

TERMS OF REFERENCE COMPILED BY SIR ANAND SATYANAND FOLLOWING CONSULTATION

Royal Commission of Inquiry into Historical
Abuse in State and Non-State Care

THE NEW ZEALAND GOVERNMENT

Responding to the representations received for several years from many citizens and groups both locally and from overseas;

Acknowledging the time during which many children from all communities, but particularly Māori and Pacific communities, were removed from their families and placed in State and non-State care;

Recognising also the many adults who entered State and non-State care during this time;

Confirming that many of the children and adults in State and non-State care will have been people with disabilities;

Accepting that placement in care in some non-State settings is likely to have involved direct or indirect actions by State officials;

Appreciating that whilst many in this situation received education and care that enabled a better life in times to come, a number suffered neglect, inadequate care and abuse;

Considering that the matter requires detailed investigation, review and the identification of lessons to be learned for the future; first in regard to State care and secondly in regard to non-State care.

Focusing on Te Tiriti o Waitangi, The Treaty of Waitangi and its principles, and acknowledging the status of Iwi and Māori under Te Tiriti, The Treaty.

Noting the number of similar inquiries that have been mounted or are in progress in the United Kingdom, Australia and Canada.

HEREBY ESTABLISHES a Royal Commission of Inquiry under the Inquiries Act 2013 whose terms of reference for working are as follows:

BACKGROUND

1. Many individuals and community groups have called for an independent inquiry into abuse in State and non-State care in New Zealand. The call for a broad-based Inquiry into abuse in care was most recently emphasised during consultation on the nature and scope of these Terms of Reference.
 2. It is desirable to take all appropriate legislative, administrative, judicial and other measures to protect individuals from abuse, including measures to prevent, identify, report, refer, investigate and follow up incidents of abuse. It is recognised that New Zealand has ratified and endorsed the Universal Declaration of Human Rights and subsequent human rights instruments and conventions 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.
 3. Abuse of individuals, in State care or non-State care, is inconsistent with applicable standards and principles of human rights law in New Zealand and internationally. Such abuse necessitates impartial examination to understand, acknowledge and respond to the harm caused to individuals, families and communities and to ensure that lessons are learned for the future.
 4. In light of these matters a Royal Commission of Inquiry has been established into Abuse in State and non-State care. The Minister of Internal Affairs is responsible for the Inquiry.
 5. The Inquiry will give appropriate recognition to Māori interests, acknowledging the disproportionate representation of Māori, particularly in State care. The Inquiry will be underpinned by Te Tiriti o Waitangi, the Treaty of Waitangi, and will partner with Māori throughout the Inquiry process.
 6. Pacific people have also been disproportionately represented in State care. The Inquiry will recognise this, together with the status of Pacific people within an increasingly diverse New Zealand.
 7. The Inquiry will note the interests of disabled people, including adults with mental illnesses.
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PURPOSE AND SCOPE

8. The matter of public importance, which the Inquiry is directed to examine, is historical abuse of individuals in State and non-State care.
 9. The Inquiry will identify, report on and make recommendations about the following matters:
 - 9.1 The nature and extent of abuse and neglect that occurred in State and non-State care during the relevant period.
 - 9.2 The impact of the abuse and neglect on individuals and their families, whānau and communities, including immediate, longer-term and intergenerational impacts.
 - 9.3 The factors that caused or contributed to the abuse and neglect of individuals in State and non-State care during the relevant period.
 - 9.4 What lessons were learned; what changes were made to legislation, policy, rules, standards and practices to prevent and respond to abuse and neglect in State and non-State care; and what gaps, if any, remain and need addressing.
 - 9.5 Changes to legislation, policy, rules, standards and practices that will protect future children and vulnerable people.
 - 9.6 The processes for individuals who claim, or have claimed, abuse while in State and non-State care, including improvements to those processes.
 10. In considering the above matters, the Inquiry shall have particular consideration for any people or groups where differential impact is evident.
 11. The Inquiry may consider the circumstances that led to individuals being in State or non-State care and any other factors that may have contributed to the decision-making process.
 12. The Inquiry may consider other matters that come to its notice in the course of its inquiries that it considers would assist it to deliver on its stated purpose, scope and in carrying out its functions.
 13. The Inquiry may seek amendment of these Terms of Reference.
 14. The Inquiry shall consider the experiences of any individual who was in State or non-State care between 1 January 1950 and 31 December 1999 inclusive. The Inquiry may at its discretion consider and examine cases prior to 1950 and after 1999.
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DEFINITIONS

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

15.1 Abuse includes: physical, sexual and psychological abuse; neglect; and inadequate care.

15.2 State care means that: the State assumed responsibility, whether directly or indirectly, for the care of the individual concerned, including at school or where the State delegated or contracted out its authority or care functions to another individual or entity.

15.2.1 The State may have assumed responsibility for a person as the result of a decision or action by a State official; 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.

15.2.2 State care does not include adults in prison, adults in police custody or general hospital admissions. However, the experience of a person in these facilities may be considered if that person was also in State care at the time.

