

Office of the Minister of Internal Affairs

Chair

Social Wellbeing Committee

FINAL ESTABLISHMENT OF THE ROYAL COMMISSION INTO HISTORICAL ABUSE IN STATE CARE AND IN THE CARE OF FAITH-BASED INSTITUTIONS

Proposal

1. This paper seeks Cabinet's agreement to:
 - expand the original scope of the Royal Commission into Historical Abuse in State Care ("Royal Commission" or "Inquiry") to include care in faith-based institutions and schools;
 - refine the terms of reference for the Inquiry, following public consultation on the draft terms of reference; and
 - finalise matters for the establishment of the Royal Commission, including the terms of reference, budget, membership, and approval of the establishment instrument for the Inquiry.

Executive summary

2. In October 2017 the Government committed to establishing an inquiry into historical abuse in State care as part of its 100 day plan. The Royal Commission was formally established in February 2018. The Royal Commission's first task was to undertake public consultation on its draft terms of reference and report back to the Minister of Internal Affairs.
3. Cabinet also set up a Ministerial Working Group to inform the Royal Commission establishment process, including consideration of the Chair of the Royal Commission's feedback on the results of the public consultation exercise. Cabinet invited the Minister of Internal Affairs to provide Cabinet with advice on any changes to the Inquiry's terms of reference following the public consultation process, as well as the budget and membership for the next phase of the Inquiry [CAB-18-MIN-0017 refers].
4. Having considered the advice of the Royal Commission and the Ministerial Working Group, I propose a number of changes be made to the Inquiry's terms of reference. I seek Cabinet's agreement for the Royal Commission to inquire into:
 - the nature and extent of abuse that occurred in State care and in faith-based care institutions from 1950 to 1999, with discretion to consider matters beyond these dates;
 - the factors (including structural, systemic or practical factors) which caused or contributed to the abuse;
 - the impact of the abuse on individuals and their families, whānau, hapū, iwi, and communities (immediate, long-term, and intergenerational);
 - the circumstances that led to individuals being taken into, or placed into, care and the appropriateness of such placements (including factors that contributed, or may have contributed, to the decision making process);

- the lessons learned, changes made, and what gaps, if any, that remain and need addressing;
 - the current frameworks to prevent and respond to abuse in care, and any changes that will protect children, young persons, and vulnerable adults in the future;
 - the redress and rehabilitation processes for individuals who claim, or have claimed, abuse in care, including improvements to those processes; and
 - other appropriate steps the State or faith-based institutions should take to address the harm caused, including whether there should be an apology by the State and by faith-based institutions for the abuse that occurred.
5. I propose that four additional members be appointed alongside the Chair of the Inquiry. The appointment of these members will be considered by Cabinet Appointment and Honours Committee (APH) in a separate paper.
 6. The forecast budget for the Royal Commission and related processes is \$78.849 million. This budget is based on estimates of the core costs of the Inquiry, including:
 - the potential number of people who will engage with the Inquiry, and its overall workload;
 - the resources required by the Inquiry, including policy, investigative, administrative, and executive staff; and
 - the potential number of people who will require counselling.
 7. It is possible that the Inquiry's cost will vary from these estimates once it begins its work. Should the Royal Commission require additional funding in the future, it will have the opportunity in its interim report in 2020 to identify additional funding requirements.
 8. The budget does not include payment of participants' legal costs by the Crown. Uncertainty surrounding the Royal Commission's final methodology means that the potential cost of Crown funded legal assistance is difficult to quantify at this stage. The terms of reference include the principle that the Inquiry should avoid an overly legalistic approach to its investigations. Crown funded legal assistance, if required, will need to be recommended by the Inquiry to the Chief Executive of the Department of Internal Affairs, under section 18 of the Inquiries Act 2013 (the Act).
 9. The Department of Internal Affairs has no baseline funding to cover the costs of the Inquiry and cannot otherwise absorb these costs because of significant fiscal pressure. Should the cost of the Inquiry not be fully funded, there will be risks to the delivery of existing priorities in Vote Internal Affairs. Accordingly, I seek funding for the Royal Commission as a pre-commitment against the Budget 2019 operating and capital allowances.

Background

10. In recent years, there have been growing calls for an independent inquiry into the abuse of individuals in State care. This included a public awareness campaign led by the Human Rights Commission, entitled *Never Again / E Kore Anō*, and has more recently included individuals and groups who have advocated for an Inquiry into abuse in other settings. In October 2017, the Government committed to establishing an Inquiry into abuse in State care as part of its 100 day plan.
11. On 29 November 2017, Cabinet agreed to establish an Inquiry into abuse in State care under the Act [CBC-17-MIN-0028 refers]. Cabinet established a Ministerial Working Group to consider the potential scope and implementation of the Inquiry. Cabinet agreed that the Department of Internal Affairs would be the administering agency for the Inquiry.
12. On 30 January 2018, Cabinet noted my intention to advise the Governor-General to appoint Rt Hon Sir Anand Satyanand to serve as Chair of the Inquiry [CBC-18-MIN-0017 refers].
13. On 1 February 2018, the Royal Commission was formally established by Order in Council. At that stage, it was proposed that the Royal Commission would run for three years.
14. In broad terms, the original intention was that the Inquiry would examine the nature and extent of the abuse in State care; the immediate, long term, and intergenerational impacts of it; the factors that caused or contributed to it; the lessons learned; and the steps that should be taken to help prevent abuse occurring in the future. The Royal Commission would listen to the experiences of people in State care and would report before the end of the Parliamentary term. Detailed definitions were included for key concepts, as well as the Royal Commission's findings and recommendatory powers.

Two phase establishment process

15. CBC agreed the Royal Commission would be established in two phases [CBC-18-MIN-0011 refers]:
 - In the first phase, the Chair was directed to undertake public consultation on the draft terms of reference, and advise the Minister of Internal Affairs on any potential changes to the terms of reference arising from it. Cabinet also set up a Ministerial Working Group to inform the Royal Commission establishment process, including the Chair of the Royal Commission's feedback on the results of the public consultation exercise;
 - In the second phase, the Minister of Internal Affairs would report to Cabinet with a proposal on the final terms of reference along with other matters necessary to establish the Inquiry, such as its budget and membership.

Results of public consultation

16. The Chair consulted with stakeholders and with the public (supported by a public awareness campaign launched on 30 April 2018). The Royal Commission received submissions from over 400 people and organisations.
17. Feedback covered the purpose of the Royal Commission, its scope, a suitable reference to the Treaty of Waitangi, the dates within which the Inquiry should consider people's experiences of abuse, and what constitutes 'state care'.

18. On 28 May 2018, the Chair provided me with his report on the public consultation. His report provided an overview of the key issues arising in submissions, as well as draft text for further consideration. The Chair's key recommendations were to:
- extend the Inquiry's scope to include abuse occurring in non-State care settings;
 - adopt a sequential approach to reporting on State care and non-State care settings;
 - make amendments to the provision on the final reporting date;
 - extend the time period covered by the Inquiry beyond 1950 – 1999; and
 - include an appropriate reference to the Treaty of Waitangi and its principles.
19. On 28 June 2018, the Ministerial Working Group reconvened to consider the Chair's report. The Chair attended the meeting to present his report. Following the Working Group meeting, I undertook careful and detailed consultations with Ministerial colleagues and directed officials to prepare a further revised terms of reference for consideration by Cabinet.

Terms of reference

20. I seek Cabinet's approval to finalise the proposed final establishment instrument (**Appendix One**). The instrument, which takes the form of an Order in Council and warrant, contains the terms of reference in its Schedule. The terms of reference contains a preamble and background, and provides the purpose, scope, key definitions, principles and methods of work, findings and recommendation powers, and reporting dates and related practical matters.
21. Finalising the terms of reference is an essential step in establishing an Inquiry. Given the status and function of the terms of reference, it needs to be clear and precise, while also providing a level of flexibility for the Inquiry to address issues as they arise. The terms of reference can be amended by the Minister under the Act, although, as far as possible, it is desirable to ensure it is fit-for-purpose from the beginning.
22. In developing the terms of reference, I have given careful consideration to the feedback from members of the Ministerial Working group. 9(2)(h) [REDACTED]
9(2)(h) [REDACTED]
9(2)(h) [REDACTED] Finally, consistent with Cabinet Manual guidance, I have engaged with the Chair following the submission of his report on public consultation and prior to lodgement of this paper. This consultation period included a briefing from the Chair to the Ministerial Working Group, as well as a final, formal period of consultation prior to Cabinet.

The Inquiry's name will be updated

23. I propose amending the name of the Inquiry to reflect the updated purpose and scope. The title will be amended from "Royal Commission into Historical Abuse in State Care" to "Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions".

Purpose of the Inquiry

24. I propose that the matter of public importance which the Inquiry will be 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. The specific purpose of the Inquiry will be to identify, examine and report on the matters that are in scope.

Scope of the Inquiry

25. To enable the Inquiry to assess and shed light on the scale and impact of abuse in various settings, and to help ensure clear and effective steps are taken in future to prevent and respond to abuse, I propose a mandate that will allow the Inquiry to examine, in broad terms:
- the nature and extent of the abuse;
 - the factors (including the structural, systemic or practical factors) that caused or contributed to the abuse;
 - the impact on individuals and their families, whānau, hapū, iwi, and communities;
 - the circumstances that led to people being taken into, or placed into care and the appropriateness of such placements;
 - the lessons learned, what changes were made, and what gaps, if any, remain and need addressing;
 - the current frameworks to prevent and respond to abuse in care, and any changes that will help to protect people in the future; and
 - the redress and rehabilitation processes for individuals who claim, or have claimed, abuse in care.
26. For the first four issues listed above, the Inquiry will have the authority to make comments, findings, or both. For the final three matters, the Inquiry will be able to make comments, findings, or both, and recommendations for the future. The Inquiry's recommendations can focus on legislation, policy, rules, standards and practices. This gives the Royal Commission a strong and effective mandate, which should help to ensure that what happened in the past does not happen again.
27. Taking into account all of its analysis, comments, findings and recommendations on the issues in scope, the Inquiry will also have the ability to report and make recommendations on any other appropriate steps that should be taken by the State or by faith-based institutions to address the harm caused. This includes whether there should be an apology by the State and faith-based institutions, or any other action that may be needed. A summary table of the Inquiry's scope and expected results (in terms of comments, findings and recommendations) is included in **Appendix Two**.

IN CONFIDENCE

Redress and frameworks for prevention and response to abuse

28. I propose that the Inquiry has the power to identify, examine, and report on the redress processes for people who have experienced abuse in care, including improvements to these processes. The term 'redress' is a broad term and includes monetary processes (such as historical claims and compensation or settlement processes), as well as non-monetary processes (for example, rehabilitation and counselling). The issue of redress, and the way forward for these processes in the future, is of particular importance for victims / survivors and this was reflected in stakeholder feedback.
29. At the launch of the Royal Commission, it was made clear that the Government wants to understand whether the Crown has previously responded to claims of abuse cases appropriately. This is included in the Inquiry's scope under the proposed terms of reference. The Inquiry's work to recommend improvements to the frameworks to prevent and respond to abuse (including oversight mechanisms) provides a sufficiently broad scope to examine, among other things, processes such as feedback, complaints, reviews, claims, and monitoring, to the extent that they all constitute part of the State's framework for prevention and response to abuse in care.

Limitations to scope

30. The Act provides that an Inquiry may make findings of fault, but may not make findings of civil, criminal, or disciplinary liability. I do not propose that the Inquiry be directly involved in, or be empowered to resolve or settle, individual cases or claims or to review the merits of individual court decisions. It will, however, be able to look at structural or systemic issues and make recommendations for the future.

Key concepts in the Inquiry's mandate

Definition of Abuse

31. I propose to refine the definition of 'abuse' to include a sub-clause covering "inadequate or improper treatment or care that resulted in serious harm to the individual (whether mental or physical)". During the first 100 days, the definition of abuse, coupled with the expectation that the Inquiry will consider and make use of domestic and international legal standards relevant to abuse in care, meant that an exhaustive definition was not strictly necessary.
32. During the public consultation process, stakeholders submitted that 'inadequate care' and 'non-voluntary medical intervention' should be included in the Inquiry's scope. Physical or psychological abuse (or both) can be interpreted widely to include non-voluntary medical intervention, where appropriate. It may also fall under the concept of 'improper treatment', subject to the Inquiry's analysis of relevant domestic and international guidance. It will ultimately be for the Royal Commission to consider, interpret, and apply domestic and international law and associated guidance for key definitions in the terms of reference.
33. When considering abuse of individuals, the Inquiry will be able to consider abuse by those involved in the provision of care (which is defined in the terms of reference) and abuse by other care recipients. This approach will ensure a strong human rights focus and will enable a robust analysis of the systems and measures that need to be in place to protect people from abuse in care.

Individuals in scope (ages or groups)

34. I propose that the Inquiry consider the experiences of children, young persons, and vulnerable adults in care.
35. The definition of 'individual' has been clarified to align with domestic and international law approaches. For the purpose of this Inquiry, I propose that the term 'individual' be defined as children or young persons below the age of 18 years, or vulnerable adults. The UN Convention on the Rights of the Child defines 'child' as a person below the age of 18 years (article 1). As an example of relevant domestic law, section 2 of the Oranga Tamariki Act 1989 defines 'child' as a person under the age of 14 years. A 'young person' is defined as either a person over 14 and under 18 years of age (in the care and protection context) or under the age of 17 years (in the context of youth justice and Youth Court proceedings). As the Royal Commission will examine both protection settings and some justice settings, rather than define 'child' and 'young person' separately, I propose a simple definition that will be clear for both participants and the Inquiry.
36. I also propose that the terms of reference contain a definition of 'vulnerable adult'. In the first 100 days, 'vulnerable adult' was broadly understood to apply mainly to those adults who were affected by disability, mental illness, or both. Given the various settings in scope, and the domestic and international guidance on the complex nature of vulnerability in care settings, a more open definition is proposed. This definition recognises that general vulnerability can arise by virtue of being deprived of liberty or in care and, in addition, an individual may be vulnerable for other reasons (for example, due to their physical, intellectual disability, or mental health status, or other factors).

Definition of State care

37. The definition of 'State care' is a key concept for this Inquiry. I propose that the definition retain most of its original elements, such as the assumption of responsibility (direct or indirect) for the care of an individual. The State can assume responsibility in various ways: through a decision or action by a State official; a court order; or through a voluntary or consent-based process (including self-referrals or the referral of another).
38. The concept of 'indirect' State care covers situations where the State may have passed on its authority or care functions to another individual, entity, or service provider (including private entities or service providers). This can be done by delegation, licence, contract, or in any other way. Entities or service providers will be in scope whether formally incorporated or not and however they are described. This wide list should capture the various ways that entities and service providers have provided care for the State, both previously and today. Abuse in State care will mean abuse that occurred in New Zealand. It does not include abuse in fully-private settings, such as the family home, except where an individual was also in State care.

