The Royal Commission of Inquiry into Historical Abuse in State and Faith-Based Care: A Preliminary Review

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On behalf of The Royal Commission Forum

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Contents

Overview and summary of recommendations

This report presents information on the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (the Commission) that was launched in February 2018. It provides recommendations in the following areas:

- Making the Commission survivor-centred
- The transparency of the Commission
- The Commission's relations with other state bodies
- The importance of accountability for survivors
- The Commission's public relations
- The provision of counselling for survivors
- The work of the Survivors Advisory Group
- The operation of private sessions
- The operation of public hearings
- The Commission's use of 'roundtables'
- The Commission's publishing strategy
- The appointment of a fifth Commissioner
- Access to records
- Resourcing the Commission

Methodology

A draft version of the report was compiled by December 2019, reflecting upon publicly available material, information provided by the Royal Commission and the experience of the Forum members. That draft was tabled at a workshop held at the University of Auckland on 20 February 2020. That workshop compiled the recommendations that appear in this summary report. Those recommendations were sent to the Commission in a letter dated 31 March 2020. The Commission replied in a letter dated 7 May 2020. That reply is included in the report's appendices.

The historical components of this report cover the period from 1 February 2018 to 31 December 2019. Some of the recommendations reflect discussions ongoing in the period between January and February 2020. Since then, the advent of the global CORVID-19 pandemic, and the emergency 'lockdown' New Zealand imposed on 21 March 2020, has affected the operation of the Royal Commission significantly.

The Royal Commission Forum

Objectives

The Royal Commission Forum (the Forum) is a community organisation that formed in 2018 in response to New Zealand's establishment of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (the Commission). The Forum works to bring people together "to promote justice for survivors of historic abuse in Aotearoa New Zealand with regard to the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions".[1] As part of that work the Forum provides the Commission with constructive independent feedback designed to help the Commission work effectively. Our feedback is provided through numerous channels, including our website (royalcommissionforum.org). On 15 July 2019 we provided the Commission with a formal letter raising specific concerns. That letter and the Commission's response are appended to this report.

People

The current members of the Forum are Judith Aitken, Belinda Battley, Rosslyn Noonan, Elizabeth Stanley, Oliver Sutherland, Fleur Te Aho (on leave), Keith Wiffin and Stephen Winter.

The Royal Commission of Inquiry into Abuse in Care

History

The Commission emerged in a context of increased public awareness of past and present abuse in state care.[2] While problems related to abuse in care were raised by the Human Rights Commission (and further investigation aborted) in 2011, persistent litigation, such as the Whakapari case,[3] academic publications,[4] news reports,[5] and a claim before the Waitangi Tribunal[6] drew continuing attention to the problem of abuse in care. Beginning in 2017, the Human Rights Commission led the *E Kore Ano: Never Again* campaign, while international pressure included the 25 August 2017 release of a report by the United Nations Committee

[1] Royal Commission Forum, "Who We Are," https://www.royalcommissionforum.org/about-us.

[2] Matt Nippert, "Govt Spends $1m Fighting Abuse Case - and Loses," 25 March 2017 2017.

[3] T v Attorney-General [2015] NZHC 733

[4] Elizabeth Stanley, *Road to Hell: State Violence against Children in Postwar New Zealand* (Auckland University Press, 2016).

[5] Aaron Smale, "Child Abuse Report 'Shut Down'," *RNZ*, 24 November 2016 2017..'

[6] Te Mata Law, "Statement of Claim," (The Waitangi Tribunal,, 2017).

on the Elimination of Racial Discrimination recommending an independent commission of inquiry into the abuse of children and adults with disabilities in state care.[7]

On 1 February 2018, Sir Anand Satyanand was appointed Chair of the Commission. Sir Anand began a process of public consultation on the draft Terms of Reference, including face-to-face consultations with stakeholders.[8] This was followed by a public awareness programme inviting comment on the draft Terms of Reference through phone, online and written channels, along with a number of hui.[9] The incipient Commission received 401 submissions, 52% from or on behalf of survivors.[10]

Those submissions raised points critical of the draft Terms of Reference, including:

- Lack of clarity in vital definitions, namely state care
- Lack of clarity regarding the timeframe in which the Commission would operate
- Inappropriate reference to Māori and Pacific peoples that placed Pacific peoples in an inferior position.
- Lack of specific reference to the Te Tiriti o Waitangi/the Treaty of Waitangi
- The exclusion of survivors of faith-based care
- Insufficient concern for people with mental illness and disability.[11]

The final terms of reference incorporated two key changes. The inquiry was broadened to include abuse in faith-based institutions and have a stronger emphasis on te Tiriti and partnership with Māori.

Terms of reference: purpose and scope

The final Terms of Reference (12 November 2018) describe the purpose and scope of the Commission. The Commission is empowered to investigate and examine "historical abuse and neglect of individuals in State care and in the care of faith-based institutions".[12] The investigation includes children, young persons and vulnerable adults. The goal of the inquiry is to "understand, acknowledge, and respond to the harm caused to individuals, families, whānau, hapū, iwi, and communities" and "ensure lessons are learned for the future".[13]

[7] New Zealand Family Violence Clearinghouse, "Un Racial Discrimination Committee Recommends Inquiry into Abuse in State Care," (2017).
[8] The Royal Commission of Inquiry into Historical Abuse in State and Faith-Based Care, "Report on Public Consultation on the Draft Terms of Reference," (2019): 1.
[9] Ibid.
[10] Ibid., 3-4.
[11] Ibid., 5.
[12] *Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-Based Institutions Order 2018 (Terms of Reference)*, 1.
[13] Ibid.

The inquiry process encompasses events that occurred between 1 January 1950 and 31 December 1999. The Commission may, however, also consider events prior to 1950 or after 1999 when relevant to inform its recommendations.[14]

There will be two main strands in the Commission's research. The first strand will "look back" at the past to understand what happened and why. The second strand will "look forward" and will review the current systems of preventing, and responding to, abuse to ensure improvements.[15]

The Commission recognises that a significant number of the people who suffered from abuse in state care were/are from Māori and Pacific communities. Therefore, the inquiry "will give appropriate recognition to Māori interests, acknowledging the disproportionate representation of Māori, particularly in care. The inquiry will be underpinned by Te Tiriti o Waitangi/the Treaty of Waitangi and its principles and will partner with Māori throughout the inquiry process".[16]

For the final Terms of Reference, see the Appendices.

Organisation: People and structure

As of December 2019, the Commission was led by four Commissioners who are supported by legal and administrative staff. The Commissioners were appointed in January 2019.

Judge Coral Shaw (Commissioner – Chair from November 2019) has a background in education and law. She introduced a number of community-based initiatives related to family violence and restorative justice as a District Court judge

Ali'imuamua Sandra Alofivae (Commissioner) is an Auckland-based lawyer representing children, young persons and their families.

Dr Andrew Erueti (Commissioner) is Associate Professor at the Auckland University School of Law.

Paul Gibson (Commissioner) was a member of the Human Rights Commission from 2011 to 2017 as the Disability Rights Commissioner.

The former Chair, Sir Anand Satyanand, resigned from the Commission in November 2019.

Lead support staff for the Commission include:

[14] Ibid., 6.

[15] Ibid., 14.

[16] Ibid., 6.

Simon Mount (Counsel Assisting) is a barrister specialising in civil and criminal litigation, regulatory law, health and media law, and public inquiries.

Mervin Singham (Executive Director) was Chief Mediator with the Human Rights Commission, first Director of the Office of Ethnic Affairs and a senior public servant in the Department of Internal Affairs.

At the end of 2019, the Commission had seven divisions.[17]

The Treaty Engagement (Partnerships) Team comprises a range of roles designed to facilitate and support the engagement of Māori survivors, hapū and iwi with the Commission.

The Survivor Accounts and Community Engagement Team manage survivors' relationships with the Commission. This includes administering the private sessions, ensuring survivors receive necessary psychological and logistical support and helping to promote the work of the Commission.

The Legal and Investigations Team provides legal advice to the Commission, conducts investigations and operates the Commission's public hearings.

The Research and Policy Team informs the activity of the Inquiry by providing policy analysis and research services.

The Communication Team manages external communication, including newsletters, the Commission's website and Facebook. It also supports internal communications between different teams and members.[18]

The Strategy & Assurance Team provides certainty to the Inquiry regarding the quality standards of the Commission's activities, identifies and minimises organisational and security risks and threats.

The Support Services Team offers administrative services related to human resources and IT, procurement, budgeting and health and safety.

In addition to its core staff, the Commission has relationships with key partners. Those relationships include:

[17] The Royal Commission of Inquiry into Historical Abuse in State and Faith-Based Care, "Provisional Report to the Royal Commission Forum," (Unpublished2019), 5..
[18] Ibid., 6.

The Survivor Advisory Group of Experts was appointed in early 2019. The group was supposed to meet at least four times per year (in Auckland or Wellington) to provide advice directly to the Commissioners. The composition of group might change over time.[19]

Members of **the Legal Assistance Panel** provide legal representation, advice and help to people or groups participating in the Inquiry".[20] As of December 2019, there were three contracted counsel.

Budget

The Department of Internal Affairs administers the Commission's budget. Cabinet initially confirmed a $78m budget, while acknowledging that more funding would be required. From this initial budget, $56m is allocated to day to day operations; $6m to Commissioners fees; $15m as counselling and survivors support fees; $1m as capital (office space). In September 2019, $11.98 million of the operating budget was allocated to supply survivors with legal support.

As of October 2019, the Commission had spent $14.9 million, projecting an overspend of $1.7 million in that financial year. The Commission expected to request additional funding from the government in 2020—a year earlier than originally projected.

Crown's response to the Royal Commission

A Cabinet paper describing how the Crown will engage with the Royal Commission of Inquiry into Historical Abuse was released by the Minister of State Services on 8 May 2019.[21]

The document states that the government will do as much as possible to support the Royal Commission in its role and emphasises its commitment to Treaty principles in this matter. The Cabinet paper also highlights the importance of avoiding burdensome legalism and explains that the "legal approach to engagement with the Royal Commission and with survivors will be exploratory, seeking to balance the Crown's legal obligations with the principles, and avoid an overly legalistic approach."[22]

The text also offers an important warning. It states that "many Non-Government Organisations (NGOs) and Crown entities will also be impacted by the Royal Commission"

[19] The Royal Commission of Inquiry into Historical Abuse in State and Faith-Based Care, "Survivor Advisory Group," https://www.abuseincare.org.nz/survivors/advisorygroup/.

[20] "Pānui," news release, November 2019, 2019, https://www.abuseincare.org.nz/library/v/83/panui-november-2019.

[21] Minister of State Services Chris Hipkins, "Proposed Strategic Approach to Guide the Crown Engagement with and Response to the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-Based Institutions," ed. State Services Commisson (2019).

[22] Ibid., 2.

and expresses concerns that these entities may struggle to meet the Commission's expectations while maintaining their current services.[23]

The Crown created a secretariat to coordinate Crown agencies' engagement with the Commission.

Key activities of the Royal Commission

In 2019, the Commission had three key areas of activity: private sessions, public hearings and production of research and reports. The Commission began work in 2019 in all three areas.

Private sessions

Private sessions enable survivors to share their care experiences with a Commissioner in a confidential environment. Most survivors use these sessions to describe injurious care experiences and the consequences they believe followed. Previous experience with the Royal Commission on Abuse in Australia showed that, if designed properly, these sessions can assist survivors while providing information and evidence relevant to the Commission's investigations. Conversely, poorly designed sessions can increase survivors' feelings of vulnerability and distress.[24]

Private sessions began in May 2019 and usually last a couple of hours.[25] Most were held in motels, although the Commission will have a dedicated space in Auckland operational in 2020. Survivors can bring a support person with them and the Commission employs a "well-being person" to prepare survivors and to make sure that they feel safe during the session. The Commission produced a video to explain the process, so survivors know what to expect. Survivors need to sign a consent form and sessions are recorded. Anonymised information collected during the discussions will be used to inform the Commission's research and public hearings.[26] Survivors are offered (usually four) follow-up sessions with a counsellor. Commissioners have travelled the country to complete, as of January 2020, 275 private sessions.[27]

Public hearings

The Commission will hold public hearings to inform the Commission's findings and reports. There will be two main types of public hearings. Some will focus on issues relevant

[23] Ibid.
[24] Rebecca Moran, ""Part 2: "A Safe Place to Tell"-Accessibility and Fitting," https://www.royalcommissionforum.org/post/rebecca-j-moran-part-2-a-safe-place-to-tell-accessibility-and-fitting.
[25] The Royal Commission of Inquiry into Historical Abuse in State and Faith-Based Care, "Our Journey," https://www.abuseincare.org.nz/about-us/journey/.
[26] ""Pānui."
[27] "Provisional Report to the Royal Commission Forum (Updated)," (Unpublished2020).

to survivors, such as records-access and the practices surrounding monetary redress. Others will investigate the operations of specific institutions. These may include the histories of certain care sites, such as an orphanage, or the present operations of larger organisation such as a church or government ministry. The Commission anticipates holding around twenty public hearings in total, each may involve multiple days of witness testimony.

The evidence and stories emerging from public hearings will help the Commission "make independent, unbiased findings to inform our recommendations to the Government".[28] A key secondary purpose for public hearings is to publicise the experiences of survivors and the work of the Commission.

The Commission will solicit statements from potential witnesses prior to the hearing. Selected witnesses will speak to those statements in the hearing itself. They may be asked questions by the Commission's lawyers and/or the Commissioners. The public hearings are accessible to the public at the venue and live streamed on the Commission's website. The website publishes videos and transcripts of the testimony along with the witnesses' statements.

As of December 2019, the Commission had held one substantial set of hearings. This "contextual" hearing heard from a range of witnesses to elicit general information on New Zealand's care services and more personal experiential testimony from survivors.

Research and reports

The Commission is charged with making findings and providing recommendations based on the evidence it gathers. The Commission began research work in 2019, purchasing an information management database ("Relativity") and appointing a research team. Research conducted by the Commission will support information derived from public hearings to inform a series of reports. That research process may involve a series of 'Roundtables' in which experts and other stakeholders contribute to policy development.

Supported by independent research and by information produced in both private sessions and public hearings, the Commission is charged with delivering two key reports. The first "interim report" will be produced at the end of 2020.[29] There will be two parts to the interim report. The "substantive interim" report will include information on the progress made by the inquiry. This will provide data on the survivor population and may offer potential interim findings and recommendations. The "administrative interim report" will include "an analysis of the likely workload to complete the next phase of the inquiry, taking into account cohort

[28] "Public Hearings," https://www.abuseincare.org.nz/public-hearings/about/.

[29] ""Report on Public Consultation on the Draft Terms of Reference," 16..

sizes" and "a detailed assessment of any additional budget required to complete the next phase of the inquiry".[30] The Commission's final report will be produced by 3 January 2023.[31]

In addition, the Commission may produce a range of reports on specific issues and experiences supported by research and information received at both private sessions, roundtables, public hearings and independent research. In this respect, the Commission may follow the model of the Australian Royal Commission, which published reports on a wide range of issues and experiences relevant to abuse in care.

The Activities of the Royal Commission in 2019

Timeline

This section provides a timeline of some Commission's key activities during 2019.

February: Initial Commission meetings held in Wellington and Auckland

From late January until mid-March, Commissioners held more than 30 meetings with more than 70 individuals and organisations with particular interest in the problems related to abuse in care. The meetings allowed Commissioners to hear about the expectations for the Commission while informing their approach to private sessions and public hearings.[32]

May: First private sessions begin in Otago.

