

Version
as at 28 March 2024



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

(LI 2018/223)

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—

Dr Andrew Erueti, of Auckland, Associate Professor 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:

Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This order is administered by the Department of Internal Affairs.

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

Preamble: amended, on 8 September 2023, by clause 5 of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order (No 2) 2023 (SL 2023/250).

Preamble: amended, on 15 June 2023, by clause 4 of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2023 (SL 2023/141).

Preamble: amended, on 5 August 2021, by clause 4(1) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

Preamble: amended, on 15 November 2019, by clause 4 of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2019 (LI 2019/268).

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) *[Revoked]*
- (b) Ali'imua Sandra Alofivae, MNZM:
- (c) Dr Andrew Erueti:
- (d) Paul Gibson:
- (e) Her Honour Judge Coral Shaw.
- (f) *[Revoked]*

Clause 5(a): revoked, on 15 November 2019, by clause 5 of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2019 (LI 2019/268).

Clause 5(f): revoked, on 15 June 2023, by clause 5 of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2023 (SL 2023/141).

6 Chairperson of inquiry

The person who is to be the chairperson of the inquiry is Her Honour Judge Coral Shaw.

Clause 6: amended, on 15 November 2019, by clause 6 of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2019 (LI 2019/268).

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) *[Revoked]*
 - (c) *[Revoked]*

Schedule clause 10.1(b): revoked, on 5 August 2021, by clause 5(1) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

Schedule clause 10.1(c): revoked, on 5 August 2021, by clause 5(1) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

- 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 During the relevant period, what lessons were learned and what changes were made to legislation, policy, rules, standards, and practices to prevent and respond to abuse in care.
- Schedule clause 10.5: replaced, on 5 August 2021, by clause 5(2) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).
- 10.6 *[Revoked]*
- Schedule clause 10.6: revoked, on 5 August 2021, by clause 5(3) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).
- 10.7 The redress processes for individuals who claim, or have claimed, abuse while in care, including improvements to those processes.
- Schedule clause 10.7: amended, on 5 August 2021, by clause 5(4) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).
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.

Discretion

Schedule heading: inserted, on 5 August 2021, by clause 5(5) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

- 15A. In addition to the matters that are in scope, the inquiry may also, at its discretion,—
 - (a) consider issues and experiences prior to 1950:
 - (b) for the purpose of informing any recommendations made under clause 32A or clause 37A(a), consider issues and experiences after 1999.

Schedule clause 15A: inserted, on 5 August 2021, by clause 5(5) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

- 15B. To avoid doubt, the discretion in clause 15A means the inquiry may hear from people who—
 - (a) were in care at any point before 1950:
 - (b) were in care at any point after 1999:
 - (c) are currently in care (whether or not they were also in care before 2000).

Schedule clause 15B: inserted, on 5 August 2021, by clause 5(5) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

- 15C. For the purpose of the inquiry's engagement with people currently in care, further guidance on principles and methods of work is provided in clauses 21 and 22.

Schedule clause 15C: inserted, on 5 August 2021, by clause 5(5) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

- 15D. Despite the discretion in clause 15A, the inquiry is not permitted to examine or make findings about current care settings and current frameworks to prevent and respond to abuse in care, including current legislation, policy, rules, standards, and practices.

Schedule clause 15D: inserted, on 5 August 2021, by clause 5(5) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

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:
- (ba) for the avoidance of doubt, a faith-based institution may assume responsibility for the care of an individual through an informal or pastoral care relationship. An informal or pastoral care relation-

ship includes a trust-based relationship between an individual and a person with power or authority conferred by the faith-based institution, where such a relationship is related to the institution's work or is enabled by the institution's conferral of authority or power on the person:

- (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.

17.9 **Care settings** means settings in which an individual is in—

- (a) State care (including the settings listed in clause 17.3(c)); or
- (b) the care of faith-based institutions.

Schedule clause 17.4(ba): inserted, on 8 September 2023, by clause 6 of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order (No 2) 2023 (SL 2023/250).

Schedule clause 17.9: inserted, on 5 August 2021, by clause 5(6) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

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) *[Revoked]*

Schedule clause 19(j): revoked, on 5 August 2021, by clause 5(7) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

- 19A. In addition to operating as required by clause 19, the inquiry must operate in a way that, to the extent practicable,—
- (a) avoids taking a legalistic approach:
 - (b) uses less formal procedures in addition to, or as an alternative to, public hearings.

Schedule clause 19A: inserted, on 5 August 2021, by clause 5(8) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

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.

Schedule clause 25: replaced, on 5 August 2021, by clause 5(9) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

- 25A. The inquiry must—
- (a) support the relevant department to comply with the department's administrative and financial planning (relevant to the inquiry) by providing regular information and reporting on administrative and financial matters; and
 - (b) for the purpose of assuring the Minister that the inquiry is on track to deliver the reports and recommendations required under these terms of reference, provide a quarterly report to the Minister that—
 - (i) sets out the critical activities the inquiry needs to complete under these terms of reference; and
 - (ii) reports on—
 - (A) the expected cost of completing the activities; and
 - (B) the expected timing for completing the activities; and
 - (C) the progress towards completing the activities (including in terms of cost); and

- (iii) explains what steps the inquiry is taking, or proposing to take, to mitigate any risk to completing the activities in accordance with these terms of reference.

Schedule clause 25A: inserted, on 5 August 2021, by clause 5(9) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

25B. The inquiry must—

- (a) prepare the form of the quarterly report following consultation with the relevant department; and
- (b) provide the form to the appropriate Minister for approval by 31 August 2021.

