

**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY
FAITH-BASED 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'imuumua Sandra Alofivae
Paul Gibson

Counsel: Mr Simon Mount KC, Ms Kerryn Beaton KC, Ms Katherine Anderson, Ms Tania Sharkey, Mr Michael Thomas, Ms Kathy Basire and Ms Alisha Castle for the Royal Commission

Ms Rachael Schmidt-McCleave and Ms Julia White for the Crown

Ms Sally McKechnie and Ms Brooke Clifford for Te Rōpū Tautoko, the Catholic Bishops and Congregational Leaders

Mrs Fiona Guy-Kidd, Mr Jeremy Johnston and Ms India Shores for the Anglican Church

Ms Maria Dew KC, Ms Kiri Harkess and Mr Lourenzo Fernandez for the Methodist Church and Wesley Faith

Mr Brian Henry, Mr Chris Shannon and Ms Sykes for Gloriavale

Ms Sarah Kuper and Mr Matthew Hague for the Presbyterian Church

Ms Helen Smith and Ms Sarah Kuper for Presbyterian Support Central

Mr Sam Hider for Presbyterian Support Otago

Mr Andrew Barker and Ms Honor Lanham for Dilworth School and Dilworth Trust Board

Mr Karl van der Plas, Mr Jaiden Gosha, Ms Rachael Reed and Ms Ali van Ammers for the Dilworth Class Action Group

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

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TRANSCRIPT OF PROCEEDINGS

INDEX

DEREK FIRTH	
Questioning by Ms Anderson	480
Questioning by Commissioners	505
AARON SNODGRASS and DAN REDDIE	
Questioning by Mr Barker	515
Questioning by Ms Anderson	518
Questioning by Commissioners	533
DILWORTH SURVIVORS PETITION	542
OPENING STATEMENT BY THE ANGLICAN CHURCH	544
RIGHT REVEREND ROSS BAY, MOST REVEREND DONALD TAMIHERE and MOST REVEREND PHILIP RICHARDSON	
Questioning by Mrs Guy Kidd	545
Questioning by Ms Anderson	556
Questioning by Commissioners	568
CLOSING STATEMENT BY THE CROWN	570
CLOSING STATEMENT BY DILWORTH SCHOOL and DILWORTH BOARD OF TRUSTEES	577
CLOSING STATEMENT BY THE ANGLICAN CHURCH	581
CLOSING STATEMENT BY THE CATHOLIC CHURCH	583

20 **Adjournment from 3.50 pm to 4.05 pm**

21 **CHAIR:** Welcome back for the final session of the day, I hope that flickering light doesn't mean
22 anything and just so everybody knows, we've closed our evidence for the public hearings
23 and we're now moving into the final part of our hearing, which is closing submissions, and
24 we have an update on who's going when. Just to let everybody know, both in the room and
25 online, today we will hear closing submissions from the Crown, from Dilworth School and
26 the Trust, from the Anglicans and from the Catholics, and then tomorrow we will hear, a
27 big day tomorrow, from first Gloriavale, then the Methodists, the Dilworth Class Action
28 Group, from SNAP, the Gloriavale Leavers' Trust and we finish with submissions from our
29 Survivor Advisory Group, SAGE, and then there will be a poroporoaki from Ngāti Whātua.

30 So that's the order of service, if I may again adopt a phrase from our faith-based
31 institutions. And just, please, to note to all those who are making submissions, I don't have
32 a timer but 20 minutes is your lot; we must, must finish by 20 past 5. Kia ora koutou.

33 Welcome back, finally, Ms Schmidt-McCleave.

34 **CLOSING STATEMENT BY THE CROWN**

1 **MS SCHMIDT McCLEAVE:** Tēnā koutou katoa. I te mana whenua o tēnei rohe, Ngāti Whātua
2 ki Ōrākei, tēnā koutou. E ngā Kaikōmihana tēnā koutou. E ngā purapura ora katoa, tēnā
3 koutou katoa. Ko Ms Schmidt McCleave tōku ingoa, ko te rōia mō te Karauna. (Greetings
4 all. To the tribal authority of this region, Ngāti Whātua, Ōrākei my acknowledgements.
5 Greetings to you the Commissioners, and to you the survivors. My name is Ms Schmidt
6 McCleave, lawyer for the Crown.)

