

UNDER

THE INQUIRIES ACT 2013

IN THE MATTER OF

ROYAL COMMISSION OF INQUIRY
INTO HISTORICAL ABUSE IN STATE
CARE AND IN THE CARE OF FAITH-
BASED INSTITUTIONS

MEMORANDUM FOR THE CROWN FOR THE PROCEDURAL
HEARING

26 July 2019

Next Event Date: Procedural Hearing – 19 August 2019

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MAY IT PLEASE THE COMMISSION:

1. This memorandum refers to the Commission's Minute 1 – Procedural Hearing dated 2 July 2019 and addresses:
 - 1.1 Core participant status for the Crown; and
 - 1.2 Procedural matters for the 19 August 2019 hearing.

Core participant status for the Crown

2. The Crown's role in this inquiry is central and necessary. The Crown is committed to participating in the inquiry process in the manner that is most helpful, to enable the Commission to efficiently and effectively consider all matters within its terms of reference.
3. Given the historical nature of these matters, responsibility for the care systems that are the subject of the inquiry has been held by different central government agencies at different times. Some agencies have since been disestablished and their records and ongoing responsibilities inherited by one (or more) existing agency/ies.
4. For example, in the case of social welfare care settings, the Department of Education's Child Welfare Branch (later Child Welfare Division) was initially responsible (1925–1972), followed by the Department of Social Welfare (1972–1999), followed by the Department of Child, Youth and Family Services (1999–2006), followed by the Ministry of Social Development (2006–2017). Oranga Tamariki is presently responsible for the systems providing for the wellbeing of children and young people in state care.
5. Depending on the particular issue before the Commission, the central government agency best placed to respond may vary. For example, relevant records or staff with historical knowledge may have moved between agencies.
6. The Crown considers that the most appropriate way to reflect this historical evolution in responsibility for the care systems over the past 50 years, as well as the breadth of the matters within the Commission's terms of reference, is for the Crown as a whole to be designated as a core participant for the purposes of this inquiry. This will avoid the need for the Crown and the Commission to

guess which central government agencies might need to be designated as core participants in advance of the hearings.

7. As the Commission proceeds to issue scope documents for its public hearings and investigations, the Crown will identify which central government agencies are relevant to the context of that aspect of the Inquiry's terms of reference and the evidence and information they anticipate providing to the inquiry (including the names of potential witnesses). The Crown will also engage with and be guided by the Commission should it require evidence from a particular agency.

Orders restricting publication and public access to information

8. It is likely that some of the information that will be sought by the Commission from Crown agencies will be personal information that relates to individuals. It is possible that the Commission will also require information that is legally privileged.
9. In each case, it will be appropriate for the Commission to consider whether to make orders under s 15 to prevent publication of or restrict public access to that information, in accordance with the criteria specified in s 15(2) of the Inquiries Act 2013.
10. The Crown submits that these considerations are best approached on a case by case basis as information is requested by, or provided proactively to, the Commission. The Crown suggests that this could be achieved by:
 - 10.1 The Commission seeking an indication as to whether s 15 orders might be appropriate at the same time as requesting information from participants; and
 - 10.2 On receipt of information, whether or not s 15 orders have been sought, the Commission giving consideration as to whether there are privacy interests that mean that s 15 orders should be made in relation to that information. This may be the case, for example, where participants have provided information that names third parties without seeking to protect that information.

Ensuring natural justice to all those involved in the inquiry

11. The Crown welcomes the Commission's indications about how survivors will be supported to give evidence, including anonymously.
12. The Crown notes that it is possible that in some circumstances alleged perpetrators of abuse identified by survivors' evidence will also be survivors themselves. In other cases, allegations may be made other than that a person was a perpetrator of abuse (for example that they failed to act when aware of abuse). Given the historical nature of the matters before the Commission, alleged perpetrators of abuse and others involved in the care system may no longer be alive or competent to respond to allegations. Others may not be aware of the allegations being made in the inquiry or may require assistance to participate.
13. The Crown respectfully suggests that the Commission gives consideration to whether it might be appropriate for the Commission to appoint counsel in the role of an amicus. This counsel would attend such hearings as the Commission considers appropriate for the purposes of identifying any third party interests affected by the evidence presented to the Commission and bring these potential interests to the attention of the Commission. That counsel might contact and ascertain the position of alleged perpetrators who may become involved in the inquiry and refer them to the Department of Internal Affairs to discuss eligibility for, or access to, legal assistance.
14. An amicus may also be able to address the inquiry on any general protective orders to be considered, to ensure that any subsequent proceedings to determine criminal, civil or disciplinary liability are not prejudiced by the proceedings of the inquiry.

Timetabling matters

15. The Crown notes that the Royal Commission will issue practice notes setting out requirements for the filing of evidence, disclosure and other matters.

16. The Crown notes that it may be beneficial for the Royal Commission to hear from participants on the considerations that might apply to timetabling matters and seeks an opportunity to be heard on such matters.

26 July 2019



Nicola Wills
Counsel for the Crown

TO: The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions