

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

**Brief of Evidence of Thomas Fitzgerald on
behalf of New Zealand Police
Investigation into abuse in State psychiatric care**

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1 Introduction

- 1.1 My name is Thomas John Fitzgerald.
- 1.2 I am a Detective Superintendent, my current position is the Director: Criminal Investigation Branch, New Zealand Police. I have been in the Criminal Investigation Branch for 28 years commencing in 1993 and this position since February 2020.
- 1.3 I have been asked to provide this brief in response to some of the issues raised in Notice to Produce 22. In that Notice, Police was asked:
3. Between 2002 and 2010, what policies or procedures underpinned NZ Police investigation of complaints of sexual offending or assaults of any nature on a child/adolescent? What did best practice look like at this time?
- 1.4 In Michael Blair Webb's 4 December 2020 response to Notice to Produce 22, in response to the above question, Mr Webb stated at paragraph 3.7:
- These policies, procedures and guidelines provided instructions for Police staff on the appropriate steps to follow in the investigation of these type of matters during the relevant period. It is anticipated that further insight into the prevailing approach to best practice investigations could be provided by a Police witness who has particular knowledge and expertise in this area; and who might be able to offer a wider contextual view and cover any related matters the Royal Commission considers pertinent to the LACAU case study.
- 1.5 My evidence is provided on that basis. This brief will cover:
- (a) the development of Police policies and procedures;
 - (b) the role of policy and procedure in Police investigations;
 - (c) an overview of Police investigations in general;
 - (d) the investigation of child abuse and of historic allegations;
 - (e) sexual assault investigation policies, including from 2002 to 2010;
 - (f) child protection policies, including from 2002 to 2010; and
 - (g) best investigation practice during the 2002-2010 period, with some comments on more recent policy as well.

2 The development of Police policies and procedures

- 2.1 In general, and in relation to investigative practice in particular, prior to 2008 Police was governed by the Police Act 1958 and associated regulations. Under that Act, Police policy and procedure was governed by a complex Police Instruction system. This included more than 1,400 "General Instructions", 113 "Manual of Best Practice" chapters, "Policy Pointers", circulars and directives from the Commissioner, and other documents. General Instructions were the primary operational and administrative documents that governed day-to-day policing.

- 2.2 The 1958 Act provided for the issuing of General Instructions by the Commissioner. By reg 5 of the Police Regulations 1992 all members of Police were bound to obey and be guided by those instructions. Police General Instructions were published to communicate them to members of Police.
- 2.3 The Commissioner's Office from time to time issued Policy Pointers. These were subordinate to General Instructions. These Policy Pointers took the form of detailed instructions on a specific issue.
- 2.4 Within each Police Region or District, Commanders had the authority to issue District Orders applicable to all their staff.
- 2.5 In addition to policy advice, Police published manuals of instruction to staff. These gave practical advice and guidance for dealing with specific crimes or incidents and were referred to as the "Manuals of Best Practice". They were developed to reduce the number of General Instructions under issue and to provide general advice on appropriate methods for investigation or management of crime, incidents or other occurrences.
- 2.6 The complexity of the Police Instructions structure prior to 2008 was the subject of criticism as part of the 2004-2007 Commission of Inquiry into Police Conduct. The Police Instructions system was found to be "unnecessarily complicated, voluminous and confusing" and allowed for "inconsistencies to develop between police standards, procedures and policies because it lacked any mechanism to ensure that they are consistent."
- 2.7 As part of Police's Corporate Instrument Review Project in 2008, all existing documents were migrated across to the 'Police Instructions' publishing site. The Police Instructions Team worked with other stakeholders in Police to review, update, and consolidate all related policies, procedures, and general instructions into single source Police Manual chapters.
- 2.8 The Police Manual is the national Police policy. It contains the instructions and guidance for administrative and operational aspects of policing in individual chapters including nationally consistent operating principles, practices, policies and procedures. Police officers are expected to comply with all mandated requirements in the Police Manual and follow good practice process and procedures unless there are good and justifiable reasons not to.
- 2.9 While the Police Manual may contain 'general instructions' issued by the Commissioner under section 28 of the Policing Act 2008, it is not itself a 'general instruction.' There are currently only two documents that have been expressly issued as a 'general instruction' – these are the Police Code of Conduct and a document issued in May 2020 concerning warrantless entry under the COVID-19 Public Health Response Act 2020. Both of these general instructions are published within the Police Manual as separate chapters.