State care – settings in scope

39. To clarify the Inquiry's mandate for State care (direct and indirect), I propose an illustrative list of the settings in scope:
 - social welfare settings;

- health and disability;
 - educational; and
 - transitional and law enforcement settings.
40. For each setting, a list of examples is included to assist the Inquiry and provide clarity for participants. Many of these settings already fall under New Zealand's human rights monitoring framework under the Optional Protocol to the Convention against Torture, which establishes a system of independent oversight to prevent abuse and promote good practice. The inclusion of some other settings reflects that there is a range of places where, or circumstances when, the State assumes responsibility for the proper treatment of people in its care.
41. I propose that the terms of reference clarify that 'child welfare and youth justice placements' includes foster placements and adoptions. These are cases in which the removal of a child, and the transfer or placement of them into the care of another, may have involved discrimination, arbitrary decisions, or otherwise unreasonable conduct by officials. The experience, and its impact on the individual and their family, would be in scope.
42. I propose that the experience of children, young persons and vulnerable adults in transitional and law enforcement settings, such as police cells or custody, court cells, and transit settings (that is, abuse occurring in transit - on the way to, between, or on the way out of State care) be included. Law enforcement settings can sometimes be part of a person's State care experience and may precede or follow their entry into another care setting (for example, a youth justice residence, or psychiatric facility). A person may have fewer protections when being transferred from place to place and the inclusion of these settings recognises this.

State care - inclusion of schools

43. A notable, and significant, addition to the definition of State care is educational settings, including schools. Alongside the issue of faith-based institutions, the issue of educational settings (for example, schools) featured strongly in the public consultation process. While educational settings might be regarded as different to other care settings, it nevertheless involves the assumption of responsibility for the care of individuals receiving education. This is particularly so in residential educational settings (for example, residential special schools, health camps, and boarding schools), but abuse may occur in non-residential schools also. The expansion to educational settings would also cover, for example, early childhood education facilities (including where privately owned but subject to Ministry of Education regulation).
44. The expansion to include educational settings is a material addition to the Royal Commission's mandate, although it would align with the approach taken in Australia and other international inquiries concerning abuse of vulnerable people.
45. Finally, the inclusion of State schools in the list of educational settings ensures consistency with the proposed expansion to include faith-based institutions, which includes faith-based schools. Examples of faith-based schools include, for example, Māori boarding schools run by different churches and religious schools, both before and after integration.

State care – settings out of scope

46. I propose that the following settings be listed as out of scope:
- people in prisons, including private prisons;
 - general hospital admissions, including private hospitals;
 - aged residential and in-home care, including private care; and
 - immigration detention.
47. The Inquiry may, however, consider the experience of people in these settings if they were also in State care at the time. For example, a vulnerable adult receiving psychiatric care who was being treated in a general hospital and was abused while in that setting would be in scope. The Inquiry may consider the long-term effects of State care on individuals or groups. The Inquiry may examine whether those who were in State care went on to experience the law enforcement or correctional system and what conclusions or lessons could be drawn from this.
48. In the draft terms of reference, prisons were excluded in general. Following consultation with the public and stakeholders, the Chair recommended a revised exclusion of 'adults in prison'. The Chair noted that during the consultation period, a document expressed to reflect the views of 340 survivors of abuse in State care dated December 2017 (and which also included a compilation report dated April 2018) called for abuse in prisons to be within scope. While the main focus of submitters during the consultation phase was on abuse in settings other than prisons, the Chair acknowledged that a number of people had called for prisons to be in scope. The Chair recognised that, to a large extent, the decision on whether to include prisons is a line-drawing exercise and, while noting the potential for disparity between prisons and other settings currently in scope, he did not strongly advocate that prisons should be in scope.
49. I have considered a number of options: retaining the exclusion of all persons in prison; adopting the modified exclusion of 'adults in prison' proposed by the Chair; and removing the exclusion in whole or in part (that is, including prisons in scope, in full or for a particular group). Following consultation with the Ministerial Working Group, I propose the first of these three options.
50. These exclusions do not diminish the importance of ensuring the proper treatment and care of people in settings other than those identified as being in scope for this Inquiry. Any recommendations made by the Inquiry on changes to laws, policies, rules, standards and practices (including oversight and redress mechanisms) may have positive flow on effects for settings that are not currently covered by this Inquiry.

Faith-based institutions – rationale for expansion

51. I propose that the Inquiry be able to examine the abuse of children, young persons and vulnerable adults in the care of faith-based institutions.
52. The proposed expansion in scope reflects the feedback received during the public consultation process and subsequent advice from the Chair. The Chair advised that this was one of the most strongly argued issues in the consultation process.

53. The State needs to take a range of effective measures to protect people from abuse. The State has a special responsibility to prevent and respond to abuse when it occurs in State care. Abuse that occurs in other settings also requires a robust and effective response. During the consultation period, members of the public and stakeholders made a number of submissions that the State has a responsibility to protect all vulnerable people in New Zealand. The Chair considered these submissions to be well-made and to have considerable weight. While the specific nature of the State's responsibility may differ within and between the care settings that are in scope, the expansion to include abuse in faith-based care is consistent with the original understanding that a strong rationale for the Inquiry itself is to uphold human rights. The Inquiry and its terms of reference can help to bolster New Zealand's overall fulfilment of relevant international human rights obligations, and the amendments to the terms of reference reflect the desire to take a person-centred approach.
54. By including abuse occurring in the care of faith-based institutions, New Zealand would be aligning with its international counterparts who have, in the course of undertaking historical abuse inquiries, recognised the seriousness of abuse in faith-based settings and demonstrated their willingness to consider future measures to protect vulnerable people from abuse. The Australian Royal Commission, as well as the Inquiries in England and Wales, for example, examined both State and faith-based care.
55. Recognising the importance of preventing and responding to abuse in State and other settings is also consistent with New Zealand's commitment to international human rights law and its role as a good international citizen. This Inquiry is an opportunity to finally address the issue of abuse in care, and the benefits of ensuring greater protection of vulnerable people should not be underestimated. The Royal Commission may make recommendations that have financial or other implications for faith-based groups in the future (for example, around their processes for responding to claims of abuse).
56. The expansion to include care in faith-based settings (other than those that were already included in the draft terms of reference by virtue of the concept of 'indirect State care') and to incorporate a wider list of educational settings beyond residential special schools, will have a corresponding impact on agencies.

Faith-based institutions – definition

57. For the purpose of this Inquiry, the term 'in the care of faith-based institutions', would mean "where a faith-based institution assumed responsibility for the care of an individual, including faith-based schools".
58. There is some overlap between abuse in the care of faith-based institutions and the concept of 'indirect State care', which the terms of reference recognise. This is because, for many years, faith-based institutions have, under a range of legal and other arrangements, provided care on behalf of the State. Expressly providing for abuse in the care of faith-based institutions and faith-based schools ensures coverage of settings where the faith-based institutions were not acting on the State's behalf, but were nevertheless providing care and were responsible for the proper treatment of children, young persons, or vulnerable adults. Faith-based care settings may be residential or non-residential, voluntary or non-voluntary.

59. To avoid any doubt that 'faith-based institutions' is limited, for example, to specific religions or denominations, the terms of reference clarify that the definition 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 terms of reference also confirm that the Royal Commission can consider abuse in faith-based institutions, whether formally incorporated or not and however they are described. This approach is informed, in part, by the approach taken by the Australian Royal Commission into Institutional Responses to Child Sexual Abuse.

Non-state settings that are out of scope

60. Fully private settings (that is, where there was no assumption of responsibility by the State or a faith-based institution for the care of an individual, such as settings where people engaged with faith-based institutions as private citizens and where there was no care relationship or function) are not in scope. This means, for example, that recreational and sports clubs are not included. Expanding the Inquiry's mandate to include all private settings where abuse has happened during the relevant period (and beyond) would add significantly to the complexity, timeframe, and overall cost of the Inquiry. In addition, in the first 100 days some survivors and campaigners emphasised the importance of remaining true to the original focus on State care.
61. While these settings are out of scope, the Inquiry's general ability to look at frameworks to prevent and respond to abuse may have general benefit for private settings. For example, recommendations concerning the responsiveness of investigations into abuse will likely have benefit not only for people in care, but for people who report abuse in settings not directly covered by this Inquiry.
62. The proposed approach to faith-based institutions that provided care (as compared to all non-State settings, as proposed by the Chair) ensures that the Inquiry is able to focus its attention on what went wrong in the past in New Zealand's care system and how we can protect these people in the future. It will be a matter for the Inquiry to gauge how best to manage its workload and be sensitive to the needs of victims / survivors.

Time period covered

63. I propose clarifying and expanding the Inquiry's discretion to consider matters occurring prior to 1950 and after 1999. Originally, the Inquiry had the discretion to consider matters outside both dates. The discretion for matters after 1999 was, however, limited to situations where someone was in care prior to that date.
64. During the public consultation period, submitters raised questions about the rationale for the 1950-1999 time period, particularly when State-run institutions were operating into the early 2000s. They also explained that the Royal Commission is being asked to make recommendations on current and future practice, legislation, policy, standards and processes without being able to hear the experience for those in care in the last 18 years.

65. I consider that an expanded discretion, for the purpose of informing future recommendations, is preferable for a range of reasons. First, it ensures continued recognition of the time period cited by campaigners and by UN human rights treaty bodies that have considered or made comments or recommendations on the issue of State care. Second, another date may have unintended consequences in terms of the Inquiry's ability to make meaningful future recommendations. If an end date of 2017 were set, for example, this could prevent the Inquiry from considering legislative, policy, rules, standards and practice changes that arise during the course of its term. This would also be inconsistent with a future focus. I consider this matter is appropriately left to the Inquiry to manage in an appropriate, timely, and effective manner.
66. As a result of allowing the Inquiry to consider matters after 1999 (in order to inform future recommendations), the revised terms of reference clarify that the Inquiry may hear from people who were in care at any point after 1999 or who are currently in care, whether or not they were also in care before 1999.

Principles and methods of work

67. This Royal Commission is examining one of the most serious issues of public importance. On that basis, and to demonstrate the commitment to addressing this issue properly, I propose that the terms of reference confirm that the Inquiry will operate with professionalism and integrity and in line with relevant domestic and international good practice guidance. Guidance documents, for example the United Nations Human Rights Training Manual on Human Rights Monitoring (which was referred to in the draft terms of reference) and other documents, provide valuable practical guidance on what good practice involves. It is expected that the Inquiry will consult and make appropriate use of relevant guidance documents, to inform their ways of working.
68. I propose that the principles to guide the Inquiry's work include those listed immediately below. These principles take into account suggestions by the Chair, as well as an additional principle I consider will add value to the Inquiry's work:
- do no harm;
 - focus on victims and survivors;
 - take a whānau-centred view;
 - work in partnership with iwi and Māori;
 - work inclusively with Pacific people;
 - facilitate the meaningful participation of those with disability, mental illness, or both;
 - respond to differential impact on any particular individuals or groups;
 - be sensitive to the different types of vulnerability that arise for people in care;
 - ensure fair and reasonable processes for individuals and organisations associated with providing care; and
 - avoid an overly-legalistic approach.

Counselling and support to be made available

69. The terms of reference provides for the Royal Commission to make available counselling or other similar support to those affected by abuse in State care or in the care of faith-based institutions. As existing counselling services in this area are in high demand, services may not be readily available. The Royal Commission will need to carefully plan its approach to the provision of counselling, which could be provided through an in-house team, or by well-planned partnership or similar arrangements with external providers.

Co-operation from agencies / institutions

70. The Act provides that the Inquiry has the ability to regulate its own procedure, unless specified in the Act and the terms of reference. In this case, I propose that the terms of reference contain supplementary guidance on some aspects of co-operation expected of agencies / institutions. These agencies / institutions will be expected to co-operate with the Inquiry to enable it to hear from people who are currently in care. This includes providing a safe and secure environment and ensuring the Inquiry can work independently and with due regard to the need for confidentiality. It confirms the Government's expectation that people in care who engage with the Inquiry in good faith will not, in relation to the sharing of that information, be subject to disciplinary action, change in care conditions, or other disadvantage or prejudice of any kind. This provision is designed to ensure that people will not experience 'reprisals' (such as abuse, harm, or other disadvantage) simply because they decided to share their story. Finally, the Government expects that agencies / institutions will ensure supports are in place for people who engage with the Inquiry. This does not interfere with any counselling or other support that may be made available through the dedicated counselling fund.
71. This provision does not limit the ability of agencies / institutions to do what they are lawfully able to do under existing legislation, nor do they create new, enforceable legal obligations. It is a policy tool which mirrors the statutory framework that applies to visits to people in care by independent bodies. It is designed to signal the government's expectation of what constructive and appropriate engagement should look like (that is, what a 'do no harm' approach would involve when applied in practice).

Complaints and claims processes continue to operate during the Inquiry's term

72. The terms of reference confirms that, while the Inquiry is running, other processes (for example, feedback, complaints, review, claims, settlement, or similar processes) continue to run. There is no expectation or requirement for people to go through these processes before engaging with the Inquiry. This recognises the distinct purposes of these separate processes and the fact that the Inquiry may make recommendations on improvements to such processes for the future.

The Inquiry will be based in New Zealand

73. The terms of reference provide that almost all of the Inquiry's work will be undertaken in New Zealand. The Inquiry will be expected to use modern technologies to communicate with persons based overseas. From time to time, however, and only where the Inquiry determines that it is necessary to gather evidence from persons based overseas, it may travel outside New Zealand. The Inquiry will need to ensure that it has all relevant legal or other permissions to do such investigative work outside New Zealand. It is also required to conduct this work in a manner that meets the principles laid out in the terms of reference (both on engagement with victims / survivors and on financial transparency and accountability).

