

# **Royal Commission into Abuse in State Care**

**Compilation of Reports prepared by: Dr  
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**30 April 2018**

Following the announcement of the new Labour-led government in October 2017 there were clear signs of an intention to hold an independent inquiry into the abuse and neglect of children, young people and vulnerable adults in state care. The initiatives attached to this report were prepared in response to that commitment. They were led by Sonja Cooper, Dr Anaru Erueti, Rosslyn Noonan and Dr Elizabeth Stanley but all of them were informed by the views of survivors, along with experts and professionals working in the field of child care.

The first set of documents was prepared as it became clear that the government was preparing draft terms of reference with the object of informing that process. The documents include:

**Annex 1**, A "Draft framework for a New Zealand Royal Commission into Abuse in State Care" of 4 December 2017. This set out what the Inquiry should be (a Royal Commission) and what it ought to do (for example engage fully with survivors) and was informed by a survivors' survey and our consultations with survivors and other experts who have worked on issues of child care.

**Annex 2**, Survivors' submissions on Inquiry into Abuse in State Care, 2018. This survey was sent out from 15 November 2017 to survivors. By 11 December 2017, we had received 422 submissions. We have asked the Royal Commission to integrate these 422 submissions into the consultation process so they stand alongside other submissions received.

The following second set of documents were prepared after the government released its draft ToR on 1 February 2018.

**Annex 3**, Short Report from Hui, 14-15 February 2018. This report followed a hui held to discuss the draft Terms of Reference for the Royal Commission released by government on 1 February 2018. The hui was funded by the New Zealand Law Foundation. It was attended by survivors, advocates, practitioners working in the care/justice/health sectors, academics and media professionals, among others. Sir Anand Satyanand, the newly appointed Chair of the Royal Commission, listened carefully to the presentations and wide-ranging discussion across the two days. The report contains ten recommendations aimed at strengthening the Royal Commission and the draft ToR. These ten recommendations reflected the views of those who attended the Hui.

**Annex 4**, “Royal Commission of Inquiry into Abuse in State Care Submission on Government’s draft terms of reference”, dated 24 April 2018. These draft terms of reference were prepared by Sonja Cooper, Dr Anaru Erueti, Rosslyn Noonan and Dr Elizabeth Stanley as a submission to the Royal Commission on the draft Terms of Reference (ToR) released by Government on 1 February 2018.

**Sonja Cooper, Dr Anaru Erueti, Rosslyn Noonan and Dr Elizabeth Stanley**

# **Annex 1**

## **Draft Framework for a NZ Royal Commission into Abuse in State Care**

**4 December 2017**

By

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This draft framework has been developed from the survivors' survey, completed by 340 survivors of abuse in state care at 1 December 2017. It reflects their wishes. We have also consulted with several advocates and survivors who have worked on these issues for many years. We thank all those who have assisted us in the development of this document.

We strongly support the official commitment to advance further effective engagement with survivors, their families and whānau, as well as with stakeholders (including whānau, hapu and iwi; NGOs; scholars; legal experts; and community groups) into the design, scope and operations of the Commission.

## **TERMS / FRAMEWORK**

### **1. This must be a Royal Commission rather than an Inquiry**

This body must be established at the highest level, being a Royal Commission. While other forms of Inquiry would have the same powers as a Royal Commission, the latter is extremely important in demonstrating mana. A Royal Commission will symbolise the government's seriousness in taking action against state abuse, and demonstrate that this is a 'whole-of-government' issue. We anticipate that it will be the only opportunity in our lifetime to deal with the state's abject failure to protect and nurture children, young people and seriously vulnerable adults.

Thousands of victim-survivors have been treated very poorly, over decades. The impacts of abuse have affected many more New Zealanders, across generations. The NZ government now spends millions of dollars each year (including through Health, Social Development, Oranga Tamariki, Police, Justice and Corrections) to address the legacies of abuse. A Royal Commission would provide a strong and undeniable basis for understanding these experiences, remedying victimisation, and provoking crucial changes within laws, policies and practices. It has the potential to positively change the relationships between state agencies and survivors, their families and whānau.

The Commission must be entirely independent from those agencies and institutions that have been previously connected with abuse or harms. To ensure success, survivors must also perceive independence with regards to how Terms of Reference have been constructed, the appointments of senior

staff, as well as in daily operations and practices. The Commission must be viewed as credible and victim/survivor-centred.

## **2. The Commission must hear evidence on different forms of 'abuse' and 'care'**

- To uncover the full range of physical, sexual, psychological abuse and neglect.
- To hear evidence on the impacts of that abuse/neglect on victims, their families/whānau, and communities.
- To uncover and record the treatment of children, young people and vulnerable adults with disabilities in 'state care' (the latter category being carefully defined, following consultation, to manage scope). This includes experiences of those held in:
  - child welfare care (including family homes, foster care, religious homes, social welfare homes, other non-governmental placements)
  - psychiatric and psychopaedic hospitals and wards
  - health camps
  - correctional facilities (including youth justice facilities, borstals, prisons)
  - special education schools

## **3. The Commission must investigate and report on significant issues relating to abuse in state care**

Among other things, these include:

- To detail the context, nature and extent of abusive treatment of those in care.
- To show how any abuse breached statutory obligations and policies of the day.
- To demonstrate how abuse was differentially experienced by certain groups of children/populations, and the systemic implications of this.
- To investigate the factors (including colonisation, te Tiriti breaches, assimilation policies and institutionalised racism) that led to the targeting of Māori families by child welfare agencies and the over-representation of Māori in state care.

- To more broadly explore how abuse has been enabled and perpetuated through structural and systemic processes (including in relation to ableism, patriarchy, etc).
- To clarify the legacies of abuse in state care – ie the extent and impact of the long-term consequences of child abuse and neglect on individuals, families and NZ society.
- To identify the agencies responsible for harms (including any re-victimisation through the claims process).
- To record how official responses, political decisions, investigations, and criminal or civil proceedings have dealt with complaints of abuse, including how, when and where they have caused revictimisation.
- To outline the statutory or administrative limitations or barriers that have adversely affected those taking claims on abuse.
- To reflect on the adequacy of existing care practices, remedies and support mechanisms.

There must be widespread dissemination of findings – in the form of public events, hui, thematic papers, media pieces, short reports – through all its operations. The Commission must demonstrate its progress, whenever possible.

It is vital that the Commission provides regular and accessible updates to survivors and victims' families. While diverse formats (eg audio/visual) will be necessary, it must also include communications that do not involve website or social media technologies. Communications must also be written in understandable language.

Alongside interim reports (see s20), the Commission should produce a publicly available final report that records findings in full. Reports should include 'lessons', recommendations and actions for future prevention.

#### **4. The Commission must explicitly outline the experiences of, and impacts on, particular victims**

The Commission must hear the experiences of: (i) Māori; (ii) those with disabilities; (iii) both girls and boys.

##### *(i) Māori*

In New Zealand, a disproportionate number of indigenous children have been held in state care, and institutionalised racism and colonisation has impacted on their treatment and opportunities. Māori communities have

been consistently marginalised in the making of law and policy on state care and there is evidence of the targeting of Māori families by state care agencies. During the mid-1980s, Māori children accounted for over 80% of those held in Auckland's social welfare institutions. Māori survivors have detailed a significant loss of cultural identity as a result of their experiences. Māori children now form a large majority of children in state care. And there is a clear link between the significant numbers of Māori in state care and the disproportionate number of Māori in the prison system.

