

DRAFT TERMS OF REFERENCE– Royal Commission of Inquiry into Historical Abuse in State Care – FOR CONSULTATION

BACKGROUND

1. For a number of years, many individuals and community groups have called for an independent inquiry into abuse in state care in New Zealand. The most recent public call for an independent inquiry was led by the Human Rights Commission and entitled Never Again/E Kore Anō. The Confidential Listening and Assistance Service recommended the establishment of an independent mechanism to undertake a systematic review. At the international level, the United Nations Committee on the Elimination of Racial Discrimination has also recommended that New Zealand establish an independent inquiry into abuse in state care.
2. New Zealand has international obligations to take all appropriate legislative, administrative, judicial or other measures to protect individuals from abuse, including measures for the prevention, identification, reporting, referral, investigation and follow-up of incidents of abuse. Abuse of individuals in state care is inconsistent with applicable domestic and international human rights law standards and principles. It warrants prompt and impartial examination, both to understand, acknowledge and respond to the harm caused to individuals, families and communities, as well as ensure lessons are learned for the future.
3. In light of this, and consistent with this Government’s commitment to set up an inquiry in the first 100 days of its term, a Royal Commission of Inquiry [will/has] been established into historical abuse in state care. The Minister of Internal Affairs is responsible for the Inquiry.

PURPOSE AND SCOPE

4. The matter of public importance which the Inquiry is directed to examine is historical abuse of individuals in state care.
5. The Inquiry shall examine, identify, and report on the following matters:
 - 5.1 The nature and extent of the abuse that occurred in state care during the relevant period.
 - 5.2 The impact of the abuse on individuals and their families, whānau and communities.
 - 5.2.1 In considering this, the Inquiry is invited to consider both the immediate impacts, as well as longer-term and intergenerational impacts;
 - 5.2.2 In considering this, the Inquiry is also invited to have particular consideration for Maori and any groups where differential impact is

evident, e.g. by gender, LGBTQI people, Pacific people and people who have experienced mental health issues.

- 5.3 The factors which may have caused or contributed to the abuse of individuals in state care during the relevant period, including any systemic factors identified.
- 5.4 General findings on lessons learned from the past which have informed subsequent changes in practice, and any gaps or potential areas of focus.
- 5.5 The current settings available to prevent and respond to abuse in state care including standards that assist in preventing and responding to abuse.
- 5.6 The redress processes for individuals who claim, or have claimed, abuse while in state care, including improvements to the redress processes that can be considered.¹

Other matters arising

6. The Inquiry may consider 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.
7. 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.

DEFINITIONS

8. 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.²

State care

¹ The term "redress" covers monetary processes (for example, historic claims) 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 paragraphs 15(e) and 19 below, examine these processes and issue interim reports or recommendations.

² See for example, the definition given in s14(1)(a) Oranga Tamariki Act 1989.

- An individual is in state care if the State has responsibility, whether directly or indirectly,³ for their care.⁴ For the purpose of this Inquiry, state care does not include prisons, general hospital admissions or schools (other than residential special schools).⁵ However, the experience of an individual in these facilities may be considered if that individual was also in state care at the time.⁶
- The Inquiry shall consider the experiences of any individual who was in state care between 1 January 1950 and 31 December 1999 inclusive, irrespective of whether they were a child, young person or an adult at the time.⁷ The Inquiry may at its discretion consider cases prior to 1950.

APPOINTMENTS

9. The members of the Inquiry are: Rt Hon Sir Anand Satyanand GNZM QSO.
10. Of the members, Rt Hon Sir Anand Satyanand GNZM QSO shall act as Chair of the Inquiry.

PRINCIPLES AND METHODS OF WORK

Principles

11. 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.
12. 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):⁸
 - being victim and survivor-focused;

³ 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 shall, therefore, have regard to applicable domestic and international law concerning effective jurisdiction and control in the course of its work.

⁴ 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).

⁵ While for present purposes the treatment of individuals in prisons does not fall within the immediate definition of 'State Care', the Inquiry may consider, in broad terms, the long term impacts of state care experience on an individual or group of individuals. The Inquiry may, for example, examine whether those who had state care experience went on to experience the criminal justice or correctional system and what conclusions or lessons, if any, might be drawn from the Inquiry's analysis.

⁶ For example, the Inquiry could consider abuse of a child in a school if that child was also in a child welfare placement.

⁷ The Inquiry may also consider, in a general manner, issues arising after 31 December 1999 with respect to individuals who were in care prior to that date.

⁸ 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).

- taking a whānau-centred view;
- working in partnership with iwi and Māori;
- being responsive where differential impact is evident, e.g. by gender, LGBTQI people, Pacific people, disabled people and people who have experienced mental health issues.
- avoiding a disproportionately legalistic approach.

Methods of work

13. 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 or other specialist units, 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;
 - the need to establish appropriate arrangements in relation to current and previous inquiries, in New Zealand and elsewhere, for evidence and information to be shared with the Inquiry, so that the work of those inquiries, including, with any necessary consents, the statements of witnesses, can be taken into account by the Inquiry in a way that avoids unnecessary duplication, improves efficiency and avoids unnecessary trauma to individuals; and
 - the need to ensure that institutions and other parties are given a sufficient opportunity to respond to requests and requirements for information, documents and things, including, for example, having regard to any need to obtain archived material.
14. The Inquiry is directed to establish a survivor advisory group 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

15. Without limiting the terms of reference set out above, the Inquiry shall consider the following deliverables.⁹
 - 15.1 Deliver a public statement on and record of these matters – with a particular focus on any differential impacts for Māori, Pacific peoples, disabled people and by gender;
 - 15.2 Report and present general findings on the causes of or contributing factors to the abuse, including systemic issues;
 - 15.3 Report and present general findings on lessons learned from the past which have informed subsequent changes in practice, and identify gaps or recommended areas of focus;
 - 15.4 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
 - 15.5 Comment on existing redress and rehabilitation processes for individuals who claim, or have claimed, abuse while in state care, and recommend potential changes to these if needed.
16. 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

17. The Inquiry will commence on [TBC] and may begin considering evidence from [TBC].
18. The Inquiry is to issue its final report, containing findings and recommendations, in writing within the current parliamentary term.
19. The Inquiry may issue interim report or reports of findings and recommendations.
20. 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.
21. 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.

⁹ Findings and recommendations may concern, for example, legislative, administrative, policy, practice, or procedural change.