H.4

Tāwharautia: Pūrongo o te Wā

Interim report

Volume One

Abuse in Care
Royal Commission of Inquiry

December 2020

Presented to the Governor-General by the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions

ISBN 978-0-473-55413-2

Abuse in Care
Royal Commission of Inquiry

4 December 2020

Her Excellency
The Rt Hon Dame Patsy Reddy
Governor-General of New Zealand

May it please Your Excellency

By Order in Council dated 15 June 2020, and preceding Orders, we were appointed to inquire into the historical abuse of children, young persons and vulnerable adults in State care and in the care of faith-based institutions.[1]

The terms of reference require us to present a substantive interim report to you by 28 December 2020.

We are pleased to submit the Royal Commission's substantive interim report for your consideration.

Yours sincerely

Coral Shaw
Judge Coral Shaw
Chair

Ali'imuamua Sandra Alofivae, MNZM
Commissioner

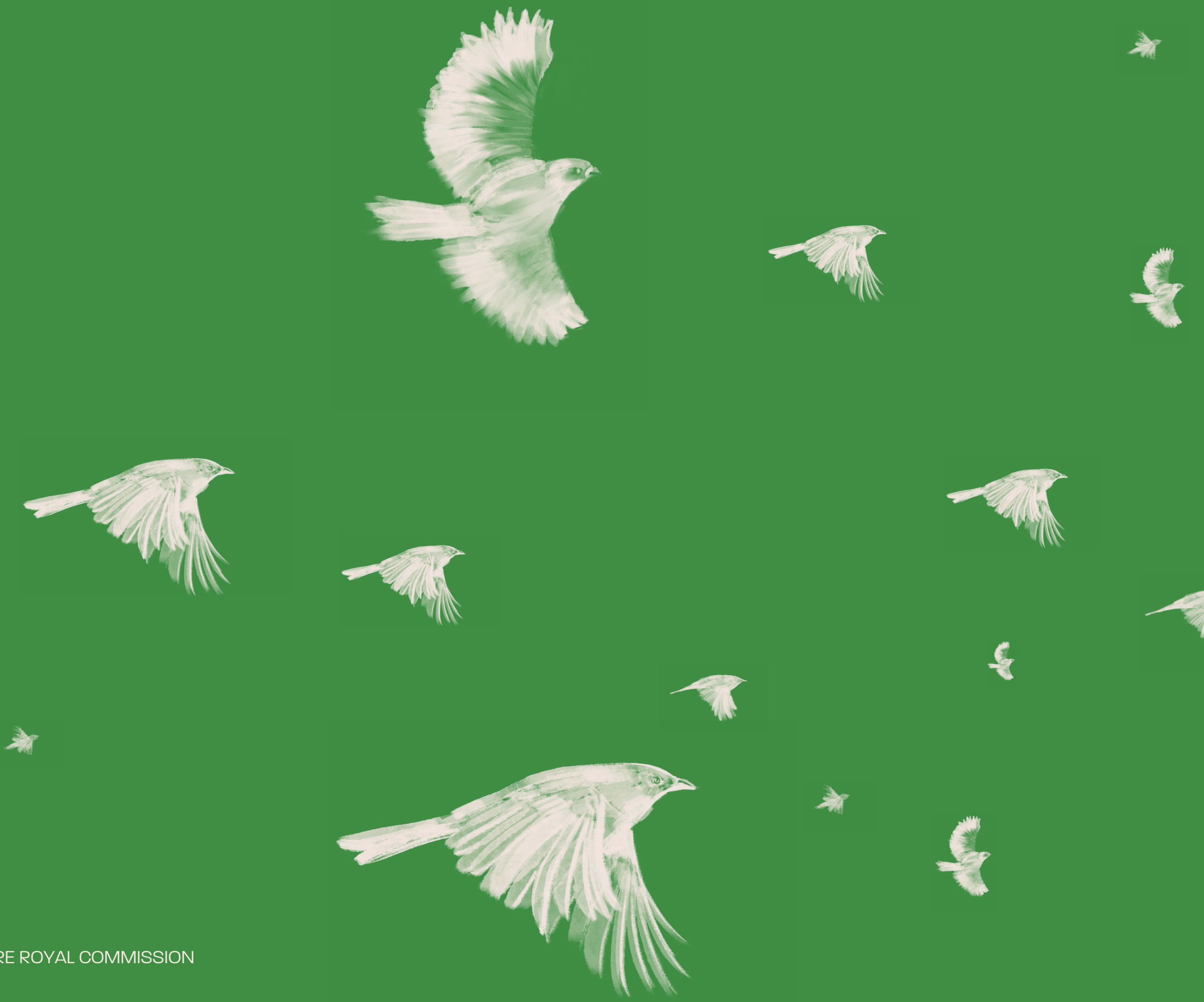
Dr Andrew Erueti
Commissioner

Paul Gibson
Commissioner

Julia Steenson
Commissioner

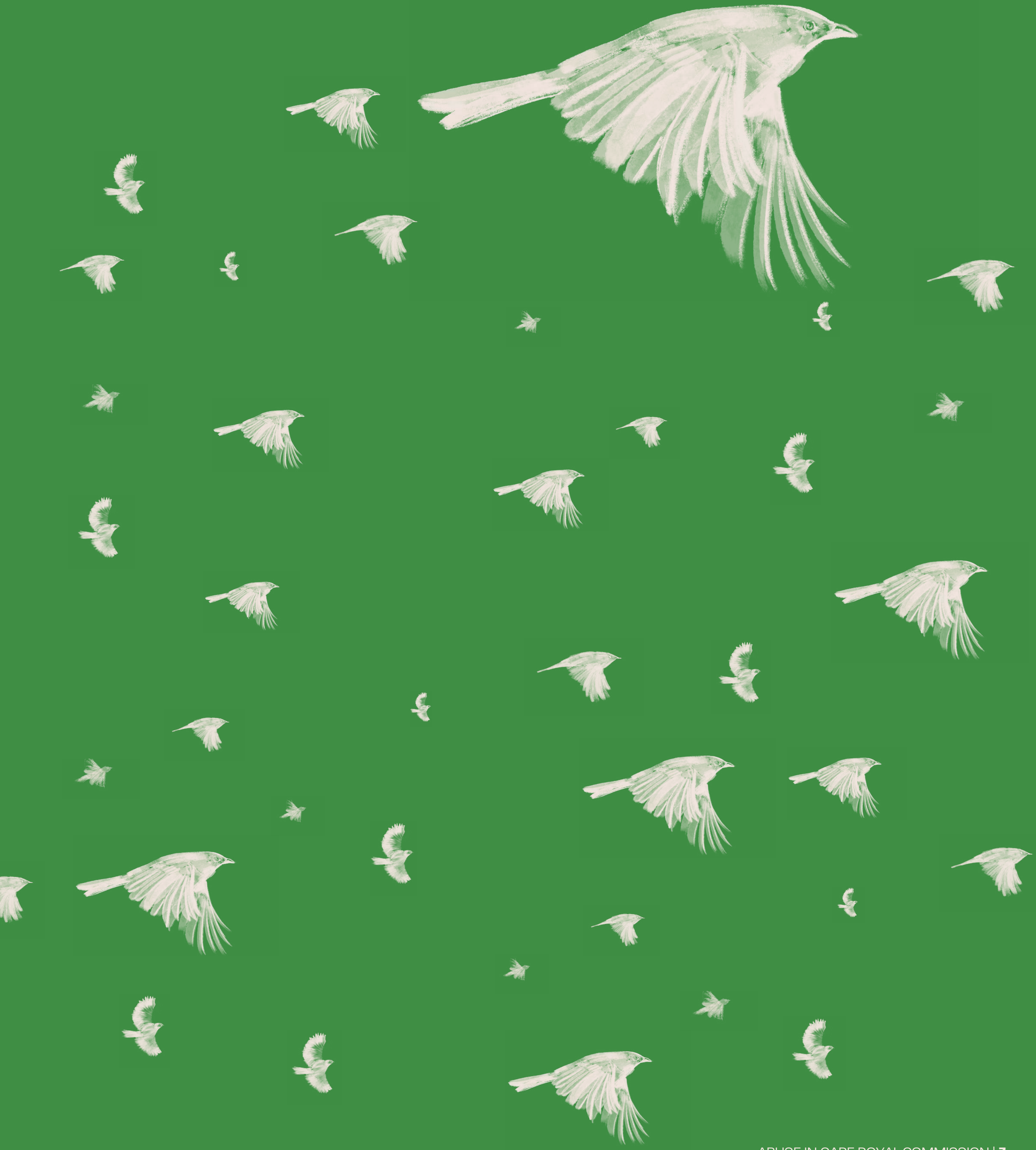
**Hūtia te rito o te harakeke,
kei hea te kōmako e kō?
Whakatairangitia, rere ki uta
rere ki tai.**

**Kī mai koe ki ahau, "He aha te
mea nui o tēnei ao?"
Māku e kī atu, "He tangata,
he tangata, he tangata."**

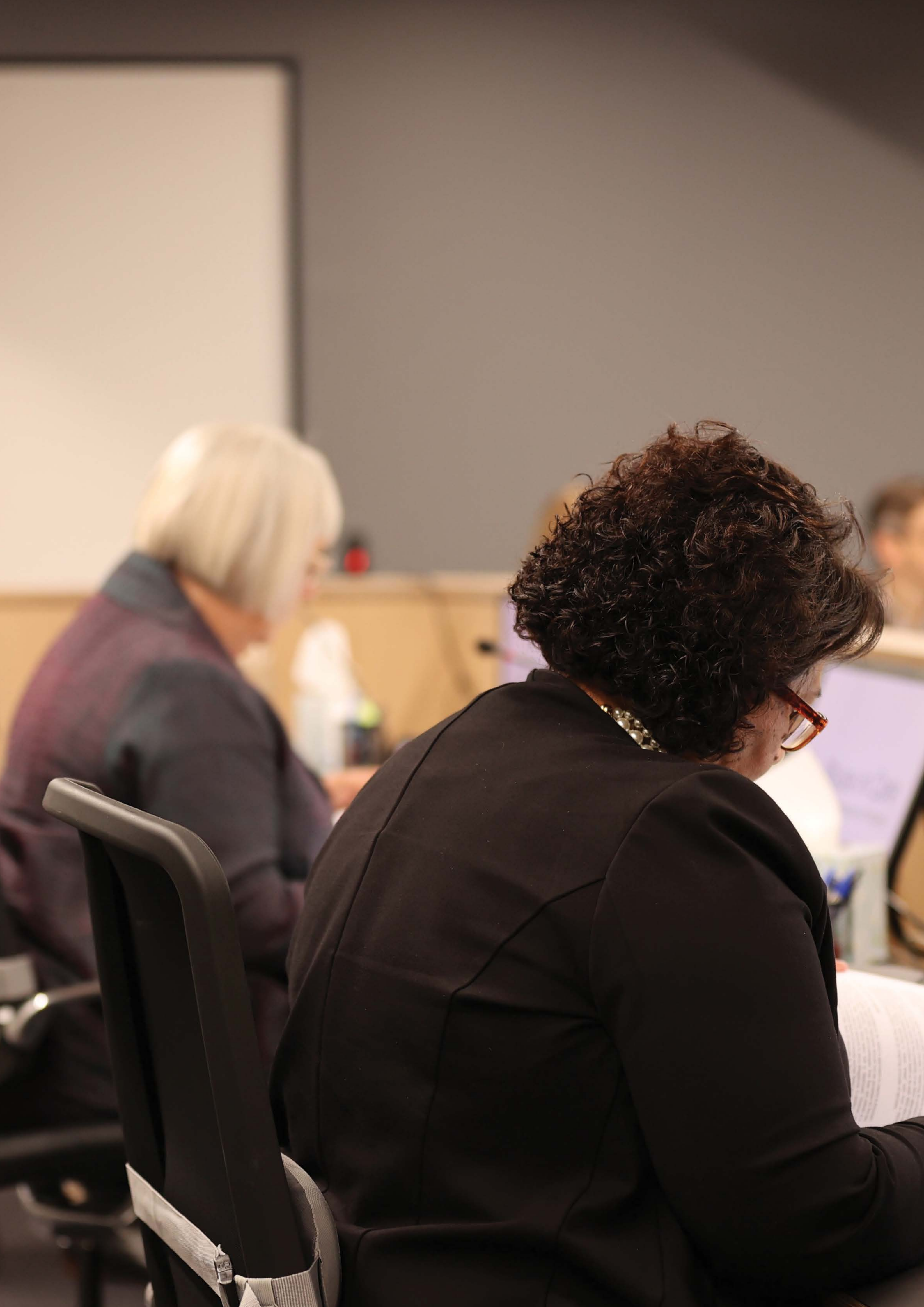


Pluck out the heart of the flax bush, and where would the bellbird sing? It would fly about aimlessly.

Should you ask, "What is the most important thing of this world?" I would reply, "It is people, it is people, it is people."



Contents



Foreword

We are pleased to present Tāwharautia: Pūrongo o te Wā – the interim report of the Royal Commission of Inquiry into Abuse in State Care and in the Care of Faith-based Institutions.

This reports on the inquiry's work since the terms of reference were announced by the Government in November 2018, and describes the key themes and common issues from the experiences shared with us by victims/survivors so far.

The name Tāwharautia is a word that implies providing shelter or care whether physical, emotional or spiritual. The word has broad application. *Kia tāwharautia a Mātaatua* is a well-known whakataukī urging multiple iwi to unite under a common cause to redress wrongs and to create a tatau pounamu, an enduring peace. To use the words of Sir Te Ahorangi Timoti Karetu "it is the very absence of the essence of tāwharautia that causes our children to experience abuse." The name will be used across all reports of this inquiry. It is used with approval from te reo experts Te Ahorangi Timoti Karetu, Pou Temara and (the late) Wharehuia Milroy, and we are very grateful for their assistance in selecting it.

Volume one summarises what we have been doing, how we have been approaching our work, and what we have been learning. It draws on information gathered and evidence received through private sessions with hundreds of survivors, research and investigations and public hearings, including our contextual hearing held in October 2019, and our hearing into State redress processes held between September and November 2020. It also sets out what we need to do from here to satisfy the terms of reference.

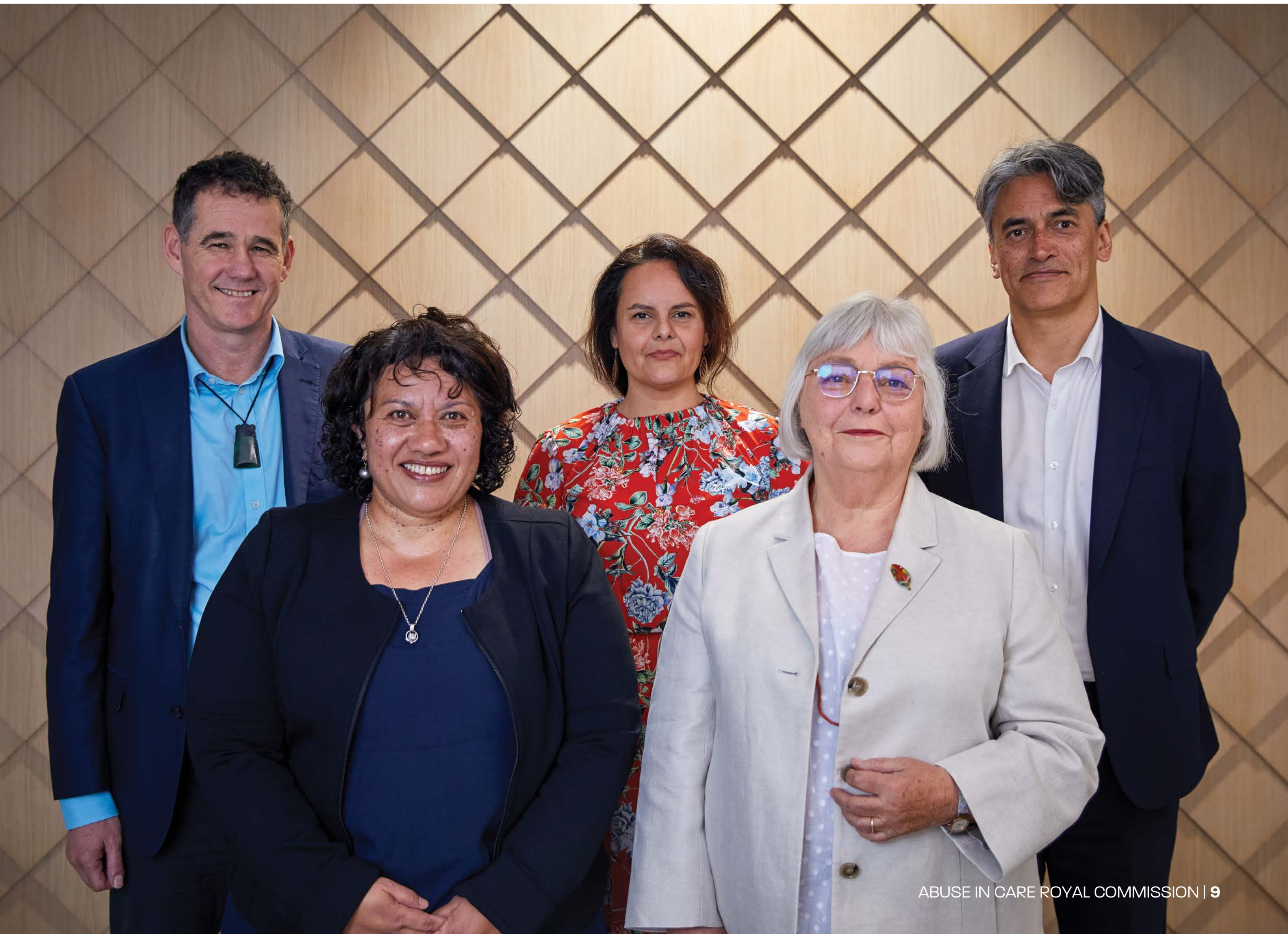
Volume two is devoted to survivor voices – an analysis of 50 private session transcripts covering several care settings. It shares survivors' own words about their experiences and draws out themes we have been hearing. We acknowledge the work of Synergia in preparing this part of the report, with the assistance of Dr Anna Duncan and Dr Sarah Carne of the inquiry.

We have received the benefit of invaluable insights from many people and groups through the course of the inquiry and thank them all for their contributions. But we must also specifically acknowledge the contribution of a few groups.

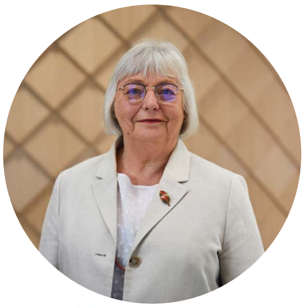
First, we are grateful for, and admire the bravery of, survivors who have come forward to share their experiences of abuse in care. Without them this work would not be possible, and their experiences, along with the experiences of others who are not able to come forward, would remain unknown. We give particular acknowledgement to those survivors who have passed on.

We also acknowledge and thank the members of our survivor advisory group, Kararaina Beckett, Sally Champion, Jim Goodwin, Anne Stephenson, Keith Wiffin, Gary Williams, as well as the members of our Māori advisory group Te Taumata – Prue Kapua (chair), Neville Baker, Sharon Hawke, Liz Mellish and Matthew Tukaki. The advice and support of the members of both groups continue to be invaluable as we go about our work. We look forward to continuing to work together.

Finally, we would also like to acknowledge the passionate team of people working for the inquiry.



Commissioner profiles



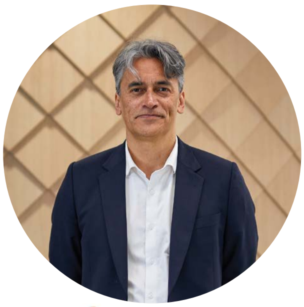
Coral Shaw

Judge Coral Shaw – chair

Coral Shaw was appointed chair of the inquiry in November 2019 following the resignation of Sir Anand Satyanand. Coral served as a District Court judge in West Auckland where she introduced a fast-track system for family violence cases. Together with Hoani Waititi Marae, she established a marae-based programme of restorative justice. Coral later served as a judge of the New Zealand Employment Court and United Nations Dispute Tribunal.

Ali’imuamua Sandra Alofivae

Sandra Alofivae has practised as a lawyer in Auckland for the past 20 years representing children, young people and their families. She grew up in Māngere and has strong ties to the local community through her work in the voluntary sector. In 2016, Sandra was made a Member of the New Zealand Order of Merit for her services to the Pacific community and to youth.



Dr Andrew Erueti

Andrew Erueti from Ngā Ruahinerangi and Ngāti Ruanui (Taranaki) and Te Āti Haunui-a-Pāpārangi (Whanganui) is Associate Professor at the University of Auckland Faculty of Law. He is a former Fulbright scholar and has published extensively in New Zealand and overseas on indigenous rights and human rights in international law. Between 2008 and 2012, he was Amnesty International’s lead adviser on indigenous rights based in London and the United Nations office in Geneva.

Paul Gibson

Paul Gibson was the Disability Rights Commissioner at the Human Rights Commission from 2011 to 2017. The work he led includes historic State abuse, accessibility, education, New Zealand Sign Language, Down syndrome, antenatal screening, neuro-disability and mental distress/psycho-social disability. Paul is a former president of the Disabled Persons Assembly. Breaking down barriers for disabled communities has been a life-long priority for Paul, informed by his own situation as a blind person.

Julia Steenson

Julia Steenson is of Ngāti Whātua and Waikato descent and joined the inquiry in August 2020. Julia has extensive governance experience and is currently an elected representative on the Ngāti Whātua Ōrākei Trust Board and, since 2017, a director of Whai Rawa Limited. Having previously established the general counsel role for Te Wānanga o Aotearoa in 2012, she presented on indigenous rights and intellectual property at the World Indigenous People Conference on Education in Toronto in 2017 and also presented on access to legal services and digital technology at Te Hunga Rōia Māori o Aotearoa in 2018, and has launched a tech start-up to improve access to legal services.

Executive summary

This inquiry was set up to examine, effectively and impartially, the abuse and neglect of the country's youngest and most vulnerable individuals while in State and faith-based care primarily between 1950 and 1999. The terms of reference encompass a broader range of care settings and types of abuse and neglect than any other similar inquiry in the world. They require us to examine, among other things, the nature and extent of abuse in all of these settings and how different groups, such as Māori, Pacific people and disabled people, have been harmed. Despite the comprehensiveness of the terms of reference, we can reduce them to four essential questions:

- *How and why have people ended up in care?*
- *What abuse has taken place, why, and with what effects?*
- *What changes have already been, and can be made to prevent and respond to abuse?*
- *How should State and faith-based institutions provide redress and rehabilitation to survivors?*

This interim report is an overview of what we have learned so far about these questions. There is much more work to do to answer the questions fully, which will follow in the form of a series of reports arising out of individual investigations and informed by private sessions with survivors, culminating in a final report.

Our approach

In carrying out our work, we are guided by a set of values, principles and strategic pillars. One of our prime concerns is to do no harm to survivors while investigating abuse. To that end, we have a dedicated team looking after the health, wellbeing and safety of all survivors who contact us. We register every survivor who contacts us, and the total currently stands at more than 1,900 survivors and about 350 witnesses or other interested people. We expect that thousands more will eventually contact us.

For a survivor perspective on our work, we draw on the advice of a survivor advisory group. We have also recently established a Māori advisory group, Te Taumata, for advice on ensuring an effective Te Tiriti o Waitangi-based approach, incorporating tikanga in our activities, and strengthening Māori partnerships and engagement.

The success of the inquiry depends to a great extent on survivors and others coming forward to help us with our work, and we reach out to the community to encourage survivors, their families and others to participate in our activities. Building relationships and trust is a big part of this work. We have focused our efforts on reaching Māori, Pacific people, disabled people (especially those with learning disabilities), the Deaf community, homeless people, those with mental health difficulties, the LGBTQIA+ community, young people, seniors and women. Our work with these groups, and others, will continue throughout the inquiry.

Gathering information and evidence

We are steadily building up a more detailed picture of abuse through three principal means:

Survivor accounts: In confidential, one-on-one private sessions (in person or by video), survivors talk to a commissioner about their experiences of abuse. Some survivors derive therapeutic benefit from talking – sometimes for the first time – about their abuse. Importantly, we collate anonymised information from these sessions to feed into our investigations work. To date, we have held more than 550 such sessions in 27 towns and cities and in seven prisons. We plan to eventually hold about 2,700 private sessions. Some survivors also give their accounts in group sessions, or in writing. We expect to collect about 500 written accounts over the course of the inquiry.

Investigations and public hearings: We have nine major investigations under way and may eventually start as many as 11 more to ensure we can respond to all aspects of the terms of reference. Five are examining abuse in specific settings: psychiatric institutions, State-run children's residential care, disability care, and Catholic and Anglican Church institutions. Three are examining abuse and its impact on specific groups, namely Māori, Pacific people and disabled people. The ninth is looking at redress available to those abused while in State or faith-based care.

To date, we have issued close to 100 information requests to the Crown and faith-based institutions and received more than 370,000 documents. We estimate that we may receive more than two million documents and several thousand witness statements by the time the inquiry ends. Investigations will also use roundtables, kaupapa-based hui, fono, and wānanga to gather information in more informal or culturally appropriate ways.

We have so far held two public hearings: a contextual hearing and a hearing into State redress processes, and have begun a third, into the redress processes of faith-based institutions. We have heard evidence from survivors, academic and legal experts, government officials, and others. By the end of 2020, we expect to have held about 45 days of hearings. Public hearings allow the public, survivors and others to see, hear and understand the work we are doing. They also enable individuals and institutions to respond to allegations of wrongdoing and, where appropriate, to be publicly held to account for their actions.

Research and policy work: We carry out and commission research to help with our investigation work. We have been reviewing literature about abuse, studies and records from the past 70 years, as well as conducting analysis of information we have received, such as survivor accounts. We are planning research projects to fill the gaps in existing data, in particular trying to get a clearer picture of the impact of abuse in care on Māori, Pacific people and disabled people. We also carry out policy analysis to help understand previous policy contexts and inform recommendations for change.

What we have learned about abuse

Despite the limited information currently available to us, it is clear the extent of abuse in care is significant. A report we have commissioned has estimated that about 655,000 people went through some of the care settings covered by the terms of reference and that up to about 250,000 may have been abused. It will never be possible to determine the precise number of people abused in care because of large gaps and deficiencies in the data available. But this work indicates that even on conservative estimates, there has been more abuse in care than previously thought. It is likely these figures are an underestimate of the problem, for reasons outlined in the report itself. Another point to stress is that abuse in care continues to this day.

The people who have been abused in care come from all backgrounds and situations. A distinctive feature of our inquiry is that many come from the most disadvantaged or marginalised segments of the community – children, young people and vulnerable adults, particularly from Māori whānau, Pacific families, children from impoverished backgrounds, disabled people and women and girls.

Children were often placed in care for reasons other than bad behaviour, in many cases because authorities deemed their home life unsafe or inadequate to care for them. Yet as bad as their home life may have been, many left in worse shape than when they arrived, often with devastating and long-lasting consequences.

Two of the most common routes into State care are through the criminal courts and through the social welfare system. Māori have been overrepresented in both, and unsurprisingly are overrepresented among those taken into care. There is evidence that the discriminatory attitudes of officials, members of police and the public towards Māori contributed to this overrepresentation. Pacific people are also overrepresented in care today, though not to the same extent as Māori. A large proportion of disabled people have experienced some form of care during their lives and disabled people are likely to be overrepresented among abuse victims.

Survivors have told us about a wide and disturbing range of abusive behaviour ranging from, at the most common end, physical assaults and sexual abuse through to unreasonable physical restraint, cruel, inhuman and degrading treatment, use of medication and medical procedures such as electro-convulsive therapy as punishment, unjustified solitary confinement and isolation, improper strip searches and vaginal examinations, verbal abuse and racial slurs.

Survivors have also described physical, emotional and psychological, medical, educational, spiritual and cultural neglect. The last of these is particularly relevant to Māori, who struggled to find and reconnect with whānau, hapū and iwi, and build a sense of Māori identity. Pacific children were encouraged to abandon their Pacific identity while in care. Survivors with a disability reported feeling abandoned, invisible and excluded from their family and wider community.

The information gathered so far suggests there are some common factors in abuse cases, including a lack of vetting, training and oversight of those in positions of authority, the absence of clear or safe processes for making complaints of abuse, and failures to respond to disclosures of abuse adequately.

Survivors, especially those with disabilities or from Pacific families whose English was limited or who found it particularly difficult to challenge authority, described formidable barriers to disclosing abuse. We heard many examples of inadequate or harmful responses to reports of abuse. Survivors who reported abuse in psychiatric care settings felt at a particular disadvantage because psychiatrists, doctors and nurses were highly regarded figures whose word was seldom doubted. Rarely was action taken against the alleged perpetrator. Sometimes victims were punished for reporting abuse or placed back in abusive families or settings after their disclosure. We heard about active attempts to cover up abuse and/or transfer the abuser or abusers after victims made allegations.

We have also learned about some of the economic costs of abuse. A report we commissioned has estimated the cost of abuse in care to individuals and society between 1950 and 2019 at up to $217 billion.

Redress processes and outcomes are unsatisfactory

The State's redress processes, including the Crown's approach to civil claims, have been overly focused on the financial implications to the State, rather than on providing satisfactory compensation to survivors and ensuring their wellbeing. The Crown has vigorously defended claims in court, while government agencies have developed alternative, out-of-court claims processes that survivors describe as protracted, lacking transparency, inconsistent and full of hurdles. The resulting financial settlements are inadequate and also inconsistent. Rehabilitation, such as counselling, medical treatment and employment training, is inadequate.

Government agencies have full control of the claims processes. Survivors who make claims are frequently disbelieved and forced to retell their experiences again and again, which they find traumatising. Information and guidance on claims processes are poor. Many survivors are unaware they can even make a claim. Finally, settlement processes have not sufficiently considered the Crown's obligations to Māori under Te Tiriti.

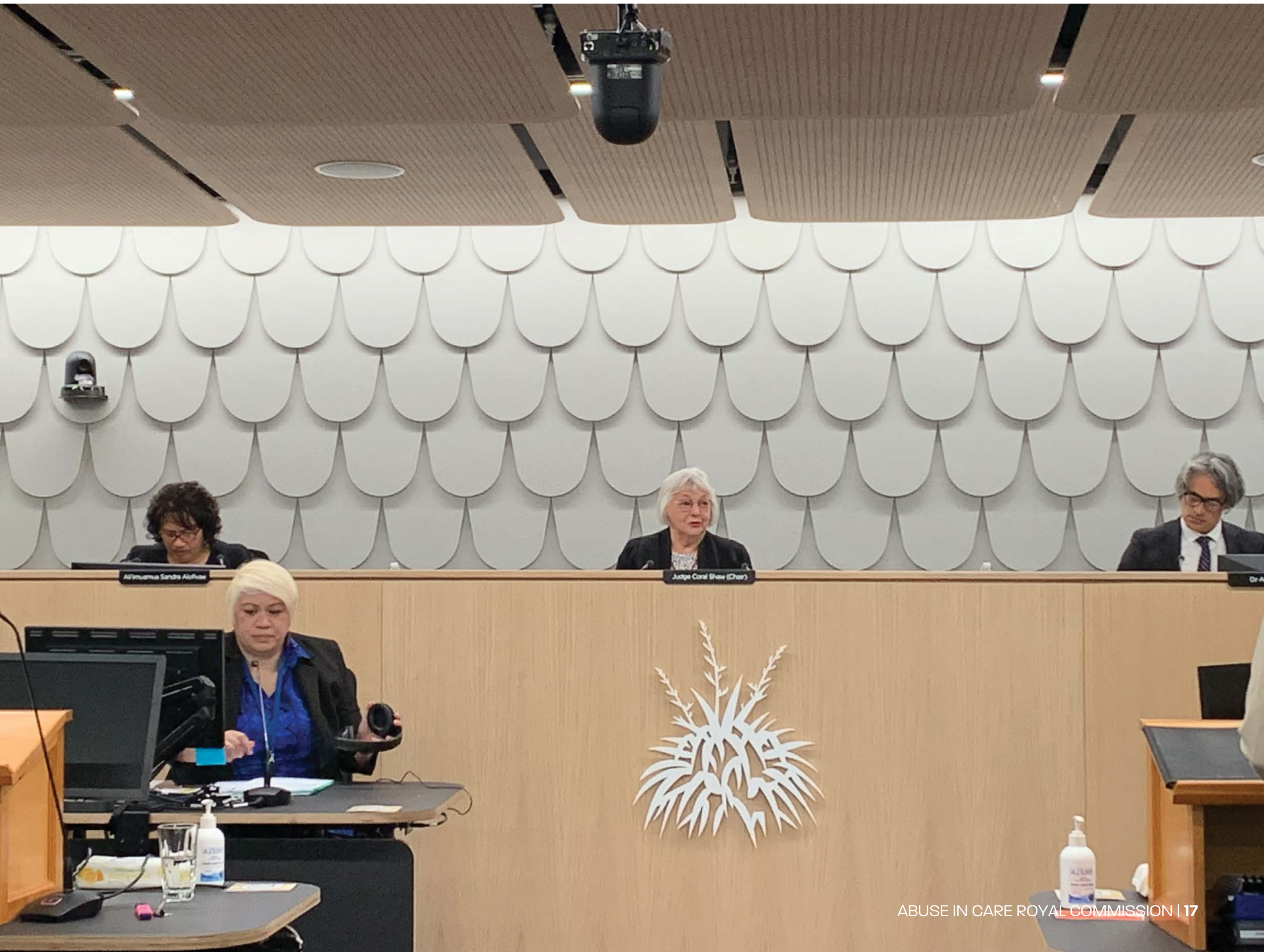
Looking ahead

We will continue our existing investigations and begin new ones into other care settings, such as youth justice facilities, schools and foster care. Some investigations will span several settings. Public hearings, roundtables, hui and wānanga will supplement these investigations, helping us build a more complete picture of what happened and why. Private sessions, a valuable source of first-hand information, will continue, along with the collection of written statements. We will be issuing more information requests, which will produce a steady flow of documents to examine.

We have much work to do to get a firmer estimate of how many people were abused in care. We need more information on how abuse affected particular groups, such as Māori, Pacific people and those with disabilities. We will need to conduct or commission more research, and the results of this work and the information we collect will all need to be evaluated, tested, synthesised and transformed into practical recommendations for change.

We are conscious of the need to produce a fair, accurate and comprehensive account of abuse in care. The terms of reference demand it, but equally importantly, the survivors of abuse demand it, the interests of justice demand it, and the public deserve it.

Some of the material in this report includes real examples of abuse. This may be distressing for some readers.



Part one: Why we are here

Introduction

This inquiry is examining the nature and extent of abuse in care and the reasons why many of the country's youngest and most vulnerable people have been abused while in the care of the State and faith-based institutions.

Generations of children, young people and vulnerable adults have been subjected to abuse and neglect in ways and on a scale that most New Zealanders will find incomprehensible.

Māori have suffered more than most, both individually and collectively. They have been overrepresented in care for generations. They have also been disproportionately subject to abuse, as have people with disabilities, including those with mental illness.[2] Pacific people have also been badly affected.[3] And to be clear, the abuse continues to this day.[4]

For many years, victims and survivors, community leaders, academics, human rights campaigners and others lobbied for an investigation into this shameful subject.[5] New Zealand owes a great debt to those who worked tirelessly to this end, particularly survivors themselves who were at the forefront of efforts to establish this inquiry.

The inquiry's then chair, Sir Anand Satyanand, carried out extensive consultation on draft terms of reference and, in response to the views of survivors, experts and members of the public, recommended broadening the inquiry's scope.[6] The final terms of reference now cover more types of abuse and neglect than any other similar inquiry in the world. In this report, we generally use the term abuse to include neglect.

The terms of reference also encompass a very broad range of settings, both direct and indirect State care and faith-based care, including child welfare and youth justice facilities, foster placements, adoption placements, all schools, early-childhood facilities, health camps, health and disability settings (both in-patient and community-based), police and court cells and faith-based institutions (whether part of an organised religion or otherwise).[7]

> **"It seems that "abuse" and "care" don't fit together. Yet, here we are. I ask that everyone in New Zealand open their hearts to the voices... of those who share. Realise that our voices are valid, real and raw. We are sharing our valid experiences. My plea is that our experiences be validated and listened to. When we do that, we can honour the experience and soon alleviate this pain."**
>
> **ANONYMOUS SURVIVOR, MESSAGES TO AOTEAROA**

We are required to address the effects of abuse on particular groups, including Māori, Pacific people and disabled people. Reflecting public feedback during the consultation process, Cabinet confirmed that the inquiry would be underpinned by Te Tiriti o Waitangi/the Treaty of Waitangi and its principles, and would partner with Māori throughout its work.[8]

The terms of reference emphasise international as well as New Zealand law, including human rights law. The inquiry has an extremely wide timeframe – from 1950 to 1999 – and is able to look before and after that period.[9] Our work has two strands: one looks back to establish what happened and why, and the other looks forward to current systems for preventing and responding to abuse and what changes need to be made.[10]

Despite the comprehensiveness of the terms of reference, they can be condensed to four essential questions:

- *How and why have people ended up in care?*
- *What abuse has taken place, why, and with what effects?*
- *What changes have already been, and can be made to prevent and respond to abuse?*
- *How should the State and faith-based institutions provide redress and rehabilitation to survivors?*

These questions apply equally to faith-based institutions and the State – and in some cases people have been in the care of both, and sometimes in numerous care settings. For Māori, these questions must be seen within the context of tikanga Māori as well as broader historical factors such as colonisation, urbanisation, ongoing racial discrimination and the Crown's obligations arising from Te Tiriti as well as the United Nations Declaration on the Rights of Indigenous Peoples. Successive generations of whānau, as well as the Māori communities in which they live, have had to endure some of the worst effects of institutional care.

For Pacific people, the broader context includes the large-scale migrations of the mid-20th century, the cultural and social impact on Pacific communities, particularly young people, and the social response to this from New Zealanders.

For disabled people, the broader context includes shifts over time from institutional to family care, the need for care relationships from school age through to adulthood, the domination of decision-making by non-disabled people, stigma, shame, whakamā (externalised shame or guilt), discouragement of individuals from safely getting their care needs met, a history of unnecessary medical intervention, eugenics, segregation, a view that people with disabilities suffer from a deficit rather than simply being different, compulsion, coercion, and bioethical experimentation in care and treatment, and difficulty in accessing care.[11]

Despite the complexity of what we must examine, our objectives are simple: we must find practical and effective ways for the State and faith-based institutions to put right the harm that has happened, and to keep children, young people and vulnerable adults safe in future. We have much work to do to achieve these objectives.

This interim report discusses the work we have done so far and notes the key themes and common issues arising from what we have learned.

"The abuse of Māori children in care also arises from the same context [of colonisation], as indeed does the abuse of all children. Colonisation is an inherently abusive process."

MOANA JACKSON

1.1. Nature of the problem

Abuse in care is a serious and long-standing problem

The abuse and neglect of children and other vulnerable people in care has been a serious and long standing social problem. It is difficult to get an accurate estimate of the total number of people who may have been affected by abuse in care, due to large gaps and deficiencies in the data available, such as from underreporting of abuse. However, a report we have commissioned suggests that up to about 250,000 may have been abused in care since the 1950s.[12] The report found the data currently available has large gaps, which means these numbers are likely to change as our research and investigations uncover more information about the extent of abuse and neglect in care.

The evidence and other information we have received is unequivocal: many people in care today continue to be abused and neglected.[13]

The survivors of this abuse are among society's most vulnerable people. They include children separated from their families and placed in State care in circumstances outside their control, young people in the care of church leaders, people with physical, sensory or neurological disabilities or mental health issues – all people who, for one reason or another, were reliant on others outside their families to care for them and keep them safe. Instead of being kept safe, people left in worse shape than when they arrived.

We have heard from many people who have suffered abuse. The key theme from their experiences is the breadth and depth of their suffering. The types of abuse have included physical assaults, sexual abuse, unreasonable physical restraint, cruel, inhumane and degrading treatment and

> **"I have told so many priests about the abuse I have suffered in confession and have only received penance in return. Not one ever told me it was a crime or gave me advice, so I believed it was my sin to carry."**
>
> **LEONIE JACKSON**

punishment, improper use of medical procedures (in extreme cases involving electric shocks on genitals and legs), unjustified solitary confinement and isolation, improper strip searches and vaginal examinations and verbal abuse and racial slurs. We have also heard about many forms of neglect, including physical, emotional, educational, psychological, medical, spiritual and cultural neglect.

Abuse in care has wide-reaching consequences

We are learning about the different impacts on key groups. Māori in particular have been overrepresented in care for generations and recent data shows they have been disproportionately subject to abuse.[14] The problem persists to this day despite the chorus of Māori and others who have called for profound change to improve Māori outcomes.[15] Oranga Tamariki's most recent annual report shows Māori today make up 69 per cent of children in care and 81 per cent of the children abused in care.[16]

Disabled people, including people with a mental illness, are another important and often overlooked group. They are more likely to be in care and for longer periods than non-disabled people and are also more likely to be abused.[17] We have heard that many suffered particularly from educational neglect. Their learning needs were not acknowledged, they were denied the opportunity to learn to read or write, and as a result they were prevented from reaching their full potential.

