

**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY  
LAKE ALICE CHILD AND ADOLESCENT UNIT INQUIRY HEARING**

**Under** The Inquiries Act 2013

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

**Royal Commission:** Judge Coral Shaw (Chair)  
Ali'imua Sandra Alofivae  
Mr Paul Gibson

**Counsel:** Mr Simon Mount QC, Ms Kerry Beaton, Mr Andrew Molloy,  
Ms Ruth Thomas, Ms Finlayson-Davis, for the Royal  
Commission  
Ms Karen Feint QC, Ms Julia White and Ms Jane Maltby  
for the Crown  
Mrs Frances Joychild QC and Ms Alana Thomas for the  
Survivors  
Ms Moira Green for the Citizens Commission on Human  
Rights  
Ms Susan Hughes QC for Mr Malcolm Burgess and Mr  
Lawrence Reid  
Ms Frances Everard for the New Zealand Human Rights  
Commission  
Mr Hayden Rattray for Mr Selwyn Leeks

**Venue:** Level 2  
Abuse in Care Royal Commission of Inquiry  
414 Khyber Pass Road  
AUCKLAND

**Date:** 14 June 2021

1 this is not the first time you've told your story, you've told it many, many times, but we  
2 recognise that and it can never be easy, but you have done it and I think you've done it  
3 because this time it's in the public eye and we thank you very much for that.

4 A. Thank you very much.

5 Q. It's very important. Thank you.

6 A. Thank you.

7 Q. Time for lunch. [Applause]

8 **Lunch adjournment from 12.50 pm to 2.04 pm**

9 **CHAIR:** Ms Feint. Before we start I believe you want to talk about that letter.

10 **MS FEINT:** Yes, thank you Madam Chair. I just wanted to clear up the confusion this morning  
11 because we had a different letter put on screen from the letter of apology from the Prime  
12 Minister that I read out. We've now got to the bottom of it.

13 So the letter that I read out and that was in my opening submissions was dated 31  
14 October 2001 and that was the letter that was sent to the round 1 claimants and then there  
15 was a second letter for round 2 dated 23 December 2002 and that went to the round 2  
16 claimants. I had assumed that they got the same letter, but the second one had been  
17 tweaked. And then just to confuse matters further, the letter that was put up on the screen  
18 was neither of those two, that was a draft of the round 2 letter it appears.

19 So what we could do in our closing submissions is just we could set out the  
20 documents in the relativity bundle.

21 **CHAIR:** Yes, that would be sufficient. It's apparent to me the substance wasn't very different but  
22 it was just expressed in slightly different ways. If you could remember to do that in your  
23 closing that would be great. Thank you for the explanation.

24 **MS FEINT:** Thank you for allowing me to clarify that.

25 **CHAIR:** That's fine. Now Ms Thomas.

26 **MS R THOMAS:** Thank you Madam Chair. We now have our next witnesses from ACORD. I'll  
27 just introduce we have Dr Sutherland, Dr Ross Galbreath and seated next to Dr Sutherland  
28 and Dr Galbreath is Robert Ludbrook who is also a member of ACORD, the lawyer for  
29 ACORD. He's seated with Dr Oliver Sutherland and Dr Galbreath today as a support and  
30 also so that he's able to hear more clearly his friends' evidence today.

31 **DR OLIVER SUTHERLAND**

32 **DR ROSS GALBREATH**

33 **CHAIR:** Can I just welcome you three gentlemen, it's very good to see you all sitting there, and to  
34 thank the two of you for assisting. I have been told that it's possible that particularly you,

1 Mr Galbreath, might like to supplement Dr Sutherland's evidence, is that correct, you might  
2 like to add one or two things?

3 **MR GALBREATH:** Yes.

4 **CHAIR:** If that's the case, I don't know about you, Mr Ludbrook, are you interested in saying  
5 anything in particular?

6 **MR LUDBROOK:** No.

7 **CHAIR:** Just out of an excess of caution, what I'll do is ask you both to take the affirmation then  
8 we can avoid any messy disputes later on about who said what. Is that all right? So  
9 addressing to you, Dr Sutherland and Mr Galbreath, do you both solemnly, sincerely, truly  
10 declare and affirm the evidence you give before this Commission will be the truth, the  
11 whole truth and nothing but the truth?

12 **DR SUTHERLAND:** I do.

13 **MR GALBREATH:** I do.

14 **CHAIR:** Thank you both.

15 **DR SUTHERLAND:** Sounds like a wedding.

16 **CHAIR:** It sounds like a wedding but I promise you I'm already married, not today thank you.

17 **DR SUTHERLAND:** I meant me and Ross.

18 **CHAIR:** Well, you can talk about that privately later.

19 **QUESTIONING BY MS R THOMAS:** Thank you. Oliver, do you have some opening words  
20 that you would like to address to the Commissioners?

21 **DR SUTHERLAND:** Tēnā koutou, tēnā koutou, tēnā koutou katoa. Tuatahi, tēnā koutou Ngāti  
22 Whātua whānui, kaitiaki o tēnei whenua, o tēnei rohe, o tēnei takiwa, Ngāti Whātua, ngā  
23 mihi ki mahana tēnei ki a koutou.

24 Tuarua, te poari, no kaitiaki o tēnei kaupapa tēnei koutou, talofa lava, ka nui ngā  
25 mihi ki a koutou katoa.

26 Tuatoru, koutou kua tae mai nei i tēnei ra, koutou katoa i tēnei ra, tēnā koutou, tēnā  
27 koutou, tēnā koutou katoa. Fakalofa lahi atu to my Niuean friends.

28 Madam Chair, here we are after 45 years, late, but it's never too late for justice.  
29 I first want to acknowledge those survivors of Lake Alice who as teenage children  
30 recounted their experiences to me in 1976 and 1977, and also those others who are going to  
31 be recounting their experiences during this hearing.

32 In particular I want to pay my respects to Hake Halo who gave his evidence this  
33 morning. Because when he was just 14 years old he was brave enough to come and to talk  
34 to me and to talk to us and to speak out publicly and to lift the lid for the first time on the

1 dreadful story of the Lake Alice Adolescent Unit.

2 I also want to pay my respects to the educational psychologist Lyn Fry, because if  
3 Lyn Fry hadn't come to us and ACORD and broken the Official Secrets Act and given us  
4 details of Hake's treatment and talked to us about it, we would never have known of Hake  
5 and we would never have gone to him, and if we hadn't have done that I don't know, there  
6 wouldn't have been a Mitchell Inquiry as we'll come on to. So I do want to pay my respects  
7 to Lyn who I understand has made a submission to the Commission and is living in  
8 London.

9 Lastly I just want to pay my respects to those members of the Auckland Committee  
10 on Racism and Discrimination. We were a team and we're still a team and I'd just like to  
11 acknowledge Mitzi Nairn and Ray Nairn and Ulla Sköld, as well as Robert Ludbrook and  
12 Ross and myself, just want to pay my respects to my colleagues.

13 Madam Chair, 45 years ago in May 1977 when I revealed the appalling treatment  
14 suffered by children at Lake Alice to Dr Stanley Mirams, who at the time was the Director  
15 of the Mental Health Division of Ministry of Health, when I told him in particular about the  
16 enforced administration of electric shocks to children's bodies, I said publicly and I quote,  
17 "If the new allegations are proved correct, the misuse of the shock treatment, the shock  
18 equipment will constitute perhaps the most appalling abuse of children in the guardianship  
19 of the State that this country has known."

