

**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY
STATE INSTITUTIONAL RESPONSE 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)
Dr Anaru Erueti
Ali'imuamua Sandra Alofivae
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Ms Sally McKechnie for Te Rōpū Tautoko, the Catholic Bishops and congregational leaders

Mr David Stone for the New Zealand State Abuse Survivors Charitable Trust

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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Hearing opens with Ka Waiata and karakia tīmatanga by Ngāti Whātua Ōrākei

[9.48 am]

CHAIR: Nau mai hoki mai ki tēnei tūmatanui tēnā koutou, tēnā koutou, a rā tēnā rā tātou katoa.

Before I open the hearing to counsel, can I just acknowledge some people who are in the room, particularly the survivors of abuse in care and their network and their representatives who have been attending regularly. I just want to acknowledge first that you have been attending, that you do come and go and it's quite obvious that some of this is very painful for you, and in spite of that, you maintain a presence here, a vigil, if you like, and just to say that the Commissioners have noticed and appreciate your attention, your close and quiet attention to the evidence. So, thank you for your presence.

Good morning. I'll invite Ms Spelman now to open.

MS SPELMAN: Tēnā rā tātou, e mihi ana ki te pou whakawairua Matua Wyllis nāu i

whakatūwhera tēnei nohoanga kia tika ai te mahi e whai ake nei, tēnā koe, otirā ki a rātou o Ngāti Whātua Ōrākei, e noho tonu ana mātou i raro i tō mana, tēnā koutou. Ki ngā purapura kua whetūrangitia e mihi ana, ki ngā purapura ora ki konei ā-ipurangi, ki te kāinga e whakarongo mai ana, mai i tēnei uri o Ngāti Hikairo ki Kāwhia, tēnā koutou katoa. E te tēpu ngā Kaikōmihana tēnā koutou, huri noa ki te whare, tēnā koutou, tēnā koutou, tēnā rā tātou katoa.

Good morning, everyone, my name is Julia Spelman, I'm one of the Counsel Assisting the Royal Commission. I'm a woman in my early 30s of Māori and Pākehā descent. Today I'm wearing a black dress with a very bright pink jacket and I have brown hair.

I'm joined today by my Counsel Assisting colleague, Ms Basire, and together we will be doing the questioning of Police.

But first, Madam Chair, I will be passing over to the Crown who will begin with the evidence-in-chief.

CHAIR: And before we do that, I'll take the affirmation, but before I even do that, thank you for reminding me, I have not introduced myself to those who cannot see. My name is Coral Shaw, the Chair of the Commission, I am elderly, I have white chin length hair and I wear glasses.

So, let's, first of all, take the affirmation then I'll invite Mr Clarke-Parker.

NEW ZEALAND POLICE

ANDREW COSTER AND TANIA KURA (Affirmed)

CHAIR: Good morning, Mr Clarke-Parker.

1 **QUESTIONING BY MR CLARKE-PARKER:** Good morning, tēnā koutou katoa, ko Max
2 Clarke-Parker ahau. And for those who can't see me, I am Pākehā, I have brown hair, a
3 beard, and today a purple tie. Tēnā kōrua.

4 Beginning with you, Commissioner Coster, may I please have you just give your
5 full name and description.

6 **MR COSTER:** Andrew David Coster, I'm a male Pākehā, approaching 50, wearing a grey suit,
7 with brown hair, short back and sides.

8 **MR CLARKE-PARKER:** And Deputy Commissioner Kura.

9 **MS KURA:** Kia ora, I'm Tania Ruth Kura, I'm female, part Māori, other side of 50, and I'm
10 wearing a black jacket and a black dress with bright orange flowers.

11 **MR CLARKE-PARKER:** Thank you. And you are the Deputy Commissioner for Leadership
12 and Capability.

13 **MS KURA:** I am.

14 **MR CLARKE-PARKER:** Commissioner Coster, you have prepared a written brief of evidence
15 for this hearing and that's been submitted to the Commission and that will be taken as read.
16 But you also have a short summary of that brief in front of you that you will read through
17 now?

18 **MR COSTER:** I have.

19 **MR CLARKE-PARKER:** Thank you, and please go ahead.

20 **MR COSTER:** Tēnā koutou katoa. E ngā mana whenua o tēnei rohe, Ngāti Whātua ki Ōrākei,
21 tēnei te mihi. E ngā mōrehu katoa i to mamae, i tō māia, i tō manawanui, kei te mihi, kei te
22 mihi, kei te mihi. Ki ngā Kaikōmihana tēnā koutou. Ki a koutou katoa kua huihui mai nei,
23 kia ora. Ko Andrew Coster tōku ingoa, ko au te Kaikōmihana o Nga Pirihimana o Aotearoa,
24 nō reira, tēnā koutou, tēnā koutou, tēnā koutou katoa.

25 I'd first like to acknowledge the courage of those survivors who have appeared
26 before the Commission. It's clear many have suffered greatly. It's also apparent that some
27 have received inadequate service from Police. This has been difficult to hear.

28 As Commissioner of New Zealand Police, I know this is a vastly changed
29 organisation from the one I joined 25 years ago. We don't always get it right, but our
30 people serve their communities with empathy, compassion and professionalism and I'm
31 proud to be their boss.

32 The following statement is a summary of my brief of evidence. It touches on the
33 major themes, and I'll be pleased to go into detail on any point the Commission wishes to
34 know further about.

1 **CHAIR:** Before you carry on, can I just ask you to keep an eye on the pace, we have a
2 stenographer and the signers who need to keep up with you

3 **MR COSTER:** Of course.

4 Before I address the questions, the Commission has asked, I wish to make some
5 general comments on evidence the Commission has heard.

6 I acknowledge that Police has historically had relatively few policies, processes and
7 procedures aimed at supporting the Deaf community and people with disabilities to engage
8 with us. Police continues to work on the gaps which have existed and how we have
9 engaged with some Deaf and disabled survivors of abuse.

10 We recognise we can do more to improve services and relationships with disabled
11 people.

12 A recent disability stocktake has led to work to improve our services for disabled
13 communities.

14 I acknowledge that Māori are disproportionately represented across the criminal
15 justice system. I accept there are serious questions to answer in relation to Māori and
16 Pasifika experiences of policing in New Zealand.

17 Police strongly supports efforts to shine a light on these issues as part of the
18 Waitangi Tribunal's ongoing Justice System Kaupapa Inquiry.

19 We have initiated a major research programme, Understanding Policing Delivery,
20 focused on whether and to what extent bias exists at a system level in Police's operating
21 environment. The research will explore who Police stop and speak to and how Police
22 engage with them, decisions around the use of force and prosecution decision-making.
23 We're taking care to ensure the research gives us actionable insights that enable us to
24 quickly make changes as opportunities present.

25 Further, I acknowledge the lack of a clear statutory framework for vetting, which
26 creates uncertainty about what information can be considered as part of the process. Police
27 is an entry point to the criminal justice system and sometimes State care. With this comes
28 the responsibility of ensuring our actions are fair, equitable and in the best interests of the
29 community.

30 The Commission has asked Police to comment on the following topics: Te Tiriti o
31 Waitangi, priority groups, Māori, Pacific, and disabled people, monitoring, oversight and
32 safeguarding, entry into care, particularly in relation to surveillance and charging decisions
33 of youth, complaints, referrals and criminal justice, staffing, funding and resources, lessons
34 learned.

1 Te Tiriti o Waitangi. Police is committed to honouring Te Tiriti and upholding its
2 principles as New Zealand's founding document. One of our six core values is commitment
3 to Māori and Te Tiriti. We have established mechanisms and processes supported by our
4 Māori, Pacific and Ethnic Services, or MPES, to govern our relationships with tangata
5 whenua and provide feedback on our strategies and where there is room for improvement.

6 These include the Commissioner's Māori Focus Forum, which brings together
7 Kaumatua and kuia to provide input at a strategic level to the Police Executive.

8 Māori responsiveness managers and Māori advisory groups are active in Police
9 districts operating at the highest levels of district decision-making.

10 Iwi liaison officers lead initiatives to support Māori communities and enhance
11 cultural capability in Police.

12 The Māori Wardens programme brings expertise to Police and gives the wardens
13 valuable support and resources. Recruits are exposed to Māori culture, tikanga, and
14 language from their first days at the Royal New Zealand Police College.

15 The Turning of the Tide, launched in 2012 and refreshed in 2019 as Te Huringa o te
16 Tai, is our prevention strategy for working with and for Māori communities. This work is
17 guided by a Deputy Chief Executive Māori within the senior Police Executive.

18 Priority groups. As well as tangata whenua, Pacific communities influence policy
19 and service delivery through the Commissioner's Pacific Advisory Forum, Pacific liaison
20 officer roles and the establishment of Pacific staff networks.

21 We built relationships by engaging with eight Pacific community reference groups
22 under the Ministry of Pacific Island Affairs Pacific Capacity Building Programme and
23 established Police Pacific Peoples advisory groups.

24 From 2008 leadership and management commitment were strengthened through an
25 annual national Pacific fono, later sponsored by an Assistant Commissioner. It has a strong
26 and growing membership.

27 Recruitment and representation. We understand the need to reflect the communities
28 we serve, so we focus recruitment efforts among Māori, Pacific and ethnic communities.
29 Beyond recruitment we are working to increase diversity at all levels of our organisation.

30 Disabled people. In 2021 Police undertook a disability stocktake to enhance
31 understanding of our current situation and identify future opportunities. Its findings
32 concluded that Police is an inclusive employer, but community engagement was often
33 reliant on individual staff rather than national leadership. It found our property portfolio

1 included some buildings without disability access or facilities and that Police held data did
2 not meet the required standard.

3 We have initiated a range of work to ensure we improve our services to disabled
4 communities. We recognise that we can do better.

5 Monitoring, oversight and safeguarding. Police as a care provider. Police's role as
6 a care provider is limited. Our facilities are primarily to hold people awaiting court
7 appearance or bail with some short-term exceptions. Programmes are underway to address
8 the requirements of the present and to redesign Police custody in partnership with iwi for
9 the future.

10 Monitoring of people in Police custody. Monitoring of a person in custody begins
11 at the time of arrest or detention and continues until they are released or custody is
12 transferred. On arrival, a person's details are recorded in the Electronic Custody Module
13 and an evaluation of their mental and physical health is made. The level of monitoring
14 from constant to every two hours depends on the perceived risk. Any concern about a
15 person's welfare triggers a call for medical assistance.

16 Entry into care. Before any action that could lead a child or young person towards
17 care, Police must consider the principles of Section 208 of the Oranga Tamariki Act 1989,
18 including: unless the public interest requires otherwise, criminal proceedings should not be
19 instituted against a child or young person if there is an alternative means of dealing with the
20 matter.

21 Before deciding to lay charges, Police will consider the appropriateness of a
22 warning, alternative action, or a family group conference. Alternative actions include
23 Te Pae Oranga, which applies an iwi Māori led framework to the community justice panel
24 approach.

25 Decisions about charging are guided by the Solicitor-General's prosecution
26 guidelines, particularly whether there is enough evidence to convict and whether it is in the
27 public interest to prosecute. The way the guidelines are applied may be different where the
28 accused is a young person.

29 The Commission has identified public surveillance of young people leading them
30 into State care as an area of interest. Police patrol public areas, and intelligence functions
31 access a range of information sources to inform deployment. Helping ensure decisions are
32 supported by robust evidence and analysis.

1 Police works closely with organisations which work with children, like Oranga
2 Tamariki and its predecessors, to ensure efficient information sharing and a consistent
3 approach.

4 Complaints, referrals and criminal justice. Handling of complaints. The handling
5 of allegations of abuse of children, young people, Deaf or disabled people or people with
6 mental health conditions has evolved over time. This includes significantly improved
7 management of complaints to ensure interviewing techniques are accurate and reliable
8 while reducing re-traumatisation.

9 Improved investigative practices have brought national consistency and a more
10 consistent level of service to victims.

11 Complaints of abuse. Police does not have a universal policy on allegations of
12 abuse in care. All abuse reports are thoroughly investigated in accordance with child
13 protection investigation policy and adult sexual assault investigation policy. Police does
14 not have a specific policy for approaching potential victims to seek disclosures. This is
15 assessed case-by-case. Such approaches are treated with caution to avoid retraumatisation.

16 Investigators may publicise a dedicated 0800 number and e-mail address to
17 encourage potential victims to come forward of their own accord.

18 Specialist child witness interviewing. Since 2007, Police has substantially reformed
19 investigative interviewing, policy and practice. The SCWI model follows the PEACE
20 framework developed in the United Kingdom and aligns with international best practice
21 protocols. An evaluation of interviews with children in New Zealand published in 2016
22 identified both strengths and opportunities for improvement. Police and Oranga Tamariki
23 have both made changes, including increased supervision of their interviewers.

24 Receiving and investigating complaints made by vulnerable adults. Police aspires
25 to bring humanity to every policing interaction. Police are trained to be sensitive to the
26 vulnerabilities of persons with whom they interact, adjusting the process to meet the
27 circumstances. A flexible, empathetic approach is considered most appropriate.

28 Prosecution decisions. There are obstacles to securing convictions for sexual
29 violence offending, particularly historical offending against people who were children at
30 the time. Corroborating evidence can be hard to find, and complainants may be reluctant to
31 disclose what happened to them or engage in a trial process.

32 Charging decisions are commonly made in conjunction with the Crown Solicitor
33 and in line with the Solicitor-General's prosecution guidelines.

1 It's not unusual for Police to believe a complainant, but not be able to lay charges.
2 Such decisions do not mean a case has not been properly investigated, or that the offending
3 has not been treated seriously by Police. Police decisions not to prosecute allegations of
4 sexual violence are reviewed by the national adult sexual assault and child protection team,
5 helping ensure national consistency.

6 Staffing. Training for interaction with vulnerable people. Police training on
7 responding to situations involving vulnerable people occurs at induction to the organisation,
8 initial recruit training and in ongoing workplace learning. Recruits are trained in engaging
9 with people experiencing mental distress, including awareness of suicide indicators and
10 how to respond to threatened or attempted self-harm.

11 There is cultural and awareness training, not directed at children or vulnerable
12 people, but designed to help all staff empathise and engage with different cultures. In
13 addition, the Child Protection Protocol signed between Police and Oranga Tamariki in
14 January 2022 outlines the requirement for Police to access Regional Disability Advisors
15 through Oranga Tamariki where necessary.

16 We are committed to ensuring conscious and unconscious bias are not factors in
17 decision-making and have introduced training accordingly.

18 Vetting of caregivers and support workers. Police's vetting service is one of its
19 general functions under Section 9 of the Policing Act 2008. The aim is to contribute to
20 public safety, particularly the protection of vulnerable people and to national security by
21 providing vets for employers and others to assess the suitability of individuals for sensitive
22 roles.

23 In 1991 there were 24 organisations and relevant organisations who could request a
24 Police vet. Today the Police Vetting Service deals with more than 15,000 approved
25 agencies who collectively request more than 600,000 vets annually. The lack of a clear
26 statutory framework for vetting creates uncertainty about what information can be
27 considered as part of the vetting process.

28 The growth of the NIA, or National Intelligence Application database, and
29 increased information sharing between Government departments means what can be
30 considered Police information is growing significantly and includes information that is
31 subjective and has not been tested, for example, in court.

32 Notification of safety concerns. Responsibility for re-vetting staff members or
33 volunteers lies with the employer or voluntary body. The Children's Act has a requirement

1 that children's workers are re-vetted every three years but there is no formal enforcement or
2 audit process to ensure bodies subject to the Act comply with this.

3 Finally, lessons learned. Police has had the opportunity to learn lessons from a
4 number of internal and external sources. For example, the Commission of Inquiry into
5 Police Conduct, or COI, led by Dame Margaret Bazley, led to a vast range of changes to
6 adult sexual assault investigation practices.

7 In 2019, the Solicitor-General's prosecution guidelines in respect of sexual violence
8 allegations were updated by Crown Law to give victims the right to request a review of a
9 decision not to prosecute. Those guidelines have been incorporated into Police policy and
10 practice.

11 Police is currently working on a cross government initiative developing a longterm
12 strategy to ensure a sustainable sexual violence network is available to all New Zealanders.
13 Police is aware that there are more lessons to be learned in this space and to that end we
14 keenly await the Commission's final report and recommendations. Thank you.