This form of neglect can have a compounding effect: people who have received inadequate education are less able to assert

> **"You take a stone, you drop it into a pond, it ripples, you are looking at intergenerational ripples…Don't judge a person in isolation to their history. All issues and behaviours have a whakapapa, they came from somewhere for some reason, these things didn't just manifest out of the land. Everything has a whakapapa"**
>
> **DR RAWIRI WARETINI-KARENA**

their rights, protect themselves and complain when abuse occurs. The lack of readily available data on the nature and extent of abuse of disabled people while in care is one example of how this part of our population has been overlooked and how the experiences and consequences of abuse to this group have gone undocumented.

Similarly, there is little readily available information on the number of Pacific people who have gone into care, or on their experiences of that care, including abuse suffered. For long periods, agencies have not collected or kept consistent data on the number of Pacific people in care or have counted Pacific together with Māori. The limited data affects what we understand about Pacific people's experiences of care. We are working to understand more about the ways in which Pacific people have suffered abuse in care across our history. Today, Pacific youth are overrepresented in youth justice residences and out-of-home care placements, though not to the same extent as Māori.[18]

We acknowledge that some people belong to more than one of the groups we discuss in this report. We accept responsibility for ensuring the voices of survivors are heard no matter what group they come from or perspective they have.

Beyond the physical injuries some victims and survivors are left with, there are many other profound and long-lasting consequences. The list is considerable and includes loss of identity, innocence and sense of belonging, mental health difficulties (ranging from insomnia through to depression, suicidal thoughts and suicide), loss of educational and employment opportunities, poverty, homelessness, relationship and interpersonal problems, family breakdowns, loss of spiritual or cultural identity and drug or alcohol addiction.

The impact is often particularly profound for children who have been severely abused or maltreated, especially if at a young age. They can be left with deeply entrenched impairments, such as an inability to regulate behaviour and emotions, diminished intellectual abilities, language and memory difficulties, and poor cognitive processes to control behaviour and achieve goals.[19] Their ability to develop attachments can be affected, which has an impact on their relationships, sense of self-worth and empathy.[20]

In many cases, there is a direct line from abuse in care to anti-social behaviour, such as gang membership and crime. Many survivors end up in prison.[21]

Survivors may suffer further trauma when they seek compensation or redress. Some have described the process as worse than the abuse itself, pointing to disrespectful, drawn-out, and sometimes traumatising interactions and, in at least one case, the State's rejection of claims despite the conviction of the abuser as a child-sex offender.

The impact of abuse in care is felt far beyond survivors themselves. It also harms their families, their immediate community and society as a whole. The impact reverberates from generation to generation. This is especially pronounced for Māori, who have suffered the loss of cultural identity through disconnection from their whakapapa, whenua and te reo Māori, and the breakdown of identification with their whānau, hapū and iwi. The removal of a Māori child into care outside of their whānau also has a negative impact on the tino rangatiratanga of the whānau, hapū and iwi to which the child belongs.

In addition to the impacts felt by individuals, the financial and social costs of picking up the pieces are borne by communities, whānau, hapū, iwi and society generally. Impacts such as poverty, substance abuse and crime stretch community services. Unrealised personal potential manifests in loss of economic productivity and other stresses on the community. Several individual survivors have obtained reports from an actuary, who calculated the loss caused by abuse at up to $910,000 for each survivor.[22]

A report we commissioned estimated the cost of abuse in care to New Zealand in 2019 at between 0.4 per cent and 0.8 per cent of GDP.[23] The same report estimated the cost of abuse in care to New Zealand for the period 1950 to 2019 at up to $217 billion. These costs are not borne equally across society: Māori in particular bear a higher proportion of these costs, given the inequality that has existed over generations, and the high numbers of Māori who have been abused in care.

The consequences for the individual – and therefore for society, too – persist long after the abuse has ended. One survivor, Mike Ledingham, aptly described the continuing anguish: "It's not water under the bridge… The pain is still there … The bishop spoke about closure, but how can you have closure when you wake up having had a nightmare."[24] Or as another survivor, Annasophia Calman, put it: "The abuse I suffered while in care has blackened my entire life."[25]

1.2. A history of inaction and ineffectiveness

Survivors have argued for years that the State and faith-based institutions are accountable for abuse that took place while in their care and have complained of failures to respond adequately and provide adequate redress. We do not at this stage make findings of responsibility or fault, but there is no doubt the State has obligations to those in its care, including domestic and international human rights obligations, as well as those under Te Tiriti. These obligations are being tested by claims before the courts, the Waitangi Tribunal and the United Nations. The United Nations Committee Against Torture has expressed concern about New Zealand's failures to investigate abuse in State care and compensate victims.[26] Similarly, faith-based institutions are increasingly facing claims of abuse in their care.

Other countries have collectively conducted nearly 50 inquiries of one type or another into abuse in care.[27] In comparison, only limited efforts have been made to examine abuse in care in New Zealand. The Confidential Forum for Former In-Patients of Psychiatric Hospitals (2005-07) gave individuals a means of talking about their experiences.[28] The Confidential Listening and Assistance Service (2008-15) had a similar purpose and was well regarded by many who participated in it.[29] However, neither had the scope to fully investigate what occurred.

There have been other reviews and reports. These have included the Auckland Committee on Racism and Discrimination into abuse in children's residences (1978),[30] the Human Rights Commission

> **"Nothing breaks my heart more [than] to see the continued appalling rates of abuse coming out of those homes and institutions today. The historical and the now are inextricably linked. We have not learned from the past… To help effect better outcomes for those that are in care, you must recognise the historical."**
>
> **KEITH WIFFIN**

(1982),[31] various bodies examining mental health services,[32] and the Human Rights Commission again in 2011.[33]

In 1985, the Minister of Social Welfare asked a Māori advisory committee to report into Māori experiences of the social welfare system. The resulting report, Puao-Te-Ata-Tu (Daybreak), identified institutional racism in the social welfare system, and called for whānau, hapū and iwi to assume greater autonomy over the care of Māori children.[34]

However no independent inquiry has comprehensively examined abuse or redress involving faith-based institutions in New Zealand.

In general, previous reviews and inquiries had narrow scope, lacked sufficient powers and made recommendations that were ignored or not fully implemented. All fell short of an independent public inquiry with statutory powers and broad scope. The result was continued dissatisfaction.

More recently, discontent has continued to build about the lack of a satisfactory examination of abuse in care, resulting in petitions to Parliament, a campaign by the Human Rights Commission, Waitangi Tribunal claims and calls by prominent figures for an independent inquiry. In 2018, the Government responded by establishing this inquiry.

1.3. An independent public inquiry with meaningful powers

Royal commissions are reserved for the most serious matters of public importance.[35] In establishing this royal commission, the Government said it wanted to send "the strongest possible signal" about the seriousness with which it regarded the issue. As a result, we have a very wide scope and significant powers, including to set our own procedure, demand that individuals and organisations answer questions and give us documents. That means we will be in a position to make meaningful recommendations for change based on independent investigation, research and listening to survivors and their families.

> **"Please listen to survivors, even when it hurts. The most vulnerable members of your communities need you to listen, to care and to help. If good people are courageous, we can stop abuse."**
>
> **ANONYMOUS SURVIVOR, MESSAGES TO AOTEAROA**

Details about the features of our inquiry are set out in part two of this report, but it is worth stressing two points at the outset: we are an independent public inquiry committed to working transparently and in public wherever possible, and we will be responsive to survivors' needs.[36] In practice, working in public means:

- *Survivors and others can see and hear what we are doing.*
- *Survivors' voices can be heard by a wide audience.*
- *Individuals and institutions can be publicly held to account for their actions and inactions.*
- *Interested parties can participate, promoting fairness and hearing a range of views.*
- *The public can learn about what happened.*
- *The public can assess for themselves the soundness and independence of our work.*
- *The work we do can become a matter of public record.*

Activities open to the public include formal hearings, some roundtables, wānanga and hui held in accordance with tikanga Māori, fono observing Pacific protocol, and other forms of public engagement. Some of our activities are streamed live and remain available in accessible formats on our website. Operating in public in these ways fosters robust fact-finding and openness.

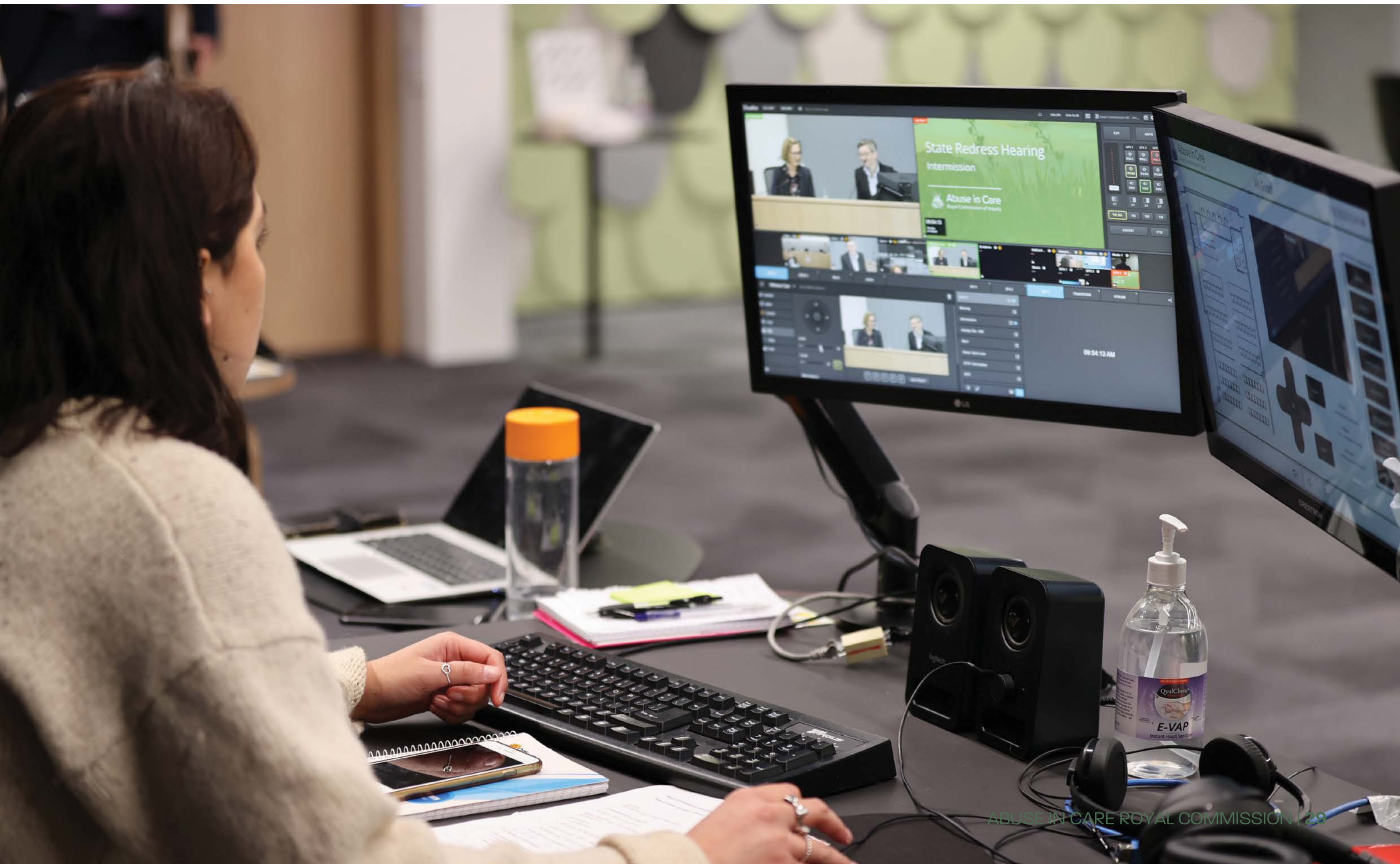
In particular our public hearings involve formal questioning, often from a variety of perspectives, with publicly available transcripts and direct accountability to a wide audience. This ensures institutions are held to account. It also bolsters public confidence in the integrity of our investigations. Representatives of survivors were clear about the pointlessness of another inquiry that merely listened and did not investigate. One group said a "listening only" inquiry would simply traumatise victims all over again.[37]

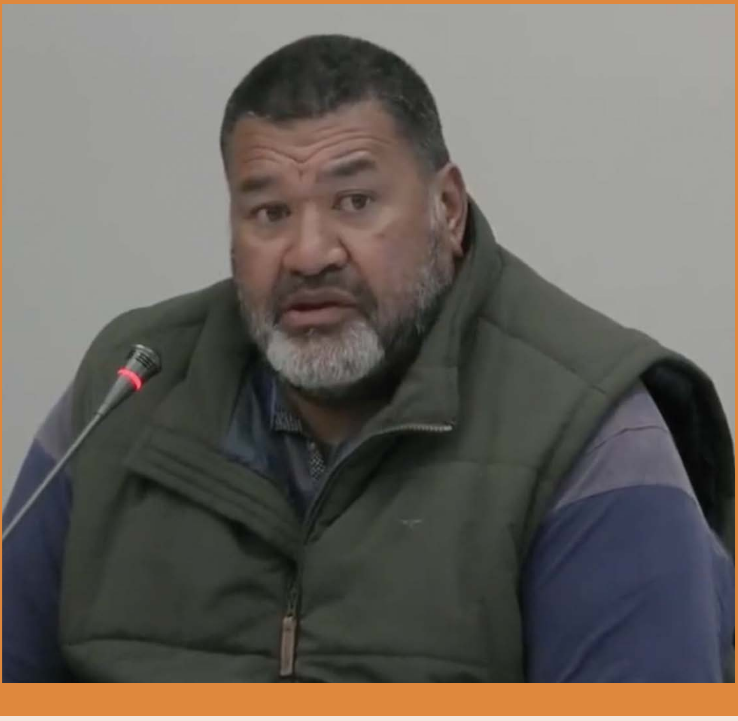
In being responsive to survivors' needs, we recognise the need to be guided by survivors as we plan and carry out our work. For this reason, we established specialist advisory groups of Māori and survivors, and we will continue to engage with survivors and interested parties. We also recognise the need to allow survivors to give evidence in a safe way. We have developed our processes to allow this to happen, such as by ensuring survivor witnesses are not cross-examined.

Many survivors emphasised they wanted us to investigate institutions using our full range of legal powers.[38] We have begun doing exactly that, drawing on teams of experienced people equipped to carry out detailed investigative work.

Such an approach is all the more necessary given the mistrust that has been built up through inaction, denial and harmful behaviour – real or perceived – by various governments and other institutions and care providers.

In short, this inquiry is a once-in-a-generation opportunity to address the problem of abuse in State and faith-based care. The following sections of this report explain how we are working, the key themes we have seen to date, and our plan for the work ahead.





Fa'afete Taito

Love and identity lost in long road from home hidings to prison sentences

Fa'afete Taito began running away from home after repeated hidings from his father in the 1970s.

> *"When I was about 12 years old, I started running away from home when I could tell my dad was in a bad mood and I was in for a hiding. As I was the only boy, I received more hidings than my sisters. I would skip school and eventually be caught by a social worker."*

After getting into fights and becoming more violent at school, New Zealand-born Samoan Fa'afete was sent to Owairaka Boys' Home in Auckland at 14. It was there that he learned he had been adopted.

At Ōwairaka, he suffered a great deal of physical and racial abuse. Instead of an education, "I learned how to steal cars, how to pick locks, and I was introduced to cannabis for the first time."

“New Zealand needs to hear the truth about what happened during those years so that we can begin to heal and move forward.”

In 1979, Fa’afete began a sentence at Mt Eden Corrections Facility as a 17-year-old, fully patched member of the King Cobras gang.

The criminal underworld and lifestyle became part of who he was. A seven-year prison term in the 1990s was followed by an eight-year one in the early 2000s. This coincided with Fa’afete developing a meth addiction.

> *“I knew I had to get off it and to get off the drugs I knew I had to walk away from the criminal world altogether.”*

With his partner by his side, Fa’afete came off drugs. He had no money and no formal qualifications, but he turned that around, gaining a Bachelor of Arts from Auckland University with a double major in sociology and Māori.

Fa’afete says his experiences in State care left him without any deep sense of his Samoan identity. He also lost the ability to love.

> *“I learned that interactions with others should be aggressive, antagonistic, violent and focused on trying to get one over the other person.”*

Fa’afete says he has brought no shame on himself or his family by speaking out about his experiences at the inquiry.

> *“It is a way of explaining how the State failed us and the devastating impacts that has had for families, communities and broader society.”*

> *“New Zealand needs to hear the truth about what happened during those years so that we can begin to heal and move forward.”*

Sir Robert Martin

Institutions are places of abuse

Robert Martin was injured during his birth in 1957, leaving him with a learning disability. At 18 months, he was placed at the Kimberley Centre, an institution outside Levin for disabled people, primarily people with a learning disability. It was to be the first of a string of such State institutions.

"My life in institutions meant I personally had nothing and no one to call my own," says Robert – now Sir Robert KNZM.

> *"I also learnt that I was being punished for who I was."*

"From my own experience, I know that institutions are places of neglect and abuse. The right to education and the right to participate, the right to live free of violence, the right to life are all things at risk in an institution.

"I do not remember being picked up, or loved and cuddled, because there were so many of us, we were just a number." He recalls missing out on things other people take for granted: he longed for a pet to call his own, had never heard of the All Blacks, and new nothing of the pop music of the time.

"I also learnt that I was being punished for who I was."

He also spent his formative years at Campbell Park, a North Otago school for troubled boys and people with a learning disability, at Lake Alice Psychiatric Hospital near Whanganui and in a number of foster homes. He suffered repeated abuse and neglect at the hands of institutional staff and foster parents. He also witnessed the abuse of other patients and friends.

> ***"I learnt not to trust people, just try to and survive as best I could. I became defensive and on guard all the time just to keep away from violence and abuse."***

At 15, he was placed in the care of the Society for Intellectually Handicapped Children – now IHC. The abuse – and discrimination on account of his disability – continued.

Robert has overcome many of society's barriers and has built a good life for himself packed with books, music and sports. And a person to call his own; his wife Lynda.

In 2016, he was appointed to the United Nations Committee on the Rights of Persons with Disabilities. And in 2020, he was knighted in the New Years' Honours list and became Sir Robert Martin. His dream is for all disabled people to live the life of their choosing, free from violence and abuse, and enjoying the fair treatment other New Zealanders expect as their right.

Robert admits the abuse he experienced and witnessed affects him profoundly to this day.

> *"We were shut away from New Zealand society and culture. When people are shut away in an institution, they don't feel like a citizen. This can even feel as bad as the abuse we experienced and witnessed."*

> *"Everyone has a right to a life instead of wasting away in Institutions waiting to die."*

Part two: How we are working

Introduction

We carry out our work according to values and principles that ensure we fulfil the terms of reference.[39] To do this we obtain input from survivors, protect the wellbeing of survivors, recognise Te Tiriti and its principles, work in partnership with iwi and Māori, gather the best possible information, work effectively and inclusively with different communities and communicate the results of our work widely.

We gather evidence by hearing first-hand from survivors, by conducting investigations, interviewing witnesses, holding public hearings, facilitating kaupapa-based hui, wānanga and fono, holding roundtables and undertaking research and policy work. We gather information in a variety of ways, such as tikanga-based approaches and talanoa, to maximise the reach of the inquiry.

2.1. The foundations underpinning our work

Our strategic pillars

We recognise eight pou, or strategic pillars drawn from the terms of reference, that set out key issues we must address in the course of our inquiry. They are:

- *the survivor voice*
- *the circumstances of those going into care*
- *the nature and extent of abuse*
- *the impact of abuse*
- *systemic factors behind abuse*
- *redress and rehabilitation*
- *transforming how we as a nation care*
- *Te Tiriti o Waitangi/the Treaty of Waitangi.*

Te Tiriti o Waitangi/the Treaty of Waitangi and its principles

Te Tiriti guaranteed Māori tino rangatiratanga over their lands, people and taonga. It is commonly accepted that the enduring effects of colonisation, including efforts by the State to assimilate Māori, have undermined the tino rangatiratanga of Māori.[40] The taking of tamariki Māori into care has harmed not only individuals but also the tino rangatiratanga of the whānau, hapū, and iwi to which they belong.[41]

Te Tiriti is central to our work and one reason why we must partner with Māori. We recognise the principles of Te Tiriti as defined by the Waitangi Tribunal and the courts. We are guided by these principles, including the principles of partnership, equity, redress, active protection and autonomy, and the Tiriti guarantee of te tino rangatiratanga. We are also conscious of the findings of the Waitangi Tribunal, in several reports, that Te Tiriti was about establishing spheres of authority for Māori and Pākehā, and that the details of their relationship would be worked out over time and in good faith.[42]

> **"The taking of Māori children has been a cost that has been both intensely personal and inherently political. The presumed right to do so was derived from the same racist presumptions of European superiority that marked colonisation as a whole, and the attendant belief that indigenous children needed to be saved, civilised and protected from themselves."**
>
> **MOANA JACKSON**

We also note the significance of the human rights that apply to indigenous peoples and in particular the United Nations Declaration on the Rights of Indigenous Peoples, which guarantees indigenous people's fundamental human rights, including the right to self-determination.

International and domestic human rights

The large body of international human rights standards and commentary guides our work, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and the Convention on the Rights of Persons with Disabilities. New Zealand has also enacted the Bill of Rights Act 1990 to give effect to its obligations under the International Covenant on Civil and Political Rights.

Our values

We have adopted four key values to guide the way we work:

Aroha: We demonstrate care, kindness, compassion and empathy, acknowledging the mana and voice of individuals with whom we interact, as well as enhancing their dignity and self-esteem.

Transparency: We explain what we are doing, balancing appropriately the need for openness against the need for confidentiality. We make visible what was previously invisible. We draw attention to lesser-known survivors of abuse and previously unacknowledged forms of abuse and neglect. We make sure those affected know what progress is being made.

Fairness and balance: We aspire to the highest standards of fairness and balance through a human rights approach, non-discrimination, accountability and empowerment. We facilitate the meaningful participation of survivors as well as those with responsibility for their care.

Independence and determination: We will investigate all experiences, perspectives, practices and frameworks raised by the terms of reference independently and with thoroughness and vigour.

Our principles and methods of work

The terms of reference set out principles and methods we must follow in our work, many of which are drawn from human rights principles. They include to:

Act independently

Our inquiry is entirely independent of the Government and faith-based institutions. This independence is protected by the Inquiries Act 2013 and is essential because we are examining the actions of current and past governments, faith-based institutions and the responsible individuals within them. The funding set aside by the Government for our work comes through the Department of Internal Affairs, but the department has no involvement in the substance of our work. We set our own procedures and reach our own conclusions.

Focus on survivors and avoid harm

We have designed our processes to be focused on survivors and to recognise and respond to the effects of trauma. We prioritise survivor wellbeing – and the avoidance of harm – in everything we do, and our survivor advisory group helps ensure survivor input into the way we approach our work.

Work in partnership with iwi and Māori

We work hard to develop partnerships with iwi and Māori and have a team dedicated to this task, although all teams are responsible for ensuring they work in partnership with Māori. This is a core part of recognising Te Tiriti and its principles in our work. We also recently established Te Taumata, a group of Māori leaders, to offer advice on Te Tiriti-related activities and tikanga approaches to our work. We are engaging with iwi and Māori and Māori non-government organisations and will hold kaupapa-based hui on matters of relevance to the inquiry.

Work inclusively with Pacific people

Pacific people are also a focus of our work. We are aware that many Pacific people are not comfortable talking publicly about abuse. Many in Pacific communities feel that abuse and its disclosure bring shame to survivors and their families, especially when respected elders and religious leaders are implicated. We provide a culturally safe setting that acknowledges this fact, and also give recognition to Pacific values such as family respect, reciprocity, love, spirituality and the importance of the collective.

We acknowledge the cultural differences between the communities of the various Pacific nations, nurture relationships according to those differences, and acknowledge those who have come forward to talk about their experiences of abuse.

Involve vulnerable adults and people with disabilities

We work hard to allow the meaningful participation of all disabled people who wish to engage with us, including people with a learning disability, a physical or sensory impairment (including people who are hard of hearing) or a mental health issue.

We aim to ensure all disabled people have supports specific to their impairment so they can share their experiences of abuse. We also ensure our informed consent processes are accessible and inclusive. More than that, we make every effort to establish respectful relationship-based engagement with disabled survivors and offer them comprehensive and inclusive support.

In our engagement with disabled people, we also reach out to their families, whānau and wider community. This includes staff of institutions who witnessed and tried to prevent abuse.
In our engagement with the Deaf community, including survivors of abuse, we acknowledge the pride many members of the community have in their language, New Zealand Sign Language, and in the unique Deaf community culture. New Zealand Sign Language interpreters are available for private sessions, and there has been live New Zealand Sign Language interpretation, as well as live transcription, of all public hearings.

Use fair and reasonable processes that are not overly legalistic

We have designed our processes to be fair and reasonable and to be as flexible and straightforward as possible to minimise the need for legal support. We conduct public hearings in a way that avoids the adversarial approach typically found in courts. We tightly control the way hearings are run, so that, for example, participants such as the Crown, faith-based institutions or advocacy groups need our permission to be represented and to ask questions. In most cases, only our lawyers and commissioners will ask questions of survivors who are appearing as witnesses, and not lawyers for the Crown or care institutions.

We ensure our procedures are culturally sensitive and appropriate. We now have our own purpose-built public hearing space in Auckland. Its design and overall appearance are intended to make survivors feel as relaxed and supported as possible. We will also hold hearings on marae.

Operate efficiently

This is the country's biggest inquiry because of the number of people affected, the period under investigation and the seriousness of the issues. It is also large in terms of cost and duration. In designing and running the inquiry, it is our responsibility to avoid unnecessary cost and act effectively and efficiently. We are accountable for our use of public funds, and we are always looking for ways to work more efficiently while still complying with our core principles and terms of reference.

Share information with other inquiries

The terms of reference explicitly allow us to receive information and evidence from other local and overseas inquiries examining matters relevant to our work.[43] These may include, for example, the Waitangi Tribunal's inquiry into Oranga Tamariki[44] and the inquiry by the Whānau Ora Commissioning Agency into Oranga Tamariki,[45] as well as recent investigations by the Children's Commissioner[46] and the Office of the Ombudsman[47] into the removal of babies from their parents or whānau, and the recent Government Inquiry into Mental Health and Addiction.[48]

Overseas, recent inquiries on aspects of abuse in care have been, or are being, carried out in Australia,[49] Canada,[50] England and Wales,[51] Scotland,[52] Northern Ireland,[53] and the Republic of Ireland.[54] Material from these sources allows us to be more efficient as an inquiry since we can learn from their experiences and benefit from the insights that led to their findings and recommendations. We are also able to share information with other inquiries, which we might do if, for example, it would avoid unnecessary trauma to individuals.[55]

In deciding whether to obtain or share material, we consider:

- *the relevance of the subject matter to our own terms of reference*
- *whether sharing will avoid unnecessary trauma to survivors*
- *the confidentiality or sensitivity of any information to be shared, and what protections can be put in place to protect confidentiality*[56]
- *whether sharing material will increase our efficiency*
- *the features of the other inquiry, including what information it is legally allowed to disclose and by what process, and whether informal or formal sharing is appropriate*
- *the requirement for us to reach our own conclusions and findings*
- *the location of the material, the quality of the records and reliability of the information they contain, including whether the evidence has been tested.*

Form relationships with key organisations

We have obtained the formal commitment of the Crown and some large faith-based organisations to support the inquiry. We also have formal and informal relationships with other organisations that can help us carry out our work. We have, for example, a memorandum of understanding with the Department of Corrections governing our interactions with survivors in prison. It deals with the wellbeing and privacy of survivors in prison, security matters, how we conduct private sessions and witness interviews with survivors in prison, and how they can attend public hearings to give evidence where required.[57]

We also have a memorandum of understanding with New Zealand Police, which deals with, among other things, when we will make referrals to investigate possible criminal conduct.[58] We have a further memorandum with VOYCE Whakarongo Mai, an advocacy and support organisation connected with people currently in State care, setting out how we will work together.[59]

2.2. Our core processes for gathering information and evidence

Survivor accounts

Survivors who want to share their experiences with us can choose to do so in several ways. One is by meeting with a commissioner in a private session. We go to considerable effort to ensure survivors are supported and ready for their private session because many find it an acutely distressing experience to recount what happened to them. A facilitator is present to make sure survivors have everything they need, and a wellbeing support person is available as required. There is no need for survivors participating in private sessions to have a lawyer, but those who wish to have legal advice before their session can talk to a legal assistance panel lawyer free of charge.

By the end of October 2020, we had held more than 550 private sessions in 27 towns and cities and in seven prisons. We have had online private sessions with survivors in New Zealand and overseas, particularly in Australia, and we expect to continue with these. We will expand this to survivors in the Pacific if there is a demand.

We expect to hold about 2,700 private sessions by the time the inquiry ends. We held all sessions in person before COVID-19, but some are now conducted online. We will continue to offer online sessions if a survivor prefers, or if they are necessary to keep staff and survivors safe from COVID-19 risks.

Group sessions are available for survivors who have undergone a common experience of abuse, for example in the same institution, as a family (including several generations of the same family) or at the hand of the same abuser, and who feel more comfortable sharing their experiences together. In August 2020, we held three group sessions in Christchurch.

Survivors may give us written accounts of their experiences rather than attend private sessions. Literacy support is available to survivors to assist in completing a written account. We have received around 20 written accounts so far and expect to receive as many as 500 such accounts by the time the inquiry ends.

We are careful to get informed consent from survivors participating in private and group sessions, and providing written accounts. This includes informing them how their information will be used and stored, that they will not be identified, that it is up to them what information they wish to share with the inquiry, and that they can change their mind about participating at any time before the information is used.

We encourage survivors to register with us when they first make contact so we can put wellbeing measures in place for them and also, if they are interested, so we can send them updates and newsletters about what we are doing. By the end of October 2020, 1,923 survivors had registered with us, and we expect almost 10,000 to eventually do so. Based on our experience to date, we expect about a third of registered survivors will want to either have a private session or give us a written account of their abuse.

Survivor accounts serve two crucial functions. One is to give us a clearer picture of abuse and its impact in survivors' own words. First and foremost, we use the information gathered in this way in our investigations and in the topics we look at in hearings, research, roundtables, wānanga, kaupapa-based hui and fono.

The other function is to provide an opportunity for survivors to open up about their abuse, sometimes for the first time. For some, this can have significant therapeutic benefits. As one survivor observed, the fact someone in a position of authority actually listened to their life's story helped enormously in putting the abuse behind them:[60]

> *"I felt after the meeting that I had been reborn, that I finally had a life. I feel like I have been cleansed. This experience has given me the courage and motivation to get on with my life and take opportunities I have never considered."*

Another survivor who took part in a private session also described the transformative power of telling someone about the abuse:[61]

> *"I suffered [sexual abuse] from my teacher when I was seven years old. I feel this experience will help me... to leave behind that trauma, which has affected many aspects of my life for over 65 years. Because the perpetrator threatened to kill my mother and myself if I told anyone, I never told my mother what he did to me. ... Although I never had the chance to appear before a court of law, I have had some kind of substitute justice by going through [this] process."*

We aim to provide an experience that is as positive and supportive as possible. The fact survivors have suffered trauma means we must take special care to ensure they can describe their experiences without undue distress. To that end, we have carefully developed processes covering initial contact, pre-session preparations, the session itself and post-session follow-up.

We speak to all survivors beforehand and send out an information pack about how private sessions work, or a comprehensive booklet to assist with a written account. We ask if they have any preferences about the gender or ethnicity of the commissioner they will talk to, and whether they have any special requirements. Photos of the commissioner and facilitator who will be present are sent out ahead of time.

The location for face-to-face private sessions is selected to ensure a safe, wheelchair-accessible setting. We try not to choose locations near churches, schools or other places that might trigger memories of abuse. We ensure the room is soundproof and has a neutral décor. Typically, we have held most of our private sessions in hotels and motels, although in future we will also hold sessions in our purpose-built space in Auckland, and we may hold sessions where appropriate on marae.

For those taking part in an online session, a facilitator calls beforehand to make sure the survivor is comfortable with the technology set-up, and that the lighting and positioning are acceptable. Sessions are informal and survivors choose how much to share and in what way. We respect any requests to include tikanga practices, such as starting a session with a karakia if the survivor wishes. We are developing processes to give survivors the choice to share their experience in te reo Māori. Commissioners are there to listen and learn. We audio-record the private sessions with the survivors' consent and give a copy of the transcript to those survivors who request it.

Survivors can bring support people to their private session if they wish. In principle, there is no limit on the numbers of supporters. Wellbeing advisors – typically social workers, therapists or mental health nurses – are also available during private sessions. Funded legal assistance is available for those who, for example, may want advice about the implications of disclosing their own offending during a session.

About 15 per cent of registered survivors are in prison. They can contact us through an 0800 number that is not monitored or recorded by prison staff. Similarly, mail between a survivor in prison and the inquiry is not read. (We have a memorandum of understanding with the Department of Corrections, setting out measures to ensure the privacy and confidentiality of communications between survivors in prison and us.[62]) To date, we have held 37 private sessions at seven of the country's 18 prisons. The survivors in prison have come from all security classifications.

At the end of each private session, we offer survivors blank postcards, called M*essages to Aotearoa New Zealand*, to fill out as they wish. The messages and thoughts expressed on them offer a compelling, often painful insight into the hearts and present-day lives of survivors. Their contents are as varied as the individuals who write them. We publish these anonymous reflections on our website and will do so for the remainder of the inquiry. They may be on display at our public hearings in Auckland and be included in a commemorative book when the inquiry ends.

Investigations and public hearings

We have divided our inquiry into a series of investigations to gather and test the information required to respond to the terms of reference.[63] The first nine investigations are now under way. Five are examining abuse in specific settings; psychiatric institutions, State-run children's residential care, disability care, and Catholic and Anglican Church institutions. Three are examining abuse and its impact on specific groups; Māori, Pacific people and disabled people. The ninth is looking at redress available to survivors. We estimate up to 20 investigations will be necessary to examine all the matters set out in the terms of reference.

Each investigation begins with a provisional scope document detailing what we will examine. These are available on our website. We may modify them in response to consultation, submissions from interested parties, or as further information becomes available. To gather information, our investigations:

- *review material, such as previous inquiries or research reports*
- *interview witnesses*
- *analyse information from survivor accounts*
- *seek witness statements or other documents from participants*
- *compel documents from individuals or institutions for examination*
- *carry out research.*

To date, we have issued close to 100 information requests to the Crown and faith-based institutions and received more than 370,000 documents as part of our investigations. Each investigation team analyses this information to assist commissioners. To do this, we have set up specialist information and evidence management systems to ensure we can securely and comprehensively examine all relevant material.

Investigation teams work with witnesses or their representatives to prepare statements, which are formal evidence to the inquiry, and which may form the basis of our findings about what happened and why. The teams review survivor accounts and documents received from the Crown and institutions to identify people who may be able to provide witness statements on matters relevant to a case study or topic of investigation. In some cases, the evidence may be heard and tested in a public hearing. To date, we have obtained statements from more than 100 witnesses.

Investigations also involve public hearings and other public processes, including kaupapa-based hui, fono, roundtables and wānanga. Most investigations will include at least one public hearing involving an examination of a particular topic or case study relevant to the investigation. In some cases, we will publish a report after a case study, in addition to an overall investigation report.

At public hearings, we call witnesses to give evidence on oath or affirmation about what happened, for example in a particular institution or agency, to address a particular issue, topic or kaupapa relevant to the investigation, or to respond to allegations of wrongdoing. Commissioners and lawyers can question witnesses, although in general only our own lawyers will question survivors, not lawyers for the institutions under investigation.

Proceedings will usually be in public and in most cases streamed live, but if the evidence of a witness is particularly sensitive, the inquiry may decide to hear the evidence in a closed sitting, with only the commissioners and other permitted people present.

Public hearings:

- *give survivors a means of talking publicly about their abuse and its impact on them and others*
- *enable witnesses of abuse to describe publicly what they saw or heard*
- *allow witnesses to be questioned from a range of perspectives*
- *enable individuals and institutions to respond to allegations of wrongdoing in a public forum, thereby helping us ensure fair treatment of everyone connected with our activities.*

The goal is that the public, survivors and others can see, hear and understand our work, and, where appropriate, individuals and institutions can be publicly held to account for their actions.

By the end of 2020, we expect to have held about 45 days of public hearings and heard evidence from about 80 witnesses, including survivors, academic and legal experts and government officials.

We also hold public meetings, including kaupapa-based hui and fono, and will hold roundtables and wānanga. These offer flexible and culturally appropriate ways for us to explore particular topics, including legal and policy issues, and test recommendations with victims and survivors, their advocates, academics, government and faith-based representatives and other experts. Kaupapa-based hui and wānanga allow for the investigation and research teams to gather information from Māori communities in a way that is consistent with their tino rangatiratanga and ngā tikanga Māori.

At the end of each investigation, we will produce a public report outlining what we have found. All these reports will feed into our final report.

Investigation teams are led by a senior lawyer with relevant expertise, supported by a liaison commissioner. The multi-disciplinary teams comprise investigators, lawyers, researchers and policy analysts. They work closely with our wellbeing, engagement and survivor accounts teams. Teams may seek advice and help from the survivor advisory group, Te Taumata, or specialist advisors. The exact composition of each team depends on the subject matter it examines.

All investigation work is overseen by a steering committee containing two commissioners, senior counsel and relevant areas of the inquiry staff.

Our investigations rely heavily on the co-operation and willingness of witnesses, particularly survivor witnesses, who speak to us. We provide wellbeing support to any survivor helping with our investigations. There is also funded legal assistance, from a panel of approved independent lawyers, available to those involved in our investigations who meet published criteria.[64]

We have developed criteria, published on our website, about how we select areas for investigations. In summary, these are that the area in question:

- *is part of the terms of reference*
- *addresses a subject or topic identified in private sessions, other investigations, written accounts or research*
- *has been the subject of concerns from survivors, survivor advocates and/or the public*
- *is likely to lead to meaningful recommendations.*

Our nine initial investigations are among the biggest and most complex we are likely to carry out and were chosen first because of the time they will take to complete.

Within each investigation, we may identify certain institutions, settings, kaupapa, themes, systemic issues or groups of people that require closer attention. These areas, or case studies, may form the basis of public hearings. In deciding which of these case studies to examine, we apply the same criteria just mentioned, but we also consider whether a proposed case study:

- *will contribute to the investigation of a diverse range of State and faith-based care settings and subjects*

- *involves abuse allegations that are serious, numerous and widespread in nature, or appear to be representative of the abuse that took place in that type of setting*
- *appears to involve a State or faith-based institution's facilitation of abuse or failure to prevent abuse*
- *is likely to have enough evidence, including witnesses and documentary material, available to enable a close examination of the abuse*
- *may be required in order to achieve accountability for past abuse*
- *will contribute to the recognition and representation of Māori based on Te Tiriti and its principles*
- *will contribute to a diverse range of investigations in terms of ethnicity, gender, social and cultural backgrounds and geographic spread*
- *will contribute to recognition and representation of disproportionately affected groups, such as Māori, Pacific people and those with disabilities*
- *will help ensure sufficient representation and participation of people with disabilities, people with mental illness, women, girls and those from the LGBTQIA+/rainbow community.*

We have two initial case studies looking at particular institutions: the child and adolescent unit at Lake Alice Hospital (which will form part of our investigation into abuse in psychiatric care) and Marylands School in Christchurch (which will form part of our investigation into abuse involving the Catholic Church). We also have three case studies looking at particular kaupapa as part of our Māori experiences investigation. These cover Māori experiences of intergenerational abuse in care, experiences of racism in State and faith-based care, and Māori contemporary experiences of abuse in care.

Research and policy

We carry out and commission research to help with our investigation work and to report on broader issues relevant to the terms of reference. To date, we have been reviewing literature about abuse, studies and records from the past 70 years, as well as conducting analysis of new information we have received, such as survivor accounts. We also plan to gather information through roundtables, wānanga, hui, fono and consultation on issues or options papers, and carry out original research.[65]

Research work to date includes an analysis of information received through survivor accounts,[66] the first stages of a project to estimate the number of people who were in care and might have been abused between 1950 and today,[67] and an estimate of the economic impact of abuse in care.[68] We are producing reviews of New Zealand and international literature and overseas inquiries on key topics, including:

- *the nature of abuse in care*
- *the impact of abuse in care*
- *the causes and contributing factors of abuse in care*
- *the circumstances of going into care*
- *the prevalence of abuse in care.*

As well as research, we carry out policy analysis. We are required by the terms of reference to make recommendations on frameworks for preventing and responding to abuse in care and providing redress and rehabilitation.[69] Policy work is required both to help us to understand the adequacy of past and present frameworks to prevent and respond to abuse, and to develop meaningful, practical recommendations for changes to legislation, policy, processes, rules, standards and practices.

