



Cabinet

Minute of Decision

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Final Establishment of the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions

Portfolio **Internal Affairs**

On 12 November 2018, following reference from the Cabinet Social Wellbeing Committee (SWC), Cabinet:

Background

- 1 **noted** that on 25 January 2018, the Cabinet Business Committee (CBC) agreed to establish a Royal Commission of Inquiry into Historical Abuse in State Care [CBC-18-MIN-0011], which was formally established by Order in Council on 1 February 2018;
- 2 **noted** that Rt Hon Sir Anand Satyanand was appointed to lead the Inquiry and that, shortly after its establishment, he conducted a public consultation on its draft terms of reference;
- 3 **noted** that CBC invited the Minister of Internal Affairs (the Minister) to report on the terms of reference, additional Inquiry members, the Inquiry's forecasted budget, and the establishment of a Survivor Advisory Panel [CBC-18-MIN-0011];
- 4 **noted** that on 28 May 2018, the Chair of the Royal Commission reported back to the Minister on the results of the consultation on the draft terms of reference;
- 5 **noted** that on 28 June 2018, the Ministerial Working Group met to discuss the Chair's findings and was consulted on the final scope of the terms of reference;

Terms of Reference

- 6 **agreed** to the revised terms of reference, as set out in the establishment instrument attached as Appendix One to the submission under SWC-18-SUB-0163;
- 7 **agreed** that the title of the Inquiry be changed from "Royal Commission into Historical Abuse in State Care" to "Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions";
- 8 **agreed** that the terms of reference include a preamble that:
 - 8.1 sets out the historical backdrop;
 - 8.2 the government's commitment to the establishment of the Inquiry;

- 8.3 references the treatment of persons with disabilities, mental illnesses or both;
- 8.4 reaffirms and recognises international and domestic sources of law that will apply to the Inquiry's work; and
- 8.5 expressly recognises the Treaty of Waitangi and its principles, as well as the status of iwi and Māori under the Treaty of Waitangi;
- 9 **agreed** that the matter of public importance which the Inquiry is directed to examine is the historical abuse of children, young persons, and vulnerable adults in State care and in the care of faith-based institutions;
- 10 **agreed** that the stated purpose of the Inquiry is to identify, examine, and report on the matters in scope;
- 11 **agreed** that the matters in scope for the Inquiry are:
- 11.1 the nature and extent of abuse that occurred in State care and in the care of faith-based institutions during the relevant period (the relevant period being 1950 to 1999, with discretion to consider matters beyond these dates);
 - 11.2 the factors, including structural, systemic, or practical factors, that caused or contributed to the abuse;
 - 11.3 the impact of the abuse on individuals and their families, whānau, hapū, iwi, and communities (immediate, long-term, and intergenerational);
 - 11.4 the circumstances that led to individuals being taken into, or placed into, care and the appropriateness of such placements (including factors that contributed, or may have contributed, to the decision making process);
 - 11.5 what lessons were learned, what changes were made, and what gaps, if any, remain and need addressing;
 - 11.6 the current frameworks to prevent and respond to abuse in care, and any changes that will protect children, young persons and vulnerable adults in the future;
 - 11.7 the redress and rehabilitation processes for individuals who claim, or have claimed, abuse in care, including improvements to those processes; and
 - 11.8 other appropriate steps that State or faith-based institutions should take to address the harm caused, including whether there should be an apology by the State and faith-based institutions for the abuse that occurred;
- 12 **agreed** to the expansion to the definition of abuse in the terms of reference, to include inadequate care and abuse by other care recipients;
- 13 **agreed** to the definition of individual in the terms of reference to cover children, young persons below the age of 18 years, and vulnerable adults;
- 14 **agreed** to the revised definition of State care in the terms of reference, including the expansion to include educational settings (including schools), transitional and law enforcement settings, and the exclusion of people in prisons, general hospital admissions, aged residential and in-home care, and immigration detention;

