

STATEMENT OF AARON SMALE

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Introduction

[1] My main whakapapa lines are to Ngāti Porou through my grandmother Kumeroa Tawhara, and her parents Cyrus Tawhara and Wikitoria Huriwai. I also have links to Nga Puhī through a Hiku tipuna and Whakatohea.

[2] I also have Scandinavian, English, Irish and possibly Sephardic Jewish ancestry.

[3] Through my great-grandfather I whakapapa to the Taiapa whānau, celebrated carvers known not only in Ngāti Porou but in the training of many carvers throughout the motu. Carvers are not just craftsmen but also historians and story-tellers. They were the whakapapa experts who passed on the narratives of the hapu and iwi.

[4] I am a journalist and photographer, carrying on my great-grandfather's heritage of story-telling. I began working in 1999 in local papers in Levin, later at the Manawatu Standard in Palmerston North. I then became a freelance journalist, allowing me to work exclusively on both photography and long form writing, with a broad focus on Māori society, Māori subjects and stories.

[5] In 2004 I began working for *Mana* magazine first as a freelance contributor and later in 2013-2015 as the associate editor. My work at *Mana* gave me the opportunity to tell social issues stories for a Māori audience. This gave me the freedom to look at these issues from a Māori point of view, rather than having to bend them to what major media outlets thought a majority audience would consume. However, I realised it was Pākehā who needed to hear the stories I was telling. I worked on a short-term contract starting in 2016 for Radio NZ as a Māori affairs reporter. Returning to freelance work following that, my work has been published by a number of major news outlets in New Zealand and gained international coverage with Al Jazeera as well.

[6] I have tabled applicable articles from my body of work in addition to this witness statement.

[7] I am currently a PhD candidate in history, researching Māori children in state custody and I will continue this research while the Royal Commission completes its inquiry.

[8] The themes I have explored in my work to date – the parallels with the removal of indigenous children in other countries, the impact on Māori and the response of the state - continue to drive my journalism and my PhD research will explore them further. I am also collaborating with a friend who is a film-maker, Julian Arahanga, to produce a three-part documentary series for Māori TV. I've also been fortunate to work with Mike Wesley-Smith from TV3's The Nation on several stories. We continue to collaborate on investigating state abuse.

[9] The following will summarise crucial areas of concern, the conclusions that I have drawn, and lingering questions which remain from my investigative journalistic inquiry exploring this issue.

[10] I've written a number of stories about the issue of state abuse and the removal of Māori children – opinion pieces, analysis, news stories and stories that refer to this issue. There are several main themes that I have focused on in all of my coverage:

- (a) The behaviour of the state in the way it has treated victims both when they were children and when they became adults,
- (b) parallels with the removal of indigenous children in other parts of the world, and
- (c) the impact on Māori, particularly Māori men.

[11] This evidence will in broad strokes summarise the investigative work I have done on this issue and my remaining questions as to the above three key areas.

Investigative work

Lead up to “Justice Delayed, Justice Denied”

[12] I grew up cut off from my Māori heritage and whānau because I was adopted through a closed adoption. As a teenager I attended St Stephens, a Māori boys boarding school, which was partly an attempt by my adoptive parents to give me exposure to my Māori heritage. However, it only underlined my confusion about my identity. There was also a culture of violence that had a deeply negative impact on me. I did not know or meet my birth parents until I was 16 years old. I first met my sister, a sibling I never knew I had until she phoned me, decades later.

[13] While my lived experience of adoption and schooling could be within the scope of the Terms of Reference for the Royal Commission, the focus of this evidence will be on the survivors of the welfare system that took older children.

[14] I wrote about the experience of finding my sister Tanya who I didn’t know existed in “The Stranger You Know” published by *North & South* in 2014, where I explored the wider social issue of closed adoptions and race. During the research phase, I read Anne Else’s book *The Adoption Question* which has one chapter on how Māori adoptees were treated.

“Race comes up throughout the history of adoption. Finding enough parents willing to take Māori or part-Māori children, or indeed any ‘non-European’ child, was universally regarded as one of the major problems in adoption, as the official forms themselves indicated.”¹

[15] I followed this with investigative articles about why Māori were figured so prominently in negative social statistics, particularly Māori men. Centred on the high levels of Māori incarceration I wrote “Inside Out”.² As in all my work, I began with listening to Māori voices, and I spoke to people who had experience of being in the criminal justice and Corrections systems.

¹ *A Question of Adoption*, Anne Else, Bridget Williams Books 1991, page 73.

² “Inside Out” *Mana Magazine*, attached at Tab A.

[16] What I heard from these Māori voices were that factors that led to most people being in prison or the criminal justice system were issues like education, family breakdown, drug and alcohol addiction, mental health issues – and the welfare homes. At that stage I wasn't aware of the scale of the welfare homes or the details of what had happened.

[17] Later I wrote a review of Elizabeth Stanley's *The Road to Hell: State Violence against Children in Postwar New Zealand* for Mana magazine. Struck by the scale and breadth of the issue of children in care, I was troubled that most of those children were Māori. For many, their entry into those institutions was for trivial reasons – wagging school, pinching milk money, getting into a fight. In one case a boy had ended up in Eponi for stealing a pencil.