Our policy team provides analysis and advice to help establish policy contexts and identify common themes, policy objectives, policy questions and options for change. Policy analysts work with each investigation team, key interested parties and other inquiries to test developing policy recommendations.

In addition to supporting individual investigations, our policy team will also consider inquiry-wide issues such as institutional racism, intergenerational harm, the impact of colonisation, mandatory reporting, the role of digital governance and information-sharing in preventing abuse, and ableism.[70]

A steering committee consisting of two commissioners, senior counsel, senior research and policy representatives and other representatives from the inquiry staff oversees the research and policy work programme, project plans and resourcing. It is responsible for making recommendations to commissioners about the research and policy work programme.

2.3. Partnerships and engagement

Survivor advisory group

We have established a group comprising survivors of abuse in State and faith-based care who provide advice on how we operate – in particular how we engage with and support different groups of survivors – and also on areas we are researching or investigating.[71] The group went through a reorganisation in early 2020 to improve its effectiveness. Since April 2020, it has operated with terms of reference setting out membership and methods of operation.

This group helps ensure our work is informed by those with lived experience of abuse in care. We select members based on their skills and experience, and with the aim of having a cross-section of experiences relevant to the terms of reference. The group is supported by a full-time staff member. Wellbeing support is available to all members. We have consulted individual members as well as the whole group at different times.

Māori partnership and engagement

We work in partnership with whānau, hapū, iwi and Māori organisations to recognise both the need for our work to be underpinned by Te Tiriti and its principles, and the significant impact the care system has had on tamariki Māori and Māori communities over many generations. We have a team focused solely on developing effective partnerships, and this is being achieved by:

- *engaging with iwi and national Māori entities*
- *working with Māori non-government organisations to provide kaupapa-based support for Māori survivors*
- *running kaupapa-based hui and wānanga with Māori with care experience, experts and practitioners to gather information relevant to our investigations and other work.*

We have also recently invited respected Māori leaders to form a group to work with us, known as Te Taumata. It will provide strategic advice to commissioners to ensure we have an effective Te Tiriti-based approach in our work. It will also aim to strengthen relationships with Māori to promote Māori engagement with our work and provides guidance about tikanga to be observed during our activities. Finally, members will provide guidance to ensure information-gathering processes and hearing evidence procedures reflect the fact Māori have been – and continue to be – overrepresented in care statistics.

More generally, all our various teams build a Māori partnership approach into their work and take steps to encourage engagement with, and the participation of, Māori. For example, we:

- *make te reo Māori interpretation available at public hearings, recognise mana whenua and observe tikanga practices at public hearings*
- *ensure appointments to investigation teams include Māori*
- *present documents where possible in English and te reo Māori*
- *advertise our work in English and te reo Māori on iwi radio stations.*

We consult Māori on research topics and involve Māori in developing policy proposals. We are looking at further means of incorporating tikanga into the way we operate, including by holding public hearings at marae, and ensuring processes are in place for survivors to give evidence at public hearings in te reo Māori and tikanga-appropriate ways. We also focus our recruitment to ensure Māori representation.

Wellbeing support

We have a dedicated team of people who work with approved providers of wellbeing services to support the health, safety and security of survivors who engage with us. We have gradually refined and improved these processes. At the outset, we check in with all survivors who contact us to ensure they feel in a safe space to share their experiences with us. Each is assigned an inquiry staff member who is that person's direct point of contact for anything related to the inquiry.

We take a trauma-informed approach, and training is available to all staff to understand how to work with survivors. This means listening to survivors and recognising symptoms of trauma, communicating clearly, and designing approaches to meet survivors' needs and give survivors choice about how they interact with us and what support they receive. We recognise Māori frameworks of wellbeing and support their use, and also recognise other cultural frameworks and support relevant to individual survivors.

We offer all survivors free wellbeing support before and after their involvement with the inquiry. This can be in the form of short-term support using in-house mental health professionals or approved external providers. For longer-term support, we can make referrals to other providers.

We call registered survivors to check on their wellbeing and help them prepare for their private sessions, written account, witness statement and/or attendance at public hearings (for which we provide support on the day). We can also arrange follow-up support in their community.

Wellbeing staff work with our contact centre staff or others to discuss survivors' needs and, if necessary, help with the staff-survivor relationship. Some survivors can require a great deal of support to help them prepare to share their experiences with us. Others require very little. Where appropriate, we also work alongside survivors' own counsellors and support networks.

For survivors in prison, we offer support in their preparations for a private session. We can arrange face-to-face or telephone counselling and referrals to other mental health and wellbeing service providers. We can also connect survivors in prison with advocacy and support services run inside prisons. Since prisoners do not always have easy access to support from their community, we take particular care with the wellbeing of this group of survivors.

Community engagement

We need the community's help to gather all the information necessary to our inquiry, and that means getting out into the community to explain who we are, what we do and how we can help survivors and others. In addition to our team focused on Māori partnerships and engagement, we have other teams engaging with groups such as Pacific people, and people with disabilities, including a mental illness – all of whom have also frequently been placed in care and abused.

It is difficult to reach some survivors, such as those with a learning disability, neurodiversity or cognitive impairment, homeless people, or those with mental health issues. In reaching out to many of these individuals, we are conscious that conventional engagement strategies are likely to be too brief or impersonal. It takes considerable sensitivity – and time – to build a trusting relationship with such survivors. Significantly, it also means building a strong relationship with the communities in which these individuals live.

We establish these relationships by engaging with community organisations, support groups and networks, focusing particularly on those with the greatest potential to connect us with survivors, such as Citizen's Advice Bureau and Community Law.

We also encourage survivors to come forward and share their experiences and we make sure survivors have any necessary supports – including supports specific to their impairment – when they appear in public hearings or give accounts in private sessions. We ensure those with disabilities are in a position to give informed consent before recounting their experiences.

Our initial focus has been on reaching Pacific people, disabled people (especially those with learning disabilities), the Deaf community and homeless people. Engagement efforts have included:

- *developing formal and informal relationships with organisations and communities*
- *holding hui and fono*[72]
- *reaching out to families and the wider community, including staff, who may know of or have witnessed abuse in disability care settings*
- *making New Zealand Sign Language interpreters available for private sessions and public hearings (along with live transcription at these hearings)*
- *releasing videos for Deaf people on what we do, and how deaf people can be involved.*[73]

We also plan to stream question-and-answer sessions and face-to-face meetings live, with an emphasis on reaching those with mental health issues, the LGBTQIA+ community, young people, seniors and women.

Communications

We have a communications team whose role is to:

- *explain our role to the public and provide progress updates on our work*
- *encourage survivors and others to come forward and participate in our investigations, public hearings, private sessions and other activities*
- *encourage survivors to spread the word about their experience of engaging with us, which can help build confidence in our activities*
- *build understanding of, and trust in, our work among key interested parties.*

Our key channel is the news media, although we also use social media, our website and promotional material to reach different audiences. We liaise with journalists and others to ensure they have the information they need to produce informed, accurate content. We actively work with media and provide media releases to profile our work and encourage survivors to register with us. We also facilitate media access to our public hearings and other public proceedings. Thousands of people have watched each of our hearings live.

We have a social media presence on Facebook to reach survivors and their circle of family, whānau and other support people. It also provides a useful platform to help the public understand the nature and extent of historical abuse suffered in care. By sharing survivor videos, images and information, we reach on average more than 33,000 people a month. Each of our posts receives on average 150 responses.

Our website www.abuseincare.org.nz is aimed first and foremost at survivors, although it is also the primary window into our work for interested parties and the public. It went live in mid-2019 and was developed with the support of survivors to make it easier for them to get the information they need. It is accessible and easy to read on mobile devices. It has information for survivors about all aspects of our work and how to get involved.

The website also has a set of frequently asked questions, which expand on key parts of the terms of reference. The terms of reference can be read in full (18 pages), in abridged plain English form (two pages), in Te Reo Māori, in New Zealand Sign Language and in six other languages. A selection of survivor videos is also available on the website.

We send a monthly newsletter, Pānui, to every registered survivor, along with key interested parties and others who have expressed interest in receiving it. The newsletter is widely shared via our website, Facebook page and other social media channels. A hard copy is also posted to those without email addresses or in prison.

Dallas Pickering

Foster care turned out to be foster abuse

Dallas Pickering's 16-year-old mother had no choice but to put her up for adoption at birth and she was taken in by a middle-class Pākehā family. The adoption was closed, and she had no connection to her biological parents.

In her adoptive family, Dallas was physically and sexually abused, neglected, ill-treated and inadequately fed. At age 5, she weighed the same as a 12-month-old.

> *"I was not allowed to eat with the family. I would only have two to three minutes to eat before being told to get up from the table. I had to eat fast or I would lose my food. Sometimes my food was thrown out to me on the lawn. If I wasn't fast enough, the dogs would get it and I would miss out."*

When social workers learned about her treatment, they moved her to a foster home – the first in a series of foster homes and family group homes she would live in during her childhood. Despite being aware of the abuse she suffered in her adopted family, social workers placed her back there four times.

"While other kids came and went from family group homes, I had nowhere else to go. I was stuck in a family group home until I was 16."

> *"I did not have anyone I could talk to. Nobody ever asked me how I was."*

Dallas suffered physical, sexual and emotional abuse and neglect in many of these homes. A stay in a family group home, supposed to be a staging post between more permanent placements, lasted several years.

> *"While other kids came and went from family group homes, I had nowhere else to go. I was stuck in a family group home until I was 16."*

Pregnant at 16 and with two children before she was 20, Dallas started making changes in her life, including gaining a Diploma of Social Work and undertaking post-graduate study.

After applying unsuccessfully for her files from the Ministry of Social Development and the relevant district health board, Dallas took legal advice and made a civil claim.

> *"I was advised to just accept an apology and take an offer of compensation. I was also told that none of the caregivers who had abused me in so many ways would be held to account. I still feel there is no real justice or closure for me. I feel that the childhood I experienced in the care of the State foster homes, family group homes and my adoptive families home robbed me of any sense of belonging or identity."*

She says it is a constant journey to develop a sense of identity. When, as an adult, she met her biological father, he told her he was Māori – and therefore she was. For about 10 years, she built this into her sense of identity. However, two weeks before her 50th birthday, Dallas received a DNA test result which showed she was not Māori. She said this compounded her struggle to get a sense of who she was, and has also affected her children's sense of identity. She says that through closed adoptions and constantly changing care "you lose the true essence of who you are," and this impacts not just her but her children.

Dallas says there is a stigma attached to be being a foster child, and she feels a strong sense of shame – a burden she carries to this day, along with the pain of the abuse she suffered while in foster care.

James Packer

Claimant met with scepticism because abuse not written down on file

James Packer was at Kelston School for the Deaf in Auckland between 1983 and 1987 and at Sunnyside Psychiatric Hospital in Christchurch between 1992 and 2003.

His teacher at Kelston regularly subjected him to physical abuse. He remembers being smacked in the head, punched, hit with objects and punished for using sign language. He witnessed the same teacher assaulting other students and breaking his friend's arm.

James' mother Cheryl told us how James still lives with the fear. "James still puts clothes against his door to stop the brutal teacher coming in to attack him. He's nearly 50 years old. He still has nightmares."

James' mother complained to the school about the abuse, but there was no investigation and the abuse continued.

At Sunnyside, James was misdiagnosed as schizophrenic and given anti-psychotic medication that left him unable to walk.
After two years he was correctly diagnosed by an external expert as having Asperger's Syndrome. The hospital did not accept the diagnosis and

"James still puts clothes against his door to stop the brutal teacher coming in to attack him. He's nearly 50 years old. He still has nightmares."

continued to medicate him for schizophrenia. He was punished with isolation and medication for using sign language. James brought a claim against Sunnyside that was settled after two years.

James also made a claim for compensation for the abuse he had suffered at Kelston. Before lodging the claim, James asked for his records from Kelston and the Ministry of Education, but neither organisation was able to give him any relevant records. This was stressful and frustrating, particularly since, in the absence of these files, he could not be precise about when the abuse occurred. The ministry's investigation found that there was no documentary evidence to support his claims. James' mother says "I made a complaint and no one recorded it evidently. This does not mean it did not happen".

He said it was frustrating the ministry was "allowed to hide behind its poor record-keeping and processes".

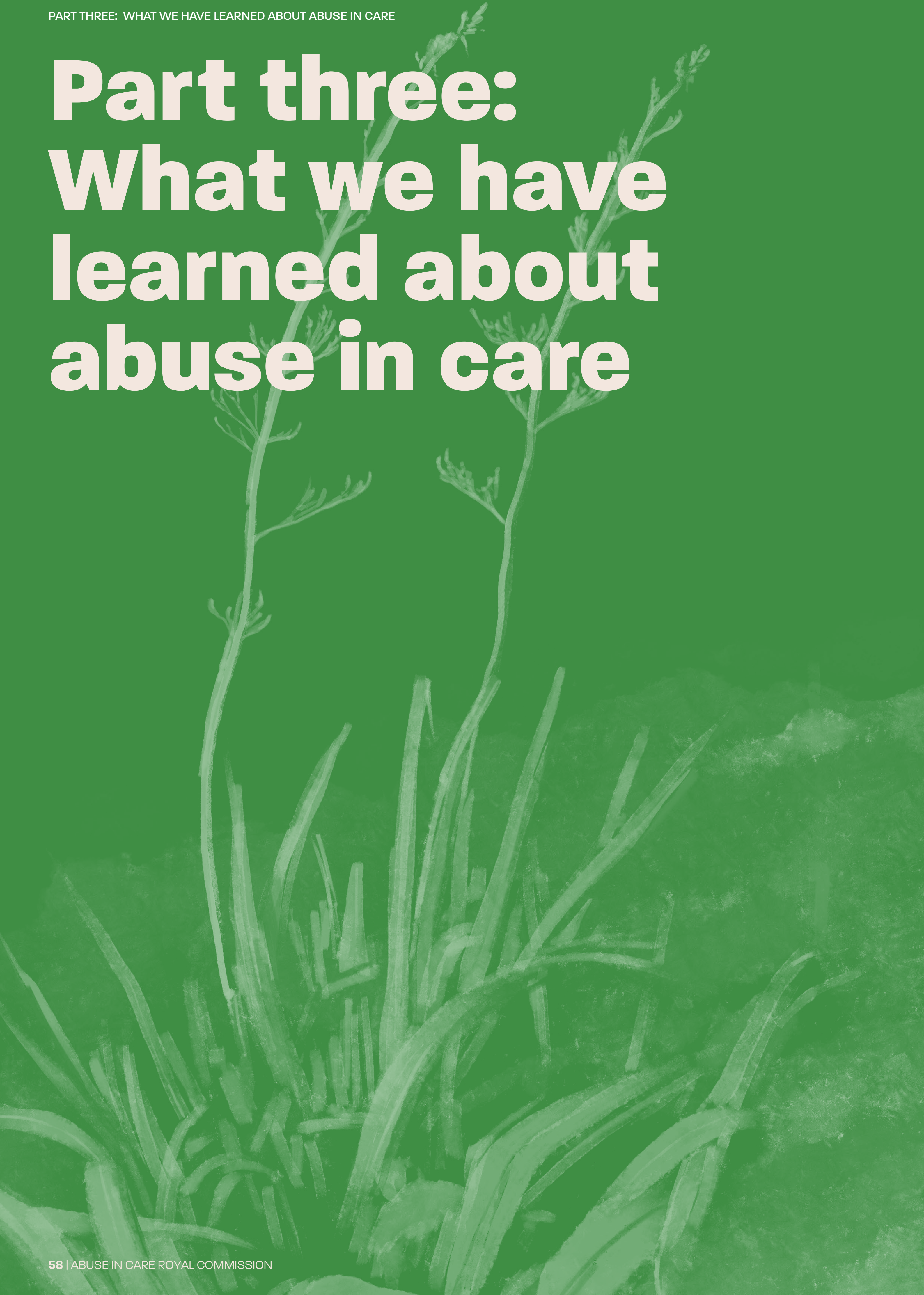
It took five years for James' Kelston claim to be settled. He eventually settled for $10,000. The claims process caused James and his mother unbearable stress and affected his whole whānau.

James hopes the claims process will eventually be clearer, more accessible and more centred on the survivor. He says the investigation of claims should be independent of the agency concerned.

He described the redress process as traumatising because he had to relive the experiences of abuse and because of the sheer uncertainty of the process.

> *"It was never clear who I could or should speak to. It was never clear if people would listen to me or take me seriously. This compounded my feelings of anxiety and disillusionment.*
>
> *"It should be made as easy to engage with as possible, given it is already dealing with vulnerable, traumatised people. It takes a lot of courage to challenge the system and speak up about what happened. Allegations about abuse are not made lightly because they come at such a huge personal cost."*

Part three: What we have learned about abuse in care



Introduction

We outline here what we have learned so far based on hundreds of private sessions, two public hearings and investigation and research work. We start by noting the large numbers affected by the care system and how certain marginalised groups came into care institutions. We then consider the nature of abuse, including what happened to survivors and the effect on them and their communities. As stated earlier, the summary below is just the beginning of what we will learn about these topics through our investigations. Later reports will examine these topics in more detail.

The people who have been abused in care come from all backgrounds and situations. But a distinctive feature of our inquiry – as evidenced by the people we see in private sessions and witnesses we interview – is that many survivors come from the most disadvantaged or marginalised segments of the community. They are the children, young people and vulnerable adults of Māori, Pacific and lower socio-economic families, as well as disabled people, women and girls.

3.1. About survivors

Abuse has affected a large number of people

To date, more than 1,900 survivors have registered with us, but this is unquestionably only a fraction of those abused in care. Many will have died or migrated, and many may be unaware of the inquiry or have not yet come forward. Some will be unwilling or unable to talk about their abuse.

A report we have commissioned estimates about 655,000 people have been in certain types of care settings in New Zealand since 1950,[74] and that up to 256,000 may have been abused.[75] The report reviewed existing data to calculate these estimates. If anything, these numbers are likely to underestimate the true situation, given the gaps in the available data and the breadth of settings and types of abuse within the scope of our work.[76] The abuse has also affected the families and whānau of victims, along with their communities and later generations.

> **“When other adults take on the duties of parents they have an obligation to care for children like good educated parents.”**
>
> **ANNE HILL**

The terms of reference require us to report on the size of the cohorts (groups) of people in State care and care in faith-based institutions, largely to help arrive at estimates of the work ahead for the inquiry. For the reasons just mentioned, it will never be possible to determine the precise number of people abused in the State and faith-based settings within scope – the gaps in, and defects with, the recorded data are too large, and there are inherent difficulties in estimating the number of people abused and neglected in such diverse settings over such a long period of time.

Despite these limitations, the work done to date indicates that more people have passed through the care settings examined than was previously known or, in some cases, estimated. Moreover, even on the most conservative estimates, there has been more abuse in care than previously thought. On any assessment, this is a serious and long-standing social problem that needs to be addressed.[77]

Abuse in care has had an impact on people from all parts of New Zealand society. As already noted, many survivors have come from socially and economically marginalised segments of society, in particular Māori, Pacific people and disabled people.

Of the survivors registered with us who provided their ethnicity, about 45 per cent are Māori, and 2.4 per cent are Pacific people. Nearly a third of survivors and witnesses reported some form of disability. Fifty-nine per cent are male, and 41 per cent female.[78] Overall, we expect the proportions to change as registration numbers increase.

Māori have been disproportionately affected

The taking of Māori children into care must be viewed in the context of the aftermath of colonisation and large-scale Pākehā settlement. Māori contact with social welfare agencies began in a significant way only after the Second World War as a large number of Māori migrated to the cities and social services expanded into rural areas.[79] The proportion of Māori in urban areas increased from 25 per cent in 1945 to 62 per cent in 1966 and 83 per cent in 1988. Before this time, extended whānau and hapū generally cared for Māori children. A wide disparity gradually emerged between Māori and Pākehā, as measured by a range of housing, education, employment, health and crime statistics,[80] resulting in widespread poverty and sometimes serious family dysfunction.

Justice advocate and former public servant Sir Kim Workman told us of the ingrained racism and intolerance of Māori in society at the time, and said that often the disparity was attributed not

> **"However, while the over-representation may be known there seems less understanding about why Māori are so overrepresented… . In my considered view [the reasons for the disproportionality] are unavoidably linked to the history of colonisation and the failure of successive governments to honour Te Tiriti o Waitangi… An interrogation of its systemically violent and racist nature helps position the recent and current abuse of Māori children, and indeed all children, in a context where understanding and eventual resolution might be achieved."**
>
> **MOANA JACKSON**

to a failure of government policy, but to shortcomings in Māori: Māori were often perceived to be the problem on the basis of their ethnicity alone.[81]

Māori children were brought to the notice of government officials even for their "potential" delinquency, and a predominantly Pākehā police force exercised its powers more readily against Māori children.[82] Against this backdrop, an increasing number of Māori children and young people began appearing before the children's courts.

Since that time, Māori have been persistently overrepresented in the two most common routes into State care – the criminal courts and care and protection system. Between 1940 and 1970, for example, Māori children and young people were found to be three times more likely to appear before the children's courts than other children and young people.

A study in 1998 found Māori children made up 42 per cent of social welfare care and protection cases, at a time when they made up 24 per cent of the child population. Māori were also more likely than others to be removed from the home as a result of these processes. A report, for example, by the Chief Ombudsman found 42 per cent of cases brought before the children's courts in 1973 involved Māori, but of cases where children were removed from the home, 51 per cent involved Māori.

The proportion of Māori in State care has been correspondingly high. In some institutions, such as the Ōwairaka Boys' Home in Auckland in the 1970s, up to 80 per cent of residents were described as "Polynesian, mainly Māori".[83] This had a stark effect on a generation of Māori. Statistician Len Cook estimates that by the late 1970s, about one in every 14 Māori boys and one in every 50 Māori girls were living in State institutions.

Available data suggest that a disproportionate number of Māori have also been in both disability and mental health facilities – illustrating the point made earlier about the overlap between groups and settings. Māori have higher proportions of disability compared with others in all age groups. Māori have also been consistently overrepresented in admissions to psychiatric institutions since the 1970s.[84] Reports in the 1990s show Māori were not only more likely to be receiving mental health care, but also more likely to be in secure care and subject to compulsory treatment orders.

The disproportionate representation of Māori children in care continues to this day. As at 30 June 2020, Māori made up 68 per cent of children and young people in care and protection custody and 74 per cent of those in youth justice custody.[85] The Office of the Children's Commissioner found that, in 2019, Māori babies up to the age of three months were five times more likely than non-Māori babies to be taken into State care.[86] A 2019 Oranga Tamariki report also suggests Māori have been abused at higher rates while in care. The report showed Māori make up 81 per cent of children abused in care, compared with 69 per cent of those in care.[87]

Many Māori in care today are the children of those previously taken into care. Māori have also been alienated in large numbers from their history, values, whenua, tikanga and cultural connections.

Our investigation into Māori experiences of abuse in care will look more closely at the broader context of the high number of Māori who have ended up in care.

Pacific people have also been affected

Young Pacific people have been placed in care since at least the 1970s. At this time New Zealand had entered an economic downturn and resentment towards migrants was on the rise.[88] Today, Pacific

> **"The pressures involved when thinking about disclosing historic sexual abuse to one's family are significant. I was going into this decision knowing that I was putting how we did life at risk. The abuse meant our core beliefs, our faith, how our family raised our children, the people we trusted and let into our homes, would all be questioned."**
>
> **FRANCES TAGALOA**

youth are overrepresented in youth justice residences and out-of-home care placements (though not to the same extent as Māori): Pacific youth make up 23 per cent of the former and 16 per cent of the latter despite accounting for just 13 per cent of the youth population.

However, we have found it difficult so far to establish a firm picture of how many Pacific people were in care or were abused in care during the full period covered by the terms of reference, largely because of unclear, inconsistent or insufficiently detailed record-keeping. Some reports on residences, for example, counted Pacific people and Māori together, while many official records – including the census until 1986 – did not allow individuals to identify themselves as having more than one ethnicity, such as both Māori and Pacific.

At a national level, statistics do not adequately show the impact on young Pacific people in urban areas where Pacific populations have been concentrated, and beyond more recent census data there are very few, if any, records that record distinct Pacific ethnicities. We also heard from survivors who said staff at residences discouraged them from acknowledging their Pacific heritage, which may have led to underreporting of these ethnic groups in care settings.[89]

In addition, many in Pacific communities are reluctant to speak about being in care or being abused in care. Both of these are a source of shame for some in the community and their families, and for this reason many are reluctant to divulge their experiences to their own families or community, let alone to officials.[90]

Despite these limitations, it is clear abuse in care is an important issue for Pacific communities. There are some reports that suggest some care residences had disproportionately high numbers of Pacific residents during the 1970s and 1980s. A report on six Auckland social welfare residences in 1983 found 16 per cent of residents were of Pacific ethnicity, compared with 6 per cent of the youth population,[91] and other residences and residential schools had between 50 per cent and 80 per cent Māori and Pacific residents (although no breakdown is provided specifically for Pacific children).[92] Pacific (and Māori) children were also reportedly overrepresented at health camps in the 1980s.

Pacific adults were admitted to psychiatric care at rates proportionate to the population, but were more likely to be committed to such care, and subsequently readmitted. Churches played, and continue to play, a central role in the lives of the Pacific migrant population, and as a result many Pacific children spent time in church camps and schools where they may have been exposed to abuse. The likelihood of Pacific people being in the care of both the State and faith-based institutions during their lifetimes is an example of the interconnected nature of the settings in the terms of reference.

In our view, the failure of official sources to systematically or appropriately collect ethnicity data has contributed to an underreporting of the experiences of this part of our population. Our Pacific investigation will be looking to build a more coherent picture of Pacific experiences in care.

Many people with disabilities have been abused

A large proportion of disabled people have some experience of care at some time in their lives.[93] However, there is little data on how many disabled people have been placed in care or how many disabled people were in particular types of care. Before 1996, in fact, governments did not collect official data on the number of disabled people in New Zealand at all.

Despite this, studies and government records show that disabled people, particularly those with learning disabilities, spent time in a range of institutional care settings, including psychiatric and so-called psychopaedic hospitals, children's homes and youth justice settings, and that they were often moved between these places. Disabled children were also likely to go to special schools, some run by faith-based institutions. For example, Marylands School – the subject of one of our current case studies in the Catholic investigation – was a residential

> **“I think I was 13 or maybe 12, you know, I had this lady come to our house and I hadn’t been in any trouble, she just turned up and said “oh you’ll like it where you’re going” and I didn’t know if I was – where the hell I was going”**
>
> **SHANNON, MĀORI, 59**

school for boys including those with learning disabilities.

For much of the 20th century, parents of disabled children often faced considerable pressure from governments to place their children in State institutions by the age of five, on the grounds it was better for them and their family. Those who entered institutions were likely to stay in care for much or all of their lives.

Disability researcher and activist Dr Hilary Stace told the inquiry this happened against a backdrop of attitudes and policies that discriminated in favour of non-disabled people, sometimes influenced by eugenics,[94] and how this led to the development of separate residential institutions for children with a learning disability and legislation permitting children with learning disabilities to be removed from their families and placed in care.[95]

Between the 1950s and 1970s, residential institutions remained the State’s preferred option for housing disabled people, particularly those with a learning disability. These numbers fell after that time, but psychopaedic institutions continued to operate until the 1990s and in some cases until the mid-2000s.

Survivor Sir Robert Martin was a resident in one such institution. He said a doctor told his mother he was “mentally retarded” and to send him away and forget about him.[96] He said that, at 18 months, he “lost his family” when he was sent to the Kimberley Centre in Levin, a place for children with intellectual disabilities: “I cried for them. I wanted them to come and take me home, but they did not come so in the end, I gave up crying for them.”[97] Later, the State’s focus shifted to providing disabled people with supported care so they could live in their own homes. Current residential care services are typically much smaller, frequently housing four to six people.

There is little data on abuse of disabled people in care, in large measure because they often faced extra hurdles to recognising and disclosing abuse, such as communication difficulties, fear of withdrawal of support from the carers on whom they depended, or an inclination by those in positions of authority to consider disabled people to be unreliable witnesses of abuse.

International studies show that as a population disabled children and adults experienced abuse at far higher rates and for more prolonged periods than non-disabled people, and that disabled children living in care may be more vulnerable to abuse. The fact disabled people are more likely to spend time in institutions and for longer periods than non-disabled people partly explains this difference. We will be looking to establish whether the higher rates of abuse found overseas are replicated in New Zealand. For now, we see no reason to believe New Zealand is any different.

As with the Pacific population, we see the lack of data on disabled people in care as impeding our understanding of the experiences of this group. As IHC director of advocacy Trish Grant aptly put it when discussing the monitoring of disabled people in education: "What you count you value, and what you don't count you don't value."[98]

Women and girls have also been abused

The majority of survivors registered with us are male.[99] But women and girls have suffered distinct types of harm in care.

More research is needed into what led to the placement of girls in care or what their experience was like while in care. We know, however, that in the 1950s and 1960s there was a general fear of "moral delinquency", particularly as it related to girls.

Several witnesses described how girls – even as young as eight or nine – endured forced examinations in stirrups for venereal diseases, on admission into care or after being out of an institution for a day.[100] Although information is limited, we are also aware of reports of women and girls in institutions, particularly disabled women and girls, being sterilised without consent.[101] Previously institutionalised girls were more likely to remain in, or return to, institutions because they were viewed as "risky" or in need of further containment.[102]

Advocate Dr Oliver Sutherland, told us Māori girls were at particularly high risk of being taken from their families into care. He found that Māori girls brought before the courts between 1967 and 1976 were more likely than both non-Māori girls and Māori boys to be placed into State care as a result of that process. In one three-year period, between 1974 and 1976, every one of the twenty 15-year-old girls sentenced to borstal was Māori.[103]

Girls seen as difficult to control could also be labelled mentally unwell and sent to psychiatric institutions. For instance, at Fareham House in the late 1960s, a school initially established for Māori girls, between 20 per cent and 30 per cent of girls were transferred to psychiatric hospitals.[104]

One girl, Beverly Wardle-Jackson, said that even at her young age she "could see the injustice of dumping us girls into mental institutions simply because there was nowhere else for us to go. It seemed as though we were some kind of social experiment".[105] She said she was sent back to Porirua Hospital whenever she was regarded as being "difficult", but in truth she was "just a lonely, isolated teenage girl".[106]

Women and girls also suffered from lack of support when they became pregnant, including coming under pressure to adopt out their babies.[107] Many young unmarried mothers were forced to give up their babies at birth. The lack of easily available contraceptives for single women before the 1970s – and very restricted access to abortion – limited young women's choices. It was not until 1973 that single mothers could receive the domestic purposes benefit to help raise their children, enabling some to escape from abusive and violent partners.

In the 1950s, women who became pregnant outside marriage faced extreme pressure from their families and social welfare agencies to adopt out their babies. The Adoption Act 1955 made such adoptions "closed", meaning mothers lost all connection with their babies. There were almost 45,000 adoptions between 1955 and 1985.[108]

Many women have told us in private sessions of their grief and regret at not being able to keep their children. They described being taken to mothers' homes, often run by faith-based institutions, and being treated with contempt by staff while they waited to give birth. They were subject to various forms of abuse and trauma, the effects of which were often lifelong. We also heard from children who spoke of a sense of injustice at being separated from their mothers at birth.

Many closed adoptions involved Māori children adopted into Pākehā families.[109] One such person, Dr Alison Green, told us she did not learn of her Māori heritage until later in life. Her adoptive parents were told she had "a touch of Spanish blood" when they adopted her in 1958.

She described growing up without whakapapa, whenua and whānau as "traumatic, painful and at times accompanied by feelings of low self-worth".[110]

We were told Māori children who looked "too Māori" were often sent to unsafe homes because many adopting parents did not want "darker-skinned" children. The "best" applicants were offered the "best" children, and those applicants perceived as marginal were offered "less desirable" children.[111] Whānau, hapū and iwi also experience a sense of loss when a child is adopted into a Pākehā family. Such placements can affect the wider family's right to claim their whakapapa.

Reasons for placements have been varied and in many cases arbitrary

Individuals have been placed in care for a variety of reasons, including poverty, being born to an unmarried mother, a parent's substance abuse, the death of a parent, abuse in the home, a child's perceived delinquency, a perception that children were not "under proper control", truancy, and a child's disability or mental illness. Children were often placed in care because of reasons other than bad behaviour.[112] Even those placed in care for that reason were often living in volatile family environments.

Many survivors had little or no understanding of why they had been removed from their families or felt the reasons were arbitrary or unwarranted. Some said their removal from their family was handled with little consideration and left them feeling distressed, fearful and uncertain about the future. We heard from survivors who told us family members had volunteered to take care of them so they did not have to enter the care system, but the State declined such offers for no good reason.

Said one survivor: "They should have put me with my nana 'cos she was fighting tooth and nail to have me living with them … Why would they want to put me in a foster care so bad? They just refused. It doesn't make sense."[113]

Some also said they felt tricked or pressured into agreeing to voluntary psychiatric care. Others described entering psychiatric care with a misdiagnosis or without a diagnosis of mental illness at all. For example, deaf survivor James Packer was misdiagnosed with schizophrenia and sent to Sunnyside Psychiatric Hospital where he was medicated accordingly.[114] Two years later, his mother was able to have him correctly diagnosed with Asperger's syndrome by an external clinician, but this was not recognised by the institution where he remained, still on medication for schizophrenia, for about another nine years.[115]

Similarly, Leonie McInroe was admitted to Lake Alice hospital as a result of a misdiagnosis of borderline schizophrenia. While at Lake Alice, she was given drug therapy and electro-convulsive therapy, or ECT, as forms of punishment.[116] Another survivor, Joan Bellingham, described how she was perceived as non-conforming because she was openly gay in her late teens. She and her parents were told she was unwell and needed treatment, which led to her being in and out of psychiatric care, receiving medication and ECT, for the next 12 years.[117]

Whatever the reason young people or vulnerable adults went into care, we have heard that far from being cared for, many left in worse shape than when they arrived, often with devastating and long-lasting consequences.

3.2. Nature of abuse in care

Abuse has taken many forms

Abuse, as defined by the terms of reference, includes physical, sexual, emotional and psychological abuse. It also includes neglect and any inadequate or improper treatment or care that results in serious harm, whether mental or physical.[118] Of course, standards and understandings of care changed over the period we are examining. The standards of the time may be relevant to our consideration of whether particular conduct was abusive, but we will look at conduct that caused serious harm regardless of whether it was accepted conduct at the time. To be clear, the abuse we have heard about to date includes conduct that was clearly abusive even when judged against the standards of the day.

We were told that whatever unhappiness, neglect or abuse

“[the Sister] was known at Sacred Heart as being a disciplinarian, I remember her taking off her thick, high heeled shoe to hit the back of the legs or backside and in front of school assemblies while we were all lined up to watch.”

FRANCES TAGALOA

survivors experienced at home often paled in comparison to what they later endured in care. Survivors across many different settings described violent, volatile environments in which various forms of abuse were rife. It was rare to be subjected to just one form of abuse. Many survivors were maltreated in a variety of ways. A large majority also witnessed the abuse of others.

We heard from survivors who endured serious physical and sexual assaults, humiliation, degradation and other dehumanising behaviour. These included unreasonable physical restraint, cruel, inhuman and degrading treatment, the use of medication and medical procedures as punishment, unjustified solitary confinement and isolation, improper strip searches and vaginal examinations, verbal abuse and racial slurs.

We also heard how abuse was inflicted on individuals to punish, control or instil fear in them. Some cases of abuse were so serious the United Nations accepted, without dispute by the New Zealand government, that they amounted to acts of torture.[119]

Emotional, psychological or mental abuse can result from improper removal from home or placement in a care setting, frequent changes in placements, undue length of time in care, lack of access to health or education services, loss of contact with family of origin and loss of contact with one's culture or language of origin.

Neglect can include physical, emotional and psychological, medical, educational, spiritual or cultural deprivation. Survivors described all of these and told us their basic human needs for affection, warmth and love were not met while in care. Cultural deprivation is a particular issue for many Māori survivors, who struggled to find and reconnect with whānau, hapū and iwi, and build a sense of Māori identity after being placed in non-Māori care.

Abuse has happened in many care settings

The types of care within the terms of reference include residential and non-residential settings, such as care and protection residences, youth justice residences, foster care and adoption placements, children's homes and borstals, psychiatric hospitals or facilities, disability facilities, non-residential psychiatric or disability care, health camps, programmes provided by third parties contracted to the State,[120] schools and education facilities (including boarding schools and residential special schools) as well as transitional settings, including police cells, police custody and transport between State care facilities.[121]

The definition of care in the terms of reference focuses on whether the State "assumed responsibility" for looking after that person, whether directly or indirectly.[122] This means individuals may be "in care" regardless of whether they are physically within one of the institutions or settings listed above.

As for faith-based institutions, care settings can include residential and non-residential settings such as faith-based children's homes and orphanages, homes for unmarried mothers, religious schools, youth groups and camps operated through a faith-based organisation, and churches. We can investigate abuse regardless of whether it took place on or off, say, church grounds or premises.

The crucial factor is whether the faith-based institution had a care relationship with the person abused. This means, for example, that we can investigate the abuse of an individual while away on a day trip or overnight stay. We have heard from survivors who have been abused by a person in this care relationship in a wide range of settings, including in their own homes, in a presbytery, in a seminary, in a car, in a cathedral and in the confessional.

We can also look at abuse such as bullying that causes serious harm and physical or sexual violence by other residents in a care setting. We have heard from many survivors and advocates that violence from other residents was common.

We know that more than 1,000 State and faith-based care institutions, homes and service providers were in operation between 1950 and 1999, and we may well learn of more as the inquiry continues. Settings have changed in type and in number according to prevailing attitudes about such things as delinquency, mental illness, disabled people, ethnicity and best practice for social work.

Physical abuse has been common

Physical abuse and the witnessing of physical abuse has been very common, particularly in residential care, foster care homes and education, health and disability settings. Survivors told us they were slapped, punched, kicked and hit. They were also strapped, whipped, caned, belted, burned with objects, hosed down and made to eat inedible items such as soap. They could also be given demeaning tasks, such as cleaning a floor with a toothbrush. Others were forced to do excessive physical training, sometimes on blistered feet and to the point of exhaustion.[123] Other abuse included being compelled to stand outside in one place or position for many hours or being paraded nude before others.[124]

Witnesses said physical violence was often administered as a form of punishment. Beverly Wardle-Jackson, for example, described how the principal of the State-run girls' home Fareham House tied her up "like an animal" after she ran away.[125] In another case, we were told of a boy who absconded from the Wesleydale Boys' Home in Auckland and was hit 12 times on the buttocks with a cricket bat, and another boy who was administered the same punishment with such force that his buttocks bled.[126]

We also heard examples of individuals who were physically punished for minor or non-existent reasons, such as waving, spilling a drink, crying, bed-wetting, biting nails or losing a handkerchief.[127] Professor Elizabeth Stanley's book, Road to Hell: State Violence against Children in Postwar New Zealand, notes that boys who absconded were made to fight one another as punishment.[128]

In some psychiatric hospitals, patients were given forms of punishment such as the administration of ECT without any anaesthetic, or the use of apparatus conventionally used to administer ECT to instead administer shocks to the genitals and legs.[129] We also heard of instances where hospital staff supervised children administering ECT on others in care. Patients at psychiatric institutions were also given experimental behaviour modification therapies, such as deep sleep therapy, aversion therapy and abreaction therapy, and drug treatments.

"When I first got to Epuni they put me in what was called secure. It was like a police cell. Every new arrival went there for two or three days. You were pretty much locked up all 23 hours of the day. For one hour you got taken out for physical exercise. I remember sitting there crying, wondering what was going on, frightened at being locked in a cell."

EARL WHITE

Anne Helm, who was subjected to six weeks of deep sleep therapy at Cherry Farm Hospital in Dunedin in the 1970s, said the experience left her physically shattered. Staff were constantly taking her blood pressure, she said, "because the huge amounts of medication coursing through my body could potentially paralyse and stop fundamental functioning. At the end of this 'treatment', my legs atrophied from complete bed rest, I could not support my bloated weight… I was barely able to lift my head from a pillow".[130] Medications were sometimes given to sedate and control, rather than to produce therapeutic benefit, and they were often given without patient consent.[131]

ECT, administered in accordance with strict criteria, continues to be a recognised and often successful treatment for psychiatric conditions. However we heard many people speak of its devastating impact on them when administered improperly. These accounts of abuse in psychiatric institutions reinforce well-documented material compiled by the Confidential Forum for Former In-Patients of Psychiatric Hospitals. One survivor, Egan Bidois, described it as torture.[132] Another, Joan Bellingham estimates that she received ECT more than 200 times. She described the process:[133]

> *"There were no regular patterns to the ECTs. Sometimes it would happen twice a day, maybe once a day, or once every few days. You would be told the night before that you would have shock treatment the next day and not to have anything to eat. They would give me a muscle relaxant to paralyse me. It felt like razor blades going through my body. You were fully awake during this time. You could see the silver machine and the assistants holding the electrodes… Every time after shock therapy I felt faint, dizzy and vomited. I felt terrible. I would vomit and cry and often beg them not to do it again. They would not listen or respond. Sometimes it caused me to become completely blind for a period of time."*

The United Nations Committee Against Torture recently considered a complaint about the use of "unmodified ECT" and medication as punishment at the child and adolescent unit of Lake Alice Hospital. The committee indicated that these actions might amount to torture and/or ill-treatment, and that New Zealand had breached its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by failing to ensure the competent authorities undertook a prompt and impartial investigation.[134]

Seclusion has been used as a form of punishment

Children and young people in residential care were sometimes locked in isolated cells or rooms as a form of punishment or control, which could occasionally stretch into weeks or months.[135] Witnesses said secure rooms were small, sometimes windowless, cold, dirty, smelly and largely unfurnished. In some cases, bedding and mattresses were removed during the day, forcing children to sit on the floor or bedframe. Buckets or potties were provided for a toilet. There was nothing to do. Often meals had to be eaten in the room.