*(ii) Children and Vulnerable Adults with Disabilities*

Consideration must be given to the numbers of children and vulnerable adults with disabilities (including physical, mental, learning or intellectual disabilities) who have suffered serious levels of abuse and neglect under state care, and who have been systematically silenced. Those with disabilities have suffered different forms of abuse and neglect, including being more likely to be physically restrained and controlled. It is important to understand how violence and abuse can be legitimised through official language and care cultures.

*(iii) Girls and Boys*

There appears to be significant gender-based differences in the abuse suffered by boys and girls. While the vast majority of those in state care were and are boys, it appears that girls have also suffered particular forms of abuse within state care – for example, being more likely to be given medications, in care, on account of their 'gendered delinquencies' rather than any offensive action. These gendered issues also intersect with ethnicity, such that Māori girls were also (and remain) significantly over-represented in 'care' and 'justice' institutions. While there has been little work on the abuse experienced by boys in state care (particularly in terms of their sexual abuse), there has been even less work undertaken to acknowledge or understand the specific abuse against girls, and its subsequent impact on New Zealand women.

Alongside these groups, it is vital that the Commission explores the experiences and impact of abuse on different groups. For example, Pasifika children also appeared to be disproportionately held in care. Further, many Pākehā children experienced state care, and some suffered extreme levels of violence. It is also important to understand how state interventions could harm, rather than assist, families who struggled with economic

disadvantage. It is therefore essential that the Commission is attentive to institutionalised racism, bias and different forms of disadvantage.

### **5. The Commission must hear evidence on historic and contemporary abuse in care**

It is apparent that many children still face many harms and abuse within state care (seen, for example, within reports from the Children's Commissioner, and with new claims to Cooper Legal). These harms and abuse mostly affect Māori children.

The Commission must therefore hear all claims (with a cut-off date for evidence being the final date for registration of claims to the Commission). Survivors have a strong priority to prevent abuse, and understanding the contemporary situation is crucial for this to happen.

### **6. The Commission must hear evidence from a wide range of people**

The Commission should invite evidence from:

- Anyone who has experienced abuse while in state care including those who have previously given their testimonies to official bodies or through legal avenues.
- Family, friends and whānau of those in state care (in cases where a victim has died or requires support to give testimony; and, to discuss generational impacts).
- Staff who work or have worked with those in state care.
- Officials of the relevant government and non-governmental agencies, including policy makers, politicians, workers, church or charity officials.
- Iwi and iwi-wide representative bodies (for example, the Maori Women's Welfare League, NZMC).
- Experts including scholars and legal experts.

### **7. The Commission must engage processes that are survivor-focused**

The Commission must be attentive to the fact that, due to their experiences, many survivors are deeply suspicious of government (and other) workers to be honest or to prioritise their interests over institutional

priorities. The Commission needs to be particularly attentive to these dynamics and ensure that all processes/practices are survivor-led.

Survivor-focused processes should include:

- The Commission must develop processes that ensure the effective participation of Māori, for example: to adopt an inclusive understanding of family; to establish relationships with key Māori stakeholders; collaborative work with Māori (for example advisory boards and joint decision making on process, design and implementation); ensuring that some hearings take place within settings (eg marae) that are culturally appropriate, and that apply processes consistent with tikanga Māori.
- Many survivors want to publicly record their experiences. This is also a vital element in developing public understanding of the nature and legacies of abuse in state care. Survivors must also have full opportunity to provide their evidence within private hearings, and to have their contributions anonymised.
- The Commission should regularly travel to hear testimonies (eg in community settings; institutional settings such as prisons). Within larger towns and cities, the Commission must hold hearings in various locations and at appropriate times, to ensure accessibility and that survivors feel comfortable.
- The Commission must advertise internationally, especially in Australia. Consideration should be given to the establishment of Skype hearings.
- Alongside individual public hearings, it would be valuable to pursue thematic hearings (eg the treatment of children/adults with disabilities; girls in care; institutionalised racism, etc) to ensure greater public understanding of experiences.
- In addition to direct engagement with the Commission, survivors should be able to opt to have their previous testimony/files (eg from CLAS; MSD Historic Claims) forwarded to the Commission. It must be ensured that, in doing so, survivors are not later prejudiced by previous documents that were often limited in scope.
- The Commission must provide supports to assist those giving testimony before, during and after disclosure (including: counselling; travel expenses for survivor and support person; child care). Particular supports should be directed to those with disabilities.

- The Commission should provide both pastoral and legal care to survivors. The latter will be important if evidence later forms the factual basis of individual legal claims.
- The Commission should adopt processes that will ensure survivors and families are not re-traumatised. For example, to train commissioners and staff on how to recognise and respond appropriately to signs of trauma, and creating culturally safe spaces for survivors and whānau.

## **8. The Commission will have powers of compulsion with regards to witnesses and documents**

In line with legislation, the Commission will have the power to retrieve all relevant, non-redacted documentation held by government and other agencies. This is an important power, given the previous lack of transparency and attempts by government departments to silence or hide evidence of abuse.

International evidence – eg from Australia – demonstrates that Inquiries without legal powers to force witnesses to appear or to subpoena documents found that most key people/agencies did not appear, and they ignored findings and recommendations. Alongside full access to documentation, this Commission will be able to compel witnesses.

## **9. The Commission must hold significant research capacity**

The Commission can draw on materials already collated (eg by the Human Rights Commission) and should have access to the materials and outcomes of previous work (eg under the Confidential Forum, CLAS, HCU, etc). The Commission can also draw upon research already undertaken. This includes national research (eg by academics, civil society groups and government Ministries, among others) as well as international bodies (eg by the recent Commissions in Australia or Ireland).

Alongside this, the Commission should undertake – or engage others to undertake - further substantive research. Several big projects would be useful, for example:

- To outline the systemic continuity of the 'care to custody' pipeline;
- To examine the role of institutionalised racism within the care/justice systems, including engagement with Māori on policies and laws

relating to state care and prior 'inquiries' including the MSD historical claims processes;

- To explore how the silencing of abuse against those with disabilities can be challenged;
- To examine the traumatic impact of abuse on victims, and the 'intergenerational' impacts on families and whānau;
- To examine how new knowledge on abuse should change professional training and practice of social workers, police, lawyers/judges, etc.

Any research must be conducted in an ethical manner and consistent with international human rights including UN Declaration on Rights of Indigenous Peoples. This includes standards as to privacy, informed consent, and access to information.

## **10. The Commission must adjudicate on compensation**

- The Commission should review all previous decisions and payments of compensation, and establish a new explicit justification for the rationale and level of payments. It will have the power to change previous compensation. It is important for survivors to know that any previous compensation cannot be reduced.
- The Commission will develop and publicise a transparent compensation process, including levels of quantum.
- Compensation must also attend to the wider impact of neglect or psychological abuse
- Compensation should be provided to all survivors, regardless of their life history or status (eg it should not exclude high-tariff offenders)
- Consideration should be given to providing compensation to partners/children of those who have died following victimisation.
- If the above processes are not possible, the Commission should gather evidence on previous compensation levels, research international 'best practice' in the area, and recommend the establishment of an independent body to undertake compensation (and other redress) practices.

## **11. The Commission must undertake other measures for redress**

- The Commission should provide immediate supports to assist survivors – eg assistance to retrieve records and support in

examining them; initial counselling sessions; supports with dealing with other agencies; removal tattoos, etc.

- The Commission should assist survivors to achieve further outcomes – such as connecting them to bodies that might enable restorative justice with offenders; or the transfer of cases to police for further investigation, where appropriate.
- The Commission should outline potential changes to law – eg ACC – to enable all survivors of state abuse to receive life-term counselling (not just those who have suffered sexual violence).

## **12. The Commission must provide recommendations for prevention of abuse**

The Commission will outline actions for required changes in law, policy and practice. Among other issues, this would include actions to:

- Address any systemic factors contributing to the occurrences of abuse and/or neglect.
- Ensure detection and prevention of abuse within state care practices.
- Improve and adequately resource oversight, reporting and complaints mechanisms.
- Consider the services required to older care leavers (e.g health care, counselling, housing, aged care, access to care records, etc).
- Draw upon international best practice to improve education, training, development and practice of social workers and others engaged with state care environments.
- Consider processes of reconciliation between affected communities and responsible state agencies.
- Make recommendations on how to honour and commemorate those who have not survived.
- Consider how to ensure greater control by communities, particularly by Māori in the care of children.
- Drawing upon international best practice and legal reforms, to consider the necessary actions required to remove barriers to justice created by the statute of limitations and ACC.

Ideally, the Commission would have the ability to compel obligations on agencies to fulfil recommendations, and to provide accountability for those changes (eg the Australian Royal Commission is currently noting positive and negative implementation of its recommendations).

### **13. Integrated with a Public Apology**

The publication of the final report will establish the ground for a sincere and full public apology by the Prime Minister.

## **THE STRUCTURE OF THE COMMISSION**

### **14. Position of the Commission**

The Commission should receive administrative support under the Department of Internal Affairs. The Commission must be entirely independent.

### **15. Developing the Terms of Reference**

It is important that the Terms are finalised with input from survivors, and from other stakeholders (including, for example, whānau, hapu and iwi; womens' groups; Pasifika organisations).

### **16. The Commissioners**

All senior staff must be individuals who:

- (i) Have no prior relationship with the agencies involved in the abuse or in previous responses to claimants. Survivors must clearly perceive that senior members are independent from any previous harmful experiences
- (ii) Are of the highest moral standing
- (iii) Have independence of mind
- (iv) Have demonstrated integrity and empathy
- (v) Have personal stamina and mental capacity
- (vi) Have knowledge of Tikanga Māori and te Tiriti
- (vii) Have an ability to behave and review without specific partiality

It may well be the case that the Chief Commissioner does not have a judicial background. It is more important for them to have experience and familiarity with the issues involved, a record in high quality operations, and a pastoral care emphasis.

It would be appropriate to recruit three Deputy Commissioners, each given a responsibility for the aforementioned priority groups (Māori; Disabilities; Girls and Boys).

### **17. Survivors Advisory Panel**

To ensure that the Commission always works for the interests of survivors, the Commission should develop an advisory panel. Comprised of survivors,

the Panel will provide continuous feedback on the Commission's direction, strategies and outputs. All panel members will be paid, and receive travel expenses, for their work.

## **18. Values**

The Commission should develop a set of values to provide a guide for all engagements, operations and outputs. Among other elements, this could include:

- That the Commission is mindful of the potential of the process to be a traumatic experience for survivors, and others, coming forward.
- That the Commission centralises the voices of victims, and provides official acknowledgement of their experiences.
- That the Commission prioritises processes, as well as outcomes, that are 'empowering' and 'life-improving' for those affected.
- That the Commission operates according to the principles of te Tiriti o Waitangi, and the practices and values of Nga Tikanga Māori.
- That the Commission is established and operates according to human rights standards set out in relevant human rights Conventions and Covenants, including the UN Declaration on the Rights of Indigenous Peoples.
- That the Commission provides a sense of accountability for the actions and decision-making that has affected victims-survivors.

## **19. Funding**

This Commission has the potential to positively impact upon many New Zealanders' lives. It will also bring benefits to multiple government departments, in helping to improve policies and practices towards populations that can often be linked to significant budget expenditure. For these reasons, the Commission should be appropriately funded to undertake its work.

## **20. Timelines**

Survivors have waited a very long time for action. While they almost unanimously support this Commission, the process will also have the potential to be retraumatising for them. This Commission has to be undertaken as quickly as possible.

The individual outcomes they seek – to be heard, acknowledged, supported, to be fairly compensated – should therefore form the basis for the Commission’s first segment of work.

The Commission should stage its work. For example:

Part One Collate and disseminate information on what abuse occurred, to whom, and the impacts of that abuse  
Determine/provide supports, redress and compensation  
Establish first set of recommendations  
Publish Interim Report One

Part Two Determine why abuse happened and continues to happen (see s3)  
Establish second set of recommendations  
Publish Interim Report Two

Part Three Explore the state’s response to claimants, and the continuing framework of complaints, monitoring and accountability  
Establish third set of recommendations  
Publish Interim Report Three

Part Four Final Report and Public Apology

Beyond being attentive to survivors’ needs, this staging would allow clear progress to be made in developing public understanding, and will allow system changes to be undertaken while the Commission is in operation.

## **Annex 2**

### **Survivors' Submissions on Inquiry into Abuse in State Care**

**2018**

By

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with

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## **Acknowledgements**

We would like to thank all the team at Cooper Legal, especially Kerryanne Mai, for their assistance in providing administrative and financial supports for this work. We were fortunate to also receive resources from the Human Rights Commission to ensure that survivors did not have to pay to respond to this survey.

## **Overview**

This survey was established to quickly ascertain survivors' views on the scope and activities of any Inquiry.

The survey was sent out to survivors from 15 November 2017. Recipients were (i) Cooper Legal clients; (ii) CLAN NZ members; (iii) those within personal networks.

Given the political urgency to establish a process, there was a very short time-frame for the return of surveys. Despite this, we had a very strong return rate - By 11 December 2018, we had received 422 submissions.

**We ask the Royal Commission to integrate these 422 submissions into the consultation process, so they stand alongside other received submissions. This is particularly important given that survivors should not be expected to repeat their concerns or thoughts on the nature of the Inquiry to different groups or agencies.**

## **Findings**

The submissions illustrate significant consistency of views between survivors.

NB. If people did not respond to a survey question, then it was counted as '*Don't know*'. This category also includes those who replied '*Don't know*'.

## 1. WHO SHOULD BE HEARD?

### Alongside victims-survivors, should the Inquiry hear from:

	YES	NO	DON'T KNOW
Victims' families and friends?	<b>335 (80%)</b>	22 (5%)	65 (15%)
People who worked in state care facilities?	<b>279 (66%)</b>	56 (13%)	87 (21%)
Government and non-government agency workers? (eg, church and charity-based workers)	<b>241 (57%)</b>	38 (9%)	143 (34%)

- (i) Submissions illustrated **strong support (80%) for families and friends to be heard**. Survivors regularly remarked upon their inclusion in relation to: (a) when an abuse victim had died or had difficulties in communication, so that all victims could be 'counted' and represented; (b) providing the Inquiry with testimony on the intergenerational impacts of state abuse.
- (ii) Although still a majority in support (66%/57%), there is ambivalence about the inclusion of workers within hearings. Seven survivors commented that they **did not trust workers to tell the truth** under Inquiry conditions. Government (politicians/civil servants) and other workers are seen to be protective of themselves and their institutions.
- At the same time, submissions also noted that workers could detail how abuse occurred, and help to understand the systems that failed to protect victims. On that basis, while **it will be important to hear from staff**, the Commission **must be survivor/victim focused and aware of the impact of the process on them**.

