

Discussion paper

Paper One: The potential purpose and scope of an inquiry into abuse in state care

Date: 07 December 2017

Security Level: IN CONFIDENCE

To: Ministerial Working Group on the Inquiry into Abuse in State Care

Purpose

- 1 This discussion paper outlines key issues relating to the purpose and scope for the proposed inquiry into abuse in state care. It seeks Ministers' feedback on these matters.

Executive summary

- 2 The Government has committed to setting up an inquiry into the abuse of children in state care as part of its 100-day plan (the Inquiry).
- 3 Establishing an inquiry of this nature is complex, and there is a range of issues that will need to be considered. The purposes and scope of the Inquiry will signal the Government's intent as to what it should address and seek to achieve, and could have a range of operational, financial and legal implications
- 4 This paper provides the Working Group with the first of two tranches of information on these matters. We seek your feedback on options around:
 - the purposes and related outputs for the Inquiry
 - the potential scope of the Inquiry, including:
 - how care should be defined for the purposes of the Inquiry
 - how abuse should be defined for the purposes of the Inquiry
 - whether the Inquiry should cover children and young people only, or also include vulnerable and disabled adults
 - whether the Inquiry should consider an historic period only (eg abuse in care before the early 1990s), or include consideration of more recent periods.
- 5 In this paper we have sought to reflect the range of possible options and their implications, as well as stakeholders' views, rather than offer recommendations.
- 6 Oranga Tamariki has begun targeted engagement on these matters with a range of stakeholders, including signatories to the *Never Again/E Kore Anō* campaign, individuals who have made public statements, and key Māori and Pacific stakeholders.
- 7 We invite you to indicate matters in this paper on which you would like further information or a more detailed summary of stakeholders' views.
- 8 On 18 December 2017, the Working Group will meet to discuss a second paper covering other establishment questions, including the type of inquiry, reporting, appointments, structure and funding.

- 9 We will seek to provide a draft Terms of Reference reflecting Working Group feedback for consideration as soon as practicable.

Recommended actions

It is recommended that you:

- 1 **note** that on 4 December 2017, Cabinet agreed to establish a Ministerial Working Group to guide decision-making on the establishment of the Inquiry and invited a report back in January 2018 on draft terms of reference, budget and appointment of the head of the Inquiry [CAB-17-MIN-0520 refers]
- 2 **note** the options set out in this paper for the following aspects of the Inquiry:
 - 2.1 purposes and related outputs of the Inquiry
 - 2.2 scope of the Inquiry, including definition of state care, definition of abuse, age range and time period
- 3 **note** that the purposes and scope of an inquiry will signal the Government's intent as to what the inquiry should address and seek to achieve, and could have a range of operational, financial and legal implications
- 4 **provide feedback** on:
 - 4.1 your preferred purposes to be set for the Inquiry
 - 4.2 your preferred outputs to accompany the purposes for the Inquiry
 - 4.3 how care should be defined for the Inquiry
 - 4.4 how abuse should be defined for the Inquiry
 - 4.5 whether the Inquiry should cover children and young people only **OR** children, young people and vulnerable and disabled adults
 - 4.6 whether the Inquiry should consider an historic period only (eg abuse in care before the early 1990s), **OR** include consideration of more recent periods
- 5 **note** that on 18 December 2017 the Working Group will meet to discuss a second paper covering other establishment questions, including the type of inquiry, reporting, appointments, structure and funding
- 6 **note** that we will provide a draft Terms of Reference reflecting Working Group feedback for consideration as soon as practicable.

Joint paper:

Paul Kissack, Deputy Chief Executive, Leadership and Organisational Development, Oranga Tamariki

James Poskitt, General Manager, Community and Families Policy, Ministry of Social Development.

Circulated by Hon Tracey Martin, Minister for Children, and Hon Carmel Sepuloni, Minister for Social Development.

