

ROYAL COMMISSION INTO ABUSE IN CARE PRELIMINARY HEARING

25 JUNE 2019

ADDRESS BY COUNSEL ASSISTING

Tena koutou katoa.

Tena tatau kua haere mai nei i runga i te karanga o tenei kaupapa me nga mahi nui kei mua i a tatau.

(I acknowledge all of us here that have been brought together by this significant kaupapa and the important work ahead)

No reira tena koutou, kia ora tatau katoa

[1] May it please the commission, my name is Simon Mount and I appear today as Counsel Assisting the Inquiry, together with Hanne Janes and Julia Spelman. The Inquiry's Deputy Counsel Assisting, Kerryn Beaton, cannot be with us today.

[2] The purpose of this address is to give some more information about the way the Inquiry will work in practical terms. I will have a particular focus on the public hearings, but I will also mention some of the other important parts of the Inquiry that have already been described by the Commissioners.

[3] Before I go into further detail, it is important and appropriate to hear the voice of those who are at the centre of this Inquiry: the survivors of abuse in care.

[4] For Netta Christian, her memories of abuse as a State Ward remain vivid to this day. In her words, taken from her book "Stolen Lives", her "foster mother would fly into the most awful rages, thrashing and whipping me from when I was quite small. I compared her to a volcano, as you never knew when she would blow up... I used to scream at her "Why are you belting me?" She would scream back "You know why my girl, you know the reason why." But I never did know why.'

[5] Along with regular physical and emotional abuse, Netta experienced months of sexual abuse by a neighbour. Nobody did anything to stop that.

[6] As Netta says, “something is terribly wrong when power is given to people who abuse it. My brother and I were not two sacks of potatoes; we were small, innocent, vulnerable children with names, feeling, wants and needs. Above all we had the right to be shown love and protection and to grow up in a safe and happy home. Instead we got constant abuse, neglect and lifelong feelings of utter worthlessness simply because we were state wards.”

[7] Reflecting on her own life, Netta came to the conclusion that for her and her brother, “the Child Welfare Department had stolen our childhood from us.”

[8] Along with many others, Netta has made a short video – which is available on the Royal Commission website – which means we can hear from her directly:

[play Netta’s video]

[9] That is why we are here today. Because of people like Netta and the many other thousands of young people and adults who experienced abuse and neglect while in care. Netta is only one voice, but today she is an important reminder of the personal impact of such abuse and the importance of the task ahead.

[10] A few moments ago, I introduced the team of Counsel Assisting the Inquiry. We as Counsel have several roles in this Inquiry:

- (a) One of our key roles will be to direct the investigations that lead to public hearings. In a moment I will talk about the broader investigation teams we will lead, which will include people with many different backgrounds and skills.
- (b) At the public hearings, we will ask questions on behalf of the Commission and we will also represent the public interest. An important part of that will be to make sure survivors have a voice, and are treated properly - with respect and sensitivity throughout the hearing process.

- (c) We will give advice to the Royal Commission about its legal powers and obligations.
- (d) We also have a number of other roles throughout the life of the Inquiry, which I don't need to describe in detail now.

Public hearings

[11] As Commissioner Erueti has explained, public hearings have several purposes. They allow people to bear witness publicly so that New Zealanders can hear the truth about abuse that has happened in the past, and in many cases is still happening. Secondly, they allow institutions and leaders to be held to account for what has happened and for their actions or inaction. Thirdly, they provide a public forum to examine the law, policies and practices that are meant to prevent and respond to abuse.

[12] For these reasons, public hearings will be a critical part of what we do in the Royal Commission. I want to explain in a little bit more detail how the public hearings will work.

[13] The first point is that public inquiries are very flexible. There is not only one kind of public hearing, and public hearings can operate in many different ways.

- (a) In some cases, our public hearings will involve very direct questioning in order to hold institutions and individuals to account for past abuse and their response to it.
- (b) In some cases, we will hear from survivors who are called to speak at public hearings. They will be able to do so in an appropriate way, with due regard to the sensitivity of the matters being discussed. In many cases, people will do this anonymously, without revealing their identity publicly. In other cases, some people may choose to give evidence of their experiences without that protection. But nobody will be required to give evidence publicly in that way unless they choose to.
- (c) In some cases, public hearings will be about the Commissioners listening to the evidence of people who have broad knowledge about the topics in the Terms of

Reference. They might include University researchers or academics, professionals working in this area, or other people who have studied and learned about these issues. Particularly when we are in that kind of mode, a public hearing will not resemble a traditional legal process but will allow a more open dialogue and discussion.