25 June: Preliminary hearing in Auckland

At the preliminary hearing, the Commission shared information about why the Commission was established, what the Commission is and how it will function.

14 August: The Commission published an issue paper: Redress (civil litigation)

This paper called for public submissions on topics relating to monetary redress and civil litigation.

19 August: First procedural hearing in Auckland

At this Procedural hearing the Commission provided information about the logistics of public hearings, such as how individuals can apply for leave to appear or how organisations can apply to be a participant of the Inquiry.[33]

29 October – 8 November: Contextual Hearing in Auckland

Survivors shared their stories of abuse and experts provided historical evidence and reflective insight in the topic of abuse in care.

[30] Ibid., 2.

[31] Ibid., 17.

[32] The Royal Commission of Inquiry into Historical Abuse in State and Faith-Based Care, "Our Journey".

[33] Ibid.

Key statistical information

Some journalists highlighted the lack of public access regarding statistical data on the Commission's work.[34] The Commission provided the Forum with data on its survivor engagement as of September 2019, some of which was updated in January 2020.[35] This early material is very unlikely to be statistically representative of the general survivor population. Nevertheless, the September 2019 data indicates that sexual abuse is the most commonly identified form of abuse, reported by 35% of survivors. 31% of survivors report physical abuse. 17% report psychological abuse and 16% report emotional abuse.[36] 50% of reported abuse occurred in social welfare settings. Faith based settings account for 21%, educational institutions for 12%, health and disability 9%, and law enforcement 8%, other institutions were below 10%.

As of January 2020, the Commission had 1251 survivors registered with the Commission and had completed 275 private sessions.[37] In the private sessions, 111 (41%) of survivors identified as NZ European, 60 (22%) as Māori, 1 (0%) as Pacific, 20 (7%) recorded multiple ethnicities, 49 (18%) as other, while 32 (12%) did not record an ethnicity. 133 (47%) identified as male and 142 (53%) as female.

Challenges

The Commission faced a number of challenges in its first year of substantial operations, including the resignation of the Chair. Some of these challenges are the expected results of an institution that is building a workforce, developing a procedural framework and starting highly sensitive operations at the same time. Moreover, the work of the Commission began during a period of intense nation-wide criticism of child welfare practices that has focussed in particular on the disproportionately high number of Māori children in state care.[38] However, the activities of the Commission itself have also been subject to criticisms.[39]

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[34] David Cohen, "David Cohen, "Royal Commission or Royal Mess: Abuse in Care Inquiry's First Year of Troubled Waters," *RNZ*, 27 November 2019 2019.

[35] The Royal Commission of Inquiry into Historical Abuse in State and Faith-Based Care, "Provisional Report to the Royal Commission Forum."; "Provisional Report to the Royal Commission Forum (Updated)."

[36] Information provided with the data provided does not indicate whether survivors could report more than one type of abuse.

[37] The Royal Commission of Inquiry into Historical Abuse in State and Faith-Based Care, "Provisional Report to the Royal Commission Forum (Updated)."

[38] This attention was prompted by a news report accompanied by a video. Melanie Reid, "Taken by the State: Nz's Own 'Taken Generation," 11 June 2019 2019.

[39] Critical reports include: Checkpoint, "New Head of State Care Abuse Inquiry Acknowledges Failures," *RNZ*, 14 November 2019 2019; Laura Walters, "Tracey Martin Considers Action after Royal Commission Blunder," ibid., 24 September 2019; Michael Cropp, "Survivors 'Losing Faith' after Satyanand Resignation," ibid., 7 August 2019; Laura Walters, "Resignation Ahead of Royal Commission Public Hearings " *Newsroom*, 29 October 2019 2019. RNZ, "Royal Commission: Sex Offender at Gatherings with Abuse Survivors," *RNZ*, 24 September 2019 2019. Phil Pennington, *Two Survivors Quit Royal Commission Advisory Group*, *Morning Report* (rnz.co.nz2019).

Looking forward: 2020

Redress hearings

Part of the inquiry's purpose is to investigate "the redress and rehabilitation processes for individuals who claim, or have claimed, abuse while in care, including improvements to those processes".[40] According to the Commission "the term 'redress' refers to actions that set right, remedy or provide reparations for harms or injuries caused by a wrong, such as abuse. Redress takes many forms, including apologies and monetary compensation".[41] In order "to know how effective or useful the civil litigation systems are in resolving claims for damages for abuse experienced while in care", the Commission released a statement calling for submissions from interested individuals. At the time of writing, that hearing is suspended indefinitely as a result of the COVID-19 pandemic crisis.

Interim report

An important step for the Commission will be the release of the interim report towards the end of 2020.

Recommendations

On 31 March 2020 the Forum communicated the following recommendations, resulting from the workshop held on 20 February 2020, to the Royal Commission by letter.

Preamble

We acknowledge and support the early decisions taken by the Commission to defer confidential sessions for survivors and the public redress hearings in response to the COVID-19 crisis. Like you we are concerned, however, at the impact on survivors of further delays in the Royal Commission process; and in particular we are concerned for those survivors who had already scheduled a confidential session or decided to do so.

As you know, we are a group of people who advocated for the establishment of the Royal Commission and since then have taken an active interest in its work. Given its importance, we aim to provide constructive feedback and critical support to the Commission.

Danielle Clent, "Former Charity Boss Charged with Defrauding Domestic Violence Prevention Group," *Stuff*, 9 October 2018 2019. Aaron Smale, "Aaron Smale, "Royal Commission's 'Mock' Sessions with Survivors," *Newsroom*, 10 June 2019 2019. Tracey Watkins, "Mob Man's Fate Hangs over Historic Abuse Inquiry," *Stuff*, 11 September 2019 2019.

[40] *Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-Based Institutions Order 2018 (Terms of Reference)*, 7. Michelle Duff, "Minister Refuses State Abuse Inquiry Chair's Resignation Amid Conflict Criticism," *Stuff*, 7 April 2020 2019.

[41] The Royal Commission of Inquiry into Historical Abuse in State and Faith-Based Care, "Issues Paper - Redress (Civil Litigation)," (2019), 1.

On 20 February 2020, we held a workshop at Auckland University to review progress by the Royal Commission in 2019 and discuss how the Commission could further strengthen its effectiveness. The following summarises the outcome of that workshop and includes some specific suggestions that we would welcome the opportunity to discuss with you. We realise that we are not aware of everything the Commission is doing and that you may be actioning a number of the things we are suggesting.

We also recognise that the extraordinarily changed circumstances in which we are all living may require significant changes to the way the Commission can work. Much of what we suggest will be relevant both under, and once we emerge from, our current restrictions.

Being survivor-centred

The workshop identified the value of clarifying what 'survivor-centred' means for the Commission. Both the Commission and other stakeholders would be well-served if the Commission adopted a clear statement on what they understand by a survivor-centred inquiry and made that statement the centrepiece of its work.

Recommendations

The workshop endorsed a briefing by Patricia Lundy that sets out eleven 'survivor justice needs' as potential criteria. Those eleven criteria are: voice, acknowledgement, vindication, apology, redress, rehabilitation measures, intergenerational needs, access to records, authoritative historical record, offender, institutional and systemic accountability/responsibility, and prosecution. The brief by Patricia Lundy is attached as an appendix.

Transparency

The need for transparency arises with respect to both the Commission's planning and its activities. As will be evident in the following, concerns about transparency were a major theme in many of the discussions. The Commission has too often waited until it felt it was able to announce decisions as opposed to being transparent throughout the decision-making process. Failure to be sufficiently transparent is damaging the Commission's credibility among survivors. Conversely, making the Commission more transparent will enable public engagement that is critical to the Commission's strategic operations.

Recommendations

Participants strongly emphasised the value of transparency and recommend, in the strongest terms, that the Commission become more transparent in terms of both its planning and activities.

The Commission's relations with other state bodies

Throughout our discussion, there were serious concerns that risk-averse elements within the state would attempt to limit the effectiveness of the Commission. That activity might include impeding the Commission's access to information. It also might include Potemkin-village style implementation of the Commission's (anticipated) recommendations, using superficial changes to mask both historical and ongoing systemic problems. The relationship of the Commission to the inter-ministerial working group/secretariat was of significant concern.

Recommendations

The Commission should require government agencies currently developing pre-emptive/proactive responses to report on them to the Commission. The Commission would then need to have the capacity to respond in a credible and timely manner. This Commission should ask the Minister of State Services to instruct the State Services Commissioner to follow this process.

In its final report the Commission should recommend effective ongoing mechanisms of evaluation and accountability that use appropriate metrics (e.g. child-focused standards) to assess the implementation of its recommendations, including those pertaining to care.

Ensuring the implementation of its recommendations might require an independent body or a periodic review process for state and other agencies. The Australian Senate has such a capacity. Here in New Zealand, the task might be given to the Human Rights Commission with the necessary resources or similar body.

Accountability

Some members of the workshop expressed strong preferences for both individual and systemic accountability, including criminal responsibility, for previous wrongdoing. This might include the Commission making recommendations relevant to both criminal prosecutions, either concerning the procedures for prosecutions or pertinent to the prosecution of specific individuals. It should also include findings at the systemic level, looking at how wrongful policy was developed and implemented. Those findings could well implicate both individuals and organisations.

Recommendation

The Commission must examine the operation of out of home care with respect to wrongdoing at both the individual, organisational and systemic levels.

Public Relations

The Commission is to be commended for improvements in communication and presentation, particularly on the website. However, the Commission remains relatively low profile. Some members suggested greater visibility on commercial

radio, other media and community events as survivors are more likely to develop trust in the Commission if they see it in action. Some participants suggested that lower-mediated public engagements (being a bit vulnerable) might be good. In general, the workshop tended to think the Commission has lacked a strategic, coherent communications plan with short, medium and long-term goals and with the diverse key audiences identified.

Recommendations[42]

As well as current promotional methods, the Commission should consider a high profile advertising campaign, including the full range of engagement techniques, TV, radio, the backs of buses, large roadside billboards, street posters, outdoor signs, full or half page adverts in newspapers and magazines (including in local free community newspapers), and the 'Giggle' screens now common in various shops. Leaflets and posters also need to be printed and widely distributed in the community to such places as: retirement homes, hospitals, prisons, gangs, universities, wānanga, marae, mental health organisations, doctors, lawyers, counsellors, psychologists, women's refuges, churches, charities, community houses, Māori wardens, Citizen's Advice Bureaus, Government Departments, ACC, WINZ, and the Family Court.

The Commission might contact professional advertising agencies and request pro bono assistance.

The Commission should use the media strategically, engaging in TV, radio, newspaper and magazine interviews and articles (including in local free community newspapers). Talkback radio should be explored. The Commission needs to increase the frequency of its press releases.

One suggestion for survivor engagement, based on Canadian experience, was that Commission could use data analytics to assess what sectors of the survivor population are not coming forward and then focus resources upon those areas. It would be good to understand the reasons why engagement varies across different sectors of the population.

Counselling

The Commission has made counselling for survivors a high priority. The workshop understood that the Commission offers four or five counselling sessions at time of

[42] Some of these suggestions may be impractical under the current restrictions [relating to the COVID-19 emergency], but others could still be adopted and lift the Royal Commission's profile and build confidence in its ability to carry out its terms of reference despite the crisis. And, of course, once the crisis passes, those techniques may become even more important to re-engage stakeholders.

reporting. This is a good first step. Moreover, participants understood that there may be a limit to the number of qualified and capable counsellors available.

Workshop participants raised the option of linking survivors up with other agencies' counselling services. ACC was the main alternative canvassed. At the time of the workshop, there was a four-to-six-month waiting list for ACC counsellors in many areas. While there is some merit to the use of the existing ACC infrastructure as an extension to the Commission's counselling services, the Sensitive Claims Unit only deals with sexual abuse - so many survivors would not qualify for ACC counselling at all.

In addition, some participants were dubious about recommending ACC. The sense is that ACC is can adopt a long and drawn-out adversarial approach which often re-traumatises the victims needlessly.

Overall, however, there was consensus that the current Commission counselling provisions available are suboptimal

Recommendations

That the Commission work proactively to augment the provisions for counselling available to survivors.

That the Commission work with other organisations, such as ACC, to ensure that survivors have easy access to available services.

Note further recommendations relevant to counselling appear in the section concerning private sessions below.

Survivor Advisory Group

The Commission's Survivor Advisory Group is a path-breaking initiative and the workshop recognised that the Commission cannot draw upon well-developed existing practices. Participants emphasised the need for survivors to be involved in planning and decision-making. A strategy of non-transparent 'closed door' decision-making is potentially harmful to survivors and to the work of the Commission.

The workshop understood that the operation of the Survivor Advisory Group is likely to be revised. Consultation meetings are occurring across the country, but one potential outcome is that the Group will not meet regularly as a body, but rather members will be assigned to specific research or investigative programs.

Recommendation

In the interests of transparency, the Commission ought to announce its proposed model or models for the Survivor Advisory Group as soon as possible. Those models should ensure that the Group becomes a key component of the Commission.

Private Sessions

The Commission is to be congratulated on its work with the highly challenging private sessions. These are very difficult for survivors and it is important that the process be as beneficial as possible both for survivors and for the Commission. Participants raised several issues with the sessions, including concerns with supporting survivors and data collection.

The well-being of survivors at private sessions is at significant risk. The workshop understands that support-persons at these sessions are doing their best. However, they are very limited in the time they spend with survivors, generally meeting them on the day of the session and offering a couple of follow up sessions. In general, this support could be improved.

Survivors may need help in constructing their testimony prior to the private sessions, help that is provided in a trauma-informed manner.

Moreover, survivors confront problems in logistics and administration. There remains confusion as to how the 1999 cut-off date affects those eligible for attending private sessions. Survivors experience long delays between first contact with the Commission and subsequent follow up and support. Some survivors are unable to seek the necessary help that is available. The difficulties for survivors may have begun at the point their hopes were raised for the Inquiry and they began thinking again about their abuse. They will continue to be harmed until they see action and outcomes from their participation in the Inquiry and the time it takes to process it in relation to themselves.

Turning to data collection, the format of the private sessions shapes their content. Some things that are important to survivors, and the Commission, might not emerge in those forums. For example, survivors may not emphasise the importance of criminal accountability for offenders, if the session de-legitimises retributive emotions. Moreover, there are particular concerns with the participation of survivors, including prisoners, who distrust psychologists and do not respond well to forms of information-gathering that use questions. Many prisoners have prior negative experiences with official interrogations. The Commission needs to listen to 'what is not being said' in these sessions and work with people who have experience in working with hard-to-engage populations.

Recommendations

The available support should be what the best trauma-informed practice requires. Access to counsellors should be improved/increased and that needs to be a priority. One suggestion is to facilitate iwi/hapū-affiliated support workers to work with survivors over longer periods of time.

Support has to be culturally appropriate. The location of the sessions needs to be carefully thought through, including examining the possibility of running private sessions for prisoners outside the prison.

The Commission should be aware of the effects of discursive 'framing' on the content of the sessions.

Survivors are offered four to six follow-up sessions with a registered counsellor or psychologist of their choice. However, survivors may need more counselling, as the act of openly sharing their experiences often creates unexpected new vulnerabilities and re-traumatisation afterwards, once they return home. International experience indicates that many survivors experience a sense of abandonment, that replaces initial feelings of elation. Therefore, we would like to see no limits on counselling and psychological services for survivors, as well as their families. While we recognise resource constraints, ideally the numbers of therapy sessions should be limited only by their needs.

