Lake Alice survivor Rangi Wickliffe. Photo: Aaron Smale.

Aaron Smale

Aaron Smale is Newsroom's Māori Issues Editor. Twitter: @ikon_media

NEWSROOM SPECIAL INQUIRY

State of denial: How police child abuse inquiries ran aground

In part two of a series on Crown Law withholding evidence from police Aaron Smale asks: how did the government and its lawyers behave when they knew the state was guilty of serious crimes against children?

Under oath in front of a Royal Commission the Crown's top lawyer had nowhere to go. Solicitor General Una Jagose had to admit what had been clear for nearly 50 years – that what happened to children in the Lake Alice psychiatric hospital in the 1970s was criminal.

It was a conclusion that was impossible to escape. As Jagose admitted in convoluted legalese, it was written and recorded by the state's own employees in its own documents. The perpetrators had recorded their own crimes in documents held by the state.

In her evidence Jagose stated: "The record itself showed that Dr Leeks and other staff were using ECT [electroconvulsive therapy] and other forms of things that are treatment as behavioural modification and/or punishment for those purposes and not for treatment."

Speaking of the litigation that started in the 1990s – which included Leoni McInroe, who was the first to file a civil case – Jagose acknowledged that the Crown knew from its own files that Dr Leeks' methods were unacceptable as medical treatment.

"Dr Leeks, was using treatment methods to punish and attempt to modify behaviour in a way that the Crown then, and still, thought was unacceptable, an unacceptable way to treat those children, and didn't put any of them to proof over that because the proof was right there in the file, in the very systems that the hospital and Dr Leeks ran," she said.

But despite the Crown, and Crown Law in particular, having documentary evidence that what happened at Lake Alice was unacceptable as medical treatment and crossed the line into something else, Crown Law has either withheld this evidence from police or steered police away from laying criminal charges. And it didn't just happen in the Lake Alice case. Crown Law defended the government against civil claims regarding abuse in other institutions when it knew the allegations of abuse were more than likely to be true.

In two previous police investigations into Lake Alice (one in the 1970s and the early 2000s) the question of whether the use of shock treatment on children was punishment – and therefore criminal – or medical treatment had always been a stumbling block for police. They either couldn't find a medical expert who was willing to directly criticise one of their own or Crown Law had sat on evidence that would have settled the matter and given police grounds to proceed with prosecutions.

But Crown Law knew the significance of a report about survivor Leoni McInroe from Dr John Werry, emeritus professor of psychiatry at the University of Auckland. Crown lawyer at the time Ian Carter, who is now a district court judge, was responsible for the Crown's response to McInroe's litigation and he knew the report from Dr Werry was of major significance. When discussing options for obtaining expert opinions, Carter noted that Dr Werry was available through the Ministry of Health, but "he has already given an unfavourable opinion on Dr Leeks diagnoses and treatment in the report which he prepared in support of McInroe's applications for accident compensation on the basis of medical misadventure." The report was only "unfavourable" to the Crown. It was extremely favourable to the victims' case as it confirmed many of their main allegations. It was never provided to police in the investigation in the 2000s. Crown Law didn't hand it over when documents were requested by police again in 2020.

There are other examples. Crown Law had defended MSD in a test case in 2007 while knowing full well that a staff member at Hokio Beach school, Michael Ansell, had convictions for sexually assaulting children. He had convictions before he started his job as a cook at Hokio - Crown Law was aware of this but did not disclose this until well into the litigation.

