



**Te Kōmihana Karauna mō ngā
Tūkinō o Mua ki te Hunga i
Tiakina e te Kāwanatanga**

**Historical Abuse in State Care
Royal Commission**

29 May 2018

Hon Tracey Martin
Minister of Internal Affairs
Parliament Buildings
Wellington 6160

By Hand

Dear Minister

Royal Commission of Inquiry Into Historical Abuse in State Care

On 31 January 2018 you requested me to undertake public consultation on the Royal Commission's draft Terms of Reference and to report to you on the results of that together with advice on the matters discussed.

I have now carried out that consultation. I invited members of the public to tell me their views, and I received some 400 submissions in writing, by phone and at face to face meetings. Many survivors of abuse, including prisoners, told me personal accounts of their experiences.

I met with Iwi chair representatives, members of urban Māori authorities, Māori welfare organisations and Pacific people's representatives. I consulted a number of people in the social care sector, the state sector, the judiciary, as well as legal and social policy academics and people from agencies with an interest in the wellbeing of New Zealand's most vulnerable people. I met with members of the Inquiry into Mental Health and Addiction to discuss areas of potential commonality.

I have personally considered every submission and responded to each submitter. A summary of the submissions is in the attached report.

As you know, many people are concerned about whether this Inquiry should address abuse in all care situations, not only State care. This was one of the most strongly argued issues in the consultation process, by organisations as well as individuals. A great many people, from many parts of society, advanced the notion that neglect and abuse had also occurred in non-State institutions and that the Royal Commission offered an opportunity for New Zealand to deal with both.



In my view, arguments that the State has a responsibility to all children and all vulnerable people in New Zealand have considerable weight. This is emphasised in the international instruments that New Zealand has ratified and endorsed.

Submitters also said that, if the scope of the Inquiry was not changed to include people in non-State care, they and their advocates would continue to seek the establishment of an Inquiry into abuse of children in non-State institutions. Submitters suggested that excluding those who suffered abuse and neglect outside State care would prolong the trauma for those continuing to lobby for their own Inquiry. It was argued that “abuse is abuse” and that there should be no preference for groups that may have initially sought this Inquiry. It was also pointed out that by adding non-State care to this Inquiry’s Terms of Reference, while potentially increasing time and cost, it would be more cost-effective than setting up a separate Inquiry at a later date.

The number and the intensity of these submissions have persuaded me that a wider Inquiry is properly called for and I ask you to consider this.

I have given considerable thought to the way in which abuse in non-State care might be addressed by this Royal Commission. In my view the best approach would be for the Royal Commission to hear the matters sequentially rather than concurrently. The Royal Commission would first deal with abuse in State care, and would next address the matters relating to non-State care, where the recommendations would likely focus on non-State situations.

An interim report on abuse in State care would be provided by 31 July 2020.

The enclosed re-drafted Terms of Reference begin with a focus on people who have been in State care, directly or indirectly, including where the State delegated its care functions to another individual or entity. The scope encompasses adults as well as children, those in compulsory psychiatric care and people with disabilities who were in care. The Terms of Reference define State care as any situation where the State assumes responsibility for the care of the individual, directly or indirectly, including schools. However, the Terms of Reference specifically exclude general hospital admissions, adults in prison and adults in police custody.

The Terms of Reference then provide for the Royal Commission to inquire into abuse of people in non-State care. In this phase, the Royal Commission would address those in out-of-home-care where non-State organisations assumed responsibility, directly or indirectly, for the care of children and adults. This includes schools, churches, and places under the jurisdiction of other religious and recreational organisations.

The initial drafting of the definition of non-State care is broad. In light of the potential implications, it would be prudent to consult with affected parties about the proposed definition of non-State care, should you agree with this proposal. Consultation would be with those who have sought the inclusion of non-State care, Government agencies, and with organisations and institutions who may be affected.



You will see I have endeavoured to achieve clarity in the Terms of Reference whilst removing footnotes and categorisations. The revised draft also clearly refers to the central place of the Treaty of Waitangi in this Royal Commission and emphasises the position of Māori and Pacific people who have been disproportionately represented in care, particularly State care. I have also recognised the vulnerability of disabled people.

There were many submissions on the time period this Royal Commission should consider. With very few exceptions, submissions questioned the rationale for the 1950-1999 time period, particularly when State-run institutions were operating into the early 2000s. Another point made was that the Royal Commission is being asked to make recommendations on current and future practice, legislation, policy, standards and process without being able to hear the experience of those in care in the last 18 years. I received a number of well-argued submissions that this Royal Commission should consider experiences up to 2017.

You will see, however, that I have not recommended a specific date that the Royal Commission should cover. I leave that to you and your colleagues to decide. I have, however, recommended that the Royal Commission should have the discretion to hear matters after 1999. This would be consistent with the discretion currently recommended for experiences before 1950.

As mentioned earlier, if the Government agrees to extend the scope of the Inquiry as proposed, I suggest it would be appropriate for me to conduct further consultation on the definition of non-State care, which would be for a period of four weeks. In my view, this consultation should not hinder the commencement of the work of the Royal Commission regarding people in State care.

This leaves the question of the release of this letter and its attachments. There will be considerable public interest in the matters I have raised. I realise you will want to consult with your colleagues and officials about the material.

I shall be happy to discuss any matters that you think may call for clarification or enlightenment. I look forward to hearing from you in due course.

Yours sincerely

Anand Satyanand

