

[PAGE]

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

Under The Inquiries Act 2013

In the matter of The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions

Royal Commission: Judge Coral Shaw (Chair)
Ali'imuamua Sandra Alofivae

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

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

Date: 17 February 2022

TRANSCRIPT OF PROCEEDINGS

[PAGE]

INDEX

MR CB – video played	571
MR CZ – video played	572
WAYNE GOWLAND – video played	572
CLOSING SUBMISSIONS BY THE CROWN	575
CLOSING SUBMISSIONS BY ST JOHN OF GOD	583
CLOSING SUBMISSIONS BY SNAP	595
CLOSING SUBMISSIONS BY THE NETWORK	608
CLOSING SUBMISSIONS BY DR MULVIHILL	618

Not relevant to the Natural Justice Process

Not relevant to the Natural Justice Process

Not relevant to the Natural Justice Process

Not relevant to the Natural Justice Process

Not relevant to the Natural Justice Process

22 **MS ANDERSON:** Yes, so we're starting with the Crown followed by submissions on behalf of
23 the Church, then followed by SNAP, then the Network and then Dr Mulvihill.

24 **CHAIR:** Thank you very much.

25 **MS ANDERSON:** I'll hand over to the Crown.

26 **CHAIR:** Almost good afternoon Ms Schmidt-McCleave.

27 **MS SCHMIDT-McCLEAVE:** Almost, Madam Chair, tēnā kōrua. I have got copies of our
28 written closing that have been provided to the Commission but possibly late for the
29 Commissioners to see. I've got two hard copies here, I'm only going to speak to those and I
30 will be jumping around a little bit. I'll hand them up.

31 **CHAIR:** We haven't seen them so it would be helpful just to have them, thank you.

32 **CLOSING SUBMISSIONS BY THE CROWN**

33 **MS SCHMIDT-McCLEAVE:** I want to begin by giving a mihi to the Commissioners for the
34 opportunity to present this closing statement on behalf of the Crown response to the Royal

[PAGE]

1 Commission and I also want to begin by echoing the words of the Crown witnesses by
2 acknowledging the bravery and strength of the survivors who have come forward to share
3 their kōrero. I'd also want to acknowledge their families, their whānau and other
4 supporters, including their supporters who have given evidence here and who have stood by
5 them offering their aroha and support for many years.

6 It has been humbling to be here and to hear their evidence and I wish to mihi to
7 those survivors who have spoken so movingly and with such extraordinary and inspiring
8 courage.

9 I also want to acknowledge the Mana Whenua, Ngāti Whātua Orakei. I'd also
10 acknowledge Jesse Gubb who has provided such thought-provoking and cleansing karakia
11 through the course of the hearing and to Ngai Tahu, the Mana Whenua where Marylands'
12 school is located.

13 As I explained at the outset of this hearing, the Crown's approach to the Royal
14 Commission of Inquiry overall, and to this Marylands inquiry, is to listen and learn from
15 survivors from their supporters and their communities about their experiences with the
16 New Zealand State and to provide assistance to the Commission where it is needed and
17 where it is possible to do so.

18 I've said it before but I'll say it again, the Crown has been listening. We who are
19 with you in this room, the agencies represented through their witnesses and by the agencies
20 who have been listening remotely on the livestream.

21 The importance of survivors' voices is recognised by the Crown. It is impossible to
22 overstate their contribution to the work of this Royal Commission, and their maia, their
23 kaha moves and inspires us daily. And has always been the case through the life of this
24 Commission, the Crown has been listening carefully so that the lived experiences of those
25 survivors can drive change to prevent further abuse and to improve how it operates.

26 The Crown continues to take what it is hearing and learning into its future planning
27 and it's taking active steps in individual cases to address issues that have been brought to
28 the Crown's attention by the evidence we've heard.

29 As I noted in opening, Marylands was a privately-run Catholic school. The
30 allegations of extremely serious abuse there, which we have been listening to over the
31 course of this hearing, were at the hands of the St John of God Brothers. But important
32 questions do arise around the role of the Crown or the State in relation to these events.

33 So in my written submissions I have set out information and evidence that the
34 Crown has, a summary of the information and evidence that the Crown has previously

[PAGE]

1 provided in response to a number of notices to produce, and I'd draw the Commissioners'
2 attention in particular to notice to produce 310 that provides a framework for considering
3 some of the questions around Crown responsibility and oversight.

4 I'd just like to note one point on Crown responsibilities owed by particular agencies,
5 and that's that while the Crown or the State is sometimes talked of and thought of as a
6 single unified entity, its statutory roles and responsibilities for the Marylands residents were
7 generally owed by particular Crown agencies. There's never been a single definitive
8 statement of the Crown's responsibilities towards children at a private school run by the
9 Catholic Church, and rather, as our evidence yesterday touched upon, the Crown, through
10 its various agencies, had a range of functions and obligations and that depended on factors
11 such as the status of a child within the school and the applicable policy and statutory
12 schemes at the time.

13 So in my submissions I have, in more detail, set out a number of sources of the
14 various aspects of governmental responsibility for the children of Marylands, and I've done
15 that in relation to the Ministry of Education and its predecessor agencies, Oranga Tamariki
16 and its predecessors, and that's principally in relation to children and young persons who
17 had legal status with those agencies, and in relation to contracted service providers such as
18 the Hebron Trust and finally the Ministry of Social Development who responds to historic
19 claims by adults placed at Marylands as children.

20 Commissioners will be aware that there hasn't been a witness sought at this hearing
21 from the Ministry of Education, however, I would urge the Commissioners to consider the
22 comprehensive written brief of evidence filed by Ms Helen Hurst on behalf of the Ministry,
23 that's dated 7 October 2021. That outlines the education landscape and statutory
24 framework of the time beginning with the period 1950 and then going through to the
25 Tomorrow's Schools reforms in 1989.

26 So until the establishment of the Ministry of Education in 1989 through that
27 legislation, the primary and secondary schooling systems in New Zealand were overseen
28 through the Department of Education under the Education Acts 1914 and 1964.

29 So in my submissions at paragraphs 15 to 30 I have set out in more detail what
30 those arrangements were, and I don't propose to go through those in detail this afternoon,
31 Commissioners, but what I would do is just to say in summary that while currently the
32 framework, well, it still offers a range of different types of education provision for students,
33 including private State-integrated and State schools, that gives caregivers a variety of

[PAGE]

1 options in relation to their children's education, and the control by the Department, now the
2 Ministry of Education, has varied at all times to reflect this.

3 And even today, private schools are, of necessity, subject to less direct State
4 oversight and control than State and State-integrated schools, and what the level of that
5 control has reflected Government policy at the time, and historically churches and private
6 providers have been active players in the provision of private education in New Zealand.

7 Now there's been a number of recent changes to the level of that oversight, and I've
8 set those out in detail at paragraphs 39 through to 40, which is a very long paragraph with a
9 number of subparagraphs, of my submissions. And you'll see there that there've been a
10 number of changes to that oversight in that time.

11 But the distinction I want to draw is that the statutory oversight regime for private
12 schools during Marylands' existence from the mid-1950s through to mid-1980s was quite
13 limited and it was restricted to that concept of efficiency that I raised with the
14 Commissioners in my opening statement, and what that meant is set out in more detail in
15 Ms Hurst's brief as well as in my written submission.

16 But mainly it meant that the Department's oversight was more focused on the
17 adequacy of the curricula, staff numbers and qualifications and school property. More
18 recent changes to legislation, however, have increased the degree of State oversight of
19 private schools and particularly in relation to the safety and well-being of students.

20 **CHAIR:** Can I just stop you there.

21 **MS SCHMIDT-McCLEAVE:** Of course.

22 **CHAIR:** That takes us back, doesn't it, I think, to paragraph 11 where you say that there's never
23 been a single definitive statement of the Crown's responsibility towards children. Now you
24 say at a private school run by the Catholic Church, but I'd expand that to private schools
25 run by any non-State entity.

26 **MS SCHMIDT-McCLEAVE:** Yes, yes.

27 **CHAIR:** That remains the case today?

28 **MS SCHMIDT-McCLEAVE:** Yes, as the submissions point out there's a number of --

29 **CHAIR:** Yes, that's right, so in spite of the recent changes to legislation and the degree of State
30 oversight, there still isn't that single Crown responsibility enacted anywhere in the
31 legislation.

32 **MS SCHMIDT-McCLEAVE:** That's right.

33 **CHAIR:** So it still remains piecemeal. I don't want to put you completely on the spot, but I just
34 wonder whether you have any views that you'd like to share with the Commission, either

[PAGE]

1 now or maybe after taking instructions, on the idea of having a single definitive statement
2 such as you suggest in paragraph 11?

3 **MS SCHMIDT-McCLEAVE:** I will take instructions on that, Commissioners, of course, but
4 certainly I will do so and come back to the Commission.

5 **CHAIR:** Good, thank you very much. Sorry I've put you off your stride.

6 **MS SCHMIDT-McCLEAVE:** That's okay, I'm just finding --

7 **CHAIR:** I think we were up to paragraph 144.

8 **MS SCHMIDT-McCLEAVE:** Yes, there was one point, though, that I did want to address,
9 which is at paragraph 32 of my written submissions, and that's that whilst the -- just to
10 clarify that, while the opening comments of Dr Longhurst stated that Marylands was
11 licensed under the Mental Health Act, I've referred in the submissions, and in our noted
12 response to the notice to produce, to a Cabinet memorandum of 1955 which states that the
13 level of the children does not make it necessary to licence the home under the Mental
14 Health Act, but it does require that it should be registered under the Education Act of the
15 Department of Education as a special school and that suitable training should be provided.

16 Now there was then a process of Cabinet approval to the payment of a special grant
17 to the Brothers of St John of God to assist them in establishing Marylands. That approval
18 finally came through in September 1956 and the grant was made subject to certain
19 conditions. One of them being that there was confirmation given by the Education
20 Department of Marylands registration as a private school.

21 And the memoranda that I've referred to there, the Cabinet memoranda, made clear
22 that that caveat of registration as a school before payment was to ensure that the registration
23 process already applied for by St John of God, and that included requisite inspections, had
24 been completed before the funds were paid. So it was not a direction by Cabinet that the
25 Brothers must register a private school to obtain funding.

26 **CHAIR:** Thank you for that.

27 **MS SCHMIDT-McCLEAVE:** So moving to Oranga Tamariki, and I'm at paragraph 45 of my
28 written submissions now. So students were at Marylands for different reasons. Some were
29 placed there by the State. More typically their placement was a private arrangement
30 between the child's parents at the school.

31 I've set out at paragraph 46, and we heard some discussion with Mr Galvin about
32 this yesterday, that if the Department of Social Welfare sought to have a child enrolled at
33 Marylands, then policies in place at the time required the steps I've set out there at 46 to be
34 followed.

[PAGE]

1 And I note at paragraph 47, again as discussed by Mr Galvin yesterday, that
2 individual children came into State care for a wide variety of reasons over the period of
3 Marylands' operation, and I've set out there the numbers he discussed that of the 1,539
4 children that were identified by the Commission as having attended Marylands in the time
5 period 1955 to 1984, there were 152 found to have a case file which indicated some form of
6 interaction with Oranga Tamariki's predecessor agencies, and I note there that not all of
7 those 152 children had a status under the Child Welfare legislation.

8 Mr Galvin spoke about their inspection of a sample of 32 of those 152 files, which
9 showed that 12 of the 35 individuals had a status under relevant Child Welfare legislation at
10 the time.

11 So again, as Mr Galvin spoke about --

12 **CHAIR:** Can I just check that, I should have asked Mr Galvin this question, I don't know if --

13 **MS SCHMIDT-McCLEAVE:** I may have to defer to him depending on the question.

14 **CHAIR:** Thank you, so he only did a sample. Do we know why he only did a sample? I'm sorry
15 I didn't ask him.

16 **MS SCHMIDT-McCLEAVE:** That is set out in his brief. I think my understanding it was a
17 matter of logistics involved in the sample and it's quite an immense task is my
18 understanding.

19 **CHAIR:** All right thank you.

20 **MS SCHMIDT-McCLEAVE:** So as he set out, the monitoring by the Child Welfare division of
21 the Department of Education and DSW and regulation of the level of care provided to State
22 wards at Marylands was guided by the statutory and regulatory framework in place at the
23 time, and Mr Galvin spoke a little yesterday and further in his brief about the visiting and
24 reporting processes described in the statutory declarations we've provided.

25 He spoke about the minimum requirements for visiting and the progress reports.
26 They were in line with the regulatory regime in place at the time focused on children who
27 had status under the Child Welfare legislation, rather than the wider cohort of all those in
28 attendance at Marylands.

29 So I would note there that the situation for children in care would be different today
30 and again, I refer to the changes, particularly the recent changes, in the regulatory and
31 legislative scheme which Mr Galvin discussed and he described the closer degree of
32 monitoring and review of the level of care provided to children in the care or custody of the
33 Chief Executive of Oranga Tamariki to those in the care or custody of iwi social services,
34 cultural social services, or the director of a child and family support service.

[PAGE]

1 So in particular, Commissioners, I refer to the description Mr Galvin gives in his
2 evidence of the National Care Standards which came in in 2018 and the framework for
3 making reports of abuse contained within those standards.

4 Turning then to the Ministry of Social Development. And again, I refer to
5 Ms Hrstich-Meyer's evidence given yesterday and in his brief, but in the context of the
6 historic claims process at MSD that she spoke about, MSD receives allegations which relate
7 to many aspects of a claimant's care experience, including those relating to abuse at private
8 institutions such as Marylands.

9 And Ms Hrstich-Meyer spoke about how historically those allegations were treated
10 within the scope of the historic claims process and critically how, under the new assessment
11 approach, that a more nuanced approach is taken, and where a claimant who was in State
12 care makes allegations of abuse at faith-based institutions, these may be taken into account
13 depending on the individual circumstances of the claim.

14 Aside from the various sets of obligations that various Crown agencies have had in
15 relation to Marylands and its residents, the Crown also, of course, had an important part to
16 play in the investigations and prosecutions at Marylands, and I refer to the evidence given
17 yesterday by Detective Superintendent Peter Read, which recognises in hindsight that there
18 were areas of practice of Operation Authority that could be improved on, but many of the
19 principles of support and engagement with complainants during that investigation, in
20 particular vulnerable complainants, have driven best practice and are used in investigations
21 today.

22 Current policies incorporate inter-agency collaboration and that provides a
23 framework for supporting survivors of abuse through the criminal justice process. And
24 Police, as Detective Superintendent Read said yesterday, that Police continue to be
25 committed to considering how their processes can be improved to reduce the difficulties for
26 victims in engaging in the criminal justice process. Including, in particular in the context of
27 this hearing, vulnerable survivors. And that includes, as Mr Read noted, further
28 engagement with the Royal Commission.

29 So in conclusion then, I would just like to note that in summarising the situation,
30 while Marylands was operational, the Crown had a number of specific obligations relating
31 to the school's operation. And I've set out there, from an education perspective, the
32 obligation to ensure the school was registered and then those factors which meant that it
33 was efficiency and as that concept was then understood, from the Department of Social
34 Welfare there were obligations to particular residents where those residents had a

[PAGE]

1 relationship or status with the Department. And this distinguished Marylands from the
2 State residences where the State rather than the Church was the institution ultimately
3 responsible for running the resident.

4 This quite limited State purview can be contrasted with today's environment which,
5 as I've set out in more detail in these submissions, provides for a greater State oversight of
6 the running of private schools and residential care services. The changes provide numerous
7 safeguards, reducing the risk that the type of abuse that occurred at Marylands can occur
8 and go undetected.

9 So in ending these submissions, the Crown reiterates once again its commitment to
10 the Commission's work. The Crown is committed to continuing to provide information and
11 evidence to enable your recommendations to be fruitful and to ensure that these terrible
12 experiences we've heard about in the last two weeks do not occur again.

13 The Crown echoes the comments made by the Commissioners to the survivors who
14 have given evidence for this hearing and to others. We are grateful to you for sharing your
15 experiences so that the State may learn what more may be done to avoid the abuse that you
16 should never have experienced from ever occurring again.