Public hearings

The public hearings are a key forum in which the Commission becomes visible to survivors and the public generally. Given the limited number of hearings that the Commission will undertake, a clear and coherent strategy for determining what hearings will occur, and ensuring that these are accessible as possible, is critical to the operation of the Commission.

In the workshop, it became clear that no participant had a clear understanding of what the general strategy for public hearings would be. Of course, the notes posted for the counsel assisting at the preliminary hearing outline a general strategy. But one must know that information is in that document if one is going to find it. Moreover, that information is very abstract. As of right now, it is hard to know that the Commission has an effective plan ready to implement its strategic goals.

Moreover, it was observed that, if the Commission is to meet its obligation to make ameliorative recommendations applicable to current practice, those hearings will have to encompass post-1999 activity.

Many participants observed that, while the contextual hearings were generally successful across a range of criteria, the court-like setting was off-putting to survivors. In general, to the degree that the proceedings resemble a court, the more likely they will be to harm survivors and discourage widespread participation.

Given the importance of public hearings and with current constraints likely to extend for much of this year, we hope that the commission is exploring alternative ways of holding public hearings.

Recommendations

The Commission should consider publishing its projected series of public hearings, according to topic and place, over the next 12-18 months. That schedule might be clearly specified as provisional and subject to change. However, knowing what is likely to come in the Commission will help survivors and others understand where they will 'fit' into the work of the Commission, enabling potential participants to prepare for participation.

The workshop was aware that the Commission should have a new facility for holding hearings and other events in Auckland in 2020. That facility should be designed to be both accessible and welcoming, both physically and aesthetically.

Public hearings should be conducted in a trauma-informed manner. Here the Commission could look to the experience of other Commissions as well as draw upon New Zealand's own innovative history, including alternative legal mechanisms.

The Commission is encouraged to address challenging topics and confront controversial questions. But to do so effectively, people need to know what the Commission will be doing well in advance.

Roundtables

The workshop endorsed the suggestion that the Commission would use roundtables as flexible, policy-oriented mechanisms. The flexibility of the roundtable initiative is a significant benefit, as different roundtables could operate in different ways.

One idea was that roundtables held *in camera* could provide an alternative evidence-gathering practice for two potential groups. Firstly, some survivors may prefer to participate as a group, as an alternative to a private session or public hearing. Second, some public servants may prefer to provide information through an *in camera* roundtable as opposed to a public hearing.

There was some discussion as to whether policy-oriented roundtables should be held *in camera* or in public. Some participants favoured a public approach in the interests of transparency. Others were concerned that some of the beneficial potential of frank advice would be lost if participation was public.

Again, participants stressed that the roundtables would have to reflect upon post-1999 information.

Recommendations

The strategy and topics for roundtables should be published as soon as possible. Like the public hearings, this plan might be provisional. However, knowing what roundtables are likely to be held, when they will happen and how they will proceed, will help people understand how they may participate in the Commission.

The Commission should seek to make flexible use of roundtables, fitting the design to the particular issue and participants.

The Commission should be forthright in focussing appropriate roundtables on post-1999 questions.

Publishing strategy for the Royal Commission.

There was firm agreement that Commission should clearly identify its goals in publishing/reporting and adopt an optimising strategy for publication that takes into account changes in the political landscape. A one-size-fits-all-topics approach might not be the best. The workshop noted the importance of identifying the various audiences for Royal Commission material and recognising each audience and each topic requires an appropriate approach. Every public communication should take account of the possible impact on survivors and incorporate a survivor perspective. In addition, publications should be presented so as to have the optimal effect on policy and procedural change

There was some discussion regarding how the Commission should report. On one hand, the idea that the Commission might publish reports on each hearing or issue was seen as valuable because it would ensure that information came in more usable forms and those who would benefit from the reports would be more likely to read them if they were shorter and specific to particular histories/issues. Moreover, the Commission would be continuously productive, enabling media to regularly report on new issues, thereby enabling a higher public profile and superior engagement strategy. Lastly, at least some of the Commission's recommendations might be implemented sooner, making things better for people more quickly.

Recommendations

Internationally, different Commissions have adopted different approaches and New Zealand's Commission should ensure its publishing strategy is effective and accessible. However, there was general agreement that the Commission should publish reports on each major hearing or roundtable. These might include findings, but also, those reports might notify observers of salient issues.

Whatever format is chosen, the voices of survivors should be foregrounded. Commissions elsewhere make extensive use of quotation, anonymous or otherwise, to give voice to survivors. Around the world the outcome of Inquiries has depended on the credibility of the work the commissioners do. Survivors voices can illustrate findings and support recommendations and validate the experience of survivors.

A Fifth Commissioner

The Commission remains 'short-staffed', months after the resignation of the original Chair.

There was some concern among the workshop that bringing a new Commissioner 'up to speed' would be challenging. But quickly the workshop judged that, given the large amount of work the Commission needs to accomplish, including a large number of private sessions, a fifth Commissioner would be invaluable. Indeed, given the enormity of the task of the Commission, the workshop discussed whether the number of Commissioners should be increased.

The workshop agreed that the new Commissioner should, if possible, represent Māori survivors and be female. It would preferable if they were not a member of the legal profession.

The workshop agreed that the Royal Commission Forum should send a letter requesting the appointment of a new Commissioner to the Minister of Internal Affairs, the Honourable Tracey Martin. That letter was sent on 4 March 2020.

Recommendations

The Commission should actively work to add a new Commissioner, giving preference to a candidate who is Māori and/or female.

Given the broad ambit of its work, the Commission should consider whether the addition of further Commissioners would be beneficial.

Records

The workshop touched only briefly on records. Participants generally endorsed the work of Care Records Aotearoa, which has drafted a set of priorities pertaining to records management and access.

Participants agreed that issues relevant to records are important to a range of the Commission's activities as well as to engagement with the Commission and, as a consequence, should be addressed by the Commission as a matter of urgency.

Recommendations

The Commission should consult the work of Care Records Aotearoa, a preliminary brief compiled by that body is attached as an appendix.

Issues pertaining to records would be a good focus for a roundtable. That roundtable should consider whether and how records-access for survivors could be administered by a credible independent body.

Royal Commission resourcing

Participants in the workshop expressed some uncertainty about how much control the Commission has over its own financial resources. One obvious concern, shared by all those who spoke on the topic, was that the Commission needs adequate funding across the duration of its work.

There was some discussion as to whether the Commission has adequate control over its funding and other resources. Some suggested that a previous lack of control over money and staffing had inhibited Commission's activities.

Recommendation

If this is not already the case, the Commission should have full control over the use of its budget, subject only to meeting the standard state sector accountability requirements. Efficiencies may be realised by using DIA or other existing state infrastructure and processes, for example, banking and accounting services, but those activities should be at the instigation of, and responsible to, the Commission. In the end, the Commission must have substantive financial independence.

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Appendices

Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Order 2018

Elizabeth the Second, by the Grace of God Queen of New Zealand and her Other Realms and Territories, Head of the Commonwealth, Defender of the Faith:

To—

The Right Honourable Sir Anand Satyanand, GNZM, QSO, of Wellington, former Governor-General, lawyer, District Court Judge, and Ombudsman,

Ali'imuamua Sandra Alofivae, MNZM, of South Auckland, lawyer, former Families Commissioner, and Pacific community leader,

Dr Andrew Erueti, of Auckland, lawyer and senior lecturer at the University of Auckland Law School,

Paul Gibson, of Wellington, disability adviser, advocate, and community leader, and former Human Rights (Disability Rights) Commissioner, and

Her Honour Judge Coral Shaw, of Te Awamutu, former lawyer, District Court Judge, Employment Court Judge, and Judge of the United Nations Dispute Tribunal:

Greeting!

Recitals

Whereas for a number of years, many individuals, community groups, and international human rights treaty bodies have called for an independent inquiry into historical abuse and neglect in State care and in the care of faith-based institutions in New Zealand:

Whereas historical abuse and neglect of individuals in State care or in the care of faith-based institutions warrants prompt and impartial investigation and examination, both to—

(a) understand, acknowledge, and respond to the harm caused to individuals, families, whānau, hapū, iwi, and communities; and

(b) ensure lessons are learned for the future:

Whereas the Inquiries (Royal Commission of Inquiry into Historical Abuse in State Care) Order 2018 (the **initial order**), on 1 February 2018,—

(a) established the Royal Commission of Inquiry into Historical Abuse in State Care as a public inquiry; and

(b) appointed the Right Honourable Sir Anand Satyanand, GNZM, QSO, as the member of the inquiry; and

(c) provided for its terms of reference to be notified after consultations on them were completed:

Now therefore We, by this Our Commission, establish the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (which continues and broadens the inquiry of, and replaces, the Royal Commission of Inquiry established by the initial order).

It is declared that this Order in Council constituting Our Commission is made—

(a) under the authority of the Letters Patent of Her Majesty Queen Elizabeth the Second constituting the office of Governor-General of New Zealand, dated 28 October 1983;* and

(b) under the authority of section 6 of the Inquiries Act 2013 and subject to the provisions of that Act; and

(c) on the advice and with the consent of the Executive Council.

*SR 1983/225

Order

1 Title

This order is the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Order 2018.

2 Commencement

This order comes into force on the day after the date of its notification in the *Gazette*.

3 Royal Commission of Inquiry established

(1) The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions is established (the **inquiry**).

(2) The inquiry continues and broadens the inquiry of, and replaces, the Royal Commission of Inquiry established by the Inquiries (Royal Commission of Inquiry into Historical Abuse in State Care) Order 2018.

4 Matter of public importance that is subject of inquiry

The matter of public importance that is the subject of the inquiry is the historical abuse of children, young persons, and vulnerable adults in State care, and in the care of faith-based institutions.

5 Members of inquiry

The following persons are appointed to be the members of the Royal Commission to inquire into that matter of public importance:

(a) the Right Honourable Sir Anand Satyanand, GNZM, QSO:

(b) Ali'imuamua Sandra Alofivae, MNZM:

(c) Dr Andrew Erueti:

(d) Paul Gibson:

(e) Her Honour Judge Coral Shaw.

6 Chairperson of inquiry

The person who is to be the chairperson of the inquiry is The Right Honourable Sir Anand Satyanand, GNZM, QSO.

7 Date when inquiry may begin considering evidence

The inquiry may begin considering evidence from 3 January 2019.

8 Terms of reference

The terms of reference for the inquiry are set out in the Schedule.

9 Revocation

The Inquiries (Royal Commission of Inquiry into Historical Abuse in State Care) Order 2018 (LI 2018/3) is revoked.

Schedule
Terms of reference

cl 8

Preamble

The New Zealand Government

Reaffirming its commitment, made in October 2017, to establish an independent inquiry into the abuse of individuals in care;

Reflecting on the period between the 1950s and late 1990s, when many children and young persons from all communities were removed from their families and placed in care;

Reflecting also that a number of children, young persons, and vulnerable adults entered the care of faith-based institutions;

Acknowledging that a significant number of those removed from their families and placed in care were from Māori and Pacific communities;

Confirming that many vulnerable adults also entered care during this time;

Recognising that many of these children, young persons, and vulnerable adults were people affected by disabilities, mental illness, or both;

Observing that the placement in care is likely to have involved the State and its officials, whether directly or indirectly;

Appreciating that whilst a number of people in this situation received appropriate treatment, education, and care, many others suffered abuse;

Recognising that those who were abused, as well as their families and whānau, experienced both immediate and long-term impacts;

Emphasising the need to ensure that all people in care are treated with humanity and with respect for the inherent dignity of the person, particularly children, young persons, and vulnerable adults;

Reaffirming applicable domestic and international law, including human rights law, on the proper treatment of people in care, including relevant standards on the prevention of and responses to abuse;

Recognising Te Tiriti o Waitangi/the Treaty of Waitangi and its principles, as well as the status of iwi and Māori under Te Tiriti/the Treaty;

Taking note of the observations made in recent years by United Nations human rights treaty bodies with regard to this issue;

Responding to the calls made for several years, by individuals and groups in New Zealand and abroad, for an independent inquiry into abuse in care;

Considering the establishment of inquiries into similar issues in other countries, including Australia, Canada, England and Wales, Northern Ireland, and Scotland;

Convinced that the matter now requires thorough, effective investigation and review, in order to identify lessons from the past and pathways for the future;

Hereby establishes the following terms of reference for the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions:

Background

1. Many individuals and community groups have called for an independent inquiry into historical abuse in State care in New Zealand. This included the campaign led by the Human Rights Commission entitled *Never Again / E Kore Anō*. In 2017, the United Nations Committee on the Elimination of Racial Discrimination recommended that New Zealand establish an independent inquiry into this issue. The United Nations Committee on the Rights of the Child also considered the treatment of children in care in 2016. Other countries have established similar inquiries to examine abuse in various settings. During the public consultation on the draft terms of reference, a number of stakeholders called for a broad-based inquiry that could look into abuse both in State care and in the care of faith-based institutions.

2. In recent years, a range of processes has been established to respond to the issue of abuse in State care. The Confidential Forum for Former In-Patients of Psychiatric Hospitals and the Confidential Listening and Assistance Service listened to individual experiences of State care and made recommendations for future work. Their work highlights the significant impact abuse has had on individuals and their families and the co-ordinated efforts that are needed in order to prevent it happening in the future.

3. New Zealand has international legal obligations 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. New Zealand has ratified, or endorsed, a range of international treaties and other instruments which are relevant to the work of this inquiry. These include the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Rights of the Child; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the Convention on the Rights of Persons with Disabilities; and the Declaration on the Rights of Indigenous Peoples. A number of other instruments and guidance materials are also relevant to the proper treatment of people in care.

4. Abuse of individuals in State care is inconsistent with applicable standards and principles of human rights law in New Zealand and internationally. It creates the need for prompt and impartial investigation and examination. When undertaken effectively, this can provide the basis for understanding, acknowledging, and responding to the harm caused and for ensuring lessons are learned for the future. Abuse of individuals in the care of faith-based institutions is also very serious and calls for a similarly robust and effective response to help prevent future abuse.

5. In light of these matters, a Royal Commission has been established into historical abuse in State care and in the care of faith-based institutions. In accordance with the Inquiries Act 2013 (the **Act**), the inquiry will operate independently, impartially, and fairly. The Department of Internal Affairs is the 'relevant Department' for the purposes of the Act.

6. The inquiry will give appropriate recognition to Māori interests, acknowledging the disproportionate representation of Māori, particularly in care. The inquiry will be underpinned by Te Tiriti o Waitangi/the Treaty of Waitangi and its principles, and will partner with Māori throughout the inquiry process.

7. Pacific people have also been disproportionately represented in care. The inquiry will recognise this, together with the status of Pacific people within an increasingly diverse New Zealand.

8. A number of vulnerable adults (for example, those with disabilities, mental illness, or both) also experienced abuse in care. The experiences of these people will also be a key focus of the inquiry.

Purpose and scope

9. 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. The purpose of the inquiry is to identify, examine, and report on the matters in scope. For matters that require consideration of structural, systemic, or practical issues, the inquiry's work will be informed not only by its own analysis and review but also by the feedback of victims/survivors and others who share their experiences. The matters in scope are:

    10.1 The nature and extent of abuse that occurred in State care and in the care of faith-based institutions during the relevant period (as described immediately below):

        (a) the inquiry will consider the experiences of children, young persons, and vulnerable adults who were in care between 1 January 1950 and 31 December 1999 inclusive:

        (b) the inquiry may, at its discretion, consider issues and experiences prior to 1950. In order to inform its recommendations for the future, the inquiry may also consider issues and experiences after 1999:

        (c) for the avoidance of doubt, the discretion in paragraph (b) means the inquiry may hear from people who were in care at any point after 1999 or are currently in care (whether or not they were also in care before 1999). Further guidance on principles and methods of work relating to the inquiry's engagement with people currently in care is provided in clauses 21 and 22.

10.2 The factors, including structural, systemic, or practical factors, that caused or contributed to the abuse of individuals in State care and in the care of faith-based institutions during the relevant period. The factors may include, but are not limited to:

(a) the vetting, recruitment, training and development, performance management, and supervision of staff and others involved in the provision of care:

(b) the processes available to raise concerns or make complaints about abuse in care:

(c) the policies, rules, standards, and practices that applied in care settings and that may be relevant to instances of abuse (for example, hygiene and sanitary facilities, food, availability of activities, access to others, disciplinary measures, and the provision of health services):

(d) the process for handling and responding to concerns or complaints and their effectiveness, whether internal investigations or referrals for criminal or disciplinary action.

10.3 The impact of the abuse on individuals and their families, whānau, hapū, iwi, and communities, including immediate, longer-term, and intergenerational impacts.

10.4 The circumstances that led to individuals being taken into, or placed into, care and the appropriateness of such placements. This includes any factors that contributed, or may have contributed, to the decision-making process. Such factors may include, for example, discrimination, arbitrary decisions, or otherwise unreasonable conduct.

(a) With regard to court processes, the inquiry will not review the correctness of individual court decisions. It may, however, consider broader systemic questions, including the availability of information to support judicial decision making, and the relevant policy and legislative settings.

10.5 What lessons were learned; what changes were made to legislation, policy, rules, standards, and practices to prevent and respond to abuse in care; and what gaps, if any, remain and need addressing.

10.6 The current frameworks to prevent and respond to abuse in care; and any changes to legislation, policies, rules, standards, and practices, including oversight mechanisms, that will protect children, young persons, and vulnerable adults in the future.

10.7 The redress and rehabilitation processes for individuals who claim, or have claimed, abuse while in care, including improvements to those processes.

11. As part of its interim or final reports, the inquiry will present comments, findings, and recommendations as described in clauses 31 and 32.

12. In considering the matters in scope, the inquiry shall give particular consideration to any people or groups where differential impact is evident.

13. Available guidance, both in New Zealand and internationally, recognises the general vulnerability of a person who is under the responsibility of another person or entity. Vulnerability may also arise in relation to a person's nationality; race; ethnicity; religious belief; age; gender; gender identity; sexual orientation; or physical, intellectual, disability, or mental health status. The inquiry will give particular consideration to these vulnerabilities in the course of its work.

14. The inquiry may consider other matters that come to its notice in the course of its work, if it considers this would assist the inquiry in carrying out its functions and in delivering on its stated purpose.

15. For the avoidance of doubt, existing feedback, complaints, review, claims, settlement, or similar processes will continue to operate during the course of the inquiry's work. As provided in clauses 31 and 32, the inquiry may make interim or final recommendations on improvements to these processes.

Definitions

16. In the course of its work, and when applying the definitions below, the inquiry will consider relevant domestic and international law, including international human rights law.

17. For the purpose of the inquiry, unless the context otherwise requires, the following definitions will apply:

    17.1 **Abuse** means physical, sexual, and emotional or psychological abuse, and neglect, and—

        (a) the term 'abuse' includes inadequate or improper treatment or care that resulted in serious harm to the individual (whether mental or physical):

        (b) the inquiry may consider abuse by a person involved in the provision of State care or care by a faith-based institution. A person may be 'involved in' the provision of care in various ways. They may be, for example, representatives, members, staff, associates, contractors, volunteers, service providers, or others. The inquiry may also consider abuse by another care recipient.

    17.2 **Individual** means a child or young person below the age of 18 years, or a vulnerable adult, and—

        (a) for the purpose of this inquiry, 'vulnerable adult' means an adult who needs additional care and support by virtue of being in State care or in the care of a faith-based institution, which may involve deprivation of liberty. In addition to vulnerability that may arise

generally from being deprived of liberty or in care, a person may be vulnerable for other reasons (for example, due to their physical, intellectual, disability, or mental health status, or due to other factors listed in clauses 8 and 13).

17.3 **State care** means the State assumed responsibility, whether directly or indirectly, for the care of the individual concerned, and—

(a) 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:

(b) the State may have assumed responsibility 'indirectly' when it passed on its authority or care functions to another individual, entity, or service provider, whether by delegation, contract, licence, or in any other way. The inquiry can consider abuse by entities and service providers, including private entities and service providers, whether they are formally incorporated or not and however they are described:

(c) for the purpose of this inquiry, 'State care' (direct or indirect) includes the following settings:

(i) social welfare settings, including, for example:

(A) care and protection residences and youth justice residences:

(B) child welfare and youth justice placements, including foster care and adoptions placements:

(C) children's homes, borstals, or similar facilities:

(ii) health and disability settings, including, for example:

(A) psychiatric hospitals or facilities (including all places within these facilities):

(B) residential or non-residential disability facilities (including all places within these facilities):

(C) non-residential psychiatric or disability care:

(D) health camps:

(iii) educational settings, including, for example:

(A) early childhood educational facilities:

(B) primary, intermediate, and secondary State schools, including boarding schools:

(C) residential special schools and regional health schools:

(D) teen parent units:

(iv) transitional and law enforcement settings, including, for example:

(A) police cells:

(B) police custody:

(C) court cells:

(D) abuse that occurs on the way to, between, or out of State care facilities or settings.

(d) the settings listed above may be residential or non-residential and may provide voluntary or non-voluntary care. The inquiry may consider abuse occurring in any place within these facilities or settings. The inquiry may consider abuse that occurred in the context of care but outside a particular facility. For example, abuse of a person in care, which occurred outside the premises, by a person who was involved in the provision of care, another person (as described in clause 17.1(b)), or another care recipient:

(e) without diminishing the importance of ensuring that people in settings other than those listed in clause 17.3(c) receive good care and treatment, for the purpose of this inquiry, State care does not include the settings listed below. However, the experience of a person in these facilities or settings may be considered if the person was also in State care at the time:

(i) people in prisons, including private prisons:

(ii) general hospital admissions, including private hospitals:

(iii) aged residential and in-home care, including private care:

(iv) immigration detention:

(f) while, for the purpose of this inquiry, the treatment of people in prisons does not fall within the definition of State care, the inquiry may consider the long-term effects of State care on an individual or a 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 systems and what conclusions or lessons, if any, might be drawn from the inquiry's analysis:

(g) for the avoidance of doubt, 'abuse in State care' does not include abuse in fully-private settings, such as the family home, except where an individual was also in State care:

(h) for the avoidance of doubt, 'abuse in State care' means abuse that occurred in New Zealand.

17.4 **In the care of faith-based institutions** means where a faith-based institution assumed responsibility for the care of an individual, including faith-based schools, and—

(a) for the avoidance of doubt, care provided by faith-based institutions excludes fully private settings, except where the person was also in the care of a faith-based institution:

(b) for the avoidance of doubt, if faith-based institutions provided care on behalf of the State (as described in clause 17.3(b) above), this may be dealt with by the inquiry as part of its work on indirect State care:

(c) as provided in clause 17.3(d) above, care settings may be residential or non-residential and may provide voluntary or non-voluntary care. The inquiry may consider abuse that occurred in the context of care but outside a particular institution's premises:

(d) for the avoidance of doubt, the term 'faith-based institutions' is not limited to one particular faith, religion, or denomination. An institution or group may qualify as 'faith-based' if its purpose or activity is connected to a religious or spiritual belief system. The inquiry can consider abuse in faith-based institutions, whether they are formally incorporated or not and however they are described:

(e) for the avoidance of doubt, 'abuse in faith-based care' means abuse that occurred in New Zealand.

17.5 **Relevant period** means the period described in clause 10.1(a) above.

17.6 **Redress processes** includes monetary processes (for example, historic claims and compensation or settlement processes), as well as non-monetary processes (for example, rehabilitation and counselling).

17.7 **Relevant department** means the Department of Internal Affairs, in accordance with section 4 of the Act.

17.8 **Appropriate Minister** means the Minister of Internal Affairs, in accordance with section 4 of the Act.

Principles and methods of work

18. The inquiry will discharge its functions in accordance with the provisions and principles of these terms of reference and the Act. Given the seriousness of the issues under consideration, the inquiry will operate with professionalism and integrity and in line with relevant domestic and international good practice guidance. The inquiry will implement policies, methods, processes, and procedures that enable it to conduct its work in a manner sensitive to the needs of individuals and their families, whānau, hapū, and iwi, or other supporters.

19. The inquiry will operate according to principles that include (but are not limited to)—

(a) do no harm:

(b) focus on victims and survivors:

(c) take a whānau-centred view:

(d) work in partnership with iwi and Māori:

(e) work inclusively with Pacific people:

(f) facilitate the meaningful participation of those with disabilities, mental illness, or both:

(g) respond to differential impacts on any particular individuals or groups:

(h) be sensitive to the different types of vulnerability that arise for people in care:

(i) ensure fair and reasonable processes for individuals and organisations associated with providing care:

(j) avoid an overly legalistic approach.

20. To ensure a sound foundation for its work, the inquiry will implement clear policies and methods of work. These include, but are not limited to, policies or methods of work to—

(a) facilitate the timely receipt of information, the production of documents, or other things, in accordance with the inquiry's powers under the Act:

(b) identify and engage specialist investigative, advisory, or research functions to support the inquiry:

(c) ensure information or evidence obtained or 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:

(d) receive information and evidence from, or share information and evidence with, current and previous inquiries in New Zealand and elsewhere, where appropriate and with due regard to confidentiality. 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:

(e) ensure that personal information is treated appropriately and in accordance with the principles of sensitivity, confidentiality, and informed consent. Individuals who share their experiences with the inquiry should be able to access their information at a later date on request. The inquiry will establish appropriate processes for handling such requests:

(f) inform participants of support, complaints, or other processes which may be available to them and, to the extent appropriate, assist them in accessing these processes. This includes supporting victims/survivors (if they wish) to refer a matter to the Police or to other appropriate complaints or

investigative bodies or support services. The inquiry will adopt appropriate policies around safety and consent in these situations:

(g) provide organisations and other parties sufficient opportunity to respond to requests and requirements for information and documents.

21. The Government's expectation is that—

(a) agencies/institutions will co-operate with the inquiry to enable it to hear from people who are currently in care and, where necessary, these agencies/institutions will ensure a safe and secure environment for the inquiry to undertake this work (for example, if the inquiry visits a care facility):

(b) agencies/institutions will also ensure that the inquiry is able to undertake its work independently and with due regard to the importance of confidentiality:

(c) a person in care who shares their experience with the inquiry in good faith will (in relation to the sharing of that information) not be subject to disciplinary action, a change in care conditions, or other disadvantage or prejudice of any kind:

(d) agencies/institutions will ensure that those who are currently in care and who engage with the inquiry have appropriate supports in place, given the sensitivity of the issues being discussed. This does not limit the application of clause 24.

22. Without limiting section 16 of the Act, and for the avoidance of doubt, there is no requirement or expectation that those who share their experience with the inquiry (whether currently in care or not) must first make use of feedback, complaints, review, claims, settlement, or similar processes. There is also no limitation on people engaging with the inquiry if they have already gone through these processes, are currently going through them, or may go through them in the future. This recognises that the inquiry and other processes exist for similar but distinct purposes, and that the inquiry may recommend improvements to these processes as part of its work.

23. The inquiry will establish an advisory group or groups comprising survivors of abuse in State care and in the care of faith-based institutions that, 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 groups may be asked to provide feedback on matters the inquiry is considering. The advisory groups will not have a decision-making function. The inquiry will also, as appropriate, engage specialist advisors (for example, cultural advisors) to strengthen the inquiry's work and fulfil the principles listed in clause 19(a) to (j).

24. The inquiry will establish and implement a detailed plan for the provision of counselling or other support to those who are affected by the issue of abuse in

State care or abuse in the care of faith-based institutions. To ensure a victim/survivor-centred approach based on good practice and informed consent, the inquiry may make use of in-house counselling services or partnership or similar arrangements with other specialist providers. The inquiry will apply the dedicated funds that have been set aside for this purpose in a sensitive and appropriate manner.

25. In discharging its functions, the inquiry will operate effectively and efficiently and ensure transparency and accountability in its use of public funds. To meet these standards, and to ensure that the relevant department meets all of its statutory and reporting obligations, the relevant department will finalise administrative and financial reporting requirements in consultation with the inquiry. Such reporting requirements may involve, for example, bi-annual or quarterly reporting of financial and administrative matters.

26. The inquiry will undertake two key strands of work:

    26.1 **Strand 1—Looking Back**: this strand will map the nature and extent of abuse in State care and faith-based institutions, the impact of that abuse and the factors which caused or contributed to the abuse. The principal question for this strand will be to establish what happened and why.

    26.2 **Strand 2—Looking Forward**: this strand will review the current systems for preventing and responding to abuse, to test whether these are fit-for-purpose and identify what changes need to be made as a result. The principal question for this strand is how to ensure that what occurred cannot happen again.

27. The inquiry has the power to determine its own procedure, unless otherwise guided by the Act or these terms of reference. The inquiry may advance its work using a range of methods and settings. The inquiry will determine the appropriate way to manage its work. For example, the inquiry may determine whether all inquiry members need to be present in a particular setting, or whether work can proceed with a smaller number of inquiry members present. The inquiry will ensure its procedures are clear, readily available, and can be understood by the public and participants.

28. The inquiry will be based in New Zealand, where almost all of its work will be undertaken. The inquiry will use, wherever possible and appropriate, modern technology to communicate with participants or others who are based overseas (for example, by video link).

    28.1 From time to time, and only where the inquiry determines that it is necessary to gather information or evidence from participants or others who are based overseas, the chairperson, members, or nominated Secretariat staff may travel outside New Zealand. The inquiry will ensure that it has all relevant legal or other permissions (as the case may be) to undertake investigative work outside New Zealand. It will also ensure that it conducts this work in an appropriate, effective, and efficient man-

ner in accordance with the principles and standards contained in clauses 18, 19, 20, and 25.

29. The inquiry's approach to its analysis and reporting will be sensitive to the different contexts in which abuse occurred (for example, State care or faith-based institutions, the different groups of affected individuals, or abuse occurring at different points in time). The inquiry will reflect this in its work and reporting.

Findings and recommendations

30. The inquiry may deliver one or more public statements on any aspect of its work.

31. The inquiry will report and make general comments, findings, or both, on—

(a) the nature and extent of abuse that occurred (as described in clause 10.1 above):

(b) the factors, including systemic factors, which caused or contributed to abuse (as described in clause 10.2 above):

(c) the impact of the abuse on individuals and their families, whānau, hapū, iwi, and communities (as described in clause 10.3 above):

(d) the circumstances that led to individuals being taken into, or placed into care (as described in clause 10.4 above):

(e) the lessons learned and what changes were made to prevent and respond to abuse (as described in clause 10.5 above).

32. The inquiry will report and make recommendations, which may concern legislation, policy, rules, standards, and practices, on—

(a) any gaps and areas for future changes to the frameworks to prevent and respond to abuse in State care and faith-based institutions, including oversight mechanisms (as described in clause 10.6 above):

(b) any appropriate changes to the existing processes for redress, rehabilitation, and compensation processes for individuals who claim, or have claimed, to have suffered abuse while in State care and faith-based institutions (as described in clause 10.7 above):

(c) any other appropriate steps the State or faith-based institutions should take to address the harm caused, taking into account all of the inquiry's analysis, comments, findings and recommendations. This includes whether there should be an apology by the State and faith-based institutions for the abuse of individuals during the relevant period, or any other action that may be needed.

