

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

Under The Inquiries Act 2013

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

Royal Commission: Judge Coral Shaw (Chair)
Dr Anaru Erueti
Ali'imua Sandra Alofivae
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Ms 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

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TRANSCRIPT OF PROCEEDINGS

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1 **DR COOKE:** Tēnā koutou, tēnā koutou, tēnā tātou katoa, ko Allan Cooke tāku ingoa, I'm one of
 2 the Counsel Assisting the Commission. For those of you who are online, I am a Pākehā
 3 male, I'm towards the elderly end of my years. I'm wearing a black suit with a blue shirt
 4 and a coloured tie and I have white hair.

5 We're now going to hear from the Chief Ombudsman, Mr Boshier. He is going to
 6 do a mihi mihi. He will then read a brief opening statement. He understands that you will
 7 swear him in and once that occurs and he does the mihi mihi and the statement then I'll ask
 8 him some questions.

9 **CHIEF OMBUDSMAN**

10 **PETER BOSHIER (Affirmed)**

11 **QUESTIONING BY DR COOKE:** Mr Boshier, as I've outlined, you're going to do a mihi mihi
 12 and then read a brief opening statement. I'd be grateful if you could commence those tasks.

13 **MR BOSHIER:** Thank you, ngā mihi nui. Just before I start, I'm a 70-year-old male of slightly
 14 below average height with greying hair and a red tie and I'm wearing a black suit. Me
 15 pēnei he kōrero tīmatanga māku. Hutia te rito o te harakeke, kei hea te Kōmako e ko? Kī
 16 mai ki ahau, he aha te mea nui o te ao nei? Māku e ki atu, he tamariki, he rangatahi, he
 17 tangata, he tangata, he tangata. Ko tēnei te kaupapa o tāku tari. Nō reira, tēnā koutou, tēnā
 18 koutou. Ka haere tika tonu ngā mihi ki a koe Judge Shaw, talofa lava Laufiga
 19 Ali'imua Sandra Alofivae. Ka tukua ngā mihi mahana e mātou nō Tari o te Kaitiaki
 20 Manata [Mana Tangata], nō reira, tēnā koutou anō.

21 I'd like to thank the Commission for inviting me to speak. I realise we have time
 22 constraints and I'd like to be helpful and tidy, but I would like to start with some personal
 23 reflections. I've witnessed the State Care system in action for more than 40 years and
 24 I make the following observations from the point of view of a family lawyer, a judge and
 25 now as Te Amo Kapua o Kaitiaki Mana Tangata, guardian of the mana of the people, the
 26 Chief Ombudsman.

27 The revolutionary Children, Young Persons and Their Families Act, whilst passed
 28 in 1988, the year I was appointed as a judge, and enacted the following year, I have grown
 29 up with this Act. Things started out with so much hope and so much promise. The new
 30 Act represented a quantum shift away from court-based resolutions and the power of the
 31 State in favour of community and, specifically, iwi, hapū and whānau.

32 But there simply wasn't the will to sustain that momentum and power shifted back.
 33 As a judge in the Family Court, I witnessed the State's oversight of the welfare and

1 protection of children become increasingly dislocated and on too many occasions tragedy
2 resulted.

3 There have been a number of reviews over the years, often held as a result of such
4 tragedies. Unfortunately, from my point of view, in the position I hold today, Chief
5 Ombudsman, I see too many poor practices continuing. For example, Māori culture and
6 tikanga should hold their rightful place in the system but do not, in my opinion.

7 Some of those shortcomings were highlighted in one of our seminal reports, "He
8 Take Kōhukihuki: A Matter of Urgency", published in August 2020. This was an
9 investigation into Oranga Tamariki policy and practice when removing new-born pēpi from
10 their parents. We were critical and yet in that same report there was evidence of good
11 cultural practice in some parts of the country and we focused on Blenheim as an example.

12 So what does the future hold, members of the Commission? Children need a sense
13 of security, safety and well-being. They need to feel loved, but, at present, the level of
14 protection offered to a child across the State system can just be a matter of chance. When
15 the state intervenes, it can save lives. On the other hand, its intervention may not always be
16 meaningful, appropriate to the situation, or can simply come too late.

17 And I choose my words carefully. To put it plainly, it seems to be random whether
18 a child is rescued, continues to be neglected, or worse. The future of all of our children
19 should be certain, not just a matter of luck.

20 We need to have a country, a system, a culture, an ethos where children's safety and
21 well-being can be assured. As I've previously advised the Commission, when I give my
22 evidence today, the law under which I operate does not permit me to give details of actual
23 cases, but I can talk about the flavour and also case notes which we have published. Within
24 those limitations, I hope that the contribution I make may move us towards betterment for
25 children of Aotearoa. Thank you.

26 **DR COOKE:** I first want to get you to confirm that under section 13 of the Ombudsman Act, you
27 investigate decisions or recommendations made or acts done or not done by government
28 agencies and including, for present purposes, Oranga Tamariki?

29 **MR BOSHIER:** Correct.

30 **DR COOKE:** And you've always had a power since 1962 to investigate agencies, including
31 Oranga Tamariki?

32 **MR BOSHIER:** That's correct.

33 **DR COOKE:** Any person, including a child, may make a complaint to the Ombudsman?

34 **MR BOSHIER:** Yes.