3 The role of policy and procedure in Police investigations

- 3.1 A broad knowledge of investigative policy and procedure is essential to the conduct of an effective investigation.
- 3.2 However, rather than setting out a detailed plan for how to conduct an effective investigation, policy and procedure form a baseline and provide a starting point

for an investigation. Policies and procedures set a national standard below which investigations should not fall. A desired outcome of the policy is that investigations are carried out at a consistent standard across New Zealand and victims receive a consistent level of service.

- 3.3 Many policies include technical requirements for investigation, such as requirements for recording witness or complainant interviews. These are consistent with the requirements under the Evidence Regulations 2007, which stipulate how these interviews should be undertaken, disclosed, and stored.
- 3.4 Policies and procedures also allow compliance to be assessed, and opportunities for improvement to be identified.

4 An overview of Police investigations in general

- 4.1 The goal for all investigators is to conduct a good, thorough, and effective investigation. Although policy and procedure set a benchmark, they are general in nature and need to be tailored to each specific investigation. The style, approach, and heart of an investigation are not and cannot be mandated by policy or driven by a desire to comply with policy and procedure. There will be differences in how different investigators carry out an investigation and, within an appropriate range, that exercise of discretion and judgement is appropriate and conducive to good investigations.
- 4.2 Within the framework provided by policies and procedures, investigations often include an initial fact finding stage which builds the evidentiary picture and may include interviews, followed by an assessment of the evidence, which may include obtaining expert and legal advice. These phases overlap and inform each other, and the progression of an investigation will not always be linear.
- 4.3 During the initial phase the investigator must consider the urgency of making enquiries based on current risk to the alleged victim or others who may be unsafe, and what steps need to be taken immediately to secure their safety. All investigators are constantly required to consider the appropriate prioritisation of the cases they are looking at.
- 4.4 Investigations are conducted with an awareness of context. At each stage, an investigator considers the growing factual picture, the possible and likely outcomes, the level of urgency and threat, and the future of the case. There is an awareness that prosecution decisions will be challenged through the criminal prosecution process (if charges are laid) and a corresponding desire to ensure that decisions are robust.

Initial action – contextual fact-finding

- 4.5 First, an officer has to understand what they are dealing with in terms of the facts. The whole circumstances of the matter have to be considered. Every available fact must be considered and synthesised so that it can be used in advancing the investigation. Facts that are needed but not immediately available must be uncovered. The fact finding process is guided by the possible shape that the investigation may take. Even at the early stages, an investigator will be thinking of the possible charges that may result from the investigation. Those possible charges may guide the types of facts the investigator looks for. If it becomes apparent that a particular factual issue is going to be particularly

difficult, this may become the focus of the inquiry. For example, in a case where there is strong evidence of an assault, but the identity of the perpetrator is in question, the focus of the fact finding may turn to the identify issue. Without sufficient evidence of the identity of the perpetrator further facts on other aspects of the investigation are unlikely to contribute to a successful prosecution.

- 4.6 Factual groundwork will include interviews of witnesses and victims, scene examinations, and gathering forensic evidence. Throughout the fact finding process, the goal is to develop a thorough understanding of the factual situation, which requires an assessment of witness credibility, and thorough due diligence.
- 4.7 There is a risk of bias and of poor investigation when investigations are conducted without the entire factual picture. The factual groundwork is absolutely essential to a good investigation.
- 4.8 In the course of fact finding, the purpose of the investigation must be considered. This allows consideration of the urgency of the investigation, and consideration of how to develop the investigation to allow for movement to the critical phases.

