

**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
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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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24 Now it is time for closing statements and I believe they're going to come from you,
25 Ms Schmidt-McCleave. I say "statements", is that just one statement? Thank you.

26 **CLOSING STATEMENT BY THE CROWN**

27 **MS SCHMIDT-McCLEAVE:** It is, Madam Chair, as I understand it, yes. Tēnā koutou katoa. E
28 te mana whenua o tēnei rohe, Ngāti Whātua ki Ōrākei, tēnā koutou. E ngā Kaikōmihana
29 tēnā koutou. E ngā purapura ora katoa, tēnā koutou katoa. (Greetings all. Ngāti Whātua,
30 Ōrākei the tribal authority of this region, my acknowledgements. And to you, the
31 Commissioners, greetings. To the survivors, I salute you all). Thank you, Madam Chair,
32 and Commissioners, for the opportunity to present the closing statement of the Crown for
33 the State institutional response hearing. Thank you also to the survivors, their whānau and

1 supporters who have sat patiently through many hours of, as Mr Wiffin put it, often
2 insomniac-inducing evidence over the past fortnight.

3 To survivors, to use the words of one of the Crown witnesses, your evidence has at
4 times left us speechless. It has at times left us tearful. Any words we can use feel hollow.
5 As the Crown's representative through many of these hearings, I have struggled to both
6 comprehend what I've heard and to express the utter sadness your stories have filled me
7 with. And I know what I'm feeling is just a tiny fraction of the pain you carry with you
8 every day through your lives. I wouldn't try to pretend, I can imagine what that feels like,
9 but on behalf of myself, and of the Crown agencies I represent, I do want you to know we
10 do hear and feel your despair, your frustration, your heartache.

11 Through your bravery, new light has been shed on this shameful history of abuse in
12 care. You have provided an opportunity and imperative on the Crown to reflect on its
13 practice, its history and its present day practices. You have also laid down wero to the
14 Crown, focused on ensuring that the mana and dignity of all individuals in State care is
15 protected, respected, upheld and that, as a bare minimum, children in State care are not
16 abused, that they are loved, that they are nurtured and that they have a voice.

17 You have heard from Crown agencies that work is being done on many important
18 issues. In many cases, that work has quite recently started, and we have heard, through
19 questioning of Crown witnesses and from SAGE's comments this afternoon, a desire to see
20 more change and to see it faster. We know it is clear there is much more work to be done.
21 That work is under way, it will proceed and it will be further guided by this Commission's
22 final report and recommendations.

23 In the rest of this closing statement by the Crown, I want to focus on three main
24 things: the acknowledgments the Crown has made during this hearing; a very brief
25 overview of some of the policy and practice changes made to improve government services
26 over the years and Government-funded services to reduce the possibility of abuse in care;
27 and work that is still ongoing or is still needed to further improve the State care system.
28 Things are changing, but there is definitely more work to be done.

29 I'm very aware of timing constraints, Madam Chair, and I will provide
30 Commissioners after this with a fuller closing statement, so I will speak to a lot of what I
31 have here, given the timing this afternoon.

32 **CHAIR:** And for the public, will that be able to be put up on our website so everybody can read
33 it?

1 **MS SCHMIDT-McCLEAVE:** Absolutely, it will. And just to explain, you can appreciate we
2 were working on it literally up until this afternoon as evidence came up.

3 **CHAIR:** Yes, indeed.

4 **MS SCHMIDT-McCLEAVE:** Over the course of this Inquiry, we have heard disturbing and
5 atrocious stories of pain, loss, sadness and sorrow. We have heard about many kinds of
6 abuse and neglect, --horrific physical and sexual abuse, over-medication, racism, ableism,
7 disconnection from culture and whakapapa and of the terrible impact of families being
8 separated from loved ones. We have heard about the corrosive and traumatic
9 intergenerational impact of all these things.

10 The presence of so many chief executives and senior government officials in the last
11 two weeks, including the Public Service Commissioner this afternoon, reflects the
12 importance that the Crown puts on being held accountable and on engaging with the
13 Commission to improve the care system both now and into the future.

14 Over the past fortnight, you have heard a range of acknowledgments from chief
15 executives, as well as the Crown's joint acknowledgments about past practices that were
16 wrong, either by design or in the way they were implemented. Crown agencies have set out
17 the way their policies, practices, approaches and attitudes have changed since the scope
18 period. That change, I say, has been substantive and significant, but as has been raised
19 through the course of this Inquiry, there are still many more improvements needed.

20 Crown agencies have also outlined the work under way or planned to continue to
21 strengthen and improve the way the State keeps safe and cares for, loves, I say, tamariki,
22 rangatahi, deaf people, disabled people and people with mental health conditions.