Background

- 10 The Government has committed to setting up an inquiry into the abuse of children in state care as part of its 100-day plan (the Inquiry).
- 11 On 4 December 2017, Cabinet agreed to establish a Ministerial Working Group (the Working Group) to guide decision-making on the establishment of the Inquiry and invited the Minister of Internal Affairs to report back to Cabinet in January 2018 from the Working Group, including the on draft terms of reference, budget and appointment of the head of the Inquiry [CAB-17-MIN-0520].
- 12 There have been calls for an independent inquiry into abuse in state care in New Zealand for many years, including most recently by the *Never Again/E Kore Anō* campaign¹, launched by the Human Rights Commission, and by the United Nations Committee on the Elimination of Racial Discrimination (CERD).²
- 13 Previous government responses to concerns about abuse in state care have included:
 - the Confidential Listening and Assistance Service (CLAS), which provided a forum from 2008 to 2015 to hear from and assist people who alleged abuse or neglect in state care before 1992, listening to 1103 people over seven years
 - the Confidential Forum for Former In-Patients of Psychiatric Hospitals (the Confidential Forum), which provided a forum from 2005 and 2007 to hear from and assist 493 people with concerns about former patients' experiences in state institutions before 1992
 - government agency claims processes to settle claims with individuals where possible, such as the Ministry of Social Development (MSD) historic claims process, which in the last five years has resolved approximately 540 claims.
- 14 CLAS and the Confidential Forum have taken a focus on hearing and responding to individuals coming forward with their experiences, and agency settlement processes have focused on resolving individual claims. An inquiry could build on this previous work to take a focus on investigating these issues at a systemic level.

Reporting to Cabinet on the draft Terms of Reference for the Inquiry

- 15 The Minister of Internal Affairs will report back to Cabinet by 29 January 2018 with advice on decisions around the establishment of the Inquiry. These decisions will be reflected in the Inquiry's draft Terms of Reference.
- 16 The Inquiries Act 2013 (the Act) governs the establishment and implementation of statutory inquiries, and the Cabinet Manual provides further guidance on this. The Act specifies that the Terms of Reference for a statutory inquiry may set out any relevant matters, including:
 - the scope and purpose of the inquiry
 - administrative and procedural matters
 - a reporting date, provisional reporting date, or a process for determining the reporting date.
- 17 This paper provides you with the first of two tranches of information on these matters. It sets out options for the purposes, outputs and potential scope for the Inquiry.

¹ <http://www.neveragain.co.nz/sign>

² http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NZL/CERD_C_NZL_CO_21-22_28724_E.pdf

- 18 On 14 December 2017, we will provide you with a second paper that sets out options for:
- the desired type of inquiry under the Act (public inquiry, Royal Commission or government inquiry)
 - reporting
 - the structure of the Inquiry, including the appointment of its Chair
 - funding options
 - key principles for ways of working
- 19 We will provide a draft Terms of Reference reflecting Working Group feedback for consideration as soon as practicable.

Key considerations

- 20 The purpose and scope of the Inquiry will signal the Government's intent as to what it should address and seek to achieve. Setting up an inquiry of this nature is complex, and there is a range of specific issues that will need to be considered.

Addressing stakeholders' concerns

- 21 A primary concern for the Inquiry will be addressing the needs and concerns of survivors and other stakeholders.
- 22 We have begun targeted engagement with a range of stakeholders, including signatories to the *Never Again* campaign, people who have made public statements and key Māori and Pacific stakeholders. Where appropriate, we have indicated stakeholders' views on different matters in this paper. Appendix 1 provides a list of the stakeholders we have engaged with.
- 23 A number of key issues have been raised in our early engagement and in public statements around the potential purpose and scope of the Inquiry:
- whether the Inquiry should take a primarily historic focus or also consider recent and continuing issues
 - the degree to which the Inquiry should take a systemic focus³, and/or consider specific cases, including individual redress
 - questions around scope, including how broadly to define 'state care', whether the Inquiry should focus on children only, and how broadly to consider concepts of harm.
- 24 It is likely not possible for an inquiry to be set up to please all stakeholders. While some stakeholders are concerned that the Government may draw the Terms of Reference too narrowly and miss important issues of concern, others are concerned that a broad Terms of Reference will lose a distinct focus on the issues they are most concerned about. Clear public explanations of decisions taken and further consultation or public engagement will be needed to ensure the final Terms of Reference command sufficient support.
- 25 Some stakeholders we have spoken to have indicated concern around how potential conflicts of interest will be managed by agencies involved in the establishment of the Inquiry. For this reason, we have sought to reflect the range of possible options and their implications, as well as stakeholders' views, rather than offer recommendations.

Operational and legal implications

- 26 The Government has obligations under the Treaty of Waitangi and domestic and international law that will need to be considered. [REDACTED]

³ Note that any systemic analysis would need to be informed by some degree of evidence from individual cases.