Investigation and evidence assessment

- 4.9 Suspect interviews, arrests and laying charges are critical phases of an investigation. Priorities and timeframes determine the progress through these phases. It is common for suspect interviews to take place later in the investigation, once most of the other information has been located, but this varies from case to case. Sometimes witnesses will be interviewed more than once.
- 4.10 Decisions to arrest and charge are commonly made after witness interviews and the completion of factual investigations. However, arrest and prosecution decisions can bring to light further information and further witnesses, which may require additional rounds of fact finding, witness interviewing and similar.
- 4.11 As part of evidence assessment, the investigator must consider how persuasive the evidence (including witnesses) are likely to be in a court context, in front of a judge or jury.

Charging and expert and legal advice

- 4.12 In a complex investigation, police will take expert and legal advice in relation to the case, in order to make a prosecution decision. A decision to lay charges requires both that there is sufficient evidence to produce a reasonable prospect of conviction, and that prosecution is in the public interest.¹ Legal advice may be relevant to whether there is sufficient evidence to charge, in particular in considering whether the evidence meets the legal test for offending and the availability of any defences.
- 4.13 Ultimately, a charging and prosecution decision is a Police decision. Advice is sought, and peer review of advice may be sought, alongside consultation with

¹ As per the Solicitor-General's Prosecution Guidelines 2013, and, previously, the Crown Law Prosecution Guidelines 2010 and 1992.

other officers. The ultimate decision will finally be made on the basis of the facts and taking into account the advice given. In that regard (and with the Lake Alice investigation in mind), it would be extremely uncommon for an investigator to proceed to lay charges where they have received clear legal advice against doing so. I cannot recall any such case in my career. The situation would be different if the legal advice is ambiguous, or different opinions are received, in which case the investigator would have latitude to proceed to lay charges.

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

5 The investigation of child abuse and of historic allegations

- 5.1 Specific investigation policies and best practice guidelines recognise the importance of these types of investigations and the unique nature and challenges they bring.
- 5.2 The first determining factor in the way these investigations are undertaken is the age, maturity or intellectual capacity of the complainant at the time of reporting to Police. Complaints made by those who are adults at the time of reporting are generally investigated under the Adult Sexual Assault Investigation policy. Police will approach child complainants differently to adult complainants in light of their age, vulnerability, and intellectual development.
- 5.3 It is also recognised that matters of a sexual nature require extra care, empathy and support. Specialised policy and procedures have been instigated to assist sexual violence complainants.

Child protection investigations

- 5.4 Child protection investigations have their own particular challenges, as children are some of the most vulnerable members of the community and it is well recognised that child abuse has a devastating effect on the child.
- 5.5 Child safety is a critical issue and the investigation of child abuse is given a high priority by Police. Police has adopted a broad approach to child safety and is committed to a prompt, effective and nationally consistent response to child safety, in conjunction with other agencies and community partners. The use of formal processes ensures all the elements of good child protection practice are applied.
- 5.6 There are subtle differences between investigating reports of child safety concerns and other criminal enquiries. Most notable is the power imbalance between the child and the offender, and the subsequent impact and consequences of abuse on the victim.
- 5.7 Some elements of Police's approach to child abuse allegations are aimed specifically at providing for child complainants, such as Police interview techniques. These elements of Police practice would not have applied to the reports of child abuse at Lake Alice received in the mid-2000s, as the complainants were already adults. Other elements of the Police approach would however continue to be relevant, such as Police's understanding of the specific obstacles to reporting crime for children at the time of offending.