## 2. WHAT SHOULD THE INQUIRY FOCUS ON?

### Should the Inquiry:

	YES	NO	DON'T KNOW
Hear about sexual abuse?	<b>400 (95%)</b>	4 (1%)	18 (4%)
Hear about violent abuse?	<b>409 (97%)</b>	2	11 (3%)
Hear about psychological abuse?	<b>409 (97%)</b>	2	11 (3%)
Hear about neglect?	<b>398 (94%)</b>	3 (1%)	21 (5%)

Hear about 'historic' and recent abuse (no cut-off date for evidence)	<b>380 (90%)</b>	5 (1%)	37 (9%)
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- (i) Submissions gave very high support (90%+) for an Inquiry that takes a broad focus. **The Inquiry should encompass all types of abuse and neglect, and have a scope that includes historic and recent abuse.**

### 3. HEARING ACCOUNTS OF ABUSE

#### Should the Inquiry:

	<b>YES</b>	NO	DON'T KNOW
Have public hearings as well as private hearings?	<b>270 (64%)</b>	56 (13%)	96 (23%)
Travel around the country to hear stories?	<b>328 (78%)</b>	23 (5%)	71 (17%)
Hold hearings on marae or other whanau-based places?	<b>259 (62%)</b>	44 (10%)	119 (28%)

- (i) Submissions demonstrated **strong support (78%) for the Inquiry to travel around the country**. Some survivors remarked that they would like to have hearings in their home towns and cities. Several noted that the Inquiry must conduct hearings within prisons, especially as so many abused care leavers are now incarcerated.
- (ii) Submissions illustrated reasonably **good support (62-64%) for public and marae-based hearings**. Some survivors are very strongly in favour of having these opportunities but others thought that they might be compelled to give testimony in public or on a marae, and they responded negatively to that. These responses indicate that **the Inquiry must be flexible, offering different hearing opportunities** that are meaningful to survivors, while being able to inform the NZ public about abuse issues.

### 4. POWERS

#### Should the Inquiry:

	<b>YES</b>	NO	DON'T KNOW
Be able to fully access all relevant documents from other agencies or groups?	<b>383 (91%)</b>	5 (1%)	34 (8%)

Be able to make witnesses to attend?	<b>293 (69%)</b>	17 (4%)	112 (27%)
Be able to access your previous statements? (eg to MSD historic claims unit and/or CLAS)	<b>331 (79%)</b>	10 (2%)	81 (19%)

- (i) Submissions demonstrated **very high support (91%) for an Inquiry that is able to fully access all relevant documentation**. Survivors frequently added that it is important to receive non-redacted information.
- (ii) Submissions indicated **strong support (79%) for an Inquiry that could access their previous statements to agencies that have dealt with abuse claims**. Several noted that this could not be in place of testimony to the Inquiry, but should be used as an additional source of information.
- (iii) There is **fairly strong support (69%) for compelling witnesses**. Comments against this reflected concerns that it may take attention away from survivors.

## 5. VICTIM SUPPORTS

### What related services would you like to see?

	<b>YES</b>	NO	DON'T KNOW
Counselling sessions	<b>377 (89%)</b>	15 (4%)	30 (7%)
Assistance with obtaining records	<b>381 (90%)</b>	4 (1%)	37 (9%)
Support people to guide you through the process	<b>375 (89%)</b>	13 (3%)	34 (8%)
Regular updates on the Inquiry's progress	<b>409 (97%)</b>	3 (1%)	10 (2%)

- (i) Submissions demonstrated **very high support (89%+) for an Inquiry that has care and assistance capabilities**. Most survivors who did not support these services remarked that they had already received these supports, so did not need them.
- (ii) There is **extremely strong support (97%) for an Inquiry that communicated well** with them and NZ society. Survivors regularly commented that updates should be diverse, accessible and presented in easily understood language.

## 6. OUTCOMES

### Should the Inquiry:

	YES	NO	DON'T KNOW
Be able to recommend compensation?	<b>398 (94%)</b>	2	22 (6%)
Be able to examine and change previous compensation?	<b>311 (74%)</b>	13 (3%)	98 (23%)
Have a public report that will support a State apology?	<b>369 (88%)</b>	9 (2%)	44 (10%)
Make recommendations for changes in laws, policies and practices?	<b>389 (92%)</b>	1	32 (8%)
Track the implementation of recommendations?	<b>345 (82%)</b>	2	75 (18%)

- (i) Submissions indicated **very high support (94%) for an Inquiry that was able to take on the function of providing compensation**. Survivors noted that the Historic Claims Unit process is flawed and should be replaced. A key element of Inquiry work would be to establish a transparent approach to compensation.
- (ii) There is **strong support (74%) for an Inquiry that could adjudicate on previous compensation**. Four survivors who did not support this thought they might be asked to 'give up' compensation. Any approach, here, must emphasise to survivors that compensation could not be reduced.
- (iii) There is **high support (88%) for a report that led to a state apology**. Several survivors noted that this needed to be meaningful, frank and full.
- (iv) There is **very high support (92%) for an Inquiry to make recommendations** across laws, policies and practices. Some survivors noted that the Inquiry needed to work beyond 'social welfare' to encompass changes in health, policing, justice and corrections, among other areas. There is also **strong support (82%) for an Inquiry to be able to track implementation** of recommendations. Some survivors feared that the Inquiry would not lead to necessary change.

## 7. WHAT ELSE SHOULD BE INCLUDED?

Survivors had an opportunity to make further comments on what they would like to see in the Inquiry. Their observations and suggestions are extremely useful to consider in any developments.

### Nature of Inquiry

- Must be Royal Commission (x12)
- To be completely independent (x6), especially from MSD/ Oranga Tamariki (x2)
- To be open and transparent (x5)
- Involve survivors in decision-making on Terms of Reference (x2)
- Learn from overseas experiences in setting up Terms of Reference
- Take advice from the Waitangi Tribunal, to ensure that it is Māori-focused

"Bureaucrats should not be able to change terms of reference, or conditions of redress, without full consultation with victims"

- Agencies should release all their information and stop protecting themselves
- To be a fair and just process

## Scope

"All historic abuse should be looked at, no matter when it occurred"

"To enquire why the state (MSD) continues to abuse us. That's what I feel they are doing, just stalling all the time and waiting for us to die"

- Must have particular emphasis on Māori, and the stolen generations
- Must include foster care and community placements (x3)
- Include all institutions, not just those of state care (x3) – including churches (x3) and charities (1)
- Cover abuse in mental health hospitals, and other health services
- Include residential schools
- Investigate all agencies, including prisons and their inspectors

"Later suffering should be included, the impact that the abuse has caused in terms of how their life has turned out. For myself: a hate of authority, anger, grief, hopelessness, shame, mistrust, a need for vengeance, violence, drug abuse"

## Timeline

- Needs to be done quickly (x12)
- Build in a time-frame – to make decisions after claim is lodged. Don't drag it on

"Work as quickly as possible. Each time I get an email/letter, it takes me back to that place. Government acts like it doesn't matter or that we don't feel, but we do"

"It has to be talked about, but remember it's so hard to flip back to the past, it hurts so much to know that I could have had a different life if I'd had the support I needed as a child"

- Those who've waited longest should be prioritised in hearings
- Fast-track cases with low level victim impact
- Should develop handling system to help with the quick, fair processing of claims. Using factors such as: the degree of severity; the decade the claim applies to; age of the client when the abuse started; number of years the abuse continued; when the claim is first lodged; current health of the client. The overall rating would be assessed from the sum of factors, and could be reviewed if circumstances changed (eg if a client becomes terminally ill).

