

**STATEMENT OF PAULA TESORIERO, DISABILITY RIGHTS COMMISSIONER**

**to the Abuse in Care Royal Commission of Inquiry**

**5 November 2019**

1. E ngā mana, e ngā reo, raurangatira mā,  
tēnā koutou katoa.  
Ko Paula Tesoriero ahau.  
Ko au te Kaihautū Tika Hauātanga, mō te Kāhui Tika Tangata ki Aotearoa.  
Nō reira, tēnā koutou, tēnā koutou, tēnā koutou katoa.  
Mauri tangata, mauri ora
  
2. I would first like to acknowledge those who have fought so hard for this inquiry to take place. It is because of the courage and persistence of many people, over many decades, that I have the opportunity to address you today.
  
3. And equally I acknowledge all survivors – you were failed by the very system that claimed to protect you. We owe it to you to get this inquiry right. I acknowledge you all – those who helped raise awareness of the wrongs that were inflicted on you, those of you who suffered in silence, and those of you who are no longer with us. Moe mai rā.
  
4. I also wish to acknowledge those who have gone before me at the Human Rights Commission. Later in the week you will hear from former Chief Human Rights Commissioner, Rosslyn Noonan, about the important work that the Human Rights Commission did in this area during her tenure leading the Commission. I also acknowledge the clarity, commitment and tenacity of both Paul Gibson, my predecessor as Disability Rights Commissioner, and the former Race Relations Commissioner, Dame Susan Devoy. They and their teams were instrumental in building the momentum leading to this inquiry. I thank them for their mahi.

5. In particular, the *E Kore Anō / Never Again* campaign launched in 2017 contributed to greater public awareness about the nature and extent of the abuse that occurred in places under control of the state. Many New Zealanders signed the Human Rights Commission's open letter to the then Prime Minister, demanding justice for survivors of state abuse and calling for an independent inquiry. The present government made a commitment, during the last election, to establish an inquiry into the abuse of children in state care, within its first 100 days in office. This promise formed the basis of the inquiry that we have today.

***Why is this a human rights Issue?***

6. The Human Rights Commission retains a strong interest in these matters and in the work of this inquiry. Abuse of citizens at the hand of the state constitutes a grave human rights violation. Indeed, the Universal Declaration of Human Rights was developed in response to the atrocities that occurred during World War 2 and the fatal consequences of a State devaluing its citizens based on certain characteristics.
7. This inquiry has already heard powerful words about colonisation, about breaches of Te Tiriti o Waitangi, New Zealand's own human rights document. New Zealand was a significant architect of the Universal Declaration of Human Rights, and obligations under te Tiriti are echoed in the Universal Declaration. Both documents call for equality.
8. Since the Universal Declaration 71 years ago, New Zealand has signed up to several other major human rights treaties, including the United Nations Convention Against Torture, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, and the International Covenant on Civil and Political Rights. We have also endorsed the Declaration on the Rights of Indigenous Peoples. These international commitments all detail how New Zealand will promote the human rights of particular groups of people. They also reinforce the New Zealand government's obligation to honour te Tiriti. We like to think of ourselves as human rights leaders, a great place to bring up children, and a fair and just society.

9. But this is not true for everyone. Our institutions and systems have failed many of those whose rights we were meant to uphold. These victims include children and young people, and those who have experience of mental, intellectual and physical impairment. We recognise the burden of abuse that has fallen disproportionately on Māori. This Inquiry will assist in exploring the true depth and magnitude of that burden, one that has not been out in the open or acknowledged, for Māori, and for disabled people, and for many others. We do know, from the stories we have already heard, that the physical, sexual and emotional abuse inflicted on thousands of people has had horrific long term, often intergenerational, impacts.
  
10. I would like to focus specifically at this point on the impact of state abuse on disabled people. You have heard and will continue to hear from many during this contextual hearing, and throughout the inquiry, about the experiences of disabled people in the care of the state. Anyone who has experienced abuse in the care of the state can face personal, structural and environment obstacles when they come forward and seek acknowledgement of their experiences and answers to their questions.
  
11. But disabled people may be further hindered by additional social, physical and emotional barriers. These make it even harder from them to tell their stories, to be taken seriously, and to access and participate in accountability processes. Systems that are already convoluted, unwelcoming, and obscure can become effectively impregnable. The system can take advantage of this silence.
  
12. In 2017 the Human Rights Commission engaged the Donald Beasley Institute to undertake some research to find out what was known about the abuse of people with learning disabilities and other types of impairments in state care. Their stories were largely absent from the growing public discourse or official records to date. You have already heard from Dr Brigit Mirfin-Veitch about the outcome of that project and what she found. Her findings provided a small glimpse into the experiences of a group that has been effectively invisible from the community, both because of the manner in which they were historically detained by the state but also in the public consciousness.