15 **MR CLARKE-PARKER:** Thank you, both, and I'll now hand you over to Counsel Assisting for
16 questioning.

17 **CHAIR:** Tēnā koe, Ms Spelman.

18 **QUESTIONING BY MS SPELMAN:** Tēnā koe.

19 Tēnā kōrua. Just to begin with some timeframes, Commissioner Coster, you joined
20 Police in 1996; is that right?

21 **MR COSTER:** That's correct.

22 **MS SPELMAN:** And were appointed in your current role in 2020.

23 **MR COSTER:** Correct.

24 **MS SPELMAN:** And Deputy Commissioner, you joined the Police in 1987?

25 **MS KURA:** Yes.

26 **MS SPELMAN:** And also 2020 came into this new role.

27 **MS KURA:** I did.

28 **MS SPELMAN:** Thank you that's some helpful timeframes as we move through today.

29 I want to begin with the Police role in entries or pathways into care that you have
30 just discussed, Commissioner, and as you'll be aware, the Royal Commission is
31 investigating the circumstances that led to individuals being taken into or placed into care
32 and the appropriateness of such placements.

1 In your statement, Commissioner, and just now, you made reference to Section 208
2 in terms of the principle about not going ahead with criminal proceedings if there's an
3 alternative. Now, that section that you refer to is from the 1989 Act, isn't it?

4 **MR COSTER:** Originally.

5 **MS SPELMAN:** Yes, and so that's something in terms of current Police practice that Police
6 would approach matters in that way?

7 **MR COSTER:** Yes.

8 **MS SPELMAN:** Considering an alternative before going ahead with criminal proceedings?

9 **MR COSTER:** Correct.

10 **CHAIR:** Just Keep an eye on speed, please, we have a long road to travel and we don't want to
11 exhaust our people.

12 **MS SPELMAN:** Understood, thank you.

13 Just looking back then before 1989 to the period that the Commission is looking at,
14 1950 through to 1999, the previous legislation, the Children and Young Persons Act 1974
15 and its predecessor, the Child Welfare Act 1925, to your knowledge was that same
16 provision present in the previous legislation?

17 **MR COSTER:** I don't believe so, but I obviously have no working knowledge of the previous
18 legislation having not had to use it.

19 **MS SPELMAN:** Sure.

20 **MR COSTER:** What I would say is the 1989 Act represented a step change in the way we deal
21 with Youth Justice issues, and what we have seen as a consequence of that change is an
22 ongoing reduction in youth offending over a 30-year period. So notwithstanding current
23 challenges, it has set us on a good path.

24 **MS SPELMAN:** Sure, and just for now I'm just going to stick with that period before 1989, we
25 can come to the current and the more recent years a bit later. But looking back again, pre-
26 1989, when that provision didn't exist, would you accept that there wasn't such an
27 imperative for Police to consider alternative action and that that was part of the change that
28 came in the 1989 Act?

29 **MR COSTER:** I think that's fair.

30 **MS SPELMAN:** In terms of more generally, the period 1950s to the 1970s, we know that,
31 looking back, it's obviously going back some time now, research has characterised that
32 period as one of moral panic more generally, there's lots of research about concerns of
33 youth delinquency. Would you accept that as a general characterisation of that period?

34 **MR COSTER:** It seems to be a feature of every generation unfortunately.

1 **MS SPELMAN:** Sure. And during that period, I suppose the more criminalising approach, and
2 I say that compared to perhaps current practice with alternative action, would you say that
3 was something that was approached not just by Police but that was a general attitude in
4 terms of politicians and Social Welfare and the other agencies that operated during that
5 1950s to 1970s period?

6 **MR COSTER:** I think that's a fair statement. No first hand knowledge though.

7 **MS SPELMAN:** Looking back, I suppose to someone who does have first hand knowledge, Tā
8 Kim Workman, who obviously was a police officer back at that time and you'll be aware
9 he's given evidence at previous Royal Commission hearings, so I just want to read you a
10 brief quote from what he said previously in terms of that particular period and then ask for
11 your comment on it.

12 So Tā Kim described that time as:

13 "The whole culture of Police was geared towards enforcement, catching people
14 doing stuff and punishing them in the naive belief that that would prevent them from doing
15 it again."

16 I'm not asking you in terms of your first hand experience, but as Commissioner of
17 Police looking back on the organisation that you've inherited, does that generally accord
18 with your understanding of that time?

19 **MR COSTER:** I have huge respect for Tā Kim and he is speaking from first hand experience.

20 I certainly couldn't contradict him, and I think it's fair to say the journey the organisation
21 has been on has seen it shift very significantly from a singular focus on enforcement to a
22 much broader focus on prevention and on taking actions that will prevent future harm.

23 **MS SPELMAN:** Sure. Just one other legislative point just in terms of the context for this period.
24 In the 1974 Act, so the one we were just speaking about, the predecessor to the 1989 Act,
25 there was another section, Section 12, which included broad powers for Police to pick up
26 essentially unaccompanied children in public places and if a parent or guardian could not be
27 found to deliver them into the custody of the Director-General of Social Welfare.

28 Now,-- it's not a quiz on the legislation, but simply to set up that context for the
29 period that we're talking about, I think you would accept that back then there were much
30 more general powers for Police to do that sort of enforcement on the streets, picking up
31 children in a way that perhaps wouldn't be done today?

32 **MR COSTER:** I certainly know practice has changed. Obviously, the current Act has provision
33 for Police to take into care kids who are at risk unaccompanied, but the provision is
34 different and I'm certain the practice is different.

1 **MS SPELMAN:** Thank you. So, in practical terms then, and again I'm asking about the 1950s to
2 1970s sort of historic period, in practical terms the way that children came, I suppose, many
3 times into care was Police picking them up on the street and bringing them to the Children's
4 Court, sometimes a Police action, sometimes an action of Social Welfare, but in terms of a
5 pathway to coming before the court, Police had a role in that?

6 **MR COSTER:** Yeah, I can't agree with the suggestion that it was the dominant route, I just don't
7 know the answer to that, but I certainly accept that it is a route by which people may enter
8 the system of care.

9 **MS SPELMAN:** In terms of that route, whether it was the dominant one or not, that really was
10 the Police, in terms of Police role, entry into care, it was who and how the Police were
11 policing that we're focused on in terms of what would be the Police role of pathways into
12 care.

13 **MR COSTER:** I imagine, similar to today, that Police would come across circumstances where
14 young people were at risk, also in family circumstances and that there would have been
15 routes for young people into care that weren't only about being found unaccompanied, or
16 offending in a public place. So, I think it's certainly a route, but it's quite hard for me to put
17 a finger on exactly at that time what was happening and what was the dominant path for
18 young people and Police's involvement.

19 **MS SPELMAN:** Sure. So looking back to that period, we also heard in a previous hearing from
20 Dr Oliver Sutherland who, as you may be aware, did a lot of work during this time period
21 with children and young people who were held in Police cells and brought before children's
22 courts, and he makes reference to studies from that time, a study by Ross Hampton of the
23 Justice Department research section looking at 1973 and Auckland Police officers when
24 deciding who to prosecute, and the finding was that when deciding who to prosecute,
25 Police:

26 "... discriminated against Māori boys by sending a disproportionate number of them
27 to court, thus inflating their crime rate in comparison with that of non--Māori children."

28 **MR COSTER:** I certainly accept that there are a disproportionate number of Māori boys who
29 went to court and sadly that continues to be the circumstance in the criminal justice system
30 today. What I can't prove out in terms of what was occurring at that time is the cause of
31 that and the statement includes both elements, so that's, in terms of today's practice, one of
32 the areas where we really focus through our understanding, policing delivery programme of
33 work which is about trying to dig in to what is the reason for the disproportionate
34 representation and what role might Police have at that.

1 **MS SPELMAN:** I'll just ask you, Commissioner, we will come later on today to talk about the
2 current work and in particular that project, but at the moment I would appreciate it if you
3 would just stay with me in this historical part because it's important that we go through this
4 particular time period.

5 **MR COSTER:** Of course.

6 **MS SPELMAN:** There will be time to talk about that project later.

7 **MR COSTER:** Yes.

8 **MS SPELMAN:** So, you've said that the quote I read you about the numbers, you're not sure in
9 terms of the cause of that, essentially.

10 **MR COSTER:** I can't speak to causation, I've got no,-- there's nothing in front of me that helps
11 me with that, and obviously other people have given testimony on it, but I just can't speak
12 to exactly what was occurring there from anything that's available to me.

13 **MS SPELMAN:** Sure. I'll just read you one more quote from someone who was there at the time
14 and who has given evidence about it, from Dr Sutherland. So, he said in 1979 that in
15 addition to the bias that he says could be seen by Police at the decision to prosecute stage,
16 that:

17 "... racist attitudes among police officers towards Māori children and young people
18 were legendary."

19 Now, bear in mind I'm obviously asking about an historical period, but what's your
20 comment on that in terms of Police as a historical organisation?

21 **MR COSTER:** It's very difficult for me to comment on that. You know, even within our current
22 workforce, officers who were working at that time are few and far between, if they even
23 exist. So, I can't add anything to what's in front of the Commission on that, either to agree
24 or disagree.

25 **MS SPELMAN:** Okay. We might return to that topic a bit later on today. In terms of the types of
26 issues or offences that young people and children were being picked up for and brought to
27 court at the time, we've heard evidence from a number of people about the types of offences
28 being quite low level, for example things like truancy, stealing lollies, vagrancy, those sorts
29 of offences and I'm asking you, again looking at that period historically, not what the
30 current practice is, but just would you acknowledge that that's quite different back then, that
31 Police were exercising their authority in terms of quite low level crimes in the way that's
32 perhaps not done these days?

33 **MR COSTER:** As we've acknowledged, the 1989 Act was a really significant shift in practice, it
34 really, as I understand it, turned things on their head in terms of how we approached

1 offending by young people. In terms of the mix of offences that were being dealt with, I'm
2 sure that that featured as part of it, but I can't speak with any confidence to what the mix
3 was.

4 **MS SPELMAN:** I'd just like to turn now to one example from a survivor who gave evidence in a
5 previous hearing, their experience as a Samoan child in Auckland in the late 1960s, 70s
6 period. And what he says about his experience then is this, I quote:

7 "The Police used to pick on us. I had enough. I could be walking down the street
8 and Police would just pick on me. I would be with two white fellas and if there were two
9 of us darkies the cops would pull us up and leave the white guys alone. That's what it was
10 like. It got to the stage where I think because I was being picked up so many times by the
11 Police and labelled as a criminal it became normal. They would see you on the street and
12 ask you if you had any money, then you would be under arrest for vagabond or something."

13 And again, I appreciate that you weren't a police officer at this particular time,
14 stopping this particular boy, but what's your comment in terms of survivors who had those
15 experiences and what that might mean about how they feel towards Police?

16 **MR COSTER:** That's an incredibly sad account and it's someone's experience that I certainly am
17 not here to disagree with, and I won't. What I can't really speak to confidently is to what
18 extent that was reflective of Police practice at the time and what was going on there but,
19 you know, I certainly understand, even based on my own experience, that different
20 communities come from quite different starting points in terms of their relationships with
21 Police, and there's a deep history that sits behind that.

22 **MS SPELMAN:** I should say, of course, Deputy Commissioner, if you want to contribute on
23 these questions, feel free; is that a question that you'd like to comment on?

24 **MS KURA:** No, I agree with the understanding what was happening at the time, although joining
25 Police in 1989 I have a little bit more context, joining in 1987 at least before the new Act
26 came in, it was absolutely a change for the organisation, quite a significant change and lots
27 of -it- really challenged the way we practised in 1989 when the new Act came in.

28 **MS SPELMAN:** Also, in terms of that former period, what were some of the practices that
29 stopped after the 1989 Act?

30 **MS KURA:** I think it was the inclusion of whānau, the fact that if I and- it's remembering a while
31 back, is -the- being- more cognisant of that this isn't just a single person, to be more
32 inclusive of understanding where the family may fit for a person, and equally about
33 including other agencies in any decisions that were made. So those are just some things
34 I remember from the time of the change when the new Act came in.

1 **MS SPELMAN:** Thank you. One other part of the new 1989 Act was a principle that criminal
2 proceedings should not be instituted against a child or young person solely in order to
3 provide any assistance or services needed to advance the welfare of the child or young
4 person or his or her family, whānau or family group. Deputy Commissioner, is that
5 previous practice something that would occur, Police in an effort to get services for a
6 family would use what powers they had, which essentially was bringing them to court in a
7 hope that they might get some help that they needed?

8 **MS KURA:** I don't think I can comment across -consistently across the country what might have
9 happened, but if I think of my early days, we may have done some things where it was
10 make a decision about a single child- but I can't comment on general practice.

11 **MS SPELMAN:** I suppose you would both accept, it seems, that was enough of a practice that a
12 principle was brought in in the new 1989 Act to stop that practice if it was occurring.

13 **MR COSTER:** I just don't know the origin to that, I imagine it may be covered in the
14 parliamentary debates at the time, but it's certainly a principle that has persisted and a
15 recognition that children in Care and Protection aren't well served by Youth Justice
16 proceedings.

17 **MS SPELMAN:** There are just a few other aspects I want to touch on in terms of Police practice
18 that may have contributed to children and young people entering into State care. So once
19 we get to the point where a child is brought to the Children's Court or the Children and
20 Young Persons Court, or perhaps actually before that when they're still at the police station,
21 we've heard evidence, again from Dr Sutherland, at the time that there were many Police
22 interviews that took place of children without legal representation, without a family
23 member being present, and in his evidence that amounted to Police coercively obtaining
24 confessions from these children, and I'll just read you a brief quote, again from his evidence
25 at a previous hearing:

26 "Children were often held in Police cells before they got into Court even. There
27 was rarely a parent present, there were never lawyers present, no advocate was present.
28 Social Welfare officers might have been present but basically they and the Police persuaded
29 the children to plead guilty."

30 **MR COSTER:** I just can't offer anything particularly on that. I know that the practices around
31 guardians being present, around legal involvement also shifted very significantly with the
32 1989 Act and I assume that without those safeguards there was a risk of things occurring
33 without those protections. But in terms of what the standard organisational practice was, I
34 can't say.

1 **MS SPELMAN:** I suppose, perhaps, Commissioner it's a similar point to the one you made earlier
2 which is that you weren't there and can't speak to the first hand experience, but you're not
3 disagreeing with the evidence that's been given in terms of the experience of Dr Sutherland
4 as an advocate for many, many children across the country during that period?

5 **MR COSTER:** I'm not in a position to agree or disagree, I just can't add anything to that,
6 unfortunately.

7 **MS SPELMAN:** Would you accept that based on today's standards, having children, some
8 younger than eight years old, even, being interviewed without a legal representative or a
9 family member would be something the Police would --

10 **MR COSTER:** Just would never occur today.

11 **MS SPELMAN:** And it shouldn't have happened back then either.

12 **MR COSTER:** That's hard, I think we can sit today, and we can say that's the case and with a lot
13 of confidence we can say that. What I can't really speak for is the views of the community
14 that existed at that time. And so, there are lots of things that today are obvious good
15 practice to us but may or may not have been obvious good practice back then.

16 **MS SPELMAN:** I suppose this is a hindsight question, so instead of asking you put yourself in
17 the shoes, I'm asking for your --

18 **MR COSTER:** Without a doubt today we know that that is just not the right thing to do.

19 **MS SPELMAN:** Sorry, Deputy Commissioner, it looked like you had something you were adding
20 there.

21 **MS KURA:** I do think about the practice that we had before the new Act and there would be
22 things that we definitely wouldn't do now that we may have done, and I can't think of it
23 being a systemic written "this is how you do things", but for children who may have been
24 on their own or in situations where you might have come across somebody on the street, the
25 fact that we didn't talk to, maybe seek advice from family, is something that comes to mind
26 when you raise the situation now.

27 **MS SPELMAN:** I suppose you could accept without accepting the details, that if this type of
28 practice was, for example, widespread or perhaps just routine, that that could have had a
29 real influence on how many children were coming into court and subsequently entering
30 State care if they were being dealt with without the protections of their whānau or a legal
31 representative, is that a fair summary?