33. In accordance with the Act, 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, that relevant standards have been breached, or both, and may make recommendations that further steps be taken to determine liability.

Commencement, reporting, and conclusion of work

34. The inquiry will commence once this instrument comes into force and it may begin considering evidence from 3 January 2019. In its first phase, prior to its interim report in 2020, the inquiry will give particular (but not exclusive) consideration to abuse in State care.

35. The inquiry is to provide an interim report on its work, in writing, by 28 December 2020. The interim report will be presented in two parts:

    35.1 a substantive interim report, including,—

        (a) a substantive progress report on the inquiry's work to date on direct and indirect State care and care in faith-based institutions. This may include the key themes or common issues arising in the experiences shared by victims/survivors in the first phase:

        (b) an analysis of the size of the cohorts for direct and indirect State care and care in faith-based institutions:

        (c) any interim findings and recommendations on the matters in clauses 31 and 32 that could or should be made at an early stage, for the Government's consideration; and

    35.2 an administrative interim report, including—

        (a) an analysis of the likely workload to complete the next phase of the inquiry, taking into account cohort sizes:

        (b) a detailed assessment of any additional budget required to complete the next phase of the inquiry.

36. The substantive interim report (*see* clause 35.1) is to be presented by the inquiry in writing to the Governor-General, who will provide the report to the appropriate Minister. As soon as practicable after receiving the report, the Minister will table the report in the House of Representatives. Once tabled, the inquiry may also publish the substantive interim report on its website.

37. The administrative interim report (*see* clause 35.2) is to be presented by the inquiry in writing to the appropriate Minister. As soon as practicable after receiving the report, the Minister will report to Cabinet to consider any revision to the inquiry's budget and any other matters as appropriate. The administrative interim report will not be tabled in Parliament, but may be released by the Minister.

38. In addition to the two-part interim report referred to in clauses 35 to 37, the inquiry may issue a further interim report, or reports. In these reports, the inquiry may also issue interim findings and recommendations. The process for tabling interim reports, and their later publication, will follow the same process as for the substantive interim report (*see* clause 36). Any further interim reports issued under this clause will also be issued in writing and to the Governor-General.

39. The inquiry is to issue its final report, in writing and containing its final findings and recommendations on the matters in clauses 31 and 32, to the Governor-General by 3 January 2023. The process for tabling the final report will follow the process provided in section 12 of the Act. Once tabled in the House of Representatives, the inquiry may also publish the final report on its website.

40. If the inquiry identifies any issue that may affect its ability to deliver the final report by the date notified in the *Gazette*, it will notify the appropriate Minister as soon as possible with a view to identifying an appropriate solution. The solution may include, but is not limited to, an extension of time.

41. In addition to issuing its final report, the inquiry will find other ways to ensure that the public understands and has access to its work, whether by public statements, events, videos, research reports, issues papers, or similar documents.

Amendments

42. The appropriate Minister may amend these terms of reference in accordance with the Act. The inquiry may also request amendment of these terms of reference at any time prior to the final reporting date described in clause 39 above. Any request for amendment by the inquiry will be made formally and in writing to the Minister.

In witness whereof We have caused this Our Commission to be issued and the Seal of New Zealand to be hereunto affixed at Wellington this 12th day of November 2018.

Witness Our Trusty and Well-beloved The Right Honourable Dame Patsy Reddy, Chancellor and Principal Dame Grand Companion of Our New Zealand Order of Merit, Principal Companion of Our Service Order, Governor-General and Commander-in-Chief in and over Our Realm of New Zealand.

Patsy Reddy,
Governor-General.

By Her Excellency's Command,

Jacinda Ardern,
Prime Minister.

Approved in Council,

Rachel Hayward,
for Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 12 November 2018.
This order is administered by the Department of Internal Affairs.

Wellington, New Zealand:
Published under the authority of the New Zealand Government—2018

THROUGH THE LENS OF SURVIVORS:
LESSONS FROM THE NORTHERN IRELAND HISTORICAL INSTITUTIONAL ABUSE INQUIRY

Professor Patricia Lundy [1] | February 2020
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Introduction

Historical institutional child abuse scandals have rocked Church and State institutions across the globe. A frequent government response has been to commission abuse inquiries to investigate allegations of harm and wrongdoing. An estimated 20 countries have established such processes *(Swain, et al., 2018)*, but there is scant research and critical analysis of abuse inquiries, particularly from the perspective of survivors.

This policy brief discusses in-depth research on the Northern Ireland Historical Institutional Abuse Inquiry (HIAI) from October 2014 to date. Research has been collated using a mixed methods participatory action research (PAR) [2] approach including 43 in-depth interviews with survivors, five focus groups with 75 participants, observation of the HIAI, a survey post-Inquiry, and analysis of the HIAI transcripts [3]. This paper examines survivors' experiences and assessments of the HIAI, what they hoped to achieve, and to what extent their justice needs were met. It gives a unique insight into an abuse inquiry from the perspective of survivors and lessons learned.

The Historical Institutional Abuse Inquiry

The Historical Institutional Abuse Inquiry (HIAI) was established in Northern Ireland in response to survivors' campaigns for justice, and in 2013 the Northern Ireland Assembly enacted legislation to establish an inquiry into the scale of child abuse in institutions run by the Catholic Church and the state. The HIAI's remit included sexual, physical and emotional abuse, neglect, and unacceptable practices in children's residential institutions (other than schools) between 1922 and 1995. In public hearings between January 2014 and July 2016, 22 institutions were investigated, as well as the circumstances surrounding the sending of child migrants from Northern Ireland to Australia, and the abuses committed by Fr. Brendan Smyth, a notorious paedophile Catholic priest.

The HIAI had two components: a confidential Acknowledgement Forum that provided survivors with the opportunity to tell their story; and a Statutory Inquiry where evidence was given in public. Survivors could choose to participate in the Acknowledgement Forum only, or both components. Four-hundred and twenty-seven survivors spoke to the Acknowledgement Forum, and one individual gave a written account. Three-hundred and thirty-three survivors gave evidence to the Statutory Inquiry (246 in person and 87 via witness statements) *(Hart et al., 2017)*.

The Inquiry also heard from 194 witnesses who were not former residents (staff, police, and public officials). The HIAI Report was published in January 2017 and found evidence of systemic failings in residential institutions, i.e. that there was "sexual, physical, and emotional abuse, neglect and unacceptable practices across the institutions and homes examined" *(Hart et al., 2017, 8-42)*.

Research Findings

One of the key challenges in researching responses to historical institutional abuse is to clarify what is required for survivors to achieve justice (Lundy, 2020). I identify eleven survivor justice needs, namely: voice, acknowledgement, vindication (includes validation), apology, redress (monetary/symbolic), rehabilitation measures, intergenerational needs, access to records, authoritative historical record, offender accountability and taking responsibility, and prosecution. They form the basis of the analytical framework to assess the Inquiry from the survivors' perspective. Survivors' identified justice needs are discussed below.

Voice, Acknowledgement, Vindication:
Of the 43 survivors interviewed, most stated that the motivation to participate in the Inquiry was to "have a voice." They wanted to "tell their story" and "to speak for those unable to testify." Survivors wanted their voices to be heard and the abuse and harms to be publicly acknowledged. Thus, a further motivation for taking part in the HIAI was acknowledgement (45%).
A recurring theme in interviews was that victims wanted to be believed. Overwhelmingly participation was about achieving vindication and validation.

Apologies were perceived as vindication and validation. 63% of interviewees said they wanted an apology, whereas 29% believed an apology had no benefit. Apologies had to have consequences: "what good is an apology without action?" [Interview with F4, July 2016]. Apologies as stand-alone gestures are not sufficient in meeting survivors' justice needs, although, if perceived as satisfactory, they can be an important form of symbolic redress.

Redress (monetary/symbolic):
Compensation was the most frequently cited justice need in interviews. Almost 80% prioritized compensation. Participants in all five focus groups discussed compensation at length as a priority. In the Inquiry itself a lower proportion (33%) stated that compensation should be recommended, which may be related to the official and public nature of the Inquiry. In interviews with the author, some said they were reluctant to talk publicly about financial compensation, concerned that they might be seen as "in it for the money."

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Others found it difficult and offensive to "put a price" on their suffering. The HIAI specifically asked survivors about their views on a form of memorial. There were mixed views on this: some welcomed the idea as a form of acknowledgement; others were strongly opposed to it as a painful reminder that might even be harmful: 13% were in favor and 26% were not. In the Inquiry, 11% were not in favor and 12% were.

"Repair" or rehabilitation measures were a constant theme in interviews and survivors discussed this at length in focus groups. [4] Measures to help repair and rebuild shattered lives were emphasized, including healthcare services, long-term counselling, education and training, **intergenerational needs**, and reunion with family/siblings. As with compensation above, a lower proportion (2%) mentioned family compensation/intergenerational needs at the public Inquiry. This, again, underscores the context of reticence in an official public arena.

Access to records emerged as a key justice need in most interviews and all focus groups. A major source of distress, trauma, struggle, and frustration for survivors was gaining access to their personal historical files and establishing meaningful information. Survivors shared accounts of their disappointment when records retrieved were inadequate and/or heavily redacted. "I was trying to understand my childhood...I thought I would get to understand me as a person." [Interview with F2, Jan. 2016] It cannot be overstated the depth of distress this has caused: "Our lives are in a file somewhere and we can't find out who we are" [Male participant, Focus Group 4].

Accountability, Prosecution, Historical Record:
A key motivation for participating in the Inquiry was to get "the truth". Some described the same principle in other ways, e.g. the need to find out why the abuse happened, why them and how people could justify what they did. Others said they wanted "the truth to be known" and documented so that society understood the extent of the abuse and harm they had suffered as children. Truth was linked to establishing an authoritative historical record. Others said that they already knew the truth; all they wanted was for perpetrators and institutions to take responsibility and be accountable. A significant number of survivors (71%) expressed a strong desire for those who abused them to be criminally prosecuted or "punished through the courts". Accountability emerged as an important aspect linked to acceptance of responsibility, and vindication, and validation:

> *When people stand up and say, what we did was wrong – we shouldn't have done that ... Then you get to think, you know what, maybe I'm not scum – maybe I didn't deserve this [Int: M10, Nov. 2016].*

Did the Inquiry meet Survivor's Justice needs?

A clearer understanding of survivors' justice needs allows for a more critical analysis of the potential and limits of the format of the HIAI in meeting those needs, from the perspective of survivors who engaged in the Inquiry. The next section considers the confidential Acknowledgement Forum, followed by the public Statutory Inquiry.

The Acknowledgement Forum

The Acknowledgement Forum sought to provide "an opportunity for victims and survivors to recount their experiences on a confidential basis" *(Hart et al., 2017, p.5)*. The Forum was private, confidential and had therapeutic aspirations seeking to hear testimony and accept without challenge.

Out of the 43 interviews conducted with survivors, more than half said that the Forum was a positive experience. Survivors said it conferred acknowledgement (53%), gave voice (50%) and regarded it as "helpful" (39%). Most described the Forum as meeting their needs to be listened to:

> *The Acknowledgement Forum was a channel I felt I could best cope with. The Acknowledgement Forum personally brought a sense of relief without being intrusive or judgemental. For me, it afforded me a platform as an individual to give me confidence to speak out and people will listen. While the Acknowledgment Forum provided a relaxed environment, I can't say the same for the statutory element [Int: M2, Nov 2015].*

Some survivors were of the opinion that the Acknowledgement Forum was all that was required and that the more intrusive Public Inquiry was not necessary. "You could have actually written the report just on the Acknowledgement Forum" [Int: M5 Nov 2015].

For many the Forum was a positive first step in breaking the silence and denial, however, only a small number described the experience as healing or cathartic (18%). Furthermore, a sizeable number said they "felt exposed" or "vulnerable" (39%), and experienced longer term emotional consequences (29%) after attending the Forum.

There were mixed views as to the adequacy of support provided during and after the Forum. Some said that adequate support and help had been provided (29%), others felt more support was needed (37%), while others still were highly critical. The HIAI felt every effort had been made to ensure that sufficient emotional support had been provided, yet the survivors' groups felt they have been left to "pick up the pieces" *(BBC, 2013)*.

The Public Inquiry

Giving Voice: The Trauma of Testifying

Survivors spoke in interviews of being re-traumatised and re-victimised by the experience of giving evidence to the Public Inquiry. It was an "emotional experience" (55%), "traumatizing" or "abusive" (47%); or they "felt vulnerable" (42%). A small number said it was an "intimidating experience" (18%), and others felt "victimized" (18%). Existing research on the psychological effects of giving testimony to such inquiries questions the therapeutic value and healing effects *(Hamber, 2009)*. The "glow quickly fades" once survivors return home, which is when many feel a sense of abandonment *(Stover, 2004: 107)*.

When survivors received their testimony in the form of a written statement in the post to their home, this created new vulnerabilities:

> *A lot of our guys would have gone more or less secretly and then a letter arrives in your post box with 15 pages or whatever...So someone is going to have to go off on their own and read through this statement word for word - and that's a point of vulnerability. You need to have somebody to contact people, and somebody that they're able to contact; because this is going to be really emotionally charging for people. [Int: M 5, Nov 2015].*

Adequate information is crucial to ensure participants fully understand what the process involves. Of the 43 survivors interviewed, 42% said that they had "insufficient information and understanding" of the public hearing procedures. Just 5% said they were well informed. This falls far short of a victim-centred approach. Even those who described the process as very positive felt that they could have been better prepared:

> *I found the court thing intimidating...that court was packed – then you've got that panel and all of the electronics and the TV up on the wall – and all the people sitting in the background – and you're not sure who they are – and what they're doing – why they are there – and I'm thinking are these press or social workers. I just didn't know...Maybe a little bit more information about who everybody is and what their role is. [Int: M10, Nov. 2016].*

Although witness support officers and a representative from Contact NI counselling services were available at all times to provide assistance, and survivors were signposted to appropriate agencies, half of those interviewed said "more victim support was needed"; strong criticism was also expressed about the adequacy of support.

Inquisitorial or Adversarial?

The Inquiry stated that public hearings would not be conducted like a trial, it would be inquisitorial and all questions would be directed to ascertaining facts *(Hart et al., 2017, p.12 para 28 & 30)*. A significant number of survivors regarded the process as adversarial (39%). To some it felt like they were the ones being "held to account" (39%):

> *It actually felt as if you were on trial. We were specifically told it would never have felt like that – but it did, it did – it was terrible...It was an experience I wouldn't want to do again...Honestly, I wouldn't want to put myself through that again. [Int: F1b, June 2017]* [5]

Many survivors considered that they should have been better prepared in advance. Only 29% said that Counsel "explained clearly" the public hearing's procedure. What might be considered as "sympathetic" questioning by Counsel was perceived by some survivors as deeply intrusive and unnecessarily challenging of their integrity. Some strongly objected to what they saw as irrelevant details about their past being brought up (37%). This made some feel like they "were offenders" or "the guilty party" and that made them defensive.

Timely Disclosure

The nature, extent, and timing of disclosure emerged as a significant factor. As one survivor put it, "why are we finding out about ourselves in front of everyone in the dock?" [Int: M13, Jan 2016]. Some survivors said that they were given personal and sensitive information in the briefing session immediately prior to testifying Ill-timed disclosure "surprised" and "shocked" survivors and this had a destabilizing effect:

> *It was a really hard day because I had to find things out about my mother, and stuff that I had never known in my life. I didn't know that my younger sister was born with [named disease]. I didn't know my mother was in such a hospital...And then I discovered there was a letter... [Counsel] said, "I know you won't have seen this before but we're going in now; and by the way did you know your mother had syphilis..." And you are supposed to just deal with that and then answer questions. [Int: F15, Sept. 2016].*

In addition, information of a highly personal and potentially traumatic nature was casually introduced while survivors were on the stand giving oral evidence. Of the 43 survivors interviewed, almost 40% said "disclosure was distressing" and should have been "communicated in advance" of public hearings. Some survivors asked for copies of the disclosed documents but were refused. Since many survivors had spent decades looking for snippets of information about their childhood, this appears particularly harsh, even cruel. For some survivors, the experience was disempowering, undermining, and traumatizing.

Legal Representation and Equality of Arms

Some survivors expressed disappointment that they were denied their own personal legal representation (34%), which was stated by the Inquiry Chairman to be unnecessary because "it is the role of the Inquiry legal team to gather the relevant evidence and to interview each applicant to ascertain what that person can say about the matters that have to be investigated by the Inquiry." [6] In contrast, only those against whom allegations were made (alleged perpetrators/institutions) had "a right to legal representation and, if not otherwise indemnified or without sufficient financial resources, to have their legal representation paid out of public funds." [7]

In some circumstances, where those accused of abuse were unidentified, "dead, or very elderly, and too physically frail to give evidence in person, or their mental health or memory had failed to such a degree that they were not able to give reliable evidence" (*Hart et al., 2017: 1-15*), spokespersons for the respondent religious orders with no personal experience of the events gave generic evidence from written records. Survivors were not afforded the same opportunity to present a "collective account" of an institution. Alleged perpetrators, having had sight of all the evidence in advance, appeared better prepared for oral hearings and not dependent on memory. By comparison survivors having had no advance access to documents were expected at short notice and under pressure to recall specific details of events that took place 30 or 40 years earlier. [8]

Accountability and Prosecutions

Accountability and Prosecution was clearly a justice goal for many of the survivors. Analysis of HIAI transcripts show that of the 177 survivors who gave evidence in person, only 6% stated they wanted prosecutions. However in interviews with the author a significant number of survivors (71%) expressed a strong desire for those who abused them to be "punished through the courts".

> *That's a big thing to me, if people are going and giving evidence at an inquiry and naming individuals who have done such horrific crimes on them, there should be prosecutions. [Int: F2, Jan 2016].*

The HIAI did refer 190 complainants to the PSNI, from which 77 matters relating to the complaints were reported to the Public Prosecution Service (PPS) for consideration. However, to date, in Northern Ireland there have been no prosecutions emanating from cases referred to the PSNI by the HIAI. [10]

Apology, Memorials and Compensation

The HIAI recommended that the NI Executive and those responsible for each institution where systemic failings were found should make a public apology. A memorial should be erected in Parliament Buildings or on the Stormont Estate to remind legislators and others of what many children experienced in residential homes. On monetary compensation (see Research Findings: Compensation above), the Inquiry did make recommendations for redress which were published in January 2017 [11]. However, research shows that the recommendations fall far short of meeting survivors' justice needs *(Lundy & Mahoney, 2018)*. In April 2017, the Panel of Experts on Redress (see footnote 3 above) published a Position Paper which set out a detailed critique of the Inquiry's redress recommendations and proposals to improve redress to meet survivors' needs *(Panel of Experts on Redress, 2017)*. This was used as a lobbying/campaign tool and led directly to "significant changes" being made to the historical abuse redress legislation which passed through Westminster in November 2019. These changes helped bring compensation closer to meeting survivors' needs (some issues remain and are still under discussion).

Reflections and Recommendations

- The potential risk to mental health through re-traumatization and re-victimization raises important questions about the appropriateness of this model to deal with historical child abuse. Policy-makers should explore a less intrusive, more humane, inclusive, and empowering way in which to acknowledge, vindicate, and establish an authoritative historical record. It is crucial that any harmful aspects of existing processes are not repeated, and lessons are learned.
- The very nature of public inquiries, their processes, and structures are limited in terms of addressing the full range of justice needs. A conversation should take place to explore creatively, sensitively, and imaginatively a model for dealing with historical child abuse which embraces survivors' justice needs. The starting point should be to determine what survivors want, i.e. their justice needs. Thereafter, addressing those needs would be centre-stage and drive the initiation, shaping, design, and implementation of approaches to dealing with historical child abuse.
- Fundamental to developing a model to address the legacy of historical child abuse is the full participation of survivors from an early stage in its development, design, and implementation.
- Support services should be designed in consultation with survivors. It is important that complementary processes are set in place such as counselling, witness briefing and debriefing, victim-sensitive questioning, support to assist survivors to attend processes, avoiding delays, supporting families and NGOs to offer additional support, as well as supporting culturally appropriate approaches to healing and dealing with harm. Victim-centredness should underpin processes.
- Survivors bring knowledge, resilience and resources. But capacity-building, resources, and appropriate support should be put in place to enable genuine survivor engagement; so that survivors have and can exercise power. Supporting existing local initiatives and advocacy should be encouraged in this regard.
- The development of a model (or strategy) that could embrace survivors' justice needs would require political will, resources, and paradigm shift towards a victim-led approach to historical institutional abuse.
- A single mechanism is unlikely to address all of survivors' needs.

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Footnotes:

[1] The author wishes to acknowledge and thank the Leverhulme Trust for a Major Research Fellowship Grant (MRF-2015-124) that enabled the research to be conducted.

[2] In collaboration with survivors, a Panel of Experts on Redress was established. It involved survivor groups, human rights NGOs, legal reps and academics – national and international. The survivor led Panel was a platform to facilitate survivors' voice, and that, their needs and concerns were heard. To this end, Prof Lundy's research was used to co-create with the Panel lobbying and campaign 'tools'.

[3] Percentages are used to compare as the number of people in the different data sets are not the same (e.g. forty-three interview/177 Inquiry transcript responses).

[4] See Lundy, 2016 and Lundy & Mahoney, 2018.

[5] F1a & F1b interviews were conducted at the same time.

[6] Anthony Hart, (Inquiry Chairman) "Remarks at the Third Public Session of the HIAI Inquiry" (Ramada Encore Hotel, St Anne's Square, Belfast, 4 Sep. 2013), 16.

[7] "In the Matter of a Decision of the Inquiry into Historical Institutional Abuse 1922 to 1995," NIQB 3 (2015): 10–11, para 30.

[8] The HIAI Chairman's decision not to allow victims personal representation was judicially reviewed. It was upheld at first instance but overturned on appeal.

[9] freedom of Information, Historical Institutional Abuse Inquiry FOI 2017, F-2017-02046.

[10] UN Commission Against Torture, pointed to similar low numbers of prosecutions stemming from the Ryan Report when the Republic of Ireland was examined in 2011 and again referenced the matter in 2017.

[11] Hart et al., 2017.

[12] See also, Brandon Hamber and Patricia Lundy, "Lessons from Transitional Justice? Toward a New Framing of a Victim-Centred Approach in the Case of Historical Institutional Abuse," (forthcoming, 2020). This article discusses in detail the positive and negatives of transitional justice and makes recommendations for an alternative approach.

‘The Friday Group’
Find and Connect Aotearoa
Consortium Workshop
Summary and Actions
22/11/2019

Participants

Consortium workshop

- Dr Belinda Battley, senior archivist at Archives New Zealand.
- Associate Professor Joanne Evans of Monash University, Melbourne.
- Dr Judith Aitken CNZM, a member of the Royal Commission Forum.
- Pat McNair of CLAN (NZ), the New Zealand part of the Care Leavers Australasia Network (CLAN).
- Barry McNair, Care-experience survivor and CLAN member.
- Rosslyn Noonan, director of the New Zealand Centre for Human Rights Law Policy and Practice, University of Auckland.
- Professor Tracey McIntosh, Professor in Indigenous Studies and Co-Head, Wānanga o Waipapa, University of Auckland.
- Professor Michael Myers, Department of Information Systems and Operations Management, University of Auckland.
- Dr Stephen Winter, Department of Politics and International Relations, University of Auckland.
- Nic Mason, Kairangahau Matua Research Leader, VOYCE Whakarongo Mai, Auckland.
- Dr Spencer Lilley, Te Putahi-a-Toi, School of Māori Knowledge, Massey University, Palmerston North.
- Dr Nicolas Pirsoul, Lecturer, Massey University.
- Associate Professor Anna Brown, Toi Āria: Design for Public Good, Massey University, Wellington.
- Andrew Tobin, Associate at Toi Āria: Design for Public Good, Massey University, Wellington.
- Ana Reade, Assoicate at Toi Āria: Design for Public Good, Massey University, Wellington.
- Dr Simon Mark, Senior Advisor, Strategy & Policy, College of Creative Arts, Massey University, Wellington.

Unable to attend but expressed interest in being kept updated.

- Keith Wiffin, Member, Survivor Advisory Group, Royal Commission.
- Matthew Bartlett, Director / Founder, Citizen AI.
- Ria Waikerepuru, Kaiwhakarato Parongo Rangahau Maori, Manawatu Library, Massey University.

How did we get here?
The genesis of a story

Find and Connect Australia

The project's genesis — Find and Connect in Australia — is an online resource 'for Forgotten Australians, Former Child Migrants and anyone interested in the history of child welfare in Australia' that seeks to help discovery of where records relating to care experiences may be held and provide details of how they can be accessed. It is part of a suite of services and projects funded initially following the 2009 National Apology and then subsequently renewed through to 30 June 2020. Find and Connect provides a full programme of access guidelines and principles.

For many people who grew up in 'care', the search for records and information — so vital to identity and to the process of reconnecting with family — can be frustrating, complicated, time-consuming, expensive and traumatic.

Find and Connect Australia contains information that is relevant to anyone who experienced out-of-home 'care' in Australia, not only the Forgotten Australians and Former Child Migrants, but also members of the Stolen Generations, foster children, wards of the state and adopted children.

https://www.findandconnect.gov.au

The New Zealand opportunity

Having been offered the use of the Find and Connect software developed in Australia, we now have responsibility to know what is needed and wanted by care-experienced communities in Aotearoa New Zealand.

The following pages are a synthesis of our conversation late last year and provide some potential first steps for continuing this conversation.

We would like to note that the meeting held at the University of Auckland in late November 2019 was notable for the extraordinary commitment shown by those attending to making a significant and lasting impact on this issue.

Problems / Issues
Rights in access

Issues of Access

Access to, and policies concerning, records of those in 'care' held in archives by institutions represent a source of ongoing discrimination, for a number of reasons. These include;

» These may be the only records of a person's earlier life and seeking access can be traumatic and difficult to exercise.

» The process of accessing records, and having these handed over, may be difficult, time and/or resource intensive, insensitive or disrespectful.

» Records may be restricted, and in fact may be more restricted for care-experienced people than for others, such as for instance researchers.

» Records may be heavily redacted, and the redactions may be inconsistent or unfair. In addition, the redactions may be undertaken primarily for the benefit of the institution doing the redaction rather than for the record subject.

» Records may be libellous, disrespectful, unfair, inaccurate, negative or incomplete.

Questions of Ownership

In addition to these issues of access are questions of ownership and control. Who has the right of access and who holds control and ownership of these records is part of the issue, including:

» Who owns the records? Is it the person whom the record is about, the institution who created them or the place the records currently resides? This is murky.

» Where are the records kept? Is it with individual agencies or in public institutions?

» Whose interests are protocols of security and privacy serving?

» Who makes the decisions about the records?

» What if the records are incorrect or inconsistent? Who has the right to correct or change the records?

» What is the extent of the Public Records Act of 2005? Access restrictions are set by Agency and negotiated with the Chief Archivist.

Independence

Another area for exploration is the concept of 'independence':

» What is the current provision in law?

» Is there is legislative guarantee?

» What is the decision making criteria?

» How can the influence of individuals be reduced?

Opportunities
Aotearoa New Zealand

Aotearoa New Zealand

In light of the opportunity to use the Australia software in Aotearoa New Zealand, we need to understand the context of our place and what the needs of 'care survivors' in Aotearoa are, including exploring issues of:

» rights of access
» rights of ownership
» cultural context
» co-ownership
» organisational independence
» co-determination
» Pakeha views / collective views
» indigenous data sovereignty
» organisational accountability
» legal frameworks

Ideal / Shared Vision

The following is a set of best practice concepts / improvements discussed by the group. These are exploratory and based on our knowledge to date:

» Principles for access must be developed and agreed with 'those most affected'. This process and subsequent principles would be respectfully co-designed and developed
» The access process will dignify the human journey
» The process and principles will result in improvements to the creation of records, improvements to the access of records, improvements to the maintenance of records and improvements to the disposal of records
» The process might have multiple models and will be based on a relationship of trust

Possible Governance Frameworks

At the meeting some possible Governance frameworks were offered up as being useful to explore, including the Global Indigenous Data Alliance (GIDA) and a current PhD framework being developed (Name?) with the following concepts:

» Tapu: Who has access
» Noa: Level of accessibility
» Tika: Level of value
» Pono: Level of trust
» Mauri: Originality of data
» Wairua: Spirit / intent
» Wānanga: Responsibility
» Whakapapa: Relationships
» Pūkenga: Expertise
» Kaitiaki: Protection

The Friday Group renamed
Draft Options

The Toi Āria team discussed possible names for ‘The Friday Group’ — a collection of like-minded supporters of reform of rights in records for those in care.

The options we would very much like your feedback on (or any other suggestions) are below.

We are very aware that as agreed, the final name chosen will be in both Te Reo and English. Might this involve agreeing on a Māori whakataukī?

We would be very grateful if we could seek from you Tracey a process for this.

Options

- Alliance for Rights in Record
- Consortium for Rights in Record
- Rights in Care Records Action Group
- Rights in Care Records Taskforce
- Rights in Care Records Alliance
- Rights in Care Records Partnership

Toi Āria’s preference is:

Rights in Care Records Partnership

We like the term ‘partnership’, as it conveys to us the feeling there was in the room, and provides a sense of joint action by committed people and groups with equal status.

Your feedback and thoughts are very welcome.
Some quick examples of visualisations provided here.

Rights in Care
Records
Partnership

Opportunities
Shared responsibilities

01.
Agree on our consortium name
ALL

02.
Connect with the Royal Commission
Rosslyn Noonan to lead?
Consortium to contact the Royal Commission to tell them of the consortium and our aims

03.
Best Practice framework
Dr. Joanne Evans / Belinda Battley to lead?
Seek from Find and Connect Australia its feedback on what co-design process in Australia and the best practice framework for access would look like

04.
Co-design workshops/hui (*see next page)
Anna Brown and Toi Aria team to lead with Belinda Battley. (Potential funding for this is being secured)
Undertake a series of co-design workshops with those most affected to better determine what they actually want (in a tool such as Find and Connect or otherwise) rather than what we assume they might want.

05.
Contact State Services Commission
Judith Aitken to lead?
Contact the State Services Commissioner, Peter Hughes, asking him to convene a meeting of state sector CEOs to discuss access to records

06.
Media approach
Rosslyn Noonan with Tracey McIntosh?
Approach empathetic journalists such as
Aaron Smale and Mike Wesley Smith to enable public conversation and currency in the project

07.
Petition to amend the Human Rights Act
Rosslyn Noonan with Tracey McIntosh?
Petition to add 'Care-experienced people' to the list of those who cannot be unlawfully discriminated against Section 19 of the Human Rights Act 1993

08.
Prepare a 'Briefing' paper
ALL, Lead by Auckland University team?
Draft a paper with recommendations for the Royal Commission

09.
Build a..... (TBC)
TBC once we know what is needed!

Co-design workshops/hui
Initial explorations

Involve, through co-design and a series of workshops those who have been, and remain, most affected. Explore the following:

» what are the needs, values and expectations of care-experienced people in New Zealand concerning access to records?

