

**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'imuamua Sandra Alofivae
Mr Paul Gibson

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Mr Michael Heron QC for Dr Janice Wilson
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Mr Hayden Rattray for Mr Selwyn Leeks
Mr Eric Forster for Victor Soeterik
Mr Lester Cordwell for Mr Brian Stabb and Ms Gloria Barr
Mr Scott Brickell for Denis Hesseltine
Ms Anita Miller for the Medical Council

Venue: Level 2
Abuse in Care Royal Commission of Inquiry
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AUCKLAND

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TRANSCRIPT OF PROCEEDINGS

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THOMAS JOHN FITZGERALD

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1 can't have been easy and - but it is appreciated because it's very important that people
2 involved in that inquiry are prepared to come forward and assist this Commission with
3 assessing the whole picture, and the Police role in this is a very important part of that and
4 it's our - sorry, I just wish to say that it is important that we've had the Police perspective
5 from somebody actively involved and for that we thank you.

6 A. Thank you, ma'am.

7 Q. You may stand down of course.

8 **CHAIR:** We have 10 minutes, are we going to use that or shall we take an early lunch and resume
9 a little earlier.

10 **MS FINLAYSON-DAVIS:** In your hands, Madam Chair, I don't know whether my friend has
11 any view on starting the next witness?

12 **MS FEINT:** Entirely in your hands, Detective Superintendent Fitzgerald is in the building
13 somewhere.

14 **CHAIR:** I think what we'll do, it's only 10 minutes, it seems unfair to start and stop. Let's take an
15 early adjournment. Shall we resume again at a time please - I always get the time wrong so
16 I need some help on that.

17 **MS FINLAYSON-DAVIS:** Perhaps so that we can complete Detective Superintendent
18 Fitzgerald's evidence today, perhaps an hour lunch would be -

19 **CHAIR:** Yes, all right, we'll come back at quarter to 2 then, thank you.

20 **Lunch adjournment from 12.49 pm to 1.54 pm**

21 **CHAIR:** Good afternoon Ms Feint.

22 **MS FEINT:** Tena ra tatou. We're now going to hear the evidence of Detective Superintendent
23 Fitzgerald. You affirmed him yesterday, Madam Chair, so do you want to do it again?

24 **THOMAS JOHN FITZGERALD**

25 **CHAIR:** No, you remain on the affirmation you took yesterday, Detective Superintendent.

26 **QUESTIONING BY MS FEINT:** Good afternoon superintendent. Can we confirm for the
27 record please that your name is Thomas Fitzgerald, you're a Detective Superintendent and
28 you're the Director of the Criminal Investigation Branch of the New Zealand Police?

29 A. That's correct.

30 Q. And you've been in the Criminal Investigation Branch for 28 years?

31 A. That's correct.

32 Q. Thank you. Now we've heard in this Inquiry that there is a current Police investigation and
33 you've got oversight supervision of that investigation; is that correct?

34 A. That's correct.

1 **Q.** And because the investigation is ongoing, you need to be a little bit careful in what you say
2 before this hearing so as not to prejudice that investigation?

3 **A.** Yes, that's right.

4 **Q.** And are you able to tell the Commission when you think that investigation might wrap up?

5 **A.** We're hoping that we're in a position to advise the victims in early July.

6 **CHAIR:** This year?

7 **A.** Yes.

8 **Q.** Thank you. We need to be quite specific about that.

9 **A.** Yes.

10 **Q.** Thank you.

11 **QUESTIONING BY MS FEINT CONTINUED:** And did you want to say anything more about
12 the scope of that investigation or would you prefer to leave that for the record?

13 **A.** I think it's fair to say that it's a major investigation and again, we could apologise for the
14 length of time it's taken, but it is thorough, and we need to take that time and make sure it's
15 done right.

16 **Q.** Understand that. So the Commission has asked you to give evidence concerning Police
17 investigations, Police investigation policies and procedures, and I think you'll probably be
18 prepared to concede your brief is somewhat on the dry side?

19 **A.** Yes, very.

20 **MS FEINT:** So if it's all right with you, Madam Chair, we thought we'd only read out the most
21 relevant parts of it.

22 **CHAIR:** That's perfectly all right. Just to let you know, Superintendent, we've read it all of
23 course, dry as it is.

24 **QUESTIONING BY MS FEINT CONTINUED:** Can I ask you to go to paragraph 4 please
25 Superintendent. And that's an overview of how Police generally conduct investigations?

26 **A.** Yes.

27 **Q.** If I ask you to read that for us please.

28 **A.** Sure. "The goal for all investigators is to conduct a good, thorough and effective
29 investigation. Although policy and procedure set a benchmark, they are general in nature
30 and need to be tailored to each specific investigation. The style, approach and heart of
31 investigation are not and cannot be mandated by policy or driven by a desire to comply
32 with policy and procedure. There will be differences in how different investigations carry
33 out - how different investigators carry out an investigation and within an appropriate range.
34 That exercise of discretion and judgment is appropriate and conducive to good

1 investigations.

2 Within the framework provide by policies and procedures, investigations often
3 include an initial fact-finding stage which builds the evidentiary picture and may include
4 interviews, followed by an assessment of the evidence which may include obtaining expert
5 and legal advice. These phases overlap and inform each other and progression of an
6 investigation will not always be linear.

7 During the initial phase, the investigator must consider the urgency of making
8 inquiries based on current risk to the alleged victim or others who may be unsafe and what
9 steps need to be taken immediately to secure their safety. All investigators are constantly
10 required to consider the appropriate prioritisation of the cases they are looking at.

11 Investigations are conducted with an awareness of context. At each stage an
12 investigator considers the growing factual picture and likely outcomes, the level of urgency
13 at threat and the future of the case.

14 There is an awareness that prosecution decisions will be challenged through the
15 criminal process, criminal prosecution process if charges are laid and a corresponding
16 desire to ensure that decisions are robust.

17 Initial action contextual fact-finding phase. First, an officer has to understand
18 what they are dealing with in terms of the facts. The whole circumstances of the matter
19 have to be considered. Every available fact must be considered and synthesised so that it
20 can be used in advance in the investigation. Facts that are needed but not immediately
21 available must be uncovered. The fact-finding process is guided by the possible shape that
22 the investigation may take. Even at the early stages, an investigator will be thinking of the
23 possible charges that may result from the investigation. Those possible charges may guide
24 the types of facts the investigator looks for. If it becomes apparent that a particular factual
25 issue is going to be particularly difficult, this may become the focus of the inquiry. For
26 example, in cases where there is a strong evidence of an assault, but the identity of the
27 perpetrator is in question, the focus of the fact-finding may turn to the identity issue.
28 Without sufficient evidence of the identity of the perpetrator, further facts on other aspects
29 of the investigation are unlikely to contribute to a successful prosecution.

30 Factual ground work will include interviews of witnesses and victims, scene
31 examinations and gathering forensic evidence. Throughout the fact-finding process, the
32 goal is to develop a thorough understanding of the factual situation, which requires an
33 assessment of witness credibility and thorough due diligence.

34 There is a risk of bias and of poor investigation when investigations are conducted

1 without the entire factual picture. The factual ground work is absolutely essential to a good
2 investigation.

3 In the course of the fact-finding, the purpose of the investigation must be
4 considered. This allows consideration of the urgency of the investigation and consideration
5 of how to develop the investigation to allow for movement to the critical phases.

6 Investigation and evidence assessment. Suspect interviews, arrests and laying
7 charges are critical phases of an investigation. Priorities and timeframes determine the
8 progress through those phases. It is common for suspect interviews to take place later in
9 the investigation once most of the other information has been located. But this varies from
10 case to case. Sometimes witnesses will be interviewed more than once.

11 Decisions to arrest and charge are commonly made after witness interviews and
12 the completion of factual investigations. However, arrests and prosecution decisions can
13 bring to light further information and further witnesses, which may require additional
14 rounds of fact-finding, witness interviewing and similar.

15 As part of evidence assessment, the investigator must consider how persuasive the
16 evidence, including witnesses, are likely to be in a court context in front of a judge or jury.

17 Charging and expert legal advice. In a complex investigation, Police will take
18 expert and legal advice in relation to the case in order to make a prosecution decision. A
19 decision to lay charges requires both that there is sufficient evidence to produce a
20 reasonable prospect of conviction and that the prosecution is in the public interest. Legal
21 advice may be relevant to whether there is sufficient evidence to charge, in particular in
22 considering whether the evidence meets the legal test for offending and the availability of
23 any defences."

24 **Q.** Can I just stop you there, Superintendent. So you've referred there to the two limbs of the
25 test and the prosecution guidelines, which is footnoted in your footnote 1. Are you able to
26 explain to us what those two limbs constitute?

27 **A.** The first one being evidential sufficiency which is the first limb, do we have the evidence
28 that gives rise to a successful prosecution and then the public interest test has a number of
29 aspects to it that need to be considered. Some of those including the seriousness of the
30 offence, the age of the offender, elderly or young, the criminal history of the offender, the
31 authority of the offender over the victim and a number of other things that are considered in
32 the public interest.

33 **Q.** And if you don't meet the evidential sufficiency threshold, could you nonetheless determine
34 to proceed in the public interest?

1 A. The first arm is the evidential threshold.

2 Q. So you need to do that first?

3 A. Yes.

4 Q. Thank you, if you continue at paragraph 4.13.

5 A. "Ultimately a charge and prosecution decision is a Police decision. Advice is sought and
6 peer review of advice may be sought alongside consultation with other officers. The
7 ultimate decision will finally be made on the basis of the facts and taking into account the
8 advice given. In that regard, and with the Lake Alice investigation in mind, it would be
9 extremely uncommon for an investigator to proceed to lay charges where they have
10 received clear legal advice against doing so. I cannot recall any such case in my career.
11 The situation would be different if the legal advice is ambiguous or different opinions are
12 received, in which case the investigator would have latitude to proceed to lay charges.

13 An investigation may not end at the prosecution decision. Following a decision to
14 prosecute, further witnesses may come forward or further information may come to light."

15 Q. Thank you. If I stop you there then. So just considering some of the factors that are
16 relevant to the investigation in the Lake Alice case, what difference does it make if the
17 Police are investigating allegations which are of an historical nature of several decades
18 standing?

19 A. There's a number of issues with historical investigations. In respect of reinvestigation, if
20 we start, clearly time and the build of evidence is one of those factors. In relation to the
21 victims, there's a number of considerations. In the early part of the investigation in the
22 scoping phase, recontacting of victims is a phase that has to be very considered about what
23 that will be do as far as re-traumatising, privacy issues in relation to making contact with
24 people where you may expose things they haven't discussed with their family, new partners.
25 So there is a lot of consideration into what is done in those early scoping phases of
26 historical complaints.