32 **MR COSTER:** Potentially.

33 **MS SPELMAN:** Another contributing cause we've heard about from many different sources in
34 this Inquiry to, particularly, Māori children and young people coming into care in great

1 numbers during that time period, is the general stereotyping of Māori during that time in the
2 broader society and officials linking Māori juvenile offences to perceived defects in their
3 home life including culture and traditions of Māori communities. And some have also said
4 that this amounted to State policies promoting and maintaining the intentional dismantling
5 of whānau with Police being one part of that strategy. I appreciate that's a broad question,
6 but I would like you to comment on it.

7 **MR COSTER:** I certainly can't say with any confidence what sat by, --sat behind practices that
8 failed to recognise the intrinsic value of Māori culture. But I can certainly say that as an
9 organisation, even in the time I've been in, we're in a fundamentally different place in terms
10 of our valuing of Tikanga Māori and valuing of what that can do to support young people
11 who are at risk, and indeed adults who are having difficulty. And I fully recognise that
12 insider knowledge did not form part of our practice for the vast majority of the period we're
13 talking about.

14 **MS SPELMAN:** Thank you. I'd like to move on now to the topic of abuse while in Police care,
15 and I note, Commissioner, that you've described this as, in terms of- perhaps- "care
16 provider" is not quite the right phrase in the context of Police, but Police having a limited
17 role as a care provider.

18 Now, just to check before we go on, that you're both familiar with the scope of what
19 the Royal Commission is looking at in terms of abuse in relation to Police, which includes
20 Police cells, Police custody, so of course that's while being under arrest perhaps on the
21 roadside, being transported in a Police car, Court cells, where of course we know Police are
22 custodial officers, and abuse on the way to or from or between State care facilities. So,
23 would you accept that's a slightly broader role than perhaps what you've described in terms
24 of, in your statement, as simply a holding facility between arrest and bail?

25 **MR COSTER:** Yeah, I guess that was a reference to a place where people stop and are in care,
26 but absolutely, our duty of care starts from the time that someone comes into our custody
27 through to the time that they are handed over to another carer and that's an area where we
28 have evolved considerably and continue to evolve.

29 **MS SPELMAN:** Sure. So, in addition to, I suppose, the physical Police facilities and cells,
30 there's also all of that on the street and in cars and while someone's in Police custody, you
31 accept that's all part of what we're talking about?

32 **MR COSTER:** Of course, of course.

33 **MS SPELMAN:** Great. Another aspect we've heard about is, I suppose, a more informal use of
34 Police, which is Social Welfare essentially requesting or using Police as their enforcement

1 arm in terms of uplifts or interventions and I'll just for your context give you another quote
2 from Tā Kim Workman who's featuring heavily today. So, about that point Tā Kim said in
3 his previous evidence:

4 "The Child Welfare officers often attempted to involve Police in their operational
5 processes which created considerable tension between the two agencies. Child Welfare
6 officers had a tendency to portray Youth Aid and the Police as 'the enforcers' when it came
7 time to remove a child from a family, even though they may have initiated the process."

8 So that is, I suppose, a slightly additional or informal role that the Police also played
9 here, but that does again broaden the scope of what we're talking about when Police were
10 put perhaps in the unenviable position of having to help your colleagues from Social
11 Welfare, Child, Youth and Family, and the present day Oranga Tamariki.

12 **MR COSTER:** Yeah. Certainly, Police assistance was and is still called for in some
13 circumstances. I can't speak to the prevalence of that and certainly Tā Kim is better placed
14 than I am to speak to the frequency of that.

15 **MS SPELMAN:** I suppose it just broadens out what we're thinking of, doesn't it, in terms of the
16 Police being involved not just as a Police initiated action of arrest, but actually being called
17 in as the strong arm and then having often quite a lot to do with these children and whānau
18 who were being brought into State care, both historically and today?

19 **MR COSTER:** Yeah, as I say, I can't speak to how commonly that occurred but to the extent that
20 occurred, then clearly it's relevant.

21 **MS SPELMAN:** I want to raise with you just a couple of examples of this, and I'm dealing with
22 this in this topic of abuse by Police because that's how it has been described in evidence
23 that the Royal Commission has heard. So, this example is from survivors who gave
24 evidence as a whānau group at a previous hearing, and they're talking about a period in
25 1964, being at home and they describe this as "the day we were ripped from our parents".
26 And I'll just read you a little bit of this for your comment:

27 "On a date in 1964 a swarm of people came to our house in the early hours of the
28 morning, like thieves they invaded our home. I watched in sheer horror as two uniformed
29 strangers manhandled my mum. She was grasping hold of cupboard handles in the kitchen
30 for dear life, I watched as they slammed my mum down to the floor on her back. One of
31 them dropped knee first on to my mum's stomach to pin her down, the other one quickly
32 shackled her hands together with handcuffs. They stood up and grabbed a handcuff each.
33 I remember they both laughed like they had achieved a great feat and dragged her out the

1 door. I went into shock after this. I was five and a half years old, and I had never seen this
2 sort of violence in my entire childhood."

3 Now, these witnesses who gave this evidence are now in their later ages and this
4 experience from their childhood is obviously very vivid for them in terms of the impact that
5 it's had, and that extension of the risk for and at times the actual abuse of people by Police
6 in that enforcement role for Social Welfare. What's your comment on the experience of
7 those who experienced Police service in that way?

8 **MR COSTER:** Obviously that's a terrifying account and from the experience of that person it's
9 very hard to defend it and I won't try to. Obviously, what isn't available to any of us is
10 what information those officers were acting on. Police's role in those situations when
11 called on to assist is really about making the situation safe for the exercise of a statutory
12 function by another agency. And so, our actions will turn around the information that's
13 been provided to us, but clearly if that's how it played, I can't defend that and I won't
14 attempt to, but just to make our role clear, we are not the ones to initiate actions to remove
15 children, but we do support it and clearly it's our job to do that fairly and professionally.

16 So, that kind of situation is not one that would ever have been acceptable.

17 **CHAIR:** Ms Spelman, you might be coming to this and if you are I'll leave it. Is there any,- what
18 underpins that relationship between the Police and, today, Oranga- Tamariki and do you
19 know anything about what preceded it? Is it statutory, is it a memorandum of
20 understanding? Do you know what the arrangement is?

21 **MR COSTER:** It's a memorandum of understanding that brings the two agencies together around
22 our respective statutory functions, and clearly it has gone under, you know, our practices
23 around that have been very much under the microscope as a result of more recent reports
24 and investigations of this, and practice has shifted considerably, including on our part to the
25 extent possible trying to mobilise appropriate staff to deal with uplift situations, including
26 iwi liaison officers who are much, I suppose they're our experts in being culturally
27 equipped to deal with those situations, and to the extent possible Police will take a backseat
28 role to ensure safety for all rather than a hands on role.

29 **CHAIR:** How much of what you've just said is enshrined in the memorandum of understanding?
30 That's one question. And the other question, maybe for you, Deputy Commissioner, before,
31 say, before 1986, was there a formal arrangement or how did it work?

32 **MR COSTER:** Certainly, the current MOU speaks to roles and responsibilities in terms of that
33 business of uplifting children, and that's something that we --

34 **CHAIR:** Does it speak to bringing in the iwi liaison officers, for example, or is that just --

- 1 **MR COSTER:** I believe it does, but clearly we can produce a copy of those documents.
- 2 **CHAIR:** I've put you on the spot, so if you could produce it that would be handy.
- 3 **MR COSTER:** Absolutely, we will do that. I can't speak to whether something existed back in
4 this period,-- you might know the practice, Tania.
- 5 **MS KURA:** No, I wasn't involved, as a constable I wasn't aware of a memorandum of
6 understanding. However, the supporting another agency, whether it be Child, Youth and
7 Family or another agency was common practice because the request may come through a
8 Senior Sergeant to direct you to go and support somebody else, just like the same with
9 Court, so I wasn't aware of a memorandum of understanding, but I was aware that the
10 practice was that if we were called upon, we helped.
- 11 **CHAIR:** It might be useful, I think, if we were to ask if you could provide perhaps any
12 arrangements, if we don't already have it. Do we know if we have them already?
- 13 **MS SPELMAN:** I'll just check, we don't have it in the bundle for this hearing, but I'll just check if
14 we can bring that up.
- 15 **CHAIR:** Something we can do later.
- 16 **MR COSTER:** We can confirm in a break on that.
- 17 **CHAIR:** Good, thank you.
- 18 **COMMISSIONER ERUETI:** Can I briefly ask too, in that memorandum of understanding is
19 there clarity about the role and responsibility of different agencies when it comes to child
20 offending? So, OT and Police?
- 21 **MR COSTER:** Child offending is a combination of statutory provision and policy and practice,
22 so slightly different from Care and Protection side, and it's very dependent on the age of the
23 young person as well. It's actually quite a complicated set of arrangements for who's
24 responsible for what and depends on the seriousness of the offending. It's tricky to
25 navigate, but we have our Youth Aid experts who do that on our behalf.
- 26 The short answer is there's a bit more to that one than uplifts, which sit very clearly
27 in the Care and Protection arena, led by Oranga Tamariki supported by us with an MOU
28 that sits around that.
- 29 **MS SPELMAN:** I just want to follow up with one more question on the topic raised by our Chair.
30 So you mentioned, Deputy Commissioner, that general practice of a request would come
31 through from someone senior and the officers on the ground would go and do that, and this
32 may be clear, but just to clarify, there wasn't at that time a role for Police in terms of acting
33 as a check on the decision-making of that other agency, for example in this particular case
34 where there were eight children under 10 years old living and the children were uplifted

1 due to a perception that they weren't being cared for, that wouldn't be something that Police
2 would have an evaluative function or any sort of monitoring or check function of whether
3 in fact that uplift should be carried out?

4 **MS KURA:** I don't recall that practice as such, I recall it being a support for safety was the
5 function that we had in my particular experience.

6 **MR COSTER:** I would add to that that even today it's not Police's role to second guess Oranga
7 Tamariki's statutory decision-making. However, if an uplift is to be conducted, Police will
8 be part of the planning and a key question there would be, what's an appropriate manner for
9 this to be undertaken in, and if there have been situations of abuse then clearly we may
10 have some visibility of what those are from our statutory perspective.

11 The complexity that you can get in these situations is what do we know about the
12 circumstances. Unfortunately today, we may have situations where firearms are present,
13 where methamphetamine is being used, and so there's actually quite a lot of planning that
14 may need to go into how to safely effect an uplift. Presumably, there were versions of
15 those kinds of difficulties going back to this period, but it's a little difficult to speak to what
16 the practices were around that.

17 **MS SPELMAN:** Is it fair to say that it's not a role Police would want to be doing but they only do
18 it if requested and if it's considered to be necessary from a safety perspective?

19 **MR COSTER:** Absolutely.

20 **MS SPELMAN:** So, from the Police's view it would be much better if there were other ways to
21 deal with those type of uplift situations that didn't require the presence of uniformed police
22 officers?

23 **MR COSTER:** Absolutely.

24 **MS SPELMAN:** And I suppose that situation, we have seen very recently, and I know, Deputy
25 Commissioner, in terms of the Hawke's Bay uplift at the time when you were District
26 Commander, we see some of these same themes and issues of the presence of uniformed
27 police officers perhaps aggravating a situation due to some of the history that Police have
28 with particular communities?

29 **MS KURA:** If I think about the Hawke's Bay incident, I also am aware that we used plain clothes
30 officers to try and balance, we used connections with iwi leaders as well, Police connected
31 to those people as a part of trying to understand the circumstances, and I know that our
32 people that were involved in those situations were really mindful of "can I seek some
33 advice and some support from senior leaders about what the best practice is now".

1 So, if I think about the situations in the 1980s compared to that baby uplift, our
2 people did question a lot more about why here and why now, but that doesn't mean we have
3 the statutory obligation to override that or anything like that. So, I think the officers these
4 days will add or question, not because they have to, but because they know it's the right
5 thing to do.

6 **MR COSTER:** And a strength we would bring as an organisation now is the strong relationships
7 we enjoy right across the country with iwi. So, our people are very creative about how to
8 try and resolve situations in a way that deescalates, and so we're much less likely to turn up
9 at a home with a show of force than we ever have been in the past. And we continue to try
10 and work on that, and I think our people are really smart actually about how they're trying
11 to resolve some of these very difficult situations we face.

12 **MS SPELMAN:** It's an interesting point in terms of accountability and decision-making, and
13 I just would like you to clarify, is what you're saying that Police do now have a role in
14 acting as a check on the power of Oranga Tamariki, informally as you've said, by asking
15 those sorts of questions and pushing back on what the planning is? Because that does
16 sound quite different to the historical position.

17 **MR COSTER:** For me, and I think what Deputy Commissioner Kura was speaking to is we have
18 a role in making sure that the manner of any uplift in which Police is involved is
19 appropriate. It's not our place and nor should it be to second guess statutory decision-
20 making of another agency. So, we need to be able to play our part in a way that reflects our
21 values, our legal responsibilities, and so that speaks to manner of uplift more than whether
22 an uplift is or isn't the appropriate thing to do.

23 **MS SPELMAN:** I'd like to turn now to a different section of this abuse by Police topic, and you'll
24 appreciate that there's been a lot of evidence about this and I'm just selecting particular
25 examples to highlight a broader point. So, there are two examples that have come through
26 in evidence which are quite similar to each other, although from different time periods.
27 And it's about assault by Police for people who are in Police custody as suspects in order to
28 obtain a confession.

29 So, in the first example, the evidence that was heard was that, I'll just read this part
30 to you:

31 "While I was in Police custody police officer handcuffed my hands behind my chair
32 and hit me around the head with a phone book. He used a phone book so it wouldn't leave
33 marks. While he was hitting me with the phone book I could see stars and he kept doing it
34 until I admitted and confessed to the crime. I agreed with him to make him stop."

1 Now again, I'm not asking you to comment on whether that practice was widespread
2 or not, that's something that of course the Commission can make its own findings about

3 **CHAIR:** Do we have the age of that person?

4 **MS SPELMAN:** 15 at the time.

5 **CHAIR:** Thank you.

6 **MS SPELMAN:** But I do want you to comment on that in terms of obviously that is a fairly
7 widespread allegation in terms of historical, the more, it's still an allegation in current days
8 of course, but historically a much heavier handed approach from Police in terms of use of
9 force, excessive force, when manhandling, rough handling, all those sorts of words. Would
10 you accept that that was considered more common, more acceptable back then in terms of
11 that 1970s, 1980s sort of practice?

12 **MR COSTER:** It's hard to imagine that violence to that extent has ever been acceptable, although
13 I accept that situations like that have happened. What does appear to have been acceptable
14 and in fact we still get community members reflecting positively on what they would think
15 of as the good old days where the community cop turned up and gave them a kick up the
16 pants and sent them on their way.

17 And so, without a doubt, as a community and as an organisation we have shifted
18 considerably in our views about the use of force to resolve situations. And I can certainly
19 say today there are high levels of accountability for any actions that overstep the line and
20 we do charge our people when they use force beyond what's permitted by legislation.

21 **MS SPELMAN:** I suppose I just want to drill into this I suppose, ask it from a different way, and
22 this might be better for you, Deputy Commissioner, just because of you starting earlier in
23 the Police. So, I take your point, Commissioner, that this sort of straight-out assault would
24 never be acceptable at an official level. But what I'm asking about is more the culture at
25 that time in terms of within perhaps constables, more junior, inexperienced Police and what
26 they were taught and what they saw and how they behaved at that time, which you'll
27 appreciate is quite a separate point to the official Police line which I'm sure back then
28 hopefully would have been "don't assault citizens".

29 **MR COSTER:** Even by the time I joined I feel like that culture wasn't where you're talking about,
30 but...

31 **MS SPELMAN:** New Zealand was a different place in the 1970s and 1980s, and I'm sure you'll
32 both appreciate that our survivors who are here are very interested in your honest
33 assessment of this time.