- [REDACTED] s9(2)(h)
- 27 [REDACTED] s9(2)(h)
- 28 Agencies involved may need to respond to the Inquiry's work, for example by producing documents or providing information where required.
- 29 Note that agencies will be impacted differently as they work according to different operational, legal and accountability frameworks.⁴

Options for purposes and scope

- 30 We have identified options around the following aspects of the Inquiry:
- purposes and related outputs for the Inquiry
 - scope of the Inquiry, including:
 - definition of state care
 - definition of abuse
 - age range
 - time period.
- 31 We have considered implications for these options that include:
- likely effectiveness in addressing the needs of survivors
 - ease of implementation
 - legal risk
 - resourcing and time
 - likely impact on Government operations and processes.
- 32 The diagram in Appendix 2 sets out the high-level options covered in this paper for purpose and scope.

Purposes the Inquiry could address

- 33 The purposes provided in the Inquiry's Terms of Reference will create expectations as to what the Inquiry should investigate and the outputs it should deliver.
- 34 The **Never Again campaign** has called for the Inquiry to investigate the abuse of people in state care and identify systemic issues that permitted this abuse to occur and its broader impacts on communities. It has also called for the Government to take appropriate steps to acknowledge the harm that was caused to victims and survivors, provide them with appropriate redress and rehabilitation, and take action to ensure the abuse never happens again. These matters could potentially be reflected in the Inquiry's Terms of Reference.
- 35 **Stakeholders** have advocated for a range of purposes for the Inquiry that are broadly in line with the campaign. Stakeholders have told us not to underestimate the empowerment of having history heard and acknowledged (eg through an official apology). Some have called for a 'truth and reconciliation' process to be undertaken. They have also called for the Inquiry to address the question of 'how

⁴ For example, in devolved sectors such as health or education, there may be impacts for a range of bodies including school boards and DHBs.

are we stopping this from happening in the future?’ Some have said the Inquiry should draw on previous work with survivors to avoid re-victimisation.

- 36 A number of stakeholders have called for systemic issues around Māori disproportionately entering the state care system to be acknowledged and addressed. Māori stakeholders have advocated for the Inquiry to be conscious of historical context, including the impact of colonisation on Māori, and emphasised the need for the Inquiry to honour the Treaty of Waitangi and build on previous work, including Puao-te-ata-tū. Appendix 3 sets out a summary of issues raised in a hui we held on 4 December 2017 with selected Māori and iwi stakeholders.
- 37 Pacific stakeholders have indicated that the Inquiry should provide a sense of justice and should identify lessons learned that will have positive impacts on Pacific communities. They have called for a focus on preventing further abuse from happening in the future rather than on punishment and compensation. Appendix 4 sets out a summary of issues raised in a meeting we held with the Oranga Tamariki Pacific Panel on 29 November 2017.
- 38 **CERD** has recommended that the Inquiry should be empowered to determine redress, rehabilitation and reparations for victims.
- 39 **Similar inquiries in other jurisdictions** have been set purposes that include:
 - investigating the nature, extent and impacts of abuse in state or institutional contexts
 - identifying causes of or factors in this abuse, including any systemic issues
 - making recommendations to the Government about changes to policies, practices or redress.
- 40 We have identified five potential purposes for the Inquiry. These can be grouped into three categories, and any combination of them could be included in the Terms of Reference:
 - *Historical focus*
 - **Purpose 1** – investigate the nature and extent of the abuse that occurred
 - **Purpose 2** – investigate the impacts of the abuse on survivors and their families, whānau and communities
 - **Purpose 3** – investigate why the abuse occurred
 - *Current and future focus*
 - **Purpose 4** – consider current settings to prevent and respond to abuse
 - *Individual redress*
 - **Purpose 5** – consider existing redress processes for people who have been abused.
- 41 Consideration is also needed as to what outputs the Inquiry should deliver. Outputs could be framed in broad or specific terms. The framing may have an impact on the Inquiry’s effectiveness, and outputs may carry different levels of risk.
- 42 The following sections set out key considerations for each of the above purposes, including potential related outputs for the Inquiry.

Historical focus

Purpose 1 – Investigate the nature and extent of the abuse that occurred

- 43 Stakeholders have indicated that this should be a minimum requirement for an inquiry into abuse in state care. Public acknowledgement of the scale of the abuse that occurred has been a key request from stakeholders. Tasking the Inquiry with this purpose alone may not be seen as being sufficiently comprehensive.
- 44 Outputs for the Inquiry could include:
 - making a public statement on these matters (**broad**)
 - creating a more detailed public record (**specific**).