- 1 **DR COOKE:** You may also, as we know, decide to make investigations of your own initiative.
- 2 **MR BOSHIER:** Correct.
- 3 **DR COOKE:** The Prime Minister may also ask you to investigate.
- 4 **MR BOSHIER:** Correct.
- 5 **DR COOKE:** And you are an officer of parliament, of course.
- 6 **MR BOSHIER:** Yes.
- 7 **DR COOKE:** Which means necessarily that you are truly independent of the State system; you
8 are not a public servant, as such, are you?
- 9 **MR BOSHIER:** That's correct, and so there are three Officers of Parliament: the Auditor-General,
10 the Parliamentary Commissioner for the Environment and the Ombudsman. We are
11 appointed by the Parliament, by a debate and motion in the House, and the appointment --
- 12 **CHAIR:** Sorry to do this, but we are constrained by our stenographer and our signers, so just
13 please keep an eye.
- 14 **MR BOSHIER:** Thank you.
- 15 **CHAIR:** Arms will be waved and signs should be shown if you transgress again.
- 16 **MR BOSHIER:** Sorry. I should have known better.
- 17 **CHAIR:** That's all right.
- 18 **MR BOSHIER:** Yes, there are three Officers of Parliament, the Auditor-General, the
19 Parliamentary Commissioner for the Environment, and the Ombudsman.
- 20 **DR COOKE:** I take it means that you are not subject to ministerial direction or guidance; is that a
21 correct understanding?
- 22 **MR BOSHIER:** That is the correct constitutional basis, yes.
- 23 **DR COOKE:** We also understand that some agencies of State, such as Oranga Tamariki, I
24 believe, get their funding via perhaps a Ministry of Social Development, through that
25 source. I understand that your funding is completely separate and is via a direct
26 appropriation from the House of Parliament?
- 27 **MR BOSHIER:** That's correct, and New Zealand is one of the few countries in the world with
28 this ideal constitutional purity.
- 29 **DR COOKE:** Can you tell us, in relation to the working of your office and the work that is to be
30 done under the changes that arise, what your budget is and to what extent it may have risen
31 in recent years?
- 32 **MR BOSHIER:** Yes, when I commenced having been a Law Commissioner prior to this position,
33 so when I commenced at the end of 2015, the office budget was \$10.4 million. In the
34 current financial year, it is \$55 million.

1 **DR COOKE:** Given the work that you are to do, does that current budget incorporate the new
2 task that you have, I think from 1 July 2023?

3 **MR BOSHIER:** Yes, and I should explain that we were funded, in fact, by Parliament about two
4 years ago in anticipation of us needing to ramp up this part of our work. It is already part
5 of our budget.

6 **DR COOKE:** Going back to the complaint process, does a child or person who wants to make a
7 complaint to you about Oranga Tamariki have to first make a complaint to Oranga
8 Tamariki?

9 **MR BOSHIER:** The answer is no, but we will take a complaint, triage it and decide whether that
10 should head back to Oranga Tamariki on our recommendation.

11 **DR COOKE:** If that complaint is referred back to Oranga Tamariki without there being an
12 investigation, is there any follow-up process by your office with Oranga Tamariki to see
13 what, in fact, has occurred with that complaint?

14 **MR BOSHIER:** Yes, and one of my own requirements, because I'm strongly driven by outcomes,
15 is to ask my staff to follow up with both the complainant and the agency to see that
16 something's happened. It's more aggravating for a complainant if then nothing happens.

17 **DR COOKE:** Irrespective of whether your office formally takes up the complaint and conducts
18 an investigation, there is nonetheless a process by which a person who makes a complaint
19 may nonetheless receive -- have an "investigation", in inverted commas, and have that
20 complaint looked at?

21 **MR BOSHIER:** Yes, and I like my staff to make it clear to tamariki, rangatahi or whānau that if
22 this doesn't proceed in a satisfactory direction, they're to come back to us.

23 **DR COOKE:** In terms of your office and the complaint system, there is also the internal Oranga
24 Tamariki independent review panel. I'm not sure that we've actually heard a great deal
25 about this, for some reason, and that may be an oversight on the part of a number of us,
26 which we'll have to do a mea culpa about, but perhaps you could just explain your
27 understanding of the independent review panel.

28 **MR BOSHIER:** Yes. Some years ago, the then Chief Executive of Oranga Tamariki created an
29 independent review panel within Oranga Tamariki, but with people not employed by
30 Oranga Tamariki. At present, it has on it, amongst others, the retired Judge von Dadelszen;
31 Mary Slater, a former Deputy Public Service Commissioner; Shenagh Gleisner, a former
32 Chief Executive of Ministry of Women's Affairs, and others. Their role is to endeavour to
33 investigate a certain tier of complaints and report to the Chief Executive on action that
34 might be taken.

1 **DR COOKE:** Are you able to offer any observation or comment as to the success or otherwise of
2 what you describe as being an independent review panel?

3 **MR BOSHIER:** I know a lot about it because we've been in discussions about the future of this
4 panel, in view of our enhanced investigation status. I think this will go in the direction of
5 the independent review panel being more of a restorative justice resolution
6 non-investigative body, and we will focus more on cases requiring investigation resource,
7 because this panel does not have it.

8 **DR COOKE:** You've already told us that you have an obligation as to secrecy on matters that
9 come to your office and to your staff. In some situations relating to investigations, you are
10 able to disclose information as is appropriate, aren't you, but, again, for present purposes
11 and just to re-affirm it for those listening and watching, we will not be talking about actual
12 cases today.

13 **MR BOSHIER:** Correct. Can I just say why?

14 **DR COOKE:** Yes.

15 **MR BOSHIER:** I want people to be able to come to my office and find that their personal
16 situation is not aired publicly and further aggravate any harm.

17 **DR COOKE:** Where you have a complaint and you open an investigation, you will either find the
18 complaint not made out or it will be made out. Are they the two essential options?

19 **MR BOSHIER:** Can I endeavour to describe the process --

20 **DR COOKE:** Sure.

21 **MR BOSHIER:** -- as it now works and for some of the Commission who have been Family Court
22 lawyers, they have heard about what was the Family Court's early intervention system. A
23 complaint comes in and we assess it. We endeavour to resolve it. That's informal and
24 doesn't necessarily head with the formality of an investigation. In present law, I can only
25 investigate, in terms of the legal definition, if I notify an investigation.

26 One of the good things about the changes which will occur in the legislation just
27 passed is that I do not need to go through that formal notification process in order to get the
28 information I want from the agency. It's an important shift for me, that I have power and
29 confidentiality at the outset.

30 At the moment, there's a bit of trust involved in trying to resolve at the outset and
31 being given information on that basis. To answer your question, if it's needing to go
32 through to a formal investigation, and a number do, that's what happens and, at the end,
33 there is a process of a provisional report and a final report with recommendations.