We also heard that holding children in such a way for a period of time on arrival was routine practice at some residential institutions. For example, long-time advocate Dr Oliver Sutherland said boys admitted to Ōwairaka Boys' Home in the 1970s would have to strip in front of staff for delousing. Boys would then be sent straight to isolation cells for days, permitted out only for an hour of physical training each day. Boys would not be permitted to speak to each other or to staff, who communicated with children only through nods of the head.[136]

We have also heard about the use of seclusion (a form of solitary confinement) in disability and psychiatric care facilities, and recent independent reviews have found high rates of restraint and seclusion practices in health and disability settings in New Zealand.[137] Our investigations will further examine the improper use of seclusion for children and vulnerable adults in residential children's care settings and in disability care settings including psychiatric care.

Sexual abuse has been inescapable for many

We have heard that it has been common for those of all ages to experience sexual abuse. Some were repeatedly abused in a variety of State and faith-based settings. Staff, carers, priests, ministers, nuns, the children of carers, other children in care – all could be perpetrators. Some children were also sexually abused by their family members while in the care of the State. In one study, 57 of the 105 participants were sexually violated by the adults who were meant to be caring for them, and 48 were sexually assaulted by another child.[138]

We heard how many girls in care found sexual abuse "became the norm".[139] One such person, Dallas Pickering, said she was sexually abused while in adoptive care, foster care and a family group home. Another, Annasophia Calman, said she was sexually abused in many placements. In one, she was raped by her foster father: "After the first time I was raped, I went down to the cowshed and had a shaking fit, and that night I scrubbed myself in the bath until I started bleeding."[140]

Girls, some as young as eight or nine, were also subjected to routine venereal disease testing at some residences, including compulsory tests on arrival, and further testing if they absconded or had been on day leave.[141] Girls who resisted the testing could be strapped down or denied privileges until they agreed to the test.

Boys were also sexually abused. One witness, Mike Ledingham, told us he was sexually abused by the priest of his parish convent school at the age of eight.[142] He later learned the priest had also abused his two younger brothers. Others spoke of being sexually abused by staff in residential boys' homes and schools.[143]

Survivors in psychiatric institutions reported frequent sexual abuse by psychiatrists and nurses. Some described being forcibly given medication and waking up to find they were being sexually abused. Survivors also described witnessing older boys forcing younger patients to perform sexual acts on them at psychiatric hospitals.[144]

> **"When you hear them screaming you know what's going on. You know what's happening to that boy, he's just getting raped. That's what I felt when I first got it done to me, I screamed. Then when you hear that scream it's like he'll come back to his dormitory, into his little cubicle, and us boys used to go and sit in there with him because he's crying. We hold him, hug him, we just say to him "we know what you're going through mate, you're just – you're fresh meat, that's why they're doing it. But after a while you get used to it."**

KERRY JOHNSON

We also heard that sexual abuse was inescapable and unchallenged for a significant number of those with disabilities, no matter what the age, and that sexual abuse was part of a larger all-pervading culture of violence in institutions.

Sir Robert Martin said he was sexually abused by staff and other residents at the Kimberley Centre and Campbell Park School in North Otago. He remarked that he "couldn't understand how people could be so cruel".[145] Gay Rowe described learning that her disabled brother had been sexually abused by two staff members at her brother's residential care facility. She said: "I was angry, I was hurt that somebody felt they had a right to do with my brother what they wanted to when they were supposed to actually be caring for him… it just made me feel sick."[146]

Bullying and humiliation have been rampant

Survivors have made repeated references in their accounts to emotional and psychological abuse. They described the constant fear and psychological toll of repeated maltreatment, including witnessing abuse of others.

Survivors were bullied, belittled, humiliated, insulted, intimidated, put down, ostracised from communal activities, discriminated against, and felt they were unloved and unwanted. Again, this abuse was perpetrated by staff, carers and other children. Regardless of setting or age, they were subjected to strong verbal abuse. They were told they were lazy, useless and stupid, that they would not get out of hospital, would be medicated for life, would not be able to study, work or live independently, and should not have children. This resulted in hopelessness and feelings of low or no self-worth. Keith Wiffin said the abuse by staff at Epuni Boys' Home in Lower Hutt had a powerful effect on him:[147]

> *"Psychologically they made it quite clear we were second-class citizens and the most likely outcome in life was that we would go to prison. There weren't many positive messages. It was an abusive and negative environment. Once you were in it, there were huge obstacles to success."*

Another survivor, Ann-Marie Shelley, spoke about the psychological abuse she received at a Salvation Army Bethany home for unmarried mothers: "[The Major] who oversaw Bethany made sure we never forgot that we were delinquents, deviants and sinners who had nowhere else to go."[148]

Lack of communication or consultation about placements has caused distress

A great source of distress was that people did not know why they were

> **"On the first day back at Epuni [one of the other boys said] 'Make sure your light's out at night and you'll have a better chance'. And I knew exactly what he was referring to."**
>
> **KEITH WIFFIN**

in care, how long they would be there, when they would get to see their family, and what they should do to stay out of trouble. Arthur Taylor said one of the hardest things about being in care was never knowing how long he would be there, and this constant uncertainty caused him great anxiety and stress: "To a child, even a week is a long time. I asked all the time, but no one would tell me."[149]

Another survivor described in a private session that she was never told why she was in a Catholic orphanage and not with her parents and siblings: "It wasn't until discovery documents came for my court case did I find out that it was my mother who put me there."

Frequent moves between placements also caused emotional distress. Dallas Pickering, for example, was moved 12 times by the time she was 15. In that time, she was placed in an adoptive family, three foster families and two group homes. She described the trauma she experienced after being removed from a foster placement where she had built positive connections and a "normal family life".[150] Chassy Duncan was moved between foster, "family home"[151] and residential special school placements 17 times in less than two years. He said he "felt like livestock, just getting moved from paddock to paddock".[152]

> **"The very first memory I have of being a state ward is the day we got put in a police car. My mum was in the front. We were all at the back. She was crying. We just thought we were going for a ride."**
>
> **SANDRA, MĀORI, 45**

Basic needs have been ignored

Many survivors said they were deprived of such essentials as food, water, shelter, warmth, personal hygiene, medical care, a safe living environment and education while in care. Dallas Pickering said her adoptive family "insidiously neglected" her. She described being locked outside by herself for hours and learning to survive by drinking water from a hose and eating fruit from the garden. A neighbour sometimes passed food under the hedge.[153] At five, she weighed the same as a 12-month-old. Nonetheless, she was later placed back with the same adoptive family.

Some children did not receive even the most basic education, perhaps because of a lack of teachers, or because staff and carers had such low opinions about their intelligence or abilities.[154] When Annasophia Calman left Nazareth House in Christchurch at age 14, she could barely read or write.[155]

Some survivors were not given affection or the opportunity to form connections with others. Sir Robert Martin said residents of the Kimberley Centre were locked away from the community. "It was lonely. There were hundreds of people around me but as a little boy I didn't know another human being – not properly anyway."[156]

Children were given no opportunities to have what would be regarded as typical childhood experiences, such as going to

> **"They called themselves the Sisters of Compassion and they must've had compassion...but hell's teeth...I craved then and I still crave now really just tenderness and comforting... I look back on those 400 days at the Home of Compassion as the worst days of my life....Even when [my wife] died at 40 and I was struggling as the sole parent of our teenagers, I rarely felt as desolate as I have felt in my time at the Home of Compassion."**
>
> **ADAM, EUROPEAN, 73**

birthday parties, visiting the zoo or going to playgrounds. Beverly Wardle-Jackson described her excitement at receiving her first Christmas presents from visitors to Florence Booth Salvation Army Home in Wellington, only for staff to confiscate them at the end of the day.[157]

Violence and intimidation have been used to control residents

Severe physical violence, intimidation, coercion and psychological and sexual abuse have been employed to control people, particularly those in residences. In one study, survivors reported that physical abuse was used to isolate children, "break their spirit" and create divisions among them, including by making children active members in the punishment of others, or by imposing collective punishments.[158] Staff and carers created an environment of constant fear in order to control those in their care. Arthur Taylor said Epuni Boys' Home reminded him of a slaughterhouse because "everyone was terrified all the time".[159]

In some places, the culture of violence was reinforced through initiation ceremonies and the enforced prohibition of "narking" or "snitching" about abuse. Physical violence was meted out, encouraged and condoned through the so-called "kingpin" system, in which some children or young people were designated as dominant and others as subordinate. Fights between residents to determine which child would be the kingpin were condoned or encouraged by staff. Some survivors considered it was a form of entertainment for staff, who used the system to their own advantage to control those in their care. Professor Elizabeth Stanley said that, left unprotected, "children had no choice but to harden up and use violence themselves, so victims became bullies and on it progressed".[160]

We also heard of a practice at Wesleydale Boys' Home called the

---

> **"It may be hard to understand, but I found the periods I spent in prison easier than the time in the welfare homes. The prison guards were doing their jobs, they were more caring, and I felt safe at night."**
>
> **EARL WHITE**

"golden fist". If a boy absconded, all the other boys were denied privileges, such as morning and afternoon tea, supper and rest periods, until the boy was found. When the boy was located, staff would arrange a boxing match between him and the boy considered to be the best boxer. Staff and other residents would gather to watch the fight, which ended only when the boy who had absconded was knocked to the ground and would not get up. The use of such collective punishments meant the group would discipline itself.[161]

We heard that as part of admission procedures at some residential facilities, personal clothing and belongings were confiscated in an apparent attempt to erase any trace of individual identity.[162] Daily life often resembled a prison or the military. Individuals were under constant surveillance and had no say over any aspect of their lives, including when they got up, what they ate, what they wore, and what they did during the day. They were made to adhere to strictly regimented routines, such as being made to eat, shower and shave at particular times, or not being allowed to interact with friends.[163] There was no privacy.

We heard of a practice in some girls' homes of requiring girls to change into their pyjamas mid-afternoon, after which their clothes were locked away to deter runaways. Professor Stanley said such practices were the daily denigrations, or mundane harms, suffered by children: "These abuses often occurred as part of the everyday administration of the state care system."[164]

Survivors commonly described a feeling of being trapped in State care, of being confined and restricted on a daily basis in a manner they considered hurtful, excessive and humiliating. Beverly Wardle-Jackson said every aspect of her daily life – right down to the prohibition on wearing her own clothes, even her own underwear – reinforced the sense of being trapped and powerless.[165]

Māori have been subjected to racial abuse and cultural disconnection

The State has been more likely to remove Māori from their homes or put them in foster care than to place them with whānau.[166] Racist attitudes and a disregard of Māori identity compounded the harm experienced by Māori placed in care. Māori survivors described experiencing discrimination that included ridicule and racial insults from foster parents and staff at residences. They also said they were ignored and disbelieved when trying to report abuse. They were forced to work long hours before and after school and were treated like second-class citizens. Māori girls were also taken into residential care, and some were housed in Fareham House, a State-run home initially established specifically for Māori girls near Featherston.[167]

Professor Stanley's book, Road to Hell: State Violence against Children in Postwar New Zealand, is littered with examples of such racially infused abuse. She told us survivors described to her how staff "verbally abused them, calling them thick, stupid, useless, lazy, whinging, filthy, dirty, low lives, scumbags, poofters, critters, shitheads, pricks, no hopers, white maggots, niggers and monkeys".[168] She said a 1978 report into Ōwairaka Boys' Home found "Māori were put down and treated with contempt. There was no effort made to treat those children as human beings".[169]

It was also difficult for Māori children to be placed in stable, long-term care in foster families or with adopting parents.[170] We heard about the difficulty of adopting out babies who were darker skinned or of mixed race. They usually went to less suitable families or ended up in State or faith-based care. Those adopted out could not find their whānau, hapū and iwi or learn te reo Māori. They also felt disconnected from their culture and struggled to build a sense of identity and belonging.

Some voiced deep regret to us about not being able to speak te reo Māori, and others expressed anger at their hapū and iwi "for not being there" when they needed them.

Māori communities had little influence over the way Māori children were cared for and little opportunity to provide their own forms of care, whether in child welfare, mental health or disability settings.[171] It is clear, for example, that the non-recognition of Māori customary law on adoptions under the Adoption Act 1955 has inhibited the ability of extended whānau to keep Māori children.[172]

Pacific people have also suffered disconnection from their families and culture

Many Pacific people who ended up in care were children of recent migrants. For some, English was a second language and they described being teased for their poor English and treated as stupid. Some, as noted, said officials encouraged them to abandon

> **"I didn't learn none of my whakapapa, I still don't know my whakapapa. I wish I did, because I could understand my Māori side."**
>
> **KERRY JOHNSON**

their Pacific identity once in care. Others spoke of not knowing their Pacific identity until adulthood.

Pacific survivors spoke of feeling stripped of their cultural identity, and of trying to fill the gap left by its removal. Fa'afete Taito described how he went into care considering himself Samoan and Christian and came out "being tough and being violent – that was my new identity".[173] Others talked about feeling powerless, confused, betrayed and struggling to cope with life in New Zealand. Many felt overwhelming shame for their family, leaving them emotionally crippled for years afterwards.

Disabled people have been ostracised from society and their needs have not been met

Survivors with a disability often felt ostracised from the rest of society when they were placed in care. Many reported feeling abandoned, invisible and excluded from their family and wider community.

Survivors in this group said they endured abuse in a variety of forms. In addition to the types of abuse described previously, these included receiving identical haircuts and birthday events; being forced to share underwear; being subjected to painful medical interventions with little or no therapeutic benefit, including psychotropic medication and sterilisation; having their hands tied to prevent them from using sign language; being subjected

> **"It was Deaf survival mode to try and please hearing people, watching their face to see how they should react…the teacher realised that she should use sign and she told us to keep it quiet and if there were other people coming into the classroom, that we needed to stop signing. We agreed. As soon as someone came, I'd hide my hands and I'd use the oral method and everyone would come in and say, 'Very good'"**
>
> **SALLY, ETHNICITY UNKNOWN, 47**

to experimental and punitive "treatments"; and being subjected to extensive use of restraints and isolation.

Some survivors told us the abuse made them feel less than human. Disabled children and adults who needed support with personal care (such as with eating, dressing, bathing and going to the toilet) were particularly vulnerable.

James Packer described, among other things, being hit and watching others being assaulted as punishment for using New Zealand Sign Language at Kelston School for the Deaf.[174] Sir Robert Martin witnessed Kimberley Centre staff use a fire hose on a naked disabled boy who had soiled himself. He said this memory had never left him: "He would try to stand up and be knocked over again. I have seen many terrible things, but what I saw that day has stayed with me and still frightens me. It was a warning – if you misbehave, this will happen to you."[175]

More broadly, these survivors reported neglect of their social, cultural, educational and health needs. We heard they were often exposed to an "extremely impoverished [relationship] environment" and felt as though no one cared about them.[176] Many disabled survivors reported being deprived of the opportunity to learn to read and write or reach their full learning potential, being denied any recognition of their learning needs, and, if they went to school, being segregated from other students.

Some were denied stimulation of any sort. Sir Robert said Kimberley Centre residents had nothing to do and "some people stayed on the floor all day rocking back and forth, especially people with the highest needs. There were so many of them, they were just left on the ground. If someone had an accident and soiled themselves, they were just left in their dirty clothes".[177]

Leaving care could also be a considerable shock. Sir Robert said he "had to learn to live and to survive all over again" after his release at 15.[178] He felt as though he had been "brought up on a different planet with different rules" because he had no knowledge of world events or well-known aspects of kiwi culture, such as the All Blacks.[179]

Some individuals have suffered abuse in many settings

Children in the State care system were commonly moved from institution to institution, especially if they were in care for a long time. Some were abused in more than one setting, and this could go on for periods of five to 10 years or more. In some cases, individuals went directly from the cradle into care that lasted for decades. Some survivors considered the frequency with which they were uprooted to be abuse in itself.

Entering care in one type of institution, for example a residential home or youth justice facility, did not necessarily mean an individual remained in that setting. The individual might find him or herself next in a psychiatric hospital, or moved into foster care. Survivors described the trauma of being removed against their will from positive, supportive placements, as well as the difficulty of forming meaningful relationships when they were shifted so frequently.

Decisions about when and where to move children appear to have often been in response to overcrowding and budgetary and administrative considerations, and not the child's preferences or care needs.[180] Sometimes, children were moved from residential homes to psychiatric hospitals for treatment without understanding why and, in many cases, in the absence of any diagnosed condition that required treatment.

Such transfers were apparently sometimes an outcome for children at residences who displayed "behavioural problems" or were regarded as "uncontrollable". We have heard that many of these children were being subjected to physical and sexual abuse at the time, which may have accounted for any misbehaviour. In some cases, the "treatment" received in psychiatric institutions was more akin to punishment.

Some survivors spoke of abuse at every institution or foster home in which they were placed. Beverly Wardle-Jackson, for example, described being abused at Florence Booth Salvation Army Home, Miramar Girls' Home in Wellington, Strathmore Girls' Receiving Home, a family home in Christchurch, Fareham House, Porirua Hospital and Oakley Hospital in Auckland.[181] She was sent back and forth between some of these institutions, only to be abused afresh.

Chassy Duncan described suffering abuse at placements with relatives, foster homes, family homes, a residential special school, boys' homes, youth justice residences and third-party care programmes.[182] Kerry Johnson described suffering physical, sexual and psychological abuse at the Marylands School run by the Order of St John of God, and abuse at Campbell Park School, as well as social welfare placements and residential hospitals.[183]

Individuals' interests were of little concern to some carers

Many survivors felt keenly that no one had their best interests at heart. They said no one asked them what they wanted before being shifted from placement to placement. There was no way to talk about the way they were being treated or to express concerns about placements, particularly if they were being returned to unsafe homes. There was no one to whom they could feel safe reporting abuse. Staff seemed overwhelmed and overworked.

Some said they rarely met their social worker. Few reported a relationship with an adult who might offer them guidance or support. The lack of any permanent foster home added to the sense of being swallowed up in a system unconcerned about their fate. The failure to place them with their own extended family or whānau, the separation from siblings and the inability to see their own family during holidays reinforced the sense of isolation from anyone who might care for them.

Some said their foster or adoptive parents treated them differently to the family's biological children.[184] They were made to eat separately and do excessive household chores and manual labour. Others spoke of being called by laundry numbers instead of names.

Some disabled people reported the absence of the most basic levels of care. They were left in soiled or wet clothes or left alone without company or stimulation. In addition, some were drugged and beaten.

3.3. Impact of abuse in care

The consequences of abuse in care can be profound and lifelong. Some are more visible – damaged health, drug use, alcoholism, crime – and some are less apparent although no less real – emotional disconnection, poor relationships, damaged mental health, anger and grief. These effects reverberate beyond survivors to their families, whānau and communities and society generally.

What we heard from survivors about the impact of abuse on their lives matched that found in literature on the subject, both here and overseas, as well as the

> **"They told you, 'When you reach 18, you're out of CYFS and that's it.' There's no skills. You weren't given any skills, how to survive, how to go back to your family and tell them, 'I'm your sister, I'm your aunty.' You weren't given that. I'm still trying to do it today and I'm 54 next week."**
>
> **DORIS, MĀORI, 53**

testimony given to us by experts in the field.

Many survivors have shown great courage, resilience and fortitude, overcoming enormous hurdles to get an education, get employment, deal with the damage done to them, form healthy relationships and generally rebuild their lives. However, many have struggled on some or all of these fronts. Some have taken their own lives, unable to bear the suffering caused by their abuse.

Specific research on the consequences of abuse in care is limited in New Zealand, particularly in distinguishing the different effects of abuse in care on different groups of survivors, such as Māori, Pacific people, people with disabilities, women and girls. What research does exist shows a correlation – but not a definite causal link – between abuse and adverse consequences. It will be challenging, if not impossible, to exclude the effect of other factors, such as abuse suffered before or after a person was in care.

A particular feature of abuse suffered while in care can be a distrust of authority. We observed that those abused in State institutions frequently were distrustful – and even fearful – of institutions and authority. Those abused in faith-based settings also commonly experienced a loss of faith or spirituality.

Abuse can hurt individuals for life

Abuse hurts for a lifetime. It can manifest in a few, many or all aspects of a survivor's life, at various times and at various intensities. From the testimony we heard and evidence we gathered, it is clear abuse can lead to poor physical health. Many survivors reported disability or long-term illness later in life.

Survivors of abuse are much more likely to experience mental health problems at some point in their lives, including insomnia,

> **"I think the hardest thing is even though we lived that as kids, it's like we're continuously having to relive it. And now as adults it's like this has been our life for 21 years, nah, 44 years. It's been a long road, and it's like when's it ever going to end?"**
>
> **GEORGINA SAMMONS**

depression, anxiety, post-traumatic stress disorder (**PTSD**), alcohol and drug misuse and suicide.[185] Loss of identity, innocence and belonging, loss of educational and employment opportunities, and loss of spiritual or cultural identity are other consequences, as are low self-esteem, self-loathing, recurring feelings of guilt, shame, anger and grief.[186]

Impairments of all sorts are another impact of abuse, whether in behaviour, emotional regulation, decision-making or intellectual, language or memory abilities, particularly for those who suffered prolonged or severe abuse as children.[187]

Relationship and interpersonal problems also arise, whether with partners, close family members or social interactions generally.[188] Anti-social behaviour, gang membership, criminal behaviour, poverty and homelessness are other consequences, as are distrust or fear of authority.

Almost without exception, survivors we spoke to said they continued to feel the impact of abuse to the present day. Arthur Taylor described it as a deeply embedded painful thorn that accompanied the memories of his time in care.[189] Tanya and Georgina Sammons described how they continue to suffer from anger and are mocked by their workmates for their poor reading and spelling,[190] Cheryl Munro described how her son James, at nearly 50, still has nightmares and "still puts clothes against his door to stop the brutal teacher coming in to attack him".[191]

Physical consequences include serious injuries and medical conditions

Survivors told us about immediate physical injuries from abuse, such as wounds, bruises, head injuries and internal injuries, that were rarely adequately treated at the time the injury was sustained. They also reported chronic longer-term medical conditions resulting from the abuse, including incontinence, migraines, cardiovascular problems, diabetes, malnourishment, sexually transmitted diseases, chronic pain, impaired brain functioning and memory loss.[192]

One survivor, now 49, recalled: "I had so much migraines. They found me with pressure on my brain and when I went for the x-ray, I remember the doctor came back and going, 'Have you been involved in a car accident?' I go, 'No'. He said, 'Your brain looks like you've been in a car accident.' I'm going, 'It's okay, it's just all the violence I had to suffer growing up.' "[193]

Another survivor, Anne Hill, told us how as an adult, she had to have a lobe of her lung removed partly because of the effects of untreated pneumonia she suffered while at a Catholic orphanage: "I developed a serious lung abscess and infection in my 20s and at age 27, I had a left lobe of my lung removed… During this operation there was a discussion as to when I had started coughing. It was then that it was suggested that I had 'pits' in my lungs due to the pneumonia I suffered from, and never got properly treated, as a child at [the orphanage]."[194]

Research done here and overseas similarly shows that those abused in institutional care in childhood suffer poorer health outcomes generally.[195] These include frequent physical illnesses and more doctor and hospital visits as an adult for a variety of health conditions, such as chronic pain and asthma.[196]

Mental health issues, including psychiatric disorders, are particularly common

One of the consequences survivors most often mentioned was the impact on their mental wellbeing.[197] Daily life is clearly a struggle for many. They have suffered from PTSD, including flashbacks as often as daily, as well as anxiety, depression, mental distress, including nightmares and sleeping difficulties, and problems with drugs and alcohol. It was not uncommon for survivors to describe repeated suicide attempts. One survivor, in a private session, described these attempts and how they affected her parents:

> **"In 1991, I had major bowel surgery that took four hours. The surgeon told me afterwards that he could tell that I had been sexually abused as a child. I had signs of an untreated sexually transmitted disease, which I remember I had had symptoms of since childhood. This had caused considerable damage, and it took the surgeon a long time to remove scarring, but he was pleased I would be able to conceive a child. I still find this traumatic and share it only because the stigma and shame should not have been mine."**

ANNE HILL

> *"Poor mum and dad. I mean, 'cos I, at this stage of my life, I was trying to harm myself and I just wanted to die, you know… I started to feel so bad about myself that I just – I couldn't see any point in living like this and I felt like I was disappointing my parents, and my sister had succeeded in nursing, and here was me, just shaming the family and, you know, ending up in psychiatric hospital. Poor things… it was so shocking for them. In fact, one time dad went almost white overnight. He'd heard that I'd ended up in the life support or something. I'd tried to kill myself … I attempted suicide 180 times."*

Overseas research and inquiries also show that survivors of abuse have high rates of mental illness, including strong links to PTSD, alcohol and substance abuse, mood-related disorders, anxiety and anti-social personality disorders, and frequent thoughts about suicide or attempts at suicide.[198]

Feelings of shame, guilt and low self-esteem pervade survivors' lives. It was common for survivors to describe frequent feelings of anger, sometimes at "the system", sometimes at individuals, and often disproportionate to triggering events. Many struggled to control their anger without violence, and worried about what it might lead to. One survivor, in a private session, talked about how anger had taken over his life:

> *"I'm just an angry man. That's why I've never left prison ever since I came in in 2008. I've been taking out my anger on authority, officers, just using violence to take out my anger of what happened to me because I could never forget it. I can never erase it out of my mind. I'm always reminded of it every day and when I do have bad flashbacks, when I go dark, I can't control, I just lash out, using violence either against the prison officers or other prisoners."*

Survivors' relationships are disrupted

Many survivors find it extremely difficult later in life to trust people or form close relationships, including with their own families. Some find it difficult to socialise, interact with people or function in society generally because of low self-worth and anxiety about how they are perceived or how they might act – or rather, react – in certain situations.

Those abused as children are more likely to be subjected to violence later in life, and develop insecure attachment styles associated with relationship difficulties.[199] Some survivors spoke of the particular impact of sexual abuse on their sexual relationships with partners later in life. Some told us that they felt unable to show affection or hug their children.

As survivor Fa'afete Taito put it, State care robbed him of the ability to love:[200]

> *"The world of State care and the gangs takes away your ability to love and care. My mother loved me, but I lost the protective power of that love when I was removed and made a State ward. I learned that interactions with others should be aggressive, antagonistic, violent, and focused on trying to get one over the other person… Losing the ability to love is a profound and deep loss and one that many men in my situation have also experienced… we did not know how to love our partner and kids in a healthy way."*

In some cases, the struggles survivors have faced in raising children have led to their children in turn being removed from them and placed in care. Removal of children was deeply upsetting and traumatic for survivor parents. Some saw it as a result of authorities' stigmatisation, or focus on their history, rather than on their progress in overcoming the impact of their abuse.
One such parent said in a private session:

> *"I think OT [Oranga Tamariki] don't realise how much some parents do actually change. I mean, I've changed from being abused, being sexually assaulted, being raped, being physically beaten to a pulp, to trying to be the best mother I can be, but CYFS, they don't want to see that. They want to see their side. They want to see the bad. They want to see the negative. They don't want to see the positive changes*

"As my fear of [my abuser] and the thought of the pain grew, I also started to wet myself at the thought of knowing what was going to happen. This made me a target for bullies. Boys started to ridicule me, and other boys didn't want to hang out with me because I was the kid that pissed himself. I had no friends."

JOHN

> **"To me [being in a youth justice residential centre] was just getting ready for jail really, it was training ground for jail… I guess it made me a bit more institutionalised, that place, in my thoughts, in my behaviours, the way I reacted to people was never really the same again after that."**
>
> **CHASSY DUNCAN**

> *that people have made. And a lot of these survivors, they've changed their lives dramatically and impacted a lot with their children. And some of them, they end up losing their children to Child, Youth and Family because of their history, which is unfair on the parent and is unfair on the family."*

Survivors may experience disconnection from their culture and faith

As already mentioned, many Māori felt disconnected from their culture, whakapapa and whenua after being placed in care. They became alienated from their spiritual values, language, culture and identity. Studies of indigenous children in care in Canada and in Australia showed similar outcomes.

Pacific survivors also spoke of profound disconnection and loss of identity, and of creating a new identity revolving around gang affiliations and violent behaviour.[201] Fa'afete Taito told us about a deep institutional resistance when he described himself as Samoan:[202]

> *"[The guard at Ōwairaka] asked me what I was. I said I was Samoan and he said no you're not and asked me asked me if I was a New Zealand citizen. I said I was, and he said: 'Well, you're a New Zealander then.' From then on, when I was asked, I would say I was a New Zealander."*

Many who were abused in faith-based institutions lost trust in the church and religious practice, and some spoke of having their faith taken from them as a result of abuse – particularly if they felt the church had concealed, or facilitated the concealment of, the abuse. Said one survivor: "They robbed me of my faith, the Catholic Church. They really did…

That's what I believe in. I honestly hope and pray that there's some spiritual thing after we die."[203]

Survivors may continue to face educational and employment hurdles

Many survivors continued to grapple with the effects of receiving only a limited education, whether simply not provided, interrupted by constant school or care setting changes, or disrupted by the cognitive or behavioural impact of abuse. As one survivor said: "I had trouble with numeracy and literacy… Why would I want to learn? You know, I was trying to survive."[204]

Even some survivors who made deliberate efforts as adults to complete their education or obtain further education found that their limited schooling affected their ability to get or keep jobs. This had significant and continuing financial consequences, as well as reinforcing their sense of self-worth or feelings of shame. We have no doubt many of the intelligent and capable survivors who have spoken to us would have achieved very different life outcomes but for the abuse suffered in care.

Survivors sometimes turn to gangs or crime

There is a well-documented, although not inevitable, link between being in care and associating with or joining gangs, or becoming involved in crime and ending up in prison.[205] For some, time in care and the people they met there were their first interaction with criminal activity. One survivor with first-hand experience put it this way:[206]

> *" 'Oh, hey, there's my bro' from jail, you know, he got no family either, so we're mates.' I thought that the government at the time, they actually turned you into a gang member… the day they put you in there when you're a young kid, you meet other young kids in the same sort of situation and you grew up to – you went to jail and then you became a gang member. Because by the time you went out of there, society…[it] don't acknowledge you as a good person, I suppose."*

Survivors told us gangs gave them a sense of belonging and identity, and this was particularly so for Māori and Pacific people, who faced the additional burden of loss of identity and cultural connection. Others turned to crime as a way to survive.

Many survivors told us that the more involved they became in the world of crime and gangs, the more difficult it was to lead a productive and crime-free life. Some felt their path in life had been fixed, making it difficult for them to determine their own future or re-establish a normal life.

Criminal convictions compounded the difficulties survivors faced in finding employment, while time spent in prison disrupted family relationships. Some survivors expressed regret that they had not been a supportive parent because they had spent most of their children's lives in prison.

Abuse harms families and has intergenerational effects

Survivors' family members often suffer the consequences of abuse, too. Family members described feeling either powerless if aware at the time of the abuse, or guilty for having failed to protect loved ones if aware only later on. We have heard from family members who have loyally supported survivors through the long and painful process of trying to get justice, at significant cost to themselves.

Some survivors, including Pacific people, spoke of how being abused in care would bring stigma to their whole family, and how this prevented them from disclosing the abuse to family members or lodging complaints.

Later generations also suffered consequences because survivors found the impact of abuse affected their own parenting. We heard of many cases in which survivors inflicted violence on the next generation. Georgina Sammons told the redress hearing:[207]

> *"The abuse itself has had an ongoing impact on how we view ourselves and what we expect from family relationships. Both [my sister] and I have been in abusive relationships as adults that have also affected our kids. When I was a really young mum, I used to hit my kids too. When I got a bit older, I realised that one day I might really hurt them and had to stop. I don't hit my kids any more, but I still struggle to control anger and the desire to be violent because that was how I was shown things should be dealt with. I also wasn't there for my kids in some ways – I didn't go to sports games and things because I didn't know that was what a parent was supposed to do. My daughter used to walk herself to her netball games."*

Some children of survivors were themselves removed into care, resulting in feelings of disconnection from their family and culture and loss of identity or, worse, might suffer abuse in care themselves.

Some survivors told us they were themselves children of parents who had been in care and described abuse they suffered both at the hands of their parents and caregivers in placements.[208] Other children of abuse survivors also suffered from the disconnection experienced by their parents. Hope Curtin, for example, was separated as a one-year-old from her mother who had suffered an abusive childhood in foster care:[209]

> *"[My mum] had such a rough life and carried so much pain with her that she couldn't live a normal life. The abuse she suffered had affected her ability to look after me, even though she loved and cared about me. It's extremely hard to explain how hard it is to lose a mum at such a young age… I have also not had the chance to know my own family. I had no connection with my mum's side at all … I know nothing of our Māori heritage. I am only just starting to come to terms with everything now and find out where I come from."*

Māori communities have suffered particular consequences

Abuse in care harms the mana, autonomy, physical and mental health of Māori children. Survivors have told us of losing their Māori identity, connection with culture, language and whakapapa.

The taking of so many Māori children into care also damages Māori communities, and strikes at the heart of tikanga Māori and Māori autonomy, or tino rangatiratanga. The health and welfare of their future leaders, their rangatahi, is a matter whose importance to Māori cannot be underestimated.

Whānau have watched as more and more of their children have gone into care, only to emerge with poor education and employment prospects, a lack of connection to their whakapapa, profound psychological damage, a greater likelihood of committing crime, and a greater likelihood that their children – and their children's children – will also end up in care, perpetuating a cycle of neglect, abuse and trauma.

There is a clear association between the high number of Māori children in care and the high number of Māori in prison.[210] As at November 2020, Māori men make up 52 per cent of the male prison population, while Māori women make up 60 per cent of the female prison population. Professor Stanley told us officials were more likely to regard children, once institutionalised, as worthy of further incarceration. Māori communities suffer the social costs of these high incarceration rates.

The economic cost to society is large

Quite aside from the profound social and human costs, there is a significant economic cost to abuse. This includes financial costs to the economy from spending on healthcare, justice,

> **"The trauma we are carrying is killing us. I agreed to give evidence at this hearing because I want my whānau to have better lives, to be respected as the young people they are, and the elders they will be. Hardly a day goes by when I'm not reminded of the trauma we live."**
>
> **DR ALISON GREEN**

police and social welfare, and productivity losses.

Advocates Sonja Cooper and Amanda Hill have obtained actuarial calculations of the cost of the loss caused by abuse suffered by some of their clients. For three recent clients, the actuary calculated the cost for each client at between $590,000 and $910,000.[211]

We commissioned a report for a high-level estimate of the economic cost to New Zealand of abuse in care since 1950.[212] The report's authors estimate the average lifetime economic and non-monetary cost for each person abused in care will be $857,000 (in today's dollars).

Applying this figure to the estimated number of people abused in care, the authors estimate the cost to the economy of abuse between 1950 and today at between $20.8 billion and $46.7 billion. Adding a sum to reflect the pain, suffering and premature death of survivors, the authors put the total cost in the range of $96 billion to $217 billion. This is a broad, indicative estimate. It relies on the estimates of the number of people abused in care, and so faces the same constraints described earlier, as well as limitations in accurately identifying the impact of abuse in care and the cost of addressing that impact. But despite these limitations, the estimate gives an indication of just how much this abuse costs New Zealanders and the economy.

3.4. Preventing and responding to abuse in care

Common factors underlying abuse in care

Preventing abuse first requires an understanding of the factors commonly seen in abuse

> **"I told my father early on that I was being abused... My father didn't believe me. He said words to the effect of 'A man of the cloth would never do anything wrong. I don't want to hear about this ever again.' That was the end of that conversation."**
>
> **JOHN**

cases, including the failures of institutions and carers. A lack of vetting, training and oversight of those in positions of authority is one such factor. Survivors have frequently mentioned poor management of the staff or carers who controlled most or all aspects of their lives. They have described a lack of vetting, training and supervision, a frequently cited example being social workers who visited their home but spoke to them only in the presence of the carer who was also the abuser. As a result, they had no connection with their social worker and could not trust that he or she would take action to protect them against any abuse they disclosed.

The Confidential Listening and Assistance Service heard similar stories of social workers whose sole focus seemed to be finding a placement, rather than true concern for, or attention to, the lives of the children concerned. Some survivors either never saw a social worker or fleetingly saw a string of social workers in the course of being moved from place to place, with the result that they were unable to form a trusting bond with any one of them. In turn, the social workers learned too little about them to pick up signs that something was wrong.

Institutional culture that condones violence or devalues residents is another factor. Survivors described understaffed institutions where staff seemed overwhelmed and overworked. Many spoke of violence and harsh physical discipline as the norm. They said staff either failed to eradicate or actively encouraged "no-narking" and "kingpin" cultures.

Some described practices intended to erase individual identity, such as requiring residents to dress the same and have the same haircut. Some described restrictions on contact with outside adults, such as parents or social workers.

Organisations seldom recognised signs of abuse, whether intentionally or unintentionally. Many survivors said they ran away to escape from abuse, but this was dismissed as bad behaviour, rather than seen as a signal that something might be wrong within the institution or home. Many also described the silence – and tacit approval – of staff in the face of known or suspected abuse as well as situations where known or suspected abusers were able to move to different institutions.

Barriers and responses to disclosure of abuse

Many individuals described the formidable barriers to disclosing abuse. There was often no clear process or no direct contact with adults who could be regarded as safe. Even when there was such contact, the outcome was far from predictable, as Joan Bellingham recalled: "During my treatment at Princess Margaret [Hospital], I remember making several complaints to individual doctors. I wasn't sure at the time if they were 'official' complaints. I was never even sure whether we, as patients, could make an 'official' complaint. No one ever listened... I would tell my parents, but they never questioned authority."[213]

The barriers were particularly high for those with disabilities or from Pacific families. Having either limited ability to read or write or limited ability to speak English, they felt unable to voice their concerns or challenge authority. Many feared the consequences of disclosure, either for themselves or for their family.

Survivors spoke of the power of their abusers to falsify reports or records, so that any disclosure would not be believed. Some also said they did not understand until much later that they were being abused. Some never fully comprehend the abuse. Gay Rowe told us she found out about the sexual abuse of her disabled brother only because former staff members disclosed it to her lawyers.[214]

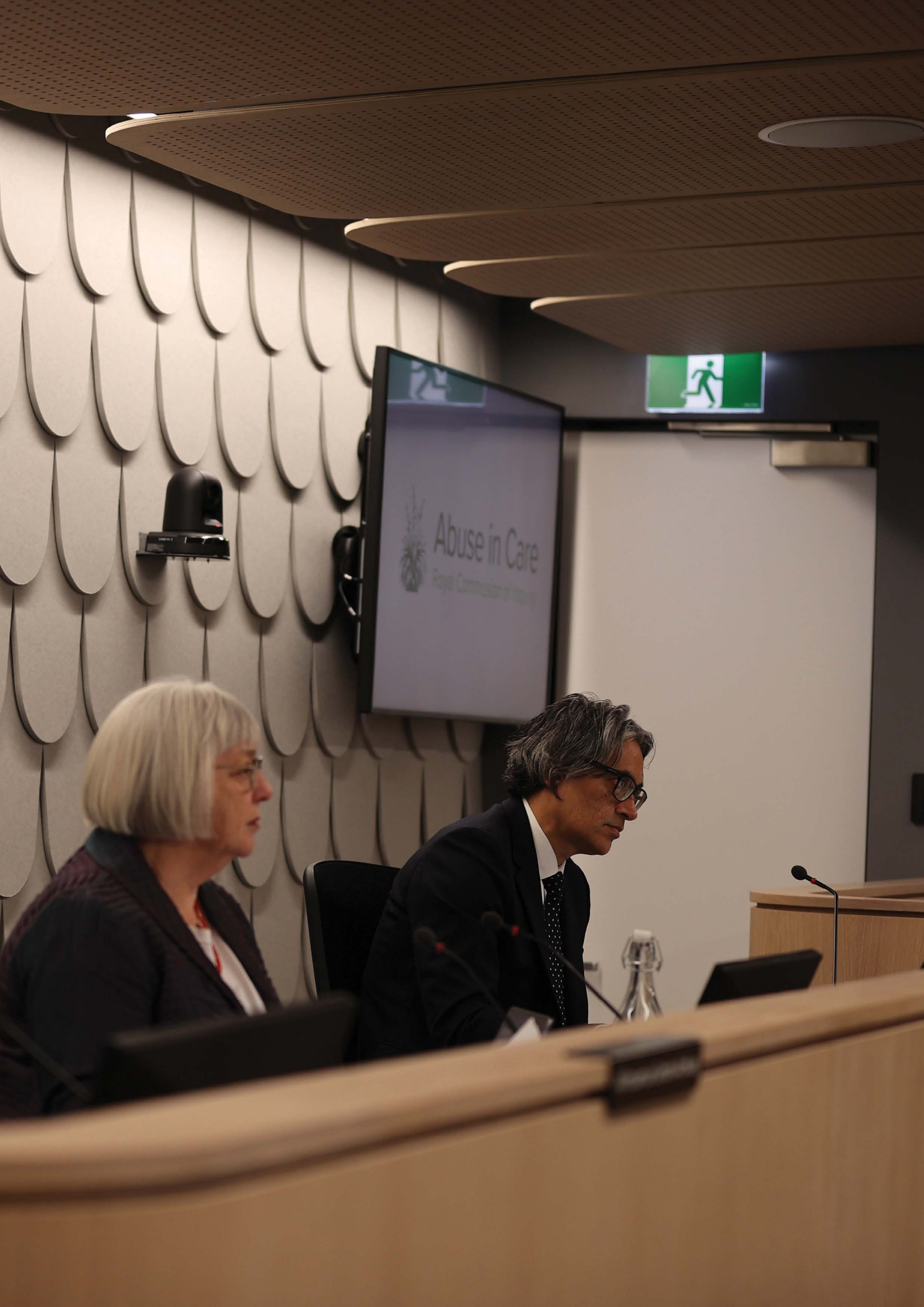
We heard many examples of inadequate or harmful responses to abuse. Many were simply not believed, and no action was taken. Survivors who reported abuse in psychiatric care settings felt at a particular disadvantage because psychiatrists, doctors and nurses were highly regarded figures whose word was seldom doubted. Rarely was action taken against the alleged perpetrator.