- 45 In addition, the Inquiry could be tasked with explicitly investigating the nature and extent of abuse in state care for Māori (**Purpose 1a**), Pacific peoples (**Purpose 1b**), and/or disabled people (**Purpose 1c**). Stakeholders we have spoken to indicated that the Inquiry should take a particular focus on these groups, as they are likely to have been disproportionately affected by abuse in state care. Māori have made up, and continue to be, a majority of those in state care, and have particular concerns about the disproportionate intervention by the State in the lives of whānau, hapū and iwi.
- 46 Careful consideration will be needed as to how the Inquiry should successfully engage and hear the concerns of these groups. For example, stakeholders have told us that the membership of the Inquiry should include people who belong to these groups or at least have an understanding of the issues facing Māori, Pacific and disabled communities. It would also be advisable for the Inquiry to seek the expert input of iwi and Māori, Pacific or disability organisations at various stages.
- 47 Paper Two will provide options around principles to be included in the Terms of Reference around how the Inquiry should work with survivors and different communities.

Purpose 2 – Investigate the impacts of the abuse on survivors and their families, whānau and communities

- 48 Another key request from stakeholders has been for the Inquiry to investigate and acknowledge the impacts of the abuse on survivors, as well as the wider impacts on their families, whānau and communities. This should include consideration of longer-term and intergenerational impacts.
- 49 Again, the Inquiry could take a particular focus on investigating the differential impacts of the abuse for Māori (**Purpose 2a**), Pacific peoples (**Purpose 2b**), and/or disabled people (**Purpose 2c**). This has been a key concern among the stakeholders we have spoken to. A further concern raised is the need for the Inquiry to recognise the different experiences of girls and boys in state care.
- 50 See proposed outputs for Purpose 1.

Purpose 3 – Investigate why the abuse occurred

- 51 The Inquiry could be tasked with investigating causes of the abuse and identifying any systemic issues that contributed to it. Stakeholders have indicated that they see this as a critical element of an inquiry. Most similar inquiries in other jurisdictions have been tasked with this.
- 52 Outputs for the Inquiry could include:
- recommending whether the Government should make an apology (**broad**)
 - presenting general findings on causes of or contributing factors to the abuse, and whether there were any systemic issues (**somewhat broad**)
 - presenting findings of fault for the abuse, including whether relevant agencies and individuals discharged their responsibilities appropriately (**specific**).
- 53 All three of these outputs are available to the Inquiry by default unless they are explicitly limited in the Terms of Reference. Inquiries may make findings of fault or recommend that further steps be taken to determine liability, though they do not have the power to determine civil, criminal or disciplinary liability.⁵
- 54 Our engagement with stakeholders suggests that the Inquiry should be tasked with each of these three outputs, as they would help to ensure it is seen as robust and appropriately focused on identifying any systemic issues.

⁵ Note that civil, criminal or disciplinary liability may be determined separately by the appropriate agency or agencies.

55 [REDACTED] s9(2)(g)(i)
[REDACTED] There has been a particularly strong call from stakeholders for a Government apology.

56 If the Inquiry is tasked with finding fault, this will require careful and detailed work.
[REDACTED]
[REDACTED] s9(2)(h)

57 Where the Inquiry may make an adverse finding, it would be required to work with affected agencies or individuals in a fair manner.

Current and future focus

Purpose 4 – Consider current settings to prevent and respond to abuse

58 The Inquiry is likely to identify issues that have implications for current policy and practice, including around preventing and responding to abuse and rehabilitating survivors. Tasking the Inquiry with looking at current system settings could allow the Government to clearly signal a willingness to address current issues. Similar inquiries in Australia and Scotland have been tasked with making recommendations on current settings.

59 Outputs for the Inquiry could include:

- reporting on general lessons to be learned from the past (**broad**)
- identifying gaps or recommended areas of focus, such as standards or protections to help to prevent abuse or promote good care (**somewhat specific**)
- examining current policy, legislative and practice settings, including around rehabilitation of survivors, and make specific recommendations on these (**specific**).

60 Reporting on lessons learned and identifying gaps or areas of focus may require less detailed analysis of the current settings, and therefore less time and resourcing.

61 Making specific recommendations about current settings may be seen as more robust, and could require more time and resourcing. Depending on the scope of the Inquiry, there may be some overlaps with the current proposed inquiry into mental health. There is also some risk that making such recommendations could be seen as relitigating the work of previous system reviews, such as the Modernising Child, Youth and Family Expert Panel's 2015 review of the operating model for vulnerable children. However, this may be mitigated if the Inquiry tasked with building on previous reviews and existing government work programmes underway, rather than starting from scratch.

62 Note that this option is linked to decisions on the time period to be considered by the Inquiry. See paragraphs 103 to 111 for further consideration.