1 **CHAIR:** Judge, to whom do you have to notify this investigation, is it to Oranga Tamariki or to
2 whom?

3 **MR BOSHIER:** To the Chief Executive of the agency.

4 **CHAIR:** So they get advanced warning that an investigation is coming.

5 **MR BOSHIER:** Correct, and what the central issue is, yes.

6 **CHAIR:** Thank you.

7 **DR COOKE:** Are you able to tell us about the number of complaints that your office would
8 formally investigate in relation to Oranga Tamariki?

9 **MR BOSHIER:** Yes, I can. As at 1 July this year, we had 81 complaints on hand concerning
10 Oranga Tamariki. In the last 12 months, we've completed 218 complaints. Six complaints
11 were from children directly and in relation to the complaints which we investigated, we
12 recommended and attained remedies in 140 cases.

13 **DR COOKE:** In relation to those in which you've made recommendations, and I'm talking
14 specifically in relation to Oranga Tamariki here, have there been occasions where you have
15 not achieved a remedy that's arisen from a recommendation you have made?

16 **MR BOSHIER:** No, but with the caveat that I've had to get fairly assertive at times in requiring
17 performance of my expectations, and I don't mean to be overly assertive about this, but
18 there are times when I have to be very clear and Oranga Tamariki needs to be very clear on
19 what will happen if a recommendation is not implemented. Sometimes I need to go to that
20 extra stage.

21 **DR COOKE:** With any complaints system, it has to have integrity as to its process and its
22 outcomes. And certainly now that your office is going to have a greater jurisdiction in
23 relation to complaints, there are two questions that would arise around the need to have
24 integrity and trust. One is getting the trust of Māori in particular, given that the greatest
25 cohort of children who are in care are Māori; and then, secondly, being seen by those who
26 make complaints, and also to the public as a whole, that when you do an investigation, you
27 are able to hold agencies, and this particular agency, clearly to account. I'm going to talk a
28 little bit later about some aspects of this, but just on that particular point, are you able to
29 comment about the aspect of trust and the aspect of being seen to hold the agency to
30 account in a very clear and transparent way?

31 **MR BOSHIER:** Yes, and I'll endeavour to be succinct because it's a big topic. I believe Māori
32 have had the right to not trust the Crown. The Children, Young Persons and Their Families
33 Act should have worked. It had all the ingredients in it of an act which should have

1 embraced tikanga and a relationship with Māori. In fact, in some ways, it was ahead of its
2 time. It should have been a reflection of Te Tiriti o Waitangi principles.

3 About three years ago, I decided that my office needed, if it was to do well in this
4 work, to engage with Māori. I, therefore, set up an Advisory Board, which is called Pūhara
5 Mana Tangata. "Pūhara" meaning an oversight of a platform; "mana", we know what that
6 means; and "tangata". This has on it powerful but feisty Māori, people such as Dame Naida
7 Glavish, Lady Tureiti Moxon, Arihia Bennett from Ngai Tahu, recently, Ngira
8 Simmonds -- Archdeacon Ngira Simmonds has been appointed from the Kingitanga and
9 we have members from Wellington as well.

10 This has revolutionised my office's approach and embracing of Te Ao Māori and
11 I just want to say that the seminal moment for me was a wānanga we held at Waitangi,
12 where we talked about the fact that we aren't the Crown and should not be seen as the
13 Crown, Māori need to see us as holding the Crown to account, so where does that leave us
14 in terms of Te Tiriti o Waitangi? And it means that we should observe and implement the
15 Treaty as a non-Crown agency, but make sure the Crown agencies do observe it.

16 Your second question was holding agencies to account. I have the rare ability to
17 table a report in Parliament and so it gets the attention of the Parliament upon tabling. It's a
18 process that's put by the Speaker in front of the Parliament. I have found it particularly in
19 the OPCAT jurisdiction. That's jargon. It stands for the Optional Protocol of Crimes
20 Against Torture. This is when I inspect prisons, mental health units and so on and
21 sometimes we find what see unacceptable, and I did it just on Monday of this week in
22 relation to the Otago prison, where we criticised, as you may you know, the use of CCTV
23 footage constantly on prisoners who were abluting and undertaking all their personal
24 chores. And we table reports such as that in Parliament and it's a fairly powerful thing to
25 do.

26 **DR COOKE:** Just on that point then, in what situations -- how often would you have tabled such
27 a report in Parliament, given that would be the pinnacle of where you would go in terms of
28 addressing a concern arising out of an investigation?

29 **MR BOSHIER:** We go through an assessment. We have forms for everything, and this is called
30 a publication assessment, and we look to see what we've found. We don't want to fire shots
31 constantly, you don't enhance your reputation by doing that. So we look to see whether
32 we've already made recommendations that haven't been implemented and we, therefore,
33 need to hold the agency to greater account, and we look to see how serious the issue is.

1 Can I give you an example. When we did our report on 6 August 2020 in relation to
2 Oranga Tamariki it was called "He Take Kōhukihuki: A Matter of Urgency". We tabled
3 that in Parliament because it needed the attention of Parliament. Some other smaller
4 reports we do don't need to hold Parliament's attention.

5 **DR COOKE:** So that report and the issues that it addressed would be indicative of the type of
6 issue that would call for the attention of Parliament?

7 **MR BOSHIER:** Yes.

8 **DR COOKE:** I asked you the question about holding Oranga Tamariki to account, because for
9 many of the survivors who have come to the Commission, they have expressed frustration
10 in many respects about how their history, their narrative, their kōrero has been dealt with by
11 Oranga Tamariki, by MSD, etc, by various systems that they've had to go through.
12 It would be important to know the significance that you hold to being seen in making sure
13 that Oranga Tamariki is held to account and the extent to which that can be -- is going to be
14 done, if you're able to do that within --

15 **MR BOSHIER:** A short time.

16 **DR COOKE:** Politic time.