20 At the time ACORD only had details of three children. Now, of course, we know  
21 that there were scores if not hundreds, and we know from their testimony that there was no  
22 "perhaps" about it; they suffered, and the abuses that they suffered were indeed the most  
23 appalling abuse of children in the guardianship of the State this country has known.

24 **MS R THOMAS:** Thank you Oliver. If you could now move on to paragraph 3 in your  
25 statement. You have said that the New Zealand Government knew what was happening at  
26 the Lake Alice Child and Adolescent Unit in 1976 and 1977. How did the Government  
27 know this?

28 **DR SUTHERLAND:** Well, they knew because, of course, of the courage of Hake Halo in the  
29 first instance, 13 year old who spoke out to his grandmother and then other children spoke  
30 to us of their abuse. Psychologists such as Lyn Fry risked their own careers and spoke out.  
31 And I spoke out, together with my colleagues in the Auckland Committee of Racism and  
32 Discrimination, a journalist with the *New Zealand Herald*, Peter Trickett, did a tremendous  
33 job in publicising what was going on at Lake Alice, and then the Ombudsman denounced  
34 the electric shock procedures as not justified.

1           So they knew, the Government knew, the people in positions of authority knew and  
2 cannot say that they were unaware of this abuse. And particularly the punishment of the  
3 use of shock equipment on children's legs to deliberately cause pain, and the allegations  
4 which we made that this was torture.

5 **MS R THOMAS:** If we now move on to paragraph 9 of your statement, which is titled "The Case  
6 of Hake Halo". December 1976 you were the spokesperson for ACORD at that time?

7 **DR SUTHERLAND:** Yes, I was.

8 **MS R THOMAS:** Can you tell us what was ACORD, what is ACORD?

9 **DR SUTHERLAND:** The Auckland Committee on Racism and Discrimination was a group  
10 established in 1973. Essentially we were challenged by Māori and Pacific activists at the  
11 time that the problem in New Zealand was institutional white racism and what Pakeha  
12 needed to do was to research and expose that racism. And that, I guess, was the basic  
13 kaupapa of ACORD and that was what we saw as, I guess, our mission at the time.

14 **MS R THOMAS:** In December of 1976 you've mentioned the name of Lyn Fry who was a  
15 Department of Education psychologist, she contacted you. What did she say to you at that  
16 time?

17 **DR SUTHERLAND:** Well, Lyn came and told us that she'd been the -- when she was the  
18 educational psychologist for a series of inner city Auckland schools she became involved  
19 with the case of Hake Halo. He was having difficulties at school and she was attempting to  
20 find ways to help him and his family out of the difficulties. She said that she told us that  
21 she had wanted him to go to Hokio Beach, a Social Welfare home and she advocated for  
22 that for some time but in fact Social Welfare wouldn't do that and he went through  
23 Ōwairaka and then eventually to Lake Alice.

24 **MS R THOMAS:** Did she give you any information about Hake's experiences at Lake Alice?

25 **DR SUTHERLAND:** She did. She told us, of course, that he had complained of having shock  
26 treatment, that he'd complained of having punish shocks put on his head for punishment  
27 and she told us enough about Hake's situation for us to want to talk to Hake, which then we  
28 did.

29 **MS R THOMAS:** Once she had given you this information but before you spoke to Hake, what  
30 did you decide to do to gather more information about this unit that she described?

31 **DR SUTHERLAND:** Well, the first person I got in touch with, not because I knew him but  
32 because he was well-known, was the Superintendent of Carrington Hospital, Dr Fraser  
33 McDonald. I telephoned him and I told him what I knew of Hake's story, which was based  
34 on what Lyn Fry had told me at that stage, and I made notes of my phone conversation with

1 him at the time. Dr McDonald told me that there were three classes of patients at Lake  
2 Alice. There was a security wing for the criminally insane. That's what most people had  
3 heard of, but there was also a second area for overflow people who needed psychiatric work  
4 from the Palmerston North area and they were what he called the good psychotics who  
5 caused no trouble.

6 But it was also the outpatient hospital for Palmerston North Hospital Board and  
7 included the Child and Adolescent Unit. I asked him about ECT being used on a child as  
8 young as Hake's age and he said, and I quote, "I can't remember ever having given ECT to  
9 someone under 16 years". Then he said to me that he'd used a consent form for ECT at  
10 Carrington but he didn't know if it was used elsewhere in New Zealand.

11 So I continued to gather more information. We were starting to get a feel for what  
12 was happening at Lake Alice. But then I got in touch with Dr Sheila Godfrey at the Child  
13 Health Division of the Department of Health and Dr McLeod at the Auckland Hospital.  
14 Then on 7 December 1976, a week after Lyn Fry had come to us, I rang Professor John  
15 Werry, a psychiatrist at the Auckland Medical School, and –

16 **MS R THOMAS:** I'll just pause you there, we'll bring up the notes of that conversation, if that's  
17 all right, on to the screen.

18 **DR SUTHERLAND:** Oh yeah.

19 **MS R THOMAS:** At the time of your information-gathering you also made some file notes  
20 effectively of your conversations?

21 **DR SUTHERLAND:** Yes, those are my file notes.

22 **MS R THOMAS:** Would you read for us please the highlighted paragraph, perhaps if we call that  
23 out so it's a bit bigger?

24 **DR SUTHERLAND:** I can read it. Yes, Professor Werry said to me, you can see it's quoted,  
25 "ECT has a very specific indication. It is given in cases of severe depression, whereas this  
26 boy seems to be suffering from a personality disorder."

27 **MS R THOMAS:** Professor Dr John Werry, he was a key member of the Royal Australia and  
28 New Zealand College of Psychiatrists at that time?

29 **DR SUTHERLAND:** Yes, he was, and I felt that by talking to him it was, in a sense, talking to  
30 the College of Psychiatrists who then might have – who he might be able to pass the  
31 information on that children of the age of 13 were being given shock treatment at Lake  
32 Alice.

33 **MS R THOMAS:** If we now move on to paragraph 13 of your statement. You've gathered

1 evidence from other people in relation to this unit. Did you also speak with Hake and his  
2 family?

3 **DR SUTHERLAND:** Yes, yes, certainly I did. On 8 December I spoke with and I interviewed  
4 Hake, his parents were there, but most importantly I spoke with his key caregiver who was  
5 his grandmother as we've heard. She had brought Hake up since he was a baby. She didn't  
6 speak English, I knew she didn't, and so I took with me a Niuean leader who was a  
7 neighbour of mine in Grey Lynn, John Kolo, who was also a senior member of the Niuean  
8 community in Auckland. He was the person I used repeatedly in my interactions with Hake  
9 and his family. And John explained to Hake's family just what ECT, electroconvulsive  
10 therapy, constituted, because they had no idea at all. Most people don't, and they certainly  
11 didn't have any idea what it was.

12 When he explained that to the family they broke down and they cried. They were  
13 happy for us to make his case public, so long as nothing would identify the family and they  
14 hoped that by making his case public it would get the authorities to do something for Hake  
15 and do something for other children.

16 **MS R THOMAS:** To make this case public, is that when, Dr Galbreath, you authored a letter on  
17 behalf of ACORD on 13 December and you wrote that letter, sent it to the minister of  
18 Social Welfare?

19 **MR GALBREATH:** Yes, that's correct, yes.

20 **MS R THOMAS:** I'll just ask for that letter to be brought up on to the screen please. Just to  
21 confirm, this is a letter dated 13 December 1976. It's addressed to the Minister of Social  
22 Welfare. If we scroll down to the bottom of that document, it's a letter that you sent, Ross,  
23 on behalf of ACORD?