1 **MS KURA:** So, I joined in 1987 and I actually went to Canterbury, I was in Christchurch, and for
2 me there were some instances of knowing, not that I saw, but knowing that potentially
3 somebody had been assaulted for a confession. And I do recall thinking to myself, I don't
4 know about violence, it's not within my remit, that's not how I've been brought up, it's not
5 something I know about; if I have to do that to get a confession from somebody it's not the
6 organisation for me. What I probably realised, well, what I realised is actually that's not a
7 widespread thing that everybody did but when you first start that was something that did
8 surprise me, that I had heard that that had happened, I didn't see that behaviour, but I
9 had - other- people would talk about it.

10 **MS SPELMAN:** I should make clear, of course, it's not at all directed, any allegations towards
11 you personally, Deputy Commissioner.

12 Just, interestingly, another example which is strikingly similar of this practice which
13 is from a woman survivor who was a child --as a Māori child had abuse in care but this is
14 about an experience as a young adult which of course is within our scope as well. And she
15 describes being interrogated at the Auckland police station by detectives, so not junior
16 police officers, and she said:

17 "When I was at the police station they put us in separate rooms, first came in and
18 said to me..."

19 Wanting her to sign a statement, essentially, it's quite long so I'll just paraphrase this
20 section. So, trying to get her to sign a statement, swearing back and forth, and then one of
21 the detectives coming back in and saying:

22 "There's ways that we can make you talk, you know, either you're going to talk or
23 your co-offender's going to talk and I was, like, what are you fucking talking about? He
24 goes, well, we can hit you in places, we can hit you in places where you won't bruise.
25 Well, that's exactly what they done, started hitting me with the phone book in my stomach
26 on the sides of me where I wouldn't bruise and then came back in with a statement from the
27 guy and forcibly tried to make me sign it. Yeah, nah, I didn't sign it, I got bashed around,
28 got sent to Mt Eden Prison and after the medical found out that I was hapū with my son."

29 So, it is similar, that allegation, in terms of quite strategic violence from Police not
30 only to obtain a confession as the motive, but actually in terms of assaulting someone in
31 such a way where it would be difficult to detect. Is that level of thinking around the abuse
32 something that you remember when you spoke earlier, Deputy Commissioner, about what
33 you heard as a young police officer?

1 **MS KURA:** Not to the full extent that you talk about there, but for me in a general sense yes, that
2 there was conversation. But as a relatively, -as a very new constable, you listen and you
3 watch and you try to understand what the culture is and how you might fit, I guess,
4 is -the and- so for me it was always looking and trying to find out and to listen to see what
5 the cues were to the organisation and the insights that you might get. So, I had definitely
6 heard- of those stories in those early 80s, sorry in the late 80s.

7 **MS SPELMAN:** I suppose for police officers who may have engaged in that sort of practice, is it
8 fair to say that for them as young or perhaps not that young police officers, there were
9 strong internal rewards around things like arrests, convictions, processing cases through in
10 terms of how to succeed and get ahead in the Police and do well as a police officer, is that
11 what's behind, do you think, some of this behaviour?

12 **MS KURA:** Maybe, I couldn't say exactly, and I think that basic human rights have always
13 existed and so for me the rewarding of that type of behaviour in the promotion or going to
14 become a detective seems quite perverse in a whole lot of ways, but if I think about it might
15 be that a person got to be a senior in an incident car, or in an i-car, or they might have been,
16 I'm not so sure that it was across everybody, but there might have been some times that that
17 happened.

18 **MS SPELMAN:** Sorry, I should clarify, I don't mean rewarding the abuse, I mean rewarding
19 police officers who have higher arrest rates, who work on cases where convictions are
20 secured who generally meet that part, I know those aren't the only expectations of police
21 officers, but who meet those particular expectations, that type of behaviour would be
22 rewarded internally?

23 **MR COSTER:** Certainly, what we value in frontline staff has shifted considerably over time.
24 And if we go back to sort of the dominant expectation on Police at this time was about
25 enforcement, was about prosecuting offenders for crimes, was about solving crimes, and
26 where that's your dominant lens for success, then obviously, you know, there's desire within
27 the organisation to achieve those outcomes.

28 We have to be clear, though, that doesn't always translate into bad practice, and
29 certainly by the time I joined, you know, we may have had bad actors, but there was no
30 sense that that was the dominant way of behaving or that those bad actors, you know, went
31 from being detectives who behave like that to being senior leaders who behaved like that.

32 So, you know, my sense was, by the time I joined anyway, what we saw was
33 predominantly the right things occurring, but still within the mix of that you would have
34 bad things occur. For me, the hardest aspect of all of this is trying to put a finger on how

1 dominant was bad behaviour like that and to what extent was it accepted, and I don't think
2 it's very easy to say that even for an officer working at that time, you know, back then I'm
3 not sure how big we were, probably an organisation of somewhere between 6 and 8,000
4 staff spread across hundreds of locations around the country trying to put your finger on
5 what is the culture, well, actually, there isn't one consistent thing that occurs, particularly
6 then where we were much less connected than we are today. So, at some level you can
7 have things exist within particular stations, that may or may not be representative of what
8 was happening across the country.

9 **MS SPELMAN:** Sure, and we might again come back to this in another part of the day, but just
10 now I want to ask you very briefly, I'm conscious of my going over time already, about
11 holding children in Police cells as a form of abuse. So this topic of having children held in
12 Police cells is clearly something that's come up many, many times in recent years,
13 historically as well, and in terms of this Inquiry one report in particular that's been
14 considered is a 1997 report from the then Children's Commissioner which comprehensively
15 sets out all the things that probably are easily accepted today in terms of that practice being
16 in breach of children's rights, in breach of our human rights obligations, in breach with
17 respect to Māori children of Te Tiriti obligations.

18 And my understanding, correct me if I'm wrong, is that the Police view generally is
19 that you don't want to hold children in Police cells and you would very much like that
20 practice to stop; is that correct?

21 **MR COSTER:** Absolutely, yeah. I know you've heard from Judge Becroft, and I think he was
22 very appreciative when we acknowledged at an UN hearing on this point that is Police's
23 view we shouldn't have children and young people in Police cells. However, we face a
24 very real practical difficulty as a country which is large geography relative to population.
25 Some people for their own safety, young people for their own safety and the safety of the
26 public do need to be in a secure place and it's not always possible, at least on current
27 infrastructure, to have them somewhere other than a Police cell. So, on rare occasions it
28 still occurs, and we do our level best, certainly with our understanding today, to make sure
29 that those young people are looked after in the best possible way.

30 But those environments are not really suitable for young people, and there's no
31 realistic chance of making them so, given what would be involved in achieving that.

32 **MS SPELMAN:** Sure. And I suppose there's two points within this, isn't there, there's the first
33 one which is that in many respects Police don't have control over when a child is ordered to

1 come into Police custody, you're then stuck with them, essentially, and you have to make
2 the best of that situation. But with --

3 **MR COSTER:** I think most commonly it will occur when Police apprehends a young person
4 who, for whatever reason, needs to be in secure care and it will be the gap between when
5 we pick them up and when they're able to be placed somewhere else.

6 **MS SPELMAN:** Yes, although I suppose the examples that have been highlighted previously by
7 Judge Becroft and indeed by the former Children's Commissioner back in 1977 also
8 referred to examples when there were times where Social Welfare or Child, Youth and
9 Family weren't able to have a place for somebody to go and so instead they had to be
10 ordered by the Court to be held in Police custody for a period. So that is part of that
11 practice as well.

12 But the point, I suppose, that was made back in 1997 is, separate to the fact that
13 Police don't always have control over whether the child is coming into their custody, that
14 once they're there, or knowing that they may be coming, there is a responsibility for Police
15 to ensure that the facilities they're held in are suitable. So, my question is, given we've had
16 this issue in the public forum for 25 years, I don't understand there to have been any work
17 done by Police in terms of making Police cells a place where it wouldn't be so traumatic for
18 children to be held in the times when they are.

19 **MR COSTER:** The nature of Police cells and the other people who come to be in those general
20 areas means that they will never be suitable places for young people, particularly young
21 people who are there for Care and Protection purposes. And --we simply don't see that
22 as-- Police cells as the appropriate place to be investing in order to address that problem.

23 **MS SPELMAN:** What would need to be done to Police cells to make it a more appropriate place
24 for a young person or a child to be held?

25 **MR COSTER:** That's not the way you would set out to solve that problem. It really is looking at
26 how we have other places where young people can go, where they can be cared for.

27 **MS SPELMAN:** Given that the Police, then, has made that decision of over 25 years that's a
28 significant investment resource issue if you were to change or upgrade your facilities, and
29 I take your point that's not the direction you want to go in. I suppose the flip-side of that,
30 then, is what has the Police done to end this practice? What's been the role of Police,
31 separate to the point you made about the UN?

32 **MR COSTER:** I don't think that view has been held by Police for 25 years, not as clearly as I've
33 stated it. So just to be clear, I think clearly some of this was accepted practice at the time
34 that it occurred. Police is working incredibly hard to improve our custody environments

1 not just for young people but for all people who come through them. Clearly, they are
2 places where there's high risk of suicide and they create extra complication for people who
3 often are experiencing one of the worst moments of their life.

4 It's very expensive infrastructure, which is very hard built, you can't just move the
5 walls because they're thick concrete. So that is a significant and longterm programme of
6 work.

7 For young people our focus is on working with Oranga Tamariki about how we can
8 ensure suitable care in the places where that is required around the country, and we
9 carefully monitor the presence of young people in Police cells and work very
10 hard- including- internal escalations when that occurs, and work very hard to make sure
11 that that situation is addressed as fast as possible.

12 **MS SPELMAN:** And, of course, you can't speak to the infrastructure of another agency, but am
13 I right in taking from what you're saying that if the present day Oranga Tamariki and
14 broader infrastructure was in place in a way that makes sense for the large geographic
15 distribution we have of our population, that that will always be preferable than having
16 children in Police cells?

17 **MR COSTER:** Yes.

18 **MS SPELMAN:** In that sense it sounds as though Police probably would support calls that Judge
19 Becroft has made for those particular provisions of the Act to be repealed because without
20 the repeal it doesn't seem as though this practice is stopping even if it has reduced over
21 time, it does still happen today.

22 **MR COSTER:** The bit that's beyond my remit is whether spending tens of millions of dollars on
23 addressing that issue is a better investment than intervening to create safer home
24 environments or intervening to better provide more suitable education for young people
25 who are struggling or the range of other public investments that you might want to make in
26 this area.

27 Those decisions sit with ministers, and we can simply agree that Police cells are not
28 the best place for young people.

29 **CHAIR:** Just a short question from me, Commissioner, I don't expect you to know the answer, do
30 you know if records are kept about the number of children who are kept in custody?

31 **MR COSTER:** Yes, we do capture that through our District Command Centres, so -I would need
32 to check whether that can be wrapped up into a view that we could provide to the
33 Commission, but certainly for our own -real-time- internal purposes we keep a track on the
34 presence of young persons --

1 **CHAIR:** That would be useful, I'm not sure if we have that already, I don't want to put you to any
2 additional work, but if we haven't, I would be interested to know about trends and patterns,
3 let's say from 1989 through to the present about the number of children per annum, or
4 whatever, have been held in custody by the Police for whatever reason.

5 **MR COSTER:** Thank you. We will see, I believe the act of monitoring of this has only been a
6 more recent practice in recent years, but we will check what we can.

7 **CHAIR:** Whatever you can provide would be welcome, thank you.

8 **MS SPELMAN:** Thank you.

9 **CHAIR:** Thank you, Ms Spelman.

10 **MS SPELMAN:** I'd like to turn now to another topic which is Te Tiriti o Waitangi and the
11 obligations of Police. So, we've read, of course, the material you've provided in your brief
12 in your responses and as I understand it the first piece of work that was really done on this
13 was, again, Tā Kim Workman back in 1998 and his work on whakakaupapatanga Te Tiriti;
14 is that correct?

15 **MR COSTER:** Certainly, there was a lot of thinking that occurred around that time which led to
16 the establishment of our Iwi Liaison Officer network and the organisation has grown in
17 maturity from late 90s through to where we are today, so that was certainly the time that it
18 occurred and there were a range of people, I believe, who contributed to that thinking.

19 **MS SPELMAN:** Sure. And in many respects that's earlier than some other agencies, but that sort
20 of mark around the late 90s seems to be when that work really began within Police.

21 **MR COSTER:** I'm just actually looking at my material here. The first Iwi Liaison Officer was
22 appointed in 1996, but I think the real momentum on that was probably more like '99, but
23 yeah, late 90s.

24 **MS SPELMAN:** Sure. You would accept, of course, that the Te Tiriti obligations pre-date that
25 1996 or 1998 date.

26 **MR COSTER:** Of course.

27 **MS SPELMAN:** They go back. Part of that is that Police have an obligation to actively protect
28 Māori who are in Police care.

29 **MR COSTER:** We have a duty to actively protect all people in our care and Te Tiriti is obviously
30 a really important founding document in terms of that duty.

31 **MS SPELMAN:** Sure. Let's perhaps be clear, then. Of course, you have a duty to protect
32 members of the public, that's part of your job, but here I'm asking about specifically your
33 Te Tiriti obligations. So, in terms of those obligation,s you accept that you have an
34 obligation to actively protect Māori who are in Police care.

1 **MR COSTER:** Absolutely, yeah.

2 **MS SPELMAN:** And that the nature of that concept of active protection means active as opposed
3 to reactive or passive, is that how you understand it?

4 **MR COSTER:** Obviously there is a complex interplay between Te Tiriti and statutory
5 frameworks that set up duties for different organisations and then the overlay of other
6 policies. So, to speak to what was the understanding of those duties at the time you're
7 talking about, I think is difficult and I suspect- hopefully you are not asking me to do that.
8 In terms of how we see things today, Te Tiriti- is a really important point of reference for
9 us and that's partly why in our design or thinking about Police custody environments we
10 have been engaging in a conversation with Ngāti Kahungunu about proving out what a
11 better approach into custody might look like with a view not to just getting a person to a
12 court, but with a view to getting them the assistance they need from the moment of that first
13 intervention.

14 That work is in its early stages, but we have signed a kāwenata with Ngāti
15 Kahungunu part of which is thinking about that work.

16 **MS SPELMAN:** Thank you for that answer. In terms of the question that I asked, though, it was
17 about, I suppose, the nature of these obligations being active, being something that Police
18 are themselves thinking about and taking action on as opposed to or in addition to reacting
19 and responding to things as they happen, and I'm just checking --

20 **MR COSTER:** Certainly, that's true of our practice today.

21 **MS SPELMAN:** That's your understanding.

22 Now, I note your hesitation to answer questions about a historical period but I do
23 have some broad questions for you about that. And, I suppose, particularly looking at that
24 1950 to 1999 period which of course is what the Inquiry is doing, what is your
25 understanding of what Police did, if anything, to uphold those particular obligations?

26 **MR COSTER:** My understanding is fairly limited. I note that across all of Government
27 recognition of the importance of Te Tiriti really didn't start until probably mid-70s and has
28 matured slowly since then. So, I believe where Police was at was reflective of where
29 Government as a whole and probably society as a whole was at at that time.

30 **MS SPELMAN:** Sure. So, it's probably fair to say, then, that pre-1990s Police haven't been
31 particularly responsive to tangata whenua in that more historical period.

32 **MR COSTER:** I was responding probably quite specifically to Te Tiriti in terms of its
33 significance but to the best of my knowledge it has been acknowledgment of Te Tiriti that

1 has enabled better relationships with Māori and more appropriate ways of working with and
2 for Māori.

3 But I'm also confident that at a personal level to the extent that community policing
4 and relationships with the community were a feature of what we have always done, that
5 there will have been relationships in place between local iwi and local police officers. And
6 so, I'm reluctant to tar with one brush everything that happened through this period,
7 because I strongly suspect that there were respectful relationships within communities that
8 allowed matters to be resolved without formal criminal justice intervention.

9 That's more a feature, has been a more reliable feature of policing in rural and
10 provincial locations than it has been in our cities.

11 **MS SPELMAN:** I suppose another aspect of the obligations and relationships between Police and
12 Māori is the nature of the individual world view and the collective world view. I think,
13 Deputy Commissioner, you've touched on this a little earlier in terms of that change that
14 came in with the 1989 Act in your experience.

15 On this point, Tā Kim has said that:

16 "Back then the focus was entirely on the individual behaviour of the young offender
17 and the whānau didn't actually figure in the process. The idea of holding a hui with whānau
18 to discuss what happened and to work out how to prevent future offending was anathema to
19 most Pākehā officers."

