

19 November 2019

### Thematic review of Royal Commission Contextual Hearing

1. The Royal Commission of Inquiry into Abuse in State Care and the Care of Faith-based Organisations (**Royal Commission**) ran a Contextual Hearing in Auckland from 29 October to 8 November 2019. Twenty-nine witnesses gave evidence, and the Disability Rights Commissioner, counsel for the Crown, and counsel for Te Rōpū Tautoko (**Tautoko**) made statements to the Royal Commission. Witnesses included experts, survivors of abuse, and experts who had survived abuse themselves.
2. This document sets out the main themes of the evidence given at the Hearing. Multiple counsel, including counsel for Tautoko, noted that we did not necessarily accept the evidence being given, but that we would test the evidence at a more appropriate time.
3. The majority of the evidence given focused on State care, and abuse in State institutions. Nevertheless, we consider that the contextual themes may inform the Royal Commission's future approach to all investigations, including those into the Catholic Church.
4. Two witnesses, Professor Des Cahill and Dr Peter Wilkinson, gave joint evidence solely on faith-based institutions. Michael Ledingham and Annasophia Calman gave evidence of the abuse they experienced in Catholic institutions. Cooper Legal also gave evidence that briefly mentioned their engagement with various Catholic redress processes.

### Key themes

5. From the Hearing, a total of eight key themes were apparent;
  - (a) Abuse and the impact of abuse in care on Māori;
  - (b) Abuse and the impact of abuse in care on people with learning disabilities;
  - (c) Adoption;
  - (d) The impact of the abuse on survivors;
  - (e) The redress process;
  - (f) The Privacy Act;
  - (g) Recommendations for change in the State context; and
  - (h) Abuse in the Catholic Church, including recommendations for change.

### Abuse and the impact of abuse in care on Māori

6. A number of both expert and survivor witnesses gave evidence about abuse experienced by Māori. This evidence addressed the cultural and societal factors that led to an overrepresentation of Māori at every level of the State care system.

7. Witnesses discussed statistical evidence showing that Māori were more likely to be treated with greater severity at every level of the care system, including being more likely to be investigated by Social Welfare, more likely to be uplifted, and more likely to be institutionalised. Witnesses noted that this institutional bias is still present today.
8. Removing Māori from their families and placing them in either institutions or foster homes predominately overseen by Pākehā parents deprived these children of developing a cultural identity. This caused intergenerational trauma where parents raised in care were unable to give their children a connection to their whakapapa and culture. This alienation led to the forming of sub-cultures, including gangs.
9. Evidence indicated that actions taken by successive governments to date had failed. This was partially accredited to no government being willing to seriously comply with obligations for Māori self-determination under the Treaty of Waitangi, as doing so would involve divesting a significant amount of the State's power. Witnesses called for a truly Māori-centred approach, including measures such as appointing independent Children's Commissioners for Māori, and establishing entirely separate agencies to handle State engagement with Māori children.

### **Abuse and the impact of abuse in care on people with learning disabilities**

10. Both expert and survivor witnesses discussed the abuse, and neglect experienced by people with learning disabilities. Parents were encouraged to place their disabled children in institutions and forget about them. Experts criticised these policies as being based in eugenics and treating people with learning disabilities as sub-human.
11. The remote location of institutions and the lack of societal concern about these people created a culture where neglect and abuse was unchecked. Abuse took place in a multitude of forms, including ECT being administered as punishment, seclusion, and medical experimentation.
12. Witnesses speaking on this topic were generally dissatisfied with the progress made regarding the treatment of people with learning disabilities. Although the large institutions have been closed, witnesses considered that societal attitudes towards people with learning disabilities have not significantly changed, and criticised ongoing prejudices that undermine self-autonomy, personal choice, and the individuality of members of this vulnerable group. Furthermore, redress processes limit the definition of abuse to exclude some of the treatment suffered by former residents of institutions by defining it as "medical treatment".

### **Adoption**

13. Witnesses discussed the adoption system in New Zealand from 1950 – 1999 and gave evidence about the experience of children who were given up for adoption. They discussed the cultural and societal pressure for single mothers to give their child up for adoption. Witnesses noted that this pressure was heaviest within privileged Pākehā families; less privileged mothers were more likely to have their child removed by the State, but were also more likely to want to keep their child.
14. Adoption disproportionately affected Māori, and Māori children and families experienced worse outcomes in the adoption process. Social workers ranked potential adoptive families and children, and placed the "best" children with the "best" families. Evidence showed that the more "Māori" a child looked, the less desirable that child was. This in turn led to fewer Māori children being adopted, and therefore more Māori growing up in institutions.

15. Māori whāngai (traditional adoption) was not recognised in the State adoption system. Whānau, such as grandparents, who were often willing and able to adopt the child, were refused permission to adopt as they were soon as “too old, too poor, and too Māori.” In turn, this contributed to cultural disenfranchisement with Māori children raised without a connection to their culture and whakapapa.