[18] Stanley drew the conclusion that abuse in care was where Māori incarceration started, and her book provided an evidence-based analysis to underpin it.

[19] So began my coverage on the issue. I wanted to tell the story of what happens when tens of thousands of Māori children are taken from their whānau, put in care or in institutions where some were sexually, physically and psychologically abused, not given a proper education and then kicked out after three to four years. Factoring in their children and grandchildren, what would that look like? And who would listen to their stories?

Bias in the Media Industry

[20] One of the reasons why I became a freelance journalist in 2004 was the indifference at mainstream newspapers towards Māori perspectives in stories. *The Road to Hell*, was to me clear evidence that there was a bigger story here for Māori. In raising what would later become *Justice Delayed, Justice Denied* to producers at RNZ, I was again met with indifference, at least initially. I have been told that other media had a similar attitude to Stanley's book. In my view the media is still yet to grasp the significance of the impact of state abuse, particularly on Māori.

The Evidence and Research

[21] Speaking to Elizabeth Stanley, Sonja Cooper, Rosslyn Noonan and her Honour Judge Henwood, the bones of the story were there. Each gave extremely detailed and useful information about how the state had behaved and how survivors had been impacted.

[22] One theme that came out of those conversations was the call for an independent inquiry. A report by the Human Rights Commission called for an independent inquiry in 2011 and I obtained copies of correspondence between Rosslyn Noonan and the Attorney-General regarding the report. This correspondence indicates that this critical report was intentionally held back from public release. Judge Henwood in her final report for CLAS had also recommended an independent inquiry.

The Survivors

[23] While the expert experience was invaluable in showing the broad legal and political context, it was just as important to show the human impact. I'd like to acknowledge survivor Jimmy McLaughlin who gave his account to me on the record. Jimmy's eloquent telling of his experience made a huge impact on me and I think that is reflected in the impact the story had on readers.

[24] From "Inside Out" I knew Mongrel Mob member Edge Te Whaiti. When I contacted him to try and find someone who had been through the welfare homes, he referred me on to Francis McLaughlin, and his brother Jimmy, who had been through the welfare homes. I have found that many gang members either went through the welfare system or know many who did.

[25] Jimmy is not in the Mob himself. When I met him, he is just this quiet guy in Papakura looking after his mother, trying to get by.

[26] When I first started interviewing Jimmy he had difficulty talking. I was deeply uncomfortable, feeling that I was making things worse for him, and offered to stop. But he wanted to carry on.

[27] Eventually he found his voice. While he didn't go into detail about the abuse, referring to it only obliquely, his account of the impact it had on his life was immense. In many ways his account was not his alone – it reflected the experience of many others who had been through the same experience.

[28] The story could now show mainstream New Zealand the state's egregious, calculated behaviour over a long period of time coupled with the real human impact on survivors like Jimmy. In his own quiet way, Jimmy had smashed through the silence that the system had tried to impose.

Morning Report

[29] Just prior to the release of *Justice Delayed, Justice Denied*, the government quietly released a response to the CLAS recommendations. I contacted Judge Henwood for her reaction – she was furious. The then Minister of Social Development, Anne Tolley, had declined an interview up until this point but had to give one following Judge Henwood's comments. With what we knew from the work done thus far on *Justice Delayed, Justice Denied*, the presenters of Morning Report were briefed by Siobhan Wilson with strong angles for Kim Hill's interview with the Minister. The interview delayed the morning news by 15 minutes while Tolley defended the government's handling of the claims and denied the necessity of an independent inquiry. Depending on your perspective the interview was both brutal and gratifying.

Article Goes Live

[30] Immediately after the interview on Morning Report, Radio NZ was flooded with calls from survivors around the country. One survivor walked into the newsroom in Christchurch looking for someone to talk to and got quite upset in a conversation with a journalist there; and the Nine to Noon programme continued the coverage following Morning Report. *Justice Delayed, Justice Denied* and the Tolley interview put the story out there in a way that grabbed the attention of mainstream New Zealand.

[31] At the Human Rights Commission, staff were discovering that the HRC report had been buried by listening to Morning Report. I heard that many were furious. Dame Susan Devoy, the Race Relations Commissioner, and communications advisor Christine Ammunsen, would become champions for the survivors. I'd just like to record my gratitude to them for their support of survivors and their lobbying of MPs across the political spectrum.

[32] The survivors and the Human Rights Commission generated a momentum behind previous calls for an independent inquiry. That momentum became irresistible.

[33] While there were so many people involved in that push, I'd like to make a special mention of survivor Keith Wiffin. If any one individual can be credited with almost singlehandedly bringing about this Royal Commission, it is Keith. His astute lobbying and advocacy over many years, his building of relationships with the media, his rallying of allies around the cause, all this work that he did on his own initiative and at his own expense created the climate that led to this Royal Commission.

[34] I met Jimmy again at the 2017 protest at Parliament where survivors presented the petition seeking an independent inquiry. It was somewhat overwhelming to see survivors standing up for themselves in front of parliament. A poignant moment for me was seeing Jimmy there being spoken to by Dame Susan Devoy – he'd driven down from Auckland just to take part. I told him my view, that he had started it, by breaking the silence, which I think he found a bit embarrassing and overwhelming.