27 **CHAIR:** Can I just be clear about this. Did you say reinvestigation, or did you just say -

28 A. Yes.

29 Q. I understand the topic is historical investigation, it could be two couldn't it?

30 A. Both, yes.

31 Q. It could be from scratch or a reinvestigation?

32 A. Yes.

33 Q. Are there different considerations in relation to both?

34 A. No, only the fact - same considerations for contacting and scoping phases, yes.

- 1 **Q.** Okay, thank you.
- 2 **QUESTIONING BY MS FEINT CONTINUED:** Thank you. Can I now take you to paragraph
3 5.10 and just ask you to read from the second sentence in that paragraph please?
- 4 **A.** "The initial stage of a mass allegation investigation such as Lake Alice may include a
5 scoping phase. This means working out the depth and breadth of the investigation that
6 should be undertaken. In a historical investigation, scoping is often the most complex
7 exercise, and it can change as the investigation goes on. Determining what facts are
8 available and the nature of the circumstances is complex. Witnesses will need to be
9 interviewed or re-interviewed with the additional awareness of the risk of memory lapse
10 given the time that has elapsed."
- 11 **Q.** So when you refer to mass allegation investigations, presumably you're talking about
12 something like Lake Alice as being a mass allegation investigation?
- 13 **A.** Yes.
- 14 **Q.** And so I understand what you're saying is that you are constantly evaluating, as you
15 proceed with your investigation plan, what additional steps need to be taken and what
16 further evidence you may need to gather?
- 17 **A.** That's correct.
- 18 **Q.** And what the scope of the investigation is?
- 19 **A.** Yes, it may be that initially you have to keyhole down the evidence to find out what's
20 happened without the risk of re-traumatising everybody, you will go to the court and see
21 where that goes and then reconsider and widen from there.
- 22 **Q.** Right, thank you. So an example of that, for instance, is when Detective Superintendent
23 Burgess was discussing that he was going to interview the staff at Lake Alice first, he
24 thought about that sequencing quite carefully presumably?
- 25 **A.** I would think that that was in his mind.
- 26 **Q.** Now the other question I wanted to ask you about how you approach an investigation, you
27 make a point in, if I can take you to paragraph 9.2(c) of your evidence which is on page 14?
- 28 **A.** Yes.
- 29 **Q.** You make the point there that allegations concerning medical treatment, including ECT and
30 Aversion Therapy, relate to a set of facts involving technical psychiatric evidence and a
31 pattern of alleged offending not commonly seen by Police. Can I ask you to expand upon
32 those factors as complications in planning your investigation please?
- 33 **A.** Yes, any investigation that revolves around expert evidence and expert opinion has some
34 challenging factors, both in the investigation phase and at the prosecution phase. Police

1 obviously are heavily reliant on the experts and on expert opinion. And very conscious of
2 trial by expert and what that brings from years of experience. So there's a lot to be mindful
3 of in relation to how we're going to be guided by experts.

4 **Q.** And if you're considering criminal offending of a professional, such as a doctor in relation
5 to their occupation, presumably establishing criminal intent may be a somewhat fraught
6 exercise?

7 **A.** Again, yeah, very conscious of that in these types of inquiries, both for doctors and nurses
8 and implied authority or medical defence is available for what is perceived to be medical
9 care or ill treatment.

10 **Q.** Thank you. Just before we leave your brief of evidence, I think it was raised this morning
11 and so I thought I'd ask you, if you could give the Commission an overview of how Police
12 policies and procedures have changed in relation to child abuse and sexual assault
13 allegations please?

14 **A.** Right. The policies have moved on through the years from start of looking at 1998 through
15 to 2006 and then forward. In general terms, all the policies - it is recognised by the Royal
16 Commission into Police conduct in 2008 that although the policies were adequate, they
17 were somewhat messy and too many and they asked us to refine them down, that's been
18 done. So the policies are much more succinct and they are very victim-centric in the way
19 we treat victims of child abuse and adult sexual assault.

20 They detail how expert witnesses, the interviewers will do the interviews, what the
21 level of training people have to hold certain files and to supervise files, and probably one of
22 the main points of the policy, to ensure consistency across the country, is that we have
23 national oversight of files. First off there's a prescribed audit at district level four times
24 a year and then a national oversight of five per cent of files carried out by a central team at
25 Police National Headquarters.

26 **Q.** Thank you. Now unless the Commissioners have any questions about that last answer, I
27 was going to move on to look at the Lake Alice investigation.

28 **CHAIR:** Yes, we'll just check to see if the Word document has come through. We'll keep going
29 and just with the proviso that if anything - that you read out anything into the record that
30 you're referring to, thank you.

31 **QUESTIONING BY MS FEINT CONTINUED:** All right, so this document is
32 CRN0000153_0001 and it's named "Lake Alice Child and Adolescent Unit sequence of
33 events, Police actions and response". So can you please tell us, Superintendent Fitzgerald,
34 who prepared this document?

- 1 A. It was prepared by one of my - one of our team at Police National Headquarters.
- 2 Q. And what were their sources, was it the documentary record within Police files?
- 3 A. Yes, it is.
- 4 Q. And can you please tell us why you directed for this timeline to be prepared, what is its
5 purpose?
- 6 A. The sequence of events is critical for me supervising any major investigation, especially
7 historical investigations, in relation to what actually happened at the time in context. It's an
8 investigative mistake to look back with the bias of hindsight and everything that goes with
9 that, presuming when you're reading a document one-off and your knowledge is biased by
10 that. This sequence, and I've used it at another major Royal Commission actually, enables
11 us to make sure we are looking at things in context and exactly what was known and what
12 was available at the time.
- 13 Q. So that you can pinpoint at any particular time what the available record was to the
14 investigation team?
- 15 A. Yes.
- 16 Q. Thank you. So if we turn to page two on this document. It has the overview. And could
17 we highlight the timeline at the bottom please so that we have a chance of seeing it. So can
18 you please explain what this shows, Superintendent?
- 19 A. That's the front page which gives the very basic timeline of the major events starting back
20 from 1969 when Dr Leeks was registered through to the Police investigation beginning in
21 2018.
- 22 Q. And it would be helpful if you can read it, if you can explain to us the colour coding system
23 you're using there.
- 24 A. So on this page and on the subsequent pages right through the document it goes into
25 columns after this timeline and they are blue is Police response, yellow is complaint made
26 to Police and the dates of those, pink is other agencies, pastel sort of orangey colour is
27 significant events and the green is media reporting.
- 28 Q. Thank you. Then if we go over the page I thought it would be useful for the
29 Commissioners if we step through what happened in the 1977 Police investigation since I
30 understand you're going to be asked some questions about that by Counsel Assisting. Are
31 you able to say whether there's anyone at Police who was involved in the 1977
32 investigation who may be available to give evidence?
- 33 A. Not that I'm aware of.
- 34 Q. So you're working off the documentary record?

- 1 A. Yes.
- 2 **Q.** So if we look at this page, so just to illustrate how it works under the "Significant events"
3 column, for instance, we've got at the top in 1969 Leeks obtained registration as a
4 psychiatrist in New Zealand, and then down the bottom in 1972 the Lake Alice Child and
5 Adolescent Unit was opened as an adjunct to and co-located with the former Lake Alice
6 Psychiatric Hospital which housed mainly adult patients committed under the Mental
7 Health Act. And then going across to the "Complaint to the Police" column, there was a
8 complaint to the Police in January 1974 concerning indecent assaults?
- 9 A. That's correct.
- 10 **Q.** On other unit patients, and we see in the blue column the Police response, that in December
11 1972 Nurse Paltridge was convicted of indecent assault on a boy under 16 years?
- 12 A. That's correct.
- 13 **Q.** And sentenced to six months in prison. And then there's a further Police investigation and
14 prosecution underneath that?
- 15 A. That's correct.
- 16 **Q.** So then if we go over to page five, I wanted to step through the sequence of events in the
17 1977 investigation. So the first event is in that central yellow column, complaint to the
18 Police on 14 June 1977, there was the first complaint to the Police regarding ECT when
19 Dr Mirams, who was the - I forget his exact title, Director of Mental Health at the
20 Department of Health I think, sent a memorandum to the Commissioner of Police?
- 21 A. Yes, that's correct.
- 22 **Q.** So could you take us through that please, Superintendent. I think for the sake of everyone
23 listening, if you read out what's in each column. So first of all, what was Dr Mirams'
24 complaint?
- 25 A. So Dr Mirams sent a memo to the Commissioner of Police, the memo from Dr Mirams to
26 the Commissioner of Police, asked Police to investigate complaints that staff have
27 administered painful electric shocks without any medical direction or approval. The matter
28 was being considered under section 112 of the Mental Health Act for patient's statement,
29 and then there's two names, which have been redacted, who later withdrew the statement,
30 also recommended interviewing - another redaction - who has been mentioned in recent
31 media articles.
- 32 **Q.** Thank you, then if you go to the recent Police column and step us through what the Police
33 response was?
- 34 A. So AC Thompson, who was the Commissioner at the time, has forwarded the information

1 to the Director Crime via memorandum directing that the investigation should be carried
2 out by Detective Senior Sergeant Butler, Whanganui CIB. That was on 15 July 77. On 22
3 July, Police received referrals from Dr Mirams of the two complaints about ECT treatment.
4 On 24 July 77, Detective Senior Sergeant Butler visited Lake Alice, spoke to Pugmire, he'd
5 viewed records for the following nurses, Fountain, Blackmore and Hunt during his visits.
6 27 July(sic) 77, Detective Senior Sergeant Butler conducts an interview.

7 **Q.** You're saying July but -

8 **A.** Sorry, June, it's small writing on this.

9 **CHAIR:** If you look on the screen it's been highlighted, it might make it easier for you.

10 **A.** The mother of - deleted - wrote to Police saying her son was at Lake Alice at the time from
11 media records. She understood Police were investigating allegations of mistreatment but
12 she preferred him not to be interviewed if possible. This is referred to Dr Mirams by
13 ACORD along with - deletion and deletion - complaints but parents did not want him
14 interviewed so his complaint was not referred to Police. 29 June 77, Banks makes a
15 statement to Wellington CIB complaining about his treatment at the unit. 6 July 77,
16 Detective Senior Sergeant Butler interviews Dr Mirams.

17 **QUESTIONING BY MS FEINT CONTINUED:** Then we need to go over the page. I think you
18 might have missed on that first page that the Police interviewed Dr Leeks at the end of
19 June, his first interview. Now we're up to 7 July.

20 **A.** 7 July 77, Detective Senior Sergeant Butler conducts an interview. Again on 7 July 77,
21 Napier Police interview - redacted. He had no recollection of any treatment other than
22 being fed intravenously. 11 July 77, Detective Senior Sergeant Butler, the second interview
23 with Leeks. In that interview Leeks is recorded as having said had given 12 to 16 boys
24 ECT treatment or Aversion Therapy. Leeks undertook to provide detail of who had
25 received such treatment and from whom as it would be recorded in the medical notes. This
26 interview indicated that Leeks would also have authorised nursing staff to administer ECT
27 to the head.

28 12 July 77. Detective Senior Sergeant Butler interviews two - redacted name -
29 was the subject of a complaint of sexual offences against other boys who were patients at
30 Lake Alice with him in late 1973 and early 1974. Two redactions - Banks - and another
31 two redactions and another redaction - Whanganui CIB file 451/74. Redaction - disclosed
32 that ECT treatment he had had, including the instance where the boys who had been victims
33 of his sexual attacks, were told by Leeks to administer electric shock to him while
34 conscious.

1 On 13 July 77, Detective Senior Sergeant Butler interviews former Nurse Hunt.
2 On 13 July 77 Detective Senior Sergeant Butler interviews Nurse Blackmore. On 20 July
3 77, Detective Senior Sergeant Butler interviews Leeks a third time, receives docs about
4 Banks and patients given ECT and Aversion Therapy. At 26 July 77, Detective Senior
5 Sergeant Butler interviews - redacted.

6 **Q.** And we go over the page to page seven.

7 **A.** Again in the Police response 29 July 77, Detective Senior Sergeant Butler interviews staff
8 nurses, O'Connell, Stabb and Conlan. 10 August 77, Butler's first investigation report.
9 Detective Senior Sergeant Butler reports to the District Commander Whanganui with
10 conclusion that there is insufficient evidence to substantiate charges under section 112 of
11 the Mental Health Act 1969, having regard to the protection afforded to Leeks and staff
12 reporting to him under section 124 of the Act.

13 On 18 August 77, there is a memo from the Director Crime, Churches, to Head of
14 Development and Operations at PNHQ - Police National Headquarters - supports the
15 decision not to prosecute and expresses the view that the treatment is not a matter of
16 criminal liability, but possible professional malpractice.