References to Treaty of Waitangi and its principles

74. I propose the inclusion of an appropriate reference to the Treaty of Waitangi / Te Tiriti o Waitangi and its principles in the terms of reference. Since the decision to establish the Inquiry was announced, there has been a clear understanding that this Inquiry needs to have the trust and confidence of Māori, given the number of Māori children, young persons, and vulnerable adults who have been in care.
75. The draft terms of reference left open the question of how best to refer to the Treaty of Waitangi and its principles to the public consultation period. This approach provided an unrestricted opportunity for Māori to give feedback on this issue, and was also designed to give the Royal Commission maximum flexibility to develop ways of working that would enable it to operate in a manner consistent with the Treaty of Waitangi / Te Tiriti o Waitangi and its principles.
76. Following this consultation process and advice from the Chair, I propose amendments that will build on the terms of reference by retaining or strengthening existing Treaty references, including in the preamble and background sections. The Inquiry will also be underpinned by the Treaty and its principles and will partner with Māori throughout its process.

9(2)(h)



Preamble and background

78. I propose the inclusion of a preamble in the terms of reference. While the Act does not require a preamble, paragraphs of this nature are common in international human rights instruments, as well as in the establishment instruments for similar Inquiries in other countries.

79. The preamble recites the relevant historical background, the groups that have experienced abuse in care, the bodies that have previously looked into this issue, and the observations of United Nations human rights treaty bodies in recent years. The preamble also emphasises the need to treat all people in care appropriately and reaffirms the domestic and international law that is relevant to, and will inform, the Royal Commission's work. Finally, the preamble reaffirms the Government's original commitment to establish an independent inquiry and its recognition that the matter now requires thorough, effective investigation and review.
80. The background paragraphs of the terms of reference note the key events or processes that preceded the decision to establish this Inquiry. These include the Confidential Forum for Former Inpatients of Psychiatric Hospitals; the Confidential Listening and Assistance Service; the *Never Again / E Kore Anō* campaign; and recent United Nations' (UN) reviews as key milestones that preceded the establishment of this Inquiry.
81. The Inquiry is expected to find ways of being sensitive to the different people affected by abuse in the course of its work. To this end, I recommend changes to strengthen the language around the experience of persons with disability, mental illness, or both, to reinforce the original intention in establishing this Inquiry.

Procedure of Inquiry

82. I propose that the Inquiry commence on the day the establishment instrument comes into force and may begin considering evidence from 3 January 2019. This is consistent with the original expectation that the Inquiry would be able to begin its substantive inquiry work from mid-to-late 2018.
83. I propose that the Royal Commission provide, at a minimum, two key reports during its term. In summary:
 - the Inquiry's panel members will begin once the establishment instrument comes into force, and the formal Inquiry will commence on **3 January 2019**;
 - the Inquiry will present an interim report by **28 December 2020**, which will report on progress on work to date, and make any interim recommendations the Inquiry considers necessary or desirable; and
 - the Inquiry will deliver a final report within four years of its start date (**3 January 2023**), subject to any extensions agreed under the Act.
84. The Inquiry will undertake its work on abuse in State care and in faith-based institutions concurrently. It would not be practicable for the Inquiry to consider abuse in State care first, and could erode trust and confidence in its process as considering one category of victims / survivors may be perceived as running counter to the principles of 'do no harm'.
85. Cabinet will consider the question of the appropriate amount of funding to support the Inquiry's work through to completion, following an interim report from the Inquiry in 2020. This will enable Cabinet to consider this issue once more is known about the size of the cohorts and the Inquiry's workload.

86. The ability to report back on the cohort size reflects the fact that a range of variables affects how many people can, and may want to, engage with the Inquiry. Direct comparison to overseas inquiries on similar topics provides a partial (but not complete) picture: while the Australian Royal Commission, for example, focused mainly on child sexual abuse, it also assessed related abuse. It also, by comparison to this Inquiry, had a very wide list of institutional settings in scope (including, for example, private sports clubs). The ability to report back in 2020, therefore, presents a good opportunity to ensure this Inquiry has the necessary tools to deliver on the mandate set by Cabinet, once the size and scale can be quantified in more detail.

Appropriate Minister and relevant Department

87. The proposed terms of reference recognise my role as the appropriate Minister under the Inquiries Act. The relevant department is defined in the Act as the Department of Internal Affairs unless another department of State is appointed. In November 2017, the Department of Internal Affairs was confirmed as the agency that would provide administrative support to this Inquiry [CBC-17-MIN-0028].

Appointment of Inquiry members

88. I seek Cabinet agreement to appoint four members of the Royal Commission in addition to the Chair [CBC-18-MIN-0011 refers]. This number reflects the significant workload expected of the Royal Commission and its proposed extended scope. It also allows for diversity across the panel, and the ability to cover any personal absences during the course of the Inquiry's term.
89. Appointment of these four Inquiry members will be considered by APH with a separate Cabinet paper for that purpose.

Survivor Advisory Panel

90. In January 2018, Cabinet noted CBC's agreement that I would report back on details of the Survivor Advisory Panel [CAB-18-MIN-0017].
91. The proposed terms of reference uses the term "Survivor Advisory Group or Groups", which reflects their role in assisting the Inquiry and ensuring there is a victim / survivor voice. As the term suggests, the Royal Commission may appoint more than one group, to reflect the different groups affected by abuse in care. While they will not have a decision-making role, their input will be very important to the overall work of the Royal Commission. The process for determining the membership of these groups, and how they will work, is to be decided by the Royal Commission once the full panel of members is in place.
92. In addition to the establishment of a Survivor Advisory Group or Groups, the terms of reference provide that 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 the terms of reference.

The Social Wellbeing Board's view on the implications of the Inquiry for social and justice sector agencies

93. Crown agencies involved with children, young persons, and vulnerable adults in State care and in the care of faith-based institutions, are preparing to be ready to support the Royal Commission of Inquiry once it begins its investigations. The Social Wellbeing Board (the Board) of Chief Executives across the social sector recommends taking a joined-up approach to coordinate an appropriate Crown response to the Inquiry. While exploring how best to support such a joint response, the Board has identified the potential for substantial impacts on the public sector.

Impact on the public sector for the duration of the Inquiry and beyond

94. After considering the experience of overseas jurisdictions undertaking similar inquiries and individual agencies' experience to date, the Board anticipates the impact on social and justice agencies and their sectors to be substantial, both during the Inquiry and after as government responds to the Inquiry's recommendations.
95. Potential impacts for the duration of the Inquiry would include:
- the need for an interagency Secretariat, overseen by the Board, that would lead and coordinate the Crown response by aligning cross-agency effort and ensuring responses are integrated, open, constructive and transparent;
 - an increased demand on existing claims and redress processes and experiences, as well as flow-on effects for associated service responses;
 - agencies' need to access expert legal advice and, potentially, representation, to fund their own legal costs;
 - agencies' provision of legal and non-legal advice, management of information requests, support for hearings and provision of support staff to engage with the Inquiry; and
 - agencies' readiness to ensure an effective redress and claim process across government.
96. At least one agency will be able to manage some of these flow on impacts within baselines, for example, for an expected increase in the number of investigations and prosecutions. It is likely, however, that additional resourcing will be required for most of them.
97. Additional costs are also anticipated as the government responds to the Inquiry's recommendations and initiates work to help prevent abuse occurring in the future.

Implications of agreed scope and definitions

98. Decisions on the scope of the Inquiry (including, for example the expansion of the definition of abuse in the terms of reference to include 'inadequate care') could, depending on how it is interpreted and applied by the Royal Commission, affect agencies' ability to respond appropriately and effectively. The Board recognises and agrees with the need to examine omissions or failings in the provision of care and considers that 'inadequate care' is covered under 'neglect'.

IN CONFIDENCE

99. The Board also notes the importance of the Inquiry's role in determining the qualitative threshold that neglect would have to reach; the relevance of contextual elements; the need to treat all people in care appropriately; and the need to consider relevant domestic and international law.
100. The Board is committed to supporting the Inquiry through a public sector that is well-positioned and able to respond effectively to ensure all people in care are treated with humanity and respect.

Financial implications***Budget for the Royal Commission***

101. I am seeking agreement from Cabinet for \$78.849 million to fund the Royal Commission and related processes.
102. The forecast budget for the Inquiry has been calculated in consultation with the Royal Commission and other key stakeholders, using the Australian Royal Commission into Institutional Responses to Child Sexual Abuse as a model. The key forecasted cost categories (over the expected four year duration) are:

Table 2 Royal Commission forecasted cost summary¹

Cost category	Total forecasted cost (\$ million)
Chair and member fees	6.123
Counselling costs	15.335
Personnel costs	30.625
Hearings and listening sessions	6.885
ICT costs	3.919
Legal fees	4.829
Accommodation	2.842
Other costs	8.291
TOTAL	78.849

103. These costs are based on estimates of the likely workload of the Inquiry and resources it will require. It is possible that the Inquiry's cost will vary from these estimates once it begins its work. Should the Royal Commission require additional funding in the future, it will have the opportunity in its interim report in 2020 to identify additional funding requirements.
104. Given the estimated nature of the Royal Commission's budget, a Specific Fiscal Risk has been lodged with the Treasury in acknowledgement of the potential unquantified cost. In addition, because of the scale of the Inquiry and its cost, it will be required to report publicly on its expenditure every six months, to ensure that the Inquiry will be fiscally accountable and transparent in how it uses public funds to deliver on its mandate.

Estimated workload and resources

105. The likely workload for the Inquiry has been estimated as follows:

¹

Refer to Appendix Three for a comprehensive breakdown of the forecasted costs.

IN CONFIDENCE

- an initial inquiry duration of four years;
 - an estimated total cohort of approximately 8,000 children, young persons, and vulnerable adults who experienced abuse in State care, and with the inclusion of faith-based care settings, up to 14,000 individuals could engage with the Inquiry;
 - 100 formal hearing days during the course of the Inquiry to hear from institutions and individuals;
 - between 1,600 and 2,800 informal (i.e. private) listening sessions where individuals will have the opportunity to be heard;
 - counselling for between 4,800 and 8,500 people, including (in line with the Government's commitment that no person is turned away) those who have chosen not engage with the Inquiry or fall outside its terms of reference but are assessed as needing counselling nonetheless; and
 - reimbursement of reasonable travel costs for attendance at public hearings and private listening sessions.
106. The Inquiry's budget is based on the following resources being available to it:
- one Royal Commission Chair supported by four members, working four days per week for the duration of the Royal Commission's term;
 - an average staff level of 64 Full-Time Equivalent (FTEs), including policy, investigative, administrative, and executive support;
 - experienced Counsel assisting the Royal Commission full-time; and
 - the Department of Internal Affairs, as the administering agency, providing core administrative services to the Royal Commission and recovers those costs.

Participants' legal expenses

107. The terms of reference include the principle that the Inquiry should avoid an overly legalistic approach to its investigations. While this may help to save some legal costs, those affected may still desire and seek Crown-funded legal representation or other legal support.
108. It is assumed that State institutions (direct State care providers) will fund their own legal costs. Indirect State care providers (for example, non-government organisations contracted by the State to provide care) may need to have their situation assessed by the Royal Commission under the Act.
109. Because of the uncertainty around the legal cost for participants, the Department of Internal Affairs has lodged a Specific Fiscal Risk with the Treasury.

Indicative counselling expenditure profile

110. The Department of Internal Affairs has recommended that the counselling funding is ring-fenced in a dedicated Multi-Year Appropriation (MYA) to ensure that these monies are dedicated to counselling services for people affected by the Royal Commission's work. As existing counselling services in this area are in high demand, services may not be readily available. Counselling requirements are forecast over seven years at a total cost of \$15.335 million (unless exhausted earlier):

Table 5: Royal Commission forecasted counselling costs

	Financial years (\$ millions)							Total
	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	
Counselling	1.464	2.233	3.028	3.388	2.662	1.911	0.648	15.335
As a % of total	10%	15%	20%	22%	17%	12%	4%	100%

111. The counselling budget is standalone, to ensure a dedicated focus on victims / survivors of abuse in care. It therefore supplements, rather than replaces, any services that may be available to victims / survivors, if they meet eligibility criteria. This supplemental approach ensures that victims / survivors have access to support that is, and is seen to be, independent of State agencies.

Financial transparency and accountability

112. While it is essential for the Inquiry to have investigative independence, it must also be fiscally accountable and transparent in how it uses public funds to deliver on its mandate. The Department of Internal Affairs is responsible for establishing the process for monitoring the Inquiry's budget and the reporting timeframe.

113. The Department of Internal Affairs proposes that the Royal Commission submit a formal financial report to the Department every six months, from the date of establishment, until the conclusion of the Inquiry on:

- how much of the budget has been used, compared to forecast; and
- whether there have been any material deviations from expectations, as well as significant costs that were unanticipated, that are of relevance to future funding decisions.

114. These reports will be informed by the structure and content of New Zealand Public Service annual report standards, and will be made publicly available.

115. The Department will monitor progress and expenditure in a manner that is separate from the substantive issues of the Inquiry, in accordance with the requirements of the Public Finance Act 1989 and New Zealand Generally Accepted Accounting Standards.

116. Individually and collectively, these measures help to ensure that the Royal Commission's expenditure is monitored transparently.

Between-Budget contingency bid

117. I am seeking approval for an increase of \$78.849 million to Vote Internal Affairs appropriation from 2018/19 to 2022/23 to cover the costs of the Inquiry, consisting of:

- \$56.066 million for Departmental expenditure to fund the Royal Commission's operations;
- \$6.123 million for non-Departmental expenditure to pay Commissioners;
- \$15.335 million for counselling for individuals involved in the Royal Commission's work; and

- \$1.325 million for capital expenditure related to the Royal Commission's work.
118. Cabinet Office circular CO (18)2 requires that proposals for funding from the between-Budget contingency demonstrate that the proposal cannot be funded through reprioritisation, cannot be deferred until the next Budget and should be supported with the same degree of information as a Budget proposal.
119. The Department of Internal Affairs has considered and discounted the following sources of funding, in consultation with Treasury:
- *reprioritising funding from within Vote Internal Affairs 2018/19 baseline* - this is not viable as the Department is facing significant cost pressures in 2018/19 and beyond. The Department's Four Year Plan forecasts approximately \$268 million in cost pressures over the next four years. These cost pressures have been largely driven by increased demand for the Department's Crown-funded services and the required investment to meet service delivery expectations. Any further reduction of funding to existing activities would have a detrimental impact on outputs and outcomes;
 - *seeking contributions from other agencies* - this is not viable as the amount of funding required is significant relative to existing baselines and may affect stakeholders' views on the independence of the Royal Commission;
 - *seeking new funding as part of Budget 2019* - this would be optimal if the timing aligned. However, the Royal Commission requires funding to commence work in December 2018 (with the ability to consider evidence from 3 January 2019) prior to budget decisions being confirmed in April 2019. The initiative was part of the Government's 100 day plan and preparation for the Royal Commission's commencement has been underway since January 2018.

