

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

Under The Inquiries Act 2013

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

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

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

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

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

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

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

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

Date: 25 August 2022

TRANSCRIPT OF PROCEEDINGS

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OFFICE OF THE CHILDREN'S COMMISSIONER

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CHAIR: Nau mai hoki mai. Good afternoon.

MS HEINE: Commissioners, Ms Heine again.

CHAIR: Yes, Ms Heine, welcome back.

MS HEINE: I have discussed with Ms Spelman the best way to organisation ourselves so you and the Commissioners get maximum opportunity for questions and we're proposing that I will briefly identify each of the three women we have in front of you, invite them to introduce themselves to the Commissioners and to those observing.

Judge Eivers has a mihimihi and preliminary statement which I think has been made available. So, on the far right we have Judge Eivers. Judge, can I invite you to introduce yourself briefly.

CHAIR: Shall we just have the affirmations before we start.

MS HEINE: Yes, of course.

CHAIR: Get that piece of formality over.

OFFICE OF THE CHILDREN'S COMMISSIONER

FRANCES EIVERS, FIONA CASSIDY, GLENIS PHILIP-BARBARA (Affirmed)

CHAIR: Now, Ms Heine, are you familiar with our practice, newly introduced for this hearing but it seems to be successful, of us all describing ourselves for those who cannot see us?

MS HEINE: I was, Your Honour, I had introduced myself last time but you're quite right.

CHAIR: We do it for each session because different people may be watching.

MS HEINE: Of course, my apologies. I'm a European woman, relatively tall, with medium length dark hair and I'm wearing a blue and white jacket today. Judge Eivers.

JUDGE EIVERS: Tēnā rā tātou katoa, ko Frances Eivers tōku ingoa. He uri nō Ngāti Maniapoto me Waikato ahau, ko au te Kaikōmihana mō ngā mokopuna o Aotearoa. Greetings everyone, my name is Frances Eivers, I'm a descendant of Ngāti Maniapoto Waikato and Pākehā, I am the Children's Commissioner for Aotearoa. For the audio record, I am a woman old enough to have three full grown sons, I have brownish hair, brown eyes, and I'm wearing a bright green jacket today.

CHAIR: Kia ora.

MS CASSIDY: Kia ora koutou, ko Tawhitirahi te maunga, ko Awapoka te awa, ko Pōtahi te marae, ko Te Aupōuri, Ngāti Kurī, Te Rarawa ōku iwi, ko Fiona Cassidy tōku ingoa. I am

1 a middle aged Māori wāhine, salt and pepper hair, slightly overweight, wearing a black
2 dress and a bright red shawl. Ngā mihi ki a koutou.

3 **CHAIR:** Kia ora.

4 **MS HEINE:** And then on the far left we have Glenis Philip Barbara.

5 **MS PHILIP-BARBARA:** Tuatahi rā, ka rere atu taku mihi aroha ki a koutou ngā mōrehu e
6 mātaki mai ana i tēnei ahiahi, tēnā rā koutou katoa, huri noa ki a koutou ngā Kaikōmihana,
7 nei rā te mihi o te Tairāwhiti ki a koutou. My name is Glenis Philip Barbara, a descendant
8 of Te Tairāwhiti whānui, I am a Papatūānuku sized wahine Māori with a moko on my chin.
9 Kia ora.

10 **CHAIR:** This is not meant to be a personal denigration time but thank you.

11 **MS HEINE:** Madam Chair, if acceptable, could Judge Eivers do her mihimihi?

12 **CHAIR:** We are entirely in your hands, kei a koe to tikanga, Judge.

13 **JUDGE EIVERS:** Tuia te rangi, tuia te papa, tuia ngā kōrero, tuia ngā wānanga, kia mau kia ita.
14 Kia kuru pounamu te rongo, mō te oranga o ngā tamariki o Aotearoa, tihei mauri ora.
15 Weave in sky Father, earth Mother, weave in the conversation, and knowledge, hold firm
16 and secure. For our mokopuna to live their best lives and be well. It is life, united and
17 ready to progress.

18 Tuatahi ki te pae o maumahara, ko Pōhutukawa tera e tiaho mai rā hei tohutohu mō
19 ngā marae aituā kua whetūrangitia. Kia tātou ngā urupa o rātou mā. Tēnā tātou katoa.
20 Firstly, to those who are of memory, it is Pohutukawa that shines on us to symbolise those
21 who have passed, formed into stars.

22 Tū mai rā Maungakiekie. Rere ana te waka o Māhuhu ki te Rangi e rere nei ki roto i
23 ngā wai o Waitematā. Ki ngā kaihoe me ngā uri o Ngāti Whātua, karanga mai rā, karanga
24 mai rā. E ngā hapū me ngā iwi o Tāmaki Makaurau, me ngā iwi o ngā hau e whā, tēnā
25 koutou katoa. Stand firm Maungakiekie. Let your vessel of Māhuhu ki te Rangi flow in
26 the waters of Waitematā. To the paddlers and descendants of Ngāti Whātua, call upon us.
27 To the subtribes and iwi of Tāmaki, and the tribes of the four winds, we acknowledge you
28 all.

29 Ka whakahōnore to tātou Arikinui a Kingi Tūheitia, te pou herenga waka, te pou
30 herenga tangata, e te kāhui ariki tēnā koutou. We honour Kingi Tūheitia, the rallying point
31 for people, the mooring post for canoes, to the King movement we acknowledge you all.

32 Ki ngā purapura ora me a rātou whānau whānui, nei rā te mihi maioha, te hōnore nui
33 kia koutou katoa. Ko te moemoeā, kua hoki ai te mana me te oranga ki ngā purapura ora.

1 To our survivors and your families, we acknowledge and honour you. The hope is that the
2 strength and wellbeing has been restored and will be restored to our survivors.

3 Ki te Kōmihana o te Karauna, nei rā te mihi kia koutou ngā taringa e āta
4 whakarongo ki ngā kōrero pāpōuri, ki ngā kōrero mamae. Kia koutou ngā Kaikōmihana, e
5 āku mareikura, e āku whatukura, e āku rangatira tēnā koutou. To the Royal Commission,
6 we acknowledge you, the many ears who have heard the hurt and the sadness. To the
7 Commissioners, my esteemed and treasured leaders, we acknowledge you all.

8 Nā reira, he kōrero whakamutunga. Tungia te ururoa kia tupu whakaritorito te tupu
9 o te harakeke. Tēnā koutou, tēnā koutou. Kia kaha tātou katoa. A closing statement. Set
10 fire to the bush and the new flax shoots will spring up. I acknowledge you all, and let us all
11 be strong.

12 **CHAIR:** Tēnā koe. Before we proceed any further, I've just received a note to say that the sound
13 on the livestream, in other words what people are trying to listen to as we proceed, is
14 described as terrible and there's a question of whether we should break to try and get that
15 sorted. I'm just going to ask the technology five- minutes? I'm very sorry that we have
16 to- break for that.

17 Judge Eivers, as you were saying your opening comments, I was just thinking about
18 the flax bush that was sitting in front of us here, so I think we're all speaking on the same
19 terms.

20 Anyway, let's take five minutes and try and get the technology right so we don't
21 have to be further interrupted.

22 **Adjournment from 2.45 pm to 2.52 pm**

23 **CHAIR:** With fingers crossed we start again. Thank you, Ms Heine.

24 **MS HEINE:** So, Chair, Judge Eivers just had a short-written statement which will take about five
25 minutes.

26 **CHAIR:** Thank you.

27 **JUDGE EIVERS:** Tēnā koutou katoa. My name is Frances Eivers and I have been the Children's
28 Commissioner for Aotearoa since the 1 November 2021. I was previously a District Court
29 judge working extensively with mokopuna in the court system based at Manukau and
30 working mainly in the South Auckland region.

31 The statements of we three witnesses on behalf of the Office of Children's
32 Commissioner, being myself, our first Assistant Commissioner Māori, Glenis Philip

1 Barbara, and Executive Director Fiona Cassidy, have all been taken as read. However,
2 I want to make some opening comments that go to the heart of what we wish to share with
3 both the Commission and those who have shared their stories.

4 The Care and Protection and Youth Justice system has failed to serve the interests of
5 our mokopuna, and it continues to fail them today. Despite the efforts of many committed
6 and dedicated people working within the system, past and present, it remains in free fall.
7 We must acknowledge the reality that getting it right for mokopuna is beyond the means of
8 a state structure that acts in isolation.

9 To make a transformational change required for our mokopuna to be safe and have
10 every opportunity to thrive, we must ensure that Te Tiriti is the foundation for
11 transformation of the Care and Protection system. A by Māori for Māori approach is
12 required to address the disproportionate number of mokopuna Māori in State care. It must
13 be prioritised.

14 Appropriate training, guidance and support is critical for all adults involved in
15 delivering care for mokopuna in the State system. Places of detention must move from a
16 prison-like system to a model of therapeutic care. We must listen to the voices of
17 mokopuna and whānau and act on what they tell us. They must not have to tell their story
18 again and again and again.

19 A functional mokopuna and whānau centred complaint system is urgently needed.
20 There must be true independent oversight of the Care and Protection system.

21 Finally, Oranga Tamariki and other social sector agencies must make every effort to
22 repair trust, not only with the families they work with, but with Aotearoa at large.

23 As I am on the public record as saying, and echoed by many across the children's
24 rights sector, the State cannot monitor itself. No matter how many non-interference
25 agreements we are told are in place, or assurances that it is independent, the Independent
26 Children's Monitor that will undertake most of the monitoring of the care system is a
27 departmental agency and cannot be independent of government. It is a simple fact that the
28 kaimahi and the monitor are public servants, public servants cannot speak truth to power.
29 They are there to implement the decisions made by ministers who in turn are elected to
30 represent the will of the people.

31 The public does not believe that the new monitor can be truly independent. I'm
32 repeatedly asked why the State is deliberately taking steps to remove any checks and
33 balances on a system that has the most feared powers of them all, that is the ability to take
34 your child away. I have no answer for them.

1 The answers to the challenges before us lie in reforming the Care and Protection and
2 Youth Justice system itself, yet it is the oversight system of the agencies' policies and
3 practices that has become the focus of change.

4 I remain of the view that an effective, well-resourced and fully independent
5 monitor, teamed with relentless advocacy is vital to prevent, address and eliminate the
6 abuse of mokopuna in care. These are an essential part of the process to begin the slow but
7 sure rebuilding of trust in the system entrusted with the care of our mokopuna.

8 I've already noted that public trust has been eroded, but I ask you to look at this
9 through the eyes of those at the centre of the storm, mokopuna themselves.

10 At the end of the matter, mokopuna are experts in their own lives, they know what
11 is happening around them and to them and yet they tell us again and again that they remain
12 silent in front of authority because "No One is listening anyway, why would I share?" But
13 these are the very mokopuna that the system is supposed to be supporting.

