

UNDER THE

Inquiries Act 2013

IN THE MATTER

of The Royal Commission of Royal Commission into
Historical Abuse in State Care and in the Care of Faith-
based Institutions

**MEMORANDUM ON BEHALF OF THE BISHOPS AND
CONGREGATIONAL LEADERS OF THE CATHOLIC CHURCH OF
AOTEAROA NEW ZEALAND:**

FOR 19 AUGUST 2019 PROCEDURAL HEARING

Date: 25 July 2019



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1. This memorandum is filed on behalf of the Bishops and Congregational Leaders of the Catholic Church of Aotearoa New Zealand, represented by Te Rōpū Tautoko (**Tautoko**), in response to Minute 1 - Procedural Hearing dated 2 July 2019 (**Minute 1**) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (**Royal Commission**).

2. This memorandum;
 - (a) Provides, to assist the Commissioners and other Royal Commission participants' understanding:
 - (i) A brief overview of the Catholic Church's structures and duties;¹
 - (ii) An initial outline of the types of care provided in Aotearoa New Zealand by the Catholic Church during the period being examined by the Royal Commission;

 - (b) Addresses the questions posed in Minute 1, including:
 - (i) Seeking confirmation of core participant status.
 - (ii) The kind of information that the Catholic Church, through Tautoko, could provide to the Royal Commission;
 - (iii) A preliminary indication of where the Catholic Bishops and Congregational Leaders may seek orders prohibiting publication from the Royal Commission; and

¹ Counsel note that practice within the Catholic Church is to refer to the global Catholic Church in the feminine, and therefore Catholic Church documents may refer to the Catholic Church as "she", "her", or "the Mother Church".

- (c) Requests the guidance from the Royal Commission on a number of matters.

3. Also filed with this memorandum are:

- (a) A letter of support from the Catholic Bishops and Congregational Leaders for the goals of the Royal Commission;
- (b) An appendix providing a more detailed description of the structures of the Catholic Church, prepared by Tautoko, to assist the Royal Commission; and
- (c) An application for leave to appear at the Procedural Hearing.

Commitment to the goals of the Royal Commission

- 4. The Catholic Bishops and Congregational Leaders welcome the inclusion of faith-based organisations and are committed to active and open participation in the Royal Commission.
- 5. This support is reiterated in the letter from Cardinal John Dew and Sr Katrina Fabish RSM, filed with this memorandum.

The Catholic Church in Aotearoa New Zealand

- 6. To assist the Commissioners and other participants in the Royal Commission, Tautoko has prepared an overview of the structure of the Catholic Church, and particularly, the Church in Aotearoa New Zealand.
- 7. This description is filed with this memorandum and is intended as a preliminary overview only, to assist the Royal Commission with its planning. It is anticipated that further detail will be sought by the Royal Commission in a number of key areas and evidence will be provided accordingly.

8. At this preliminary stage, Tautoko seeks to highlight the following relevant features of the Catholic Church in Aotearoa New Zealand.

The Structure of the Catholic Church

9. There is no single legal entity called “the Catholic Church” or “the Catholic Church in Aotearoa New Zealand”. Nor is there is a single “head” of the Catholic Church in Aotearoa New Zealand. Rather, the Catholic Church is made up of a number of entities. These entities can be broadly divided into dioceses, religious orders or congregations, and a number of other associated Catholic organisations and institutions.

Bishops and Dioceses

10. There are presently five dioceses in Aotearoa New Zealand - Auckland, Hamilton, Palmerston North, Christchurch, and Dunedin – and the Archdiocese of Wellington. The dioceses of Hamilton and Palmerston North were created in 1980.
11. Each diocese is headed by a bishop. In New Zealand, by virtue of the Roman Catholic Bishops Empowering Act 1997, each diocesan bishop is a corporation sole. All diocesan and parish property is vested in the bishop, as a corporation.
12. The Wellington Archdiocese is headed by Archbishop John Dew, who has also been appointed by the Pope as a Cardinal. However, Archbishop Dew is not the “leader” or “head” of the Church in Aotearoa New Zealand. Rather, each of the six bishops is accountable directly to the Pope for his own diocese.

Religious congregations or orders

13. In addition to the dioceses, there are currently over 40 religious congregations (or orders) in Aotearoa New Zealand.