Schedule clause 25B: inserted, on 5 August 2021, by clause 5(9) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

26. The inquiry will map the nature and extent of abuse in State care and faith-based institutions, the impact of that abuse, and the factors that caused or contributed to the abuse. The principal question for this work will be to establish what happened during the relevant period and why.

Schedule clause 26: replaced, on 5 August 2021, by clause 5(10) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

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 manner 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.
- 29A. Without limiting sections 14(2) and (3) of the Act, after 31 July 2023 the inquiry may not request information from any person, or receive evidence or information from any person, if doing so may delay completion of the inquiry’s final report.

Schedule clause 29A: inserted, on 15 June 2023, by clause 6(1) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2023 (SL 2023/141).

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) *[Revoked]*
 - (b) any appropriate changes to the existing redress 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 insti-

tutions for the abuse of individuals during the relevant period, or any other action that may be needed.

Schedule clause 32(a): revoked, on 5 August 2021, by clause 5(11) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

Schedule clause 32(b): amended, on 5 August 2021, by clause 5(12) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

- 32A. The inquiry may make recommendations for changes to be made in the future to ensure that the factors that allowed abuse to occur during the relevant period in State care and in faith-based institutions do not persist.

Schedule clause 32A: inserted, on 5 August 2021, by clause 5(13) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

- 32B. The inquiry is to present the recommendations required by clause 32, and any recommendations under clause 32A, in writing to the appropriate Minister by 30 May 2024.

Schedule clause 32B: inserted, on 15 June 2023, by clause 6(2) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2023 (SL 2023/141).

Schedule clause 32B: amended, on 28 March 2024, by clause 4(1) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2024 (SL 2024/23).

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.
- 37A. In addition to the two-part interim report referred to in clauses 35 to 37, the inquiry is to provide—
- (a) recommendations on redress processes; and
 - (b) an interim report on redress processes.
- Schedule clause 37A: inserted, on 5 August 2021, by clause 5(14) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).
- 37B. The inquiry is to present the recommendations on redress processes (*see* clause 37A(a)) in writing to the appropriate Minister by 1 October 2021.
- Schedule clause 37B: inserted, on 5 August 2021, by clause 5(14) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).
- 37C. The inquiry is to present the interim report on redress processes (*see* clause 37A(b)), which will include the recommendations on redress processes (*see* clause 37A(a)), in writing to the Governor-General by 1 December 2021. The Governor-General 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 report on its website.
- Schedule clause 37C: inserted, on 5 August 2021, by clause 5(14) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

37D. If the recommendations on redress processes included in the interim report on redress processes are not the same as the recommendations presented to the appropriate Minister under clause 37B, the inquiry must ensure that the interim report includes—

- (a) an explanation of the changes made to the recommendations; and
- (b) the reasons for the changes.

Schedule clause 37D: inserted, on 5 August 2021, by clause 5(14) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

38. In addition to the two-part interim report referred to in clauses 35 to 37 and the recommendations and interim report referred to in clauses 37A to 37D, 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.

Schedule clause 38: amended, on 5 August 2021, by clause 5(15) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

38A. After 31 July 2023, the inquiry may not produce any interim report.

Schedule clause 38A: inserted, on 15 June 2023, by clause 6(3) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2023 (SL 2023/141).

38B. After 31 July 2023, the inquiry may not produce any research reports, case studies, or issues papers if doing so may delay completion of the final report.

Schedule clause 38B: inserted, on 15 June 2023, by clause 6(3) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2023 (SL 2023/141).

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 26 June 2024. 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 final report may also be published on the inquiry's website.

Schedule clause 39: amended, on 28 March 2024, by clause 4(2) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2024 (SL 2024/23).

Schedule clause 39: amended, on 5 August 2021, by clause 5(16)(b) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

39A. If any of the inquiry's recommendations under clauses 32 and 32A made to the appropriate Minister by 30 May 2024 (*see* clause 32B) differ from the inquiry's recommendations on those matters made in its final report to the Governor-General, the inquiry must ensure that the final report includes—

- (a) an explanation of the changes made to the recommendations; and
- (b) the reasons for the changes.

Schedule clause 39A: inserted, on 15 June 2023, by clause 6(5) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2023 (SL 2023/141).

Schedule clause 39A: amended, on 28 March 2024, by clause 4(1) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2024 (SL 2024/23).

- 39B. If the Minister considers that the final report includes information that, if disclosed, would be likely to prejudice the right to a fair trial, the Minister may make redactions to the report to exclude that information. However, if the Minister presents a redacted report, the Minister must table the complete report as soon as practicable after the information is no longer likely to prejudice the right to a fair trial.

Schedule clause 39B: inserted, on 15 June 2023, by clause 6(5) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2023 (SL 2023/141).

40. *[Revoked]*

Schedule clause 40: revoked, on 5 August 2021, by clause 5(17) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

41. The inquiry must take steps to ensure that its final report is easy for the public to access and understand.

Schedule clause 41: replaced, on 15 June 2023, by clause 6(6) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2023 (SL 2023/141).

Amendments

42. The appropriate Minister may amend these terms of reference in accordance with the Act.

Schedule clause 42: amended, on 5 August 2021, by clause 5(18) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

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.

Notes

1 *General*

This is a consolidation of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Order 2018 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2024 (SL 2024/23)

Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order (No 2) 2023 (SL 2023/250)

Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2023 (SL 2023/141)

Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179)

Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2019 (LI 2019/268)