14 Please picture in your mind a 16-year-old- Māori rangatahi, his home is chaotic, he
15 has seen and experienced family violence, he has grown up moving from one draughty,
16 overcrowded home to -another if- he's even got a home,- he's- never been sure of where his
17 next meal comes from,- and he's never been told he is valued.

18 Outside of his home people see his family and judge him as the same. Now he's in
19 trouble and he's coming before me in the court. These young people are often treated more
20 harshly because of being stereotyped as bad or just like their parents, but the vast majority
21 of these rangatahi were victims long before they began offending. Their trauma has formed
22 their response to the world around them, a world that has never shown itself to be on their
23 side.

24 Why had no one helped him before? The trouble is they have probably tried, but
25 from an early age this rangatahi trusts no- one, he doesn't see anyone in the system as
26 separate; Work and Income are the enemy; teachers are the enemy because they pry into his
27 family life; social workers,- don't-- trust them, they take you away and he's been told that
28 by other kids what that's like, better to stay silent and stay where he is, at least he
29 understands that place.

30 The story is a familiar one, many of you will have heard it before and perhaps we
31 are inured to the tragedy, but for him this is his unique story, his personal pain, and we
32 must never forget that.

33 Part of his suffering is a lack of trust in a system that is not built for him, does not
34 talk to him in a language he can trust and understand. If he cannot trust the system and the

1 people within it, it is not down to him to change, it is up to us to change, so that he can be
2 heard and he can be supported.

3 This does not happen enough, and we are losing these rangatahi by effectively
4 abandoning them by not connecting with people who can work with them, can be heard,
5 and can effect change.

6 I, for one, will continue to take whatever steps I can to demonstrate to them that the
7 system can change and that we are on their side, and we do have their backs. Ultimately,
8 we need to listen more deeply to what children tell us and stop telling them what we think
9 they need.

10 Children and young people in care have a wisdom and perspective that adults can
11 learn from. To walk the talk myself, my staff regularly meet with rangatahi and hear their
12 voices and I just want to tell you some of what's come from the voices of these rangatahi,
13 about how they would want to live, they could live a good life.

14 The big message is give kids a choice. "A good life to me is having the same
15 opportunities as everyone else. I've done all of these things but nothing changes. Will all
16 of Oranga Tamariki make a change? No little white lies? I want support, stability and to
17 be loved unconditionally. When a child is supported and feels the love, they are capable of
18 anything. I think the one thing children and young people need to have good lives now and
19 in the future is safe communities and environment. A lot of support from mental health
20 people as well as parents who can't handle stress or their anger, lots of counselling at school
21 and at home for young people. We need to break the cycle by providing these needs.
22 I want a safe place for everyone to feel free to voice their opinion, give the young
23 generation the chance to have a lot of great experience but they should have a great meal to
24 start the day off and motivation to aim higher for their career path."

25 These are words from our mokopuna.

26 We welcome a future where the monitoring of State care is not necessary in the way
27 that it is so desperately needed right now. Until then we should all be committed to
28 championing a vision of a better Aotearoa New Zealand where all mokopuna are listened
29 to, accepted, loved, safe and able to be supported by their whānau.

30 In closing, I want to stress that there is hope if we listen to the voices of our
31 mokopuna. As a mokopuna in care told us so clearly, she wanted support, stability, and to
32 be loved unconditionally. When a child is supported and feels the love, they are capable of
33 anything. We must keep mokopuna at the centre of our thinking. Tēnā koutou.

34 **MS HEINE:** I think I can now hand over to Ms Spelman.

1 **CHAIR:** Thank you. Kia ora, Ms Spelman.

2 **QUESTIONING BY MS SPELMAN:** Kia ora anō. Tēnā koutou, nei rā te mihi ki a koutou kua
3 whai wā ki te haere ki konei ki tēnei o ngā wahanga, tēnā koutou katoa. Just for those who
4 might be tuning into this session who weren't here this morning, my name is Julia Spelman,
5 I'm one of the Counsel Assisting, I'm a woman in my mid 30s, of Māori and Pākehā
6 descent, and I have brown hair, a green dress and a black jacket on today.

7 Judge Eivers, thank you for those introductory words, that's set a foundation for
8 where we're going. I'd like to start by talking about independence, because I think that cuts
9 to the heart of what the concerns are that you bring with you today, and that's particularly
10 timely of course, because while the Royal Commission has been sitting this week, there's
11 been the news of the third reading of the bill in question.

12 So, you've outlined just at a high level some of those concerns around why having
13 independence, an independent monitor is so important. I just wondered if you could
14 comment in relation to the safeguards that have supposedly been put in place, such as the
15 non-interference agreement, I think you said, and why you still hold concern about the new
16 arrangements.

17 **JUDGE EIVERS:** The Independent Children's Monitor, I welcome the fact that the investment
18 has gone into having a monitor set up that covers the country as fully as it does and the
19 work that's been done, but my concern, and I've said this from day one and I still say it, is
20 that at the end of the day, it's a Government agency, the employees within the Independent
21 Children's Monitor are public servants, that is their responsibility is to Government. I
22 would prefer to see the Independent Children's Monitor as an independent entity, so an
23 independent entity is a step back from Government and doesn't have that same obligation to
24 ministers and to policy that a public servant has.

25 **MS SPELMAN:** And another part of the discussion there's been around the new arrangements
26 and the set-up has been around this idea of separating the advocacy function from the
27 monitoring function, and what that means for an independent monitor. I just wondered if
28 you could provide your comments, because of course the view has been put that that can't
29 work well together, those two, that there's a conflict which causes trouble.

30 **JUDGE EIVERS:** Those of us who are advocates or have been advocates know that the best
31 evidence informs your advocacy and that would be, in my view, an ideal model where the
32 two work together. I mean, now that the law has the-- bill has gone through, there is an
33 obligation within the bill for the Independent Children's Monitor, the Children's

1 Commissioner and the Ombudsman to work together and that will happen. But the
2 advocacy role is one that requires good evidence.

3 It is a matter really of those functions are broken up, so instead of it all being in one
4 agency, we've now got three agencies, where our whānau have to navigate their way
5 through three agencies. That's my real issue there.

6 **MS SPELMAN:** Another aspect you touched on was encouraging us all to look at things from the
7 perspective of the child, the mokopuna at the centre of things. What have been some of
8 those concerns from that the from-- a child's perspective that your officers heard about the
9 new arrangement, could you just give us a bit more detail on that.

10 **JUDGE EIVERS:** I may have to come back to you on that because I'm not sure that we have
11 canvassed that with our mokopuna. We're around asking them other things about Covid-19
12 and matters of education, so I'm not sure. Glenis, do you know if we've asked?

13 **MS PHILIP-BARBARA:** There has been general conversation, but we certainly have not, in my
14 time at the OCC, set out to investigate that fully.

15 **MS SPELMAN:** So, it's more the views that mokopuna have expressed about their general
16 challenges navigating all of these systems and your concern that having it split into three
17 agencies makes it perhaps more complicated rather than easier to navigate.

18 **JUDGE EIVERS:** Correct, and in my experience, actually as a judge in the Care and Protection
19 and Youth Justice Court, showed me that too. I don't know how many times whānau said
20 in the courtroom, "I am tired of telling my story, I see a different person every week" and
21 you really feel their frustration and it's not fair.

22 **CHAIR:** Could I ask a question, please, about the splitting up of these, well, the fact that there are
23 three agencies working. You will be more familiar with the new legislation than I. To
24 what extent, and you say that you will be working together and talking to each
25 other,- to- what extent does the legislation require and facilitate that interaction between
26 those three agencies and to what extent does it rely on personal relationships and goodwill
27 for it to work?

28 **JUDGE EIVERS:** Judge Shaw, I can't remember the section but there's an obligation on the three
29 agencies to have a memorandum of understanding. So, there is that legislative obligation
30 but, of course, we know that anything like that will depend upon the goodwill of the
31 agencies and certainly that everyone will go in with the right with- that goodwill, because
32 it's very -important well-, as Commissioner of Children, it's what is best for our mokopuna,
33 and you have to- work with the model that is there.

1 **CHAIR:** What about information sharing, because you've already said that a good advocate needs
2 good information, so that implies that you're going to need information from each of those
3 other agencies in a form that your office can use to be an advocate. How do feel about that
4 in terms of what is required under the legislation and arrangements made?

5 **JUDGE EIVERS:** That will be done and that is a requirement but, of course, it just slows down
6 the whole process, and again, I suppose the Independent Children's Monitor is looking at
7 looking through the lens of a government agency and their recommendations will be as a
8 public servant, whereas an independent agency has more freedom, perhaps, to express
9 things differently and more directly.

10 **COMMISSIONER ERUETI:** And you clearly are concerned about the quality of the evidence
11 that will be gathered by the independent monitor?

12 **JUDGE EIVERS:** The integrity of the work they do is good, I don't want to criticise that. I'm just
13 concerned from a general point of view really, and looking at the model that has now been
14 brought into law, that for a start, it's one step removed, it's an extra agency, there will
15 be,- they will determine what will be looked into, and there will be,- the --lens will be as a
16 public servant as opposed to an independent agent who really doesn't have to have the same
17 consideration about government policy or obligation to the Crown.

18 **COMMISSIONER ERUETI:** I think this issue came up when we met with the Monitor about
19 quality of evidence because of the questions of trust of communities, and the lack of
20 independence about whether children will trust this new entity and then, of course, whether
21 Māori will trust the new entity because of the history of distrust, and the apparent lack of
22 independence, meaning, "Can I speak to this entity?" So that means that the evidence
23 gathered, there is this question about how complete it might be and informed.

24 **JUDGE EIVERS:** Potentially, I think that would be correct. It's not that they've got as-- I say, it's
25 nothing about the integrity of the work that will be done by the Independent Children's
26 Monitor, it's about how far they can go, and I come back to that point, really, about the
27 State not monitoring itself.

28 **CHAIR:** Thank you.

29 **MS SPELMAN:** Thank you. So, I suppose I'm just conscious as well for those who are watching
30 at home and this talk of a bill, for those who might not be familiar with all the detail of that,
31 what are the changes for the Office of the Children's Commissioner once that bill does
32 receive Royal Assent?

33 **JUDGE EIVERS:** Under the Children's Commissioner's Act 2003, the Children's Commissioner's
34 Office or Children's Commissioner has the responsibility to advocate for all for- all

1 mokopuna in Aotearoa under the age of 18 to advocate for their rights and interests, to
2 investigate any complaints, to monitor and -to monitor- the procedures and practices of
3 Oranga Tamariki. There are other obligations, but these three are now going
4 to,- these- three functions are being split -between advocacy- remains with the Children's
5 Commissioner, or Commission as it will be,- complaints and investigation will go to the
6 Ombudsman's Office; and monitoring of the practices and procedures of Oranga Tamariki
7 will sit with the Independent Children's Monitor.