20 Is that a fair statement of that historical period we're talking about?

21 **MS KURA:** Yes, that would be how that's- why the change with the Act actually brought- those
22 conditions to the fore and asked everyone to think more consciously about how we would
23 do that. It was quite a change.

24 **MS SPELMAN:** In terms of the statistics we've touched on a couple of times, but I haven't gone
25 through them in great detail because I trust you're aware of them from the material that
26 we've given you, but the way that Māori children and young people in particular
27 disproportionately feature in the statistics of this time period, 1950s to 1970s in particular,
28 of charges, of appearing in the Children's Court, of being held in custody, of being
29 sentenced to institutions, in your view is the disproportionality that's shown in that data
30 inconsistent with Te Tiriti?

31 **MR COSTER:** At an outcome level I think we have to assume that it is. From a Police
32 perspective, the work that we now have going under the banner of Understanding Policing
33 Delivery is about understanding what sits behind that, because clearly, it's a complex array

1 of issues that leads to anyone coming to Police attention, and we often are right at the
2 bottom of the cliff.

3 The things that need to come together for a young person to be well, are complex,
4 many and varied and almost entirely sit out of the Police domain. And so but- I think, you
5 know, I think- it's uncontentious that if we have proportionally many more Māori in the
6 criminal justice system than we ought to have, that somewhere something has gone wrong.

7 **MS SPELMAN:** Okay. In terms of -- I know you've raised again the more recent work that
8 Police is doing, and in terms of that and of course Police are also involved in some
9 proceedings before the Waitangi Tribunal on related topics, you would know then that in
10 terms of the articulation of the tribunal of the rights and the Māori right to tino
11 rangatiratanga over taonga, do you accept that that includes whānau and tamariki Māori in
12 that expression of taonga which gives rise to these obligations?

13 **MR COSTER:** I just don't think I'm the best or most appropriate witness to be forming a view on
14 the scope of Te Tiriti, I can --

15 **MS SPELMAN:** Fortunately for you the tribunal has formed that view. What this question is
16 for you as Commissioner of Police, given that's a view that's been articulated in some detail
17 by the tribunal, who as you perhaps allude to, are the ones appropriately placed to describe
18 that. What I'm asking is, the Police as an organisation, do you accept that, that that
19 articulation of taonga includes whānau and tamariki Māori?

20 **MR COSTER:** I can accept that for any culture our children are taonga, and that needs to shape
21 and inform the way all State agencies treat children. What I can't probably do is speak with
22 confidence to the extent the Treaty describes that and how it relates to children and I think
23 there's an important cultural aspect to that as well.

24 So, I'm certainly not going to contest it, but I don't really feel qualified to speak with
25 confidence on the meaning of the Treaty on this topic.

26 **MS SPELMAN:** It sounds as though you're prepared to accept that as a general point about
27 taonga of all cultures, that that would include children and whānau but not prepared to
28 accept that in relation to Māori in the context of these specific obligations?

29 **MR COSTER:** I think when you posed the question you tied it in with its significance in terms of
30 tino rangatiratanga, which raises a range of questions for me about the role of the State in
31 protecting the wellbeing of young people and how that sits in tension with the concept of
32 tino rangatiratanga under the Treaty and that's just well out of my domain, but at a level of
33 principle for Māori, rangatahi, mokopuna, taonga, well, it's self-evident that they are. And
34 so hopefully that's clear.

1 The bit that I would struggle to articulate with confidence is the relationship
2 between the Oranga Tamariki Act, Police's statutory obligations in terms of looking after
3 the well-being of young people, and the wording of Te Tiriti and that really gets into an
4 area of -- that's a legal question and I'm sure it's a question that the Waitangi Tribunal will
5 answer with much greater qualification than I can.

6 **MS SPELMAN:** Sure. Before we move on from this topic, I hear the points that you're saying.
7 I suppose another way to go about this is to think the Police are obviously doing a lot of
8 work currently to try to understand those obligations and partnerships, ways of working
9 with Māori in part in recognition of some of the history. Is part of that thinking at a
10 conceptual level for Police, how Police can work to support Māori to be able to exercise
11 tino rangatiratanga? Is that part of your strategic thinking in the work you're doing?

12 **MR COSTER:** Te Huringa o te Tai, our Māori strategy articulates very clearly that the best
13 solutions for Māori will be with Māori and so when we look at the well-being of young
14 people, there's no doubt that answers sit within whānau and hapū and iwi. And we have
15 worked hard to try and reflect that into our practice to the extent that is Police's role and
16 I could give you lots of examples of this, but just to pick one, Whāngaia Nā Pā Harakeke is
17 a Police initiated response to family harm that involves kaiawhina working with whānau to
18 try and address the well-being of the whānau, including the well-being of tamariki within a
19 context where family harm is occurring.

20 To us that way of working with iwi and Māori is increasingly a second nature thing,
21 but I would also accept that that's only been part of our journey since those first steps in the
22 late 90s and not something that has been ingrained in the way we operated before then.

23 **MS SPELMAN:** Deputy Commissioner, did you have anything you wanted to add on that?

24 **MS KURA:** No, I don't.

25 **MS SPELMAN:** I'm conscious of the time.

26 **CHAIR:** You choose the time that suits your plan, Ms Spelman.

27 **MS SPELMAN:** There's quite a lot more to go so it's probably a good time for a break now.

28 **CHAIR:** Very well, we'll take the morning adjournment for 15 minutes and return after that.

29 Thank you.

30 **Adjournment from 11.30 am to 11.48 am**

31 **CHAIR:** Thank you, Ms Spelman.

32 **MS SPELMAN:** Another aspect of this section I want to ask you about relates to the particular
33 impacts that have been experienced by Māori through abuse in care in relation to Police,
34 and I note that in your evidence, your written evidence, you said that Police have been

1 listening and obviously have had representatives in attendance at previous hearings. I just
2 wondered what some of the particular impacts for Māori that Police have heard and have
3 been struck by, what have some of those reflections been for you in terms of what survivor
4 evidence we've heard to date?

5 **MR COSTER:** Obviously the survivor stories that we've heard have been confronting and have
6 reflected circumstances where the Police response did not provide them with the safety or
7 the protection that they would have expected in the circumstances.

8 I think as it relates to Māori, this is part of a broader issue around the extent to
9 which agency responses are suitable for addressing the issues that exist within Māori
10 communities, and in particular the importance of working in partnership to find solutions.
11 And as I've alluded to, much has changed in that regard in the last 20, 25 years.

12 But it's evident that the responses that occurred during the period in question didn't
13 reflect the needs of Māori communities and didn't reflect what for them would have been
14 the best way to resolve the situations that existed.

15 So, you know, that's confronting and our commitment as to where we are today is to
16 make sure that to the extent possible our practice is in partnership with Māori and is getting
17 us to the most appropriate resolutions for the situations that we face.

18 **MS SPELMAN:** Going forward, just to build on what you've said and thinking about measuring
19 success or measuring progress in these areas, what does successfully honouring Te Tiriti
20 look like for Police?

21 **MR COSTER:** This clearly needs to be multifaceted, because the problems that lead to people
22 coming into contact with Police are so many and varied, you know, across the spectrum of
23 family harm, mental health, youth offending, youth suicide, gangs, there's no one answer
24 that from a Māori perspective is going to address all of those issues, except for that it's in
25 partnership and that it is culturally appropriate. And so the kinds of things that are making
26 a really big difference here, Te Pae Oranga I mentioned in my evidence, is a marae based
27 response to low level offending, supported by infrastructure on marae to intervene in the
28 underlying causes of offending rather than simply respond to symptoms, and as that's been
29 evaluated, we've proven that it works, it's a 22% reduction in harm from reoffending for
30 cases that have gone through Te Pae Oranga as compared to cases that have gone through
31 the mainstream courts. And so, we're expanding that now, including to youth panels to
32 allow a greater range of people to access that response.

33 **MS SPELMAN:** Would you like to see the threshold in terms of offences that can be referred to
34 Te Pae Oranga increased?

1 **MR COSTER:** There's a balancing act to be struck in all of this, the more serious the offending,
2 clearly community demands a response that reflects harm done to a victim. But Police's
3 driving focus is around our mission which is to prevent crime and harm through exceptional
4 policing and as a decision point we're really trying to push towards what are the
5 interventions that will prevent crime and harm.

6 And so that tends to take us to asking the question, is there anything that we could
7 do with this offender to reduce the risk of future harm, and that puts a slightly different take
8 on some of those issues.

9 I would note that the capability to respond in this way on marae has only really
10 come about through the process of Treaty settlements where iwi have been able to build the
11 capital and the, even to some extent the cultural capital, to be able to provide responses on
12 marae. So, policing and the preventative initiatives that we're putting in place have come
13 partly through the vehicle of Treaty settlements that have enabled iwi to, I suppose, be
14 better placed to have those responses in partnership with us.

15 Clearly that's not an unlimited capacity, so we might desire to put a whole lot more
16 through those kinds of services all around the country, we have to work at the pace of the
17 services that exist in a place and the resourcing available to then be able to take referrals
18 from us.

19 **MS SPELMAN:** Sure. So perhaps generally supported provided it could be -the need could be
20 met by the other agencies and the other support that needs to be in place to ensure that
21 something like Te Pae Oranga- is successful.

22 **MR COSTER:** Yes, qualified by unfortunately many of the people that we deal with have
23 become so entrenched in their offending that despite repeated attempts to deal with the
24 underlying causes, the trauma leaves us with few options. And so, the key in all of this is to
25 avoid that escalation early in people's lives at a stage where it's still possible to have that
26 preventative effect.

27 **MS SPELMAN:** In terms of that success, and a future looking question, is it fair to say that other
28 parts of that would look like continuation of the work you're doing on diversity within the
29 Police force, the training that you've referred to to make sure that all your police officers
30 are fully equipped to deal with the people they're serving?

31 **MR COSTER:** Diversity is clearly really important. By itself it's not the answer. If you come
32 from a diverse background but you come into a place where the culture doesn't allow you to
33 express that diversity, then it can be squashed, and so diversity is key, a culture that enables
34 that diversity to be expressed in the right way in the organisation is key, and also

1 recognising that all of our staff need a level of competence regardless of their background
2 to engage with vulnerable people, diverse communities, and at the same time recognising
3 that we put a lot of expectation on our frontline, and we could have them continuously in
4 training and they still probably wouldn't know as much as we'd like them to know about
5 everything that they might come across with the breadth of their jobs.

6 **MS SPELMAN:** That point you've just raised, Commissioner about diversity alone is not enough
7 and it's very dependent on the culture that someone's going into, I wonder, I'm conscious,
8 Deputy Commissioner, this is probably your particular area, and I anticipate that you will
9 both say again that the Police have come a long way from the past. But before we get to
10 that, I do just want to put a couple more historical points you to, because I think it's
11 important context in terms of who was in the Police historically before we move to today.

12 So back in 1950, according to Tā Kim, there was one Māori police officer in
13 New Zealand and this, I should say, we don't need to bring this document up, but just for
14 reference this is CRN 0000157 from the report Hāhā-uri Hāhā-tea Māori Involvement in
15 State Care and a quote from Tā Kim that's within that report.

16 So, he says around that same period, the 1950s, the Commissioner surveyed the
17 Police to see how they felt about recruiting Māori into the Police, and the staff were almost
18 unanimously opposed to the idea. The view is that if you employed Māori the Pākehā
19 would resent being dealt with by Māori and that they might be inclined to let their own
20 people off the hook, so it was decided that Māori were unsuitable for recruitment at that
21 time. And then moving forward to 1965, this is a quote from Tā Kim's evidence at the
22 contextual hearing, which is TRN 0000427, and this is moving forward about 15 years to
23 1965:

24 "Māori police officers were very much in the minority and in 1965 Commissioner
25 Urquhart declared that Chinese, Hindu,- I think he meant Indians,-,-- and Pacific Islanders
26 were unsuited to policing and would not be recruited. He stated that apart from Māori
27 policing should only be done by the white races."

28 So, before we speak about today and the work that obviously is squarely within
29 your domain, I just want you to both reflect on that, because obviously that whakapapa is
30 very important in terms of the organisation that you're leading today. So, what are your
31 comments on that fairly recent history?

32 **MS KURA:** I guess if I think about 1950 1965 it's surprising that I'm still in the Police, isn't it, in
33 2022 if the whakapapa hasn't changed and we haven't had a changing journey? Sad, is
34 probably the way that I would think about those statements, is that it's sad that for the

1 judgments, the discrimination that was exhibited by some of our leaders that don't have the
2 foresight that we have today, is probably how I feel about it.

3 **MS SPELMAN:** And perhaps another aspect of that is that Tā Kim spoke about at the time was
4 that Police culture is representative in some senses of broader New Zealand society and so,
5 by and large, Kim said the racism that exists within the Police also exists within our larger
6 society as a reflection of that.

7 Does that accord with your view, Deputy Commissioner?

8 **MS KURA:** Yeah, I think so, I think about probably from a personal level, my parents as a
9 Pākehā mother, Māori father, what they would have experienced, so I think that
10 that's- back- in those days it would have been exactly what they experienced.

11 **MS SPELMAN:** So, you alluded just before to the journey and the way that's come, is that
12 something going forward in terms of Police upholding its obligations that you see is the
13 force being representative of the communities that it's serving?

14 **MS KURA:** Absolutely. I think that -- I think when I joined in 1987 there was about even 10%
15 women and now when we've just hit 25%, significantly different environment for I think
16 our people to be able to thrive in when you can work with somebody else who looks like
17 you, who thinks like you, who has similar values to you, it means that you have the courage
18 to do some things that might want to challenge status quo, that might want to be forward
19 thinking, so I think the diversity is a key for us but it has to be in an environment where you
20 feel safe to be able to express who you really are.

21 **MS SPELMAN:** And bearing in mind the progress that's been made, where do you see things in
22 terms of how much more there is to do?

23 **MS KURA:** How long is a piece of string? There is as much as -I think we have to be aligned
24 with society, we can't go beyond what is potentially sitting in our communities, because we
25 find -that -I think about recently in my experience iwi check points during Covid, quite
26 interesting about how that divided New Zealanders and the way that they thought about
27 how Police should be involved in that particular activity. We thought about it from a safety
28 perspective, from about how we keep everybody safe and yet our communities may well
29 have had a lot of trouble and it probably divided our organisation in some ways too about
30 why are we policing in this way, we haven't done this before, but we were willing to
31 actually consider- more than one view and think about doing things differently.

32 **COMMISSIONER STEENSON:** Can I just ask a question of clarification. You were talking
33 about how that was reflective of society, so the views within the Police, the culture. Would
34 you say that rather than society views, that was actually those who held power's views?

1 **MS KURA:** I'm not sure about that.

2 **COMMISSIONER STEENSON:** Because I'm sure Māori who were part of society would have
3 wanted to have been recruited, for example.

4 **MS KURA:** But I also think that there would have been Pākehā that -and I think about my own
5 family, actually, the ability to even think that that was a possibility probably didn't exist
6 either. So,- I do think a little bit about you don't know what you don't you know, or what
7 you can't dream about, and so being forced to do something different that you don't know is
8 possible, I do think we were reflective of society.

9 **COMMISSIONER STEENSON:** I guess what I'm getting to, so that reflection of society was in
10 fact a reflection of the power that was held in parts of society and not held in others?

11 **MS KURA:** I'm not sure I understand that.

12 **MR COSTER:** I don't want to speak for you, Tania, but it seems to me that even for Māori in the
13 organisation at that time, the way of working was, and the way things were was somewhat
14 accepted, not by all, and not in every respect, but the views that exist within Police largely
15 reflect the dominant views within society. Of course there are always people who see a
16 different possibility and who come from a very different place.

17 But it seems as though society at that time was pretty homogenous in the way it
18 responded to things, you know, in the majority, not in all communities.

19 As Tania has alluded to, we, --the way I'd say it, it's hard to outperform the
20 community that surrounds you, and when you push the boundary on that it creates tension
21 and it creates pushback, it doesn't make it the wrong thing to do, but to some extent what
22 occurred inside of policing in this time, it wouldn't have occurred if society had condemned
23 it.

