“Response to a Catastrophe – The Royal Commission into Abuse in Care”
25th Annual New Zealand Law Foundation Ethel Benjamin Address
Dunedin, 29 September 2022

E nga mana e nga reo e nga hau e wha, rau rangatira ma. Tena koutou
E mihi ana ki te manawhenua, tēnā koutou
E mihi ana ki te Rōpū Roia Wahine o Ōtākou, tēnā koutou me te karanga kia kōrero āu i tēnei rā.
E mihi ana ki a koutou kua tae ā tinana mai nei, e mātakitaki hoki mā te ipurangi, tēna koutou, kia ora koutou katoa

I acknowledge the mana whenua, greetings.

I acknowledge the Otago Women’s Law Society, thank you for your invitation to give this Address today.

Everyone who has come along today or who are watching the live stream, greetings to you all.

The invitation from OWLS (Otago Women’s Law Society) to give this Ethel Benjamin Address came as such surprise that I said yes without thinking. Then having registered the enormity of the significance of the event I instantly regretted it.

A review of the impressive speeches of my predecessors made things worse. The very first by Dame Silvia Cartwright in 2007 set a very high bar which has been maintained by those who have followed her which left me - a pragmatist rather than an academic - rather intimidated.

But the powerful and inspiring example of Ethel Benjamin and the dedication of OWLS to the celebration of her memory brought me to earth. She was a woman who not only seized what opportunities came her way but also created her own.

It is worth repeating for the record and for the next generation some of her achievements: She was not only New Zealand's first woman lawyer but in 1897 the first in the British Empire to appear as counsel in court.

She excelled academically. Her law practice thrived in the face of serious barriers placed in her way by the Otago District Law Society. She founded the New Zealand Society for the Protection of Women and Children. But she also managed a restaurant happily named The Cherry Tearooms and was a property speculator. When she and her husband moved to England in 1908 as a woman she was unable to practice law but managed a bank in Sheffield. She was tragically killed in a motor accident in 1943. I wish I knew her. I want to know what drove her against all odds to study and practice in the law. I would love to have talked about her wide interests both personal and professional.

One of the great pities is that her personal papers no longer exist. So, while we have the achievements and some formal records we have to infer or even guess at what Ethel was like as a person. What I know for certain is that she was tenacious. She took hold of the chances that came her way. She amassed a wealth of experience in the law and in business.

I firmly believe that lawyers who come to the law with full and rich past experiences or open themselves to a varied life while in practice can better serve their clients and society at large.

I have been most fortunate to have had rich experiences both before I became a lawyer and since. In my journey through the law I have been supported, mentored and encouraged by good, clever and kind lawyers and my friends and family and I am very grateful for the variety and breadth of opportunities I have had. In my present role as Chair of the Royal Commission into Abuse in Care I have had to draw on all of these, both personal and professional - for this is a job like no other and has stretched me like no other. It has affected me profoundly both personally and professionally. It has opened my eyes to a previously unspoken and shameful history of cruel abuse and neglect of the most vulnerable

in our society. It has caused me to reflect long and hard on what it truly means to be a responsible citizen of Aotearoa/New Zealand.

I will start with the voice of one of the survivors who has shared their account with the Royal Commission but who wishes to remain anonymous.

"It seems that "abuse" and "care" don't fit together. Yet, here we are. I ask that everyone in NZ open their hearts to the voices… of those who share. Realise that our voices are valid, real and raw. We are sharing our valid experiences. My plea is that our experiences be validated and listened to. When we do, we can honour the experience and soon alleviate this pain."

Much of the work of this Royal Commission is dedicated to listening to survivors and giving them the voice they have lacked for so long. The Commission's reports are fundamentally based on their accounts. Our recommendations are all designed to change the way New Zealand/Aotearoa cares.

In this Address I will give you some background about Royal Commissions and something of the history that led to this one. I will then take you through how the Commission is working and end with some personal reflections.