- (d) In some cases, public hearings will be forward looking, and the focus will be on identifying changes or solutions that will make sure we learn the lessons of the past.
- (e) Importantly, any particular public hearing may involve a mixture or combination of the things I have just mentioned.

[14] Some Inquiries take place in private, behind closed doors. For very good reason, some aspects of this Inquiry will also happen in private. The most obvious example is the private sessions that Commissioner Aloffivae has described. But it is important that some of our work takes place in public to bring sunlight to things that have been covered up for too long. Our choice to operate with public hearings will allow that, but it does not mean we will be overly legalistic. In everything we do, we will be guided by the principles and values the Inquiry has very clearly set out. And while there may be lawyers involved, the Inquiry will remain in control of the process from beginning to end. This will not be an Inquiry dominated by lawyers or an overly legalistic or adversarial approach.

[15] Every public hearing will begin with an investigation. The focus of each investigation and hearing will be set out in advance in what is called a 'scope document':

- (a) The scope document will set out clearly the topics and questions the Inquiry will address in the particular investigation. It will be like a mini terms of reference for the particular investigation.
- (b) For example, one topic in the Terms of Reference is the redress and rehabilitation processes for individuals who have experienced abuse in care. To address that topic, the scope document might include questions such as:

- (i) How has the State treated people who claimed compensation or other redress for past abuse?
- (ii) What tactics and methods has the State used in those cases?
- (iii) What has been the effect of the State's conduct on those seeking compensation for abuse?
- (iv) What have the outcomes been for those people?
- (v) How could things be done better?

[16] The Inquiry could ask similar questions about redress and rehabilitation processes in faith-based institutions. Those are just examples, but the key point is that the Inquiry will be clear at the start of each investigation what it is specifically planning to investigate.

[17] We expect the Inquiry will carry out many investigations, each with its own scope document. The Inquiry has developed criteria to help choose the things it will investigate. Our starting point, of course, is the Terms of Reference. We will try to reflect a national approach and cover diverse settings including State and religious institutions, schools and hospitals, out of home care, adoption, and foster care. We will consider in each case whether:

- (a) We have a compelling set of allegations about a particular institution or group of institutions, including materials gathered through our private sessions;
- (b) We will identify whether witnesses are available, including both survivors and alleged perpetrators, as well as relevant documents and other evidence; and
- (c) We will try to ensure that our investigations and public hearings identify any systemic issues, particularly those relevant to the eight pou developed by the Commission;
- (d) We will try to ensure a fair representation of affected people, including men and women, boys and girls, people from economically deprived communities and families, Maori, Pasifika, LGBTQI, and people with disabilities.

[18] For example – and these are just examples – the Inquiry may carry out investigations into:

- (a) Particular State institutions like Lake Alice Psychiatric Hospital, as well as the more well-known institutions such as Epuni Boys' Home;
- (b) Faith-based residences and faith-based care more generally; and
- (c) Some broader thematic topics, for example, the abuse of Maori and Pacific people and abuse and neglect in the disability sector.

[19] In each case the Inquiry will publish a **provisional** scope document at an early stage. That will help us to identify **core participants** who may or may not have previously sought that status with the Inquiry. The Inquiries Act defines a core participant as:

- (a) a person who has played or may have played a direct and significant role in relation to the particular topic, or
- (b) someone with a significant interest in a substantial aspect of the topic, as well as
- (c) someone who may be subject to explicit or serious criticism in that phase of the inquiry.

[20] For each investigation and public hearing, the Inquiry will have a multi-disciplinary team:

- (a) We will soon be announcing a **panel of legal counsel** and we will appoint particular counsel from the panel to lead investigations, depending on the expertise and background required. We have already appointed three counsel to begin work for the Commission – they are Hanne Janes, Chris Merrick and Julia Spelman. It is extremely important to the Inquiry that our group of counsel come from diverse backgrounds, and we will make sure we have Maori and Pacific counsel, as well as those with experience in the disability sector.

- (b) In each case, counsel will be supported by a team of investigators, researchers, lawyers and other specialists. We already have the help of a senior human rights expert, Rachel Opie, and a team of experienced researchers.

