



Internal Affairs briefing

Hon Tracey Martin
Minister of Internal Affairs

Title: **Royal Commission: Cabinet papers for final establishment decisions**

Date: 2 November 2018

Key issues

This briefing attaches the two Cabinet papers seeking the final establishment decisions for the Royal Commission into Historical Abuse in State Care and in the Care of Faith-Based Institutions. The Cabinet papers seek decisions regarding:

- the final Terms of Reference (TOR);
- the inquiry budget; and
- the appointment of the remaining Inquiry members.

You have recently completed pre-Cabinet consultation with your Ministerial colleagues, the Royal Commission and agencies. The attached Cabinet papers reflect these consultations, and are provided for your review and lodgement with Cabinet Office on 5 November 2018 for consideration by Cabinet Social Wellbeing Committee (SWC) and Cabinet Appointments and Honours Committee (APH) on 7 November 2018. The briefing also provides you with talking points to support consideration of these issues at Cabinet Committee.

Action sought	Timeframe
Agree to lodge the attached Cabinet papers with the Cabinet Office on 5 November 2018, for consideration at SWC and APH on 7 November 2018.	Monday 5 November 2018
Sign and provide the advice sheet to Cabinet Office.	9 November 2018

Contact for telephone discussions (if required)

Name	Position	Direct phone line	After hours phone	Suggested 1 st contact
Trina Tautau	Inquiries System and Establishment Manager	027 565 6181	027 565 6181	✓
Jane Pierard	Director, Inquiries	022 108 6137	022 108 6137	

Return to	Trina Tautau
Cohesion reference	ADXRF2XRITYKY-1244570709-4
Ministerial database reference	

Purpose

1. This briefing seeks your agreement to lodge the enclosed paper for the Cabinet Social Wellbeing Committee (SWC) on 7 November 2018, containing the establishment instrument for the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions 2018. This briefing also seeks your agreement to lodge the enclosed paper for the Cabinet Appointment and Honours Committee (APH) meeting on 7 November 2018.

Comment

2. On 30 October 2018, the Department provided final draft Cabinet papers to you for lodgement for SWC and APH. Enclosed with the SWC Cabinet paper was a revised draft terms of reference (TOR), reflecting the Department's revisions following consultation with agencies, the Royal Commission, and the Ministerial Working Group.
3. On 1 November 2018, following feedback from you through your office, the Department undertook further revisions to the SWC Cabinet paper and TOR. On 2 November 2018, the Department provided a revised and updated SWC Cabinet paper, APH paper, and terms of reference. These Cabinet papers are attached as **Appendix A and B**, respectively.
4. The updated TOR is included in the form of the final Order in Council / warrant. This instrument is attached as an appendix to the SWC Cabinet paper.

Next Steps

5. We have prepared draft talking points to support your discussions at the SWC and APH meetings on 7 November 2018 (**Appendix C and D**, respectively). Department officials will be available to support you at these meetings.
6. We recommend that you consult with the Prime Minister's Office regarding issuing a press release announcing the final establishment of the Royal Commission following Cabinet's approval. You may wish to also hold a joint press conference similar to that held in the first 100 days. The Department will work with your office to develop media and communications material.
7. The establishment instrument (Order in Council and Royal warrant, with TOR attached) will be submitted to the Governor-General and Executive Council for passage. Once passed, the establishment instrument will be publicly notified in accordance with the Act.
8. We anticipate that notification of the instrument will occur by 15 November 2018.
9. It is also recommended that you proactively release the Cabinet papers and associated scoping papers relevant to your final Cabinet proposal, subject to consideration of redactions that would be justified if the information had been released under the Official Information Act 1982.
10. Following Cabinet's final decisions on establishment, the Department will provide you with a final briefing, including appointment letters to Inquiry members, and papers for proactive release.

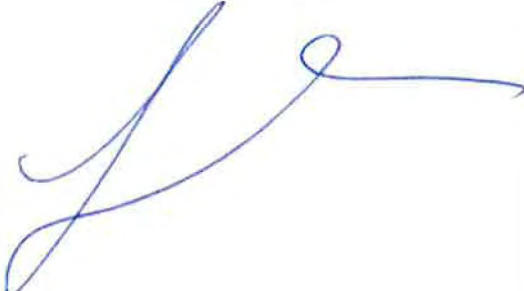
Recommendations

11. We recommend that you:

- a) **Agree to lodge the attached Cabinet paper for consideration by the Social Wellbeing Committee; and** Yes/No
- b) **Agree to lodge the attached Cabinet paper for consideration by the Appointments and Honours Committee, and** Yes/No
- c) **Sign and provide the advice sheet to Cabinet Office.** Yes/No



Jane Pierard
Director Inquiries



Hon Tracey Martin
Minister of Internal Affairs
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Appendix A included separately