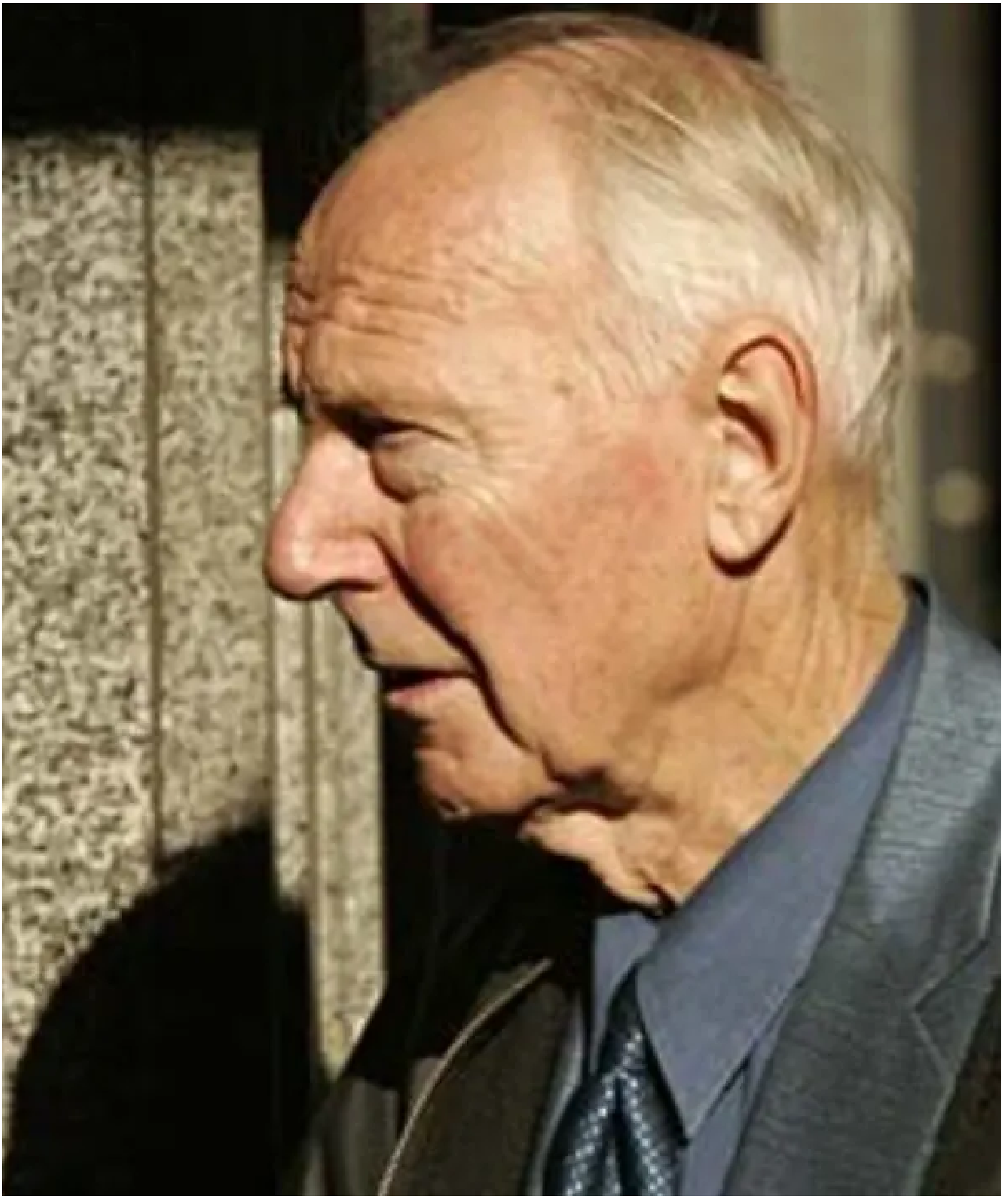
Sally McKechnie from Crown Law had also intervened in police investigations into two separate complaints about accused and convicted paedophiles that had worked in state welfare homes Holdsworth and Epuni. In one criminal complaint about Social Welfare staff member John Drake, McKechnie asked the police if they minded her talking to Drake. Police told her they'd prefer if she didn't, but couldn't stop her from doing so. But McKechnie had already spoken to Drake. McKechnie was representing MSD who had received allegations of sexual abuse against Drake from 15 individuals. She was not a defence lawyer. Drake refused to talk to the police and eventually died without being charged.

McKechnie also intervened in a police complaint about Alan Wright-Moncrieff, who had worked at Epuni Boys Home. She told Keith Wiffin via his lawyer Sonja Cooper that if he proceeded with a police complaint, MSD could not investigate his civil claim. He backed off making a police complaint only to find out later that MSD had done nothing to investigate, despite Wright-Moncrieff having previous convictions for sexual abuse relating to his time at Epuni. Again, Crown Law had not disclosed this until well into litigation. He was eventually convicted again for offences against Wiffin and two others. Police were investigating further allegations when Wright-Moncrieff committed suicide.

A 50-year failure

The two police investigations into what happened at Lake Alice were in 1978 and again starting in 2002 and concluding in 2010. The third was started in 2020 after the UN found New Zealand in breach of the Convention Against Torture.

In the first two investigations police barely spoke to victims, for example, just one in the 2002 inquiry. But otherwise complaints from victims were simply not taken seriously. The 2020 investigation found there was enough evidence to charge a number of people with criminal offences, including Dr Selwyn Leeks, but it was too late.