7 I represent all the core government agencies involved with the Inquiry. For those
8 unable to see me, I am a 49 year old woman of Scottish, Polish and German descent, I have
9 brown hair and brown eyes and today I am wearing a red jacket with a red and white
10 blouse. I have no visible disabilities.

11 Thank you, Madam Chair and Commissioners, for the opportunity to present this
12 brief closing statement of the Crown for the faith institutional response hearing.
13 I particularly thank you for accommodating me to give this closing -- these closing remarks
14 on behalf of the Crown this afternoon due to a short prior commitment on my part
15 tomorrow morning.

16 I will therefore be absent for the first part of tomorrow morning but I do intend to
17 return to take part in the final stages of the Commission's public hearing work as it brings to
18 an end its final public mahi before the important reporting date of June 2023.

19 I also acknowledge, on behalf of the Crown, the survivors, their whānau, and
20 supporters who have sat patiently throughout many hours of evidence over the past nine
21 days and indeed over the past three years. Your fortitude, your courage and your strength
22 continue to inspire and motivate us all.

23 As the Commission heard in the State institution hearing in August, the Crown's
24 work continues apace to implement into its processes across agencies what it has heard in
25 the evidence to date, and what the Commission has already recommended. In the words of
26 the Chair in this hearing, this ongoing work is critical to ensure what we have heard never
27 happens again, e kore ano.

28 The Crown has played an observing role in this hearing, but as we have all heard
29 over the past days, the role of Church and State in care settings is not always well defined.
30 To that end in these brief closing remarks, I wish to pick up on some points that have
31 emerged in the evidence and to comment upon them. The Crown is actively considering
32 these points and a fuller response will be provided in due course.

33 In particular, when delivering my opening statement, Madam Chair, you asked me
34 about the Crown passing on Te Tiriti and human rights obligations to faith-based

1 institutions who care for children and how the Crown monitors those obligations. We are
2 in the process of confirming the scope of your question and we will respond with a written
3 fuller response as soon as possible.

4 In these closing remarks, however, I wish to focus briefly on three issues which
5 have emerged over the last nine days. These are the structure of the education system, the
6 retention of records, and the redress system currently being formulated. I want to deal with
7 the third issue first.

8 As was advised in the State hearing in August, work on the design of a new
9 independent redress system has begun in response to the Royal Commission's report He
10 Purapura Ora, he Māra Tipu. Critical to that work is collaboration with survivors and the
11 prominence of the survivor voice.

12 The Crown is acutely aware that, to be enduring, a redress system must reflect the
13 needs and wishes of survivors and be survivor driven and focused. To that end, the Crown
14 Response Unit has been engaging with survivor groups and other key stakeholders to seek
15 their views on how the collaborative design of a new redress system might work, with the
16 aim of commencing that process in the first quarter of next year. And I understand that
17 more details around this design process will be made available next month in November.

18 In parallel, the Crown Response Unit has also been working at pace on projects
19 flagged by the Royal Commission for immediate work and that includes a public national
20 apology, improvements to records processes, and an interim listening service. Short-term
21 changes have already been announced around current claims processes.

22 Of course also critical to the design of such a system is the involvement of the
23 Churches and their supporting organisations. The Crown Response Unit has been engaging
24 with the five major churches that have historically operated care institutions, the Catholic,
25 Anglican, Methodist, Presbyterian churches and the Salvation Army, one-on-one and
26 collectively, on the development of the new independent redress system.

27 That engagement has been positive and the unit welcomes the churches'
28 commitment to being part of the broader work to develop the new system through a
29 survivor-centred design process.

30 The Crown Response Unit does recognise that given the complexity of the
31 churches' structures, which we've heard about in the last nine days, including with their
32 social service groups and schools, the Unit does need to better formalise the relationship
33 with the churches and the other non-State care organisations. I am informed that the Unit

1 will begin working with these groups to formalise these arrangements at the conclusion of
2 this hearing.

3 The second point I want to address you on briefly, as was acknowledged by the
4 Crown in its hearing in August, there are record-keeping issues such as gaps in recording
5 and the loss of some records which have meant that the number of children, and particularly
6 the number of Māori and Pacific children in State care during the period in question, is
7 unlikely to ever be known. It has been apparent through this hearing that similar
8 record-keeping failures have existed in faith-based organisations and care institutions.