Appendix B included separately



Appendix C - Draft talking points for Cabinet Appointments and Honours Committee meeting

Background – previous Cabinet consideration

- In October 2017, the Government committed to establishing an inquiry into historical abuse in State care as part of its first 100 day plan.
- The Royal Commission was formally established on 1 February 2018 with Sir Anand Satyanand formally appointed as the member. At the time of the initial establishment, it was understood that following the appointment of further Inquiry members, Sir Anand would be formally confirmed as Chair.
- The Royal Commission's first task was to undertake public consultation on the Royal Commission's draft Terms of Reference. In late May 2018, the Chair presented his report on public consultation, which also included his conclusions and recommendations. Following submission of the public consultation report, I undertook consultation with Ministerial colleagues. I also sought and considered advice from officials on technical, legal and operational matters.
- Cabinet invited me, as the appropriate Minister, to report back on any changes to the Terms of Reference, following public consultation, as well as on the full budget and membership for the next phase of the Inquiry.
- The Royal Commission's proposed Terms of Reference and budget will be submitted to Cabinet for final decisions, following consideration by the Cabinet Social Wellbeing Committee (SWC) later this morning.

Decisions sought today: appointment of remaining four Inquiry members

- Today I seek Cabinet agreement to appoint four members of the Royal Commission and to formally confirm the existing member, Sir Anand Satyanand, as Chair.
- These five Inquiry members reflect the significant workload expected of the Royal Commission, taking into account its expanded scope. This approach allows for good diversity across the panel, and the ability to cover any personal absences during the course of the Inquiry's term.
- All four proposed additional members are well known and recognised for their significant achievements in their respective fields of expertise.
- The proposed additional members are: Ali'imua Sandra Alofivae; Dr Andrew Erueti; Paul Gibson and Judge Coral Shaw.

The appointment process sought interest from a range of sources

- Given the nature and complexity of this Royal Commission, as well as the high level of public interest in its work, I conducted a hybrid appointment process. This process involved seeking nominations from:

- across government (including confidence and supply party caucuses);
 - government departments, including nominating agencies;
 - independent Crown entities and related bodies;
 - stakeholders who engaged in the first 100 days; and
 - universities, experts, and community groups.
- The nominations period ran for approximately one month and 63 nominations were received.
 - Nominations were matched against the expertise, skills and attributes sought.
 - Careful consideration was given to the desirability of achieving an appropriate mix of members, with an appropriate balance of ethnicities, genders, ages, abilities and backgrounds. These factors were assessed alongside the need for specialist skills and experience. Special consideration was given to the desire for strong Māori and Pacific representation, as well as the experience of those affected by mental health or disability. This aligns with the principles and expectations set out in the Royal Commission's Terms of Reference.
 - To finalise my proposal to Cabinet, I considered feedback and suggestions by the Royal Commission Chair, as well as formal consultation with Ministerial colleagues and official advice.
 - I propose the Royal Commission members be appointed for a period commencing on the date the establishment instrument for the Royal Commission (Order in Council and Royal warrant) comes into force and that their appointment expires no later than the date on which the Inquiry concludes.

Conflicts of interest and probity

- Appropriate enquiries concerning probity and actual or perceived conflicts of interest for the proposed members have been undertaken by the Department. These enquiries have included the completion of formal declarations by proposed members on any actual or perceived conflicts, as well as consideration of any written disclosures made by candidates of any issues that might be regarded as a conflict of interest (whether actual or perceived and whether past, present or future).
- Given the Royal Commission's purpose and the breadth of the matters in scope, and in the context of New Zealand communities, it is reasonable to expect that candidates may have matters to declare.
 - Such matters might include, for example: work involving victims and survivors of abuse; advocating for the establishment of the Inquiry; connections to some of the institutions potentially in the scope of the inquiry; and involvement in the consultation on the draft Terms of Reference.
- The Department has carefully considered all matters covered in candidate disclosure forms concerning their previous or current work. In undertaking these assessments, the

Department has referred to the Office of the Auditor-General guidance on recognising and managing conflicts of interest.

- The Department has also undertaken other background and records checks including criminal convictions.
- Based on candidate disclosures and direct engagement with candidates, the Department is satisfied that the four Inquiry members proposed for appointment are suitable for appointment to this Royal Commission.

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Next steps

- Following Cabinet approval a press release and/or press conference will announce the final establishment of the Royal Commission.
- In addition, the establishment instrument (Order in Council and Royal warrant, with TOR attached) will be submitted to the Governor-General and Executive Council for passage. Once passed, the establishment instrument is expected to be publicly notified in accordance with the Inquiries Act by 15 November.