14. A religious congregation is a group of men or women who take vows of poverty, chastity, and obedience (among others specific to the congregation). Member of congregations are referred to within the Catholic Church as “religious” or, if priests “religious priests”.
15. Each religious congregation is self-governing and has its own “rule” or constitution, and its own leadership, chosen by edicts of the congregation and to whom the members are responsible. Typically, religious congregations are significantly more democratic and participatory in governance than the wider Catholic Church.
16. Some religious congregations are led by a superior general at the international level, and by provincial superiors at the national or regional level. Others are autonomous congregations and do not have an international superior general. Within New Zealand, there are three congregations where the superior general/congregation leader resides in New Zealand.
17. There has been significant change among the congregations in the period being considered by the Royal Commission. The membership of many individual congregations is reducing and members are aging. A number of religious congregations which were previously active in Aotearoa New Zealand no longer have any members or physical presence. By contrast, a small number of congregations have commenced their missions in Aotearoa New Zealand since 1999.
18. Members of a congregation are called to a particular mission, often reflecting the particular concerns that motivated the founder of that congregation. In Aotearoa New Zealand, religious came primarily to provide education, nursing, and other services for the alleviation of poverty consistent with the needs of a then rapidly growing country. Over time, these needs diminished and many religious started working in other roles.

19. Of the congregations with a current or historical presence in Aotearoa New Zealand, approximately 25 undertook care or provided education in ways that are likely to fall within the remit of the Royal Commission.

Collective leadership

20. Amongst these independent entities, leadership groups are formed for particular purposes. Principal amongst these are:
 - (a) The New Zealand Catholic Bishops Conference (**NZCBC**), an unincorporated entity through which all six New Zealand bishops meet to facilitate understanding and cooperation.
 - (b) The Congregational Leaders Conference of Aotearoa New Zealand (**CLCANZ**), an umbrella body for the leaders of the religious congregations in Aotearoa New Zealand, also meeting to facilitate understanding and cooperation.
21. In 1982, NZCBC and CLCANZ formed the Mixed Commission as a vehicle for their partnership and as a forum for sharing their work with one another and resolving issues.
22. For practical reasons, this memorandum uses “Catholic Bishops and Congregational Leaders” to refer to the groups within the Catholic Church in Aotearoa New Zealand who are engaging with the Royal Commission.

Te Rōpū Tautoko

23. In 2018, following the draft Terms of Reference for the Royal Commission being announced, the Catholic Bishops and Congregational Leaders formed Tautoko.

24. Tautoko was formed to provide, as much as possible, a central and co-ordinated response to the Royal Commission and the Commissioners' inquiries.

25. In creating Tautoko, the Bishops and Congregational Leaders recognised that:

"...the Catholic Church is a family, a faith community of pilgrims, seeking a collective approach to understanding, reviewing, acknowledging and addressing the learnings of the past.

Even where institutions no longer exist or congregations have little presence in New Zealand, there is a collective accountability as Church leaders.

The recognition is that the Bishops and Congregational Leaders must speak with one voice and, together, learn and evolve".

(Te Rōpū Tautoko Terms of Reference, revised June 2019).

26. It is through Tautoko that the Catholic Bishops and Congregational Leaders will be collectively represented in the Royal Commission.

