR COSTER:** Correct.

23 **MS SPELMAN:** In terms of that independence, how do you ensure and not just you but any
24 Commissioner of Police throughout history, how do you ensure that you can exercise that
25 function independently and not, for example, be influenced by whoever the particular
26 minister of the day might be?

27 **MR COSTER:** Successive ministers have, in my observation, been pretty good about recognising
28 the operational independence of Police. The incentives are not probably to be accountable
29 for something that you don't need to be, and so that division's been respected, and -yeah-.

30 **MS SPELMAN:** I suppose the example we were discussing just before about the Dawn Raids and
31 I think you mentioned when you were talking about it that being an action reflective of the
32 community at the time but-- obviously that wasn't you as Police Commissioner back then,
33 but that was actually Police agreeing to use Police power in a certain way, which seemed

1 perhaps more influenced by the political views of the day; is that a fair summary of that
2 period?

3 **MR COSTER:** I'm not close enough to how that played in practice to understand those dynamics
4 at the time. But I need to point out that operational independence doesn't absolve us from
5 the general principle that Police will enforce the law, as it stands for the time being. And
6 so, whilst there's a level of discretion, it's not absolute.

7 **MS SPELMAN:** Sure, but the Police enforcement of the law would be done in a way that's non-
8 discriminatory, that would be the way that it should be enforced.

9 **MR COSTER:** It ought to be.

10 **MS SPELMAN:** And clearly that wasn't the case in relation to the example of the Dawn Raids;
11 would you agree with that?

12 **MR COSTER:** I think there's a question there about where the focus and effort was directed in
13 terms of the communities that may have been subject to immigration action supported by
14 Police and I think there's a pretty strong evidence base to say that the focus of that effort
15 was on the Pacific community particularly. But again, people more studied in it than I am
16 have looked at those issues and formed views, the Government's recently apologised and
17 Police actions were clearly part of that apology.

18 **MS SPELMAN:** Yes, which would make your acceptance of it I think fairly straightforward
19 I would have thought.

20 So, I know that this issue of racism has a historical point -of course it's a current
21 issue as well in terms of the understanding Police delivery work and I know that you've
22 spoken publicly about that a number of times- and it seems as though there's some
23 misunderstanding perhaps or contention around the terms that are used when we talk about
24 this issue.

25 **MR COSTER:** There certainly can be. For me the most important thing here is that we find a
26 meeting of minds which we have repeatedly failed to do, between the various reports that
27 have been written expressing views around structural racism and I suppose where the
28 Police organisation has sat on those things. Part of the disagreement I believe turns around
29 the use of terminology. For example, for those working in this area structural racism is
30 simply or systemic racism is a system that repeatedly gets different outcomes for one group
31 of people than another. But quite naturally when people working in a system hear that, the
32 assumption is, you know, you're saying that I have racist attitudes, but I don't. As we've
33 dug into this we've really focused on, well, what is it that we're particularly looking at here?

1 And it really is the systems, processes, policies, procedures that shape policing, and the way
2 that plays out for different groups of people.

3 Independent -sorry, individual attitudes, whilst potentially relevant to the
4 conversation, aren't actually where, you know, our independent panel's perspective, where
5 the greatest focus should sit. And so,- we've been very blessed to have Tā Kim leading the
6 independent panel overseeing this work, we have practitioners in this field who are very
7 respected, and we've brought in an operational reference group led by officers from around
8 the country who are able to engage in a conversation about policing and how these things
9 play out in practice.

10 So yes, the terms can be quite problematic and that's why I've resisted the use of
11 them because I really have felt that they don't get us closer to a meeting of the minds on
12 where the issues sit because of the misunderstandings that exist around them.

13 **MS SPELMAN:** I just want to make sure I'm clear on what you're saying with that, so there's
14 I suppose the difference between structural or organisational racism, and I think we all
15 agree that's different to personal racism, but what you've said is that it's difficult for police
16 officers to understand the difference between those terms?

17 **MR COSTER:** I think any time people hear the term, --or the average person when they hear the
18 term "racism" it immediately conjures up images associated with individual racist attitudes.

19 **MS SPELMAN:** So, it's that difference between the individual and the structural which is the
20 issue there? --

21 **MR COSTER:** I think that's probably the biggest area of misunderstanding which triggers a
22 defensive response that immediately shuts down the opportunity for an examination of how
23 we're working and what are the consequences of the way we're working.

24 **MS SPELMAN:** It seems as though as an alternative terminology, going back to your predecessor
25 in 2015, Commissioner Bush, he obviously used different words, he said unconscious bias
26 and accepted that that was present within Police, I think he said as it is in all organisations.
27 And had repeated that several times during his term and that's also, I understand, accepted
28 at that general level in terms of your position on that point?

29 **MR COSTER:** As a matter of fact, all human beings have unconscious biases, those are the
30 things that prevent us from stepping out on to a road without first looking as well as a range
31 of other consequences that come from the way our brains work. What we're talking about
32 in the UPD work focuses probably less on unconscious biases, although organisational
33 practices may play into individual unconscious bias as we're talking about policies,

1 processes, organisational ways of working that may not be suitable for the outcomes we're
2 trying to achieve.

3 **MS SPELMAN:** And the work, even the small part of it, that is around bias or unconscious bias
4 that you've described in the brief, that's specifically talking about unconscious bias in
5 relation to race or ethnicity as opposed to other types of bias?

6 **MR COSTER:** The term "unconscious bias" I think is less useful for us in this context than
7 systemic bias, because unconscious takes it back into the individual space, whereas pretty
8 clearly when we look at the criminal justice system, it sits more at the structural systemic
9 level.

10 **MS SPELMAN:** I suppose you could also have both, right, you could accept, which I think you
11 have publicly previously, that the Police as an organisation, individual officers within the
12 Police have unconscious bias, as do all humans, I think that's generally accepted, and what I
13 was just clarifying is, in that context you're talking about, unconscious bias in relation to
14 race, or specifically here in terms of the way that non--Pākehā are dealt with by Police as
15 opposed to other types of bias.

16 **MR COSTER:** I'm generally trying to avoid the use of the term "unconscious bias", I've repeated
17 it in reference to the previous acknowledgment by the previous Commissioner, but it's not a
18 term that I'm routinely using.

19 **MS SPELMAN:** Sure. So, instead of the focus on the individual, your decision is to focus at a
20 structural level but to speak about structural bias as opposed to structural racism; is that
21 correct?

22 **MR COSTER:** I'm actually,- I actually find the terminology less helpful than addressing
23 specifically what the behaviours are. Obviously I can talk to them, I can reflect on what
24 they tend to mean to different people, but the purpose of the Understanding Policing
25 Delivery work is to get beyond- I suppose the labels that are often thrown in different
26 directions when people are talking past each other to try and say, okay, well, we accept that
27 the criminal justice outcome has much worse outcomes -- criminal justice system has much
28 worse outcomes for Māori than for non--Māori. When we dig into that what are the factors
29 that are leading to that, what is the Police contribution to that and what would we need to
30 shift. I'll give you a simple example.

31 A construct that has historically been acknowledged within Police is the idea of the
32 attitude test, it's the equivalent of what the courts do when there is a more significant
33 sentence given to someone who hasn't acknowledged their offending. And so, if someone
34 is contrite and says yes, I did that, you know, and they're apologetic, they're probably going

1 to be sentenced lighter than if there's complete denial. And there's a similar thing that
2 occurs in terms of Police practice in the exercise of discretion.

3 Some might argue that's entirely appropriate because actually it reflects someone
4 who acknowledges their offending is much less likely to reoffend than someone who is
5 completely in denial. Others might say, actually if that response isn't helping to get us to an
6 outcome of the prevention of future harm then is it fit for purpose as something to occur
7 inside of Police practices and processes.

8 So those are the sorts of things that, you know, quite specific examples of where are
9 the decision points, what's happening in the interactions between Police and people that are
10 leading to different outcomes for one group than for others.

11 **MS SPELMAN:** Okay. So, I understand, I think, your present -day strategy in terms of obviously
12 you think that is the most effective way to proceed on these issues, is to --

13 **MR COSTER:** We have 14,000 people who we need to ensure are able to operate in the most
14 appropriate way for the communities that we Police. And so, whatever we do, if we don't
15 have an effective way of engaging 14,000 people in the conversation, then we're not going
16 to succeed. And the understanding --

17 **CHAIR:** Can I, --finish that sentence, please, I am sorry to interrupt you-- if you want to.

18 **MR COSTER:** No, go ahead.

19 **CHAIR:** I just wonder whether we might be going around ahead in circles, because you have
20 addressed the question Ms Spelman is asking in your evidence, paragraph 4.13, you say:

21 "Police is continuously working on introducing a variety of tools that help staff
22 learn and address racism, ableism and bias."

23 And then you talk about Manaki Āki, the learning resource. So, it seems to me
24 that - I'm not quite sure what this debate is about really, because you're saying here that you
25 are actually doing- that, you are working --

26 **MR COSTER:** Absolutely.

27 **CHAIR:** So, we accept the systemic stuff but you are actually working with staff members as well
28 in terms of their attitudinal frameworks and perceptions, cultural biases and the like; is that
29 right?

30 **MR COSTER:** Absolutely, but I think what we're saying is when it comes to the big outcomes
31 that we're trying to achieve, they come by tackling the systemic things that arise and that's
32 where our effort is focused, most significantly.

33 **COMMISSIONER ERUETI:** You are definitely making an effort to shift individual attitudes
34 about the bias that they bring to the job and discrimination?

1 **MR COSTER:** The mindset that we bring to our work is fundamentally important. What I'm
2 very mindful of, though, is there's plenty of evidence internationally that simply rolling out
3 unconscious bias training does nothing to shift bias, in fact sometimes it makes it worse.
4 And so, when we're talking about, you know, where is the biggest opportunity to make a
5 difference, it is looking more at that system process policy level. When we're talking about
6 individual attitudes, it's actually about, you know, on the positive side of the ledger the
7 expectations we set about fairness and equity, about bringing humanity to our interactions,
8 and that's the expectation I have of leaders that that's the environment they will create and
9 that's the way we would speak to our people about it.

10 **COMMISSIONER ERUETI:** What is the science saying, is it saying if you adopt that
11 unconscious bias and it's very individual -centric that people just become, you're saying that
12 people become defensive and shut down and just -there's self---denial --

13 **MR COSTER:** They maybe misinterpret the conversation as being directed at them and their
14 attitudes personally rather than the way an organisation or a system is operating, and
15 internationally there's research that shows unconscious bias training per se tends to identify
16 the cognitive biases that we all hold and then a lot of people then embrace those biases that
17 they think serve them well in their lives. That isn't where we're trying to get to here.

18 So, we've thought quite carefully about the best way to tackle this and that's why
19 we're working with Tā Kim and the panel and their insights are informing the approach that
20 we're taking.

21 **CHAIR:** I think we should move to the next topic.

22 **MS SPELMAN:** Thank you.

23 So the last point I just wanted to cover on this is obviously with all the work that
24 you've done, I know neither of you are coming today to suggest that things have been fixed
25 or that these problems don't exist anymore, and I suppose in terms of the more recent
26 examples of these issues coming up you'd be well familiar with the different concerns about
27 differential treatment in relation to pre-charge warnings, I think that was 2016 from the
28 IPCA, 2019 in terms of the tactical options reports, and most recently the issue around
29 photographing Māori children in particular out on the street, and so I just wanted to give
30 you a chance to comment, to clarify, I think, that these are issues the Police understand are
31 still very much current and ongoing and that's probably no doubt why you're doing this
32 work.

1 **MR COSTER:** Yeah, certainly Understanding Policing Delivery programme is looking at who
2 we stop and speak to, our use of force decisions and our charging decisions, and those are
3 called out as the --

4 **CHAIR:** You're all racing to the line here a little bit, just slow down, everybody, including you,
5 Ms Spelman.

6 **MR COSTER:** In policing internationally those three areas are called out as the biggest points of
7 tension, but there's a lot of complexity that sits underneath it. If we take use of force,
8 Police doesn't get to choose who presents with a mental health crisis or who has a drug and
9 alcohol problem that leads to a confrontation with Police, but we do get to shape the way
10 we respond to those circumstances when they come, so those are the things we have to dig
11 into.

12 **MS SPELMAN:** Does that research project that is going on, underway, also address and assess
13 how bias or discrimination has impacted the delivery of service on Pacific peoples?

14 **MR COSTER:** Yeah, it's not specifically about Māori, although that in a statistical sense is where
15 the biggest discrepancy lies, it is broad in terms of all of our delivery.

16 **MS SPELMAN:** So there would be ongoing work specifically in terms of in collaboration with
17 specific communities and with appropriate experts?

18 **MR COSTER:** Yeah, I'm absolutely sure that will be part of it and that's where the panel is
19 helping us to make sure we cover the ground we need to.

20 **MS SPELMAN:** Thank you. That's the end of the questions on those topics. I know
21 Commissioners had questions throughout but I just thought if there was any other questions
22 in relation to those topics before I pass over to Ms Basire.

23 **CHAIR:** Yes, I'm just wondering in terms of time. I'm conscious of time, we'll just take some
24 short questions now then we can wrap them up at the end. Is that all right?

25 **COMMISSIONER ERUETI:** Can I take, just going back to the comment before about
26 historically how racism was prevalent within New Zealand communities and the Police
27 force constituted, was representative of those communities, because I think in fact it was
28 mostly or all Pākehā in the 50s and 60s. With the -you- described how being at the sharp
29 end of policing that intense interaction, that that could have a dehumanising kind of attitude
30 towards the people that Police were dealing with. Would you accept then that those intense
31 interactions could lead to some amplification of the discrimination that the Police officers
32 brought to that interaction?

33 **MR COSTER:** There's a very real risk of that in policing, you know, alongside the risk that when
34 you're only seeing people on the worst days of their lives that becomes a dominant view of

1 what's happening in the community, so that is something we constantly have to battle with,
2 that the nature of the interactions we're having every day aren't necessarily representative of
3 what's happening in the community as a whole.

4 **COMMISSIONER ERUETI:** Yeah, but you could see it could have- it would follow it would
5 have that effect of amplifying attitudes. The other question I had was about the Treaty and
6 it's not in the Policing Act specifically, yet you have taken it upon yourself to spell out what
7 your Treaty obligations, and so you've got, is it a policy for giving effect to Te Tiriti- and
8 you've divided it into three different, articles one --

9 **MR COSTER:** Three parts.

10 **COMMISSIONER ERUETI:** Yeah, what do you think drives you to do that, to adopt that policy
11 internally if it's not written into the statute?

12 **MR COSTER:** I think this is something that successive Commissioners have seen as important.

13 You know, commitment to Māori and the Treaty is one of our six core values, it hasn't
14 always been, but it has been certainly for over a decade, or quite a bit longer actually, and I
15 think within the organisation it's accepted as the right thing to do at one level.

16 But there's more, sort of, if people can't agree it's the right thing to do, well, if more
17 than 50% of the prison population is Māori then unless we do things that work with and for
18 Māori, we will never achieve our outcome of preventing crime and harm, and we need to be
19 clear it's offending and victimisation too, so it just makes sense, it's the right thing to do.

20 **COMMISSIONER ERUETI:** Yeah, it does, and there's a sense of obligation to do something, to
21 make a difference, to make something right.

22 **MR COSTER:** Absolutely. The most common thing you will hear from people who joined
23 Police about why they joined is to make a difference. Then the conversation is simply,
24 well, how do you do that, what's the most effective way to make a difference? And as
25 we've focused more on prevention, which we have been doing for a decade, or more, then
26 it's obvious that you need to work in partnership because most of the problems that present
27 for Police occur well prior to Police having contact or indeed actual mandate.

28 **COMMISSIONER ERUETI:** Thank you.

29 **CHAIR:** Thank you, I think Ms Basire's going to take over; is that right?

30 **QUESTIONING BY MS BASIRE:** Yes, Madam Chair. E ngā Kaikōmihana, ko Kathy Basire
31 tōku ingoa, tēnā koutou. My name is Kathy Basire, for those listening, I am a middle-
32 aged- Pākehā woman with mid-length grey hair-- well, it's grey at the front, apparently at
33 the back it's not so grey, I'm wearing a black jacket and a cream dress.

1 Now, good afternoon -are we not, yes, we are at -afternoon -Commissioner- and
2 Deputy Commissioner. The focus of the next part of our questioning is going to be about
3 the Police's response to investigating and prosecuting abuse in care.

4 I want to thank you for your acknowledgment today and in your brief that the Police
5 have been listening closely to the evidence given at the hearings, and you have listened to
6 the survivors and you have reflected on their accounts of abuse and their accounts of
7 engagement with Police.

8 You would have heard common themes emerging from the evidence that the
9 Commission has been gathering over all its hearings. Survivors of abuse in care are both
10 children at the time and adults at the time. They experienced a wide range of abuse, both
11 by the people who were supposed to be caring for them, and other residents of their care
12 facilities.

13 The abuse is the type of crime that the Police should focus their most resources on
14 because we're talking about significant sexual violence, significant physical violence,
15 seclusion, restraint, overmedicalisation.

16 You would have heard the survivors say that often they felt they would not be
17 believed if they raised the abuse, or that the abuse was so widespread and normalised in the
18 institution that they didn't raise it. Many felt that the Police would not listen or act due to
19 the reason that they were in care, that they wouldn't believe a person who might otherwise
20 be seen as a bit of a troublemaker, that the Police may not believe them because they're a
21 mental health patient, or because they're disabled.

22 You would have heard survivors and family members speak of fear of speaking out
23 in case it made matters worse for their loved ones. And concerningly, and this is what I'm
24 going to turn to now, for some who did make allegations to the Police, they felt the Police
25 did not listen. Some were returned by Police to the very institution where the abuse was
26 occurring, and we have heard multiple allegations of failures by the Police to investigate at
27 all or investigate in a timely manner. The failures to investigate have led to failures to
28 prosecute alleged offenders and we've also heard evidence about alleged offenders being
29 able to continue to offend as they were just transferred to other institutions.

30 You have acknowledged in your brief of evidence, Commissioner, that at times this
31 has been uncomfortable to hear and I just want to emphasise that the wide range of people
32 that we have heard from, so we've heard from Māori, Pacific peoples, but also disabled
33 people who have been disabled in many different ways, and those experiencing mental

1 health conditions, and the range of abuse that they suffered was in multiple types of
2 institutions and care homes and institutions and hospitals.

