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JUDGE ANDREW BECROFT - AFFIRMED

3

EXAMINED BY MS SPELMAN

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5 **MS SPELMAN:** I'd like to call our next witness who is
6 Judge Andrew Becroft.

7 **CHAIR:** Thank you, good morning, Judge Becroft. I am
8 required by the Inquiries Act to ask you, just as
9 you commence, as follows - (witness affirmed).

10 **MS SPELMAN:**

11 Q. Before we begin, Judge Becroft, if I could ask you to
12 refer to the statement in the folder before you. And I
13 believe it's signed by you on page 16?

14 A. Signed and dated.

15 Q. And could you confirm the statement is true to the best
16 of your knowledge and belief?

17 A. I do.

18 Q. Thank you. Before I begin with questions, I understand
19 you want to outline briefly the evidence that you're
12.19 20 going to give today?

21 A. If I could begin (talks in Te Reo Maori). Can I begin by
22 making six brief introductory points which I hope both
23 set my evidence in context and provide a summary of the
24 key issues that my evidence raises?

25 Firstly, I begin by acknowledging the suffering,
26 hurt and violence experienced by the many who have been
27 victims of State care and the abuse they have suffered
28 and the strength and courage they have demonstrated
29 already in sharing their experiences.

12.20 30 As the current Children's Commissioner, as a father,
31 brother and son, I want to acknowledge it is a harrowing
32 experience, as it must be for all of us, to hear about
33 the extent of abuse that children and young people have
34 experienced and it is particularly hard knowing that the

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1 abuse in State care continues today.

2 I need to acknowledge too that as a Judge and as a
3 Pakeha male, I come from a position of privilege and have
4 enjoyed a stable and loving family myself. But my
5 current role comes with significant responsibilities and
6 obligations to give voice to children and young people
7 today, particularly children and young people in care,
8 and I want to do justice to that responsibility.

9 Number two. I need to be very honest from the
10 start, to say that since 1989 the Office of the
11 Children's Commissioner has been the independent monitor
12 of both Child, Youth and Family and more recently Oranga
13 Tamariki, with a responsibility to monitor the practices
14 and policies of the State care system.

15 To the extent that that system has failed our
16 children, there is at least, by implication, a
17 recognition that the office has failed to properly
18 monitor the system. And I make that acknowledgement
19 carefully and I hope responsibly, acknowledging at the
20 same time that the government has never funded the office
21 to comprehensively monitor those in care and successful
22 Governments, despite requests to do so, have not, in my
23 view, sufficiently funded in any way nearly sufficiently
24 funded a state monitoring agency such as myself to carry
25 out the job. And that, in a sense, is a light motif that
26 I think will flow through the Inquiry, that to have a
27 statutory mandate for independent monitoring is one
28 thing. To resource it and to commit resources to it is
29 quite a different thing and there has been a wholesale
30 failure by successful Governments to ensure its system of
31 Care and Protection has been adequately comprehensively
32 resourced to carry out that monitoring mandate.

33 Number three. In alignment with our statutory
34 mandate, the focus on this submission is based on State

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1 care institutions. But all children have the right to be
2 free from abuse. Can I suggest that in pursuing this
3 goal, the Commission will face many difficult issues
4 along the way.

5 One, for instance, is the issue of privilege, that
6 is legal privilege that's asserted. An example is
7 provision in the Evidence Act that means communications
8 with Ministers of religion are legally protected. If
9 someone discloses that they have perpetrated or are
12.24 10 perpetrating abuse against a child, such admissions are
11 legally privileged. The issue as to whether this
12 privilege should be abolished is but one example of the
13 issues that this Commission will face. An issue that
14 faced the Australian Royal Commission also.

15 Can I say generally that privilege is a particularly
16 adult concept, usually asserted to protect adults.

17 I hope that privilege is not asserted too often to
18 this Commission. And if it is, I would urge you to
19 examine it carefully as to whether it's really necessary.
12.25 20 As I say, it is an adult concept usually to protect
21 adults and I hope privilege, wherever possible, can be
22 waived so that children are enabled to have their story
23 told clearly and what happened to adults as children is
24 told. Privilege, it seems to me, is a peculiarly adult
25 centered rather than child centered concept.

26 The fourth thing by way of introduction, is to say
27 that a particularly profound and deep issue is the
28 disproportionate number of Maori in State care and
29 therefore the disproportionate number of Maori who have
12.25 30 been abused while in State care.

31 In 1989, through Puaoteata-Tu and then
32 legislation, we had the opportunity for a genuine
33 evolution in the way we care for children. Frankly, that
34 opportunity withered on the vine very early. Now, in

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1 2019, we have a second chance for the revolution that
2 never materialised the first time. This is an obligation
3 now on us to get it right a second time.

4 The fifth thing to say by way of introduction, is in
5 my view urgent transformational change is required to the
6 Care and Protection system. I highlight that, in my
7 view, the time has come to appoint a separate statutory
8 body, a Commissioner for Children in care, maybe two
9 Commissioners, at least one of whom must be Maori.

12.27 10 There must be a truly independent monitor of the
11 Care and Protection system, empowered when necessary to
12 speak out publically as a watchdog. There must be a
13 truly independent complaints system. The systems that
14 are in place now and have been in place have not been
15 independent and are fundamentally flawed.

16 There must be closure of the large scale Care and
17 Protection residences in New Zealand. They should be
18 replaced by much smaller family based homes for two,
19 three or four children or young people but as a temporary
12.27 20 option and as a last resort. I am not advocating we
21 change a bad system to a less bad system. Wherever
22 possible, if a child needs to be removed, placement
23 should be with properly resourced, supported and assisted
24 wider family or kincare.

25 And the final point to make by way of introduction,
26 point 6, is that I urge the Commission, with great
27 respect, to exercise your discretion regularly and
28 consistently to consider issues and experiences of those
29 in care after 1999 through to the present day. I say
12.28 30 that because it's often asserted there is a bright line
31 in the past where abuse has stopped. No-one can tell me
32 when that date is. And while one hopes that the extent
33 and depth of abuse has reduced, we know that it is still
34 happening. Oranga Tamariki, I commend them on this, are

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1 producing quarterly reports of abuse and neglect of
2 children in care which reveals a 7-10% current abuse
3 rate. Frankly, that is likely to be the rock bottom
4 number because we know that the power imbalance for
5 children in care inhibits making complaints. The actual
6 percentage is likely to be greater and we know from the
7 Australian Royal Commission it's about 22.9 years before
8 adults make disclosures of abuse as a child. So, please
9 exercise the discretion to go beyond 1999.

12.29 10 So, they are the six introductory comments and the
11 summary of where my submission will go and I'm happy to
12 be led through those submissions that need further
13 amplification.

14 Q. Kia ora, Judge, thank you for that. In terms of the
15 first point you make, you outline in your brief the role
16 of the Office of the Children's Commissioner in terms of
17 the monitoring function and you've outlined that in your
18 introduction right now. Is there anything else in terms
19 of the current monitoring role and under resourcing that
12.30 20 you wish to say at this point?

21 A. I think the submission is clear that we've got a
22 widespread statutory mandate that's never been resourced
23 or funded to match the legal mandate. We've talked a
24 good game about monitoring, it hasn't been delivered and
25 to the extent that the office is implicated in that,
26 that's admitted.

27 Q. And as I understand it, the focus of the monitoring
28 function the office can fulfil has been on residences as
29 a primary point of focus?

12.30 30 A. That is correct. About half the office's operational
31 resources go towards monitoring and assessment of Oranga
32 Tamariki. In 2012, that was two staff and a director.
33 It soon became four staff and a director. Now nine staff
34 and a director for 6,400 children in care. The decision

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1 has been made to prioritise those most vulnerable in
2 State detention, you're right, in the 9 Care and
3 Protection and Youth Justice residences.

4 Q. In terms of the pace for our stenographer and sign
5 interpreters, just to keep an eye on them as we're going
6 through, so they can capture everything.

7 In terms of the point you outlined about a separate
8 and independent monitor for children being so vital,
9 could you tell us a little about the current state of
12.31 10 play in terms of what was announced in April this year of
11 the proposed changes to how that independent monitoring
12 might work?

13 A. The Cabinet released a paper, you are correct, talking
14 about a review of the monitoring and oversight systems
15 for children in care and the complaint system. General,
16 big picture decisions were made but the detail is being
17 worked through now. An important point to make is that
18 it would be important, in my view, for government not to
19 set in stone decisions about that monitoring and
12.32 20 complaint system before it had the full advantage of the
21 Royal Commission's findings or at least leave the door
22 open for amendments to that new system, pending your
23 findings. Because this really is a once in a lifetime
24 opportunity to overhaul the system and what you will
25 determine ought to significantly influence the new
26 monitoring and complaint system that is being built.

27 Q. And you've said in your brief that the intention of the
28 review is to strengthen the independent oversight of
29 children in the care of Oranga Tamariki. Has anything
12.33 30 emerged thus far to show whether that intention will be
31 realised in terms of the new proposal?

