



**29 March 2018**

**Questions and Answers about the Royal Commission of Inquiry into Historical Abuse in State Care**

**The establishment of the Inquiry**

***How was the draft Terms of Reference for the Inquiry developed? / What has been done over the first 100 days?***

- On 4 December 2017, Cabinet agreed to establish an inquiry into abuse in state care under the Inquiries Act 2013. It also agreed that a Ministerial Working Group be set up to consider the potential scope and implementation of the Inquiry, led by the Minister for Children/of Internal Affairs supported by the Minister for Social Development.
- A cross-agency group of officials supported the Ministerial Working Group to consider these matters. The group's work was coordinated by Oranga Tamariki and included representatives from the Department of Prime Minister and Cabinet; the Department of Internal Affairs; the Crown Law Office; Te Puni Kōkiri; the Ministry for Pacific Peoples; the Ministries of Social Development, Health, Education, and Justice; and the State Services Commission.
- As part of this process, Oranga Tamariki engaged with several stakeholders, including survivor groups, signatories to the *Never Again* campaign, current and former Human Rights Commissioners, people who have made public statements and key Māori and Pacific people stakeholders.
- The Department of Internal Affairs is now responsible for administering the independent Inquiry. In practice this will mean securing resources for the Inquiry and providing it with independent secretariat support. The Inquiry will determine how it will allocate the available resources.

***Who has been appointed to the Inquiry?***

- Rt Hon Sir Anand Satyanand has been appointed as the Inquiry Chair and member of the Inquiry.
- Sir Anand is well suited for the Chair role due to his extensive governance and leadership experience in high profile government appointments, including as New Zealand's Governor-General. He has been in roles that require the ability to assess evidence impartially, with integrity and not be unduly influenced. His extensive legal background and knowledge of machinery of government and government processes will be very helpful to the Inquiry.
- An inquiry Chair plays an important role in the overall success of an inquiry. It is important the Chair has the technical expertise to run an inquiry, as well as a range of other professional and personal attributes.
- The Terms of Reference must list all the members of an inquiry. It is expected three to four additional members will be included in the final Terms of Reference after an initial period of public consultation. These members will be selected to cover an appropriate range of skills and experience to deliver the Inquiry.

***When will the Inquiry begin and end?***

- On 1 February 2018, the Inquiries (Royal Commission of Inquiry into Historical Abuse in State Care) Order 2018 came into effect and formally established the Inquiry.

- The first phase of the Inquiry will include a period of public consultation on the draft Terms of Reference, led by Rt Hon Sir Anand Satyanand. Given the nature and scale of this Inquiry, it is important to make sure the Terms of Reference are appropriate and fit for purpose.
- After this consultation period, Cabinet will agree and notify the final Terms of Reference, and the Inquiry can begin considering evidence. Under the Act, the Inquiry cannot consider evidence until the Terms of Reference are notified.
- It is expected the Inquiry will begin considering evidence in mid- to late-2018.
- It is expected the Inquiry will meet the reporting requirements set out in the final Terms of Reference. Given the nature and complexity of the subject matter, however, the Act provides that the deadline may be changed by notification if the Inquiry finds that additional time is needed to deliver on its mandate.

## **Public consultation on the draft Terms of Reference**

### ***Why will there be consultation on the draft Terms of Reference for the Inquiry?***

- The stakeholders spoken to, as well as experience from overseas inquiries, make it clear that a carefully considered and widely accepted Terms of Reference are crucial for an inquiry to operate successfully.
- Abuse in state care is a very serious issue and is a matter of public importance. Unlike single-issue inquiries, inquiries that look into the conduct of the state over many years are a significant undertaking. Affected people in particular will need to have trust and confidence in the Inquiry and its work before deciding whether to engage in it.
- Because of this, it is crucial that members of the public, particularly victims and survivors and their families, have a chance to have their say on the Terms of Reference of the Inquiry. Feedback will be given careful consideration, as it has during the work to date.
- The consultation will cover questions around the purpose, scope and implementation of the Inquiry. This will help to finalise Terms of Reference that are appropriate and fit for purpose.
- The consultation will also help to inform the development of the Inquiry's work programme and methods of work, including potential ways of giving effect to the guiding principles listed in the Terms of Reference.