24 **DR GALBREATH:** That's correct, yes.

25 **MS R THOMAS:** If we go back up to the document at paragraph 2.

26 **MR GALBREATH:** Yeah.

27 **MS R THOMAS:** Would you be able to read, if we call that out so it's larger, the first part of that  
28 paragraph?

29 **MR GALBREATH:** Yes, this is the guts of what we're saying to the Minister, that as his legal  
30 guardian and without the consent of nor consultation with his own family, your department  
31 arranged for the transfer of this 13-year-old Niuean, whose only offences were for  
32 shoplifting, to the Lake Alice Hospital for the criminally insane. During the next 11  
33 months he received forced medication by intra-muscular injection and about 10 treatments  
34 of electroconvulsive therapy.

1           His family did not give their consent for this, nor were they ever told officially that  
2 it had taken place. Then on October 19th, Hake – it's been redacted – who was still a  
3 State ward was returned to his family in Auckland. An officer of your department who had  
4 been handling this boy's case for some years then tried to persuade his family to send the  
5 boy back to Niue where he can work with animals. They were instructed by this and, of  
6 course, refused to do it since the immediate family was in Auckland and there was no  
7 possibility of specialised help for Hake in Niue.

8           Since he returned from Lake Alice the family has had no help or advice from your  
9 department and are being left to look after as best they can a boy who is still a ward of the  
10 state. Your department has not even ensured that his child benefit is restarted, his parents  
11 have not received it since his return from Lake Alice Hospital."

12 **MS R THOMAS:** Thank you. Now if we could come back to your statement, Oliver, at  
13 paragraph 15?

14 **DR SUTHERLAND:** The day after we sent that letter to Bert Walker I spoke again with Hake  
15 and together with my interpreter, John Kolo, being present. Hake said that he had had ECT  
16 six or seven times and has had it "straight, I wasn't put to sleep first." He said, "it hurts  
17 when I have it." Hake then went on to say, "Dr Leeks says you get this for having done this  
18 and this wrong. They did this to punish me. Leeks, he's no good."

19 **MS R THOMAS:** Did Hake also mention something else that you noted but didn't think so much  
20 of it at the time?

21 **DR SUTHERLAND:** Yeah, my notes, looking back on them now, say that he said to me that it  
22 was also given in the chair. Now I didn't realise the significance of that because this was in  
23 December 76, until a few months later when I met other boys whose cases we'll come on to,  
24 who said that they were sat in a chair and were given shocks to their legs. So Hake was  
25 foreshadowing that particular issue as far as we were concerned, but we didn't realise the  
26 significance of it.

27 **MS R THOMAS:** At that time. And you introduced Hake to the journalist from *The Herald*,  
28 Peter Trickett, and then on 15 December of that year 1976 the first news article about  
29 Hake's case was published?

30 **DR SUTHERLAND:** That's right.

31 **MS R THOMAS:** I'd now like to ask you some questions in relation to Craig Jackson, so if we  
32 move on to paragraph 19 of your statement. Craig Jackson was a psychologist for the  
33 Department of Education and he was the district psychologist in 1972 through to 74 in the  
34 area that included Lake Alice. At the time he had written to the Inspector of Education



1 raising concerns that he had with Lake Alice, and I'd now like to bring up the letter which is  
2 7 January 1977, a letter that Craig Jackson has written.

3 Just to confirm, this is a letter 7 January 77, it's a letter written by Craig Jackson to  
4 Dr Stanley Mirams, the Director of Mental Health Division. If we could bring up  
5 paragraph 2 so that's clearer to see please. Oliver, would you mind reading that paragraph  
6 out?

7 **DR SUTHERLAND:** "During the" – Craig Jackson writes, "During the latter part of 1972  
8 through 1973 and again in 1974 (until August), I was responsible in my professional  
9 capacity as acting district psychologist, Palmerston North, for consultative liaison visits to  
10 the principal of the Lake Alice Hospital school from its initial stages of establishment."

11 **MS R THOMAS:** Thank you. If we can now bring up the subparagraphs (a), (b) and (c), if you  
12 could read those to us Oliver.

13 **DR SUTHERLAND:** Yes, he's giving his impressions of the use of shock treatment at the time;  
14 "(a), that as far as I could reliably ascertain it was often used without pre-medication  
15 procedures, which I understood to be contrary to ethical medical practice; (b), that in my  
16 view it was being used punitively as part of the disciplinary structure, governing the  
17 conduct of youngsters resident in the unit; (c), that the majority of youngsters in the unit at  
18 the time had received this treatment without reference to their medical or psychiatric status  
19 or grounds for admission."

20 **MS R THOMAS:** Thank you. If we could just call out paragraphs 5 and 6 of that letter. If you  
21 could read that out?

22 **DR SUTHERLAND:** Craig Jackson goes on; "At the time I voiced my concerns to the inspector  
23 supervising Special Education of the Whanganui Education Board, Mr K Robinson, and  
24 have currently written to my administrative superior, Mr R Sinclair, Chief Psychologist on  
25 the matter. I appreciate that I am not competent to pass any definitive judgments as a  
26 non-medically trained person, on medical treatments. But nevertheless, on humanitarian  
27 grounds, and on the basis of commonsense judgment it appeared to me at the time that  
28 unethical use was being made of this treatment."

29 **MS R THOMAS:** Thank you. You can take that one down and, Oliver, if I can just remind you  
30 to speak slowly and we'll move on to paragraph 20 of your statement. You and Craig  
31 Jackson corresponded with letters back and forth to each other. What did Craig Jackson  
32 say to you about his efforts?

33 **DR SUTHERLAND:** He wrote to me and he said that he felt he had done all he could within the  
34 system end quotes to draw the attention of the higher authorities to definite irregularities in

1 the use of ECT as a treatment in the adolescent unit.

2 **MS R THOMAS:** In January 1977 the Minister For Social Welfare announced there would be a  
3 ministerial inquiry. Can you read to us the terms of reference listed in your statement there  
4 – paragraph 21(a) – for that inquiry?

5 **DR SUTHERLAND:** Yes, I will, I'll say this is the inquiry we thought we wanted because it was  
6 going to, we hoped, lift the lid, clear the air about what was happening at Lake Alice. But  
7 the terms of reference were rather narrow.

8 The first term of reference in principle 1 was that the Magistrate, Mr Mitchell,  
9 should inquire into Hake's case and report on the authority on which treatment was  
10 administered to the boy by the medical authorities at Lake Alice. In other words, who was  
11 responsible for the treatment that the boy got.

12 **MS R THOMAS:** Just turning over there, the second –

13 **DR SUTHERLAND:** And any associated matters that may be thought by you to be relevant to  
14 the general objects of the Inquiry.

15 **MS R THOMAS:** How were those terms of reference viewed by ACORD and by the  
16 Psychological Association, for example?

17 **DR SUTHERLAND:** Well, they were too narrow, I mean in ACORD, we had already been  
18 calling for a full public inquiry into what was going on at Lake Alice. And, of course, this  
19 indicated that Mitchell was only going to look at Hake Halo's case on its own. And then  
20 when the terms of reference were announced, the Psychological Association spokesperson  
21 said that they had called for a formal inquiry about the reported use of ECT on adolescent  
22 children at Lake Alice and that the Inquiry's limited terms of reference didn't meet the  
23 association's request. Moreover, it was going to be held in camera, none of it was going to  
24 be published.