8 **MS SPELMAN:** And there will be still some monitoring role for OCC in relation to your other
9 monitoring function?

10 **JUDGE EIVERS:** Yes, the Children's Commissioner has the mandate under the OPCAT, the
11 Optional Protocol for Crimes Against Torture, which was given to the Children's
12 Commissioner by the Ministry of Justice, and we do do that. It's essentially- my team
13 within the office go to all of the places of detention to check that young people or rangatahi,
14 mokopuna, are not being harmed or there's -torture basically-- their well-being.

15 **MS SPELMAN:** In the response from the Office of the Children's Commissioner there's a helpful
16 reflection on the history of the office from 1989 through to today. I just wondered in
17 relation to your comments about independence, you say that the independence of the
18 Children's Commissioner has been a cornerstone of the trust of the public, but also
19 obviously of children. I just wondered if you wanted to offer any thoughts on that in terms
20 of the history and build-up of that, given that we're now looking at this new change with
21 three new agencies, what is the potential of loss of that history over the last 30 odd years?

22 **JUDGE EIVERS:** Each of the Commissioners before me, and I acknowledge each and every one
23 of them, have been strong advocates for mokopuna. An example of some of the matters
24 that have changed or issues, or changes, for Aotearoa is the repeal of Section 59 of the
25 Crimes Amendment Act, so not being able to use discipline, physical discipline on children,
26 on mokopuna.

27 A lot of work was done very early on in terms of child poverty and health by
28 previous Commissioners which eventually led to the Child Poverty Reduction Act. There's
29 also a Child Poverty Monitor.

30 And there were also changes to Oranga Tamariki Act as a result of advocacy
31 through the Children's Commissioner's Office. And I suppose the Children's Commissioner
32 has always been an identifiable person, so that a young person goes, "That's my
33 commissioner", you know, "That is my commissioner", and I come back to we need to look
34 at this through the eyes of our mokopuna.

1 **MS SPELMAN:** Thank you. So, you mentioned before of course that now that that bill has gone
2 through work will be underway in terms of the new arrangements, and one point that's
3 come up this week is about a potential gap in monitoring of what can be done by the
4 Independent Children's Monitor, and that's in relation to Section 396 providers who do not
5 have delegated authority from the Chief Executive of Oranga Tamariki.

6 So, I know you have these general concerns that you've described about the future
7 of monitoring for mokopuna. And I just wondered if you had a comment in terms of a
8 potential for risk of abuse and neglect in relation to 396 providers who may there- may- be
9 a bit of a gap there in terms of how they are monitored.

10 **JUDGE EIVERS:** I'm not sure that Glenis--, do you know anything about this?

11 **MS PHILIP-BARBARA:** This is a concern. If we are going to properly monitor an entire
12 system, it's unacceptable to have gaps. Where entities have been engaged to provide care
13 and other services for mokopuna and their whānau it's really important that they are
14 covered by the monitoring system to provide confidence and trust and to build that into the
15 system. So, it is a concern, the gap.

16 And certainly, for the Office of the Children's Commissioner, our monitoring focus
17 has been on places of detention due to resource constraint rather than a lack of capacity to
18 stretch out across any gaps that might appear.

19 **MS SPELMAN:** Thank you for that, and that seems to be, I suppose, the other big-ticket item
20 here is the statements that you've made in the response and in your brief that from the
21 beginning, in your view, the Office of the Children's Commissioner has never been funded
22 properly to carry out the mandate that it has. And I just wonder if you could touch on that
23 in terms of the initial point from 1989 of what it was set up to do in the first place.

24 **JUDGE EIVERS:** Yes, that has always been a concern but I'm going to ask Fiona Cassidy to
25 speak to that because she's got the information on that.

26 **MS CASSIDY:** Kia ora. When the Children's Commission was set up in 1989 the purpose behind
27 it was to actually have a voice. It started with \$500,000 and five people. During our
28 preparation for this Commission, we heard from kaimahi and staff who have been involved
29 in its establishment since then.

30 In 2003 we were given broad legislative functions to monitor and assess the policies
31 and practices of the State care, and until 2007 we were focused predominantly on the
32 Section 13 mandate under the Children's Commission, and then we became a National
33 Preventative Mechanism, but we did not get the funding to actually be able to meet our
34 mandate.

1 As it currently stands, we the Office of the Children's Commissioner monitor 33
2 places of detention, 25 under Section 13, but all 33 under OPCAT.

3 What that has meant for each Commissioner is they have had to make choices about
4 how they spend that funding. And all of them have chosen to look at what is possible to
5 make the most significant difference. That difference has been looking at those in State
6 care. And through that work of those who have gone before us and those currently, what
7 we have seen is that the Children's Commission, which is only small, that started with five
8 people and currently has 29 and at its maximum three years ago had 34, has ensured that
9 the children's voices, our mokopunas' voices have been heard, and they have been heard at
10 the highest level and they have made a difference.

11 Just imagine what would have happened if we had been given more funding. Over
12 the years we as an organisation have asked for more funding and, as you will you know, it
13 is a difficult task. There is not one Children's Commissioner that at any point in time didn't
14 ask, within very small margins, to be able to do more.

15 The funding we have got did not necessarily come forward and what it allowed it to
16 do was the Commissioners to pick particular projects.

17 So, in terms of a small organisation, it has not shied away that at the middle, front
18 and centre of what we do is mokopuna.

19 I would also like to add and possibly, if I may, to ask-- Glenis in her former role to
20 talk about our difference and our difference is we come from a Māori Te Ao kaupapa.
21 We're not mandated by a government agency; we're mandated by what is right for
22 mokopuna.

23 I wonder, Glenis, if maybe you could talk a little bit about that.

24 **MS SPELMAN:** Thank you, ae.

25 **MS PHILIP-BARBARA:** I suppose beginning with the idea of calling all the children who we
26 seek to give voice to, to advocate for, "mokopuna", the coining of the term, it's an old, old
27 kupu and some of my aunties asked me, "Babe, why this word 'mokopuna'? You know, are
28 you trying to gather up the country's mokopuna?" I said, "No, what we're trying to do in
29 this system that we are a part of is bring all of those mokopuna, all 1.2 million of them
30 closer to us, so that we can give them the same regard and accord them the same mana as
31 we do to our own.

32 So that centring, that Te Ao Māori view, is about considering all of the tamariki of
33 Aotearoa our mokopuna, so bringing them, drawing them closer to us. So that way of
34 working is relational, deliberately so, so that when our people go out to places of detention,

1 we invest the time, we create the space, we play volleyball, we hang out on the basketball
2 court, we sit and we create space and we listen, not just with these two things on the sides
3 of our heads, but with our ngākau too.

4 Because building trust with young people who have been hurt, who have been
5 abandoned, who have been mistreated is a tough job, and for this tari, the Office of the
6 Children's Commissioner, it's taken over 30 years to build that trust in our community, and
7 that trust has been built through centring the mana of mokopuna and whānau and listening
8 with all of our being every time.

9 **MS SPELMAN:** Tēnā koe i tērā whakautu. It seems as well that within the haerenga that the
10 office has been on in the last sort of 10 years particularly, and especially with your
11 appointment, whaea, that the internal capacity of the office, particularly with recruiting
12 more Māori staff and really building that capability, has put the office in a stronger position
13 to engage in the way you've described. Is that sort of part of that journey internally?

14 **MS PHILIP-BARBARA:** Yes, and through the, you know, the work that went into responding to
15 the Section 20 request, we had the privilege of meeting Māori staff throughout the years
16 who operated with those same principles at their heart, who developed the concept of mana
17 mokopuna as the core of our monitoring framework, who have taken and built that
18 approach over time in partnership with our communities and our whānau.

19 So, it's not about acting in isolation, it's actually about listening and responding and
20 constantly evolving that approach.

21 **MS SPELMAN:** And part of, I suppose, the budget constraints and the issues that come with it
22 seem that, as often happens within agencies, it's Māori staff who carry the burden of that
23 extra work to get done what needs to be done for mokopuna. Has that been something
24 experienced by your tari as well?

25 **MS PHILIP--BARBARA:** It would be fair to say that the staff of the OCC over years, and we've
26 met some fantastic people as a consequence of the Section 20, are passionate, are
27 committed, and have heaps of aroha in their heart. And so yes, that is that's-- a matter that
28 we have been concerned about over years, the extent to which small numbers of staff carry
29 a massive workload, and, you know, burden of the ngākau is how I would describe it, that
30 sense of, yeah, taumaha for the things that they hear, for the things that we see, for the
31 things that mokopuna tell us.

32 **MS SPELMAN:** And just in terms of the budget points that you were making before, I'd just
33 wanted to clarify two of those if I can. It may not be clear to everyone who's watching how
34 exactly the OCC goes about budgets and being where-- it sits within the system and budget

1 bids, that sort of thing, but that seems quite important to this point you are making, so
2 I wonder if you could explain that a little more for us.

3 **MS CASSIDY:** Kia ora. So, the Ministry of Social Development are our monitor, and we are
4 given a set sum of money to actually perform our functions each year. What we have done
5 for many years is put in what they call a budget bid, so for those of you who are not
6 familiar, that is an opportunity to try to get more funding. We have put in our submission,
7 every time we have asked for funding it has been minimal, and what it has all gone towards
8 is actually allowing the tari to continue to operate at the level we talked about, which is
9 looking after our requirement -- no, not our requirement, after our chosen OPCAT function,
10 and also what it has allowed on one or two cases is to do significant pieces of work.

11 So, I think some of you will know that over the years the Office of the Children's
12 Commission has done some, and it comes back to the advocacy, they have done pieces of
13 work which take the voices of children and have brought about change, whether that be for
14 a good life.

15 Glenis, could you just talk about a couple more during your time?

16 **MS PHILIP-BARBARA:** I think the State of Care reports are significant in terms of what we're
17 discussing here that constant monitoring of the residences and the broader system of State
18 care has been an important feature. We produce a report after every single visit to a
19 residence or a place of detention and have done so for many, many years, and so over time
20 there are significant themes that have emerged from all of that reporting, which inform our
21 lens and the things that we are concerned about as we head off into the year following.

22 **CHAIR:** Ms Spelman, if I could.

23 **MS SPELMAN:** Of course.

24 **CHAIR:** Whaea, you talked about the MSD being your monitor and that was raised when our
25 MSD witness came up, I meant to ask then what that meant, but from is-- it monitor or
26 administrator?

27 **JUDGE EIVERS:** Yes, Judge Shaw, the monitor is appointed because we're an Independent
28 Crown Entity.

29 **CHAIR:** That's right.

30 **JUDGE EIVERS:** So, it is the word "monitor" so our funding bid has to go through the monitor,
31 so through MSD in this case, to Treasury.