32 A. No final decision has been made but all the public
33 communication has been that the government is committed
34 to not just small increases but a fundamental change in

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1 resourcing and oversight. Calculations made by our
2 office, to properly discharge the role of staff are
3 between 80-100 would be required and a significantly
4 bigger budget but nothing less will do if we are going to
5 take seriously independent monitoring of every child in
6 State care. But the final decisions are still to be
7 made. They are happening right now.

8 Q. So, that's 80-100 staff to do it properly, as compared to
9 currently I think you said 9 staff?

12.34 10 A. 9 and a director. We're talking about a radical and
11 qualitative change. And that, I might say, is not
12 dreaming of a Rolls Royce system. That's simply getting
13 in place what is needed to discharge the statutory
14 mandate.

15 Q. So, in terms of what else that might look like, you
16 mentioned just briefly in your introduction a new role, a
17 Commissioner for Children and Young People in Care, can
18 you tell us first a little about why you think that's so
19 important?

12.34 20 A. It is a specialist skillset to know the legislation,
21 policy and practice of the State care organisation. It
22 is a significant and demanding role in itself. I
23 envisage a Children's Commissioner and perhaps
24 co-Commissioners for children in care, one of whom must
25 be Maori, working together under the same governance
26 structure, in the same office, supporting each other.
27 But I think the time has come if we're going to
28 prioritise monitoring to have that specialist, focused,
29 independent watchdog for children in care.

12.35 30 Q. Structurally, you mentioned that that Commissioner and
31 the Commissioner for Children could become Parliamentary
32 officers?

33 A. Absolutely. I think that should be the model. You know,
34 there is a Parliamentary Commissioner for the

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1 Environment, so the taonga, treasures of our mountains,
2 rivers and lakes are watched over, cared for and given a
3 clear watchdog mandate. Surely, our children are no less
4 treasures than the physical resources? Why in principle
5 would we not have a truly independent Parliamentary
6 Commissioner for Children? That is something, in my
7 view, that needs urgent attention.

8 Q. You mentioned earlier that a motif throughout this work
9 may be the issue of resourcing. What are the differences
12.36 10 in terms of how resourcing would function if the role was
11 a Parliamentary Commissioner?

12 A. At the moment, the resourcing comes through vote,
13 Ministry of Social Development. The Minister for Social
14 Development and the Minister for children, the office has
15 a close relationship with. I think it would be far
16 cleaner and have a much greater appearance and actual
17 reality of independence, if that resourcing came from
18 Parliament, from the Speakers Committee, so that it was
19 crystal clear that this was an absolutely independent
12.37 20 role. 23% of our population are under 18 children. They
21 don't have much of a voice, certainly not a vote. It, in
22 my view, defies belief as to why we haven't had a
23 Parliamentary Commissioner for Children from the
24 beginning.

25 Q. Is it right that the other aspect structurally of being a
26 Parliamentary Commissioner, would be there's no reporting
27 line to a Minister? The administration is done
28 effectively through the Committee, The speakers
29 Committee?

12.38 30 A. Absolutely correct. And there's always a tension
31 reporting to the body that funds the watchdog, especially
32 if the watchdog is speaking out about a closely related
33 government department. It would be much better in my
34 view to remove that structural tension.

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1 Q. And you've mentioned the need for Maori representation at
2 that high level. Just so I'm clear, is it your
3 suggestion that the Commissioner for Children role would
4 be a co-Commissioner model?

5 A. And the Commissioner for Children in Care as well. I
6 think for all that we have learnt and heard already, and
7 know about the New Zealand demography, to reflect the
8 Treaty and to reflect a true governance model the time
9 has come for that role, yes.

12.39 10 Q. Can I move to the third heading in your brief which is at
11 page 6, this is the obligation to get it right which you
12 touched on earlier.

13 The first point you made about whether children are,
14 in fact, better off as a result of state intervention,
15 could you unpack that for us a little?

16 A. In doing so, I want to highlight the primacy, the
17 beginning point, being both the Convention on the Rights
18 of the Child and particular articles of that Convention
19 that provide an obligation for special protection and
12.39 20 assistance for those who have been deprived of or removed
21 from their family. But the Principal starting point to
22 give the Treaty, it seems to me, is vital to assert. As
23 an aside, the Convention on the Rights of the Child, the
24 Children's Convention, is not taken seriously enough
25 across government in New Zealand and as a symmetry, it's
26 time that we prioritised in all that we do, careful
27 application of the Convention. But as to your specific
28 question, yes, on the evidence that we have currently for
29 children in care, it shows a pattern of high health
12.40 30 education needs, poor educational achievement, a higher
31 likelihood of criminal offending for children in State
32 care, when compared to the general population. There
33 isn't enough information to show whether outcomes for
34 children in care are improving.

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1 Q. And Judge, we had some evidence earlier in the week, on
2 Monday, from Professor Stanley, and she gave evidence
3 about the way the State assesses risk in terms of
4 intervention and began to explore this idea that risks,
5 in terms of an individual or particular family or whanau,
6 were prioritised without as much thought being given to
7 the risks of state intervention and the negative things
8 that may come from even benign State intervention.

9 I just wondered if you would like to comment on that
10 thought?

11 A. I agree, and I think that is the danger and the trap for
12 every government and State intervention agency, to over
13 estimate the advantages of its intervention and to
14 underestimate the risks associated from that very
15 intervention itself. It always struck me in the Youth
16 Court, the number of boys who were remanded elsewhere who
17 were in State care, when they breached their bail it was
18 invariably for one thing to run back to the very home
19 they had been removed from. So, the pull towards the
20 family of origin is incredibly strong and perhaps
21 underestimated.

22 Q. And you mentioned earlier, I think, your suggestion that
23 really the focus is first on supporting within a family
24 or whanau or wider family with appropriate resourcing;
25 have I got that right?

26 A. Absolutely. And what is more, it is now the new
27 statutory mandate, the new Oranga Tamariki legislation,
28 as from 1 July this year, no longer is the old Child,
29 Youth and Family mandate in place. That was last resort,
30 intervene when there was a need for removal, almost the
31 ambulance at the bottom of the cliff. The new statutory
32 mandate is early support, assistance, intervention
33 whenever there is any risk of removal to get a
34 preventive. That is a great model. It's going to take a

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1 paradigm shift in the way the State agency has previously
2 worked but it is the right principle and it is now the
3 law and we will have to be vigilant to ensure that the
4 necessary changes, the fundamental changes in approach
5 actually take place.

6 Q. In terms of this section of your brief, you also spoke a
7 little about what the office has learned as part of the
8 routine monitoring most recently, I believe, ias the
9 2017-2018 year. Did you want to share any of those
10 points with us, in terms of the current experience of
11 those young people?

12.43 12 A. Given that we have focused, in terms of our agreed
13 performance expectation, on those in secure residences,
14 the message loud and clear, especially for those in Care
15 and Protection residences, is in the words of one young
16 girl there, it's a hard place to be happy. it is a
17 difficult experience, especially for those who are there
18 for a prolonged time, aggregated with other children from
19 traumatic and violent backgrounds, it's not a recipe for_
12.44 20 eign enduring rehabilitation. It is a tough place. I
21 have quotes in my submission from children, and it talks
22 of the - some have talked about the self-harm and the
23 attempts of self-harm that have taken place. I mean,
24 that is not to say that the stories universally of those
25 in State care residence are negative. Some talked about
26 it saved my life. But the general theme following 3, is
27 that it has been a hard place to be happy and we have
28 recommended that the State care, Care and Protection big
29 residences be closed but we come to that.

12.45 30 Q. Yes. Just to finish off in terms of this section, you've
31 mentioned just briefly the four reviews that are ongoing
32 currently. I understand they all have their own
33 different timeframes of when they will be completed but
34 what is your comment in terms of how those Inquiries
might inform the work that's taking place here at Royal

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1 Commission?

2 A. They are all looking at separate issues. They have
3 clearly different Terms of Reference. I hope they will
4 be of significant assistance for the Commission. And
5 indeed, the first of those reviews, the Oranga Tamariki
6 internal review of the specific Hastings case, I
7 understand is due for release at 3.00 today. So, the
8 first step in the instalment, it will be of assistance,
9 is due for release in less than 3 hours.

12.45 10 Q. We will certainly keep an eye out for that at the time.

11 Your next point, Judge Becroft, you made at the
12 beginning given its importance but I want to come back to
13 it in some more detail, and that is the experience of
14 Maori both in terms of being placed in State care at high
15 rates and also experiencing abuse in care at high rates.

16 Can you talk us through your thoughts on this
17 section?

18 A. The statistics are well-known. In fact, there are
19 similar statistics in terms of poor outcomes for Health
12.46 20 and Education and child poverty. This isn't ~~simply~~
21 asimply a State care issues, it's a much wider issue.

22 And, in my view, it's
23 impossible not to begin by recognising the enduring
24 legacy of colonisation, together with modern day systemic
25 bias, and that's an issue for every
26 decision-maker in every government department throughout
27 New Zealand. And I would have thought that the research
28 and current understanding makes that arguable.

29 Q. In terms of modern day systemic bias, as you've put it,
12.47 30 can you help us by way of examples in terms of your
31 experience being someone who's worked in the system for
32 many years, what that might look like practically?