Establishment instrument

120. I seek authorisation to submit the Order in Council, made under the authority of the Letters Patent and subject to the Act, to the Executive Council. The terms of reference must be notified by Order in Council or by notice in the Gazette by the Minister (section 7 of the Inquiries Act).
121. This will come into effect the day after the establishment instrument is publicly notified.
122. Section 7 of the Act requires the Order in Council to include specific matters relevant for the establishment of the Inquiry. I confirm that the Order in Council complies with the principles of the Treaty of Waitangi; the rights and freedoms contained in the New Zealand Bill of Rights Act 1990; the Human Rights Act 1993; the principles and guidelines set out in the Privacy Act 1993; and relevant international standards and obligations. It also complies with the *Guidelines on the Process and Content of Legislation* (2014 edition) and meets the requirements in section 7 of the Act.
123. This Order in Council will need to be submitted to the Executive Council on 12 November 2018. A waiver will also be required on the 28-day rule for legislative instruments to come into force at least 28 days after they have been notified in the *New Zealand Gazette*. I seek a waiver on the grounds that the instrument needs to come into effect as soon as possible after Cabinet's final decisions on 12 November 2018 and the instrument only confers benefit on the public.

124. I am not aware of any grounds on which the Order in Council should be drawn to the attention of the House of Representatives under Standing Order 319. The draft Order in Council has been certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.
125. If Cabinet agrees, this Order in Council will be submitted to the Executive Council on Monday 12 November 2018, with the intention that it will be notified in the *New Zealand Gazette* by or before Thursday 15 November 2018 and come into force the following day.

Consultation

126. The Department of the Prime Minister and Cabinet, the State Services Commission, the Treasury, the Crown Law Office, Oranga Tamariki – Ministry for Children, the Ministry for Social Development, the Ministry of Education, the Ministry of Health, and Te Puni Kōkiri, Police, the Ministry of Justice and the Department of Corrections were consulted on this paper. The Ministerial Working Group was consulted on the substantive content of this Cabinet paper. I finalised the proposed terms of reference following consultation with all relevant parties.

Treasury Comment

127. The Treasury has been consulted on the contents of this Cabinet paper and supports its proposals.

Human rights

128. A strong rationale for the Inquiry itself is to uphold human rights. The Inquiry should be mindful of relevant international treaties and obligations, including the UN Convention on the Rights of the Child, the UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the UN Convention on the Rights of Persons with Disabilities and the UN International Convention on the Elimination of All Forms of Racial Discrimination.
129. The Royal Commission is likely to help address issue 28 of the UN Committee against Torture's List of Issues for New Zealand's seventh periodic report. Issue 28 asks New Zealand to "provide information on the progress made by the Claims Resolution team and other bodies that can provide compensation, apologies and other remedies in dealing with historic experiences of cruel treatment, and the status of those claims." While the Royal Commission does not determine individual cases, it is an important part of investigating and understanding what happened, and identifying what would help to prevent abuse in the future.
130. The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. Human rights implications include procedural fairness for all parties, whether they are complainants or persons whose conduct is under consideration by the Inquiry. The Crown needs to act consistently with the principles of the Treaty of Waitangi in the establishment of the Inquiry. During the first 100 days, the Crown provided updates to the Waitangi Tribunal on the steps taken to establish the Royal Commission. The Crown filed a further memorandum during the public consultation period. The Crown will file a further memorandum once the terms of reference have been agreed by Cabinet.

131. The terms of reference reaffirm 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 response to abuse. The terms of reference also provide that the Inquiry is to have regard to the various types of vulnerability that arises for people in care, and to any people or groups where differential impact is evident. Many of the principles and methods of working in the terms of reference will enable the Inquiry to operate consistently with a human rights approach.

Ministerial Working Group

132. The Ministerial Working Group was set up to oversee the establishment of the Inquiry. I propose that the Ministerial Working Group be disestablished once the Royal Commission commences.

Gender implications

133. The Inquiry is expected to include all genders in its scope and to consider gender implications in the development of its processes.

Disability perspective

134. The outputs for the Inquiry include a focus on investigating the impacts for people placed in disability care. The good practice principles included in the proposed terms of reference provide that the Inquiry is to facilitate the meaningful participation of those with disability, mental illness, or both.

Legislative implications

135. An Order in Council is required. This will be notified by or before Thursday 15 November 2018. The Order in Council will include the terms of reference as an Annex. It will appoint the final members of the Royal Commission and will confirm Rt Hon Sir Anand Satyanand as the Chair.

Certification by Parliamentary Counsel Office

136. The draft Order is certified by the Parliamentary Counsel Office as being in order for submission to Cabinet, in reliance on advice received from the Crown Law Office.

Regulatory impact analysis and compliance cost statement

137. Regulatory Impact Analysis is not required as this is an internal administrative or governance arrangement.

Publicity

138. Following agreement to this Cabinet paper, a press release will be issued on the finalised terms of reference, commencement date, the members, timelines, and other key issues.
139. I intend to proactively publish this Cabinet paper, and other relevant papers, on the Department of Internal Affairs' website, subject to consideration of redactions that would be justified if the information had been released under the Official Information Act 1982.

Recommendations

140. It is recommended that the Committee:

1. **note** that on 25 January 2018, the Cabinet Business Committee agreed to establish a Royal Commission of Inquiry into Historical Abuse in State Care and that it was formally established by Order in Council on 1 February 2018;
2. **note** that Rt Hon Sir Anand Satyanand was appointed to lead the Inquiry and that shortly after its establishment, he conducted a public consultation on its draft terms of reference;
3. **note** that Cabinet Business Committee invited me to report back to Cabinet on the terms of reference, additional Inquiry members, the Inquiry's forecasted budget, and the establishment of a Survivor Advisory Panel;
4. **note** that on 28 May 2018, the Chair of the Royal Commission reported back to me on consultation on the draft terms of reference;
5. **note** that on 28 June 2018, the Ministerial Working Group met to discuss the Chair's findings and was consulted on the final scope of the terms of reference;

Terms of Reference

6. **agree** to the revised terms of reference, as contained in the establishment instrument (**Appendix One**) and its referral to the Executive Council for passage following Cabinet decisions;
7. **agree** the title of the Inquiry be changed from "Royal Commission into Historical Abuse in State Care" to "Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions";
8. **agree** that the terms of reference include a preamble that sets out the historical backdrop; the Government's commitment to the establishment of the Inquiry; references to the treatment of persons with disabilities, mental illnesses or both; reaffirms and recognises international and domestic sources of law that will apply to the Inquiry's work; and expressly recognises the Treaty of Waitangi and its principles, as well as the status of iwi and Māori under the Treaty of Waitangi;
9. **agree** that 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. **agree** that the stated purpose of the Inquiry is to identify, examine, and report on the matters in scope;
11. **agree** that the matters in scope for the Inquiry are:
 - 11.1 the nature and extent of abuse that occurred in State care and in the care of faith-based institutions during the relevant period (the relevant period being 1950 to 1999, with discretion to consider matters beyond these dates);
 - 11.2 the factors, including structural, systemic, or practical factors, that caused or contributed to the abuse;
 - 11.3 the impact of the abuse on individuals and their families, whānau, hapū, iwi, and communities (immediate, long-term, and intergenerational);

- 11.4 the circumstances that led to individuals being taken into, or placed into, care and the appropriateness of such placements (including factors that contributed, or may have contributed, to the decision making process);
 - 11.5 what lessons were learned, what changes were made, and what gaps, if any, remain and need addressing;
 - 11.6 the current frameworks to prevent and respond to abuse in care, and any changes that will protect children, young persons and vulnerable adults in the future;
 - 11.7 the redress and rehabilitation processes for individuals who claim, or have claimed, abuse in care, including improvements to those processes; and
 - 11.8 other appropriate steps that State or faith-based institutions should take to address the harm caused, including whether there should be an apology by the State and faith-based institutions for the abuse that occurred.
12. **agree** to the expansion to the definition of abuse in the terms of reference, to include inadequate care and abuse by other care recipients;
 13. **agree** to the definition of individual in the terms of reference to cover children, young persons below the age of 18 years, and vulnerable adults;
 14. **agree** to the revised definition of State care in the terms of reference, including the expansion to include educational settings (including schools), transitional and law enforcement settings, and the exclusion of people in prisons, general hospital admissions, aged residential and in-home care, and immigration detention;
 15. **agree** that the relevant period to be covered is 1950 - 1999, with an expanded discretion to look beyond these dates;
 16. **agree** to the definition of redress processes in the terms of reference;
 17. **agree** that the Minister of Internal Affairs will be the responsible Minister for this Inquiry (as appropriate Minister under the Act);
 18. **agree** to the following principles to guide the Inquiry's work:
 - 18.1 do no harm;
 - 18.2 focus on victims and survivors;
 - 18.3 take a whānau centred view;
 - 18.4 work in partnership with iwi and Māori;
 - 18.5 work inclusively with Pacific people;
 - 18.6 facilitate the meaningful participation of those with disability, mental illness, or both;
 - 18.7 respond to differential impacts on any particular individuals or groups;
 - 18.8 be sensitive to the different types of vulnerability that arise for people in care;
 - 18.9 ensure fair and reasonable processes for individuals and organisations associated with providing care; and
 - 18.10 avoid an overly-legalistic approach.

19. **agree** that the Royal Commission does not adopt a sequential approach where claims related to state care are progressed first with an interim report in 2020, to be followed by claims relating to other care settings;
20. **agree** to set down an interim report date of 28 December 2020, with a final reporting date to be set down following consultation with the Chair by notice in the *New Zealand Gazette*;
21. **agree** that the Inquiry may issue other interim reports, including interim findings and recommendations;
22. **agree** that amendments may be made to the terms of reference as per the provisions of the Act and extensions of time for the reporting date may be granted;

Duration and timing

23. **agree** that the duration of the Royal Commission is extended from three to four calendar years, with a final reporting date to be published in the *New Zealand Gazette*;
24. **note** that counselling requirements and expenditure are forecast beyond four years;
25. **agree** that commencement of the Royal Commission is gazetted in November 2018 following Cabinet decisions, and that the Royal Commission begins hearing evidence from 3 January 2019;

Inquiry members

26. **note** that a separate paper is going to the Appointment and Honours Committee to appoint four Inquiry members;

Ministerial Working Group

27. **agree** that the Ministerial Working Group be disestablished once the Royal Commission commences;

The Social Wellbeing Board

28. **note** that the Social Wellbeing Board has identified the potential for substantial impacts on the public sector arising from the need to take a joined-up approach to coordinate an appropriate Crown response to the Inquiry;
29. **note** the Social Wellbeing Board recommends that Cabinet note that Chief Executives on the Board are working on developing a more detailed understanding of the financial implications of the Inquiry for social sector agencies to manage the Crown response during and after the Inquiry's term;

Financial implications

30. **note** there is limited information on which to develop assumptions about key parameters of the Inquiry, and deviations from the Department of Internal Affairs' forecasts are expected and could be material;
31. **note** the key assumptions made in preparing the budget:

- 31.1 the Inquiry's substantive work will begin in January 2019, with panel members in place before this date;
 - 31.2 State care (direct and indirect) will be the primary, but not exclusive, focus, with faith-based care as a further, separate, focus;
 - 31.3 the Inquiry will present an interim report on State and faith-based care in 2020;
 - 31.4 in 2020, Cabinet will take a further decision on the budget for the next phase of the Inquiry; and
 - 31.5 the Inquiry will deliver a final report by 3 January 2023, within four years of its evidential start date of 3 January 2019.
32. **note** the substantive assumptions underlying the budget:
- 32.1 an estimated total cohort of approximately 8,000 children, young persons and vulnerable adults who experienced abuse in State care, and with the inclusion of faith-based care settings, up to 14,000 individuals may engage with the Inquiry;
 - 32.2 100 formal hearing days during the course of the Inquiry to hear from institutions and individuals;
 - 32.3 allowance for between 1,600 and 2,800 informal (i.e. private) listening sessions where individuals will have the opportunity to be heard;
 - 32.4 the provision of counselling for between 4,800 and 8,500 people who interact with the Royal Commission; and
 - 32.5 reimbursement of people's reasonable travel costs for attending public hearings and private listening sessions.
33. **note** the key operational assumptions underlying the budget:
- 33.1 one Royal Commission Chair supported by four members, working four days per week for the duration of the Royal Commission's term;
 - 33.2 an average staff level of 64 Full-Time Equivalents (FTEs); and
 - 33.3 the Department of Internal Affairs, as the administering agency, provides core administrative services to the Royal Commission.
34. **note** the budget does not include allowance for participants' legal costs to be paid by the Crown when recommended by the Inquiry under section 18 of the Inquiries Act 2013, and a separate application to Cabinet for funding will be made once the Royal Commission is able to estimate these costs;
35. **note** that there is insufficient certainty to create a tagged contingency for either Crown funded legal assistance or for any potential additional funding resulting from the Royal Commission's 2020 report-back, and the Department of Internal Affairs has lodged a Specific Fiscal Risk with the Treasury in acknowledgement of this unquantified cost;
36. **note** it is assumed that State institutions will fund their own legal costs;
37. **agree** to provide an exemption from the Publicity expenses provisions of Cabinet Office Circular (18) 2 to enable the Royal Commission to make autonomous decisions regarding its advertising expenditure without recourse to Cabinet or Ministers;

38. **note** that the Department of Internal Affairs, as the administering Department, acts for the Royal Commission in certain areas, including employing the Royal Commission's Secretariat and managing its appropriations, and in doing so applies Public Sector good practice policies, and passes any resulting costs onto the Royal Commission;
39. **agree** that the Royal Commission will submit a financial report to the Department of Internal Affairs every six months, commencing from the date of establishment, and the Department will make this report publicly available;
40. **agree** to increase funding in Vote Internal Affairs in 2018/19 and out-years to provide for the costs associated with the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions;
41. **note** that the funding for the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions is urgent, cannot be met from Vote Internal Affairs' baselines, and cannot be deferred until Budget 2019;
42. **agree** to establish the following new Multi-Year Appropriation, to run from 3 January 2019 until 30 June 2023:

Vote	Appropriation Minister	Title	Type	Scope
Internal Affairs	Minister of Internal Affairs	Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions - Operating Expenses	Departmental Output Expense	This appropriation is limited to supporting the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions.