24 **COMMISSIONER STEENSON:** I guess my question is a slightly different way of looking at it.
25 If Māori, for example, had been in positions like Government and were able to see
26 possibilities for themselves and have tino rangatiratanga in those spaces, then- and- a say,
27 then that would have been somewhat a different reflection on society. But I take your
28 point, that because they didn't even feel they had that, to me that kind of gives me the
29 answer, thank you.

30 **MS SPELMAN:** I'll just stick with this point in a different way, so we've spoken about the
31 make-up of Police and obviously historically been a predominantly Pākehā organisation,
32 that changing over time, so that's the inwards culture. And I hear your acceptance of that
33 point about the general reflection of what's in society anyway. But going, I suppose, a layer
34 deeper than that, the way that, again in the evidence from the contextual hearing Tā Kim

1 described it, was that you take the general racism in society, and of course police officers
2 are also members of society, but then within the closed culture of Police which perhaps
3 particularly at that time had values around loyalty and conformity, uniformity, Tā Kim said
4 in his experience:

5 "... was that within that closed culture there was reinforcement of practices around
6 the treatment of offenders or of members of the public that sort of scaled that level of
7 racism up some notches."

8 And in particular he refers to a few examples, one of them being the Dawn Raids
9 which of course targeted Pacific communities which he described as "incomprehensibly
10 racist".

11 So, I wonder if - we've- got the general point about Police being a reflection on
12 society, but what about that deeper point of within Police culture racist views perhaps
13 being, if not encouraged, but allowed or reinforced or intensified. What's your comment on
14 that? And I ask that about historical and we'll turn secondly to the future.

15 **MR COSTER:** There are aspects of policing that -clearly we're dealing with the most problematic
16 behaviours in society and we are at the sharp end of those interactions, and that can, you
17 know, it's been well studied internationally that that can lead to a level of animosity
18 between people that you don't see in other contexts. When you are interacting with
19 someone who may be angry or drug or alcohol affected or mentally unwell and there's
20 violence involved, at a human level that leads to ways of interacting that have to- be
21 amongst the least healthy ways that people can interact. So that is just a reality of the
22 nature of policing.

23 Issues like Dawn Raids, for example, you know, again reflected attitudes that
24 existed in the community at that time, that was a government policy that clearly had it not
25 been something that was accepted by the community as unlikely to have occurred and
26 Police was the vehicle, or one of the vehicles through which that policy was affected, one
27 of the things we're really emphasising in our strategy today is to bring humanity to every
28 interaction, and it's about the idea of trying to see the people in front of you as human
29 beings even though if in the moment they may not be behaving like one, trying to
30 understand what's happening at a human level to drive someone to behave in the way that
31 they are.

32 That's a pretty different conversation to have inside a Police organisation, I doubt
33 you'll find any other Police organisation that has that in their strategy. But it's a recognition
34 that law enforcement interactions can tend to dehumanise in a way that other settings don't.

1 And so, I don't think we'll ever change the nature of the interactions per se in terms of the
2 context, but we can change the way our people approach those things and think about them,
3 and that's got to sit inside of the culture in the organisation.

4 **MS SPELMAN:** Thank you for that answer. I'm not sure it did deal with this question though,
5 which is just about that historical culture in the time period that Tā Kim's talking about, and
6 the perhaps more closed culture back then that Police had as opposed to now where there
7 seems to be a lot more interaction and working with communities, and whether that culture
8 did serve to scale up the level of racism that was present.

9 **MR COSTER:** I really can't speak to that. Tā Kim lived it, he's bringing his experience, I simply
10 can't say that. Maybe you have --

11 **MS KURA:** Yeah, I kind of -I think about it as that,- -I think that the closed culture as you talk
12 about was more prevalent earlier in my career than it was certainly later, and having a
13 contrary view was quite difficult in the 80s and 90s than it was later on-, so in that setting I
14 would understand why that could happen.

15 **MS SPELMAN:** Okay. I suppose another way of looking at this is considering, and again this is
16 at the historical, and I'll ask about the present in a moment, but about the level of structural
17 racism that existed, or whether or not it did exist within Police in that period we're talking
18 about. And I'm thinking about this in relation to the Waitangi Tribunal who, as you know,
19 last year had an inquiry into Oranga Tamariki which examined many of the issues that are
20 also now being examined in relation to Police here. And as part of that the Crown in those
21 proceedings, and I'm looking here to the report He Pāharakeke MSC 0008144 at page 177.

22 It's widely known, of course, that the Crown made particular concessions as part of
23 those proceedings in relation to Oranga Tamariki. And what that was, the Crown conceded
24 that:

25 "Structural racism is a feature of Oranga Tamariki and its predecessors, and has
26 resulted from various legislative policy and system settings over time. The Crown
27 acknowledges that this has had adverse effects for tamariki Māori, whānau, hapū and iwi
28 and has detrimentally affected the relationship between Māori and the Crown. Further, the
29 Crown acknowledges the role that poor practice, lack of engagement and poor cultural
30 understanding have played to create distrust throughout the Care and Protection system."

31 And clearly this hearing and those concessions were fairly fundamental when they
32 happened. And I just wondered in terms of your Police leadership whether that was
33 considered by Police. That concession made by Oranga Tamariki in relation to Police's
34 history, was that something that was considered by your leadership when it happened?

1 **MR COSTER:** I'm not aware that it was specifically, it may have been but I'm not aware that it
2 was. Clearly, we've started our own piece of work aimed at looking at structural inequality
3 inside of justice, specifically Police's role in that. It will be considered by the Waitangi
4 Tribunal.

5 **MS SPELMAN:** Thank you. Were you still? --

6 **MR COSTER:** I was just going to say, issues connected with policing will clearly be considered
7 as part of the Waitangi Tribunal's criminal justice kaupapa inquiry which Police is a key
8 part. So, yeah, that's all I can say on that.

9 **MS SPELMAN:** Sure, and the very same issues here in this forum, in this Inquiry that we're also
10 dealing with now.

11 A related aspect of that is accountability for you as Police Commissioner. In terms
12 of that, and your different functions within your role, who, if you could describe for us how
13 and to whom you're accountable?

14 **MR COSTER:** I'm operationally independent in terms of Section 16 of the Policing Act 2008.
15 However, I'm accountable to the Minister of Police for the administrative function of the
16 organisation. So, I have a split there in terms of my functions.

17 **MS SPELMAN:** And in terms of that administrative side, budget and number of police officers,
18 that sort of thing?

19 **MR COSTER:** Yes.

20 **MS SPELMAN:** But decisions about how and where Police are used and deployed, that's for you
21 to make independently.

22 **MR COSTER:** Correct.

23 **MS SPELMAN:** In terms of that independence, how do you ensure and not just you but any
24 Commissioner of Police throughout history, how do you ensure that you can exercise that
25 function independently and not, for example, be influenced by whoever the particular
26 minister of the day might be?

27 **MR COSTER:** Successive ministers have, in my observation, been pretty good about recognising
28 the operational independence of Police. The incentives are not probably to be accountable
29 for something that you don't need to be, and so that division's been respected, and -yeah-.

30 **MS SPELMAN:** I suppose the example we were discussing just before about the Dawn Raids and
31 I think you mentioned when you were talking about it that being an action reflective of the
32 community at the time but-- obviously that wasn't you as Police Commissioner back then,
33 but that was actually Police agreeing to use Police power in a certain way, which seemed

1 perhaps more influenced by the political views of the day; is that a fair summary of that
2 period?

3 **MR COSTER:** I'm not close enough to how that played in practice to understand those dynamics
4 at the time. But I need to point out that operational independence doesn't absolve us from
5 the general principle that Police will enforce the law, as it stands for the time being. And
6 so, whilst there's a level of discretion, it's not absolute.

7 **MS SPELMAN:** Sure, but the Police enforcement of the law would be done in a way that's non-
8 discriminatory, that would be the way that it should be enforced.

9 **MR COSTER:** It ought to be.

10 **MS SPELMAN:** And clearly that wasn't the case in relation to the example of the Dawn Raids;
11 would you agree with that?

12 **MR COSTER:** I think there's a question there about where the focus and effort was directed in
13 terms of the communities that may have been subject to immigration action supported by
14 Police and I think there's a pretty strong evidence base to say that the focus of that effort
15 was on the Pacific community particularly. But again, people more studied in it than I am
16 have looked at those issues and formed views, the Government's recently apologised and
17 Police actions were clearly part of that apology.

18 **MS SPELMAN:** Yes, which would make your acceptance of it I think fairly straightforward
19 I would have thought.

20 So, I know that this issue of racism has a historical point -of course it's a current
21 issue as well in terms of the understanding Police delivery work and I know that you've
22 spoken publicly about that a number of times- and it seems as though there's some
23 misunderstanding perhaps or contention around the terms that are used when we talk about
24 this issue.

25 **MR COSTER:** There certainly can be. For me the most important thing here is that we find a
26 meeting of minds which we have repeatedly failed to do, between the various reports that
27 have been written expressing views around structural racism and I suppose where the
28 Police organisation has sat on those things. Part of the disagreement I believe turns around
29 the use of terminology. For example, for those working in this area structural racism is
30 simply or systemic racism is a system that repeatedly gets different outcomes for one group
31 of people than another. But quite naturally when people working in a system hear that, the
32 assumption is, you know, you're saying that I have racist attitudes, but I don't. As we've
33 dug into this we've really focused on, well, what is it that we're particularly looking at here?

1 And it really is the systems, processes, policies, procedures that shape policing, and the way
2 that plays out for different groups of people.

3 Independent -sorry, individual attitudes, whilst potentially relevant to the
4 conversation, aren't actually where, you know, our independent panel's perspective, where
5 the greatest focus should sit. And so,- we've been very blessed to have Tā Kim leading the
6 independent panel overseeing this work, we have practitioners in this field who are very
7 respected, and we've brought in an operational reference group led by officers from around
8 the country who are able to engage in a conversation about policing and how these things
9 play out in practice.

10 So yes, the terms can be quite problematic and that's why I've resisted the use of
11 them because I really have felt that they don't get us closer to a meeting of the minds on
12 where the issues sit because of the misunderstandings that exist around them.

13 **MS SPELMAN:** I just want to make sure I'm clear on what you're saying with that, so there's
14 I suppose the difference between structural or organisational racism, and I think we all
15 agree that's different to personal racism, but what you've said is that it's difficult for police
16 officers to understand the difference between those terms?

17 **MR COSTER:** I think any time people hear the term, --or the average person when they hear the
18 term "racism" it immediately conjures up images associated with individual racist attitudes.

19 **MS SPELMAN:** So, it's that difference between the individual and the structural which is the
20 issue there? --

21 **MR COSTER:** I think that's probably the biggest area of misunderstanding which triggers a
22 defensive response that immediately shuts down the opportunity for an examination of how
23 we're working and what are the consequences of the way we're working.

24 **MS SPELMAN:** It seems as though as an alternative terminology, going back to your predecessor
25 in 2015, Commissioner Bush, he obviously used different words, he said unconscious bias
26 and accepted that that was present within Police, I think he said as it is in all organisations.
27 And had repeated that several times during his term and that's also, I understand, accepted
28 at that general level in terms of your position on that point?

29 **MR COSTER:** As a matter of fact, all human beings have unconscious biases, those are the
30 things that prevent us from stepping out on to a road without first looking as well as a range
31 of other consequences that come from the way our brains work. What we're talking about
32 in the UPD work focuses probably less on unconscious biases, although organisational
33 practices may play into individual unconscious bias as we're talking about policies,

1 processes, organisational ways of working that may not be suitable for the outcomes we're
2 trying to achieve.

3 **MS SPELMAN:** And the work, even the small part of it, that is around bias or unconscious bias
4 that you've described in the brief, that's specifically talking about unconscious bias in
5 relation to race or ethnicity as opposed to other types of bias?

6 **MR COSTER:** The term "unconscious bias" I think is less useful for us in this context than
7 systemic bias, because unconscious takes it back into the individual space, whereas pretty
8 clearly when we look at the criminal justice system, it sits more at the structural systemic
9 level.

10 **MS SPELMAN:** I suppose you could also have both, right, you could accept, which I think you
11 have publicly previously, that the Police as an organisation, individual officers within the
12 Police have unconscious bias, as do all humans, I think that's generally accepted, and what I
13 was just clarifying is, in that context you're talking about, unconscious bias in relation to
14 race, or specifically here in terms of the way that non--Pākehā are dealt with by Police as
15 opposed to other types of bias.

16 **MR COSTER:** I'm generally trying to avoid the use of the term "unconscious bias", I've repeated
17 it in reference to the previous acknowledgment by the previous Commissioner, but it's not a
18 term that I'm routinely using.

19 **MS SPELMAN:** Sure. So, instead of the focus on the individual, your decision is to focus at a
20 structural level but to speak about structural bias as opposed to structural racism; is that
21 correct?

22 **MR COSTER:** I'm actually,- I actually find the terminology less helpful than addressing
23 specifically what the behaviours are. Obviously I can talk to them, I can reflect on what
24 they tend to mean to different people, but the purpose of the Understanding Policing
25 Delivery work is to get beyond- I suppose the labels that are often thrown in different
26 directions when people are talking past each other to try and say, okay, well, we accept that
27 the criminal justice outcome has much worse outcomes -- criminal justice system has much
28 worse outcomes for Māori than for non--Māori. When we dig into that what are the factors
29 that are leading to that, what is the Police contribution to that and what would we need to
30 shift. I'll give you a simple example.

31 A construct that has historically been acknowledged within Police is the idea of the
32 attitude test, it's the equivalent of what the courts do when there is a more significant
33 sentence given to someone who hasn't acknowledged their offending. And so, if someone
34 is contrite and says yes, I did that, you know, and they're apologetic, they're probably going

1 to be sentenced lighter than if there's complete denial. And there's a similar thing that
2 occurs in terms of Police practice in the exercise of discretion.

3 Some might argue that's entirely appropriate because actually it reflects someone
4 who acknowledges their offending is much less likely to reoffend than someone who is
5 completely in denial. Others might say, actually if that response isn't helping to get us to an
6 outcome of the prevention of future harm then is it fit for purpose as something to occur
7 inside of Police practices and processes.

8 So those are the sorts of things that, you know, quite specific examples of where are
9 the decision points, what's happening in the interactions between Police and people that are
10 leading to different outcomes for one group than for others.

11 **MS SPELMAN:** Okay. So, I understand, I think, your present -day strategy in terms of obviously
12 you think that is the most effective way to proceed on these issues, is to --

13 **MR COSTER:** We have 14,000 people who we need to ensure are able to operate in the most
14 appropriate way for the communities that we Police. And so, whatever we do, if we don't
15 have an effective way of engaging 14,000 people in the conversation, then we're not going
16 to succeed. And the understanding --

17 **CHAIR:** Can I, --finish that sentence, please, I am sorry to interrupt you-- if you want to.

18 **MR COSTER:** No, go ahead.

19 **CHAIR:** I just wonder whether we might be going around ahead in circles, because you have
20 addressed the question Ms Spelman is asking in your evidence, paragraph 4.13, you say:

21 "Police is continuously working on introducing a variety of tools that help staff
22 learn and address racism, ableism and bias."

23 And then you talk about Manaki Āki, the learning resource. So, it seems to me
24 that - I'm not quite sure what this debate is about really, because you're saying here that you
25 are actually doing- that, you are working --

26 **MR COSTER:** Absolutely.

27 **CHAIR:** So, we accept the systemic stuff but you are actually working with staff members as well
28 in terms of their attitudinal frameworks and perceptions, cultural biases and the like; is that
29 right?

30 **MR COSTER:** Absolutely, but I think what we're saying is when it comes to the big outcomes
31 that we're trying to achieve, they come by tackling the systemic things that arise and that's
32 where our effort is focused, most significantly.

33 **COMMISSIONER ERUETI:** You are definitely making an effort to shift individual attitudes
34 about the bias that they bring to the job and discrimination?