Individual redress

Purpose 5 - Consider existing redress processes for people who have been abused

63 Participants are likely to raise concerns about current mechanisms of redress for those who have been abused in state care. Considering these processes may support the Inquiry to meet survivors' needs. [REDACTED] s9(2)(g)(i) and [REDACTED] s9(2)(h)
[REDACTED] Conversely, if the Inquiry does not consider these matters, it may be seen as not sufficiently addressing the issue. Some stakeholders have said that the Inquiry should cover redress or compensation for survivors.

64 If the Inquiry is tasked with considering these processes, there is a scale of potential outputs it could deliver:

- commenting on the impact of existing redress processes on survivors (**broad**)
- recommending changes to existing redress processes⁶ (**somewhat specific**)
- making recommendations about individual claims for redress (**specific**)
- resolving individual claims directly (**specific**).

65

[REDACTED]

s9(2)(g)(i) and
s9(2)(h)

66 Recommending changes to existing redress processes may be seen as a more robust approach. Most stakeholders we have engaged with to date have called for changes to current redress processes, while stopping short of calling for the Inquiry to directly manage these processes itself. This approach could provide an opportunity to identify what current processes do well, as well as potential areas for improvement.

[REDACTED]

s9(2)(h)

67 Making recommendations to the appropriate agency about individual claims for redress could provide a stronger opportunity to acknowledge the experiences of survivors.

[REDACTED]

s9(2)(g)(i) and
s9(2)(h)

68 Empowering the Inquiry to resolve individual claims directly may go the furthest towards addressing survivors' needs.⁷ A small number of stakeholders have called for this.

[REDACTED]

[REDACTED]

s9(2)(h)

69 Our second paper to you will provide advice on funding options for the Inquiry.

70 This option is linked to decisions on the time period for the Inquiry. See paragraphs 103 to 111 for further consideration.

1. We seek your feedback on:

- your preferred purposes to be set for the Inquiry
- your preferred outputs to accompany these purposes
- whether the Inquiry should take a particular focus on the abuse that occurred for Māori, Pacific peoples and/or disabled people.

⁶ This could include recommending the establishment of a new independent agency to deliver redress for abuse in state care.

⁷ Note that inquiries do not have the power to determine civil, criminal or disciplinary liability.

Key scoping questions for the Inquiry

- 71 Stakeholders have noted that where Ministers choose to exclude something from the scope of the Inquiry, they may wish to recognise the importance of the issue by making clear how they expect review or action to be taken on those areas outside the Inquiry. An inquiry may not be the most appropriate vehicle for some issues.
- 72 Where Ministers want to include wider issues but are concerned about the resulting breadth of the Inquiry, they may wish to indicate a preference for a phased approach (sequential) or dividing the Inquiry into workstreams (parallel). This could allow the scope to capture a wider set of issues without diluting the focus on specific areas. The breadth of the Inquiry could also be managed by seeking outputs that are less specific, rather than those that will require the most detailed work.
- 73 The following sections set out options for the definition of state care, definition of abuse, age range and time period to be considered by the Inquiry.

Definition of care

- 74 The definition of care used for the Inquiry will determine which groups of people are eligible to participate, as well as which institutions or agencies may be under investigation. This definition should be precise but flexible enough to allow the Inquiry to respond to issues that come to light in the course of its investigation.
- 75 While the Government has committed to an inquiry into abuse in state care, some stakeholders have expressed views that go wider than this.
- 76 Both **CLAS** and the ***Never Again* campaign** have used a definition of state care that covers health residential facilities (eg psychiatric hospitals and wards, disability facilities and health camps), child welfare and residential special education.
- 77 **Stakeholders** have generally taken the view that where care is provided by the State, it should be in scope for the Inquiry. Some stakeholders, particularly survivors of abuse in state care, have been clear that they want the focus to be on state care. There is a broad consensus that a minimum definition should be based on the legal status of the child to include child welfare and youth justice settings and providers (including NGO providers).
- 78 The scope used for CLAS and the *Never Again* campaign has also had support, being centred on state care, but capturing similarly vulnerable groups and settings. It also has the advantage of having been used previously in defining the CLAS service scope.
- 79 Some stakeholders have suggested that the Inquiry should take a broader scope to focus on cases of abuse where children are under the control of adults, such as state-funded boarding schools. However, relatively few people have called for the Inquiry to go even broader, such as to include abuse that occurred in all schools, prisons, or private institutions such as sports clubs and scout groups. This would clearly go beyond any definition of 'state care' and may be strongly opposed by some of those who have campaigned for an inquiry into state care.
- 80 **CERD** has recommended that the Inquiry should include adults with disabilities.
- 81 **Similar inquiries in other jurisdictions** have covered cases in child welfare or youth justice services, mental health care facilities, and specialist residential schools. Scotland has taken a wider scope to include some private institutions such as faith-based groups.