The size of the Catholic Church in Aotearoa New Zealand

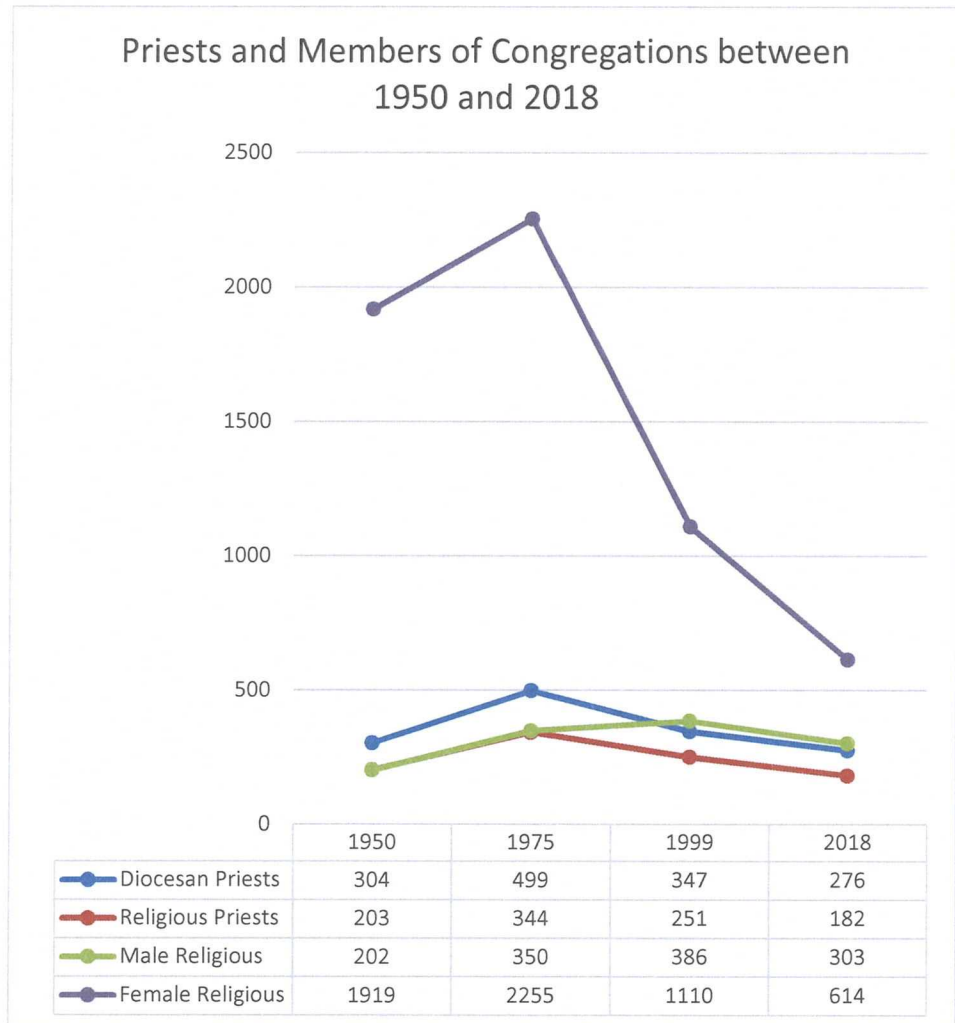
27. Members of the Catholic faith form one of the largest religious groups in Aotearoa New Zealand. In 1950, 10.8% of people in Aotearoa New Zealand identified as Catholic. That number was 14.2% in 1975, 12.4% in 1999, and was 10.9% in 2018.

28. Tautoko is continuing to compile relevant data and statistics that may be of interest to the Royal Commission. At present, the following information may be useful;

(a) In 1950 there were 193 Catholic Parishes and just over 200,000 Catholics. By 1999 there were 265 parishes and approximately 480,000 Catholics.

(b) Today, 201 parishes exist and over 500,000 people identify as Catholic.

(c) Over the period 1950-2019 the demographics of the number of Clergy and religious present in New Zealand has changed, as shown by the following graph:



Impact of the structure of the Catholic Church on the Royal Commission

29. As described above, each diocese and congregation in Aotearoa New Zealand is independent from each other and there is no single legal entity or authority for the Catholic Church in Aotearoa New Zealand.

30. There are a number of key impacts of this structure that are relevant to the inquiries of the Royal Commission.

(a) There is no single or definitive history or record of the care provided by the Catholic Church in Aotearoa New Zealand between 1950 and 1999.

(b) While there is central direction in a number of areas from Rome and in canon law, there are also variable practices and policies between different entities within the Catholic Church. In many cases, the care institutions in which the Royal Commission may have an interest no longer exist. The retention of the records has been variable. In some cases, the congregation no longer has a presence in Aotearoa New Zealand. Records may have been discarded or may now be in Australia or elsewhere overseas, because of the length of time that has elapsed since the institution's closure.

(c) There is no single repository for records within the Catholic Church in Aotearoa New Zealand. Historically, there was variable practice in record keeping and in the retention and archiving of those records. Some records do not, and have never, existed. Other records have been previously discarded, lost and in some cases, destroyed (through accidents, such as fire, or where it was thought they were no longer needed, such as where an institution closed some time ago).