[35] At that protest, the then deputy leader in opposition Jacinda Ardern promised the crowd gathered there that there that Labour would support an independent inquiry.

Smashed by the State: The Kids from Kohitere

[36] Any story can flare up and disappear within the 24-hour news cycle. I wanted to keep it in the public eye. The follow-up proved to be just as challenging as the initial story, and I didn't have any fresh leads at that point. I began looking into Kohitere, a place described as a "hellhole".

[37] Then in January 2017, the opposition spokesman for Police Stuart Nash released a statement calling for the “real action required to smash gangs once and for all”.³ I took it as a challenge to show that many gang members had already been smashed – by the state when they were children.

[38] In February, I was invited by Mongrel Mob member Harry Tam to speak at a gang hui. Held at a marae near Featherston, I told those gathered about the story I’d done with Francis’ brother Jimmy and the story I’d done with Edge. While *Mana* magazine had been popular in prisons, I was now working for Radio NZ. The audience would be predominantly white, middle class. I talked about how that audience sees a brown face and patch and they knew what I meant.

[39] I told them I was interested in asking them, where are you from? What’s your whakapapa? And I said, if you have been through these welfare homes, the state was your parent. It was part of your whakapapa. This was met with a stony silence and I wasn’t sure how it was being received. I wrapped up what I was saying and then greeted each of them individually, there were between 40-50 people there.

[40] Sitting down to lunch, I found practically all of them had been through the welfare homes. I got talking to Black Power member Albie Epere who was willing to talk about his experience on the record. I focused the story around gangs and how many gang members had come through places like Kohitere.

[41] Albie was quite different from Jimmy. He too had spent a lot of time in prison, but it was for violence. He carried himself with a certain confidence and had views that he was not afraid to articulate. He described how violence became normalised for the kids that went through places like Kohitere:⁴

“After I got out of those places you could sit there and watch somebody get a hiding and you would think nothing about it. But anybody else that would be looking at it, that had never seen violence in their life or hadn't had it in their life, they'd freak out. I'd be sitting there thinking, 'what's the f**king

³ <https://www.labour.org.nz/time-to-smash-the-gangs>

⁴ Smashed by the State: The Kids from Kohitere, attached at Tab B.

problem, he's only getting a hiding'. These were the things we learnt when we were younger, how to take a hiding and how to give a hiding. I could probably say that most gang members now either went through those places and are still gang members now or were gang members."

"There's an old saying, lock a dog in a cage and let him out after a while and see what he does. There's only one thing he's going to do, he's going to rip everything apart because you kept him in a cage and treated him like an animal. That's what they did with us. Even though we were in a boys' home and not in a cage, mentally we're in a cage. We're in their cage. We call that the system cage, it's all about the system, the system that runs everything."

[Regarding the state and politicians] "I would like them to take responsibility for their actions... I would like to ask politicians to take responsibility because we're a by-product of their system. That's what I'd like to say to them. Where's your responsibility in it? Or is it sweep it under the carpet like everything else."

[42] One thing Albie raised was the silence of iwi leaders. He said:

"I'll never leave what they call the gang. For me it's my iwi, it's my hapu. I say that because where was my iwi and my hapu when I was growing up?"

[43] Albie's story had an impact not just on the intended audience, but also within gangs themselves. Although they talk about their experience of welfare homes amongst their own, Albie gave those private conversations public validation. Him breaking the silence led to others being able to start talking about it in the media.

[44] I later wrote "Once Were Kids" which delved into the institutional racism that underpinned the state abuse story.⁵ This pulled together some of the themes of my previous research, putting the issue in its larger historical context.

Parallels to International Indigenous Experience - *A Quiet Genocide*

[45] Watching the Apology to Australia's Indigenous Peoples in 2008, and because of my experience of adoption, I formed the view that a similar thing had happened here. Dr Maria Haenga-Collins completed her masters and then a PhD on the adoption of Māori children.

⁵ Attached at Tab C.

Although the separation of Māori children from their whānau wasn't an explicit policy as it was in Australia, a combination of policies led to the same results. Confusion, lack of identity and culture, this reflected a lot of my own experience. I was conscious of trying to stand back from my personal experience and looking at the evidence on its own merits. Was there really a similarity?

[46] Maria did her PhD under in Australia under Peter Read, the historian who had exposed the Stolen Generations in Australia and coined the term. I was also introduced via email to Wilton Littlechild, a Cree man who was one of the Commissioners for the Truth and Reconciliation Commission, a survivor of the residential schools also. On the importance of lived experience for the Commissioners, Wilton Littlechild said:

"I remember being asked quite angrily, 'what makes you think you're going to believe my story, I've told it seven times, nobody believes me, what makes you think you're going to be able to hear my story?'"

"At first I felt I was being personally attacked. They didn't know I was a residential school student for 14 years. So I told them I really appreciated their testimony, their lived experience, because they were telling me my story. Many times. The experience they were talking about was my story. That's why I felt that I could believe their story."