25 **MS R THOMAS:** If we could now turn to paragraph 25 of your statement where you talk about  
26 the Mitchell Inquiry taking place in February of 1977 and ACORD filed some submissions  
27 to that inquiry. If we could bring those up, please, on the screen. If we could call out the  
28 paragraphs numbered 1 to 5 so they're a bit larger. Are these the submissions that ACORD  
29 made to the Mitchell Inquiry, was it at the start of the Inquiry?

30 **DR SUTHERLAND:** Yes, they are.

31 **MS R THOMAS:** Could you read through those one at a time?

32 **DR SUTHERLAND:** Yeah, they were issues that we wanted Mitchell to cover. First was the  
33 right of the family to be told in a language that they fully understood and of their choosing

1 precisely what the Government department was doing with respect to their child and why;  
2 in short, the right to know.

3 The second issue was the right of the natural parents or grandparents to be consulted  
4 in the language which they understand as to the educational, welfare and medical treatment  
5 (especially shock treatment) to be administered to their child.

6 That led on to the right of the natural parents or the grandparents to give or not give  
7 informed consent for medical treatment (especially shock treatment) to their child.

8 The fourth issue was whether the State, when it's taken over the legal guardianship  
9 of a child, then has the right to do whatever it pleases to that child and to the body and to  
10 the mind of that child without reference to the natural parents or the grandparents.

11 And lastly, we continue to be concerned about the handing over by one Government  
12 department, which is the Department of Social Welfare, to another, which was the  
13 Department of Health which ran Lake Alice, of a child without ensuring that the child's best  
14 interests would be the paramount consideration in any treatment or mode of treatment  
15 which he might receive and also without ensuring that his special needs as a Polynesian  
16 child would be fully understood and met.

17 Because I have to say, that throughout Hake's entire story to this stage, no-one had  
18 paid the slightest attention to the fact that he was Niuean, none. Except Dr Leeks who felt  
19 he should be sent back to where he'd come from, and that he was a monument to the  
20 inadequacies of the immigration system, which Dr Leeks put in writing. Not in my  
21 evidence but I've said it, and I'll never forget it.

22 **MS R THOMAS:** He made these submissions at the Mitchell Inquiry. And I understand  
23 Mr Robert Ludbrook was your lawyer at that Inquiry, Dr Galbreath was in attendance every  
24 day for the six days of the hearing and you yourself, Dr Sutherland, were also in attendance  
25 when you were able to be observing that inquiry. From your memory of the Inquiry, did  
26 Hake or any of his family give evidence at that hearing?

27 **DR SUTHERLAND:** Not as far as I know.

28 **MR GALBREATH:** No, I'm sure I was there on every day and he wasn't, or no-one from his  
29 family were there that I was aware of. He certainly didn't give evidence.

30 **MS R THOMAS:** Ross, if you could just move the microphone slightly closer to your chin.  
31 There you go.

32 **CHAIR:** I think it's important, if you don't mind, just to repeat what you said.

33 **DR GALBREATH:** Yeah. Neither Hake nor his family were at the Inquiry and they certainly  
34 didn't give evidence. There was a suggestion, I think, in Mitchell's report that he had been

1 to see them, but we never heard any confirmation of that from them.

2 **MS R THOMAS:** Once the evidence of the Mitchell Inquiry had concluded, so the six days of  
3 hearing, Oliver, what did you do at that point, did you write a letter?

4 **DR SUTHERLAND:** Yeah, I wrote to the Chief Ombudsman, Sir Guy Powles, who by that stage  
5 I knew quite well and I was aware that he was looking into another case at Lake Alice, and  
6 I wrote to Sir Guy and I said – summarised some of the evidence that was given for him  
7 and I concluded by saying that it's abundantly clear that a full-scale inquiry into Lake Alice  
8 Adolescent Unit is essential and I hope Mr Mitchell recommends it.

9 **MS R THOMAS:** When you wrote that to Sir Guy, what made you say that?

10 **DR SUTHERLAND:** Well, there was a bigger picture, it was clear that what happened to Hake  
11 was part of the picture, and it was what happened to an individual boy. But in fact, there  
12 was so much that was abundantly wrong with what was happening and we were just  
13 starting to unravel small bits of it, little bits of information came to us that built a bit of a  
14 picture that we thought that a full inquiry was the only way to get to the bottom of what  
15 was happening to these children at Lake Alice.

16 **MS R THOMAS:** And at that stage you were hopeful that Judge Mitchell would recommend  
17 that?

18 **DR SUTHERLAND:** Yeah, more than hopeful, I think we thought that he would be bound to,  
19 given how much he had already started to see.

20 **MS R THOMAS:** So if we could move over in your statement through to paragraph 32 in relation  
21 to the findings of the Mitchell Inquiry and the report of the Commission. In that paragraph  
22 in your statement you cover one of the answers to the term of reference that Judge Mitchell  
23 has stated. Can you read that out to us please?

24 **DR SUTHERLAND:** Yes, I will. Just to remind you, the term of reference that we're talking  
25 about was the one that says, "Mitchell should report on the authority upon which treatment  
26 was administered." So when we go to what Mitchell's report actually said, he said:

27 "I consider that the authority for his treatment can be implied from the conduct of  
28 the people concerned, both the family and the Department of Social Welfare. This rested in  
29 the trust imposed on all sides in Dr Becroft who made the placement. At the same time, it  
30 must be acknowledged there was no express authority for the ECT from the family or from  
31 the offices of the Department of Social Welfare."

32 So whatever Mitchell was doing he could not escape and if he was trying to  
33 exonerate the department, which he did, he could not escape the fact that there was no  
34 express authority given for the boy's treatment.

1 **MS R THOMAS:** And when you had spoken with Hake and with his family, what was their  
2 understanding of what they had or had not consented to?

3 **DR SUTHERLAND:** His family, I don't think they knew that consent was even sought. I don't  
4 think anyone asked them. Don't forget that all they were told was that he was being sent to  
5 Lake Alice to go to a school, the last of a number of schools and the one that perhaps they  
6 hoped would be the one that would help him best.

7 **MS R THOMAS:** So their understanding was he was simply being sent to a school, no  
8 understanding that it was a psychiatric hospital, no mention of ECT and no understanding  
9 of consent or request for consent?

10 **DR SUTHERLAND:** Not at all. You need to remember that he was in the Ōwairaka Boys' Home  
11 when he was sent down, even visiting rights were limited to the family there. So they could  
12 only see him in the context of Ōwairaka when he was sent down directly and put on a plane  
13 and sent straight down to Lake Alice.

14 **MS R THOMAS:** So when ACORD received a copy of the Mitchell Inquiry report, how did  
15 ACORD interpret that report? And at the moment we're on paragraph 33 of your statement.

16 **DR SUTHERLAND:** Firstly, we need to remember that the Minister had publicly said – had  
17 vindicated the department, so Bert Walker was very happy with the report, as I guess when  
18 we read it we probably knew he would be. As far as we were concerned of course we  
19 regarded it as a whitewash. It didn't – except for that one statement there was no  
20 authority, informed consent being given. But otherwise, really what Mitchell did was just  
21 simply exonerated the actions of the officials and the medical staff who dealt with Hake,  
22 and actually directed blame towards his family if anywhere.

23 **MS R THOMAS:** Can I ask you now to read slowly but paragraph 34 of your statement in its  
24 entirety?