So, to begin:

1. What is a Royal Commission?

There are many forms of Inquiry that are possible under a range of statutes but for present purposes I will concentrate but one form: The Royal Commission. It is not easy to draw a clear line about what informs the decision by government whether to set up an Inquiry as opposed to a Royal Commission of Inquiry. In its report on Inquiries in 2007[1] The Law

[1] 2007 Law Commission "The Role of Public Inquiries." 2007

Commission even questioned if there was any need to continue the distinction. The Inquiries Act 2013 that followed some time after the Law Commission's report says that a Royal Commission is established under the Royal Prerogative in contrast to Inquires which are established by Order in Council. However, both are public Inquiries and share the same duties, powers, immunities and privileges. In the end it seems that Royal Commissions should be reserved for the most serious matters of public importance. What this amounts to is ultimately for the government of the day to weigh and determine.

The Law Commission identified the many reasons for an Inquiry. They include:

To establish facts; to learn from events; as a cathartic or therapeutic exposure; reassurance - rebuilding confidence after a major failure; accountability, blame and retribution; political considerations such as to show that something is being done about a serious matter; and policy development.

Since 1976 there have been 10 Royal Commissions covering such diverse topics as the policy driven issues of contraception, sterilisation and abortion; electoral reform; social policy; nuclear power generation; the courts and genetic modification. Some Royal Commissions have inquired into conduct, such as the Royal Commission on the circumstances of the conviction of Arthur Allan Thomas, have been concerned with drug trafficking and some dealt with both conduct and policy matters such as the Air New Zealand plane crash on Mt Erebus, the mine explosion and deaths at Pike River and the Christchurch Mosque attack. The common feature of these Royal Commissions of Inquiry into conduct is a catastrophic event.

The duration of these previous Royal Commissions ranged from 14 to 22 months. Only a couple took a shorter time than estimated.

What makes a good Commission of Inquiry? How will we know if it has worked, if it was worthwhile?

Ultimately the answers to these questions is a matter for history and history shows that the political reasons for setting up a Royal Commission are not always matched by the extent to which the recommendations of the Inquiry are implemented.

It has been said of Inquiries in Britain that "If public Inquiries are to be known by their fruits, and if their proper fruits are reforms and improvements in law and practice, there is probably not a great deal to be said for them."

I believe that that pessimistic view came from the realisation that responses by successive governments to the implementation of recommendations by Royal Commissions had been, at best, patchy. In New Zealand the Law Commission recommended that there was need for Inquiry reports to be tabled in the House of Representatives to ensure that there is well defined and clear responsibility for releasing reports and responding to recommendations. That requirement was added into the Inquiries Act 2013. This, hopefully, is a something of an answer to what has been referred to as institutional amnesia.[2]

That act also clarified and made explicit some previously uncertain common law principles for the fundamentals of a public Inquiry. Notably, these included for the first time the express requirement that an Inquiry must act independently, impartially and fairly. It also clarified the limits to the powers to determine civil, criminal or disciplinary liability of any person. These legislated standards and boundaries should engender some institutional and public confidence in the outcomes.

Several Royal Commissions in New Zealand have resulted in significant government responses to catastrophic events. Of many examples the 1988 Cartwright Inquiry concerning the treatment of cervical cancer at National Women's Hospital which resulted in the

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[2] Reflecting on the features of 'successful' public inquiries. Jennifer Doggett Alastair Stark and Sophie Yates August 18, 2021

establishment of ethics committees, the Health Information Privacy Code and the office of the Health and Disability Commissioner.

It also led to the establishment of the National Cervical Screening Programme.

The Royal Commission on the Pike River Coal Mine Tragedy lead to major changes to health and safety legislation and the setting up of WorkSafe New Zealand.

These changes were accepted by the public and have become part of our legislative fabric.

I believe that apart from a considered response by the government of the day, an important driver of the outcomes of an Inquiry is likely to be the extent to which the public engages with and is concerned enough about the issues raised in the report to require the politicians to make changes.

The fact that that the reports of Commissions of Inquiry must be tabled in Parliament after presentation to the Governor General means that the public is now guaranteed at least formal access to them and that they are subject to public scrutiny and debate. I am hopeful that if the Inquiry is transparent and operates in public view as much as is possible, and if it engages not just with those with a vested interest in the subject matter but with the public as a whole, then there is a good chance that the public will look for and even demand change. But that is for later.

2. History of the Royal Commission into Abuse in Care

The Royal Commission has not yet delivered its final report. That is due in mid-2023. I am constrained in what I can say about our current findings and proposed recommendations but so far we have presented two interim reports, and I draw mostly on these for what follows. I will also refer to unchallenged evidence given by survivors at the public hearings. This Royal Commission is based on a rich history that predates its establishment by many years.