Investigation of historic allegations

- 5.8 Investigations of historic allegations are not inherently different to other investigations. However, there is a reduced level of urgency relating to these claims owing to the lack of immediate danger to the victim. The lack of immediacy does not mean they are considered less serious.
- 5.9 Where historical allegations have been previously investigated, the initial focus of the investigation will be on what has changed since previous investigations. Victims' and witnesses' memories can change over time. The investigator needs to understand what has changed and why it has changed.
- 5.10 Once that is understood, the investigator will consider what is necessary to establish a case. The initial stage of a mass allegation investigation (such as Lake Alice) may include a scoping phase. This means working out the depth and breadth of the investigation that should be undertaken. In a historical investigation, scoping is often the most complex exercise, and it can change as the investigation goes on. Determining what facts are available, and the nature of the circumstances is complex. Witnesses will need to be interviewed or re-interviewed, with the additional awareness of the risk of memory lapse given the time that has elapsed.
- 5.11 As with other investigations, the person of interest interviews and suspect interviews are crucial and must be undertaken at the appropriate point, and expert and legal advice should be taken. Decision-making in relation to investigations is not linear, and further witnesses may come forward following a charging decision or other publicity about the case, which may change the scope of the investigation.

6 Sexual assault investigation policies

- 6.1 The Police adult sexual assault investigation policy applies when the complainant reporting the offence is an adult at the time of reporting regardless of whether they are a child when the offence occurred.
- 6.2 While general investigative best practice has not changed substantially over time, sexual assault investigation policy, and in particular investigation guidelines have changed substantially for the better, setting more effective standards, and providing more thorough guidance.
- 6.3 The Adult Sexual Assault Investigation Policy was first published as a Policy Pointer on 6 February 1998, and designated a two-year lead-in time to allow police to meet the requirements of the policy. Prior to this Policy Pointer, sexual assault investigation was provided for in the Police Manual. The new policy brought a greater victim focus to such investigations.
- 6.4 The Adult Sexual Assault Investigation Policy was updated by a version which commenced on 1 August 2003.²

² New Zealand Police *Adult Sexual Assault Investigation Policy* 1 August 2003. Provided to the Royal Commission in response to Notice to Produce (NTP) 6 on 26 May 2020.

- 6.5 The 2003 Adult Sexual Assault Investigation Policy immediately directed the reader that it “provides the policy and principles for the practice and procedures for the investigation of Adult sexual assault”.
- 6.6 It contained sections on principles, Police commitments, selection of personnel, training, procedures for investigation management, facilities and equipment, statistics, historical complaints, complaint resolution, and administration.
- 6.7 Several changes to the process around the investigation of sexual assaults came about as a result of the Commission of Inquiry into Police Conduct, established in February 2004 to carry out a full, independent investigation into the way Police had dealt with allegations of sexual assault against members of Police and associates of Police. It released its final report on 26 March 2007. The report, while noting improvements over the preceding 25 years, was critical of some aspects of Police policy, procedure and conduct relating to investigation of allegations of adult sexual assault.
- 6.8 The Commission of Inquiry made several recommendations. Police was directed to make improvements to sexual assault investigations, to address the proliferation of policies and procedures, and to ensure effective implementation of the adult sexual assault investigation policy. Improvements were recommended to policy, training, investigation guidelines, victim communication and specialist support. The recommendations were aimed at continuing to improve the services that Police provides to victims.
- 6.9 The 2003 Policy Pointer was replaced in 2009 by the Adult Sexual Assault Investigation Guidelines, which were incorporated into the Police Manual. The guidelines were further updated (and renamed to Adult Sexual Assault Policy and Procedures) in 2013 to ensure currency in relation to practical application, processes and other updates. A monitoring and oversight regime (Quality Assurance Improvement Framework) was also incorporated at this update. A 2016 update incorporated a tiered training model setting out what level of training an investigator must have to undertake certain stages of the investigation.
- 6.10 Since the release of the Commission of Inquiry report, Police has also:³
- (a) developed case investigation plans for adult sexual assault with a focus on timelines, victim communication and supervisor reviews (2016)
 - (b) included adult sexual assault training in all Police recruit training and implemented training for all front counter staff; and
 - (c) developed a webpage related to Adult Sexual Assault including useful information, links to support agencies and a feedback mechanism.

7 Child protection policies

- 7.1 Prior to 1995, there was no dedicated policy relating to investigation of sexual abuse and serious physical abuse of children.