Appendix D - Draft talking points for Cabinet and Social Wellbeing

Committee meeting Background – previous Cabinet consideration

- In November 2017 Cabinet agreed to establish a public Inquiry into abuse in State care. At that time it also established a Ministerial Working Group to consider the potential scope of the Royal Commission and agreed that the Department of Internal Affairs would be the administering agency for the Inquiry. It was agreed that the Royal Commission would be established in two phases:
 - In the first stage the Chair would undertake public consultation on the draft Terms of Reference (TOR) and report to the Minister of Internal Affairs on potential changes to the TOR arising from that public consultation.
 - In the second stage the Minister of Internal Affairs, as the responsible Minister for the Inquiry, would report to Cabinet following the Chair's public consultation with a proposal on the final TOR, the full budget, Inquiry members, and details of the Survivor Advisory Panel.
- In February 2018 the Rt Hon Sir Anand Satyanand was appointed as Chair of the Inquiry when the Inquiry was formally established.
- In broad terms, the original intention was that the Inquiry would examine the nature and extent of abuse and neglect in State care; the immediate, long term, and intergenerational impacts of such abuse; the factors that caused or contributed to this abuse; the lessons learned; and the steps that should be taken to help prevent such abuse occurring in the future.

I seek Cabinet's agreement to fully establish the Royal Commission today, but first an update on work that has occurred:

In April

- The draft TOR was released for public consultation. 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.
- Feedback varied and 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 neglect, and what constitutes 'state care'.

In May

- 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 a 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 date of the final report-back;
- extend the time period covered by the Inquiry beyond 1950 – 1999; and
- include an appropriate reference to the Treaty of Waitangi and its principles.

In June

- On 28 June 2018, the Ministerial Working Group reconvened to consider the Chair’s report, with the Chair attending to present his report. Following the Working Group meeting, I undertook careful and detailed consultations with Ministerial colleagues on the key scoping questions and directed officials to prepare a further revised TOR for consideration. In the course of finalising this proposal, I also considered different options for a phased inquiry.
- At this time formal Ministerial consultation on membership was undertaken and the Department carried out a nomination process for the remaining Inquiry members and finalised the budget.

In July and August

- The Department consulted closely with the Royal Commission, Treasury and other key stakeholders on revising the TOR and developing the budget.
- I consulted with the Prime Minister and Minister of Finance on key components of the TOR and budget, respectively.
- I met with the Minister of Finance to discuss the budget. Following this, my officials developed budget options and undertook further consultation. A phased approach to the budget was agreed.

In September

- I considered a further scoping paper which proposed the final scope of the TOR and the budget, to be used as a basis for final consultation.

I now seek decisions on the final TOR and the budget

- A separate paper is being submitted to the Appointments and Honours Committee (APH) seeking agreement to appoint the remaining Inquiry members (APH paper).

Scope decisions

- Following the Ministerial Working Group’s consideration of the Inquiry’s scope, which included the Royal Commission’s feedback on the TOR consultation, I seek your agreement that the scope of of the Royal Commission includes:
 - 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);
 - the factors, including structural or systemic factors, which caused or contributed to the abuse and neglect;

- the impact of the abuse and neglect 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);
- what lessons were 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 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 and neglect that occurred.

Budget

- The forecasted budget for the Royal Commission is \$79.893 million and is subject to an interim report back in 2020 on the workload and budget required to complete the Inquiry's work after 2020. The key assumptions underlying the budget are:
 - an initial inquiry duration of four years;
 - an estimated cohort of between 8,000 and 14,000 children, young persons and vulnerable adults who experienced abuse in care;
 - 100 formal hearing days, and 1,600 informal (i.e. private) listening sessions;
 - an average of 12 hours' counselling per person for up to 4,800 people who interact with the Royal Commission;
 - one Royal Commission Chair supported by four members; and
 - an average staff level of 64 Full-Time Equivalents (FTEs).
- There is limited information on which to develop budget assumptions, particularly information on the size of the cohort and the number of people who will engage with the Inquiry during its term. Analysis of known statistics has been balanced with best judgement, and deviations from the Department's forecasts are expected and could be material.
- The budget does not include allowance for participants' legal costs to be paid by the Crown. This would need to be provided separately, following a recommendation by the Inquiry to the Chief Executive of the Department. In addition, no contingency is included.
- Accordingly, I seek funding for the Royal Commission from the between-Budget contingency established as part of Budget 2018, and as a pre-commitment against Budget 2019.

Next steps

- Following Cabinet approval a press release and / or press announcement will be made advising of the final establishment of the Royal Commission.
- Following Cabinet, the establishment instrument (Order in Council and Royal warrant, with TOR attached) will be submitted to the Governor-General and Executive Council for passage. Once passed, the establishment instrument will be publicly notified in accordance with the Inquiries Act.