15.2.3 While, for present purposes, the treatment of adults in prisons does not fall within the definition of State care, the Inquiry may consider the long-term effects of State care on an individuals or group of individuals. The Inquiry may, for example, examine whether those who were in State care 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.

15.3 Non-State care means: any situation where a non-State organisation assumed responsibility, directly or indirectly, for the out-of-home care of a person including non-State schools, churches and other religious organisations and recreational groups; whether on their premises or not.

15.3.1 Non-State care does not include private hospital and rest home admissions, including dementia care, or people in retirement villages.

15.3.2 For the avoidance of doubt non-State care does not include custody in private prisons.

15.4 The relevant period means the period described in clause 14 above.

APPOINTMENTS

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

PRINCIPLES AND METHODS OF WORK

18. The Inquiry shall implement principles, methods, processes and procedures that enable it to conduct its work in a manner sensitive to the needs of individuals and their families, whānau or other supporters.
 19. The Inquiry will operate according to principles that include (but are not limited to):
 - 19.1 focusing on victims and survivors.
 - 19.2 taking a whānau-centred view.
 - 19.3 working in partnership with Iwi and Māori.
 - 19.4 working inclusively with Pacific people.
 - 19.5 responding to differential impact on any particular individuals or groups.
 - 19.6 ensuring fair and reasonable processes for individuals and organisations associated with providing care.
 - 19.7 avoiding an overly legalistic approach.
 20. To ensure a sound foundation for its work, the Inquiry will implement methods which may include (but are not limited to):
 - 20.1 mechanisms to facilitate the timely receipt of information, the production of documents, or other things, in accordance with the Inquiry's powers under the Inquiries Act 2013.
 - 20.2 specialist investigatory, advisory or research functions to support the Inquiry.
 - 20.3 safeguards to ensure information or evidence 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.
 - 20.4 appropriate arrangements, including confidentiality, for evidence to be shared with the Inquiry from current and previous Inquiries in New Zealand and elsewhere. This is to ensure that the work of those Inquiries, including witness statements, can be taken into account by the Inquiry in a way that avoids unnecessary trauma to individuals and improves efficiency.
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- 20.5 organisations and other parties being given sufficient opportunity to respond to requests and requirements for information and documents.
21. The Inquiry will establish an Advisory Group or Groups comprising survivors of abuse in State and non-State care which, from time to time, will provide assistance to Inquiry members. These Groups will help the Inquiry focus on victims and survivors by ensuring the voices of survivors are heard and recognised by the Inquiry. At the Inquiry's request the Advisory Groups may be asked to provide feedback on matters the Inquiry is considering. The Advisory Groups will not have a decision-making function.
22. The Inquiry will consider two strands of work:
- 22.1 Strand 1 Looking Back; will map the extent of abuse in State and non-State Care, the impact of that abuse and the factors which may have caused or contributed to the abuse. The principal question for this strand will be to establish what happened and why.
- 22.2 Strand 2 Looking Forward; This strand will contain a review of current systems of prevention to test whether these are fit for purpose and identify what changes need to be made to legislation, policy, rules, standards and practices as a result. The principal question for this strand is how to be sure what is established in strand 1 cannot happen again.
23. In order to ensure a clarity of focus on the diverse nature of the underlying issues that the Inquiry is likely to encounter, the Inquiry will first deal with matters affecting individuals in State care and subsequently those in non-State care.

FINDINGS AND RECOMMENDATIONS

24. The Inquiry shall consider:
- 24.1 delivering public statements on any aspect of the Inquiry.
- 24.2 reporting and presenting findings on factors that caused or contributed to abuse in State and non-State care, including accountability and systemic factors.
- 24.3 identifying lessons from the past and how these led to subsequent changes to legislation, policies, rules, standards and practices; identifying any gaps and areas of focus for future changes.
- 24.4 recommending any changes to legislation, policy, rules, standards and practices to prevent and respond to abuse in State and non-State care.
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- 24.5 recommending appropriate steps to address the harm caused; and whether there should be an apology by the State and other relevant organisations for the abuse of individuals.
- 24.6 commenting on existing processes for compensation, redress and rehabilitation for individuals who claim, or have claimed, to have suffered abuse and neglect while in State and non-State care; and recommending any potential changes.
25. In accordance with the Inquiries Act 2013, the Inquiry does not have the power to determine the civil, criminal, or disciplinary liability of any person. However, it may make findings of fault and/or that relevant standards have been breached, and may make recommendations that further steps be taken to determine liability.

COMMENCEMENT OF WORK AND REPORTING REQUIREMENTS

26. The Inquiry will commence on 1 August 2018 and may begin considering evidence from 1 September 2018.
27. The Inquiry is to issue its final report, containing findings and recommendations, in writing, by a date to be notified by the Minister in the *Gazette*. An interim report on abuse in State care is to be provided by 31 July 2020.
28. In addition to the interim report referred to in clause 27, the Inquiry may issue a further interim report or reports including findings and recommendations.
29. If the Inquiry identifies issues that may affect its ability to deliver a final report within the required time period 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.
30. 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.