From the earliest days of colonisation in Aotearoa New Zealand both the state and faith based institutions have found it necessary to provide out of home care for troubled or disadvantaged children and young people and for vulnerable adults such as those with a disability, the mentally ill and the deaf. Just one example is the industrial schools established in 1896 for "Neglected and Criminal Children".

Based on the limited and poor quality historical data[3] (of itself a disgrace), we have estimated that between 1950 and 1999, 650,000 people went through care institutions covered in the Inquiry's Terms of Reference, and up to about 250,000 may have been abused. These people were from all parts of New Zealand's social fabric and of all ages and cultures. However people from three particular groups have been taken into care in numbers hugely disproportionate to their actual populations.

Institutional or out of home care was not a part of pre-colonised Māori society, yet Māori have been and continue to be overrepresented among those taken into care. At times up to 80% of the children in particular state institutions such as Owairaka Boys' Home in Auckland were described as "Polynesian, mainly Māori". It is clear that the discriminatory attitudes of officials, members of the Police and the public contributed to this overrepresentation.

[3] Tāwharautia- Pūrongo te wā Volume 1 https://www.abuseincare.org.nz/library/v/194/tawharautia-purongo-o-te-wa-interim-report

To this day the number of Māori in care is still disproportionate to the Māori population and this extends to the number of children who are abused in care. Many Māori in care today are the children of those previously taken into care.

Daniel Ku was removed from his grandmother's care in rural North Island and separated from his twin, other siblings and his whole culture. He was subjected to unspeakable sexual, physical and emotional abuse at the hands of the state and the Brothers of St John of God at Marylands School for children with disabilities and at the Child and Adolescent Unit at Lake Alice Psychiatric Hospital. He told us:

"All I'm thinking is why are the people picking on the pēpis… when I was a young child they were damaging right up to the age of 14, and from the age of 14 I was still being picked on by the system".

As an adult Daniel has had his own children taken from him and, in spite of his best efforts, including multiple parenting courses, he has had to wait till his son was 17 before he could be reunited with him.

And so it is that, in the name of "Care" Māori have been alienated in large numbers and across generations from their history, values, whenua, tikanga and cultural connections. Pacific people have also been overrepresented in care and that continues today. A large proportion of people with disabilities and other vulnerable adults have not only experienced some form of care during their lives but are likely to be overrepresented among those who suffered abuse and neglect.

It can take decades for a victim of abuse to gather sufficient insight and strength to confront what they have been through let alone to report the abuse and seek redress for the harm they suffered. Survivors face significant barriers when disclosing their abuse: disbelief, lack of or inaccessible complaints processes, whakamā or shame. But in spite of these formidable barriers, by the late 1990s some survivors began to bring claims in the High Court seeking redress from both the state and faith based institutions for what they had gone through while in their care.

In the early 2000s, with a steadily growing number of court claims and a potential liability of hundreds of millions of dollars looming, the state and the churches were forced to react. Between January 2004 and 31 August 2015, 2513 people made claims either in Court or directly against the Ministry of Social Development [4] alone. Many more were claiming against the Ministries of Health and Education as well as individual churches. But, as we found in our report on redress, "He Purapura Ora he Mara Tipu", despite harrowing accounts and often obvious signs of physical, emotional or psychological damage, many survivors had their efforts to obtain redress rejected time and time again. In short, in statements of defence the Crown refused to acknowledge the harm it had done to survivors, despite the supporting evidence on record. It resisted their claims using all available legal defences such as the Limitations Act, resulting in years of delay before these survivors could make any progress on their claims. The churches also initially took a legalistic view relying on their insurers to resist or reduce the claims.

Eventually, the state and churches set up alternative forms of redress in an attempt to grapple with the large number of claims. But we have found that in doing this they took little or no account of Māori or Pacific culture, values and tikanga nor were the processes and outcomes fair or consistent. Redress was unobtainable for most Deaf people and those with disabilities.

We found that these schemes have often caused further harm to people already deeply harmed by the organisations they were seeking redress from. Survivors are told currently that their claims to the Ministry of Social Development will take five years to resolve unless a fast track process for less monetary redress is chosen.