3 So, what I want to focus on now is what the Police's response to investigating this
4 abuse has been historically. But before I do, and because we sort of went over time so I
5 think we'll just explore this first; would you agree, Commissioner, that there is an inherent
6 power imbalance whenever a child or an adult is in care compared with the adults who
7 provide care?

8 **MR COSTER:** Absolutely.

9 **MS BASIRE:** And you'd agree that violence, whether it's sexual or physical, at its core is abuse of
10 power.

11 **MR COSTER:** Absolutely I do, noting that for some types of violence there was formal
12 recognition of it in the form of corporal punishment so that is a carve-out, but in general
13 terms, yes.

14 **MS BASIRE:** I don't want to dwell too much because we've just had a whole discussion about
15 unconscious bias, bias, structural bias, but I just want to explore, pick up on something that
16 you said to my colleague, which is that very often the same groups of people are offenders
17 and victims, so offender groups experience victimisation often at the same rate and that is
18 something that perhaps is not widely known but if we take a -- would you agree?

19 **MR COSTER:** It's well recognised within Police that the people we are dealing with as offenders
20 today may well present as victims tomorrow, so that is uncontentious for us.

21 **MS BASIRE:** Yes. And so just for those listening, you might have an example of somebody
22 who's a gang member who perpetrate a crime and the next week they could be a victim on
23 another file because of what's happening in that group.

24 **MR COSTER:** I can give you a really relevant example today. We looked at a cohort of 63, I
25 think it was, young people who had committed ram raid offences in Auckland in a recent
26 period. More than half of those presented to Police as being present at a family harm event
27 by the age of 3. So, there's a close connection between offending and victimisation.

28 **MS BASIRE:** Yes, but when we look at abuse in care, which is the focus of our investigation,
29 would you agree that there is a difference that the Police don't see as much which is the
30 offender group in abuse in State care, when we're talking about the people who ran these
31 institutions or employed in these institutions, were actually quite different from the victim
32 group. Do you understand what I mean?

33 **MR COSTER:** I'm not -in- terms of their position of power do you mean?

1 **MS BASIRE:** Well, in terms of their position of power, but also in terms of their demographics.
2 So perhaps I can explain. We've heard allegations against psychiatrists, doctors, teachers,
3 priests, people who in the past, in the timeframe that we're looking at, would be seen as
4 pillars of society.

5 **MR COSTER:** Sure, yes, yeah.

6 **MS BASIRE:** And I don't have the exact statistics, but very often they would have been Pākehā.

7 So, when we look at systemic bias, would it be fair to say that in the past the Police may not
8 have recognised the extent of the problem because of the group of offenders that the
9 allegations were being made against?

10 **MR COSTER:** It certainly seems to be true that the awareness of the risk of, for example, sexual
11 offending by people in positions of authority through this period doesn't reflect the
12 awareness that we all have today.

13 I would also note the challenge specifically within the justice system around
14 credibility and that someone who is maybe a young person in care, you know, be it for
15 offending or whatever the reason, is going to -in that time would have struggled to get
16 cut- through- in the criminal justice system relative to the testimony of someone from the
17 kinds of offices that you're referring to.

18 **MS BASIRE:** Yes. So would you agree that these issues, first of all, of lack of recognition that
19 people in positions of power can do, commit crimes, and secondly, that people in power
20 were inherently seen as more credible, those two issues affected the way you investigated
21 and prosecuted crime up until, for example, 1999?

22 **MR COSTER:** Look, I think questions of assumed credibility are kind of at the core of decision-
23 making around things like prosecution and actually remain so today when we consider in
24 bringing a case to court, is there evidence that could reasonably lead to a conviction and
25 credibility is one of those really difficult areas within it, particularly where you have a
26 vulnerable victim who may not be articulate, may have had issues in their own background
27 that might be used to undermine their credibility. So, it's very difficult when dealing with
28 vulnerable victims to get this right, and it remains an ongoing focus and challenge for the
29 system today I think.

30 **MS BASIRE:** Yes, so taking the focus back to abuse in care rather than victimisation per se,
31 you've recognised, you've agreed with me that there is a power imbalance between the
32 people who are providing care and those in care, and you've accepted that people in the
33 Police in the past most likely were affected by the lack of understanding of what was

1 happening in these care homes or institutions; why is it that the Police do not have a
2 universal policy about receipt of abuse of -- allegations of abuse in care even now?

3 **MR COSTER:** I think the vulnerability of people in care as compared to others is well
4 understood, as a result of the light that's been shone on these issues in the last couple of
5 decades. The response to people who have been -you- know, any situation of abuse, for
6 example, involving young people gives rise to questions of, for example, is this young
7 person safe, and that could be whether they're in their own family home, whether they're in
8 another context, whether the abuser has ongoing access.

9 So up to press, we haven't seen the need for a specific and separate policy from the
10 kinds of guidelines that inform all of our practice when you get a young person in a
11 situation of abuse.

12 **MS BASIRE:** Right. Well, of course, it is not only young people that we're looking at, we're
13 looking at adults at risk or adults in care. But just pulling it back to the discussion about the
14 power imbalance, when I was growing up, the Police's response to family violence was just
15 another domestic and they wouldn't even turn up. Now we've come a far way from that,
16 and I find it interesting that all the policies that have been developed around what was
17 called domestic violence, and now is called family harm violence, acknowledges this
18 inherent power imbalances that occur in families and I've looked on your website and
19 there's lot of really interesting information about wheels, power control wheels, there's a
20 much more greater understanding of psychological abuse, coercion, control within families.

21 However, when we look at abuse in care, you don't appear to have developed the
22 same sort of policies. Do you think that is something that the Police could look at?

23 **MR COSTER:** I definitely think we should be open to looking at it. My personal view is that the
24 insight people have about vulnerability of -our people have about the vulnerability of
25 children in a family violence situation transfer over pretty easily into any situation where a
26 young person or indeed an adult who has vulnerabilities are at risk but, you know, it's
27 certainly something that could be reflected in -Police -explicitly- in Police training and
28 practice.

29 **MS BASIRE:** Thank you. We're going to talk more this afternoon about data collection, but at
30 the moment the Police do not have any way of telling the Royal Commission in the
31 last year how many allegations of abuse in care its received, does it?

32 **MR COSTER:** Not as a statistic, no.

33 **MS BASIRE:** And that's because the way the data is collected is individual to the person, the
34 people involved?

1 **MR COSTER:** Yes, Police's systems are continuously evolving in terms of the data we collect.
2 We have a large number of boxes that can be ticked on any given file to reflect hate crime,
3 family violence, a whole range of different kinds of offending. And abuse in care could be
4 another of those. The challenge for us in collecting data is that we tack on so much
5 requirement that our frontline staff can't realistically and practically give effect to all of that
6 data gathering requirement.

7 So I think a question we would ask, you know, in considering whether that should
8 be part of our system, is for what purpose will this be used and relative to all of the other
9 things that people would like us to collect, is this a good one to include? I accept it would
10 have been incredibly useful for this Commission to have that data. I suppose the question
11 would be is there an ongoing need for it. Again, something that we could consider if there
12 was a clear need for that kind of ongoing monitoring.

13 **MS BASIRE:** Because you do collect data on family harm violence?

14 **MR COSTER:** Yes, we do.

15 **MS BASIRE:** I guess part of my point to emphasise is that do you agree the Police need to be
16 careful not to have focus on that group of people that they see as problematic, that group of
17 people who are offending against each other, and lose sight that there are other offender
18 groups in New Zealand who cause significant harm and if it's anything like what we've
19 heard, if any of that is continuing into the future it means that people are going to continue
20 to be harmed and it's not going to get picked up. Would you agree?

21 **MR COSTER:** Obviously by the time it's getting to the point of being recorded as data in Police
22 systems it's quite a long way down the track in terms of where you'd want to put your
23 protections for people. So, I can certainly accept that it could be useful to have a lens on
24 that. But I would also note that our child protection policies, our adult sexual assault
25 policies and our monitoring of all of the cases that sit in that category would now pick up
26 the vast majority of the behaviours that are in scope for abuse in care.

27 So, you know, our practices around particularly child protection and adult sexual
28 assault have moved massively in the last 15 years, such that I would be less convinced of
29 the value of specific data collection about care settings per se.

30 **MS BASIRE:** But those two policies that you just talked about miss the whole cohort of people
31 aged 16 to 65 who are vulnerable adults who might be --

32 **MR COSTER:** If the abuse was not sexual, yes, that's correct.

33 **MS BASIRE:** I think that probably brings us to an appropriate time to have lunch before I start
34 asking you some more specific questions.

1 **CHAIR:** We're going to take a shortened lunch adjournment today, we are a going to take 45
2 minutes, so eating will be more rapid than usual, and that is because we've got a lot of work
3 to do. Thank you, both, and we'll see you all back here at 1.45. Thank you.

4 **Lunch adjournment from 12.59 pm to 1.52 pm**

5 **CHAIR:** Welcome back, everybody. Ms Basire.

6 **MS BASIRE:** Thank you, Madam Chair.

7 Before the break, Commissioner and Deputy Commissioner, we were having a
8 discussion about victim and offender groups and just before I go on to ask some more
9 detailed questions, there's just one point I wanted to raise with you.

10 You gave us the example of the young men involved in ram raids and a large
11 percentage of those are known to Police from family harm incidents when they were as
12 young as 3. I just wanted to point out or ask you, are you aware of the level of statistics of
13 current offenders who were victims of abuse in State care?

14 **MR COSTER:** No, because we don't have a statistic for abuse in State care per se, but obviously
15 we,-- there is research that looks at, for example, the prevalence of family violence or abuse
16 in the background of inmates generally which is very high, I can't put a number on it, but in
17 my mind it's in the vicinity of 50%, it's high.

18 **MS BASIRE:** And would you accept, and we don't have the statistics either because nobody's
19 kept them, that there's a large percentage of the prison population today would be survivors
20 of abuse in care?

21 **MR COSTER:** I probably can't say that because I just don't know that to be true. I do know that
22 in a more general sense abuse and family violence feature very highly in the histories of
23 inmates but I have no way of knowing whether that statement is true.

24 **MS BASIRE:** We have taken many survivor statements who have gone on to offend after they
25 have been victims of abuse in State care rather than family violence, would you accept,
26 even though we don't have the statistics, that abuse in care has been a pathway into crime?

27 **MR COSTER:** I would certainly acknowledge it is a relevant influence, also recognising that
28 many of the young people who went into care had a range of challenges in their
29 backgrounds, but you can't deny the impact of abuse on future offending.

30 **MS BASIRE:** Thank you.

31 Now, you would agree that the most important tool for prosecution is a thorough
32 investigation?

33 **MR COSTER:** Sorry, say that again?

34 **MS BASIRE:** The most important tool for prosecution of an offender is a thorough investigation?

1 **MR COSTER:** Yeah, I think that's fair.

2 **MS BASIRE:** Because without a thorough investigation you don't get the best possible evidence
3 and it's the best possible evidence that you want to put before a court if you charge
4 somebody.

5 **MR COSTER:** Absolutely. Sure, yeah.

6 **MS BASIRE:** And you would agree that without adequate and timely investigations, often
7 prosecutions fail?

8 **MR COSTER:** Yes.

9 **MS BASIRE:** Now, you have in your brief of evidence acknowledged that Police have made
10 failings in regard to investigating abuse in State care, in particular in relation to Lake Alice.
11 I just want to explore some more examples today that the Commission have gathered, and
12 I just want to emphasise that these, hopefully if I have time, I am going to cover three,
13 Ms Spelman is going to cover one, which are a very small number of the examples that
14 have come to our attention.

15 So the first example I want to talk to you about is a case that was referred to in
16 Detective Kirby's brief of evidence and that is where a survivor, a Deaf survivor who
17 attended a residential Deaf School as a child,-- he attended the residential Deaf School as a
18 child; as an adult he went with a group of other Deaf former pupils to the Police in 2008 to
19 open up a conversation about allegations about a teacher at the school.

20 So we have to be careful not to name names, but I just want to check with you you
21 understand which case I'm talking about?

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

23 **MS BASIRE:** Thank you. So in 2008 this survivor went with four other people to the Police and
24 we have a job sheet, which is for the Crown and transcript purposes, NZP0049063. For
25 ease I will just paraphrase some information in the job sheet.

26 This was a detective who herself had learned sign language.

27 **MR COSTER:** A constable, correct.

28 **MS BASIRE:** Yes, you're right it was a constable in Henderson, and it was through her
29 engagement with the Deaf community that these people came forward. And so, I'm going
30 to ask you a number of questions about this investigation, but would you agree the very fact
31 that it was that point of contact that these people came forward that it is important for the
32 Police to have outreach to, for example, disabled communities?

33 **MR COSTER:** Yeah, certainly, and I think it was impressive in this case that an officer had taken
34 it on herself to learn sign language, recognising the need in her area. And it's an area where

1 we've identified the need for ongoing improvement despite improvements made more
2 recently.

3 **MS BASIRE:** Right. So, she had a meeting with these five people, and I understand there was an
4 interpreter also present, and they raised allegations of abuse during their school years, and
5 they told her to date there was at least 80 Deaf people wanting to make a complaint about
6 this person, who I'll call Person A, and that a list was being collated of those people and in
7 this written job sheet she says:

8 "The complainants are very emotional about this issue, very passionate about
9 retribution and are ready to speak out about this injustice."

10 Attached to the job sheet which we got, dated 2008, is a typed-up list of about 30
11 individual people's names, the years they would have been at the Deaf School and where in
12 the country or overseas they were believed to be residing. However, after that, nothing
13 happened, did it, there was no investigation in 2008?

14 **MR COSTER:** That's correct, I understand there was a misunderstanding about next steps in
15 terms of where the initiative sat for what would happen next and that the officer's belief
16 was that there was a larger list of names to come, and beyond that it was not followed up,
17 which clearly is a miss on our part.

18 **MS BASIRE:** So, you would accept that that was a failing?

19 **MR COSTER:** Yes.

20 **MS BASIRE:** And it's a fairly recent failing isn't it, because 2008 is only less than 15 years ago.

21 **MR COSTER:** It is fairly recent. What happened also around that time was a very significant
22 look into Police's handling of child abuse and sexual abuse cases within the Wairarapa area,
23 which led to very significant national reflection on Police's protocols, practices, policies,
24 around the handling of complaints of this kind. That led to the establishment of
25 additional, - to dedicated investigative groups for particular kinds- of offending, and a
26 much greater monitoring and awareness of cases of this nature.

27 So whilst it is relatively recent, it preceded what I would describe as the most
28 significant shift in recent memory of Police's practices in responding to cases of this nature.

29 **CHAIR:** Was that as a result of this case or it just happened to be coincidental?

30 **MR COSTER:** Coincidental. So, in connection, or around the time of the Commission of Inquiry
31 into Police Conduct a related issue was concern about Police practices and to some extent
32 attitudes in relation to, particularly, sexual assault and it was around that time that it was
33 identified a massive backlog of cases of this nature in the Wairarapa, which led to a broader

1 national look. And so, we now have quality assurance frameworks, dedicated investigators,
2 ongoing national monitoring of child protection and adult sexual assault cases.

3 **MS BASIRE:** In what year would you say that things improved?

4 **MR COSTER:** The look into all of those matters in the Wairarapa was around 2010 as I recall it,
5 and since, -off the back of that we have had an ongoing process of improvement. So- it
6 started immediately and quite intensively in the, let's say, few years around the time of
7 where you're talking about, and then has continued through the course of the decade that's
8 followed.

9 **MS BASIRE:** In this case nothing happened in 2008, but in 2010 this survivor with another group
10 of Deaf people, and I'm not sure whether they're exactly the same group or a wider group,
11 met with the, or went through the Confidential Listening Service process, and they outlined
12 that they had spoken to a constable from Auckland and nothing had happened, and so
13 again, the Confidential Listening Assistance Service sent through a Police referral to the
14 same Police Station in 2010, two years later. It sat for over, almost two years four months
15 before it was assigned for somebody to do something about.

16 Would you agree with that from the documents?

17 **MR COSTER:** I'm not going to dispute the detail of that, I'm not across the fine detail, but
18 certainly would acknowledge that's an unacceptable delay.

19 **MS BASIRE:** And just for the record, that's NZP0041742.

20 So, you agree it's an unacceptable delay. What I want to talk to you about now is
21 what actually happened when it was "investigated", and I've actually raised my hands and
22 indicated "investigated" with inverted commas, because I'd like to know what your opinion
23 is on the level of investigation that actually occurred.

24 So, I'm going to discuss what then happened in 2012 reliant on a job sheet which is
25 NZP0041743. This was an acting detective sergeant, - no, it was a detective constable who
26 appears to have been given the task of investigating. He is assigned the file, he's told it's an
27 historic file from 35 years ago and involved a- and --I'm quoting this from the job sheet:

28 "A minor assault on students by a teacher, it's been around quite a few people but
29 had not been finalised."

30 Then the police constable outlines the steps that he goes through and the first step
31 he went to was talking to a woman who was a lawyer advocate for three of the students
32 who'd come forward. He then phoned the school that the teacher was currently teaching at
33 and he leaves a message to find out who he should talk to and without ever meeting the
34 complainants or taking a statement or evidential interview from them, he rings the teacher

1 involved and advises him of the allegations. He then rings the lawyer involved and tells her
2 the threshold to proceed to trial would not be reached.

3 Now, there's a number of things that happen after that, but I just want to discuss,
4 would you call that an adequate investigation on any level?

5 **MR COSTER:** My understanding is the investigation file for this case was not available because
6 it was destroyed in line with our normal destruction authority. So I'm a little
7 uncomfortable, based on what I have to hand in front of me right here, about relying on a
8 single job sheet to characterise everything that occurred in the context of that investigation.

9 I think that's a bit unsafe unless I'm misunderstanding the situation.

10 **MS BASIRE:** Well, the survivor who's given a statement to us who went to the police station and
11 met the constable who communicated with him via sign language and then went to the
12 Confidential Listening Service has never been evidentially interviewed by the Police, he's
13 never given a statement to the Police, the Police have never been to see him. You are
14 correct that whatever was on the investigation file, if there was one, is no longer available
15 because the Police have destroyed it and I want to talk to you a little bit about that later; but
16 it seems clear from the job sheet that, and a report form, --what we'll do is just put the job
17 sheet, which is NZP0041743, up on the screens.

18 **CHAIR:** And for the information of those watching, apologies but you won't be seeing this, so
19 Ms Basire, any parts that are relevant if you could read them out.