17 **MR BOSHIER:** Yes, when the Ombudsman office was created in 1962, the first Ombudsman
18 was probably our most famous, Sir Guy Powles, and he said the Ombudsman's task is to
19 shine a light and to show in dark places things that an agency might not want to see and
20 I believe that to be my task. I found frustrations as a judge in asking plans to be
21 implemented which weren't, and I carry -- part of my kaupapa now is I will not tolerate it.
22 If someone is meant to be doing a job and doesn't do it, my job is to hold them to account.

23 **DR COOKE:** You opened in your statement about your work over many years, both as a lawyer,
24 as a judge, you were with the Law Commission. I just want to turn briefly to that history
25 and then ask you some questions that arise from that, because you've had warrants -- as a
26 District Court judge, you would have sat in the District Court's criminal jurisdiction, you
27 would have sentenced people to terms of imprisonment. You have to say "yes".

28 **MR BOSHIER:** I beg your pardon. I'm so sorry, yes.

29 **DR COOKE:** And you've sat -- for many, many years, your primary role was as a Family Court
30 judge.

31 **MR BOSHIER:** Correct.

32 **DR COOKE:** And within that, you would have sat on many, many occasions sitting in the
33 children and young person's jurisdiction.

34 **MR BOSHIER:** Correct.

1 **DR COOKE:** You were also a Youth Court judge.

2 **MR BOSHIER:** Yes.

3 **DR COOKE:** And you, therefore, would have seen and come across many rangatahi who were
4 within that jurisdiction as well, of course.

5 **MR BOSHIER:** Yes.

6 **DR COOKE:** You would then be able to see -- if you reflect, do you see any pattern between care
7 and protection cases that arise, first of all, in the Family Court, where you may have
8 children who are taken into care, and then, subsequently, children who go through the
9 Youth Court and then into the adult system? Do you see any correlation at all?

10 **MR BOSHIER:** I do.

11 **DR COOKE:** Do you want to tell us about that.

12 **MR BOSHIER:** I think if there can be meaningful intervention -- this, what I'm about to say will
13 not be not known. If our intervention is just going through the motions and there is not
14 good accountability, in all senses initially, the chances of any change are slim. I think huge
15 change really matters at the very beginning of a child's life. I often felt, if I can say so, in
16 the Youth Court, I was never going to achieve a great deal. I felt in the Family Court, when
17 doing care and protection cases, that opportunities had been missed -- if there had been
18 meaningful whānau hui or family group conferences, the correlation is simply
19 unmistakable.

20 **DR COOKE:** Do you see a correlation between children coming into care and those same
21 children, as they pass through their care journey, going into the residence system and then
22 into the criminal justice system?

23 **MR BOSHIER:** Yes, I don't want to pretend to be an expert on this. I sat, particularly in the
24 latter part of my principal Family Court judge, seldom in the criminal court, so I don't have
25 the level of knowledge as some others here today do. But the answer to that is that it was
26 usual to see of a number of criminals a past which reflected their history which had led
27 them to this situation.

28 **DR COOKE:** Because when you're sitting in the District Court in its criminal jurisdiction and you
29 sentence a person to a term of imprisonment, you do so having regard to a number of
30 factors and one of those would be that person's criminal history. That's correct, isn't it?

31 **MR BOSHIER:** Yes.

32 **DR COOKE:** When you look at that person's criminal history, you will often see a history that is
33 within the District Court itself and then within the Youth Court, or the old Children and
34 Young Persons Court, wouldn't you?

1 **MR BOSHIER:** Yes.

2 **DR COOKE:** And many, many of those who would appear in the District Court would have an
3 extensive history that would run back to the time of their being in their teenage years.

4 **MR BOSHIER:** Yes, and my caveat is I'm not so knowledgeable about this as some of my former
5 colleagues.

6 **DR COOKE:** I understand that, but you would recall sitting as a judge and being presented with a
7 conviction history that would reflect that type of history.

8 **MR BOSHIER:** Correct.

9 **DR COOKE:** Thank you. Just arising out of the same background and looking now -- you may
10 have answered this but I'll ask it again, if you look back from your position where you sit
11 today at the care system, back through to 1950 and perhaps, from your perspective, more
12 the period in the 1980s and the 1990s and through to today, do you see any continuum of
13 themes that arise as problems in the care system?

14 **MR BOSHIER:** Can I answer that in this way: if I start from my appointment as a Family Court
15 judge, I felt the family group conference system and empowerment of the whānau was
16 fabulous and it worked for a period. Secondly, a lot of my initial sitting as a Family Court
17 judge was on circuit in my hometown of Gisborne, but also the far north, and the system
18 worked. It then began to fall off the pace and I became disillusioned. There would be
19 family group conferences with virtually no-one present. There had not been the work that
20 was required to change the destiny of the case.

21 I felt that when I came into this position, if I can fast-forward, I was reliving my
22 past. And we have a children in care team, which I'm happy to talk to you about, if you
23 wish, but it is seeing a continuation of the problems that I experienced as a judge.

24 **DR COOKE:** Would it be fair for me to say then that your view would be children today are still
25 at risk of being harmed and are actually being harmed within the care system?

26 **MR BOSHIER:** Yes, I am dealing with cases where children have been harmed and have died, by
27 way of a complaint from whānau, and I have cases where I'm looking at those very issues
28 right now. That's why I'm being fairly passionate about this.

29 **DR COOKE:** I want to ask you some questions about your OPCAT jurisdiction. As I understand
30 it, it is not a complaint jurisdiction, but is an inspection and monitoring jurisdiction.

31 **MR BOSHIER:** Correct.

32 **DR COOKE:** So it's conceptually different from what we've been talking about.

33 **MR BOSHIER:** Yes.

1 **DR COOKE:** But it's a jurisdiction that embraces those who are detained against their will.
2 That's, essentially, it, isn't it?

3 **MR BOSHIER:** Yes.

4 **DR COOKE:** That would cover prisons, court facilities, facilities for those who are detained
5 under the Intellectual Disability Compulsory Care and Rehabilitation Act, and those
6 agencies who provide care under that provision.

7 **MR BOSHIER:** Yes.

8 **DR COOKE:** Aged care, Covid-19 facilities, immigration centres and mental health.