³ New Zealand Police *A Decade of Change 2007 to 2017: Implementing the recommendations from the Commission of Inquiry into Police Conduct*, at page 9.

- 7.2 In the period 2002 to 2010, the following pieces of policy and guidelines were in place:
- (a) Policy: The overarching Child Abuse Policy, first issued in 1995 as a Policy Pointer, and updated in 2003;
 - (b) Policy: Additional General Instructions relating to care and protection;
 - (c) Best Practice Guidance: The Manual of Best Practice, as it related to Children and Young Persons;
 - (d) Training: Criminal Investigation Branch Training programmes relating to sexual offending.
- 7.3 The Child Abuse Policy, the first dedicated child abuse Policy Pointer, was issued on 1 December 1995. The Child Abuse Policy was developed in conjunction with the then New Zealand Children and Young Persons Services (now Oranga Tamariki). It was the primary document governing Police procedure for the investigation of child abuse allegations, and encompassed matters of principle and matters of practice.
- 7.4 The 1995 policy established guiding principles for investigations and outlined the Police commitment to ensuring that child abuse teams were established, and that the investigation of child abuse offences was given a high priority.⁴
- 7.5 In relation to the investigation of offences, it contained policies regarding training and procedures of investigation management, including guidance relating to receipt of complaints, initial contact with the child, interviewing the child, medical examination, protection of the child, siblings, and involvement of the non-offending parent(s).⁵

Updated Manual of Best Practice: Children and Young Persons

- 7.6 In 2008, the manual of best practice was updated, to outline Police best practice under the Children, Young Persons, and their Families Act 1989.⁶ This provides for the conduct of investigations following receipt of a report that a child or young person is in need of care or protection.
- 7.7 In terms of interviewing the child or young person as a witness, the information is explicitly to be read in conjunction with Policy Pointer 1995/12 "Policy and guidelines for the investigation of child sexual abuse and serious physical abuse" and the "Joint NZCYPS and Police operating guidelines for evidential and diagnostic interviewing on video under the Evidence Amendment Act 1989".
- 7.8 Guidance is provided on how to prepare for, conduct, and follow up interviews with children or young persons where there is a suggestion they are in need of

⁴ New Zealand Police *Policy and guidelines for the investigation of child sexual abuse and serious physical abuse (1995/12)*, with a version effective from 1/08/2003, at page 1. Provided to the Royal Commission in Response to NTP 1 in December 2019.

⁵ New Zealand Police *Policy and guidelines for the investigation of child sexual abuse and serious physical abuse (1995/12)*, with a version effective from 1/08/2003. Provided to the Royal Commission in Response to NTP 1 in December 2019.

⁶ New Zealand Police *Manual of Best Practice, Children and Young Persons, 2008*. Provided to the Royal Commission in Response to NTP 1 in December 2019.

care or protection. Further guidance is provided for the interviewing of victims of sexual offences.

7.9 On the subject of conducting an investigation in relation to care and protection or reports of ill-treatment or neglect, the document sets out:

(a) Initial action after receipt of a report of a child or young person in need of care or protection, which provides that:⁷

When conducting an investigation, you must focus on:

- The immediate safety of the child or young person.
- Obtaining evidence to show whether or not the child or young person is in need of care or protection.
- Preserving evidence of any offences against the child or young person.
- Documenting the case so that the Care and Protection Resource Panel, and the Care and Protection Co-ordinator, have enough information to ensure that the child's or young person's long-term care and protection needs are met.

(b) Guidance on interviewing a child or young person as a witness, including the option to video tape the interview, and how to conduct the interview – including preparation, conduct during the interview, and steps to take after the interview.⁸

(c) Specific guidance on interviewing victims of sexual offences, stating that the interview should generally be conducted by members of a Child Abuse Team, but providing guidelines to be followed if required to conduct an interview.⁹

7.10 Specific, detailed forensic evidential interview guidelines were also published in 2008. The guidelines set out the approach to be taken in forensic evidential interviews. It states at the outset:¹⁰

In recent years there has been a greater awareness of the benefits of properly conducted forensic interviewing of children and young persons and our community has been well served by the professionalism and diligence shown by such interviewers. Accordingly both the Police and Child Youth and Family organisations recognise the importance of the task and wish to further progress this with these updated guidelines.