20 **MS BASIRE:** Yes.

21 **CHAIR:** Thank you.

22 **MS BASIRE:** So that is the job sheet. So:

23 "25 June 2012, I receive a file from the acting Detective Sergeant, I'm advised it's
24 an historical file from 35 years ago and involved a minor assault on students by a teacher,
25 it's been around a few people, has not yet been finalised."

26 Can you see that first part?

27 **MR COSTER:** Yes.

28 **MS BASIRE:** Next, the first thing he does on that day is ring the lawyer advocate, speak about
29 previous emails and dealings she had with other police officers, and he reiterates to her that:

30 "Given the nature of the offences and the historic nature may not reach the court's
31 evidential sufficiency test, and there's issues about what might be illegal now not
32 necessarily illegal back then".

33 She confirms she's realistic about the expectations and she's advised the
34 complainants.

1 But you will see in this job sheet there is no indication that he ever speaks to the
2 complainants?

3 **MR COSTER:** Certainly not on what's in front of us, yeah.

4 **MS BASIRE:** And then if we can have a look at document NZP0041744, and Toni, if that could
5 be put up on screen.

6 So, this is a report form which, for those not in the know, is something that is a
7 summary of an issue that one police officer is seeking approval, to be fair, from a senior
8 police officer; is that a fair way of summarising that document?

9 I can see you are nodding.

10 **MR COSTER:** Yes.

11 **MS BASIRE:** So, in this report form, the constable has introduced to his senior the file, he's said
12 that the complaint originally surfaced in 2008 when members of the Deaf community
13 approached the constable, and this is where there seems a conflict in the evidence that the
14 Police's understanding was that group of people would appoint a spokesperson about
15 whether they wanted to proceed with the complaint. He then outlines:

16 "The complainants did not get back to the Police but some two years later made
17 contact via a lawyer from Auckland Disability Law as per the attached e-mails on this file."

18 I know you say that you're uncomfortable without seeing the investigation file, but
19 it would indicate in conjunction with that job sheet that it's the e-mails on the file from the
20 lawyer that is the basis of the information.

21 **MR COSTER:** It appears to be.

22 **MS BASIRE:** And what we know from the later statement that we got from that survivor is that
23 what is summarised under his name is a minimisation of what he's told us.

24 **MR COSTER:** Sorry, may I just see the next page of that report?

25 **MS BASIRE:** Yes, yeah, sorry I forgot you can't scroll yourself. So the next page, so we're
26 talking about the person at the top of that page.

27 **CHAIR:** I think it's worth telling the world that it outlines the allegations made by three of the
28 survivors at least. Is this the end of the,- is it just, -the- three- complainants?

29 **MS BASIRE:** Yes. And then if we just go to the next page, page 3, again it's difficult because it
30 says "as part of the Police investigation the following was completed" and there's a list of
31 things that have happened but there's no indication of speaking to the complainants.

32 **MR COSTER:** Maybe to cut to the chase, certainly it would be normal and expected practice
33 today that if you're going to make a decision on a case that you'll have interviewed the
34 victim by an appropriate means and had the opportunity to assess what evidence they would

1 give. On the face of it that hasn't occurred here and they've relied on the account from a
2 lawyer acting on behalf of those complainants for the nature of the behaviour concerned
3 and they've described it, accepting that there appears to be a gap between the victim's
4 account of that behaviour and what's described in this report, and on the face of it have
5 made the decision based on an assessment of how corporal punishment might play into a
6 prosecution, or the evidential sufficiency for a prosecution in this case, to decide that the
7 matter is able to go no further.

8 It doesn't reflect the kind of depth we would expect to see in an investigation of this
9 kind, and which I believe we would see in an investigation of this kind today, particularly
10 because of the greater awareness that has come around mass allegation matters, as a result
11 of the learnings from our work on child protection and adult sexual assault cases since
12 around this time.

13 So hopefully that's a helpful reflection.

14 **MS BASIRE:** Yes, because bearing in mind the first complaint was that up to 80 people wanted
15 to speak to the Police about this, this was not a minor issue.

16 The mass investigation policy that you have, when did you implement that policy?

17 **MR COSTER:** I would have to go back, but it's certainly been in the last decade that that's really
18 come into what I would describe as a solid practice.

19 **MS BASIRE:** I think I understand it was 2017.

20 **MR COSTER:** That sounds about right.

21 **MS BASIRE:** Why did it take until 2017 for the Police to develop a policy when large groups of
22 people come to complain?

23 **MR COSTER:** I can't speak to the genesis of that with great confidence, I think we could provide
24 more context around what led to that. Obviously, this remains a really difficult area.
25 Knowing when to approach potential victims in a way that doesn't retraumatise, doesn't
26 contaminate evidence but does ensure that where there are potential for mass allegations
27 that the scale of those can be understood is an art not a science and I think it's an area where
28 we will continue to learn, and the practice now I think is much better in terms of setting up
29 0800 numbers, engaging with the institutions concerned and requesting them to provide a
30 standard communication out across people who might be affected to enable them to be
31 aware that an investigation may occur.

32 I know we are doing that much better now, but I think that continues to evolve.

33 **MS BASIRE:** Because the failures that you've acknowledged with Lake Alice pre-dated this,
34 didn't it?

1 **MR COSTER:** Yes. Yes, it did.

2 **MS BASIRE:** I am not quite sure,-- so here we have again in 2012 an inadequate investigation
3 into what could have been far greater, but we don't know because the Police to date still
4 hasn't investigated.

5 **MR COSTER:** I think we'd say it was contemporaneous with the Lake Alice practice because,
6 you know, the sort of insight about Lake Alice has been really much more recent in terms
7 of getting that investigation to the right place.

8 **CHAIR:** Can I just ask, make an observation and really ask a question, Commissioner.
9 I appreciate your remarks about how difficult and how sensitive it is to approach
10 complainants in matters like this, particularly on a mass scale, and you've referred to the
11 fact that you don't want to subject them to re-traumatisation. Can I just share this with you,
12 that from all of the hundreds of survivors to whom we have spoken, both personally and in
13 the context of these hearings, one of their great complaints is the fact that they are
14 traumatised by no action being taken at all.

15 **MR COSTER:** Absolutely, yeah.

16 **CHAIR:** And I wanted to make sure you understood that perspective.

17 **MR COSTER:** I'm fully cognisant of that and absolutely accept that.

18 **CHAIR:** Thank you.

19 **MS BASIRE:** Just before I leave this example, it did highlight two issues. One is that it appears
20 that one of the reasons this file was investigated this way was because the complainants
21 were Deaf. That is that it was much easier to phone the person who said they were their
22 spokesperson than to speak to the complainants themselves. Would you agree that
23 historically there hasn't been enough support available for police officers, first of all, to
24 communicate with Deaf people?

25 **MR COSTER:** Yes, yeah, I would agree with that.

26 **MS BASIRE:** And that's been a barrier?

27 **MR COSTER:** Yes.

28 **MS BASIRE:** The second point that this raises is that the police officer involved did make some
29 investigations with the school that the Person A was still teaching at. He has put in his
30 report that the teachers that he spoke to about this teacher said that they hadn't had any
31 recent complaints about him and thought he was quite good, basically. But there was no
32 follow-up, apart from speaking to this person's peers and interviewing Person A, with the
33 children of that school to see if the children in that school were currently safe.

1 By that I mean in some of your NTPs you've talked about school community
2 officers, I think they are, where you can assign a police officer to work with a school and
3 they can do some education programmes so you can be sure that the best possible chance of
4 children raising allegations is available because they're aware of that pathway.

5 One of the issues from this complainant, a survivor in care, is that had he been
6 talked to and had his fellow students been talked to, the Police would have become aware
7 of the climate of fear that operated in the school when they were children, such that they
8 didn't speak out against that teacher. So what is your comment about assessing whether
9 something's currently happening just by speaking to adults in a school?

10 **MR COSTER:** Certainly, I would think our practice would be different today, at least in terms of
11 our ability to reach more effectively into the school community. One of the complexities
12 around -- one of the factors it seems to me in this case would have been that the offending
13 concerned dated back to a period where corporal punishment was permitted and accepting
14 that the behaviours here appear to go well beyond that, whether it would be seen as
15 analogous to, I suppose, explore with students in the school at the time this was being
16 looked at, expecting to find anything going on, in other words the behaviour at this time
17 would have been visible to other teachers, and possibly accepted as, well, that's what
18 corporal punishment entails, versus the environment that he was teaching in at the time this
19 was looked at.

20 So I can't speak for the staff concerned and their decision-making, but if we had
21 allegations of assault today where corporal punishment isn't even potentially available as an
22 excuse, I think the posture is going to be quite different and I would have much more
23 confidence that we would get this right.

24 That said, whether it's -the judgment about whether to open up- a path of inquiry in
25 respect of a specific teacher, you need a strong evidential base to do that to be justified in
26 creating that conversation in a particular environment, particularly if it's a different
27 environment from where concerns first arose. So those are judgment calls, it's not clear-cut
28 that you would always go down that path. So at least as a starting point, engagement with
29 staff and those responsible at a school is a reasonable starting point, whether it goes far
30 enough I think is the question.

31 **MS BASIRE:** Yes, and I do think that this particular investigation got side-tracked by the
32 corporal punishment question because, as you say, even you just glancing at those
33 documents, you can see what's alleged is way beyond corporal punishment.

1 **MR COSTER:** It feels to me that it should be, but I don't have a good,-- and corporal punishment
2 was gone by the time I was at secondary school, I just don't have a gauge on what was
3 accepted under the banner of that, but when I read the description of it, it sounded
4 unpleasant, so I honestly don't know what the norms were.

5 **MS BASIRE:** Another point which you have touched on is discretion. You can have as many
6 policies as you like, but in reality it is one or two police officers on a file, at least
7 historically, who would be the people making an assessment about whether a prosecution is
8 laid?

9 **MR COSTER:** Yes, I mean supervisors would normally have, -even then supervisors would have
10 had oversight in the context of an investigative unit, because when the file goes for filing it
11 goes to a supervisor, as the report in front of us suggests, it went to a Detective Senior
12 Sergeant. So,- the review's always been there, I think what's stronger now, particularly in
13 the sexual assault arena, is the extra layer of audit that we have over the top of it and for
14 child abuse.

15 But everything in policing, really, relies on good judgments being made and we put
16 in checks and balances, but we still need good judgments.

17 **MS BASIRE:** Yes, and the supervisor can only make a decision based on the information he's
18 been given, because everyone's too busy for the supervisor to read everything to check that
19 the person who's making the report to him is summarising things fairly.

20 **MR COSTER:** Yeah, they certainly won't reinvestigate it, but I would have expected them to
21 look at the full material on the file and formed a view based on what's on there.

22 **MS BASIRE:** The file in this case was destroyed. What is the Police's policy on destruction of
23 records?

24 **MR COSTER:** It depends on the seriousness of the offences attached to a particular case.
25 I suspect that this one was destroyed a decade after initial creation, although I can't say that
26 with confidence without looking specifically at it. So, we have archive policies, I can't give
27 you chapter and verse on those, but we can certainly provide them to you.

28 **MS BASIRE:** Do you think that is an issue that the Police destroy records which might be later
29 needed to support a prosecution?

30 **MR COSTER:** I think it's much less likely to occur now simply because the vast majority of what
31 we do is digital and it's much easier to keep it long-term, you know, you don't need to
32 destroy a digital record per se. Clearly it's a very different scenario when everything was
33 paper-based and you just can't store everything forever.

1 I believe our archive policies are appropriate and in line with what would be
2 considered government best practice. It is going to be dependent, though, on the
3 seriousness of the allegations made, because if it presents as a minor allegation on a file it
4 will be subject to earlier destruction than if it's logged as a serious allegation, because that's
5 how the rules work.

6 **MS BASIRE:** Okay, I'll just move on to another example which Detective Kirby looked at for us.

7 This is an investigation into a possible sexual assault on a number of non-verbal men who
8 lived in the former Tokanui Hospital.

9 **MR COSTER:** [Nods].

10 **MS BASIRE:** So this dates back to early 90s, 1992, and what happened was a staff member in a
11 community organisation that had contact with a school that was based at Tokanui had
12 concerns that a senior teacher at that school may have been sexually abusing the residents.
13 This teacher lived alone and was in the habit of taking non-verbal boys home at the
14 weekend with no oversight, which I think these days would be ringing alarm bells for
15 anyone, but perhaps wasn't ringing alarm bells back then.

16 It appears from the documentation that the first report of concern was made to the
17 Police on 2 November 1992 where a resident who was non-verbal but used a form of
18 communication pushing yes/no buttons had indicated something may have happened to him
19 at the weekend. So he was taken to be medically examined and the Police were involved.

20 It the appears the Police, in conjunction with the hospital decided that they would
21 try and gather evidence by allowing two further boys, and I call them boys but they were
22 actually young men, to go to this teacher's house over the weekend and the plan was to take
23 a medical kit on those boys before and then after. Effectively, the boys, or the young men
24 were being used as bait to see if any offending happened. Would you agree that that
25 practice didn't meet the standards of policing then and wouldn't meet the standards of
26 policing now?

27 **MR COSTER:** It certainly wouldn't meet the standards of policing now and I would be surprised
28 if it would have been assessed as a reasonable tactic then. Putting potential victims in
29 harm's way to secure evidence just is not something that makes sense.

30 What's a bit unclear to me is obviously the conversations that occurred at the time
31 and how it was that he was allowed ongoing access to vulnerable people, although
32 acknowledging if you can't prove what's going on that can create a very difficult chicken
33 and egg situation. But I can't condone the tactic.

34 **MS BASIRE:** And as you say, we don't know what the conversations are but we do have --

1 **CHAIR:** Just a moment, Ms Basire.

2 **MR CLARKE-PARKER:** I'm loathed to interrupt, it would be helpful for both counsel and, I
3 imagine, the witnesses to have the documents in front of them that are being referred to as
4 the basis for all these factual comments.

5 **CHAIR:** Are there documents that are relevant?

6 **MS BASIRE:** Yes, there are.

7 **CHAIR:** Thank you for raising that.

8 **MS BASIRE:** The document, which is NZP0041964, if that can be put up.

9 **CHAIR:** Just for clarity, Commissioner, you have been advised in advance of these cases?

10 **MR COSTER:** In broad terms I'm aware of them but I haven't looked at the specific report forms.

11 **CHAIR:** So it would be helpful for you to see this.

12 **MR COSTER:** It would be helpful, thank you, yes.

13 **MS BASIRE:** That's the first page of the report form.

14 **CHAIR:** Again, the public won't see these. The reason is they contain a whole lot of personal
15 private details which can't be redacted but if you could read them out where appropriate.

16 **MS BASIRE:** So this report form talks about the situation that I've just outlined.

17 **MR COSTER:** [Nods].

18 **MS BASIRE:** And if you go to the paragraph that starts "Subsequently", this appears where
19 Police came into the picture. The police officer says:

20 "We were contacted on 2 November 1992 after a resident had returned from a
21 weekend visit and he was medically examined."

22 And then the next paragraph starting "The idea":

23 "The idea was to leave things as normal but monitor the next pupils he had visit and
24 examine them prior to them going and again when they returned."

25 So on 10 November two named pupils, one was of Rarotongan descent, one appears
26 to be Pākehā, were examined after returning home from weekend visits. The police officer
27 says "I obtained the medical kits and forwarded them." And I also have a copy of the
28 medical kits where the police officer has signed them.

29 So the question, which you accepted, was that although we don't know what
30 conversations happened, this was done in conjunction with the Police, it's clear, isn't it?

31 **MR COSTER:** It certainly appears to be, yes, yeah. The worst position to be in, and this can
32 occur today, is where you have someone in a position of trust and authority, a suspicion that
33 something's happening but an inability to prove it. And this tactic is hard to fathom but
34 then there's also the question of the alternative. If you don't have the ability to secure

1 evidence to displace someone from the position of trust then it can feel like a bit of a
2 stalemate and I think in today's environment institutions probably are prepared to take a
3 little bit more risk and tackle these issues a bit more head on. But that's certainly not a
4 guarantee that you're going to be able to resolve the situation. But at least in this case,
5 presumably, the GRO-B could have been prevented from taking children to his home
6 and that would have mitigated the risk.

7 **MS BASIRE:** Yes. I just want to talk a little bit more about what happened after that. So if we
8 can have a look at document NZP0041943, Toni.

9 This is the detective effectively signing off on the file because he couldn't prove
10 anything. He spoke to the suspect. The reason I wanted to show you this is if you see
11 midway through that paragraph there's a line that says:

12 "The suspect appears to be of genuine nature and was in fact attempting to train the
13 students to live in a Community House situation rather than have them at the Tokanui
14 Hospital as permanent patients."

15 It goes on to say:

16 "However, in light of this inquiry he's reviewed that aspect, and he's not going to go
17 ahead with it, he only takes one home with him now, and he's instigated a system of
18 medical exams before or after the visits."

19 Again, obviously, that was the decision of the school to allow that to go ahead, but
20 the Police knew about it, clearly. And as things often happen, in 1999 a verbal complainant
21 came to the Police and said that that very same person had sexually abused him for two
22 years prior to the time that he was in Tokanui, and he was convicted.

23 There appears on the file to have been one follow-up back to the Tokanui time and
24 without the whole file we don't know whether there was an attempt to reinvestigate the
25 Tokanui issues.

26 But this is one of the many examples we've come across where people raise
27 concerns or suspicions, people in positions of power continue to be employed, and then
28 eventually enough evidence is found, and you can see the pattern has been there all along.
29 Would you agree?

30 **MR COSTER:** That absolutely happens, yes. I think the difficulty, and I want to be realistic that
31 this difficulty continues today, depending on how strong the suspicion is about offending,
32 whether or not it's going to be appropriate to seek to elicit a wider group of complaints from
33 people who may be the victim of abuse, and whether we can secure evidence to take it

1 forward, that's still an uncertain thing, and unfortunately there are examples of situations
2 where complaints are made maliciously, much less common, I would suggest, than
3 situations where they're truthful, but it happens, and so in situations of very circumstantial
4 or, you know, suspicion but not evidence, the judgments are incredibly difficult,
5 recognising the reputational impacts on people who aren't offending to have it alleged that
6 they are, and conversely, clearly, the impact on victims who are never protected because we
7 can't or don't resolve the situation.

8 **MS BASIRE:** Yeah, I'm going to talk to you a little bit more this afternoon about your policies
9 with vulnerable adults, because this was a really difficult situation, because the
10 complainants were non-verbal and you would struggle with that situation even today.