Dr Selwyn Leeks

Police had missed their chance in 2002. The investigation into Lake Alice that concluded in 2010 after eight years was so shoddy that police had to apologise to victims at the Royal Commission. One of the failures was that they lost 15 of the 39 files.

But the investigation was rife with failures and the police failures were deeply entwined with its reliance on Crown Law, which not only advised police but was in possession of evidence that could have assisted the investigation. But at times both the police and Crown Law were in possession of the same evidence but failed to act on it. That evidence was not just about the torture of children using electric shocks. They also had evidence of the rape and sexual abuse of children.

In a review of the Lake Alice file in 2018 police looked at how the complaints of sexual abuse had been handled in the early 2000s. Despite many of the victims making complaints of being raped and sexually abused, none of them had been interviewed by police about the allegations.

The 2018 police assessment states that: “the disclosures in the statements do relate to serious sexual abuse and certainly there is no record on this file of the sexual allegations being investigated by police.”

One of the allegations, made by at least three of the victims, was that staff put them into adult wards where they were sexually assaulted and raped by dangerous adult psychiatric patients. Rangi Wickliffe gave evidence at the Royal Commission of being put into Villa 8, a unit for criminally insane adults, where he was gang-raped after being knocked out by ECT as punishment for running away. He had just turned 11.

But police were in possession of a document written by an Education Department psychologist to his boss in the 1970s that described children being put into Villa 8 and sexually assaulted by some of the most dangerous patients in Lake Alice. The document also confirms that this was well-known among top officials at the time, including the head of mental Health Dr Stanley Mirams, Don Brown the head psychologist in the Department of Education, and the superintendent of Lake Alice, Sydney Pugmire.

The author of the memo, Iain Tennent, stated: “This poses to us as psychologists in the Department of Education acute ethical problems. Are we by our continued involvement in the hospital conniving at what is potentially most anti-therapeutic and perhaps criminally negligent?”

There was also evidence all over other files that described children being put in Villa 8. Wickliffe had run away with his friend Vernon Sorenson and Sorenson’s medical notes mention the incident and him being put in Villa 8. When spoken to about the incident, Vernon recalled the details clearly, even though he had not seen his file.

Despite the documentary evidence provided to police about children in Villa 8, police preferred to rely on the views of the police commissioner more than 20 years earlier. In a report by Malcolm Burgess he mentions without comment a media report that relied on the word of Dr Mirams:

“In a media article in January 1978 the Commissioner of Police stated that there was no evidence of criminal misconduct. There is similar comment from the then Director of Mental Health, Dr Mirams.”

But Dr Mirams was mentioned in the Ministry of Education document written in 1978, where it says he was aware children were being sexually assaulted in Villa 8. Mirams had knowledge of criminal misconduct and could have assisted police in their investigation but instead lied to police and the media.

In the file of the police investigation from 2010 Rangi Wickliffe’s testimony in his written complaint was regarded with skepticism. He was never spoken to by police about what happened to him at Lake Alice.

Wickliffe says he was never believed as a child or an adult when he told people what happened to him at Lake Alice. Seeing the document that described what was happening to children in Villa 8 was the first time his experience has been validated.

“They labeled me a liar for 50 years. It didn’t happen Rangi, you’re a liar. They put it on my file. Liar. They’re not going to admit to sodomy of a little boy.”

He says no-one has ever been held responsible for what happened to him and hundreds of other children who went through Lake Alice, while many of the victims went on to be punished for their crimes.

“We were surrounded by rapists and dangerous mentally ill people. What did you expect us to turn out like? We didn’t have a choice as children so as adults we turned out tricky motherfuckers.”

“Can I just apologise to all my victims and not go to jail? No I can’t.”

Former health minister Annette King. Photo: Lynn Grieveson

When the Helen Clark Labour Government came to office from 1999, ministers faced decisions over some of the civil litigation launched in the previous decade.

Prime Minister Clark and Health Minister Annette King were aware that children had been put in adult wards with dangerous psychiatric patients, something they were presumably told by Ministry of Health officials and information which was available to other government agencies including Crown Law.

In a Cabinet paper signed by both Clark and King they state that: “the adolescent claimants were surrounded by (and on occasion housed in the same ‘villa’ as) adult psychiatric patients often suffering from serious (and possibly dangerous) mental disorders.”