33 A. It's easy to use a term like systemic bias or systemic
34 racism. I think what is meant by that, is the collection
of individual decisions, often made unconsciously or with

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1 sometimes the best intentions but when aggregated
2 together, result in a pattern that disadvantages, in this
3 case, Maori.

4 I know from my own experience in a different forum
5 in the Youth Court, there was a clear statutory
6 injunction that, in terms of indigenous Maori children,
7 that whanau, hapu and iwi be involved in decision-making
8 and be encouraged to develop their own means of response.
9 I realised with some shame myself, a practice with the
12.48 10 version of the Act had the words hapu and iwi twinkled
11 out, there was a full stop after whanau. It was seldom
12 raised in Court or developed and I did not fully give
13 full force to the power of the Act. And I think if
14 decisions are made in the Care and Protection context
15 that don't explore more widely whakapapa links, resources
16 that are available within wider whanau, hapu and iwi, and
17 if decisions are made that narrow the focus and exclude
18 those options, and if they are made regularly, that may
19 well be the basis of what you would call systemic bias or
12.49 20 racism against Maori.

21 It's an easy concept to assert but it needs to be
22 unpacked and we all need to be challenged because it's
23 likely that all decision-makers in New Zealand, not just
24 Oranga Tamariki decision-makers, are susceptible to that
25 unconscious bias.

26 Q. And you've pointed out in your brief that's something
27 that has been well documented in multiple reports in the
28 last 30 years and you've referenced Puao-te-Ata-Tu in
29 particular. What are your comments in terms of, I know
12.49 30 you mentioned earlier the full vision of the 1989 Act as
31 informed by Puao-te-Ata-Tu hasn't been realised but have
32 any of those concepts or ideas filtered through in terms
33 of the work that you've been doing?

34 A. I mean, I would like to think that the clear statutory

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1 vision is before all of us, before our office too. It
2 was a wonderful dream in 1989, a vision that was very
3 clear, just a dream, it was legislative lee set out, a
4 new way of doing things. As I say, that vision quickly
5 withered on the vine, decision-making shrunk back into a
6 State care dominated model. Some of you will know
7 exactly that experience. It almost became that which it
8 was designed not to be. So, as at now, the challenge is
9 to give full life to that revolutionary approach which
12.50 10 ought to mean a huge reduction of Maori children in State
11 care.

12 Q. And just to skip ahead for a moment. You mentioned at
13 point D that legislative change on its own is not enough
14 and there's been some reference to the new 7AA in
15 evidence in this hearing. What are your thoughts on the
16 significance of that particular provision?

17 A. As a lawyer and a Judge, perhaps I trusted too much in
18 the power of the law in itself to change behaviour. The
19 1989 law and subsequent experience, gives ~~lie~~^{light} to the
12.51 20 fact that law automatically changes behaviour. The new 7
21 AA provision, in fact no more than makes or does no more
22 than makes explicit what ought to have been implicit for
23 30 years. It could always be seen, I think, now, as a
24 damning indictment on 30 years of failure. I mean, 7 AA
25 shouldn't be touted as a brave new world and new section.
26 It is simply basic Treaty law put in place and it makes
27 very clear what should have been the case for 30 years.
28 But I look forward to it because if those new provisions
29 are given proper life, there must be change.

12.52 30 Q. Just on that point, we also had some evidence last week
31 from Dr Moana Jackson, who was also asked about 7AA, and
32 he commented at page 244 of the transcript in relation to
33 agreements in particular between iwi and Oranga Tamariki,
34 "they are systemically flawed because they do not address

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1 the power imbalances which exist, they retain the power
2 of decision-making with the Crown and do not acknowledge
3 the right inherent in Te Tiriti o Waitangi for iwi and
4 hapu to make those decisions".

5 Is that in line with what you're saying or do you
6 have a comment on Dr Jackson's evidence?

7 A. I agree. And, in fact, for every government organisation
8 in New Zealand, there is a question about devolution of
9 resources and decision-making power to iwi and Maori
12.53 10 organisations, not just Oranga Tamariki. But for Oranga
11 Tamariki, there are a number of models or steps that
12 could be taken at the least to devolve power to iwi, so
13 that they have the resources to provide care for their
14 own mokopuna, their own Tamariki.

15 Another model is to go further and to have two
16 divisions within Oranga Tamariki, one for Maori, one for
17 non-Maori. A further and most radical step, would be to
18 have separate institution, one for Maori children, one
19 for non-Maori children.

12.54 20 The point is that the current structure needs to be
21 transformed. All those options, it seems to me, are on
22 the table and decisions will need to be made about them.

23 Q. Another point, Judge, that you've referred to in your
24 brief, is the experience of people with disabilities in
25 State care. Just to go back to page 8 for a moment.

26 A. Yes.

27 Q. And I just wondered if you'd like to talk us through your
28 thoughts in terms of that part of your brief?

29 A. I can simply say this, in our office we have had
12.55 30 continued and clear urgings from the disability community
31 that special attention needs to be given to the
32 experiences of disabled people in State care because they
33 are doubly vulnerable, not just because of their
34 disability but also because of State care itself. And I

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1 have been challenged to make clear that, with great
2 respect, the Commission should not treat lightly the
3 particular challenges in State care for those who are
4 disabled. And early research indicates, and relatively
5 new research, indicates that is a significant issue.

6 Q. You mentioned earlier your view around the closure of big
7 residences, secure Care and Protection residences, and
8 you go into this in a little more detail at page 9 of
9 your brief.

12.56 10 A. The Office's Director of Monitoring and Investigation, Ms
11 Liz Kinley, is here. She leads our monitoring work. The
12 clear conclusion of all our monitoring and visits to the
13 secure Care and Protection residences are they should be
14 closed. I understand, at least informally, that is the
15 view of Oranga Tamariki but I will not speak for them.
16 And I look forward to Oranga Tamariki confirming how and
17 when those residences will be closed. It is an
18 old-fashioned model. It is, as young people would say,
19 so last century, the model of segregating children from
12.57 20 violent and traumatic backgrounds and then aggregating
21 them together is inherently problematic and very risky,
22 not least of which is the potential for bullying and
23 abuse from other children and young people when grouped
24 together. But the system is flawed, outdated,
25 anachronistic and it needs to go, just as we abolished
26 orphanages and Borstals, so these residences should be
27 closed down. And they should be replaced, we have said,
28 by much smaller community-based family homes with
29 specialist staff but they should not become the default
12.58 30 option. That's what I meant by saying we don't want to
31 replace a bad system with a less bad system. They should
32 be short-term, temporary, last resort because what must
33 be prioritised is placement within family, wider family
34 or kincare that's properly resourced one-on-one.

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1 Q. And just so we're clear, Judge, we've heard a lot of
2 evidence about some of the historic residences but today,
3 in 2019, can you just clarify which ones you are
4 referring to? I understand some of them may be
5 physically the same institution but with a different name
6 these days?

7 A. There are five Care and Protection residences. One in
8 South Auckland, one in Epuni in Wellington, two in
9 Christchurch, one in Dunedin. They are varying sizes but
12.59 10 can I say this, it has been encouraging to us that
11 residences known as Whakatakapokai South Auckland has
12 been already significantly down sized, it is a different
13 institution, it's probably only limited to three, four or
14 five children or young people as an assessment centre, as
15 a hub, and they are moved out very quickly to spokes, the
16 spoke model, the spoke being much smaller community based
17 homes. And that's a positive step in the right direction
18 and long may it continue. In fact, quickly may it
19 continue.

12.59 20 **MS SPELMAN:** Chair, I am conscious of the time.

21 **CHAIR:** Yes, and I sense you are about to go on to page
22 11?

23 **MS SPELMAN:** That's right.

24 **CHAIR:** That may be a suitable time for the Commission
25 to take its lunch adjournment.

26 **MS SPELMAN:** Thank you.

27

28 **Hearing adjourned from 1.00 p.m. until 2.15 p.m.**

29

30 **MS SPELMAN:**

31 Q. Judge Becroft, I turn to page 11 which is the fourth
32 detailed point in your brief. I want to ask you about
33 your suggestion of creating a child-centred complaints
34 mechanism. Perhaps we could start with you outlining

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1 first what is the current process?

2 A. Yes. This section deals with the need for a truly
3 independent complaints system. At the moment in the
4 residential context, the complaint system is dealt with
5 by grievance regulations with grievance Panels drawn in
6 the community, the system being known now as Whaia te
7 Maramatanga. Essentially, it demands and requires that
8 the process be commenced by obtaining from the residence
9 or a staff member the form to complete detailing the
10 grievance. You can immediately see the flaw in a system
11 which requires a child or young person to initiate the
12 complaint with a staff member who may, in fact, be a
13 colleague of the person being complained about.

14 It is very clear that children and young people
15 themselves see the system as inadequate because of that
16 reason and the proof of the pudding, sadly, is in the
17 history. No or virtually no serious instance of abuse,
18 neglect or any form of complaint has been uncovered using
19 that system. It has worked very well, in terms of
14.18 20 complaints about the operation of the residence, food,
21 lost clothing, other issues of that magnitude, but sadly
22 after near 30 years of operation, that system hasn't been
23 able to consistently uncover significant abuse or neglect
24 that has usually come through other channels, often when
25 the child or young person has left the residence.