"When that got across on the moccasin telegraph as we call it, that here was a former student sitting as a commissioner, they opened up. They were quite willing to tell me their experience once they knew I had been down that path myself. It was very helpful. But it started out with a level of mistrust or distrust or lack of trust. We had to build that trust and it took us about a year actually, to build enough trust for the survivors to be willing to come forward and tell us their experience."

"Justice Sinclair, the chairperson, she didn't go to residential school but her parents did. And Marie Wilson she didn't go to residential school either, but her husband did. That link, that bond between the three of us, I think was really helpful to make sure we strengthened our foundation of independence."

[47] In the final report from the Canadian Truth and Reconciliation Commission, one could read material that was uncannily similar to Elizabeth Stanley's book.

[48] During my research I found discussions and scholarship looking at the question of whether the removal of indigenous children amounted to genocide. While genocide is usually

thought of as mass slaughter, the UN definition is not limited to that. It mentions a number of actions that destroy a group, including the removal of children.

[49] As Littlechild put it, genocide is not just about massacres:

“Was it or is it genocide? Sometimes the worst situations around the world are taken and we’re told, ‘well yours wasn’t genocide because they didn’t have these outright killings, you weren’t shot to death, butchered’. But in some cases, people argue it’s just as bad, it’s a slower death, a psychological death through these policies, which is still at the end of the day applicable under the definition of genocide.”

[50] The interviews with Wilton Littlechild, Peter Read and Vicky Tauli-Corpuz gave crucial international perspectives on the issue. While they didn’t know about the New Zealand situation, their expertise in their respective fields put what happened here in a broader context. Indigenous peoples in colonised countries have lost their lands, their culture and then their children. This played out in different ways using different legislation and terminology, but the pattern was undeniably the same.

[51] Both Read and Littlechild explained how when the issue came to public attention there really wasn’t an over-arching narrative to explain what had happened. It was not just that the majority of the population that did not have the bigger picture, but many survivors themselves also did not grasp the larger context of what had happened to them personally.

[52] Peter Read says that at first, it also took him some time to understand the government processes that led to indigenous children being taken.

“I didn’t realise the sensational nature of the story to be honest because I was more concerned with the individual people, some of whom I knew already from my work. Or I’d met their parents or grandparents in the course of travelling around the state. The enormity of what was going on did take a while to sink in, partly because I was so concerned about the individual stories.”

“When I showed this to friends who hadn’t been working in the archives with me I wasn’t saying, ‘look, there was this policy designed to put an end to Aboriginal culture’, it was, ‘look this woman has been driven mad by the state’. Some files just say she finished up in an asylum in 1923 aged 38. No more was heard of her. The file just ends there. I’d say, ‘look at this for goodness sake, these people are being driven mad by the state’.”

“That’s the big breakthrough as I look back now. So much of our terrible Aboriginal history is still argued about. But the Stolen Generations has made it to the national consciousness, the national imagination, and most importantly the national curriculum. Basically, it’s like the First World War - it’s part of our curriculum, it’s part of our history. Even the federal government doesn’t argue anymore that it shouldn’t be on the curriculum.”

[53] That process took years but now both Canada and Australia have acknowledged it in an official way that this was an event in the nation’s history.

[54] I asked Vicky Tauli-Corpuz, the UN special rapporteur for indigenous peoples, if what happened in New Zealand could be compared to what happened in those countries if New Zealand didn’t have such explicit, legislative targeting of Māori. Her response was unequivocal:

“Even if there is a lack of explicit policy, if the actions that have been taken are similar, then we can say it’s a parallel. It’s really the act that is more important than even the policy. In some cases there are policies. But what is even worse is if there are no policies but the actions that have been taken are basically the same in nature. So you cannot say because there was no explicit policy that it never happened.”

[55] The numbers can provide a better comparison than looking at the written legislation or policy. When New Zealand is put alongside those countries, on a proportion of the present-day indigenous population taken into state care, against the time period, the situation appears worse. Comparing with Canada and Australia, more Māori children were taken as a proportion of their overall population over a much shorter period. While these numbers are approximate and need more analysis, even on available data they show a picture that makes comparison with Australia and Canadian experience unavoidable.

[56] Tyrone Marks’ story was at the heart of “The Quiet Genocide”. Tyrone’s story is one of the worst I have come across for several reasons – his young age and the circumstances he was taken under, the number of welfare homes he went through and his experience at Lake Alice, and his story was also a part of a Treaty of Waitangi claim.

“Maybe it was right for the social welfare to intervene. But they should have intervened and made things right instead of treating me the way they did. They should have just left me where I was. I wasn’t

sexually abused at home. I might have been mistreated but, shit, I wouldn't have had to suffer all the other things that I went through. All I've done while I was in there was survive. What I've done in my life after that is survive. That's all."

"They left me uneducated. They took away what I didn't have anyway. And then treated me like shit. Let me be abused at their hands and other people's hands."

"But why? Why?"

[57] We've seen the media coverage overseas on the US-Mexico border of the trauma of children being separated from their children and incarcerated. It's international news. I had the privilege just recently of being selected for the Ochberg Fellowship at Columbia University in New York. I met journalists who were covering this very issue, the trauma of separation. Although I had drawn attention to the trauma of abuse, from conversations with these journalists I realised that I had largely overlooked the trauma of separation.