- 82 Examples of how this could be scoped for the Inquiry include any combination of:
- all child welfare and youth justice placements, including with contracted providers⁸
 - health and disability residential facilities and placements, including with contracted providers⁹
 - residential special education, including with contracted providers
 - child welfare or youth justice experience, but not in care¹⁰
 - prisons
 - schools, including boarding schools¹¹
 - fully private institutions.¹²
- 83 Setting a narrow definition (eg child welfare and youth justice placements only) may provide for a more focused inquiry and could reduce the time, resourcing and level of government support required. This could exclude a number of people with experience in health, disability and special education residences from participating in the Inquiry. This could mean that some claims and grievances are unaddressed and may resurface in the future.
- 84 Setting a definition consistent with CLAS and the *Never Again* campaign may be perceived as being more comprehensive and robust, and may go further to address the needs of people who have been abused, particularly disabled people. Based on early engagement with stakeholders, it is possible that this is the definition likely to command the most support. This approach is likely to require additional resources, time and support.
- 85 Setting a broader definition (eg including prisons or schools) is likely to require significantly more resources, time and support, and may risk diluting the overall focus on state care.
- 86 If the scope of the Inquiry excludes certain groups of people, consideration will be needed as to other potential mechanisms that could be made available to address their grievances and concerns.
- 87 If the Inquiry covers institutions such as health and disability residential facilities or prisons, the age range could be set to include people who experienced abuse in those facilities as adults. See paragraphs 97 to 102 for further consideration.

2. We seek your feedback on how care should be defined for the Inquiry.

Definition of abuse

- 88 The definition of abuse set for the Inquiry will have implications around the people whose experiences of abuse will be considered.
- 89 A key question is whether the Inquiry should focus on instances of physical, sexual and emotional abuse and neglect, or should additionally consider the inappropriate removal of children and young people from their families, whānau, hapū and iwi.
- 90 Section 14(1)(a) of the Oranga Tamariki Act 1989 defines abuse in terms that include physical, sexual and emotional abuse and neglect. This is reflected in

⁸ This could include state-mandated placements in private homes.

⁹ This could include disability residences, health camps and psychiatric hospitals and wards. It excludes general hospital admissions.

¹⁰ This could include children and young people who received a child welfare or youth justice intervention, but were not placed in care. This aligns with eligibility for the MSD claims process.

¹¹ Including schools in scope would have implications for Boards of Trustees.

¹² This could include private organisations or institutions providing care without a state mandate or contract, including faith-based organisations, scout camps and private disability residences.

current Oranga Tamariki practice guidance, and is consistent with the definition used by **CLAS** and the **Never Again campaign**.

- 91 **Stakeholders** have overwhelmingly expressed that the Inquiry needs to cover all forms of abuse. A number of people have also called for it to cover the perceived abuse of being placed into state care itself. If the Inquiry does not consider this issue, there is likely to be strong criticism, particularly by Māori.
- 92 **Similar inquiries in other jurisdictions** have generally limited the definition of abuse to sexual and/or physical abuse.
- 93 The full range of options we have identified are below:
- **Option 1** – physical and/or sexual abuse only
 - **Option 2** – physical, sexual and emotional abuse, and neglect¹³
 - **Option 3** – a definition of abuse that in addition to Option 2, includes inappropriate decisions to place a person in state care.
- 94 **Option 1** is considerably narrower than current legislation, practice and policy. It would exclude certain groups of people from having their claims or grievances addressed in the Inquiry.
- 95 **Option 2** is consistent with current legislation, practice and policy, and provides reasonable opportunity for the Inquiry to acknowledge the experiences of a range of people.
- 96 **Option 3** could provide an opportunity for the Inquiry to explicitly consider the Government's removal of children and young people from their families and whānau, which has been a key focus of public input on the Inquiry to date. It could also allow the Inquiry to consider the placement of people in disability or psychiatric facilities. While this option may go the furthest towards meeting stakeholders' needs, particularly those of Māori, it represents a considerably expanded scope and may require significant further time and resourcing.