Similarly, those abused in faith-based institutions felt their complaints of abuse by nuns or clergy would not be believed. Ann-Marie Shelley told us: "After her punishment, [the nun] told me not to tell my parents because they would not believe me. Parents believed nuns, she said, not bad little girls."[215]

Sometimes punitive measures were meted out to victims who reported abuse. Earl White recalled the threat of punishment for making complaints at Hokio Beach Training School in Levin: "When you first got to the home, the first things you were told is you don't inform on the boys and you definitely don't lay any complaints about staff members because it would only cause you trouble. If someone did inform, they just ended up getting beaten up."[216]

In other cases, concerns were ignored, and victims were placed back in abusive families or settings after their disclosure. We also heard about active attempts to cover up abuse and/or transfer the abuser or abusers after victims made allegations. Survivors said that institutions often seemed more concerned about preserving their own reputation than looking after the welfare of those in their care.

> **"There were times where I couldn't say too much to my social worker that came to visit me at a family home because…they were supervising the visit to make sure that we wouldn't tell my social worker what was happening in the home… I wished my social worker would have caught on to something that was wrong with me, or seen the little thing that wasn't right with me."**
>
> **PRIVATE SESSION**


Abuse in Care
Royal Commission of Inquiry

Joan Bellingham

Shock treatment given to "cure" sexual orientation

Joan Bellingham was an outgoing 18-year-old when she began her nursing training at Christchurch's Burwood Hospital in 1970. She was openly gay – something not then socially acceptable – and endured prejudice and hostility from training staff.

As months passed, Joan's treatment from training staff worsened and came to a head when a tutor falsely accused Joan of stealing drugs from a trolley. After this accusation tensions escalated. Joan was told she needed treatment and was taken to the psychiatric ward at Princess Margaret Hospital the same day. Joan was given no choice but to go and was not able to take any clothes or other belongings with her. Her parents did not understand why she needed treatment, but they did not feel able to question a doctor's authority. It was to be the first of Joan's 24 admissions to the ward over the next 12 years.

As a patient, Joan was kept in a highly medicated state. She was compelled to take the drugs and was not told what they were or what they were treating. She received electroconvulsive therapy, or ECT, more than 200 times.

Joan: Second person top left

> *"They would give me muscle relaxant to paralyse me," she recalled. "It felt like razor blades going through my body. You were fully awake during this time. You could see the silver machine and the assistants holding the electrodes. They would place the electrodes around my head before I became unconscious."*

Afterwards she would vomit and sometimes lose vision. She begged staff not to repeat the procedure, but they ignored her.

> *"As I became institutionalised, I would ask for ECT and they would give it to me. I ended up hating myself so much. It was a form of self-loathing, which I believe was caused by the medication I was given."*

The ECT sessions left her with electrode burns on her scalp, severe memory loss, chronic headaches and tinnitus.

In 1987, Joan lodged a claim with the Accident Compensation Corporation over the scalp burns. Twelve years later, it paid her compensation of $10,000 for the burns and $1,500 for the headaches.

> *"It felt like ACC were constantly questioning whether what happened was true. They constantly sought to deny my claims."*

In 2005, Joan filed a claim in court over the way she was treated, but it never went anywhere because the Crown relied on the Limitation Act. She continued to try many channels to seek compensation, and in 2012, Crown Law offered her a 'wellness payment' of $4,000, plus $4,250 towards legal costs. The settlement felt uncertain for Joan as her lawyer advised that the wellness payment may need to be repaid as she had already received compensation from ACC.

Joan described the redress process as very difficult.

> *"There was never any clarity or certainty. There was also never any support through the process. I constantly felt like I was battling uphill to get people to recognise or believe what I was saying actually happened."*

Joan said it was essential a clear process for redress was put in place, and that there was financial and other support for those making claims. She said this would have greatly alleviated the stress she endured.

Keith Wiffin

Sexual abuser made life hell for boy at Epuni home

Among a host of haunting memories from his time in State care, one stands out for Keith Wiffin.

> *"I will never forget being locked in a room in one of the wings and hearing the boy next door being raped by a staff member, knowing what was happening and wondering when it would be my turn."*

Keith's introduction to State care began at 10 after he was made a ward of the State following the death of his father, which left his mother with little income or support to care for their four children.

Following a brief court appearance, Keith found himself in a van heading to Epuni Boys' Home in Lower Hutt. There he was to get a taste of the violence that would follow.

> *"One boy in particular didn't like the look of me and smashed a guitar over my head. I walked into the place picking bits of wood out of my head – that was my welcome."*

> *"The culture of violence was totally foreign to me. There had been nothing like that going on in my home environment. We faced hardship, but there was never any abuse."*

Keith was sexually abused on a number of occasions by a housemaster at Epuni Boys' home in the 1970s, when he was 11 years old.

From Epuni, Keith went to a Family Home, where he also experienced violence. State care had a devastating impact on Keith, then in his formative years, and the consequences continued throughout his life.

Many years later, as an adult, Keith attempted to obtain redress from the Ministry of Social Development for his abuse. He didn't know it at the time, but by then the housemaster who abused him was a convicted sex offender, with convictions for sexual abuse of other boys at Epuni in the 1970s. Despite that, the Ministry of Social Development didn't accept Keith's account of events and rejected his claim.

> *"I thought that the Crown, in particular the Ministry of Social Development, would look at the merits of my claim and want to do something about it without it going to court. That didn't happen."*

Instead, the letter from Crown Law in response to his claim denied his allegations of physical assault and stated that his claims of sexual abuse would face 'considerable legal hurdles', including the Limitation Act. The response took a serious toll on Keith. "I don't remember another point in my entire life when I have been that angry", he said. To him, the Crown's focus was on protecting its liability. "For me, the Crown reduced the issue to one of money...without any real genuine compassion for the victims."

Keith withdrew his claim but continued to seek justice including by participating in a 60 minutes documentary. The Ministry later made an ex gratia payment, and his abuser was later convicted of offences against him and two other boys from Epuni.

Keith hopes the inquiry will thoroughly investigate and scrutinise the actions of officials. He hopes it will result in an overhaul of the approach to redress to properly achieve justice for survivors.

"We need to look at this through a thoroughly different lens and the lens is about the morality, the ethics and the humanity of it. Because until it's looked at through that lens...this will only ever be a fight about money, and that's not what this is about."

"It needs to be about the wellbeing of the victims and being open, honest and transparent about what has occurred, the scale of what's occurred and the impact it's had on the nation as a whole."

He also considers it important for the inquiry "to get things put in place for those who are in care now and who will go into care in the future because abuse in care is still happening."

Part four: What we have learned about State redress processes

The redress investigation

The terms of reference require us to investigate redress and rehabilitation processes for those who have suffered abuse in care. The term redress includes compensating people for past wrongs by, for example, a payment of money, as well as other steps to rehabilitate or otherwise put things right.[217] Governments and institutions can provide redress through a combination of different measures such as the courts, claims processes, investigations, prosecutions and inquiries.

People who seek redress for abuse in care have frequently suffered significant trauma in their lives, and many have personal or living circumstances that make it difficult for them to take part in a court case or claims process. Some are suffering from the psychological effects of abuse, such as PTSD, or other mental health or addiction problems. Many are disabled people, including people with learning disabilities that make it particularly difficult for them to take part in a claims process. Many are in prison.

Some went through many care settings and have no clear picture of who was responsible for their care. Many face barriers to disclosing or discussing their abuse, or have a deep distrust of officials. Many more have suffered discrimination or marginalisation throughout their lives. Māori claimants are not just survivors of abuse in care, but belong to a people who have been subjected to colonisation. The State has particular obligations to Māori, as tangata whenua, under Te Tiriti.

Recognising the importance of this subject to many survivors, we made redress processes by the State and faith-based institutions the subject of our first investigation. We began by producing an issues paper in mid-2019, and holding public hearings from September – December 2020. We heard from 27 witnesses in the public hearings including 14 survivors and family members, most of whom had been represented by Cooper Legal – the law firm that has acted for the overwhelming majority of legally-represented claimants. The subject is broad, and the investigation will continue in 2021, building on the public hearings held in 2020 and will include roundtable meetings, research, wānanga and other policy and consultation work.

We will continue to hear from survivors in private sessions, and will also seek further evidence from those who have dealt directly with the Crown, without legal representation. We will publish a full report with our findings and recommendations in 2021. We will review any responses to our recommendations over the remainder of the inquiry and report further as necessary.

In this interim report, released shortly after the close of the first public hearing on State redress, we summarise the key themes to date. Much of the detail will be included in the report next year rather than in this interim report.

4.1. Obtaining redress from the State

Over the last 20 years, more than 5,000 people have made claims against the State for abuse in care, either via the courts or directly to the Ministry of Social Development, Oranga Tamariki, Ministry of Health[218] or Ministry of Education.[219] More claims continue to be made. The Ministry of Social Development, for example, told us its historic claims team still receives about 40 new claims a month.[220] New claims also continue to be filed in court.

The State has defended claims made in court, while progressively developing a range of out-of-court settlement processes. To date, slightly more than half of all claims made against State agencies have been closed, either with a resolution – usually made up of a financial payment and an apology – or discontinued.[221] More than 2,000 remain outstanding, and we have heard that even the resolved claims have in many cases left grievances for the claimants concerned.

Many survivors told us that making a claim was traumatising because the response was so protracted, they were frequently disbelieved and had to relive their abuse, sometimes numerous times. Nor had they yet received the justice they sought.

Many survivors also want – and need – more than monetary compensation, something reflected in the international human rights conventions and declarations. They want counselling, psychological care, medical treatment, assistance with housing and training to boost their employability. They also want their experiences to be heard and acknowledged. That means a genuine apology for the abuse they experienced and a recognition of the profound impact it has had on them and their families.

For Māori, there must be consideration of ngā tikanga Māori and recognition of whakapapa, aroha, mana, utu, mauri and tapu.

Any consideration of redress for personal injury must take account of New Zealand's accident compensation scheme. This has existed since 1974 and compensates those who have suffered personal injuries within specific categories defined by legislation and in court and tribunal decisions. Those entitled to cover are unable to sue in court – a core element of the scheme.

Many survivors of abuse in care have accident compensation cover for some or all of their injuries, and are therefore unable to sue for compensation for those injuries – although the position is often complicated. Accident compensation can therefore be both a component of the redress provided by the State to victims and survivors of abuse, and an obstacle to some legal claims for redress.

The State's response to claims by Lake Alice survivors

The State examined the question of redress for abuse in care claims in the 1990s in response to claims by former residents of Lake Alice Hospital's child and adolescent unit, which operated from 1972 to 1977. In the mid-1990s, two former residents of that unit brought claims in the High Court against the Crown for serious abuse they had suffered in the unit.

In early 2020, the United Nations Committee Against Torture found New Zealand in breach of the Convention Against Torture for failing to conduct a full and impartial investigation into abuses at Lake Alice.[222] We have begun an investigation and plan to hold a public hearing next year on the matter.

We heard evidence from one of the early claimants, Leonie McInroe, who filed her claim in 1994. She described the litigation process as eight-and-a-half "gruelling years of emotional battering, abuse and bullying from the Crown".[223] The Crown later apologised for its avoidable delays in progressing the case, although the Solicitor-General described the apology to us as "woefully inadequate".[224]

In 1999, a large group of Lake Alice claimants filed claims in the High Court seeking redress for mistreatment in the unit. The Crown had earlier decided against establishing an out-of-court settlement process, but in 2000 Cabinet accepted a recommendation from the Prime Minister and Minister of Health to direct Crown Law to pursue such a process.

Their recommendation recognised the potential legal defences available to the Crown, including a defence under the Limitation Act 1950.[225] However it also noted that the State had a moral obligation to help those harmed while in its care. It also considered the distress claimants would face in the courts, the vulnerability of those individuals and the potential for an alternative process to address claimants' needs better than litigation. For these reasons, the Crown chose not to rely on the legal defences available to it.

Instead, the government of the day set aside a sum of money, and introduced a specific out-of-court settlement process for these claimants. A retired judge heard from each claimant and determined a settlement amount, after which each claimant received an apology from the Prime Minister and Minister of Health. Claimants merely had to report their abuse and show they were at the unit during the relevant time. This process involved a decision-maker – the judge – who was independent of the government agencies responsible for Lake Alice.

The government later extended this process to others who had been at the Lake Alice unit at the relevant time and who made claims after the initial group. The Crown funded a lawyer for any unrepresented claimants among this group. We heard that to this day the Ministry of Health continues to receive new claims from survivors of the Lake Alice child and adolescent unit.

Although there is no longer an independent decision-maker, the ministry offers a settlement and an apology from the Prime Minister if the claimant was at the unit at the relevant time. The amounts it offers are based on the settlement amounts determined by the retired judge.

The State defended other claims in court

From the time of the Lake Alice group settlement, more and more survivors began seeking compensation from the State for abuse at other psychiatric hospitals, as well as at child welfare and educational settings. As the numbers grew, Cabinet several times considered developing a group settlement process similar to Lake Alice, but did not do so, accepting the advice

> **"The Crown is a formidable opponent. As the years went on I constantly felt as though the plan was to wear me down using multiple tactics and strategies. Long periods of time doing nothing and creating long delays was one such tactic, eliminating my resources, I had legal aid debt that had to be re-applied for frequently, against the Crown's unlimited available funds."**
>
> **LEONIE MCINROE**

of Crown Law and government agencies, particularly the Ministry of Social Development, that the new claims showed no evidence of "systemic abuse" – a test the Crown adopted to distinguish the Lake Alice group from later claims.

The Crown was also concerned these claims were too broad to accept at face value, that readily settling out of court might make the State a target for exaggerated or false claims, and that an alternative mechanism might set a precedent for others with grievances to demand alternative mechanisms to the courts. For these reasons, the Crown did not set up a Lake Alice-style group settlement programme for these claims. Instead, it took up the legal defences it had relinquished in the Lake Alice claims process and defended claims in court.

Of the hundreds of claimants who have filed cases in the courts, only a handful have ever had their claims fully heard. Of those claims, very few were decided in favour of the claimant.[226] The barriers to a successful judgment are substantial and numerous, including:

- *accident compensation legislation that bars those with Accident Compensation Corporation cover from suing in court for compensation*[227]
- *the Limitation Acts 1950 and 2010, which allow a defence against claims more than six years old*[228]
- *immunities under mental health laws protecting staff from liability for their actions*[229]
- *the inherent difficulty in proving, in the absence of written records or other corroboration, that specific abuse occurred in State care*
- *the difficulty in proving that the abuse suffered in care was the cause of later life circumstances*
- *establishing direct or vicarious liability, particularly if the victim was abused while placed with another organisation, or abused by someone other than the caregiver, such as a foster sibling rather than a foster parent.*

The highly sensitive and traumatic nature of the abuse in question also strongly discourages many survivors from making claims in court.

The Crown has vigorously defended the small number of claims that have come to court, and consistently invoked the limitation defence and other statutory barriers described above. The Crown has largely been successful in defeating the claims, even when courts have found that the claimants were abused. The Crown's success in the courts has discouraged many other claimants from pursuing their claims to a hearing.

The Solicitor-General, who is responsible for the conduct of Crown litigation, acknowledged that civil litigation in the courts could be a "brutal" forum for survivors and that the Crown had not been sufficiently survivor-focused in its approach. However, she told us it has been appropriate and necessary for the Crown to use the defences available to it to defend many of the cases.

She said State agencies are not generally found liable for abuse in care under New Zealand's legal framework, as the courts' decisions showed. She said Crown agencies had to balance claims by abuse survivors against the need to be responsible with public money. The ministries largely agreed that court proceedings were difficult for survivors, adding it was for this reason that they had developed the claims processes discussed next.

We have some sympathy with the view that civil litigation is not a well-suited forum for survivors of abuse that happened many years ago, and that it often cannot give survivors the resolution they want. We also agree that it is appropriate for the Crown to be able to defend itself in accordance with the law. However, we are concerned that in conducting these cases the Crown has at times gone beyond a neutral application of the law and used strategies that appear to have been designed to discourage other claimants.

In our view, some of the Crown's conduct has failed to meet the high standard expected of the Crown in conducting civil litigation, and that we expect from the Crown when facing claims from survivors of abuse in State care.

We heard evidence of many deficiencies in the Crown's approach in the few cases that came before the courts. In Ms McInroe's case, the Crown was responsible for long and avoidable delays. It did not keep claimants adequately informed of the progress of their cases, which could have been done through their lawyers. In some cases, it did not properly follow the Crown litigation strategy, which from 2008 promoted the settlement of factually meritorious cases.

It failed to ensure the facts of cases were adequately assessed at an early stage so that factually meritorious cases could be identified and settled promptly. It did not engage in meaningful settlement discussions, even when requested by survivors. It actively resisted settlement payments, even when abuse was proved. In one case it failed to disclose highly relevant information adverse to the Crown case, including the previous convictions of an alleged perpetrator, for a long period of time.

In one case, the Crown led a survivor to believe he needed to drop a police complaint so the Crown could interview the perpetrator. The survivor dropped the police complaint, but the Crown then failed to speak to the perpetrator.

In another case, it engaged private investigators and gave them overly broad instructions, leading a State Services Commission inquiry to find it in breach of the State Sector Code of Conduct. It opposed name suppression for sexual abuse victims on strategic grounds, something described by the Solicitor-General as appalling and unjustifiable.[230] It opposed adjournments, despite the lack of prejudice to the Crown, when a claimant's lawyer was without funding. It required claimants to prove facts the Crown knew were likely to be correct.

At trial, it employed aggressive tactics, particularly including improper lines of cross-examination, suggesting that abuse survivors should have disclosed the abuse at the time. It adopted a starting assumption that claimants and their witnesses were lying and colluding, even when the evidence showed they were more than likely telling the truth.

The approach taken by the Crown exacerbated many survivors' distrust of the Crown and compounded their trauma. Earl White described feeling treated like a criminal: "All of the specific incidents of violence I described by staff members were challenged. I was told they were all denied and that I had made them up as fabrications. I kept responding that I stood by what I had said and continue to do so today. It was quite traumatising to be called a liar and being challenged every time I answered with what I knew to be true."[231]

Keith Wiffin said he got the sense that the Crown considered "it was some sort of interesting game for them, new and different. For us, it was about our lives".[232]

In our view, there is some justification for survivors' views. The Crown appears to have had a determined focus on defending litigation to minimise the State's liability, in part to deter future claims through the courts and also in the knowledge that victories for the Crown in court would minimise the negotiating power of claimants in out-of-court processes.

In conducting the litigation, the Crown became caught up in the adversarial process and lost sight of the human reality underlying the cases – the survivors who had been abused in State care. The Crown was entitled to defend itself, but the Solicitor-General accepted the Crown may have had a degree of tunnel vision while in litigation mode.

The Crown has made some changes over time to the way it conducts litigation. For example, there is now a bespoke case management system that gives claimants some choice when cases are brought on for hearing.

Agencies have developed their own out-of-court claims processes

Despite the State's success in the courts, the stream of new claims into the courts and to the State agencies grew. In spite of suggestions to the contrary, the government maintained there was no need to establish a Lake Alice style out of-court process for settling claims.[233] It accepted advice that there was still no evidence of systemic abuse in care institutions, and that the risk of liability was low.

However, to deal with the backlog, and continuing influx of new claims, Cabinet approved a revised Crown litigation strategy in 2008 that encouraged relevant government agencies to resolve claims directly where possible, including settling meritorious claims. The phrase 'meritorious claim' was not fully explained in the document, and the understanding of the phrase developed over time.

In response, the Ministry of Social Development, Ministry of Education and Ministry of Health – and more recently Oranga Tamariki – have developed their own out-of-court claims processes,[234] which offer settlements to claimants even when legal defences such as limitation and the accident compensation bar would be available. These individual processes became the State's de facto out-of-court claims mechanisms and continue to this day.

Unlike the Lake Alice process, these claims processes remain within the control of each agency and have no independent decision-maker or review mechanism. Claimants can accept the agency's assessment of their claim and settle or reject it and go to court, in which case Crown Law and the agencies will continue to raise strong defences.

Each agency's claims process is different. Each has different eligibility rules and different approaches to settling claims. The Ministry of Social Development, for example, will accept a claim from any person who believes he or she was harmed as a result of abuse or neglect while in the care of the various child welfare departments before 1 April 2017.[235] The Ministry of Education, on the other hand, will accept claims only from a person abused or neglected while attending a residential special school or primary school before 1989 (because schools' boards of trustees are responsible for abuse after that date), or a State school that has now closed.[236]

We heard evidence that the Ministry of Education also requires a higher burden of proof than the Ministry of Social Development, although the Ministry of Education disagreed with that and both agencies told us they considered their approaches were consistent. The Ministry of Education carries out extensive investigation processes.

In contrast, the Ministry of Social Development is constrained to paper-based reviews. The Ministry of Health carries out very little investigation of claims, but offers "wellness payments" that are much lower than the settlement offers made by other agencies.[237] The processes within the agencies have also changed over time. These different processes have led to starkly different results depending on where a claimant was in care, and when they made a claim.

Survivors and their advocates and supporters have found the processes difficult to access, confusing, slow and frustrating. Survivors expressed frustration that there was no single place to file claims, particularly those who have been in the care of several agencies and must approach each to make a claim. Claimants were concerned that the agencies seemed to have complete control of the processes. The agencies decided what they would accept and what they would offer, and survivors had no ability to appeal against any offer to an independent body.

We heard many survivors talk about feeling disbelieved, powerless and distrustful of the agencies. Several spoke of accepting offers reluctantly because they wanted the process to be over.

The fact there is no single agency to make inquiries to, or lodge a claim with, has resulted in a great deal of frustration for claimants shuttling between government departments, often with lawyers

> **"...stop arguing over who's to blame. Who's to blame is, you know, it's not me to blame, I didn't ask for this, I didn't ask for any of this, I just want these people to stop blaming each other and just pay me... Please just so I can get on with my life."**
>
> **KERRY JOHNSON**

in tow. It also seems to have led to inefficiencies.

Many agencies, for example, have or are belatedly planning separate consultation with Māori to meet partnership and engagement obligations under Te Tiriti – a process that is inefficient for both the Crown and Māori. Following a Cabinet paper in December 2019 calling for work towards a possible single process, agencies have developed terms of reference for the work but not started the work itself. Meanwhile, the Ministry of Education and Ministry of Social Development appear to have moved further away from such an outcome, having abandoned previous efforts to carry out joint assessments of claims.

It is clear from the evidence we heard that the ministries were faced with more claims than they were capable of resolving given the complexity of those claims, the needs of survivors, and the expertise required. Most continue to struggle with a backlog of claims.[238] The agencies' responses have been disparate and lacking in urgency. On the whole, their processes have been reactive and ad hoc, despite some progress particularly by the Ministry of Social Development.

The agencies gave evidence of recent improvements, notably allocating more resources to them, making them more survivor-focused, offering more "wraparound" services and in some cases giving Māori more input into their design. These are welcome improvements. However, many have been made only very recently and vary from agency to agency. There are no current plans to introduce any independence into the processes.

Overall, it seems to us that the decision by successive governments to continue with separate claims processes while defending claims in court has resulted in a missed opportunity to look more broadly and more imaginatively at non-court solutions to a social injustice whose scale has become increasingly apparent with each survivor who comes forward.

Successive governments have justified not taking a cohesive and comprehensive approach based on the advice that there is no evidence of systemic abuse. This ran contrary to the information increasingly in the hands of the agencies and Crown Law. The resulting narrow focus has avoided consideration of the Crown's obligations under Te Tiriti, as well as New Zealand's human rights obligations.

In contrast, we heard evidence from Stand Tū Māia, a trust that manages the assets and liabilities of former State children's health camps, about its approach to redress. About three years after it was formed in 2000, it began receiving claims for redress from children abused at health camps. The trust's chief executive, who is empowered to work directly with claimants, told us its redress process aims to heal and restore. The focus is on the claimant's needs, which may include financial support and/or cultural, therapeutic or practical forms of support.

Information to guide claimants has been hard to find and patchy

Many survivors remain unaware they may be able to make a claim. State agencies have published little information about their out-of-court claims processes and how they work, although there have been some recent improvements. Even now, there is limited published information on eligibility criteria or guidance on what evidence is considered or how settlement amounts are calculated.[239]

For example, the Ministry of Education has made available only very basic information about timeframes for making claims. The Ministry of Health has nothing on its website to indicate it even has a claims process. Some survivors may not have access to the internet or the ability to find and navigate their way through online content easily.

Survivors spoke of not knowing that a claim could be made until much later in their life. Patrick Stevens was sent to the Lake Alice child and adolescent unit in the 1970s and was therefore eligible for the separate Lake Alice claims process run by Ministry of Health. However, he did not contact Cooper Legal to start the claims process until March 2017 after 18 months of assistance from his health worker. He received a payment under that process in 2019, but died less than a year later.

Others described the difficulty of finding out about the processes when they wanted to make a claim. James Packer said the absence of any useful publicly available information "made the processes so hard to understand, to know what was required, and what outcomes were possible in redress. We knew nothing about eligibility of claims, how they were being assessed and by whom, or what sort of compensation was available. There have been so many delays and no clarity around timeframes".[240]

Another survivor, Joan Bellingham, said: "There was never any clarity or certainty. There was also never any support through the process. I constantly felt like I was battling uphill to get people to recognise me or believe what I was saying actually happened."[241] She said clear procedures and some financial resources and other support would have alleviated a great deal of personal stress.

Deaf and disabled survivors and those in prison have particular difficulties obtaining and understanding information about claims processes and what support is available. Disabled survivors and their advocates told us some had difficulty understanding that what had happened to them was abuse or what a claim was. Similarly, some struggled to assess possible solutions. We heard of one survivor, for example, who had trouble understanding the difference between an offer of about $5,000 and another of about $600.

It is clear information about the out-of-court claims processes is difficult to find, not survivor – focused, patchy and often confusing. Agencies have not been proactive in promoting their claims processes or making information accessible. Nor have they shown any initiative in identifying individuals or groups of individuals who may have claims and telling them about their options.

The onus has been on survivors to find the information and make a claim or contact a lawyer. This has particular relevance for disabled people, who face additional barriers to accessing information.

We are concerned that this situation continues for contemporary claims. From late 2019 Oranga Tamariki has run a claims process for people abused in its care since 2017. However, it published information on its website about this process only in late October 2020 and not in a well-signposted area.[242] To reach the page, it is necessary to scroll to the bottom of the homepage, click on "compliments, complaints and suggestions" then under the heading "feedback" there is a link to "claims".[243]

Legal assistance has been limited and uncertain

Abuse claims involve complex areas of law and fact, and many survivors cannot afford a lawyer. Low-income survivors can qualify for legal aid, although this comes with uncertainty and risks. The series of adverse court decisions in abuse in care cases in 2007 and 2008 – followed by successful applications by the Crown for costs orders – led the Legal Services Agency to send a notice of intention to withdraw legal aid to 1,151 claimants pursuing court cases for abuse in care.[244]

Each claimant had to justify why his or her claim should continue to receive funding, and explain why the claim had sufficient "prospects of success". About two hundred claimants lost their legal aid after their justifications were rejected, although about half of those had legal aid reinstated after seeking statutory reviews or appeals, providing further information to Legal Aid as part of the review process, or making fresh applications.[245] This process placed a significant burden on claimants and their lawyers and led to lengthy delays before they could resume their claims.

Those who do receive legal aid may also end up with large debts because legal aid is treated as a loan. Currently, State agencies make a contribution towards claimants' legal aid debt in their settlement offers, and the Legal Services Agency writes off any remainder. However, this is not done until claimants accept a settlement or proceedings are finished. In the meantime, many claimants may feel they have a debt hanging over them.

There was uncertainty at an early stage whether a claimant who sought redress through the out-of-court processes would be eligible for legal aid funding. The Legal Services Agency required a claimant to file a separate application if he or she decided to pursue an out-of-court settlement.

In the early period, the Agency required a claimant to show the Crown did not intend relying on the limitation and accident compensation bars and also accepted abuse had occurred – before it would grant legal aid for an out-of-court process.[246] Legal Aid Services now makes legal aid available for out-of-court processes and court proceedings, and has funded more than $20 million for historic abuse cases.

The Ministry of Social Development told us it would fund some legal advice for claimants who went through its out-of-court process and had no lawyer. It also offers a limited amount (unless more is specifically requested) for legal advice before signing a settlement agreement.[247]

Other forms of support have also been limited

Disclosing and talking about abuse, especially sexual abuse, can be very traumatic, and counselling can help heal those psychological wounds. Some agencies have funded a limited amount of counselling for survivors to support them going through the process.

For example, the Ministry of Social Development told us it helps claimants get counselling and also connects them to appropriate support services where necessary.[248] If accident compensation or community support options are not appropriate, the ministry will fund a limited number of counselling sessions to help an individual through the claims process.[249] It may also provide counselling as part of a settlement offer.

A report commissioned by the ministry said some Māori survivors found the support or counselling offered to them to be inadequate to help them deal with the effects of disclosing their experiences.[250] Of those survivors who did receive counselling, some said it helped them to realise they were not to blame for their abuse or allowed them to verbalise their experiences and move on. The ministry told us it would have approved more counselling, but only a small number of claimants have chosen to take up this support.[251]

Access to mental health services is hampered by the fact that we have a small workforce for this type of work – particularly for Māori and Pacific support services.[252] Addressing this capacity issue will be necessary to make improvements in this area. Survivors in prison – many of whom are Māori – have found it particularly difficult to access counselling, not only because of workforce limitations. Survivor Kerry Johnson told us how he struggled to build a relationship with a Counsellor. Once he did, "it helped me a lot, it has let my brick wall down". However, when he transferred to another prison, counselling with that counsellor could not continue.

Other supports, such as advocacy, have also been generally unavailable. Some claimants spoke of the difficulty they faced reading their own records without assistance. Many other claimants and supporters talked about the absence of any support, such as an advocate or person who could help them understand and complete the necessary paperwork to make a claim.

Cheryl Munro advocated for her son James Packer, who is deaf and has Asperger's syndrome. She described the process as "just debilitating. You feel so alone. There was actually no one to help you". She felt it would be impossible for someone in James' position without an advocate: "It's just too draining, too difficult."[253] Agencies told us that tikanga-based supports or assistance to connect with whakapapa may be made available, but only if requested by a claimant.

In addition to the counselling support described above, the Ministry of Social Development has made very recent attempts to introduce more comprehensive support services, what it calls "wraparound" services, as part of its claims process. It offers services to help a claimant through the process as well as helping claimants access other government services, such as housing through Kāinga Ora, various benefits through Work and Income and health services. Advocates have welcomed this development.[254] However, it is a pilot programme only, and a full programme is three to four years away.[255]

Despite these recent improvements, our general impression is that State redress processes have put too little focus on survivors and their wellbeing or support. Agencies have provided little in the way of specialised support for disabled people, such as those with a learning disability – a particular concern for survivors from residential special schools and disability support services and institutions. Overall, agencies seem to have made too little allowance for survivors' individual cultural, tikanga Māori, language, disability or mental health needs.

Survivors have struggled to get access to their records

Claimants have faced considerable hurdles obtaining full and speedy access to records of their time in care. These records contain information vital to helping claimants piece together their past and make a detailed claim. Some claimants have waited more than 12 months to be given their records. In many cases, claimants find their records are incomplete or heavily redacted or they receive nothing at all from some institutions because their records have been destroyed as a result of agencies' retention and destruction practices.

Redacted records sometimes have hundreds of pages blacked out, mostly because of agencies' legal obligation to protect the privacy of other individuals named in the records. Sometimes information is withheld, such as details about family members or photos of school classmates, that would help claimants remember and understand their time in institutions. The removal of this and other information fuels survivors' suspicions and distrust about agencies' motives and sincerity.

Advocates have also raised concerns about inconsistent redactions and the unnecessary redaction of relevant information, both by agencies directly and through the court process of discovery. In some cases, these complaints have been upheld in court.[256]

There is no independent service to help claimants access or understand their records, which is a particular issue for those in prison, who have limited access to community support services. Instead, agencies conduct their own searches and determine what to release.

Record-keeping is a matter for each agency, and there is no uniform digitising of records. An individual's records may be scattered among different institutions, government agencies and district health boards. Poor record-keeping has also sometimes made it difficult for survivors to get records. Patrick Stevens described how difficult it was to get records from the relevant district health board because his name had been spelt wrongly and his birthdate incorrectly recorded by medical staff when he was a child.[257]

There is a need to address the creation, maintenance and retention of records as well as claimants' access to them. The absence of records and difficulty in obtaining information is an issue both for individual claimants and for anyone trying to get a better picture of abuse in care.

We are concerned that some agencies collect very little data through the claims processes themselves. None, for example, could give us an accurate breakdown of the demographics of people making claims. This is a missed opportunity to gain a real understanding of what abuse has occurred and who it has affected. We are working to develop a better picture of this information as part of our redress investigation and broader research work.

Claims processes are not independent or transparent, and agencies have controlled all aspects

Agencies control every aspect of the claims processes: they find the records, they decide what to release or withhold, they assess the claims, and they make the settlement offers. Processes generally lack transparency, and claimants have no appeal to an independent adjudicator beyond the general right of complaint to the Ombudsman. Agencies argue that claimants who want factual findings or want to dispute settlement offers can go to court. However, this is not a practical option for most because of the substantial legal barriers already discussed that stand in the way of a successful judgment. These barriers include the Crown's choice to rely on defences such as the Limitation Act 1950 when cases do go to court, which can prevent factual findings from being made or damages being awarded when abuse is found to have occurred.

There is force in the argument of survivors and others that the agencies responsible for the abuse should not be the ones determining claims. For example, some Ministry of Social Development claims assessors have worked for the Department of Social Welfare or Child Youth and Family as social workers, and this gives the perception that those assessors may have some loyalty to the Ministry of Social Development. All four agencies maintained that their claims processes were operated impartially and there was no direct conflict of interest in their processes.

However, survivors definitely see a conflict of interest, especially when an agency is simultaneously defending court cases and determining claims. Survivor James Packer said this arrangement was inherently unfair: "The process of investigation needs to be independent and not carried out by a ministry that is interested in protecting its conduct and reputation, and those of the teachers. It feels to us like there is a conflict and so impossible for claimants to truly feel the process is fair and impartial."[258]

Survivor Keith Wiffin made a similar point, saying any claims process should be independent of the ministries and agencies that employed alleged perpetrators and that might be liable themselves:[259]

> *"Otherwise, the agencies are effectively investigating themselves, and I believe my experience shows that agencies cannot be trusted to do so objectively. The independent claims process should have a victims' representative. It needs to have a mandate to fully investigate claims, and make findings about what happened so that instances of abuse can be properly acknowledged and addressed. The government agencies must be involved, but the final arbiters of what abuse we suffered and what the agencies should be liable for must be from outside the agencies."*

The processes' lack of transparency was another failing. There has been little information on how agencies have investigated and assessed claimants' allegations. Agencies might refuse to accept part or all of a survivor's claim and give no clear explanation or justification, or they might decline to provide all of the information on which they based their decision.

The Ministry of Education, for example, told us it will give claimants the records and information relied on by the assessor to make an assessment of their claim, but it does not give the claimant the assessor's report.[260] Claimants and their lawyers told us they were left speculating about why an agency made a particular offer.

We saw examples of the Ministries of Social Development and Education refusing claims on the basis that there were no written records to establish that the abuse occurred. Despite the Ministry of Social Development's evidence that it does not require official documentation of abuse, and that it accepts claims on face value, our impression is that it, like other agencies, often makes more of the lack of records than seems to be justified. Abuse is rarely recorded or documented directly.

Naturally, this lack of transparency has fuelled survivors' distrust of the process. Despite the evidence of the Ministry of Social Development that its claims team "listened to people's accounts of their experiences without judgement",[261] many survivors spoke of feeling disbelieved, devalued and frustrated at the rejection of their claim for the simple reason that – through no fault of their own – there was no written record of the abuse. They felt that agencies did not regard their voices as valid evidence of what happened to them. Said one, Georgina Sammons:[262]

> *"I still don't understand how [the Ministry of Social Development] can say there was 'insufficient evidence' of psychological and physical abuse. They didn't even talk to anyone who might be able to corroborate what I was saying. For example, no one talked to [my sister] or my foster sisters or any of the other people in the care of our foster parents who would be able to talk about the abuse we suffered in that household. Just like with my police complaint, I felt like I was being treated like a liar, even though no one actually took the step of talking to anyone who might know."*

For many survivors, this was part of a consistent pattern of not being believed, even when there was physical damage to show. Joan Bellingham had scars on her head from the frequent use of ECT when she was in Princess Margaret Hospital. However, she told us that when she tried to get accident compensation, the Accident Compensation Corporation did not believe her, saying the scars could have been from cigarette burns.

At this stage, we see the lack of transparency and independence of the claims processes as major concerns and significant barriers to achieving fair redress in which survivors can have faith. Several of the agencies said an internal process offered advantages, including that their employees were in a good position to make assessments because of their in-house knowledge and expertise and that it ensured the agencies responsible were held accountable for redressing the harm they had caused.

We believe a process featuring some measure of independence could still tap in-house expertise and, moreover, would be far more likely to ensure accountability where it was due. This is a matter we will be examining in more detail later.

Decisions have taken too long

Survivors have often had to wait a long time after making a claim to receive a settlement offer. The Ministry of Social Development and Ministry of Education have often taken years to make settlement offers (and at each step of the way claimants can be required to recount – and re-experience – their abuse). The Ministry of Social Development gave evidence that at the moment it usually takes four years to resolve a claim after it has been registered with the agency.[263] The Ministry of

Education told us it has received 177 claims in the last 10 years, but has resolved only 46.[264]

Survivors said agencies told them nothing about how long it would take to process a claim, and when it arrived, they felt pressured to accept whatever was offered simply to put an end to the ordeal and move on with their lives. This can be exacerbated by having to deal with several or more agencies.

Survivor Chassy Duncan first approached a lawyer about the abuse he had suffered in State care in 2007, when he was 18. Thirteen years on, and now aged 31, he recently received and accepted an offer from the Ministry of Social Development. He said: "I wanted to get on with my life and to start leaving the claims process behind. I knew the offer wasn't as good as it could be, but after a lot of thought, I accepted the offer." His claim over abuse suffered at Waimokoia School in Auckland was made in 2014 and was settled in November 2020 after he gave evidence at our public hearing.

Those who have sought redress through external channels have also faced long delays. IHC told us it filed a claim in the Human Rights Commission in 2008 on behalf of a group of disabled children, claiming unlawful discrimination. Twelve years later, they are still awaiting a decision about whether the Human Rights Review Tribunal will hear the case.[265] These delays have a significant impact on the children, many of whom have left school while still waiting for a resolution.[266]

Investigating and resolving abuse claims will inevitably take time, but that surely need not prevent claimants receiving clear, regular progress reports. We acknowledge that agencies have taken steps to try to reduce delays.

The Ministry of Social Development and Ministry of Education have both very recently expanded their claims teams to help clear the backlogs of claims. In 2015, the Ministry of Social Development also began offering a fast-track process to outstanding claims (received before December 2014), in which it accepted certain types of allegations at face value and made offers without thorough investigation. This was a one-off process that ran from 2015 to 2016. Despite more staff and other resources, agencies are still unable to keep up with the flow of claims, and backlogs are increasing.