23 The overarching acknowledgments made on behalf of the Crown at the outset of
24 this hearing are that as repeated by Mr Hughes this afternoon and I won't repeat them now,
25 except to emphasise the acknowledgment that the State did not always ensure children,
26 disabled people, deaf people and those with mental health conditions were safe when in
27 State care.

28 The additional acknowledgments made by chief executives during the hearing
29 reinforced those Crown acknowledgments as specific to their relevant care settings.
30 Further acknowledgments of specific failings were also made. There was acknowledgment
31 that institutional or structural racism and ableism in legislation, policy and systems have
32 contributed to the disproportionate representation and discriminatory treatment of Māori,
33 Pacific people, disabled people, and deaf people in care.

1 The alienation of Māori and Pacific people and of deaf people from their culture,
2 identity, language, communities, was also acknowledged, as were the ongoing impacts for
3 individuals and their whānau and aiga.

4 While there was recognition from agencies that work continues to be needed across
5 all three priority groups, there was particular recognition of the long way still to go for
6 disabled people. One of the many areas where this was recognised is the need for more
7 work to ensure agencies' workforces reflect the communities they serve and partner with.

8 In the time available, I don't have time to repeat the specific acknowledgments made
9 by every Chief Executive here, but I would like to highlight a few of them. Oranga
10 Tamariki Chief Executive Chappie Te Kani acknowledged the adverse impacts for
11 tamariki, Māori, whānau, hapū and iwi of structural racism, which he said was a feature of
12 the system that had detrimentally impacted the relationship between Māori and the Crown.
13 He made acknowledgments as to the Care and Protection system not always keeping
14 children safe, the improper vetting, training, supporting and monitoring of caregivers,
15 reports of harm not always being believed or followed up, the lack of support for whānau
16 and families to prevent children coming in to care, and the lack of sufficient emphasis on
17 family-based alternatives to State care. He acknowledged, and I repeat, that tamariki need
18 more than a minimum standard of safety. They deserve to not only be free from abuse, but
19 to be loved, to be nurtured, to have their needs met.

20 Director General of Health, Dr Diana Sarfati, acknowledged the existence of
21 evidence before the Commission of the effect of institutionalisation on disabled people.
22 They were placed in settings where many experienced abuse and the detrimental impacts of
23 this. She acknowledged that the 1973 Royal Commission report, which recognised that the
24 policies of large scale institutionalisation in the 50s to 70s, was the opposite of international
25 best practice at the time.

26 Acting Chief Executive of Whaikaha, Ministry of Disabled People, Geraldine
27 Woods, acknowledged that in the scope period, the health and disability care setting were
28 ableist. They did not meet the needs of disabled people and disabled people often
29 experienced discrimination and unfair treatment as a result of their disability.

30 Secretary for Education Iona Holsted acknowledged that the education system had
31 too low expectations of tamariki and rangatahi Maori and of Pacific children and young
32 people, which had harmed Māori and Pacific and contributed to poor education outcomes
33 over generations. She conceded that, historically, there was less oversight of private
34 schools. This may have provided opportunities for predators and that, at times, the

1 response to complaints about access to support services, especially in relation to learning
2 support, can be too slow and can feel bureaucratic to families and whānau.

3 Police Commissioner Andrew Coster acknowledged there had been gaps in how
4 Police engaged with some deaf and disabled survivors of abuse, and that there are serious
5 issues to address in relation to Māori and Pasifika experiences of policing in Aotearoa.

6 MSD Chief Executive Debbie Power recognised that the Ministry's redress system
7 has not always got things right for claimants. She said that the current historic claims
8 process did not account for a person's loss of culture or cultural disconnect while in State
9 care, which was hugely significant for survivors. Disabled people, deaf people, people with
10 mental health conditions faced additional barriers to access many services, including
11 redress, and more needed to be done in this area.

12 Today, Mr Hughes, the Public Service Commissioner, has acknowledged that the
13 Public Service has not always worked together in the way that it should, and has not been
14 joined up, as it should be, around children, young people and their families and
15 communities; that the Public Service has not reflected the make-up of society and has not
16 fostered workforces inclusive of all groups; and has not always had the focus it should have
17 had on developing and maintaining capability to engage with Māori and to understand
18 Māori perspectives.

19 Critically, in his role today, Mr Hughes owned the failings of chief executives
20 outlined to the Royal Commission over the last two weeks. He agreed with my friend,
21 Ms Toohey, that in addition to the acknowledged historical issues, some of the current
22 issues discussed at the Commission are concerning. On the failings of individual public
23 servants in the scope period, Mr Hughes said he currently holds the role as head of the
24 Public Service and so needs to own the leadership going back to 1950. He endorsed all the
25 failings acknowledged by chief executives and set out his expectation that chief executives
26 will own and fix mistakes and that acknowledgment is at the start of that process.