26 So, relying on the current process as it is, without
27 independence, has proved to have ~~off~~ been flawed and
28 inadequate. For those not in residential care, there are
29 limited opportunities to make complaints and usually, they
14.19 30 are accessed through the social worker which again may be
31 the very person in respect of whom the complaint is about.

32 Q. And so, in terms of the process at least within the
33 residences, after accessing the form it has to be in
34 writing; is that correct?

- 954 -

1 A. Correct.

2 Q. What is the role of the Grievance Panel at that point?

3 A. Submitted to the residence's manager for investigation
4 internally, which we have pushed hard for there to be a
5 standard practice but there are still variations within
6 residences. And if the child or young person doesn't
7 like the result, then there is escalation to the
8 Grievance Panel who try to advertise themselves, try to
9 make sure that they are available, go to the residences
14.20 10 for meals to get to know the children, but by and large
11 to get to the Grievance Panel you have to get through the
12 internal process, through the manager and be dissatisfied
13 with the result. Everything we know about the power
14 imbalance of being detain~~ed~~ed, tells us that children who
15 are vulnerable are going to find it incredibly difficult
16 to make a complaint to begin with but to ask them to jump
17 the extra hurdle of making a complaint to the very system
18 in which abuse may have taken place has proved just about
19 an insuperable hurdle.

14.20 20 Q. Historically, what has the role been, if any, of
21 advocates to assist in the grievance process?

22 A. Ironically, the legislation makes it clear that advocates
23 should be provided by Child, Youth and Family, Oranga
24 Tamariki, the residence. But it goes on to say there is
25 no obligation on them to fund it. So, in the end, it's
26 become empty and it has relied on a series of voluntary
27 advocates who have come and gone and there's been no
28 widespread consistent provision of advocates and it is a
29 classic example of adults designing a system, saying
14.21 30 children should have advocates, adults agree with that,
31 but as to who pays it, not our responsibility. In the
32 end, it's been something of a dead letter for 30 years
33 and incredibly frustrating.

34 Q. And you mention in your brief a new organisation, VOYCE

- 955 -

1 Whakarongo Mai, what is their role?

2 A. This could be a game changer. It is designed to be a
3 widespread advocacy service for every child in care. If
4 this doesn't appear to be too conflicted a description,
5 it's an NGO setup by the government, funded by the
6 government, but an NGO, free to be independent and grow
7 and develop and be an advocate and supporter of every
8 child in care to help children negotiate complaints, to
9 stand with them and to be their mouth piece, supporter
10 and mentor. It is a terrific model, still in its early
11 days, but we have high hopes for it.

12 Q. And I appreciate it's still in its early days but is
13 there some current advocacy work that advocates from
14 VOYCE Whakarongo Mai are already engaged with?

15 A. Yes, they have started in the residences and they are
16 starting slowly but surely to cover the whole country in
17 residences, and they are proving useful in developing
18 long-term relationships. At last, at last, children in
19 care are beginning to have access to someone who can help
20 them and speak for them when necessary.

21 Q. And so, you've mentioned that Oranga Tamariki have made a
22 commitment to develop a new child-centered complaints
23 process, is that to replace the current grievance
24 process?

25 A. No, the grievance process will be amended and is being
26 amended and it certainly needs to allow an independent
27 exit route for a complaint from the beginning. But
28 Oranga Tamariki have made clear that they want a new, fit
29 for purpose, internal complaints system. And all power
30 to them, in terms of developing that. But it won't be
31 sufficient by itself unless there is a separate door that
32 complaints can enter and make complaints to, directly,
33 that bypasses Oranga Tamariki. Frankly, I think
34 everything I have seen in my various roles, is that we

- 956 -

1 should be wary of trusting government agency to design
2 complaint system. That is the frank position. I could
3 go on and say because they're not independent, they are
4 not fully funded and they use the language of adults to
5 say it will be a way of continuous system improvement.
6 That's great but actually it has to be child-centred,
7 fully funded and utterly independent, and children need
8 to know that and they need to be able to trust it.

9 Q. Thank you. The other point is the new review that the
14.24 10 Office of the Commissioner plans to undertake. What is
11 the thinking beyond doing that?

12 A. Just go back to the complaints point. There is one point
13 I need to stress. There has been a, in one sense,
14 understandable, if not commendable determination to
15 design a new complaints system for an adult eye, as if
16 having a Rolls Royce complaints system internally is
17 going to solve it. Even externally, it may not solve it
18 because the real question is, unless you get a complaint
19 to investigate, it doesn't matter much. We have to be
14.25 20 thinking about how do we create environments and systems
21 that enable our most vulnerable children and young
22 people, often detained in a situation of power imbalance,
23 to complain. That is why the Australian Royal Commission
24 says it's 22.9 years on average before complaint is made.
25 We should be wanting 22.9 seconds before complaints are
26 made. Somehow we have to get an environment where the
27 complaints can be made. Great having a good system to
28 carry out investigation but we have to encourage the
29 complaints to be made at the time.

14.26 30 So, what we're hoping to do next year, what we are
31 committed to do in our directive of monitoring, is here
32 we want to follow-up and carry out a review of children
33 and young people who have been in detention, 6 months to
34 a year later. Say now you're out of State care, out of

- 957 -

1 detention, out of the residence, is there anything more
2 you want to tell us? Are there things you can say now
3 that you felt you couldn't say then? It will be a way of
4 us testing and getting information as to whether indeed
5 there is a power imbalance that has inhibited complaints.
6 We want to give that evidence to you, give that report to
7 you, when we've got it but we think it will be very
8 helpful for you and for us to understand why it is that
9 children may not make complaints while detained and in
10 State care.

14.26

11 Q. Judge, the next point in your brief relates to the way
12 that the Royal Commission interprets its Terms of
13 Reference which you mentioned at the beginning of your
14 comments. What was your thinking behind your strong
15 encouragement to take a wide interpretation of the post
16 1999 time period?

17 A. Not for me to be too strong about this, it is a matter
18 for the Commission, but point 10 in the Terms of
19 Reference, 10(b) says, "the Inquiry may ~~at~~ its
20 discretion consider issues and experiences prior to 1950
21 and in order to inform its recommendations for the future
22 the Inquiry may also consider issues and experiences
23 after 1999. "

14.27

24 In my view, there is no principled basis for drawing
25 the line in 1999 as it was in the first place. I am glad
26 there is that discretion. Please, please, please,
27 exercise it in a large and liberal way because, and this
28 is the reason I ask for it, abuse is still happening. We
29 know that. Even on the self-disclosed figures of Oranga
30 Tamariki, it's between 7-10% abuse rate and it's likely
31 to be much higher. It would be wholly in my view
32 inappropriate, it would be unwise and it would be sad if
33 the 1999, 31 December, deadline was only rarely eally
passed.

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34 I think there's every reason to think ~~there will be~~
will get a lot

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1 of good information to inform good recommendations if we
2 regularly go past 1999. I've said it as clearly as I
3 can. It is a matter for you but with great respect I
4 would urge you to use it wherever possible.

5 Q. In terms, Judge, of the work of the Office of the
6 Children's Commissioner, some of the reports you've cited
7 in your brief-Court, has that been borne out in terms of
8 more recent experiences of young people, the ongoing
9 nature of those issues?

14.29 10 A. Exactly. We still hear the sad and harrowing accounts of
11 both abuse by staff and abuse by other young people
12 sharing the residence.

13 Q. Just coming to the end of this section, Judge, I just
14 wanted to give you a chance at this point if there was
15 anything else you wanted to share with the Commission in
16 terms of your encouragement as to where the focus should
17 be in the next few years?

18 A. Well, that's an enticing invitation that I should
19 exercise wisely. I mean, there are so many issues that I
14.30 20 haven't mentioned and perhaps should have done.

21 The continuing option to remand young people into
22 adult Police cells in solitary confinement must be
23 considered in the structural sense a form of abuse.

24 The remand to large scale institutions unnecessarily
25 because there aren't enough smaller ~~community-~~
26 based community-based homes, must be considered a form of
27 structural abuse.

28 The rather absurd two witness rule of the Jenovah
29 Witness Church based institution, in my view both mangles
14.30 30 Biblical principles and fails to understand the dynamics
31 of sexual offending.

32 There is a list of individual issues that I could
33 raise but in conclusion, I think what I really want to
34 say is that, nothing less than a genuine revolution in
our approach to Care and Protection will do. This is the

- 959 -

1 opportunity to bring that about. Most of us in this room
2 won't get the chance again in our lifetime to do it. I
3 hope that we grasp it. Incremental change won't do.