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[4] Attorney General v J [2019] NZCA

In spite of being brought face to face with the abuses endured and the impact of those on the survivors, the agencies and institutions were slow to take preventative action and make systemic change to prevent abuse happening again - something that all survivors overwhelmingly hope for.

It is no wonder then that survivors, faced with these barriers, looked for other avenues to obtain justice including the Human Rights Commission and eventually the United Nations. Private individuals and advocacy groups began to pressure government and the opposition to set up an independent Inquiry into abuse in state care.

In 2009 The UN Committee Against Torture raised concerns about how New Zealand handled historic abuse claims after The Citizen's Commission on Human Rights brought to its attention cases such as that of Paul Zentfeld, a survivor of Lake Alice Child and Adolescent Unit in the 1970s.

In 2011 the then Chief Human Rights Commissioner Rosslyn Noonan, produced a draft report *The Review of the State's Response to Historic Claims of Abuse and Mistreatment Suffered While Under the Care of the State*.

This report, which was never published, recommended an independent Inquiry. She did not think that the Ministry of Social Development was appropriately impartial to conduct such an Inquiry.

According to Rosslyn Noonan in evidence to the Royal Commission, the response by the Crown was that international human rights standards did not require an independent process, only that it be impartial, and that there were no systemic issues arising from the claims of abuse which merited independent investigation.

It is important at this point to acknowledge the tenacious, brave people who advocated for an Inquiry in the face of stiff resistance. People like Rosslyn Noonan, who continued her crusade far beyond her professional responsibilities; Dr Oliver Sutherland; the Citizens Commission on Human Rights, survivors, academics and investigative journalists. On behalf of survivors, lawyers such as Grant Cameron, Sonja Cooper and Amanda Hill at Cooper Legal continued to press claims that others would have abandoned as hopeless. They did this at their own personal cost and shamefully endured ridicule and criticism of their efforts from within the legal profession, including from some judges.

Another is the remarkable Dame Carolyn Henwood who had chaired a listening service for survivors set up by the Government. In her 2015 CLAS Final Report: *Some memories never fade*[5], she concluded that much of the abuse was preventable, if jobs (had been) conducted properly and proper systems had been in place. Participants said they wanted systemic change and a public acknowledgement of the wrongs of the past.

She recommended a public statement by the Government, acknowledging the wrongs of the past, but didn't call for an Inquiry at that time.

But Social Development Minister of the time, Anne Tolley, stated that there would be no universal apology as there was no evidence that abuse of children in state care was systemic, and an independent Inquiry would retraumatise victims.[6]

The Prime Minister of the time, Bill English, said a formal Inquiry was not needed, as the extent of the problem was already "pretty well known". An Inquiry would make little difference to children now in state care but could divert much-needed resources away.[7]

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[5] *Some Memories Never Fade* – Final Report of the Confidential Listening and Assistance Service

[6] *Tolley rules out apology for child abuse in state care | RNZ News*

[7] www.odt.co.nz/news/dunedin/insight/%E2%80%98terrible%E2%80%99-treatment-systemic

The then Judge Henwood told the Royal Commission that the Government response to her report was "quite devastating" and had prompted her to publicly support an Inquiry.

She also stated firmly that evidence of systemic failings that led to abuse would not be found unless the State was prepared to look.

The pressure on the Government to look was mounting. In 2017 The United Nations Committee on the Elimination of Racial Discrimination called for an independent Commission of Inquiry into abuse of children and adults with disabilities in state care in New Zealand. [8]

In July 2017, 200 people, including victims of violence and abuse in the State's care, gathered on the steps of Parliament to send a message. [9]They shared harrowing stories of mistreatment before handing over a 5300-name petition and the Human Rights Commission's E Kore Anō [10]open letter, signed by 10,000 New Zealanders, calling for an independent Inquiry and a universal apology.

Following the 2017 election, the establishment of a Royal Commission into Historical Abuse in State care was on the first 100 days agenda for the incoming Labour Government. It came into being on 31 January 2018.