27 He reiterated his profound regret at the hurt and harm to survivors and their families
28 and communities.

29 I'm very conscious of time, Madam Chair. The next part of my closing statement
30 was to outline the changes made in the last 70 years to improve the care system and make it
31 safer. I think, in the time available, I'm going to skip through a part of that. It sets
32 out -- there's a good two pages which speaks about the changes that are in place and which
33 we've all heard spoken about in the last two weeks.

1 But what I want to say and what I want to make clear to survivors is that there is
2 more work to be done and further change is under way. Some of what needs to be done
3 involves the Crown improving its own practices. The Crown wants to further develop
4 whānau-centred, community-focused and devolved solutions where it can. Indeed, we have
5 heard evidence today from both Te Puni Kōkiri and the Ministry For Pacific Peoples of the
6 power of such initiatives, a view also echoed today by the head of the Public Service, Mr
7 Hughes.

8 He spoke about improving the system for tamariki by needing to use a number of
9 levers. He made the point that some sit within government, others sit outside. He spoke of
10 increased collaboration, changes to the Public Service under the new Act, including the
11 ability to form executive boards reporting to one minister on a particular issue- and, for
12 Commissioners' records, that's sections 25 to 31 of the -Act and-- of the Public Service
13 leadership team under section 59 of the Act.

14 What is clear is that teamwork at the highest level is needed to maintain the
15 momentum of new initiatives.

16 The next part of my written submissions also provides greater detail of the steps that
17 are being taken, but I want to say as well as those changes already under way, the Crown,
18 of course, keenly awaits the final report and recommendations of this Royal Commission.

19 The Crown has identified several themes that have emerged from this hearing,
20 including the importance of Crown agencies being able to work on a cross-agency basis,
21 rather than taking a siloed approach; the importance of Crown agencies working with
22 communities to build capability and design process that enables shifting decision-making
23 and resourcing closer to those communities; recognising, too, that different communities
24 may need different processes and a one-size-fits-all approach will not work; enabling strong
25 processes for vetting, safeguarding, monitoring and oversight of people in care and
26 ensuring ample and appropriate complaint avenues are available; gathering consistent, high
27 quality data that is appropriately disaggregated, including in terms of ethnicity and
28 disability, and ensuring that that data is used to monitor and improve practice; ensuring that
29 the Crown's approach to people in its care is appropriately grounded in Te Tiriti and is
30 appropriate for all people in care, including, in particular, priority groups; and most of all,
31 the faster positive change can be made, the better.

32 I have included, for the benefit of Dr Erueti, a part in my brief which addresses the
33 role of the Public Service in relation to the Treaty of Waitangi to clarify an issue that has

1 arisen during the course of the Inquiry, but I don't need to take you through it now but that
2 is there.

3 So, in conclusion, lessons learned from the Inquiry, we have listened and we have
4 heard and we will continue to listen. This may be the last hearing at which the Crown has
5 substantive appearances, but be assured we leave today knowing there is a big journey
6 ahead. In addition to what we have heard during this Inquiry, the reports and
7 recommendations that flow from it will be invaluable to further improve the way the care
8 system works and, critically, the way it works with communities, families, whanau, hapū
9 and iwi to care for people in the future, seek to keep them safe from abuse and to feel love
10 and nurtured.

11 This work has started. As I mentioned in my opening, Cabinet has instructed
12 officials to begin looking at what a national apology, or apologies, should look like and, as
13 confirmed this week, this will likely happen after the Commission releases its final report,
14 so the Crown can take all the Commission's findings into account.

15 Additionally, work on the design of a new independent redress system has begun in
16 relation to the redress report, He Purapura Ora, he Māra Tipu.

17 When people are brought into the care of the New Zealand State, as a society, we
18 expect them to be protected from abuse. That is an absolute minimum. Indeed, we all
19 expect much more -- that those people will be loved, they will be nurtured and they will be
20 supported to face challenges and to lead happy and fulfilled lives. It is abundantly clear
21 that in far too many cases, that did not happen in this country. That is a difficult and
22 shameful history for the Crown to bear.

23 The Crown is grateful to the Commission and to survivors for the difficult work in
24 bringing that history to light and is committed to ensuring the mistakes of the past are not
25 repeated.

26 My final acknowledgment is to the survivors. Ko tōku mihi whakamutunga ki a
27 koutou ngā purapura ora. (My final acknowledgement is to you, the survivors). I humbly
28 thank you for your courage and your strength to express and share your experiences. Nā te
29 nāku i te tēnei mihi mō tō koutou maia, ki te kaha, ki te whakapuake i ō koutou kōrero, hei
30 whakakapi i tēnei kōrero, ma te whakarongo me te ako, ka huri tātou te tai. Nō reira, tēnā
31 koutou, tēnā koutou, tēnā tātou katoa. **(I want to acknowledge you for your courage and
32 your strength to share your story. To conclude, by listening and learning we will turn the
33 tide. So I thank you, thank you, thank you very much).