11 But just before we leave this current example, Toni, if you can just put up
12 NZP0042002.

13 I understand this is what we call a NIA noting, so information recorded on the
14 computer, Police computer database. That's about this offender, it outlines that he has
15 offended against the boy, that he ends up getting convicted of.

16 But if you scroll down you will see -on- the same page, Toni, sorry, there is a
17 noting:

18 "He is/was a keen photographer and had taken photos of the victims and other
19 boys."

20 Now, there's nothing on the file to indicate it, but would that have been a very
21 useful investigation tool, the photos of the other boys?

22 **MR COSTER:** If you had grounds to search for them. So again, it would come down to, in the
23 first instance, were there sufficient grounds to get a search warrant to go to the house and,
24 of course, to get a search warrant you're not just -- you don't just need to have reasonable
25 grounds to believe an offence has occurred, you need reasonable grounds to believe that the
26 place you're going to search contains something of evidential value, it's not just a fishing
27 expedition.

28 So, without the full detail of what was known in the first instance, I can't say
29 whether there would be sufficient grounds to have obtained a search warrant to recover
30 photos if anyone even knew that photos existed.

31 **MS BASIRE:** We must have known that photos existed because it says "he's taken photos of the
32 victim and other boys."

33 **MR COSTER:** We knew that in '99, I don't know if we knew that in '93.

1 **MS BASIRE:** Yes. No, I wasn't suggesting that, I was suggesting that in terms of reopening then
2 this 1993 investigation, that although you didn't have statements from the boys,
3 photographs of him either abusing the boys or the boys in compromising situation coupled
4 with the suspicions in 1992, you may have well been able to prosecute him for that
5 offending.

6 **MR COSTER:** Quite possibly. What we can't see on here is whether a search was conducted of
7 his home address and, if so, what was found. One possibility might be that we know photos
8 were there because his house was searched, so I just can't speak to that.

9 **MS BASIRE:** Yes. That's fair.

10 Another example, and this relates to, again, a teacher at a girls' home, this is
11 document number ORT 0082593, and Toni, if you could just highlight, can you see where
12 the blue pen marks are? The paragraph that starts "Because" --

13 **CHAIR:** Could you just explain, orient us to the document, please?

14 **MS BASIRE:** Right, so this is a letter from the acting Assistant Director to the Director-General
15 of the Social Work Division, Palmerston North. No, it appears to be from the Social Work
16 Division, Palmerston North to the Director-General of Social Welfare.

17 It's a letter talking about the fact that some former what they call inmates of a girls'
18 home have alleged misconduct some two and a half years ago and then there was another
19 complainant that had come forward and the issue from the Police point of view is what
20 allegedly the chief detective told the people who ran the home.

21 Toni, the actual quote starts with "Because of the content." I'll just read it out, we
22 have it on the screen.

23 So, they've taken, there's been some complaints and then they've taken another
24 complaint and it's been investigated by the CIB in Whanganui, and the year that we're
25 talking about is 1972. In the letter it says:

26 "Because of its content the chief detective said he was obliged to have a
27 considerable number of the present inmates of the home interviewed unless our department
28 was willing to arrange for the GRO-Bs immediate removal. Because of the certain
29 disruptive effects that such actions would have, the people running the children's home
30 gave the assurance that the GRO-B would be removed..."

31 Now, we're going back to the 70s, but if that is an accurate reflection of what the
32 Police told the people running the care home, the children's home, that's not adequate
33 investigation either, is it?

1 **MR COSTER:** No, I don't know whether it would have met 1972 standards either, but certainly
2 today you would see a mass investigation triggered, we would be seeking to interview any
3 young people we could identify as affected, and at the same time working with Oranga
4 Tamariki around how we ensure the protection of children who may still be vulnerable.

5 So, yes, it's not something that we would see happening today.

6 **MS BASIRE:** But it did happen in the past, didn't it?

7 **MR COSTER:** I only know what you know in terms of what's in this report.

8 **MS BASIRE:** Yeah, but would you agree that if that's a theme that we've heard from our
9 survivors about the fact that, particularly with females, they're being sexually abused in
10 these care homes, and that nothing was ever done about it and often the teacher just moved
11 to another care home, that that's consistent with what we see in this document?

12 **MR COSTER:** There certainly appears to be some evidence of that in this case.

13 **MS BASIRE:** Just for completeness, in that case in 2006 -no-, in 2002, one of the girls who made
14 allegations about that teacher came forward to Police and made a statement about ongoing
15 sexual abuse when she was in that care home and the Police wrote her a letter in 2006 and
16 said that unfortunately, due to lack of corroboration there would be no prosecution.

17 **MR COSTER:** Yes, I understand that's the case.

18 **MS BASIRE:** Yes.

19 **MR COSTER:** Sorry, was that a question, or it was confirming that that had in fact occurred?

20 **MS BASIRE:** Yes.

21 **MR COSTER:** Yes, it appeared to be the case. One thing just to note on that, it looks as though,
22 well it's-- not clear whether there was a conversation that went alongside that letter, but
23 practice today would be in addition to formal communication as that was, there would be
24 time spent with a victim talking them through the reason we have got to where we have.

25 As I said in my opening statement, the fact that Police doesn't prosecute doesn't
26 necessarily mean Police don't believe the victim or believe that something has occurred but
27 at times there is a gap between our ability to prove those things to the evidential standard
28 required and the evidence that's actually available in the case.

29 **MS BASIRE:** Because of the time available we haven't been able to put all the examples that
30 we've come across to you, but on behalf of your organisation, do you accept, at least in the
31 time period that the Commission's looking at, 1950 to 1999, there were widespread failures
32 to investigate abuse against children and vulnerable adults in care?

1 **MR COSTER:** I certainly accept that there were failures. The piece that is really hard for me to
2 get clear on is how widespread they were. I'll just give you a bit of current context that
3 may be helpful with that.

4 We took a snapshot earlier this month of the number of cases for both adult sexual
5 assault matters and child protection matters and they are 3,000 and 6,000 cases
6 respectively. So 9,000 current cases that, you know, are of the character of what we're
7 talking about here today. Dealing with volumes like that, despite our best efforts, we will
8 still have occasions where we don't get it right.

9 I'm not saying that the volume at this time was at that level, but what I would note is
10 we have in front of us certainly too many cases where there have been failures, but not
11 enough for me to say that they were widespread or representative of all Police practice at
12 that time.

13 **MS BASIRE:** I'm just going to move on to another topic. There is one further example, but my
14 colleague Ms Spelman is going to talk to you about it, because it's a case she's very familiar
15 with.

16 I just want to go back to the issue that was raised by the case of the non-verbal men
17 at Tokanui Hospital. You've said in your brief of evidence that Police do not have specific
18 policies for dealing with complaints from vulnerable adults. Is that correct?

19 **MR COSTER:** Yes, in terms of, yeah, specific policy addressing that, that is correct.

20 **MS BASIRE:** And I just want to address the language of "vulnerable adult". Now, "vulnerable
21 adult" was the term that the Commission actually used in our questions to you in one of the
22 notices to produce. However, probably the better term when talking about disability, at
23 least, is "adults at risk", and this definition is drawn from the Crimes Amendment Act,
24 which was in 2011:

25 "An adult at risk is an adult who needs care and support, is experiencing or at risk of
26 experiencing harm, abuse or neglect, and because of their need for care, support, they are
27 unable to protect themselves from harm, abuse, neglect or the risk of that."

28 Would you be comfortable with that definition?

29 **MR COSTER:** I think so. I certainly don't disagree with it and acknowledge it's an important
30 concept. Within Police parlance today, you often hear people talking about vulnerable
31 victims, which can take many, --can be different in terms of their circumstances, but the
32 idea that the circumstances of the victim may lead to the need for a different response, I'm
33 certainly open to the idea that we could create greater clarity within Police guidance about

1 some of the different kinds of potential victims there are in this category and special
2 considerations around them.

3 **MS BASIRE:** Yes. Well, the language is important, because particularly from a disability
4 perspective a person is not inherently vulnerable because of their disability, it is the
5 situation that society puts them in that actually makes them at risk. Do you believe that
6 your average police officer would understand the difference between the label "vulnerable
7 adult" or "adult at risk"?

8 **MR COSTER:** The nuance between those terms might be a bit much to expect of the average
9 officer, but if you asked an officer to describe different kind of victims that would be more
10 vulnerable and therefore might need special protection or a different response, I have every
11 confidence that they would be able to speak to the kinds of areas that we're talking about.
12 So, I believe the knowledge is there, but I think there's opportunity for us to improve the
13 guidance about that to improve understanding and to drive greater consistency of response.

14 **MS BASIRE:** Why is it that you don't have specific policies dealing with complaints coming
15 from adults at risk?

16 **MR COSTER:** I think the awareness of these issues is probably still emerging, we're in a
17 significantly better place than we were 10 or 15 years ago, predominantly, I would say,
18 because of the increased awareness around child protection and adult sexual assault
19 matters, but this is probably -acknowledging- there are some categories of offending that sit
20 outside of both those areas, there's an opportunity to create greater clarity.

21 **MS BASIRE:** Yes, because I mentioned this before lunch, policies around children for people
22 under 16, policies around sexual assault for adults cover all adults, but we actually have a
23 large group of people aged 17 to 64, if we leave aside that there might be policies to do
24 with elderly, who come under this term "adults at risk." Would you agree that there is a
25 gap in your policies and procedures about abuse against that group?

26 **MR COSTER:** I certainly think there's opportunity to improve. As I say, I do think the level of
27 awareness today is much better than it's been in the past, but I accept this might be an area
28 where we need to take a specific look, maybe draw on the definition you've called out and
29 speak in a bit more detail to that.

30 **MS BASIRE:** I just want to talk about that a little bit more, because we're not actually talking
31 about a small group of people. The statistics, and I think it's even in your disability
32 stocktake paper, show that one in four New Zealanders identify as having a disability,
33 Māori adults have higher rates of disability, sometimes quoted between 26 and 32% of
34 adults, 15% of children. Pacific peoples have higher rates also.

1 We know in terms of mental health that higher rates of violence and abuse against
2 adults leads to higher rates of mental illness and higher rates of violence are also
3 experienced by the most marginalised groups such as Māori, Pacific, women, rainbow,
4 people who live in residential care services, people who have less access to education,
5 employment and income and have inequality and access to housing. Would you agree with
6 all that?

7 **MR COSTER:** Absolutely, and none of that's lost on us. One of the things that came out of
8 Prevention First, which was a strategy launched in around 2010, was the idea of victim
9 focus and a system for understanding repeat victimisations, which then led to intervention
10 plans working alongside people who had been repeatedly victimised to try and provide
11 better support or address the underlying causes, and through that work we came to see
12 where more intense victimisation was and I think our learning around family harm has
13 really helped us to get better insight there.

14 So all of that, I think, is pretty well-understood.

15 Areas that are more emergent I would say are foetal alcohol syndrome and the way
16 that affects the way people present, be it as offenders or victims, and we're seeing through
17 the likes of the Criminal Case Review Commission cases being looked at in respect of
18 offenders who maybe have suffered from those less obvious disabilities that we need an
19 awareness of within policing.

20 So, I think there are areas where we can strengthen our policies.

21 **MS BASIRE:** Do you believe that Police react quickly enough to information when we look at
22 the FASD issue, which now is appearing to be the overwhelming issue with offender
23 groups, that's been known about for quite a while and I understand that you're only just
24 starting to look at policies around FASD?

25 **MR COSTER:** I think it's a good question. We will tend to move pretty consistently in pace with
26 where community is at in terms of understanding of these issues. We do try to outperform
27 the community, we've got an evidence based policing centre that is looking to draw insights
28 from policing around the world and bring those in for application within our context. But
29 we don't have a massive infrastructure able to set up to monitor science, health, social
30 issues and be able to magically get us in front of the general awareness that sits inside of
31 community of these issues.

32 So I'm not making an excuse, I'm just observing that Police is forward leaning but
33 there are reasonable limits to how far ahead of scientific insight and general community
34 conversation we can get.

1 **MS BASIRE:** And that's perhaps a discussion that we need to have a look at in terms of future,
2 but really this is about partnering with the people who do understand these things,
3 particularly with disability, and you've talked about international research -- international
4 research, and I'm just talking here from a human rights paper that was published in 2021,
5 that international research says that over 90% of disabled participants in some international
6 studies are disclosing physical, sexual, emotional and coercive violence against them, and if
7 one in four New Zealanders identify as disabled, this is a large issue.

8 I just want to pull back on, --you've said quite often about family violence, but the
9 point I want to make about adults at risk is that there is still a large risk factor with them in
10 care settings, because by their very necessity they live in some sort of residential care
11 home. We might have closed the psychopaedic hospitals, but they're still in residential care
12 and that raises a huge risk factor for them.

13 In terms of the Police's forward thinking, are you aware of the pilot programme that
14 was done in 2016, 2017 at the Waitematā Police Station in DHB called Safeguarding
15 Adults From Abuse.

16 **MR COSTER:** No, not specifically.

17 **MS BASIRE:** Right, I'm sorry, this document didn't seem to make its way into the bundle but as it
18 was one of yours I thought you might know a bit about it.

19 But this is a pilot programme where they very much tried to partner between the
20 Police and DHB to help vulnerable adults and they acknowledge that some of the family
21 harm violence policies weren't available to adults at risk, and in terms of --

22 **CHAIR:** Ms Basire, I wonder,-- I think we should afford the Commissioner the courtesy of
23 showing him the document.

24 **MS BASIRE:** Sorry.

25 **CHAIR:** I don't know if you have an unmarked version. That one seems to be peppered with
26 sticky notes. Would you like to have a look at it?

27 **MR COSTER:** I'm certainly happy to take a look if that's helpful, yeah. Obviously, I'll be limited
28 to what I can say without it but --

29 **CHAIR:** Yes, because I don't think you've --

30 **MR COSTER:** I can speak in general terms to this if it's helpful. If you think about the vast array
31 of issues that can land with Police from family harm to mental health, to drug abuse, to
32 youth offending, to gangs, we do our level best to work in partnership to improve our
33 practice across all of these areas, and we have literally hundreds, probably thousands of sort
34 of partnership style relationships operating around the country on different issues.

1 Our practice has tended to be, as a partnership that's come in a particular place as a
2 result of some good initiative starts to bear fruit to try and share it and then ultimately turn
3 it into national policy. But we could have a university of people working alongside the
4 Police trying to capture that and turn it into policy and we probably still wouldn't stay on
5 top of it all. And so clearly this is an area where there is some opportunity to take learnings
6 like the one you have in front of you there and bring them through into national policy.

7 One of the real challenges for policing is as we get these multiplicity of issues, how
8 much do we expect generalists to have their head across them versus creating specialist
9 groups. We're a big organisation, but we're also over many locations and running 24/7 and
10 it's a constant tension between fragmenting our workforce to get people with the right
11 expertise to deal with particular areas of interest, versus equipping the frontline to be able
12 to know enough about what they might confront to be able to respond appropriately to it.

13 And we're trying to get our systems, particularly on our mobility devices, to provide
14 our people with the reference material they need to know in the moment what's required.
15 But it's a constant challenge for us to have them sufficiently expert across the massive
16 range of issues that are relevant to policing.

17 **MS BASIRE:** And that's probably the reason why I raise this pilot, and I can get you a copy in the
18 break, I won't ask you specific questions about the pilot. However, you would, from what
19 you've said, agree with me that in order to keep people in care, which is our core group that
20 we're talking about, safe, that Police need to partner with other agencies, because you can't
21 be an expert in everything. Would you agree?

22 **MR COSTER:** I think that's right. There'd be a question for all of Government about what is the
23 best way to bring knowledge, insights and partnership into all of the agencies that touch this
24 space, because we could all try and partner with all of the organisations working in this
25 area, or we could have a Government approach that enables us to share those learnings
26 across agencies.

27 I'm not at the point of being able to say what exactly the solution is, but certainly
28 I've called out three priorities for my time as Commissioner, one of them is focused
29 prevention through partnerships and it's really the idea that prevention is core to our
30 business, Police needs to focus on the things that it can do to keep communities safe and
31 prevent crime and harm, and then for the balance of what needs to be done we need to
32 partner.

33 But clearly there are many more agencies that we could partner with than we have
34 people to do the partnering, and so that is our balancing act in all of these things.

1 **MS BASIRE:** Yes, because for adults in care we don't have an equivalent of Oranga Tamariki, do
2 we?

3 **MR COSTER:** No, I think that's fair.

4 **MS BASIRE:** Just briefly on that point, now you've acknowledged in your brief of evidence that
5 there are gaps particularly with disabled adults and Police's engagement and working with
6 disabled victims.

7 **MR COSTER:** Yeah, I don't know about engagement, I think I've referred to opportunity to
8 improve our policies to ensure that we are responding appropriately to that victim group.

9 **MS BASIRE:** You've referred and some of the NTPs have referred to the fact that when an adult
10 at risk or a disabled adult is being interviewed the Police do have the opportunity to use the
11 specialist child witness interview staff and format. The information you gave us was that
12 those interviewers however, their training on disability is just a video. I'm not sure, you're
13 probably not across that final detail --

14 **MR COSTER:** I am not quite at that level of detail, but I accept their primary skill set is aimed
15 more into child victims.

16 **MS BASIRE:** So there is an opportunity, whether it is those people who are trained or you bring
17 in people from outside who are trained, but you would agree it would be very difficult for
18 one interviewing officer to be right across all the various mental health impairments and
19 disabilities that a person could present with and adequately interview them to get the best
20 evidence possible?

21 **MR COSTER:** Absolutely. One thing we are doing as a consequence of our disability stocktake
22 is aiming to improve access to, for example, sign language interpreters and some of those
23 arguably easier things to achieve in this space. Getting into the expertise to deal with
24 witnesses or victims who have other disabilities is obviously complex and it's not clear to
25 me that there is a workforce available out there with that expertise to come in and be part of
26 a Police interviewing process, I'm just not sure if that capability yet exists.

27 **MS BASIRE:** Yes. The Tokanui example where the survivor communicated by pushing yes or
28 no, that would be a major challenge for a specialist child interviewer, wouldn't it?

29 **MR COSTER:** Yes, it would, and I think even more so it would be a major challenge to get to a
30 standard of evidential sufficiency to prosecute without an expert witness able to reassure
31 the court that the evidence obtained by that method was reliable with an understanding of
32 the victim's disabilities. That will always be a real challenge when we are dealing with
33 victims who have disability.