17 Tena kōrua. I'm happy to answer any further questions from the Commissioners.

18 **CHAIR:** I would just add, there is learning, of course, about what must be down avoid the abuse,
19 but we still have the ongoing responsibilities, don't we, to those survivors who remain with
20 us.

21 **MS SCHMIDT-McCLEAVE:** Absolutely.

22 **CHAIR:** Who still carry the shame, still carry the burden, the pain and the impacts. So I think it's
23 important that the Crown expressly accepts some responsibility in that regard as well.

24 Would that be appropriate?

25 **MS SCHMIDT-McCLEAVE:** Absolutely, I tautoko that sentiment, Madam Chair.

26 **CHAIR:** Thank you.

27 **COMMISSIONER ALOFIVAE:** Ms Schmidt-McCleave, thank you for your submissions. I just
28 wanted to ask in terms of the policy work that might be going out there. You've heard very
29 carefully and you've listened and you've responded in terms of the power of the voices of
30 our survivors.

31 So where there's opportunity, in particular with your ERO office, where there's
32 direct interaction with the schools, whether or not, you know, if there's actually work going
33 on in that space to in actual fact, it's almost like a recalibration, the balance of the voices
34 that you're hearing, the Crown is hearing, when they go into these institutions.

[PAGE]

1 **MS SCHMIDT-McCLEAVE:** I can't be as particular as saying specifically the ERO, I don't have
2 that knowledge, but I can find that out. But certainly through the agencies, so to the extent
3 it's coming through the various agencies listening and responding, yes absolutely.

4 **COMMISSIONER ALOFIVAE:** Thank you very much.

5 **CHAIR:** So thank you so much for your presence during this last couple of difficult weeks and
6 thank you for your submissions, Ms Schmidt-McCleave, and no doubt we will see you
7 again at our next hearings.

8 **MS SCHMIDT-McCLEAVE:** Tena kōrua.

9 **CHAIR:** Kia ora.

10 Good afternoon Ms McKechnie.

11 **MS McKECHNIE:** Commissioner. Some quick housekeeping to commence. You should both
12 have the skeleton outline of my oral submissions which I see the registrar is handing to you
13 now. Madam Chair, I would make a formal request that we be able to file written
14 submissions. The opportunity to seek leave yesterday was lost in the hearing sitting late.
15 So I should have sought this yesterday, Madam Chair, I apologise, but we will invite the
16 opportunity to be able to file more fulsome written submissions within a couple of weeks to
17 respond to the issues raised.

18 **CHAIR:** Yes, I see no reason and that would be very helpful if you were. So I take it they would
19 be submissions that expand on this synopsis or this outline?

20 **MS McKECHNIE:** Yes, Madam Chair, and indeed respond to any particular questions that the
21 Commissioners have. The scoping document for this hearing, as you will appreciate, is
22 sparse, and there are particular questions that you and your fellow Commissioner may have
23 in the last eight days that we would welcome that indication so we can respond specifically
24 to those.

25 **CHAIR:** Certainly I think that would be very helpful, thank you.

26 **MS McKECHNIE:** Madam Chair, this document is also being provided on the TRT website, so if
27 there are people following along and watching and they wish to see the words of the
28 Brothers and the Church, that is there for them as well and it's been provided electronically
29 to counsel.

30 **CHAIR:** Thank you.

31 CLOSING SUBMISSIONS BY ST JOHN OF GOD

32 **MS McKECHNIE:** To commence, Madam Chair, Commissioner Alofivae, over the past seven
33 days the Royal Commission has heard evidence from survivors and survivor advocates and
34 throughout this period there have been members of the Catholic Church here and they have

[PAGE]

1 also been online, thanks to the Covid restrictions, by necessity, and they have been listening
2 to the experiences of those individuals and reflecting deeply on their oral evidence and their
3 written submissions.

4 We would like to acknowledge the courage of the men and the women who have
5 shared their experiences and the experiences of those who have been harmed.
6 Commissioners, the Brothers and the Church have heard their pain and they have heard the
7 anger and the frustration.

8 Brother Tim and Archbishop Paul appeared in the hearing and I want to echo their
9 profound apologies as I commence these closing submissions to all who have been hurt and
10 harmed while in the care of Marylands and the Hebron Trust. Those two men as
11 individuals, and the wider church, acknowledges that these places should have been places
12 of safety and nurture for vulnerable young people and they were not.

13 That Marylands was a place of sexual, physical and psychological abuse,
14 Commissioners, is horrific. That Bernard McGrath was able to corrupt the Hebron service
15 intended to assist vulnerable young people is appalling. And the Church apologises to you,
16 survivors, to your families, whānau and to the hundreds of co-workers who worked in these
17 institutions. This harm should never have happened and it is a great shame and deep regret
18 to the church that it has.

19 Commissioners, the extent of the abuse, particularly in Marylands, is painfully
20 clear. From previous investigations, from the redress process The Order has undertaken
21 and from the evidence at this hearing, it is clear that the abuse at Marylands was
22 widespread and caused by many offenders. It is the darkest chapter in the history of the
23 Catholic Church in New Zealand.

24 The abuse involving St John of God, for which the Brothers have records of
25 allegations and we acknowledge that that is only a part of the likely offending, accounts for
26 16% of all the allegations of sexual harm for which the church has records.

27 One man, Bernard McGrath, is responsible for 5% of those allegations.

28 One of the most challenging questions for the Royal Commission, and for society,
29 will be to determine how this harm was able to go on for so long. To modernise, to our
30 eyes, certainly to yours and to mine, with the extent of this harm being clear, it seems
31 unfathomable that this was not seen and was not stopped earlier.