17 12/9/77, Police legal opinion. Senior Sergeant Trendle recommends getting expert
18 medical opinion on whether - redacted - the - redacted - incident of being given electric
19 shocks by other boys would be considered standard medical practice. In respect of other
20 offences that might amount to ill treatment he thought there was not enough evidence to
21 support a prosecution at this stage.

22 **Q.** Can you read from the - that extract from his opinion in the box to the left, if you follow the
23 arrow.

24 **A.** Legal opinion from Senior Sergeant Trendle. The use of electroconvulsive therapy and
25 Faradic Aversion Therapy, even though they may not be universally accepted means of
26 treatment, do not by themselves constitute ill treatment. However, their use in certain
27 instances outlined in the file seem to me to lack merit to such an extent as to possibly
28 constitute an offence against section 112 of the Mental Health Act.

29 **Q.** Then if we go back to the timeline, who is DC Walton?

30 **A.** Deputy Commissioner.

31 **Q.** What is his response?

32 **A.** DC Walton says get medical opinion on the use of ECT. So DC Walton advises Director
33 Crime, indicates he is not satisfied with this conclusion. He directed to seek opinion of the
34 Director of Medical Services about the treatment and get a referral to a medical expert from

- 1 whom to obtain an opinion.
- 2 **Q.** So to summarise, when you said that Deputy Commissioner Walton was not satisfied with
3 the conclusion, he was not satisfied with Butler's report that there was insufficient evidence
4 to charge and therefore he directed that there be a medical opinion sought?
- 5 **A.** That's correct.
- 6 **Q.** All right. So I think it's helpful now if we go and look at the opinion from Senior Sergeant
7 Trendle which is dated 12 September 1977 and it's NZP0000804. Have you got a copy of
8 that with you Superintendent? Just wait for that to be brought up on the screen.
- 9 **A.** Yes, I have.
- 10 **Q.** I'm going to refer you to the summary at paragraphs 18 and 19. Just before we go there, on
11 the screen can we just bring out the heading of the document please, the top of page one.
12 We can see that it's being sent to the Head of Development and Operations at Police
13 National Headquarters, concerning allegations of ill treatment by staff at Lake Alice
14 Hospital and it's dated 12 September 1977?
- 15 **A.** That's correct.
- 16 **Q.** If we go to the very end we can see the author is Neville Trendle who is in the legal section
17 of Police?
- 18 **A.** Yes.
- 19 **Q.** Thank you. Then if we can go to paragraph 18. It's only two paragraphs, I might just get
20 you to read out the summary in full please.
- 21 **A.** "The allegations of various boys recorded in this file all stem from measures instituted for
22 their treatment and control by Dr Leeks and his para-professional staff at the adolescent
23 unit of Lake Alice Hospital. So that bona fide innovation had no traditional means of
24 treatment are not unnecessarily suppressed, public policy requires that the allegations be
25 carefully evaluated. Though there is a vast area between treatment prescribed by the
26 Mental Health Act 1969 and ill treatment which is proscribed, officials at institutions
27 nevertheless do not have an absolute carte blanche. The use of electroconvulsive therapy
28 and Faradic Aversion Therapy, even though they may not be universally accepted means of
29 treatment, do not by themselves constitute ill treatment. However, their use in certain
30 instances outlined in this file seem to me to lack merit to such an extent as to possibly
31 constitute an offence against section 112 of the Mental Health Act."
- 32 **Q.** Then paragraph 19?
- 33 **A.** "There would not appear to be sufficient evidence to further consider the first two instances
34 referred to, though Detective Senior Sergeant Butler might wish to review this. As to the

1 incident involving - redaction - particularly because of the sensitive nature of this whole
2 investigation, I think further inquiry should be made. I am not in a position to suggest who
3 the appropriate experts might be, but what is required is the professional judgment of the
4 way treatment was administered to **GRO-B**. If this judgment (based on Dr Leeks' position
5 as it was in 1974) is that his procedures were so outrageous as to be quite beyond bona fide
6 medical opinion at the time, consideration will have to be given to the charge under the
7 mental Health Act. If it is the professional view of those seen that the treatment in this case
8 was unreasonable and unprofessional (but no more) the matter may well be resolved
9 internally as Detective Senior Sergeant Butler indicates."

10 **Q.** Thank you. I think that name should have been redacted, Madam Chair, in that paragraph.

11 **CHAIR:** Yes, steps are being taken I think.

12 **QUESTIONING BY MS FEINT CONTINUED:** Thank you. Now if we go to the medical
13 opinion that was sought and that is NZP0000791. We can see on the cover sheet,
14 Superintendent, that the author is doctor DG McLachlan and he's sending a letter dated 28
15 December 1977?

16 **A.** That's correct.

17 **Q.** To the Deputy Commissioner of New Zealand Police?

18 **A.** Yes.

19 **Q.** And it indicates that he's a medical doctor and a member of the - a fellow of the Australian
20 and New Zealand College of Psychiatrists?

21 **A.** That's correct.

22 **Q.** And he says on that cover page that he's done a report on this topic, it's taken him almost
23 three months, but the documentary research and study of the literature took him much
24 longer than he anticipated. And he's returning the Police file on the subject which had been
25 loaned to him?

26 **A.** That's correct.

27 **Q.** Then if we go over to the first page of the report please. Could you just read the first two
28 paragraphs to set out what his report covers please?

29 **A.** "On 28 September I attended a briefing at National Police headquarters by the Deputy
30 Commissioner Mr RJ Walton on the disclosures of the Inquiry to date on possible ill
31 treatment of patients at Lake Alice Hospital within the meaning of section 112 Mental
32 Health Act 1969. Later with Detective Chief Inspector Mitten and Detective Senior
33 Sergeant Butler, who were also present at the briefing, I had further discussion in detail on

1 the facts and events that had been disclosed by inquiries, and the substance of statements
2 made by staff, ex-staff and patients.

3 Since then I have studied carefully and repeatedly all the records and information
4 provided for me. I have also reviewed extensively the literature relevant to those particular
5 issues. As a result, I have formed a definite opinion on the whole situation relating to Lake
6 Alice. Though I now present this report in a condensed form and shall deal with selected
7 issues under the - I will deal with selected issues under the following headings, it must be
8 remembered that I have considered all the facts presented to me in coming to an opinion."

9 **Q.** Thank you, it's quite a long opinion so we won't read the whole thing, but if I could just
10 take you to some of the key conclusions. If we go down to the bottom of page two. It's
11 quite hard to read, isn't it, it's quite faded.

12 **A.** Yes.

13 **CHAIR:** Do you want the whole of para two to be highlighted?

14 **MS FEINT:** No, just the bottom half a dozen lines please.

15 **CHAIR:** Starting "Medical staff"?

16 **QUESTIONING BY MS FEINT CONTINUED:** Yes. If you could start reading from, you see
17 where it says "ECT modified" on the fourth line there?

18 **A.** Yes. "ECT modified by anaesthetic and relaxant was not regularly used, as is desirable, but
19 that does not amount to ill treatment. It is well recognised that the accompanying injections
20 modifying treatment lessen the therapeutic benefit."

21 **Q.** And then if we go to the top paragraph of page three.

22 **A.** "And I have many times, as a last resort in problem cases and with suitable safeguards,
23 used unmodified or straight ECT to initiate improvements when the unusual - sorry, when
24 the usual modified ECT was ineffective. There are many patients who would never get
25 well without this. Unmodified ECT should not be used routinely, but it is justified in
26 difficult and problem patients when all other methods have failed."

27 **Q.** Then if we go to the top of page four please. If you can just read out that, those first two
28 sentences please?

29 **A.** "Electrotonus or faradic stimulation use as the aversion stimulus used in behaviour
30 conditioning is more controversial. As applied to the thigh, knee or leg it would not be
31 painful, but would be at least uncomfortable because of the involuntary muscle contractions
32 produced, but that is the intention of the method."

33 **Q.** Then at the bottom of that same paragraph if you read out the last two sentences please,
34 starting "Only a minority"?

1 A. The last two sentences?

2 **CHAIR:** Yes, on the screen.

3 A. Sorry. "Only a minority of psychiatrists have endorsed the method without reservation and
4 it has largely been left in the hands of ancillary staff, mainly psychologists, to practise this
5 technique. Nevertheless, it was in 1973, and to a lesser extent still is, an accepted method
6 of treating behaviour disorders."

7 **QUESTIONING BY MS FEINT CONTINUED:** And then if we go to page six, paragraph five,
8 last sentence in paragraph five.

9 A. "I have studied carefully the summaries of case histories of individual patients and I have
10 no disagreement with the choice of treatment used; in particular where ECT was used, it
11 was justified by the psychotic (depressive or schizoid) features present in patients where
12 chemotherapy and other treatments had failed."

13 **Q.** And then if we just finally go over to page eight please, the final paragraph on the page.

14 A. "From all my reading and investigation of these patients at Lake Alice, I can find no
15 confirmation of the suggestion that any activity by doctors or other staff was undertaken
16 with other than genuine therapeutic intent. The only really questionable situation arose
17 over - redacted - and this I have dealt with in detail. I can find nothing to support charges
18 of unethical or unprofessional conduct, however badly judged or unwise it may have been
19 in one instance, and nothing to support ill treatment of patients in terms of section 112,
20 Mental Health Act 1969. Further, I do not consider there is any evidence that any person
21 acting in bad faith or without reasonable care (section 124) as would have to be proven in
22 any interlocutory proceedings."

23 **Q.** Then finally just the first two - yeah, if we go to the final paragraph please, paragraph eight.

24 A. Starting with "In summary"?

25 **Q.** "In summary".

26 A. "In summary, it is my opinion that the allegations against Dr Selwyn Leeks and the staff at
27 the adolescent unit, Lake Alice Hospital, have not been substantiated. Though unorthodox
28 methods of treatment were used, there was precedent for this and it could not be regarded
29 as improperly motivated or unprofessional. In my view, it does not come within the
30 criminal provisions of section 112 Mental Health Act 1969. The procedures then used as
31 part of a total therapeutic regime were rather a measure of desperation at the failure of all
32 else in very complex and - in a very complex and difficult situation. Since 1974 the whole
33 approach to care and treatment at the unit has changed, the methods used earlier are no
34 longer applied, and there is now nothing to justify criticism. Consequently, I have no

- 1 suggestion to offer for amendment to the present management and treatment of patients.
2 I recommend that no further action be taken."
- 3 **Q.** Thank you very much, Superintendent, for reading all that out. I asked you to read large
4 extracts of that because the Dr McLachlan is fairly emphatic, is he not, that there's nothing
5 to see here?
- 6 **A.** Very.
- 7 **Q.** And it's a matter of record that on receipt of that opinion the Police decided they had
8 insufficient evidence to lay charges against Dr Leeks?
- 9 **A.** Yes, clearly we were guided very strongly by that opinion.
- 10 **Q.** And in your professional opinion as an investigator of many years standing, do you think -
11 how would you describe the Police response?
- 12 **A.** Regardless of what the investigators thought, it would be very difficult to go against that
13 strength of expert evidence.
- 14 **Q.** Thank you. So I think we can set that aside now and I just had a couple more questions
15 before we finish. Yesterday you presented to the Commission a statement on behalf of the
16 New Zealand Police in which you conceded that Police did not accord sufficient priority
17 and resources to the investigation of allegations of criminal offending in that 2002 to 2010
18 period. Are you able to tell me please first of all who made the decision to make that
19 concession, and secondly I'd invite you to explain why that decision was made.
- 20 **A.** The decision was made by the Commissioner and the Executive of the New Zealand Police
21 after consideration and looking at what had been done over those years and some of the
22 things that I mentioned yesterday, and because of those facts and supporting, that Police
23 recognised what that has done to these survivors.
- 24 **Q.** And to be clear, the Police are saying that there's an institutional failing here and you're not
25 pointing the blame or saying that any individuals are necessarily at fault?
- 26 **A.** That's correct.
- 27 **Q.** I suppose this is inviting you to speculate, but do you think having - how would devoting
28 more resources to the investigation have changed that investigation?
- 29 **A.** It is somewhat speculation, but with any investigation if you have further resources to
30 widen the scope in the early stages, there is of course a chance that that will lead you down
31 different paths of widening that investigation.
- 32 **Q.** Thank you. I think in closing your evidence-in-chief I was going to invite you to read
33 paragraph nine of your brief, "Concluding comments", because you do explain the position
34 of Police to the survivors. Can you please start at paragraph 9.1.