9 **MR BOSHIER:** Correct, and the latest one is we have morphed from MIQ facilities,
10 recommissioned hotels, to what are called AIAs and those stand for alternative isolation
11 accommodation facilities, motels sprinkled around Aotearoa where people are in them
12 because they cannot self-isolate at home.

13 **DR COOKE:** Within each of those venues -- I'll call it that, for want of a better word -- there are
14 going to be children and vulnerable people who will be detained.

15 **MR BOSHIER:** "Yes" is the answer. The Children's Commissioner oversees, under OPCAT, the
16 youth side residences. We defer -- and the Children's Commissioner does that. We do the
17 whole of the balance and, for the sake of completion, there is one other aspect of this
18 preventative work and it's the Armed Forces prison, which is in Burnham Military Camp.
19 We do the whole rest of the balance.

20 **DR COOKE:** Just to be clear on the distinction between the Children's Commissioner and your
21 office, and I'm thinking particularly of the IDCCR Act, where you have a child who is
22 charged with an offence but is found not fit to plead under CPMIP, that child may then be
23 subject to detention under the IDCCR Act.

24 **MR BOSHIER:** Correct.

25 **DR COOKE:** Does that become your responsibility, that child, or is that child under the auspices
26 of the Children's Commissioner?

27 **MR BOSHIER:** We have an agreement with the Children's Commissioner that, according to age,
28 the Children's Commissioner exercises oversight. Can I quickly explain something
29 complicated? Mr Gibson knows this because he was involved in what's called the
30 Independent Monitoring Mechanism and the National Preventative Mechanism, but I do
31 need, if you don't mind, to spend a minute on this.

32 The National Preventative Mechanism comprises the Children's Commissioner, the
33 Independent Police Conduct Authority, me, the Armed Forces personnel and the Human
34 Rights Commission. We divide up who does what in terms of overseeing. We, in short,

1 agree on any aspect that there could be an overlap. For instance, the Independent Police
2 Conduct Authority will do some court cells and we won't. We just come, we collaborate
3 and we agree.

4 The Independent Monitoring Mechanism is a collaboration between the Human
5 Rights Commission, the disabled people's organisations and the Ombudsman. We
6 collaborate and work out who's going to do what and work in a partnership, though
7 respecting each other's roles, and mine has to be independent of the Crown.

8 **MS CASTLE:** So in terms of those relationships that you're describing, are they formal
9 relationships where it's recorded or is it based on -- is it, essentially, one of relationships
10 that are formed between the individuals fulfilling the particular roles?

11 **MR BOSHIER:** It's formal. Each -- in the case of the National Preventative Mechanism, there's
12 domestic legislation called the Crimes of Torture Act, there is a requirement to set up a
13 National Preventative Mechanism. It's statute and we do it.

14 The Independent Monitoring Mechanism is a designation from Parliament pursuant
15 to the United Nations Convention on the Rights of People With Disabilities. So there is
16 formality, there is minutes. We do a report. In fact, we have just filed a report in
17 Parliament from the IMM.

18 **DR COOKE:** I raise that question because it's one that's pertinent to an issue I was going to cover
19 later but I'll do it now and that is the new oversight functions that are going to be put in
20 place through the Act or the legislation that was just passed the other day. One of the
21 issues that arises for this Commission is going to be how is this new tripartite system going
22 to work between the Children's Commissioner, the Ombudsman and the ICM, the monitor,
23 and whether or not you're going to have an obligation under the statute to work together,
24 but it's the -- perhaps you'd be able to assist the Commission by telling us how you envisage
25 that is going to work.

26 **MR BOSHIER:** I think everything depends on good leadership, and my life has been about
27 collaboration. That's how you make a court work or anything else work. You get the best
28 results with a collaboration of resources.

29 I mentioned the NPM and the IMM as examples of the fact that collaboration has
30 been occurring for many, many years and it works. There is trust and there is cooperation.

31 In terms of the legislation which Parliament has passed, it exhorts me to work
32 collaboratively with the Independent Children's Monitor and the Children's Commissioner
33 and that's just what we will do.

1 I think the clarity of roles is helpful, personally. Right now, in conjunction with the
2 others, a detailed agreement on how this will work now the legislation has been passed is
3 being written.

4 **DR COOKE:** You're aware of the concerns that are held, particularly in relation to the Office of
5 the Children's Commissioner and ostensible diminution of its role; you're aware of those
6 concerns?

7 **MR BOSHIER:** My concern, if I can centre on my concern, which I hope is helpful to the
8 Commission, is the enhanced powers of investigation which I will have. I will be able to
9 do my job better because I can go in earlier with more power. There's another important
10 thing that this legislation gives me and that is when I need to, I'm allowed to breach
11 secrecy. I could not do that before. I just want to focus on my broader investigative role,
12 which will be much more potent than it has been able to be.

13 **DR COOKE:** I want to go back briefly, and I'm mindful of the time now, to OPCAT, because
14 you've told us that it's -- you don't take complaints, so, obviously, people cannot complain
15 to you. The next question I would have is, in terms of the work you've done under that, is it
16 leading to the elimination of abuse and neglect in the facilities that are covered? I'm
17 mindful of issues such as those related to tie-down beds or seclusion of autistic children and
18 there may be others, but I use those two examples in this instance.

19 **MR BOSHIER:** Yes, well, in terms of tie-down beds, which I felt, and said, was extremely
20 inhumane, and the graphic nature of this should be said, because sometimes agencies need
21 to be held to account by us. So just going back to a question of restraint report, prisoner A
22 at 4 o'clock with the change of shifts, and I saw the video footage, taken into a cell,
23 restrained with leather straps from 4 o'clock for 16 hours, 37 consecutive days, and that was
24 happening in Aotearoa New Zealand until some years ago. And as a result of our report,
25 that's now been banned within the prison system. Pepper spraying continues to be an issue
26 where the Ombudsman exerts influence on having that diminished.