4 In terms of Maori, the revolution is through
5 devolution of power and resources. We need a specific
6 and well funded truly independent monitoring agency with
7 a designated Commissioner for Children in Care,
8 Co-Commissioners. As long as I have life and breath,
9 that is what I will advocate for. You need to know
10 again, I said beware of trusting government agencies to
11 establish an independent complaints commission^s. Beware
12 of governing agencies establishing monitoring
13 institutions that are independent. We know, under the
14 Official Information Act an aide memoire was produced for
15 us where government thinking had been that the monitor
16 should be a government agent monitoring another
17 government agency. Frankly, it defies belief that that
18 would give not only public confidence but ~~also this is~~
19 necessary confidence for children in care. I mean, we
20 have to hold the line on utter full and complete
21 independent. We are a watchdog, we necessarily can bark
22 loudly and bark publically. We know there is an
23 opportunity at the moment in designing the new
24 independent monitoring~~ing~~ to fully involve Maori, designed
25 by Maori for Maori. These are matters that are happening
26 at the same time as your Commission work parallel. I
27 hope that reports can be issued in a stage manner that
28 can feed into what's going on now, otherwise the danger
29 is the horse will have bolted and the stable closed,
30 legislation in place and you haven't reported back. We
31 need an independent complaints system, we need the
32 closure of our Care and Protection residences. I am
33 committed in this role to transformational change, that
34 is my respectful challenge to this Commission also.

- 960 -

1 **MS SPELMAN:** Chair, in terms of questions from counsel,
2 I have had indications from Ms McCartney QC and
3 Ms Leauga that they may have some questions for
4 Judge Becroft. You may need to check that that is
5 still the case.

6 **CHAIR:** Thank you. Have you organised an order between
7 you Ms McCartney and Ms Leauga?

8 **MS ~~MCKECHNIEM~~CARTNEY QC:** We have, thank you.

9 A. This is now an unusual experience for me, normally I ask
10 the questions.

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JUDGE ANDREW BECROFT

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QUESTIONED BY MS

McCARTNEYMCKECHNIE QC

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Q. Judge Becroft, I am appearing for the National Collective of Independent Women's Refuges in New Zealand together with Zoe LaughtonWarton who I think Your Honour knows.

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The Women's Refuge have an interest obviously in the placement of children and young people in homes where they can be, places where they can be protected. They also have an interest in the impact of the violence and the recycling of the violence intergenerationally.

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In relation to the questions I have for you today, your evidence, your oral evidence has defined and clarified a lot of the areas or a number of the areas that I was going to go to. Understanding that the revolutionary change that you are advocating is the closure of the State care institutions, the movement on a last resort and short-term basis?

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A. Correct.

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Q. To community based units. And in that regard, I have a number of questions.

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In phasing out the big institutions, are you recommending to the Royal Commission, and have you given consideration to this, a timeline for the phasing out?

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A. Yes and yes. A part of me thinks nothing less than a

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bulldozer would do tomorrow. The other part of me recognises as a responsible Commissioner, that there's got to be alternatives and other options in place, and that's a responsible thing to say.

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But as has been shown with the drastic downsizing of whakatakapokai, these things can happen very quickly. I would be very disappointed if by the end of next year

- 962 -

1 they weren't all closed, that's very doable. Given the
2 \$1.1 billion injection into Oranga Tamariki, surely this
3 is the sort of thing it should be spent on?

4 Q. In relation to the last resort and short-term community
5 based units that you've spoken of, is there a period of
6 time in which you think a young person have you ing
7 considered this would stay in those units?

8 A. I haven't exactly considered it but I know we've had
9 examples of 9 months to a year, and much longer in the
14.37 10 current residences. And I'm certainly not thinking that
11 long. But there are children and young people who come
12 from such damaging and violent and volatile backgrounds
13 that at least in the short-term specialist expert
14 intensive care is required. It's a small cohort of young
15 people. The previous Commissioner felt as a pediatrician
16 there were 200 or so children in New Zealand who had very
17 high and very complex needs, and I think that's a useful
18 starting point. But, no, I don't have an exact month
19 figure to give you as to how long it should be there.
14.38 20 Suffice to say, even better is specialised one-on-one
21 living arrangements and care.

22 Q. Perhaps, I'd be interested in your answer to this, with
23 the provision for application to be made if that
24 community based unit care had to be extended, application
25 to the Court I'm saying?

26 A. Yes, I think there should always be monitoring. A great
27 example just happening now in the Youth Justice context,
28 Ngapuhi social services wanted to provide remand care for
29 young people. I visited Ngapuhi in Kaikohe a couple of
14.38 30 weeks ago. Interestingly, they were thinking originally
31 of four or five bed homes for young people. They did the
32 research and the thinking and said that is just so not
33 appropriate. Much better to have one-on-one care. They
34 now have a suite of homes throughout Northland where

- 963 -

1 young people can go one-on-one with experienced trained
2 family caregivers and mentors to look after them. That's
3 a way better model. That's what shows what can happen
4 when the community and Maori in this case, are given
5 resources and power to come up with their own options.
6 That's a significantly better model, in my view, than
7 anything that's in place now. We could do the same for
8 Care and Protection.

9 Q. Can I come then to the resourcing issue that you're
14.39 10 talking of. While we talk about whanau based care, and
11 this can sometimes mean a relative for a wider line of
12 family member, that person or persons, I understand your
13 evidence, would still need to be fully funded for the
14 care that they are providing to the young person?

15 A. Exactly, and I think there has been a false assumption
16 that that sort of care ought to be free but stranger
17 foster care is resources supported and paid. Actually,
18 they should both get the same. There's no reason to
19 differentiate. Wider more distant ~~eiplined~~ family who
14.40 20 may be ready and willing still will face a significant
21 and unexpected financial burden and need help and
22 resources, just as stranger foster care is entitled to,
23 and that's been long, I think, a glaring and
24 unacceptable difference.

25 Q. Would the Commissioner for Children in Care, the role
26 that you are proposing -

27 A. Parliamentary Commissioner, yes.

28 Q. Parliamentary Commissioner, let me use the full term.
29 Would that person or persons have the role of monitoring
14.41 30 the whanau based care, home care positions?

31 A. All care.

32 Q. All care?

33 A. All care, without reservation.

34 Q. And in relation to the role of the supervisors, if you

- 964 -

1 like, the monitors, they would require specialist
2 training?

3 A. Absolutely.

4 Q. In order to get into that level of monitoring?

5 A. And coming from a background of understanding child and
6 youth development, child and youth dynamics. In our
7 office at the moment, we have a mixture of trained social
8 workers, child psychologists, research teachers in
9 learning and behaviour, speech therapists, youth workers,
10 all that sort of expertise is required. As I said, the
11 tragedy is the 6400 children in care, we're only giving
12 detailed attention to the 200 in the residence.

13 Q. Of course, if we closed the residences, as you've
14 suggested, they could bring the focus perhaps wider
15 because of the young people being in a number of homes?

16 A. Correct but the 9 current staff in a directorate will not
17 be enough to visit in a comprehensive way all 6400 in
18 care. That's why we came up with the 80-120 staff and
19 probably \$20 million budget. We have to be realistic,
20 that's the figures we're talking about to do properly
21 what we have never done properly until now.

22 Q. Putting on my role as acting for Women's Refuge, would
23 you agree that support would be required for the carers,
24 so that they are protected in the role that they are
25 undertaking?

26 A. Absolutely.

27 Q. Because, as you've told the Royal Commission, the people,
28 young people they're looking after, come from often very
29 damaged violent backgrounds themselves and we would want
30 to ensure that cycle of violence has stopped?

31 A. Correct.

32 Q. Judge Becroft, are you aware of, we heard the evidence of
33 it yesterday, economic research and papers coming out of
34 Oxford University about the benefits of putting the money

- 965 -

1 in at the beginning and not at the end after the damage
2 has happened?

3 A. I am and I agree. In fact, one of the reasons I took
4 this job from my current job, is everything that I'd seen
5 as a Judge was that all roads lead back to much earlier
6 intervention, first thousand days, first 7 years, were
7 crucial times. And a brief summary of that evidence, I
8 think, is while we can be effective in the Courts, it's
9 twice as expensive and half as effective as getting in
10 earlier, particularly in the first thousand days, when
11 it's half as expensive but twice as effective.

12 **MS MCKECHNIEMCCARTNEY:** Thank you.

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JUDGE ANDREW BECROFT

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QUESTIONED BY MS LEAUGA

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Q. I appear on behalf of survivors who have claims before the Waitangi Tribunal. The Commission will have heard from my senior Mr Stone over the last few days and I just have a few questions on behalf of our claimants.

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Thank you very much for your evidence. It is a privilege to stand before the Commission and you today to ask these questions.

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Firstly, just in relation to the first page of your evidence where you note the systemic failings of the Crown and how these have impacted Maori and that your office is implicated in that failure. You also mention how your office has not been fully resourced or sufficiently resourced to discharge its duty.

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Would you agree that these failings would amount to a failing on the part of the Crown to discharge its duties owed to Maori under the Treaty of Waitangi, taking into account the principles of good faith, partnership, care and protection?

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A. Yes, as part of a wider systemic failure, yes.

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Q. Thank you. And you also mention that successful Governments have known about the lack of resourcing, so they have been aware of what's going on, they've been aware of the shortcomings, they are aware of the statistics that you've mentioned today, yet despite these failings and this knowledge of the shortcomings, it seems that children are still being let down; would you agree to that?