In the same Cabinet paper they show an awareness that the allegations being made in the civil litigation were highly credible. In one section the paper states: “The Crown Law Office view is that these claims present a considerable litigation risk to the Crown…. In addition to the Ministry of Health’s exposure to liability, there remains a secondary risk to both the Department of Child, Youth and Family Services and the Ministry of Education (which ran a school at Lake Alice. The scope of claims may be broadened as some of the claimants allege physical and sexual abuse while in Department of Social Welfare (DSW) institutions also. There are also statements to the effect that DSW staff were aware of the painful treatment regime at the Lake Alice adolescent unit and even used it as a threat.”

In another review on the civil litigation, signed off by Helen Clark and Annette King, there is an acknowledgement that: “There is no question that these facts suggest that something was amiss at the LAAU.”

“Something amiss” is something of an understatement. Helen Clark had been a little more explicit in her comments when she in Opposition. She gave an interview to RNZ in 1999 in which she explicitly said that what happened at Lake Alice was torture. (If it was torture, then New Zealand had obligations under the UN’s Convention Against Torture. One of those obligations was that New Zealand authorities conduct a thorough investigation. They didn’t.)

But in government, Clark and King were careful to manage how the subject of Lake Alice was discussed in the media, likely influenced by Crown Law. In a memo Annette King said: “care must be taken with what is said publicly about the settlement to avoid opening the floodgates.” Crown Law made transcripts of what ministers said in the media, including previous health minister Bill English, to assess whether they had exposed the Crown to legal liability.

In 2002 the Clark government reached an out of court settlement with the victims. But 39 of the victims then filed formal police complaints and their civil statements of claim were passed to police.

While the civil litigation had concluded, Crown Law’s attitude towards the criminal investigation still seemed to be run with the Crown’s liability in mind, not the victims' right to justice. While Crown Law had gathered a mountain of evidence during nearly 10 years of civil litigation, it was in no hurry to assist police by providing this evidence. And police seemed to be in no hurry to carry out a thorough investigation, even though King was police minister by this stage and knew what evidence the Crown held. Between Crown Law and Police they managed to let perpetrators of serious crimes against children get away with those crimes.

Sir Terence Arnold.

Although there is theoretically a separation of the roles of those dealing with civil litigation and criminal cases within Crown Law, there were those who could see what was happening on both sides of this divide. The Solicitor General at the time Sir Terence Arnold, who was later appointed a Supreme Court judge, received updates from Nicola Crutchley, his deputy. She was kept informed of the civil litigation and was also advising police on the criminal investigation. Newsroom understands that Crutchley, who is now based in Australia, declined to give evidence at the Royal Commission.

Crutchley would have been aware of the significant evidence that Crown Law had access to through the civil litigation process. How much of that evidence was shared with police is unclear but McInroe’s ACC report was never given to police by Crown Law during that investigation.

In a memorandum to a colleague about the criminal complaint to the police, Crutchley said: “We generally keep separate matters both sides of the Office are dealing with,” but goes on to say that “I need to be kept fully advised on the progress. The civil claims are highly political ones about which there has been considerable publicity in the past. Thus I need to keep the Solicitor-General fully advised of where we are with this opinion.”

The earlier decisions by police not to lay criminal charges, supported by advice from Crown Law, was shown to be even more indefensible by what the police found in the third investigation when they actually interviewed victims and reviewed the available documents (when they finally got hold of them).

One stark example of evidence that was not acted on is correspondence between the police and Professor Garry Walter, a psychiatrist in Australia, who had provided an expert opinion in the 2002 investigation. On being asked by police in 2019 to confirm his opinion, Prof Walter stated: “I can confirm that it remains my opinion that applying electrodes on the genitalia of children as a form of aversion therapy was not an accepted medical practice in the 1970s and is not an accepted medical practice now, and that in no way could this be justified as medical treatment.”

And New Zealand’s failures were exposed for a second time on the international stage. A second case was taken to the UN about Lake Alice by survivor Malcolm Richards and the UN again found that New Zealand had failed to meet its obligations to “to conduct a prompt and impartial investigation into the acts of torture alleged by the complainant while he was at the Child and Adolescent Unit of the Lake Alice Psychiatric Hospital, in violation of the State party’s obligations under articles 12 and 13 of the Convention (Against Torture).”

The UN committee also found that “the authorities of (New Zealand) made no consistent efforts to establish the facts of such a sensitive historical issue involving the abuse of children in State care.”