1 **CHAIR:** Tēnā koe, Ms Schmidt-McCleave, and I take this opportunity to thank you,
2 Mr Clarke-Parker, and your legal team behind the scenes, and Ms White, for your
3 appearances over these long two weeks. We're very grateful to you for your approach and
4 your acknowledgments and thank you for the final submissions.

5 **MS SCHMIDT-McCLEAVE:** Tēnā koe, Madam Chair, ngā Kaikōmihana ***(thank you Madam
6 Chair and the Commissioners).

7 **CHAIR:** Kia ora. Tēnā koutou katoa. E mihi ana te mana whenua, Ngāti Whātua Ōrākei, tēnā
8 koutou e tautoko ana i tēnei kaupapa nui, nāu e āwhina mātou mai i te tīmatanga ki tēnei
9 wā. E mihi ana ki a koutou o ngā purapura ora, koutou i rongohia te mamae, kia kaha, kia
10 manawanui. (Hi and Greetings to you all. I acknowledge Ngāti Whātua, Ōrākei tribal
11 authority for the support you have accorded this momentous inquiry. You who have given
12 support since the beginning through to today. I salute you the survivors and the pain you
13 have experienced, be strong and steadfast).

14 We've heard a lot of words over the last two weeks and I'm not going to add too
15 many to them, but I just need to say, for the record, that this afternoon, this moment marks
16 the end of this historic ten-day State agencies public hearing.

17 We have heard from the legal guardians of the thousands of children, young people
18 and vulnerable adults who were abused in State care from the 1950s. Later this year, we'll
19 be hearing from leaders of the faith institutions who had the care of children, young people
20 and vulnerable adults, and that will be at our second Institutional Response Abuse in Care
21 hearing.

22 Just a few brief observations. Without exception, all State agencies were
23 represented by their current Chief Executive and other Executive Officers who responded
24 to the Commission's call for them to attend and we are grateful for that. While their
25 testimony, we know, was frustrating for many survivors, and we have heard our SAGE
26 members express some of those frustrations, there were repeated admissions that the State
27 had failed survivors and that it did not always ensure that people were safe in its care.

28 Those leaders and their agencies can no longer have any doubt about their
29 obligations under Te Tiriti o Waitangi, about their responsibilities to the disproportionate
30 number of Māori, Pacific and disabled people in their care. They can have no doubt about
31 the need for rigorous and proper monitoring for neglect and abuse, and no doubt that a
32 proper complaints system is necessary.

1 I believe that this Royal Commission and this hearing have significantly raised
2 awareness of abuse in care in the wider population and it is essential that this happens, that
3 it is known wider in order to ensure that the abuse does not continue.

4 On a final note, Commissioners have a few thank yous. We want to thank the Royal
5 Commission staff who have made this landmark hearing possible and you've heard
6 reference to that from other people. We know how hard those staff have worked to keep
7 this large machine, this complicated machine, this unwieldy machine running and we are
8 very grateful to them. So to the investigation and evidence management teams, to Counsel
9 Assisting, to our media team and comms, to the events and logistics teams, and particularly
10 to our well-being teams, a big thank you to you all.

11 And we know that this was an organisation-wide effort, with many others behind
12 the scenes ensuring the hearing ran smoothly. Thank you for caring for our survivors, and
13 thank you for showing manaaki to all those people who have attended our hearings.

14 Ehara tāku toa i te toa takitahi, engari he toa taka tini. (My valour is not that of the
15 individual, but of the many). Success is not the work of an individual, but the work of
16 many. Nō reira, tēnā koutou, tēnā koutou, rau rangatira ma, tēnei rā tātou katoa. We will
17 now have waiata karakia.

18 **KAUMATUA KINGI:** Tautoko i ngā kōrero, kōrerohia ake nei e mihi ana ki a koutou o
19 te taumata, ko ngā tari kāwanatanga i haere mai nei i tēnei wiki, te whakahoki kōrero ki a
20 koutou ngā purapura ora. To tātou nei waiata ko Te Aroha. (I want to acknowledge what
21 has been shared, to the bench, to the government organisations who came this week to
22 share and to the survivors, thank you. our song, Te Aroha.) (Waiata Te Aroha - love, faith
23 and peace be amongst us all). Ka tau te manaakitanga te wāhi ngaro ki runga ki tēnā ki
24 tēnā ki tēnā o tatou, e mahia te hua makiki te piki te kaha, piki te ora, piki te māramatanga e
25 rongu e whakairihia, tūturu whakamaui ki a tina, hui e, tāiki e. (May the protection of the
26 beyond be on us all. That everything be cleared and that we are well. Let it be, let it be.
27 Thank you).

28 **Hearing concluded at 5.06 pm**