1 **MS BASIRE:** Yes. In terms of record-keeping what's called augmented and alternative
2 communication, such as using some sort of device, are records kept by the Police of how
3 often those sorts of communication are used with victims?

4 **MR COSTER:** Not to my knowledge.

5 **MS BASIRE:** You touched on the issue of credibility. You would agree that before a prosecution
6 goes forward, either the prosecutor or the officer in charge or the supervisor makes their
7 assessment pursuant to the Solicitor-General guidelines, and one of the issues they look at
8 is the reasonable prospect of conviction.

9 **MR COSTER:** Yes.

10 **MS BASIRE:** And credibility throughout the years with our cohort group has been problematic,
11 would you agree?

12 **MR COSTER:** I suspect for most that's true.

13 **MS BASIRE:** Yeah, so we're saying that in the past, and the example that Ms Spelman is going to
14 talk about very shortly, is where a female was considered not credible because at 12 she
15 was considered promiscuous, when her father was sexually abusing her, that wouldn't be
16 considered today as a credibility issue, but issues to do with augmented and alternative
17 communication would still be highly controversial today?

18 **MR COSTER:** Yeah, I think I'd use a different term than "credibility" and I would talk about
19 "reliability". So where an alternative method of -- an alternative method of communication
20 is being used in a court with which the court is not familiar and with which the court
21 doesn't understand the mental capability of the person using the device, I'm certain the court
22 would need someone to stand up and say, "I've been working with this person; based on my
23 experience, my training, I believe this person is able to communicate reliably through this
24 device" and that then might get you through the starting gate.

25 But the sad reality is that even for entirely able victims, achieving a successful
26 prosecution for, say, a matter of historic sexual abuse is very difficult, because of the
27 challenges of corroborating witness account.

28 So I don't want to sound pessimistic but I want to be realistic that the criminal law
29 sets a high bar for conviction and all of these things represent real challenges to reaching
30 that high bar.

31 **MS BASIRE:** There's no longer a requirement for corroboration. Why is it that the Police still
32 feel they need to find corroboration before a case will go ahead?

33 **MR COSTER:** I didn't say that, what I'm saying is we will always look for corroboration, in the
34 absence of it, then we are reliant on the testimony of the victim and whatever evidence is

1 brought by the defence, and that is a matter that will be relevant to the likelihood of
2 securing conviction, depending on all the circumstances, including the nature of the account
3 we've been able to achieve from the victim.

4 Where these matters are for serious offending and line calls then we will, as a matter
5 of common practice, engage with Crown solicitors to make that assessment.

6 So this isn't just a Police decision, we will go to the people who will need to be able
7 to bring the case before the court to present the evidence, to check our own view, and it's
8 not uncommon for us to then go for another opinion if we're still not happy with where that
9 assessment has landed.

10 **MS BASIRE:** Just briefly on that, in the Marylands investigation there were some complaints that
11 didn't go ahead due to that assessment that people had learning difficulties that meant they
12 were vulnerable to cross-examination-. Now, we've run out of time to talk about it, but
13 I just wanted to flag that again these are decisions, judgment calls that have to be made by
14 either the Police or the Crown Solicitor, there is no hard and fast rule, and that brings me
15 back to the point that I made right at the start, which is the importance of understanding
16 people's unconscious bias about - because they bring those biases to play even if those
17 biases are related to disability in a paternalistic sense, "we don't want to put this poor
18 person with a learning disability through this situation" as opposed to supported
19 decision---making where that disabled person makes a decision themselves about whether
20 they want to be put through that situation.

21 But I've run out of time to ask you any more about that, so unless there's a comment
22 you want to make on that, I'm just going to hand over.

23 **MR COSTER:** To acknowledge it, and also to note that in a justice system where 12 people from
24 the public are expected to make that assessment, those biases will also play into their
25 decision-making potentially affecting the likelihood of a conviction.

26 **MS BASIRE:** Thank you.

27 **CHAIR:** Were you about to embark on a new area, Ms Spelman, or is it --

28 **MS BASIRE:** It's just one case example.

29 **CHAIR:** You're going to finish off that aspect, that's fine.

30 **MS SPELMAN:** Happy to take the break if you'd like to.

31 **CHAIR:** It's up to you, how long do you think you're going to be? Don't make wild promises you
32 can't keep, Ms Spelman.

33 **MS SPELMAN:** I'm confident I can stick to 10 minutes.

34 **CHAIR:** Let's get that done and then we'll take the break.

1 **MR COSTER:** You're just going to say yes/no answers.

2 **CHAIR:** No, I'd never say that.

3 **QUESTIONING BY MS SPELMAN CONTINUED:** Yes, if the Commissioner cooperates, I
4 will be able to stick to 10 minutes.

5 My colleague has briefly touched on it but this is the last example. The reason
6 I want to raise it with you is to just point to some of the things that have changed since this
7 example, which is from 1980.

8 So, this is one of our Māori survivors who gave evidence at a previous hearing
9 about a range of things, being in care for quite some time, but the beginning of it related to
10 her being sexually abused by her father from about 8 or 9, I think you're familiar with the --

11 **MR COSTER:** Broadly.

12 **MS SPELMAN:** So, if we could bring up on the screen document WITN 0267004 - sorry-, 7020,
13 my mistake.

14 So we're looking at a Police report form and we can see that it's dated, on the next
15 page, in 1980. It's a few pages long, so 1980 and then through to 1981. So if we could just
16 go to page 4 of that document. And you don't need to read the whole thing but that's just
17 for your context.

18 So in terms of these allegations that were made by this survivor and there was
19 also - her sister was also spoken to, there's just some comments in here which -are -perhaps
20 stick out to us reading it from a 2022 lens. So- I just want to read you a couple of passages
21 for you to comment on. The first one:

22 "Difficulties arose in this inquiry because none of the allegations were recent and
23 there was no corroboration of the statement by the sister."

24 Moving further down, there's discussion about other inquiries that were done in
25 relation to the suspect and a suspicion around him attempting or having possibly have had
26 some other sexual, -some other incidences of sexual intercourse with other friends of these
27 sisters, these girls being in the 12 and 13- year- -old age bracket.

28 And then the comment just in that last paragraph:

29 "Again, these allegations cannot be corroborated and none are recent. Also, the
30 girls themselves are of a promiscuous temperament and all have had intercourse prior to the
31 incidences with this person."

32 So we are going back some way, to 1980. What's your comment on the kind of
33 language that's being used in this report?

1 **MR COSTER:** Clearly that wouldn't even be relevant in today's circumstances. I think there's a
2 pretty good understanding that sexualised behaviour can come as a consequence of being
3 sexually abused. So that today would be completely unacceptable.

4 In terms of attitudes at the time, I can't say whether that reflected a bias that existed
5 generally in community, or whether it was something that was a feature of the Police
6 mindset, but clearly you would not expect to see something like that today.

7 **MS SPELMAN:** Just at the top of the next page there's a comment about "none have made recent
8 complaints to either their parents or anyone else" and that also seems to be seen as a barrier
9 in this case. But Police would take a different position on that today?

10 **MR COSTER:** I think there's a good understanding, particularly in terms of child protection and
11 sexual assault, that there are lots of reasons why people don't come forward to a particular
12 person or come forward at all in terms of offending or victimisation and that it may take
13 some years and that that is not in itself a reflection of a lack of credibility. So that is, I
14 think, well understood and I would like to think has been well understood for some time.

15 **MS SPELMAN:** And these days Police routinely call counterintuitive expert evidence to
16 comment on these various issues when they come up?

17 **MR COSTER:** Yes.

18 **MS SPELMAN:** Without rushing, but just moving a bit further down the page to the paragraph
19 that begins "It was previously stated." This is, I suppose, the conclusion of this particular
20 Detective Sergeant about what's to happen and he says:

21 "In my own mind, I feel that he has committed the offences, but the girls he has
22 committed them on would not make good witnesses, character wise, and there is nothing to
23 corroborate their statements."

24 So for this particular survivor, when they gave evidence before the Commission
25 about this, it was only prior to that hearing that they had had those documents shown to
26 them, that was the first time they'd seen themselves described in that way, and their
27 response, as you can imagine and you may well have seen it at the time, was very
28 emotional, it was extremely upsetting for them to hear themselves as a 12 year old be
29 described in those terms, and that particular survivor said, and this is, sorry, looking at the
30 transcript of evidence, which is TRN 0000319, which we don't need to bring up, but just for
31 your reference, that:

32 "He" --being this detective- "that he's a detective that knows and believes that, but
33 still nothing. And again, making us like we're not the victims, anything that we've been
34 saying from day fuck'n 1 is just, what, ignored or they don't fuck'n read it, what is it?

1 Things could have been so different, like I read that and I'm just like we would have made
2 good witnesses- character wise. And there was nothing to corroborate the statements?

3 Only that we'd been telling the story over and over again and speaking on deaf ears."

4 And appreciate, again, you weren't the police officers involved, but as the head of
5 Police now, what's your comment in relation not just to this survivor, but perhaps others
6 who had similar experiences, how could this have happened?

7 **MR COSTER:** Yeah, I completely understand and sympathise with that response from that
8 survivor, and, you know, the language used in this report and that way of describing victims
9 is not appropriate today, I can't say where that sat in terms of ways of working at the time,
10 and where you have more than one person make a complaint, clearly that adds to the weight
11 of what was being put forward.

12 There's one thing that I think it is important to note as a current constraint, which is
13 we still have cases today where witnesses are believed but for reasons of evidential
14 sufficiency matters do not proceed to prosecution.

15 Now, I don't think that that would be -that that would happen in a case like this
16 today, but there are still cases where that can occur. And, you know, as I've alluded to,
17 there is a gap between what can be brought to criminal trial and where Police's own
18 assessment of matters might sit. So,- to acknowledge that, but also to completely
19 understand where that survivor is coming from.

20 **MS SPELMAN:** Thank you for that.

21 Just in this particular example, things did in fact unfortunately continue for this
22 survivor who, about a year later, made a further complaint that her father was forcing her to
23 have sexual intercourse with him and she complained a number of other times and nine
24 years later, in 1989, we can then see on document WITN 0267019, on page 2, that the
25 Police case was reopened and there was an investigation and the offender did in fact plead
26 guilty, and guilty pleas were entered in the High Court to ten charges of incest, five charges
27 of indecent assault, and one charge of attempting to dissuade a witness, this particular
28 survivor, from giving evidence.

29 So, you can imagine again for this particular survivor who had to endure further
30 years of what happened to her before there was action.

31 **MR COSTER:** Yeah, another point I should just make is certainly in today's context where there's
32 ongoing risk to a victim, that is going to be a factor that weighs more heavily towards
33 prosecution than something where that risk no longer exists. So that is another thing that in

1 this case ought to have pointed to prosecution, I would have thought, without having
2 personally examined all the evidence on the file.

3 **MS SPELMAN:** Sure. So I suppose the things that have changed that you're referred to such as
4 now having specialist interviews and counterintuitive evidence and previous sexual
5 experience being dealt with differently these days, those things of course are all
6 improvements but unfortunately come too late for not just these particular survivors but
7 others like them.

8 **MR COSTER:** [Nods].

9 **MS SPELMAN:** One other aspect that the survivor noted when they gave their evidence was that
10 at the point their father was charged and pleaded guilty, that she wasn't contacted by Police
11 or any of the other agencies to talk about why it had taken so long or to offer any sort of
12 apology for their experience; what's your position in terms of Police making amends for
13 some of the failings that we've spoken about today?

14 **MR COSTER:** I can say that in a general sense today where things go wrong we're generally
15 pretty good at fronting up on those issues. Obviously I can't speak to all of the
16 circumstances of the case in front of us but, you know, our posture today is one of learning,
17 and aiming to continually improve, and I think that's reflected in the pace of change in the
18 organisation in the last 10 to 20 years compared to the period preceding that.

19 **MS SPELMAN:** I think that's exactly 10 minutes so I better stop.

20 **CHAIR:** Well done. Yes, you were about to be penalised but you just avoided it. Let's take a 15
21 minute adjournment and then we'll return for the final session, thank you.

22 **Adjournment from 3.36 pm to 3.52 pm**

23 **CHAIR:** Tēnā koe ano, Ms Spelman.

24 **MS SPELMAN:** Tēnā koe.

25 Tēnā kōrua. Commissioner, just in relation to the document that Ms Basire was
26 referring to before, I understand a copy of that has now been provided by e-mail, and in
27 order to give you a chance to look at that properly we'll follow up with some written
28 questions following this hearing in relation to that.

29 I'd like to move now to looking more towards the future for Police in relation to
30 these topics, and I wanted to start with something that you've spoken about a couple of
31 times today, which is, I suppose, the expanded role of Police in the last 20 to 30 years or so.
32 And in particular you've made a couple of comments today about things like mental health
33 call-outs, I think you said Police don't choose who presents with a mental health issue, or

1 people who present affected by drugs and alcohol, and possibly the third area of sort of
2 expansion is family violence and related issues.

3 Now, those three areas, family violence, mental health, and drug or alcohol related
4 issues, they would take up a pretty large chunk of Police resource?

5 **MR COSTER:** Certainly, yes, if you count all of those, there'd be few matters that our frontline
6 responders are dealing with that don't have at least some connection to one of those topics
7 and the demand is growing. To illustrate, both family harm and mental health demand on
8 the frontline have increased by 60% over the last five years and we know that less than
9 30% of all family harm is actually reported to Police, so there's massive unmet potential
10 demand out there.

11 **MS SPELMAN:** So that places your police officers in a probably increasingly difficult position in
12 terms of the type of skills or training that they need to be able to go into these particular
13 situations.

14 **MR COSTER:** There's certainly been a growing expectation on the Police College, which Deputy
15 Commissioner Kura is responsible for, to deliver training covering many different topics
16 that the frontline need to know about. Our balancing act is to recognise they need
17 awareness to be able to respond appropriately to what's their role without putting them into
18 the place of actually being the drug counsellors, social workers, whatever it might be, and
19 then making sure that our systems enable connections off to the right interventions.

20 An example of where we've really moved forward on that recently is with an
21 initiative called awhi which, using an application on the officer's phones they are able to
22 make a social service referral to such services as might be available and relevant within
23 their area for a particular problem. And we're aiming to try and, I suppose, re-engineer our
24 processes more and more to link people who come to our attention to the right
25 interventions.

26 But we also need to acknowledge that there's an increasingly complex range of
27 issues presenting, particularly for young people in terms of their mental well-being.

28 **CHAIR:** There's another complex issue which is our stenographer, who I think might explode if
29 you keep going at that rate.

30 **MR COSTER:** Sorry.

31 **CHAIR:** Just remember it's getting late in the day and she has been going all day -as have our
32 signers. So- both of you, just please don't rush.

33 **MS SPELMAN:** Noted, thank you.

1 Deputy Commissioner, in terms of your role, I suppose, both in charge of Police
2 College and more generally leadership and capability within the Police, what's your
3 comment on that kind of new skill set or new expectations that are required possibly
4 compared to when you began in '87?

5 **MS KURA:** Vast, there's such a wide range of things that our new constables need to learn and
6 we're really mindful, we've actually got a review of our initial training package at the
7 moment, we're looking at: is it fit for purpose, is it keeping up with the changes in what our
8 frontline staff are seeing?

9 The things that we know we need to reinforce is the values base, the values are -the
10 organisational values, bringing humanity to all of our interactions, laying a really
11 good- foundation with our recruits at the college, setting a good sort of a scene and base for
12 them to then continue to learn on.

13 So if I look at you have 16 weeks at the Police College where you're learning a lot
14 of information, I think there's more than 200 topics in their first 16 weeks that they're
15 currently learning and then we look at a workplace assessment programme on top of that
16 over the next two years that builds on all of the foundation skills that they've learned at the
17 college and then as they learn in the workplace, and it's a hard environment for them to
18 learn in, because they could be, as we had some recruits straight from Police College into
19 the protests at Parliament, and so it's quite a dynamic environment that some of them learn
20 in. It's not a gradual situation.

21 **MS SPELMAN:** And by necessity I suppose having to cover so many topics during 16 weeks the
22 type of depth that you'd be able to go into is going to be pretty high level on some of those
23 topics.

24 **MS KURA:** Yes, I think that we are really challenged with this about how everybody learns at a
25 different rate, we know we've got adult learners, --I'm mindful of the noise.

26 **CHAIR:** They are trying to fix the air conditioning so it's life or death for us. So if you could bear
27 the dentist like noises, we'd be grateful. Thank you.

28 **MS KURA:** If I think about the depth that we go into in all of these topics, and what's relevant,
29 people learn at different rates, we've got to be mindful of some people can learn a lot in 18
30 month and take everything in, but some people, it might take them three years, so we are
31 really cognisant for our new constables it's, you know, a steep learning curve.

32 **MS SPELMAN:** And I suppose one of the pressures for Police is that given the availability or
33 lack of availability of other services, sometimes Police are the only option in terms of being
34 available 24 hours a day and across the country, so there may well be occasions when fairly

1 new constables are going into complex, fluid, changing mental health situations really
2 without the training that they would need to be able to deal with that appropriately.

3 **MS KURA:** Yes, I'd agree that's a really high pressure situation for a number of them.

4 **MR COSTER:** We are working with the new health arrangements to try and achieve a greater
5 availability of the appropriate response services to support frontline Police because, as you
6 say, you know, we aren't quite the right resource to deal with people who are in mental
7 distress.

8 **MS SPELMAN:** Absolutely. I suppose another, for another group of people, in terms of some of
9 the historical failings that we've spoken about in this hearing, and that we know in other
10 contexts and the long history that Police have in this country, there are also some people
11 who will have a fear of calling Police, a mistrust, a distrust; do you accept that?

12 **MS KURA:** Yes.

13 **MS SPELMAN:** And for some people who we've heard from through this Inquiry, that relates to
14 in times when they perhaps need assistance and would call the Police but the fear of having
15 their children taken away from such a phone call means that they won't call for help.

16 **MR COSTER:** Yeah, absolutely. One of the positive things under the banner of Te Aorerekura,
17 the new family violence strategy, is the concept of community led responses, particularly to
18 family harm, and recognising that Police is a response but actually most often what's
19 needed in these whānau is supporting them to resolve whatever's causing the stress in their
20 environment.