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[8] https://nzfvc.org.nz/news/un-racial-discrimination-committee-recommends-inquiry-abuse-state-care

[9] *Livestream from steps of Parliament, handing over petition [ActionStation - Live at Parliament with hundreds of Ngā... (facebook.com)]*

[10] *E Kore Anō – Human Rights Commission campaign https://www.hrc.co.nz/news/e-kore-ano-never-again/*

Finally, the abuse and neglect of people in care had been acknowledged by a government and action was taken to address it with a Royal Commission of Inquiry. This was a catastrophe that justified such a serious step. But this was not a single or isolated event but a decades long intergenerational catastrophe that impacted survivors as long as they lived as well as their whānau, hapu and iwi. It also had pernicious impacts on the whole of our society.

From the start this was no ordinary Inquiry. For the first time, a Chair of a Royal Commission, Sir Anand Satyanand, was asked to consult on and recommend refinements to its own draft Terms of Reference. This decision reflected the recognition that to build trust and confidence among survivors, their whānau and the wider community, the Terms of Reference needed to be developed independently of the state agencies under whose care people suffered abuse and neglect.

Sir Anand consulted with a wide range of survivors and stakeholders and the general public. As a result of his report in November 2018 the Terms of Reference were expanded to make this Royal Commission the most comprehensive of such Inquiries internationally. It covers not just the abuse but the neglect of children, young persons and vulnerable adults who were in care between 1950 and 1999. The scope was widened to include those in the care of faith-based institutions as well as the state.

Importantly, following consultation, the Terms of Reference require that the Inquiry is underpinned by Te Tiriti o Waitangi and must partner with Māori throughout the Inquiry process. It must give appropriate recognition to Māori interests and to Pacific peoples. A key focus is abuse of vulnerable adults. The state care settings that can be investigated include:

- social welfare settings, such as care and protection and youth justice residences
- foster care and adoptions placements
- borstals, or similar facilities
- health and disability settings such as psychiatric hospitals, residential and non-residential institutions for people with disabilities

- all educational settings, early childhood, primary, intermediate, and secondary State schools, including boarding schools and residential special schools
- transitional and law enforcement settings, such as police cells, police custody, court cells, to cover abuse that occurred on the way to, between, or out of State care facilities or settings.

The Inquiry is to investigate the care provided by faith-based institutions who assumed responsibility of individuals, including faith-based schools residential and non-residential.

The Commission was asked to look not only at this history and the systemic reasons for the abuse and neglect that had happened in these settings, but the impacts of this abuse and make recommendations as to the future of care in this country.

So it was that the largest and most long running and expensive Inquiry in New Zealand's history came into being. Its formal title is: The Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions. It has a multi-million dollar budget and a life span of 5 years - l3 years longer than any other Royal Commission. We began work in earnest in January 2019.

At the same time Cabinet established a Crown Response Unit to lead and coordinate the Crown's response to the Royal Commission. In response to orders I, as Chair, make under the Inquiries Act, this Unit answers questions we pose and provides Crown records, some going back to colonial times. Over a million such documents have been disclosed to the Inquiry. The Unit also provides other information such as timelines and research papers.

Similarly, the Catholic Church has a response unit, Te Roopu Tautoko, to coordinate the responses of the many parts of the church. Other faith-based institutions have retained law firms and counsel to represent their interests and to appear at public hearings as appropriate.

3. How the Commission is working and where we are heading

Structurally the Commission comprises a Chair and 4 Commissioners. Sir Anand gave two years of valuable service: conducting the consultation and, once the rest of the Commissioners were in place at the end of 2018, overseeing the establishment of the Commission. He then left to become Chancellor of Waikato University. I replaced him as Chair. Our Commissioners are, Ali'imuamua Sandra Alofivae, Dr Andrew Erueti, Paul Gibson and Julia Steenson. Counsel Assist are Simon Mount KC and Kerryn Beaton KC supported by a number of barristers who come in and out as required to assist with investigations, public hearings and report writing. Our Secretariat which oversees the administration and operations of the Inquiry was headed by Mervin Singham who left to become the Chief Executive of the new Ministry for Ethnic Communities and was replaced last year by Helen Potiki who manages the staff, the organisational systems and processes to support our operating model including numbers of solicitors, researchers, policy analysts and investigators, well-being and engagement experts as well as the administration of HR, Health and Safety, Governance, and Communications. At times these staff have numbered up to 200.

We are acutely conscious that this is an independent public Inquiry committed to working transparently and in public wherever possible.