⁷ New Zealand Police *Manual of Best Practice, Children and Young Persons, 2008* at page 44. Provided to the Royal Commission in Response to NTP 1 in December 2019.

⁸ New Zealand Police *Manual of Best Practice, Children and Young Persons, 2008* at page 45-46. Provided to the Royal Commission in Response to NTP 1 in December 2019.

⁹ New Zealand Police *Manual of Best Practice, Children and Young Persons, 2008* at page 46-47. Provided to the Royal Commission in Response to NTP 1 in December 2019.

¹⁰ New Zealand Police *Evidential interviewers' guidelines* February 2008, at page 1. Provided to the Royal Commission in Response to NTP 1 in December 2019.

- 7.11 The policy and guidelines set out the approach to be taken to forensic evidential interviews. It specified that forensic interviews must be recorded, and must be carried out by an interviewer with specialist training in interviewing children and young people and requirements of the Evidence (Videotaping of Child Complainants) Regulations 1990.

IPCA inquiry into Police Conduct, Practices, Policies and Procedures

- 7.12 In 2006, resourcing for child abuse files in the Wairarapa area was identified as an issue by Police. In 2008, a substantial backlog of files was discovered in the Wairarapa area, and in response, Police launched Operation Hope. A team of about 20 staff assessed, prioritised and investigated approximately 550 cases.
- 7.13 The Wairarapa situation was reported to the Independent Police Conduct Authority (IPCA) in 2009, and the IPCA both assumed oversight of Operation Hope and urged Police to undertake an urgent audit nationwide. Operation Scope was undertaken to conduct that audit. A third Police operation, Operation River, maintained oversight over Operations Hope and Scope and related internal disciplinary inquiries. The IPCA launched its own independent inquiry, which looked at child abuse investigation across New Zealand.
- 7.14 Part one of the IPCA's investigation report made 34 recommendations to improve Police practices, policies and procedures in the investigation of child abuse.
- 7.15 Part two of the IPCA investigation's report acknowledged that, following the release of the Authority's Part I Report in May 2010, Commissioner Broad established a Child Protection Implementation Project Team to address the Authority's recommendations in part one of its report. The team led substantial changes to Police practices, policies and procedures.¹¹
- 7.16 In 2010, following its inquiry, the IPCA considered the policy, stating:¹²
- Although the content of the 1995 Policy is essentially sound it needs to be updated. The intervening 15 year timeframe since the policy came into effect has brought with it various changes, including the enactment of new legislation. For example, the statutory provisions referred to in chapter 9 of the 1995 Policy, relating to evidence and victims, are now historic and have been superseded by more recent legislation. Similarly, although it is likely that many aspects of the procedural advice remain valid, it is important that these matters are revised so that Police staff are provided with current "best practice."

Further updates to policy

- 7.17 The "Policy and guidelines for the investigation of child sexual abuse and serious physical abuse" was incorporated into the Police Manual in early 2010. In December 2010, the policy was updated and renamed the "Child protection policy and investigation guidelines". Its purpose was to provide a main source of child protection information for Police employees. A large part of the chapter

¹¹ *IPCA Inquiry into Police Conduct, Practices, Policies and Procedures Relating to the Investigation of Child Abuse: Part II*, February 2011, page 9.

¹² *IPCA Inquiry into Police Conduct, Practices, Policies and Procedures Relating to the Investigation of Child Abuse: Part I*, May 2010, page 80.

describes internal Police procedures in relation to child protection investigations.¹³

7.18 The updated document included topics relating to assessing seriousness, policy and principles, key processes in child abuse investigations, initial actions and safety assessment, consultation and joint investigation planning, interviewing victims, witnesses and suspects, medical forensic examinations, evidence gathering and assessment, hospital admissions, mass allegations, investigations into online offences, charging offenders and considering bail, prosecution and other case resolutions, final actions and case closure, and responsibility for victims.