32 **CHAIR:** Does MSD provide any back office services?

33 **JUDGE EIVERS:** Oh yes, they do. They do, but of course it goes to Treasury, we've got to, sort
34 of, you know, as is appropriate.

- 1 **CHAIR:** Sure. And your budget would be you- would carving- off a bit of your budget to pay
2 back to MSD for those services, I expect?
- 3 **JUDGE EIVERS:** Do we?
- 4 **CHAIR:** Yeah, you do.
- 5 **JUDGE EIVERS:** I know we pay rent.
- 6 **CHAIR:** So, the use of the word "monitor" is becoming a supercharged word around here.
- 7 **JUDGE EIVERS:** It is, yes, I see.
- 8 **CHAIR:** That's right. So, I just wanted to be clear what you meant by "monitor" in this context. I
9 think it's important we get that clear.
- 10 **JUDGE EIVERS:** Yes.
- 11 **CHAIR:** So, who's best placed to explain what that means?
- 12 **MS PHILIP-BARBARA:** So, the role of the monitor in this instance is to monitor the
13 performance of the Independent Crown Entity, because of course we have to on an annual
14 basis report against our statement of performance expectations and against our strategic
15 objectives. We report to the Minister for the use of public funds, which is prudent, given
16 that we are an independent entity.
- 17 **CHAIR:** It's the Public Finance Act responsibilities.
- 18 **MS PHILIP-BARBARA:** Yes, so it's an accountability relationship as well as a funding one.
- 19 **CHAIR:** So, is the monitoring just in relation to the Public Finance Act or is it beyond that; do
20 you know?
- 21 **MS PHILIP-BARBARA:** Well, included in the Public Finance Act, as you'll be aware, is a
22 responsibility to perform the functions for which we have been funded. So, there's a
23 performance aspect in there too.
- 24 **JUDGE EIVERS:** We can come back to you with the detail on that, Judge Shaw, but I know
25 when I first was appointed and I had I- was trying to understand what a monitor was, I sort
26 of saw them -as I- see the monitor as a bit of an overseer, so the relationship is one of
27 support, but it's also the vehicle by which we get funding.
- 28 **CHAIR:** That's right, and that's really where I'm coming to. So, you are beholden to the Ministry
29 of Social Development for the budget bids and the advocacy on behalf of the Office for the
30 budget bids to the Minister?
- 31 **JUDGE EIVERS:** Yes, it goes through MSD.
- 32 **CHAIR:** That's right. Okay. Thank you very much.
- 33 **COMMISSIONER ERUETI:** May I just quickly intervene with a question. I'm triggered by or
34 prompted by the State of Care report, whaea, about a valuable resource. I did wonder when

1 you're talking about limited funding and choices you have to make about where you focus
2 your energies, it does seem to me that there's been a lot of attention on the residences over
3 the years, which is important because of its, you know, the inherent danger within them.
4 But also, the foster care system and 396 providers is another very large area for tamariki
5 that hasn't been able to have the same sort of attention from the office. Do you think that
6 it's-- that fair?

7 **MS PHILIP-BARBARA:** I think that's very fair. I mean, the Commissioner can speak to this
8 herself, but over years as we interviewed previous staff, weighing up where we were most
9 concerned for the safety and wellbeing of mokopuna, those in detention, in places of
10 detention have occupied a lot of our thinking and concern, because of the removal of a
11 person's freedoms and liberties and the culture that can exist in spaces like that, that's where
12 we've chosen to focus our attention.

13 **COMMISSIONER ERUETI:** Tēnā koe.

14 **JUDGE EIVERS:** I can talk to that in terms of my discussions with previous Commissioners and
15 it was a fact of priority, because Section 13 is huge, it places the responsibility to monitor
16 the practices and procedures of Oranga Tamariki. Of course, if you're not funded to do
17 that, one has to prioritise, and it was decided that that was the best way forward. Having
18 said that, there are also thematic reviews that were done at times, Te Kuku O Te Manawa is
19 an example.

20 **COMMISSIONER ERUETI:** Yes, kia ora.

21 **MS SPELMAN:** Just on that point raised by Commissioner Erueti, I suppose the other half of it is
22 the OPCAT designation and the fact of having to do that monitoring. But I know one thing
23 you pointed out in your statement was the lack of funding once that designation landed with
24 the Office. So, I just wonder, because that seems, again, quite an important point, just to
25 play out so everyone can understand. Whoever would like to --

26 **JUDGE EIVERS:** I'll ask Glenis to speak to that because she was in charge of that at one point.

27 **MS PHILIP-BARBARA:** At one point, yes. So, my understanding is that when the designation
28 was first given, we were already doing Section 13 monitoring, and so the thought was, in
29 order to make good use of public funds, we would effectively be monitoring under the
30 OPCAT designation together with Section 13 monitoring, we would undertake them
31 together. Actually, if you're familiar with our reports from those visits of that time, you'll
32 see this blending, blended approach to our monitoring visits.

33 As time has gone by, you'll see a shift towards OPCAT monitoring being the
34 primary focus.

1 **MS SPELMAN:** And that can correspond, I suppose, over the years with each Commissioner
2 setting their own priority and agendas which might mean more of a focus on other things
3 and then that OPCAT work has to sort of carry on on its own.

4 **MS PHILIP-BARBARA:** Correct, it is finely balanced because young people talk to our office
5 on a regular basis and do raise their own concerns with the Commissioner of the day.

6 **MS SPELMAN:** And I suppose a related point is noted in your statement about the United
7 Nations Subcommittee on the Prevention of Torture, this is back in 2013, but a concern
8 around if that funding situation is not remedied, that would put New Zealand in the
9 inevitable position of being in breach of those obligations.

10 In terms of the issues we've gone through about the current process for budget bids
11 and going through MSD, just one other point that I wanted to talk to you about was, you
12 mentioned, whaea, about the mana mokopuna approach and the work and mātauranga that's
13 gone into developing that, and I suppose the other side of it is the longer that that work
14 takes in terms of building up trust and relationships, it is inevitably a more expensive
15 process, so to speak.

16 And I understand there was some pushback from MSD in terms of the Office
17 seeking further funding to continue that work and having to justify why that was
18 appropriate. Can you just talk us through that tension a bit more?

19 **MS PHILIP--BARBARA:** I suppose there is always, when we are working with public funds, a
20 tension between efficiency and effectiveness. We're no different to anybody else. And we
21 know from our from- our mokopuna- centred work that the way that we monitor places of
22 detention simply takes more time. So,- three days is the minimum amount of time that we
23 will spend in a place of detention. And we generally take a team of up to four, sometimes
24 more, depending on the numbers of young people in a place of detention, particularly the
25 larger residences.

26 When we go into those spaces, we have to invest the first day in actually just
27 spending time with young people, being in their space, like I said before, playing
28 volleyball, I'm really bad at volleyball but playing volleyball, playing basketball, spending
29 time sharing a meal, that kind of thing, because every mokopuna in that place determines
30 for themselves whether or not they choose to speak with us. So, our ethical approach is in
31 line with tikanga Māori and kei ngā mokopuna katoa te mana. So, they get to determine
32 whether or not they want to participate in the monitoring that we are undertaking.

1 If we don't generate space and time to allow them to ask us their questions to clarify
2 their understandings of what we are doing, it's very seldom that we- believe that if we don't
3 create that space,- we are unlikely to have mokopuna speak with us.

4 Because we take this approach, we generally have good engagement. And if we
5 begin with the voices of mokopuna it allows us to consider what the focus of our adult
6 interviews might need to be. So that's what we mean by mana mokopuna, we listen to the
7 voices of young people first and foremost and then we reflect on what they've told us in
8 their formal interviews and in conversations, and that gives us a steer in terms of where in
9 that system we need to look next to confirm or clarify things that they may have told us.

10 **MS SPELMAN:** Tēnā koe. So, I wonder, then, in terms of the office now and these challenges
11 we've spoken about, what sort of changes to the way funding is done would you be looking
12 for that you've spoken to in terms of improving the issues that you've identified?

13 **MS CASSIDY:** One of the difficulties now is we're in a new environment because of the bill.
14 And what we do know is there are things that may or may not be picked up by that. I'd just
15 like to bring up, if I may, the grievance process and the fact that throughout all of the work
16 that we've done what we've found is that it needs an overhaul because it is not mokopuna
17 centred.

18 We as an organisation believe that we have a significant opportunity to be part of
19 what is going forward, but it will not happen unless we figure out in this new paradigm how
20 we work and who gets listened to. I just want to build on what Glenis said, that what we've
21 got, which I don't believe the other organisations have, is we have the trust of mokopuna.
22 That's not going to come overnight, because we change legislation. So, the three entities
23 need to figure out how that's going to work.

24 The other point, though, around funding is that OPCAT is actually an
25 internationally recognised monitoring system. It's not going away, and we as a country
26 have a commitment to ensure that our mokopuna do not have crimes of torture or inhumane
27 behaviour is actually settled on them. That is our commitment at this stage to maintain.
28 And it is very difficult within this particular funding round.

29 **MS SPELMAN:** Yes, I'm conscious it's very much a changing situation at the moment. But I just
30 note one of the earlier comments in terms of funding being ringfenced, especially in terms
31 of that monitoring of mokopuna because it's, correct me if this is wrong, but in your view
32 not appropriate for that to be part of a contestable budget bid process, given the importance
33 of that work.

1 **MS PHILIP-BARBARA:** You would think, with international obligations and just the fact that
2 most New Zealanders don't realise that we have young people in places of detention in this
3 country, that we would ringfence and prioritise the monitoring of those places.

4 **COMMISSIONER ERUETI:** Could I just seek clarification, the grievance panel that's-- the
5 panel attached to the residences, right? Are we able to have a kōrero about the overhaul
6 that's needed at some point? It's coming?

7 **MS SPELMAN:** I've got it in my sights, don't worry.

8 But just finally on the funding point, I think this is the other aspect, I know, Judge
9 Eivers, you noted in your statement that you welcomed the significant investment in terms
10 of the Independent Children's Monitor but of course that also raises questions in the times
11 when in previous years the Office of the Children's Commissioner has been pushed back
12 for funding and the funding was there, it's just gone to a different part of the system.

13 **JUDGE EIVERS:** That's correct.

14 **MS SPELMAN:** Thank you. So, if Commissioners don't have other questions about
15 independence and monitoring, possibly there are? Yes? I was going to turn after that to
16 complaints, including the grievance panel, so perhaps it's best to have some questions on
17 those other points now.

18 **COMMISSIONER ERUETI:** It is interesting that, so- you still have a monitoring function, and
19 it's overlapping with the Independent Monitor, so there's that question of trying to work that
20 out. And of course, you've spoken a lot about the 30 years of effort going into making a
21 tamariki/mokopuna- centred complaints process, which of course raises for us the new role
22 for the Ombudsman who's been specialising in complaints processes -for since- the Office
23 has been established, but not focused on tamariki. So,- I think we might come back to that
24 later, about this new role under the legislation.