We are committed to taking a human rights approach to ensure that the reporting of the Inquiry, including findings, expressions of views and recommendations, is consistent with and promotes compliance with international and domestic human rights law and policy to the greatest extent possible. At the centre of this is Te Tiriti o Waitangi which, as I have said, underpins the whole Inquiry.

One part of our work that has remained constant is the survivor-centred approach to gathering our information and evidence. You might ask if this smacks of predetermination. However the Terms of Reference recognise that abuse occurred and that it has had lasting impacts. It expressly requires us to focus on victims and survivors. Our task is to consider the

structural systemic or practical factors that caused or contributed to this abuse and its impacts.

At the heart of the survivor-centred approach is the Private Session where a Commissioner or an experienced kaitakawaenga sits down with a survivor or a group of survivors and whānau to listen and record their experiences while they were in care, the impact on their lives and their ideas about what needs to change. We work in a trauma informed[11], mana enhancing way. These encounters gives us privileged access to the heart-rending, powerful and deeply shocking accounts which inform our investigations, findings, reports and recommendations. This process also has a therapeutic value for at least some survivors who, despite the pain of reliving the abuse, feel compelled to tell us their account.

Other survivors prefer to give their accounts in writing or through a third person. All are welcome. In almost all cases they tell us that the reason for doing this this is to stop it happening ever again to future generations. You will see that to date our reports have contained summaries of some of these accounts. All are being archived so they can never be lost. Our wellbeing services provide as much support as a survivor needs to help prepare, go through and then to recover from these sessions.

The accounts are analysed to find facts, patterns and identify abusive settings and systems. So are the hundreds of thousands of documents we have and continue to receive.

Our Research and Policy team plays a vital role in this analysis, conducting or commissioning research papers and advising on policy as we navigate the huge task of writing reports and formulating recommendations for change.

[11] https://www.ranzcp.org/news-policy/policy-and-advocacy/position-statements/trauma-informed-practice

Public hearings are an important part of our work. Covid permitting, these hearings are open to the general public and are live streamed. They are also able to be watched on our website. All but three of the hearings have taken place in a purpose-built hearing space in Newmarket, Auckland. We have held 13 hearings; the final one starts in mid- October. The most recent hearing saw 14 Chief Executives and other executive officers from government departments as well as the Ombudsman questioned over two weeks about the historic abuse that took place and their plans for the future. Almost all made fulsome acknowledgments of what was alleged by survivors.

We have received criticism from some quarters that the public hearings are too legalistic and too daunting for survivors. We acknowledge that criticism and have taken it into account in our planning. There are some fine balances to be struck and judgement is necessary about who should be called. It is important that the public is aware of and has confidence in what we are doing and feels that it can participate. The public needs to be able to see and assess for itself the soundness and independence of our work. It is also vital that individuals and institutions can be held to account and that the evidence becomes a matter of public record. Above all it is essential that Aotearoa New Zealand opens its ears to listen, learn and acknowledge not only this dark part of our history but also the reality of many who are still in care and still suffer from the impacts of abuse.

To that extent relatively formal hearings are necessary.

But the hearings are not adversarial. Although all the state and faith based parties are represented by legal counsel, the hearings are run by the Commission's Counsel Assist who, with the Commissioners, decide which witnesses will be called. These Counsel Assist conduct virtually all of the questioning. Some survivors really want to give evidence in public, however painful. Others want nothing to do with them. We respect their right to choose. We provide wellbeing to anyone impacted by the hearings particularly but not exclusively survivors. Commissioners, lawyers, staff and other witnesses are not immune from the trauma caused by hearing this evidence.

To make hearings as culturally authentic and as accessible as possible for Pacific and Māori, two hearings were heard in venues away from our hearing room. In 2021 we held the Pacific hearing, ”Tulou-Our Pacific Voices”, in the Fale o Samoa in Mangere, Auckland. The Pacific community attended in large numbers and embraced the hearings which were infused with pacific protocol and practices. Our tikanga based Māori hearing was held in April 2022 at Orākei marae in Auckland with the blessing of Ngāti Whātua although Covid settings meant that the hearing was closed to the public and all witnesses had to participate remotely. That hearing was named by Ngāti Whātua "To muri te pō roa, tēra a Pokopoko Whiti-te -rā". It refers to hope and healing for survivors of abuse in care after years of darkness.

