



April 2, 2018

Anand Satyanand
Chair
Royal Commission into Historical Abuse in State Care
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Dear Mr Satyanand

Thank you for your letter to Ken Clearwater requesting feedback on the proposed Terms of Reference (TOR) for the above Royal Commission. As Ken is that National Advocate for Male Survivors Aotearoa (formerly Male Survivors of Sexual Abuse Aotearoa NZ), it is appropriate that I respond as Chair of the national body and with Ken's endorsement.

Of particular concern to male survivors is **the intended scope of the review**, limited as it is to abuse that occurred within State institutions however they may be finally defined. You will be well aware, from data available from the Australian Royal Commission, that 60% of the disclosed abuse occurred within faith-based institutions. We contend that is it likely that the New Zealand statistics will be comparable to those observed in Australia, which means that a majority of abused persons will not fall within the scope of this Royal Commission.

We note with interest in your draft TOR that you reference the New Zealand government as having "*international obligations to take all appropriate legislative, administrative, judicial or other measures to protect individuals from abuse, including measures for the prevention, identification, reporting, referral, investigation and follow-up of incidents of abuse.*" And we note that these obligations are not constrained by where the abuse occurred.

Furthermore, we would argue that for Government to understand what actions are necessary to deal with the prevention of abuse and the recovery of abuse victims, it needs to understand the full nature and extent of both historical and current abuse, which will only become apparent if the review scope is widened to include all institutional abuse.

We presume that the Commission fully understands the potential adverse impacts of this limited review.

But we would like to point out, as a national service provider, two potentially related impacts that concerns us greatly – both relate to the probable creation of two-classes of survivors and how that may affect our services in the future.

If the scope of the review remains as currently defined there will be two classes of survivors – those who were abused in state institutions and the rest. And if there are outcomes from the review that result in compensation (however that is finally defined) that is only available to survivors who fall within the scope of the review, then the impacts of creating two survivor classes with potentially different compensation and/or service support options would be, in our view, unethical, unfair, and unjust.

The related impact for our organisation, and we suspect for many others dealing with survivors, is that the establishment of the commission is almost certain to create more demand for our services – a demand that we currently could not service. In considering the challenges for all organisations in dealing with increased service demand you should also consider how these organisations will deal with the potential that survivors of state-based abuse may have better service options. Again we would find such an outcome unethical, unfair and unjust.

We would strongly urge you to widen the scope of your enquiry to include all survivors of abuse that occurred within any institutions based in New Zealand.

To that end we have amended your draft terms of reference and attached a revised version that matches our expectations for an ethical, fair and just outcome for all survivors.

Yours sincerely

Philip Chapman

Philip Chapman

Chair, Male Survivors Aotearoa

DRAFT TERMS OF REFERENCE– Royal Commission of Inquiry into Historical Abuse in State Care – FOR CONSULTATION [edited by Male Survivors Aotearoa]

BACKGROUND

1. For a number of years, many individuals and community groups have called for an independent inquiry into abuse in state care in New Zealand. The most recent public call for an independent inquiry was led by the Human Rights Commission and entitled Never Again/E Kore Anō. The Confidential Listening and Assistance Service recommended the establishment of an independent mechanism to undertake a systematic review. At the international level, the United Nations Committee on the Elimination of Racial Discrimination has also recommended that New Zealand establish an independent inquiry into abuse in state care.
2. More recently there has also been calls from many groups, including the Anglican and Catholic churches, for the extension of any independent inquiry into abuse to include faith-based institutions in particular and any other institutions (sporting, social etc.) – in effect to widen the inquiry to include all abuse within any New Zealand institutions.
3. New Zealand has international obligations to take all appropriate legislative, administrative, judicial or other measures to protect individuals from abuse, including measures for the prevention, identification, reporting, referral, investigation and follow-up of incidents of abuse. Abuse of individuals within any New Zealand institution is inconsistent with applicable domestic and international human rights law standards and principles. It warrants prompt and impartial examination, both to understand, acknowledge and respond to the harm caused to individuals, families and communities, as well as ensure lessons are learned for the future.
4. In light of this, and consistent with this Government’s commitment to set up an inquiry in the first 100 days of its term, a Royal Commission of Inquiry [will/has] been established into historical abuse within New Zealand institutions, including in particular but not limited to state-based and faith-based institutions. The Minister of Internal Affairs is responsible for establishing this independent Inquiry.

PURPOSE AND SCOPE

5. The matter of public importance which the Inquiry is directed to examine is historical abuse of individuals within New Zealand institutions.
6. The Inquiry shall examine, identify, and report on the following matters:
 - 6.1 The nature and extent of the abuse that occurred during the relevant period.
 - 6.2 The impact of the abuse on individuals and their families, whānau and communities.

- 6.2.1 In considering this, the Inquiry is invited to consider both the immediate impacts, as well as longer-term and intergenerational impacts;
- 6.2.2 In considering this, the Inquiry is also invited to have particular consideration for Maori and any groups where differential impact is evident, e.g. by gender, LGBTQI people, Pacific people and people who have experienced mental health issues.
- 6.3 The factors which may have caused or contributed to the abuse of individuals during the relevant period, including any systemic factors identified.
- 6.4 General findings on lessons learned from the past which have informed subsequent changes in practice, and any gaps or potential areas of focus.
- 6.5 The current settings available to prevent and respond to abuse including standards that assist in preventing and responding to abuse.
- 6.6 The redress processes for individuals who claim, or have claimed, including improvements to the redress processes that can be considered.¹

Other matters arising

7. The Inquiry may consider the circumstances that led to the decision to take or place someone into institutional care and the factors that may have contributed to the decision-making process involved.
8. The Inquiry may consider other matters that come to the Commission's notice in the course of its inquiries and that it considers would assist it to deliver on the stated purpose, scope and deliverables.