[58] Al Jazeera published *A Quiet Genocide* to an international audience in November 2017.⁶

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[60] As reflected in my work, I state emphatically that what happened in the past, and is still happening in New Zealand regarding the removal of Māori children is directly comparable to what happened to indigenous children removed from their families by the state in Australia and North America.

⁶ <https://interactive.aljazeera.com/aje/2017/quiet-genocide/index.html>

The Behaviour of the State – the State is a Psychopath

[61] Following the announcement of the Royal Commission of Inquiry, I wrote a piece for *North & South* that had a similar purpose as my evidence here in the Contextual Hearing.⁷ It was a closing of the circle – many of the issues and questions that had led me to do the coverage of abuse in state care had started during the time I'd first written the story about my adoption for *North & South* in 2014.

[62] In that story, I used the analogy of a psychopath as a way to describe the behaviour of the state to summarise what was a complex set of decisions over a long period of time in relation to historic abuse in care.

[63] I don't say this to be sensational or facetious. Legal powers were used by the state to remove children from their families for a variety of reasons and many of those children were then raped, sexually and physically abused and neglected while the state was responsible for their care and upbringing. Those are the crimes of individual perpetrators, but what has been the state's response to the actions of its employees?

[64] From what I have found, I can see that the state's behaviour towards the survivors fits into many of these criteria - Lack of remorse or guilt. Manipulative. No insight into the offending. Inflated ego. Lying. Callous. Shallow emotions. Insincere speech. Arrogant and selfish. Violent. High risk of reoffending.

[65] I am not accusing individual employees of being psychopaths, but many of their decisions, taken collectively, add up to a pattern of behaviour that is about putting the interests of the state ahead of the interests of victims in ways both subtle and stark.

[66] The state is not an impersonal machine. It is made up of individuals within organisations. Those individuals make choices from a number of options. There is nothing inevitable, preordained or mechanical about those choices. What did representatives of the state know, both public servants and those in political positions, and what did they do with

⁷ <https://www.noted.co.nz/currently/currently-social-issues/abuse-in-state-care-nz-inquiry-aaron-smale-path-to-justice>

that knowledge? To what extent were the interests of the survivors in conflict with the interests of the state?

[67] A long list of powerful people made decisions about the problem of abuse in care. It is my view that those decisions were made not to take responsibility for what happened, but to protect the state's reputation and financial position, particularly where it was in direct conflict with survivor interests.

[68] There is no institution that can truly hold the state accountable, and the courts are extremely limited.

[69] There are any number of points I could start from to illustrate this, but the example that most comes to mind is Lake Alice. I will not here outline the severe abuse, or torture, suffered by children kept there in an adolescent unit between 1972 and 1977, and before and after these dates as well.

[70] Fast forward 20-odd years to the 1990s when these children were adults and there was a gathering momentum to take a claim against the Crown. A couple of individual claims had occurred and around 1998 a class action suit was filed against the Crown by lawyer Grant Cameron on behalf of over 50 former patients of the Lake Alice adolescent unit. The claim was filed when National were in government. Helen Clark in opposition promised to resolve the claim. There is some overlap in the handling of the case because in 1999 Labour came into government.

[71] I made an OIA request of Crown Law in November 2017, asking for documents relating to this claim. I sought the Crown's legal strategy and correspondence between Crown Law, the Attorney General, Prime Minister Helen Clark. Crown Law refused to give any documents relating to the legal strategy, citing legal privilege. I made a complaint to the Ombudsman, arguing that the case was closed and there was public interest in the details of what had occurred. This complaint took 18 months to resolve and was not upheld. I tried to get copies of the ministerial briefings for Paula Bennett regarding abuse in care that would have been drafted as she was the incoming the Minister for MSD; this had to be re-started after the

portfolio was handed to Anne Tolley. I lost track of where it got up to. I would anticipate the Royal Commission will be able to obtain these documents and others in order to understand the Crown's decision-making process.

[72] I did receive some documents from that request, although they were heavily redacted. One of them was from the Ministry of Health, briefing the incoming Minister of Health and indirectly Cabinet. The document gives a limited glimpse into the thinking around the forthcoming claims and the options that the state had at that stage.

[73] The Briefing states that many of the claimants from of Lake Alice adolescent unit were wards of the state and they had been in other institutions run by the Department of Social Welfare before arriving at Lake Alice and further, that some were making allegations of abuse in those institutions as well. The pathways of survivors into and through care institutions are a recurring theme that has never been looked into with any independent assessment. This is one key area where the system hurt survivors, that the state was aware of, and it remains to be seen what was done with that knowledge. The overlap between different state agencies or ministries is again something that needs independent assessment.

[74] Again I ask, with the knowledge that many survivors were saying they had experienced abuse while under the care of different departments, what was done by the state? From the briefing itself, it looks like the major concern was the limiting of potential litigation from the Lake Alice claim to the Ministry of Health alone and protecting the financial liability of the Department of Social Welfare and the Department of Education. Those who were abused by the state as children are barely mentioned.

[75] In his response to the briefing, the Minister requests a meeting with the Treasurer and Minister of Social Welfare along with officials. That indicates that the Minister of Health, and Cabinet knew the Lake Alice case had implications beyond the Ministry of Health, and again I suggest that what was decided about how this was to be handled deserves the scrutiny of independent assessment.