We also hold less formal wānanga and hui in accordance with tikanga Māori, fono and talanoa observing Pacific protocol, and other forms of public and private engagement such as roundtables, some in person but many by Zoom. Some of our activities are streamed live and remain available in accessible formats on our website.

We consult regularly with a Survivor Advisory Group, and a Taumata of senior Māori and expert panels. Commissioners have travelled to several parts of the country to attend community engagements. As well, we are closely watched and monitored by independently formed groups of experts and survivor networks who have no hesitation in calling us to task. This can be uncomfortable but it is vital that we remain as close to the voices of survivors and engaged experts as we can and if we put a foot wrong we need to be told and learn from that. One of the skills I have had a lot of practice in at this job is to accept valid criticism and apologise where we have gone wrong. Importantly we have constantly to look for ways to make our processes better and to learn from our mistakes.

My aim is to ensure that the hopes of survivors are kept alive. One who gave eloquent voice to the hopes of survivors after one of the public hearings said "*The darkness and shame we have carried has begun to lift in the light of exposing the truth of what we have suffered at the hands of so many for so long"*[12]

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[12] Leonie McInroe Survivor

As the Commission is still very much in business and our investigations are ongoing, it is not appropriate for me to speak in any detail about our current work. What I can say is that the Commission has over the last four years been through several phases - a set-up and research phase, then an investigation phase which comprised evidence gathering and public hearings. We initially identified potentially 20 separate inquiries to cover all of the settings in the Terms of Reference. Time and resources do not permit this and we have consolidated them to nine investigations. We are very conscious that the Commission has a finite life span (the final report is to be no later than June 2023) and a constrained budget with which to conduct our investigations and reports.

We have now moved into the final analysis and report writing phase. Currently we are finalising two case studies into the Lake Alice Child and Adolescent Unit and into Marylands School run by the Brothers of St John of God in Christchurch. Work on the final report is underway.

I commend to you the two interim reports we have already published. In a report at the end of 2000 called *Tāwharautia- Pūrongo te wā* we outlined the Inquiry's progress and findings to that date. In December 2021 we submitted a substantial report *He Purapura Ora, he Māra tipu* in which we traversed the evidence about the historic redress processes for survivors.

In summary, we found that much of the abuse suffered at the hands of state and faith based institutions was criminal and some of it was torture. Historically, those agencies were not willing to accept the widespread abuse that could easily have been uncovered. The scale of abuse was too horrific, the costs were too high. The agencies convinced themselves that this was not a systemic wide-spread problem.

The full individual and societal impacts of the abuse and neglect will be fully described in later reports but we have already reported that 80% of current prisoners have spent time in State care as have similar numbers of Mongrel Mob and Black Power gangs. One survivor described how the extreme violence he experienced in boys homes carved "a deep groove" in him and was passed on "to the people we came into contact with …. including our own families. [13]

We have already made recommendations for a future redress system and scheme which are currently before the Government for action. The Public Service Minister Chris Hipkins, and the Minister of Internal Affairs, Jan Tinetti, announced shortly after its release that the Government was starting work on a new, independent, survivor focussed redress system to implement the recommendations.[14]

On 9 August Minister Hipkins released a Cabinet Paper outlining immediate and urgent projects to improve survivors' experiences of seeking redress. This is another unique aspect of the Inquiry - the Government is working on implementing interim recommendations before the final report has been delivered.

4. *Personal Reflections*

I want to finish with my personal reflections on this extraordinary journey over the last 4 years by repeating what I said at the beginning. This work has affected me profoundly both personally and professionally. It has opened my eyes to a previously unspoken and shameful history of cruel abuse and neglect of the most vulnerable in our society. It has caused me to reflect long and hard on what it truly means to be a responsible citizen of Aotearoa New Zealand.

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[13] He Purapura ora, he Māra Tipu From Redress to Puretumu Torowhānui p 36 Vol 1 December 2021

[14] Beehive press release 15 December 2021

For I am a child of the era when the worst of this was happening. Born in 1947 I was a baby boomer born into the post Second World War age. It was a time of prosperity and opportunity. But, on the other hand, it was an age of conservative, straight laced largely misogynistic thinking that frowned on dissent, that was overtly racist, that actively encouraged eugenics and was informed by ableism[15]. Physical violence in the form of strapping and caning of children was sanctioned in both schools and home to maintain discipline.