1 A. "Concluding comments. Although the scope of my evidence is primarily directed at
2 generic discussion of Police policy and practise, there are some comments I wish to make at
3 this point on behalf of New Zealand Police to acknowledge the survivors of the events of
4 Lake Alice. In making these comments I am mindful of the reopened Police investigation
5 into Lake Alice and the limitations that places on my ability to comment on some aspects of
6 the file.

7 The investigations into Lake Alice have been unusual in a number of respects.
8 Lake Alice has been subject to significant scrutiny through a number of investigations and
9 inquiries and has been the subject of a civil claim against the Crown which produced a
10 large number of formal statements of evidence by survivors and resulted in the Crown
11 settling with the plaintiffs. The allegations concerning treatments including ECT and
12 Aversion Therapy relate to a set of facts involving technical psychiatric evidence and a
13 pattern of alleged offending not commonly seen by Police. The above factors all have
14 contributed to the investigations having features that are not typical for an investigator,
15 particularly in the context of Police - in that context Police policies will provide a
16 framework to the investigator but not a set of prescriptive rules.

17 With the benefit of hindsight, New Zealand Police in 2021 look back on the
18 investigations conducted between 2002 and 2010 with regret. We wish now we had
19 managed to reach a decision sooner in that investigation. Like all people reporting serious
20 offending to Police, that has significantly impacted their lives. The survivors of Lake Alice
21 would have benefitted from receiving a decision sooner. I acknowledge that delays in
22 Police decision-making in the context of this type of offending can be very difficult for
23 victims and I apologise to them on behalf of Police.

24 I also acknowledge the difficulty that the decision in 2010 not to lay criminal
25 charges would have undoubtedly presented for at least some of the survivors of the events
26 of Lake Alice. Police prosecution decisions are based on a number of factors which include
27 considering the defences a defendant would have available to them that would reduce the
28 likelihood of being able to achieve a criminal conviction. It is not unusual for Police to
29 believe a complainant but still not be in a position to lay charges. Such decisions are often
30 very difficult for investigators, however it does not mean a case has not been properly
31 investigated or that the offending has not been treated seriously by Police.

32 Decisions about whether or not to lay charges often involve weighing a range of
33 complex and competing factors. Police are required to consider the prosecution guidelines
34 I discussed above, reasonable prospects of conviction and the public interest.

1 I acknowledge, however, that for any victim, including the survivors of Lake Alice, the
2 decision not to lay charges may make them feel that Police did not believe them, or that
3 Police is content to let someone get away with their offending. On behalf of New Zealand
4 Police, I acknowledge how difficult that can be for those who have come to Police in the
5 hope of seeing a prosecution and conviction in response to traumatic events that have
6 occurred in their lives."

7 **Q.** Thank you very much, Superintendent. Is there anything else you wish to say before I turn
8 you over to my friend?

9 **A.** That's fine thank you.

10 **Q.** Thank you very much. I understand that Counsel Assisting the Commission will now have
11 questions for you.

12 **CHAIR:** Yes.

13 **QUESTIONING BY MS R THOMAS:** Good afternoon Detective Superintendent Fitzgerald.

14 You've just read the final paragraphs of your brief of evidence that was filed with the
15 Commission earlier this year where you've outlined the Police regret the time it took to
16 reach a decision in the 2000s and yesterday on behalf of the Police you went further and
17 apologised for that delay as a failing.

18 **A.** That's right.

19 **Q.** In addition to delay, your apology also stated that not all allegations were thoroughly
20 investigated. Can you expand for us please what you mean by that comment in the
21 apology?

22 **A.** That was in relation to the timeframe and some of the statements not being included at the
23 start of that inquiry.

24 **Q.** I'll just re-read that sentence, I think it said "This resulted in unacceptable delays in the
25 investigation and meant that not all allegations were thoroughly investigated." So are you
26 saying it's because of the delay that -

27 **A.** Delays, yes.

28 **Q.** Sorry, can you just explain that further to me?

29 **A.** The delay in thoroughly investigating those complaints.

30 **Q.** So you've said not all allegations were thoroughly investigated in that timeframe. Does that
31 mean that some of them were thoroughly investigated or...

32 **A.** Yes, I think you've heard in relation to what the charges that were put before or
33 recommended for charging.

34 **Q.** So the charges that Mr Burgess said there may be a prima facie case in relation to seven -

1 A. That's correct.

2 Q. - of the survivors, the Police position is that those seven cases were thoroughly
3 investigated?

4 A. They were investigated, yes.

5 Q. I'd like to ask you some questions about the standards and policies that you refer to in your
6 brief. Initially at paragraph 3.2 of your brief you've said that the Police policy and
7 procedure sets out a baseline and the national standard below which investigations should
8 not fall. Can I just confirm with you, is that like a minimum standard?

9 A. The standard of best practice, yes.

10 Q. I'd now like to put up some documents please and the first one is NZP0026569. If you
11 could turn to paragraphs 10.1 and 10.2.

12 **CHAIR:** Could you just orientate us please about that document?

13 **QUESTIONING BY MS R THOMAS CONTINUED:** Yes I will. Just to confirm this is a
14 Police policy document setting out policies under the adult sexual assault investigation
15 policy from 2003; is that correct?

16 A. That's correct.

17 Q. And these two paragraphs cover the policies relating to historical complaints. I'll just read
18 these into the record.

19 10.1 "Given that reports of adult sexual assault can be made to the Police some
20 years after the incident, the Police response to such complaints will take into consideration
21 factors such as:

22 Choice made by the victim, evidence offered by the victim, availability of other
23 evidence, availability of witnesses, legal precedents, the offender's response and likelihood
24 of continued offending.

25 10.2 Consultation with the victim is a priority throughout the investigation
26 process and decisions must be made in consultation with the victim and the coordinator of
27 adult sexual assault investigations."

28 Just to confirm, Detective Superintendent, that was the Police policy that was in
29 place as of 2003?

30 A. Yes.

31 Q. And if we now bring up the next document please, NZP0026568. This is again a document
32 Police policy but it's the adult sexual investigation guidelines of 2009, is that -

33 A. That's correct.

34 Q. Correct - and if we could turn to the - call out the historical complaints paragraph. I'll just

1 read that into the record.

2 "Sexual assault reports may be made to Police years after the incident.
3 Investigators should consider these factors when deciding what response Police will take.
4 The victim's ability to clearly recall events, the ability for this to be corroborated, the
5 availability of other evidence and witnesses, the victim's current circumstances and
6 well-being, legal precedents (consult legal section or the Crown Prosecutor where relevant),
7 the offender's current situation (still alive, in firm, or overseas), the offender's known or
8 likely response, the likelihood of further, continued or connected offending (past, present or
9 future)."

10 Those were the documents of policy relevant to historical complaints in the 2000s,
11 those two?

12 A. That's correct.

13 Q. Just to confirm the position that we heard yesterday in relation to Mr Reid, he held the file
14 between 2002 to the beginning of 2006?

15 A. That's correct.

16 Q. He received 34 civil statements at the time that he held the file from Mr Grant Cameron.
17 He did task a colleague to interview one survivor, and that was Hake Halo?

18 A. That's correct.

19 Q. But the Police don't have a record of that interview with Mr Halo. That was the position we
20 heard about yesterday from Mr Reid. Just in terms of the position with Mr Burgess who
21 gave evidence today, he confirmed that by the time he held the file, 2006 to 2010, there
22 were 41 complainants from the Lake Alice Child and Adolescent Unit and no evidential
23 interviews were done with those complainants while he held the file; is that correct?

24 A. As I understand it from yesterday, yes.

25 Q. And this morning, in fact Mr Burgess accepted in his evidence that thorough investigative
26 interviews might have clarified some of the evidence. Did you hear that this morning?

27 A. Yes, I did.

28 Q. Detective Superintendent, I acknowledge that those investigative decisions are not ones that
29 you made, but in your role as the Director of Criminal Investigation Branch, do you accept
30 that the decision to not evidentially interview any of the 41 individuals who wanted to
31 complain to the Police fell below the national standards of the Police policies that existed in
32 the 2000s?

33 A. As you've heard and as I would acknowledge, yes, that would have assisted. It does need to
34 be taken into context that there were statements available from those people through other

1 means, it has to be put into context that there was complaints and statements.

2 **Q.** Yes.

3 **A.** They were the scoping part of the investigation. So I'm agreeing with you, but there is
4 context to that.

5 **Q.** So it would have assisted to have those Police evidential interviews as well?

6 **A.** Could have, yes, absolutely.

7 **Q.** And would have therefore complied with the policies we've just gone through?

8 **A.** That's correct.

9 **CHAIR:** Can I ask you, Superintendent, how usual is it in your experience for the Police to rely
10 on statements that are non-evidential; solely rely upon them?

11 **A.** It doesn't, you know, it's a very unusual case to have those, so it's not something we - any of
12 us have much experience of.

13 **Q.** So it's unusual that you'd have a case where you've got pre-existing statements from, say,
14 civil proceedings?

15 **A.** Very unusual, yes, especially to that extent and that number.

16 **Q.** But in general, do you have a position on how appropriate it is to rely just on those, even in
17 the scoping phase?

18 **A.** Obviously it's better to have a full interview done by our experts, but in the scoping phase,
19 considering what I outlined earlier about re-traumatising contact, all those things, in the
20 early stages of the scoping phase, reasonable, yes.

21 **Q.** Thank you.

22 **QUESTIONING BY MS R THOMAS CONTINUED:** I'd now like to ask to put up another
23 document, but just before I do, it is a document which the Commission has received as part
24 of its request and it's a document dated August 2018, which I understand was before your
25 time in terms of overseeing this investigation. So I'd like the document ending 1302 to be
26 brought up please. Just to give this document some context and background, it is an email
27 that has been sent from within the Police, Detective Inspector Kirby, who was the Manager
28 of the Adult Sexual Assault and Child Protection Team at Police National Headquarters.
29 Somewhere in there it says it's a no surprises e-mail that's been sent to Senior Sergeant Tim
30 Anderson and then further on to the Assistant Commissioner Richard Chambers.

31 **A.** Detective Superintendent Tim Anderson.

32 **Q.** Sorry, thank you. I'd like to turn to the issues identified section of this email and highlight
33 or call out issue one. I'll just read this into the record:

34 "It seems Police have not actually spoken to most of the victims personally but have

1 used unsigned statements obtained from civil court. These statements are not to the detail
2 or done in the way Police statements would be taken. Certainly it appears no consideration
3 has been made to evidentially interview the victims who have disclosed sexual abuse."

4 Detective Superintendent, do you have any comment in relation to that issue that
5 has been outlined in that email

6 A. No, that's a review done by one of our experts and that's a fair comment he's made. Again,
7 there is the context to the scoping part of the investigation and legal advice, but that's a fair
8 comment made at that point.

9 Q. Thank you. If we could bring out issue two. "Medical notes and records have been
10 obtained for most of the victims, however it seems very little further investigation has been
11 done to corroborate the allegations."

12 In relation to that issue, Detective Superintendent, do you have any comment?

13 A. It's not my report, but it's the view of one of our experts who's reviewing the file.

14 Q. Do you have any comment in relation to the words there that little further investigation has
15 been done to corroborate allegations?