1 **MR COSTER:** The mindset that we bring to our work is fundamentally important. What I'm
2 very mindful of, though, is there's plenty of evidence internationally that simply rolling out
3 unconscious bias training does nothing to shift bias, in fact sometimes it makes it worse.
4 And so, when we're talking about, you know, where is the biggest opportunity to make a
5 difference, it is looking more at that system process policy level. When we're talking about
6 individual attitudes, it's actually about, you know, on the positive side of the ledger the
7 expectations we set about fairness and equity, about bringing humanity to our interactions,
8 and that's the expectation I have of leaders that that's the environment they will create and
9 that's the way we would speak to our people about it.

10 **COMMISSIONER ERUETI:** What is the science saying, is it saying if you adopt that
11 unconscious bias and it's very individual -centric that people just become, you're saying that
12 people become defensive and shut down and just -there's self---denial --

13 **MR COSTER:** They maybe misinterpret the conversation as being directed at them and their
14 attitudes personally rather than the way an organisation or a system is operating, and
15 internationally there's research that shows unconscious bias training per se tends to identify
16 the cognitive biases that we all hold and then a lot of people then embrace those biases that
17 they think serve them well in their lives. That isn't where we're trying to get to here.

18 So, we've thought quite carefully about the best way to tackle this and that's why
19 we're working with Tā Kim and the panel and their insights are informing the approach that
20 we're taking.

21 **CHAIR:** I think we should move to the next topic.

22 **MS SPELMAN:** Thank you.

23 So the last point I just wanted to cover on this is obviously with all the work that
24 you've done, I know neither of you are coming today to suggest that things have been fixed
25 or that these problems don't exist anymore, and I suppose in terms of the more recent
26 examples of these issues coming up you'd be well familiar with the different concerns about
27 differential treatment in relation to pre-charge warnings, I think that was 2016 from the
28 IPCA, 2019 in terms of the tactical options reports, and most recently the issue around
29 photographing Māori children in particular out on the street, and so I just wanted to give
30 you a chance to comment, to clarify, I think, that these are issues the Police understand are
31 still very much current and ongoing and that's probably no doubt why you're doing this
32 work.

1 **MR COSTER:** Yeah, certainly Understanding Policing Delivery programme is looking at who
2 we stop and speak to, our use of force decisions and our charging decisions, and those are
3 called out as the --

4 **CHAIR:** You're all racing to the line here a little bit, just slow down, everybody, including you,
5 Ms Spelman.

6 **MR COSTER:** In policing internationally those three areas are called out as the biggest points of
7 tension, but there's a lot of complexity that sits underneath it. If we take use of force,
8 Police doesn't get to choose who presents with a mental health crisis or who has a drug and
9 alcohol problem that leads to a confrontation with Police, but we do get to shape the way
10 we respond to those circumstances when they come, so those are the things we have to dig
11 into.

12 **MS SPELMAN:** Does that research project that is going on, underway, also address and assess
13 how bias or discrimination has impacted the delivery of service on Pacific peoples?

14 **MR COSTER:** Yeah, it's not specifically about Māori, although that in a statistical sense is where
15 the biggest discrepancy lies, it is broad in terms of all of our delivery.

16 **MS SPELMAN:** So there would be ongoing work specifically in terms of in collaboration with
17 specific communities and with appropriate experts?

18 **MR COSTER:** Yeah, I'm absolutely sure that will be part of it and that's where the panel is
19 helping us to make sure we cover the ground we need to.

20 **MS SPELMAN:** Thank you. That's the end of the questions on those topics. I know
21 Commissioners had questions throughout but I just thought if there was any other questions
22 in relation to those topics before I pass over to Ms Basire.

23 **CHAIR:** Yes, I'm just wondering in terms of time. I'm conscious of time, we'll just take some
24 short questions now then we can wrap them up at the end. Is that all right?

25 **COMMISSIONER ERUETI:** Can I take, just going back to the comment before about
26 historically how racism was prevalent within New Zealand communities and the Police
27 force constituted, was representative of those communities, because I think in fact it was
28 mostly or all Pākehā in the 50s and 60s. With the -you- described how being at the sharp
29 end of policing that intense interaction, that that could have a dehumanising kind of attitude
30 towards the people that Police were dealing with. Would you accept then that those intense
31 interactions could lead to some amplification of the discrimination that the Police officers
32 brought to that interaction?

33 **MR COSTER:** There's a very real risk of that in policing, you know, alongside the risk that when
34 you're only seeing people on the worst days of their lives that becomes a dominant view of

1 what's happening in the community, so that is something we constantly have to battle with,
2 that the nature of the interactions we're having every day aren't necessarily representative of
3 what's happening in the community as a whole.

4 **COMMISSIONER ERUETI:** Yeah, but you could see it could have- it would follow it would
5 have that effect of amplifying attitudes. The other question I had was about the Treaty and
6 it's not in the Policing Act specifically, yet you have taken it upon yourself to spell out what
7 your Treaty obligations, and so you've got, is it a policy for giving effect to Te Tiriti- and
8 you've divided it into three different, articles one --

9 **MR COSTER:** Three parts.

10 **COMMISSIONER ERUETI:** Yeah, what do you think drives you to do that, to adopt that policy
11 internally if it's not written into the statute?

12 **MR COSTER:** I think this is something that successive Commissioners have seen as important.

13 You know, commitment to Māori and the Treaty is one of our six core values, it hasn't
14 always been, but it has been certainly for over a decade, or quite a bit longer actually, and I
15 think within the organisation it's accepted as the right thing to do at one level.

16 But there's more, sort of, if people can't agree it's the right thing to do, well, if more
17 than 50% of the prison population is Māori then unless we do things that work with and for
18 Māori, we will never achieve our outcome of preventing crime and harm, and we need to be
19 clear it's offending and victimisation too, so it just makes sense, it's the right thing to do.

20 **COMMISSIONER ERUETI:** Yeah, it does, and there's a sense of obligation to do something, to
21 make a difference, to make something right.

22 **MR COSTER:** Absolutely. The most common thing you will hear from people who joined
23 Police about why they joined is to make a difference. Then the conversation is simply,
24 well, how do you do that, what's the most effective way to make a difference? And as
25 we've focused more on prevention, which we have been doing for a decade, or more, then
26 it's obvious that you need to work in partnership because most of the problems that present
27 for Police occur well prior to Police having contact or indeed actual mandate.

28 **COMMISSIONER ERUETI:** Thank you.

29 **CHAIR:** Thank you, I think Ms Basire's going to take over; is that right?

30 **QUESTIONING BY MS BASIRE:** Yes, Madam Chair. E ngā Kaikōmihana, ko Kathy Basire
31 tōku ingoa, tēnā koutou. My name is Kathy Basire, for those listening, I am a middle-
32 aged- Pākehā woman with mid-length grey hair--, well, it's grey at the front, apparently at
33 the back it's not so grey, I'm wearing a black jacket and a cream dress.

1 Now, good afternoon -are we not, yes, we are at -afternoon -Commissioner- and
2 Deputy Commissioner. The focus of the next part of our questioning is going to be about
3 the Police's response to investigating and prosecuting abuse in care.

4 I want to thank you for your acknowledgment today and in your brief that the Police
5 have been listening closely to the evidence given at the hearings, and you have listened to
6 the survivors and you have reflected on their accounts of abuse and their accounts of
7 engagement with Police.

8 You would have heard common themes emerging from the evidence that the
9 Commission has been gathering over all its hearings. Survivors of abuse in care are both
10 children at the time and adults at the time. They experienced a wide range of abuse, both
11 by the people who were supposed to be caring for them, and other residents of their care
12 facilities.

13 The abuse is the type of crime that the Police should focus their most resources on
14 because we're talking about significant sexual violence, significant physical violence,
15 seclusion, restraint, overmedicalisation.

16 You would have heard the survivors say that often they felt they would not be
17 believed if they raised the abuse, or that the abuse was so widespread and normalised in the
18 institution that they didn't raise it. Many felt that the Police would not listen or act due to
19 the reason that they were in care, that they wouldn't believe a person who might otherwise
20 be seen as a bit of a troublemaker, that the Police may not believe them because they're a
21 mental health patient, or because they're disabled.

22 You would have heard survivors and family members speak of fear of speaking out
23 in case it made matters worse for their loved ones. And concerningly, and this is what I'm
24 going to turn to now, for some who did make allegations to the Police, they felt the Police
25 did not listen. Some were returned by Police to the very institution where the abuse was
26 occurring, and we have heard multiple allegations of failures by the Police to investigate at
27 all or investigate in a timely manner. The failures to investigate have led to failures to
28 prosecute alleged offenders and we've also heard evidence about alleged offenders being
29 able to continue to offend as they were just transferred to other institutions.

30 You have acknowledged in your brief of evidence, Commissioner, that at times this
31 has been uncomfortable to hear and I just want to emphasise that the wide range of people
32 that we have heard from, so we've heard from Māori, Pacific peoples, but also disabled
33 people who have been disabled in many different ways, and those experiencing mental

1 health conditions, and the range of abuse that they suffered was in multiple types of
2 institutions and care homes and institutions and hospitals.

3 So, what I want to focus on now is what the Police's response to investigating this
4 abuse has been historically. But before I do, and because we sort of went over time so I
5 think we'll just explore this first; would you agree, Commissioner, that there is an inherent
6 power imbalance whenever a child or an adult is in care compared with the adults who
7 provide care?

8 **MR COSTER:** Absolutely.

9 **MS BASIRE:** And you'd agree that violence, whether it's sexual or physical, at its core is abuse of
10 power.

11 **MR COSTER:** Absolutely I do, noting that for some types of violence there was formal
12 recognition of it in the form of corporal punishment so that is a carve-out, but in general
13 terms, yes.

14 **MS BASIRE:** I don't want to dwell too much because we've just had a whole discussion about
15 unconscious bias, bias, structural bias, but I just want to explore, pick up on something that
16 you said to my colleague, which is that very often the same groups of people are offenders
17 and victims, so offender groups experience victimisation often at the same rate and that is
18 something that perhaps is not widely known but if we take a -- would you agree?

19 **MR COSTER:** It's well recognised within Police that the people we are dealing with as offenders
20 today may well present as victims tomorrow, so that is uncontentious for us.

21 **MS BASIRE:** Yes. And so just for those listening, you might have an example of somebody
22 who's a gang member who perpetrate a crime and the next week they could be a victim on
23 another file because of what's happening in that group.

24 **MR COSTER:** I can give you a really relevant example today. We looked at a cohort of 63, I
25 think it was, young people who had committed ram raid offences in Auckland in a recent
26 period. More than half of those presented to Police as being present at a family harm event
27 by the age of 3. So, there's a close connection between offending and victimisation.

28 **MS BASIRE:** Yes, but when we look at abuse in care, which is the focus of our investigation,
29 would you agree that there is a difference that the Police don't see as much which is the
30 offender group in abuse in State care, when we're talking about the people who ran these
31 institutions or employed in these institutions, were actually quite different from the victim
32 group. Do you understand what I mean?

33 **MR COSTER:** I'm not -in- terms of their position of power do you mean?

1 **MS BASIRE:** Well, in terms of their position of power, but also in terms of their demographics.

2 So perhaps I can explain. We've heard allegations against psychiatrists, doctors, teachers,
3 priests, people who in the past, in the timeframe that we're looking at, would be seen as
4 pillars of society.

5 **MR COSTER:** Sure, yes, yeah.

6 **MS BASIRE:** And I don't have the exact statistics, but very often they would have been Pākehā.

7 So, when we look at systemic bias, would it be fair to say that in the past the Police may not
8 have recognised the extent of the problem because of the group of offenders that the
9 allegations were being made against?

10 **MR COSTER:** It certainly seems to be true that the awareness of the risk of, for example, sexual
11 offending by people in positions of authority through this period doesn't reflect the
12 awareness that we all have today.

13 I would also note the challenge specifically within the justice system around
14 credibility and that someone who is maybe a young person in care, you know, be it for
15 offending or whatever the reason, is going to -in that time would have struggled to get
16 cut- through- in the criminal justice system relative to the testimony of someone from the
17 kinds of offices that you're referring to.

18 **MS BASIRE:** Yes. So would you agree that these issues, first of all, of lack of recognition that
19 people in positions of power can do, commit crimes, and secondly, that people in power
20 were inherently seen as more credible, those two issues affected the way you investigated
21 and prosecuted crime up until, for example, 1999?

22 **MR COSTER:** Look, I think questions of assumed credibility are kind of at the core of decision-
23 making around things like prosecution and actually remain so today when we consider in
24 bringing a case to court, is there evidence that could reasonably lead to a conviction and
25 credibility is one of those really difficult areas within it, particularly where you have a
26 vulnerable victim who may not be articulate, may have had issues in their own background
27 that might be used to undermine their credibility. So, it's very difficult when dealing with
28 vulnerable victims to get this right, and it remains an ongoing focus and challenge for the
29 system today I think.

30 **MS BASIRE:** Yes, so taking the focus back to abuse in care rather than victimisation per se,
31 you've recognised, you've agreed with me that there is a power imbalance between the
32 people who are providing care and those in care, and you've accepted that people in the
33 Police in the past most likely were affected by the lack of understanding of what was

1 happening in these care homes or institutions; why is it that the Police do not have a
2 universal policy about receipt of abuse of -- allegations of abuse in care even now?

3 **MR COSTER:** I think the vulnerability of people in care as compared to others is well
4 understood, as a result of the light that's been shone on these issues in the last couple of
5 decades. The response to people who have been -you- know, any situation of abuse, for
6 example, involving young people gives rise to questions of, for example, is this young
7 person safe, and that could be whether they're in their own family home, whether they're in
8 another context, whether the abuser has ongoing access.

9 So up to press, we haven't seen the need for a specific and separate policy from the
10 kinds of guidelines that inform all of our practice when you get a young person in a
11 situation of abuse.

12 **MS BASIRE:** Right. Well, of course, it is not only young people that we're looking at, we're
13 looking at adults at risk or adults in care. But just pulling it back to the discussion about the
14 power imbalance, when I was growing up, the Police's response to family violence was just
15 another domestic and they wouldn't even turn up. Now we've come a far way from that,
16 and I find it interesting that all the policies that have been developed around what was
17 called domestic violence, and now is called family harm violence, acknowledges this
18 inherent power imbalances that occur in families and I've looked on your website and
19 there's lot of really interesting information about wheels, power control wheels, there's a
20 much more greater understanding of psychological abuse, coercion, control within families.

21 However, when we look at abuse in care, you don't appear to have developed the
22 same sort of policies. Do you think that is something that the Police could look at?

23 **MR COSTER:** I definitely think we should be open to looking at it. My personal view is that the
24 insight people have about vulnerability of -our people have about the vulnerability of
25 children in a family violence situation transfer over pretty easily into any situation where a
26 young person or indeed an adult who has vulnerabilities are at risk but, you know, it's
27 certainly something that could be reflected in -Police -explicitly- in Police training and
28 practice.

29 **MS BASIRE:** Thank you. We're going to talk more this afternoon about data collection, but at
30 the moment the Police do not have any way of telling the Royal Commission in the
31 last year how many allegations of abuse in care its received, does it?

32 **MR COSTER:** Not as a statistic, no.

33 **MS BASIRE:** And that's because the way the data is collected is individual to the person, the
34 people involved?

1 **MR COSTER:** Yes, Police's systems are continuously evolving in terms of the data we collect.
2 We have a large number of boxes that can be ticked on any given file to reflect hate crime,
3 family violence, a whole range of different kinds of offending. And abuse in care could be
4 another of those. The challenge for us in collecting data is that we tack on so much
5 requirement that our frontline staff can't realistically and practically give effect to all of that
6 data gathering requirement.

7 So I think a question we would ask, you know, in considering whether that should
8 be part of our system, is for what purpose will this be used and relative to all of the other
9 things that people would like us to collect, is this a good one to include? I accept it would
10 have been incredibly useful for this Commission to have that data. I suppose the question
11 would be is there an ongoing need for it. Again, something that we could consider if there
12 was a clear need for that kind of ongoing monitoring.

13 **MS BASIRE:** Because you do collect data on family harm violence?

14 **MR COSTER:** Yes, we do.

15 **MS BASIRE:** I guess part of my point to emphasise is that do you agree the Police need to be
16 careful not to have focus on that group of people that they see as problematic, that group of
17 people who are offending against each other, and lose sight that there are other offender
18 groups in New Zealand who cause significant harm and if it's anything like what we've
19 heard, if any of that is continuing into the future it means that people are going to continue
20 to be harmed and it's not going to get picked up. Would you agree?