### ***How and when will the public consultation take place?***

- Rt Hon Sir Anand Satyanand will be responsible for deciding how to carry out public consultation on the draft Terms of Reference.
- The Department of Internal Affairs will establish an independent secretariat that will be responsible for supporting the Chair to organise and carry out the consultations.
- At this stage, the period of consultation is expected to begin in February 2018 and to take around three months to complete. Careful consideration will be given to the timeframe for consultation as the Chair undertakes this work.
- Further information on the consultation process will be available online once Sir Anand has decided on this.

## The purpose and scope of the Inquiry

### *What will the Inquiry inquire into?*

- The draft Terms of Reference for the Inquiry direct it to inquire into the nature and extent of abuse that occurred in state care, what its immediate and long term impacts were, the factors (including systemic factors) which may have caused or contributed to it, and lessons to be learned from the past.
- They also direct the Inquiry to look at current settings to prevent and respond to abuse in state care, as well as existing redress and rehabilitation processes for victims and survivors.
- A key focus for the Inquiry is to understand any differential impacts of abuse in state care for Māori and any groups where differential impact is evident, for example by gender, LGBTQI people, Pacific people, disabled people, and people with mental health issues.
- The Inquiry may also consider the factors and circumstances that led to someone being placed into state care.

### *What types of abuse will be covered?*

- The draft Terms of Reference cover physical, sexual and emotional abuse and neglect, as defined in applicable domestic and international standards.

### *What does 'state care' mean?*

- The draft Terms of Reference provide that, for this Inquiry, state care covers situations where the state has **assumed direct or indirect responsibility for an individual's care**.
- **State care includes**, for example, child welfare and youth justice placements, as well as care in health, disability and special education facilities (such as psychiatric hospitals and residential care facilities, residential special schools and health camps). These categories are broadly in line with the definition used by the Confidential Listening and Assistance Service and proposed by the *Never Again/E Kore Anō* campaign.
- The State may **assume responsibility** for the care of an individual in various ways, for example:
  - a State decision or action in relation to an individual (for example a placement decision) or
  - the implementation of a court order or
  - through a voluntary or consent-based process (including accepting self-referrals or the referral of an individual into care by a parent, guardian, or other person).
- The State may have **indirect responsibility** for the care of an individual in situations where the State has delegated, licensed, or in any other way contracted out or passed on its decision-making authority or care functions to another (including private) individual, entity, or service provider.
- For this Inquiry, **state care does not include** corrections prisons, former penal institutions, general hospital admissions or schools (other than residential special schools). Residential special schools are a particular type of special school which care for students who have low vision or hearing, severe behaviour needs, or high educational, social and emotional needs.
- The draft Terms of Reference provide some scope for the Inquiry to look at prisons, hospital admissions and schools:

- The experience of people in these institutions may be considered if that person was also in state care at the time. For example, the Inquiry could consider the abuse of a child in a school if that child was also in a child welfare placement at the time.
- The Inquiry may also consider, in broad terms, the long-term impacts of state care experience on a person or group of people. The Inquiry may, for example, examine whether those who had state care experience went on to enter the criminal justice or correctional system and what conclusions or lessons, if any, might be drawn from the Inquiry's analysis of this experience.

### ***Why doesn't the Inquiry cover all abuse in schools / prisons / churches?***

- The primary calls for an inquiry were focused on instances of abuse that occurred in situations where the State had a clear responsibility of care. The definition of state care set out in the draft Terms of Reference is broadly in line with that used by the Confidential Listening and Assistance Service, and campaigned for by the Human Rights Commission's *Never Again/E Kore Anō* campaign.
- Stakeholders have been clear they want the Inquiry to be timely and focused. This means the scope of the Inquiry must be carefully considered to make sure it can consider issues in enough detail.
- More recently there have been some public calls for a wider inquiry, for example to include all schools and religious institutions. The draft Terms of Reference will cover some of these institutions where they provided care on behalf of the State, but will not include all cases that occurred in these contexts. A wider scope would be likely to significantly increase the duration and cost of the inquiry, or decrease its ability to consider issues in sufficient detail.
- Unlike abuse inquiries in the United Kingdom and Australia, which focused on sexual abuse, the Inquiry will consider all forms of abuse. While the definition of state care only covers certain circumstances, the Inquiry is therefore broader in other respects.