There can be tensions in this area: without extra funding swift processes may sacrifice thorough investigation for speed. They may also result in lower payments, such as the Ministry of Health's wellness payments, which are made on an untested basis and paid relatively quickly but at a modest level.

Remedies have been inconsistent

Many survivors and advocates considered agencies' offers fell far short of what was reasonable to compensate for the harm suffered. Offers typically included a lump sum payment and an apology, although agencies usually stopped short of acknowledging liability for the harm. Survivors also criticised the significant variation in offers between agencies and even within the same agency.

Lake Alice claimants in the early 2000s, for example, received average payments of about $68,000, whereas the Ministry of Health now gives claimants from any other psychiatric institution a wellness payment of no more than $9,000 even if there is evidence of severe abuse.[267] Amounts of this size are well out of step with those paid for human rights breaches such as unlawful detention and breach of privacy. They also fall far short of those offered by overseas redress schemes.

The Australian National Redress Scheme, for example, will make payments of between AUD$70,000 and AUD$150,000 for serious sexual abuse.[268] In New Zealand, the Ministry of Social Development's payment guidance suggests a maximum of $55,000 for chronic and serious sexual and physical abuse in a context of chronic, wide-ranging practice failures.[269]

The amounts survivors received often paled in comparison to the rehabilitation costs they faced. James Packer, for example, received a wellness payment of $18,000 from the Crown Health Financing Agency and a

> **"It was pretty cold… it was like they'd just copied and pasted from some sort of Google template… Like it didn't carry any weight. Like they didn't even understand half of what it was to be me in the system. Because if they did understand they would have said more than what they just said in that letter."**
>
> **CHASSY DUNCAN**

settlement payment of $10,000 from the Ministry of Education.

His mother Cheryl Munro said: "James is not well now, so many years later, so getting a wellness payment was a bit of a misnomer for us." She said the payment of $18,000 meant absolutely nothing to their whānau: "I mean, I spent $450 last week on medication for James, $250 the week before. I live on a pension. $18,000 was nothing... About the time James went to Sunnyside Hospital I had an inheritance of $75,000. That was gone within a year trying to keep James alive... $18,000 didn't mean a thing."[270]

The agencies gave evidence that they did not calculate their payments to compensate for harm, but rather to acknowledge the harm or make a contribution towards improving the survivor's wellbeing. The size of the payments also recognised the contribution of New Zealand's accident compensation scheme, which provides no-fault compensation to individuals on the basis that they cannot seek compensatory damages.

Each agency acknowledged the importance of making payments that were consistent with those paid to other survivors. The point of reference, however, was always past payments, regardless of how they were arrived at. It was unclear to us the basis on which each agency calculated settlement offers.

The Ministry of Education gave evidence that it based its settlement offers on the Ministry of Social Development's process, although it had never looked into the basis for that process.[271]

> **"...if I got told that I was going to get that amount of money to go through what I went through all over again, I wouldn't take it, I wouldn't take it. So, it didn't feel like a bit like, I don't know, like they just didn't really care that much, and it's not exactly a life-changing settlement, you know what I mean? It didn't impact me as much as what I went through impacted me."**
>
> **CHASSY DUNCAN**

It also gave evidence that it did not attempt to evaluate the extent of the harm caused to a claimant in calculating the settlement amount because its calculation process did not allow for such a step. Its focus was instead on consistency with past payments.[272]

The Ministry of Health adopted a similar approach, basing its "wellness payments" on settlement amounts offered by the Crown Health Financing Agency to 336 remaining claimants before its disestablishment in 2012.[273] And those amounts in turn were based not on any assessment of appropriate compensation for claimants' abuse, but rather on finding a way to fairly divide the available $5 million between the 336 claimants.[274]

We were left with the clear impression that no agency had undertaken any considered analysis of how to calculate appropriate settlement amounts. We also understand that agencies have not factored inflation into their payment levels, so the value of payments has been decreasing over the years.

Some survivors criticised the overemphasis on monetary compensation, such as it is, and the lack of other forms of redress to help them deal with the effects of abuse. The types of assistance that can help include educational assistance, employment training, counselling and help to reconnect with whānau. Ministries have occasionally provided some of these, but usually only if requested.

Many told us a crucial element of any compensation package was an acknowledgement of the abuse they had suffered and the harm it had caused. However, most of those who spoke at the State redress hearing found the apologies offered to them to be insincere and full of platitudes.

> **"Over the eight-and-a-half long years with the callous nature of the Crown's treatment of my claim I had come to realise that the only meaningful compensation for all I and others had endured would be money. They were not capable of anything else."**
>
> **LEONIE MCINROE**

Paul Beale, for example, received an apology letter from the Ministry of Health for what he had endured at Parklands, a residential facility south of Auckland for those with an intellectual disability. The four-paragraph letter said in part: "I am now able to acknowledge the seriousness of the matters that you raised… I hope that this letter of apology and the compensation will enable you to bring some closure to those experiences. I also hope that with this resolution process behind you, you are now able to move forward with a sense of peace."

His sister, Gay Rowe, said: "I was stunned. Even reading it now I just want to get it and screw it up and toss it in the bin because, frankly, I didn't really think it was worth the paper it was written on."[275] She said it demonstrated that the ministry had no idea about Paul's level of comprehension.[276] A later, modified letter was only "slightly better".[277]

Agencies did not involve Māori when designing claims processes

Until very recently, agencies have had made little effort to involve Māori survivors, non-government organisations, whānau or hapū in developing claims processes – despite so many claimants being Māori, and without any apparent consideration of Te Tiriti obligations.

The Ministry of Social Development established its claims team in 2004 and developed its out-of-court claims process between 2006 and 2008. However, it was not until 2018, more than 10 years later and following the lodging of redress claims with the Waitangi Tribunal, that the ministry sought out a small number of Māori claimants to consult about its claims process.

The Ministry of Health has been facing claims since the mid-1990s, however it never consulted Māori while developing processes for responding to those claims.[278] Oranga Tamariki has only been in existence since April 2017, but it also had not yet taken steps to engage with Māori in the design of its claims process.[279] The Ministry of Education and Oranga Tamariki told us they intend to consult with Māori in 2021.[280]

It is well established that the Crown must act consistently with Te Tiriti principles and obligations, including active protection, tino rangatiratanga, equity, collaborative agreement and redress. International indigenous rights also include an obligation on the State to consult and cooperate in good faith with indigenous peoples to obtain consent to measures that will affect them.[281] We note in this context the fact that a high proportion of Māori were among those abused and that a majority of claimants across the claims processes are Māori.[282]

Some Māori claimants have raised concerns about not seeing a single Māori face throughout the entire duration of their claim, and the lack of tikanga Māori and te reo Māori in agencies' processes. The lack of independence in any of the processes was also a concern, as was the fact Māori themselves were not involved in delivering redress. Finally, the State has made no attempt to recognise and put right the harm done to Māori collectively by taking Māori children into State care and abusing many of them there. Nor has it made any attempt to recognise Māori tino rangatiratanga over Māori tamariki in the processes themselves, a point eloquently made by Moana Jackson at our contextual hearing.

The agencies' current proposals to involve Māori and incorporate tikanga into their settlement processes appear to us to be tentative, limited in scope and weak, particularly given the Crown's knowledge of its Treaty and human rights obligations in this area.

The Ministry of Education told us it had recently tried to hire Māori assessors, but without success.[283] As noted, Oranga Tamariki has yet to consult Māori about the design of its claims process. This is a matter of real concern, given the large number of Māori currently in its care, although Oranga Tamariki assured us that iwi and Māori partners would be involved in the design of its new processes.

All in all, we are left with a sense that the Crown and its various agencies have learned little from the past, and that there will be more imposition on, rather than consultation or engagement with, Māori unless deliberate steps are taken to do otherwise.

The Crown has misunderstood the size and nature of the problem

In our view, the Crown as a whole has failed to recognise the true nature and extent of the problem with abuse in care. It has repeatedly taken a narrow view and failed to recognise that the many claims with its agencies or before the courts are the petitions of vulnerable people with legitimate claims of injustice against the State. That injustice flowed from a failure of the State to protect those in care – often vulnerable children and young people.

Instead of acknowledging the underlying problem requiring a comprehensive response, Crown agencies have dealt with claims using the orthodox tools of civil litigation and bureaucracy. This has resulted in a failure to see or understand survivors' needs, to engage meaningfully with survivors, and to draw on the available knowledge of abuse.

The Crown has repeatedly underestimated the size of the problem and accepted overly optimistic forecasts that claims would dry up or be settled within relatively short periods of time. Despite creating out of court settlement processes that have matured over time to varying degrees, the Crown has foregone opportunities over many years to adopt a broader view and initiate fundamental reform. This has contributed to the strong sense of injustice that many survivors described to us.

4.2. Principles of effective redress

In the next phase of our work, we will consider options for future redress processes, taking into account feedback from survivors, their advocates, Māori and the Crown and its agencies. This will include consideration of changes to litigation (through both legislative changes and approach) and out-of-court claims processes.

There will always be a need for a range of options to ensure that different needs are met. We outline here our current view of the main general principles required to make redress effective. We may amend these principles as we consider further evidence and feedback. We do not yet make comment on how to implement them. Any changes to redress processes should be designed according to sound principles, in consultation with survivors and in partnership with Māori.

Be consistent with the Crown's obligations under Te Tiriti and the United Nations Declaration on the Rights of Indigenous Peoples

A redress process, including steps to design it, should:

- *be consistent with the Crown's obligations under Te Tiriti*
- *be consistent with the United Nations Declaration of the Rights of Indigenous Peoples, including the right to self-determination and the State's obligation to obtain free, prior and informed consent to administrative decisions that affect indigenous peoples.*

Make genuine apologies

Apologies should:

- *acknowledge the wrong done and the harm caused*
- *accept responsibility for that harm*
- *express regret or remorse for the wrong and the harm*
- *be made by a person at an appropriate level of authority to be meaningful*
- *commit to making amends*
- *commit to avoiding any repetition of the wrong*
- *be flexible, and respond to the wishes and needs of the individual survivor*
- *be consistent, where appropriate, with tikanga Māori.*

Be open and transparent about how the redress process works

A redress process should:

- *provide sufficient information to allow survivors to make informed decisions about how to deal with their experiences*
- *publish clear and useful information about how it works, including the how to make a claim, the eligibility and assessment criteria it uses, how payments are calculated and any other services or support available*
- *make this information available to non-English speakers, deaf and disabled people and those in prison.*

Offer effective support and assistance to empower claimants

Once a claim is made, a redress process should:

- *offer independent advocacy support to claimants*
- *offer counselling and cultural and other supports*
- *offer assistance to track down and understand claimants' records.*

Set a reasonable threshold for proving abuse or demonstrating harm

The threshold for proving abuse and demonstrating harm should:

- *not defeat meritorious claims.*

Act independently

A redress process should:

- *be sufficiently independent of the agencies and institutions having obligations to, or being responsible for, the alleged abusers and claimants to avoid real or perceived conflicts and build trust in the process*
- *have a mechanism to ensure it can investigate claims appropriately, sufficiently and as vigorously as possible.*

Make fair and consistent decisions

A redress process should:

- *make decisions that are predictable, transparent and consistent from claimant to claimant and from year to year*
- *make decisions that are fair and equitable.*

Be timely and communicate with claimants

A redress process should:

- *have adequate resources so it can resolve claims in as timely a manner as possible*
- *give claimants the choice of a brief, quickly resolved assessment or an extensive, longer-to-resolve assessment*
- *give claimants an accurate estimate of how of long an assessment will take and keep in close touch to provide progress updates*
- *give priority and urgency to claims from elderly or unwell claimants.*

Help claimants get records that are as complete as possible

A redress process should:

- *help survivors obtain their records in as full a form as possible while still respecting the privacy of others*
- *help survivors to understand their records*
- *favour disclosure wherever possible*
- *make consistent disclosures wherever possible, irrespective of whether made under court discovery rules or on request*
- *give specific, not general, explanations about why it must withhold information for privacy reasons.*

Provide redress that helps restore claimants' overall wellbeing

A redress process should:

- *offer redress that contains a package of measures to help restore the health and wellbeing of survivors. These may include:*
  - *financial payments*
  - *continuing access to counselling services at any time the survivor (and, where necessary, family members) wishes to use them*
  - *help with education and employment, healthcare, secure housing, financial advisory services and community activities*
  - *offer claimants specialist counselling services to deal with drug or alcohol addiction problems that may be related to their experiences*
  - *help to establish connections with whakapapa, iwi or broader family*
  - *help for Māori survivors to build up their cultural knowledge and te reo Māori skills*
  - *help to identify opportunities, such as memorials, for the collective recognition of the harm caused to particular groups.*

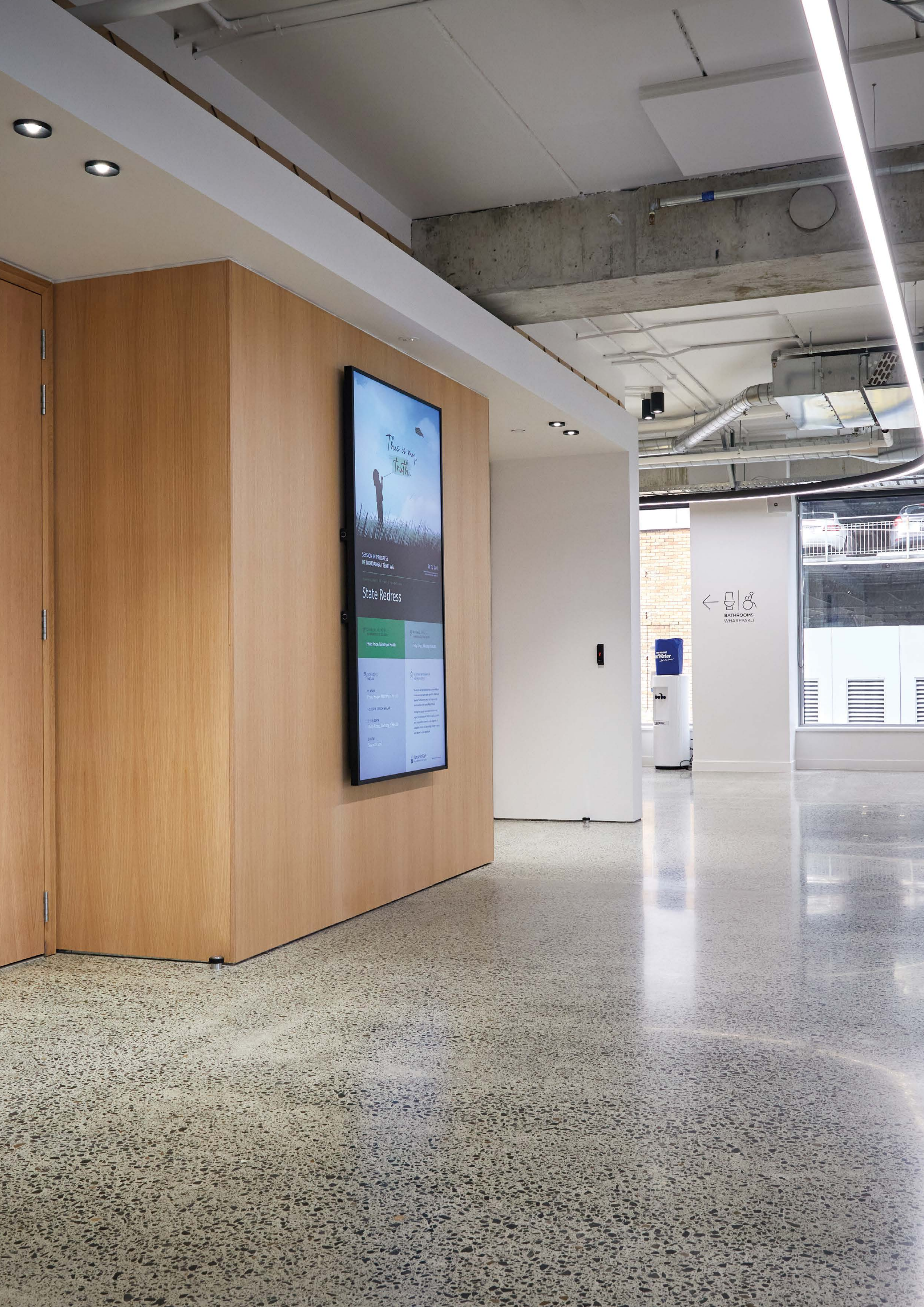
  - *recognition of the intergenerational harm of abuse*
  - *support for claimants to build and maintain healthy relationships with their own families and children*
  - *access to restorative justice-type processes where appropriate*
  - *a review of claimants' criminal records*
  - *discussions with relevant agencies about how to prevent abuse to those currently in care.*
- *gives claimants choice in the process and in the redress received.*

Comply with human rights principles relating to effective redress processes

A redress process should be consistent with international human rights principles by:

- *providing remedies that are accessible, effective and take into account the vulnerability of certain survivors, such as children and disabled people*
- *including elements of restitution, rehabilitation, compensation, prosecution and guarantees of non-repetition.*

We intend undertaking a detailed assessment of options to improve redress processes. We encourage all those with an interest to contribute to this process. Proposals will be most useful if founded on principle, informed by the lessons of past experience in New Zealand and overseas, and capable of meaningful and practical implementation.


This is my truth
SESSION IN PROGRESS
HE NOHOANGA I TĒNEI WĀ
State Redress
BATHROOMS
WHAREPAKU

Arthur Taylor

Simple truancy leads to life behind bars

Arthur Taylor was a highly intelligent child from a loving family. Feeling unchallenged at school, he often skipped classes in favour of the library or the outdoors. But truancy was punished very harshly in the late 1960s, and at 11 he was violently removed from his home and placed in Epuni Boys' Home in Lower Hutt.

There he was treated in the same way as boys who had committed serious assaults, sexual crimes, theft and burglary.

Crime and violence, previously unknown to him, became normal. "Before it was totally alien to me. When I first went there I'd be appalled at hearing kids' stories of the bad things they'd done – and then I wasn't appalled any more. It became my normal."

He was repeatedly abused by staff and also witnessed staff abuse other children. This environment destroyed his self-esteem and he lived in a constant state of fear and anxiety.

> *"The staff had a massive leather strap and I remember one day being called out of the shower by a housemaster. He took me outside and he and another housemaster took me into a room when I only had a towel on. One housemaster hit me with the strap multiple times while the other one held my hands. I had horrendous welts and marks on my back."*

He was released from Epuni but sent back several times – again for truancy. The boys' home began keeping children in cells and he became used to the feeling of being locked up.

At 15, he was sent to the psychiatric wing of Porirua Hospital after an altercation with a staff member. He was threatened by staff and left to fend for himself in a ward where violence and sexual abuse between patients were common.

During his adolescence, he was in and out of State care. He became entrenched in criminal culture and spent 40 of his 63 years incarcerated.

> ***"I can say without a shred of doubt, if I didn't end up in the Epuni Boys' Home I would never have interacted with the criminal justice system...none of my family have had any dealings with the criminal justice system either apart from me. What's the difference between me and them? I went to the Epuni Boys' Home."***

Arthur hopes the inquiry will bring recognition and acknowledgement of the harm he and others suffered, and that authorities will learn from what happened to him and so many others in State care and not repeat the mistakes of the past.

> *"To many who suffered, it's like a thorn embedded very deeply that is always there. How different their lives would have been, had they not been placed in State care."*

Georgina, Tanya & Alva Sammons

Sisters' legacy of abuse felt keenly to this day

Sisters Georgina, Tanya and Alva Sammons were taken into State care at ages two, three and four respectively. They were all subjected to regular psychological abuse and beatings from their foster mother, father and brothers, they were not provided with adequate clothing, and some of their basic needs were not met. They were moved at least 15 times in 13 years, and were regularly made to miss school to look after younger relatives. They were also sexually abused by their foster brothers for many years, starting from the age of about six.

Georgina filed a police report when she was 14 about the sexual abuse, but police did not fully investigate. Alva also told Child Youth and Family Services about her abuse in 1992, after she had left care, but no action was taken in respect of the younger girls.

The abuse caused all of them social, relationship, and parenting problems. The frequent moves and missed schooling affected their education and left them with limited career options. They lost contact with their wider whānau and hapū and iwi. Alva could not care for her two children, and they were given into the care of other family members.

Alva died at 26, leaving her two children behind. Shortly before Alva's death, the sisters told each other about their abuse. Tanya and Georgina believe it was Alva's discovery that her younger sisters were also abused that broke her.

After Alva's death, Georgina and Tanya made claims to the Ministry of Social Development. The files they received from the ministry contained many blacked-out or missing sections. Even so, there were notes from social workers and others expressing concern about their wellbeing over the years.

Georgina waited nine years for the ministry to settle her claim. She accepted $32,000 after a judicial settlement conference, an experience she found horrible and intimidating. The ministry accepted there were some breaches and failures and some neglect, but cited insufficient evidence of physical and psychological abuse by her foster parents.

She said the ministry seemed not to accept that abuse had happened if it was not written down on file. But a lot of what happened to them was never written down.

> *"We only had occasional contact with social workers, usually together with our foster mother, [and] we knew not to say anything bad or complain or else we would get a beating."*

Tanya's claim began in 2014 and remains unresolved. In 2016, the ministry offered her $20,000 as part of a fast-tracked review of her claim. She rejected this offer and asked a full review of her claim. That review has still not been completed. Georgina and Tanya cannot understand why the amount offered Tanya is so much lower than the settlement Georgina received. They were in the same household, and subject to the same abusive environment, for all their childhood.

The sisters also continue to fight for recognition of Alva's claim, together with Alva's daughter, Hope. They want the ministry to recognise the harm that Alva suffered, and to provide redress for Alva's children who continue to suffer the impact of Alva's abuse and missed out on having their mother present in their lives.

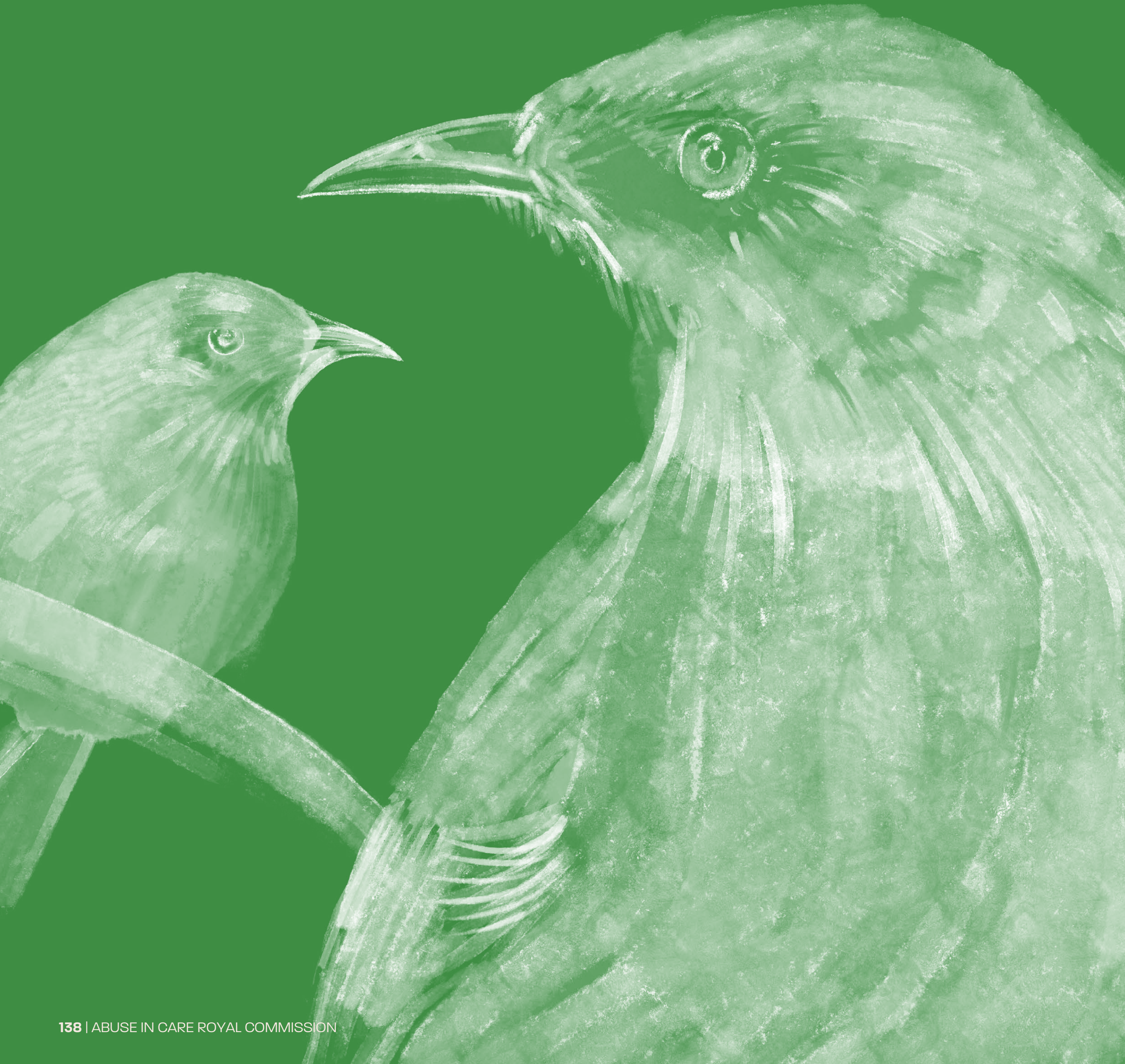
The ministry says it will only assess claims from the person who was in care, and will not accept Alva's claim as she has passed away. In 2015, the Ombudsman recommended the ministry should treat Alva's 1992 complaint to Child Youth and Family Services as a claim and respond to it through the usual historic claims process. The ministry did not accept this recommendation.

Tanya and Georgina hope their story will lead to changes in the way the State provides care, such as ensuring social workers do more to foster the trust of children in their care and providing support to young adults once they are no longer in care. They also want a thorough review of the way claims are assessed and help to deal with the enduring consequences of abuse on survivors and subsequent generations.

Georgina says the abuse has had a ripple effect on their children. "For [the ministry] not to accept [Alva's claim] because she's deceased... it not only affected her, it then caused a ripple effect. She's got kids that she left behind and that then affected them." Alva's daughter Hope says:

> ***"The abuse affected [my mum's] life to the point where she felt she couldn't stick around and be a mum. So it's also affected me and everyone else around her that loved her. I carry my mum's pain with me and I feel responsible for getting closure."***

Part five: The next phase of the inquiry



Introduction

Kia whakatōmuri te haere whakamua

I WALK BACKWARDS INTO THE FUTURE WITH
MY EYES FIXED ON THE PAST.

Our work to date has only begun to uncover the extent of abuse in care, its impact and the severe cost to society. We know that much investigative, research and analysis work remains to be done so we can produce meaningful and balanced recommendations to prevent harm and find better ways to repair the damage done. Below we set out the work ahead of us to address fully the terms of reference of our inquiry.

5.1. The work ahead

A partnership with Māori

Partnering with Māori is critical to our work. We have talked about our efforts to date to engage with Māori survivors and communities, and to establish Te Taumata. This work must continue, and we expect that Te Taumata will play a significant role in future.

A key question will be to what extent current redress and rehabilitation arrangements are consistent with Te Tiriti, ngā tikanga Māori, te reo Māori and New Zealand's international human rights obligations, including the United Nations Declaration on the Rights of Indigenous Peoples. This includes the matter of apologies to Māori whānau and communities and consideration of ngā whakaaro nui, such as whakapapa, mana, utu, mauri and tapu.

Next year, we will hold public hui or wānanga and a public hearing on Māori and their experiences of abuse in care. Almost all of our investigations, both State and faith-based, will have a Māori dimension, given the status of Māori as tangata whenua and the impact of abuse in different settings on their whānau, hapū and iwi.

Connecting with survivor communities

We will continue to support survivors of abuse and their families as they work with the inquiry, particularly Māori, Pacific people and those with a disability, including those with a mental illness. We are expanding our efforts to reach out to those in marginalised and hard-to-reach communities.

In addition to the groups above, our focus for 2021 will be on

connecting with those with mental health issues, the LGBTQIA+ community, young people, seniors and women. We will be attentive to overlaps among these groups. Beyond 2021, we will continue to build relationships and look for new ways to reach out to and involve various communities.
We will:

- *build on what we have learned about our approaches to engagement to date and ensure our processes reflect a Te Tiriti-based approach*
- *continue to use formal and informal ways of communicating and collaborating with community organisations, support groups and networks that work with our priority groups*
- *use engagement approaches that are culturally appropriate*
- *draw on the expertise of the members of the survivor advisory group*
- *hold regular Māori focus groups and kaupapa-based hui to discuss, and ensure a Te Tiriti perspective on, specific topics relevant to our investigations*
- *strengthen relationships with Māori and promote Māori involvement in our work*
- *implement communication strategies and approaches, incorporating feedback from survivor groups (including Māori), aimed at more effectively communicating the progress we are making.*

Survivor accounts

Based on current modelling, we expect to receive about 3,200 survivor accounts, either in person or in writing. We also expect between about 8,000 and 12,000 survivors to register with us by the time we finish our work. These estimates are based on our experience to date and the experiences of similar inquiries overseas.

We aim to ensure all survivors, including those in care and protection or youth justice facilities, in prison or outside New Zealand, can share their experience with us if they wish. We will continue developing our processes to meet survivors' needs and where possible allow survivors to choose where they feel most comfortable meeting and talking to us.

With Māori survivors, we will respect their rangatiratanga and give whānau, hapū and iwi the option of deciding where we meet, including, where appropriate, on marae. We will continue to apply what we learn through private sessions (including written accounts and group sessions) to our investigations, public hearings and research and policy work.

Survivors have never had an opportunity to talk about their experiences to a body with the powers and scope of this inquiry. We will protect the information given to us by survivors who wish to keep their experiences confidential, while making sure the matters they raise receive public attention and feed into our investigation and research work. In keeping with our obligation to do no harm, we will continue to provide wellbeing services to these survivors that are tailored to their individual needs.

Investigations and public hearings

Our first nine investigations will continue through the next year, and in some cases beyond. We intend holding regular public hearings, hui, wānanga, fono, roundtables and other public engagement processes for the rest of the inquiry, subject to any COVID-19-related disruptions.

From our nine investigations, we have identified topics for seven public hearings in 2021. We have already mentioned the case studies into abuse at Lake Alice Hospital's child and adolescent unit (as part of the psychiatric care investigation) and abuse at Marylands School in Christchurch (as part of the investigation into abuse involving the Catholic Church). The other five case studies or topics hearings are: Māori experiences of abuse, redress for survivors of abuses in faith-based care, abuse in State-run children's residential care, Pacific people's experience of abuse, and abuse of people with disabilities. We will use the criteria outlined earlier in this report to determine the precise scope of these and future hearings.

Most hearings will be at our public hearing space in Auckland, although some may be held elsewhere, such as on marae, if appropriate to the subject matter. We also expect to hold roundtables, kaupapa-based hui, fono, wānanga and other information-gathering and consultative forums.

Kaupapa-based hui will allow investigation teams to gather information from Māori communities in a way that is consistent with their tino rangatiratanga and ngā tikanga Māori.

In all of the anticipated 20 investigations, our teams will gather information and evidence through information requests, witness interviews, analysis of information from survivor accounts, research and policy projects, and hui, fono, wānanga and roundtables. To complete these investigations, our work will include:

Analysis of information and evidence: We have already received more than 255,000 documents, and from what we know so far, we estimate we may receive more than 2 million documents and several thousand witness statements during the course of the inquiry. We will comprehensively analyse these through specialist information and evidence management systems we have set up.

Processes to ensure fairness: We will give affected people, groups and organisations the opportunity to comment on the information we have gathered, and on intended findings and recommendations. We will tell the public when we begin further investigations and select more case studies, and we will consult on scope documents.

Reporting on our findings as we go: Each investigation will produce a report with findings and recommendations. Where appropriate, we may make findings that individuals or institutions were at fault, or were in breach of relevant standards.

We may also produce reports on case studies of particular institutions, themes, systemic problems or groups of people, and reports on topics that span two or more investigations. We will not wait for the final report to make recommendations or look to the future.

Communicating with the public: Through roundtables, wānanga, kaupapa-based hui, fono and workshops, we will exchange ideas with the public and interested parties. We will also issue public statements about our work and release issues papers.

Research and policy

High-quality research and policy work are crucial. Our researchers will commission or carry out research in line with the needs of investigation teams and the inquiry as a whole. The research team will continue to gather and synthesise information, provide analysis and conduct primary research where necessary. We will seek the help of Māori experts to ensure we give sufficient weight to Māori research. Similarly, we will draw on the expertise of other subject matter experts on particular areas.

An immediate research priority is to get a clearer picture of the various groups of survivors, particularly Māori, Pacific people and disabled people. For example, we have commissioned work from the Donald Beasley Institute on the experiences of disabled people in care who are unable or unlikely to communicate with us via the channels outlined above. We are also developing research projects on Māori experiences of abuse.

Other priorities include:

- *literature reviews and further analyses of survivor accounts to support subject matters under investigations*
- *using our newly established policy team to provide analysis and advice and help shape recommendations.*

Final report

Our final report will synthesise all the work of the inquiry, including survivor accounts, investigations, research and policy. It will identify the systemic problems and focus on recommendations for the future. Where necessary, we will review any changes made in response to earlier recommendations. The duration of the inquiry will allow us to monitor and respond to such changes in a way that most inquiries cannot.

5.2. Our long-term goals

We are determined to produce an accurate and fair account of abuse in care in this country. We will identify the systemic factors that caused or contributed to that abuse. Our recommendations will aim to ensure there is no repetition of what survivors have experienced. In this way, we hope to bring lasting change to the lives of survivors, their families, whānau, hapū and iwi.

We are keenly aware this is important and urgent work, especially as each new survivor comes forward with a story of life-shattering abuse. As one survivor noted after a private session: "Realise that our voices are valid, real and raw." Or as another put it: "Our kids are our future, let's stop hurting them." Can the task before us be put more succinctly?

We realise we cannot do this on our own. We need the help of survivors, advocates, experts and the institutions themselves that are at the centre of this inquiry.

We plan to give effect to our aspirations in the following ways:

We will produce a credible public record of abuse in care

We will give New Zealand a fair, accurate and comprehensive account of abuse in care. This will show what happened, how and why, and we will do so in a way that includes individual experiences but also places those experiences within the wider context of New Zealand society, both past and contemporary. We hope the results will encourage further scholarship and reflection about what took place in care institutions, and prompt changes for the better.

The public will better understand the nature and scale of the abuse

Our goal is to ensure members of the public see, hear and understand the evidence of abuse. Our public hearings will be the most visible of our activities, but we will also invite the public to read, and the media to report on, our investigation reports, case studies, issues papers and research reports. We will also ask them to take part where possible in our community engagement initiatives, roundtables, wānanga, kaupapa-based hui, fono and workshops.

Those responsible will be held to account

Accountability is a critical demand of survivors – and justifiably so. We have heard the strong calls for individual, organisational and systematic accountability for wrongdoing. Where appropriate, we will make findings that individuals and organisations breached relevant standards.

We will also consider whether the State and faith-based institutions should do more themselves to provide accountability for what happened. Where appropriate, we will make referrals to police and other complaints or investigative bodies. Referrals may result in investigations and in some cases we expect prosecutions to follow.

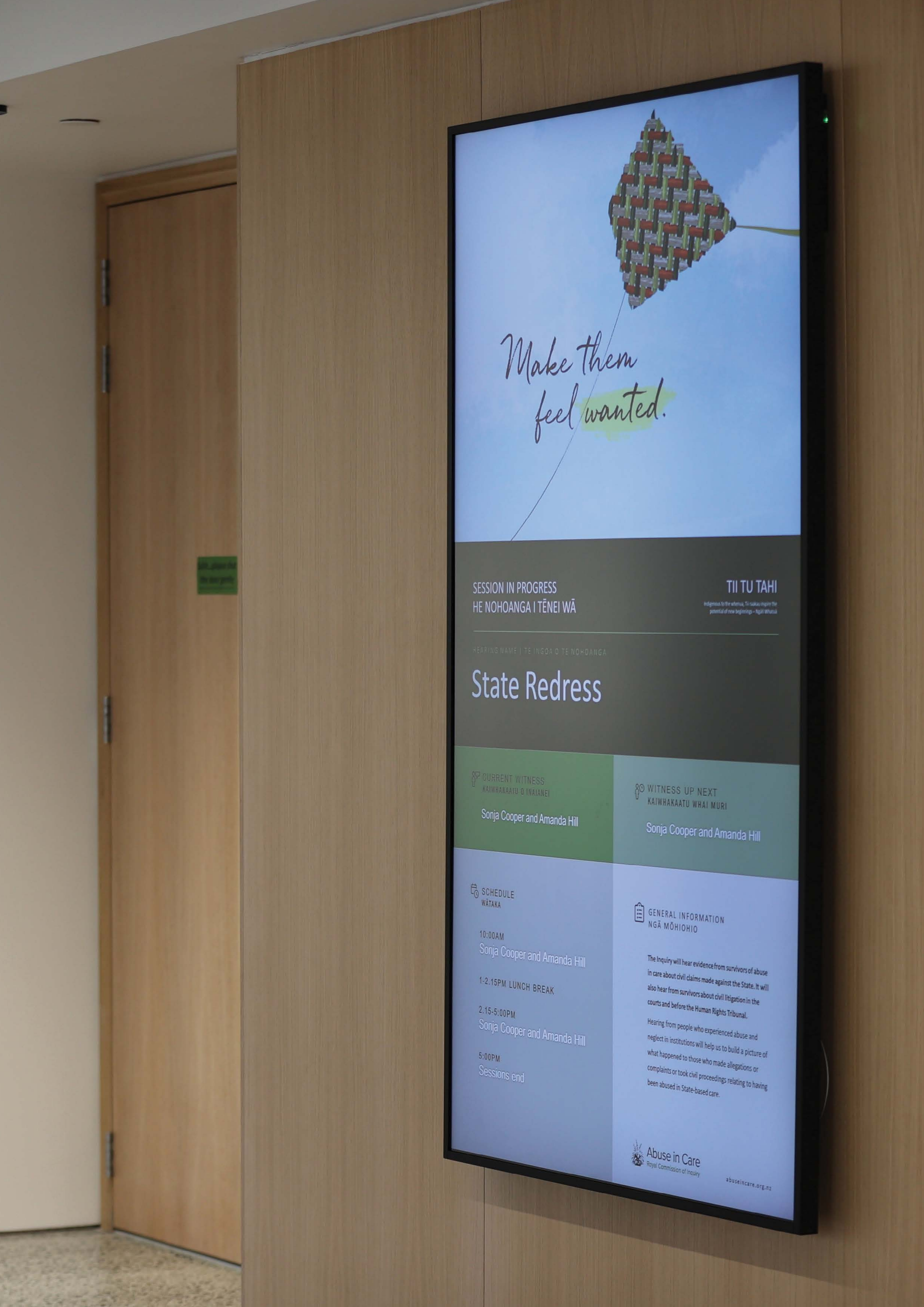
We will actively work with Māori

Through active partnership and engagement with Māori, we will make recommendations that aim to deliver meaningful change for Māori in accordance with Te Tiriti and the human rights set out in the United Nations Declaration on the Rights of Indigenous Peoples.

Care providers will protect the vulnerable better and treat them well

We will make recommendations that seek to improve care laws, policies, procedures and practices, as well as the way care providers provide redress to survivors and the other mechanisms in place for independent oversight of care.

Our recommendations will be based on evidence about what happened in the past and what happens to the present day. In this way, we will give effect to the terms of reference and help create a safer future for all New Zealanders.



Make them feel wanted.