43. **approve** the following change to appropriations to meet the operating expenses associated with the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions, with a corresponding impact on the operating balance and net core Crown debt:

Vote Internal Affairs Minister of Internal Affairs	\$million - increase/(decrease)	
	2018/19 to 2022/23	2023/24 & Outyears
Departmental Output Expense: Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions - Operating Expenses (funded by revenue Crown)	56.066	-

44. **note** that the indicative spending profile for the new Multi-Year Appropriation described in recommendation 43 above is as follows:

Indicative annual spending profile	\$million - increase/(decrease)					
	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24 & Outyears
	8.668	13.706	14.246	13.367	6.079	-

45. **agree** to establish the following new multi-year appropriation, to run from 3 January 2019 until 30 June 2023:

Vote	Appropriation Minister	Title	Type	Scope
Internal Affairs	Minister of Internal Affairs	Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions - Commissioners' Fees	Non-Departmental Other Expense	This appropriation is limited to the payment of Commissioners' fees for the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions.

46. **approve** the following change to appropriations to meet the Commissioners' fees associated with the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions, with a corresponding impact on the operating balance and net core Crown debt:

Vote Internal Affairs Minister of Internal Affairs	\$million - increase/(decrease)	
	2018/19 to 2022/23	2023/24 & Outyears
Non-Departmental Other Expense: Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions - Commissioners' Fees	6.123	-

47. **note** that the indicative spending profile for the new Multi-Year Appropriation described in recommendation 46 above is as follows:

Indicative annual spending profile	\$million - increase/(decrease)					
	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24 & Outyears
	1.015	1.459	1.459	1.459	0.730	-

48. **agree** to establish the following new Multi-Year Appropriation, to run from 3 January 2019 until 30 June 2023:

Vote	Appropriation Minister	Title	Type	Scope
Internal Affairs	Minister of Internal Affairs	Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions - Counselling Costs	Non-Departmental Other Expense	This appropriation is limited to providing counselling services for individuals participating in the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions.

49. **approve** the following change to appropriations to meet the counselling costs for individuals involved with the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions, with a corresponding impact on the operating balance and net core Crown debt:

Vote Internal Affairs Minister of Internal Affairs	\$million - increase/(decrease)	
	2018/19 to 2022/23	2023/24 & Outyears
Non-Departmental Other Expense:	15.335	

Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions – Counselling Costs		-
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50. **note** that the indicative spending profile for the new Multi-Year Appropriation described in recommendation 49 above is as follows:

Indicative annual spending profile	\$million – increase/(decrease)					
	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24 & Outyears
	1.464	2.233	3.028	3.388	5.222	-

51. **note** that under the Public Finance Act 1989, the maximum period for a Multi-Year Appropriation is five years;
52. **note** that if further appropriations are required beyond the five year period, approval will be sought from joint Ministers under the provisions available in Cabinet Office Circular CO (18) 2: Proposals with Financial Implications and Financial Authorities, and any unspent funding will be transferred to the new appropriations;
53. **approve** the following capital injection to the Department of Internal Affairs to enable the purchase of software and premise fit-out, with a corresponding impact on net core Crown debt:

	\$million – increase/(decrease)					
	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24 & Outyears
Department of Internal Affairs: Capital Injection	1.325	-	-	-	-	-

54. **note** that following the Royal Commission's completion, the Department of Internal Affairs will make a one-off voluntary capital withdrawal;
55. **approve** the following capital withdrawal from the Department of Internal Affairs, reflecting the circumstance described in recommendation 54 above, with a corresponding impact on net core Crown debt:

Vote Internal Affairs Minister of Internal Affairs	\$million – increase/(decrease)						
	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25 & Outyears

Department of Internal Affairs: Capital Withdrawal	-	-	-	-	-	(1.325)	-
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56. **agree** that the proposed changes to appropriations and Departmental capital injections for 2018/19 above be included in the 2018/19 Supplementary Estimates and that, in the interim, the increases be met from Imprest Supply;
57. **agree** that the expenses incurred under recommendations 43, 46, and 55 above be charged as a pre-commitment against the Budget 2019 operating allowance;
58. **agree** that the Departmental capital injection incurred under recommendation 53 be charged as a pre-commitment against the Budget 2019 capital allowance;
59. **note** that these pre-commitments will reduce the operating and capital funding available for initiatives in Budget 2019 by commensurate amounts;
60. **note** that once the Royal Commission is established, it will spend its budget as it best sees fit to deliver on the terms of reference and should the Royal Commission require additional funding in the future, the Minister of Internal Affairs will report back to Cabinet on the Royal Commission's forecasted budget needs for phase two. The Minister of Internal Affairs will either seek agreement to the amount sought by the Royal Commission, or a different amount.

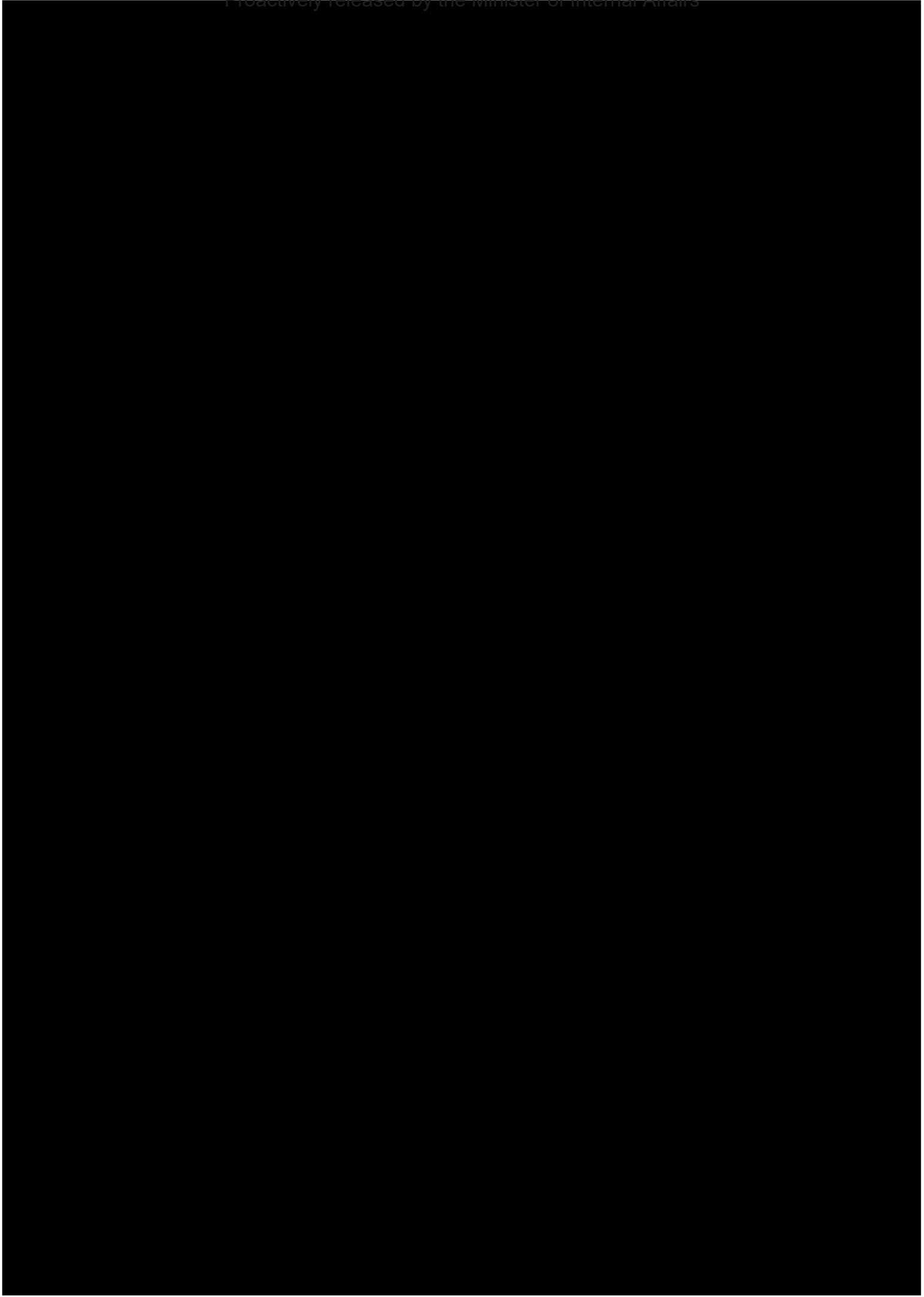
Establishment instrument

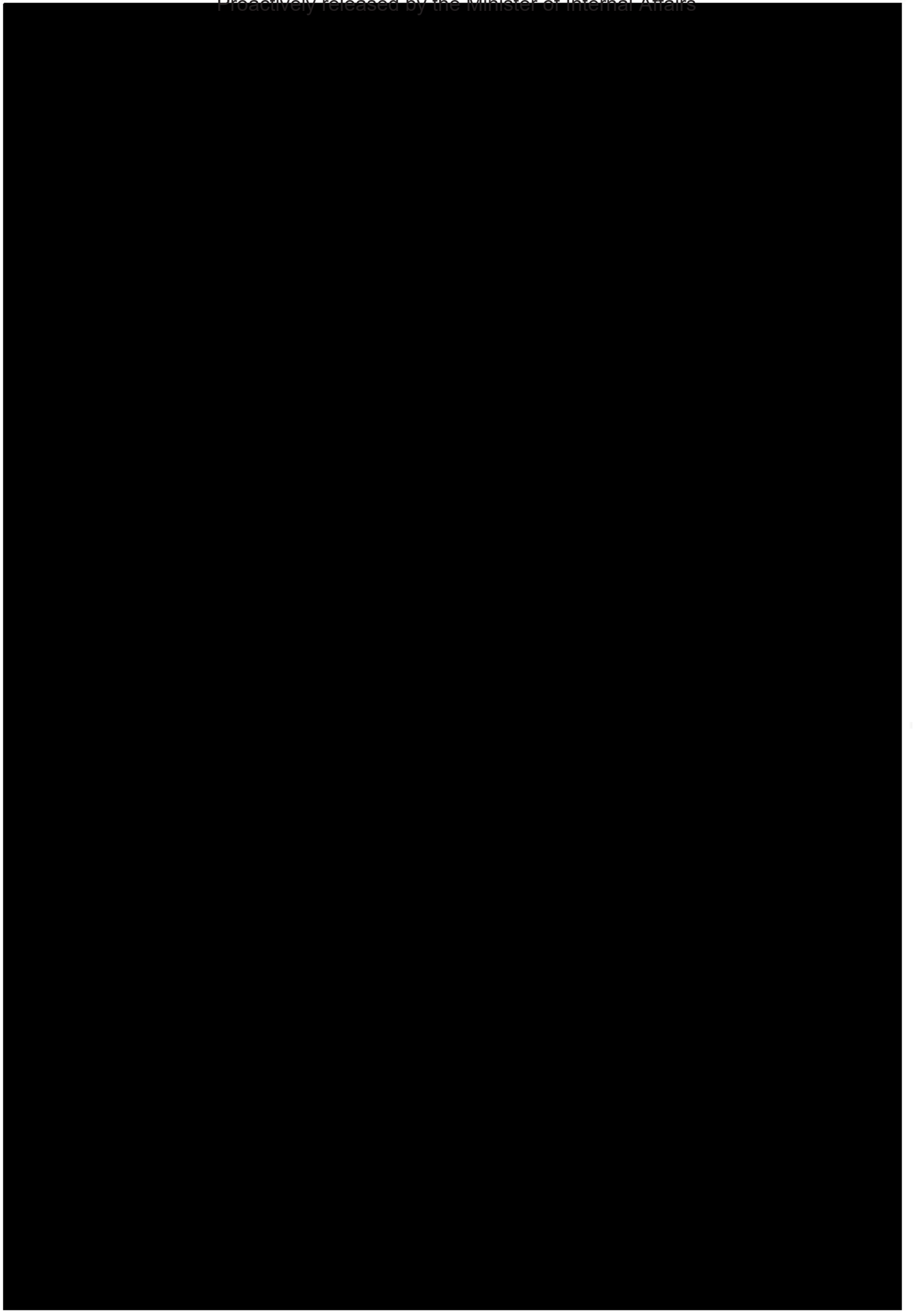
61. **authorise** the submission to the Executive Council of the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions Order 2018;
62. **note** that a waiver of the 28-day rule is sought:
 - 62.1 so that the regulations can come into force as soon as possible; and
 - 62.2 on the grounds that the instrument needs to come into effect as soon as possible after Cabinet's final decisions on 12 November 2018 and the instrument only confers benefit on the public).
63. **agree** to waive the 28-day rule so that the establishment instrument can come into force the day after it is publicly notified.