32 And Commissioners, there is clearly no simple answer to this question. And I have
33 set out in my submissions what some of the evidence shows and what some of the historical
34 record shows about what the barriers may have been.

[PAGE]

1 First, Commissioners, there was clearly historical societal attitude towards victims
2 of abuse, and a belief about complainants and attitudes towards those in positions of
3 authority. The evidence of these boys, when they were brave enough to make complaints,
4 was not believed by their families, by Police, by social workers, when they sought to make
5 complaints.

6 It was an error of great respect for authority figures, and for many in society it was
7 unthinkable that abuse could be taking place in institutions like this. The Catholic Church
8 acknowledges, Commissioners, the dangers of clericalism and the role religion played in
9 reinforcing some of those beliefs about the infallibility of priests and Brothers. And that
10 evidence was very painful for the Church to hear the survivors give and they acknowledge
11 that role.

12 There was some evidence, Commissioners, about the lengths that the perpetrators
13 went to hide their abuse. Evidence from evening staff at Marylands who had suspicions but
14 did not see offending. And the evidence at Hebron that it appears Bernard McGrath took
15 great steps to keep his offending secret from others. Indeed, other children genuinely
16 leaping to his defence, which is awful to think about in retrospect, but demonstrates the
17 power of manipulation and secrecy.

18 **CHAIR:** To that, I think we have to add the use of violence, the threats of violence should the
19 children disclose.

20 **MS McKECHNIE:** Yes, ma'am, I'll come to that in paragraph --

21 **CHAIR:** You will come to that, all right.

22 **MS McKECHNIE:** No, ma'am, there are sadly many factors and that is one of them, shame, fear,
23 fear of harm and fear that they would not be believed.

24 **CHAIR:** Yes.

25 **MS McKECHNIE:** And there are, of course, the distinct and particular vulnerabilities of these
26 children, they are different from each other, Marylands as against Hebron. At Marylands
27 the children often had learning disabilities, lacked family support, some had no families or
28 dysfunctional families. The children at Hebron were in the care of Hebron because they
29 were at the edges of society and had found themselves on the streets.

30 Finally, there are clearly systemic failings by regulators, social workers and church
31 authorities which led to insufficient and incomplete investigation of complaints or
32 complaints not being followed up.

33 Commissioners, the survivor evidence is clear that the children, many of the
34 children at Marylands and at Hebron were part of a dysfunctional system of care that

[PAGE]

1 ultimately allowed abuse to take place and the Church takes responsibility for its part of
2 that system.

3 The safeguarding processes within the Church during the Marylands period were
4 rudimentary and insufficient. The evidence of Brother Tim is that within The Order during
5 this period complaints were first brought to the Prior of the community, and what is now
6 clear from the record is that for periods in the history of Marylands, the Prior himself was
7 an abuser.

8 Brother Tim accepted, Madam Chair, when you put it to him in evidence, that the
9 evidence supports that there was a culture of systemic abuse for periods at Marylands and
10 the wider Church shares Brother Tim's shame that that was the case.

11 Commissioners, it is clear from the historical records such that we have that
12 opportunities to prevent harm were missed. In 1977 an anonymous complaint was made by
13 an adult about Bernard McGrath and Rodger Moloney in a letter that did not name the
14 children alleged to have been harmed and it did not detail the behaviour. Tragically, very
15 tragically in hindsight, Brother O'Donnell did not believe this allegation.

16 The assumptions that he made about those letters, the motivations, the assumptions
17 he made about the motivations for sending the letter, and his decisions to destroy them
18 would not have been made today. In 2003 during the second Police investigation when
19 the full extent of Bernard McGrath's offending was becoming clear, Brother Moloney was
20 interviewed on a number of occasions and in one of those interviews he acknowledges that
21 he should not have dismissed the 1977 allegation.

22 Both Brother Tim and Archbishop Paul have expressed their deep regret about some
23 of these decisions of their predecessors.

24 Commissioners, there does remain some debate about what the historical record
25 shows about who knew what within the leadership of The Order and within the wider
26 church and when they knew that. We will detail what this historical record shows and what
27 inferences can be drawn from it in our formal written submissions.

28 From the records we have, the actions of the leadership, The Order's leadership in
29 August 1992, when the allegations against McGrath were being made, suggest the
30 leadership were not seeking to cover up his offending. I note that's not the conclusion of
31 the journalist in the documentary we have just seen, but we will detail what inferences we
32 say can be drawn from those documents. He, of course, was returned to face prosecution in
33 1993.

[PAGE]

1 For the diocese, Commissioners, we are not aware of any records that show that the
2 Bishop of Christchurch was aware of allegations against McGrath prior to 1992. The
3 diocesan records show that they have knowledge of those allegations against McGrath
4 when they were raised in the context of Hebron in 1992. And the first complaint made
5 directly to a Bishop in New Zealand appears to have been after these prosecutions became
6 public.

7 It is not clear, Commissioners, from the historical record beyond the evidence from
8 the Detective Superintendent why further steps were not taken in 1993 to examine the
9 extent of offending.

10 **CHAIR:** It became pretty clear through the evidence that much of the reason why it's so difficult
11 to pin down who knew what was the lack of documentary evidence, isn't it.