25 **DR SUTHERLAND:** It was how we summed it up, which was Hake's case exemplified all the  
26 worst elements of institutional racism that were prevalent in New Zealand in the 1960s and  
27 the 1970s. We've got to remember that was a time in which large numbers of Pacific  
28 people were migrating to New Zealand, many of them like Hake's family not able to speak  
29 English.

30 Hake and his grandmother, who had whangai'd him or informally adopted him,  
31 they'd arrived in New Zealand to join the Pacific Island community in 67, neither able to  
32 speak English. Their encounters with the education, Police, Social Welfare, judicial, and  
33 ultimately the health systems for the next 10 years were all characterised by

1           misunderstandings and confusions. Nobody used an interpreter except us and we took John  
2           Kolo. But none of the rest of them. How they thought the grandmother could possibly  
3           understand anything, because she couldn't, and it was never explained, and she never did  
4           understand until we met with her.

5                       It was a classic institutional racism. Which culminated in Judge Mitchell's Inquiry  
6           and report which then again demonstrated the failure of all those institutions that dealt with  
7           Hake and his grandmother to understand the cultural divide between themselves and this  
8           troubled Niuean family.

9           **MS R THOMAS:** We now move on to paragraph 37 of your statement. During Hake's case,  
10           some other families had contacted you and had contacted ACORD about their boys'  
11           experiences at the Lake Alice Child and Adolescent Unit. What did they tell you?

12           **DR SUTHERLAND:** Yes, they came to us because at the time there was considerable publicity,  
13           front page publicity about Hake's case. And these families had seen this publicity and  
14           approached me on their own volition to tell me what their boys had experienced. And  
15           I interviewed the boys and their families; one Māori, one Pākehā. Both boys were wards of  
16           the State at the time they were placed in Lake Alice Adolescent Unit. They told me about  
17           children not only receiving ECT to their heads, and ECT as punishment to their head, but  
18           also a special sort of punishment in which the electrodes from the ECT machine were  
19           placed on either side of their knees and an electric current was passed through their knees  
20           as a form of punishment.

21                       One of these boys described to me what happened when he was given this  
22           punishment. I quote, "They gave me a shock, turned it off and on, it jolts you out of the  
23           chair. The chair fell over. The chair fell over and I rolled around the floor until they turned  
24           it off. I got it twice on the knee, once for whistling at one of the nurses and once for  
25           smoking."

26           **MS R THOMAS:** I'd now like to ask Ross some questions, if we could turn to paragraph 48 of  
27           your statement, Ross.

28           **MR GALBREATH:** Yes.

29           **MS R THOMAS:** Just to confirm, Ross, you attended all of the hearing days of the Mitchell  
30           Inquiry?

31           **MR GALBREATH:** I did, yes.

32           **MS R THOMAS:** And then once ACORD had received the new evidence that Oliver has just  
33           spoken to us about these other two adolescents receiving electric shocks to their knees, how  
34           did that new evidence change your understanding of what you'd just watched in the

1 Mitchell Inquiry?

2 **MR GALBREATH:** Well, it changed the perception of what we had called shock treatment  
3 completely. It wasn't shock treatment, it was shock punishment. And at the Mitchell  
4 Inquiry we'd all been talking about shock treatment and Dr Leeks had let us go on thinking  
5 that, he didn't tell the whole truth basically. So everyone from the judge and most of the  
6 rest of us and – perhaps one or two of the psychiatrists there might have guessed what was  
7 going on, but the rest of us – when we talked about shock treatment we thought ECT.

8 So the revelation of what was being done, well, it seemed so – I used the word  
9 "egregious" in my evidence – so wicked that we hadn't – we simply hadn't imagined that  
10 anything like that could be happening.

11 **DR SUTHERLAND:** No.

12 **MR GALBREATH:** But it seemed so egregious that for once we didn't go straight to the  
13 newspapers over it, it was so bad that we felt we had to inform the authorities of what was  
14 going on. And as I recall, Oliver was going to Wellington for work, so while he was there  
15 he went and spoke to Dr Stanley Mirams, the Director of Mental Health, and Mirams  
16 initially seemed to be taking it very seriously and said there were some aspects of it he just  
17 couldn't imagine being done, but I think his position shifted a bit later.

18 But the whole Mitchell Inquiry, of course by this stage its report was about to come  
19 out, but we realised that it was almost irrelevant, it hadn't actually penetrated to what was  
20 really going on.

21 **MS R THOMAS:** And do you –

22 **MR GALBREATH:** It was all under a misapprehension.

23 **MS R THOMAS:** So this misapprehension, do you think, looking back, that Judge Mitchell was  
24 also under that misapprehension?

25 **MR GALBREATH:** Yes.

26 **MS R THOMAS:** You said that Oliver went to Wellington and he actually went to speak to  
27 Dr Stanley Mirams, so I'd just like to ask Oliver if we turn back to your evidence now, at  
28 paragraph 38?

29 **DR SUTHERLAND:** Yes, I had decided, I was going to be in Wellington and I should see  
30 Dr Mirams personally, not do what ACORD's usual practice was, which was to make a  
31 press statement straight away. We did soon after, but I presented these allegations to  
32 Dr Mirams on 11 May 77. And I, at this meeting, again I stated ACORD's demand for a  
33 full inquiry into the Lake Alice Child and Adolescent Unit and that it should be closed.

34 Then in a press release, the day after I guess, I made that comment, I started my

1 evidence with and I'll read it again, that "If the new allegations put before Dr Mirams were  
2 proved correct, the misuse of the shock equipment will constitute perhaps the most  
3 appalling abuse of children in the guardianship of the State that this country has known."

4 Then within days of this meeting Dr Mirams said in an interview with the  
5 *New Zealand Herald* that the ECT machine had been taken away from the Lake Alice  
6 Adolescent Unit.

7 **MS R THOMAS:** Thank you, I'll now ask for the next document to be brought up which is a  
8 news article. While that's happening, Oliver if you could just tell everyone, or remind  
9 everyone who Dr Mirams was?

10 **DR SUTHERLAND:** Dr Mirams, Stanley Mirams was the Director of the Mental Health  
11 Division of the Department of Health and he had responsibility, therefore, for all  
12 psychiatric institutions in the country run by the department.

13 **MS R THOMAS:** So you had this meeting with him, that's when he told you the ECT machine  
14 would be taken away and then he also had an interview, and this is the article where  
15 Dr Mirams is quoted in May of 1977. It's a little bit fuzzy on the screen, but would you be  
16 able or comfortable to read, perhaps if we do it block by block, that first highlighted?

17 **DR SUTHERLAND:** "Dr Mirams confirmed that detailed statements from children put to him by  
18 ACORD alleged that the ECT equipment in the adolescent unit had been used to administer  
19 electric shocks to children's legs." He went on, "If this is true it would involve deliberately  
20 giving a painful shock with the intention of it being painful, he said.

21 "The pain would not be incidental to the treatment as it is with much medical  
22 treatment. This is the allegation I'm looking into. If it's true, a number of considerations of  
23 professional judgment could apply but I would find it very difficult to envisage any defence  
24 which could be offered in those circumstances. Administering electric shocks to parts of  
25 the body other than the head might be classed as Aversion Therapy, Dr Mirams said. But  
26 as a former child psychiatrist himself, he could not imagine using electric shocks himself as  
27 Aversion Therapy on children. I cannot envisage using ECT on children at all except in  
28 very unusual situations, perhaps in the case of a child who is profoundly depressed".