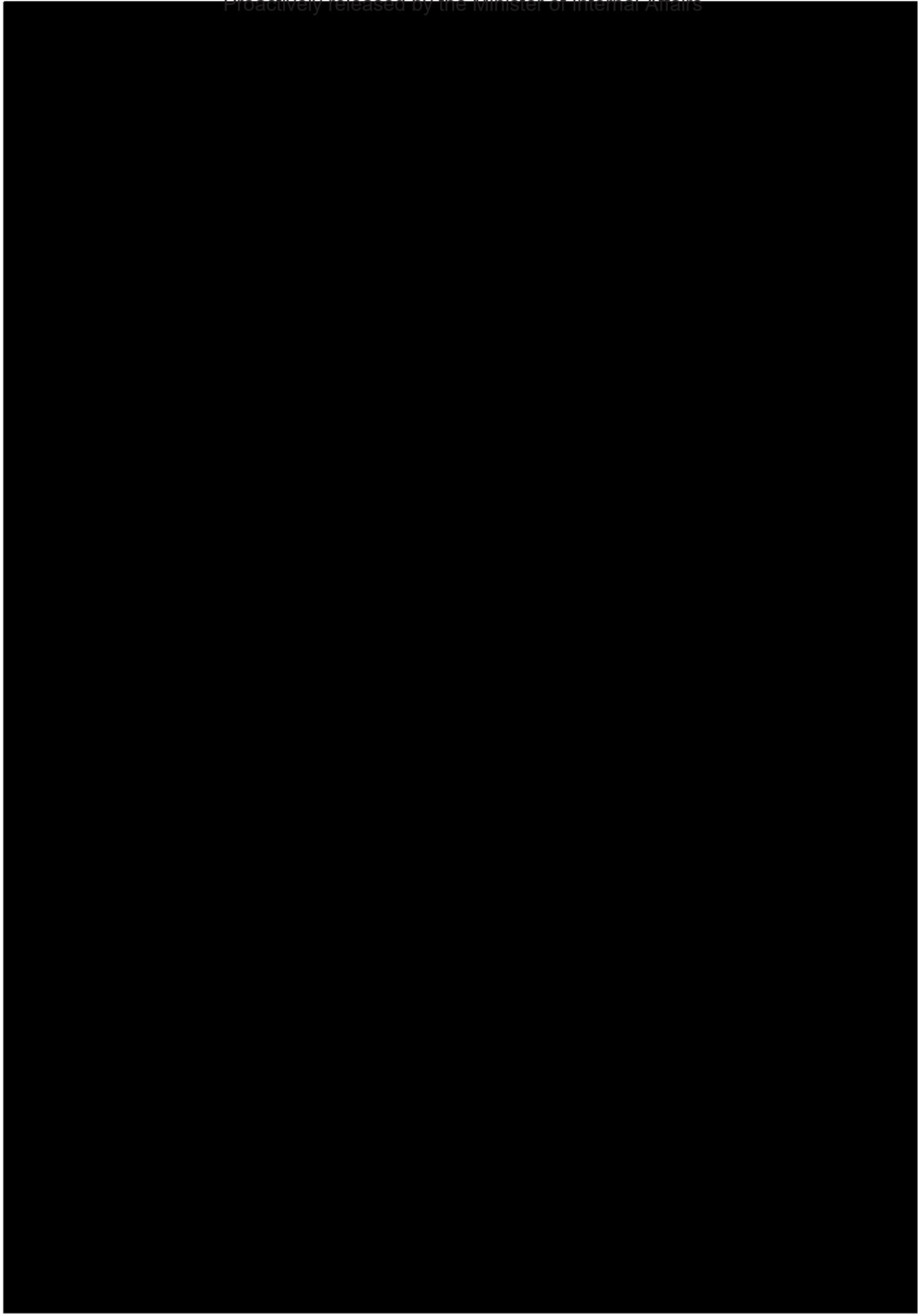
Authorised for lodgement

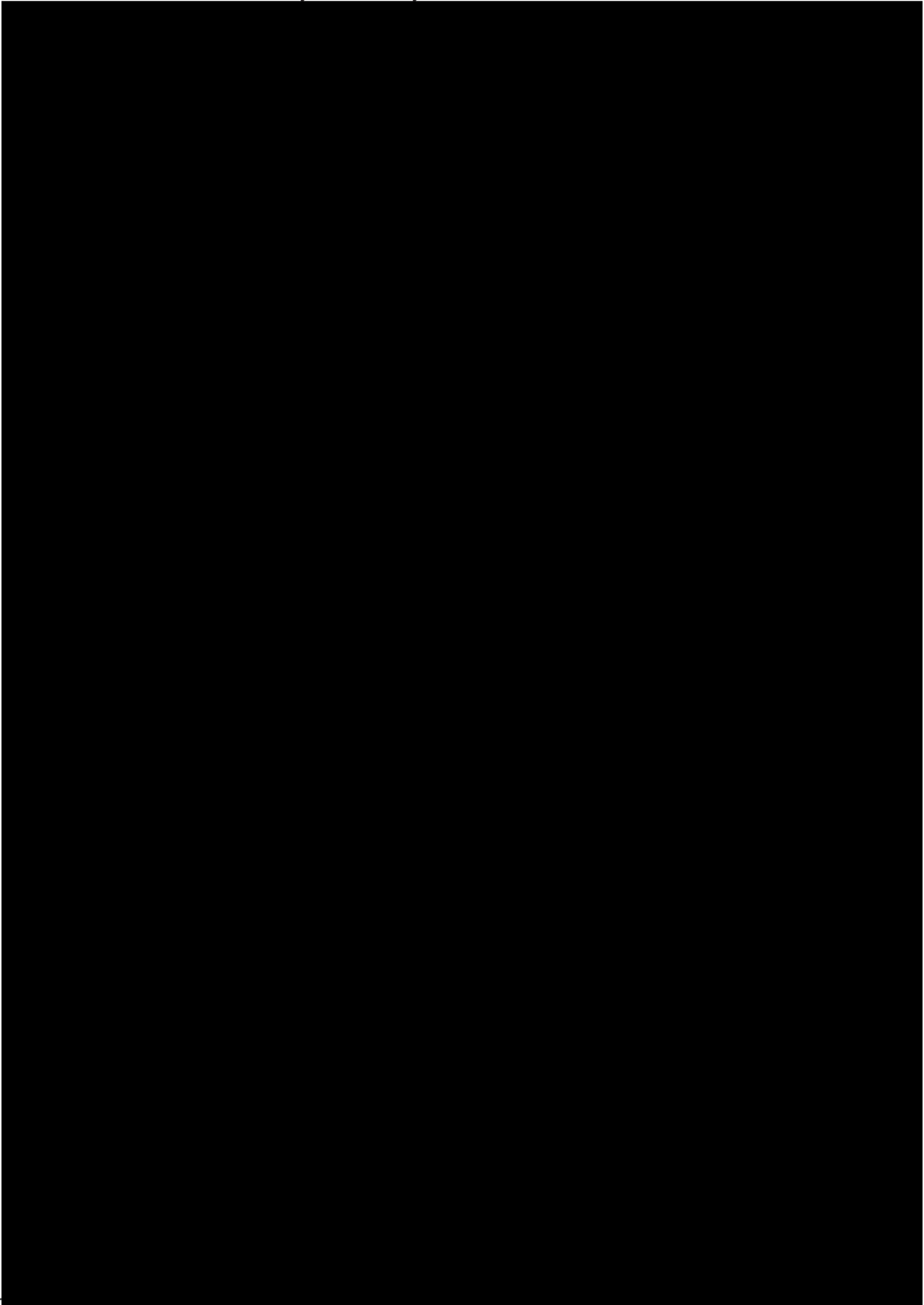
Hon Tracey Martin
Minister of Internal Affairs

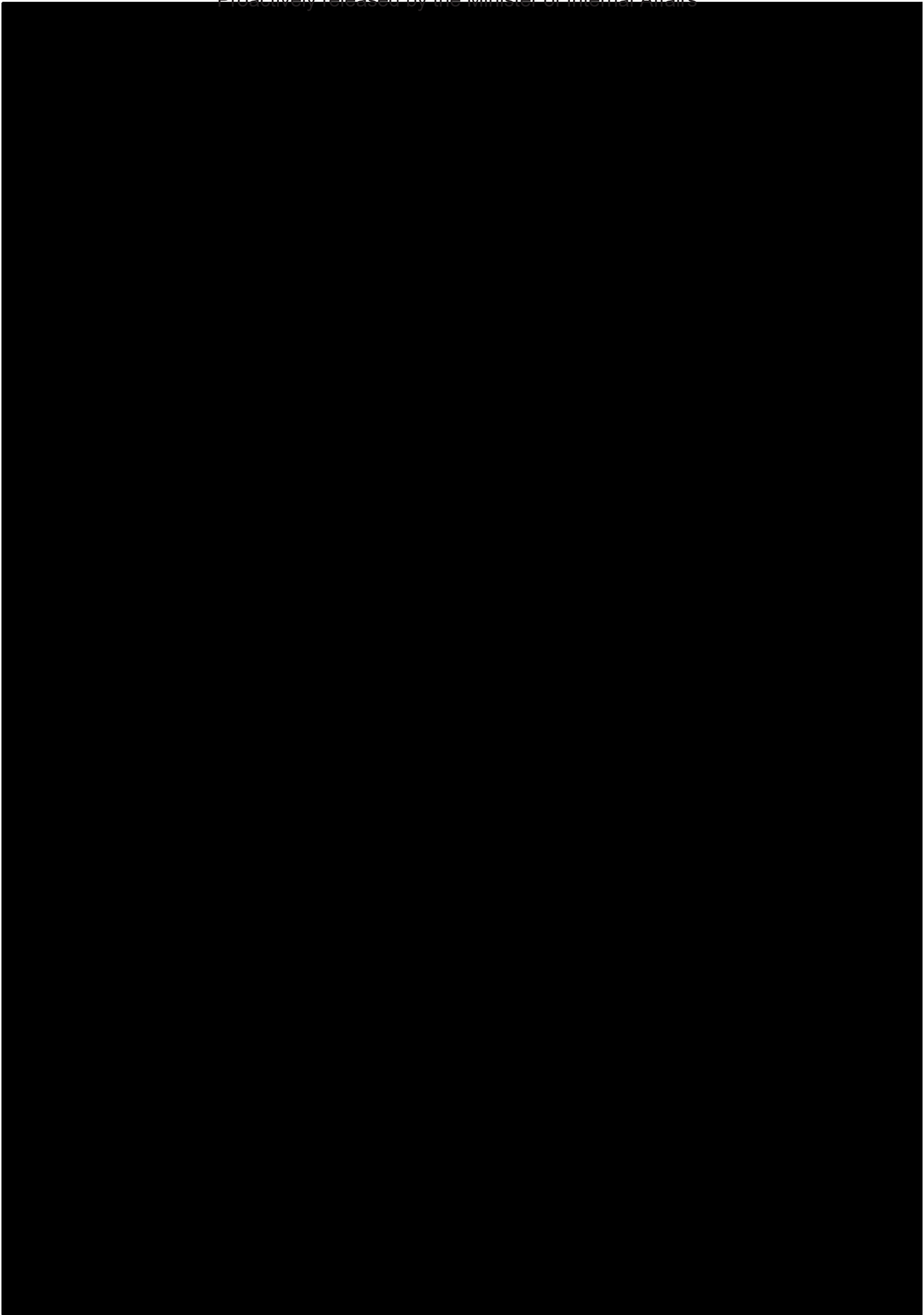
Final Terms of Reference
Available Online