12 **MS McKECHNIE:** Yes ma'am. And, as I go on to say in those submissions, what the historical
13 records do amply demonstrate is first that the record-keeping was not good. And
14 record-keeping was not only not good, but that records of allegations were not kept.
15 Brother O'Donnell acknowledged in 2016 his practice was not to record these matters. And
16 Commissioners, this lack of knowledge also meant that between generations of leaders
17 within The Order, there was a lack of knowledge of what had gone before. And tragically
18 this has created risks that patterns of behaviour and warning signs were not known.

19 It is clear from some of the correspondence from Brother Burke and then again the
20 early period of Brother Timothy that they are not aware of matters that their forebears
21 knew, and it's only become clear to them when, for example, Police statements from the
22 2000s have been given to the Brothers. These documents have not allowed that knowledge
23 and those warning signs to have been identified.

24 **CHAIR:** Yes.

25 **MS McKECHNIE:** And that is very tragic, Commissioners, and it has allowed abuse to go
26 undetected for longer than it should have.

27 **CHAIR:** Is it accepted by the Church that this is another systemic failing, this failure to keep
28 reports and details of complaints? Because I see the Church has said it's changed, it's now
29 taking steps to do it, it's obvious that it was needed but it wasn't done, was it, and it wasn't
30 done --

31 **MS McKECHNIE:** Commissioner, I am reluctant to make a comment on behalf of the whole
32 Church because the documents that we hold for other Orders and different congregations
33 are different, and for other diocese and congregations the record keeping is better.

34 **CHAIR:** Let's keep it to St John of God.

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1 **MS McKECHNIE:** No, for St John of God, ma'am, I think Brother O'Donnell's words in 2016
2 acknowledge that that's his practice and that has created problems.

3 **CHAIR:** Yes, all right thank you.

4 **MS McKECHNIE:** Commissioners, picking up on those comments that you just made, Madam
5 Chair, the Church is very aware of these failings and since 1990 has collectively
6 implemented and followed A Path to Healing about which you have heard much evidence
7 in the past.

8 There are now additional processes around abuse and around safeguarding.

9 For many it has not changed enough and the church acknowledges that and this
10 Royal Commission will go some way to installing further change. There is clearly still
11 work to do.

12 **CHAIR:** Yes.

13 **MS McKECHNIE:** Commissioners, turning now to the evidence of redress that the Commission
14 has heard in the last week, and this is clearly very powerful evidence and very valuable
15 when we look forward to what the redress should be into the future. Commissioners,
16 I highlighted in opening a number of questions that we were hoping would be explored this
17 week and many of them have been touched on, and I summarise here some of the evidence
18 that we have heard and raise the questions and challenges from the Church's perspective for
19 your input and guidance.

20 Firstly, Commissioners, as I've highlighted for those following, this is from
21 paragraph 28 of the skeleton, what form should support and redress take? The evidence
22 this week, Commissioners, and what is clear from the historical record, is that some
23 survivors have sought a closer and supportive relationship with The Order. There has been
24 much evidence about what Brother Burke discussed with a number of these men, and then
25 evidence that those survivors later felt let down. Dr Mulvihill describes this as a second
26 injury.

27 There are other survivors who have a deep mistrust of The Order and of the Church
28 and we've heard evidence from Brother Tim that these survivors often want no on-going
29 relationship with the Church at all.

30 For others, what they want from The Order and/or from the Church changes as they
31 progress through their lives. Against this, Commissioners, there's clearly a call for
32 consistency. There's evidence in this hearing where survivors are comparing the
33 settlements that they receive with the settlements that others received. And these tensions,

[PAGE]

1 Commissioners, make implementing a fair, flexible and effective model of redress very
2 challenging.

3 These men are all individuals, Commissioners, and how those principles can be
4 applied in all those circumstances is a challenge that we face and that this Commission
5 faces.

6 **CHAIR:** Can I just make an observation here, and it comes out of our (inaudible) report, as well
7 as listening further to what we've heard here. I think you've said it; every one of the
8 survivors is an individual. So to the extent possible, each response for redress must be
9 individualised.

10 That doesn't mean to say that everybody gets the same amount of money, because if
11 it's dealt with on need then it becomes able to be regulated. But you say that it makes it
12 very challenging. My suggestion for the Church is to think about it from the survivor
13 perspective. If a survivor wishes to have further contact with the Church, if it wants to take
14 advantage of pastoral care, then why not; if they don't, then there will be an alternative.

15 I just wonder how challenging that actually is. It's certainly not cookie cutter.

16 **MS McKECHNIE:** No, ma'am, I think one of the principal challenges is how things change over
17 time for the church. You speak of decisions which survivors and their legal advisors make.
18 But subsequently those decisions may be regretted or revisited in what is thought has
19 changed. That is one of the challenges; the psychological impact of this harm,
20 Commissioner, makes clear, that survivors, some survivors do change across their lives
21 what they need.

22 **CHAIR:** That was the magic of Brother Burke's method, I think, because he promised an ongoing
23 relationship which recognised the changes and recognised the flexibility. So I'm just
24 putting it there, it was an idea perhaps before its time, but in many ways reflected in our
25 report.

26 So what I just want to put out there is whatever comes up is not going to be easy,
27 but we're not in this for being easy, we're in this to make sure that survivors get the full
28 redress that they need rather than what State or the churches are prepared to give them.

29 I think that takes a mental -- a change, a change in attitude, a change in culture, a
30 change in way of thinking that is vital before we can get this right. And I'm simply laying
31 that on the table as thoughts for you and your clients to think about.

32 **MS McKECHNIE:** They certainly are thinking very hard about these issues, Commissioner.