29 Then in bold, "Any suggestion that ECT applied to the brain could be justified as  
30 Aversion Therapy would be unthinkable."

31 Now he said "unthinkable". Yet that is what Hake said happened to him, that is  
32 what happened to Hake, you get this for having done this wrong or that wrong.

33 **MS R THOMAS:** And those words you've just read out are the words quoted as being Dr Mirams  
34 at the time?



1 **DR SUTHERLAND:** They're Dr Mirams' quote from his interview with the newspaper.

2 **MS R THOMAS:** After that news article being published, the very next day Dr Mirams  
3 commissioned a District Inspector to investigate the two allegations that ACORD had  
4 presented to him?

5 **DR SUTHERLAND:** Yes, that's right. There was an Auckland lawyer called Gordon Vial and he  
6 was the District Mental Health Inspector, I think under the Mental Health Act, and Mirams  
7 asked him to investigate the allegations that ACORD had made, and the cases, yeah.

8 **MS R THOMAS:** This was all happening in May of 1977, which is a particularly busy month  
9 because that's also when the Ombudsman report was released?

10 **DR SUTHERLAND:** Yes, that's right, his report came out on 23 May.

11 **MS R THOMAS:** What were the five main conclusions from the Ombudsman report? This is at  
12 paragraph 41.

13 **DR SUTHERLAND:** Sir Guy's report was into the case of a 15 year old Māori boy and he'd been  
14 investigating since July the previous year and Sir Guy concluded, firstly, that the boy's  
15 detention at Lake Alice was unlawful; secondly, little consideration had been given to the  
16 question of whether the boy or his guardian consented to the treatment; 3, Sir Guy said  
17 ECT should never be given to a protesting patient and that this form of treatment, in all but  
18 the most exceptional of circumstances, ought to be eschewed if for no other reason of the  
19 difficulty of obtaining consent from young people.

20 Fourthly, it was to be given – if ECT was to be given it should be given – it should  
21 be the modified form with anaesthetic. He lastly found that the cumulative effect of a  
22 number of the actions and decisions of the offices of the Departments of Health and Social  
23 Welfare caused that boy, and I quote, "a grave injustice", which was probably the harshest  
24 criticism he could make as Ombudsman of those departments.

25 **MS R THOMAS:** Now within a day of that report being released, *The Herald*, the journalist Peter  
26 Trickett ran an article; how did he respond in the article to the Ombudsman's conclusions?

27 **DR SUTHERLAND:** Peter Trickett was interested in what might be going on in other psychiatric  
28 institutions in the Auckland area, so he went to five of them and he inquired in each case  
29 whether they used ECT on children or adolescents and in every case they said that they did  
30 not.

31 **MS R THOMAS:** If we move to paragraph 44 of your statement. What were ACORD's next  
32 steps?

33 **DR SUTHERLAND:** Well, we weren't satisfied with the response. Gordon Vial was busy  
34 investigating these cases, but in fact of course the Lake Alice Unit was still operating,

1 Leeks was still there. So on 7 June 77 I spoke to Dr Mirams and told him that I'd already  
2 been in touch with Gordon Vial, the District Mental Health Inspector, because it appeared  
3 that he hadn't interviewed the family of one of the boys and I wanted, because I knew these  
4 people, I wanted him to interview the mother of one of the complainants.

5 Mr Vial had not interviewed this mother and I urged, again, I urged Dr Mirams that  
6 a full inquiry into the past and present dealings of this unit was required. And I received  
7 the reply from Dr Mirams to say the matter was now in the hands of the Police. And the  
8 Minister of Health, Frank Gill, was quoted as saying that Dr Mirams had studied Mr Vial's  
9 report which he'd got at that stage and was of the opinion that section 112 of the Mental  
10 Health Act may need to be invoked. And that section 112 relates to the inhuman treatment  
11 of patients.

12 **MS R THOMAS:** And at that point you're aware the Police were investigating – what was  
13 ACORD still aiming for at that time?

14 **DR SUTHERLAND:** We wanted an independent inquiry. Actually, we called for a Royal  
15 Commission, and here we are. That was 77. Gosh, I hardly knew what a Royal  
16 Commission was in those days, but at any rate we did and we felt it was the only way, it  
17 was no good, the Police – whatever the Police were going to do, and we'll see in a minute  
18 what they did do or didn't do, but a Royal Commission was really the only way to deal with  
19 what had, I think, got completely out of hand in terms of the way the authorities were  
20 dealing with it.

21 **MS R THOMAS:** And who did –

22 **DR SUTHERLAND:** And we sent a telegram – we did send a telegram to Frank Gill asking what  
23 was going on and making the allegation that what had happened to the children was torture.

24 **MS R THOMAS:** And did you receive a reply to that telegram?

25 **DR SUTHERLAND:** Yes, Gill replied saying the Police inquiry into improper treatment and  
26 allegations of improper treatment were continuing.

27 **MS R THOMAS:** Did he also say to you that there had been no previous allegations of torture  
28 and there was no evidence of those allegations?

29 **DR SUTHERLAND:** Yes, he did.

30 **MS R THOMAS:** And when you had used the word torture in your telegram to –

31 **DR SUTHERLAND:** Frank Gill.

32 **MS R THOMAS:** – Frank Gill, what were you referring to?

33 **DR SUTHERLAND:** I was referring to the use of shocks on the legs particularly, and the use of  
34 ECT on the – or the use of the equipment on the head as punishment.

1 **MS R THOMAS:** So by sending the Ministry of Health that telegram describing the electric  
2 shocks to the knees of those boys as torture, what had ACORD put on the record at that  
3 time, effectively?

4 **DR SUTHERLAND:** Well, we'd said to every authority that wanted to listen that what was  
5 happening at Lake Alice was absolutely unacceptable and that the only way to get to the  
6 bottom of it and to find out who was accountable was to have a Commission of Inquiry.

7 **MS R THOMAS:** Then in January of 1978 the Police announced that they had found no evidence  
8 of criminal misconduct. What was ACORD's position in response to that announcement?  
9 This is at paragraph 48 of your statement.

10 **DR SUTHERLAND:** Yeah, I think by then we were beyond being surprised. Nobody had  
11 believed these children except us and the Citizens Commission. And I think we probably  
12 weren't surprised at all that the Police shelved the whole matter.

13 **MS R THOMAS:** In terms of, if we're turning now to paragraph 49 –

14 **DR SUTHERLAND:** But what we did maintain was that those violations of the children's bodies  
15 was a gross violation of the children's rights and we said so. But you've got to remember,  
16 we didn't have a Human Rights Commission at that stage, didn't start until 77, this was 77,  
17 so there was no other body that anyone could go to.

18 **MS R THOMAS:** What were your thoughts at that time about whether these electric shocks were  
19 punishment or treatment? This is in relation to paragraph 49 of your statement?

20 **DR SUTHERLAND:** As Ross has said, there are difficulties when you look at – and if you look  
21 at it from the child's point of view, let alone their parents, that you have an ECT machine  
22 with two electrodes that are put on the head to – for therapeutic reasons to shock a child out  
23 of deep depression, the classical use for ECT, the only use for ECT in fact. And then you  
24 have situations that we were facing where those same electrodes which had a therapeutic  
25 use suddenly had a punitive use, and we found it very hard to get our heads around that and  
26 to explain that.