(d) Nor is there likely to be individuals or potential witnesses with the breadth of knowledge about the relevant historical practices of the "Church" as a whole in Aotearoa New Zealand. Rather, this knowledge and experience will occur more often at a diocese or congregational level.

Steps taken in preparation for the Royal Commission by Tautoko

- 31.** Aware of these challenges in collating information and preparing evidence, Tautoko has taken a number of steps to commence preparation for the Royal Commission;
- (a) In December 2018, Tautoko sent a letter from its legal advisors to all dioceses, religious orders, and other Catholic entities instructing them to begin compiling the information they held, and forbidding the destruction of any documents or records that could be of interest to the Royal Commission.
 - (b) From March 2019, Tautoko began a project working with the dioceses and congregations to record and organise the relevant information. This includes identifying gaps in the information held by diocese and congregations.
- 32.** This work is ongoing. Due to the size and decentralised nature of the Catholic Church in Aotearoa New Zealand, the historical nature of the records, and the age of many priests and religious, this is a significant, and challenging, undertaking.

Care and education provided by the Catholic Church in Aotearoa New Zealand

- 33.** Care has always been offered to those in need as part of the wider religious and pastoral mission of the Catholic Church in Aotearoa New Zealand.
- 34.** The care provided in the earlier part of the Royal Commission's period responded to the significant number of people relying on charity and religious social support in difficult times. In this period, there was considerably less social security provided by the state. Many social services within the Catholic Church were established and grew in response to this need.

- 35.** Over time there has been a reduction in the scale of residential care provided within the Catholic Church. This appears to be closely linked to wider societal changes across Aotearoa New Zealand. The rise of the welfare state in particular made a significant number of Catholic-run institutions, works, services and ministries unnecessary, as their role was being steadily replaced by state care and non-residential support for families.
- 36.** An overview of the types of care provided within the Catholic Church is provided below.
- 37.** As information gathering is ongoing, the details and conclusions are necessarily tentative. This material is not presently in a form that could be tendered as formal evidence. It is provided here to assist the preliminary understanding and planning of the Royal Commission.

Residential care

- 38.** It appears that there were approximately 65 institutions, that may be within the scope of the Terms of Reference of the Royal Commission. These institutions provided some form of “residential” care to children and vulnerable adults within the Catholic Church between 1950-1999. This category has been approached broadly.
- 39.** From the information gathered to date, this includes:
- (a) Orphanages;
 - (b) Respite care;
 - (c) Homes for unmarried mothers;
 - (d) Skills training facilities;
 - (e) Emergency shelters;
 - (f) Care of those at-risk;
 - (g) Pastoral care and retreats;
 - (h) Supervised living;
 - (i) Refugee care;
 - (j) Hostels; and
 - (k) Psychiatric care.

40. Many institutions included some or all of the above services. Of these, three continue to exist in some form today.
41. In a number of these institutions, there was both “indirect state care” of children placed by the state and non-state residential care. Children came into the Catholic Church’s care through a variety of means, ranging from State placement, families, parents, male widows, or single mothers making a considered decision to place children with the Church, through to the abandonment of children at churches and other Catholic institutions.
42. Where a child came into the residential care of the Catholic Church without State involvement, there are a number of important differences from State care. These include the types of circumstances which lead to the child being in care, its voluntary nature, the motivation of the Catholic Church in providing different sorts of care, the relevant legislative scheme, and the level of oversight. Tautoko anticipates that the nature, relevance, and impact of these differences will be examined during the course of the Royal Commission.

Non-residential care, social services and ministry

43. In addition to residential care, there was – and remains – non-residential care and support provided by social services within dioceses and congregations for children and vulnerable adults. These includes services such as:
- (a) Adoption services;
 - (b) General, family and grief counselling;
 - (c) Skills training;
 - (d) Early intervention/prevention work;
 - (e) Social work services;
 - (f) In-home care;
 - (g) Outreach programmes;

- (h) Mental health and well-being programmes; and
- (i) Youth work.

44. In addition to specific social services, a fundamental feature of the role of priests and religious members in the Catholic Church is to provide spiritual and pastoral care, especially supporting families, children, and the vulnerable.

45. Distressingly, in some cases, this has allowed abuse to be committed against those who should have been protected. Counsel notes that the “Questions and Answers” for the Royal Commission include abuse which happened in these settings.

Education

46. The Catholic Church has also had a significant role in education, one that continues today. Many of these schools were started by congregations to provide for the needs of people in Aotearoa New Zealand for education, especially for those without resources.

47. From the currently collected information:

(a) In 1950, there were:

- (i) 83 Catholic colleges and 55 boarding schools (which may be included in the college figure) serving 7,159 college students.
- (ii) 196 Catholic primary schools serving 27,222 students;

(b) In 1975, there were:

- (i) 81 Catholic colleges and 42 boarding schools (which may be included in the college figure) serving 21,230 college students.
- (ii) 254 Catholic primary schools serving 43,816 students;

(c) In 1999, there were:

- (i) 47 Catholic colleges and 22 boarding schools (which may be included in the college figure) serving 24,651 college students.
 - (ii) 194 Catholic primary schools serving 34,010 students;
- (d) In 2018, there were:
- (i) 49 Catholic colleges and 13 boarding schools (which may be included in the college figure) serving 31,935 college students.
 - (ii) 188 Catholic primary schools serving 34,953 students;
- 48.** Of the schools within the Catholic network, Tautoko has identified 66 Catholic schools (both primary and secondary) with boarding facilities during the 1950–1999 period. Of these, 13 boarding schools (all secondary) remain.
- 49.** The legislative structure and oversight of Catholic schools was fundamentally changed in the middle of the Royal Commission’s period, when they were integrated into the State system under the Private Schools Conditional Integration Act 1975. Integration took place on a school-by-school basis and was completed for Catholic schools by 1984. An integrated school has a designated “special character”. Of the 330 state-integrated schools, 237 have Catholic Character as their “special character”. As integrated schools, Catholic schools receive significant direct state funding.

The Information sought by the Royal Commission in Minute 1

“Core participant”

- 50.** The Catholic Bishops and Congregational Leaders anticipate, given the scale of care and education that was provided under the auspices of the Catholic Church in Aotearoa New Zealand between 1950 and 1999, the Catholic Church will be a ‘core participant’ in the Royal Commission.

51. The Catholic Bishops and Congregational Leaders welcome this and ask that Tautoko be the contact point for all matters relating to the Catholic Church. Tautoko can coordinate the appropriate responses.
52. Tautoko looks forward to formal confirmation of “core participant” status from the Royal Commission in due course.

Outline of proposed information

53. Tautoko looks forward to an indication from the Royal Commission of the information and evidence the Royal Commission will require and on what timeframes.
54. It is clearly impractical (and indeed, likely to be very unhelpful) to seek to provide the Royal Commission with “all” the information relating to the Terms of Reference and care and education across the Catholic Church in Aotearoa New Zealand between 1950 and 1999.
55. Tautoko looks forward to working with the Royal Commission to ensure that the relevant information, evidence and material can be provided in a timely way.

Orders prohibiting publication

56. Tautoko anticipates that it may seek orders preventing the publication of names of individuals or other identifying details where appropriate. Tautoko anticipates that such orders may be sought where publication would;
 - (a) breach the terms of a discussion or an agreement, where confidentiality was requested by the victim;
 - (b) risk identifying a victim or victim’s family without the consent of that victim, including where details of perpetrators risk identifying the victim; or

- (c) breach a prior court suppression order of which Tautoko is aware.

Guidance on future structure of the Royal Commission

- 57.** Tautoko requests guidance from the Royal Commission on its intended future structure and, how and when it will conduct hearings.
- 58.** Considering the approaches taken in other jurisdictions, it is anticipated that there may be:
 - (a) case studies, focusing on representative examples;
 - (b) hearings examining themes that apply to all participants; and/or
 - (c) thematic hearings where a faith-based perspective will be sought.
- 59.** At present, it is not known how any case studies will be selected or which key themes will involve faith based groups. Tautoko welcomes guidance from the Royal Commission in these areas.
- 60.** Tautoko's ability to respond to the Royal Commission's request and assist in any hearings relating to the Catholic Church will be greatly assisted by:
 - (a) An intended hearing timetable.
 - (b) A high-level outline of the subject matter for each hearing.
- 61.** We look forward to receiving this as soon as is possible.
- 62.** Tautoko understands that the detailed approach to be undertaken to each hearing will be outlined using a "scoping

document". These documents are welcomed. However, counsel asks, where possible, that an indication of likely areas for hearings be outlined ahead of the detailed scoping documents become available.

