

NZ Royal Commission of Inquiry into Historical Abuse in State Care **and** **in the Care of Faith-based Institutions**

Background

CLAN NZ has been working hard lobbying and advocating for a Royal Commission of Inquiry in NZ ever since the NZ branch was first launched at a public meeting on Saturday 18th Feb 2012 at Outhwaite Hall in Grafton, Auckland.

At long last, on 20th Oct 2017, Jacinda Ardern, the newly elected Labour Prime Minister, announced that "setting up an inquiry into the abuse of children in state care" was one of the sixteen issues in Labour's 100-day-plan. The "Royal Commission of Inquiry into Historical Abuse in State Care" was established by the Government on 1 February 2018 with Sir Anand Satyanand appointed as Chair and a draft Terms of Reference was released for consultation.

On 12th November 2018, the New Zealand Government announced the final Terms of Reference for an extended inquiry which would also include Faith-based institutions:

<http://www.legislation.govt.nz/regulation/public/2018/0223/latest/LMS118772.html>

Watch press conference here: <https://www.youtube.com/watch?v=wuXcq0FQbuM&feature>

So the scope has now been extended from exclusively covering State Care to now also including children who were in the care of faith-based institutions, churches, religious schools and communities, as well as orphanages, youth detention centres, psychiatric hospitals and any government care services contracted out to private institutions.

Accordingly, the Inquiry now has a new title, the "***Royal Commission into Historical Abuse in State Care and in the Care of Faith-Based Institutions***".

The four deputy commissioners have been confirmed as Ali'imua Sandra Alofivae, Dr Andrew Erueti, Paul Gibson and Judge Coral Shaw. They join the chief commissioner, former governor general, Sir Anand Satyanand. Their backgrounds are:

Sir Anand Satyanand has been a Governor-General, a lawyer, a judge, and a parliamentary ombudsman. He also has experience in a wide range of government appointments, such as leading the Confidential Forum for Former In-Patients of Psychiatric Hospitals. Most recently, Anand led the Commonwealth Group, which observed the 2017 national elections in Papua New Guinea. Before that, he completed two terms as Chair of the Commonwealth Foundation, the counterpart of the Commonwealth Secretariat. He has worked as a Prison Board Chairman and as a member of the National Parole Board.

Paul Gibson was the Disability Rights Commissioner at the Human Rights Commission from 2011 to 2017. The work he has led includes historic state abuse. Paul is blind and is a former President of the Disabled People's Assembly. Internationally he has chaired the Global Network of National Human Rights Institutions disability caucus. He has also previously worked as an independent disability consultant in health and tertiary education.

Dr Andrew Erueti is a Senior Lecturer at the Auckland University School of Law. Previously he taught at the Law Schools of the University of Waikato and Victoria University of Wellington. In 2018 he was named the Fulbright Ngā Pae o te Maramatanga Scholar recipient and spent a year at the University of Colorado in Boulder researching the Rights of Indigenous Peoples.

Judge Coral Shaw is a former teacher, lawyer and District Court Judge. As a judge in West Auckland she introduced a first fast track system for family violence cases which included advocates for family abuse victims. She established WAVES, a trust to coordinate West Auckland services for victims and perpetrators of family violence. She also incorporated a marae-based programme of Restorative Justice into the Waitakere Court sentencing processes. She has also worked in prisoner rehabilitation and has carried out reviews for the Human Rights Commission.

Ali'imuamua Sandra Alofivae (Sandra) has practiced as a lawyer in the Auckland region for the last 20 years representing children, young persons and their families. She was born in New Zealand, grew up in Mangere and has strong ties to the local community. Sandra was appointed to the Counties Manukau District Health Board in December 2010 following a six year term as a Commissioner with the Families Commission. In 2016 she was made a Member of the New Zealand Order of Merit for her services to the Pacific community and to youth. In 1995 she was also bestowed an honorific title by her family in the village of Sa'anapu, Samoa.

The Terms of Reference

The Terms of Reference requires the Commission to act in accordance with the principles of the Treaty of Waitangi and to work in partnership with Māori. As is well known, Māori are significantly over-represented in out-of-home care in Aotearoa/New Zealand.