27 And I'm really pleased that Frances Joychild called it electrocution, it was a word  
28 that we never used but in fact that's what it was, she was right. High voltages, high  
29 amperages were passed through the children's legs. One of the children said to me not only  
30 was it put on his own knee but two of the boys who ran away together were made to sit  
31 together and their knees were pressed together and shocks were put on – the electrodes  
32 were put on one knee of one boy, one knee of the other boy and their knees pushed together  
33 and they were shocked at the same time. Unspeakable.

34 **MS R THOMAS:** Oliver, just before I get to your conclusion, I'm going to go back to one

1 paragraph that we omitted earlier and you won't forgive me if we don't go back there. It  
2 relates to accountability, so if we actually go right back to paragraph 7 and your paragraph  
3 8?

4 **DR SUTHERLAND:** Yeah. We wanted to get to the bottom of who was responsible, who was  
5 accountable, because if Mitchell wasn't going to do it and if Police weren't going to do it  
6 and if Mirams wasn't going to do it then we would try and do it – we would do it one way  
7 or another. The unit was administered by the Palmerston North Hospital Board and, as  
8 we've said, it was on the same site as the adult facility which was administered by the  
9 Department of health under Dr Pugmire. So the question really always remained, who was  
10 responsible for Leeks? Or who was he responsible and accountable to.

11 We talked this over with Peter Trickett, *The Herald* reporter who was doing the  
12 investigative work on this, and he interviewed both the Superintendent of the Palmerston  
13 North Hospital Board, Dr Kenneth Archer, and he interviewed the Superintendent of Lake  
14 Alice Hospital, Dr Sid Pugmire, trying to determine which of them was responsible for  
15 Dr Leeks and they both denied responsibility.

16 And in the end, Dr Pugmire was quoted as saying "I suppose he's really answerable  
17 to himself."

18 **MS R THOMAS:** And that was a quote that he made in the *New Zealand Herald* 15 December  
19 1976?

20 **DR SUTHERLAND:** That's right.

21 **MS R THOMAS:** Thank you. Now just coming to a conclusion of your evidence, Oliver, if you  
22 could read out paragraphs 51, 2 and 3.

23 **DR SUTHERLAND:** Tracing and encapsulating everything that we'd done, I suppose, over those  
24 years, in '77 we called the act of punishing children with powerful electric shocks to their  
25 body what it is, which was torture. We repeatedly drew attention to complaints of abuse  
26 and we repeatedly called for a full inquiry into these allegations. And so it can't ever be  
27 said, and maybe the Crown won't say it, that the people in power in the '70s did not know  
28 what was going on at the time. They knew, they knew because we told them repeatedly.  
29 The response of the authorities not to hold any department to account or any individual to  
30 account through a disciplinary hearing or criminal prosecution is now a matter for this  
31 Commission of Inquiry.

32 45 years later finally the time has come for this Royal Inquiry to ask those probing  
33 questions, make findings on where the accountability must lie. Thank you.

34 **MS R THOMAS:** Thank you Oliver, thank you Ross.

1 **CHAIR:** Take a moment. You've had a lot of those up until now, but could I -- just looking at the  
2 accountability question, and there's a lot more work for us to do in terms of reading all the  
3 background and the like, but something jumped out at me in paragraph 46 of your evidence.

4 **DR SUTHERLAND:** Do you want me to go to it?

5 **CHAIR:** Yes, remind yourself of what you've told us. And this is --

6 **DR SUTHERLAND:** Yes, we didn't read this one out.

7 **CHAIR:** You didn't, I think it's important. Dr Dobson, who you say here was the Chair of the  
8 New Zealand division of the Royal Australia and New Zealand College of Psychiatrists. So  
9 we're talking here about -- you mentioned before about professional bodies and the like.

10 **DR SUTHERLAND:** Yes.

11 **CHAIR:** Do you know enough about the hierarchy of psychiatrists to know whether Dr Leeks  
12 would have been answerable in a professional capacity to that college?

13 **DR SUTHERLAND:** Look, they must have had rules, they must have had --

14 **CHAIR:** Professional standards.

15 **DR SUTHERLAND:** -- codes of conduct, must have.

16 **CHAIR:** Yes.

17 **DR SUTHERLAND:** I don't know much, and with a bit of luck we'll be able to ask Professor  
18 Werry, because Professor Werry was also a senior in this, but Dobson, as I said, he was the  
19 Chair or whatever he was of the New Zealand division. And what he said -- do you want  
20 me to go on?

21 **CHAIR:** Yes please.

22 **DR SUTHERLAND:** What he said to us, what he said to me at a meeting that we went to in  
23 August '77 when all this stuff was brewing, he said that he knew that in '77 and '74 at Lake  
24 Alice shocks were administered to children's bodies as quote "Aversion Therapy" unquote.  
25 And in fact this was new to us. We hadn't been aware that that's what was happening, or  
26 that's how it could be described.

27 Since the Police were already in the middle of their investigation I wrote to the  
28 Police, who were investigating these allegations, to tell them that Dobson had told us that  
29 during '73 and '74 the children got Aversion Therapy electric shocks. And the Police  
30 replied to my letter by saying that "Your letter is acknowledged." So if nothing else they  
31 were put on notice that it was being used as Aversion Therapy.

32 **CHAIR:** Did you --

33 **DR SUTHERLAND:** Yet what the difference was between punishment and Aversion Therapy.  
34 I mean, you know, smacking a child, you can say it's Aversion Therapy but we've outlawed

1 it, I mean – you understand.

2 **CHAIR:** Well, I'm sure I do. It's just interesting, isn't it, because you wrote to the Police about  
3 this.

4 **DR SUTHERLAND:** Yes.

5 **CHAIR:** You talked about Aversion Therapy. Did you have any other contact with the Police?  
6 We're still talking about accountability, I've covered the Psychiatry College or College of  
7 Psychiatrists. In terms of Police, did you and ACORD have any formal contact with the  
8 Police about their inquiries?

9 **DR SUTHERLAND:** No, and we never knew what that '77 inquiry did, but with a bit of luck one  
10 of the later witnesses in this hearing will tell us, because we don't know who they  
11 interviewed, we don't know who they – how deeply they dug, they certainly didn't come to  
12 us, even though we were the ones who laid the original complaint and were in touch with  
13 the families.

14 **CHAIR:** Then my last issue that jumped out at me in the course of your evidence was the  
15 response of the Government, or at least of the then Minister of Social Welfare, to Sir Guy  
16 Powles' report?

17 **DR SUTHERLAND:** Newspaper headlines, he said that Sir Guy had gone off half-cocked.  
18 That's what he said, it was an incredibly rude and dismissive response to Sir Guy's very  
19 in-depth inquiry. It was a calculated insult and it was meant to be I'm sure.

20 **CHAIR:** Why do you think that might be, if I might ask an obvious question?

21 **DR SUTHERLAND:** Why should Bert Walker think that? Because Bert Walker was sick to  
22 death of hearing about Lake Alice, he'd heard about it from us, he criticised me personally  
23 when we first told the story of Hake's case, he said that the only person who was doing any  
24 harm to the child was Dr Sutherland by making it public. Not that I ever made Hake's  
25 name public, but the very fact, that indicated the attitude that the Cabinet Ministers of the  
26 day had towards us. Though he did announce an inquiry, and again we don't quite know  
27 what went on behind the scenes that led to the inquiry that I think he felt he would have  
28 rather not had.

29 **CHAIR:** It concerns me, and I know we're talking history, but it is, as you say, a very important  
30 part of our history that this was the Minister of Social Welfare who I believe at that time  
31 would have had the guardianship of Hake.