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A. In substance, yes. I mean, every government, not that I am here to defend governments but every government has

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- 967 -

1 resourcing decisions to make but it's been crystal clear
2 that this many children in care at any one time exist and
3 our office has only been able to visit that many. That's
4 been well-known.

5 Q. Yes. And given there are known statistics that Maori are
6 disproportionately represented in State care, you would
7 agree that Maori children in particular are being failed
8 even more so?

9 A. Yes, and I think I've said in the opening paragraph of
10 the submission that the brunt of this failure in State
11 care has been experienced by Maori, my very words.

12 Q. Thank you. And you also mention in your evidence that
13 the Puao-te-Ata-Tu report and how the Children, Young
14 Persons and Their Families Act 1989 has failed to live up
15 to the vision of that report.

16 In that report, Maori speak about wanting more of a
17 role, more of a say and more responsibility in regards to
18 their Tamariki. Would you accept that one reason the Act
19 did not live up to the vision of Puao-te-Ata-Tu, and
14.47 20 acknowledging of course that there are potentially other
21 reasons, but that racism in particular played a very
22 large part in Maori effectively being sidelined?

23 A. That's probably unaan-arguable as a contributing factor,
24 as I confessed myself.

25 The unconscious bias and racism. If
26 there were more Andrew Becroft's let's say in the Justice
27 System, add them all together and the collection of
28 decisions cumulated, results in a systemically racist
29 system as it may well do and probably certainly does with
14.48 30 any other government department faced with making
31 decisions.

32 Q. Thank you. So, today, here we are, 31 years after that
33 report came out, same issues have not gone away and again
34 they are at the front of social conscious. Would you
 agree that including Maori in a far greater capacity and
 involving Maori more in decision-making than has

- 968 -

1 previously been done, that could go some way to assist
2 change and to implement what was envisioned by the
3 report?

4 A. Yes, absolutely. In fact, I'd add what you suggest is no
5 more what the law said then and says now, to involve
6 whanau, hapu, iwi and wider family in all decisions. I
7 mean, there are 32 times in the new legislation where the
8 phrase whanau, hapu, iwi and wider family groups are used
9 collectively as being both the decision-maker, those who
14.49 10 receive the resources and are empowered to provide
11 support and bring about rehabilitation for their own
12 children and young people. But you could go much
13 further, as I talked about, full devolution of power to
14 iwi and Maori organisations, two twin houses within the
15 same organisation, Maori/non-Maori. And one model for
16 others to decidethrust-aside, is two parallel Care and
17 Protection system; one for indigenous New Zealand
18 children, one not, reflective of the Treaty. In
19 fact, you could go much further than what you just
14.50 20 suggested.

21 Q. Absolutely, thank you. And lastly, you've mentioned
22 Oranga Tamariki in your evidence and we know that Oranga
23 Tamariki in particular with a lot of recent public
24 pressure as well, have begun to work more with Maori
25 which is a good thing and a step in the right direction.
26 In your opinion, however, why is it that that seems to be
27 the exception and not the norm?

28 A. Well, for 30 years it was the exception, contrary to what
29 was implicit in the legislation. You ask a massive
14.50 30 question that is bigger than just Oranga Tamariki, the
31 answer for which relates to why there are the absolutely
32 inappropriate disproportionate figures in health and in
33 education and in Youth Justice and adult justice and life
34 expectancy and rheumatic fever. Those are the big
questions for our country. This Commission, in a sense,

- 969 -

1 is facing phasing in this Inquiry one of the big and
2 extractable pable
3 questions that we have as a country to grapple and to
4 wrestle with, and that is the position, theat this
5 disproportionate disadvantage of Maori and the brunt of
6 all
7 the negative statistics that they are facing. This is
8 just but one instance of a much wider issue but it can't
9 be
10 escaped and it can't be avoided.

11 **MS LEAUGA:** Thank you for your time, Judge.

12 **CHAIR:** Thank you, Ms Leauga. I will now invite my
13 colleagues or as many of them that wish to, to ask
14 you questions of their own.

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JUDGE ANDREW BECROFT
QUESTIONED BY COMMISSIONERS

COMMISSIONER ERUETI: It is a real concern, isn't it, that your resources are devoted towards the residences and so foster care and these other arrangements of care are therefore outside of the scope of your work, in effect?

A. In practice, that's right, yeah. We keep an eye on the trends and we keep an eye on the principles but in terms of visiting and supervising and interviewing and supporting and hearing from those children in those other forms of care, you're right, that is outside our practical scope.

COMMISSIONER ERUETI: Okay, thank you. I understand VOYCE is providing an advocacy service for these children and that's an NGO, although it's funded by the State. It seems there is an advocacy role that's being established by the MSD. Is that the case? If that is the case, there seems to be some duplication where you have two services being offered?

A. The current Grievance Panel regulations for 30 years have provided for advocates for those in lock up residences but there's no obligation to fund it. I see it as inevitable that a growing and competent resource takeover all those services. Based on a model from Scotland, a key plank of the Expert Advisory Group in 2016, Child, Youth and Family Services. VOYCE got off to a slow start but there's every reason to believe that it will deliver a much needed advocacy service that's been a hole in the system and it's inappropriate conceptually for the

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1 monitor to also be the advocate. To have a separate
2 advocacy service is just terrific and long overdue and
3 what's needed and we support it.

4 **COMMISSIONER ERUETI:** Thank you. We heard yesterday too
5 about the need for targeted specialist services for
6 those who are in care, not just the more general
7 services that are provided to children. And that
8 seems to be a major gap in Aotearoa today. Would
9 you agree with that?

14.54 10 A. It is a significant gap, yes, and I think for those 200
11 or so children and young people with very high and very
12 complex needs, I think it's easy to underestimate the
13 depth and extent and profound nature of those needs and
14 they do need some very significant expert well resourced
15 services. Too many of them really have been failed by
16 education and health systems as well. One thing I'd
17 urge, is we broaden the discussion and not simply have
18 Oranga Tamariki left, literally, holding the baby.
19 Health and education ~~ete ease~~ have to be there too.

14.54 20 There are children now in the Care and
21 Protection residences who actually should be under the
22 health umbrella and they should be provided with humane,
23 compassionate, ~~examination at~~ expert health
24 intervention. We have allowed a
25 system where Oranga Tamariki has really become, in some
26 sense, I use this not callously, the dumping ground for
27 the very most challenging children and young people and
28 it's not fair just to say it's Oranga
29 Tamariki's problem. It's not, it's much wider than that.
14.55 30 I hope you hear health from Health and Education services
31 as to where they are in all of this.

32 **COMMISSIONER ERUETI:** Thank you, Sir. I just wanted to
33 clarify your vision is of the Children's
34 Commissioner, that would also have two
Co-Commissioners, your current office and then a
specialist care and -

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1 A. Two Commissioners, I think so, yes.

2 **COMMISSIONER ERUETI:** There has been a call recently for
3 a Maori Commissioner, I wondered what your views
4 were on that?

5 A. I can give you our stop press update, if you want. The
6 most that I can do under the current legislation is to
7 appoint an Assistant Maori Commissioner for Children. It
8 sounds a bit, in my daughter's term, a debuzz but it's
9 the most that I can do, it's not meant to be
10 disrespectful.

14.56

11 We're appointing a chief Maori adviser to help us
12 with the job specification. We would like to
13 appoint one by July next year. We are doing all
14 that we can within the office to try to reflect a Treaty
15 approach to our structure and we are committed to that.

16 And I look forward to the improvements
17 that will bring. I think ideally having two
18 Commissioners, you could say at least one of whom~~them~~
19 should be Maori in a Co-Commissioner role, I think that
20 would be an exciting and creative way forward that's
21 never been attempted in New Zealand before.

14.56

22 That's what I mean by radical transformation and
23 structural change.

24 **COMMISSIONER SHAW:** Thank you very much for your
25 evidence. You must feel as though you've been
26 beating the drum for a very long time.

27 A. As with others but yes.

28 **COMMISSIONER SHAW:** Indeed. And one of the drums that I
29 think you have been beating, you've referred to it
30 briefly, I would just like a bit more detail about
31 this, about the limitations on the office of the
32 Children's Commissioner due to under resourcing.
33 You just note on the bottom of page 3, "These
34 limitations have been frequently drawn to the
attention of the government of the day by

14.57

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1 successive Children's Commissioners". This is not
2 to question that that is true but one of the things
3 that we are looking at right across our Terms of
4 Reference is, what did the government know and not
5 act on? And so, to that end, I'm asking you, are
6 you able to give us a little more information about
7 the way in which these failings have been reported
8 to successive Governments by all the Commissioners
9 who have come before you and yourself?