Procedural guidance

- 63.** Tautoko seeks guidance from the Royal Commission on how it intends to approach key procedural matters. In particular, Tautoko looks forward to clarity on the following;

Natural justice and specific factual allegations

- 64.** Tautoko invites guidance from the Royal Commission about how it intends to deal with specific factual allegations.
- 65.** The natural justice of any living individuals facing allegations will need to be considered. Tautoko looks forward to clarity from the Royal Commission about how it intends to address this issue, particularly during hearings. Tautoko raises this now, as it wishes to avoid, or at least, minimise any adversarial element in forthcoming hearings.

Privacy and confidentiality

- 66.** Tautoko invites guidance about the approach to be taken by parties to anonymising primary documents, evidence and other information prior to material being provided to the Royal Commission.
- 67.** Tautoko, and the organisations it represents, holds a considerable volume of personal and private information about both children and their families. Very many of these children will not be involved directly with the Royal Commission. In many of these files, there is distressing information about the circumstances that led to care being required. In some cases, the people who are the subject of these files, who are now adults, may not know this information.

- 68.** While Tautoko is determined to be open and transparent with the Royal Commission, it wishes to do this in a way which respects and protects the information of both the survivors who seek the Royal Commission's assistance, and the other children and vulnerable adults who have been in in the Catholic Church's care.
- 69.** Tautoko is aware that the approach to documents needs to allow the document to both be understood, and ensure that the privacy and confidentiality of individuals is protected. For example, will naming conventions be used as they have been in other inquiries of this sort? And if so, what are these intended to be?
- 70.** Tautoko also seeks guidance in due course as to how the Royal Commission intends that privacy and confidentiality will be addressed during the hearings and in its subsequent reporting.

Allegations against current members of the Catholic Church

- 71.** The Catholic Bishops and Congregational Leaders are aware that allegations may be made during the Royal Commission against current members of the Catholic Church.
- 72.** Should such an allegation be made, Tautoko asks to be informed of the allegation in general terms, to enable any steps required to keep third parties safe can be taken while the investigation is underway. In many cases, priests and religious members of the Catholic Church will be in community with others.
- 73.** The Catholic Bishops and Congregational Leaders anticipate, and support, such matters being referred to the Police and investigated. The Catholic Church will cooperate to its fullest legal extent with any Police investigation.

Conflicts of interest

- 74.** Tautoko has noted the Commissioners' conflicts of interest management plans and in particular, the references in those

plans to the Catholic Church. The Policies uses the term “close association” to indicate when there may be a potential conflict of interest.

75. Tautoko urges the Royal Commission to take a cautious approach to possible conflicts of interest and request further clarification as to what the Royal Commission consider constitutes a “close association”.

Education

76. It is noted that the upcoming Contextual Hearing does not include education in any form.
77. Given the extent of education undertaken within the Catholic Church during the period being considered by the Royal Commission, general guidance is sought about the Royal Commission’s intentions. In particular, how, if at all, are day schools to be considered by the Royal Commission?

Upcoming hearings

19 August Hearing

78. An application for leave to appear have been filed in relation to the 19 August 2019 Procedural Hearing.

Participation in the 29 October “Contextual” hearing

79. Tautoko invites the Royal Commission to indicate if it would be assisted by Tautoko’s participation in the October “Contextual” hearing.
80. Counsel notes that the Scoping Document appears to anticipate the involvement of ‘faith-based’ groups. However, as presently drafted, the Scoping Document is predominately “State” focused in its framing. In particular, concepts such as “taken into care”

and “targeting Māori” do not apply in circumstances of voluntary care.

81. As briefly foreshadowed in this memorandum, there are a number of matters where the Catholic Church and other faith based groups have a different perspective from the State.
82. Tautoko would be grateful if the Royal Commission would indicate if it would assist for Tautoko to appear to provide this perspective and context at the October hearing.

Date: 25 July 2019



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