



UNDER THE INQUIRIES ACT 2013

IN THE MATTER OF

The Royal Commission of Inquiry

into Historical Abuse in State Care and in the

Care of Faith-Based Institutions

MINUTE 16

Faith-based Care

31 January 2022

Introduction and Purpose

1. The Royal Commission's terms of reference require it to examine abuse of children, young persons and vulnerable adults in State care, as well as in the care of faith-based institutions.
2. Some faith-based institutions have queried the scope of the phrase "in the care of faith-based institutions" in the terms of reference. The purpose of this Minute is to explain the inquiry's current interpretation of that phrase, and to outline some of the key considerations relevant to that interpretation.
3. The Royal Commission extended an opportunity to interested participants to provide submissions on the interpretative approach outlined in this minute. The inquiry considered all submissions received in finalising the minute. It will also continue to take these into account as it develops its work programme for 2022 and beyond.

The concept of care and being in care

4. The terms of reference define State or faith-based care as the assumption of responsibility, directly or indirectly, for the care of an individual. In particular, clause 17.4 provides:

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.
5. The terms of reference focus on the relationship between the State and/or faith-based institutions and the individual, and the ways in which individual carers or institutions assume responsibility for others, with reference to some of the settings in which care was provided.
6. Care may arise in various ways or circumstances. The drafting history¹ and text of the terms of reference indicate an intention to go beyond the narrower institutional focus that has been a feature of previous internal or external reviews and investigations into abuse in care.
7. In this respect, care is not confined to formal institutions or care programmes. For example, there is no limitation in the terms of reference to abuse taking place within an institution's premises. Location is relevant to but not determinative of the inquiry's jurisdiction.
8. The terms of reference do not limit care to permanent or ongoing or regular care: it may, for example, be irregular, temporary, intermittent or transitional.

¹ See for example, original Draft terms of reference (February 2018) (definition of "State Care"); Original Draft terms of reference, footnote 2 (in relation to the concept of indirect State care); Original Draft terms of reference, footnote 3 (regarding the non-exhaustive list of examples by which people may come into care).

Moreover, the responsibility for the care of an individual may be held or exercised individually or may be shared.

9. The terms of reference do not specify or limit the forms and methods of care delivery. This is understandable given the number and range of settings in scope. Care may be provided, for example: *in* an institution or *by* an institution; and by persons *involved in* the provision of care (e.g. with, for, or on behalf of the institution).
10. The inquiry can consider the conduct of representatives, members, staff, associates, contractors, volunteers, service providers, or others.² It can also consider abuse by another care recipient and the response to that abuse. The terms of reference do not require persons to be paid, formally titled, or meet other set criteria in order to fall within the inquiry's scope.

The inquiry's approach to faith-based care

11. For the purpose of this inquiry an institution or group is "faith-based" if its purpose or activity is connected to "a religious or spiritual belief system".³ Faith-based care (including care provided on behalf of the State) has its own unique features given this connection and may extend beyond more traditional types of care.⁴
12. The terms of reference neither expressly list nor limit faith-based care settings, other than the inclusion of faith-based schools and the exclusion of "fully private" settings.
13. A range of care relationships may fall within the scope of the inquiry. The most obvious example is where an institution acts as a formal residential care provider.
14. However, the concept is not limited to residential care. Another example is the inclusion of all faith-based schools, which extends faith-based care to a much broader class of care including day students as well as boarders.
15. A care relationship may also arise in many "pastoral care" situations in the faith-based context. For example, those with authority or power conferred by a faith-based institution may assume a trust-based relationship with a child or vulnerable adult. Where such a relationship is related to the institution's work or is enabled through the institution's conferral of authority, the child or vulnerable adult may properly be described as in the care of the faith-based institution. Examples may arise in the context of youth group activities (including day trips and camps); Bible study groups; Sunday school or children's church activities; day trips and errands; pastoral or spiritual direction, mentoring, training or counsel in groups or individually (including visiting congregation/faith community members in their homes, outside the institution's grounds, or elsewhere).

² Terms of reference, cl 17.1(b)

³ Terms of reference, cl 17.4(d).

⁴ Terms of reference, cl 17.4(b).

16. As a result of their position of authority, members of and those working for faith-based institutions who exercise a pastoral care role may have significant influence over an individual, whānau, family or other group's identity, beliefs, and life choices in interpreting a particular religious or belief system, and/or in guiding others on their religious or spiritual path. A pastoral relationship is therefore commonly one of trust and vulnerability.
17. The physical location of abuse is not definitive, particularly in the context of a pastoral relationship. For example, the abuse of a child, young person or vulnerable adult in any place may be in scope if the abuse is by a priest, religious or lay person who holds a pastoral role in a church and the abuse has been enabled or facilitated by that role.
18. What constitutes faith-based care may be specific to a particular faith-based institution. The nature, structure, organisation, and operation of an institution (both formally and in practice) will bear on the inquiry's assessment of what constitutes faith-based care, what forms of "care" are engaged, and the other issues the inquiry will need to consider under the terms of reference. For example, faith-based institutions differ as to whether and to what extent they separate faith-based activities from daily and family life, and the extent they engage with or separate themselves from the general population and secular authorities.
19. "Fully private settings" are excluded from both State and faith-based care, although the exclusion is framed somewhat differently. The definition of State care expressly excludes the "family home",⁵ whereas the faith-based definition does not.⁶ In the context of this inquiry, "fully private settings" refers to abuse that has occurred within the home and does not relate to the provision of faith-based care. Members of and those working for faith-based institutions have visited homes of private citizens and committed abuse. These situations are within the scope.
20. Both State care and faith-based care can at times be provided in the family home. The notion of "private" settings, therefore, is only partly determined by location: what matters is the type, nature, and extent of connection to the care provider. Finally, the exclusion in both instances is not absolute and is limited if the person was in care at the time.⁷
21. Each case will require careful consideration and the inquiry will determine the types of conduct, activities and settings that properly fall within scope of "care" (whether in whole or in part) as its investigations continue.

Relevance of matters under other parts of the terms of reference

22. The matters in the inquiry's scope are not presented as a hierarchy; they are interdependent and mutually reinforcing. It is well-known and understood that New Zealand has held internal and external investigations and reviews into abuse in specific care settings. Part of the policy intention in establishing this

⁵ Terms of reference, cl 17.3(g).

⁶ Terms of reference, cl 17.4(a).

⁷ Terms of reference, cls 17.3(g) and 17.4(a).

Royal Commission of Inquiry appears to have been not only to provide a fulsome, public record of historic abuse in care, but also to examine thoroughly, independently, and impartially why and how abuse occurred and how it can be better prevented and responded to in the future.

23. The equal importance of the scope provisions is reflected in the wide yet detailed powers to make comments, findings, and recommendations in clauses 31 to 33. In addition to people's experiences of abuse in care, the inquiry's analysis of factors, impacts, circumstances, prevention and response, and redress frameworks are central to its work.
24. A wide range of matters will, therefore, fall within the scope of the inquiry. In the course of its investigations the inquiry will determine whether, how and in which ways it obtains, uses and presents information and evidence. In doing so, the inquiry will consider the history and text of the terms of reference, as well as legal, practical and other relevant considerations.

Produced by the Royal Commission of inquiry into Historical Abuse in State Care and in the care of Faith-based Institutions



Coral Shaw
Chair
31 January 2022