9 I note that during the scope period for your Inquiry, contracts between faith-based
10 institutions and Government agencies for care work would not necessarily have included an
11 explicit requirement to maintain records of that work. There is currently a requirement in
12 the 2005 Public Records Act for every public office and local authority to create and
13 maintain records of its affairs, including the records of any matter that is contracted out to
14 an independent contractor. And I can advise the Commission that there is ongoing work
15 occurring in this space.

16 Finally, I wish to briefly comment on the role of the Crown in faith-based care. As
17 I noted in opening, many of the organisations discussed over the last nine days received or
18 receive Government funding for the schools, homes and other social services they operated
19 or operate. Agencies such as Education, the ERO, Oranga Tamariki, and the Ministry of
20 Social Development have and have had different roles in the accreditation, monitoring and
21 regulation of schools, both private and State-integrated, and of care homes and other
22 contracted social services.

23 What has been apparent in this hearing is the contrasting way differing faiths view
24 their responsibilities to tamariki, rangatahi and other vulnerable people that come into their
25 care. While the Crown or the State is sometimes talked of and thought of as a single
26 unified entity, its statutory roles and responsibilities for people in different forms of
27 faith-based care were generally owed by particular Crown agencies which meant that the
28 Crown, through its various agencies, had a range of functions and obligations depending on
29 a number of factors, including the child's legal status and applicable policy and statutory
30 schemes at the time.

31 We have heard through this hearing in particular that churches who are proprietors
32 of schools have characterised the closeness of their relationship with those schools quite
33 differently despite having similar structural arrangements between the proprietor and the
34 School Board. We also noted that for some, a close relationship with the school is essential

1 to ensure the special character of that school founded on the Church's doctrines and beliefs
2 and that it is appropriately maintained. That close relationship is also characterised by the
3 Church's willingness to accept responsibility for abuse within the school as well as the
4 wider Church.

5 I referred in my opening submissions which set out in detail the differing roles and
6 responsibilities of the State in different settings but what must be emphasised is that the
7 presence of those differing roles and responsibilities did not detract from the primary
8 responsibility to ensure safety, which lay with the institution concerned. As I also set out in
9 more detail in my opening, over time, various legislative and regulatory requirements have
10 been implemented to improve student safety in educational settings, including in private
11 schools and in respect of monitoring and oversight in care settings.

12 When people are brought into the care of the Church or of the State, as a society we
13 expect them to be protected from abuse. As I said in August, that is an absolute minimum.
14 We all expect much more; that they will be loved, that they will be nurtured, and they will
15 be supported to face challenges and lead happy and fulfilled lives. It is shameful that this
16 did not always happen.

17 The Crown emphasises again that it is grateful to the Commission and to survivors
18 for the difficult work in bringing that history to light and it is committed to ensuring the
19 mistakes of the past are not repeated, including in settings where the role of the Churches
20 and the State intersect.

21 This is the last public outing by this Commission in its critical work. The Crown
22 thanks you for the opportunities it has had in the course of the last three years to assist the
23 Commission, and continues to be available to do so as the Commission moves into the final
24 stages of its mahi.

25 I want to finish by speaking to survivors. Ko tōku mihi whakamutunga, ki a koutou
26 ngā purapura ora. (My concluding acknowledgement is for you, the survivors). I humbly
27 thank you for your courage and strength to express and share your experiences. Nā te
28 ngākau iti tēnei mihi mō tō koutou māia me te kaha ki te whakapuaki i ā koutou kōrero. Hei
29 whakakapi i tēnei kōrero, mā te whakarongo me te ako ka huri tātou te tai. Nō reira, tēnā
30 koutou, tēnā koutou, tēnā tātou katoa. (I humbly acknowledge your courage and strength
31 for expressing your stories. To conclude, through listening and learning we will be able to
32 change the tide. Hereby, I greet, acknowledge and salute each and every one of you here).

33 **CHAIR:** Kia ora, Ms Schmidt-McCleave. Can I just thank you on behalf of the Commission, you
34 and your other counsel, Ms White, and others who have stood representing the Crown, for

1 your diligence, your clarity and your assistance in cooperation with the Commission. It's
2 been very valuable and we thank you very much very much for that.

3 **MS SCHMIDT-McCLEAVE:** Ngā mihi ki a koutou.

4 **CHAIR:** Kia ora.

5 **MS SCHMIDT-McCLEAVE:** Kia ora.

6 **CHAIR:** We're now going to hear from the Dilworth School. Kia ora, Mr Barker.