16 A. Again, it's not my e-mail so I'm not sure what that comment's based on or how much is
17 taken into account.

18 Q. Are you in a position where you could comment on, from your knowledge, whether there
19 was any further investigation that had been done to corroborate the allegations?

20 A. I think you've heard this morning from Malcolm Burgess in relation to what he did.

21 Q. If we move on to the third issue that's raised in this email. "Under today's standards there
22 has not been a quality investigation conducted particularly of the sexual allegations."

23 In your role, Detective Superintendent, do you have any comment about that issue
24 being identified?

25 A. No, again, that's done by one of our experts reviewing the file, that's his comment.

26 Q. Do you have any comment in response to this?

27 A. All I can say is on his review of the file, that's what he says.

28 Q. Number four, if we could bring that one up. "When legal opinions were sought it was only
29 in relation to the physical abuse." Do you have any comment in relation to that issue
30 outlined?

31 A. Again, that's his review of the file, that was what the legal - and we've heard this morning
32 what the legal opinion was sought on.

33 Q. Do you have any comment yourself, though, in response to that?

34 A. In what way? To comment on, the file or -

1 **Q.** From your knowledge of the file and the comment made here that it was limited to - the
2 legal opinion was only sought in relation to physical abuse?

3 **A.** Well, that's the fact, yes.

4 **Q.** If we move to number five. This is obviously the author's own opinion here, but it states,
5 "In my view if the Police response to these allegations is the subject to close scrutiny there
6 will be strong criticism." What is your position in relation to that?

7 **A.** Again, it's the reviewer's opinion on the file and certainly from an adult sexual assault
8 specialist team, that's their view.

9 **Q.** Are you prepared to give us your view on that comment and your opinion?

10 **A.** My view is that the comment is correct, however it has to be taken into context of where
11 the scoping investigation got to before legal advice.

12 **Q.** So the comment made by the Detective Inspector I think was the manager of the adult
13 sexual assault -

14 **A.** That's correct.

15 **Q.** - team for New Zealand. It's correct coming from him and his expertise?

16 **A.** Yes.

17 **Q.** And his assessment?

18 **A.** Yes.

19 **Q.** I'd like to turn now, pull that document down, to -

20 **CHAIR:** Can I just ask just for clarification about that. This document was received before you
21 took over the - became in charge of the investigation.

22 **A.** That's correct, yes.

23 **Q.** Thank you.

24 **QUESTIONING BY MS R THOMAS CONTINUED:** If I can also offer some extra
25 clarification. The email was - the file was pulled out at Police National Headquarters in
26 response to an OIA request and reviewed by Detective Inspector -

27 **CHAIR:** That answers my next question, why was it commissioned, and it's in response to an
28 Official Information Act request?

29 **QUESTIONING BY MS R THOMAS CONTINUED:** Correct, and Detective Inspector Kirby
30 undertook that review.

31 At paragraph 4.5 of your brief to the Commission, you've talked about the initial
32 phase of an investigation and the contextual fact-finding part of that. You've said that the
33 whole circumstances of the matter have to be considered, every available fact must be
34 considered. And then at paragraph 4.7 you've gone on to say there is a risk of bias and of

1 poor investigation when investigations are conducted without the entire factual picture.
2 The factual ground work is absolutely essential to a good investigation.

3 I'd now like to put up a document please which is from the United Nations decision
4 in the case concerning Mr Zentveld. If we could turn to paragraph 9.4 which is at the
5 bottom. If you could just highlight the very last sentence of para 9.4 starting with - if you
6 could bring that out. I'll just read the last part of that where it says:

7 "The authorities of the State party made no consistent efforts to establish the facts of
8 such a - then if you turn to the next page - sensitive historical issue involving the abuse of
9 children in State care. They have also failed to expressly acknowledge and qualify the
10 alleged treatment inflicted on the complainant."

11 What is the police's position on this criticism made in this UNCAT decision?

12 A. The UNCAT report in relation to New Zealand Inc response is one part of that. The Police
13 position is that we, as I've said, have apologised for the failings up until 2010, and we now
14 have opened up a full reinvestigation.

15 Q. As I read the apology, it specifies certain things that the Police have apologised for, such as
16 delay, not giving sufficient priority and resource to the case. But it doesn't, for example,
17 specify an apology for not fully establishing the facts which is effectively the criticism
18 made here. Do you accept that the 2000 Police investigation did not fully establish the
19 facts at that time?

20 A. I accept that if the investigation had been widened, certainly one of those factors if the legal
21 advice was different and the investigation had been widened, then absolutely there would
22 have been a wider scope and more facts found in the investigation.

23 Q. Prior to the legal advice that was sought at the end of that period, it was actually back in
24 2006 when the decision to limit the scope was made, so do you accept that that was the
25 time when a different decision would have more fully established the facts, that Police
26 decision in 2006 rather than the legal advice?

27 A. Yes, that's correct, a different decision may have resulted in that. But again, in context of
28 the scoping part of the investigation, you have to start somewhere, but you're correct that a
29 different decision to resource it immediately and widen it, you're correct.

30 Q. Thank you, you can bring that one down. There's been quite a few questions in relation to
31 the sexual allegations that were before the Police in the 2000 investigation. Mr Burgess
32 confirmed he had received 41 complaints of individuals who wanted to complain and he
33 accepted yesterday - this is at page 759 lines eight to nine of the transcript - that there was
34 severe allegations of sexual assault of varying kinds. What do you say today on behalf of

1 the New Zealand Police about the Police decision not to investigate those sexual
2 allegations?

3 A. As I've said in the apology, we apologised for investigations that weren't done correctly
4 through that time. As part of that, that includes a number of those. I think you heard from
5 Mr Burgess his reasons for why that didn't occur. Certainly as I've said in my apology
6 yesterday.

7 Q. Just on that in terms of the apology, it specifically acknowledges Paraldehyde as a
8 punishment that should have been included in the scope from 1977 to 2010, but the Police
9 apology is silent on the topic of sexual offending. Does the Police now accept any failings
10 in terms of its 2002 to 2010 investigation into the sexual allegations?

11 A. Each one of those investigations will have to be gone through on its merit and that's
12 different to the overall apology of what's occurred. Each one of those files would have to
13 be reviewed now on its merit.

14 Q. This Police apology states that the Police did not give sufficient priority to the
15 investigation, and that led to the delay, eight years. From your own experience, have you
16 ever led an investigation that has taken eight years to reach a decision?

17 A. No, I haven't.

18 Q. It was discussed with Mr Burgess this morning that there were various documents on the
19 time where there were comments made such as this is not a priority, I'm just doing this on a
20 part-time basis and comments along those lines. We've been provided with a brief of
21 evidence from Professor Mike Rowe to the Commission and I'd like to bring up a paragraph
22 from his brief. Just to set some context here, Professor Mike Rowe is a professor of
23 criminology and he has provided a witness statement to the Royal Commission. At
24 paragraph 18, if we could just call that out please. I'll read this one into the record:

25 "In New Zealand such specialist investigation of this kind was not developed, in
26 relation to child or adult sexual assault investigation, until the 21st century. Many of the
27 features of those specialist services reflect the problems that existed prior to this time,
28 including the period covered by the Royal Commission. Key features include that only
29 officers accredited through high level specialist training can lead abuse-related inquiries
30 and that such investigations are subject to enhanced management oversight. This oversight
31 includes more stringent processes such that senior police officers must authorise the
32 discontinuation of investigations, which is intended to make it less likely that officers will
33 cease work when those in positions of authority in institutions under investigation
34 effectively block inquiries (as the international experience demonstrates was a common

1 problem historically). The organisation and practise of abuse-related investigations is
2 enhanced through the use of case investigation plans reviewed by supervisory officers.
3 Specialist officers are ring-fenced to such investigations in the way that generalist
4 detectives are not and there is a limit on the number of cases that can be assigned to officers
5 as 'open' investigations. This is intended to prevent previous poor practice such that cases
6 could be ongoing in name only since the volume of work assigned to staff might be too
7 great for an active investigation to be meaningfully in train."

8 Detective Superintendent, do you have any comment on Professor Rowe's evidence
9 about the changes that were implemented in the New Zealand Police in the early 2000s to
10 ensure that files could not be left as ongoing in name only and the changes that were made?

11 A. Only what I've stated by policy that there is national oversight of those files for that
12 purpose.

13 Q. And there is this enhanced management plan to limit the number of cases that can be
14 assigned to an individual officer?

15 A. That's right.

16 Q. If those improvements, as outlined by Professor Rowe, were made in the 2000s in
17 New Zealand, are you able to explain how this Lake Alice investigation was able to
18 continue for eight years without priority and resources?

19 A. As I've said, we've apologised for the resources that weren't applied, for not applying
20 priority and resources. Again, there's slight context and difference to the type of
21 investigation this was to what's being referred to here. I can say no more than the apology
22 I said yesterday.

23 **CHAIR:** Can I be clear, Superintendent, was this - in 2009 was this a specialist investigation of
24 the type that Professor Rowe's talking about?

25 A. Not the initial scoping of the investigation wasn't, so the investigation was held by
26 Detective Superintendent Burgess.

27 Q. No, sorry, I misframed the question. The question is, standing back and looking at the
28 subject matter of that investigation, did that fall within the category of a specialist
29 investigation that Professor Rowe's talking about?

30 A. Yes, if the investigation had been conducted and the scope widened and people interviewed
31 and gone - it would have gone into that category.

32 Q. So when does it get categorised as a specialist investigation?

33 A. It's categorised for what the offence is, so technically it goes under there, but because of the
34 scope of this investigation to start with, it was treated and held by the Detective

- 1 Superintendent.
- 2 **Q.** So it's not the fact of the type of allegation that's made that makes it a specialist
3 investigation, it comes in and says child sex offence, for example, regardless of whether it's
4 been scoped or not?
- 5 **A.** Yes, that code will dictate that it's that special offence.
- 6 **Q.** So why didn't that happen in this case?
- 7 **A.** Sorry, I can't answer that.
- 8 **Q.** So - okay, do you think it should have been, looking back?
- 9 **A.** Looking back going by policy that's exactly what should have happened.
- 10 **Q.** But it slipped through the net?
- 11 **A.** Yes.
- 12 **Q.** Thank you.
- 13 **QUESTIONING BY MS R THOMAS CONTINUED:** How do the Police today, 2021, ensure
14 that significant delay in historic investigations do not occur?
- 15 **A.** With national oversight of files that make sure that we have a consistent approach and with
16 reporting up. So now by policy of the national oversight and the audit, any similar type
17 offending has that oversight from both my position and the Assistant Commissioner Crime.
- 18 **Q.** I'm now going to ask you some questions in relation to the 1977 Police file and my friend
19 has gone through an overview with you already in terms of the Police sequence of events
20 document. But I'd like to ask you some questions at just a very basic level.
- 21 On any investigation where there are the following three factors, number one, an
22 allegation from a complainant of wrongdoing, number two, the allegation being accepted or
23 admitted by a defendant, and number three, expert evidence supporting a prosecution, in
24 that hypothetical scenario, would you agree ordinarily a prosecution would be pursued?
- 25 **A.** Well, in those very basic terms you've outlined, yes.
- 26 **Q.** So when we look at the documents from the 1977 Police investigation, we have a document
27 which I'd like to bring up now which is from Dr Mirams. This is NZP0000795. You can
28 see it's document dated 19 May 1977. Dr Mirams is the Director of the Division of Mental
29 Health in New Zealand?
- 30 **A.** Yes.
- 31 **Q.** If you could bring out please paragraph seven. I'll read out this paragraph for the record:
32 "It is my present opinion that should it be established any member of the nursing
33 staff has administered shocks of whatever nature to a patient at Lake Alice, this would
34 constitute an offence in terms of section 112 of the Mental Health Act and it might be most

1 appropriately dealt with by laying an information with the Police. Whether or not sufficient
2 evidence will emerge to justify this step is still uncertain."