» how can a co-design process be used to co-create research on the needs of care-experienced people in Aotearoa New Zealand for access to records of their time in care?

» how can stakeholders in the research be identified and included in the process from the beginning to the degree that best suits their needs, in particular Māori and Pacific partners?

'How Might We' framing

» How might we enable processes to empower people in care or with care experience to self-determine their identity using care records?

» How might we empower people to be more in charge of the role of records in their life?

Some initial starting points for workshop thinking:

» Build a representative sample of care leavers in Aotearoa

» Understand the role of records in their life during- and post-care including questions like 'what is a record?' and 'what kinds are there?'

» What is most important in thinking about making and collecting records over time?

» CLAN: who does this cover/represent and who is missing?

» Diversity? Cultural contexts?

Ownership

» Accountability

» Rights

» Control

What is a record? What is its role?

» Creation

» Access

» Maintenance

» Disposal

Past vs Future?

Further reading
Appendix

Web resources

https://www.findandconnect.gov.au/

https://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/find-and-connect-services-and-projects

https://www.dss.gov.au/families-and-children/programmes-services/family-relationships/find-and-connect-services-and-projects/evaluation-of-find-and-connect-services-final-report

https://www.royalcommissionforum.org/

https://www.findandconnectwrblog.info/2018/06/update-on-the-nz-royal-commission-into-historical-abuse-in-state-care/

https://www.abuseincare.org.nz/

https://www.gida-global.org/

http://www.legislation.govt.nz/act/public/1993/0082/latest/whole.html#DLM304474

https://www.stolenlives.co.nz/385429/

Books and more

— Stanley, E 2016 book *The Road to Hell: State Violence against Children in Postwar New Zealand* (Auckland University Press).

— MIRRA (Memory, Identity, Rights in Records, Archives) project in the UK, a collaborative project between care-leavers and UCL researchers: https://youtu.be/xs28tczL3yA

15 July 2019

Royal Commission of Inquiry
PO Box 10071
The Terrace
Wellington 6143

abuseinstatecare@royalcommission.govt.nz

Re: Important procedural issues for the Commission.

Dear Commissioners,

Congratulations on the opening public session of the Royal Commission on Abuse in Care. The Commissioners' presentations reflected a depth of analysis, a recognition of the complexity of your task and a strong commitment, both individually and collectively, to find justice for those who have been abused in care.

There is much we welcomed in the hearing, especially the appreciation by the Commission that the tasks that confront them are significant and that they remain open to new ideas. The clarity around the Commission's timeframes was very useful, as was the description of the eight Pou. We applaud the Commission's recognition that participation in the Commission by survivors is both necessary and presents significant challenges.

In general, the framework that the Commission has adopted appears robust. The comments we have received from those present or who watched the live streaming have been generally positive. People have told us they felt encouraged and reassured by what they heard. We believe that the hearing has put the Commission on firmer footing.

As you are aware the Royal Commission Forum was set up to monitor developments and provide constructive feedback. Despite the positive steps taken to date, not unexpectedly there remain issues that have yet to be adequately addressed.

We identify the most pressing as:

Survivor Advisory Group. It would have been appropriate to recognise the importance of the Survivor's Advisory Group in the design and ongoing work of the Commission. It would have helped to have Group members introduced at the opening hearing. Only Commissioner Gibson recognised Keith Wiffen's presence. We think that it would have been appropriate for all members of the Group to have been invited to attend. As an aside, we note that information regarding membership of the Group available on the website appears to be incorrect.

The second-class status of private sessions. Experience overseas indicates that many more survivors are likely to participate in private sessions than in public

hearings. That means, for most survivors, their private session is likely to constitute their primary experience of the Commission.

While the explanation offered about how the information from the private sessions will be used to guide the work of the Commission was useful, the Legal Counsel still noted that they did not constitute evidence – he tried to soften it by saying it is "not evidence under oath". We would urge the Commission to consider whether legal concepts of "evidence" is appropriate to its work. The Commission is not a court of law. Overseas, most inquiries of this nature have understood themselves as attempting to obtain and present information relevant to policy recommendations and to underpin judgements regarding systemic operations. Legal concepts of evidence are unnecessary to those tasks and may serve as potential impediments.

Legalism. We would point to general concerns with the legal character of the proceedings. While the Anglophone inquiry model is heavily legalistic, there are alternatives. The Canadian TRC is a clear alternative model and there are also European Commissions that provide alternative models of inquiry.[1] We have concerns with respect to the suggestion that Counsel for the Commission will lead its investigatory research programs.

Survivors have a right to their personal information. At present the Commission appears to treat information obtained from survivor during a private session as its own property. This is most clear in the prohibition of survivor's recording their own sessions. Many survivors might like a recording of their sessions and they may have good reason not trust the accuracy of government records. As they are telling their own stories as survivors, they should be able to record them as they wish.

Similarly, it is not presently clear how the Commission will coordinate private sessions with the desire of many survivors to obtain their personal records. Given the nature of personal memory, records are an important element of historical recovery that may inform the survivor's understanding of their own story. The Confidential Listening and Advice Service offered survivors assistance in obtaining their records. It might be worth considering whether survivors should be offered support to obtain records prior to, or as part of, the private session.

Legal Counsel. Overseas research emphasises the right of survivors to be represented by legal counsel of their own choice.[2] There are several good models, including that of Australia, that might supplement existing legal relationships, but there are serious drawbacks to not facilitating the survivor's own choice of counsel with regard to these very difficult processes. In that regard, we understand the Commission's desire to ensure that private sessions are not legal events. However, given the complex and serious legal concerns many survivors will have, it may be advisable to facilitate legal advice with regard to their participation in private

[1] A good example is the Swiss Independent Expert Commission (IEC) on Administrative Detention. https://www.uek-administrative-versorgungen.ch/home

[2] Darcie Bennett et al., *Blueprint for an Inquiry: Learning from the Failures of the Missing Women Commission of Inquiry* (BC Civil Liberties Association, 2012).

sessions: it is clear that these sessions are not without legal risks to survivors and other stakeholders, such as family members. In our opinion, survivors should be able to explore those risks with counsel of their own choice.

Accessibility. The use of potentially intimidating environments, such as court rooms and government offices, should be re-considered. While there are potentially some security risks, there have been thousands of hearings in similar bodies across the world and no examples of serious injuries. Arrangements could be made to use marae whare, local government facilities or community centres. Again, the example of the Canadian TRC might prove useful.

In addition, we would ask how survivors now living in Australia and elsewhere are expected to engage with the Commission. Does the Commission envision hosting sessions in major Australian centres?

Accountability. There is lack of clarity about whether and how governments officials will be investigated for post-1999 actions. There have been a number of serious claims that officials have misused state powers and resources to deny or impede claims of abuse and failed to act against perpetrators despite credible evidence being presented. The credibility of the Commission will depend on its ability to speak to the present-day treatment of survivors.

In closing, we emphasise how important we regard the work of the Royal Commission. The issues we have raised are intended to help strengthen your processes and procedures. We are available to discuss them with you.

Warm regards

Dr Stephen Winter

On behalf of the Royal Commission Forum

Abuse in Care
Royal Commission of Inquiry

15 August 2019

Dr Stephen Winter
Email: royalcommissionforum@gmail.com

Dear Dr Winter

Thank you for your letter dated 15 July 2019 on behalf of the Royal Commission Forum. We very much appreciate the attention that you and the other members of the Royal Commission Forum are paying to how the Royal Commission carries out its mandate, and we welcome your constructive feedback on issues that you consider should be brought to our attention. We look forward to further ongoing discussions throughout the life of the Inquiry. In your letter, you highlight as most pressing a number of issues that you believe are yet to be adequately addressed. We would like to take this opportunity to respond to your concerns in a fulsome way and are happy to engage further if you have any more questions or comments.

Survivor Advisory Group

We agree that it would have been helpful to recognise and highlight at the Preliminary Hearing the important work that the Survivor Advisory Group does and will continue to do for the Royal Commission. We will ensure this is reflected in our speeches and publications as appropriate in future.

With regard to their attendance at the hearing, there are 18 members of the Survivor Advisory Group so it will not always be possible for all members to be included in all Royal Commission activities. However, we will endeavour to include members as far as possible and in ways that fully recognise their key advisory role.

We have checked our website for any corrections required to the membership of the Survivor Advisory Group. It refers to the current membership. There is a media statement dated 21 May 2019 that refers to Ms Paora Moyle as a member of the Survivor Advisory Group. As you will be aware, Ms Moyle subsequently resigned from her role. We keep all media statements on the website as part of the Commission's record.

Status of private sessions

We agree with you that it is not helpful to draw a distinction between "evidence" and "not evidence" in this context. The Inquiry will receive information in a variety of ways, in a comparable way to other similar inquiries overseas. At the Preliminary Hearing, Counsel Assisting quite deliberately did not say that information from private sessions is "not evidence". The reference to the private sessions not being "evidence on oath" was to emphasise the non-legalistic way in which the private sessions will operate, rather an attempt to soften the point. Those attending private sessions are not asked to swear an oath or make an affirmation, and the information provided is essential to the Inquiry, including in order to identify subject matter for the hearings, research and investigations and to develop recommendations. (There may be limitations in the way confidential evidence from private sessions can be used given the Inquiry's natural justice obligations, but that is a separate point.)

Unfortunately, it appears that the consent forms used in the early private sessions contained a reference to the information being "not evidence", but that reference has been deleted for future private sessions. The Commission will be careful to avoid any such language.

Legalism

We can reassure you that the Inquiry will not operate in a heavily legalistic way. We expect this Inquiry will be less legalistic than other comparable inquiries, and we have invested a lot of thought into designing processes that are open, engaging and accessible for people with or without lawyers. More generally, we are determined to strike the right balance between different modes of operating, some of which have greater levels of formality and others of which are less formal.

At the less formal end of the scale, private sessions will comprise the largest component of the Inquiry in terms of the number of survivors spoken to. These sessions will be almost entirely non-legalistic. We have maintained that view, and while lawyers may attend as support people, legal representatives cannot 'appear' at private sessions unless there are exceptional circumstances. There will also be research and policy activities, round tables, issues paper and submissions processes, hui-a-iwi, community meetings and many other forms of engagement at different types of venue. These processes will operate in a relatively informal way.

Public hearings will be at the more formal end of the scale but will not be overly or heavily legalistic. They play a critical part in the role of the Commission to hold people and institutions to account, and we are aware that they are a very important part of the Inquiry for some people. Public hearings will be preceded by investigations, which will be led by a counsel with a multi-disciplinary team, including policy and research experts and other specialists as relevant to the topic. Public hearings must of course take place in public. Within limits, they will give parties a chance to question those giving evidence, subject to the Commissioners' discretion and control. That facilitates participation and openness. Other current New Zealand inquiries have been heavily criticised for not allowing this. (See, criticism of the Inquiry into EQC for not holding public hearings and not allowing cross-examination; criticism of the Operation Burnham Inquiry for taking place in private and not allowing cross-examination; and, criticism of the Mosque Attack Royal Commission for operating in private.)

Lawyers will be present at public hearings and will typically be the ones to ask questions. However, that does not mean the process will be heavily or overly legalistic. We have carefully selected the lawyers to be on our panel of counsel assisting, and we are confident they have the skills and backgrounds to conduct public hearings sensitively, openly and without alienating people or treating the hearings in an adversarial way. There will be some occasions where robust questioning of those in positions of power may well be appropriate – and our counsel will adjust their styles according to the context. We will work to ensure that counsel appointed to assist survivors have a similar approach and culture. The Commissioners also have a role in controlling hearings, and when appropriate will ask questions in keeping with the inquisitorial nature of this inquiry, we will make sure we set an open, inclusive and sensitive tone.

You have mentioned specifically the Canadian Truth and Reconciliation Commission. There is a considerable amount that can be learned from its approach to national, community and individual truth-telling, the sharing and acknowledging of experiences for individual and community healing and reconciliation, and the creation of an historical record on the residential schools legacy. Aspects of the approach of the Canadian TRC could be interwoven into our processes, such as group or community truth-telling and forms of public engagement and education.

At the same time, our terms of reference differ considerably from those of the Canadian TRC. While truth-telling and documenting is a significant aspect of what it was set up to do, the Royal Commission is also empowered to make adverse findings or conclude there has been violation of relevant standards. In carrying out these responsibilities, the Royal Commission must comply with the terms of reference, the Inquiries Act, and also the principles of natural justice. The extent to which the Royal Commission is seen to do so will potentially significantly affect its legitimacy and credibility.

We also want to confirm that the research programmes of the Commission are being led by the Policy and Research Directorate, although this Directorate will work closely with the Public Hearings and Investigations Directorate for the life of the Commission. Counsel Assisting will appropriately oversee investigations that will culminate in the public hearings, to which the Research and Policy Directorate will contribute. At the same time, Policy and Research has developed and works to its own research plan under the leadership of its Director.

Survivors have a right to their personal information

The Royal Commission does not consider the information provided by survivors during their private sessions to be its property. For a number of reasons, which included confidentiality concerns and advice received on trauma and re-traumatisation, a decision was initially made not to allow the recording of private sessions by survivors. A decision has since been made to provide each survivor with a written transcript of their private session, if they would like to have one. In addition, should a survivor wish to, they will be able to record their session. In relation to the Royal Commission providing support to survivors to obtain their records, we currently refer any survivor who wishes to get access to their records to the appropriate agency and give them information about how to do it. We do not unfortunately have the resources to attempt to obtain records on behalf of survivors.

Legal Counsel

In the interests of ensuring participants receive quality legal advice, we are currently finalising a process for legal assistance. We sought the feedback of a number of barristers who will be engaging with the Commission during its design. A practice note outlining this process will be available on the Royal Commission's website once approved. Related, we will soon be seeking expressions of interest from appropriately qualified practitioners wishing to be considered for inclusion on the Inquiry's Legal Assistance Panel. Participants will be able to select a lawyer from that approved panel and make an application to the Royal Commission for legal assistance funding. There is also a mechanism to apply for an exemption in order to instruct a lawyer who is not on the approved Legal Assistance Panel.
Regarding private sessions, the focus is to allow survivors to share their experiences with the Commission. As noted above, lawyers can attend in the capacity of a support person if desired by a survivor, although this will not be funded through legal assistance as the private sessions are not a legal process. We have also established a panel of lawyers, funded by the Royal Commission, to talk through with a survivor how to prepare for a private session, including any preparation of a written statement or account before the session and any issues of self-incrimination.

Accessibility

The Commission's Community Engagement team is aware of the need to ensure the environment in which participants are required to engage with the Commission is accessible and any barriers to participation are minimised, if not eliminated, whilst balancing technical needs and security. To that end we have been considering a range of options to ensure the appropriate balance is met with respect to places of engagement. Additionally, we will be using a range of venues such as marae, local government facilities and/or community centres. We are aware that survivors have diverse needs and we will be led by the feedback they provide us on which venue most suits the individual survivor as far as possible.
In our recent meeting with Rosslyn, we mentioned that we have secured a space in Auckland where we are purpose-building a public hearing space. Rosslyn provided some concrete and useful ideas for creating that space so that it will have a less legal appearance and be welcoming to all those who come into it. Those ideas have been taken on board and passed on to those working directly on this.