[76] The Briefing from the Ministry of Health lays out options as to how the government should respond. One of those options was to “use all technical legal defences.” In my view, this is the option that predominated in the state’s responses to allegations of state abuse for the next 20 years. This strategy, and the ensuing adversarial process, I believe, is one of the main reasons we are now having a Royal Commission of Inquiry.

[77] In the end the Lake Alice claim was settled by the Labour government led by Helen Clark, the victims were given a pay-out, and received an apology. From the evidence that I have been able to gather, it appears to be the cheapest option for the state. Again, if this process could be assessed independently, the survivors might be able to understand the intentions behind the settlement of this claim.

[78] During the settlement process Justice Rodney Gallen was appointed to decide how the financial settlement should be divided amongst the victims. While this was the extent of the brief, Justice Gallen also conducted a thorough process and interviewed most of the claimants, read their statements of claim and looked at other relevant documents, and wrote a detailed report in 2001. Justice Gallen’s description of the abuse is “outrageous in the extreme.” When discussing the sexual abuse, he doesn’t equivocate at all. He simply says it happened. He spends longer discussing the use of ECT, trying to determine whether it was a legitimate treatment or whether it was being used as punishment. He leaned heavily towards the latter.

[79] This report was eventually leaked to the media.

[80] The government sought a court injunction to try and prevent its publication, this was declined and the report able to be published. Who made this decision to try and suppress the report and what was their true motivation? The report simply stated the facts. The state’s behaviour here seems to undermine the sincerity of the apology and financial redress.

[81] The publicity the case had attracted led to more victims coming forward. These victims weren’t represented by Grant Cameron but instead by David Collins.

[82] Grant Cameron gave some files to the Police to support their investigation, but those complaints languished. This was in 2002. The Police announced in 2010 that there wasn’t

enough evidence to lay any charges, and that decision was made after receiving advice from Crown Law, and a question remains as to what extent this influenced their decision-making process.⁸ To my knowledge the Police did not receive all of the formal statements of former staff members of Lake Alice given to Crown Law. Privilege was waived by Attorney-General Christopher Finlayson in relation to six statements, but I understand there were a substantial number that haven't been released.⁹

[83] In the case of Lake Alice we have the views of Justice Gallen that the crimes against the children at Lake Alice were not only “outrageous in the extreme”, the financial settlement and apology, yet no one was ever charged with criminal offences. Actually, the complaints were barely investigated. Why?

[84] While only the Royal Commission has the power to seek the answers we need, from what is publicly available or available under the OIA, I have concerns around the Police investigation. Multiple allegations of child abuse like that which occurred at Lake Alice would ordinarily be the focus of considerable Police attention and resources, yet only a few Police officers were involved.

[85] Crown Law provided legal advice to assist the Police investigation. If Ros Noonan's account is correct, it was Crown Law that was putting pressure on the Attorney General to “shut it down”, and the investigative arm of the Police was seeking legal advice from the same entity.

[86] Crown Law is responsible for both prosecution and is tasked with representing the Crown's interests. I question whether the acceptance of a state system like Crown Law to manage the conflict of interest apparent in this case was ever realistic. I question whether the individual perpetrators would have avoided criminal charges if they hadn't been state employees. I doubt that the decision-makers would have been happy about these decisions if it had been their children who were raped and abused.

⁸ Police Report

⁹ Letter from Crown Law 20 December 2019 to Mike Wesley-Smith.

[87] Finally, Lake Alice is not the only case I'm aware of where perpetrators have not faced consequences, despite numerous credible allegations.

[88] If the Crown had ample motivation not to investigate itself, it certainly found the resources and tactics to defend itself.

The *White* Trial

[89] Following the Lake Alice litigation in the late 1990s, the Crown deployed "use all technical defences" again during the *White* Trial in 2007.

[90] I understand Sonja Cooper is giving evidence, so I won't go over the details of a case she is far more qualified to cover.

[91] I will pick up a couple of points that I think are relevant to my evidence. The *White* Trial was a test case and had the potential to set a precedent. Not only would such a decision pertain to the claimants in the *White* trial, it would mean any victim of historic state abuse would be able to take their case to court and find a resolution there.

[92] During the trial, the survivor describes being sexually assaulted by the cook at Hokino Beach School, Michael Ansell (Ansell was convicted for sexual offences against children). Counsel for the Crown Law pursued a line of questioning asking the survivor whether he went to Ansell's house willingly and also whether he received cigarettes after being sexually abused. The judge intervened to ask if she was arguing for a defence of consent. She said she wasn't, but she was laying a foundation for later submissions.

[93] I later interviewed the survivor from the *White* trial who was deeply distressed by what he was put through during cross examination. He was victimised twice, as a child and as an adult, and both times the state had control of the situation. I have seen re-traumatisation and re-victimisation again and again with the victims I have met. Regardless of the sincerity and personal sympathy that individuals may have, the process which still exists to protect the state.