27 **DR COOKE:** One area, and this isn't within OPCAT but it may be a matter you have a view on,
28 is there are some vulnerable people may be in facilities -- and I'm thinking of aged care
29 facilities, for example -- where their well-being can be at risk and prejudiced, and one
30 safeguard for them is the Health and Disability Act, but the jurisdiction there is very
31 specific, isn't it? Do you have a view around areas of oversight that are missing for
32 vulnerable people who are within our community?

33 **MR BOSHIER:** I think the new Ministry for Disabled People Whaikaha will be a step in the right
34 direction. I understand the Government may reflect disability legislation enacted in Canada

1 and New Zealand. I would have thought that is good, because it holds agencies to statutory
2 account in providing the proper equality for disabled people.

3 I think, and I have just said in our report to the United Nations, we are not along the
4 journey enough to create equality and equal chance for people with disabilities in Aotearoa.

5 **DR COOKE:** I spoke earlier about the involvement of Māori within your organisation and, of
6 course, the new Act is going to require you to take a tikanga Māori perspective and the
7 process that you're going to follow and be visible and accessible to families and whānau,
8 etc, and you're also to make reasonable efforts to develop relationships with iwi and Māori
9 organisations.

10 You've referred to the advisory group. There would be a school of thought that
11 could say that is as good insofar as it goes, but you would be better off having someone at
12 the table with you of equal standing/status who was Māori and would be able to then give
13 the Ombudsman's office that very clear Māori dimension. Do you want to make a
14 comment about that?

15 **MR BOSHIER:** Well, my role will conclude by statute in March 2024 and I think it's open to the
16 Parliament to decide how they want the face of the Ombudsman to then look.

17 **DR COOKE:** Do you have a view as to whether or not the work your office does is missing
18 anything by not having that presence at the top table?

19 **MR BOSHIER:** I was particularly -- what's the word now -- reinforced when Dame Naida
20 Glavish was recently filmed doing a documentary for our 60th anniversary and I watched
21 the footage yesterday, which is why I mention it, and I'll try and be succinct. She said to
22 the interviewer, "Māori will sit back and look long and hard before we trust you, we'll size
23 you up. Why should we trust you and other agencies? We've seen you at work. Māori
24 trust the Ombudsman, we will use you". And I think, inasmuch as she and other Iwi Chairs
25 such as Rahui Papa have that view, we are well on the way to our journey in enhancing
26 mana, as far as Māori are concerned.

27 **DR COOKE:** I want to leave time for questions from the Commissioners, so I want to address
28 now briefly the oversight system as it's going to be and the amending legislation. It's going
29 to cover those children, tamariki, rangatahi who are the subject of custody orders, sole
30 guardianship orders or care agreement, that's correct, isn't it?

31 **MR BOSHIER:** Yes.

32 **DR COOKE:** When we talk about custody orders, we're going to talk about what we call 101
33 orders, which come out of the Family Court, and we're also going to talk about section

1 238(1)(d) custody orders, which detain a young person in custody, which come out of the
2 Youth Court.

3 **MR BOSHIER:** Correct.

4 **DR COOKE:** And a person who is the subject of a 238(1)(d) order may also have a 101 status.

5 **MR BOSHIER:** Yes.

6 **DR COOKE:** They're not incompatible, are they?

7 **MR BOSHIER:** Correct.

8 **DR COOKE:** Where there is a custody order or 101 or an agreement, for example, they can be
9 made in favour of the Chief Executive of Oranga Tamariki, or the Chief Executive of an
10 iwi and a cultural social service, or the director of a Child and Family support service.

11 **MR BOSHIER:** Correct.

12 **DR COOKE:** Under the amending legislation, that's going to cover children who are placed under
13 section 362 of the Act, which is where those chief executives or directors are able to place
14 children.

15 **MR BOSHIER:** Correct.

16 **DR COOKE:** You're also going to have a power to look at children who are placed in a residence
17 under 364 of the Act and that embraces, specifically, the Chief Executive of Oranga
18 Tamariki.

19 **MR BOSHIER:** Correct.

20 **DR COOKE:** You also have an ability to look at and inspect or investigate complaints for 396
21 providers.

22 **MR BOSHIER:** Correct.

23 **DR COOKE:** Are there any areas relating to children who would be in the care of the State within
24 custody orders, guardianship orders or care agreements where their protection is not
25 covered by your office?

26 **MR BOSHIER:** The simple answer is "no". I should explain. We didn't want every single aspect
27 of the State's oversight of children to be with us. For instance, if the State was providing
28 tuition by a provider for a child and that was that portion of care by the State -- and there
29 are lots of these arrangements throughout the country -- I didn't feel that we should embrace
30 that, we just couldn't, resource wise. I really wanted those areas of jurisdiction, seeing as I
31 was asked about this, that I felt most mattered.

32 **DR COOKE:** You've referred earlier to your office receiving six complaints directly made by
33 children for the year ending 1 July 2022. We also know that the Independent Children's
34 Monitor received 14 complaints for children in its most recent report, which was mid 20 to

1 mid 2021, and that was 1% of all complaints made. Those two statistics would suggest that
2 the systems that are in place do not yet satisfactorily address issues about how children who
3 are in the care are able to make a complaint. Would you agree with that?

4 **MR BOSHIER:** Yes, I would, but it's not only children where our office has some distance to go.
5 We are not used proportionately by Māori, Pasifika, ethnic communities and children. We
6 have some distance to go before we are reaching with equality Aotearoa.

7 **DR COOKE:** I was going to ask you specifically in relation to how do you ensure that you are
8 visible to tamariki, rangatahi Māori and their family, to Pasifika children who are in care?

9 **MR BOSHIER:** Could I just indicate that when we started on the journey of being accessible to
10 Māori and children, we commissioned research in 2020 from a company called Point and
11 Associates and Ohomairangi Trust. We didn't want to just go on our journey without an
12 evidential foundation. That's informed the approach we are taking. So right now, for
13 instance, we are creating a micro website for access by children which will look totally
14 different.

15 I see the need for the Ombudsman to be accessible in a modern way and not an old
16 bureaucratic way and we have the budget money to do this and to bring it about.