[21] The investigation teams will work to identify the documents and witnesses the Inquiry needs to consider:

- (a) In some cases, the witnesses will be people who have chosen to contact us directly, either with or without the help of a lawyer. For those people who already have a lawyer, there is no need for them to change or get a new lawyer;
- (b) In some cases, we may make direct approaches to people to ask whether they would be willing to provide evidence to the Commission;
- (c) In other cases, people may have already spoken with a Commissioner in a private session and may have said that they would like to follow that up with evidence in a public hearing. Nobody will be forced to participate in a public hearing, and nobody will be required to give evidence more than once unless they want to.

[22] The Commission will select investigations and public hearings very carefully using the criteria I have mentioned. We will also select witnesses for each public hearing carefully, to make sure we have the right mix of people, backgrounds and evidence. Unfortunately it may not be possible for everyone who wants to be a witness in a public hearing to give evidence in public. However, the Commission's door will be open in the many ways that have been described, so that nobody will be excluded even if they cannot give formal public evidence at a public hearing.

[23] As for documents, some of these will come directly from the Royal Commission's research team who have already begun their work uncovering relevant material.

[24] In other cases, we will issue legal notices to institutions or government bodies requiring them to provide documents to the Royal Commission.

[25] Those compulsion notices will be issued under the Inquiries Act – which gives the Inquiry strong legal powers to require documents and information from both government and private bodies. The Inquiry also has the power to summons witnesses - in other words to force individuals to attend and answer questions. Obviously that power will be used only if necessary, and no survivor will be forced to attend a Royal Commission hearing.

[26] The Inquiry has taken steps to make sure that documents relevant to the Inquiry are not destroyed or disposed of. At the request of the Inquiry, the Government's Chief Archivist has issued a disposal moratorium. What that means is that no government agency is permitted to destroy or dispose of any document that might be relevant to the work of the Royal Commission. The Inquiry has made it very clear in a written notice that the same expectation applies to private bodies, for example faith-based institutions including churches.

[27] For each investigation, core participants will be given access to any statements and documents they need in order to participate fairly in the public hearing. If necessary, parts of documents and statements will be redacted or blacked out to protect the identity of survivors. However, the Inquiry will make sure that all participants have the information they need to participate fairly in a public hearing.

[28] When an investigation is ready to proceed to a public hearing, it will be scheduled, and the dates will be announced. We expect that most public hearings will last between one and three weeks, although the exact length of each hearing will vary. The venues for public hearings are still being finalised, but they may include major centres such as Auckland or Wellington, and potentially other places as well. In each case the hearings will be live streamed on the Inquiry's website so that people can follow them even if they are not able to be physically present. For witnesses with identity protection, the live stream will be carefully managed to ensure the privacy of those witnesses.

[29] The Commissioners will sometimes sit as a full group of 5, and other times there will be a smaller number of Commissioners sitting on a hearing – for example 3. The decision about the number of Commissioners to sit at a hearing will not reflect the importance of the hearing – it is simply a way to help complete the work of the Inquiry in a timely way. There will be a full transcript of everything said at a public hearing, so that all Commissioners will be fully informed, whether or not they sit at a particular hearing.

[30] At the public hearings themselves, the Commissioners will control what happens to make sure it is both fair and appropriate for all participants. Public hearings are not like court cases or law suits and they are not like criminal trials. There will be no absolute right for any participant to cross-examine witnesses. The Commission will decide in each case whether questioning of witnesses will be permitted, by whom, and if so what the permitted scope of questioning will be. The purpose of that is to make sure this is not an overly legalistic process.

[31] After each public hearing the Inquiry will typically write up and publish a report of its findings. As I said a moment ago, these are not court cases or criminal prosecutions, and the Inquiry has no power to make findings of criminal, civil or disciplinary liability. What the Inquiry can do is reach findings about what happened, why it happened and most importantly how to prevent harm in the future.

[32] It is important to emphasise the Inquiry has a legal duty to treat people fairly. That means that nobody will be subject to an adverse finding (for example be criticised) by the Royal Commission unless that person is aware of the matters on which the finding is based, and have had a fair opportunity to respond at some point during the Inquiry.