## Accessing Survivors and Whānau

- High tariff offenders should be treated the same as everyone else – government needs to own the violence that's been created. Eg Should also receive compensation (x8)

"High tariff offenders should be the same as everyone else. The MSD should realise the people you placed to protect us abused us, mentally, sexually, violently. They taught us violence...stop blaming us for your wrongs"

- Provide travel expenses for victims and a supporter to attend hearings (x3)
- Advertise globally – give New Zealanders who now live overseas a chance to participate – allow skype hearings or similar (x3)
- Visit prisons to hear testimonies (x4)
- Engage family and friends for victims who are no longer alive, or have been made incapable from their experiences (x3) – understand more about impacts (x2)

"I think people should be able to come forward on behalf of a family member who has passed away"

- Travel to as many parts of NZ as possible
- We should be able to speak without feeling afraid

"I think the way they handled my case was wrong. I feel like they don't believe me, and because it was for only a day and night that it doesn't matter"

- Remember we were trained not to nark, and to trust no-one
- Victims should be able to opt for anonymity (x3)
- Extreme care of my privacy and confidentiality regarding personal details of my life

## Communications

- Have open communications, and in understandable language for those with disabilities (x3)
- Make it a personal process (x2) – real people

"Respect the rights and wishes of the victims, many of whom have had a bad deal, for a long time, by the system"

- Have one-on-one discussions so that someone else does the paperwork
- Be able to opt out of updates

## **Supports and Care – During Commission**

- Need professional mental health support for traumatized victims (x4)

"While the intention for this is good and positive outcome, the process involving victims is very stressful and can impact on their health – physical and emotional – their behaviours which can be very challenging and this has a ripple effect onto family, friends and support team"

"Each time I receive a letter or email reminds me of that place and how slow the government is to react...it's like something that happened in the past doesn't really matter anymore. It's a big kick in the teeth"

- Provide practical supports and care to victims with disabilities (eg. use help / interpreters for those with disabilities, where required) (x3)
- While wanted, this Commission will be stressful for victims– so need to help us with that (x2)
- Follow up with victims after hearings, to see how they're coping (x2)

"I don't have anyone or anywhere to feel safe and unjudged to talk or express my inner feelings. I blame myself...I hate myself and I've learnt to hide it well"

"Everyone should be treated the same, a victim of state care abuse is a victim....Regardless of a person's current circumstances"

- Provide access to advocates and lawyers, so we can understand our options
- Put victims in contact with each other, if they request it
- Priority access to services, eg mental health, housing
- Help victims reconnect with whanau or iwi
- Help to find family members
- Assistance to victims to allow them to travel to abuse sites (eg travel costs to get to Great Barrier Island)

## **Commission Reporting**

- Public accountability – identifying who did what (x10)
- Include how abuse has had impact through life (x5)
- Examine intergenerational impacts (x3).
- Show impact on wider family

"Focus on how abuse has impacted on family, past and present – leaving people with trauma, PTSD, drug problems because they can't cope"

"I was victim of brother's abuse after he was abused in care"

- Comprehensive overview of total impact of abuse (x2)
- Report on how abuse led to offending and gang involvement (x4)
- Address MSD disrespect and lack of empathy to victims and families (x3).

"Expose how MSD has continued to abuse us"

- Name and shame those who refused to take action, or made things worse for us (x2)
- Keep attention on contemporary situation
- Report on why people were put into care, often unnecessarily
- Report in ways that can inform public conversations, including lots of public hearings (x2)
- Provide understandable information about how victimisation led to offending and poverty
- Report on how children became institutionalised – and changes laws, policies to reflect that
- Study how abuse affected us – alcohol, drugs and crime to cope. A lot of us grew with a deep hate for authority
- Use police records to identify actions against workers and those who looked after kids
- Use information from other complainants' files for validation
- Produce verifiable research data

## **Redress / Compensation**

- Quicker transparent compensation (x12)

"Months not years" – "we've been waiting too long"

- Spouses/children should be able to claim for partners/parents who have passed away (x6)
- Compensation to account for trauma and psychological harms, as can often be more difficult to recover from (x6)

"It should be taken into account all of the years spent waiting for government to admit any responsibility for systemic failure and effect our experiences have had on our children"

"MSD should pay for wrecking my life, and make sure it doesn't happen to any child again"

- Any compensation should not include fees, should be meaningful (x2)

- Compensation should be given for denial of education, not just violence or sexual abuse
- Redress scheme to be open-ended – no arbitrary closing date
- Compensation to consider working life lost, poor health, housing, and so on

## Recommendations and Further Action

"All victims of state care should have a say in terms of what changes should be done to make sure what happened to us shall never happen again"

"Emphasis on tracking the implementation of recommendations"

- Ensure it doesn't happen again (x8)
- Offer life-long counselling (x7), not just for sexual abuse through ACC. Long-term counselling should also include wider family/whanau (eg to be able to talk about continuation of violence through family or other impacts) (x2)
- Develop well-resourced protection/oversight/complaints body for all children in care today (x7)
- Accountability and prosecutions for abusers (x8)
- Abusers to be fined (x3)

"Once the Inquiry is concluded I would like to see that those found to be at fault held accountable for their negligence, so there is little or no chance of similar things happening to others"

- Develop better laws/screening for those given 'care' of children or who are involved in programmes (x6)
- Use new knowledge to train social workers and others (eg in health; justice) about impact of state abuse – develop training and programmes for them and others (x5). Develop list of survivors who could be guest speakers on courses

"How are the processes of the Inquiry going to be used to remedy the abuse of our very own 'millennial generation'? How are the people involved...going to address the abuse that is ongoing?"

- Get agencies to admit they made mistakes (x4)
- Be able to refer cases to police (x3)
- Change sentencing laws – so state abuse is clear mitigating factor (x3)

"I would like to see some form of lessening sentences imposed on offenders imprisoned where maladaptive behaviours have resulted from the impact the abuse has had on them"

- Survivors should have a say in recommendations (x2) – engage victims to develop recommendations

- Remove obstacles for legal cases – eg legal aid; limitations – stop victim blaming in courts (x3)
- Develop programmes for us to live without violence – to be specifically created for those who have been in care (x2)
- Develop new Corrections programmes that specifically address abuse in care issues. Supports for those with long sentences (x2)
- Establish restorative justice meetings with abusers (x3)
- Family support for victims doing time, as they probably wouldn't be in prison if they'd been looked after in state care
- Help victims with their offending and substance issues – be more lenient with us
- Official apologies

"We need a formal apology from the government and acknowledgement that where we were placed was unfit, and that our abuse contributed to the abuse we carried on. It ain't an excuse but an understanding of gangs, drugs, etc"

- Institutions to be accountable
- Help with ID

"Help us to heal"

## **Annex 3**

### **Royal Commission into Historical Abuse in State Care: Getting It Right**

**Short Report from Hui, 14-15 February 2018**

**Compiled by Dr Andrew Erueti, Dr Elizabeth Stanley, Rosslyn Noonan, and Sonja Cooper on behalf of, and in consultation with, the attendees of the hui on the RC's draft Terms of Reference.**

**Sponsored by the New Zealand Law Foundation**

**16 March 2018**



On 14-15 February 2018, a hui was held in Wellington to discuss the draft Terms of Reference for the Royal Commission into Abuse in State Care. It was attended by survivors, advocates, practitioners working in the care/justice/health sectors, academics and media professionals, among others. This hui followed a one-day hui of survivors hosted by the New Zealand Human Rights Commission.

Sir Anand Satyanand, the newly appointed Chair of the Royal Commission, listened carefully to the presentations and wide-ranging discussion across the two days.

At the outset many at the meeting noted the sense of achievement in having an independent inquiry and recorded their recognition of the political leadership that had led to the inquiry.

At the same time, attendees raised significant concerns about the draft Terms of Reference. They provided constructive ideas about how the Royal Commission should best operate and engage with survivors. They encouraged the Royal Commission to assert independence, to think 'outside the box', to be collaborative, to be inclusive and to prioritise survivors and their whānau at every opportunity.