### ***What time period will the Inquiry cover?***

- The draft Terms of Reference provide that the Inquiry will examine abuse occurring between 1 January 1950 and 31 December 1999 (inclusive). The Inquiry may consider cases before 1950 at its discretion.
- This cut-off after 31 December 1999 is intended to reflect that several significant changes took place across different government sectors in the 1980s and 1990s. This work, as well as more recent recommendations by the Expert Advisory Panel in the development of Oranga Tamariki, provided additional safeguards and new grievance and complaints processes for people who may experience physical, sexual or emotional abuse and neglect in contemporary times.

### ***Whose experiences will be examined?***

- The draft Terms of Reference provide that the Inquiry may examine the abuse of individuals in state care during the relevant time period, irrespective of whether they were a child, young person or adult at the time.
- In examining the experience of those individuals, the Inquiry may hear from other people with relevant information, such as family members.

### ***What will the Inquiry deliver?***

- The Inquiry is directed to consider making a public statement or record, as well as comments, findings or recommendations on a range of matters:
  - any differential impacts for Māori and any groups where differential impact is evident, for example by gender, LGBTQI people, Pacific people, disabled people, and people with mental health issues.
  - the causes of or contributing factors to the abuse, including systemic issues
  - appropriate steps for the State to take to rectify the harm caused, including whether the State should make an apology
  - existing redress processes, including potential changes to these if needed.
- The Inquiry may choose to present additional interim or final findings or recommendations.
- In addition to issuing its final report, the Inquiry is directed to consider other means its work can be readily understood and accessed by the public, for example public statements, research reports, issues papers, or similar documents.

### ***Who can participate in the Inquiry?***

- The Inquiry will determine who can participate and how.
- The draft Terms of Reference provide for the Inquiry to consider cases where someone experienced abuse before 31 December 1999 while they were:
  - in a child welfare or youth justice placement, including in residences, or
  - under the guardianship of the State, or
  - being cared for in a psychiatric hospital or a residential care facility, or
  - placed in a residential special school, or
  - at a health camp.
- The draft Terms of Reference provide for the Inquiry to consider cases where a person was abused at a school or while admitted to a hospital, if that person also met one of the above criteria at the time.
- They also provide for the Inquiry to consider a person's experience, as described above, regardless of whether they were a child, a young person or an adult at the time.

### ***Implementation of the Inquiry***

#### ***Will the Inquiry pay compensation to individual victims and survivors?***

- The draft Terms of Reference direct the Inquiry to focus on systemic issues. They do not provide for the Inquiry to pay compensation to individual victims and survivors.
- However, the draft Terms of Reference do direct the Inquiry to consider existing claims processes for victims and survivors of abuse in state care, and to recommend potential improvements if needed.

***Will the Inquiry impact my current claim under the historic claims process/other agency claims processes?***

- The draft Terms of Reference do not currently provide for the Inquiry to resolve or settle individual cases, or to issue compensation.
- The draft Terms of Reference allow the Inquiry to make comments and recommendations on changes or improvements that could be made to redress and rehabilitation processes (including claims processes).
- Several government agencies, including the Ministries of Social Development, Health and Education, have processes in place for people to pursue claims of historical abuse. These processes will continue while the Inquiry sits.
- The announcement of the Inquiry will not affect people already working with the Ministry of Social Development on existing claims or stop people making new ones, as this work will carry on. The Ministry of Social Development will continue to look at ways to improve how it works with people through the claims process, particularly around being more efficient and strengthening its focus on Tikanga Māori. If changes are to be made as a result of the Inquiry's work, and if those changes affect individual cases, further information will be provided as soon as possible.

***Will there be changes to the historic claims process?***

- The draft Terms of Reference for the Inquiry, direct it to consider existing claims processes for victims and survivors, including any potential changes to improve these processes.
- After the Inquiry has released its interim or final findings and recommendations, the Government will determine how to respond to any recommendations for changes to existing services.

***What support will be available to victims, survivors and others who participate in the Inquiry?***

- The Inquiry will decide to what extent and how it supports victims, survivors and others who participate.
- However, the principles for good practice included in the draft Terms of Reference direct the Inquiry to work in a victim and survivor-focused way. Part of this will be about making sure victims and survivors feel safe and supported when they participate in the Inquiry.