1 comments

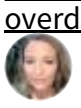
SHOW COMMENTS

MOST POPULAR ON NEWSROOM

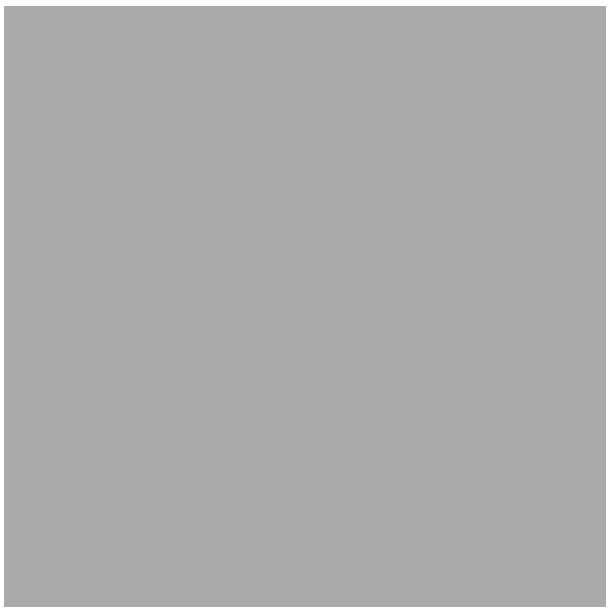
ENVIRONMENT

Trail bogged down in bureaucracy

A popular multi-use trail in Fiordland is incomplete and the trust that created it in limbo as it waits for the Department of Conservation to review plans that are years overdue.



Vaneesa Bellew 3 HOURS AGO

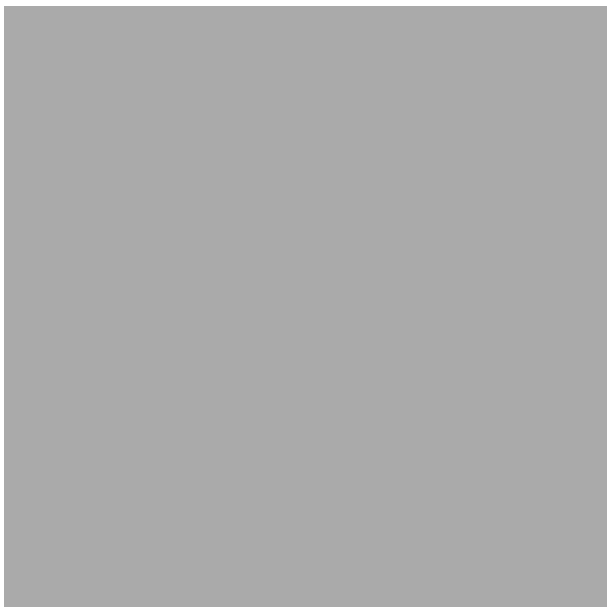


READINGROOM

An Ode for .. Nanaia Mahuta

Bard Billot on the ubiquitous Mahuta

Victor Billot 4 HOURS AGO



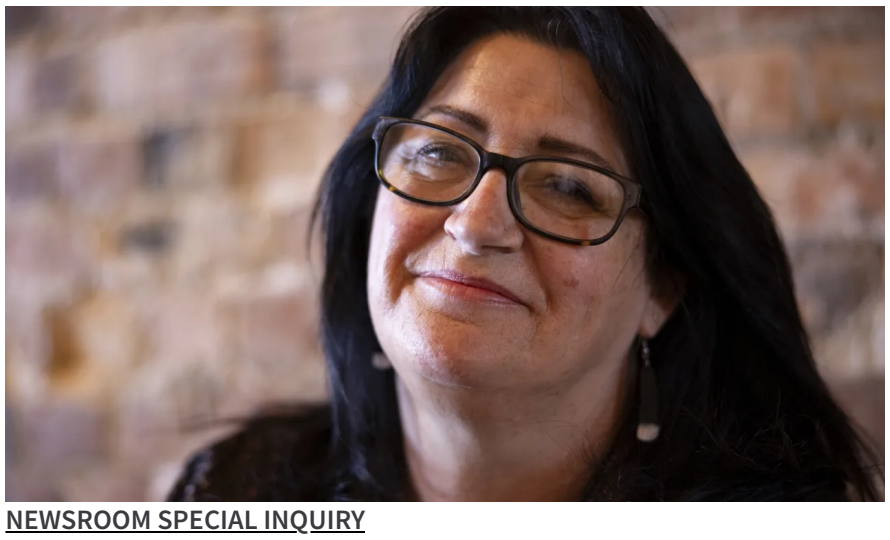
READINGROOM

Short story: Spineless, by Charlotte...