3 So that is a piece of evidence from Dr Mirams, the Director of the Division of
4 Mental Health and I'd now like to bring up the next document please, which is ending
5 332003. This is a document dated June 1977. It relates to a complainant, Mr Banks, and if
6 we could turn to page two paragraph one.

7 **CHAIR:** This is a formal Police statement is it?

8 **QUESTIONING BY MS R THOMAS CONTINUED:** Yes. I'll just read out some of the part of
9 this big paragraph here, it states:

10 "I also received what I know as Aversion Therapy or treatment which is the
11 machine administering shocks through the electrodes which are placed on your thigh of
12 either leg. This was given to me in the medical room downstairs in Villa 11 which is a
13 room between the entrance hall and the dining room. This was normally given to me by
14 Steven Hunt who was the charge nurse and I think also Terry Conlan. I don't know how
15 many times it was done but it was fairly often. This aversion treatment on the legs as far as
16 I am concerned was straight out punishment for doing things that I shouldn't have done."

17 Thank you. And if I could now bring up the third document which is document
18 ending 0767. If you could bring out the - this is an interview between the Detective Butler
19 with the staff nurse Mr Hunt in 1977. I'll just read into the record what Mr Hunt says:

20 "Mr DD was on a course of ECT by Dr Leeks. I think because of his extreme
21 psychotic behaviour at times. To my knowledge Mr DD, on Dr Leeks' instructions, was on
22 occasions given Aversion Therapy (in Dr Leeks absence) mainly for his putting the boot
23 into one of the other patient boys. It was administered by myself and other senior nursing
24 staff in the downstairs medical room of Villa 11 which was where the ECT machine was
25 kept. Electrodes were clamped across the leg below the knee. It would invariably only be
26 for a tenth of a second. In each case the boy patient was told beforehand the reason why he
27 was getting the treatment."

28 Thank you, you can pull that down. So based on those three documents there is an
29 allegation of a complaint from Mr Banks. There is an interview between the detective and
30 Mr Hunt, the alleged perpetrator, where he accepts that he did give the shocks in the way
31 alleged by Mr Banks, and the first document I pulled up was from the Director of the
32 Division of Mental Health saying that if any nurse had administered any shocks in whatever
33 nature to a patient then that would constitute an offence under that section 112. And yet in
34 1977 the Police did not file any charges.

1 I understand from the evidence that you've given today it's because the Police relied
2 on the opinion of Dr McLachlan, is that correct, from your review of the records?

3 A. That's correct.

4 **Q.** And as a result of relying on that opinion decided not to file any charges. I'd just like to
5 bring up a paragraph from Dr McLachlan's opinion that was not raised before when you
6 went through that document. If you could bring that one up on the screen, document
7 ending 0791. If we could turn to page six paragraph one and bring out - it's hard to see, but
8 to bring out, it starts with the words "It would be appropriate" thank you. I'll just read this
9 into the record. This is Dr McLachlan's opinion:

10 "It would be appropriate in this connection to comment on Dr Leeks personally as
11 I know of him. He has been well regarded by psychiatric colleagues and has been accepted
12 as a psychiatrist with special training, interest and ability in the management and treatment
13 of young people. On many occasions he has been invited to address medical gatherings on
14 aspects of his work, and this reflects his standing. Colleagues who know him much better
15 than I do accept him as a man who is compassionate, concerned for his patients, and
16 working diligently for their well-being. It would be entirely out of character for him to
17 undertake the sort of ill motivated practises that are alleged.

18 At the time of these alleged events, he was undoubtedly confronted with a heavy
19 workload and unable to devote the amount of time and degree of supervision to the
20 adolescent unit at Lake Alice Hospital that its importance warranted. In fact, he frequently
21 attended in his own time the better to help his patients. There was no possibility of
22 additional medical assistance beyond that intermittently available and already used."

23 You can pull that one down thank you. Detective Superintendent Fitzgerald, we all
24 know that intrinsic to the concept of expert evidence it needs to be impartial and objective.
25 Do you have any comment in relation to that paragraph I've just read from Dr McLachlan
26 in terms of his objectivity and impartiality?

27 A. No, I agree that it has to be impartial. My only comment would be you have to judge it in
28 the context of the 1970s and what was thought of as doctors, what was thought of as correct
29 by expert evidence. The questioning of doctors - you can't judge that expert opinion in
30 2021, you have to go back in context to the 1970s. Of course I agree with the
31 independence, but you have to put it in context.

32 **CHAIR:** So do you think it was acceptable, even in 77, for an expert opinion to be influenced by
33 personal views of somebody's standing, professional standing?

34 A. No, I don't think it's acceptable, but my comment is that in 1970, the questioning of

1 specialist doctors was not what it is today, and for us to take that on face value would not
2 be unusual in those times. It's a completely different lens today than 1970.

3 **Q.** No, undoubtedly, completely different lens, yes.

4 **A.** Yes.

5 **CHAIR:** Ms Thomas, we'll need to take a short break at some stage, I'll leave it to you to decide
6 when it's a time.

7 **MS R THOMAS:** I think now would be a good time to have - would you like a 10 minute break?

8 **CHAIR:** We'll take a 10 minute break.

9 **Adjournment from 3.35 pm to 3.50 pm**

10 **QUESTIONING BY MS R THOMAS CONTINUED:** I'm now going to ask some questions in
11 relation to 2010. On 22 March 2010 Mr Burgess wrote to the Assistant Commissioner of
12 investigations recommending that the Lake Alice Child and Adolescent Unit file be filed as
13 there was insufficient evidence to successfully prosecute a charge of wilful cruelty to a
14 child. Now on 24 March, so two days later, 24 March 2010 there was a document that I'd
15 now like to put up on the screen which is a Crown Law document of that date. If you could
16 turn to paragraph 32.

17 I'll just put this document in context. It is a document where the Crown Health
18 Financing Agency and the Ministry of Health have been asked to brief the Ministry of
19 Justice for the Government response to the United Nations Committee Against Torture
20 about allegations of torture in historical claims. I will read into the record what this
21 document from Crown Law says at paragraph 32.1:

22 "First, the Lake Alice claimants' allegations that they were subjected to improper
23 treatment could be verified from the contemporaneous medical records. The records
24 showed that Dr Leeks was practising a form of Aversion Therapy, using the ECT machine,
25 that was indefensible even for its time (the 1970s). In the current claims, the allegations are
26 contested."

27 So with this report from the lawyers for the Government, Crown Law dated 24
28 March 2010, and Mr Burgess' report two days earlier where he has summarised Aversion
29 Therapy, which we've seen earlier today up on the screen, as delivering electric shocks to
30 part parts of a child's body such as their genitals for behaviour such as masturbating, was an
31 Aversion Therapy treatment; verses this document here which says the record showed that
32 Dr Leeks was practising a form of Aversion Therapy using the ECT machine that was
33 indefensible even for its time the 1970s.

34 Do you, Detective Superintendent Fitzgerald, have any comment on those two

1 different assessments of the evidence, one from the New Zealand Police and one from the
2 New Zealand Government written within two days of each other?

3 A. Just clarify for me what difference you're referring to?

4 Q. The difference in that Mr Burgess' report, his summary in relation to Aversion Therapy was
5 that delivering of electric shocks to parts of a child's body such as their genitals for
6 behaviour such as masturbating was an Aversion Therapy treatment versus the document
7 here that says Aversion Therapy using the ECT machine was indefensible even for its time?

8 A. Are you referring to the word "treatment" in Mr Burgess' report or - I'm not sure what
9 you're asking.

10 Q. Just a general assessment that he gives - I can bring it up, but it was the two paragraphs
11 we've had up on the screen earlier this morning, he gives a summary of - based on the
12 Police evidence and file at the time, and he's providing that summary to the legal opinion
13 writer outlining the Police assessment of the facts and stating that this was Aversion
14 Therapy.

15 A. I'm not sure if that's applying words on the therapy. But I mean you're talking about
16 Mr Burgess saying that he believed there was evidential sufficiency of the charging, that's
17 the report you're referring to?

18 Q. It is the report that he provided to Mr Ian McArthur to request a legal opinion and in that
19 report he summarised over two paragraphs, based on the evidence on the Police file, a
20 summary of Aversion Therapy, in his words effectively because he would say things, where
21 it's stated, electric shocks would be given to a child's body such as their genitals for
22 behaviour such as masturbation, as Aversion Therapy. So it was his summary of the
23 therapy and I'm asking whether you have any comment on that assessment in comparison to
24 the paragraph on the screen?

25 A. If I'm right with what you're asking me, my reading of Mr Burgess' report, if you're saying
26 he's justifying it as therapy, that's not my reading of his report at all, so I'm not sure what
27 you're referring to.

28 Q. Perhaps I'll just get his report to confirm. This is Mr Burgess' report where he has stated:
29 "The third treatment which appears in the notes is what has since been
30 characterised as Aversion Therapy. It appears this is referred to in the nursing notes as
31 ECT, Ectonus or Ectonus Therapy. This apparently entailed the ECT machine being used
32 on a different setting to the setting that would be used to deliver ECT. It involved the
33 patient receiving an electric shock at a lower level of electric current as a means of
34 modifying behaviour."

1 Then it goes on to say: "The location in which the electric shock was delivered
2 during these treatments was apparently determined by the sort of behaviour that led to the
3 application of the electrodes in the first instance. For example, boys who ran away might
4 expect to have the electrodes applied to their legs, boys who were caught masturbating or
5 offended in a sexual fashion could expect to have the electrodes attached to their penis or
6 their testicles, and boys who were fighting might expect to have the electrodes attached to
7 their shoulders. These applications of electric shocks are not recorded in the ECT notes but
8 are often referred to in the nursing notes."

9 So that is the summary that I was referring to in terms of Mr Burgess' report in
10 March 2010, a summary of Aversion Therapy in his report, and I'm asking whether you
11 have any comment on that summary in comparison to the quote in the other document
12 which was the Crown Law document, where they say Aversion Therapy, using the
13 machine, was indefensible at the time.

14 A. Well, my only comment can be that you have to take this as a summary of some of the
15 report of what Mr Burgess has outlined. He is in no way, I don't want to speak for
16 Mr Burgess, but my reading of his report, he is not justifying this treatment, if that's what
17 you're referring to, in that there's a difference two days later. My reading of his report is far
18 from that.

19 Q. He's not saying that it's indefensible, though, is he?

20 A. Not in this paragraph, but then he goes on to say that he would like to charge. So I'm not -

21 Q. I haven't read anywhere in his report that he says that the Aversion Therapy was
22 indefensible for its time.

23 A. No, but I think you're taking a passage out of a summary of a report without the context of
24 the whole report. If you're somehow implying that Mr Burgess is justifying this, that's not
25 what my take of his report at all.

26 Q. So are you saying that Mr Burgess did conclude that what was going on was indefensible?

27 A. I'm saying that I think you need to read what he has said in relation to believing there was
28 enough to charge, to put it into context.

29 Q. I'd now like to move on to the 19 May 2010 where the New Zealand Government officials
30 appeared at UNCAT. This was an opportunity for the New Zealand Government to
31 respond to the fifth periodic report which had come out in June 2009. So the New Zealand
32 State party said, this is in 19 May 2010, that the Government is committed to investigating
33 allegations of torture and ill treatment, and I'll just summarise it, it's a lengthy paragraph,
34 but they went on to say:

1 "Such allegations can be pursued against the Government or individuals through
2 criminal complaint to the New Zealand Police, and through a range of other more
3 specialised options."

4 So that is what the New Zealand State party are saying at UNCAT in May 2010.
5 And eight weeks prior to that Mr Burgess has written to the Assistant Commissioner to say
6 that no charges would be pursued. Are you able to reconcile those two positions?