### **Impact of abuse on survivors**

16. Survivor witnesses gave evidence of the abuse they suffered in care, and spoke about the enduring effect of this abuse on their lives. Common themes included difficulties forming close relationships, a lack of connection with family and culture, deprivation of an education, and abuse in care setting the path for criminal activity and incarceration later in life.
17. Evidence showed the lifelong effects of institutionalisation and abuse in care. A number of survivor witnesses spoke about how the abuse they suffered normalised violence and criminal behaviour, which led to later engagement with the criminal justice system.

### **The redress process**

18. Witnesses criticised the inconsistency in the treatment of survivors across different Ministries and time periods. They had significant difficulty with the State playing the roles of both perpetrator and decision maker.
19. Expert witnesses criticised the State for taking an uncompromising approach to litigation where it relied on technical defences including the Limitations Act and ACC litigation bar. This removed the courts as an avenue for survivors to seek redress, meaning their only option was to engage with the State’s processes. They also criticised a lack of legal aid support.
20. When survivors did engage with this process, they described heavy scepticism from the State and significant delays in having their complaints heard or resolved. If resolution was ultimately achieved, survivors were disappointed with the amount of redress they received, describing it as wholly inadequate to remedy the impact the abuse had on their lives.

### **Privacy Act**

21. Witnesses described the State taking years to respond to Privacy Act requests, and when the information was given, having such significant redactions that the documents were essentially unreadable. Requesters were forced to engage with the complaints process to obtain basic information such as where they were placed. Survivors and expert witnesses implied that this lack of cooperation in the Privacy Act process was a deliberate tactic by the State to frustrate claimants.
22. These criticisms will almost certainly be raised about the Catholic Church process.
23. The treatment of peoples’ information is a highly sensitive issue, and the Privacy Act defines personal information so narrowly that it may not be fit for purpose when assessing whether to release information to a requestor. We have sought to address these issues in the Privacy Act advice previously promulgated through Tautoko and will keep this under review as the Royal Commission progresses.

24. Catholic organisations should be cognisant of the 20-day deadline for response under the Privacy Act, proactively communicate with requestors, and take a disclosure-friendly approach to releasing information.

### **Recommendations for changes in the State context**

25. Witnesses noted that multiple other inquiries and reviews have been undertaken into abuse in State care. A lack of substantive State response to the recommendations of previous inquiries caused a lack of transformational change. Lack of political will was cited as the main reason for a failure to take substantive steps to address these problems.
26. Recommendations included a comprehensive revision of the role of the State in child protection, with a need to invest heavily in both wrap-around support systems to ensure children can remain with their parents, whānau being seen as the preferred carers, and a substantive increase in oversight when children do have to be removed from their parent's care.
27. Witnesses spoke about the need to address the intergenerational impact of abuse, which requires supporting and assisting adults who were abused as children. This adds to the political unpopularity of substantive action, as it would include social support for those historically marginalised. Addressing the overrepresentation and disproportionate effect of the State care system on Māori is an essential element of any State response.
28. Commentary around the redress process was focused on the need for an independent, transparent decision maker to whom people could make complaints and have their grievances heard. This process must be separate from the State. The evidence was clear that survivors had lost all faith in the State's ability to regulate itself and to properly deal with complaints.

### **Abuse in the Catholic Church**

29. Professor Des Cahill and Dr Peter Wilkinson were the only experts who gave evidence solely on abuse in the faith-based context. Their evidence was contextual and relied on their research into international inquiries, especially the Australian Royal Commission. These inquiries had raised issues including discussion of the seal of the confessional and mandatory celibacy.
30. Cooper Legal briefly spoke about the Catholic redress process, noting the difficulties and inconsistency they encountered in dealing with different Dioceses and Congregations, each with their own processes and procedures. They also spoke about the difficulties they had encountered with A Path to Healing.
31. Two survivor witnesses spoke about abuse suffered in the Catholic Church, namely in Nazareth House in Christchurch in 1969, and in the Onehunga parish, Auckland in approximately 1958. Mr Ledingham expressed his dissatisfaction with the redress process. He called for an independent, external complaints body that has the powers to investigate complaints and grant redress.
32. The evidence around the redress processes of the State and the Catholic Church has a number of similarities. Survivors do not trust the institution that they see as representing the perpetrator of their abuse to be a fair decision maker. Any delay in the investigative process is likely to be seen as the institution not believing the perpetrator and cause them additional distress. However, survivors do not view the Courts as an appropriate impartial mediator in these matters, in part due to expense, delay, and inaccessibility.

## Next steps

33. The Royal Commission has indicated that they will release a draft scoping document for the investigation into the Catholic Church in December 2019. Tautoko, through counsel, will be able to make submissions on this document.
34. Although we do not yet know the scope of the investigations, we reasonably believe that the Royal Commission will examine the prevalence of abuse, historic responses, safeguarding, formation, and current redress processes, as well as how features of the Catholic Church may contribute to abuse, such as the confessional seal and mandatory celibacy. The present information we have indicates that these will run as “mini-commissions” with counsel appointed by the Royal Commission to lead the investigation, public hearings, and the submission of evidence.
35. This document is not intended to be confidential and can therefore be distributed within your organisations to anyone whom you think may be interested. If you have any questions, or if you would like to discuss aspects of this document further, please get in touch with us.