Their proposals for strengthening the legitimacy and effectiveness of the Royal Commission have been summarised in this report.

In brief, the ten areas identified for strengthening the Royal Commission are:

- The Royal Commission must give effect to the Treaty of Waitangi and reflect the Treaty in its ways of working
- The Royal Commission must develop effective ways to engage with survivors
- The restrictive time-frame must be removed
- The scope of the RC must be broadened to be inclusive, victim-survivor centred, and clearly understandable
- The Royal Commission should act swiftly to establish processes to receive survivors

- Commissioners require attributes that will encourage survivors to engage
- It is vital that the Commission can access non-redacted files
- The Commission should prioritise work around redress and monetary payments
- The Commission should be attentive to the future issue of apologies
- The Commission must be future-focused, and attentive to the prevention of abuse

## **1. The Royal Commission must give effect to the Treaty of Waitangi and reflect the Treaty in its ways of working**

- The RC has to demonstrate a level of significant intelligence/ understanding about working in partnership with Māori.
- Māori cannot be grouped with Pasifika and others without recognition of their specific experiences and concerns.
- The Treaty of Waitangi must be central to the Terms of Reference (“we have to work from the Treaty or it’s pointless”), in addition to Ngā Tikanga Māori and international indigenous rights.
- Specific measures should be adopted to give effect to the Treaty, eg Māori representation amongst the RC Commissioners; Māori kaupapa research projects being carried out by Māori; a tangata whenua listening panel; a Māori survivor panel; an advisory kaumatua council; and hearings on marae and urban Māori settings. There was a strong call for a specific Treaty-based stream for Māori.
- There should be appreciation of the diverse Māori experience – not limited to hapu and iwi but including urban Māori and hard to reach Māori.

## **2. The Royal Commission must develop effective ways to engage with survivors**

- As a matter of urgency, the RC must engage with survivors about their views on the consultation process, and how best to ensure survivors have full and effective participation in consultations, including ensuring adequate funding to enable their participation.
- Survivor panels should be resourced appropriately, to engage with survivors of diverse experiences and attributes. There should be group-specific panels, for example disability and Treaty panels.
- The Commission must engage widely, eg with those who are regarded as “hard to reach” including: gang-members; those in prison and state care; those who were in psychopaedic and psychiatric hospitals (including forensic services) and related services for those with disabilities; women survivors; and, survivors who reside overseas.

- The Commission must ensure that survivors have the opportunity to engage as equals. Learning from the Disability Rights Movement, the Commission should work against systemic ableism, and develop necessary supports so that those with disabilities can participate as equals. There should be adaptability in hearings, for example all-women listening panels.
- There needs to be recognition of the scale of engagement. The RC will need to hold a variety of hearings, some thematic, others addressed at specific survivor groups. The RC will also need to engage regularly with the survivor panels. The costs financially (and in terms of staff, resourcing and time) need to be taken into account - for example, CLAS had nine panellists and took seven years to hear from 1103 survivors.
- The RC would benefit from a review of other inquiries and engage with their members, including the Confidential Listening Forum (CLF), Confidential Listening and Assistance Service (CLAS) and the current mental health inquiry, but also similar overseas inquiries.

### **3. The restrictive time-frame must be removed**

Limiting the time frame (drafted as 1950-1999) will have several negative effects that will seriously compromise the integrity and impact of the Commission. In particular:

- (i) *The RC would ignore both younger and older victims of abuse, and thereby cause unnecessary trauma for those who have endured significant harms*
- Many abusive institutions operated after 2000 - eg Whakapakari on Great Barrier Island until 2004; Kimberley Hospital/Centre in Levin until 2006.
- Many survivors have been abused after 2000. For example, Cooper Legal currently has over 110 claimants under 30 years of age and that number is growing.
- Claims of abuse continue to be recorded by agencies like the Children's Commissioner (cf State of Care reports).

- Many older New Zealanders, who experienced state care in the 1940s, have waited decades for their experiences to be heard. The Australian Royal Commission heard compelling testimonies from people in their nineties.

(ii) *The RC would not be able to make meaningful recommendations about contemporary structures, institutions and socio-cultural environments in which state care and abuse is conducted.*

- Since 2000, many survivors have felt re-victimised by the way state agencies have responded to their claims of abuse. To prevent any repetition, there must be an independent examination of these processes and experiences.
- Many of NZ's contemporary social problems (such as imprisonment rates, suicide rates, mental health difficulties, or the inter-generational patterns of state care and abuse) cannot be examined or improved without full awareness of the impacts of historic and contemporary state care and abuse.
- A full historical record of state care provisions and practices is required to fully comprehend the cultures that continue to give rise to abuse and subsequent limitations on oversight or accountability.

(iii) *The RC would lose trust among survivors, their whānau and supporters.*

- The date limitation runs against the survivor-focused foundation of the RC. It is regarded as a state-protective strategy to ensure Government Ministers and government agencies whose decisions impacted on survivors between 2000 and 2018 avoid responsibility for harmful, victimising behaviours.
- The limitation would undermine the RC's ability to write a full account of how children came into state care; their experience there; the link between state care and long-term incarceration; and the inter-generational effects.

- Most survivors prioritise the prevention of future abuse and have real concerns about current protection – many would not engage with a RC that cannot effectively engage in this area.

#### **4. The scope of the RC must be broadened to be inclusive, victim-survivor centred, and clearly understandable**

*(i) The RC must have an easily understood framework*

- The Draft Terms do not contain a clear definition of state care that is easily understood by survivors. Many do not know whether they would be included or excluded from the Commission. Clarification is vital to avoid uncertainty and upset.

*(ii) The RC should hear testimonies of state and non-state abuse*

- The focus to date has been children in state care, ie children taken from their parents and whānau and placed in residential homes, short-term homes, hospitals, orphanages, foster homes, 'wilderness' programmes, or other placements. There is recognition of all forms of abuse and neglect in this context, the lack of monitoring or accountability, and the disproportionate and inter-generational effects on Māori. The hui agreed that these were significant aspects of the RC's focus.
- At the same time, there was a clear call from other survivors – such as male survivors of abuse in schools (for example Catholic-run boarding schools), and females who had been held in church homes and whose children were forcibly adopted – to have the ToR clearly include them and their experiences.
- There are issues of resourcing and timing if the ToR are extended in this manner. However, the consensus was that the RC ought not to turn away any victim of neglect or abuse, particularly as to do so would minimise state responsibility (eg through state inaction) and hearing from these survivors would assist the RC in understanding the nature and extent of abuse that occurred in out of home care.
- There needs to be recognition that prisons were routinely used for both state wards and other children (eg those on remand), and care was signed over from Social Welfare to the Prison

Service/Corrections. In addition, it was common for children to be abused while in Police custody.

## **5. The Royal Commission should act swiftly to establish processes to receive survivors**

- Many survivors are already contacting other agencies (eg the Human Rights Commission (HRC)) with their questions and concerns. It now appears that the HRC is unable to continue to provide the support it has provided to date.
- It is a matter of urgency that the Royal Commission establishes a plan to be distributed widely, about what it plans to do for the remainder of this consultation phase.
- There needs to be a process to receive survivors now during this consultation phase, including a process of receiving submissions, before the RC's formal work begins. As an immediate step, survivors should have someone to call to respond to questions or concerns, and to refer survivors for counselling and assistance. A facebook page should be established and a completely independent website should be developed. This site must be widely accessible – the recent Australian Royal Commission was well-received and the style/approach of that site could be followed. There should be information on how to engage with the RC during this consultation phase.
- The RC needs immediate support (ie, administrative, pastoral, and advisory) on how to engage with survivors. This should include an interim support group comprised of survivors and supporters.
- The government should ensure adequate funding is made available for wider services for victims of trauma.