DEFINITIONS

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

Abuse

- Physical, sexual and emotional abuse, and neglect, as defined in applicable domestic and international standards.²

Institutional care

¹ The term "redress" covers monetary processes (for example, historic claims) and non-monetary processes or services (for example, rehabilitation). For the avoidance of doubt, existing claims processes will continue to operate during the course of the Inquiry's work. The Inquiry may, in accordance with paragraphs 15(e) and 19 below, examine these processes and issue interim reports or recommendations.

² See for example, the definition given in s14(1)(a) Oranga Tamariki Act 1989.

- An individual is in institutional care if the Institution has responsibility, whether directly or indirectly, for their care.
- The Inquiry shall consider the experiences of any individual who was in institutional care between 1 January 1950 and 31 December 1999 inclusive, irrespective of whether they were a child, young person or an adult at the time.³ The Inquiry may at its discretion consider cases prior to 1950.

APPOINTMENTS

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

PRINCIPLES AND METHODS OF WORK

Principles

12. The Inquiry shall carefully consider and implement principles and methods of work which will enable it to conduct its work in a manner sensitive to the particular needs of individuals, as well as the needs of their families / whānau, or other support persons.
13. The Inquiry shall ensure that it adheres to the highest standards of professionalism and integrity in the course of its work. The principles in accordance with which the Inquiry will operate include (but are not limited to):⁴
 - being victim and survivor-focused;
 - taking a whānau-centred view;
 - working in partnership with iwi and Māori;
 - being responsive where differential impact is evident, e.g. by gender, LGBTQI people, Pacific people, disabled people and people who have experienced mental health issues.
 - avoiding a disproportionately legalistic approach.

Methods of work

14. The methods the Inquiry will implement to ensure a sound foundation for its work may include (but are not limited to):

³ The Inquiry may also consider, in a general manner, issues arising after 31 December 1999 with respect to individuals who were in care prior to that date.

⁴ Principles applicable to human rights monitoring and investigations can be found in a number of domestic and international materials, for example: UN Office of the High Commissioner for Human Rights Training Manual on Human Rights Monitoring (2001), pp 87-93 (and 2011, chapter 2).

- the establishment of sound practical mechanisms to facilitate the timely communication of information, or the production of documents or other things in accordance with the Inquiry's powers under the Inquiries Act 2013;
 - the establishment of an investigation or other specialist units, advisory or research functions to support the Inquiry;
 - the need to ensure that information or evidence that may be 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;
 - the need to establish appropriate arrangements in relation to current and previous inquiries, in New Zealand and elsewhere, for evidence and information to be shared with the Inquiry, so that the work of those inquiries, including, with any necessary consents, the statements of witnesses, can be taken into account by the Inquiry in a way that avoids unnecessary duplication, improves efficiency and avoids unnecessary trauma to individuals; and
 - the need to ensure that institutions and other parties are given a sufficient opportunity to respond to requests and requirements for information, documents and things, including, for example, having regard to any need to obtain archived material.
15. The Inquiry is directed to establish a survivor advisory group to provide independent assistance to Inquiry members, and to ensure the Inquiry remains victim and survivor-focused and responsive to victim and survivor needs. While the group will not have a decision-making function, and its feedback will not bind the Inquiry, it will assist the Inquiry at its request.

FINDINGS AND RECOMMENDATIONS

16. Without limiting the terms of reference set out above, the Inquiry shall consider the following deliverables.⁵
- 16.1 Deliver a public statement on and record of these matters – with a particular focus on any differential impacts for Māori, Pacific peoples, disabled people and by gender;
 - 16.2 Report and present general findings on the causes of or contributing factors to the abuse, including systemic issues;
 - 16.3 Report and present general findings on lessons learned from the past which have informed subsequent changes in practice, and identify gaps or recommended areas of focus;

⁵ Findings and recommendations may concern, for example, legislative, administrative, policy, practice, or procedural change.

- 16.4 Report and make any recommendation or recommendations on appropriate steps for the State or other responsible institutions to take to rectify the harm caused, including whether the State any other responsible institutions should make an apology for the abuse of individuals during the relevant period; and
 - 16.5 Comment on existing redress and rehabilitation processes for individuals who claim, or have claimed, abuse while in institutional care, and recommend potential changes to these if needed.
17. In accordance with the Inquiries Act 2013, the Inquiry may make findings of fault, but has no power to determine the civil, criminal, or disciplinary liability of any person. It may, however, make recommendations that further steps be taken to determine liability. In all of its work, the Inquiry shall act independently, impartially, and fairly.

COMMENCEMENT OF WORK AND REPORTING REQUIREMENTS

18. The Inquiry will commence on [TBC] and may begin considering evidence from [TBC].
19. The Inquiry is to issue its final report, containing findings and recommendations, in writing within the current parliamentary term.
20. The Inquiry may issue interim report or reports of findings and recommendations.
21. If the Inquiry identifies issues which may affect its ability to deliver a final report within the current parliamentary term it shall notify the responsible Minister as soon as possible with a view to identifying an appropriate solution, which may include (but is not limited to) an extension of time.
22. In addition to issuing its final report, the Inquiry should consider other means by which its work can be readily understood and accessed by the public, whether by public statements, research reports, issues papers, or similar documents.