***Will the Inquiry prosecute people who are suspected of perpetrating abuse in state care?***

- Under the Inquiries Act 2013, an inquiry does not have the power to determine civil, criminal or disciplinary liability.
- However, the Inquiry may recommend further steps be taken to determine liability.

***Will the Government apologise to survivors and other people who have been impacted by abuse in state care?***

- The draft Terms of Reference direct the Inquiry to consider recommending appropriate steps for the State to take to rectify the harm caused, including whether the State should make an apology.

### ***Will the Inquiry meet with victims and survivors?***

- The Inquiry will decide whether and how it will meet with victims and survivors of abuse in state care. It will determine the methods for engaging with people, whether in New Zealand or overseas.
- The principles for good practice included in the draft Terms of Reference direct the Inquiry to work in a victim and survivor-focused way.
- The draft Terms of Reference also direct the Inquiry to establish a survivor advisory group to provide independent assistance to Inquiry members and make sure it remains focused on victims' and survivors' needs.

### ***Can I talk to the Inquiry about the abuse in state care of my deceased relative?***

- The Inquiry will decide how to carry out the Inquiry, including how family members of deceased relatives can participate.
- The draft Terms of Reference provide that the Inquiry should take a whānau-centred view in delivering on its mandate.

### ***What happens if someone alleges abuse during the Inquiry or makes an allegation against a specific person?***

- Under the Inquiries Act, an Inquiry does not have the power to determine the civil, criminal, or disciplinary liability of any person.
- An Inquiry is not prevented, however, from making findings of fault or recommending further steps be taken to determine liability.
- When the Inquiry sets out its methods of work, it is expected it will establish processes for responding to situations where people raise concerns about abuse that is or might be happening today. This could include helping someone refer the situation to the appropriate agency, including to the NZ Police, or providing some other support. It will be up to the Inquiry to determine what processes it adopts as it plans its work methods.

### ***Where else can I go if I have been abused in state care?***

- You can provide feedback to [abuseinstatare@royalcommission.govt.nz](mailto:abuseinstatare@royalcommission.govt.nz) on the scope of the draft Terms of Reference as part of the public consultation period from 1 February 2018.
- Once the Inquiry begins to consider evidence, it will be able to clarify whether a case is in or out of scope.
- Whether your situation is in or out of the Inquiry's scope, other processes continue to operate alongside the Inquiry.
- You may, for example, be able to access historic claims processes administered through the Ministries of Social Development, Education or Health, depending on your care placement.
- To make a claim or find out more about the Ministry of Social Development historic claims process, please get in touch by:
  - calling 0800 631 127 to speak with an experienced social work advisor in the claims resolution team
  - email: [claimsresolution@msd.govt.nz](mailto:claimsresolution@msd.govt.nz)

- writing to the Claims Resolution team, Ministry of Social Development, PO Box 1556, Wellington 6140.
- Sometimes you might have questions about your time in care about why some decisions were made or why certain things happened. You can contact the Ministry of Social Development to talk this through before you decide if you want to make a claim.

If you were recently (after 31 December 2007) in the care of the Chief Executive of Oranga Tamariki (or its predecessor agency, Child, Youth and Family) OR you are still are in care, you are able to...

- report concerns through the Oranga Tamariki Contact Centre by calling 0508 FAMILY (326 459)
- access the Oranga Tamariki feedback and complaints process to raise concerns, through a letter, in person, over the phone or online at: <https://www.orangatamariki.govt.nz/contact-us/feedback-and-complaints/>
- access the residential grievance process called Whaia Te Maramatanga, if you are currently staying in a residential facility run by Oranga Tamariki
- talk to your lawyer
- speak to your social worker or another trusted adult
- speak to VOYCE – Whakarongo Mai to be connected with an advocate: call 0800 4VOYCE (486923) or visit: <https://www.voyce.org.nz/contacts/new>

You may also be able to take a complaint to the following independent bodies:

- the Children’s Commissioner
- the Ombudsman
- the Privacy Commissioner
- the Human Rights Commission
- the Health and Disability Commissioner
- the New Zealand Police (if you think a crime has occurred)
- the Social Worker Registration Board (for complaints relating to Registered Social Workers).