The inquiry will hear from victims and survivors through a combination of confidential listening sessions, formal hearings and engagement in other settings. It will have some powers to compel institutions and individuals to give evidence.

Prime Minister Jacinda Ardern has said that if the Royal Commission called for one, the Government would provide a formal apology to the survivors of abuse.

The duration of the Royal Commission has also been extended from three to four years to reflect the wider scope (two years for State abuse and two years for Faith-Based abuse). However, with now double the workload and only one extra added year; the timeframe allocated for State abuse is actually reduced, which is of some concern to us, as the majority of New Zealand's institutions were State-run, unlike in Australia. We are concerned that the much more extensive State abuse we've seen in New Zealand, that primarily affected Māori, could well be covered-over if we're not careful. We expect that this will become more obvious once the Royal Commission starts and an extension of time, money and resources will be necessary to cover the increased demand.

It is estimated that approximately 100,000 children were in State Care in New Zealand during the time period 1950-1999, so even if only 5% want to appear at the Royal Commission it will mean 5,000 individual hearings, which is obviously impossible in the time allocated. Currently over 500 survivors have already pre-registered an interest in appearing before the Commission.

In December 2020 the first Royal Commission report on State Care will be due. Then the Inquiry will expand and start looking at Faith-Based Care and that report is due at the end of 2022. The final report of the Royal Commission's findings and recommendations is due to be submitted to the Governor-General in January 2023, which is after the next election, making it difficult for the present Government to make ironclad commitments. Therefore, in our view this timeframe is far too ambitious and optimistic.

The final Terms of Reference has almost doubled the Inquiry's original proposed budget, from \$40 million to \$78.85 million over four years, which includes more than \$15 million to help participants by providing counselling and related support. However we have calculated, that based on population alone, to be on a par with Australia, we actually will need at least \$125 million. So without any doubt, the budget will also have to be significantly increased and there is a specific provision to request new funds in 2020.

Another very disturbing aspect of this Royal Commission is that redress and compensation claims will not be handled by this Inquiry - but instead the present Historic Claims Unit has been asked to cooperate with, and support any requests made by the Commission. The irony of this is that the very consequences of dealing with this grossly unfair Government compensation system was one of the main reasons there was a need for a Royal Commission in the first place. Well over 1,000 people have already lodged claims against the State for abuse or neglect and are awaiting compensation. The State's current process for addressing those claims has been subject to significant criticisms, to say the least.

However, our singularly most disturbing concern regarding the Terms of Reference is that the scope still only covers a period of 50 years – from 1950 to the end of 1999, despite Sir Satyanand's personal assurances to us that he has complete discretion to look at cases before and after that time period – and that even though the wording says that they “may exercise discretion” – in practise it means that they will investigate everything right up to the present day – and that ALL dates are actually eligible and that ALL ages can take part.

In theory the Inquiry was able to start hearing evidence from January 2019 but they are still setting things up and as at April 2019 they have not yet started hearings.

The Royal Commission members have just reviewed the Terms of Reference with their legal counsel, Simon Mount QC, with the view to clarifying the terms and their approach, including clarifying exactly who is and who is not included.

On 4th March 219 the NZ Royal Commission issued two new explanatory documents on their website: "The Terms of Reference in Plain English"
<https://www.abuseinstatecare.royalcommission.govt.nz/Terms-of-Reference---Plain-English-version>
and "Frequently Asked Questions"
<https://www.abuseinstatecare.royalcommission.govt.nz/TOR-FAQ>

This has provided some much-needed clarification e.g. both day and boarding schools are covered if they were run by religious institutions i.e. you didn't have had to sleep there at night.

They have also confirmed that priests and clergy who abused children in places like family homes, at functions, during weekends, or on holidays will be included in the inquiry.

We recommend to go to the link for further details.

[Pre-register here to attend New Zealand's Royal Commission hearing sessions:](#)

Please provide your contact details in the link below and a member of the Royal Commission Contact and Support team will be in touch within two business days to request further information. At that time they will be able to answer any questions you may have on the different ways you can be involved. <https://www.abuseinstatecare.royalcommission.govt.nz/Pre-Register>

Anyone still unsure if their particular situation is covered or not can contact the RC and ask them:

Contact Details for the Royal Commission:

Website: <http://www.abuseinstatecare.royalcommission.govt.nz/>

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