13. In 2008 New Zealand ratified the Convention on the Rights of Persons with Disabilities.

This convention does not accord new or additional rights to disabled people. It articulates the measures needed to overcome the structural discrimination that has prevented disabled people from enjoying universal human rights on an equal basis with others. It is therefore totally applicable to the early period of focus for this inquiry, as well as in the present.

14. New Zealand has made a commitment to uphold the rights in the Convention. I want to highlight just a few of the rights contained in the Convention, which are particularly relevant in the context of this inquiry:

- i) The right to equal recognition before the law
- ii) The right to access to justice
- iii) The right to liberty and security of the person
- iv) The right to freedom from torture and cruel, inhuman and degrading treatment or punishment
- v) The right to freedom from exploitation, violence and abuse
- vi) The right to live independently and be included in the community
- vii) The right to respect for home and family – the Convention states that in no case shall a child be separated from parents on the basis of a disability of either the child, or one or both of the parents.

15. I urge you to actively uphold these commitments during the course of this Inquiry and particularly as you shape a vision for the future. To assist you in doing so, I direct your attention to relevant jurisprudence of the Committee on the Rights of Persons with Disabilities with regard to legal agency and supported decision-making. I refer you to: General comment No 1 on Article 12, Equal Recognition before the law, and the associated March 2018 Report of the Special Rapporteur on the Rights of Persons with Disabilities; and her 2019 report to the Human Rights Council on Ending the Deprivation of Liberty on the basis of disability.

### ***What I expect to see from this inquiry***

16. Commissioners, I acknowledge the considerable work that you have put in to date. You have a complex task and hold a huge amount of hope in your hands. I wish you well in your endeavours. I also want to make clear my expectations for this process.

- i) The inquiry must model a human rights approach, consistent with te Tiriti o Waitangi. This means tino rangatiratanga; full participation by affected people; meaningful accountability; ōritetanga – equality; and transparency. It means looking beyond detention or protection, beyond inclusion, to agency.
- ii) I want to see an inquiry that places the survivors at the centre – an inquiry that is truly and genuinely concerned with the wellbeing of those who have been affected. An inquiry that will do whatever it takes to be accessible and inclusive, and to promote, encourage and enable all people to participate.
- iii) It will be founded on principles of non-discrimination and empowerment. It will also be consistent with the state's obligations and commitments under Te Tiriti o Waitangi – it will give meaningful effect to these duties and responsibilities: honourable kāwanatanga; tino rangatiratanga; ōritetanga.
- iv) It must acknowledge the many losses suffered: losses of whakapapa, identity, educational opportunity, income, and wellbeing. Losses of life. It must lead to accountability and mechanisms for tailored redress and rehabilitation. It must help make good the wrongs that have occurred and the injustices that have been done.
- v) I want to see the inquiry carefully consider whether New Zealand has complied with its domestic and international obligations. Have we fulfilled the commitments made on the international stage, or have we just paid lip service to them? Are we the human rights leaders we want to be?

- vi) I want to see an apology – a meaningful, genuine apology for what happened. One that will mean something to those who survived the abuse that was inflicted on them, that will acknowledge the enduring hurt and trauma and will assist individuals to find a pathway forward.
- vii) It must also consider contemporary experiences, because disabled people continue to experience abuse within state funded services, and continue to be neglected, bullied abused and silenced – as they do in wider society. We must ensure that lessons are learnt from the past to deal effectively with the present and the future. You must also act with urgency where existing abuse is brought to your attention.
- viii) Most of all I want this inquiry to build towards a future where no one is detained solely because they are disabled, they are Māori, or they are impoverished. I want to see courageous honesty about the structures that continue to perpetuate abuse. We must dismantle not only the physical but also the conceptual walls that work to separate us, and which devalue diversity and difference. These continue to create fertile ground for abuse. Fulfilling our human rights obligations, by ensuring truly equitable access to adequate resources; by upholding the right to support to exercise legal agency; and by ensuring that all voices are heard; is the best way to ensure that these things cease and will never again be part of our future.

***E kore anō***

## References

1. Committee on the Rights of Persons with Disabilities General Comment No1 Article 12 Equal Recognition before the law: Retrieved November 2019 from [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/1&Lang=en)
2. Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities The right to liberty and security of persons with disabilities Adopted during the Committee's 14th session, held in September 2015 retrieved November 2019 from <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx>
3. Rights of persons with disabilities Report of the Special Rapporteur on the rights of persons with disabilities to the Human Rights Council Fortieth session 25 February -22 March 2019 report to the Human Rights Council on Ending the Deprivation of Liberty on the basis of disability. Retrieved November 2019 from <https://undocs.org/A/HRC/40/54>