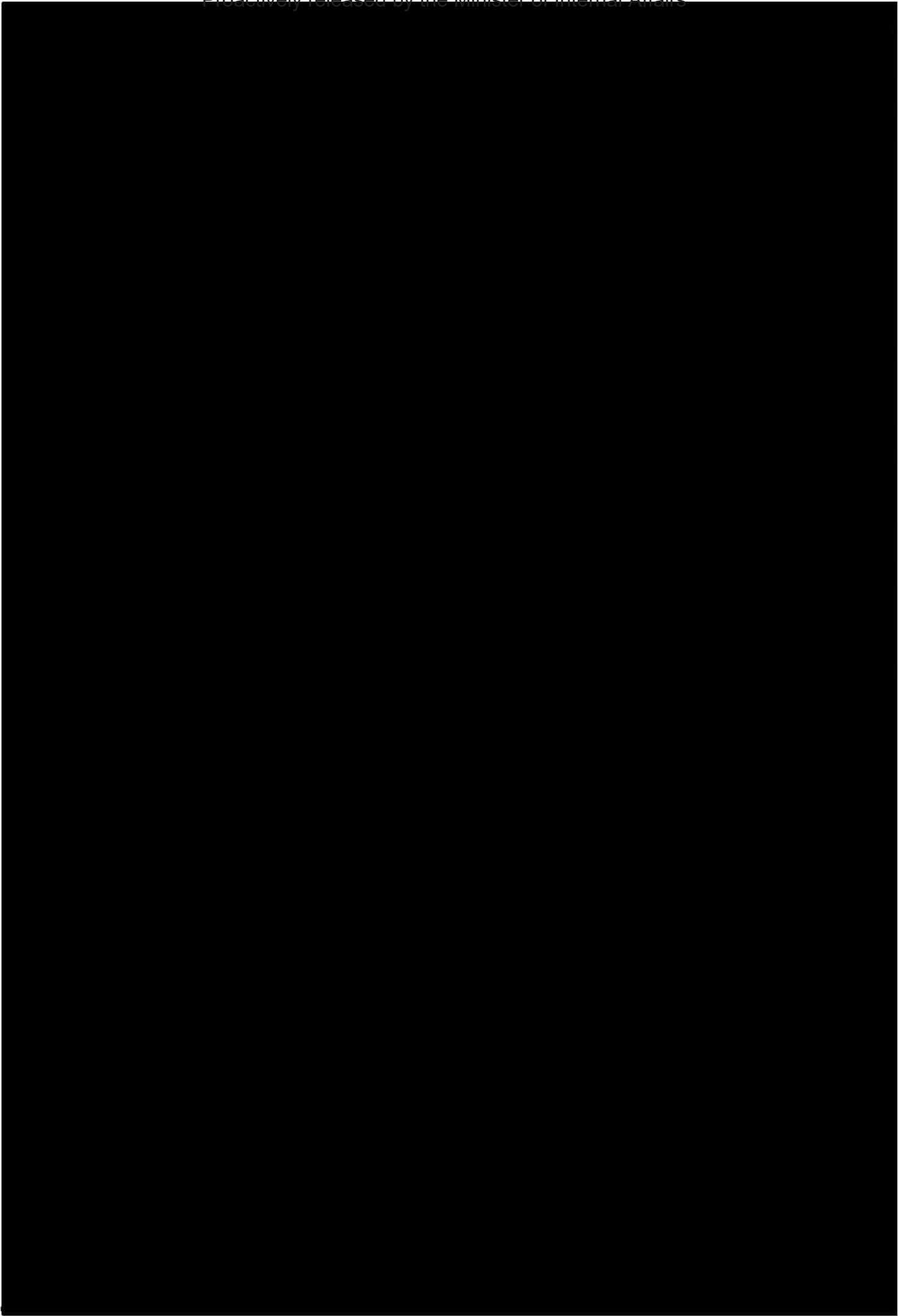


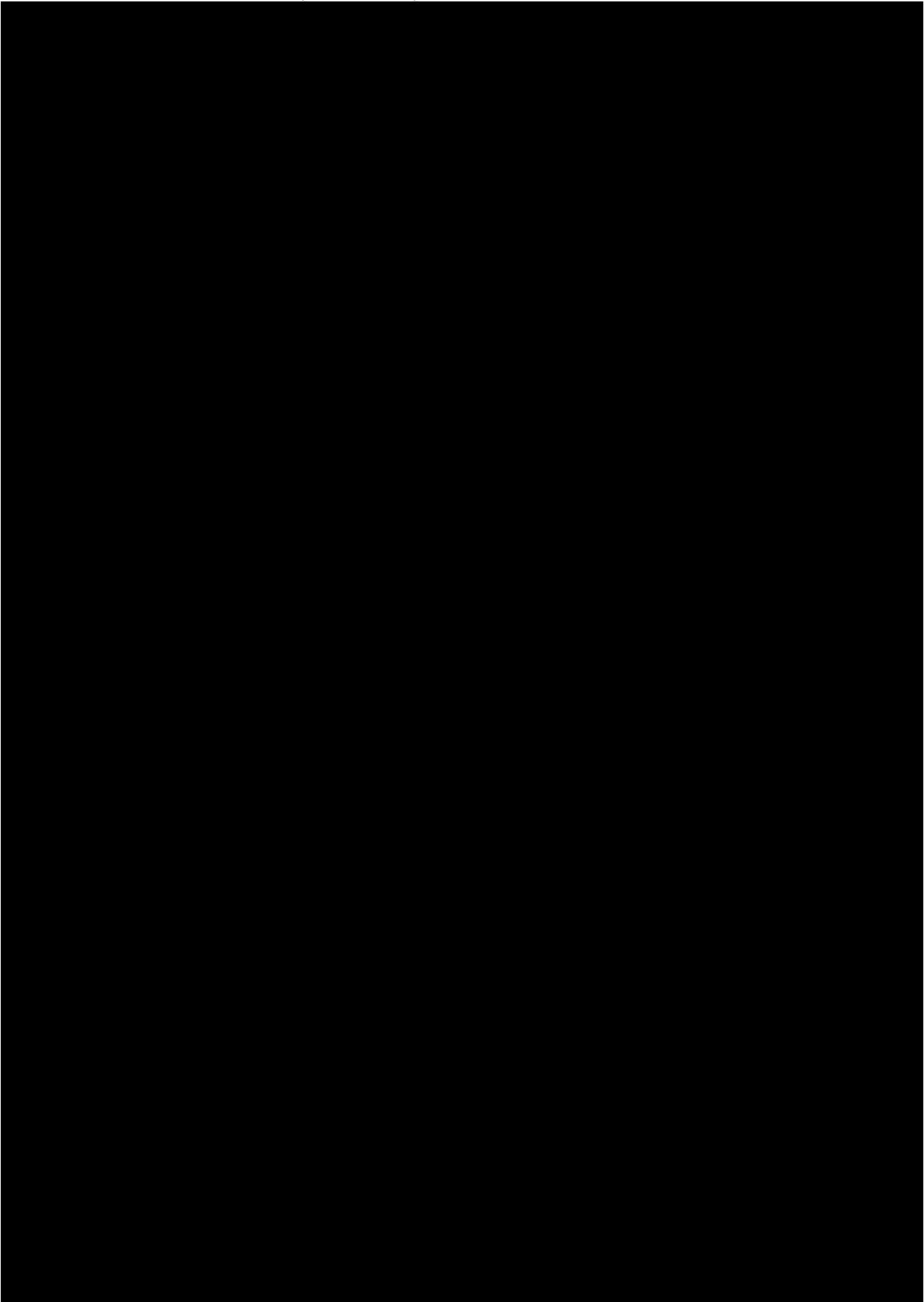


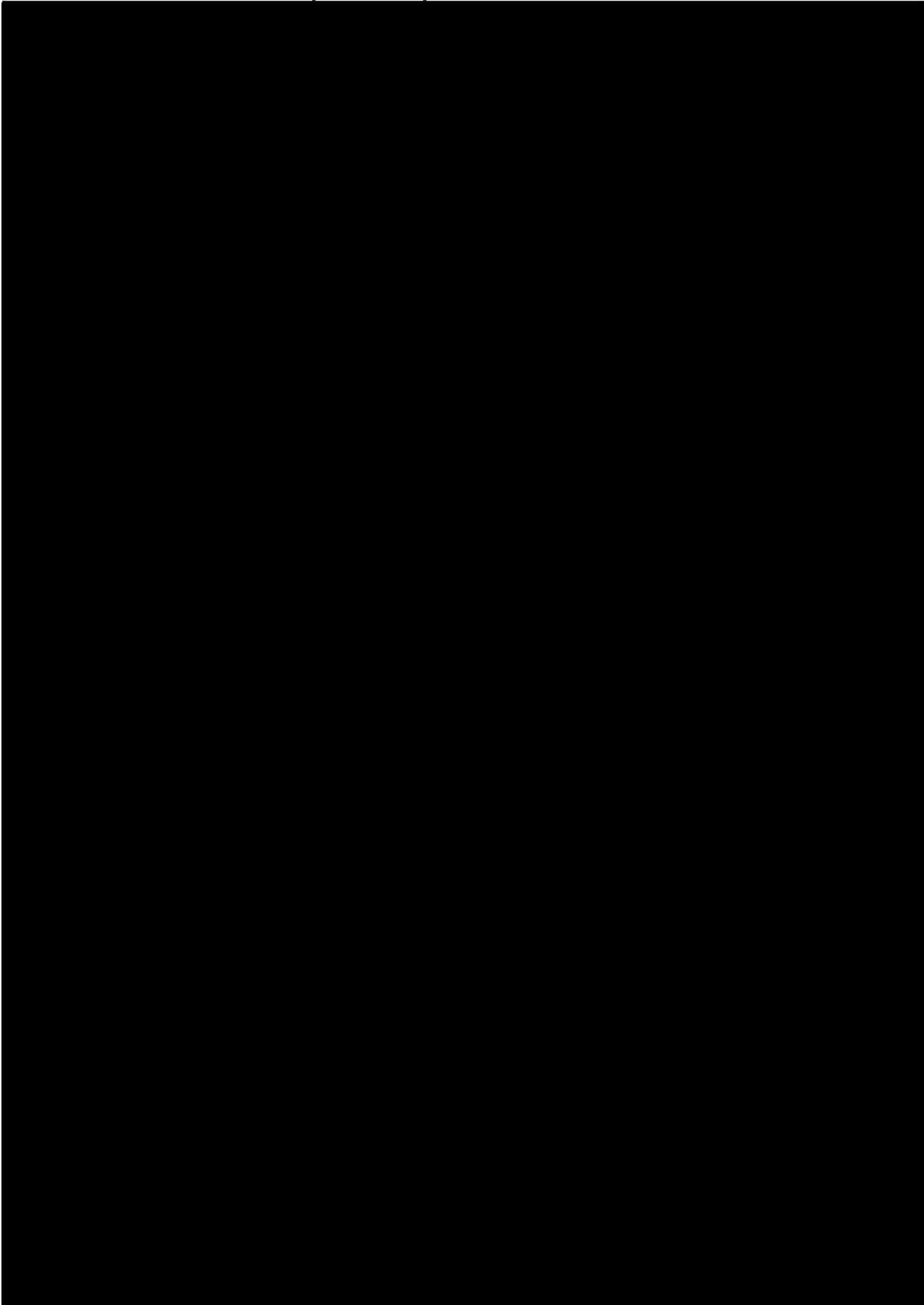


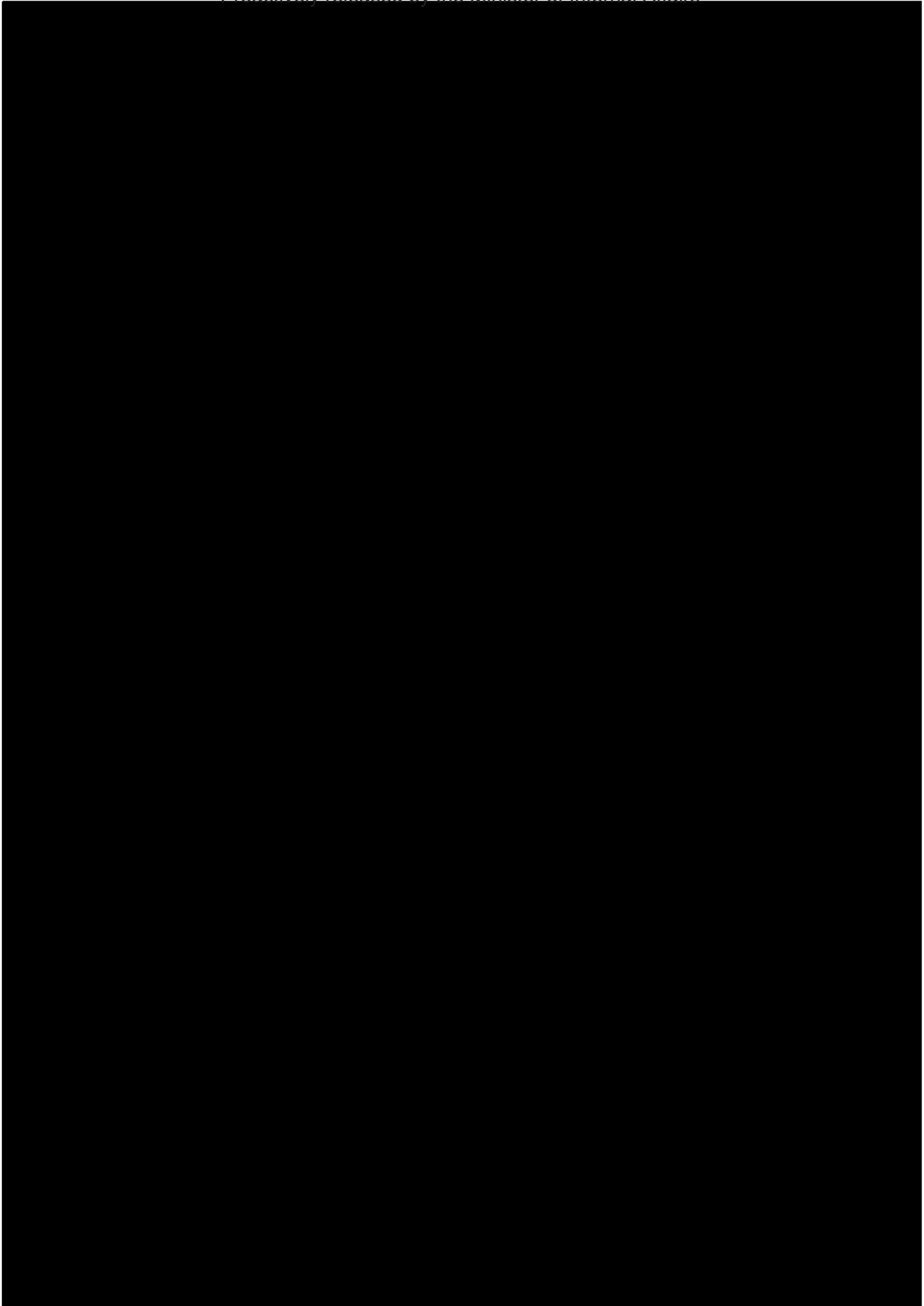


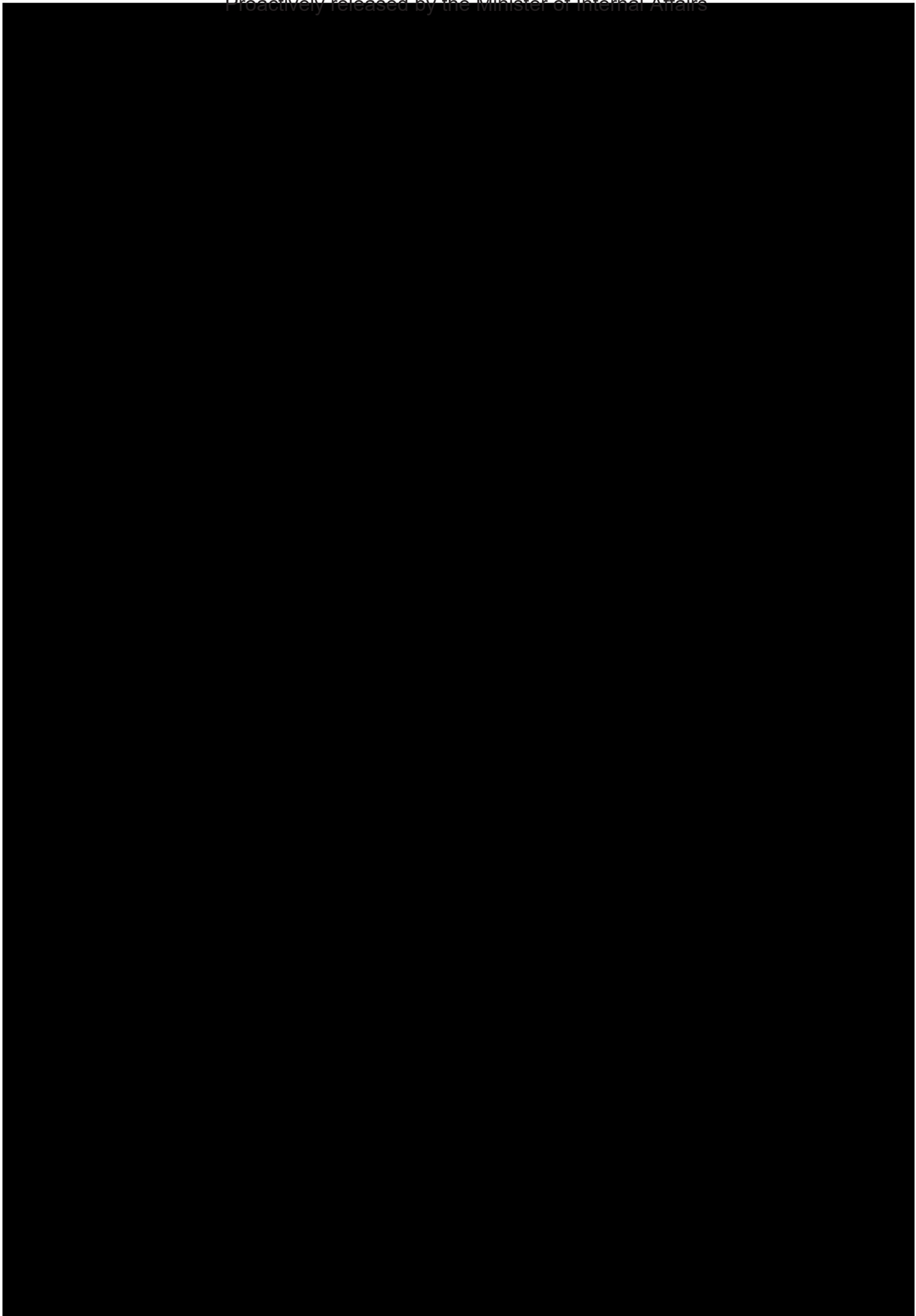


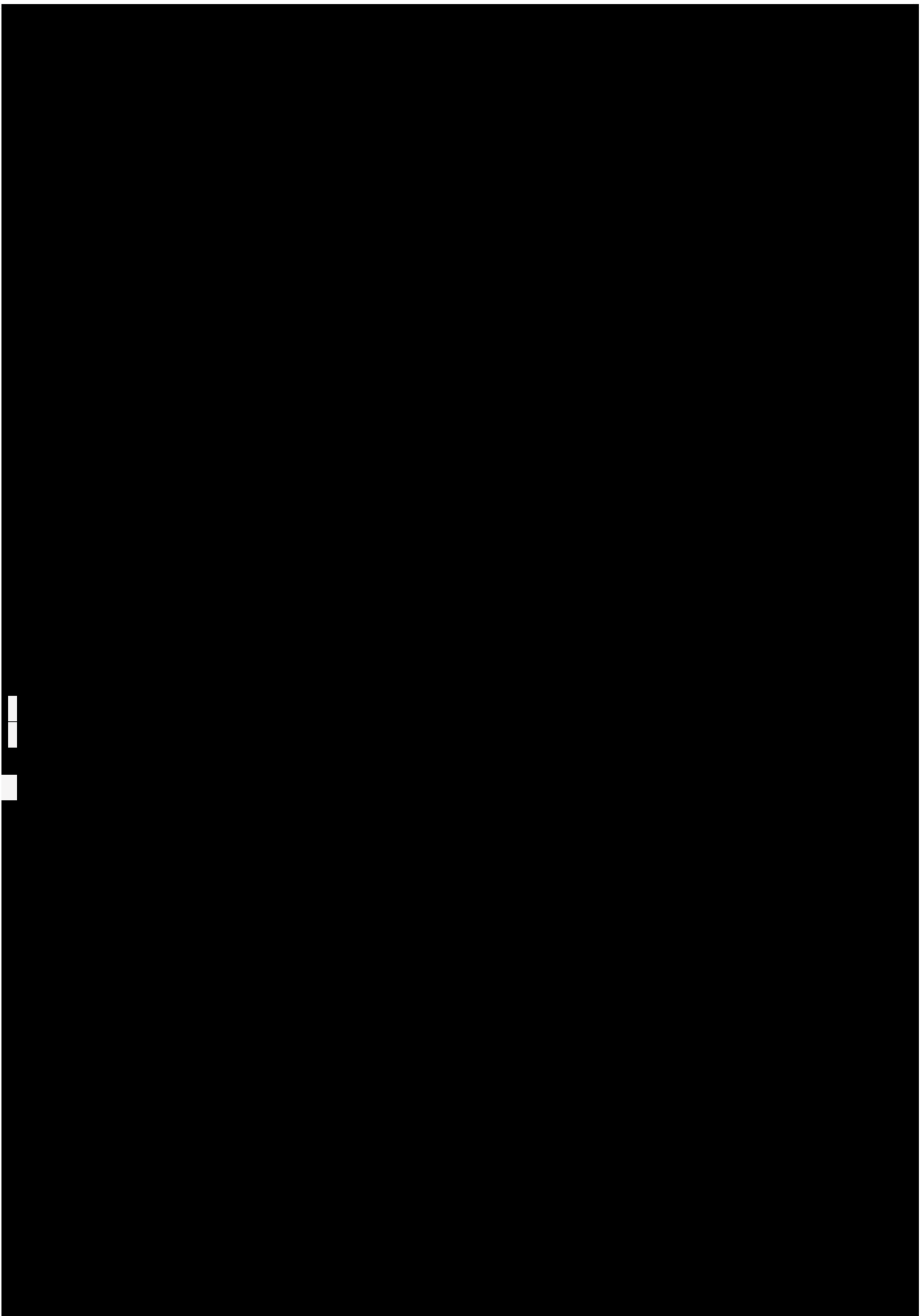




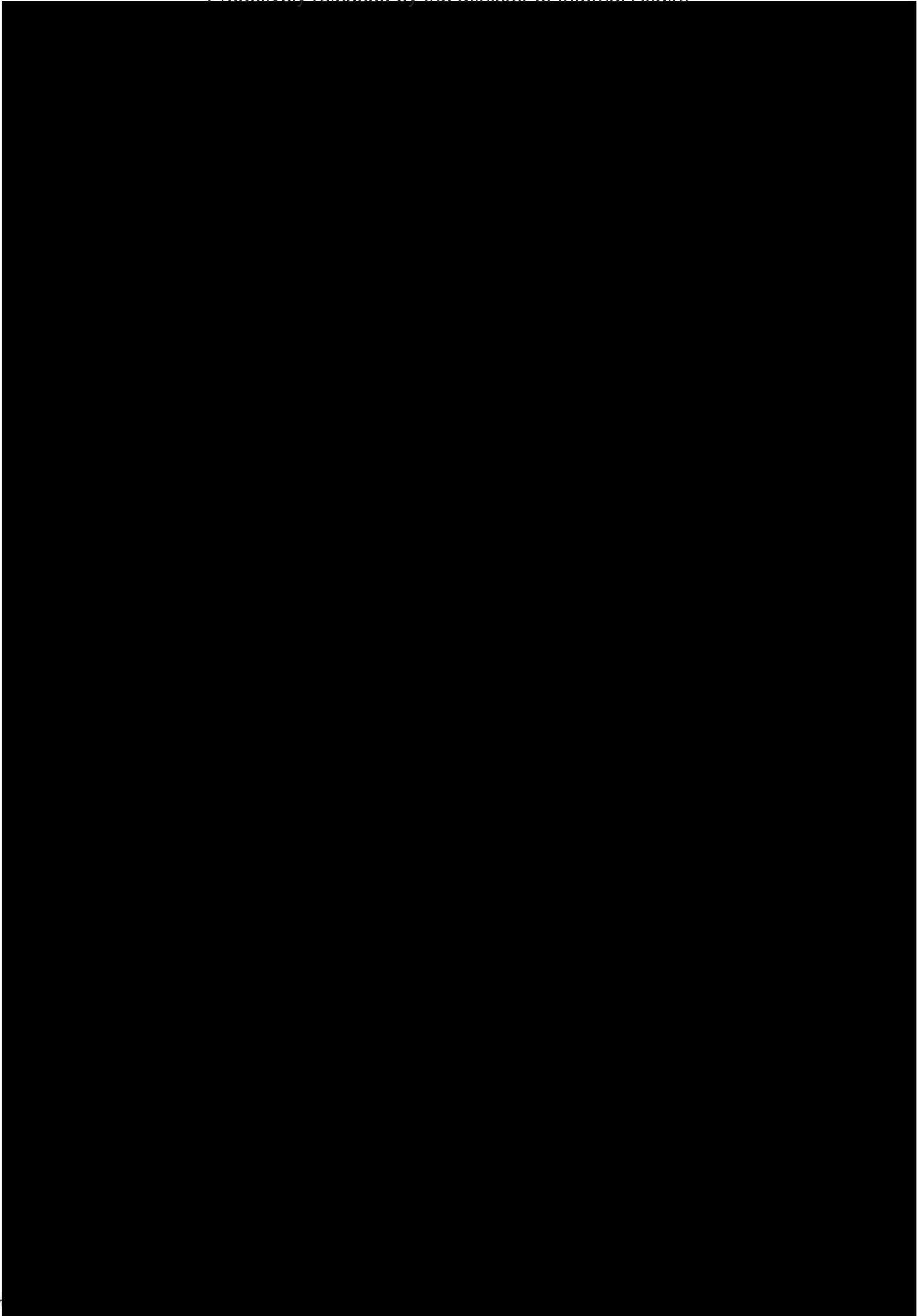


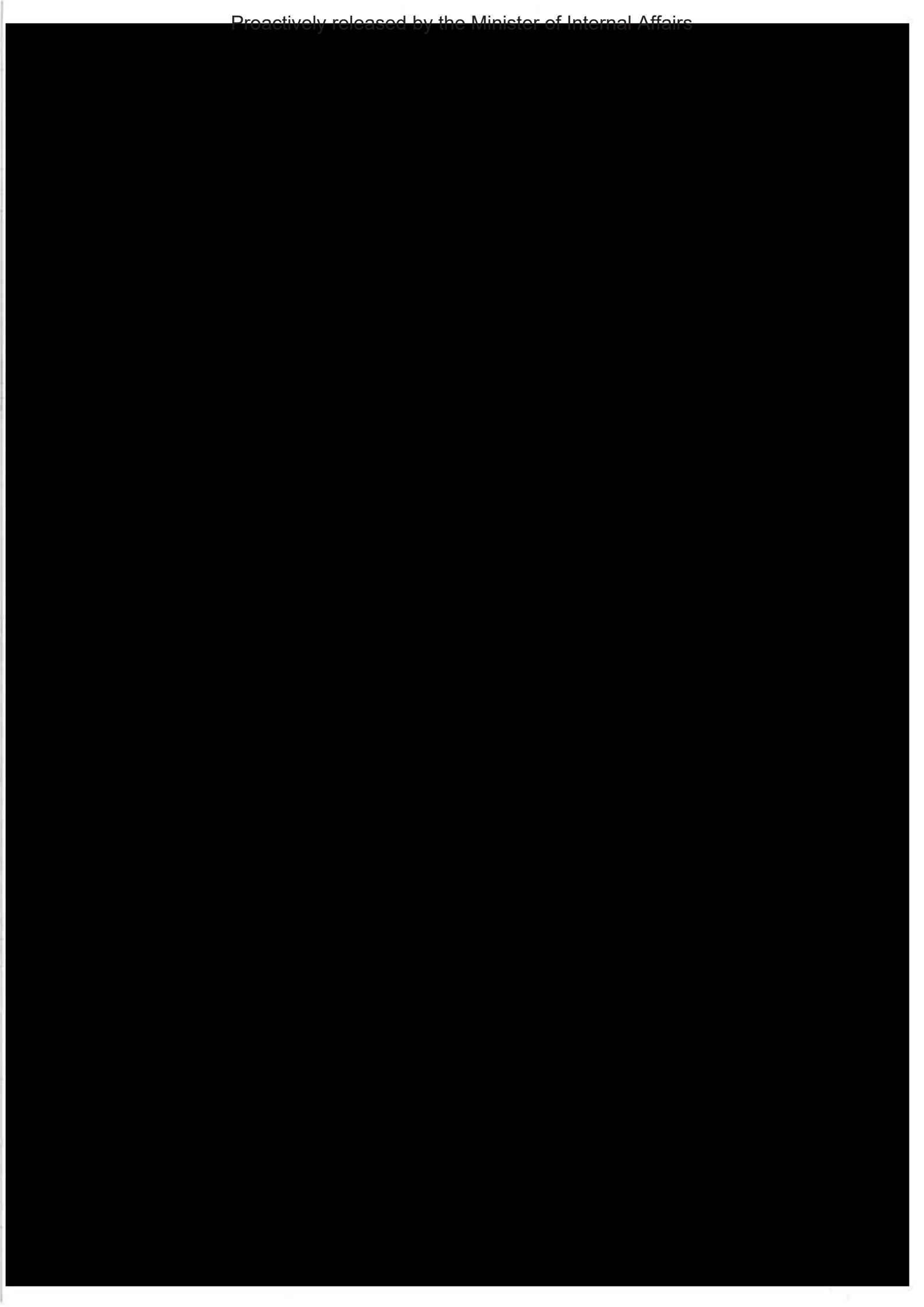






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Appendix Two: Summary of the Royal Commission scope and expected results

Issues in scope	Expected results
<p><i>Nature and extent</i> The nature and extent of abuse that occurred</p>	Identify, examine and report on these matters, making general comments, findings, or both
<p><i>Factors</i> The factors, including structural or systemic factors, which caused or contributed to the abuse</p>	Identify, examine and report on these matters, making general comments, findings, or both
<p><i>Impact</i> The impact of the abuse on individuals and their families, whānau, hapū, iwi, and communities</p>	Identify, examine and report on these matters, making general comments, findings, or both
<p><i>Circumstances</i> The circumstances that led to individuals being taken into, or placed into, care and the appropriateness of such placements</p>	Identify, examine and report on these matters, making general comments, findings, or both
<p><i>Lessons</i> What lessons were learned, what changes were made, and what gaps, if any, remain and need addressing</p>	Identify, examine and report on these matters, making general comments, findings, or both
<p><i>Current frameworks</i> The current frameworks to prevent and respond to abuse in care, and any changes that will protect people in the future</p>	<p>Identify, examine and report on these matters, making general comments, findings, or both</p> <p>Recommend any future changes to the framework to prevent and respond to abuse in care</p>