17 **DR COOKE:** I think we've also heard evidence in relation to the grievance panels, I suspect for
18 children who are in residence, that it may be a paper-based complaint system and if that's
19 the case, it means that those rangatahi are going to have to get a form from someone within
20 the system and possibly as well get assistance in writing their complaint, which clearly
21 raises issues around the integrity of that process.

22 One of the big issues in this is going to be how do you ensure that children who
23 want to make a complaint to you -- and let's assume the visibility is there -- are able to do
24 so without having that complaint filtered in any way by someone who we would not want
25 to filter it?

26 **MR BOSHIER:** In an ideal world, I like the idea of a smartphone with simple options that can be
27 populated and sent directly to us. That seems to me to be A, smart for modern users of
28 technology; B, not involve paper; and, C, doesn't need to pass through someone else's hands
29 in order to get from point A to point B. Technology, I think, is there. We've got to use it.

30 **DR COOKE:** The other aspect about communication between children and your office is with
31 those children who have a disability in any respect, because it's going to be, by definition,
32 much harder, if not impossible, for those children to be able to access the means of making
33 a complaint. I'm thinking of children who would have an educational disability of some

1 sort, a neuro-diverse aspect to them which makes it difficult. Has your office turned its
2 mind to how you can address that aspect of agency for children?

3 **MR BOSHIER:** Yes, but it's not -- can I just say again, because of Mr Gibson's presence here, it's
4 not just children with disabilities who have trouble accessing websites. For instance, in
5 Covid-19, the disabled community was not able to access websites and information in a
6 way which was appropriate. This is a challenge that I think we have to accept and
7 undertake. So the brief answer to your question is, this is non-negotiable, this has to
8 happen.

9 **DR COOKE:** I had some other questions but I don't think they're imperatives for me to ask, and
10 this would give a few minutes to the Commissioners to ask questions of Mr Boshier.

11 **CHAIR:** Thank you for that, Dr Cooke. I would assume, judge, that if there are other matters that
12 haven't been able to be canvassed in public, you'd be able to open to answering matters not
13 behind the scenes but in writing later?

14 **MR BOSHIER:** Of course.

15 **CHAIR:** I'm going to ask my colleagues if they've got any questions and, if so, to keep them brief,
16 and I appreciate that you're trying to do the same, so we'll start with Commissioner Gibson.

17 **COMMISSIONER GIBSON:** Kia ora, Judge Boshier, and thank you for acknowledgments. We
18 did work together over the years on a number of these issues. I think, through the OPCAT
19 mechanism, we were progressively increasing areas such as aged care facilities that hadn't
20 been monitored, but there still seemed like more to go. Thinking in the disability space,
21 some of the issues which we've seen here, for example, special schools where it's reported
22 that restraint is 5,000 times more likely than in a -- I'll slow down.

23 **CHAIR:** No, we have technology issues, two lots of stops. We're going to be stymied by the
24 technology, unfortunately. I don't know if that's a message or a signal but the livestream
25 has gone down and it may take some time to fix. We will see if we can do it without the
26 visual part of it going. I can't even apologise to the people who can't see us because they
27 can't see us. So where we're going to go and, again, given time, we're going to have to be
28 clever about this, we'll simply continue. Our stenographer will continue to type and our
29 signers will continue to sign. So if we, I think, maybe have just one question each, I'm
30 sorry to do that, and we may have to put that in writing. They can see us but not hear. All
31 right.

32 **COMMISSIONER GIBSON:** It's possibly the gaps between setting space monitoring through
33 OPCAT and strategic monitoring through the IMM, such things as residential specialist
34 schools, also there's about 7,000 to 10,000 people living in residential care, some of whom

1 are behind locked gates and can't access to and from their own, and we're aware of people
2 who, when staff turns up, can't get out of bed. So there's neglect issues and possibly a
3 range of more significant abuse issues which we may or may not see. What's the solution,
4 both in terms of the monitoring oversight and the strategic changes which is required to
5 remove those risks of abuse and neglect?

6 **MR BOSHIER:** Can I just talk about one aspect, Mr Gibson, and that is restraint in aged care
7 facilities, in order to keep my questions succinct. We have identified and we only have
8 jurisdiction in aged care in dementia units. Unless someone is in detention, we do not have
9 jurisdiction. If they are and restraint is occurring in a way that we believe is contrary to the
10 convention, we ask, recommend, exhort, bring about pressure to have restraint reduced and
11 that is occurring.

12 **COMMISSIONER ALOFIVAE:** Malo le soifua maua lau afioga Judge Boshier. (Welcome and
13 greetings to Judge Boshier). So the pathway into care for State children is often through the
14 Family Court or through the Youth Court and the sentiments that you expressed earlier,
15 when you were practising as a judge, is the sheer frustration of plans not being adhered to,
16 no doubt that's a sentiment that many of your judicial colleagues probably still feel today in
17 those specialist courts.

18 When I think of the ecosystem that feeds into the Youth Court and the Family
19 Court, do you have any reflections around structural issues that might assist in clarifying
20 the pathway and making things easier, more efficient, for our young people?

21 **MR BOSHIER:** When you and I did our Manukau Youth Court work in about 1999, we realised
22 that we needed to use the Pacific community instead of trying to do it all ourselves.
23 Reaching out to the appropriate communities is, to me, the answer. Within Māoridom, the
24 new legislation under clauses 38 and 42 says we must make arrangements with whānau,
25 hapū and iwi. That's where, to me, the answer lies. If the State from Wellington thinks it
26 can do it, it can't and it ought to trust others out there to do the job.

27 So my brief answer to your question is, the State can be the orchestra conductor, if
28 you like, but the music should be played by others.

29 **COMMISSIONER ALOFIVAE:** Malie, thank you.

30 **COMMISSIONER STEENSON:** Tēnā koe, he pātai a koe. Do you think that Māori, given they
31 are disproportionately affected by colonisation and successive governments and their
32 agencies and the failure with Te Tiriti over time, do you think that Māori would benefit
33 from having an Ombudsman with Māori whakapapa?