14.58 10 A. Well, at least I can speak for myself and say that I have
11 said as of now 6400 children in care, we haven't got the
12 money to visit them all. Where do you think the priority
13 is? We have, as all Commissioners do, raised a specific
14 performance expectation signed up. It was agreed that we
15 would focus on those in detention because they were the
16 most vulnerable and whoare operated most beneath the
17 radar. At the time there was the Australian controversy
18 of revelations of abuse current in Australian youth
19 detention centres and we thought at the very least we
14.59 20 have to go in, and we visited each residence twice for
21 three days in each year. Now, that was done well, as
22 well as humanly speaking, as well as could be done but
23 still left the other 6,200 children without independent
24 visitation and interviews. Yes, they had their
25 own social worker, yes, they had access to support and
26 services but it was the reality. If you take an
27 example, I had a chance to see British Columbia when I
28 first got the job, roughly similar population, similar
29 issues in Canada. There were 60 staff there and a
14.59 30 budget of
31 20 million and that was just seen as the basic
32 infrastructure that was required. I came away thinking
33 how far short are we in New Zealand? How can it be?
34 **COMMISSIONER SHAW:** You have been thinking about it
undoubtedly and doing as much as you can in your
resources. What I am really trying to nail you on

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1 this, in what form did you tell the government?

2 We've heard you on Morning Report?

3 A. Face-to-face.

4 **COMMISSIONER SHAW:** ~~And~~In written reports?

5 A. Yes, with the nod, we produce annual state of care
6 reports. I know the previous Children's Commissioner,
7 pediatrician Dr Russell Wills, he did too because I
8 checked with him.

9 **COMMISSIONER SHAW:** That's really~~is~~ what I'm getting at.

15.00 10 There's no way in which a government of the day
11 ~~could~~an say we didn't understand?

12 A. I had to sign specific performance expectations. They knew
13 what we were monitoring and whether or not we weren't
14 absolutely, it is a matter of public record, I am not
15 blowing their whistle, it just was what it was.

16 **COMMISSIONER SHAW:** That is what I was looking for. My
17 second question is one that may well be picked up
18 by my other colleagues but I'm just interested in
19 the existing legislation, the now Oranga Tamariki
15.00 20 Act, it sounds from what you've said to us, that
21 you don't think there's a great deal wrong with
22 that, except perhaps, as you said in answer to Ms
23 Leauga, perhaps the need to devolve to Maori more.
24 Taking the Act as a whole, do you think it is
25 currently fit for purpose? Are you in a position
26 at this stage to say that or do you think there's
27 something that needs significant and urgent
28 attention?

29 A. It's a good question. The first comment is, I've always
15.01 30 thought, maybe too much the language of a lawyer, that it
31 was quite an inspirational Act and was well worded. The
32 issue has never been with the words, it's been with the
33 practice. Even in terms of devolution, section 7AA
34 strongly hints at that in terms of the Chief Executive
being able to receive applications for new initiatives

1 and new ways of doing things. And the Mahur~~u~~ remand
2 service, small but significant step is an example of
3 that.

4 So, I think there is, the Act enables much that has
5 never taken place, much that could take place. And it's
6 been seen, I think, rightly, as quite wide a principled
7 and visionary piece of legislation that has fallen down
8 woefully in the practice, as far as Maori are concerned
9 in particular.

15.02 10 **COMMISSIONER SHAW:** I thought that was where you were
11 going and I think that probably is. So, it's the
12 way it's been implemented, it's perhaps the racial
13 undertones that are going through the
14 interpretation, the overlooking of those, that is
15 the issue, rather than the substance of the Act;
16 correct?

17 A. Yes.

18 **COMMISSIONER SHAW:** Thank you so much for your evidence.

19 A. If asked, I could come up with a wish list of amendments
15.02 20 but fundamentally it's in sound shape.

21 **COMMISSIONER SHAW:** Thank you.

22 **CHAIR:** Thank you, Judge Shaw.

23 **COMMISSIONER GIBSON:** Thank you, Judge Becroft.

24 Welcoming your challenge from the disability
25 community. You made a comment about the research,
26 is that again describing some of the problem or is
27 part of the - is there solutions coming out of that
28 research which fits into your vision of
29 transformation?

15.03 30 A. Yes is the answer and I simply rely, and it may have been
31 a report during your time with the Human Rights
32 Commission, 2017 research. Not a small slice of 18
33 disabled children but that was a pretty damning
34 revelation of what was going on for them. I think the

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1 answer to my question is, more research needs to be done
2 but I simply wanted to plead with the Commission that we
3 don't overlook the particular needs of the disabled
4 community because in general their needs are often
5 overlooked and they were doubly at risk when placed in
6 State care, it seems.

7 **COMMISSIONER GIBSON:** Almost a parallel question about,
8 is the system systemically racist? I would ask is
9 the system systemically ableist? There's almost a
10 preceding question to be answered; is ableism
11 understood so deeply and entrenched in the system
12 that it's not noticed, it's invisible?

13 A. It is probably not an area of prime expertise for me but
14 so far as what you are saying goes, I accept it. It's a
15 much more community-wide issue, isn't it, than all of us
16 are probably to some degree unconsciously
17 ableist. leists.

18 **COMMISSIONER GIBSON:** To what extent you talk about the
19 health education, to what extent are solutions
20 transformations tied up in a joined up whole of
21 government gamut approach to try and deal with the
22 intractable issues?

23 A. Totally, completely and utterly.

24 **COMMISSIONER GIBSON:** A monitoring regime that monitors
25 children in care, can that respond to the
26 complexity of cross government issues?

27 A. Yes, indeed the Cabinet Paper specifically indicates that
28 the monitoring system has to be wider and has to monitor,
29 and it mentions Health and Education as services that are
30 provided for children in care. And it can't be a
31 mono-focused monitoring of just Oranga Tamariki, it's got
32 to be, I think, whole of government. That's one of our
33 current failings in the legislation, the Children's
34 Commissioners Act, it doesn't explicitly give us the
power to monitor Health and Education, and I wish we
could because so many of those in care are out of
education and

1 have had long-standing health issues.

2 **COMMISSIONER GIBSON:** A specific question about
3 neurodisability. The extrapolating the
4 international research in New Zealand, indicates
5 probably 70-80% of children in Youth Justice have
6 a neurodisability. What is your sense of the scale
7 of the issue and the solutions in Aotearoa
8 New Zealand?

9 A. I think at the moment we see through a glass dimly, as it
15.06 10 were, regarding neurodevelopmental disability. We
11 haven't taken it nearly seriously enough in New Zealand.
12 Dyslexia was only recognised in 2006. Autism became
13 liable to disability support services in 2011. Foetal
14 alcohol spectrum disorder could be one of the great
15 crises of our time but we are simply, I think, sitting on
16 our hands largely on that issue. We had a 4 year
17 FASD action plan that was high on plan but very low on
18 action.

19 I think we don't have prevalent studies of FASD or
15.06 20 some other issues. I think we simply don't know the
21 scale of the issue but I do think, and I say this
22 carefully, that there is a strong argument that we have
23 placed in care and in prison a cohort of young people and
24 young adults whose real issues are undiagnosed
25 neurodevelopmental disability and the history will Judge
26 us harshly because of it.

27 **COMMISSIONER GIBSON:** Kia ora, thank you, Judge Becroft.

28 **COMMISSIONER ALOFIVAE:** Good afternoon, Your Honour,
29 very lovely to be in a position to be able to ask
15.07 30 you questions this afternoon.

31 As you well know, I am very interested in the system
32 and the system's blocks. I was really wanting to just
33 understand and get it on the record that when you're
34 talking about transformative change, because it's easy to
look at things in silos osenee, so I appreciate the
parameters remise of

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1 your brief in terms of the OCC. But a child does not
2 grow up in a vacuum, it grows up in a whanau. Talking
3 about the moment of conception, following them the
4 different milestones in their life, to be able to get to
5 the point where I think its 25 is the age that they age
6 out of the system, making sure the dots actually connect
7 to truly give them the priority that we often talk about
8 but we don't deliver on as a nation; is that correct?

9 A. I agree with you. I know of your concern and I agree.

15.08 10 In fact, as a small aside, with the foetal alcohol
11 spectrum disorder we'd be going ~~began~~ pre-conception
12 and being much clearer as a country about the risks of
13 any alcohol consumption while being are behaving in a
14 way that may lead to conception.

15 **COMMISSIONER ALOFIVAE:** So, despite best efforts in
16 determines of research availability but also
17 evidence and just what families and young people
18 are telling us, we still haven't been able to do
19 that well enough to get even to almost like where
15.09 20 we feel like there's transformative change
21 happening.

22 A. There's been progress towards co-ordinated joined up
23 interventions, it would be wrong to say it hasn't
24 happened, but it's been incremental.

25 **COMMISSIONER ALOFIVAE:** And that's not enough?

26 A. Correct.

27 **COMMISSIONER ALOFIVAE:** The other point is around
28 diversity and inclusivity. Thank you very much and
29 we appreciate the statistics around Maori and the
15.09 30 damming impacts on Maori children. But what we
31 also know is a lot of children of mixed heritage
32 are coming through, Maori Pasifika and Pakeha Maori
33 something else.

34 A. Yes.

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1 **COMMISSIONER ALOFIVAE:** Were you ~~are~~ seeing some of
2 those in your work in terms of trends around
3 children of mixed heritage in the care system.