[94] On a number of occasions during covering this topic I have come across many troubling accounts and information. One of the most troubling was something the claimant in the *White* Trial mentioned, almost as an aside. When talking about Hokio Beach School he mentioned Jules Mikus, the individual who kidnapped, raped and murdered the young schoolgirl Teresa Cormack in the 1980s. He claimed Mikus had been at Hokio at the same time as him. What stuck out in his mind was that he remembered seeing Mikus crying in the storeroom in the kitchen. This was where a lot of Ansell's offending took place. This is just one chilling anecdote that I've heard.

[95] How many of our most vicious and serious offenders are a product of the abuse inflicted on them while they were in the custody of the state as children? This in no way excuses their offending or absolves them of responsibility for their choices, and the majority of victims of state abuse did not end up committing such crimes. Yet I have heard that a startling number of our most notorious criminals had the state as their parent. What has the state done to acknowledge and address the serious harm caused by these individuals raised in its care? They are held culpable for their crimes and rightly so. But when and how will the state be held accountable for any crimes it has committed against them?

[96] In the *White* trial it was found that the sexual abuse occurred, although the Crown effectively won the case due the statute of limitations. The case also found that ACC provided a remedy. I've been told from survivors that ACC has strict limitations about the funding it provides support for those who have been damaged by abuse in state institutions, and survivors struggle to get support from the ACC framework. The *White* Trial set a precedent that favoured the state for all historic abuse claims to come. Peter Hughes was Chief Executive of the Ministry of Social Development during the period that the *White* trial was going through the courts. Sir Terence Arnold was Solicitor General from 2000 to 2006 when the *White* case was being prepared and when key decisions were made regarding Lake Alice.

[97] With the liability squarely limited, the Crown then set up a redress scheme where it got to determine the extent of the abuse and the amount it was willing to pay out. The perpetrator set itself up as the judge. This redress scheme continues to operate and the

frustration and hurt it has caused has been one of the major factors leading to this Royal Commission of Inquiry.

[98] Looking at the Lake Alice case and the *White* case together, they show how the state systems in place work to avoid being held accountable in both the civil and criminal jurisdictions.

Māori Men

[99] I want to conclude by laying down a challenge to this Royal Commission. I specifically want to talk about Māori men, who Once Were Kids. I want to qualify what I'm going to say about Māori men by stressing that I don't mean to disregard the lived experience of non-Māori or women, particularly our wāhine Māori.

[100] The biggest identifiable group of victims who went through the welfare system that is the subject of this inquiry were Māori boys.

[101] There have been many others who have advocated for Māori children in state custody over decades. Many are giving evidence during this hearing or in hearings to come. I'd particularly like to acknowledge Moana Jackson, whose work in this area and advocacy for Māori in many areas spans decades, and Sir Kim Workman, whose career spans and is connected to this issue in so many ways. Their support and encouragement has meant so much.

[102] You'll hear from Oliver Sutherland from ACORD and he will provide you with ample evidence that the state was aware of abuse back in the 1970s and 80s. They were aware because people like Oliver were relentlessly lobbying and advocating for Māori children that were being incarcerated in places like Owairaka Boys Home. Many of these children were also ending up in prisons.

[103] Despite these voices, Māori men are conspicuous by their absence from the public conversations around this issue. We all know that Māori males occupy all the worst social statistics. And yet this is practically accepted as some kind of norm that is not worth

discussing. I don't accept this and I never will. Māori men are not inherently violent, or dumb or criminal or any other negative label that has been put on them. I think this Royal Commission also needs to thoroughly investigate the underlying institutional racism that led to large numbers of Māori children ending up in welfare institutions.¹⁰

[104] Referring to the gang hui I attended in February 2017. I spoke to an older guy who was wearing sunglasses and hadn't said anything to me at first. I later saw him sitting by himself on a seat outside the wharenuī. For some reason I thought I'd go over and have a talk to him.

[105] Within a few seconds he was offloading his story to me. I won't tell his story here. It's his to tell. It was heart-breaking. As a photographer I'm a visual person and this guy was very obviously a gang member and working in radio I was also attuned to sound. What I was seeing was the typical image of a gang member. But what I was hearing was a scared, hurt little boy who had put on a mask to protect himself from a hostile world.

[106] There was one thing he kept saying which has haunted me since. He kept saying, "what did I do wrong, what did I do wrong, what did I do to deserve that?" All I could say was "nothing, bro, you did nothing wrong." What he had done was wag school for one day and he got four years of incarceration in welfare homes. And yet here he was nearly 50 years later, still broken by that experience.

[107] This man's question echoed my own. When reading that most of the Pākehā couples lining up to adopt children in the 1970s didn't want a Māori boy, I took it personally. What had we done wrong? What was wrong with us? Even as newborns, Māori males are judged as somehow unworthy or flawed.

[108] I met one survivor who, while incarcerated, discovered that his security classification ranked him as a high risk of escape. This would have had effects on privileges and rehabilitation opportunities while in prison, that has a flow on effect for chances at parole or work-placements for release readiness. He had never tried to escape from jail. The high risk

¹⁰ This issue discussed in the article "Once were Kids" attached at Tab

of escape ranking was because he'd run away from a welfare home when he was a kid - to escape the abuse. The Corrections system was re-victimising him as an adult.