- 15 **agreed** that the relevant period to be covered is 1950 – 1999, with an expanded discretion to look beyond these dates;
- 16 **agreed** to the definition of redress processes in the terms of reference;
- 17 **agreed** that the Minister of Internal Affairs will be the responsible Minister for this Inquiry (as appropriate Minister under the Inquiries Act 2013 (the Act));
- 18 **agreed** to the following principles to guide the Inquiry's work:
- 18.1 do no harm;
 - 18.2 focus on victims and survivors;
 - 18.3 take a whānau centred view;
 - 18.4 work in partnership with iwi and Māori;
 - 18.5 work inclusively with Pacific people;
 - 18.6 facilitate the meaningful participation of those with disability, mental illness, or both;
 - 18.7 respond to differential impacts on any particular individuals or groups;
 - 18.8 be sensitive to the different types of vulnerability that arise for people in care;
 - 18.9 ensure fair and reasonable processes for individuals and organisations associated with providing care; and
 - 18.10 avoid an overly-legalistic approach;
- 19 **noted** Cabinet's expectation that the environment of the Inquiry will also be conducive to ensuring that there is maximum disclosure by those who previously worked in organisations covered by the scope of the Inquiry;
- 20 **agreed** that the Royal Commission does not adopt a sequential approach where claims related to State care are progressed first with an interim report in 2020, to be followed by claims relating to other care settings;
- 21 **agreed** to set down an interim report date of 28 December 2020, with a final reporting date to be set down following consultation with the Chair by notice in the *New Zealand Gazette*;
- 22 **agreed** that the Inquiry may issue other interim reports, including interim findings and recommendations;
- 23 **agreed** that amendments may be made to the terms of reference as per the provisions of the Act and extensions of time for the reporting date may be granted;

Duration and timing

- 24 **agreed** that the duration of the Royal Commission is extended from three to four calendar years, with a final reporting date to be published in the *New Zealand Gazette*;
- 25 **noted** that counselling requirements and expenditure are forecast beyond four years;

- 26 **agreed** that commencement of the Royal Commission be gazetted in November 2018 following Cabinet decisions, and that the Royal Commission begin hearing evidence from 3 January 2019;

Inquiry members

- 27 **noted** that a separate paper was considered by the Cabinet Appointment and Honours Committee on the appointment of four Inquiry members [APH-18-MIN-0275];

Ministerial Working Group

- 28 **agreed** that the Ministerial Working Group be disestablished once the Royal Commission commences;

The Social Wellbeing Board

- 29 **noted** that the Social Wellbeing Board has identified the potential for substantial impacts on the public sector arising from the need to take a joined-up approach to coordinate an appropriate Crown response to the Inquiry;
- 30 **noted** the Social Wellbeing Board recommends that Cabinet note that Chief Executives on the Board are working on developing a more detailed understanding of the financial implications of the Inquiry for social sector agencies to manage the Crown response during and after the Inquiry's term;

Financial implications

- 31 **noted** there is limited information on which to develop assumptions about key parameters of the Inquiry, and deviations from the Department of Internal Affairs' forecasts are expected and could be material;
- 32 **noted** that the key assumptions made in preparing the budget are:
- 32.1 the Inquiry's substantive work will begin in January 2019, with panel members in place before this date;
 - 32.2 State care (direct and indirect) will be the primary, but not exclusive, focus, with faith-based care as a further, separate, focus;
 - 32.3 the Inquiry will present interim reports on State care and faith-based care in 2020, and that the first will be on State care;
 - 32.4 in 2020, Cabinet will take a further decision on the budget for the next phase of the Inquiry; and
 - 32.5 the Inquiry will deliver a final report by 3 January 2023, within four years of its evidential start date of 3 January 2019;
- 33 **noted** that the substantive assumptions underlying the budget are:
- 33.1 an estimated total cohort of approximately 8,000 children, young persons and vulnerable adults who experienced abuse in State care, and with the inclusion of faith-based care settings, up to 14,000 individuals may engage with the Inquiry;
 - 33.2 100 formal hearing days during the course of the Inquiry to hear from institutions and individuals;