Personally, I was chastised roundly by my family for publicly protesting against the building of the Manapouri Dam. I felt and endured, but could not name, the rigid sexist stereotypes I as a young girl and woman was locked into. I vividly remember my horror and confusion on hearing people I loved and respected making proud and open racist jibes against Māori or anyone of colour. I remember the jeering at people with any unusual feature or disability and the deep, deep shame attached to anyone who dared to reveal mental illness, unwed pregnancies or even poverty. At that time the norm was that these people needed to be weeded out, sent away, disciplined, made to conform to the ideal western models that white middle class New Zealand strived for. This was the conservative hierarchical colonial New Zealand that favoured correction in institutional care over support for families.

What I have learned to my horror is that this was fertile ground for the systems and attitudes that enabled and even sanctioned the abuse of our most vulnerable - those for whom home life did not conform to the ideal or worse, was violent and abusive. Each one of these children and young people needed to be understood and soothed and loved. Instead they were being abused by the state and faith-based institutions who thought they could do a better job of parenting. Those who had a mental illness, a physical, or learning or neuro disability were generally locked away, out of sight, out of mind but above all out of care. This

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[15] Ableism is “a value system that considers certain typical characteristics of body and mind as essential for living a life of value”. Ableist views consider that people with disabilities or mental health conditions are disadvantaged, leading to stigma, discrimination and often exclusion.

abuse was happening around the corner as I was cycling to school in Christchurch in the 60s. I have learned that the Church I was attending was at best blind to and at worst complicit in the locking up and abuse of children who needed love and care. I have to my shame learned that those of my classmates in a working-class school who were Māori, came without lunch, were skinny and looked afraid were most likely being abused by foster parents or the local priest. And no one was watching or protecting.

My shame is for my and subsequent generations who "left it to the authorities" to manage these "misfits". We did not see or hear their calls for help because we trusted those in power to get it right. What we reaped as a society and what the Royal Commission has reported on so far was successive generations of impacted, broken people whose care by state and faith based institutions often led to involvement with gangs, crime, mental health issues, poverty, prostitution and our dreadful mental health and prison statistics. It has disempowered and harmed generations of Māori. This is not historic. It is present and real and raw.

But I have also learned that those who suffered abuse are true survivors whose main aim is for this never to happen again. E kore anō.

I have learned that we cannot continue in the same way using the same western colonial models of care and protection and so-called treatment.

I have a vision of other ways of caring that is trauma-informed, mana-enhancing, survivor focused and underpinned by universal and international human rights principles, not the least of which are those enshrined in Te Tiriti o Waitangi.

To achieve this the Royal Commission has to tell the stories so that we collectively own them as a nation. And we all have a responsibility to look inwards. As individuals, as professionals, as communities we must ask how and why this happened. Then courageously we have to

champion reform. We must require and encourage our governments, churches and other institutions to whom we entrust our vulnerable to not only put right the wrongs of the past but to create new ways of caring that are indigenous to this land, to this people, to us.

And that takes me finally to the question I posed about what happens to the reports and recommendation of this Royal Commission of Inquiry.

Will they lead to their proper fruits of reforms and improvements in law and practice?

It is our task as Commissioners to recommend that systems that caused harm change fundamentally so that the horrors and the damage of the past cannot be repeated and that all survivors can have proper pathways to healing.

The response to our recommendations lies not only with Government and the faith-based institutions but with each and every one of us. The Royal Commission will end in the middle of next year but the need for change will remain. Governments will only change systems if we the people require and demand it.

I am very grateful to OWLS for this opportunity to describe the journey of the Royal Commission into Abuse in Care. OWLS is supported in holding this event by the New Zealand Law Foundation, the University of Otago Faculty of Law and the Williams Trust. I warmly acknowledge their participation as it has enabled me to measure the work we are doing against the principles, values and work ethic of Ethel Benjamin. I would like to think that she would approve of the work we are doing to address this catastrophe and she would have been a loud and effective voice for change. She is a fine exemplar of what it meant and continues to mean to be a responsible and caring citizen of Aotearoa New Zealand.

Kua mutu āku kōrero mō tēnei wā.

Nō reira tēnā koutou, tēnā koutou, kia ora tātou katoa.

Coral Shaw
September 2022