25 **JUDGE EIVERS:** Can I just say, just listening to the kōrero about this, and it has been a concern
26 of the Office and one that we've raised, but the fact is now that mokopuna have to talk to
27 three different groups, whereas the expertise is already within the Office of the Children's
28 Commissioner and we have a special team of really young, you know, experienced, skilled,
29 young people mainly, who go out and speak to mokopuna and the mokopuna relate really
30 well to them. So, they're going to have to relate to them through our OPCAT process, to
31 the Independent Children's Monitor through their process, and also through the
32 Ombudsman.

33 So, it's the model that I'm concerned about in terms of the mokopuna.

1 **MS PHILIP-BARBARA:** Can I just add to that briefly that actually the engagement of
2 mokopuna, the ability to build trust reasonably quickly so that a young person will share
3 their thoughts and concerns with you is a specialist skill, as is receiving and processing and
4 analysing complaints and investigating of course. So, these skills need to coexist in a
5 superhuman in order to, yeah, for us to actually get to the grist of things.

6 **COMMISSIONER ERUETI:** Kia ora.

7 **COMMISSIONER STEENSON:** My question's just around so- you've said with funding you've
8 only been able to prioritise one particular setting and there's so many other settings, as we
9 know from this Commission of Inquiry. So, I'm just wondering whether you feel that,
10 firstly, do you think the new model will be adequately funded to expand those settings,
11 I mean -given the, what- we have learned is the cost of tamariki who become adults with
12 trauma,- and they end up in prison and they end up on other sad pathways, and the
13 intergenerational impacts as well, the cost is significant.

14 So yeah, just trying to understand, will those settings be expanded do you think, or
15 is it still very much in that unknown space; and then secondly, do we know the numbers of
16 those settings where children, tamariki are not actually being monitored?

17 **JUDGE EIVERS:** I'd say, Commissioner, that well-, definitely the funding is there now for the
18 Independent Children's Monitor, so they've been allocated, I think \$44 million over four
19 years; we get \$3.157 million a year for everything. So, I'm really pleased the funding has
20 gone there, whether it's enough is an unknown because that would have to be looked at, and
21 so on. It seems like it would definitely be good in -roads into there.

22 Oranga Tamariki and its processes and procedures need to be completely
23 overturned, in my view, as Commissioner. It hasn't worked, we know that, for our
24 mokopuna in State care for the last 30 years, so we really have to look carefully at what
25 will work and we've had numerous reports that tell us, for example Wai 2915, we've had
26 Kahu Aroha, we've had numerous reports that are telling to us look at things differently but
27 that's going to require a huge change. I think Dr Cooke referred to it on the first day as
28 turning the Titanic.

29 Whether that's enough, it's probably not, but it's a good start, but it also means that
30 there needs to be an exceptional deep dive into those practices and procedures. Perhaps my
31 colleagues might like to add to that.

32 **MS PHILIP-BARBARA:** I think there's also a consideration around where we are best to invest.
33 If survivors are telling us that the current system is broken beyond repair, I would have
34 thought that there's a fine balance to be struck between the extent to which we invest in

1 trying to resuscitate it, or what that balance of investment is in, for example, supporting
2 whānau and communities to be well, and to operate at their optimum. And these are
3 conversations that we have around the table at the Office of the Children's Commissioner as
4 we think about the future and think about what's going to serve our whānau and community
5 best.

6 **COMMISSIONER STEENSON:** Okay, thank you.

7 **COMMISSIONER ALOFIVAE:** I do have some questions but I'm going to let Ms Spelman
8 carry through because I think it kind of relates a bit more to complaints and the future
9 system that I'd like to have a kōrero about.

10 **COMMISSIONER ERUETI:** Could I ask one last question about independence, the question is
11 why, why not just simply make it an ICE, why make it a departmental agency? Is it
12 maybe-- it's cheaper to have it hosted by the ERO, but we really need to kind of understand
13 why this decision has been made and not an Independent Crown Entity.

14 **JUDGE EIVERS:** Great question, Commissioner. I don't know the answer to that, but looking
15 back on papers, this has been a discussion in Government for about the last five years and it
16 was originally put that the Independent Children's Monitor would sit with the Children's
17 Commissioner Office, hence the reason for a board. A decision was then made to go
18 separately and make it a government agency. I don't know the answer to that. But I am
19 disappointed that it's not independent for-- our mokopuna.

20 I don't know if my colleagues might like to comment.

21 **CHAIR:** Shall we move to complaints, Ms Spelman?

22 **MS SPELMAN:** So yes, whaea Fiona, you started us off with grievance panels, but before we
23 dive in, I just wonder if you would outline, as you have in your statement, the different
24 types of complaint processes available so we can have that grounding.

25 And I was looking, in particular, at 28 of your statement.

26 **MS CASSIDY:** There immediately. I was looking at the judge's, I needed to get to mine.

27 Thank you. Currently mechanisms available for mokopuna to make a complaint of
28 abuse or neglect to us, we have a Child Rights Line, and they can come in direct contact
29 with us; our monitoring visits in there, the Oranga Tamariki grievance process.

30 So, I suppose if we take a step back just so everybody is clear. The Children's
31 Commission has had a Child Rights Line for many years and through that we actually get
32 whānau or mokopuna that come to us. We can't necessarily deal with the investigations,
33 but what we do with the complaints is we help whānau and their mokopuna to navigate
34 what is called the system.

1 So that's the first thing I'd like to discuss, is what we do in terms of our little office.
2 And we're very lucky that we have marvellous people who take that, we hold that
3 information in a database and of course it is a one on one relationship with those who come
4 to us and then how do we help them.

5 Would you like to add anything to that, Glenis, just for complaints?

6 **MS PHILIP-BARBARA:** It would be fair to say that it's a mix of complaints, concerns,
7 observations. It's hard to characterise sometimes the types of inquiries or concerns that
8 people phone in to the Office with or write in through the Rights Line.

9 Sometimes the threat of an investigation, and often the threat of an investigation has
10 been enough to encourage our colleagues in the system to move swiftly to have a look at
11 the situation for a whānau or a mokopuna and we maintain a close connection and follow
12 that process through until such time as the issue is resolved.

13 But that's a very labour intensive way of working, which means our capacity to do
14 that work consistently for any more than two or three people a week is limited, with the size
15 of our tari and it is a specialist kind of role, so you need a deep understanding of the
16 system. We have social work trained people manning our Rights Line and there's also the
17 advocacy piece with our colleagues across the system, whether it be in Education, in Health
18 or in Oranga Tamariki. We receive inquiries from across a broad spectrum of Aotearoa
19 New Zealand.

20 **MS SPELMAN:** So, for those mokopuna who are in care there's a difference between, I suppose,
21 the approaches of those in the community in some type of care placement or those who are
22 in the secure residences.

23 **MS CASSIDY:** If I may, Oranga Tamariki, as you know, have two complaint systems, one for
24 mokopuna in care with the community and then a grievance process for mokopuna in
25 residential facilities. The critical path for each differ and as such do not make either system
26 easy to negotiate.

27 In terms of the grievance process which is in place within residences, mokopuna
28 have told us that they don't necessarily trust it and there is an obvious reason, that when we
29 are making a complaint, they are often making it to those who may have caused that
30 concern.

31 And so, the grievance process is difficult because not only do we have them making
32 the complaint to those involved, but also not having the security that it is actually going to
33 be managed.

34 So, it's a little bit difficult for them and that has always been a concern.

1 **MS SPELMAN:** And in practical terms, that extends to the fact that mokopuna would need to ask
2 a staff member for a form, it's a paper-based system, isn't it? So, they would need to,
3 essentially, disclose they want to make a grievance because they need to get access to the
4 paper in the first place.

5 **MS CASSIDY:** Yes, that's correct.

6 **COMMISSIONER ALOFIVAE:** Whaea, can I ask a question at this the point, talofa lava.

7 **MS CASSIDY:** Kia ora.

8 **COMMISSIONER ALOFIVAE:** So, the first lot of complaints that you describe, I think I read
9 in your evidence, in one of the documents, that there's a whole lot of complaints that you
10 deal with informally, is that what you're referring to there, having to triage the traffic to
11 help whānau and mokopuna?

12 **MS CASSIDY:** Correct, those are the people who come directly to the Office of the Children's
13 Commission outside of the Oranga Tamariki system.

14 **COMMISSIONER ALOFIVAE:** Wonderful, thank you. And then just the second point on that
15 grievance panel, so then when you've been around the motu in the residences and our
16 young people, our mokopuna are saying to you the difficulties around not trusting the
17 system, are they also saying so therefore they won't then make a complaint?

18 **MS CASSIDY:** I will use the statement that we had from our team:

19 "We've consistently heard from mokopuna that making a formal complaint and
20 process is a snitch form."

21 And that often stops them from putting it in.

22 **COMMISSIONER ALOFIVAE:** So, they'll tell you, but they won't make the complaint, which
23 is the trust issue that you've been highlighting so succinctly this afternoon.

24 **MS CASSIDY:** [Nods].

25 **MS SPELMAN:** And just in terms of both the grievance process, I suppose, and complaints,
26 some of the other concerns that the Office has raised over the years around staff screening
27 grievances effectively and in some cases discouraging or questioning whether or not the
28 young person should make a grievance?

29 **MS CASSIDY:** I'm not sure if this has come up, but what the mokopuna do have access to is
30 VOYCE Whakarongo Mai who sit now to help. So, they have come out of children -who
31 or- mokopuna who have been in State care and so they can actually play- a significant role
32 in the residences, and helping the children navigate that. But they're not everywhere.

33 And other concerns that we've had is that often the staff don't necessarily have the
34 appropriate training and building of the rapport to help, so there's a multi-faceted way that's

1 **MS SPELMAN:** Kia ora anō koutou. So, we've spoken about the grievance panel and the
2 inadequacies perhaps of that current system for those in residences, and I understand that
3 the Office of the Children's Commissioner has made calls for that process to be changed,
4 but also and perhaps more fundamentally for secure residences to be closed in which case
5 there wouldn't need to be a grievance process.

6 **CHAIR:** Ms Spelman, we've got a question, we've been talking about this, and we've decided that
7 Sandra Alofivae is going to try and sort out our confusion.

8 **COMMISSIONER ALOFIVAE:** Your Honour and your esteemed colleagues over there, could
9 you just clarify for us, so in this new world, the grievance panels which are part of the
10 residences, and it's part of the complaints system, isn't it?

11 **JUDGE EIVERS:** Yes.

12 **COMMISSIONER ALOFIVAE:** Where will that go? Does that remain with the OCC's Office,
13 or will that go to the Ombudsman?