- 33.3 allowance for between 1,600 and 2,800 informal (i.e. private) listening sessions where individuals will have the opportunity to be heard;
- 33.4 the provision of counselling for between 4,800 and 8,500 people who interact with the Royal Commission; and
- 33.5 reimbursement of people's reasonable travel costs for attending public hearings and private listening sessions;
- 34 **noted** that the key operational assumptions underlying the budget are:
- 34.1 one Royal Commission Chair supported by four members, working four days per week for the duration of the Royal Commission's term;
- 34.2 an average staff level of 64 Full-Time Equivalents; and
- 34.3 the Department of Internal Affairs, as the administering agency, provides core administrative services to the Royal Commission;
- 35 **noted** that the budget does not include allowance for participants' legal costs to be paid by the Crown when recommended by the Inquiry under section 18 of the Act, and a separate application for funding will be made once the Royal Commission is able to estimate these costs;
- 36 **noted** that there is insufficient certainty to create a tagged contingency for either Crown funded legal assistance or for any potential additional funding resulting from the Royal Commission's 2020 report-back, and the Department of Internal Affairs has lodged a Specific Fiscal Risk with the Treasury in acknowledgement of this unquantified cost;
- 37 **noted** that it is assumed that State institutions will fund their own legal costs;
- 38 **agreed** to provide an exemption from the Publicity expenses provisions of CO (18) 2 *Proposals with Financial Implications and Financial Authorities* to enable the Royal Commission to make autonomous decisions regarding its advertising expenditure without recourse to Cabinet or Ministers;
- 39 **noted** that the Department of Internal Affairs, as the administering Department, acts for the Royal Commission in certain areas, including employing the Royal Commission's Secretariat and managing its appropriations, and in doing so applies Public Sector good practice policies, and passes any resulting costs onto the Royal Commission;
- 40 **agreed** that the Royal Commission will submit a financial report to the Department of Internal Affairs every six months, commencing from the date of establishment, and the Department will make this report publicly available;
- 41 **agreed** to increase funding in Vote Internal Affairs in 2018/19 and out-years to provide for the costs associated with the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions;
- 42 **noted** that the funding for the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions is urgent, cannot be met from Vote Internal Affairs' baselines, and cannot be deferred until Budget 2019;

- 43 **agreed** to establish the following new Multi-Year Appropriation, to run from 3 January 2019 until 30 June 2023:

Vote	Appropriation Minister	Title	Type	Scope
Internal Affairs	Minister of Internal Affairs	Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions - Operating Expenses	Departmental Output Expense	This appropriation is limited to supporting the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions.

- 44 **approved** the following change to appropriations to meet the operating expenses associated with the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions, with a corresponding impact on the operating balance and net core Crown debt:

Vote Internal Affairs Minister of Internal Affairs	\$million – increase/(decrease)	
	2018/19 to 2022/23	2023/24 & Outyears
Departmental Output Expense: Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions - Operating Expenses (funded by revenue Crown)	56.066	-

- 45 **noted** that the indicative spending profile for the new Multi-Year Appropriation described in paragraph 44 above is as follows:

Indicative annual spending profile	\$million – increase/(decrease)					
	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24 & Outyears
	8.668	13.706	14.246	13.367	6.079	-

46 **agreed** to establish the following new multi-year appropriation, to run from 3 January 2019 until 30 June 2023:

Vote	Appropriation Minister	Title	Type	Scope
Internal Affairs	Minister of Internal Affairs	Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions – Commissioners' Fees	Non-Departmental Other Expense	This appropriation is limited to the payment of Commissioners' fees for the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions.

47 **approved** the following change to appropriations to meet the Commissioners' fees associated with the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions, with a corresponding impact on the operating balance and net core Crown debt:

Vote Internal Affairs Minister of Internal Affairs	\$million – increase/(decrease)	
	2018/19 to 2022/23	2023/24 & Outyears
Non-Departmental Other Expense: Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions – Commissioners' Fees	6.123	-

48 **noted** that the indicative spending profile for the new Multi-Year Appropriation described in paragraph 47 above is as follows:

Indicative annual spending profile	\$million – increase/(decrease)					
	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24 & Outyears
	1.015	1.459	1.459	1.459	0.730	-

49 **agreed** to establish the following new Multi-Year Appropriation, to run from 3 January 2019 until 30 June 2023:

Vote	Appropriation Minister	Title	Type	Scope
Internal Affairs	Minister of Internal Affairs	Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions – Counselling Costs	Non-Departmental Other Expense	This appropriation is limited to providing counselling services for individuals participating in the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions.