If you were abused in a school and were not in state care at the time, several other processes are also available:

- If you were abused at a Residential Special School run by the Department of Education before 1989, you can make a historical claim. The Ministry of Education will work with you and will investigate and resolve your claim.
- If you wish to pursue an historical claim with the Ministry of Education, contact the Learning Support Information Line (0800 622 222, option 4), email [Historic.Claims@education.govt.nz](mailto:Historic.Claims@education.govt.nz), or write to Historic Claims, Sector Enablement and Support, Ministry of Education, PO Box 1666, Wellington 6140.
- If you were abused in a school, you may contact the Board of Trustees of the school concerned.



- If you are not happy with the response from the Board, or the school is now closed, you can contact your local Ministry of Education office for support and advice. Contact details are available here: <http://education.govt.nz/ministry-of-education/regional-ministry-contacts/>
- Alternatively, you can make a complaint to the Office of the Ombudsman, <http://www.ombudsman.parliament.nz/contact-us>
- If your complaint is about a teacher, you can contact the Education Council, <https://educationcouncil.org.nz/content/reporting-concern>
- The Council advises complainants to contact the school in the first instance. If a school or early childhood service believes a teacher could be guilty of serious misconduct they have a legal obligation to report this to the Council.
- If criminal activity is involved, it is always open to complainants to go straight to the Police.

If you were abused while admitted to a hospital and were not in state care at the time...

- You may wish to contact the patient advocacy service. This service offers support, advice and assistance for people who are unhappy with the health services they or others have received. The advocacy service can assist in your dealings with the DHB where the abuse took place. The advocacy service can also help you in taking your concerns to the Health and Disability Commissioner if you wish to take this course of action. The Advocacy Service can be contacted on freephone 0800 555 050 or by email [advocacy@hdc.org.nz](mailto:advocacy@hdc.org.nz). District Inspectors are appointed by law to act in a watchdog role for people's rights under the Mental Health Act. If you were abused while being treated under the Mental Health Act you may contact a District Inspector. A list of District Inspectors is on the Ministry of Health's website ([www.health.govt.nz](http://www.health.govt.nz)). You can find it by entering the words 'district inspector list' in the search bar on the front page.
- Anyone can make a complaint to the Ministry of Health about problems or concerns with a service funded by disability support services. For more information see <http://www.health.govt.nz/your-health/services-and-support/disability-services/more-information-disability-support/contact-disability-support-services>

If you were abused in a prison or penal institution...

- Corrections takes allegations of abuse in prison seriously and works closely with Police if an allegation is made.
- If you are now in the community, please make contact with Police directly.
- If you are presently in prison, you can tell a member of Corrections staff who will take you through the appropriate process depending on the nature of the complaint.
- You can also seek assistance with this by speaking to:
  - The Office of the Inspectorate on the 0800 number displayed inside the prison;
  - The Office of the Ombudsmen on the 0800 number displayed inside the prison.

### ***How much will the Inquiry cost?***

- This is likely to be the largest Royal Commission that has been carried out in New Zealand. Considerable investment will be needed to enable the Inquiry to successfully deliver on its mandate.
- The cost of overseas inquiries into sexual abuse have varied considerably, from a predicted £20.8 million per year in the United Kingdom to AU\$550 million over four years in Australia. The costs in Australia included the cost of building new premises.
- What the Inquiry is directed to examine will have implications as to how much resourcing will be needed. The inquiry budget is draft at this stage. Provisional assessments on costs have been undertaken, although those remain under active consideration until the Terms of Reference are finalised by Cabinet.

### ***Why is the Department of Internal Affairs administering the Inquiry?***

- The Department of Internal Affairs is the default department for providing administrative support to inquiries.
- The Inquiries Act 2013 is administered by the Department of Internal Affairs.

### ***Why is the Minister of Internal Affairs the responsible Minister for the Inquiry?***

- The Minister of Internal Affairs is the Minister responsible for the Inquiries Act 2013. The Minister is, therefore, the Minister responsible for this Inquiry.

### ***Can this Inquiry be independent if the responsible Minister is also the Minister for Children?***

- Hon Minister Tracey Martin proposed standing aside from this role in order to avoid any perception of conflict of interest. Crown Law advice was that there was no conflict.
- The Royal Commission chair will report to the Minister of Internal Affairs on its consultation and the terms of reference, but final decisions on the scope and structure of the Inquiry will be made by Cabinet, not by any individual Minister.
- The secretariat function of the Inquiry is hosted by the Department of Internal Affairs, however it will operate fully independently of both the Department and the Minister of Internal Affairs.