14 **JUDGE EIVERS:** It's presently not with us, we are just part of that panel. I think it's an Oranga
15 Tamariki process, but Glenis may know more about the actual make up of it.

16 **MS PHILIP-BARBARA:** To my best knowledge we haven't been advised what this will look
17 like in the new world. We are aware that there is a process of design happening where a
18 process called Manaaki Kōrero has been developed in partnership with VOYCE
19 Whakarongo Mai. We haven't had a briefing at our Office yet about it, but we are aware
20 this is a new piece of work in development.

21 **COMMISSIONER ALOFIVAE:** Yes, of course.

22 **MS PHILIP-BARBARA:** It's difficult at this early stage to determine how the old will morph
23 into the new.

24 **CHAIR:** Am I right in thinking that, I remember seeing the section, it sets up the part- of the
25 Oranga- Tamariki Act sets out the grievance panel and there's a statutory composition of
26 that panel, isn't there, Youth Court, Principal Youth Court Judge, Office of the Children's
27 Commissioner and others; is that right?

28 **MS PHILIP-BARBARA:** That's the current system.

29 **CHAIR:** That's right.

30 **MS PHILIP-BARBARA:** Yes, but we have a role in supporting or endorsing the appointment of
31 grievance panel members.

32 **CHAIR:** They appoint the panel members?

33 **MS PHILIP-BARBARA:** Yes, and we receive quarterly reports from those grievance panels that
34 we analyse and then report back.

1 **CHAIR:** Okay.

2 **COMMISSIONER ERUETI:** Nicolette was talking about that yesterday.

3 **CHAIR:** That's right, now we're fitting all the bits of the puzzle together. So, it's a --

4 **MS PHILIP-BARBARA:** That's the current system.

5 **CHAIR:** So that's the current system, it's a wait and see as to what's going to happen.

6 **MS PHILIP-BARBARA:** Yes.

7 **CHAIR:** Thank you very much for clarifying that.

8 **MS SPELMAN:** I suppose, just a further point of clarity, and this is in detail in the written
9 response, there's the initial grievance which an Oranga Tamariki investigation happens,
10 then there's, essentially, an appeal option up to the grievance panel, and then above the
11 grievance panel the Office of the Children's Commissioner as the second referral in terms
12 of the current process.

13 So perhaps just back to that point of aspiration, I suppose, around secure residences
14 if they are to be closed, and there was some questioning about that yesterday, we heard that
15 in September last year Oranga Tamariki spoke about their ambition to close secure
16 residences within six to 12 months, that's obviously not quite at that point, and they weren't
17 able to commit yesterday to a timeframe. But is that still something that the Office of the
18 Children's Commissioner is supporting?

19 **JUDGE EIVERS:** Yes, it is and most especially a priority is Care and Protection residences,
20 because those mokopuna are not offenders like in the Youth Justice system, they are
21 mokopuna who, for whatever reason, have behavioural issues and they are sent to Care and
22 Protection residences and pretty much forgotten about in my view.

23 The kaimahi at those residences do their best but those mokopuna, if I take Epuni
24 for an example, which is based in Wellington, I think when I visited several months ago
25 there were nine mokopuna there, most of them were from Kura, very proudly, but they are
26 South Auckland kids in Wellington away from their whānau and they're in a prison like
27 institution and it is just not okay. We can do way better than that for kids who simply have
28 behavioural issues.

29 They are serious behavioural issues, but we need to invest in them and their whānau
30 and help them live their best lives. So, I am talking presently with Oranga Tamariki about
31 that.

32 **MS SPELMAN:** Thank you. So stepping away then from the grievance process within residences
33 and more generally at the complaints system overall for Oranga Tamariki, yesterday
34 Oranga Tamariki said they agree that it needs an overhaul, and one of the issues that was

1 discussed was around the lack of a centralised system for these complaints, these different
2 avenues, particularly for complaints that were deemed to be not substantiated, there not
3 being a record of those, and a discussion around if there was such a central register,
4 whether that would provide a really helpful safeguarding tool for mokopuna. And
5 I wondered whether you have comments around what a complaint system functioning well
6 would look like, whether or not that centralised idea would be something worth exploring
7 from your perspective.

8 **MS PHILIP-BARBARA:** I think the first order issue to be addressed is the power imbalance felt
9 by mokopuna and their whānau, particularly in places of detention, but within State care.
10 Mokopuna have told us how frightening it is to complain when you are dependent for your
11 wellbeing on the people you are complaining about. And I think that the idea of a kind of
12 centralised place where complaints are gathered is a useful one, but I don't think will
13 resolve the power imbalance issue unless we think about what care actually is for a child or
14 a young person, for a mokopuna.

15 Mokopuna have been very clear with us, it's difficult to be cared for by the State,
16 they've told us, that actually what they want are relationships with their whānau, what they
17 want is to be cared for in a home with their whānau, with whānau who are safe, who love
18 them, who can look after them, who will commit to them for the rest of their lives, is the
19 care that mokopuna have told us about.

20 So, it's important that we create a mechanism where young people feel safe to say
21 when things aren't okay, but it feels at this current moment that we are quite a long way
22 away from that, from even understanding what the elements of that might be. I think
23 survivors are best placed to actually tell us what that might look like.

24 I worry that for the sake of efficiency, and to contribute to the importance of proper
25 oversight, that we might lose the opportunity to actually hear from survivors and to
26 understand what the optimum conditions are that give rise to their feelings of safety
27 sufficiently to be able to say when things aren't right.

28 So, this is me reflecting on all of the things that young people have told me over
29 many years.

30 **CHAIR:** Can I just interrupt again, I'm sorry Ms Spelman, but these are important matters.

31 First of all, I acknowledge, and we've heard that the design of anything like this
32 should be with mokopuna at the centre and codesigning or helping to work out what is best,
33 so that's a given. But Office of Children's Commissioner has had experience in some form
34 of pulling complaints together, I'm just thinking about your Child Rights Line, and although

1 you described it as being one that is for children other than in residences, are you able to
2 tell us, would that be something that could be usefully part of a complaints process that
3 children get an 0800 or a text number or a social media number that they could feed into?
4 But what's your experience in the Office of that line and how friendly and useful it was for
5 mokopuna?

6 **MS PHILIP-BARBARA:** I think the Child Rights Line has been quite generalist over years. It's
7 received inquiries and concerns about a huge range of things related to young people and
8 their lives, including concerns about what's happening for mokopuna in care. So, it's a
9 huge Broad ranging thing.

10 I know from speaking with mokopuna that it's not always a telephone call that's
11 going to be the most appropriate means to reach out. What they've told us consistently is a
12 relationship with a trusted adult is by far the cornerstone has- to- be the cornerstone of any
13 kind of safe pathway to raise concerns, you know, whether they are large or small, if they
14 affect the wellbeing or the sense of peace of a young person, then they are important.
15 So,- the cornerstone of that is a trusted relationship, a relationship of trust with a trusted
16 adult.

17 Beyond that, I suspect thinking about young people and their preferences and
18 presentations, some prefer to text or message, others have the confidence to make a phone
19 call to someone who might be a stranger. Others, though, would prefer to have access to a
20 trusted advocate who is not ingrained in the system that is causing them some concern.

21 **JUDGE EIVERS:** And I think, just adding to that, it's very important, I think, that mokopuna
22 themselves say how they would like to communicate that, but taking a step back, and at the
23 risk of sounding like a squeaky wheel, it needs to be independent.

24 **CHAIR:** Yes.

25 **COMMISSIONER ERUETI:** I do wonder whether the it- seems from talking with
26 Oranga- Tamariki yesterday that there's discussion between them and the Ombudsman but
27 I wonder whether that Office, whether the Office of the Children's Commissioner has been
28 involved fully and the plans for how the new complaints process will look.

29 **JUDGE EIVERS:** No, we haven't.

30 **COMMISSIONER ERUETI:** No, okay.

31 **JUDGE EIVERS:** Or I haven't, and I don't think any of my staff have.

32 **CHAIR:** Okay, thank you.

33 **MS SPELMAN:** So, I suppose one of the points you've been touching on is the complaints
34 system is one thing but the broader system of care, and I know you've said in the statement

1 is that that's the, the-- overall aim is trying to create a system, a framework where there
2 doesn't need to be this need for complaints.

3 And you mentioned at the beginning, Judge Eivers, about the changes going
4 forward being grounded in Te Tiriti and being by Māori and for Māori. I just wonder,
5 looking ahead more broadly to the care system and the overall transformation that's been
6 discussed in the last couple of weeks, if you wanted to share your thoughts around what
7 that looks like from your perspective.

8 **JUDGE EIVERS:** I start with the premise that there are a disproportionate number of Māori in
9 the State care system and actually always have been. And I'm really drawing on the
10 investigations that have already been done on this and the very good reports that have
11 already been published, in particular Wai 2915, and it talks about our setting up an
12 authority, a transition authority to look at it really carefully, what will that look like. It will
13 require consultation with Māori, with iwi, with hapū, with whānau, it will require a
14 completely different approach and it's a matter of the State standing back and the resource
15 and the decision making being with Māori for their own, because at the end of the day,
16 these are our children, they whakapapa Māori, we want to have residences and care
17 facilities and foster homes, a model which seems to be working well or which is reported, is
18 getting our mokopuna back to their communities.

19 So, we talk about mokopuna in Wellington who are from Papakura. I believe, not
20 only from a personal point of view but from what I've read and from what I know about
21 how things work, that they should be in their own community, they should be with whānau
22 who can be supported, who they trust. I mean, clearly at times mokopuna need to be taken
23 from whānau for reasons of safety, but every child, mokopuna I ever represented actually as
24 a lawyer for a child always told me they wanted to go home, they always wanted to go
25 home. And their whānau wanted them, they just didn't have the means to cope.

26 One of those mokopuna earlier in the statements talked about their parents not
27 coping, their anger, their stress, and if we could deal with, really develop unique and almost
28 boutique plans around these whānau and support them so that the State would together in
29 design with iwi but with iwi leading that, I believe that it would make a difference.

30 And it's, as I say, I'm really looking at the reports -- Kahu Aroha is another one,
31 where, you know, the investigation, the -- it's been looked at through the eyes of Māori,
32 Māori leaders, who say, look, this can be done, we can do this, and it's a matter of -- I'm
33 going to say having the courage actually to do that, because I think it will, as Commissioner
34 for children, for children that I've seen come through the court system who are intelligent,

1 smart, amazing kids that just have not had the same opportunities as, say, my own boys
2 have had, and their friends, and they deserve that, and when they need to be temporarily
3 placed in care, they deserve for that care to be the best care that they can have. And I just
4 think we've let a system develop that has possibly got out of control a little, we need to
5 bring it back, we need to bring it back to relationships, we need to bring it back to
6 community, we need to bring it back to whakapapa and it may be that it's whakapapa
7 Pasifika, it may be whakapapa Pākehā, whakapapa Māori, but mokopuna need to be with
8 their own and their whānau need to be supported so that that relationship can be repaired, or
9 strengthened, fostered, whatever is required, so that a minimum of harm is done by the
10 breaking of their whakapapa. Glenis and Fiona might like to add to that.