7 A. No, sorry, I'm not sure what the knowledge was of the person who prepared the report for
8 UNCAT.

9 Q. Are you aware of whether the New Zealand Police were part of the briefing process to that
10 UNCAT trip?

11 A. No, I'm not.

12 Q. At paragraph 12.1 of the Police statutory declaration which was filed with the Commission
13 in December last year, the Police have said: "The Police has a role in assisting the Ministry
14 of Justice to draft State party responses by providing relevant information to Ministry of
15 Justice officials."

16 Are you able to comment on why it would seem that the New Zealand officials at
17 UNCAT in May 2010 had not been assisted by the Police and not been informed of the
18 Police decision not to prosecute?

19 A. No, sorry, it's not something I have any knowledge of.

20 Q. I'm just going to move on now to 2013 actually, which - just moving through the timeline
21 from 2010 to 2020. In November of 2013 a Detective Constable of the New Zealand Police
22 conducted the first evidential interview with a complainant from Lake Alice. This
23 complainant had come forward to the Police in 2013 with some evidence of what they had
24 observed and what they described as torture. The report from that evidential interview was
25 sent to Mr Burgess who was then the Assistant Commissioner and he made a decision that
26 the case would not be reopened, stating that it was not new evidence and it had already
27 been dealt with.

28 So this was the first evidential interview of a complainant by the Police in 2013
29 and the Police chose not to pursue that line of inquiry. Do you have any comment in
30 relation to that moment in time with the Police and their investigation into Lake Alice?

31 A. No, I would need a lot more detail and a very detailed look before I could comment on that.

32 Q. June 2015 is when the concluding observations of the sixth periodic report of New Zealand
33 at UNCAT came out, so those observations said to New Zealand that the Committee notes
34 that the State party - so New Zealand - failed to investigate or hold any individual

1 accountable for the nearly 200 allegations of torture and ill treatment against minors at
2 Lake Alice Hospital. The observations went on to conclude that the State party should
3 conduct prompt, impartial and thorough investigations into all allegations of ill treatment in
4 prisons and healthcare institutions and prosecute persons suspected of ill treatment.

5 So in those documents UNCAT are making observations to the New Zealand
6 Government in 2015. Are you able to assist us with who at the New Zealand Police would
7 be briefed about this type of information from UNCAT?

8 A. Well, no, I can't say categorically, I can only give you what I believe would have happened,
9 so I can't refer to that exact date or time or what would have happened.

10 Q. Just in general, or even today, if something like that was to come out of UNCAT, who at
11 the New Zealand Police would be responsible?

12 A. I would - my understanding would be that it would be at least at the Deputy Commissioner
13 level briefing.

14 Q. So the criticism made of New Zealand in that 2015 report that the State party had failed to
15 hold any individual to account, is it your understanding that that type of criticism ought to
16 be raised at the Deputy Commissioner level within the Police?

17 A. It's only my opinion that that's probably where it would have been raised, yes.

18 Q. To make them aware of this international criticism?

19 A. [Nods].

20 Q. And you may or not be able to answer this, but were you aware whether that did happen in
21 this case?

22 A. No, I have no idea.

23 **CHAIR:** Superintendent, do you know if there's any formal process for dealing with situations
24 like this where New Zealand as a State is responding, is there any arrangement with the
25 Government in general with the Police about cooperation or information sharing?

26 A. My understanding of New Zealand Inc is that there's three prongs to it, Justice dealing with
27 that to start with, then it would come to Police for comment.

28 Q. So first it goes to Ministry of Justice?

29 A. Then it would come to us for our comment is my understanding.

30 Q. That is how it should work?

31 A. Yes.

32 Q. And I take it from your answers that you don't know whether it did happen in this case?

33 A. No, sorry, I wasn't involved at this time.

34 Q. Thank you.

1 **QUESTIONING BY MS R THOMAS CONTINUED:** Just moving through the timeline now
2 on to 2018, in 2018 Sharyn Collis came to the Police and was evidentially interviewed at
3 that time, and do you accept, however, she initially, via her lawyer, submitted her statement
4 to the Police in 2002 and it was 16 years later, 2018, when she was first evidentially
5 interviewed?

6 A. Correct.

7 **Q.** November 2018, I think it's Detective Senior Sergeant Tebbutt was in e-mail
8 correspondence with the complainant at that time and told the complainant that the Police
9 would not be investigating his(sic) allegation in relation to Lake Alice which was an
10 allegation of ECT on the genitals, because that had already been investigated by
11 Mr Burgess. But then by February 2019, Detective Senior Sergeant Tebbutt e-mailed the
12 same complainant and said the Police would now take an evidential statement from that
13 complainant about ECT on the genitals. Are you able to make any comment on this change
14 of position between the end of 2018 and 2019?

15 A. The only comment I could make is that we started a full investigation in 2019.

16 **Q.** 2019?

17 A. Yeah - 2020, sorry.

18 **Q.** So just before 2020, so we're still in September 2019, the Police received an updated
19 opinion from Professor Garry Walters?

20 A. [Nods].

21 **Q.** I'd just like that to be put up on the screen please. I just will call out the bit that starts with
22 "I can confirm." He stated "I can confirm - I'll just read this into the record:

23 "I can confirm that it remains my opinion that applying electrodes on the genitalia
24 of children as a form of Aversion Therapy was not an accepted medical practice in the
25 1970s and is not an accepted medical practice now and that in no way could this be justified
26 as medical treatment."

27 So the Police received this updated opinion in September 2019. Did the Police
28 consider opening a full investigation on receipt of this?

29 A. I wasn't in New Zealand then. I was working for New Zealand Police in Australia, so my
30 knowledge of it now is that they were undertaking an investigation, yes.

31 **Q.** And then the next moment in time is 23 January 2020 when the UNCAT decision of
32 Mr Zentveld is published and I'd like to pull out paragraph 9.9 of that decision please. I'll
33 just read into the record:

34 "In light of the above, the Committee considers that the State party's failure to

1 conduct an effective investigation into the circumstances surrounding the acts of torture and
2 ill treatment suffered by the complainant while he was at the Child and Adolescent Unit of
3 Lake Alice Psychiatric Hospital is incompatible with the State party's obligations under
4 articles 12, 13 and 14 of the Convention to ensure that the competent authorities proceed to
5 a prompt and impartial investigation wherever there is reasonable ground to believe that an
6 act of torture and/or ill treatment has been committed."

7 Detective Superintendent, in light of the matters I've just gone through with you
8 over the period of 2010 to 2020, what was the catalyst for New Zealand Police to
9 commence a full and detailed investigation into Lake Alice?

10 A. Well, going back a step, when I took over as the Director Criminal Investigations I was
11 briefed on an investigation that was underway. Detective Superintendent Tim Anderson,
12 Detective Inspector Dave Cooper had started an investigation. So it was already underway.
13 When I was briefed, it was clear to me that the victims of Lake Alice deserved a full
14 investigation with no stone left unturned and that's what we started and we are still doing.

15 Q. Thank you. If we could take that document down and put up please the apology that you
16 read out yesterday on behalf of New Zealand Police. Focusing on the part of this apology
17 here where you've said:

18 "The Police are committed to assessing policy and how national investigations are
19 resourced and are committed to ensuring that this not happen again."

20 Can you tell us please what does the New Zealand Police mean by "commit to
21 ensuring that this not happen again"?

22 A. What we mean by that is that we commit the resources needed, as I've said, and prioritise
23 investigations to ensure that these delays don't happen again.

24 Q. Are you able to comment on whether the Police are committed as a crime prevention
25 organisation to ensuring the offending against children in State care does not happen again?

26 A. Of course we're committed to crime prevention. Especially vulnerable people.

27 Q. Is the New Zealand Police committed to ensuring the Police failure to thoroughly
28 investigate and file charges for historic complaints of physical, sexual abuse against
29 children does not happen again?

30 A. As I've said, we are committed to ensuring those time delays don't happen again.

31 Q. You've noted here that the Police are committed to assessing policy. Can you tell us what
32 policy you are assessing currently in relation to this apology?

33 A. We've started looking at national investigation policy in relation to mass allegations and
34 how they're responded to, and how they are resourced.

1 **CHAIR:** Can you tell me, Superintendent, whether it's in the mind of the Police in such instances
2 where it appears that there's a mass allegation, and these can be incremental, that the Police
3 would make proactive steps to advertise the fact that you're investigating and call for
4 people to come forward?

5 A. In most cases that will happen unless there's a reason not to. There's investigations
6 underway now where that is absolutely happening as we speak, so yeah.

7 **Q.** Thank you. So that survivors out there who might not otherwise know can be alerted.

8 A. Absolutely, yes.

9 **Q.** Thank you.

10 **QUESTIONING BY MS R THOMAS CONTINUED:** This apology that you've given of Police
11 failings, where do you say the causes of those failings come from? Are they just from
12 policy and resourcing or anything else?

13 A. As I've stated, prioritising and resourcing would have taken the investigations further in a
14 timely manner.

15 **Q.** Is it just a policy issue or is it also a culture issue that might need to be addressed, in terms
16 of what you've noted here in this apology? You've said here the Police are committed to
17 assessing policy. My question is, do you think the Police also may need to assess culture
18 within the Police?

19 A. What culture are you referring to?

20 **Q.** We've heard today in the questions that were asked of Mr Burgess that looking through the
21 documents on this file there were significant focus on credibility of the survivors, for
22 example, there were comments made under such a heading that they were disadvantaged or
23 come from dysfunctional families, backgrounds, or comments along the fact that
24 difficulties investigating this file were compounded because these people had psychiatric
25 illnesses. So those types of comments. Are you able to make any comment in relation to
26 that being a culture problem within the Police or not?

27 A. I am. Mr Burgess, I don't want to talk for him, he answered the question in relation to facts.
28 What I can tell you is that my team and every investigator I know that works for me would
29 in no way pass judgment on someone because of what they'd been through, far from it. We
30 have full empathy for every victim of Lake Alice. And in no way would we - documenting
31 those facts does not take away the empathy Police have for victims in any way. So
32 I completely disagree that we have a culture, we have a very victim-focused culture and a
33 dedicated team of people who absolutely empathise with everything that's happened to
34 those victims.

1 **Q.** We have heard evidence in the course of this hearing over the last two weeks from
2 survivors who said that they approached front counters of Police Stations at various times
3 over the last decades wanting to make a complaint and they were effectively fobbed off,
4 that was their words, as not being credible or because of gang connections they weren't
5 listened to. Now I acknowledge it's noted in your brief of evidence that since 2017 the
6 Police have implemented training for all front counter staff in terms of adult sexual assault
7 training. Are you able to tell us whether the Police is in the process of improving
8 engagement with vulnerable complainants or witnesses in any other ways or has done so
9 already?

10 **A.** Certainly the training and the training standards are in place and have been in place for
11 some time. It's really difficult for me to comment on individual cases that you refer to. I'm
12 not going to sit here and say we're perfect and everybody turning up at a station - I'd be
13 very disappointed if someone turned up with serious allegations in recent times and that
14 occurred, very disappointed and it would be dealt with. But it's certainly not a culture.

15 **Q.** Just one final question, Detective Superintendent. On reflection now, do the Police have
16 any other comment on the reasons why not all of the serious allegations of sexual
17 offending, physical assaults and torture for children were thoroughly investigated?

18 **A.** No.

19 **Q.** Thank you. If you just remain there, I think Ms Joychild has some questions.

20 **CHAIR:** Thank you Ms Joychild.

21 **QUESTIONING BY MS JOYCHILD:** Good afternoon Superintendent. My name's Frances
22 Joychild, I'm counsel for the survivors. I've just got a couple of questions to ask you. In
23 your just most recent - one of the recent answers to a question you said that a new
24 investigation was actually opened in 2019; is that correct?

25 **A.** Investigation had started before I returned in 2020, yes.

26 **Q.** This was another Police investigation to the one that Mr Burgess closed off?

27 **A.** That's correct.

28 **Q.** And then the UNCAT came along and is that when you got involved in it, after the UNCAT
29 decision?

30 **A.** I got involved when I took over the position of Director of Criminal Investigations.

31 **Q.** Right, that was in January 2020?

32 **A.** February.

33 **Q.** February. I think, Superintendent, I've spoken to you once, but I get lots of reports from
34 my clients who speak to you as well. And there has been constant hope that this

1 investigation will be completed in a much more timely way. At one stage Counsel
2 understood it was going to be completed in about mid-last year. And then - but it's going
3 on and on and on. So we're now in the really disappointing situation for our clients that we
4 don't have an outcome before the Royal Commission. Were you concerned to try and get a
5 decision before the Royal Commission sat?

6 A. They're both completely separate, but I share your concern and the delay is something my
7 team and I have tried everything we can to get it to a conclusion. There is a number of
8 reasons in relation to the investigation that has to be done properly, and unfortunately it has
9 taken longer than we all wanted. So I share the frustration of the victims, but I can assure
10 you that the team is dedicated to doing this and doing it right. Unfortunately that's taken
11 longer than we hoped.

12 Q. This week, of course, clients rang me on Wednesday evening because the Police were
13 starting to call people to tell them that a decision is imminent and you have said that
14 yourself. Can you tell us what the decision is?

15 A. No.

16 Q. Why not?

17 A. Because the decision hasn't been finalised yet and it would not be appropriate for me, even
18 if it had, to say it now.

19 Q. Why wouldn't it be appropriate?

20 A. Because we want to inform the victims in person when that final decision is reached.

21 Q. Mr Zentveld yesterday said in his evidence that he would like the Police to tell the Royal
22 Commission the decision. It's obviously enormous - it creates enormous anxiety for the
23 survivors the longer they wait for it.

24 A. I absolutely agree and as I've said, we're going as quick as we can and we hope that in early
25 July we'll have the answer.

26 Q. Okay, well just one last question, and it's not meant to be insulting, but it has to be asked,
27 and that is, are the New Zealand Police playing the Commission by not giving this - I mean
28 really we're two weeks out when you are going to make the decision, why couldn't it have
29 been made two weeks earlier?

30 A. I'm pleased it wasn't supposed to be insulting. Absolutely not, this is an investigation
31 where we've got the victims at heart and we are trying our best to tell them as soon as
32 possible. What's happening amount the submission is absolutely important but the
33 investigation stands on its own.

34 Q. It does have the great misfortune that there can be no scrutiny of this investigation by the

1 Commission, can there?

2 A. The investigation will stand in its own scrutiny in time.

3 Q. It would be unfortunate if we had to have another inquiry into the investigation, it would
4 have been good if it all could have been wrapped up in one for the survivors.

5 A. As I've said, they're completely different entities, we run an investigation based on facts
6 and making sure we do it right. We can't run an investigation and have it early to have an
7 answer to the Commission, unfortunately that's not the way it works.

8 Q. Thank you, I've got no further questions.

9 **CHAIR:** Ms Thomas or perhaps Mr Molloy, would you like to comment on the ability of the
10 Inquiry to continue to look into matters once the hearing is over?

11 **MR MOLLOY:** Ma'am, I think we probably need to take - we would have to look at that
12 carefully. I see no reason why it couldn't, given that the Inquiry is ongoing. I take
13 Detective Superintendent's Fitzgerald's point, he's got his investigation to run, but I don't
14 see that that precludes us looking at it at a later date should it become appropriate to do so.

15 **CHAIR:** Yes, I think the point being that although this is a public hearing and a very important
16 one, and that it will end probably next Tuesday, it does not mark the end of the
17 investigation. That continues on, including looking at material that is coming in as we
18 speak, as well as historic material. So that's just a matter of reassurance for people that
19 think that come Tuesday it's all over. I think you'd agree, Mr Molloy, that it is not.

20 **MR MOLLOY:** Absolutely, ma'am, we made that point very clear at the beginning that this is a
21 snapshot of our Inquiry, it's not the beginning or the end of it.

22 **CHAIR:** Yes, thank you. Ms Feint.

23 **MS FEINT:** Thank you, I just have a few questions in re-examination.

24 **CHAIR:** Yes.

25 **QUESTIONING BY MS FEINT CONTINUED:** First of all, Superintendent, just to pick up on
26 the thread of that last conversation, are the Police willing to cooperate if the Commission
27 does have further questions for the Police once your investigation is completed?

28 A. Absolutely.

29 Q. Thank you. Can I please ask if the wizards running Relativity can bring up Detective
30 Superintendent Burgess' report of 14 September 2009, it's NZP000308. Just while we wait
31 for that, in the afternoon adjournment, Madam Chair, I had a call from Ms Hughes QC and
32 she said that she had been instructed by Detective Superintendent Lawrence Reid to correct
33 an error in the record, and that is the date at which he got the file within New Zealand
34 Police, and I don't anticipate that's a controversial point because it is in the document

1 record.

2 **CHAIR:** I don't have his brief of evidence with me at this moment, so -

3 **QUESTIONING BY MS FEINT CONTINUED:** He doesn't mention the exact date in his brief,
4 but - perhaps I could ask the Superintendent first if he knows off the top of his head what
5 date that was?

6 A. I don't I'm sorry.

7 **Q.** All right, I have been sent a letter that is on the record and I don't think we need to go there
8 unless you want me to, but it's the letter -

9 **CHAIR:** Is this a critical matter that needs to be dealt with at this moment or can it be dealt with
10 afterwards by talking to counsel?

11 **MS FEINT:** I could just simply read it into the record if you're happy with that, it's just -

12 **CHAIR:** Who's the letter from?

13 **MS FEINT:** It's from Superintendent Graham Emery to the Deputy Commissioner Long, and it's
14 dated 25 March 2003 indicating that he's going to transfer the file to Detective
15 Superintendent Larry Reid to head the investigation. And the document number for
16 relativity is NZP0000065. I don't think we need to bring that document up.

17 **CHAIR:** It's coming anyway. So the point of Ms Hughes' instructions is what?

18 **MS FEINT:** I understand from what she said that at some point in the questioning today it was
19 put that Detective Superintendent Reid got the file in 2002 and he has pointed out that no,
20 he got the file in March 2003.

21 **CHAIR:** Okay, all right, I don't think anyone's going to die in the ditch over that. Let's record that
22 for the record and we can move on.

23 **MS FEINT:** Indeed.

24 **CHAIR:** Unless you've got any objection Superintendent?

25 A. No.

26 **Q.** Do you know anything at all about this?

27 A. No.

28 **Q.** Yes, I thought not.

29 **QUESTIONING BY MS FEINT CONTINUED:** If we could go back to that document I had
30 asked to be put up, which has now disappeared. So this is, to orientate everyone, this is the
31 report that Detective Superintendent Burgess sent to Mr McArthur when he was seeking the
32 legal opinion, and Superintendent, you were asked a number of questions by Ms Thomas
33 about the difference between what Mr Burgess said in his report and what UNCAT said
34 concerning the fact that what had happened could be never justified as Aversion Therapy.

1 **CHAIR:** UNCAT or Crown Law Office?

2 **MS FEINT:** Sorry, my apologies, I've written it down as UNCAT but I'm told it was Crown Law.

3 **CHAIR:** You've elevated the office somewhat.

4 **MS FEINT:** Indeed. My notes get more ragged as the afternoon goes on.

5 **CHAIR:** Indeed.

6 **QUESTIONING BY MS FEINT CONTINUED:** If we could go to page seven please and can
7 we highlight the paragraph under the heading "The law" halfway down the page. So I'll
8 just read into the record what it says:

9 "The application of ECT treatment in its unmodified form as a punishment and/or
10 the application of electric shocks as some form of Aversion Therapy appears to justify
11 consideration of charges pursuant to sections 195 or 197 of the Crimes Act 1961 and/or the
12 Crimes of Torture Act 1989. It seems clear from public comment, and his response to
13 earlier inquiries, that Dr Leeks will claim that the application of these treatments was done
14 on medical grounds or as a form of Aversion Therapy."

15 So my question, Superintendent, is having read that paragraph, does that inform you
16 as to why Mr Burgess was referring to Aversion Therapy as a possible treatment?

17 A. It puts into context why he summarised what Aversion Therapy is, yes.

18 **Q.** And why would he refer to potential defences that Dr Leeks may bring?

19 A. They're very live matters in relation to this type of inquiry where he may have a defence.

20 **Q.** Thank you. And then just for the sake of completeness, because we haven't seen this
21 conclusion in the hearing, if we go to the conclusions on the final page please. And
22 Superintendent Burgess says at number one:

23 "Based on the complainants' accounts there is prima facie evidence that 31 of the 41
24 complainants were punished by the application of ECT Or Aversion Therapy."

25 Then he says in paragraph three:

26 "Notwithstanding that conservative approach there is evidence in seven cases that
27 goes beyond prima facie that is considered capable of supporting a charge or charges on the
28 basis of evidential sufficiency."

29 So what's your understanding of what he's saying there, Mr Burgess - I mean, sorry,
30 Superintendent Fitzgerald?

31 A. My reading of that report is fairly clear, that Mr Burgess is very strong in the fact that there
32 is evidential sufficiency for those cases.

33 **Q.** Thank you. And then Ms Thomas asked you a number of questions about whether you
34 thought Detective Superintendent Burgess had thoroughly investigated those seven charges

1 and she also put to you that he hadn't fully investigated all the facts. So my question is, if
2 his recommendation to lay charges had been endorsed by the legal advice, what would have
3 been the next steps to bring the charges to prosecution?

4 A. I have no doubt, and from reading reports from Mr Burgess, where on a number of
5 occasions he says further investigation will be required. And had that been accepted and a
6 prosecution started, there would have been a significant investigation, including the
7 interviewing of all those - reinterviewing the complainants.

8 Q. And if further allegations or facts come to light that might support further charges as part of
9 that additional investigation, would it be possible for Police to lay additional charges at a
10 later point?

11 A. Yes.

12 Q. Thank you very much for your evidence, Superintendent, I have no further questions.

13 CHAIR: Thank you. Somebody mentioned that it was Friday afternoon and it is and it's been a
14 long week, but it's important for us as Commissioners to thank you, Superintendent. You
15 came into this at a relatively late stage in the nearly 50 years of its history, but I think all
16 survivors are happy at least that it is being properly investigated, and according to you it is
17 being properly investigated, and that is at least some progress. Everybody awaits the
18 outcome with much interest.

19 I'm grateful to you for your indication that should the Inquiry need to get more
20 information from you and the New Zealand Police that you'd be willing to cooperate and
21 that's nothing more than we would expect, but I have to say that that is gratefully received
22 today. Thank you for your evidence, dry as it was, it turned out to be extremely
23 interesting, and again, added another important piece to the jigsaw puzzle that we're putting
24 together about this, so thank you very much indeed. Mr Molloy.

25 MR MOLLOY: Ma'am, I'll just add a very short coda to that. Detective Superintendent Fitzgerald has his
26 own investigation to run, as do we. We've kept a distance, we've had limited contact. I would
27 simply say that when I have made contact with him it's been cordial, it's been cooperative and it's
28 been helpful and I think that's probably important for people to hear as well.

29 CHAIR: Absolutely, thank you for that, and I can say that from my experience, what little I have, I've seen
30 quite a lot, the massive amount of documentation that's been provided has almost swamped the
31 Commission and although it's uncomfortable, it's been gratefully received so thank you for that. E
32 pa, haere mai.

33 **Hearing closes with waiata and karakia mutunga by Ngāti Whātua Ōrākei**

34 **Hearing adjourned at 4.37 pm to Monday, 28 June 2021 at 10 am**