32 **DR SUTHERLAND:** Yeah, he did. They were in lieu of parents. That was why we made the  
33 point about them just simply when they had Hake under their supervision just handing him  
34 to another government department. Harold Skuse is Hake's social worker, flew him down

1 to Palmerston North, took him to Lake Alice and bugged off. I mean that was the end of  
2 it as far as Social Welfare were concerned.

3 **CHAIR:** Handed over to the Department of Health.

4 **DR SUTHERLAND:** Handed over to Leeks. Well, to the Department of Health or whoever was  
5 running Leeks' clinic.

6 **CHAIR:** And again, we come back to accountability, don't we.

7 **DR SUTHERLAND:** Absolutely, absolutely. Well, the Department of Social Welfare couldn't  
8 say they still were not in lieu of Hake's parents, but were they? I don't know the answer to  
9 the question, that if a government department hands over a child to another government  
10 department they say "Yeah, we'll take that child and house it and look after it" or whatever  
11 they would say. I don't know whether that – whether there's any legal process for that to  
12 happen. But there wasn't in that case anyway, he was flown down and waved goodbye.

13 **CHAIR:** That's a very important question for us to be looking into, and we have enough lawyers  
14 in the room who I'm sure are going to get to the bottom of it well before we've finished, but  
15 thank you very much for raising those really important questions.

16 **DR SUTHERLAND:** That must have happened, you know, to so many of those children. The  
17 ones who were in Holdsworth and then were suddenly transferred, or Epuni and were  
18 suddenly transferred, they came from everywhere, they came from all those 20 Welfare  
19 homes, which were Social Welfare homes, into Lake Alice which was not Social Welfare.

20 **CHAIR:** Yes. Thank you. I'm going to ask my colleagues if they have any other questions.

21 **COMMISSIONER ALOFIVAE:** Thank you, Dr Sutherland, for that very full and  
22 thought-provoking evidence, so in terms of all of the material that you and your colleagues,  
23 Dr Galbreath and Dr Ludbrook, have provided for us. I want to ask a couple of questions,  
24 like I did with Hake, about the extended situation around the context really because in the  
25 big scheme of things it comes back actually it was a language issue.

26 **DR SUTHERLAND:** Exactly. Right from the beginning.

27 **CHAIR:** How could that have not been picked up?

28 **DR SUTHERLAND:** But you see he went to – my kids went to Richmond Road School, he went  
29 to Richmond Road School, of course they had no Niuean teachers there, not in the '70s,  
30 they didn't have any Māori teachers there hardly in the 1970s, but somebody should have  
31 realised this boy can't speak English, he can't do his homework, he can't do anything. So  
32 we'll treat him as subnormal and he gets into the special units and the special schools and  
33 the St John's home for mentally disabled children of all places. It was a language thing,  
34 you're absolutely right. And as soon as we got an interpreter then the grandmother

1 understood and Hake understood and then they were horrified what they heard but they  
2 understood.

3 **CHAIR:** So the trajectory and the framework and the mindset that was applied was actually fully  
4 framed in the Palagi sense in terms of western ideology, let's send him to Hokio because  
5 that might fix his behaviour as opposed to actually let's ask a few more questions around  
6 the context and the growing neighbourhood that this young person comes from.

7 **DR SUTHERLAND:** Yeah, you know enough to know that it was institutional racism, it was a  
8 Pākehā system through and through and through and nothing that Hake did as a Niuean boy  
9 mattered, he was treated as a backward – as just another backward kid.

10 **CHAIR:** Thank you for putting those statements on record. Much appreciated.

11 **COMMISSIONER GIBSON:** A question following on from Judge Shaw's, Dr Sutherland. You  
12 talked about in the context of accountability, you talked about departmental accountability  
13 and you talked about engaging with politicians. What's your sense of where and when  
14 political accountability kicks in and what does that look like, what should that be?

15 **DR SUTHERLAND:** What it was in this case, they sort of handed it over to the Police so Frank  
16 Gill could say well, look Frank Gill was the Minister of Health, he handed it over to the  
17 Police. Bert Walker, Minister of Social Welfare, they all said the Police are investigating,  
18 and that investigation ran for months.

19 I don't think there was any accountability taken at the political level. Every attempt  
20 was taken to denigrate those of us who were pursuing justice in this particular case and the  
21 rights of the child. Is that what you wanted? There was no political accountability, there  
22 were no politicians, none of them were interested at all in delving into what might have  
23 been going on and what might be going wrong in a government institution, for which they  
24 were ultimately responsible.

25 **COMMISSIONER GIBSON:** And what might a political accountability look like for a Minister  
26 with a given portfolio?

27 **DR SUTHERLAND:** Well, what we might have liked would be for Bert Walker or for Frank Gill  
28 to stick their hand up and say, "We accept, we believe this child and we believe that there is  
29 something to be investigated" and they would have the full inquiry that we called for. That  
30 would have been accountability; they would have believed the children.

31 **COMMISSIONER GIBSON:** Thank you Oliver, Dr Sutherland. It's my privilege to  
32 acknowledge you and also Ross and Robert for the work you've put in over the years. 45  
33 years is a long time to wait for justice. But first can I acknowledge the work you did in  
34 contributing more than significantly to the closure of the Lake Alice Child and Adolescent



1 Youth – something was achieved, and also acknowledging the three of you and the work of  
2 ACORD on institutional racism.

3 **DR SUTHERLAND:** There are others of us here as you know.

4 **CHAIR:** Yes, to all of you as well, the work on institutional racism which was pioneering and  
5 should be an inspiration to Tauwiwi in this country to take on board some of this kaupapa  
6 and, you know, I think you uncovered something more than that, something perhaps  
7 compellingly sinister, and thank you and thank you for persevering and waiting 45 years for  
8 something to happen. And we hope we can do something with that, kia ora, thank you.

9 **MS R THOMAS:** Thank you.

10 **CHAIR:** On that note, we invite you to now have a rest for a short time, I know you never stop,  
11 but in the meantime this afternoon it's time for afternoon tea. I think if we resume at  
12 about – in terms of timing, sorry to do housekeeping all around you, feel free to go. Timing  
13 for when we should start again?

14 **MS FINLAYSON-DAVIS:** As I understand it the next witness is waiting to be called, he's  
15 appearing from Australia so we can start whenever you see fit, Madam Chair.

16 **CHAIR:** All right, let's give ourselves 15 minutes and we'll come back in 15 minutes, is that all  
17 right?

18 **MS FINLAYSON-DAVIS:** Thank you.

19 **Adjournment from 3.19 pm to 3.38 pm**

20 **CHAIR:** Ms Finlayson-Davis.

21 **MS FINLAYSON-DAVIS:** Tēnā koutou e ngā Kaikōmihana o te ra, tēnā koutou o te whare, ko  
22 Emma Finlayson-Davis tōku ingoa. The next witness to be called is Tony Sutherland who  
23 is appearing, as I indicated earlier, by video link from Australia.

24 **ANTHONY SUTHERLAND**

25 **CHAIR:** Hello.

26 A. Hi.

27 **Q.** That means you can see me so that's a good start.

28 A. Well done.

29 **Q.** How would you like me to refer to you? I see you're Anthony in your brief of evidence, the  
30 lawyer's just referred to you as Tony, how would you –

31 A. My mother called me Anthony, I like to be referred to as Tony.

32 **Q.** I'm not your mother so I will refer you to as Tony.

33 A. Thank you so much.

34 **Q.** Let me just give you the affirmation and ask you to agree. Tony, do you solemnly,