[33] I want to address some particular questions that people may have:

- (a) Many people have questioned whether the Inquiry can consider abuse that occurred after 1999. The short answer is yes. That was one of the changes to the Terms of Reference suggested by the Chair and accepted by the Government. The Inquiry therefore **does** have a discretion to hear evidence about experiences after 1999 in order to inform its recommendations for the future.
- (b) Some people have asked whether the Inquiry has strong legal powers, and whether it will use those powers to uncover any documents that the Government or faith-based institutions might not want to provide. Again, the answer is yes. The Inquiries Act contains a number of powers, and I have already referred to some of them. The Commission has made it clear that it will use those powers to the greatest extent possible to make sure the Inquiry uncovers the truth.

- (c) Some people have been worried that they may incriminate themselves if they tell the Royal Commission about any criminal offending they may have committed as a result of abuse they suffered in care. The Royal Commission has a very clear policy on this that is available on our website. The short point is that nobody will be forced to tell the Royal Commission about any criminal offending they may have committed. For those who choose to tell a Commissioner about such offending in the course of a private session, we will keep that information confidential unless it falls into a very narrow list of exceptions. Those are set out clearly in the policy on the Royal Commission's website. The most obvious exception is where there is a **current threat** to someone's health or safety.
- (d) Many people have asked whether there will be funding available for legal assistance for those participating in the Inquiry. Again, the short answer is yes. Under the Inquiries Act, the Royal Commission has the power to recommend to the Government that funding be available for legal assistance. The Commission has made it clear that it will make such recommendations in appropriate cases, and the Government has been working through the arrangements to make sure that legal advice is available for those who need it. Further details about that scheme will be made available as soon as possible and will be posted on the Royal Commission website.
- (e) People have asked whether there will be a process to refer any concerns about current perpetrators and offenders to the police. The answer again is yes – the police have set up a special process to receive such referrals, and to make sure that survivors of abuse will be treated appropriately when they need to make such a complaint.
- (f) Some people have raised a concern about whether information from the private sessions will be taken into account by the Inquiry. I can make it very clear that the information from private sessions is an important part of the Commission's work. While it is not evidence **under oath** in a formal sense, it is certainly an important part of the information available to the Commission, which will inform the final report. Commissioners will hear that information directly.

- (g) We have been asked about how the Commission will engage with groups such as prisoners and ‘hard to reach’ survivors. This is very important, and the Inquiry has already negotiated a protocol with the Department of Corrections to make sure we will have confidential access to prisoners who wish to speak with us. We also have plans in place to make sure that traditionally ‘hard to reach’ people will be able to speak with the Inquiry.

- (h) As well as the points I have just covered, the Inquiry’s website has a plain English explanation of the Terms of Reference, an Easy Read version, a Sign Language version, as well as translations into Maori, Cook Islands Maori, Niuean, Samoan, Tokelauan and Tongan. There are also answers to questions about the scope and meaning of key words and phrases in the terms of reference. Anyone who wants more information is welcome to get in touch with the Inquiry and we will do our best to update the website with further clarifications as required.

What next?

[34] Very shortly, the Inquiry will publish a detailed Minute and other documents with more information about the upcoming public hearings. We then plan to hold a hearing with core participants in August.

[35] This will be an opportunity for those core participants to address any issues of concern to them publicly and will be the first step towards the substantive hearing planned for October/November that Commissioner Erueti has already described.

[36] That October/November hearing will be the contextual hearing or the scene setting hearing where Commissioners will hear evidence from a number of witnesses talking about key aspects of the Inquiry.

[37] Work has already begun on the investigations for public hearings in 2020, and public announcements about that work will be made soon.

[38] Finally, I have spoken today on behalf of the Counsel Assisting team for the Royal Commission. That team is, of course, only one of the groups of people who will be working to assist the Commission. There are other very important groups of people supporting that work, who I want to mention briefly before I finish. They include:

- (a) Survivors, their families, whanau and hapu
- (b) The staff and secretariat of the Commission
- (c) Our Survivor Advisory Group
- (d) And the many other New Zealanders who see this work as important and who will play their part in the Inquiry, including as witnesses, core participants, their counsel and others.

[39] The experience of other similar inquiries in other countries, and the experience of this Inquiry to date, make it clear that this is not easy work and there may well be hard lessons to be learned along the way.

[40] But with the dedication and good will of such a large group of people as have already come forward to help, I am very confident that Commissioners will be well supported as you undertake this important work for New Zealand.

[41] No reira tena koutou, kia ora tatau katoa