3. We seek your feedback on how abuse should be defined for the Inquiry.

Age range

- 97 The age range for the Inquiry will define the ages at which people experienced abuse while in care in order to be eligible to participate. The key question here is whether the Inquiry should consider the treatment of vulnerable and disabled adults as well as of children and young people.
- 98 While **stakeholders** have been clear that children need to be at the heart of this inquiry, a significant number of people have advocated for it to also include vulnerable and disabled adults.
- 99 The Government has previously committed to setting up an Inquiry into the abuse of children in state care. While it appears that **CLAS** focused on the experiences of children and young people, the **Never Again campaign** has included vulnerable and disabled adults as well as children. **CERD** has likewise recommended that an inquiry include disabled adults.
- 100 Focusing the Inquiry on children (**Option 1**) may help to manage its resourcing, time and operational needs, but is likely to result in strong opposition from stakeholders who have called for it to include vulnerable and disabled adults.

¹³ As per the definition given in s14(1)(a) of the Oranga Tamariki Act 1989, as well as other domestic and international human rights law.

- 101 Including vulnerable and disabled adults (**Option 2**) would provide the best opportunity for the Inquiry to consider the experiences of those who have been placed in other institutions such as disability residences and psychiatric institutions. This is likely to require additional time and resourcing.
- 102 See paragraphs 74 to 87 for related consideration around the definition of care to be used for the Inquiry. If you favour including vulnerable and disabled adults, we could provide more detailed information and advice on how that might be most helpfully defined.

4. We seek your feedback on whether the Inquiry should cover children and young people only, or should also include vulnerable and disabled adults.

Time period

- 103 This section sets out options for the time period to be considered by the Inquiry.
- 104 The key question here is whether the Inquiry should take a solely historical focus or should also consider recent cases.
- 105 **CLAS** and the **Confidential Forum** were tasked with hearing about people's treatment in care or institutions prior to 1992. The **Never Again campaign** has also focused on abuse in care that took place between the 1950s and the 1990s, though stakeholders associated with that campaign have since indicated a preference for the Inquiry to go further. **Similar inquiries in other jurisdictions** have generally not set a limited time period to be considered.
- 106 All **stakeholders** we have spoken to have expressed a view that the Inquiry should not have a cut-off date as we know some children in care still suffer from harm. Some have suggested that the scope of the Inquiry should end at a prescribed date (eg the day before the Inquiry commences, or 1 April 2017, the date on which Oranga Tamariki came into being), but ensuring there are safeguards in place to prevent and respond to abuse occurring from that date forwards.
- 107 The time period to be considered by the Inquiry could be cut in a range of ways. Based on our initial engagement with stakeholders, we have identified two main options:¹⁴
- **Option 1** – consider cases from an historic period (eg that took place before the early 1990s)
 - **Option 2** – consider any case that took place prior to a recent date – eg before the commencement of the Inquiry.
- 108 **Option 1** provides for the Inquiry to take a historical focus. Scoping the Inquiry to 1993 for example, would align it with a former definition for the MSD historic claims process¹⁵ and would reflect a range of system changes, including:
- the Children, Young Persons, and Their Families Act 1989 (now the Oranga Tamariki Act 1989) and the creation of the Children and Young Persons Service in 1992
 - significant education sector reforms in 1989
 - the Mental Health (Compulsory Assessment and Treatment) Act 1992, which introduced a range of safeguards in relation to mental health settings.

¹⁴ Other potential options include starting the scope of the Inquiry at 1950, or ending the scope of the Inquiry at 2008, in line with the scope for the new complaints and feedback mechanism being developed for Oranga Tamariki. We have not considered these options in detail as the cut-offs may appear somewhat arbitrary. We can provide further information about these options if you wish.

¹⁵ The current MSD historic claims process covers claims prior to 1 January 2008.

109 Option 1 is likely to require less time and resourcing than Option 2. However, taking a historical focus would mean the Inquiry is unable to consider abuse in these contexts that has taken place since that time. [REDACTED]

s9(2)(h)

110 **Option 2** could provide for the Inquiry to be seen as more comprehensive and robust, and may require additional time and resourcing. [REDACTED]

s9(2)(h)

111 See paragraphs 58 to 70 for related consideration of whether the Inquiry should consider current policy settings and redress processes.

5. We seek your feedback on whether the Inquiry should only consider historical cases, or should also consider recent cases.

Next steps

112 We invite you to indicate matters in this paper on which you would like further information or a summary of stakeholders' views.

113 On 18 December 2017 the Working Group will meet to discuss a second paper covering other establishment questions, including:

- type of inquiry
- reporting
- appointments and structure
- funding
- key principles for ways of working.

114 We will seek to provide a draft Terms of Reference reflecting Working Group feedback for consideration as soon as practicable.