[109] Why should children who have been abused with impunity while in state care then respect state authority or societal norms when they become adults? Why should children who have been told they are rubbish by their state caregivers have any respect for themselves or others? What would being raped repeatedly as a child do to later intimate relationships?

[110] I hope that this Royal Commission of Inquiry has a very deliberate focus on how the abuse of children in state care affected Māori, particularly Māori boys who then became men. Hurt, angry, damaged men. Their pathways into and through the different forms of "care" – foster homes, welfare homes – in many cases led on to other state institutions - psychiatric hospitals, borstals, and prisons. While the state has concerned itself with the fiscal cost to itself of compensation, what is the true cost to survivors, their whānau, hapu and iwi, and what is the cost to the rest of society? Like the man with the high-risk security classification, how are the state's other institutions continuing to punish these individuals and their whānau over the course of their lives?

[111] The impacts of that abuse continue to unfold in people's lives to this day. Trauma has ways of affecting people's lives at every stage. Since I began writing these stories in 2016 there are at least three survivors I'm aware of that have died premature deaths. There have been numerous suicides and death by drug abuse long before then. Many survivors have poor health. Trauma does that to the human body. I've been told that around 90 percent of prison inmates suffer some form of mental illness, which can often be related to trauma. It is not only those who went through welfare homes in the 60s, 70s and 80s who are affected. This continues to affect their children and grandchildren and, in many cases, their great grandchildren. They are the ones that are now tagged by the newest incarnation of the state, Oranga Tamariki, as being high risk. From what I have heard from the people I have met, I truly believe the greatest risk, the greatest threat those children face is an intervention from the state. Eighty three percent of prison inmates under the age of 20 have been in state custody as children. How is the state's intervention in the lives of Māori children in their best interests if they end up in jail? It's almost like a pre-emptive strike. Let's lock them up to try and contain

the problem early. The state has shown repeatedly and continuously that it has not learned anything, and it has not learned anything because it has never taken responsibility for its failures.

[112] The economic and social policies that led to this issue continue in various forms to this day. Māori are continually told to take responsibility. That would be fine if it wasn't so rich in hypocrisy. When is this country, when is the state going to take responsibility for what it did to thousands of children, particularly Māori children? When will New Zealand front up, as the colonial states of Canada and Australia have done?

[113] To all those who have experienced or witnessed abuse in care, you are not only victims, you truly are survivors. On more than one occasion I have walked away from a conversation or an interview with a survivor, shaking my head in astonishment and asking myself – how *did* they survive? How did they go through all of that and still function? How much abuse and trauma can one human being go through.

[114] Their resilience continues to amaze me. Some of the survivors I am honoured to call friends. Just when I think I've heard the worst they've been through, they will casually drop another detail that knocks me sideways.

[115] I've met people from all walks of life during a varied career but I've never met a bunch of people who can read you so quickly; who can spot a lie from a mile away; who can tell you about some awful thing that's happened to them, then crack a joke about it and roar with laughter, while knowing that the laughter is just one more coping mechanism they use to deal with the memories and hurt they carry.

[116] As a journalist, as a historian, as a film-maker, all I can do is tell stories. But I know that stories have the power to change things, but only when they are told and when they are heard. I've had the privilege of telling the stories of survivors of unspeakable acts of abuse at the hands of the state. I've also had the responsibility to tell the story and expose what the state has done in response.

[117] Many state abuse survivors have suffered prejudice and bias against them their whole lives – because they are Māori, because they are poor, because they are wards of the state, as prison inmates, as gang members, as those who suffer mental illness. They have been looked down on, vilified, ignored and silenced. The least I can do as a story-teller is to give them a voice, to break down that wall of silence that has imprisoned them, to give them the dignity of being heard.

[118] I hope this Royal Commission gives them that dignity on a bigger platform than my storytelling could provide. I also hope that this inquiry interrogates the state to get answers to the questions that I have raised in my evidence, that survivors have raised when telling their stories. I hope it interrogates those individuals who made the decisions, decisions that have not only failed survivors but have added another layer of abuse. I hope this Royal Commission finally holds the psychopath accountable.

[119] If it doesn't it will have failed victims, both those who have survived and those who didn't make it to see this day, and those who won't make it to 2023.

[120] This Royal Commission has a responsibility to officially record what happened in this ugly chapter of country's history and New Zealand society needs to confront all parts of what was done and why. In the words of a descendent of Canadian survivor quoted in the TRC report:

"I think all Canadians need to stop and take a look and not look away. Yeah, it's embarrassing, yeah, it's an ugly part of our history. We don't want to know about it. What I want to see from the Commission is to rewrite the history books so that other generations will understand and not go through the same thing that we're going through now, like it never happened."¹¹

¹¹ Final Report of the Truth and Reconciliation Commission of Canada, page 13.

[121] I want to finish my evidence by giving Tyrone Marks, survivor extraordinaire, and survivors the last word. Speaking of the state, he said:

“They just breach every principle, ethically, morally and they don’t take responsibility. We’ve had to take responsibility for everything we do in life. But they don’t. They haven’t.

I know my story. But I want to hear the state tell its story. I want to hear them give their explanation for what they did to us.”

Signed:

Date: