

**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY
MARYLANDS SCHOOL**

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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

Counsel: Ms Katherine Anderson, Mr Simon Mount QC, Ms Kerry
Beaton QC, Ms Jane Glover, Ms Anne Toohey, Ms Kima
Tuiali'i, Ms Julia Spelman, Mr Winston McCarthy, Ms Echo
Haronga, Mr Michael Thomas and Ms Kathy Basire for the
Royal Commission
Ms Rachael Schmidt-McCleave, Ms Julia White and Mr Max
Clarke-Parker for the Crown
Ms Sonja Cooper, Ms Amanda Hill, Mr Sam Benton,
Ms Alana Thomas and Mr Sam Wimsett as other counsel
attending

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

Date: 17 February 2022

TRANSCRIPT OF PROCEEDINGS

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CLOSING SUBMISSIONS BY THE NETWORK

DR HEASLEY: Ahiahi Madam Chair, Commissioner Sandra Alofivae. [Te reo] ka nui te mihi ki a kōrua, ko mātou ngā mana i ngā mōrehu te hunga i te whakapono, kei te whakanohanga ki a rātou kei tautoko.

As many of our network don't speak to this beautiful language I'll just translate that so that everybody's involved here. I'm just thanking both of you for hosting us here, and I've just said that we are the Network of Survivors of Abuse in Faith-Based Institutions and their supporters. Now that's a mouthful, and we're generally known as "the Network". The Network is inclusive of all victim survivors and secondary victims of abuse as children or vulnerable adults, their families, whānau, and their supporters with a special focus on survivors of abuse in faith-based institutions.

Our network also includes advocates, researchers and expert advisors local and global. You will remember our network member, Tom Doyle, giving evidence here and we have people in multiple nations right now watching these proceedings.

Marylands. Yet another example of prolific abuse that has happened in an institution in New Zealand. That was known about. But neither the Church nor the State took any action.

It operated at a time when abuse happened largely in bricks and mortar institutions, where it could be easily hidden or covered up by invested officials to protect their own and their institution from accountability.

It was a time when the culture of social services meant the focus was on managing "troubled" children by removing them into "care". This coincided with a lack of professional standards and accountability, the absence of suitably educated, trained and experienced staff, minimal monitoring processes and accountability of care institutions and the lack of resource invested in vulnerable communities.

Institutions became a dumping ground for "troubled" or "difficult" children, those with challenging behaviours, and those living with disabilities.

MS TONKS: Kia ora Commissioners. Before we continue, we want to pause and acknowledge the survivor pain and suffering we witnessed this morning. The sheer guts of the survivors who stood up before this hearing and the pain we know is shared by other survivors who suffered the same multiple assaults and rapes at the hands of parish priests and religious, in other institutions of this church or in institutions run solely by the State.

1 Marylands was described in the opening of this hearing as catering for those who
2 are mentally subnormal and delinquent. We heard later that the Brothers didn't want the
3 delinquent boys as their expertise was in mentally retarded boys. It is unclear what
4 expertise they were referring to.

5 To our shame as a nation, we allowed this labelling of our children who, with their
6 families, were coping with disability and we discarded them into institutions and
7 psychopaedic hospitals where they did not receive the care they needed and were abused.
8 Caught up in this labelling were also troubled children coping with prior abuse or from
9 vulnerable dysfunctional families. Their trauma showed itself in their behaviour at home,
10 at school, or in other care.

11 Children who presented this way landed in the too hard basket with social services,
12 particularly the Department of Social Welfare. These were the children placed in the care
13 of the Brothers. Add to the label "delinquent" or "mentally retarded" to children and
14 immediately any incentive for care and understanding is reduced.

15 If the children at Maryland were also Catholic, their caregivers, the predator St John
16 of God Brothers, could be assured that they were not only the most vulnerable of children,
17 but already encultured into a belief system that gave the Brothers additional power and
18 control. Maryland was in reality a State-supported Church-run brothel that serviced the
19 needs of paedophiles; and the children were essentially sex slaves and labourers, funded by
20 parents and tax payers.

21 Make no mistake, the peer to peer abuse happened there was as a result of it being
22 normalised by the Brothers and is their responsibility.

23 For some boys, Marylands was just part of their journey through institutions such as
24 Epuni, Campbell Park, Kohitere, Borstal and prison.

25 Survivors of this institution were prepared to suffer the additional trauma of
26 speaking about this experience in public at this hearing. We particularly acknowledge you
27 survivors for the invaluable insight you have given into that abuse that happened and what
28 needs to change in all our institutions to ensure future children are protected.

29 Dr Michelle Mulvihill gave evidence to this Inquiry speaking as a clinical expert in
30 abuse and trauma. Michelle acknowledged and validated the implications abuse has that
31 survivors have reported. Survivors have fed back to us how important this was and that it
32 has been hugely beneficial and helped them understand their trauma.

1 Trauma counselling is in short supply in New Zealand. There are too few with the
2 specialist knowledge and skills required. And we're all aware of the lengthy wait our
3 survivors have to be allocated an ACC-funded counsellor in many parts of the country.

4 Michelle spoke to the facts of what happened in the redress negotiation process with
5 the survivors of Marylands, especially noting the promise of Brother Burke to always be
6 there for them beyond any redress settlement. That never happened. Once paid, forgotten
7 is the common theme that still pervades redress processes today.

8 She also spoke of the added impacts of enculturation into the trust of the church and
9 its religious for survivors and their families. Michelle herself represents the trust in faith
10 that the most intelligent of people are encultured into. She became a victim of the church's
11 exploitation of that trust, leading her to assist with their pretence that they would put right
12 what they presented as an unfortunate harm perpetrated by individuals, when in fact she
13 found it to be embedded in the very nature of the institution itself.

14 What hope has a child got to make sense of what they're told and whether to trust
15 the truth of it. Perhaps a challenge to the truth of her evidence from the Church will give
16 the public some insight into what survivors cope with when they report their abuse.

17 **DR HEASLEY:** Ken Clearwater, who was giving critical evidence to this Marylands hearing, and
18 I'm proud to call a friend, referred to survivors' understandable fear of the power and
19 authority of the Catholic Church. This is the Church described by Professor Quadrio,
20 expert witness to the Australian inquiry as "a highly controlling organisation with a strict
21 hierarchy and a lot of control over people."

22 The Catholic Church is a comfortable environment for paedophiles. A lot of
23 offenders seek situations where they can have access to children and where they have
24 authority. So they have access, they have authority and they have the cover of a very
25 respected profession.

26 This institution, the Catholic Church, has a public persona of Christian love and
27 care. It has been globally successful promoting this and until recent years covered up its
28 dark side of paedophilia and abuse. The St John of God Brothers were the perpetrating
29 institution who protected the 90% of their number who were caring for our children and
30 who were later investigated or charged with assaults on children. These Brothers were also
31 responsible for the peer to peer abuse that they normalised, encouraged and enabled.

32 However, those ultimately accountable for the abuse that happened are the Bishops.
33 And let's be clear, the Brothers could not be in New Zealand without the agreement of the
34 authority and the diocese they operated in. That authority was the Bishop of that time. The

1 Order could not stay operating in the diocese when the abuse was known about without the
2 ongoing agreement of the Bishops.

3 The Bishops were responsible for allowing perpetrating institutions to come across
4 our New Zealand borders. They are accountable for not having them removed when they
5 found out they were assaulting our children.

6 Where there is sexual abuse of a minor or a vulnerable adult, there is only one
7 centre of responsibility; the Bishop. That's Canon Law. Bishop Martin, the Bishop
8 currently responsible for accounting to survivors, their families and New Zealand for what
9 has happened, came to this Inquiry with the same diminishing rhetoric of understanding and
10 sorrow, acknowledgment that harm was done. And again, deferred action because he is
11 still needing to listen and learn.

12 Survivors have told Bishop Martin what he needs to know. The Commission has
13 made recommendations, many of which he and his fellow Bishops could immediately
14 action. The current Bishops know what happened at Marylands, and in nearly every other
15 of their institutions in New Zealand, and have taken no action. Instead, immediately prior
16 to this hearing, they employed their usual tactics to distract and divert by releasing data and
17 suggesting to the public, and especially their church communities, that now they realise the
18 extent of the abuse and that they were taking responsibility.

19 They did not provide any accompanying information from their records as to the
20 seriousness of the abuse or the impacts it had on survivors. The newly appointed Bishop of
21 Auckland, Bishop Steve Lowe, used the abuse figures to reassure his congregation that the
22 abuse in the Catholic Church is just an indication of sex abuse in the wider community and
23 diminishes responsibility for behaviour referring to human beings as intrinsically evil and
24 flawed.

25 This is the Bishop responsible for the "broken" -- his word -- and further
26 traumatising process the church continues to run for survivor complaints and investigations.
27 Bishop Lowe completely ignores the core systemic abuse that is intrinsic to and caused by
28 the church institution itself at a level far worse than secular society. An institution that not
29 only protects sexual predators, but moves them and then demonises and crushes survivors.
30 He deflects and diminishes his institution's responsibility in the wider community.

31 **MS TONKS:** This is the church that, in the course of this Inquiry, has not stood up and been
32 accountable to survivors, the public and New Zealand for the abuse it enables; that
33 continues today. Continues to run a complaints reporting and investigation process that is
34 broken, not transparent, traumatising for survivors, and does not lead to appropriate redress;

1 has failed to keep adequate records, or lost them, or destroyed them, or does not make them
2 available; employs rhetoric to replace action and relies on their influence and the
3 enculturation of its members to protect its reputation, continues a traumatising redress
4 process and does not ensure survivors receive their entitlement.

5 A church whose authority is off shore, operates in New Zealand with privilege as a
6 charitable institution and can rely on ACC and other State-funded institutions to avoid
7 financial consequence for the abuse it enables.

8 Bishop Paul Martin is inescapably responsible for accounting today for what
9 happened at Marylands and why nothing has been done. He appeared before this hearing
10 with no action statement and repeating the rhetoric we have all heard before.

11 **DR HEASLEY:** Bishop Paul Martin stated, and I quote:

12 "All abuse, including the enablement of abuse systems that allow abuse and any
13 lack of care for those who disclose abuse is unacceptable and indefensible." I'll repeat this:
14 "Any lack of care for those who disclose abuse is unacceptable and indefensible."

15 He told Commissioners yesterday he would not leave dealing with abuse to the
16 Orders today. This is the same Bishop that John faced, you remember John in the
17 December 2020 -- the evidence that he gave. John gave harrowing and horrifying public
18 testimony to this Inquiry in December 2020. He disclosed the sexual abuse he suffered
19 from Brother Kevin Giles FMS.

20 When he approached Bishop Martin for healing and for his response, Bishop Martin
21 had not even read his statement. John reports the trauma of being face-to-face with the
22 Bishop who was unmoved by the fact that one of the episodes of rape he suffered was in the
23 music room of the Bishop's cathedral. John was then dismissed by Paul Martin saying he
24 had no power over the FMS Marist Order.

25 Bishop Paul Martin was Bishop of Christchurch and will be next Cardinal or
26 Metropolitan and will be in that role at the top of this totem pole until 2040, when I'm
27 underground, providing his health holds up.

28 When asked by you, Commissioner Sandra, yesterday, whether Bishops should
29 strengthen their oversight of the orders, given the abuse that has happened, Bishop Martin
30 replied that on a day-to-day basis of the running of the life of the diocese, there is too much
31 going on for the Bishop to do that. He relies on dialogue, goodwill and taking it "only goes
32 to authority lines if it really has to go there." Apparently abuse of children is not a good
33 enough reason.

1 In the words of Tom Doyle, the world's most renowned whistle-blower and our
2 Network member, I quote:

3 "The violation of the most innocent in the church is a scourge that neutralised
4 everything that is Christian about Catholicism."

5 **MS TONKS:** State agencies and unsuspecting Catholic parents trusted this church and gave over
6 their care of their children to this institution at Marylands and many other places across
7 New Zealand. Their trust has been devastating, has had devastating consequences for a
8 significant number of the children placed in the care of the church.

9 On every level there was systemic failures that allowed the abuse at Marylands to
10 happen. Those that knew, did nothing. The culture of social services at the time, both State
11 and faith-based, meant those in positions of power were under no pressure to use their
12 authority to address the systemic issues and require change.

13 It was a time, as we said, there was a lack of professional accountability for those
14 working in these social services, and when the solution for managing troubled children and
15 vulnerable adults was to take them into care. Monitoring of these institutions was largely
16 left to social workers whose roles and responsibilities were not defined by professional
17 practice standards, but by the church and State social services who employed them. Few
18 had any recognised accredited professional knowledge, skills training or expertise to carry
19 out the job they were employed to do. In the then Department of Social Welfare work, they
20 were delegated enormous authority and influence over children and families lives.

21 When they reported concerns to superiors, whose focus was on providing care
22 placements and not the quality of care needed, they were ignored. A litany of systemic
23 issues underlay the failure of this department to ensure children were not lifted into care,
24 rather than the responsibility they had to act in the best interests of the child.

25 Successive Governments failed to require sufficient safeguards to protect children,
26 they failed to resource alternative solutions to care institutions, they failed to ensure that
27 families and vulnerable communities had the resources they needed. They failed to require
28 professional standards for all people who had access to children when it was well-known
29 that the highest risk factor for child abuse is access to children not in the care of their
30 parents or whānau.

31 Within this appalling context of failure, church social services fill the gaps that
32 further enable the culture of taking troubled children into care, offering institutional
33 resources the Department of Social Welfare was lacking.

1 One of those was the Catholic Church, which offered the promise to work with
2 New Zealand's most vulnerable people and communities. The Brothers of St John were
3 only one of the religious institutions invited by the Bishops to come and work with
4 vulnerable New Zealand children. With all of them came the abuse we have evidenced.

5 Up against these multiple layered State and Church institutions, taking no
6 responsibility and no action, are survivors with no resource, no power and no authority.
7 Still the case today.

8 It does not end with Marylands. The abuse perpetrated in the church did not end
9 there. Sadly we know that the same serious criminal abuse was occurring in other locations
10 continued and has not stopped. Closed down bricks and mortar institutions and not closing
11 down the perpetrating institutions will not stop abuse. Perpetrators simply move their
12 criminal behaviour to less visible locations and themselves to less visible parts of the
13 institutions.

14 **DR HEASLEY:** The abuse that happened at Marylands was not atypical or anomalous of the
15 institution of which they were an enabled part. The Catholic Church of Aotearoa is
16 responsible for numerous and equally egregious sexual assaults committed by clerics,
17 consecrated men and women and entitled laity in almost every iteration of the Catholic
18 Church of Aotearoa.

19 Similar assaults on children were carried out by assailants like former Father Max
20 Murray, a Diocesan priest, former Brother Charles Afeaki, an FMS Marist Brother; Father
21 Frank Durning, an SM Marist priest; Brother Desmond Fay, a Christian Brother; Father
22 Michael Shirres, a Dominican; Mother Lucia, a Prioress of the sisters of Our Lady of the
23 Missions.

24 If an Operation Authority, the Police investigation into Marylands, were conducted
25 into the Society of Mary, FMS Marist Brothers, the Christian Brothers, the Sisters of Mercy
26 etc, it would yield the same results. Abuse was not confined by time, place or location.
27 Survivors in our network suffered similar abuse in the sand dunes at a local beach, at
28 holiday baches, in their own homes and sacristies attached to churches, schools,
29 orphanages, the car that belonged to the local parish priest, holiday camps, sports grounds,
30 presbyteries, seminaries, cathedrals, the list goes on and on.

31 The common factor is these survivors weren't believed, either when they reported it,
32 very few prosecutions ever made it to court.

33 Now this Commission has stated, and I quote from the redress report:

1 "It is incomprehensible that human beings could behave like this. What is just as
2 baffling is how those in authority failed in their responses to survivors' requests for
3 redress."

4 In our view it is neither incomprehensible, nor baffling, if one unravels the systems
5 that underpin the behaviour of this institution, which are repeated globally.

6 Accountability is the key to stopping abuse. Systemic failures not addressed allow
7 perpetrators and the institutions they belong to both State and faith-based, to avoid being
8 held accountable. Systemic failure is still at the very heart of why this abuse continues
9 today.

10 These issues have not been addressed because the institutions themselves and their
11 authorities, and officials with the power, have not wanted change. If they did, they would
12 have made it happen.

13 Immersed in the culture and influence of their institutions, it is clear they will not be
14 proactive and act to provide survivors what is needed for redress. Nor will they demand the
15 independent monitoring and safeguarding required for prevention, and that will make
16 institutions accountable for failing.

17 As we keep saying, it is the State or Government's responsibility to care and protect
18 all New Zealand children from harm. New Zealand is signatory to the UN Convention on
19 the Rights of the Child that put the responsibility on the Government. The State is required
20 to ensure institutions service and facilities responsible for the care and protection,
21 safeguarding standards and monitoring that has responsibility to children who are abused.

22 The Vatican, from where our Bishops take their authority, is also a signatory to this
23 convention but continues to be in breach of it. Why has the institution responsible for
24 abuse of New Zealand children, the most responsible for New Zealand abuse, not
25 complying with this convention, not being held accountable?

26 We seldom hear of the Papal Nuncio. He's appointed by the Vatican. He is the
27 Pope's ears and eyes in New Zealand. He has been referred to by a Bishop as "the Pope's
28 spy." His approval is needed for the Pope's appointment of Bishops and their removal.
29 Through him, all things go to Rome, including all reporting of abuse that happens in the
30 Church in New Zealand. The Papal Nuncio has diplomatic status in New Zealand. Why
31 has this diplomat, whose country is in breach of one of the most important conventions, not
32 been expelled?

33 The Catholic Church is an institution that is a clear and present danger to
34 New Zealand children. And yet, it is still allowed to have access to them. As the Chair of

1 the Australian inquiry, Justice Peter McClelland, reminded us: The abuse children suffer in
2 the care of the church are not just crimes carried out by individuals like McGrath.
3 This -- I quote McClelland -- "this is an institutional crime committed by the world's
4 biggest organisation".

5 **MS TONKS:** Commissioners, as you know, the oversight of Oranga Tamariki system and
6 Children and Young People's Commission bill is before the house. The bill largely focuses
7 on State responsibility for those that fall within its care due to their formal legal status of
8 State guardianship, or those captured in the umbrella that covers all schools now that they
9 are fully integrated.

10 Between the cracks will fall the institutions that operate in less formal structures and
11 the children abused within them. This will not protect the children who are in the pastoral
12 care of church ministers or religious. If this bill is enacted, the same heinous crimes that
13 happened at Marylands, still happening today, will not be stopped.

14 Statutes that rely on Government officials will not stop abuse. The evidence of
15 survivors and the responses of current officials who have appeared before you at this
16 Inquiry provides us with no reassurance that they have changed from the same history of
17 protection of financial resource and reputation as the churches, or that they have the
18 institutional knowledge and experience required to recognise failure and hold themselves or
19 others to account.

20 The evidence of survivors. Enactment of this proposed bill will also weaken the
21 office of the Children's Commissioner and silence a key advocate for our survivors. It is
22 incomprehensible that Ministry officials could introduce this legislation at this stage when
23 survivors are still providing so much evidence to inform the systemic changes we still need
24 today.

25 Its hurried introduction and consultation process has denied survivors proper
26 consideration of their lived experience of abuse and the request that the office of the
27 Children's Commissioner be appropriately considered for expansion with increased
28 authority, and importantly that any monitor be fully independent of influence of institutions
29 responsible for the care of children.

30 The Education Review Office for many years had a responsibility for the care and
31 oversight of the safety of children. It didn't happen. We are all accountable. The
32 behaviour you walk past is the behaviour you accept. As survivor Eddie said to this
33 hearing, the behaviour becomes normalised.

1 We as a nation have walked past abuse of children for decades. Where is the
2 outrage where the media publicly reports the most shocking experience of children and
3 vulnerable adults. With little reaction their reports fall off media platforms within 24 hours,
4 often within the hour like a snowflake in hot sun.

5 Where was the outrage when a third time guilty abuser of children, Catholic Brother
6 Kevin Healy, noted by the judge as having no remorse, was recently sentenced to three
7 months home detention in our courts because he was old and frail. What about the
8 thousands of old and frail survivors left living in dire circumstances because of men like
9 this and because the institutions that enable their abuse are taking no action.

10 New Zealand tolerates abuse of its children. Unless we change as a society it will
11 not stop. Unless we dismantle the systems that support it, it will not stop. Unless we
12 change our culture of acceptance in New Zealand, it will not stop.

13 Our Government has the responsibility and the means to make the changes required.
14 Survivors need urgent action on their resolution to have the fully independent State body
15 they ask for complaints, redress, monitoring, safeguarding, and the holding of all
16 institutions to account. We cannot trust the Church or the ministries to do this, the
17 Government must act.

18 **DR HEASLEY:** Commissioners, as a network, as a network we are extremely concerned little has
19 changed. The Network and its survivors are faced with the same opposition from Ministry
20 officials and the same need to lobby Government ministers for independent, workable,
21 inclusive solutions for abuse that were required for inclusion in this Inquiry.

22 Survivors of abuse in State and faith-based are of the one voice when they call for
23 complaints, redress, monitoring, safeguarding processes and accountability of all
24 institutions that care for children be within an independent State entity free of influence
25 from any of the institutions who provide care.

26 Commissioners, our survivors are dependent on you to stop the ongoing separation
27 of State and Church. Continued siloing of survivors will not allow the inclusive solutions
28 needed and perpetrators will hide in the furrows left in between.

29 Commissioners, our survivors ask you urgently recommend to Government a
30 review of all current and proposed legislation to ensure that every child in every institution
31 is protected from abuse. If statutes are not inclusive of all survivors, in all institutions
32 abuse will continue.

33 Commissioners, now with your permission, English is a lovely language, but we
34 have many people in our network who are Fijian speakers, or Tongan speakers, or Samoan

1 speakers, or Tagalog speakers and I would like to thank them for listening into this English
2 and may I now address them in their own language with your permission?

3 **CHAIR:** Of course you may.

4 **DR HEASLEY:** Vinaka vakalevu na nomuni soqoni kece mai eke nikau. Fakamalo atu ki he
5 tokotaha kotoa pe oku i heni he 'ano ni. Maraming salamat sa lahat ng mandito ngayon.
6 Fa'afetai tele i tangata uma. Nga mihi ki a koutou katoa i hui mai i tēnei rā; haumi e, hui e,
7 taiki e. Thank you very much Commissioners.

8 **MS TONKS:** Thank you Commissioners.

9 **CHAIR:** Thank you to the network as embodied by Dr Heasley and Ms Tonks. We're very
10 grateful to the work that you've put into your submissions and grateful to your continuing
11 support of survivors and indeed of the work of the Commission. This won't be the last time
12 we see you I'm sure, but in the meantime we hold your submissions close and will take
13 them into account as we prepare our report on this hearing, so thank you so much.

14 I see that we now have Michelle Mulvihill with us again. Thank you for joining us
15 a second time, Michelle, and I understand that you have some submissions that you would
16 like to make in closing today.