4 Can you offer us a perspective
5 on maybe some numbers?

6 A. Actually, on data as a whole, I think that's one area
7 that should be of interest to the Commission. The old
8 Child, Youth and Family's data was very patchy.
9 Dr Russell Wills' previous report on the State of care
15.10 10 said there was very limited outcome data. One of the
11 challenges for Oranga Tamariki, which it is try to meet,
12 is produce regular unarguable state of the nations
13 statistics on all the things you are talking about and
14 the data. We know when there are 67% of children in care
15 who are Maori, some of those, about 9% are Maori
16 Pasifika. So, it's important to unpack the statistics.
17 But there's never been clear statistics available. Even
18 now when you talk about removal of Maori babies,
19 different time periods are taken, sometimes 0-3 months,
15.11 20 some first 7 days, sometimes first year. It becomes very
21 confusing. I think we need a clear data set,
22 particularly for all connection with children in care.
23 That should be designed with but not solely by Oranga
24 Tamariki. That is something we've been trying to do.

25 **COMMISSIONER ALOFIVAE:** And of course another group of
26 young people that fall within our Terms of
27 Reference are those that would - another cohort of
28 young people that fall within our Terms of
29 Reference would be those in the LGBTQI community,
15.11 30 any comments around some of those young people that
31 you've seen in care?

32 A. No, only that those I've met personally talk more about
33 bullying and marginalisation or being bullied and being
34 marginalised and alienated, yes. More than I had
realised actually.

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1 **COMMISSIONER ALOFIVAE:** And obviously, in terms of
2 possible solutions, different matrix to be able to
3 work out what would work better to keep them safe?

4 A. Correct.

5 **COMMISSIONER ALOFIVAE:** I'm really interested in the
6 vulnerability of our young people is embedded in
7 the legislation. You say you have this Act, you
8 have to do this work but they don't fund you to do
9 it. And 7 AA, like you said, it is almost like an
10 indictment for us as a nation, that we had to
11 physically write it in, you will consider the
12 Treaty of Waitangi. We now have kids transitioning
13 to independence coming out of care and we have
14 section 386A which of course is still a work in
15 progress because it means that those who have been
16 in care, Oranga Tamariki are still responsible for
17 them up to the age of 25. But when we talk about
18 the practice implication, this is where the
19 variability comes in. Have you had any experience
20 or any young people discuss that with you or your
21 office?

22 **MS KINLEY:** Can I say, it is probably a little bit too
23 early at this stage for us, given that service,
24 including the community partners in that service,
25 is quite new.

26 A. That is Ms Kinley, Director of Monitoring and
27 Investigation is giving unsworn, unaffirmed, helpful
28 comments to the Commission but the gist of it being too
29 early for us to say yet because it was 1 July that took
30 effect and we're now only 3 or 4 months in but glad
31 you're here, thank you.

32 **COMMISSIONER ALOFIVAE:** Thank you for that but already
33 we are hearing noises around how that is actually
34 not serving some young people well and I was

1 wondering if your office -

2 A. Too early for us to say.

3 **COMMISSIONER ALOFIVAE:** Okay, thank you. No further
4 questions. Just very, very great grateful for
5 outlining your big picture and where you think we
6 should be going to as a nation in this area, thank
7 you, Sir.

8 A. Thank you.

9 **CHAIR:** Judge Becroft, I've got three aspects of
10 questions.

11 Number one relates to your challenge, your wero, to
12 the Royal Commission to use the discretion in the Terms
13 of Reference to look at items post 1999. At page 3 of
14 your written brief, you speak of Oranga Tamariki today
15 servicing 30,000 people with 6,400 in care. And you
16 speak of these 200 high needs people. Are you able to
17 give us something of a picture, seeing that your office
18 will be 30 years old shortly, 10 years ago and 20 years
19 ago, how that - has that 30,000 figure grown
20 exponentially over that time?

21 A. I think it's best that we give you an addendum written
22 response to that and the figures but I know for instance
23 that above that 30,000 are reports of concern. Now, aAs
24 is known, they have increased significantly. Numbers
25 in care have also increased. Whether it's
26 exponential or gradual on the graph, we can provide that
27 information for you.

28 **CHAIR:** I think I speak for all of my colleagues when I
29 say that will be helpful because we will, of
30 course, consider this matter of going beyond 1999
31 but we will need the figures to do it.

32 A. Certainly, the numbers in care after 1999 have increased.
33 And they've increased significantly lately, some of which
34 will be due to the increase in the age jurisdiction for

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1 the service. But, yes, numbers have certainly increased
2 in children in care.

3 **CHAIR:** My second question is related to your strong
4 submission made to the effect that the Children's
5 Commissioner ought to be a Parliamentary Officer
6 funded by Parliament and responsible to Parliament
7 in the same way as the Ombudsman and the Clerk of
8 the House and the Auditor-General and as you
9 referred when speaking to the Parliamentary
10 Commissioner for Environment~~tal~~.

11 You will know that those Officers of Parliament
12 receive their funding from an appropriation by
13 Parliament. In other words, there is no Cabinet
14 resolution that results in their remuneration. Do you
15 think it would be a disadvantage for the Office of the
16 Children's Commissioner not to have a voice at the
17 Cabinet table supporting the efforts of the Children's
18 Commissioner?

19 A. That's a penetrating and deep question. I would still
20 have thought that the relevant Ministers whom the
21 Commissioner monitors would want to have a view as a
22 Cabinet. But, in the end, I think it's cleaner and purer
23 for the Commissioner, the Parliamentary Commissioner, to
24 make a case for sufficient and necessary independent
25 funding. I still think that outweighs the disadvantage
26 perhaps that you bring up.

27 **CHAIR:** In other words, you're saying that you think
28 that the Parliamentary Commissioner that you have
29 in mind would be able to make submissions to the
30 relevant Parliamentary Select Committee of a
31 sufficient kind that would ensure the whole of
32 Parliament agreeing that the funding for the
33 Children's Commissioner should be sufficient to
34 undertake his or her job?

1 A. That's what I would hope. It seems to me, one of the big
2 dangers that when you have an independent statutory
3 watchdog, inevitably you are forced sometimes to bite the
4 hand that feeds you and it is much better that you're fed
5 and quartered and housed by the whole of Parliament
6 because children should be a whole of Parliament issue.
7 And it's potentially at least and theoretically to^o easy
8 to get off side with the government of the day if the
9 watchdog barks in a way that causes embarrassment, for
10 instance ~~our~~about child poverty.

11 **CHAIR:** Thank you. My third question is related to
12 Puao-te-Ata-Tu. We have heard almost every day in
13 the public Contextual Hearing about the 1988 report
14 and about how what it said in such clear terms was
15 not taken up and it remains just lying there
16 30 years on. Do you think that Puao-te-Ata-Tu is
17 fit for purpose and capable of being reconsidered
18 now?

19 A. Yes but I should also add, much of Puao-te-Ata-Tu found
15.20 20 its way into the 1989 legislation. So, in a sense, it
21 performed and still performs and still speaks by the fact
22 that many of its recommendations are now legislatively
23 enshrined. If you go back to your question, Ma'am, the
24 legislation itself is fundamentally and in a principled
25 way sound, amongst other things because of
26 Puao-te-Ata-Tu. It doesn't sit on the sideline but it's
27 pretty much enshrined in legislation now. But the answer
28 to your question is yes, there is room to do that.

29 **CHAIR:** So, Puao-te-Ata-Tu could be reconsidered as the
15.20 30 Royal Commission does its work?

31 A. I think so. And why it's mentioned by so many people,
32 particularly Maori, is it's seen as still
33 speakingcurrent.

34 **CHAIR:** I join, I hope I make obvious my colleagues in
thanking you for the clarity and the breadth of the

1 submissions you have made as Children's
2 Commissioner. They will undoubtedly be very, very
3 helpful in our ongoing deliberations.

4 I want to say also, that this may not be the first
5 time on which you will be giving evidence at public
6 hearings of the Royal Commission because there may well
7 be further matters as we come towards later aspects of
8 the Royal Commission's life where what you might say will
9 be helpful to us. Thank you.

15.22 10 A. Thank you. Can I add one addendum just for the record to
11 Commissioner Shaw? You asked about speaking to
12 government about this many children in care but only
13 being able to monitor this much.

14 In fact, the Cabinet Paper is a response to that
15 very concern that was raised. In fact, that was heard.
16 What is planned is a pretty gigantic change that does
17 show there was two ears hearing it and action promised in
18 the Cabinet Paper. And it's, I think, responsible for me
19 to say that. Of course, we wait to hear the decision.

15.22 20 **COMMISSIONER SHAW:** Thank you for that. It just took a
21 little while, didn't it?

22 A. Yeah, about 31 years.

23 **COMMISSIONER SHAW:** Thank you.

24 **CHAIR:** Thank you. Madam Registrar, I am going to
25 suggest that, and if counsel are in agreement, this
26 might be a useful time for us to take the afternoon
27 adjournment, so that the last session of the day
28 can have a clear run from about 3.35 until the end
29 of the day.

15.23 30
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Hearing adjourned from 3.23 p.m. until 3.40 p.m.