7.19 Centrally, it contained the following commitments to victims:

Police will assess all reports of child safety concerns received

Police will take immediate steps to secure the safety and welling of the child as this is the first and paramount consideration including identifying and seeking support from family members and others who can help

Police will intervene to ensure the child's rights and interests are safeguarded

Police will investigate all reports of child abuse in a child centred timeframe, using a multi-agency approach

Police will take effective action against offenders so they can be held accountable

Police will strive to better understand the needs of victims

Police will keep victims and/or their families fully informed with timely and accurate information during the course of the investigation as required by s12 of the Victims Rights Act 2002.

7.20 In 2013, content on mass allegations and online offending against children was split off into a new chapter. Content relating to training, case management and assurance was also significantly enhanced and split off into a new chapter – “Child protection – Specialist accreditation, case management and assurance”.

7.21 Police works collaboratively with other agencies to ensure the best outcomes for children and young persons in New Zealand. One of our main partners is Oranga Tamariki. In accordance with a Memorandum of Understanding between the agencies, Police and Oranga Tamariki utilise the Child Protection Protocol: Joint Standard Operating Procedures (CPP) to investigate criminal offending, hold offenders to account, and prevent future offending against children and young persons under the age of 18 years. It is Oranga Tamariki's role to investigate care and protection concerns and take action to keep children safe. The agencies work in partnership to achieve the best outcomes for children and their families (whānau).

¹³ New Zealand Police *Child protection policy and investigation guidelines* 7 December 2010. Provided to the Royal Commission in Response to NTP 1 in December 2019.

- 7.22 The CPP sets out the process for working collaboratively at the local level, and as a formally agreed national level document, it is followed by Police and Oranga Tamariki staff.¹⁴
- 7.23 Police currently has several policies related to child protection in place. The policies are under the umbrella of the overarching Child Protection Policy, last published 30 June 2017, which outlines the various policies that together comprise the Police 'Child Protection Policy' and provides an overview of our obligations under the Children's Act 2014:
- (a) Child protection - Mass allegation investigation
 - (b) Child protection - Investigating online offences against children
 - (c) Child protection - Specialist accreditation, case management and assurance
 - (d) Child Protection Protocol: Joint operating procedures (CPP) - between Police and Ministry of Vulnerable Children (Oranga Tamariki)
 - (e) Joint Standard Operating Procedures for Children and Young Persons in Clandestine Laboratories.
- 7.24 All interviews of children are undertaken by specialist trained interviewers either working for the Police or Oranga Tamariki. These interviews are all also monitored by trained investigators.

8 Best investigation practice

- 8.1 Set out below is the current approach to best investigation practice, some of which has been developed further since the 2002-2010 period.

Criminal Investigation Branch Training Programme

- 8.2 There are specific training modules in relation to the investigation of child abuse and adult sexual abuse allegations. The training programme is directed towards practical training issues and refers to both legislation and police procedure. It forms part of the Criminal Investigation Branch (Detective) training and qualification programme.
- 8.3 In addition to the general Criminal Investigation Branch training, there is a specialised child protection investigation course and an advanced child protection investigation course. There is also an advanced Adult Sexual Assault Investigation course.
- 8.4 There are four tier training levels for the undertaking of child abuse and adult sexual assault investigations. The level a Police member is trained to will determine what type of investigations that member can undertake unsupervised.

¹⁴ The current CPP was last updated in 2016 and is under currently under review.

- 8.5 There are currently around 260 dedicated staff working in child protection investigation teams and 175 dedicated staff in adult sexual assault investigation teams. There are many other trained investigators working smaller areas where the volume of investigations is not sufficient to have dedicated staff.