21 So that is moving forward, but for the time being, Police are still the first
22 responders.

23 **MS SPELMAN:** I think you mentioned earlier, Commissioner, even more broadly than Police, it's
24 just often that agency responses, whichever agency, that they're not going to be the right
25 responses to some of these community issues.

26 **MR COSTER:** Yeah, certainly some of the best responses we're seeing at the moment are coming
27 from iwi and community organisations that are commissioned to address whānau in a more
28 holistic way.

29 **MS SPELMAN:** Of course that doesn't take away from the Police's obligations and work to
30 improve what work you are doing and to do that to the best of your ability.

31 **MR COSTER:** [Nods].

32 **MS SPELMAN:** But it's probably fair to say that there are some parts of the community that
33 simply will never trust Police due to what's happened in the past.

1 **MR COSTER:** Yeah, I'm more optimistic than that, which is we are working really hard to build
2 relationships with our diverse communities and we've made massive progress through
3 things like our Māori/Pacific/Ethnic focus forums, through our relationships with iwi. I
4 think for us, as for other agencies, the biggest challenge is building relationships with those
5 who are disconnected from their whakapapa, and therefore, you know, have that added
6 disadvantage and that's going to take time to address those issues.

7 **MS SPELMAN:** I think another problem that we can see in addition to perhaps those more
8 general trust issues, is the tension that exists for Police going into a situation which may
9 have many facets, one of which is there may be criminal offences, but actually if the reason
10 Police are called in the first place is a mental health distress situation, of course there's
11 plenty of examples of that type of thing where Police go, but ultimately it's the person
12 who's arrested for a small amount of meth they have in their pocket.

13 What's your sense, Deputy Commissioner, in terms of that tension and how you're
14 training the police officers of now to deal with that, given that it's quite different from the
15 past when we spoke about that enforcement lens?

16 **MS KURA:** I think the whole premise of bringing humanity and understanding the whole person
17 is quite different to when I trained in 1987 and actually probably throughout my policing
18 career, and it's trying to, -I think the diversity of our workforce will actually help- with
19 people understanding that they come from a more diverse background so they can
20 understand the differences that people presenting might offer. I think that when I joined we
21 were all pretty much the same, and for me to understand what a family harm incident might
22 have looked like, if I saw an offence that's what you deal with, whereas now because we've
23 recruited quite differently, and we've been really, I think, deliberate about trying to recruit
24 differently and more diversely, that we are bringing people in who have life experience
25 that's- and they can relate in a different way. And I think that that's,- -that will make a
26 difference to future interactions, and I can see examples where some of our young people,
27 our staff will say, "I dealt with someone, I know that there's a lot more going on for them,
28 actually can we look at this with an iwi provider, can we think about how Te Pae
29 Oranga- might fit. Could we look at --I know they've got a social worker." And even to the
30 point of when we have a mental health nurse that might sit alongside our custody teams to
31 ask them for some background information.

32 So I think there are lots of things in place to help our staff navigate differently, but
33 it's a long journey as well.

1 **MS SPELMAN:** It sounds almost as though that shift from Police working mostly on their own
2 with a focus on enforcement through to these partnerships, do you see the future of that
3 being a continuation where, for example, if there was a 24/7 mental health or drug support
4 team that could be available, then actually Police wouldn't need to have a role in
5 responding to those sorts of events?

6 **MS KURA:** That would be perfect.

7 **MS SPELMAN:** I'm sure it would be very inexpensive to set up. But, I mean, that really is the
8 point here, isn't it, no matter what training you can do in your 16 weeks or beyond, Police
9 are never going to be mental health nurses, they are never going to be drug and alcohol
10 clinicians, and due to the historic issues, there are just, unfortunately, some people who will
11 never seek their support.

12 **MS KURA:** That's right.

13 **MS SPELMAN:** All right. That sort of brings us, I suppose, into the next part which,
14 Commissioner, you alluded to before, the by Māori for Māori solutions that of course have
15 been calls for many, many decades but sort of heightened in recent years.

16 Part of this changing role of Police, I suppose, might mean a re-definition of what
17 the Police is, what the Police is for. What would you define at the moment the purpose of
18 Police as?

19 **MR COSTER:** To prevent crime and harm, which is our current mission. So that is very much
20 there and I don't see that shifting significantly, but what's required to achieve that is still a
21 work in progress. Our statutory functions still include, law enforcement, and that will
22 always be the thing that we can do that most other agencies can't. But when we bring a lens
23 of preventing crime and harm, the key question that I think we're increasingly asking is,
24 what's the response to the situation in front of me that will achieve that outcome?

25 It is a difficult balance in policing to not step too far into the domain of other
26 agencies and then spread ourselves too thinly, so in our desire to see better preventative
27 effort in areas like family harm, responding to drug addiction issues, mental health, even
28 gangs, there are lots of initiatives that Police have -- preventative initiatives that Police
29 have started and led and brought others to the table to try and get a response.

30 For me, the maturity of this model would be that once those things are in place,
31 Police can come back to our core role and make sure that our front line's really well
32 equipped to feed off to these other mechanisms, but not necessarily have to lead them.

33 And as always, with these kinds of things, a key challenge is the investment
34 necessary to make those preventative efforts fly, and the workforce available to deliver

1 them and if we think about drugs and mental health workforce is a real challenge at the
2 moment, and so that has a bearing on what comes to Police.

3 **MS SPELMAN:** And I suppose your mention of the other agencies is a good reminder, obviously,
4 it's the criminal justice system we're talking about, the different parts of that, not just
5 Police, and I'm thinking of the analogy of the criminal justice system being like a swift and
6 dangerous river, many points where one can fall in or wade in but once you're in and you're
7 going through those currents, it's very difficult, which is obviously why there's a lot of work
8 done in terms of first time offenders, and I'm thinking of the whakatauki that encapsulates
9 this, he au kei uta i taea te kape [karo], he au kei te moana e kore e taea which talks about
10 the rapids on-shore can be bypassed, things can be dealt with at home, but the whirlpool at
11 sea cannot.

12 And I suppose that's something it sounds like the Police are still mindful of, given
13 your ultimate enforcement role that exists, it's still very dangerous for people in that sense
14 to come into contact with Police because of the consequences that can flow from arrest and
15 criminalisation and the other, sometimes, unintended negative consequences of being
16 involved in any way with the criminal justice system.

17 **MR COSTER:** My sense is it's better than it has been at any time in our history. There are more
18 and more opportunities to get help rather than end up stuck in that flow. Things like Te Pae
19 Oranga, a very deliberate effort on the part of Police to divert people away from that path.
20 But to make that a viable and sustainable way of creating community safety requires many
21 other hands at work. It's not simply a matter of diverting people away from the justice
22 system, there has to be something or someone there to work with them to address the issues
23 that led to the offending, otherwise we will just see an escalation in reduced public safety.

24 So that is why we've been really motivated to try and work with partners to make
25 sure those options are available.

26 **MS SPELMAN:** In terms of that transfer of power and resources, it sounds, again, similar to what
27 we spoke about earlier, that you're generally supportive as long as the correct, appropriate
28 amount of support and infrastructure and resources are there to support what needs to
29 happen.

30 **MR COSTER:** Absolutely, and there are some obvious areas to look for this. The reason family
31 harm has been such a focus for Police is it is the genesis of so many things, future family
32 harm victims and offenders, youth offending, youth suicide, gangs, many of those things
33 can be tied back to harm in the family context, accepting it's not the only place where harm
34 can occur, clearly it isn't. But as a strategic intervention point it's key.

1 **MS SPELMAN:** And I suppose in terms of Police as an organisation and your own leadership,
2 Commissioner, I understand you're a fan of the Peelian Principles and that philosophical
3 approach to policing and in terms of those principles, recognising the test of Police
4 efficiency is the absence of crime and disorder, not the visible evidence of Police action in
5 dealing with them. Would it be fair to say that successful Police would look like a
6 shrinking Police force over time?

7 **MR COSTER:** That would be the ideal, that we're no longer required. I think we're realistic
8 about that, but there is, you know, Police is having a really positive effect for prevention as
9 a player in the system in a broader sense, and as long as there's a large volume of
10 unreported crime, which -of- all crime only about a quarter is reported, then there's going to
11 be work for Police to do.

12 And so, there's no sign that we'll disappear any time soon, but I think our aspiration
13 should be the absence of crime and harm.

14 **MS SPELMAN:** Or at the very least, I suppose, Police reducing its size, it's not an organisations
15 that is seeking to grow for the sake of growth.

16 **MR COSTER:** Certainly not to do what might have been done in the past, but we have grown as
17 a consequence of investment in preventative activity where Police is seen to have the
18 community relationships, the leadership, the inclination to drive some things forward. But
19 I'm also an advocate for increasing our family harm investment, our mental health
20 investment, our drug treatment investment, because all of those things are further upstream
21 than us.

22 **MS SPELMAN:** And would have a significant effect on the work that Police actually had to deal
23 with.

24 **MR COSTER:** Yes.

25 **MS SPELMAN:** So all these changes that we're talking about today, appreciating that things take
26 time, but given that to date the statistics in terms of disproportionality haven't substantially
27 changed, what assurances are there that these current changes and work that the Police are
28 doing are actually going to result in better outcomes for the groups that have been
29 historically failed by Police and, in particular, I'm thinking of Māori, Pacific people and
30 disabled people?

31 **MR COSTER:** I think we need to take it broader than just Police, because even if Police
32 addresses absolutely everything that's within its power to address, as long as we have
33 disproportionality in the problems faced by certain communities more broadly, then there's
34 the real risk of that coming into Police attention and Police response. And so, all of those

1 things I've just referred to, family harm, mental health, drugs, gangs, all have a tie back into
2 policing, but all come from complex social issues that sit outside of our domain. So that
3 needs a system response.

4 In terms of Police's part in it, we are really carefully examining exactly what that is,
5 and, you know, through the course of the Understanding Policing Delivery programme it's
6 not just a kind of wait for a big report to be produced, the dialogue that's occurring between
7 the independent panel and operational staff is leading to insights that will in themselves be
8 actionable through the course of that research.

9 **MS SPELMAN:** And it sounds as though from the way you speak about the panel and the work
10 that they're doing that there's a real willingness within Police, bearing in mind you don't
11 know what they're yet going to recommend, but to take on board the advice that they give
12 you.

13 **MR COSTER:** I think there's a mutual trust actually building in that relationship which is what it
14 will take to get to the right solutions.

15 **MS SPELMAN:** In terms of, particularly, the issues for disabled people, I know my colleague has
16 touched on that quite significantly already, but one point I wanted to ask you about was in
17 terms of prevention work that Police would do. You've outlined in your brief some of the
18 changes around facilities and data collection and that type of training, but at a strategic
19 level, given what we know about people and particularly adults at risk who continue to be
20 in care to this day, do Police see a role in terms of actually doing preventative work, going
21 out to people, knowing the barriers that exist to disclose harm and abuse?

22 **MR COSTER:** I think that's something for us to turn our minds to. You know, I'll be honest and
23 say there isn't resource sitting within Police that is there available to be dedicated to that
24 function. However, there's a question of whether there are existing staff working in the
25 prevention area who could do more in that arena. As I've acknowledged in my evidence, I
26 think, ensuring the right guidance is there to understand the diversity of need that exists
27 within those different groups and giving all of our people some guidance about where they
28 can go to understand that better when they come across it, would be a good start.

29 I do think that there's, whatever recommendations come from the Commission, we
30 will need to think about it from an all of government perspective rather than on an agency
31 by agency basis.

32 **MS SPELMAN:** Sure. But in terms of, I guess, the Police as an agency, I'm conscious that when
33 you came in as Commissioner in 2020 you looked at your leadership team and made some
34 changes to reflect, I think, the strategic goals that you had.

1 **MR COSTER:** Yeah.

2 **MS SPELMAN:** In terms of recognising the needs for disabled people, I'm not sure if that's
3 reflected in terms of at your executive leadership level in terms of someone who is
4 specifically responsible for those areas, is that right?

5 **MR COSTER:** No, not in terms of one person who leads on that, it sits in two places. One with
6 Deputy Commissioner Kura in terms of equipping our people, our leadership, our culture,
7 and then in a prevention sense within our iwi and communities group under Deputy
8 Commissioner Wally Haumaha, which is really the partnership side of that, and then of
9 course there are a range of practices and policies that will exist in different groups that we
10 need to test and adjust.

11 Clearly it's not possible to have a dedicated person for every group that may need
12 group representation as my executive would be enormous if that's the way we went, but I
13 think there's good clarity about where responsibility for different aspects of this sit, but
14 definitely that's something we can consider, you know, alongside what guidance we also
15 need to ensure that clarity exists.

16 **MS SPELMAN:** In terms of the historical failings you've spoken about and the resulting trust
17 issues that's meant for Police, what is your comment around how you're measuring the
18 various work programmes that you're doing in terms of, are they making any difference or
19 not, are they having a positive impact, how are people to know if what you're doing is
20 successful? There doesn't seem to be historically a great practice of review and measuring
21 and making that known to the public.

22 **MR COSTER:** I think that's true historically. As I mentioned earlier, we now have our evidence
23 based policing centre which is a partnership between Police, the University of Waikato and
24 the ESR and it involves contribution from other academics looking at policing practice, and
25 trying to turn that into opportunities within the organisation, and part of that is evaluation.

26 So, you know, our people now when we start something new will routinely talk
27 about evaluation, which wasn't on the radar in the past. So, initiatives like Te Pae Oranga
28 are the subject of evaluation and that's how I can tell you that it's a 22% reduction in harm
29 from reoffending.

30 So the major things that we do, we will try to evaluate.

31 **MS SPELMAN:** And you've spoken or we've spoken a lot today about the UPD programme and
32 the ongoing work that's done there. I understand that so far there have been two pieces of
33 research published that are on the Police website. I think they were published this year,
34 maybe I'm wrong on that.

1 **MR COSTER:** Yes. No, that's right, and they were really in the nature of literature reviews. The
2 first tranche of original research is going out to market now in terms of calling for people to
3 do that.

4 **MS SPELMAN:** In terms of those two pieces of research, I suppose, that's a useful current
5 example of work being commissioned and I'm thinking of the grey literature review, in
6 particular, what action has there been following Police receiving those pieces of research
7 that would perhaps give some assurance to people that, you know, this talk is more than
8 talk, that there is some action behind what you're saying?

9 **MR COSTER:** I would describe those pieces more as foundational than,- because as I say, the
10 first tranche of original research is starting now. The place where I'm seeing action and
11 movement already is in the dialogue that's occurring both between the independent panel
12 and our operational staff, but then in the conversations that spring off that around the
13 organisation, where frontline people are coming forward and saying, you know, I've never
14 thought about this before, but actually having heard about UPD, I'm now thinking about
15 this aspect of our practice and I wonder whether dot dot dot-.

16 So that's real gold because when you get frontline coming up with opportunities to
17 improve equity and fairness, you know they're going to be owned and they're actionable.

18 I think the challenge with some of the historical research is it's ended up, for one
19 reason or another, in the talking past each other space rather than in the here's something
20 that Police could practically shift that would make the difference kind of area.

21 **MS SPELMAN:** In terms of a broader issue across Government, there's sometimes conversation
22 about the three year political cycle and how that can stymie efforts to change. I think your
23 term is a five year one. What's your sense of the shift of culture within Police which would
24 mean perhaps if someone came in after you who had quite different priorities or values,
25 would that mean that this work ground to a halt and perhaps, Deputy Commissioner, that's
26 possibly a better question for you to answer in terms of what you're seeing within your area
27 that you're responsible for.

28 **MS KURA:** I'm just thinking about the UPD example and where the organisation has actually
29 some initiatives from our frontline staff and the difference that it's making. We've got an
30 example in Bay of Plenty where a person has identified that the way that we treat each
31 other in the workforce is actually an opportunity for us to understand, because we've
32 become more diverse, and there are different experiences from people joining the
33 organisation, have they been kept safe when they come in. And one of- this particular
34 inspector has created a, what he's called a diversity panel, where he brings a group of

1 people in who work for us and they talk about their experiences in the workplace and how
2 they are being treated by their colleagues. And the example he's trying to make and the one
3 that comes through in all of- the training that they've done is that if we can't look after each
4 other and treat each other with respect and be mindful of our differences, how will we ever
5 police differently in the community.

6 Now, he works in a professional conduct role where he sees the behaviours that we
7 have complaints about, and he's seen it as a great opportunity to be able to give staff insight
8 from their own peers and colleagues and that's landing really well in that they're saying,
9 "I didn't realise when I said those things that I'm mistreating you" and we're looking to roll
10 that out across the country by using our own staff for lessons that we're learning about
11 ourselves and that that will then play out in the way that we treat other people.

12 So I think that there are -- the leadership opportunity, one, for somebody to take the
13 initiative to do that because they've been exposed to UPD, and then for them to think I can
14 now go out to the rest of the organisation and take this initiative out and influence other
15 leaders, is, I think, quite powerful and quite a different way to be -- rather than being told
16 you must do one of these or go to unconscious bias training, they've got their own ideas
17 about what can really influence their peers.

18 So those are the types of things for me that I think will be more sustainable because
19 it comes from the ideas of our own people.

20 **MS SPELMAN:** Thank you for that.

21 **MR COSTER:** To respond to the question around backsliding, if we can call it that, that's always
22 a risk. But I personally believe that the idea of prevention as being better than treatment is
23 now ingrained in the organisation and you would struggle to wind it back, as is the
24 commitment to our values, particularly in terms of Māori and the Treaty.

25 So ,I believe we'll keep moving forward. We are more removed from the political
26 cycle than other agencies because of operational independence and that's quite helpful, but
27 something we always have to keep our eye on the ball.

28 **MS SPELMAN:** Thank you.

29 Those are all the questions that I have. Just before finishing up I just want to
30 acknowledge all the survivors whose evidence we've referred to today, tēnei te mihi ki a
31 koutou, e mōhio ana au e mātakitaki mai ana ētahi o koutou, nō reira e mihi ana ki a
32 koutou. I know that several of them are watching and will be following this keenly to see
33 the responses to the questions that we've asked, so e mihi ana ki a kōrua, those are all the
34 questions that I have and I'll pass over to you, Madam Chair.

1 **CHAIR:** Thank you very much. I'm now going to invite my colleagues to ask the last questions
2 of the day, I think we might start with Paul Gibson.

3 **COMMISSIONER GIBSON:** Kia ora, thanks, Commissioner, Deputy Commissioner. First
4 starting off, looking backwards, I think Commissioner Urquhart, if I got the name right,
5 said he had an idea of the ideal policeman, I think was back in the day, not Chinese, not
6 Hindu, not Pacific Islander. Was he a racist?