## **Context**

### ***Why did the Government establish the Royal Commission of Inquiry into Historical Abuse in State Care?***

- There have been public calls for an independent inquiry into abuse in state care for several years. This has most recently included the *Never Again/E Kore Anō* campaign, launched by the Human Rights Commission.<sup>1</sup>
- The United Nations Committee on the Elimination of Racial Discrimination also called for such an inquiry in New Zealand. Several other jurisdictions, including the United Kingdom, Canada and Australia, recently launched or completed inquiries into similar matters.

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<sup>1</sup> <http://www.neveragain.co.nz/>

- The Government committed to establishing an inquiry into abuse in state care (the Inquiry) as part of its 100-day plan to understand and acknowledge abuse that has occurred in state care, and to learn from the lessons of the past.

#### ***What has been done previously to respond to historical abuse in state care?***

- Previous responses to abuse in state care in New Zealand include responding to individual claims, providing other forms of assistance for victims and survivors, and carrying out reviews of state care delivery and oversight mechanisms.
- From 2005 to 2007, the Confidential Forum for Former In-Patients of Psychiatric Hospitals provided a forum to hear from and offer assistance to former patients with concerns about their experiences in State institutions before 1992.<sup>2</sup>
- From 2008 to 2015, the Confidential Listening and Assistance Service provided a forum to hear from and assist people who alleged abuse or neglect in state care before 1992. Over 1,100 New Zealanders participated in this service.<sup>3</sup>
- Since 2008, several dispute resolution processes have been developed as alternatives to going through the Court to settle claims with people who had been abused in state care. For example, the Ministry of Social Development has settled 1,644 historical claims cases and is working to resolve 1024 more (as at 26 January 2018; new cases continue to be lodged). Several system reviews and reforms have responded in part to concerns about abuse and neglect in state care. These include the closure of large disability and mental health institutions between the 1980s and the early 21<sup>st</sup> century; the 1988 report *Puao-te-ata-tū*; and the 2015 review by the Expert Panel on Modernising Child, Youth and Family, and subsequent policy, practice and legislative changes.

#### ***What was the role of the Confidential Listening and Assistance Service (CLAS)?***

- CLAS provided a confidential and supportive forum for people who experienced abuse or neglect during their time in state care in residential special education, health and welfare sectors before 1992 to talk about those experiences.
- The service did not determine liability, reach a conclusion about what did or did not happen to people, or recommend a particular course of action aimed at addressing any issues raised by clients. Rather, CLAS helped people access personal information and information about the options available for seeking redress. Where people wished it, the service referred them to the appropriate agency to pursue a formal claim.
- CLAS, which was headed by Judge Carolyn Henwood, presented its final report, *Some Memories Never Fade*, in 2015. The report is published on the Department of Internal Affairs' website: [www.dia.govt.nz/Final-Report-of-the-Confidential-Listening-and-Assistance-Service](http://www.dia.govt.nz/Final-Report-of-the-Confidential-Listening-and-Assistance-Service)

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<sup>2</sup> 493 people attended meetings with the Forum. Te Āiotanga: Report of the Confidential Forum for Former In-Patients of Psychiatric Hospitals. [https://d3n8a8pro7vhmx.cloudfront.net/nzhrc/pages/174/attachments/original/1487714414/Report\\_of\\_the\\_Confidential\\_Forum\\_for\\_Former\\_In-Patients\\_of\\_Psychiatric\\_Hospitals.pdf?1487714414](https://d3n8a8pro7vhmx.cloudfront.net/nzhrc/pages/174/attachments/original/1487714414/Report_of_the_Confidential_Forum_for_Former_In-Patients_of_Psychiatric_Hospitals.pdf?1487714414).