“He always took care not to suck up the spiders”: living with invertebrates

Charlotte Simmonds OCT 01 2022

RECOMMENDED READS



NEWSROOM SPECIAL INQUIRY

Crown Law blocks

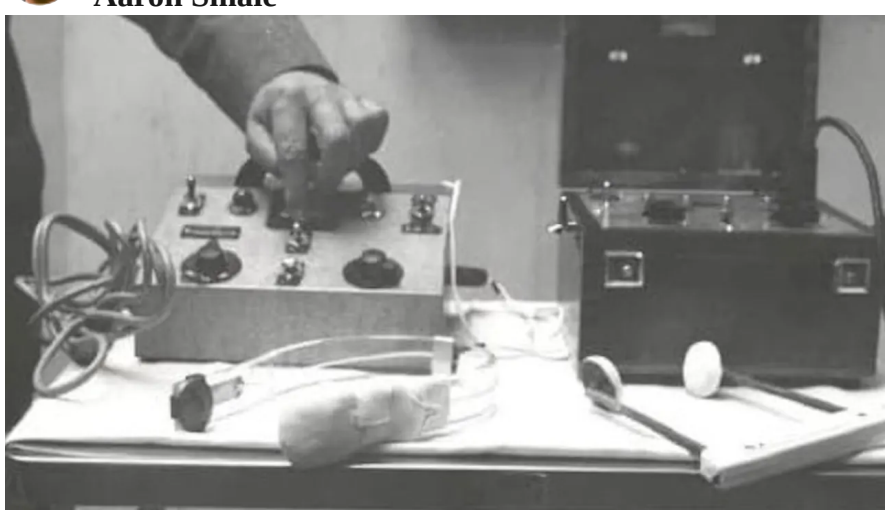
NEWS 1

Insensitive officials

police in rare standoff

Exclusive: Did the Government's legal agency withhold evidence of the rape, torture and abuse of children from police investigations? Aaron Smale unravels an extraordinary paper trail.

Aaron Smale SEP 02 2022

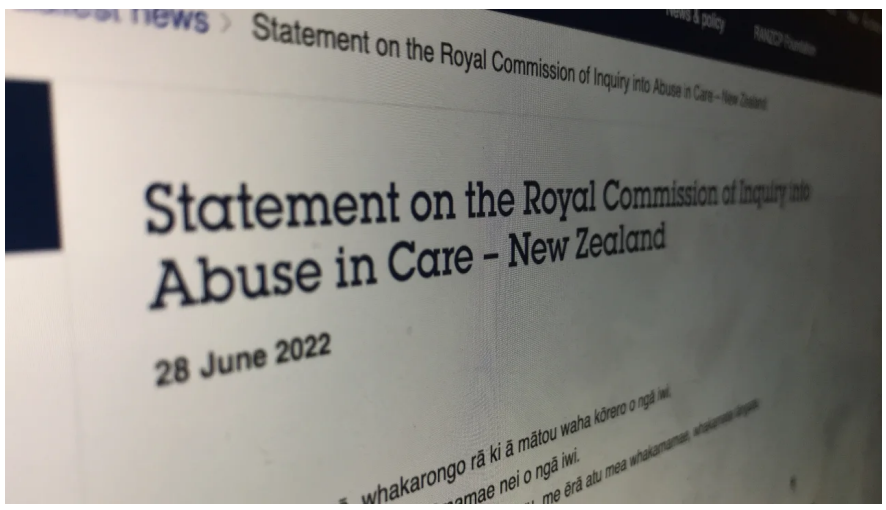


NEWS 1

anger abuse...

Pressure builds ahead of the country's top public servant appearing at hearings

David Williams AUG 22 2022



NEWS

Our terrifying 'treatment' of mental illness

Those deemed mentally unwell were shocked, drugged and, long ago, lobotomised

David Williams AUG 15 2022

COMMENT

A statement of healing causes...

A psychiatric body makes a belated and bungled apology over child torture in the 1970s

David Williams JUL 06 2022

WEEK IN REVIEW

Tortured and stuck in slow motion

Government excoriated for foot-dragging response over tortured children

David Williams JUN 27 2022

Dr's death puts spotlight on Govt

Selwyn Leeks' death leaves it largely to the Govt to answer questions about accountability.

David Williams JAN 27 2022