7 **MR COSTER:** I think through today's lens that's exactly how we would describe it. I doubt he
8 would have been described that way at the time.

9 **COMMISSIONER GIBSON:** I note today's policies or evidence talk a lot about diversity, that
10 the Police force now needs to reflect the communities in which it exists, so that is a lesson
11 that's been learned and is pretty well embedded in the Police, would you say?

12 **MR COSTER:** Ironically, or not, the Peelian Principles which are over 200 years old talked about
13 the Police are the community and the community are the Police. So that concept in
14 principle has been with modern policing for a long time but seems to have been lost in the
15 execution along the way. So, it's completely uncontentious from my point of view that
16 that's the way things need to be.

17 **COMMISSIONER GIBSON:** We heard evidence of failures through the Police to keep people
18 safe from harm in an ongoing way within the Deaf community, how many Deaf Police are
19 there at the moment?

20 **MR COSTER:** None to my knowledge.

21 **COMMISSIONER GIBSON:** Is there data kept on the breadth of disabled people in Police,
22 Deaf, mental health, wider disability?

23 **MR COSTER:** I think at an individual level we would have some visibility of that but in terms of
24 being able to capture that in an organisational sense, we're not there.

25 **COMMISSIONER GIBSON:** Is that something you intend to collect data on?

26 **MR COSTER:** I don't know whether you've got a sense of that, Tania. There's a range of data
27 that we collect, I don't believe that disability is formally part of that. I think we'd be
28 interested in where the Commission might land on a topic like that. You know, it raises
29 questions for me about whether it's even appropriate to inquire after those kinds of
30 questions, but no doubt the Commission will have a view on that.

31 **COMMISSIONER GIBSON:** And proactive recruitment of the diversity of these communities,
32 when is the community sort of in and proactively targeted for recruitment or otherwise?

33 **MR COSTER:** We've had some initiatives targeting neurodiversity, and I think that has been
34 really positive. It's on a very small scale. But we are part of broader Government efforts in

1 that regard, and certainly aiming to set up policies and ways of working that can, to the
2 extent possible, enable and accommodate people with disabilities in the workforce.

3 **COMMISSIONER GIBSON:** That sounds great, because, I think, is there a recognition of the
4 scale,-- I know we've talked about over 50% of Māori within prisons,- the scale of people
5 with neurodiversity who go through the justice system; what consciousness is there of the
6 Police in the workforce at the moment-?

7 **MR COSTER:** I think there's opportunity to keep learning in terms of that. To my earlier
8 comments, it certainly feels to me like the community is continuing to understand
9 neurodiversity and what it means and the extent and scope of it, so there's opportunity for
10 us to improve on that I am certain.

11 **COMMISSIONER GIBSON:** I'm interested, you talked about evidential sufficiency and often a
12 case, even when people are believed, doesn't get to prosecution. Do you keep data around
13 those cases?

14 **MR COSTER:** No, not at a level that we can produce as a statistic. Obviously by looking at
15 individual cases we can see in the reasoning that that's where we went. Capturing the
16 nuance of that is somewhat challenging because no sooner would we capture it then people
17 would probably want to know why didn't we reach evidential sufficiency. So, in all of our
18 data, our challenge is keeping the administrative burden at a reasonable level whilst trying
19 to produce insights that are useful for interrogating these kinds of issues.

20 **COMMISSIONER GIBSON:** I'm imagining if there's discrepancies between different groups
21 that might be a very useful insight as to how different issues are approached. For example
22 if disabled people, people with mental health issues, don't reach that evidential sufficiency
23 threshold more often, speculate, if you have that data might that be useful?

24 **MR COSTER:** I'm sure it would be. I could probably keep our ICT department which has got
25 about 300 people in it busy just responding to the requests for Police to capture and process
26 data differently. I don't want to make an excuse but just to acknowledge, it's not always
27 easy to add those requirements in at the same time as ensuring all of the people who need to
28 understand how to capture, enter accurately, record those things where they need to be and
29 their knowledge. So, most often, when we're getting to that kind of question, the way to
30 examine it would be with a specific piece of work that looks at 1,000 files of a particular
31 type, seeks to dig in and gets both into the qualitative and quantitative questions that
32 present, because the data only ever tells part of the story, if that makes sense.

33 **COMMISSIONER GIBSON:** What I took from your evidence, you seem to distinguish
34 individual racism and reluctant to name that versus systemic racism or systemic bias. Is

1 there a thinking or approach around ableism and disability and how you handle those issues
2 both at an individual level and at a systemic level?

3 **MR COSTER:** I think that's a really important question. I'm sure that at some level it will feature
4 in the Understanding Policing Delivery work. But I need to be honest and say, you know,
5 the issues around disproportionate representation of Māori in the criminal justice system
6 probably will keep that piece of work very occupied ahead of being able to get into issues
7 around ableism and I think you raise a really important question that we would need to
8 think quite carefully about how we would begin to interrogate it, recognising that the level
9 of awareness around ableism would be much less than exists in terms of racism or other
10 more obvious kinds of bias.

11 **COMMISSIONER GIBSON:** Would you also say that at a systemic level it possibly exists as
12 well in the processes, practices that result in poor outcomes through the Police system?

13 **MR COSTER:** I certainly think it's a possibility. You know, even in that narrow area we've
14 touched on around thresholds to reach prosecution and likelihood of conviction through the
15 criminal justice process, that's an area that stands out to me as fraught with risk in terms of
16 witnesses who may be less likely to be treated as reliable.

17 **COMMISSIONER GIBSON:** I'm just trying to work out what's happening at a strategic level
18 around research panels, does any of that cover the impacts on disabled people specifically?

19 **MR COSTER:** As I say, I think that's something that can be grappled with within the scope of
20 Understanding Policing Delivery. That work is still obviously in its relatively early stages,
21 and a question for the panel might be, what's the best way for us to tackle issues that sit in
22 that domain as well, as part of that work.

23 **COMMISSIONER GIBSON:** Am I right, from your evidence, there's no actual strategy around
24 disability labels, the strategy is listening and understanding, it's those two words?

25 **MR COSTER:** We've undertaken obviously recently a stocktake which is a start to understand
26 where we're at in terms of dealing with disability issues, but it is more nascent in our
27 thinking than, for example, responsiveness to Māori, Pacific, ethnic communities where we
28 have been working for a much longer period of time.

29 **COMMISSIONER GIBSON:** Some of the more high profile cases around where Police
30 interviews, other things have gone wrong and people have spent a long time in prison for
31 something they -didn't -that they've been wrongly convicted, have featured people with
32 neurodisabilities-. Has that triggered any work in itself? There doesn't seem to be that
33 much happening around this area given what's evidenced before you.

1 **MR COSTER:** Yeah. Certainly the high profile cases we've seen around, particularly, foetal
2 alcohol syndrome, have prompted a lot of thought and reflection and awareness within our
3 investigators. You know, one of the key things in there will be what safeguards need to be
4 in place in terms of that for the future, and it's sobering to see some of these cases come
5 through the Criminal Case Review Commission.

6 Inevitably we will need to work out where to start and prioritising our effort to deal
7 with some of those difficult things and a lot of it obviously sits around the awareness of
8 frontline investigators that when you're dealing with somebody who may have that in their
9 history, that that will shape the way they respond and so those are issues that can and I'm
10 sure are being addressed in the context of our detective qualifying courses and that kind of
11 thing.

12 But clearly that's just one issue that could play into the criminal justice context.

13 **COMMISSIONER GIBSON:** You mentioned safeguarding, I'm interested in this and it's
14 probably a question to respond in writing about the Waitematâ project, I'm interested in
15 why in the context of wanting more community partnerships that one appears to have
16 ended.

17 **MR COSTER:** I'm certainly happy for us to come back on what happened there.

18 **COMMISSIONER GIBSON:** You made- in- a response to Ms Spelman you said it's clearly not
19 responsible to have representation at a senior level across a range of issues. Looking back
20 to what Urquhart said about the diversity of ethnicity within the Police, what do you think
21 the Police and yourself, senior leaders, need to be doing now so that in a generation's time,
22 in two generations' time, we don't look at the Police response to ableism today in the same
23 way that we look at the Police response to racism a couple of generations ago.

24 **MR COSTER:** I think it's a really great question. We've made tentative steps into this area, I
25 think, through some of the things we're doing in terms of neurodiversity, in terms of our
26 disability stocktake. What we are doing in respect of other kinds of diversity, for example
27 ethnic diversity, gender diversity, is proactively recruiting people from a diverse range of
28 backgrounds and then trying to create staff support networks that help them through the
29 course of their career, trying to create leadership opportunity for people to step in and grow
30 throughout the organisation.

31 All of those things move much slower than we would like, and, you know, I think
32 it's a fair question to ask of us in terms of ableism and what that looks like for us as an
33 organisation.

34 **COMMISSIONER GIBSON:** Thanks. Thanks for answering the questions.

1 **CHAIR:** Julia Steenson, do you have some questions?

2 **COMMISSIONER STEENSON:** Kia ora, I've only got a couple of questions because I realise
3 it's been a long day, but it is picking up on the point around --in relation to adults at risk and
4 people with disabilities. Because just reflecting on the purpose of the Police that you've
5 told us is to prevent crime and harm, and there's a lot of intersectionality between this group
6 with Māori. What interests me is the reliability issues that you spoke about with the
7 victims of abuse and --in terms of the methodologies of collecting evidence.

8 I'm just wondering, firstly what would you say about the overall outcome that that
9 has for this group of people who therefore do not get to have the crimes that occur against
10 them prevented or upheld?

11 **MR COSTER:** I mean, clearly for any victim of crime who is unable to be vindicated through a
12 justice process and able to be protected in the deterrent sense from people believing they
13 will be held accountable for offending against a particular group of victims, that's a soul
14 destroying place to be. Police have a part to play in this, including making our best efforts
15 to bring to justice people who offend against vulnerable victim groups.

16 There is a broader question here for the entire justice system about how this ought
17 to work, recognising that there are good reasons why the criminal law sets a very high
18 standard in terms of beyond reasonable doubt for proof of criminal offending, and that
19 some people face greater hurdles to get over in terms of making out the offending against
20 them against that burden.

21 So yeah.

22 **COMMISSIONER STEENSON:** Yeah, because you talked about the need for kind of specialists
23 to come in and confirm that evidence in terms of the way it's gathered, etc. So, is
24 that --does that not occur, what are the barriers from that happening then?

25 **MR COSTER:** I'm not an expert in this area so I'm speaking from my knowledge of the system
26 and --

27 **COMMISSIONER STEENSON:** Sorry, I'm just meaning the methodology for gathering
28 evidence, I don't expect you to speak on the specialist parts.

29 **MR COSTER:** No, so for a judge -ultimately-, it's a judge or a jury that needs to be satisfied that
30 the method in which evidence has been collected is reliable and that the evidence is
31 truthful. I don't think truthfulness is the primary issue here, it's where we're using
32 nonstandard means to capture evidence of a criminal offence, how do we satisfy a court that
33 it's safe to convict on the basis of- that evidence?

1 And because most people don't have an adequate understanding of the range of
2 conditions that may affect particular victims, I believe we would need to call expert
3 evidence to make that out. And I'm imagining that the variety of different experts on
4 different conditions that would be required is many and varied. So the answer will be very
5 dependent on a given circumstance.

6 But what Police would normally do to prove a case in a situation like this would be
7 look for an expert witness that can get us to a point of confidence. For any given type of
8 condition, I imagine it would be dependent on having some understanding or knowledge of
9 the capability of the victim in question.

10 So I'm confident that does happen, but that's a lot, just a lot less straightforward,
11 clearly, than somebody who doesn't have that bar to get over.

12 **COMMISSIONER STEENSON:** Does that happen at the time of the evidence gathering or does
13 it happen subsequently? Like, are there agreements in place with, say, those experts in the
14 disability sector who do that, or is it subsequently?

15 **MR COSTER:** I'm not aware that there are formal agreements that sit around that. It would be
16 something that happens at the time where we would be -we- would start by engaging with
17 the caregivers of whoever the person is to understand the nature of their situation and then
18 try and find someone who could speak to the reliability of evidence they might give by
19 whatever method they are able to use.

20 **COMMISSIONER STEENSON:** That's tricky when it's the caregiver that's --

21 **MR COSTER:** -- case by case. Yes, but of course --

22 **COMMISSIONER STEENSON:** But I accept what you're saying.

23 **MR COSTER:** -- if the suggestion was that that was where the problem lay, then we would look
24 elsewhere.

25 **COMMISSIONER STEENSON:** Thank you. And also just trying to reconcile, coming back to
26 that purpose of prevention of crime and harm and the comment around of not crossing the
27 line into another agency's purpose but then at the same time trying to understand, because
28 prevention requires understanding the cause, rather than dealing with symptoms, I'm
29 assuming that's what you're getting at, which is kind of a holistic approach, which is
30 excellent, but how do you then reconcile that with silos of agency, you know, packages of
31 work?

32 **MR COSTER:** It's a very significant challenge for us. Most of the problems we deal with are
33 cross-cutting and don't sit tidily within one agency's responsibility. Te Pae Oranga has
34 been a great intervention because iwi don't look at people through silos and often end up

1 being service aggregators because of what they have available to them within their social
2 services.

3 Short of that, we work in multi-agency ways, for example family harm we'll have a
4 multi-agency meeting that considers specific cases and tries to work out where the best
5 place to mobilise a response is, and that can and does include NGOs who may be
6 commissioned by multiple agencies to address a range of issues and then in their service
7 delivery are able to aggregate holistically around an individual or a whānau. But by
8 definition, our problems are quite complex and cross-cutting.

9 **COMMISSIONER STEENSON:** Because it does significantly change the response.

10 **MR COSTER:** Yes.

11 **COMMISSIONER STEENSON:** Then just finally, around the files that get kept, and I know
12 we're circling right back to the early part of your evidence, but I had a question. So you
13 said that they were now digital, files are kept --

14 **MR COSTER:** Primarily.

15 **COMMISSIONER STEENSON:** Are they ever destroyed, are they kept forever or...?

16 **MR COSTER:** I think we could come back with our archiving rules. There will be digital
17 archiving rules but my belief is they will be much less strongly adhered to, if you like, than
18 our paper rules, simply because space will tend to be less of a pressure although, clearly, as
19 the size of digital evidence increases with high resolution photos and videos, that will
20 become a pressure point for us.

21 So we'll come back with what those rules are.

22 **COMMISSIONER STEENSON:** So that means at the moment some things are archived so
23 they're not readily available. Just thinking in the context of what we know from survivors,
24 they don't typically come forward until many years later which means there's, for crimes
25 that are, say, less severe, that they would be archived, just so I understand, sooner than ones
26 that were considered higher, whereas what we know for abuse in care situations, survivors
27 don't come forward and I would imagine some behaviour escalates over time, so you're not
28 necessarily seeing the same perpetrator issues where they've been lesser versus the setting
29 and situation, so just trying to understand...

30 **MR COSTER:** Yeah, the National Intelligence Application as our sort of probably core
31 information system has a long memory, but it will be other evidence that sits around it, like
32 statements and so on, that will be more at risk of archiving and ultimately destruction.

33 We need to bear in mind that in this context we're trying to interrogate a period not
34 for the reasons of bringing criminal prosecution so much as to understand what occurred,

1 and that means we're going back an extremely long way. In our experience it would be
2 relatively unusual to have an allegation where there's relevant history that goes back such a
3 long way, if that makes sense.

4 So it's still more likely that we would have holdings for an allegation that might
5 come forward now as compared to some of the things that we're trying to get back to, going
6 back in history.

7 **COMMISSIONER STEENSON:** Thank you. Sorry, it took a bit longer but thank you very
8 much.

9 **COMMISSIONER ERUETI:** Tēnā kōrua, kia ora anō. On the subject of child offending, say,
10 between the ages of 10 and 14 about this question about -- I know you focus on prevention
11 of crime and harm, but it's about the role of -- the view you would have on, either of you,
12 on Oranga Tamariki and its ability to intervene quickly enough when a flag has been raised
13 to prevent a situation from escalating to the point where Police have to intervene.

14 **MR COSTER:** Oranga Tamariki has a very difficult role. To give you a sense of scale, we make
15 roughly 80,000 reports of concern to Oranga Tamariki every year for children in family
16 harm situations. Now, arguably, every one of those represents an opportunity to intervene
17 and prevent harm, but Oranga Tamariki, by virtue of its size, is focused at a higher level of
18 risk for kids that are probably closer to that threshold of the potential to come into State
19 care.

20 So right across our system there are opportunities to intervene that we will, as a
21 system, struggle to reach because the resourcing simply can't meet the needs of all of those
22 young people.

23 **COMMISSIONER ERUETI:** So resourcing issue because the thresholds are not meeting those
24 higher thresholds that require intervention?

25 **MR COSTER:** Yeah, so the best opportunity to intervene would be a low level family harm case
26 where a mum is pregnant or where there's a young baby, because in a lifecycle sense that
27 would be the place to stop the harm. But for the system getting to intervene at that early
28 level is a challenge when there are cases that are, you know, in a risk situation now, where
29 there's almost a duty to act, because of the harm that's already occurring to the young
30 person in that situation.

31 So investing in the first thousand days as a response to prevent generational harm is
32 one of the hardest things to actually get to as a system.

33 **COMMISSIONER ERUETI:** I wonder whether, do you have a view on whether it might be
34 more effective for Māori, say when it comes to whānau Māori or for that matter Pasifika,

1 for them to have the agency to take those steps and intervene at an early stage? Do you
2 have a view on that?

3 **MR COSTER:** I think that's a really exciting opportunity and probably one that we're only just
4 really starting to tap into the potential of. It's happening a little bit, I would say, in the
5 family harm arena and I'm aware that Oranga Tamariki has been working with iwi to
6 increase their ability to care for whānau in their rohe. So to me the answers have to sit with
7 community because our State will never, and I would argue should never be big enough to
8 do all of these things from a State perspective.

9 **COMMISSIONER ERUETI:** Kia ora. On this question of the Treaty clause about there not
10 being one in the Policing Act, I wonder what your view is about, -you talked about your
11 term is five years and about embedding policy changes, like your focus on Te Tiriti- and
12 prevention and so forth, about whether you would benefit from having a Treaty clause that
13 gave clear statutory direction to pursue these things.