11 **MS PHILIP-BARBARA:** I think in the future we have a significant opportunity to think about
12 how we invest in the wellbeing of whānau and community. If we were, for example, to
13 review the level of investment in a system that survivors have told us for a long time is not
14 fit for purpose, and if we were to imagine what good that investment could do for whānau
15 and communities so that rather than parents in strife or struggling, not being sure who they
16 can trust to support them, who might provide some respite, who might help them resolve
17 issues or conflict, imagine a community where those types of resources and supports were
18 known and trusted and understood. That would create a different kind of fabric to hold our
19 whānau.

20 I haven't yet met a young person in care who wasn't worried about their mum and
21 dad and their grandparents and their sisters and brothers and everybody else in their wider
22 whānau. I've not yet met a young person in care who didn't want for every opportunity that
23 they might avail themselves of to also be available to the people they love, and the people
24 they care about.

25 So rather than thinking about individuals consuming resources, if we can think
26 about strengthening whānau, or whānau determining what that pathway to being their best
27 selves might be, if we provided support around that vision, then I think we would be having
28 an entirely different conversation about care.

29 I haven't yet met a young person in care who's actually felt cared for by the State.
30 Their eyes are constantly looking for whānau for trusted adults to provide that care.

31 **MS SPELMAN:** Tēnā koe.

32 **MS CASSIDY:** I'd just like to talk about the cost, and what we forgot is the human cost, and we
33 talk about systems and processes but right at the middle of all of this is mokopuna and

1 whanau's voices that we need to listen to, and somehow in this world that we're in now
2 we've forgotten that, and we've built a system around them, not with them.

3 **MS SPELMAN:** Tēnā koe. I'm conscious of time and I know that our commissioners will have
4 more questions for you all. So, I will leave my part there and just acknowledge all of you
5 for the answers that you've given to the questions I've asked, e mihi ana ki a koutou i tēnei
6 rā, and I will pass over to you, Madam Chair, for the final questions.

7 **CHAIR:** Kia ora. I'll just go through the Commissioners. Paul, do you have any questions?

8 **COMMISSIONER GIBSON:** Kia ora. I'm thinking about the mana of disabled children,
9 mokopuna whaikaha and we come across many children who have had that mana cared out
10 of them, pathologised out of them, and even today there's almost an absence of their voice,
11 their perspective in the conversation. Looking now and in a generation's time, what do you
12 see the changes in the care system, based on your institutional independent knowledge of
13 what has happened, what will things look like in a generation's time for disabled children,
14 mokopuna, whaikaha?

15 **JUDGE EIVERS:** In terms of mokopuna whaikaha, they are disproportionately represented too,
16 and I apologise for not mentioning that earlier. I mean, they're very much -- those
17 mokopuna with their needs within the care system need to be recognised, but it's the same
18 principles in the sense of who are their whānau, how can we support their whānau, how can
19 we make sure that their voice is heard, how can we make sure that their needs are met
20 within the system, and it will take a different approach and I guess from what I can see in
21 the past it's been a bit of a one size- fits- all-, but that voice needs to be recognised too, and
22 I know that our Mai World team do have conversations with our mokopuna whaikaha. I
23 don't see them as being any different in the sense of their needs need to be recognised and
24 their whānau need to be supported, wherever they come from, and it is more difficult for
25 them in a sense because of their needs.

26 I can get Fiona and Glenis to give their views on that too.

27 **MS PHILIP-BARBARA:** I think there's a real opportunity here as people reimagine the future to
28 consider what a fully accessible world might look like. I understand that there are
29 communities working on this visioning as we speak. But the fact is, building an accessible
30 world will take an investment, and to get to that level of investment people need to
31 understand the benefits of inclusion for mokopuna whaikaha and their whānau.

32 We talk to mokopuna whaikaha who tell us about the ableism that they experience
33 on a daily basis, often on top of the racism, and the ageism and all the other things that they
34 have to contend with in their lives. They're dreaming about an accessible world, and it's on

1 us, those of us in positions of responsibility and authority to listen really carefully to what
2 the design elements of that world is or are and make way for them. So, there's still a lot to
3 learn. The fact that we are only now collecting data about disabled people in the health
4 system means that we are on a very early but steep learning curve.

5 **CHAIR:** Julia, would you like to ask any questions?

6 **COMMISSIONER STEENSON:** Thank you, Coral. I did have one question.

7 You've clearly got, as the Office of the Children's Commissioner, you've got a lot
8 of learnings from your work with tamariki, which is really critical. I'm just wondering
9 around your relationships with agencies that you have to influence, because that's also very
10 critical in order to make change happen, and understanding the nature of those
11 relationships, because to not be included in the design of a new complaint system or even
12 know about it is somewhat concerning.

13 **JUDGE EIVERS:** Yes, that is very important, the relationships, and that is the part of what being
14 an ICE is. It's important to establish and build relationships with the Crown, with agencies,
15 with ministers, with everyone across the board that affect mokopuna. Because it's an
16 opportunity to persuade, it's an opportunity to give advice, whether that's taken or not, and
17 at times, and I'm a firm believer and I know previous Commissioners have too, worked
18 closely with agencies and ministers to build relationships for that purpose.

19 In terms of the complaints issue, perhaps it's the-- Oversight Bill has sort of been in
20 the mix and I think it's all new and it's probably in the design, it's probably one of those
21 things that perhaps just hasn't come to the fore and with complaints going to the
22 Ombudsman but it's certainly on my radar, and perhaps Fiona or Glenis might just like to
23 add to that?

24 **MS CASSIDY:** If I could talk to the relationships, we have with organisations like Oranga
25 Tamariki, Ministry of Social Development as agencies of the Crown, we do actually have
26 what I would consider good, open, robust conversations at a CE level, which the judge
27 leads. I tend to look after the next level down, and then at an operational level, in this space
28 particularly we actually work at the next level down which is more operational.

29 If I could say it's still growing. As you probably know, we recently Glenis- has
30 recently left us, the judge has been in place since November, and I have been in place since
31 March. What I will say is when we have actually asked- to see our respective counterparts,
32 that has never been turned down, and that we do have honest and open conversations.

1 Talking to the complaints process, we weren't necessarily there at the time, and
2 I wonder, given we had walked away in 2021, but I would say the doors are open, and
3 when they're not, we knock.

4 **MS PHILIP-BARBARA:** And just to cut to the grist of your question, we have strongly
5 advocated for the voices of survivors, and mokopuna in care to shape the design of any new
6 complaints system, so that has been our consistent advice to our colleagues at Oranga
7 Tamariki around the design of a new complaints system.

8 **COMMISSIONER STEENSON:** Tēnā koutou, that's my question.

9 **COMMISSIONER ERUETI:** E mihi ana ki a koutou. My question's about, when we had the
10 Independent Monitor here, he said to us that his function was to compile the data and
11 monitor, but not he- didn't see the role as being advisory or making recommendations,
12 which seemed a bit odd for an institution that's there to monitor. I just wonder what your
13 views are on that, particularly if you are going to be focusing on advocacy, if
14 there's -no - if- it's the compilation and analysis of data, that's one thing and it's valuable,
15 but not to also provide advice and recommendations seems to be missing a step here.

16 **JUDGE EIVERS:** The Independent Children's Monitor has produced a first report and there are
17 findings in there and I had a discussion with Arran about the report, so we do have a
18 relationship and we are working together. And for me it's that's-- the limitation of the
19 Independent Children's Monitor being a government agency as opposed to an Independent
20 Crown Entity. It can only go so far.

21 **COMMISSIONER ERUETI:** It can only go so far, okay.

22 **MS PHILIP-BARBARA:** I would go one further. With the Office of the Children's
23 Commissioner having had the power to make recommendations since 2003 and earlier, one
24 of the observations I would make, particularly through our reporting on residences and
25 places of detention, is that while we have been able to make recommendations, and we've
26 done so quite liberally, there's been no corresponding requirement for any of those
27 recommendations to be taken up and applied into policy and practice.

28 **COMMISSIONER ERUETI:** Yes.

29 **MS PHILIP-BARBARA:** And that's been pain point for our team over many years and is
30 something that I think would be good to consider in the shape of the new world, so to
31 speak, as it emerges.

32 It's one thing to see an issue, to analyse it and to make a recommendation based on
33 your observations, but quite another to have that then taken up and applied into policy and
34 practice.

1 **COMMISSIONER ERUETI:** I think at our first hearing, our contextual hearing, former
2 Commissioner Becroft wanted the status to change to I think a parliamentary officer so that
3 there would be more bite in the recommendations, more influence, but that didn't come to
4 pass, but yeah.

5 My other question is about what's the ideal model, and it seems that
6 you- talked -about we-- said to Mr Arran that it seemed a bit messy because you've got
7 three bodies now, but it seems that your ideal model would involve collapsing those
8 different functions into one entity; is that right?

9 **JUDGE EIVERS:** That was the grist of our submission to Parliament on the Oversight Bill, and I
10 have made public statements about that, yes.

11 **COMMISSIONER ERUETI:** I wonder whether the advocacy function in the legislation is
12 sufficiently clear, does it give you clear direction about what advocacy means and what you
13 should do?

14 **JUDGE EIVERS:** It's section under- the old Act it's Section 12 where it sets out the functions and
15 that's essentially the advocacy and that's been transferred across to the new Act, it could be
16 Section 99 actually. It's very broad and it says what you need to cover. I mean, it's
17 deliberately broad and I think that's a good thing. So,- it gives the Commissioner the ability
18 to make those decisions which is important for mokopuna.

19 It covers things like their rights and interests under the then-- the Children's
20 Convention rights, any issues that are affecting them, can make inquiries. We, of course,
21 have lost the investigation ability, which was quite a powerful tool, I'm told by my former
22 colleagues, because there was not the need to go usually through a full formal investigation
23 because it just took a conversation or two and everyone sat around the table and the issue
24 could be resolved. A more formal investigation process is now envisaged with the new Act
25 and through the Ombudsman.

26 **COMMISSIONER ERUETI:** Kia ora. And lastly, you still have your OPCAT obligations, and
27 the advocacy role is still an enormous role, and it doesn't seem your budget has changed
28 much. Does that sound like business as usual for you, that you're going to have to make it
29 happen on a thin budget and prioritise things too, as you always have done?

30 **JUDGE EIVERS:** That's a little bit up in the air at the moment, but you're correct on that first
31 premise. Of course, the new law has a board, so we'll go from being a Children's
32 Commissioner to a Children's Commission. I still don't know whether that board will have
33 three members or six members, it can have up to six members. So that's going to be a
34 whole new cost.