Quality Assurance Improvement Framework (QAIF)

- 8.6 In 2012 a quality assurance investigation framework was instigated for both Adult Sexual Assault and Child Protection as part of a continuous improvement framework.
- 8.7 This is a multi-tiered review process that ensures the quality of child protection and adult sexual assault files is regularly monitored and reviewed.
- 8.8 It involves district supervisors and managers reviewing randomly selected files against the agreed acceptable standards.
- 8.9 The main standards considered are the following:
- (a) Giving good service to victims/survivors/complainants including good communication. The regularity of communication with complainants is considered closely and monitored electronically.
 - (b) Completing a thorough investigation
 - (c) Holding the perpetrator accountable where possible
 - (d) Considering other prevention outcomes.
- 8.10 Once a year 5 % of all ASA/CP investigation files are reviewed by a National team, with the results fed back to districts.
- 8.11 These reviews have shown a decrease in the percentage of files not meeting the acceptable standards of investigation – from 30-50% in 2012/13 to an average of 5-10% (and sometimes 0%) since 2017.
- 8.12 The team at Police National Headquarters also promotes a feedback loop where all complainants of adult sexual abuse can give feedback (anonymously if preferred) on the service they received from Police investigators.
- 8.13 This information is used to improve and update policy, procedure, and training.

9 Concluding comments

- 9.1 Although the scope of my evidence is primarily directed at generic discussion of Police policy and practice, there are some comments I wish to make at this point on behalf of New Zealand Police to acknowledge the survivors of the events at Lake Alice. In making these comments, I am mindful of the reopened Police investigation into Lake Alice and the limitations that places on my ability to comment on some aspects of the file.
- 9.2 The investigations into Lake Alice have been unusual in a number of respects:

- (a) Lake Alice has been subject to significant scrutiny through a number of investigations and inquiries;
 - (b) it has been the subject of a civil claim against the Crown, which produced a large number of formal statements of evidence by survivors, and resulted in the Crown settling with the plaintiffs; and
 - (c) the allegations concerning treatments, including ECT and aversion therapy, relate to a set of facts involving technical psychiatric evidence and a pattern of alleged offending not commonly seen by Police.
- 9.3 The above factors all have contributed to the investigation having features that are not typical for an investigator. Particularly in that context Police policies will provide a framework to the investigator but not a set of prescriptive rules.
- 9.4 With the benefit of hindsight, New Zealand Police in 2021 looks back on the investigation conducted between 2002 – 2010 with regret. We wish now we had managed to reach a decision sooner in that investigation.
- 9.5 Like all people reporting serious offending to Police that has significantly impacted their lives, the survivors of Lake Alice would have benefited from receiving a decision sooner. I acknowledge that delays in Police decision making, in the context of this type of offending, can be very difficult for victims, and I apologise to them on behalf of Police.
- 9.6 I also acknowledge the difficulty that the decision in 2010 not to lay criminal charges will have undoubtedly presented for at least some of the survivors of events at Lake Alice.
- 9.7 Police prosecution decisions are based on a number of factors, which include considering what defences a defendant would have available to them that would reduce the likelihood of being able to achieve a criminal conviction. It is not unusual for Police to believe a complainant but still not be in a position to lay charges. Such decisions are often very difficult for investigators however, it does not mean a case has not been properly investigated, or that the offending has not been treated seriously by Police.
- 9.8 Decisions about whether or not to lay charges often involve weighing a range of complex and competing factors.. Police are required to consider the prosecution guidelines I discussed above (reasonable prospects of conviction and the public interest test). I acknowledge, however, that for any victim, including the survivors of Lake Alice, the decision not to lay charges may make them feel that Police do not believe them, or that Police is content to let someone get away with their offending. On behalf of New Zealand Police, I acknowledge how difficult that can be for those who have come to Police in the hope of seeing a prosecution and conviction in response to traumatic events that have occurred in their lives.

This statement is true to the best of my knowledge and belief and was made by me knowing that it may be used as evidence by the Royal Commission of Inquiry into Abuse in Care.

GRO-C

Thomas Fitzgerald