## **6. Commissioners require attributes that will encourage survivors to engage**

- Survivors need to see themselves represented in the Royal Commission. Māori need to be well-represented amongst Commissioners and RC staff. Commission members should also

include a survivor(s), and someone with lived experience of disabilities. Appointments should be broadly supported by survivors.

- Women need to be well-represented in the RC.
- It would be beneficial to have more than four Commission members, in order to: (i) include those with the right skills and attributes; and (ii) conduct hearings in a timely manner.
- Commissioners and senior staff must understand trauma, and what it means to have been in out of home care.

## **7. It is vital that the Commission can access non-redacted files**

- Without this ability, the RC process will be seriously compromised.
- In engaging with files, Commission staff must be attentive to the fact that all files will have omissions and mis-recordings.

## **8. The Commission should prioritise work around redress and monetary payments**

- Survivors have had very damaging experiences in their attempts to secure financial and other forms of redress. Official processes have been described by some as intensely abusive.
- Redress extends beyond monetary payments and includes counselling and advice, education and health benefits.
- The state 'compensation' processes of MSD, MOE and MOH are widely regarded as flawed, non-transparent and led by a culture of state protection. No survivors were consulted in establishing these schemes. They cannot continue in their present form and the Commission must act quickly to understand the current processes and make recommendations to develop new redress schemes for victims. In doing so, the RC must provide recommendations on acceptable levels of compensation, as overseas Inquiries have done.
- The Commission should examine "best practice" in other states that have provided redress schemes, and monetary payments to abuse victims.

- Redress schemes should be established in consultation with survivors.
- Acknowledging that many survivors feel they have been treated as criminals in the process of claiming redress, the Commission should examine the legal strategies and tactics adopted by the Crown to oppose claims before the Courts and the extent to which they met 'model litigant' principles. The RC should also examine the effects of the Limitation Act and ACC legislation on survivors seeking a remedy for abuse and neglect.

### **9. The Commission should be attentive to the future issue of apologies**

- Apologies can be healing experiences, particularly if they are heartfelt, authentic, frank and full. An official recognition that victims are believed is important, as well as recognition of the harm caused to survivors and who is responsible for that harm.
- Apologies can be counter-therapeutic if they lack integrity, or if harmful treatment continues.
- Apologies should also be regarded as a process that must involve survivors at every stage, including in terms of crafting what is said and how it is said and to whom (for example there may be a need for several types of apologies, with some aimed at specific groups).

### **10. The Commission must be future-focused, and attentive to the prevention of abuse**

- Many Commissions have struggled to gain implementation of recommendations. The Commission needs to be mindful of political will, and to be actively engaged with recommendations from the start of the process. Failing to do this will impact on its legitimacy and reputation.
- It is vital that the Commission moves beyond recommendations that focus solely on legal, administrative or regulatory change. Recommendations on the wider socio-cultural, political and economic context in which abuse occurs is vital.
- Preventative recommendations should be visionary as well as focused.

- The process of disclosure (particularly that it takes decades for abuse victims to come forward) must be considered and the need to retain comprehensive records emphasised.
- Any preventative scope must include organisations outside the state (eg churches, or other community groups) and be attentive to the systems (eg education, social work, health, law, justice) in which state care is situated.
- The RC should provide recommendations on wider systems – such as social work education, policies and practices - based on what it learns through the Inquiry process. Attention needs to be given to how lessons about policy and practice failings may inform current and future policy on care.
- The RC should make recommendations about the creation, collection, retention and disclosure of records relating to children in “out-of-home”/institutional care to ensure that: those children are able to understand their history; connect with their family, whānau, hapu and iwi heritage; have accurate accounts of their time in care; know the reasons for what happened to them and the decisions that were made about them; and can add their own voices to the records.
- All of this work will require considerable research capacity and support. The RC would benefit from engaging with other inquiries into neglect and abuse of children especially and how they have managed these issues.

## **Annex 4**

# **Royal Commission of Inquiry into Abuse in State Care Submission on Government's draft terms of reference 24 April 2018**

**Prepared by Sonja Cooper, Dr Anaru Erueti, Rosslyn  
Noonan and Dr Elizabeth Stanley**

## **DRAFT TERMS OF REFERENCE–**

### **Royal Commission of Inquiry into Abuse in State Care**

These draft terms of reference have been prepared by Sonja Cooper, Dr Anaru Erueti, Rosslyn Noonan and Dr Elizabeth Stanley as a submission to the Royal Commission on the draft Terms of Reference (ToR) released by Government on 1 February 2018.

They differ from the Government's ToR in the following key areas:

1. Requiring that the Royal Commission give effect to Te Tiriti o Waitangi in its structure and ways of working.
2. Requiring that the Royal Commission have regard to the international human rights standards that New Zealand has ratified.
3. Providing the Royal Commission with some flexibility to determine the exact parameters of the scope of the Inquiry and in particular what constitutes direct and indirect State responsibility.
4. Specifying that the Royal Commission will consider the experiences of any individual who was in state care at any time during their lifetime and up to 1 February 2018.<sup>1</sup>
5. Adding the following to the matters that the Royal Commission "shall examine, identify, and report on": the agencies ultimately accountable for the abuse; how official responses, political decisions, investigations, and criminal or civil proceedings have dealt with complaints of abuse; and the Crown's response to litigation.

## **BACKGROUND**

1. The legacy of people taken into state care who suffered neglect and abuse is a stain on our country's history. A majority of people who have been in state care are Māori. While some people received a better education and start in life, regrettably many did not and suffered abuse and neglect.
2. The Human Rights Commission and the United Nations Committee on the Elimination of Racial Discrimination called for this matter to be the subject of an independent inquiry. The Government has accepted the task by establishing the Royal Commission.

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<sup>1</sup> To reflect this expanded timeframe the word "historical" has been removed from the title of the Royal Commission.

3. The Royal Commission of Inquiry into Abuse in State Care is conducted under the Inquiries Act 2013. The Commission has the authority to come to its own independent conclusions and recommendations.
4. The Royal Commission provides an opportunity to identify and acknowledge what went wrong; how and why it happened; where responsibility lies; and what must be done to ensure the mistakes of the past are not repeated.

### **TREATY OF WAITANGI**

5. The Royal Commission shall give effect to Te Tiriti o Waitangi/the Treaty of Waitangi in its structure and ways of working and in particular to the Treaty principles of partnership, active protection and good faith

### **HUMAN RIGHTS**

6. The Royal Commission shall have regard to the rights of the Universal Declaration of Human Rights, and the subsequent human rights instruments and conventions which New Zealand has ratified and endorsed, including: the Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Rights of the Child; the Convention against Torture; the Convention on the Rights of Persons with Disabilities; and the UN Declaration on the Rights of Indigenous Peoples.
7. The Inquiry will adopt a “human rights approach” in its ways of working, specifically adopting the principles of participation, empowerment, non-discrimination, and accountability.

### **PURPOSE AND SCOPE**

8. The matter of public importance which the Inquiry is primarily directed to examine is abuse of individuals in state care.

9. The Inquiry shall examine, identify, and report on the following matters:

9.1 The nature and extent of the abuse that occurred in care during the relevant period. This will include abuse suffered by an individual in a family / whanau placement, when the state had notice of that abuse.

9.2 The impact of the abuse on individuals and their families, whānau, hapu and iwi and other communities. In considering this, the Inquiry is invited to consider both the immediate impacts, as well as longer-term and intergenerational impacts; and to give particular consideration to any groups where differential impact is evident.