115 Working Group feedback will inform advice to Cabinet by 29 January 2018. To meet this timeframe a draft Cabinet paper will be circulated for Ministerial consultation by 10 January 2018.

[REDACTED] s9(2)(a)

Responsible manager: Paul Kissack, Deputy Chief Executive, Leadership and Organisational Development, Oranga Tamariki



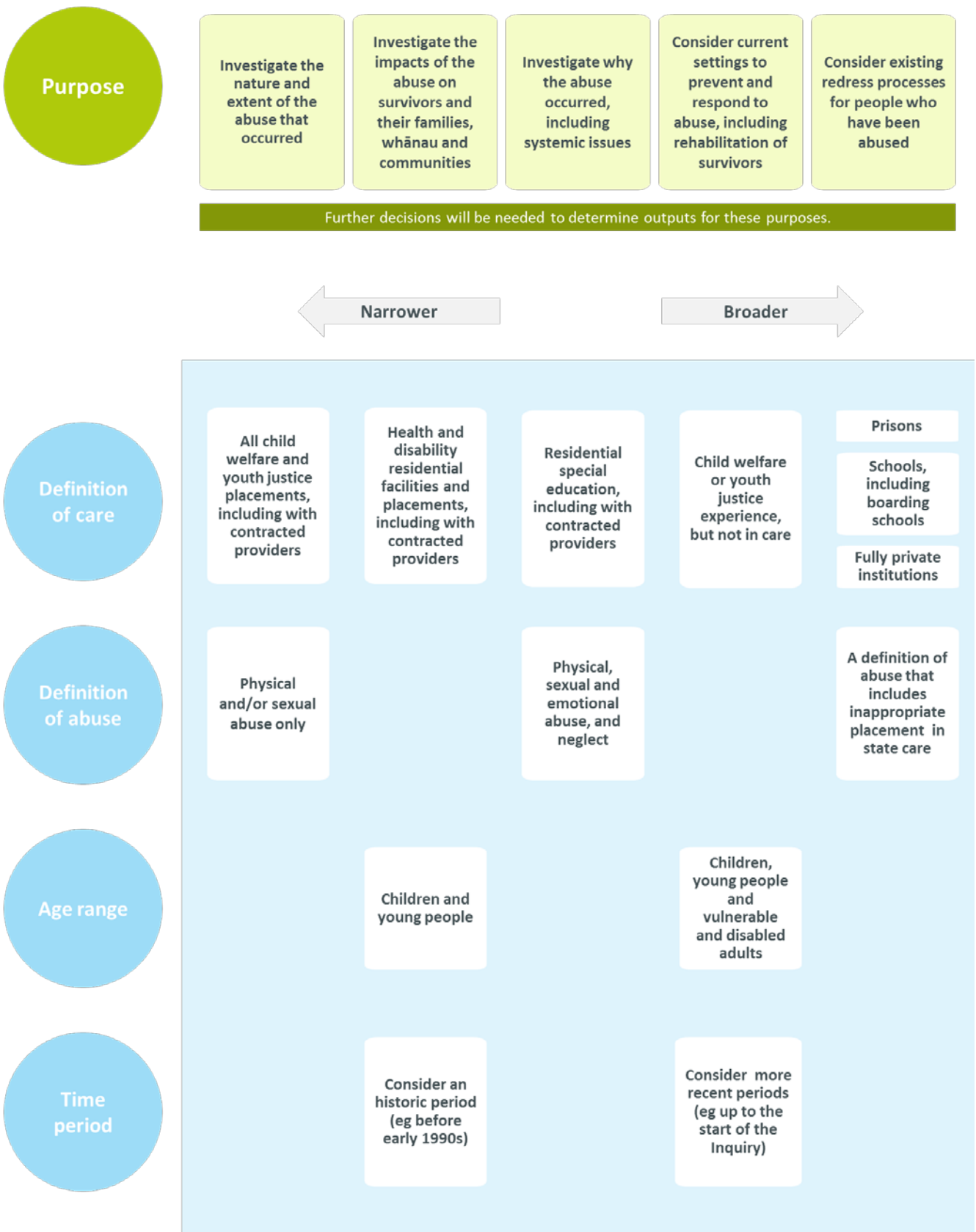
Table with 2 columns, multiple rows, and significant redaction.



Table with 2 columns, multiple rows, and significant redaction.

s9(2)(a) and s9(2)(ba)

Appendix 2: Inquiry into abuse in state care: Key scoping questions



Appendix 3: [Redacted]

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s9(2)(a) and s9(2)(ba)

Appendix 4: [REDACTED]

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