14 **MR COSTER:** As, hopefully, you can tell from what we've said today, we are very leaned in to
15 making a difference on these issues and I'm certainly mindful that legislation will send
16 important signals but it doesn't magically fix issues that turn around leadership, culture, etc.
17 However, I'm also aware that over time, more and more legislation has had Treaty clauses
18 and that has a powerful symbolic value.

19 **COMMISSIONER ERUETI:** Just on that kaupapa of culture, I did wonder when you were
20 talking about the history and the history of discrimination, that because you don't have a
21 sense of the extent of the problem of discrimination, historically, that that inhibits your
22 ability to address it now, because you don't have a sense of the extent to which it pervaded
23 the Police force. Because if you don't have a sense of whether it was dominant and it was
24 in fact dominant, how do you now direct your energies towards making change?

25 **MR COSTER:** So, I think an important part of the Understanding Policing Delivery work is to
26 understand the perspective of different communities that we police and that will be an
27 important foundation for us.

28 I think it's really important for all of our people in the environments they police to
29 understand the history and the context. To illustrate, I started policing in Māngere in 1997.
30 It was close in the living memory of the Pacific communities that had been the subject of
31 the Dawn Raids. I had zero awareness of my time at Māngere station that that was the
32 context I was policing in and that that might have shaped community perceptions of
33 policing in that place. And so we're working pretty hard to do that differently now and to
34 increase our people's awareness of the context in which they're policing.

1 **COMMISSIONER ERUETI:** Kia ora, tēnā kōrua, thank you so much for your evidence today,
2 appreciate it.

3 **CHAIR:** That's a very good segue to Ali'imuamua Sandra Alofivae.

4 **COMMISSIONER ALOFIVAE:** Talofa lava, Commissioner and Deputy Commissioner.

5 Actually, in 1997 I was living in Māngere and I knew your local cop shop and the joy that it
6 brought to us was that there were lots of brown cops in there, mainly Island boys, so mmm.
7 That's the only upside.

8 Just coming back, in terms of a lot of the survivor evidence that we've heard today,
9 and in particular from the disability community, is when you're not counted -if you're not
10 measuring it you're not counted. And it sends a really strong signal that you just don't
11 matter- and your issues don't matter.

12 And when you apply that across some of the other cohorts, so we see Pacific figures
13 are counted, but are you able to assure us that underneath that, can you get the breakdown
14 of the different ethnic communities, Samoan, Tongan, Cook Island, Niue, the whole
15 variety, because it's not acceptable to Pacific to be treated homogenously like that. And
16 often there are issues that are specific to various ethnic specific communities that don't
17 apply across to others.

18 **MR COSTER:** Yeah. Yeah, certainly, this is a message that I get loud and clear from our Pacific
19 Focus Forum and our Māori Focus Forum in terms of hapū and iwi, and our Ethnic Forum,
20 and we have ongoing work to improve our, both the capability of our systems to record and
21 then the competence of our people to inquire after those questions.

22 There are a couple of things that sort of stand out around that. One is the vast
23 number of different ethnicities, I think it's about 200 different ethnicities here in Tāmaki
24 Makaurau and the challenge of reliably capturing that, particularly when increasingly
25 people will identify with multiple ethnicities. And then also the Police's operating
26 environment or our context is quite a poor moment to be asking people about their
27 backgrounds, you know, particularly in the context of an arrest.

28 Frequently where drugs and alcohol are involved it's not always the easiest place to
29 get from people a clear answer. That won't stop us trying, but I think it's to acknowledge
30 the real limitations on Police's ability to do that.

31 One of the things that we've thought about in that regard is whether, what the
32 balance is between privacy and the State's ability to understand the people that it's dealing
33 with and whether, for example, through the mechanism of driver licences, or another

1 mechanism, there would be a way of having this information available at the system level
2 so that every agency wasn't attempting to collect information in a patchwork.

3 That wouldn't necessarily have to be available to the agency to view, but it could be
4 available at a system level to analyse and get insight, through the IDI data infrastructure
5 which is anonymised.

6 So that is just a thought. At the moment there's no one way across the system to
7 capture this kind of data.

8 **COMMISSIONER ALOFIVAE:** And, of course, everything you've said is accepted,
9 Commissioner, but one of the lessons that we're learning through this Commission is that
10 actually if you're not counted you don't matter. And so moving forward into the future, and
11 you've just alluded to Tāmaki Makaurau Auckland having around 200 -actually-, I heard it
12 was about 300 ethnicities and that Auckland itself is the second most diverse city in the
13 world, second only to Toronto. That's quite unique --

14 **MR COSTER:** Yeah.

15 **COMMISSIONER ALOFIVAE:** -- for a population of about 4 million people.

16 I don't envy the big task ahead of you in terms of having to drive some real
17 transformative change in being able to cater for all communities going into the future.

18 But you have referred to the fact that family violence is still very much a very big
19 issue and that it's a sensitive indicator for lots of things, and that often your frontline Police
20 are having to attend to predominantly, perhaps, psycho-social issues, you know, things that
21 have gone wrong in a relationship, not always what you would consider at that kind of core
22 business end of your policing manual. Is that a fair comment?

23 **MR COSTER:** It becomes our core business because we're 24/7 and we've got a short phone
24 number, but there are others who should be able to deal with it or would be able to deal
25 with it much more effectively than we can.

26 **COMMISSIONER ALOFIVAE:** Then you talked about the triaging which is accepted that that's
27 what agencies, and particularly your agency has had to do, but then it becomes everyone's
28 problem and no one's really responsible, because there's no close off loop, and you'll just,
29 perhaps regrettably, see them again when there's another callout and you're having to
30 respond to that same person because other parts of the system haven't been able to deal with
31 the issue like the drug issue or the mental health issue or other issues that would come up.

32 So in order to be successful in the policing role, do you see a leadership role as the
33 Police Commissioner with your senior exec team around some of those core fundamentals
34 that you've already identified, workforce development, across agencies? You've also

1 identified investment into the vulnerable adults or adults at risk, into that space. So those
2 are quite big issues that the Police can't achieve on their own.

3 **MR COSTER:** Correct, yeah. Absolutely. And we are taking that leadership role.

4 One of the three priorities, focus, prevention through partnerships, and such a range
5 of initiatives where Police has led. In family harm, apologies, Whāngaia Nā Pā Harakeke,
6 integrated safety response; in mental health, the co-responder model; in drugs, Te Ara
7 Oranga, working with DHB; in gangs, Resilience to Organised Crime in Communities, the
8 list goes on. There are many, many cross agency initiatives where Police have seen the
9 need and worked to bring others around the table.

10 But for any agency, it won't be a tidy alignment with their functions. The most
11 complex needs will combine mental health, drugs and alcohol, maybe family violence and
12 so -maybe- homelessness, so trying to get the right response is just a big challenge for any
13 agency.

14 **COMMISSIONER ALOFIVAE:** And so to make that difference, are you doing that through
15 MOUs, you've referred to an MOU with Oranga Tamariki. Are there any other
16 mechanisms that could be used like, perhaps, your statement of intent, the SPE, Statement
17 of Performance and Expectance, your own accountability documents to be able to hold
18 other agencies accountable alongside yourselves, because this is what we're hearing from
19 our survivors in terms of what would make a difference to their lives then, but also now,
20 and presumably going into the future.

21 **MR COSTER:** We don't have the mandate to hold other agencies accountable. That ultimately is
22 the role of ministers. However, we do actively work with other agencies through vehicles
23 like Te Aorerekura, the family violence strategy for which there's an interdepartmental
24 executive board, a creation of the Public Service Act, which makes a group of CEs
25 accountable for implementing that strategy.

26 So there are some machinery of government things that are occurring, and there are,
27 at the operational level, cross agency working groups, daily meetings, all sorts of different
28 things occurring across the spectrum of problems that we deal with.

29 **COMMISSIONER ALOFIVAE:** So not wanting to oversimplify matters, but none of that is
30 new, none of that is new, and what we're hearing from our survivors is: what's going to
31 change going forward? So, we hear about the capability building that's got to go on within
32 the workforce, and we think "amazing", big tick to that. But in terms of actually having to
33 think outside the square, seeing the themes and the patterns that you're quite privileged to
34 see, because of -- you're a first responder, so you get to see this and as I understand your

1 evidence, Deputy Commissioner, you were talking about how you're beginning to improve
2 processes inhouse, so being able to actually give each other proper critical feedback in a
3 very safe space to improve processes. You then use that as, perhaps, an advocacy model to
4 actually argue for a true systems change, otherwise we're just going to keep doing what we
5 currently do, just slicker, better, different version, without actually moving- some of those
6 bigger levers. Any comments?

7 **MR COSTER:** Tania might have a view, but for me the most significant opportunity in front of
8 us is for community organisations, iwi, who are able to take a holistic view of problems in
9 places with whānau is probably our best hope for an effective -for effectively addressing
10 these complex issues. Machinery of government has to organise us some way and for 80%
11 of the issues, maybe 90%, agency silos are the most efficient way to deploy services using
12 taxpayer- dollars.

13 The cross-cutting piece that represents our gnarliest issues probably, and I think
14 almost certainly, is best addressed through community organisations, NGOs that can join
15 services up because they're commissioned to do that, that is we do see that emerging
16 through social sector commissioning work that I imagine Debbie Power would have spoken
17 to yesterday, but we need to prove it out in practice and demonstrate where it works and do
18 more of that.

19 Tania's led some of this in Eastern District.

20 **MS KURA:** In my previous role as a district commander in Eastern, certainly the local
21 community relationships were a key part of us taking action as a whole group and when
22 I think back on my time in that role, we really enjoyed a number of good relationships that
23 were essentially personality driven but equally we all had the same goals in mind and I
24 think about from an MSD perspective that we had a lead there who wanted to,- knew that
25 she couldn't do her business without engaging with Police, without having TPK at the table,
26 without having Oranga Tamariki, the DHB, the councils, so we had quite a-- an informal
27 but formalised group that would regularly meet to discuss what was happening in our
28 particular patch.

29 Interestingly, Kahungunu also played a big part in this, and I was really privileged,
30 as the District Commander, to be invited with Kahungunu to go to Alaska to look at an
31 alternative indigenous model of care, which I found really insightful that they were thinking
32 of their own solutions and to invite government agencies to come with them on that journey
33 just exposed me to a whole lot of different thinking about how problems could be solved.
34 But that came about because our community, our local relationships were really strong and

1 the trust had been built that we might not have got everything right every day but actually
2 we were willing to listen and be open to a different way of thinking.

3 So I look at where opportunities do sit and I don't know that they can always be
4 mandated, I feel like there's a lot about different people on different journeys but local
5 communities really buy into making a difference for their own people. I do think there's a
6 strong reason to support that and I think that having now come to Wellington in a different
7 role, I don't think you can mandate for everybody to act in a particular way, you have to do
8 it because you believe it and you want to.

9 **COMMISSIONER ALOFIVAE:** And that might work for the Police but can I just ask you one
10 more systems level question, because most agencies, and I think the Police would be the
11 same, it's an individual entry point through an offender or a victim, right? But you're not
12 actually mandated to work with the family or the whānau, are you? You do that as a matter
13 of practice, because it's the right thing to do.

14 **MR COSTER:** Yeah, I think family harm is a place where inevitably that's where you find
15 yourself, but yes, I think if you've, let's say an individual shoplifts, Police would
16 traditionally deal with that individual. Under Te Pae Oranga, that becomes a much more
17 whānau led concept, because in the context of marae whānau supports are invited and that
18 sort of process of whakamā and then restoration is just a very natural thing that occurs
19 there.

20 There is a big tension between indigenous concepts of dealing with things as a
21 community, and our Western thinking around privacy and individualistic world view, and
22 that is a real barrier when we think about privacy particularly, something we need to work
23 through.

24 **COMMISSIONER ALOFIVAE:** I think it will be an ongoing conversation. But we're able to
25 describe our problems very, very well, it's actually translating it into the how and I think
26 I just want to reflect back that I'm hearing correctly, actually you're trialling lots of things at
27 a national level, at a regional level, at a local level, to find what fits and what works, but a
28 bit slow on the evaluation to be able to actually tell your story better.

29 **MR COSTER:** Yeah, a lot of these initiatives have evaluated really well. So Te Pae Oranga has,
30 Whāngaia Nā Pā Harakeke has, Te Ara Oranga has, co-responder model has. So they've all
31 been evaluated, I think the challenge is systematising that across the whole country because
32 it requires investment and it will require the effort of a lot of different organisations and
33 agencies, and everyone also has a range of other work programmes they need to land and so
34 that's the challenge.

1 **COMMISSIONER ALOFIVAE:** It's difficult to scale something that others aren't buying into as
2 being a potential answer.

3 **MR COSTER:** I think people buy into it in principle, but it's the many different things that people
4 are needing to tackle, and particularly in the last two years, whilst Covid enabled us to cut
5 through some of the normal bureaucratic barriers, it also significantly distracted us from
6 some of the long running problems that we have.

7 **COMMISSIONER ALOFIVAE:** Thank you very much.

8 **CHAIR:** I'm the lucky last. I just want to raise one issue which, and I want to bring it back to the
9 tino kaupapa o tēnei Kōmihana, abuse in care. When we first started this long journey with
10 our first hearing way back in 2019, Dr Oliver Sutherland, who you've heard referred to a
11 lot, gave some very powerful evidence, in which he described the taking into care of
12 children, particularly in the 70s, at a really rough time in our history for children, tamariki
13 Māori, Pasifika, and the most powerful words of many powerful words that he said was
14 "Nobody was listening" -- sorry - "Nobody was looking, nobody was looking". And what
15 he was talking about was the fact that children were being taken into care, being abused in
16 care, and no- one was looking. And so the children weren't protected- and the abuse
17 continued and was perpetuated.

18 I raise this with you, as I hope I'll raise with many of the chief executives who come
19 our way over the next week or so. You've talked about the community and sometimes
20 you've said, "We have to follow the community" and then sometimes I get the feeling that
21 you're wanting to move the community.

22 But it seems to me if we are going to make any of the transformational changes we
23 need, the community must come with us. It must recognise the need for change, it must
24 demand change and advocate for change.

25 So my question to you is, we've seen lots and lots of amazingly successful
26 campaigns led by government agencies, including by the Police, smoking, the road toll,
27 more or less successful, but public campaigns to raise awareness and raise consciousness,
28 family violence of course is the big one.

29 I'm just wondering whether the Police would see their way or consider being part of
30 a wide government agency campaign about children and adults who are in care, about
31 making them visible and making communities keep looking, keep their eyes open and be
32 prepared to be vigilant in the interests of their safety.

33 I just wonder how that appeals to you.

1 **MR COSTER:** Yeah, your observation that it requires a movement in the community is exactly
2 the right one. To state the obvious, the way a democracy works is that people in positions
3 of power feel like they need to get on and do some things because that's what the
4 community wants and particularly elected Members of Parliament because ultimately
5 agencies will tend to respond to what's important to ministers, and ministers respond to
6 what's important to the community.

7 I think some campaigns have successfully got ahead of the community and brought
8 the community along and I would say smoking is a really good example of that, albeit quite
9 a simpler one than some of the more complex problems we grapple with. So there is a
10 leadership role that agencies can play.

11 In relation to care settings, thankfully I think in many respects we've moved on in
12 terms of care because we're simply putting fewer people into those settings than we used to
13 and that probably is one of the best solutions that we've got.

14 I do believe Police has a supporting role to play in this, probably not the lead role,
15 but a supporting role.

16 Bearing in mind that care settings are generally run by people who have either
17 legislative or contractual accountabilities to the State, and so it ought not to be that difficult
18 to improve safety in those settings, as compared to problems that exist purely in community
19 without those other levers of control.

20 **CHAIR:** But it does require visibility, doesn't it?

21 **MR COSTER:** I think it does, and it requires those who make the settings for those places to get
22 to a point of saying this is really important, but we need to get it right. There's a whole
23 broader question around, you know, for example, around ableism which isn't just about
24 abuse in care, it's actually about opportunity and whatever else that probably would require
25 a wider range of things to occur.

26 **CHAIR:** Thank you for that. I take slight issue with the fact that there aren't -- well, obviously
27 there aren't children going into residential care in the way they were in the great numbers,
28 but there are still children who are taken into the guardianship or the legal ownership of the
29 State and therefore the State is responsible for them in various forms, foster children, for
30 example, children living in smaller residences, Youth Justice facilities, and not to mention
31 the vast cohort of people with disabilities who are living in more or less residential care.

32 **MR COSTER:** Yeah.

33 **CHAIR:** So they do exist and they're still there.

34 **MR COSTER:** Agree.

1 **CHAIR:** What it needs, in my view, is great vigilance, not just by the authorities, but by the
2 whole of the community, and that's the context in which I was asking my question.

3 So thank you for your acceptance and understanding, I appreciate that very much
4 that you get that, and I know you can't commit the Police at this stage, but I sense that there
5 would be a willingness to engage in such a campaign should one arise.

6 **MR COSTER:** Sure.

7 **CHAIR:** It's been a long day. Can I thank both of you very much indeed for your time and your
8 willingness to sit there and be questioned. And thank you to your teams because I know
9 that a vast -because I signed the documents off, the Section 20 notices, there's been a vast
10 number of requests, they will still keep- coming. Thank you to your organisation and the
11 people in it for helping us do our work by responding. Thank you very much indeed.

12 **MR COSTER:** May I say one thing in closing which is this: I've responded to a range of specific
13 things about specific cases today. I've responded without knowledge of those specific cases
14 beyond what's available to me and had to talk often in generalities and I appreciate that for
15 those who are the subjects of those cases that will in no way feel adequate to reflect what
16 they've been through and I just want to acknowledge the gap between that experience and
17 what I've been able to convey today.

18 And I'd also like to say, notwithstanding the many learnings that Police will take
19 from this Commission, and that we have taken over time, I'm incredibly proud of what
20 Police people do. They go into some of our most difficult situations and do their level best
21 to make a difference. And sometimes that isn't where we want it to be, but I'm confident
22 that the people who join New Zealand Police are there for the right reasons and it's been a
23 privilege to represent them in front of the Commission today. So thank you.

24 **CHAIR:** Tēnā kōrua. Ka mutu aku mahi i tēnei wā, matua, karakia.

25 **Waiata He Hōnore and karakia mutunga by Ngāti Whātua Ōrākei**

26 **Hearing adjourned at 5.28 pm to Wednesday, 17 August 2022 at 9 am**