50 **approved** the following change to appropriations to meet the counselling costs for individuals involved with the Royal Commission into Historical Abuse in State Care and in

the Care of Faith-based Institutions, with a corresponding impact on the operating balance and net core Crown debt:

Vote Internal Affairs Minister of Internal Affairs	\$million – increase/(decrease)	
	2018/19 to 2022/23	2023/24 & Outyears
Non-Departmental Other Expense: Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions – Counselling Costs	15.335	

51 **noted** that the indicative spending profile for the new Multi-Year Appropriation described in paragraph 50 above is as follows:

indicative annual spending profile	\$million – increase/(decrease)					
	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24 & Outyears
	1.464	2.233	3.028	3.388	5.222	-

52 **noted** that under the Public Finance Act 1989, the maximum period for a Multi-Year Appropriation is five years;

53 **noted** that if further appropriations are required beyond the five year period, approval will be sought from joint Ministers under the provisions available in Cabinet Office Circular CO (18) 2: *Proposals with Financial Implications and Financial Authorities*, and any unspent funding will be transferred to the new appropriations;

54 **approved** the following capital injection to the Department of Internal Affairs to enable the purchase of software and premise fit-out, with a corresponding impact on net core Crown debt:

	\$million – increase/(decrease)					
	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24 & Outyears
Department of Internal Affairs: Capital Injection	1.325	-	-	-	-	-

55 **noted** that following the Royal Commission’s completion, the Department of Internal Affairs will make a one-off voluntary capital withdrawal;

56 **approved** the following capital withdrawal from the Department of Internal Affairs, reflecting the circumstance described in paragraph 55 above, with a corresponding impact on net core Crown debt:

	\$million – increase/(decrease)						
Vote Internal Affairs Minister of Internal Affairs	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25 & Outyears
Department of Internal Affairs: Capital Withdrawal	-	-	-	-	-	(1.325)	-

57 **agreed** that the changes to appropriations and Departmental capital injections for 2018/19 above be included in the 2018/19 Supplementary Estimates and that, in the interim, the increases be met from Imprest Supply;

58 **agreed** that the expenses incurred under paragraphs 44, 47, and 56 above be charged as a pre-commitment against the Budget 2019 operating allowance;

59 **agreed** that the Departmental capital injection incurred under paragraph 54 be charged as a pre-commitment against the Budget 2019 capital allowance;

60 **noted** that these pre-commitments will reduce the operating and capital funding available for initiatives in Budget 2019 by commensurate amounts;

61 **noted** that once the Royal Commission is established, it will spend its budget as it best sees fit to deliver on the terms of reference, and should the Royal Commission require additional funding in the future, the Minister of Internal Affairs will report back to Cabinet on the Royal Commission’s forecasted budget needs for phase two;

Establishment instrument

62 **authorised** the submission to the Executive Council of the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions Order 2018 [PCO 21573/14.0];

63 **noted** that a waiver of the 28-day rule is sought:

63.1 so that the regulations can come into force as soon as possible;

63.2 on the grounds that the instrument needs to come into effect as soon as possible after Cabinet’s final decisions on 12 November 2018 and the instrument only confers benefit on the public;

- 64 **agreed** to a waiver of the 28-day rule so that the establishment instrument can come into force the day after it is publicly notified.

Martin Bell
for Secretary of the Cabinet

Secretary's Note: This minute replaces SWC-18-MIN-0163. Cabinet added a new paragraph 19 and amended paragraph 32.3.

Hard-copy distribution:
Prime Minister
Deputy Prime Minister
Minister of Internal Affairs