<p><i>Redress and rehabilitation</i> The redress and rehabilitation processes for individuals who claim, or have claimed, abuse in care, including improvements to those processes</p>	<p>Identify, examine and report on these matters, making general comments, findings, or both</p> <p>Recommend any appropriate changes to the existing processes for redress, rehabilitation, and compensation</p>
<p><i>Further recommendations</i></p>	<p>Recommend any other appropriate steps the State or faith-based institutions should take to address the harm caused</p> <p>This includes whether there should be an apology from the State and faith-based institutions for the abuse of individuals, or any other action that may be needed</p>

Appendix Three: Royal Commission's forecasted costs

Account Category (\$m)	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	FY 24/25	TOTAL
Non-Departmental Opex								
Committee Member Fees	1.015	1.459	1.459	1.459	0.730	-	-	6.123
Counselling for individuals	1.464	2.233	3.028	3.388	2.662	1.911	0.648	15.335
Total Non-Departmental	2.479	3.693	4.488	4.847	3.392	1.911	0.648	21.458
	10%	15%	20%	22%	17%	12%	4%	100%
Departmental Opex								
Personnel Costs	4.178	7.423	7.571	7.722	3.730	-	-	30.625
Public Hearings/Listening Sessions	1.781	1.830	2.101	1.044	0.129	-	-	6.885
Office Costs	0.048	0.064	0.065	0.066	0.017	-	-	0.261
ICT Costs	0.477	0.962	0.978	0.995	0.506	-	-	3.919
Legal Fees	0.583	1.187	1.207	1.228	0.624	-	-	4.829
Consultants	0.096	0.098	0.099	0.101	0.051	-	-	0.445
Other Operating Costs	0.230	0.224	0.228	0.231	0.059	-	-	0.971
Reporting Costs	-	-	0.039	-	0.075	-	-	0.114
Accommodation Costs	0.619	0.640	0.663	0.671	0.249	-	-	2.842
Depreciation	0.197	0.349	0.349	0.349	0.152	-	-	1.395
Capital Charge	0.042	0.084	0.084	0.084	0.042	-	-	0.335
Corporate Overhead Allocation	0.416	0.847	0.861	0.876	0.445	-	-	3.445
Total Departmental Opex	8.668	13.706	14.246	13.367	6.079	-	-	56.066
Departmental Capex								
Property fit-out	0.277	-	-	-	-	-	-	0.277
ICT costs	1.048	-	-	-	-	-	-	1.048
Total Departmental Capex	1.325	-	-	-	-	-	-	1.325
Total NDE + DE Opex + Capex	12.471	17.399	18.734	18.214	9.471	1.911	0.648	78.849