<sup>3</sup> Final Report of the Confidential Listening and Assistance Service [https://www.dia.govt.nz/diawebsite.nsf/Files/Confidential-Listening-and-Assistance/\\$file/Confidential-Listening-and-Assistance-Service-Final-Report-Some-Memories-Never-Fade.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Confidential-Listening-and-Assistance/$file/Confidential-Listening-and-Assistance-Service-Final-Report-Some-Memories-Never-Fade.pdf)

### ***Why do we need an independent inquiry into historical abuse in state care now?***

- Previous responses to historical abuse in state care have focused on listening to individual victims' and survivors' experiences and responding to their claims.
- While system-wide reviews of policies and practices to reduce abuse in state care have been undertaken, there has been no systemic inquiry to understand the nature, scale, impacts and causes of abuse that has occurred and identify any lessons that can be learned.
- Several stakeholders have called for an independent inquiry to identify any systemic issues and to help to prevent abuse in state care from happening again. The Confidential Listening and Assistance Service recommended an independent review into the issue of historical abuse in state care. The Human Rights Commission's *Never Again/E Kore Anō* campaign recently led calls for an inquiry. The United Nations Committee on the Elimination of Racial Discrimination also recommended New Zealand establish such an inquiry.

### ***Why is the Inquiry a Royal Commission?***

- The Inquiries Act 2013 specifies three types of inquiry: Royal Commission, public inquiry, and Government inquiry. A Royal Commission is a type of public inquiry.
- The three types of inquiry have identical powers, and differ only in status, how they are appointed and the way they report back.
- Royal Commissions are reserved for the most serious matters of public importance.
- Following a decision to establish an inquiry, a Royal Commission is appointed by the Governor-General. An inquiry presents its final report to the Governor-General. This final report must then be tabled in Parliament.
- Cabinet agreed to establish a Royal Commission to acknowledge the seriousness of this issue and to signal that this Government is committed to investigating it at the highest level.

### ***Will the Inquiry be independent? / What powers does it have?***

- Yes. Inquiry members will have discretion to determine how they will conduct the Inquiry, subject to the provisions of its Terms of Reference and the Inquiries Act 2013 (the Act).
- The Act requires inquiries to act independently, impartially and fairly. An inquiry may consult with a range of people, including officials, on technical matters, but it has the authority to come to its own independent conclusions and recommendations.
- To ensure the independence of inquiries, the Act provides certain powers. An inquiry can decide, for example, whether and how it will receive information, evidence and submissions. It can decide whether to conduct hearings, as well as how those hearings will be managed.
- An inquiry has the necessary tools at its disposal to make sure it can investigate matters effectively. It can decide to take evidence on oath and can summons people to give evidence (for example, officials or people whose conduct may be under scrutiny).
- An inquiry is different from a court. It is not restricted to the rules of evidence that apply in a court. It is not required to consider evidence in a hearing setting, and may decide to interview people or hear their stories in a different way, including in a confidential or private setting.
- The draft Terms of Reference provide some of the principles that will guide the Inquiry's work. These include being victim- and survivor-focused, taking a whānau-centred view, working in

partnership with iwi and Māori, being responsive to Pacific communities, being responsive to people with disabilities and avoiding a disproportionately legal approach.

## **Publicly available documents**

### ***What documents are available?***

- The draft Terms of Reference are available [online](#).
- You can also read [Cabinet papers and documents](#) considered by Ministers on the establishment of the Inquiry. These documents should provide useful context on the matters Cabinet considered when drafting the Terms of Reference.

### ***Why are the Cabinet papers being made public?***

- A Minister can approve the public release of Cabinet papers and related documents on significant policy decisions. The decision by Cabinet to establish a Royal Commission into Historical Abuse in State Care is a significant policy decision. Hon Minister Tracey Martin decided to release this material in the interests of transparency. The documents should also provide useful context on the matters Cabinet considered when drafting the Terms of Reference. The release of these documents may help provide background information for the public consultation on the draft Terms of Reference, led by the Inquiry Chair in the months ahead.

### ***Why are some sections blanked out ('redacted')?***

- The decision to proactively release Cabinet papers and related documents is different from the process of providing material under the Official Information Act (OIA). It is a decision made by the Minister, rather than in response to a request from the public. The factors considered for OIA requests are also relevant to proactive release. The redactions made in this case fall into the following categories:
  - Legal professional privilege (s 9(2)(h) OIA)
  - Free and frank expression of opinions by, between, or to Ministers in the course of their duty (s 9(2)(g)(i) OIA)
  - Information which is subject to an obligation of confidence (s 9(2)(ba) OIA)
  - Private information of individuals (s 9(2)(a) OIA)