21 **MR COSTER:** Obviously by the time it's getting to the point of being recorded as data in Police
22 systems it's quite a long way down the track in terms of where you'd want to put your
23 protections for people. So, I can certainly accept that it could be useful to have a lens on
24 that. But I would also note that our child protection policies, our adult sexual assault
25 policies and our monitoring of all of the cases that sit in that category would now pick up
26 the vast majority of the behaviours that are in scope for abuse in care.

27 So, you know, our practices around particularly child protection and adult sexual
28 assault have moved massively in the last 15 years, such that I would be less convinced of
29 the value of specific data collection about care settings per se.

30 **MS BASIRE:** But those two policies that you just talked about miss the whole cohort of people
31 aged 16 to 65 who are vulnerable adults who might be --

32 **MR COSTER:** If the abuse was not sexual, yes, that's correct.

33 **MS BASIRE:** I think that probably brings us to an appropriate time to have lunch before I start
34 asking you some more specific questions.

1 **CHAIR:** We're going to take a shortened lunch adjournment today, we are a going to take 45
2 minutes, so eating will be more rapid than usual, and that is because we've got a lot of work
3 to do. Thank you, both, and we'll see you all back here at 1.45. Thank you.

4 **Lunch adjournment from 12.59 pm to 1.52 pm**

5 **CHAIR:** Welcome back, everybody. Ms Basire.

6 **MS BASIRE:** Thank you, Madam Chair.

7 Before the break, Commissioner and Deputy Commissioner, we were having a
8 discussion about victim and offender groups and just before I go on to ask some more
9 detailed questions, there's just one point I wanted to raise with you.

10 You gave us the example of the young men involved in ram raids and a large
11 percentage of those are known to Police from family harm incidents when they were as
12 young as 3. I just wanted to point out or ask you, are you aware of the level of statistics of
13 current offenders who were victims of abuse in State care?

14 **MR COSTER:** No, because we don't have a statistic for abuse in State care per se, but obviously
15 we,-- there is research that looks at, for example, the prevalence of family violence or abuse
16 in the background of inmates generally which is very high, I can't put a number on it, but in
17 my mind it's in the vicinity of 50%, it's high.

18 **MS BASIRE:** And would you accept, and we don't have the statistics either because nobody's
19 kept them, that there's a large percentage of the prison population today would be survivors
20 of abuse in care?

21 **MR COSTER:** I probably can't say that because I just don't know that to be true. I do know that
22 in a more general sense abuse and family violence feature very highly in the histories of
23 inmates but I have no way of knowing whether that statement is true.

24 **MS BASIRE:** We have taken many survivor statements who have gone on to offend after they
25 have been victims of abuse in State care rather than family violence, would you accept,
26 even though we don't have the statistics, that abuse in care has been a pathway into crime?

27 **MR COSTER:** I would certainly acknowledge it is a relevant influence, also recognising that
28 many of the young people who went into care had a range of challenges in their
29 backgrounds, but you can't deny the impact of abuse on future offending.

30 **MS BASIRE:** Thank you.

31 Now, you would agree that the most important tool for prosecution is a thorough
32 investigation?

33 **MR COSTER:** Sorry, say that again?

34 **MS BASIRE:** The most important tool for prosecution of an offender is a thorough investigation?

1 **MR COSTER:** Yeah, I think that's fair.

2 **MS BASIRE:** Because without a thorough investigation you don't get the best possible evidence
3 and it's the best possible evidence that you want to put before a court if you charge
4 somebody.

5 **MR COSTER:** Absolutely. Sure, yeah.

6 **MS BASIRE:** And you would agree that without adequate and timely investigations, often
7 prosecutions fail?

8 **MR COSTER:** Yes.

9 **MS BASIRE:** Now, you have in your brief of evidence acknowledged that Police have made
10 failings in regard to investigating abuse in State care, in particular in relation to Lake Alice.
11 I just want to explore some more examples today that the Commission have gathered, and
12 I just want to emphasise that these, hopefully if I have time, I am going to cover three,
13 Ms Spelman is going to cover one, which are a very small number of the examples that
14 have come to our attention.

15 So the first example I want to talk to you about is a case that was referred to in
16 Detective Kirby's brief of evidence and that is where a survivor, a Deaf survivor who
17 attended a residential Deaf School as a child,-- he attended the residential Deaf School as a
18 child; as an adult he went with a group of other Deaf former pupils to the Police in 2008 to
19 open up a conversation about allegations about a teacher at the school.

20 So we have to be careful not to name names, but I just want to check with you you
21 understand which case I'm talking about?

22 **MR COSTER:** Yes, I do.

23 **MS BASIRE:** Thank you. So in 2008 this survivor went with four other people to the Police and
24 we have a job sheet, which is for the Crown and transcript purposes, NZP0049063. For
25 ease I will just paraphrase some information in the job sheet.

26 This was a detective who herself had learned sign language.

27 **MR COSTER:** A constable, correct.

28 **MS BASIRE:** Yes, you're right it was a constable in Henderson, and it was through her
29 engagement with the Deaf community that these people came forward. And so, I'm going
30 to ask you a number of questions about this investigation, but would you agree the very fact
31 that it was that point of contact that these people came forward that it is important for the
32 Police to have outreach to, for example, disabled communities?

33 **MR COSTER:** Yeah, certainly, and I think it was impressive in this case that an officer had taken
34 it on herself to learn sign language, recognising the need in her area. And it's an area where

1 we've identified the need for ongoing improvement despite improvements made more
2 recently.

3 **MS BASIRE:** Right. So, she had a meeting with these five people, and I understand there was an
4 interpreter also present, and they raised allegations of abuse during their school years, and
5 they told her to date there was at least 80 Deaf people wanting to make a complaint about
6 this person, who I'll call Person A, and that a list was being collated of those people and in
7 this written job sheet she says:

8 "The complainants are very emotional about this issue, very passionate about
9 retribution and are ready to speak out about this injustice."

10 Attached to the job sheet which we got, dated 2008, is a typed-up list of about 30
11 individual people's names, the years they would have been at the Deaf School and where in
12 the country or overseas they were believed to be residing. However, after that, nothing
13 happened, did it, there was no investigation in 2008?

14 **MR COSTER:** That's correct, I understand there was a misunderstanding about next steps in
15 terms of where the initiative sat for what would happen next and that the officer's belief
16 was that there was a larger list of names to come, and beyond that it was not followed up,
17 which clearly is a miss on our part.

18 **MS BASIRE:** So, you would accept that that was a failing?

19 **MR COSTER:** Yes.

20 **MS BASIRE:** And it's a fairly recent failing isn't it, because 2008 is only less than 15 years ago.

21 **MR COSTER:** It is fairly recent. What happened also around that time was a very significant
22 look into Police's handling of child abuse and sexual abuse cases within the Wairarapa area,
23 which led to very significant national reflection on Police's protocols, practices, policies,
24 around the handling of complaints of this kind. That led to the establishment of
25 additional, - to dedicated investigative groups for particular kinds- of offending, and a
26 much greater monitoring and awareness of cases of this nature.

27 So whilst it is relatively recent, it preceded what I would describe as the most
28 significant shift in recent memory of Police's practices in responding to cases of this nature.

29 **CHAIR:** Was that as a result of this case or it just happened to be coincidental?

30 **MR COSTER:** Coincidental. So, in connection, or around the time of the Commission of Inquiry
31 into Police Conduct a related issue was concern about Police practices and to some extent
32 attitudes in relation to, particularly, sexual assault and it was around that time that it was
33 identified a massive backlog of cases of this nature in the Wairarapa, which led to a broader

1 national look. And so, we now have quality assurance frameworks, dedicated investigators,
2 ongoing national monitoring of child protection and adult sexual assault cases.

3 **MS BASIRE:** In what year would you say that things improved?

4 **MR COSTER:** The look into all of those matters in the Wairarapa was around 2010 as I recall it,
5 and since, -off the back of that we have had an ongoing process of improvement. So- it
6 started immediately and quite intensively in the, let's say, few years around the time of
7 where you're talking about, and then has continued through the course of the decade that's
8 followed.

9 **MS BASIRE:** In this case nothing happened in 2008, but in 2010 this survivor with another group
10 of Deaf people, and I'm not sure whether they're exactly the same group or a wider group,
11 met with the, or went through the Confidential Listening Service process, and they outlined
12 that they had spoken to a constable from Auckland and nothing had happened, and so
13 again, the Confidential Listening Assistance Service sent through a Police referral to the
14 same Police Station in 2010, two years later. It sat for over, almost two years four months
15 before it was assigned for somebody to do something about.

16 Would you agree with that from the documents?

17 **MR COSTER:** I'm not going to dispute the detail of that, I'm not across the fine detail, but
18 certainly would acknowledge that's an unacceptable delay.

19 **MS BASIRE:** And just for the record, that's NZP0041742.

20 So, you agree it's an unacceptable delay. What I want to talk to you about now is
21 what actually happened when it was "investigated", and I've actually raised my hands and
22 indicated "investigated" with inverted commas, because I'd like to know what your opinion
23 is on the level of investigation that actually occurred.

24 So, I'm going to discuss what then happened in 2012 reliant on a job sheet which is
25 NZP0041743. This was an acting detective sergeant,- no, it was a detective constable who
26 appears to have been given the task of investigating. He is assigned the file, he's told it's an
27 historic file from 35 years ago and involved a- and --I'm quoting this from the job sheet:

28 "A minor assault on students by a teacher, it's been around quite a few people but
29 had not been finalised."

30 Then the police constable outlines the steps that he goes through and the first step
31 he went to was talking to a woman who was a lawyer advocate for three of the students
32 who'd come forward. He then phoned the school that the teacher was currently teaching at
33 and he leaves a message to find out who he should talk to and without ever meeting the
34 complainants or taking a statement or evidential interview from them, he rings the teacher

1 involved and advises him of the allegations. He then rings the lawyer involved and tells her
2 the threshold to proceed to trial would not be reached.

3 Now, there's a number of things that happen after that, but I just want to discuss,
4 would you call that an adequate investigation on any level?

5 **MR COSTER:** My understanding is the investigation file for this case was not available because
6 it was destroyed in line with our normal destruction authority. So I'm a little
7 uncomfortable, based on what I have to hand in front of me right here, about relying on a
8 single job sheet to characterise everything that occurred in the context of that investigation.

9 I think that's a bit unsafe unless I'm misunderstanding the situation.

10 **MS BASIRE:** Well, the survivor who's given a statement to us who went to the police station and
11 met the constable who communicated with him via sign language and then went to the
12 Confidential Listening Service has never been evidentially interviewed by the Police, he's
13 never given a statement to the Police, the Police have never been to see him. You are
14 correct that whatever was on the investigation file, if there was one, is no longer available
15 because the Police have destroyed it and I want to talk to you a little bit about that later; but
16 it seems clear from the job sheet that, and a report form, --what we'll do is just put the job
17 sheet, which is NZP0041743, up on the screens.

18 **CHAIR:** And for the information of those watching, apologies but you won't be seeing this, so
19 Ms Basire, any parts that are relevant if you could read them out.

20 **MS BASIRE:** Yes.

21 **CHAIR:** Thank you.

22 **MS BASIRE:** So that is the job sheet. So:

23 "25 June 2012, I receive a file from the acting Detective Sergeant, I'm advised it's
24 an historical file from 35 years ago and involved a minor assault on students by a teacher,
25 it's been around a few people, has not yet been finalised."

26 Can you see that first part?

27 **MR COSTER:** Yes.

28 **MS BASIRE:** Next, the first thing he does on that day is ring the lawyer advocate, speak about
29 previous emails and dealings she had with other police officers, and he reiterates to her that:

30 "Given the nature of the offences and the historic nature may not reach the court's
31 evidential sufficiency test, and there's issues about what might be illegal now not
32 necessarily illegal back then".

33 She confirms she's realistic about the expectations and she's advised the
34 complainants.

1 But you will see in this job sheet there is no indication that he ever speaks to the
2 complainants?

3 **MR COSTER:** Certainly not on what's in front of us, yeah.

4 **MS BASIRE:** And then if we can have a look at document NZP0041744, and Toni, if that could
5 be put up on screen.

6 So, this is a report form which, for those not in the know, is something that is a
7 summary of an issue that one police officer is seeking approval, to be fair, from a senior
8 police officer; is that a fair way of summarising that document?

9 I can see you are nodding.

10 **MR COSTER:** Yes.

11 **MS BASIRE:** So, in this report form, the constable has introduced to his senior the file, he's said
12 that the complaint originally surfaced in 2008 when members of the Deaf community
13 approached the constable, and this is where there seems a conflict in the evidence that the
14 Police's understanding was that group of people would appoint a spokesperson about
15 whether they wanted to proceed with the complaint. He then outlines:

16 "The complainants did not get back to the Police but some two years later made
17 contact via a lawyer from Auckland Disability Law as per the attached e-mails on this file."

18 I know you say that you're uncomfortable without seeing the investigation file, but
19 it would indicate in conjunction with that job sheet that it's the e-mails on the file from the
20 lawyer that is the basis of the information.

21 **MR COSTER:** It appears to be.

22 **MS BASIRE:** And what we know from the later statement that we got from that survivor is that
23 what is summarised under his name is a minimisation of what he's told us.

24 **MR COSTER:** Sorry, may I just see the next page of that report?

25 **MS BASIRE:** Yes, yeah, sorry I forgot you can't scroll yourself. So the next page, so we're
26 talking about the person at the top of that page.

27 **CHAIR:** I think it's worth telling the world that it outlines the allegations made by three of the
28 survivors at least. Is this the end of the,- is it just, -the- three- complainants?

29 **MS BASIRE:** Yes. And then if we just go to the next page, page 3, again it's difficult because it
30 says "as part of the Police investigation the following was completed" and there's a list of
31 things that have happened but there's no indication of speaking to the complainants.

32 **MR COSTER:** Maybe to cut to the chase, certainly it would be normal and expected practice
33 today that if you're going to make a decision on a case that you'll have interviewed the
34 victim by an appropriate means and had the opportunity to assess what evidence they would

1 give. On the face of it that hasn't occurred here and they've relied on the account from a
2 lawyer acting on behalf of those complainants for the nature of the behaviour concerned
3 and they've described it, accepting that there appears to be a gap between the victim's
4 account of that behaviour and what's described in this report, and on the face of it have
5 made the decision based on an assessment of how corporal punishment might play into a
6 prosecution, or the evidential sufficiency for a prosecution in this case, to decide that the
7 matter is able to go no further.

8 It doesn't reflect the kind of depth we would expect to see in an investigation of this
9 kind, and which I believe we would see in an investigation of this kind today, particularly
10 because of the greater awareness that has come around mass allegation matters, as a result
11 of the learnings from our work on child protection and adult sexual assault cases since
12 around this time.

13 So hopefully that's a helpful reflection.

14 **MS BASIRE:** Yes, because bearing in mind the first complaint was that up to 80 people wanted
15 to speak to the Police about this, this was not a minor issue.

16 The mass investigation policy that you have, when did you implement that policy?

17 **MR COSTER:** I would have to go back, but it's certainly been in the last decade that that's really
18 come into what I would describe as a solid practice.

19 **MS BASIRE:** I think I understand it was 2017.

20 **MR COSTER:** That sounds about right.

21 **MS BASIRE:** Why did it take until 2017 for the Police to develop a policy when large groups of
22 people come to complain?

23 **MR COSTER:** I can't speak to the genesis of that with great confidence, I think we could provide
24 more context around what led to that. Obviously, this remains a really difficult area.
25 Knowing when to approach potential victims in a way that doesn't retraumatise, doesn't
26 contaminate evidence but does ensure that where there are potential for mass allegations
27 that the scale of those can be understood is an art not a science and I think it's an area where
28 we will continue to learn, and the practice now I think is much better in terms of setting up
29 0800 numbers, engaging with the institutions concerned and requesting them to provide a
30 standard communication out across people who might be affected to enable them to be
31 aware that an investigation may occur.

32 I know we are doing that much better now, but I think that continues to evolve.

33 **MS BASIRE:** Because the failures that you've acknowledged with Lake Alice pre-dated this,
34 didn't it?