9.3 The circumstances that led to the decision to take or place someone into state care, and the factors that may have contributed to the decision-making process involved, including racial discrimination;

9.4 The factors which may have caused or contributed to the abuse of individuals in state care during the relevant period, including any structural and systemic factors, legislation, policies and practices identified; and the agencies ultimately accountable for the abuse;

9.5 How official responses, political decisions, investigations, and criminal or civil proceedings have dealt with complaints of abuse;

9.6 Any general findings which will inform changes in practice;

9.7 Any limitations in the current settings available to prevent and respond to abuse in state care including standards, supports and oversight mechanisms that assist in preventing and responding to abuse;

9.8 The redress and monetary compensation processes for individuals who claim, or have claimed, abuse while in state care, including statutory, policy or administrative barriers and the Crown's response to litigation;

9.9 Improvements to the redress processes warranted.<sup>2</sup>

#### *Other matters arising*

10. The Inquiry may consider other matters that come to the Commission's notice in the course of its inquiries and that it considers would assist it to deliver on the stated purpose, scope and deliverables.

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<sup>2</sup> The term "redress" covers monetary processes (for example, settlement processes) and non-monetary processes or services (for example, rehabilitation). For the avoidance of doubt, existing claims processes will continue to operate during the course of the Inquiry's work. The Inquiry may, in accordance with paragraph 19 below, examine these processes and issue interim reports or recommendations.

## **DEFINITIONS**

11. For the purpose of the Inquiry, unless the context otherwise requires, the following definitions will apply:

### Abuse

- Physical, sexual and emotional abuse, and neglect, as defined in applicable domestic and international standards.<sup>3</sup>

### State care

- An individual is in state care if the State has responsibility, whether directly or indirectly,<sup>4</sup> for their care.<sup>5</sup>
- The Inquiry shall consider the experiences of any individual who was in state care at any time during their lifetime and up to 1 February 2018 inclusive, irrespective of whether they were a child, young person or an adult at the time.

## **APPOINTMENTS**

12. The members of the Inquiry are: Rt Hon Sir Anand Satyanand GNZM QSO; [TBC]. Of the members, Rt Hon Sir Anand Satyanand GNZM QSO shall act as Chair of the Inquiry.

13. All senior staff must be individuals who have no prior relationships with the agencies involved with, or accountable for, the neglect and abuse, or in previous responses to claimants.

14. Survivors must clearly perceive that senior members:

- are of the highest moral standing;
- have independence of mind;
- have demonstrated integrity and empathy;
- have personal stamina and mental capacity;
- have knowledge of Tikanga Maori and te Tiriti o Waitangi;
- have an ability to behave and review without partiality.

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<sup>3</sup> See for example, the definition given in s14(1)(a) Oranga Tamariki Act 1989.

<sup>4</sup> This includes situations in which the state has delegated, licensed, or in any other way contracted out or passed on its decision-making authority or care functions to another (including private) individual, entity, or service provider. In this regard, the Inquiry shall have regard to situations in which the State did or may have had functional or legal responsibility for an individual, but placed him or her in the immediate physical care of another. The Inquiry should also hear evidence from individuals who were left with or returned to family / whanau, in circumstances where the state was aware of abuse. The Inquiry shall, therefore, have regard to applicable domestic and international law concerning effective jurisdiction and control in the course of its work.

<sup>5</sup> The situations in which the state has or may assume responsibility for an individual include: a state decision or action in relation to an individual; the implementation of 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).

## **PRINCIPLES AND METHODS OF WORK**

### *Principles*

15. The Inquiry shall carefully consider and implement principles and methods of work which will enable it to conduct its work in a manner sensitive to the particular needs of individuals, as well as the needs of their families / whānau, or other support persons. This may include the holding of different thematic or survivors-specific hearings in varied locations.

16. The Inquiry shall ensure that it adheres to the highest standards of professionalism and integrity in the course of its work. The principles in accordance with which the Inquiry will operate include (but are not limited to):<sup>6</sup>

- the principles of te Tiriti o Waitangi and human rights;
- being victim and survivor-focused;
- taking a whānau-centred view;
- working in partnership with Maori including with iwi, hapu and urban and regional and national Maori authorities;
- being responsive where differential impact is evident, e.g. to Pacific people, gender, LGBTQI people, disabled people and people who have experienced mental health issues.
- avoiding a disproportionately legalistic approach.

### *Methods of work*

17. The methods the Inquiry will implement to ensure a sound foundation for its work may include (but are not limited to):

- the establishment of sound practical mechanisms to facilitate the timely communication of information, or the production of documents or other things in accordance with the Inquiry's powers under the Inquiries Act 2013;
- the establishment of an investigation unit, or other specialist advisory or research functions to support the Inquiry;
- the need to ensure that information or evidence that may be 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;

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<sup>6</sup> Principles applicable to human rights monitoring and investigations can be found in a number of domestic and international materials, for example: UN Office of the High Commissioner for Human Rights Training Manual on Human Rights Monitoring (2001), pp 87-93 (and 2011, chapter 2).

- the need to establish appropriate arrangements in relation to current and previous inquiries, to enable the sharing of previous evidence and information, with victim/survivor-consent. This may avoid unnecessary duplication, improve efficiency and avoid unnecessary trauma to individuals;
- the need to encourage timely responses from government agencies, institutions and other parties to requests for information, documents and other relevant material, including any archived material.

18. The Inquiry is directed to establish a survivor advisory group or groups to provide independent assistance to Inquiry members, and to ensure the Inquiry remains victim and survivor-focused and responsive to victim and survivor needs. While the group will not have a decision-making function, and its feedback will not bind the Inquiry, it will assist the Inquiry at its request.

## **FINDINGS AND RECOMMENDATIONS**

19. Without limiting the terms of reference set out above, the Inquiry shall consider the following deliverables:<sup>7</sup>

- Deliver a public statement on and record of these matters – with a particular focus on any differential impacts;
- Report and present general findings on the causes of or contributing factors to the abuse, including systemic issues;
- Report and present general findings on accountability and lessons learned which will inform subsequent changes in practice, and identify gaps or recommended areas of focus;
- Report and make any recommendation or recommendations on appropriate steps for the State to take to rectify the harm caused, including whether the State should make an apology for the abuse of individuals during the relevant period; and
- Comment on existing compensation, redress and rehabilitation processes for individuals who claim, or have claimed, abuse while in care, and recommend potential changes to these if needed.

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<sup>7</sup> Findings and recommendations may concern, for example, legislative, administrative, policy, practice, or procedural change.

20. In accordance with the Inquiries Act 2013, the Inquiry may make findings of fault, but has no power to determine the civil, criminal, or disciplinary liability of any person. It may, however, make recommendations that further steps be taken to determine liability. In all of its work, the Inquiry shall act independently, impartially, and fairly.

### **COMMENCEMENT OF WORK AND REPORTING REQUIREMENTS**

21. The Inquiry will commence on [TBC] and may begin considering evidence from [TBC].
22. The Inquiry is to issue its final report, containing findings and recommendations, in writing within the current parliamentary term.
23. The Inquiry may issue interim reports or reports of findings and recommendations.
24. If the Inquiry identifies issues which may affect its ability to deliver a final report within the current parliamentary term it shall notify the responsible Minister as soon as possible with a view to identifying an appropriate solution, which may include (but is not limited to) an extension of time.
25. In addition to issuing its final report, the Inquiry should consider other means by which its work can be readily understood and accessed by the public, whether by public statements, research reports, issues papers, or similar documents.