We will also be ensuring that survivors in Australia, the Pacific or abroad elsewhere have access to and can participate in the Inquiry. Using technology to enable meaningful participation is one aspect of this, and Commissioners will travel to meet survivors as appropriate in the circumstances.

Accountability

We envisage that the Royal Commission will be investigating individuals and institutions, including government officials, for post-1999 actions in terms of how they responded, or failed to respond, to claims of neglect and abuse. This is directly within scope as one of the Royal Commission's terms of reference is to inquire into the redress and rehabilitation processes for individuals who claim, or have claimed, abuse while in care, including improvements to those processes.

We understand that for many of those who were in care during the period 1 January 1950 – 31 December 1999, their experience did not end when they left care. We will, and have already begun to, hear from those who experienced ongoing issues post-care (for example, unsatisfactory experiences with redress processes, difficulties accessing records, lack of response to allegations made, etc). We agree that it is important for the Royal Commission to investigate and report on the full experience of survivors, including their more recent and present-day treatment.

In addition to those who were in care during 1950 - 1999 and who had ongoing experiences with officials as you have outlined in your letter, the Royal Commission also has discretion to hear from those who were in care after 1999 to inform recommendations for the future.
The Royal Commission is conscious that while the Inquiry has a historical focus, our work must be completed with an eye firmly on the present and the future to fulfil our intent to make transformative recommendations about care in New Zealand.

Thank you again for raising the issues you have in your detailed and helpful letter.
We welcome your ongoing monitoring of our work and look forward to a constructive and open conversation with the Royal Commission Forum as our work proceeds.

Yours sincerely

Anand Satyanand
Chair

Abuse in Care
Royal Commission of Inquiry

7 May 2020

Dr Stephen Winter
Royal Commission Forum
Email: royalcommissionforum@gmail.com

Tēnā koe Dr Winter

I trust you had a safe Easter and hope you and members of the Royal Commission Forum are well.

At our first hearing in June 2018, we opened by sharing a personal story from a survivor, Netta. She reminded us why the work we do is so important. Netta shared that "the Child Welfare Department had stolen our childhood from us." Netta is only one voice, of the hundreds we have met over the last twelve months that reminds us just how important this work is.

For this reason, I welcome your letter of 31 March. It was a valuable tool for us to reflect on the way we operate with a view to ultimately improve the way we work to deliver on our Terms of Reference and our internal values for survivors such as Netta. Aroha is one of those values.

Transparency is another of the Royal Commission's values and it is in this spirit that I am happy to share with you as much information as possible. To make sure that we maintain this transparency I have asked a member of the Secretariat to meet with you and develop a closer relationship so that we can share operational details with you on a more regular basis.

Hitting the ground running and setting up an organisation with over one hundred employees alongside policies and procedures for running the Inquiry has been challenging. The speed and complexities of our task has tested both Commissioners and secretariat staff alike. We are working on many points you raised in your letter and I'm pleased to be able to share details with you.

We have accomplished a lot over the last eighteen months. I am reminded of the positive impacts our work has on survivors particularly through our private sessions, but also acknowledge that we must always apply a trauma-informed approach to all our work. "Do no harm" is the first principle the Terms of Reference require us to operate under. Our commitment to survivor wellbeing is central and fundamental to all our work.

Being Survivor-Centred

Thank for you for attaching the article by Professor Patricia Lundy. There are many instructive points made in this piece including the value of private sessions to survivors and ensuring survivors are well supported in public hearings. We must be guided by the experience, both good and bad, of other inquiries into the abuse of those in care.

We have a highly qualified and experienced wellbeing team who support and provide guidance on survivor-wellbeing. However, we are continuing to develop our well-being strategy and are currently appointing an external well-being provider as well as commissioning kaupapa Māori organisations to

support the Commission's work. We will also maintain our in-house well-being team to manage these processes and deliver specialist well-being support.

Last week we sought a special exemption from the COVID-19 level three restrictions to conduct an extraordinary private session with a terminally ill participant. We had to make careful arrangements to ensure we observed social distancing and hygiene rules in order to preserve the safety of the participant, their whanau, and our staff. I am delighted to share their feedback with you: [1]

> *"You (Commissioner Alofivae) have a way about you that made them feel calm and at ease, your questions were non-intrusive, you allowed me to speak without interruption and there was no judgment at all. To have someone of your standing come into their home and make me feel comfortable to share a story I have told no one for decades was very overwhelming and humbling."*

This feedback is consistent with Professor Lundy's article which states that we have an important responsibility to acknowledge each individual and to focus on the accounts of victims and survivors. In short, this is what being survivor centred means for us; a trauma-informed approach.

This trauma-informed approach is followed in all our survivor interactions including private sessions; investigations including public hearings; and (shortly to be scheduled) roundtables, as well as the Survivor Advisory Group (SAGE).

In practice, this means we are aware of the diverse and extensive impacts of childhood trauma on survivors throughout their life. We aim always to engage in ways that uphold their experiences while minimising interactions or processes that could increase their trauma.

Transparency and publishing a strategy

Over the last month we have reflected on our work plans and strategies. We are exploring new ways of working as the post COVID-19 environment becomes known. Your feedback has been timely and has been a valuable tool for us to help refine the following work programmes:

- Investigations (which includes public hearings and roundtables)
- Private sessions/survivor accounts
- Research/policy.

Transparency is important to us. We recognise the need for continuing public engagement and consider this critical to our success. We support your recommendation on this point and intend to publish more information soon about our planning and intended activities in 2020 on our website, social media and other platforms.

In 2020, we had planned public hearings, 700 private sessions, an interim and administration report. However, COVID-19 has significantly changed the way we are working. We have had to adapt quickly to these events and to ensure that our work continues at pace while taking care to ensure our staff are safe and well. We have endeavoured below to provide information about work undertaken in our key areas, particularly our legal investigations and private sessions, and our plans for the future.

[1] Some words have been changed to protect their survivors' identity

Investigations, public hearings, roundtables and accountability

Our investigation strategy continues to be refined and updated to reflect the current new way of working. Although some of the details provided below are not completely settled and are not yet public, I would like to share this information with you in the spirit of transparency and to assure you that some of the work underway is consistent with your recommendations. Please note some of these details may change as our strategy becomes finalised.

During the early phases of the Commission's establishment we decided to begin investigations into a number of areas specified by the Terms of Reference. These included:

- Redress (state and faith based)
- The Māori experience of abuse in care
- The Pacific experience of abuse in care
- Disabled people's experience of abuse in care
- State residential homes
- Abuse in psychiatric care.

In addition, as we are required to investigate faith-based institutions, we also decided to commence investigations to examine:

- The Catholic Church
- The Anglican Church.

The investigation into State redress had progressed to the stage where we were about to start a public hearing on 23 March. The research is completed; all witnesses had been prepared and scheduled to give their evidence in public; and a large number of documents analysed. The briefing papers, relevant minutes, and scoping documents are available on the abuse in care website: https://www.abuseincare.org.nz/public-hearings/about/redress-hearing/.

Due to the COVID-19 restrictions this hearing has been rescheduled for in the year once restrictions are lifted. We hope to hold the hearing on state care from September 2020. We are also exploring the possibility of holding our public hearings online through zoom for example, given the uncertainty around the ability to hold physical hearings. The Commission has also decided to hold a hearing on the redress schemes offered by Faith Based Institutes. We recognise the importance for survivors of maintaining the momentum gained from our contextual public hearing.

We continue to build our teams to carry out the balance of the planned investigations and are currently drafting scoping documents for each investigation topic, and appointing skilled litigators to advance the work.

During our investigative work we may make findings of fault or findings that relevant standards have been breached but are precluded from making findings of civil, criminal or disciplinary liability. However, should it become apparent that conduct of a criminal nature has occurred, it is within our remit to pass those findings to the prosecution services who are able to bring criminal proceedings should they deem it appropriate. The Commission has a Memorandum of Understanding with the Police to facilitate this process.

This Memorandum of Understanding also enables us to refer survivors to the Police if they wish to have their individual circumstances and allegations investigated.

To deliver on the full scope of the Terms of Reference, we anticipate that approximately ten additional investigations will be required. We are yet to decide the topics for all of these investigations to make sure that we are responsive to themes which may emerge from private sessions and survivor interactions.

Most, but not necessarily all, investigations will include in one or more public hearings. Most investigations will be setting based, inquiring into abuse in faith and state-based care settings. Public hearings will include case studies which will examine particular care institutions and/or groups as exemplars. Some investigations will be thematic, inquiring into broad areas across all care settings.

Roundtables will be used for issues which are determined as being in the public interest. For example, they will be used for topics that need a long research or policy development period or where public input is needed to assist with the formation of recommendations. We are currently working on the process and timing for roundtables and will be publishing an indicative calendar soon.

Finalising our work strategies will also allow us to plan (and cost) critical work activities over the coming years.

Resourcing

The Commission is not a legal entity capable of receiving an appropriation, meaning the Department of Internal Affairs must hold all appropriations, be accountable and ultimately responsible for such appropriations. But the Commission is able to independently decide how it will undertake its work and spend its budget to deliver on the Terms of Reference, consistent with being transparent and accountable in its use of public funds.

An initial budget allocation of $80m was approved by Cabinet when the Terms of Reference were published. Cabinet advised that the Commission should resubmit its request for funding once the approach for the Inquiry had been established and clear volume levels were determined. This will form part of the Administrative Interim Report due on 28 December 2020, with any additional funding allocated through Budget 2021.

We have determined that the existing budget allocation of $80m is insufficient and will be requesting additional funding from the Government.

In addition to financial resources, our work will also require a fifth Commissioner to complete.

Fifth Commissioner

An additional Commissioner is crucial to manage the extensive work programme we have in front of us. The responsibility for the appointment lies with the Minister of Internal Affairs. We are in regular contact with the Department of Internal Affairs who are facilitating the progress in making this appointment. We have expressed to them our preferences in respect of the background, experience and skills required to complement our existing Commissioners.

Counselling and Private Sessions

So far, we have conducted 320 private sessions. Following feedback received to date, we have identified several improvements to increase the number of sessions held and accessibility.

These improvements range from better equipped venues, a greater number of venues to limit travelling distance for survivors; enhanced pre and post wellbeing support for survivors; vital

information gathered from sessions to support both the survivor and the Inquiry; and increasing the frequency of the sessions. All these improvements have been implemented over the past six months.

We are about to increase the ways by which survivors can give their accounts to the Inquiry by giving them a choice of how their private session is conducted. In addition to 'face to face' sessions, we will shortly be offering technology enabled sessions (video conference) and written accounts which reflects flexibility during the current COVID-19 crisis. We will be proactively calling survivors to offer this new option for their consideration.

Survivors have told us that being able to provide written accounts is an important option for those who don't want to attend a private session but want to share their story with the Commission. Well-being support, and literacy support, will be offered to survivors who choose this option.

Group sessions, or hui, are another form of 'private session' that survivors have requested. We are currently working through the procedures to put these in place and will be offering this choice to survivors by the middle of the year.

As you can see we are working hard to deliver private session options and appropriate support to meet the needs of survivors based on their feedback. We have recently undertaken a review of psychosocial support services offered to survivors through the Inquiry and look forward to announcing a new model soon.

Records

We have an active Information Management team at the Royal Commission and are mindful of our obligations under the Public Records Act 2005, and particularly, our obligation to respect and care for the information provided to us by survivors.

We are working to ensure that information created and received by the Commission is stored, maintained and used appropriately, and that appropriate security and access protocols are applied. For example, information provided to the Commission by survivors is stored in a Customer Record Management (CRM) system to ensure that all information about an individual is securely held as a record, and strict access management protocols are applied.

The Commission has robust protection and security arrangements in place to ensure information is not available to unauthorised individuals or organisations, and that ICT systems and equipment are adequately protected from risks and known threats.

At the end of the Commission, we are required to transfer our records to Archives NZ since the Commission is a 'Public Office', and the records are of long-term value to New Zealand.

We will need to plan early and carefully to ensure that appropriate access, for all of our stakeholders, is in place into the future.

Before we transfer the Commission's records to Archives NZ, we must carefully consider and consult on the terms of access that are applied to the various classes of information held by the Commission at the end of its life. We need to ensure the rights of individuals are respected as well as ensuring the long-term value of the collection is maintained.

Public Relations

Thank you for the feedback on our website. It was developed after significant consultation with survivor focus groups on content and architecture. We are aiming to further improve accessibility on the website for those who are sight impaired by incorporating 'ReadSpeaker'; a tool which reads aloud content on each page.

A review of our digital engagement is currently underway, including a review of the content and functionality of our website and our social media presence. This will inform the development of a comprehensive digital engagement strategy which will sit under our overarching communications strategy. This has two objectives:

1) to encourage registrations and participation
2) to inform the public of the scale and impact of abuse.

The Terms of Reference for the Inquiry explicitly require us to focus on abuse suffered by both Māori and Pacific survivors. We are currently implementing media engagement strategies to reach Māori and Pacific people, based on significant research into audience segments, demographics and media consumption insights. The strategies include paid advertising. In the current COVID-19 media landscape we have commenced a two-week radio advertising campaign on all iwi radio stations around the country aimed at boosting knowledge of the Commission and increasing the number of registrations among Māori survivors of abuse. It will be followed by radio advertising aimed at reaching Pacific people and encouraging them to share their experiences with the Commission.

The campaigns will include future high-profile national advertising campaigns that will continue for the duration of the Inquiry.

Relations with state bodies

We are working through your points and recommendations in regard to state body relationships. We have developed a professional working relationship with the Crown Secretariat and established good lines of communication to ensure that the Inquiry has access to all the Crown material it considers relevant, while taking care that the independence of the Inquiry is safeguarded. We agree there is a risk-averse element within the State and we will not allow any attempts to limit our effectiveness.

We have issued more than a dozen notices under the Inquiries Act to government departments and Crown Agencies as well as Faith Based Institutions requiring them to produce documents. Many more notices will be issued as the investigations gather pace.

We also have a watching brief on ongoing reviews and reforms, including the Waitangi Tribunal urgent inquiry into Māori and state care; the inquiries into the uplift of tamariki Māori; and the review of the monitoring and complaints systems relating to children and young people in state care.

SAGE

The Survivor Advisory Group is essential to the Inquiry's work. Few Inquiries have established survivor advisory groups and they present many challenges in terms of selecting representative survivors and ensuring their well-being as they provide constructive advice to the Inquiry. In Aotearoa we have additional challenges given the breadth of our Inquiry and our commitment to the Te Tiriti and recognising the interests of Pacific peoples and peoples with disabilities.

At a very early stage of the Inquiry, Commissioners recognised the value to the Inquiry of having a survivor group that could provide them with advice on the design and planning of the Inquiry. At first, the whole group met throughout early 2019. After careful deliberation on the size of the group and diverse experience within it, and following consultation with members of the advisory group, Commissioners decided to maintain the survivors' advisory group but to shift our approach so that we receive advice from smaller groups with experience on particular subject matter.

For example, there will be groups providing specialist advice on different investigation topics, research themes, and issues relating to survivors well-being. We will also continue to gain feedback from survivors outside of the advisory group to ensure that we continue to have a diverse range of voices informing the work of the Inquiry, including rangatahi.

I hope this letter provides greater clarity for the Royal Commission Forum on the work we are doing to deliver on our Terms of Reference. As noted above, the Forum serves an important function in providing constructive advice from a diverse range of experts, and the Commission values this and looks forward to continuing engagement with the Forum throughout the life of the Inquiry.

If you have any questions or further comments about this letter please don't hesitate to contact me.

Ngā manaakitanga

Coral Shaw
Chair