1 **MR BOSHIER:** You'd think that that would be a factor that would be very strongly before the
2 Parliament when they look at the future shape of the Ombudsman. I'm not wishing to
3 express a personal view because it's not up to me, but I do think that it's right to represent
4 New Zealand in all respects when you're at the top table.

5 **COMMISSIONER STEENSON:** Tēnā koe.

6 **COMMISSIONER ERUETI:** Tēnā koe, judge. I know there is -- I think you mentioned that
7 there is a statutory power to appoint additional ombudsmen; is that correct? I'm not sure
8 how that's exercised, who has that authority, how does it happen.

9 **MR BOSHIER:** The statute says up to four ombudsmen may be appointed and one shall be the
10 Chief Ombudsman. There's usually a discussion between the Speaker, who is Parliament's,
11 if you like, conduit into the Ombudsman about the needs of the Ombudsman and how best
12 it should operate at any given time.

13 If, therefore, it was felt that more ombudsmen were needed and the representation
14 of the ethnicity or the culture of the Ombudsman needed to be changed, that would be a
15 discussion between the Chief Ombudsman and the Speaker and what's called the Officers
16 of Parliament Select Committee would then deliberate and make decisions. That's the
17 structure.

18 **COMMISSIONER ERUETI:** Ka pai. I have to recognise the mana of your Māori Advisory
19 Board and the work that you're doing and your vast experience. It is good to know that
20 there is a process -- you wouldn't have to wait until 2024 to have additional ombudsmen to
21 be whakapapa Māori but also Pasifika or disability or LGBTQI, that there is that facility.

22 **MR BOSHIER:** That's quite correct and the new Speaker, Adrian Rurawhe, would say to me, if
23 he felt that he wanted a change brought about in the Ombudsman, "I want to sit down and
24 kōrero with you about the presentation of your office and how it might be driven". That is
25 a matter totally for the Speaker to raise with me, if the Speaker wished to.

26 **COMMISSIONER ERUETI:** Tēnā koe. The composition of that Māori advisory group, I'm not
27 sure, it did seem -- your criteria might be "feisty" and "powerful" and can tick all those
28 boxes, but I wasn't sure whether they were also survivors. I'm not -- I don't know, but what
29 we have often heard is that it's very important to have that survivor -- as you would
30 appreciate, to have that survivor voice front and central also.

31 **MR BOSHIER:** I've tried -- I don't want to avoid your question, but I've, in fact, tried to get
32 Pūhara Mana Tangata to itself set its own shape and destiny without me wishing to
33 influence its character too much. And so I'll give you an example. Neville Baker, who was
34 te Atiawa and who died, we now need to replace Neville and it will be the advice within

1 Pūhara Mana Tangata as to who takes his place. I tend to want to step back slightly and not
2 try and influence too much.

3 **COMMISSIONER ERUETI:** Tēnā koe.

4 **CHAIR:** A final question from me, judge. You said, quite rightly, that the office relies on its
5 reputation, on its integrity and the extent to which it is trusted and you particularly referred
6 to it being necessary for Māori to trust the institution. That's totally accepted.

7 With the expanded role under the new Oversight Bill, shorthand, do you accept that
8 there's a real need now for that trust to be extended to children, to the very children over
9 whom you have now jurisdiction in terms of complaints?

10 **MR BOSHIER:** I do, and for a child who wants to access us, two things must happen. One, they
11 must be able to get access to us; and, secondly, they must get a result and it must be a result
12 within their expectation of time.

13 **CHAIR:** Do you think that the precondition for that access is that children learns to trust, knows
14 what the office is, learns to trust it, because until they get those two things in place, they're
15 not going to approach, are they?

16 **MR BOSHIER:** I agree with that. The reason that I prefer the name we've been gifted by Māori,
17 Kaitiaki Mana Tangata, is that it explains who we are and what we do. "Ombudsman" is a
18 Scandinavian word which doesn't easily explain what we do. I'm stuck with that. So where
19 it's the Children's Commissioner, it's pretty clear this is the Children's Commissioner. I
20 have got to use what I can, and I like use of Kaitiaki Mana Tangata because Māori
21 immediately, with respect, identify my role, including children.

22 **DR COOKE:** Will your office be doing outreach and explaining and advertising the fact that
23 you're there and what you do? Is that something that you're anticipating doing?

24 **MR BOSHIER:** Yes, and the only reason I have a wry smile, as I returned from Otautahi
25 yesterday, having done four speaking engagements, everything from Eldernet to the hard
26 length of penal reform, and I won't go through all the others, but the role must be seen as
27 getting out and projecting round the corners of Aotearoa.

28 **CHAIR:** Including to children.

29 **MR BOSHIER:** Correct. So, for instance, I'll go to the New Zealand School Trustees
30 Association conference in October, again in Otautahi. Children won't be there but this will
31 be a conduit for me to get access through other means and it's really important we do that.

32 **CHAIR:** Thank you. There are about a million other questions we have, but as I've indicated, if
33 we or Dr Cooke has further, I'm sure you won't mind answering them. May I thank you, on
34 behalf of the Commission, judge, both for your presence today, the preparation of your

1 evidence, your responses, the responses by your office to the section 20 notices, which
2 I know are long and laborious, and also from your earlier engagement with us and, for
3 transparency, the Commissioners had a Zoom session where we spoke to Judge Boshier
4 about the role as well, and we thank you very much for all of that engagement which has
5 been very helpful.

6 **MR BOSHIER:** Well, the privilege has been mine to be here, thank you very much.

7 **CHAIR:** Thank you. We are now going to take -- it was going to be a short lunch break, it might
8 be an even shorter lunch break. We're hoping to be back for the 2.15. We were going to be
9 at 2 o'clock. I'm just going to get a wave from the back. Would 1 o'clock be sufficient for
10 the purposes -- we've got other things to do in the lunch hour, 1 o'clock still okay?

11 **SPEAKER:** 2 o'clock.

12 **CHAIR:** Okay, 2 o'clock, we've got time to do what we have to do in the lunch break. Good.
13 Thank you very much. We'll take a break until 2 o'clock.

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