1 Also, under the new legislation there's an increased emphasis, a continuing
2 emphasis on getting children's voices which is a statutory obligation.

3 There is also the obligation to form relationships with iwi, whānau, hapū and iwi, so
4 and- that's good. However, we are forming a Te Tiriti- unit within our Office for that
5 purpose, but that is extra and on top of what we already have. So that's still ongoing, I'm
6 not sure what that will look like. It wouldn't be able to operate, in my view, on the original
7 existing budget, because of those extra obligations under the Act.

8 **COMMISSIONER ERUETI:** One last question is whether there are dedicated Commissioners
9 for Māori/Pasifika/disability in any way or is it not specified?

10 **JUDGE EIVERS:** I think the Minister has said that publicly that that's what's envisaged. Under
11 the legislation it talks about the board must be made up of 50% of people who have
12 knowledge of tikanga and mātauranga Māori, only knowledge. Our view was it should be
13 whakapapa. And I know that the Minister has said publicly that there would be someone to
14 represent Pacific, someone to represent whaikaha, and then there would be the Māori
15 representation. So that's the idea of the Commission.

16 **COMMISSIONER ALOFIVAE:** Thank you. I want to ask a question, it's a new world order
17 type question, and it's really as a result of all of the work that you've done previously and
18 the power of the voices of mokopuna, and the survivors, all of a sudden rising to the top,
19 and being the influential differentiator when it comes to policy.

20 So, there's a systems component to this in that I- fully appreciate that the
21 Office -of that- your Office has to- look at all children in Aotearoa, but for our kaupapa and
22 what you've been focusing on is children in State care.

23 From what you've seen in the Youth Justice space, what you know well from the
24 Care and Protection space and all of your interactions, and the ecosystem around children;
25 do you have a view or a vision around being able to pull those two particular components,
26 being able to put them together in one place, having a very dedicated workforce around the
27 judiciary, around the court system; because that's probably a space that everybody knows is
28 almost like a space that has some significant standing and then in your ecosystem around
29 the supports we talk about preventative assistance for whānau and being able to really
30 populate that in a way where the wellbeing is the centre, and I know that there's an Oranga
31 Tamariki action plan that kind of speaks to it. But what we've heard a lot of evidence about
32 from our survivors and from our experts is that the role of children, the role of mokopuna in
33 Aotearoa, it feels a little bit like an add-on to other bits. So, you'll have mokopuna in health
34 places, in education and social services, and that's all part of the ecosystem that needs to be

1 crafted quite deliberately to transform what we presently have now, and then the role of the
2 Office for Children's Commission or the new Commission actually in that new space. Any
3 comments? It's what we've been hearing and we're trying to piece a lot of things together.

4 **JUDGE EIVERS:** Do you mean what it would look like?

5 **COMMISSIONER ALOFIVAE:** Mmm.

6 **JUDGE EIVERS:** As Commissioner Erueti said earlier, the view that it should be an Office of
7 Parliament where it's all coordinated all in one space just as the Ombudsman is an Office of
8 Parliament and it's all about complaints and investigations. Imagine if you could have an
9 office that was just all about children, it would all be about mokopuna, it could all be
10 coordinated and be run from a central platform, I think that would look great.

11 Indeed, under the United Nations Convention on the Rights of the Child, I think it's
12 Article 2, it says that children are meant to be at the centre of decision making. So, it's
13 there and we have it in the Family Court legislation, but it needs to transpose across a much
14 bigger entity but one that just focuses on children and on mokopuna. And we do have to
15 focus on our mokopuna who are struggling. About 70% of our mokopuna are doing fine,
16 there may be issues of consent, for example, or education, but we've got -another so-- the
17 next 20% are struggling, but coping maybe, it depends upon how things are going within
18 the whānau, but there are 10% that are really, really doing it hard.

19 And each Commissioner, and I have agreed with that view, has that we need to
20 bring those mokopuna and whānau up and then we raise everybody's standards, they do
21 well, everyone will do well. And it is mokopuna Māori, Pacific and whaikaha who are
22 struggling the most disproportionately. So that's where the focus needs to be.

23 But it does need to be a central office, because I am worried actually, worried about
24 the fact that we are now going to have a system that's got divided-- into three. And yes,
25 there's an obligation for us to cooperate and collaborate, and we will, but is that still the
26 best model?

27 That's my question mark, and I'll hand over to my wāhine toa to continue the kōrero
28 there.

29 **MS PHILIP-BARBARA:** I think there is an important role, a leadership role for survivors as we
30 transition from the current state into the new world. We need specialist insight to help
31 guide and shape the thinking. But also, we need specialist insight into the application of Te
32 Tiriti o Waitangi in practice, we need specialist insight into the design of an accessible
33 world, we need specialist insight into all of those elements of whānau that make it rock and
34 feel like an awesome home.

1 We've got some big context issues to solve around poverty and homelessness,
2 around all the other social ills that we worry about, the health and well-being of whānau.

3 So, there are some big context pieces to address, and I see those being prioritised
4 but that leadership piece at every level of a new system is absolutely critical. I do believe
5 that the days of advisory panels ought to be long behind us and instead we need to be
6 investing in and believing in the leadership insights that survivors and all the other groups
7 can bring to the table. And then it's upon us to figure out how we work together for the
8 benefit of our mokopuna, our collective mokopuna.

9 What I see across the history of the OCC is a continued theme around inclusion, a
10 plea for inclusion, a plea for the ability to move beyond the opportunity to influence, I'm
11 not talking about the Office here, I'm talking about people, but beyond the opportunity to
12 influence into leadership. So, at what point are we transferring the leadership piece to
13 communities, to hapū, to iwi, to whānau, to actually have their opportunity to meet the need
14 that is apparent to all of us.

15 So, in the brave new world, not everything gets built in Wellington. In the brave
16 new world, Wellington holds space and supports the efforts of communities and the whānau
17 and others who live within them, and we invest our trust and confidence in this group of
18 leaders who have shown us all their wares through this process. There have been some
19 incredible people who have presented their evidence before you, they're inspiring, and I
20 think they deserve to lead.

21 **MS CASSIDY:** And I'd just like to add, we should not be scared to give the power to those who
22 know and too often and, you know, I live in Wellington, we do focus on the Wellington or
23 the central solution. It's more like an octopus with arms everywhere belonging to a body
24 but where those arms can make a difference. Our survivors, our mokopuna, our whānau
25 have the answers, we've just got to listen.

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

27 **CHAIR:** Thank you, Sandra.

28 I always seem to do this and it's bringing it back to the kaupapa of this Royal
29 Commission which is abuse in care, and Judge Eivers, you said something in your written
30 submission, I think you said it verbally as well, but I think it's incredibly important and I'd
31 like to end today's session just thinking about this. You said at paragraph 12:

32 "While the scope of this Commission ends in 1999 it is clear the abuse of mokopuna
33 in care continues today."

1 This is a very important statement, because I think a lot of people think this is all
2 just about history. So, I want to I-- think we know enough and have heard not from a lot
3 but from enough survivors post 1999 to have heard that, but I would be very interested in
4 knowing what underpins that submission by you and your Office, if you're able to give us
5 some more information, that would be very helpful

6 **JUDGE EIVERS:** Listening to, I think it was Corrections earlier, to my surprise, actually, as
7 I became Commissioner, I have learned that seclusion is still used in most or- the option is
8 there to still be used in most Care and Protection residences and youth detention centres
9 and mental health facilities, some are phasing out,- but it is still not something that is
10 banned per se.

11 **CHAIR:** And you class that as abuse?

12 **JUDGE EIVERS:** I do, I do. It's a room that looks like a prison cell. I'm just trying to think
13 of and- our mokopuna tell us it's happening, and I think the -issue that's- a big issue for me,
14 and also, I think just the fact that, and it's a broader definition of abuse, I'm guessing, I'm
15 surmising, is that the fact that mokopuna with behavioural problems are sent to a Care and
16 Protection facility that looks like a prison. They don't even have a backyard to play in. It's
17 a concrete wall. There's no art on the walls. As I said earlier, we can do better and I know
18 that Oranga Tamariki have the appetite for it, but we just have to- work hard, very hard on
19 it.

20 And Glenis and Fiona may have some other examples.

21 **MS CASSIDY:** If I could just give some statistics that our team put together. Between January
22 2015 and March 2021 mokopuna were restrained 3,572 times in Youth Justice residence
23 and placed in seclusion 6,518 times. Mokopuna in Care and Protection residence were
24 restrained 1,840 times and placed in seclusion 2,150 times over the same period.

25 We as an Office on behalf of the Commissioner with our reports continue to
26 highlight the concerns regarding the ongoing use of force, often called restraint, or secure
27 care, which is seclusion in detention.

28 **CHAIR:** Thank you for that.

29 Glenis, do you want to say anything at all?

30 **MS PHILIP-BARBARA:** Just that Oranga Tamariki continue to report on the abuse of children
31 in care.

32 **CHAIR:** Yes, and we've heard the figures from the Independent Children's Monitor.

33 **MS PHILIP-BARBARA:** Yes, and from time to time as part of our monitoring work, young
34 people will disclose abuse that has occurred to them which is duly investigated through the

1 CPP protocol. So, it's through all of these channels that we understand that abuse continues
2 today.

3 **CHAIR:** Yes. Thank you very much for that information which I thought would take you on the
4 hop, and I didn't intend that but I'm grateful that you had your numbers at the ready and
5 that's very helpful.

6 May I, on behalf of the Commission, thank you three sincerely for coming, putting
7 yourself through this, preparing these very helpful briefs of evidence and responding
8 particularly to the Section 20 notices, they are a very rich source of information which the
9 public can't see but which we are drawing on all the time.

10 We are very grateful for your frankness and your willingness to speak out. I'm sure
11 survivors are too. So, thank you so much and that brings us to the conclusion of today's
12 proceedings, which we will end with karakia waiata, kei a koe te karakia matua.

13 **KAUMATUA NGĀTI WHĀTUA:** (Waiata Te Aroha). Before I start, Madam Chair, I just want
14 to say that I won't be here tomorrow and it's sad that I won't be here. However, the boss has
15 told me I have to go with her with her family so I better do as I'm told, otherwise I could be
16 appearing here, but hei aha.

17 But can I say, on behalf of myself and Ngāti Whātua, I started off with a
18 tauparapara which had a meaning of being aware, being aware of what's around us and
19 collecting that information coming together. And this is the sort of place where that
20 awareness has been displayed, and I just want to commend everyone who have been part of
21 the kōrero that has happened here today, for the benefit of our tamariki ngā mokopuna. Hei
22 aha, our waiata, is Te Aroha Te Whakapono and I'll finish off with a tauparapara that
23 I started off with this evening. (Karakia whakamutunga).

24 **Hearing adjourned at 5.15 pm to Friday, 26 August 2022 at 9 am**