SESSION IN PROGRESS
HE NOHOANGA I TĒNEI WĀ

TII TU TAHI

HEARING NAME | TE INGOA O TE NOHOANGA

State Redress

CURRENT WITNESS
KAIWHAKAATU O INAIANEI

Sonja Cooper and Amanda Hill

WITNESS UP NEXT
KAIWHAKAATU WHAI MURI

Sonja Cooper and Amanda Hill

SCHEDULE
WĀTAKA

10:00AM
Sonja Cooper and Amanda Hill

1-2.15PM LUNCH BREAK

2.15-5:00PM
Sonja Cooper and Amanda Hill

5:00PM
Sessions end

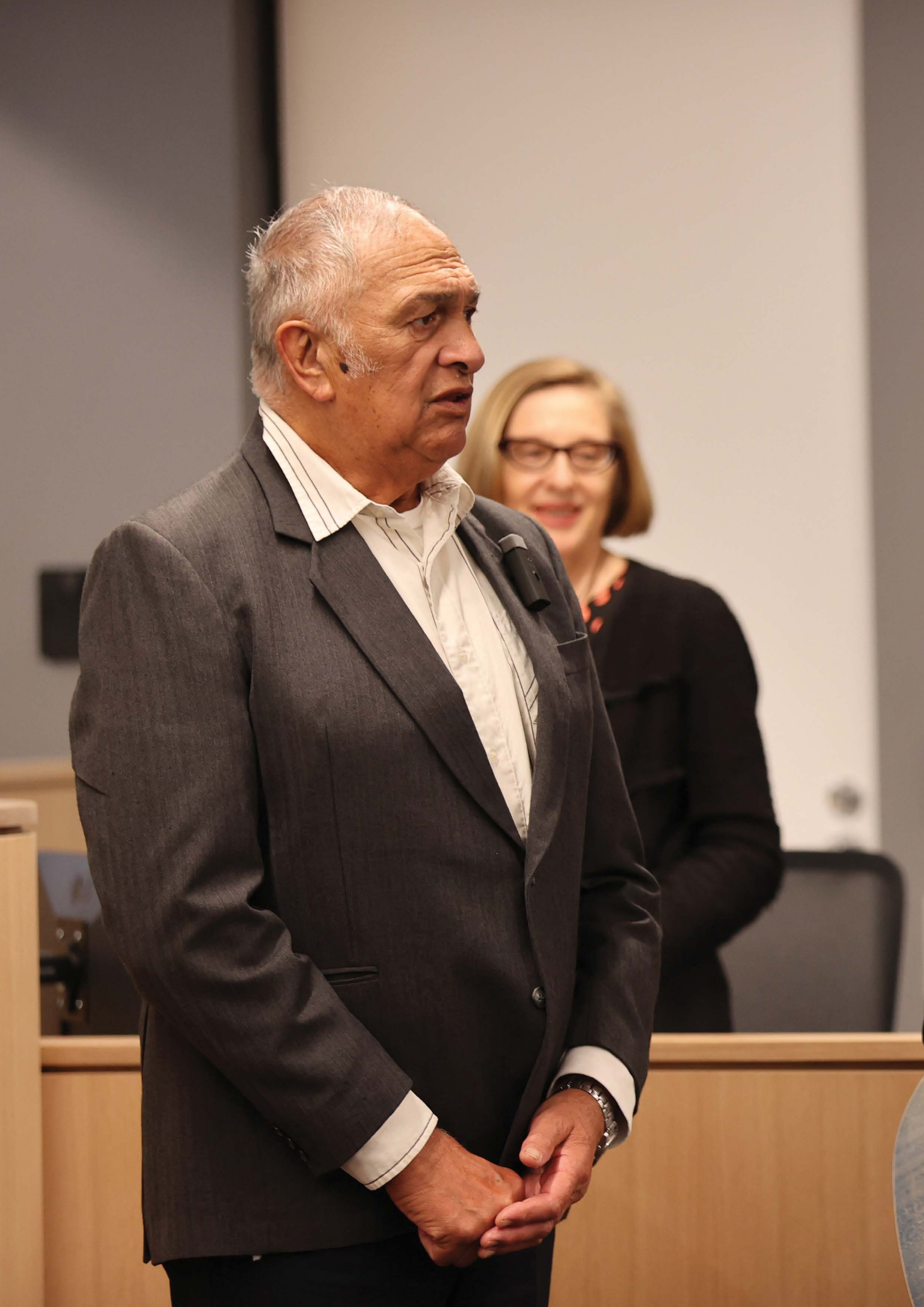
GENERAL INFORMATION
NGĀ MŌHIOHIO

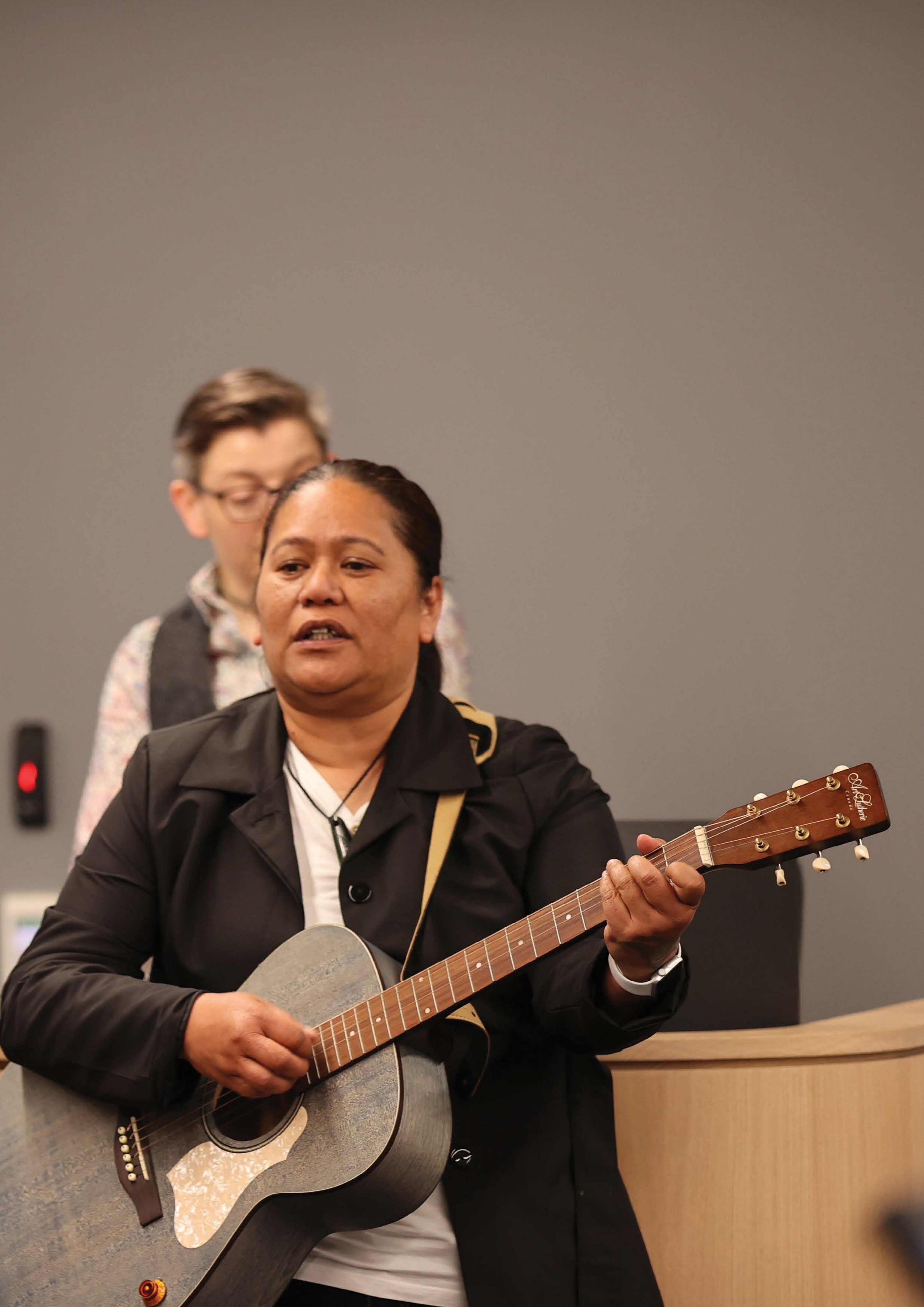
The Inquiry will hear evidence from survivors of abuse in care about civil claims made against the State. It will also hear from survivors about civil litigation in the courts and before the Human Rights Tribunal.

Hearing from people who experienced abuse and neglect in institutions will help us to build a picture of what happened to those who made allegations or complaints or took civil proceedings relating to having been abused in State-based care.

Abuse in Care
Royal Commission of Inquiry

abuseincare.org.nz





Appendix 1: Terms of reference

Abuse in Care
Royal Commission of Inquiry

Reprint as at 18 June 2020

Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Order 2018 (LI 2018/223)

Elizabeth the Second, by the Grace of God Queen of New Zealand and her Other Realms and Territories, Head of the Commonwealth, Defender of the Faith:

To—

Ali'imuamua Sandra Alofivae, MNZM, of South Auckland, lawyer, former Families Commissioner, and Pacific community leader,

Dr Andrew Erueti, of Auckland, lawyer and senior lecturer at the University of Auckland Law School,

Paul Gibson, of Wellington, disability adviser, advocate, and community leader, and former Human Rights (Disability Rights) Commissioner,

Her Honour Judge Coral Shaw, of Te Awamutu, former lawyer, District Court Judge, Employment Court Judge, and Judge of the United Nations Dispute Tribunal, and

Julia Anne Steenson, of Whangamatā, lawyer, director and elected leader of Ngāti Whātua Ōrākei:

Greeting!

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This order is administered by the Department of Internal Affairs.

Recitals

Whereas for a number of years, many individuals, community groups, and international human rights treaty bodies have called for an independent inquiry into historical abuse and neglect in State care and in the care of faith-based institutions in New Zealand:

Whereas historical abuse and neglect of individuals in State care or in the care of faith-based institutions warrants prompt and impartial investigation and examination, both to—

(a) understand, acknowledge, and respond to the harm caused to individuals, families, whānau, hapū, iwi, and communities; and

(b) ensure lessons are learned for the future:

Whereas the Inquiries (Royal Commission of Inquiry into Historical Abuse in State Care) Order 2018 (the **initial order**), on 1 February 2018,—

(a) established the Royal Commission of Inquiry into Historical Abuse in State Care as a public inquiry; and

(b) appointed the Right Honourable Sir Anand Satyanand, GNZM, QSO, as the member of the inquiry; and

(c) provided for its terms of reference to be notified after consultations on them were completed:

Now therefore We, by this Our Commission, establish the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (which continues and broadens the inquiry of, and replaces, the Royal Commission of Inquiry established by the initial order).

It is declared that this Order in Council constituting Our Commission is made—

(a) under the authority of the Letters Patent of Her Majesty Queen Elizabeth the Second constituting the office of Governor-General of New Zealand, dated 28 October 1983;* and

(b) under the authority of section 6 of the Inquiries Act 2013 and subject to the provisions of that Act; and

(c) on the advice and with the consent of the Executive Council.

---

*SR 1983/225

Preamble: amended, on 18 June 2020, by clause 4 of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2020 (LI 2020/118).

Preamble: amended, on 15 November 2019, by clause 4 of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2019 (LI 2019/268).

Order

1. Title

This order is the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Order 2018.

2. Commencement

This order comes into force on the day after the date of its notification in the *Gazette*.

3. Royal Commission of Inquiry established

(1) The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions is established (the **inquiry**).

(2) The inquiry continues and broadens the inquiry of, and replaces, the Royal Commission of Inquiry established by the Inquiries (Royal Commission of Inquiry into Historical Abuse in State Care) Order 2018.

4. Matter of public importance that is subject of inquiry

The matter of public importance that is the subject of the inquiry is the historical abuse of children, young persons, and vulnerable adults in State care, and in the care of faith-based institutions.

5. Members of inquiry

The following persons are appointed to be the members of the Royal Commission to inquire into that matter of public importance:

(a) *[Revoked]*

(b) Ali’imuamua Sandra Alofivae, MNZM:

(c) Dr Andrew Erueti:

(d) Paul Gibson:

(e) Her Honour Judge Coral Shaw:

(f) Julia Anne Steenson.

Clause 5(a): revoked, on 15 November 2019, by clause 5 of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2019 (LI 2019/268).

Clause 5(f): inserted, on 18 June 2020, by clause 5 of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2020 (LI 2020/118).

6. Chairperson of inquiry

The person who is to be the chairperson of the inquiry is Her Honour Judge Coral Shaw.

Clause 6: amended, on 15 November 2019, by clause 6 of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2019 (LI 2019/268).

7. Date when inquiry may begin considering evidence

The inquiry may begin considering evidence from 3 January 2019.

8. Terms of reference

The terms of reference for the inquiry are set out in the Schedule.

9. Revocation

The Inquiries (Royal Commission of Inquiry into Historical Abuse in State Care) Order 2018 (LI 2018/3) is revoked.

Schedule Terms of reference

Preamble

The New Zealand Government

Reaffirming its commitment, made in October 2017, to establish an independent inquiry into the abuse of individuals in care;

Reflecting on the period between the 1950s and late 1990s, when many children and young persons from all communities were removed from their families and placed in care;

Reflecting also that a number of children, young persons, and vulnerable adults entered the care of faith-based institutions;

Acknowledging that a significant number of those removed from their families and placed in care were from Māori and Pacific communities;

Confirming that many vulnerable adults also entered care during this time;

Recognising that many of these children, young persons, and vulnerable adults were people affected by disabilities, mental illness, or both;

Observing that the placement in care is likely to have involved the State and its officials, whether directly or indirectly;

Appreciating that whilst a number of people in this situation received appropriate treatment, education, and care, many others suffered abuse;

Recognising that those who were abused, as well as their families and whānau, experienced both immediate and long-term impacts;

Emphasising the need to ensure that all people in care are treated with humanity and with respect for the inherent dignity of the person, particularly children, young persons, and vulnerable adults;

Reaffirming applicable domestic and international law, including human rights law, on the proper treatment of people in care, including relevant standards on the prevention of and responses to abuse;

Recognising Te Tiriti o Waitangi/the Treaty of Waitangi and its principles, as well as the status of iwi and Māori under Te Tiriti/the Treaty;

Taking note of the observations made in recent years by United Nations human rights treaty bodies with regard to this issue;

Responding to the calls made for several years, by individuals and groups in New Zealand and abroad, for an independent inquiry into abuse in care;

Considering the establishment of inquiries into similar issues in other countries, including Australia, Canada, England and Wales, Northern Ireland, and Scotland;

Convinced that the matter now requires thorough, effective investigation and review, in order to identify lessons from the past and pathways for the future;

Hereby establishes the following terms of reference for the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions:

Background

1. Many individuals and community groups have called for an independent inquiry into historical abuse in State care in New Zealand. This included the campaign led by the Human Rights Commission entitled *Never Again / E Kore Anō*. In 2017, the United Nations Committee on the Elimination of Racial Discrimination recommended that New Zealand establish an independent inquiry into this issue. The United Nations Committee on the Rights of the Child also considered the treatment of children in care in 2016. Other countries have established similar inquiries to examine abuse in various settings. During the public consultation on the draft terms of reference, a number of stakeholders called for a broad-based inquiry that could look into abuse both in State care and in the care of faith-based institutions.
2. In recent years, a range of processes has been established to respond to the issue of abuse in State care. The Confidential Forum for Former In-Patients of Psychiatric Hospitals and the Confidential Listening and Assistance Service listened to individual experiences of State care and made recommendations for future work. Their work highlights the significant impact abuse has had on individuals and their families and the co-ordinated efforts that are needed in order to prevent it happening in the future.
3. New Zealand has international legal obligations to take all appropriate legislative, administrative, judicial, and other measures to protect individuals from abuse, including measures to prevent, identify, report, refer, investigate, and follow up incidents of abuse. New Zealand has ratified, or endorsed, a range of international treaties and other instruments which are relevant to the work of this inquiry. These include the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Rights of the Child; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the Convention on the Rights of Persons with Disabilities; and the Declaration on the Rights of Indigenous Peoples. A number of other instruments and guidance materials are also relevant to the proper treatment of people in care.

4. Abuse of individuals in State care is inconsistent with applicable standards and principles of human rights law in New Zealand and internationally. It creates the need for prompt and impartial investigation and examination. When undertaken effectively, this can provide the basis for understanding, acknowledging, and responding to the harm caused and for ensuring lessons are learned for the future. Abuse of individuals in the care of faith-based institutions is also very serious and calls for a similarly robust and effective response to help prevent future abuse.

5. In light of these matters, a Royal Commission has been established into historical abuse in State care and in the care of faith-based institutions. In accordance with the Inquiries Act 2013 (the **Act**), the inquiry will operate independently, impartially, and fairly. The Department of Internal Affairs is the 'relevant Department' for the purposes of the Act.

6. The inquiry will give appropriate recognition to Māori interests, acknowledging the disproportionate representation of Māori, particularly in care. The inquiry will be underpinned by Te Tiriti o Waitangi/the Treaty of Waitangi and its principles, and will partner with Māori throughout the inquiry process.

7. Pacific people have also been disproportionately represented in care. The inquiry will recognise this, together with the status of Pacific people within an increasingly diverse New Zealand.

8. A number of vulnerable adults (for example, those with disabilities, mental illness, or both) also experienced abuse in care. The experiences of these people will also be a key focus of the inquiry.

Purpose and scope

9. The matter of public importance which the inquiry is directed to examine is the historical abuse of children, young persons, and vulnerable adults in State care and in the care of faith-based institutions.

10. The purpose of the inquiry is to identify, examine, and report on the matters in scope. For matters that require consideration of structural, systemic, or practical issues, the inquiry's work will be informed not only by its own analysis and review but also by the feedback of victims/survivors and others who share their experiences. The matters in scope are:

10.1 The nature and extent of abuse that occurred in State care and in the care of faith-based institutions during the relevant period (as described immediately below):

(a) the inquiry will consider the experiences of children, young persons, and vulnerable adults who were in care between 1 January 1950 and 31 December 1999 inclusive:

(b) the inquiry may, at its discretion, consider issues and experiences prior to 1950. In order to inform its recommendations for the future, the inquiry may also consider issues and experiences after 1999:

(c) for the avoidance of doubt, the discretion in paragraph (b) means the inquiry may hear from people who were in care at any point after 1999 or are currently in care (whether or not they were also in care before 1999). Further guidance on principles and methods of work relating to the inquiry's engagement with people currently in care is provided in clauses 21 and 22.

10.2 The factors, including structural, systemic, or practical factors, that caused or contributed to the abuse of individuals in State care and in the care of faith-based institutions during the relevant period. The factors may include, but are not limited to:

(a) the vetting, recruitment, training and development, performance management, and supervision of staff and others involved in the provision of care:

(b) the processes available to raise concerns or make complaints about abuse in care:

(c) the policies, rules, standards, and practices that applied in care settings and that may be relevant to instances of abuse (for example, hygiene and sanitary facilities, food, availability of activities, access to others, disciplinary measures, and the provision of health services):

(d) the process for handling and responding to concerns or complaints and their effectiveness, whether internal investigations or referrals for criminal or disciplinary action.

10.3 The impact of the abuse on individuals and their families, whānau, hapū, iwi, and communities, including immediate, longer-term, and intergenerational impacts.

10.4 The circumstances that led to individuals being taken into, or placed into, care and the appropriateness of such placements. This includes any factors that contributed, or may have contributed, to the decision-making process. Such factors may include, for example, discrimination, arbitrary decisions, or otherwise unreasonable conduct.

(a) With regard to court processes, the inquiry will not review the correctness of individual court decisions. It may, however, consider broader systemic questions, including the availability of information to support judicial decision making, and the relevant policy and legislative settings.

10.5 What lessons were learned; what changes were made to legislation, policy, rules, standards, and practices to prevent and respond to abuse in care; and what gaps, if any, remain and need addressing.

10.6 The current frameworks to prevent and respond to abuse in care; and any changes to legislation, policies, rules, standards, and practices, including oversight mechanisms, that will protect children, young persons, and vulnerable adults in the future.

10.7 The redress and rehabilitation processes for individuals who claim, or have claimed, abuse while in care, including improvements to those processes.

11. As part of its interim or final reports, the inquiry will present comments, findings, and recommendations as described in clauses 31 and 32.

12. In considering the matters in scope, the inquiry shall give particular consideration to any people or groups where differential impact is evident.

13. Available guidance, both in New Zealand and internationally, recognises the general vulnerability of a person who is under the responsibility of another person or entity. Vulnerability may also arise in relation to a person's nationality; race; ethnicity; religious belief; age; gender; gender identity; sexual orientation; or physical, intellectual, disability, or mental health status. The inquiry will give particular consideration to these vulnerabilities in the course of its work.

14. The inquiry may consider other matters that come to its notice in the course of its work, if it considers this would assist the inquiry in carrying out its functions and in delivering on its stated purpose.

15. For the avoidance of doubt, existing feedback, complaints, review, claims, settlement, or similar processes will continue to operate during the course of the inquiry's work. As provided in clauses 31 and 32, the inquiry may make interim or final recommendations on improvements to these processes.

Definitions

16. In the course of its work, and when applying the definitions below, the inquiry will consider relevant domestic and international law, including international human rights law.

17. For the purpose of the inquiry, unless the context otherwise requires, the following definitions will apply:

17.1 **Abuse** means physical, sexual, and emotional or psychological abuse, and neglect, and—

(a) the term 'abuse' includes inadequate or improper treatment or care that resulted in serious harm to the individual (whether mental or physical):

(b) the inquiry may consider abuse by a person involved in the provision of State care or care by a faith-based institution. A person may be 'involved in' the provision of care in various ways. They may be, for example, representatives, members, staff, associates, contractors, volunteers, service providers, or others. The inquiry may also consider abuse by another care recipient.

17.2 **Individual** means a child or young person below the age of 18 years, or a vulnerable adult, and—

(a) for the purpose of this inquiry, 'vulnerable adult' means an adult who needs additional care and support by virtue of being in State care or in the care of a faith-based institution, which may involve deprivation of liberty. In addition to vulnerability that may arise generally from being deprived of liberty or in care, a person may be vulnerable for other reasons (for example, due to their physical, intellectual, disability, or mental health status, or due to other factors listed in clauses 8 and 13).

17.3 **State care** means the State assumed responsibility, whether directly or indirectly, for the care of the individual concerned, and—

(a) the State may have 'assumed responsibility' for a person as the result of a decision or action by a State official, a court order, or a voluntary or consent-based process including, for example, the acceptance of self-referrals or the referral of an individual into care by a parent, guardian, or other person:

(b) the State may have assumed responsibility 'indirectly' when it passed on its authority or care functions to another individual, entity, or service provider, whether by delegation, contract, licence, or in any other way. The inquiry can consider abuse by entities and service providers, including private entities and service providers, whether they are formally incorporated or not and however they are described:

(c) for the purpose of this inquiry, 'State care' (direct or indirect) includes the following settings:

  (i) social welfare settings, including, for example:

    (A) care and protection residences and youth justice residences:
    (B) child welfare and youth justice placements, including foster care and adoptions placements:
    (C) children's homes, borstals, or similar facilities:

  (ii) health and disability settings, including, for example:

    (A) psychiatric hospitals or facilities (including all places within these facilities):
    (B) residential or non-residential disability facilities (including all places within these facilities):
    (C) non-residential psychiatric or disability care:
    (D) health camps:

  (iii) educational settings, including, for example:

    (A) early childhood educational facilities:
    (B) primary, intermediate, and secondary State schools, including boarding schools:
    (C) residential special schools and regional health schools:
    (D) teen parent units:

  (iv) transitional and law enforcement settings, including, for example:

    (A) police cells:
    (B) police custody:
    (C) court cells:

(D) abuse that occurs on the way to, between, or out of State care facilities or settings.

(d) the settings listed above may be residential or non-residential and may provide voluntary or non-voluntary care. The inquiry may consider abuse occurring in any place within these facilities or settings. The inquiry may consider abuse that occurred in the context of care but outside a particular facility. For example, abuse of a person in care, which occurred outside the premises, by a person who was involved in the provision of care, another person (as described in clause 17.1(b)), or another care recipient:

(e) without diminishing the importance of ensuring that people in settings other than those listed in clause 17.3(c) receive good care and treatment, for the purpose of this inquiry, State care does not include the settings listed below. However, the experience of a person in these facilities or settings may be considered if the person was also in State care at the time:

(i) people in prisons, including private prisons:

(ii) general hospital admissions, including private hospitals:

(iii) aged residential and in-home care, including private care:

(iv) immigration detention:

(f) while, for the purpose of this inquiry, the treatment of people in prisons does not fall within the definition of State care, the inquiry may consider the long-term effects of State care on an individual or a group of individuals. The inquiry may, for example, examine whether those who were in State care went on to experience the criminal justice or correctional systems and what conclusions or lessons, if any, might be drawn from the inquiry's analysis:

(g) for the avoidance of doubt, 'abuse in State care' does not include abuse in fully-private settings, such as the family home, except where an individual was also in State care:

(h) for the avoidance of doubt, 'abuse in State care' means abuse that occurred in New Zealand.

17.4 **In the care of faith-based institutions** means where a faith-based institution assumed responsibility for the care of an individual, including faith-based schools, and—

(a) for the avoidance of doubt, care provided by faith-based institutions excludes fully private settings, except where the person was also in the care of a faith-based institution:

(b) for the avoidance of doubt, if faith-based institutions provided care on behalf of the State (as described in clause 17.3(b) above), this may be dealt with by the inquiry as part of its work on indirect State care:

(c) as provided in clause 17.3(d) above, care settings may be residential or non-residential and may provide voluntary or non-voluntary care. The inquiry may consider abuse that occurred in the context of care but outside a particular institution's premises:

(d) for the avoidance of doubt, the term 'faith-based institutions' is not limited to one particular faith, religion, or denomination. An institution or group may qualify as 'faith-based' if its purpose or activity is connected to a religious or spiritual belief system. The inquiry can consider abuse in faith-based institutions, whether they are formally incorporated or not and however they are described:

(e) for the avoidance of doubt, 'abuse in faith-based care' means abuse that occurred in New Zealand.

17.5 **Relevant period** means the period described in clause 10.1(a) above.

17.6 **Redress processes** includes monetary processes (for example, historic claims and compensation or settlement processes), as well as non-monetary processes (for example, rehabilitation and counselling).

17.7 **Relevant department** means the Department of Internal Affairs, in accordance with section 4 of the Act.

17.8 **Appropriate Minister** means the Minister of Internal Affairs, in accordance with section 4 of the Act.

Principles and methods of work

18. The inquiry will discharge its functions in accordance with the provisions and principles of these terms of reference and the Act. Given the seriousness of the issues under consideration, the inquiry will operate with professionalism and integrity and in line with relevant domestic and international good practice guidance. The inquiry will implement policies, methods, processes, and procedures that enable it to conduct its work in a manner sensitive to the needs of individuals and their families, whānau, hapū, and iwi, or other supporters.

19. The inquiry will operate according to principles that include (but are not limited to)—

(a) do no harm:

(b) focus on victims and survivors:

(c) take a whānau-centred view:

(d) work in partnership with iwi and Māori:

(e) work inclusively with Pacific people:

(f) facilitate the meaningful participation of those with disabilities, mental illness, or both:

(g) respond to differential impacts on any particular individuals or groups:

(h) be sensitive to the different types of vulnerability that arise for people in care:

(i) ensure fair and reasonable processes for individuals and organisations associated with providing care:

(j) avoid an overly legalistic approach.

20. To ensure a sound foundation for its work, the inquiry will implement clear policies and methods of work. These include, but are not limited to, policies or methods of work to—

(a) facilitate the timely receipt of information, the production of documents, or other things, in accordance with the inquiry's powers under the Act:

(b) identify and engage specialist investigative, advisory, or research functions to support the inquiry:

(c) ensure information or evidence obtained or received by the inquiry that identifies particular individuals is dealt with in a way that does not prejudice current or future criminal or civil proceedings or other contemporaneous inquiries:

(d) receive information and evidence from, or share information and evidence with, current and previous inquiries in New Zealand and elsewhere, where appropriate and with due regard to confidentiality. This is to ensure that the work of those inquiries, including witness statements, can be taken into account by the inquiry in a way that avoids unnecessary trauma to individuals and improves efficiency:

(e) ensure that personal information is treated appropriately and in accordance with the principles of sensitivity, confidentiality, and informed consent. Individuals who share their experiences with the inquiry should be able to access their information at a later date on request. The inquiry will establish appropriate processes for handling such requests:

(f) inform participants of support, complaints, or other processes which may be available to them and, to the extent appropriate, assist them in accessing these processes. This includes supporting victims/survivors (if they wish) to refer a matter to the Police or to other appropriate complaints or investigative bodies or support services. The inquiry will adopt appropriate policies around safety and consent in these situations:

(g) provide organisations and other parties sufficient opportunity to respond to requests and requirements for information and documents.

21. The Government's expectation is that—

(a) agencies/institutions will co-operate with the inquiry to enable it to hear from people who are currently in care and, where necessary, these agencies/institutions will ensure a safe and secure environment for the inquiry to undertake this work (for example, if the inquiry visits a care facility):

(b) agencies/institutions will also ensure that the inquiry is able to undertake its work independently and with due regard to the importance of confidentiality:

(c) a person in care who shares their experience with the inquiry in good faith will (in relation to the sharing of that information) not be subject to disciplinary action, a change in care conditions, or other disadvantage or prejudice of any kind:

(d) agencies/institutions will ensure that those who are currently in care and who engage with the inquiry have appropriate supports in place, given the sensitivity of the issues being discussed. This does not limit the application of clause 24.

22. Without limiting section 16 of the Act, and for the avoidance of doubt, there is no requirement or expectation that those who share their experience with the inquiry (whether currently in care or not) must first make use of feedback, complaints, review, claims, settlement, or similar processes. There is also no limitation on people engaging with the inquiry if they have already gone through these processes, are currently going through them, or may go through them in the future. This recognises that the inquiry and other processes exist for similar but distinct purposes, and that the inquiry may recommend improvements to these processes as part of its work.

23. The inquiry will establish an advisory group or groups comprising survivors of abuse in State care and in the care of faith-based institutions that, from time to time, will provide assistance to inquiry members. These groups will help the inquiry focus on victims and survivors by ensuring the voices of survivors are heard and recognised by the inquiry. At the inquiry's request, the groups may be asked to provide feedback on matters the inquiry is considering. The advisory groups will not have a decision-making function. The inquiry will also, as appropriate, engage specialist advisors (for example, cultural advisors) to strengthen the inquiry's work and fulfil the principles listed in clause 19(a) to (j).

24. The inquiry will establish and implement a detailed plan for the provision of counselling or other support to those who are affected by the issue of abuse in State care or abuse in the care of faith-based institutions. To ensure a victim/survivor-centred approach based on good practice and informed consent, the inquiry may make use of in-house counselling services or partnership or similar arrangements with other specialist providers. The inquiry will apply the dedicated funds that have been set aside for this purpose in a sensitive and appropriate manner.

25. In discharging its functions, the inquiry will operate effectively and efficiently and ensure transparency and accountability in its use of public funds. To meet these standards, and to ensure that the relevant department meets all of its statutory and reporting obligations, the relevant department will finalise administrative and financial reporting requirements in consultation with the inquiry. Such reporting requirements may involve, for example, bi-annual or quarterly reporting of financial and administrative matters.

26. The inquiry will undertake two key strands of work:

26.1 **Strand 1—Looking Back:** this strand will map the nature and extent of abuse in State care and faith-based institutions, the impact of that abuse and the factors which caused or contributed to the abuse. The principal question for this strand will be to establish what happened and why.

26.2 **Strand 2—Looking Forward:** this strand will review the current systems for preventing and responding to abuse, to test whether these are fit-for-purpose and identify what changes need to be made as a result. The principal question for this strand is how to ensure that what occurred cannot happen again.

27. The inquiry has the power to determine its own procedure, unless otherwise guided by the Act or these terms of reference. The inquiry may advance its work using a range of methods and settings. The inquiry will determine the appropriate way to manage its work. For example, the inquiry may determine whether all inquiry members need to be present in a particular setting, or whether work can proceed with a smaller number of inquiry members present. The inquiry will ensure its procedures are clear, readily available, and can be understood by the public and participants.

28. The inquiry will be based in New Zealand, where almost all of its work will be undertaken. The inquiry will use, wherever possible and appropriate, modern technology to communicate with participants or others who are based overseas (for example, by video link).

28.1 From time to time, and only where the inquiry determines that it is necessary to gather information or evidence from participants or others who are based overseas, the chairperson, members, or nominated Secretariat staff may travel outside New Zealand. The inquiry will ensure that it has all relevant legal or other permissions (as the case may be) to undertake investigative work outside New Zealand. It will also ensure that it conducts this work in an appropriate, effective, and efficient manner in accordance with the principles and standards contained in clauses 18, 19, 20, and 25.

29. The inquiry's approach to its analysis and reporting will be sensitive to the different contexts in which abuse occurred (for example, State care or faith-based institutions, the different groups of affected individuals, or abuse occurring at different points in time). The inquiry will reflect this in its work and reporting.

Findings and recommendations

30. The inquiry may deliver one or more public statements on any aspect of its work.

31. The inquiry will report and make general comments, findings, or both, on—

(a) the nature and extent of abuse that occurred (as described in clause 10.1 above):

(b) the factors, including systemic factors, which caused or contributed to abuse (as described in clause 10.2 above):

(c) the impact of the abuse on individuals and their families, whānau, hapū, iwi, and communities (as described in clause 10.3 above):

(d) the circumstances that led to individuals being taken into, or placed into care (as described in clause 10.4 above):

(e) the lessons learned and what changes were made to prevent and respond to abuse (as described in clause 10.5 above).

32. The inquiry will report and make recommendations, which may concern legislation, policy, rules, standards, and practices, on—

(a) any gaps and areas for future changes to the frameworks to prevent and respond to abuse in State care and faith-based institutions, including oversight mechanisms (as described in clause 10.6 above):

(b) any appropriate changes to the existing processes for redress, rehabilitation, and compensation processes for individuals who claim, or have claimed, to have suffered abuse while in State care and faith-based institutions (as described in clause 10.7 above):

(c) any other appropriate steps the State or faith-based institutions should take to address the harm caused, taking into account all of the inquiry's analysis, comments, findings and recommendations. This includes whether there should be an apology by the State and faith-based institutions for the abuse of individuals during the relevant period, or any other action that may be needed.

33. In accordance with the Act, the inquiry does not have the power to determine the civil, criminal, or disciplinary liability of any person. However, it may make findings of fault, that relevant standards have been breached, or both, and may make recommendations that further steps be taken to determine liability.

Commencement, reporting, and conclusion of work

34. The inquiry will commence once this instrument comes into force and it may begin considering evidence from 3 January 2019. In its first phase, prior to its interim report in 2020, the inquiry will give particular (but not exclusive) consideration to abuse in State care.

35. The inquiry is to provide an interim report on its work, in writing, by 28 December 2020. The interim report will be presented in two parts:

35.1 a substantive interim report, including,—

(a) a substantive progress report on the inquiry's work to date on direct and indirect State care and care in faith-based institutions. This may include the key themes or common issues arising in the experiences shared by victims/survivors in the first phase:

(b) an analysis of the size of the cohorts for direct and indirect State care and care in faith-based institutions:

(c) any interim findings and recommendations on the matters in clauses 31 and 32 that could or should be made at an early stage, for the Government's consideration; and

35.2 an administrative interim report, including—

(a) an analysis of the likely workload to complete the next phase of the inquiry, taking into account cohort sizes:

(b) a detailed assessment of any additional budget required to complete the next phase of the inquiry.

36. The substantive interim report (*see* clause 35.1) is to be presented by the inquiry in writing to the Governor-General, who will provide the report to the appropriate Minister. As soon as practicable after receiving the report, the Minister will table the report in the House of Representatives. Once tabled, the inquiry may also publish the substantive interim report on its website.

37. The administrative interim report (*see* clause 35.2) is to be presented by the inquiry in writing to the appropriate Minister. As soon as practicable after receiving the report, the Minister will report to Cabinet to consider any revision to the inquiry's budget and any other matters as appropriate. The administrative interim report will not be tabled in Parliament, but may be released by the Minister.

38. In addition to the two-part interim report referred to in clauses 35 to 37, the inquiry may issue a further interim report, or reports. In these reports, the inquiry may also issue interim findings and recommendations. The process for tabling interim reports, and their later publication, will follow the same process as for the substantive interim report (*see* clause 36). Any further interim reports issued under this clause will also be issued in writing and to the Governor-General.

39. The inquiry is to issue its final report, in writing and containing its final findings and recommendations on the matters in clauses 31 and 32, to the Governor-General by 3 January 2023. The process for tabling the final report will follow the process provided in section 12 of the Act. Once tabled in the House of Representatives, the inquiry may also publish the final report on its website.

40. If the inquiry identifies any issue that may affect its ability to deliver the final report by the date notified in the *Gazette*, it will notify the appropriate Minister as soon as possible with a view to identifying an appropriate solution. The solution may include, but is not limited to, an extension of time.
41. In addition to issuing its final report, the inquiry will find other ways to ensure that the public understands and has access to its work, whether by public statements, events, videos, research reports, issues papers, or similar documents.

Amendments

42. The appropriate Minister may amend these terms of reference in accordance with the Act. The inquiry may also request amendment of these terms of reference at any time prior to the final reporting date described in clause 39 above. Any request for amendment by the inquiry will be made formally and in writing to the Minister.

In witness whereof We have caused this Our Commission to be issued and the Seal of New Zealand to be hereunto affixed at Wellington this 12th day of November 2018.

Witness Our Trusty and Well-beloved The Right Honourable Dame Patsy Reddy, Chancellor and Principal Dame Grand Companion of Our New Zealand Order of Merit, Principal Companion of Our Service Order, Governor-General and Commander-in-Chief in and over Our Realm of New Zealand.

Patsy Reddy,
Governor-General.

By Her Excellency's
Command,
Jacinda Ardern,
Prime Minister.

Approved in Council,
Rachel Hayward,
for Clerk of the
Executive Council.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 12 November 2018.

This order is administered by the Department of Internal Affairs.

Appendix 2: Notes

1 Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2020 (LI 2020/118); Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2019 (LI 2019/268); Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Order 2018 (LI 2018/223); Inquiries (Royal Commission of Inquiry into Historical Abuse in State Care) Order 2018 (LI 2018/3).

2 See clause 6 and 8 of the terms of reference, and Abuse in Care Royal Commission of Inquiry (2020), What we know about the numbers of people in care and the extent of abuse in care, Indicative estimates of people in care and their abuse in care, especially Māori in care, pp4-5, 15-20, and Disabled people in care, pp5-6, 24-28. Note that as explained further at footnote 12 below, we use the term disability and disabled people in this report to include those with a mental illness, although we recognise that some people with mental illnesses do not identify as disabled.

3 See clause 7 of the terms of reference, and Abuse in Care Royal Commission of Inquiry (2020), What we know about the numbers of people in care and the extent of abuse in care, Pacific people in care, pp5, 20-23.

4 See footnote 13.

5 The terms of reference use the term victims/survivors, which recognises that some people who have suffered abuse prefer one term, and that others prefer the other term. Except in occasional instances where context demands otherwise, we have used the word survivor only.

6 See letter from Sir Anand to Minister of Internal Affairs Tracey Martin, dated 29 May 2018, and appended report on consultation on terms of reference, p4.

7 General hospital admissions, people in prisons, aged residential and in-home care and immigration detention centres are excluded, unless the person was also in State care at the time. See clause 17.3(e) of the terms of reference.

8 Generally, we use Te Tiriti to refer to all aspects of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. Cabinet agreed that the terms of reference would include a preamble that expressly recognises the Treaty of Waitangi and its principles, as well as the status of iwi and Māori under the Treaty of Waitangi. See Cabinet Minute of Decision, Final establishment of the Royal Commission into Historical Abuse in State Care and the Care of Faith-based Institutions (CAB-18-MIN-572.01), at 8.5.

9 The inquiry may hear from people who were in care at any point after 1999 or are currently in care (regardless of whether they were also in care before 1999). See clause 10.1(c) of the terms of reference.

10 See clause 26.1 and 26.2 of the terms of reference.

11 For our purposes, people with disabilities means those with long-term physical, sensory, mental and/or intellectual impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others. This includes people experiencing long-term mental distress or psycho-social disability, survivors of psychiatric care, deaf people, people with a neurological disability such as dyslexia, Attention Deficit Hyperactivity Disorder, autism, head injury, foetal alcohol syndrome, and people with an intellectual disability (who prefer the term learning disability).

12 MartinJenkins (2020), Indicative estimates of the size of cohorts and levels of abuse in State and faith-based care 1950 to 2019 (unpublished), p8. The inquiry commissioned this report to help estimate the number of people in care, to meet the requirement to provide an analysis of the size of cohorts for direct and indirect State care and care in faith-based institutions under clause 35.1(b) of the terms of reference. See also pp59-60 for more discussion on this report and the limitations of the estimates. See also Abuse in Care Royal Commission of Inquiry (2020), What we know about the numbers of people in care and the extent of abuse in care, Indicative estimates of people in care and their abuse in care, p4.

13 See, for example, the statement of Sonja Cooper and Amanda Hill for the contextual hearing, 5 September 2019, p48, and also the submission of the Network of Survivors of Abuse in Faith-Based Institutions and their Supporters, (6 April 2018, p7: "Abuse is ongoing and happening now and we have faith-based victims and survivors telling us of their abuse now. The Network has clear and compelling evidence of this." See also the statement of Children's Commissioner Judge Andrew Becroft for the contextual hearing, 6 October 2019, p14 describing "a continuing picture of State abuse of children and young people in care". See also Abuse in Care Royal Commission of Inquiry (2020), What we know about the numbers of people in care and the extent of abuse in care, pp12-14, 29-32, for information on current levels of people in care and being abused in care.

14 See Abuse in Care Royal Commission of Inquiry (2020), What we know about the numbers of people in care and the extent of abuse in care, Summary of findings, pp4-5.

15 Department of Social Welfare (1988), Puao-te-Ata-tu (day break): The Report of the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare, Wellington, p7; Human Rights Commission (1982), Children and Young Persons Homes, Administered by The Department of Social Welfare, pp123-124; Children's Commissioner (2020), Report of the Children's Commissioner in the matter of the Oranga Tamariki Urgent Inquiry (Wai 2915), pp8-13; Whānau Ora Commissioning Agency (2020), Ko Te Wā Whakawhiti, It's Time for Change: A Māori Inquiry into Oranga Tamariki, Wellington, pp 21, 32-34, 62-74.

16 Oranga Tamariki – Ministry for Children, Safety of children in care, Annual Report 2018-19, p18. This includes those that are recorded as having either Māori or Māori and Pacific ethnicity.

17 See Abuse in Care Royal Commission of Inquiry (2020), What we know about the numbers of people in care and the extent of abuse in care, Indicative estimates of the number of people who may have been abused in care, pp31-32.

18 See Abuse in Care Royal Commission of Inquiry (2020), What we know about the numbers of people in care and the extent of abuse in care, Pacific people in care, pp5, 20.

19 See statement of Professor Michael Tarren-Sweeny for the contextual hearing, 24 October 2019, p3 and Gluckman (2018), Using evidence to build a better justice system: The challenge of rising prison costs.

20 Statement of Professor Michael Tarren-Sweeny for the contextual hearing, 24 October 2019, p3.

21 See the statement of Professor Tracey McIntosh for the contextual hearing, 15 October 2019, p20; statement of Judge Carolyn Henwood for the contextual hearing, 28 October 2019, p15; statement of Professor Elizabeth Stanley for the contextual hearing, 11 October 2019, p13; and statement of Arthur Taylor for the contextual hearing, 3 October 2019, paras 3 and 62. We will continue our consideration of the relationship between people being in care and their later experience of the criminal justice or correctional systems, in light of the terms of reference – clause 17.3(f).

22 Statement of Sonja Cooper and Amanda Hill for the State redress hearing, 31 January 2020, p264.

23 MartinJenkins (2020), Economic cost of abuse in care, p3. See further discussion on p95.

24 The reckoning podcast, episode 1: Mike Ledingham, 17 September 2019: https://www.thereckoning.nz/mike-ledingham interview/.

25 Statement of Annasophia Calman for the contextual hearing, October 2019, p6.

26 See Concluding Observations of the Committee Against Torture, CAT/C/NZL/CO/5, 4 June 2009, p5, para 11.

27 See Wright, K, Swain, S and Sköld, J, The Age of Inquiry: A global mapping of institutional abuse inquiries, 2020, Melbourne: La Trobe University. They include Australia (the Royal Commission into Institutional Responses to Child Abuse, 2013-2017, and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2019-present), England and Wales (the Independent Inquiry into Child Sexual Abuse, 2014-present), Scotland (the Scottish Child Abuse Inquiry, 2015-present) and Northern Ireland (the Northern Ireland Historical Institutional Abuse Inquiry, 2014-2016), among others.

28 See Confidential Forum (2007), Te Āiotanga: Report of the Confidential Forum for Former In-Patients of Psychiatric Hospitals.

29 See Confidential Listening and Assistance Service (2015), Some memories never fade: Final report of the Confidential Listening and Assistance Service.

30 Auckland Committee on Racism and Discrimination, Ngā Tamatoa and Arohanui Inc (1978), Social Welfare children's homes: Report on an Inquiry held on June 11 1978.

31 Human Rights Commission (1982), Children and Young Persons Homes, Administered by The Department of Social Welfare.

32 Statement of Rosslyn Noonan for the contextual hearing, 4 November 2019, appendix 1: New Zealand Human Rights Commission Report, draft as at August 2011, Review of the State's Response to Historic Claims of Abuse and Mistreatment Suffered While Under the Care of the State, at para 1.14: "More than 16 inquiries were held into Auckland mental hospitals between 1969 and the landmark 1988 Mason Report. The reports identified various shortcomings in the institutions. A second Mason Report in 1996 identified six further Inquiries of national significance between 1988 and 1996."

33 Human Rights Commission, Review of the State's Response to Historic Claims of Abuse and Mistreatment Suffered While Under the Care of the State, draft as at August 2011, annexed to statement of Rosslyn Noonan for the contextual hearing, 4 November 2019, appendix 1.

34 Department of Social Welfare (1988), Puao-te-Ata-tu (day break): The Report of the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare, Wellington, p7.

35 See https://dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/4-ministers-law-and-6.

36 Under the Inquiries Act 2013, an inquiry may conduct its inquiry as it considers appropriate, unless otherwise specified by the Act or its terms of reference (section 14(1)(a) and (b)). Not all public inquiries must operate in public (section 15(1)(b) and (c)).

37 Submission of the Network of Survivors of Abuse in Faith-Based Institutions and their Supporters on draft terms of reference of Royal Commission of Inquiry into Historical Abuse in State Care, 16 April 2018, p17, para 5.0.

38 For example ibid, p10, para 3.32: "The Senior Counsel Assisting must be permitted to investigate the institutions in which abuse took place, particularly as this abuse was unquestionably criminal. This requires expert questioning and prosecutorial skills associated with the Senior Counsel Assisting role. To merely help direct victims and survivors in their testimony without concomitant questioning of the institutions which criminally assaulted them, renders the role of Senior Counsel Assisting pointless as his special skills will remain unused. The professed desire to prevent future abuse will not be attainable."

39 The terms of reference also identify principles to guide our work – see clause 18, 19.

40 See, for instance, Walker, R (2004), Ka Whawhai Tonu Matou: Struggle Without End, Auckland; Anderson, A, Binney, J, Harris, A (2014), Tangata Whenua: An Illustrated History, Wellington.

41 Whānau Ora Commissioning Agency (2020), Ko Te Wā Whakawhiti, It's Time for Change: A Māori Inquiry into Oranga Tamariki, Wellington.

42 See, for example, Waitangi Tribunal (2014), He Whakaputanga me te Tiriti: The Declaration and the Treaty, Wellington, p528; Waitangi Tribunal (1987), Report of the Waitangi Tribunal on the Orakei Claim, Wellington; Waitangi Tribunal (2008), He Maunga Rongo, vol 1, Wellington, pp166, 191.

43 See clause 20(d) of the terms of reference.

44 Waitangi Tribunal, Wai 2915, Oranga Tamariki Urgent Inquiry.

45 Whānau Ora Commissioning Agency (2020), Ko Te Wā Whakawhiti, It's Time for Change: A Māori Inquiry into Oranga Tamariki, Wellington.

46 See first report: Office of the Children's Commissioner (2020), Te Kuku O Te Manawa: Ka puta te riri, ka momori te ngākau, ka heke ngā roimata mo tōku pēpi.

47 Chief Ombudsman Investigation into policies, practices and procedures for the removal of newborn pēpi by Oranga Tamariki, Ministry for Children – see the report He Take Kōhukihuki, A Matter of Urgency, August 2020.

48 Government Inquiry into Mental Health and Addiction – see the report He Ara Oranga, November 2018.

49 Australian Royal Commission into Institutional Responses to Child Sexual Abuse – see the Final Report (2017).

50 Truth and Reconciliation Commission of Canada, inquiring into the experience of Aboriginal children at residential schools (2015).

51 Independent Inquiry into Child Sexual Abuse (England and Wales) (current).

52 Scottish Child Abuse Inquiry (current).

53 Historical Institutional Abuse Inquiry (Northern Ireland) (2017).

54 The Commission to Inquire into Child Abuse (Ireland) (2009).

55 Clause 20(d) of the terms of reference.

56 If we intend sharing confidential information, we work in accordance with the Tukutuku/Private Session Information: Self-incrimination Policy, which sets out the exceptions to the otherwise strict preservation of confidentiality of information we comply with.

57 Memorandum of Understanding, Department of Corrections and The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-Based Institutions, 7 June 2019.

58 Memorandum of Understanding, New Zealand Police and The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-Based Institutions, 21 October 2019.

59 Memorandum of Understanding, VOYCE Whakarongo Mai and The Royal Commission of Inquiry into Historical Abuse in State Care and the Care of Faith-Based Institutions, 12 March 2020.

60 See Messages to Aotearoa New Zealand on our website.

61 See Messages to Aotearoa New Zealand on our website.

62 Memorandum of Understanding, Department of Corrections and The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-Based Institutions, 7 June 2019.

63 The preamble to the terms of reference recognise that the matter of abuse in care "now requires thorough, effective investigation and review"; and clause 4 notes the need for "prompt and impartial investigation and examination" of abuse in care.

64 See Practice Note 1 – Legal assistance funding for activities set out in schedule 1, 4 December 2019, published on our website.

65 We have a research and ethics approval process to ensure all primary research we undertake or commission is relevant, suited to its intended purpose and ethical. The approval process involves reputable academics, such as Māori, Pacific, disability and social sciences experts.

66 See Volume 2 of this report, Survivor voices: an analysis.

67 See Abuse in Care Royal Commission of Inquiry (2020), What we know about the numbers of people in care and the extent of abuse in care, Indicative estimates of people in care and their abuse in care; and MartinJenkins (2020), Indicative estimates of the size of cohorts and levels of abuse in State care and faith-based care 1950 to 2019. More definitive estimates will be included in our final report.

68 MartinJenkins (2020), Economic cost of abuse in care: Scoping of approach and high-level estimate.

69 See clause 32 of the terms of reference.

70 Ableism is attitudes and policies that discriminate in favour of able-bodied people.

71 Clause 23 of the terms of reference requires us to "establish an advisory group or groups comprising survivors of abuse in State care and in the care of faith-based institutions that, from time to time, will provide assistance to inquiry members".

72 We have held four fono, attended by 100 Pacific individuals and organisations in Auckland and Wellington.

73 We have produced five such videos, which were shared on our Facebook page and have reached about 7,500 people.

74 According to the report, faith-based settings and social welfare settings accounted for the largest cohorts at over 254,000 people in each setting (each about 31 per cent of the total); followed by health and disability settings at 212,000 people (26 per cent); and education care settings at 102,000 people (12 per cent). The totals were then adjusted to account for the overlap among settings, to reflect the fact that many people passed through two or more settings. See MartinJenkins (2020), Indicative estimates of the size of cohorts and levels of abuse in state care and faith-based care 1950 to 2019, pp5-6.

75 Of these, the report estimates that up to approximately 84,000 were abused in faith-based care, and up to approximately 172,000 were abused in State care: see MartinJenkins (2020), Indicative estimates of the size of cohorts and levels of abuse in state care and faith-based care 1950 to 2019, p43.

76 The MartinJenkins report only examined a subset of the full range of settings in the inquiry's terms of reference. The report examined youth justice facilities and residences, state wards in care and protection residences, foster care and other placements, special schools, regional health schools, and non-religious boarding schools, psychiatric hospitals and facilities, faith-based residences, children's homes, orphanages and foster homes, faith-based residential disability care settings and faith-based boarding schools. It did not consider the wider category of all schools, and also did not include numbers of people who attended health camps, non-residential psychiatric facilities, residential and non-residential disability facilities, youth camps, and people held in transition in police or court cells, or within wider or pastoral care faith-based settings. The estimate of the number of people abused used modelling from New Zealand and overseas studies to extrapolate possible abuse figures. There are gaps in the data, and overseas studies are influenced by cultural, social, policy and legislative factors that are different to those applicable in New Zealand. Systems of providing care in New Zealand are also different to those available overseas.

77 Those interested in a fuller explanation of the work done, and its limitations, are referred to the separate reports published on our website: MartinJenkins (2020), Indicative estimates of the size of cohorts and levels of abuse in state care and faith-based care 1950 to 2019. A summary of this report in the wider context of available literature is also contained in the Abuse in Care Royal Commission of Inquiry (2020), What we know about the numbers of people in care and the extent of abuse in care (also published on our website).

78 These are the figures as at late August 2020. For full detail, see Abuse in Care Royal Commission of Inquiry (2020), What we know about the numbers of people in care and the extent of abuse in care, Registrations with the Royal Commission of Inquiry, Table 3: Registered survivors by registration type, care setting, gender, ethnicity, and age, p34.

79 This section draws on the analysis of available information contained in the separately published research report on what we know about the number of people in care and the extent of abuse in care. For full references for information cited in this section, see Abuse in Care Royal Commission of Inquiry (2020), What we know about the numbers of people in care and the extent of abuse in care, Māori in care, pp15-20.

80 JK Hunn (1961), Report on Department of Maori Affairs, Wellington; Te Puni Kōkiri (1998), Progress towards closing social and economic gaps between Māori and non-Māori, Wellington; Te Puni Kōkiri (2000), Progress towards closing social and economic gaps between Māori and non-Māori, Wellington.

81 Statement of Sir Kim Workman for the contextual hearing, 5 October 2019, p10.

82 Ibid, pp10-12; and statement of Dr Oliver Sutherland for the contextual hearing, 4 October 2019, pp1-2.

83 In 1969, 70 per cent of residents of the Ōwairaka Boys' Home were "Polynesian" and in 1978, 80 percent were described as "Polynesian, mainly Māori": Human Rights Commission (1992), Who cares for the kids?: A study of children and young people in out-of-family care, p219.

84 See also Te Kani Kingi et al (2018), Maea Te Toi Ora, Māori Health Transformations, p13. First-time admissions to psychiatric facilities increased only slightly among non-Māori between 1960 and 1990, but the corresponding rate for Māori during the same period was more than 200 per cent.

85 Oranga Tamariki Quarterly Report, June 2020.

86 Office of the Children's Commissioner (2019), Infographic – Pēpi Māori 0-3 months and the care and protection system.

87 Oranga Tamariki – Ministry for Children (2019), Safety of children in care, Annual Report 2018-19, p18. This includes those that are recorded as having either Māori or Māori and Pacific ethnicity. We note that these numbers fluctuate between different reporting periods.

88 This section draws on the analysis of available information contained in the separately published research report on what we know about the number of people in care and the extent of abuse in care. For full references for information cited in this section, see Abuse in Care Royal Commission of Inquiry (2020), What we know about the numbers of people in care and the extent of abuse in care, pp5, 10-11, and Pacific people in care, pp20-23.

89 See, for example, the witness statement of Fa'afete Taito for the contextual hearing, 24 September 2019, p7. There was also general underreporting of Pacific ethnicity in census data in the 1970s because of fears of deportation due to overstaying: see Abuse in Care Royal Commission of Inquiry (2020), What we know about the numbers of people in care and the extent of abuse in care, Demographic change in Aotearoa New Zealand, p11.

90 Transcript of evidence of Fa'afete Taito at the contextual hearing, 4 November 2019, pp639, 651-652.

91 We note that if compared to a proportion of Pacific youth in just Auckland, the number in these Auckland residences may not be as out of proportion.

92 Residential schools for children with a learning disability also reported high numbers of Māori and Pacific students. In 1984, Campbell Park had 57 per cent Māori and Pacific, and Salisbury Girls School had 51 per cent Māori and Pacific.

93 This section draws on the analysis of available information contained in the separately published research report on what we know about the number of people in care and the extent of abuse in care. For full references for information cited in this section, see Abuse in Care Royal Commission of Inquiry (2020), What we know about the numbers of people in care and the extent of abuse in care, Disabled people in care, pp 24-28, and Indicative estimates of the number of people who may have been abused in care, pp 30-32.

94 The study of how to rearrange reproduction within a human population to increase the occurrence of heritable characteristics regarded as desirable.

95 Statement of Dr Hilary Stace for the contextual hearing, 20 September 2019.

96 Statement of Sir Robert Martin for the contextual hearing, p2.

97 Transcript of evidence of Sir Robert Martin at the contextual hearing, 5 November 2019, p697.

98 Transcript of evidence of Trish Grant at the State redress hearing, 28 September 2020, p314.

99 Similarly, the majority of claimants with the Ministry of Social Development are male; 71 per cent compared to 28 per cent female: see statement of Simon MacPherson for the State redress hearing, p22.

100 Transcript of evidence of Sonja Cooper and Amanda Hill at the State redress hearing, 29 September 2020, p 375; statement of Professor Elizabeth Stanley for the contextual hearing, 11 October 2019, p9; statement of Dr Oliver Sutherland for the contextual hearing, 15 October 2019, pp17-18. See also the Human Rights Commission (1982), Children and Young Persons Homes, Administered by The Department of Social Welfare, pp17-18, 85.

101 See, for example, statement of Dr Hilary Stace for the contextual hearing, p10; Confidential Forum (2007), Te Āiotanga: Report of the Confidential Forum for Former In-Patients of Psychiatric Hospitals, p33; Hamilton C (2012), Sterilisation and intellectually disabled people in New Zealand – still on the agenda?, Kotuitui: New Zealand Journal of Social Sciences Online, 7(2), pp61-71; Mirfin-Beitch B & Conder J (2017), Institutions are places of abuse: The experiences of disabled children and adults in State care between 1950 and 1992, Donald Beasley Institute.

102 Statement of Professor Elizabeth Stanley for the contextual hearing, 11 October 2019, p16.

103 Statement of Dr Oliver Sutherland for the contextual hearing, p9.

104 Stanley (2016), Road to Hell, p67.

105 Statement of Beverly Wardle-Jackson for the contextual hearing, 7 November 2019, p11.

106 Ibid, p8.

107 Adoption placements are within the meaning of State care under clause 17.3(c)(i)(B) of the terms of reference. Women and girls may have also themselves been in care when adopting out their children.

108 Maria Haenga Collins (2011), Belonging and Whakapapa: the closed stranger adoptions of Māori children into Pākehā families; Anne Else (1991), A Question of Adoption: closed stranger adoption in New Zealand, 1944-1974, Wellington.

109 Ibid.

110 Statement of Dr Alison Green for the contextual hearing, p2.

111 Statement of Dr Anne Else for the contextual hearing, p8.

112 Statement of Judge Carolyn Henwood for the contextual hearing, 28 October 2019, pp14-15.

113 Volume 2 – Survivor voices: an analysis, p9.

114 Statement of James Packer for the State redress hearing, 14 February 2020, p3.

115 Transcript of evidence of Cheryl Munro at the State redress hearing, 21 September 2020, p17.

116 Statement of Leonie McInroe for the State redress hearing, 31 July 2020.

117 Transcript of evidence of Joan Bellingham at the State redress hearing, 23 September 2020, p60.

118 Clause 17.1 of the terms of reference.

119 See most recent views of the United Nations Committee Against Torture: Zentveld v New Zealand CAT/C/68/D/852/2017 (2019), p15. Because New Zealand did not contest that what was alleged would amount to torture, the focus of the report was on whether New Zealand had provided sufficient remedy. See also concluding observations on the fifth periodic report of New Zealand, CAT/C/NZL/CO/5 (2009).

120 Third parties provided programmes under the Child Welfare Act 1925, the Children and Young Persons Act 1974 and the Oranga Tamariki Act 1989.

121 Clause 17.3 of the terms of reference.

122 Clause 17.3(a) and 17.3(b) of the terms of reference.

123 See, for example, the statement of Dr Oliver Sutherland for the contextual hearing, 4 October 2019, p14.

124 See, for example, Stanley (2016), The Road to Hell, pp113-115.

125 Statement of Beverly Wardle-Jackson for the contextual hearing, 7 November 2019, p6.

126 Statement of Dr Oliver Sutherland for the contextual hearing, 4 October 2019, p15.

127 See, for example, the statement of Beverly Wardle-Jackson for the contextual hearing, 7 November 2019, p2; statement of Sir Robert Martin for the contextual hearing, p4; statement of Professor Elizabeth Stanley for the contextual hearing, 11 October 2019, p3.

128 See Stanley (2016), Road to Hell, p116.

129 As also documented by Sir Rodney Gallen, in his Report on the Lake Alice Incidents (2001), pp6-8.

130 As cited in statement of Mary O'Hagan for the contextual hearing, 14 October 2019, p17.

131 Confidential Listening and Assistance Service (2015), Some memories never fade: Final report of the Confidential Listening and Assistance Service, p29.

132 As cited in statement of Mary O'Hagan for the contextual hearing, 14 October 2019, p18.

133 Transcript of evidence of Joan Bellingham at the State redress hearing, 22 September 2020, p61.

134 See most recent views of the United Nations Committee Against Torture: Zentveld v New Zealand CAT/C/68/D/852/2017 (2019), p15. See also concluding observations on the fifth periodic report of New Zealand, CAT/C/NZL/CO/5 (2009).

135 For example, the Ministry of Social Development's review of Ōwairaka noted that one boy was held in secure for 108 days during 1985: Ministry of Social Development (2006), Social Welfare Residential Care 1950-1994: Volume III – A Selection of Boys' and Girls' Homes, p35.

136 Human Rights Commission (1982), Children and Young Persons Homes, Administered by The Department of Social Welfare, p23. See also statement of Dr Oliver Sutherland for the contextual hearing, 4 October 2019, pp12-13.

137 See Shalev, S (2017), Thinking Outside the Box: a review of seclusion and restraint practices in New Zealand, Human Rights Commission; and reports released in August 2020 by the Chief Ombudsman on five mental health units.

138 Transcript of evidence of Professor Elizabeth Stanley at the contextual hearing, 4 November 2019, p660.

139 Transcript of evidence of Dallas Pickering at the contextual hearing, 5 November 2019, p767.

140 Statement of Annasophia Calman for the contextual hearing, October 2019, p4.

141 Transcript of evidence of Sonja Cooper and Amanda Hill at the State redress hearing, 29 September 2020, p377; statement of Professor Elizabeth Stanley for the contextual hearing, 11 October 2019, p9; statement of Dr Oliver Sutherland for the contextual hearing, 15 October 2019, pp17-18. See also the Human Rights Commission (1982), Children and Young Persons Homes, pp17-18; Sutherland (2020), Justice and Race, pp100, 113.

142 Statement of Mike Ledingham for the contextual hearing, October/November 2019, p5.

143 See, for example, statement of Keith Wiffin for the State redress hearing, 12 February 2020, p2; and statement of Earl White for the State redress hearing, 15 July 2020, p7.

144 See statement of Arthur Taylor for the contextual hearing, 3 October 2019, p10; Confidential Listening and Assistance Service (2015), Some memories never fade: Final report of Confidential Listening and Assistance Service, p30; and Confidential Forum (2007), Te Āiotanga: Report of the Confidential Forum for Former In-Patients of Psychiatric Hospitals, p21.

145 Statement of Sir Robert Martin for the contextual hearing, p12.

146 Transcript of evidence of Gay Rowe at the State redress hearing, 29 September 2020, p343.

147 Statement of Keith Wiffin for the contextual hearing, 29 October 2019, p2.

148 Statement of Ann-Marie Shelley, 6 August 2020, p8.

149 Statement of Arthur Taylor for the contextual hearing, 3 October 2019, p5.

150 Statement by Dallas Pickering for the contextual hearing, 21 October 2019, p4.

151 Family homes were homes in which many children in State care would be placed, often together with the children of the supervising parents, for periods of time.

152 Transcript of evidence of Chassy Duncan at the State redress hearing, 23 September 2020, p88.

153 Statement of Dallas Pickering for the contextual hearing, 21 October 2019, p3.

154 Statement of Professor Elizabeth Stanley for the contextual hearing, 11 October 2019, p8.

155 Statement of Annasophia Calman for the contextual hearing, October 2019, p 3.

156 Transcript of evidence of Sir Robert Martin at the contextual hearing, 5 November 2019, p697.

157 Transcript of evidence of Beverly Wardle-Jackson at the contextual hearing, 6 November 2019, p896; and statement of Beverly Wardle-Jackson for the contextual hearing, 7 November 2019, p2.

158 Statement of Professor Elizabeth Stanley for the contextual hearing, 11 October 2019, p3.

159 Statement of Arthur Taylor for the contextual hearing, 3 October 2019, p6.

160 Transcript of evidence of Professor Elizabeth Stanley at the contextual hearing, 4 November 2019, p660.

161 Statement of Dr Oliver Sutherland for the contextual hearing, 4 October 2019, p15.

162 For example, see statement of Beverly Wardle-Jackson for the contextual hearing, 7 November 2019, p4; and statement of Dr Oliver Sutherland for the contextual hearing, 4 October 2019, pp11 and 16.

163 Statement of Dr Brigit Mirfin-Veitch for the contextual hearing, p8.

164 Statement of Professor Elizabeth Stanley for the contextual hearing, 11 October 2019, p5.

165 Transcript of evidence of Beverly Wardle-Jackson at the contextual hearing, 6 November 2019, p906; and statement of Beverly Wardle-Jackson for the contextual hearing, 7 November 2019, p9.

166 Stanley (2016), Road to Hell, pp37-38. See also Abuse in Care Royal Commission of Inquiry (2020), What we know about the numbers of people in care and the extent of abuse in care, Māori in care, p17.

167 Fareham housed about 40 young girls, but stopped admitting only Māori in about 1963.

168 Statement of Professor Elizabeth Stanley for the contextual hearing, 11 October 2019, p7.

169 Ibid.

170 Dalley, B (1998), Family Matters: Child Welfare in Twentieth-century New Zealand, p238.

171 For example, see statement of Sir Kim Workman for the contextual hearing, 5 October 2019, pp6 and 12. He told us that “the future of Māori and Pasifika children was left largely in the hands of Pākehā officials”. He noted, for example, that there were very few Māori staff at Kohitere Boys’ Training Centre, despite the fact that about 80 per cent to 90 per cent of those sent there were Māori. See also the Mason Report (1988), which found there was sometimes a lack of a Māori perspective on, and whānau input into, admitting and treating Māori patients in psychiatric facilities.

172 Dalley, B (1998), Family Matters: Child Welfare in Twentieth-century New Zealand, p238; Else, A (1991), A question of adoption. Hill, RS (2009), Maori and the State: Crown Maori relations in New Zealand/Aotearoa 1950-2000, p34.

173 Statement of Fa’afete Taito for the contextual hearing, 24 September 2019, p8.

174 Statement of James Packer for the State redress hearing, 13 February 2020, p2.

175 Statement of Sir Robert Martin for the contextual hearing, p9.

176 Statement of Dr Brigit Mirfin-Veitch for the contextual hearing, p5.

177 Transcript of evidence of Sir Robert Martin at the contextual hearing, 5 November 2019, p699.

178 Transcript of evidence of Sir Robert Martin at the contextual hearing, 5 November 2019, p702 and statement of Sir Robert Martin for the contextual hearing, p14.

179 Statement of Sir Robert Martin for the contextual hearing, p15.

180 For example, in relation to children with learning disability and neurodiversity, see Mirfin-Veitch & Conder (2017), Institutions are places of abuse: The experiences of disabled children and adults in State care between 1950-1992, Donald Beasley Institute.

181 Statement of Beverly Wardle-Jackson for the contextual hearing, 7 November 2019, pp1-13.

182 Statement of Chassy Duncan for the State redress hearing, 24 February 2020, pp3-4.

183 Statement of Kerry Johnson for the State redress hearing, February 2020, pp2-3.

184 See, for example, statement of Dallas Pickering for the contextual hearing, pp2-3; and statement of Beverly Wardle-Jackson for the contextual hearing, 7 November 2019, p4; Volume 2 – Survivor voices: an analysis, p29.

185 See, for example, Carr, A, Duff, H, & Craddock, F (2018), A systematic review of the outcome of child abuse in long-term care.

186 Ibid; and Katz, I, Jones, A, Newton, BJ, & Reimer, E (2017), Life journeys of victim/survivors of child sexual abuse in institutions: An analysis of Royal Commission private sessions.

187 Statement of Professor Michael Tarren-Sweeney for the contextual hearing, 8 November 2019, p3.

188 Blakemore, T, Herbert, JL, Arney, F, & Parkinson, S (2017), The impacts of institutional child sexual abuse: A rapid review of the evidence, Child Abuse and Neglect, pp74, 35-48; Commonwealth of Australia, (2004), Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children.

189 Statement of Arthur Taylor for the contextual hearing, 3 October 2019, pp1-2.

190 Transcript of evidence of Tanya and Georgina Sammons at the State redress hearing, 25 September 2020, p193.

191 Transcript of evidence of Cheryl Munro (on behalf of James Packer) at the State redress hearing, 21 September 2020, p20.

192 See Volume 2 – Survivor voices: an analysis, p61.

193 Ibid, p61.

194 Statement of Anne Hill, 28 September 2020, p9.

195 Confidential Listening and Assistance Service (2015), Some memories never fade: Final report of the Confidential Listening and Assistance Service; Carr, A, Duff, H, & Craddock, F (2018), A systemic review of the outcome of child abuse in long-term care.

196 Carr, A, Duff, H, & Craddock, F (2018), A systemic review of the outcome of child abuse in long-term care; Blakemore, T, Herbert, LJ, Arney, F, & Parkinson, S (2017), The impacts of institutional child sexual abuse: A rapid review of the evidence.

197 See Volume 2 – Survivor voices: an analysis, pp51-52.

198 Carr, A, Duff, H, & Craddock, F (2018), A systemic review of the outcome of child abuse in long-term care.

199 See statement of Dr Charlene Rapsey for the contextual hearing, 30 October 2019, p4 and associated sources.

200 Statement of Fa'afete Taito for the contextual hearing, 24 September 2019, p8.

201 Statement of Fa'afete Taito for the contextual hearing, 24 September 2019, pp7-8.

202 Ibid, p7.

203 Volume 2 – Survivor voices: an analysis, p56.

204 Ibid, p59.

205 See, for example, Lowenstein, K, (2018), Shutting down the trauma to prison pipeline: Early, appropriate care for child-welfare involved youth; Taylor, C & Fitzpatrick, C (2006), Young people in care and criminal behaviour, Jessica Kingsley Publishers.

206 Volume 2 – Survivor voices: an analysis, p56.

207 Statement of Tanya and Georgina Sammons for the State redress hearing, 24 February 2020, p9.

208 See, for example, statement of Dr Rawiri Waretini-Karena for the contextual hearing.

209 Transcript of evidence of Hope Curtin at the State redress hearing, 25 September 2020, pp217-218.

210 See the statement of Professor Tracey McIntosh for the contextual hearing, 15 October 2019.

211 Statement of Sonja Cooper and Amanda Hill for the State redress hearing, 31 January 2020, p265.

212 MartinJenkins (2020) Economic cost of abuse in care, p3. The estimate of total cost is based on the estimate of the number of people abused as calculated in MartinJenkins (2020), Indicative estimates of the size of cohorts and levels of abuse in State and faith-based care 1950 to 2019.

213 Statement of Joan Bellingham for the State redress hearing, 25 February 2020, pp7-8.

214 Transcript of evidence of Gay Rowe at the State redress hearing, 29 September 2020, p343.

215 Statement of Ann-Marie Shelley, 6 August 2020, p2.

216 Transcript of evidence of Earl White at the State redress hearing, 24 September 2020, p128.

217 See clause 17.6 of the terms of reference. In international human rights law, States have obligations to provide effective remedies for human rights violations: for example, Universal Declaration of Human Rights, art 8; International Covenant on Civil and Political Rights, art 2(3); Convention on the Elimination of All Forms of Racial Discrimination, art 6; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art 14; and the United Nations Declaration on the Rights of Indigenous Peoples, art 40. Each of these obligations may apply to some cases of abuse in care, which will be discussed more fully in the full redress report. Remedies must be accessible and effective, and take into account special vulnerabilities, for example of children (see CCPR/C/21/Rev.1/Add. 13 (2004) at [15]). The United Nations has set out that redress for such violations can include measures such as compensation, rehabilitation, a public apology or memorial, creating a public record about what happened, investigations and prosecutions for accountability, and structural reforms: see the Basic Principles and Guidelines on the Right to a Remedy and Reparation, proclaimed by the UN General Assembly. For New Zealand, redress also includes concepts from te ao Māori.

218 Until 2012, claims relating to abuse in healthcare settings were generally made to the Crown Health Financing Agency, rather than the Ministry of Health. The ministry was responsible for monitoring CHFA. For the purposes of this report, we include reference to these claims when we refer to claims made to the Ministry of Health.

219 This does not include claims that have been made directly to other services such as ACC. Four-fifths of the 5,117 claims have been made to the Ministry of Social Development, which received 4,177 claims between 2003 and 30 June 2020. Oranga Tamariki received 19 claims relating to abuse in care that occurred before 2017. The Ministry of Education received 177 claims between 2010 and October 2020 (and a "small number" of direct claims prior to 2010), and the Ministry of Health received more than 773 claims up to 30 November 2019 (including 336 claims made to the Crown Health Financing Agency, and 185 Lake Alice claimants).

220 Supplementary statement of Linda Hrstich-Meyer for the State redress hearing, 31 July 2020, p6.

221 Of the 5,117 claims, 2,743 remain outstanding. Ministry of Education has closed 46 of 177 (see transcript of evidence of Helen Hurst at the State redress hearing, 28 October 2020, p735); Oranga Tamariki has resolved 11 of their 19 (see transcript of evidence of Steven Groom at the State redress hearing, 27 October 2020, pp616 – 617); the Ministry of Social Development had closed 1,942 of its 4,177 claims by 30 June 2020 (see supplementary statement of Linda Hrstich-Meyer for the State redress hearing, 31 July 2020, pp5-6); and the Ministry of Health had closed 744 claims (including 185 Lake Alice claims, 336 claims closed by the Crown Health Financing Agency, and 223 claims made to Ministry of Health – see statement of Philip Knipe for the State redress hearing, pp16 and 23).

222 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Zentveld v New Zealand CAT/C/68/D/852/2017 (2019).

223 Statement of Leonie McInroe for the State redress hearing, 31 July 2020, p2.

224 Transcript of evidence of Una Jagose at the State redress hearing, 3 November 2020, p1069.

225 Possible defences also include bars under the accident compensation legislation, and immunity under the Mental Health Act 1969, as well as principles of vicarious liability.

226 See S v Attorney-General [2003] 3 NZLR 450 (CA); W v Attorney-General CA 227/02 15 July 2003.

227 The accident compensation scheme provides cover for personal injuries, including mental injuries caused by sexual offences. Where cover is available, the person cannot bring a claim in court for compensatory damages.

228 In general, the Limitation Act 1950 has applied to the majority of these claims. The defence is available where more than two years has passed from the date of the relevant event causing bodily injury, or from the time the person has reached 20 years old, though this period can be extended to six years with leave of the court. It is subject to some exceptions if the claimant can show that he or she was under a disability that prevented him or her from bringing the claim earlier. In some cases, the time period may also run from a later date if the claimant can show that the harm they suffered could only have been reasonably discovered at that later date.

229 The Mental Health Acts 1935 and 1969 provided immunity for acts done in pursuance of the provisions of Acts, unless the person acted in bad faith or without reasonable care. They also provided a time limit of six months for bringing such actions.

230 Transcript of evidence of Una Jagose at the State redress hearing, 2 November 2020, p1025.

231 Transcript of evidence of Earl White at the State redress hearing, 24 September 2020, p146.

232 Transcript of evidence of Keith Wiffin at the State redress hearing, 21 September 2020, p27.

233 The government did create some external processes, such as the Confidential Forum for Former In-Patients of Psychiatric Hospitals and Confidential Listening and Assistance Service, but these had no powers to investigate or assess claims, offer apologies or make settlements. Both have been discontinued.

234 We note that some processes, such as that administered by the Ministry of Social Development's historic claims unit, were set up earlier than 2008, but were developed in response to the wider scope to settle claims under the 2008 revised litigation strategy.

235 See Historic abuse – make a claim, Ministry of Social development, n.d.: https://www.msd.govt.nz/about-msd-and-our-work/work-programmes/historic-claims/.

236 See Sensitive claims of abuse in state schools, Ministry of Education, last reviewed: 08 October 2020 https://education.govt.nz/our-work/contact-us/regional-ministry-contacts/learning-support-services/historic-claims-for-abuse-or-neglect-at-a-residential-special-school/.

237 For example, a claim against the Ministry of Social Development today can result in a payment of $55,000 in a case of chronic and serious sexual and physical abuse, while equivalent abuse suffered in the care of the Ministry of Health can result in only a "wellness payment" of up to $9,000.

238 We are advised that Oranga Tamariki has one active contemporary claim.

239 The Ministry of Social Development has very recently released a more comprehensive document showing the considerations, following intervention from the Ombudsman: see the Ministry's Historic Claims Business Process and Guidance, September 2020. However, there is very little available information from the Ministry of Health or Ministry of Education.

240 Statement of James Packer for the State redress hearing, 13 February 2020, p13.

241 Statement of Joan Bellingham for the State redress hearing, 25 February 2020, p11.

242 We are advised there was previously information on the website about how to make a complaint.

243 See www.orangatamariki.govt.nz.

244 Transcript of evidence of Brett Dooley and David Howden at the State redress hearing, 29 October 2020, p843.

245 Ibid at p869. Ninety-three were reinstated, and nine further claimants made fresh applications for legal aid which were granted.

246 Ibid, p864.

247 Transcript of evidence of Linda Hrstich-Meyer at the State redress hearing, 23 October 2020, p474-475.

248 Statement of Linda Hrstich-Meyer for the State redress hearing, 27 January 2020, p8; and statement of Garth Young for the State redress hearing, 31 July 2020, p23. For a period 'wellness payments' were also made for claimants who wished to discontinue claims.

249 The Accident Compensation Corporation offers counselling to those who have been sexually abused or assaulted. The number of sessions depends on need. Family members can also have some sessions.

250 Review of Historical Claims Resolution Process – Report on the Consultation Process with Māori Claimants, July 2018, p12.

251 Transcript of evidence of Linda Hrstich-Meyer at the State redress hearing, 23 October 2020, p461.

252 See for example He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction, p59.

253 Transcript of evidence of Cheryl Munro (on behalf of James Packer) at the State redress hearing, 21 September 2020, p15.

254 Transcript of evidence of Sonja Cooper and Amanda Hill at the State redress hearing, 1 October 2020, p565.

255 Transcript of evidence of Linda Hrstich-Meyer at the State redress hearing, 23 October 2020, p480.

256 N v Attorney-General [2016] NZHC 547.

257 Statement of Patrick Stevens for the State redress hearing, 28 February 2020, p7.

258 Statement of James Packer for the State redress hearing, 13 February 2020, pp13-14. Mr Packer's evidence was presented by his mother Cheryl Munro at the hearing.

259 Statement of Keith Wiffin for the State redress hearing, 12 February 2020, p15.

260 This was on the basis that the assessor's report is legally privileged: see transcript of evidence of Helen Hurst at the State redress hearing, 28 October 2020, p784.

261 Transcript of evidence of Garth Young at the State redress hearing, 22 October 2020, p360.

262 Statement of Tanya and Georgina Sammons for the State redress hearing, 24 February 2020, pp14-15.

263 Statement of Linda Hrstich-Meyer for the State redress hearing, 27 January 2020, p21.

264 Transcript of evidence of Helen Hurst at the State redress hearing, 28 October 2020, p735.

265 See statement of Trish Grant for the State redress hearing, p22.

266 Transcript of evidence of Trish Grant at the State redress hearing, 28 September 2020, p302.

267 Lake Alice survivors may still today receive higher amounts of compensation – for example, Patrick Stevens received a payment of over $81,000 last year: statement of Patrick Stevens for the State redress hearing, 28 February 2020, p11.

268 We note that comparisons with international compensation schemes do not take into account New Zealand-specific factors, such as the accident compensation scheme.

269 MSD Historic Claims Business Process and Guidance, October 2018 (now publicly available on MSD website). MSD Historic Claims Business Process and Guidance, October 2019, version: 2.1, release date: 7 October 2019, owner: Linda Hrstich-Meyer, page 21, https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/historic-claims/msd-historic-claims-business-process-and-guidance-07-2020.pdf

270 Transcript of evidence of Cheryl Munro (on behalf of James Packer) at the State redress hearing, 21 September 2020, p19.

271 Transcript of evidence of Helen Hurst at the State redress hearing, 28 October 2020, pp752, 772.

272 Ibid, pp754-756, 759-760.

273 Transcript of evidence of Philip Knipe at the State redress hearing, 19 October 2020, pp28, 33.

274 Ibid, from p25.

275 Transcript of evidence of Gay Rowe at the State redress hearing, 29 September 2020, p349.

276 Statement of Gay Rowe for the State redress hearing, 12 February 2020, p19.

277 Transcript of evidence of Gay Rowe at the State redress hearing, 29 September 2020, p349.

278 Transcript of evidence of Philip Knipe at the State redress hearing, 19 October 2020, p98.

279 Transcript of evidence of Steven Groom at the State redress hearing, 27 October 2020, p665.

280 Transcript of evidence of Steven Groom at the State redress hearing, 27 October 2020, p681; transcript of evidence of Helen Hurst at the State redress hearing, 28 October 2020, p748.

281 United Nations Declaration on the Rights of Indigenous Peoples, art 19.

282 Ethnicity data of claimants has not been systematically recorded by any agency, but the Ministry of Social Development, and Ministry of Education both gave evidence that they estimate a high proportion of the claimants to their respective processes are Maori: transcript of evidence of Simon MacPherson at the State redress hearing, 19 October 2020, p125; transcript of evidence of Helen Hurst at the State redress hearing, 28 October 2020, p751. The Ministry of Health gave evidence that Māori make up about 10-20 per cent of claimants to its process: transcript of evidence of Philip Knipe at the State redress hearing, 19 October 2020, pp97-98.

283 Transcript of evidence of Helen Hurst at the State redress hearing, 28 October 2020, p796.

Abuse in Care
Royal Commission of Inquiry