33 **CHAIR:** Thank you.

1 **MS McKECHNIE:** The next element that I set out in my skeleton, Commissioners, is the
2 vulnerability of survivors through the redress process and that was clear in evidence in the
3 last week. Some survivors have given evidence about their recollections of the redress
4 process and the understandings of what occurred, which are not in fact from the
5 documentary record what occurred.

6 One survivor was very distressed that he had not received an apology when in fact
7 the records show that he had but did not recall. We have taken steps to re-provide that
8 document to him. But it demonstrates how difficult these processes can be. Other
9 survivors don't have the same understanding of the processes that The Order did, and these
10 led to raised expectations, then confusion, and in some cases the evidence is clear,
11 significant and understandable anger.

12 You spoke before, Commissioner, about Peter Burke's process. Peter isn't here to
13 ask, but if you look at the documents and the letters he wrote at the time, Commissioner,
14 they are not as fulsome as perhaps the impressions he gave to the survivors. Those letters
15 are more conclusory, allowing that no final settlement document was signed off than
16 perhaps the impression that was created. That is one of the challenges of the process, that
17 people have different understandings about what is being discussed.

18 And there is also clearly a question of how to keep survivors safe as they engage in
19 this process, and that is of vital interest to the Church looking forward to the redresses
20 processes that you have and will make recommendations about.

21 There's also a question, Commissioners, about how best to provide financial redress.
22 There was extensive evidence at this hearing about the ineffectiveness of financial redress.
23 And it's striking, Commissioners, because the redress paid by the Brothers to these men is
24 the largest redress paid of any institution or organisation in New Zealand.

25 Dr Mulvihill spoke of that dilemma in her evidence about how to ensure on the one
26 hand payments made to survivors are delivered in the best way possible, that balance
27 between ensuring individuals have autonomy and freedom to use the monetary
28 compensation in a manner they see fit, and then also balancing the desire that redress can
29 be used in an effective way to provide long-term support for those individuals.

30 Many witnesses, Commissioners, gave quite rueful evidence about how they'd
31 chosen to spend their money, and in many cases there was little, if any, of it left.

32 Commissioners, you've heard evidence in other hearings, and indeed in the Wade
33 case study in your redress report, Commissioners, which sets out some of the difficulties

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1 and misunderstandings when individuals try to help survivors in how they should spend
2 their money and how those can be so easily misunderstood.

3 That brings me, Commissioners, to the final point that I highlight in this part of the
4 skeleton, the lack of trust.

5 It's clear from the evidence, Commissioners, and understandable from the evidence,
6 that the harm that has been caused to these individuals, the abuse they suffered and any
7 secondary injuries, has caused them to lose faith in institutions such as the Church.

8 The destruction of that faith then extends to other institutions, such as concerns that
9 the Police are being controlled by the Catholic Church and it impacts on society and
10 Church's efforts to improve. And this is a real challenge.

11 The Church acknowledges, Commissioners, that the trust of these people has been
12 fractured by the action, of the Church, and that rebuilding it will take generations. But that
13 this work should start now.

14 Commissioners, the Church is encouraging you to consider external measures for
15 the Church and other institutions. This will assist the Church in demonstrating progress to
16 survivors in a way that is independent and genuine. The Church is aware that they do not
17 have and do not deserve, at the moment, the trust of these individuals. So a system that is
18 clear and can be independently verified will give comfort to those individuals.

19 **CHAIR:** Is that what you mean by "external measures"? I'm not sure what you mean by "external
20 measures".

21 **MS McKECHNIE:** That is what I mean by "external measures", Commissioner, but the exact
22 content of those measures, the Church would like to work collaboratively with the
23 Commission. Those measures themselves are challenging to frame how you would do that.

24 **CHAIR:** Yes.

25 **MS McKECHNIE:** We have no immediate and easy answers for what those measures might be,
26 but the Church acknowledges the power of the independent auditing and measuring of
27 those processes to help build trust with survivors.

28 **CHAIR:** I don't know if you have instructions on this, but does it go so far as to embrace the
29 notion of a completely independent system of redress that sits alongside the State system as
30 well? Is that something that's within the purview of the Church at this stage?

31 **MS McKECHNIE:** Commissioners, you've previously heard evidence from Cardinal Dew that
32 the church leaders support an independent redress scheme. So to answer your question,
33 yes.

34 **CHAIR:** Answer is yes, okay.

[PAGE]

1 **MS McKECHNIE:** The details of it, Commissioners, are still to be engaged with and as I'll come
2 on to, there is a Mixed Commission meeting next week where your redress report and this
3 hearing are being considered by the Church leaders.

4 **CHAIR:** That's good to hear, thank you.

5 **COMMISSIONER ALOFIVAE:** Ms McKechnie, can I just follow-up on that. So in this context
6 of Marylands which is education, when you talk about external measures, so we know that
7 The Order is literally diminishing, they have no further operations. But the wider church
8 will be still operating in a range of schools, Catholic schools.

9 I'm just wanting to get clarity, when you talk about "external measures", is it about
10 taking the learnings of what occurred in Marylands and setting up a framework that would
11 then be applicable across Catholic schools?

12 **MS McKECHNIE:** What I'm referring to here, Commissioner, is in the context of the redress
13 process. Catholic education, Catholic schools now are in fact State-integrated schools, so
14 they are subject to the State's regulatory regimes now. The role of Catholic entities in those
15 bodies is much more limited. They own the buildings and they have a proprietor board, but
16 the actual appointment of the teachers, the curriculum, what is taught in the schools is
17 almost exclusively controlled by the State. So it's very different to a Catholic private
18 school, as Marylands was.

19 **COMMISSIONER ALOFIVAE:** It still brings us back, though, to the issue of the power of the
20 survivor voice and when young people are able and feeling safe to be able to make
21 disclosures in these particular types of settings.

22 **MS McKECHNIE:** Very much, and the Church wants to participate in any changes made in the
23 wider education system in New Zealand. There are very many Catholic schools, as you
24 will appreciate, Commissioner, and they are a significant part of that wider State education
25 provision; so any changes that are made to enable children to more easily make complaints
26 in an education context would be supported.

27 **COMMISSIONER ALOFIVAE:** Thank you.

28 **MS McKECHNIE:** Looking forward, Commissioners. Much of this hearing has rightfully and
29 properly focused on what has happened in the past and the lessons that can be drawn from
30 the evidence. But the Church now seeks to move its focus to looking forward and
31 determining the lessons that can be taken from this hearing and how they can be applied to
32 the modern Catholic Church, particularly with regards to safeguarding and the creation of a
33 system of redress which seeks to heal from harm.

[PAGE]

1 As I mentioned, Madam Chair, the Mixed Commission meeting is being held next
2 week. This is a meeting of the Bishops of the Diocese of New Zealand and the
3 congregational leaders. It's a combined meeting and they will be discussing this hearing
4 and reflecting on the key lessons in these statements and in your reports.

5 The leaders are deeply concerned that the work of the Royal Commission translates
6 into concrete actions that they can take within the Church as a result of this work.

7 **CHAIR:** This is a meeting called specifically to deal with these issues, it's not a general meeting?

8 **MS McKECHNIE:** No, Commissioner, I don't want to give the wrong impression, this is a -- it
9 may be annual, six-monthly meeting, but it is the dominant matter on the agenda.

10 **CHAIR:** All right, thank you.

11 **MS McKECHNIE:** The Church has steps underway, Commissioners, there is a road map that has
12 been discussed and agreed, and these key moments, your report, this hearing, solidify these
13 actions in concrete ways.

14 Commissioners, I then note in my submissions that we will be filing further
15 evidence from Brother Timothy to respond to some of the matters in Dr Mulvihill's
16 evidence. There are some other matters where the documentary record has documents
17 which we wish to bring to the Commissioners' attention.

18 You will appreciate, Commissioners, there are many, many hundreds of documents
19 that have been provided to the Commission under notices, from The Order and from other
20 Catholic entities within New Zealand. There are some difficulties with the records, in part
21 because there are allegations in Australia, and it is the case that sometimes documents are
22 found in places that they were not initially looked for because they were not anticipated to
23 be there. And that has led to some of the difficulties you've heard in the last week in terms
24 of provision of documents.

25 **CHAIR:** Yes.

26 **MS McKECHNIE:** Commissioners, the Church is not seeking to challenge the stories or the
27 evidence of the survivors. But where we hold additional information that survivors don't
28 have access to, we are able to provide that to assist their understanding of their own journey
29 and their own processes. And it's clear that that record being in the hands of survivors is
30 very important --

31 **CHAIR:** Yes.

32 **MS McKECHNIE:** -- for them. We have done this informally during Counsel Assisting this
33 week where we felt it could assist, and there will be some facts and figures that may have

[PAGE]

1 been inconsistent and we will help the Inquiry ensure this information is updated by the
2 time of its report.

3 **CHAIR:** That's important, because, as I'll make it plain later, the investigation continues, this
4 hearing is but one part of it. And so we continue to investigate and inquire and any further
5 assistance is gratefully received.

6 **MS McKECHNIE:** To conclude, Commissioners, as we conclude this part of the Royal
7 Commission, the Church acknowledges the work of the Commissioners and their staff,
8 bringing us together in the toughest of times. I'm very pleased personally we have got to
9 the end of the hearing without anyone having to go into isolation.

10 But on a more serious note, Commissioners, the Catholic Church will continue to
11 engage with and work with you, the Royal Commission, the Crown, and other faith-based
12 groups towards a just resolution for survivors of harm in New Zealand. Of critical
13 importance is a desire to work with survivors and their advocates on this path.

14 The Church acknowledges we need more. Much evidence this week has been about
15 what best practice was or should have been in the past, and now we need to work
16 collaboratively to what best practice should be in the future.

17 None of us knows presently exactly what that will look like. Our society and the
18 Church, as part of that society, needs to get to a better place, which requires expertise,
19 knowledge, wisdom and experience from all in this room and from all who are listening
20 either now or later.

21 To close, we ask that survivors, Church leaders, the State, advocates and
22 professionals join together and collaboratively determine what the best practice should be
23 for now and into the future.

24 **CHAIR:** Thank you.

25 **COMMISSIONER ALOFIVAE:** Probably lots of questions, Ms McKechnie, but nothing further
26 given that you're actually going to be filing fuller submissions, and I think you've heard
27 where our interest points are in the sense that it really is around the accountability of the
28 leadership and what actually truly went on in that space. So from your perspective and in
29 respect of the evidence that's before the Commission, so thank you very much.

30 **CHAIR:** Thank you so much, Ms McKechnie, today and for your participation over the last seven
31 days.

32 **MS McKECHNIE:** Thank you Commissioners.

33 **CHAIR:** We now call on SNAP. I believe --

34 **MS ANDERSON:** Yes, SNAP's counsel is coming in by AVL.

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