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3rd May 2018

Royal Commission of Inquiry into Historical Abuse in State Care

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**Re: Submission on the Draft Terms of Reference– Royal Commission of Inquiry into Historical Abuse in State Care**

Thank you for acceptance of the attached submission.

I welcome discussion or other inquiry concerning this submission if required.

Yours sincerely,



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**Submission by Dr Hera Cook to the Royal Commission of Inquiry into Historical Abuse in State Care on the:**

**Draft Terms of Reference**

**introduction:**

1. I am grateful for the opportunity to comment on the Draft Terms of Reference– Royal Commission of Inquiry into Historical Abuse in State Care. My expertise is as an academic historian of contemporary sexual mores, based in Otago Wellington School of Public Health.
2. This submission addresses the questions asked by **Sir Anand Satyanand:** The Purpose of the Royal Commission of Inquiry; the Scope of the Royal Commission of Inquiry ; the Treaty of Waitangi; the dates within which the Inquiry should consider people’s experiences of abuse and neglect; what constitutes state care; and concludes with other matters I request that the Inquiry consider
3. Overview: The purpose and scope of the Royal Commission should reflect the presence of abuse in all institutions in NZ society. Prevention of sexual, emotional and physical abuse of children and other vulnerable people will be made possible by effective care systems in which workers are paid appropriately and children are enabled to be heard. The emergence of a more open and direct approach to sexuality is a necessary element in the prevention of sexual abuse.

**OVERVIEW OF RECOMMENDATIONS:**

**This submission**

3. What is the purpose of the Royal Commission of Inquiry?

3.1 The primary purpose of the Royal Commission is to recommend changes that will protect future children and vulnerable people.

3.2 It would be appropriate for the Royal Commission to offer an apology on behalf of the State - and all of New Zealand.

4. The Scope of the Royal Commission of Inquiry

4.1 The State is ultimately responsible for the wellbeing of NZ citizens in all situations; abuse should be included wherever it occurred in institutions outside the family.

4.2 The definition of an institution provided in the Terms of Reference for the Australian Royal Commission into Institutional Responses to Child Sexual Abuse [ARC] should be followed:

4.3 Church-run institutions must be included because evidence shows they were the major site of sexual abuse of children.

4.3.1 The courage of the Catholic Bishops conference and the Religious Orders in asking to be included in the NZ RC is remarkable and their offer must be accepted.

4.4 Abuse occurs at all levels of NZ society and the Royal Commission must reflect this.

4.5 Care workers conditions of employment and training are important determinants of the quality of care provided and should be part of the investigations carried out.

5. The Royal Commission must respect the Treaty of Waitangi and seek to understand the variation in Māori experience.

6. The Royal Commission requires wide powers in order to carry out appropriate and necessary investigations.

7. The dates within which the Inquiry should consider people’s experiences of abuse and neglect

7.1 The proposed dates would have an inequitable impact on participants (or survivors) and the need for such limits is questionable.

7.2 The NZRC should be required to hear children who have experiences of abuse.

7.3 Any limits on the period covered should still ensure that consideration is possible of the impact on care and protection systems of major changes in systems and processes and of changes in funding priorities.

8. Other matters I ask to be considered in relation to the Draft Terms of Reference

8.1 The NZ RC should be required to be open and direct in addressing sexual abuse, including encouragement of media coverage of the proceedings.

8.2 Article 12 of the United Nations Convention on the Rights of the Child states that children have a right to be heard. The expectation that children with relevant experiences will be heard should be included in the Terms of Reference.

8.3 The Inquiry should provide opportunity for those who were abused to mention experiences of good care and affection if and where these occurred. This is just and fair to those care workers who did provide such care and supportive of future workers.

8.4 The NZ RC should be funded to establish investigation units to support the inquiry where this is deemed necessary.

Conclusion

**RECOMMENDATIONS:**

# 3.What is the purpose of the Royal Commission of Inquiry?

**3.1 The primary purpose of the Royal Commission is to recommend changes that will protect future children and vulnerable people.**

“They wished to see clear improvements, so that those in need of State care today do not suffer as they did.”

*Final Report of The Confidential Listening and Assistance Service* 2015 [CL&A 2015], p.23.

The main purpose of the New Zealand Royal Commission [NZ RC] must be to develop practical recommendations aiming to prevent children and adults from enduring the sexual, physical and emotional abuse and neglect described by the people who testified to the Confidential Listening and Assistance Service [CL&AS] and the Confidential Forum for Former In-Patients of Psychiatric Hospitals. This includes addressing the following issue:

The gap between policy and practice has to be confronted. As we have seen, even though there have been policies against locking up children for example, the practice continued unabated. CL&A 2015, p.28.

There have been decades of well-intentioned efforts to improve services protecting and caring for children, young people and other vulnerable adults, including legislative changes. The NZ Royal Commission must discover how effective positive change is produced, if and where this has taken place. Does legislation create change, or is higher funding crucial? Do legal changes that are highly contentious, such as that prohibiting corporal punishment, change behaviour? How much difference does improvement in the training and/or wages and working conditions of carers and other staff make?

**3.2 It would be appropriate for the Royal Commission to offer an apology on behalf of the State - and all of New Zealand.**

“If this was to be about truth and reconciliation, then it is not clear that sufficient reconciliation has occurred. A public statement from the Government has the potential to bring people towards closure.” CL&AS 2015, p.36

Both former psychiatric inpatients and people who had experienced state care expressed a strong desire for an apology. A public apology would acknowledge the hidden suffering of many vulnerable people and help other New Zealanders to accept that damage has been done by the State and many other respectable organisations, including the churches.

Yet, while insisting on the importance of answering this demand, we must ask how will this apology, and the process of which it will be part, contribute to better outcomes for children and other vulnerable groups in NZ society? Some fourteen apologies have now been made by the Australian government.[[1]](#footnote-1) The apology to the stolen generation (at which point I was living in Australia) was a very moving experience. It aroused strong hopes that justice for the Aborigines was now going to become a reality, on the part of many Australians. Those feelings and hopes have been eroded by the failure of the Australian federal government to improve the conditions in which Aboriginal people live, and the use of the high levels of abuse of Aboriginal children as the rationale for highly intrusive and negative engagement in remote communities. What is the aim of the intended apology to people who have been abused in state care in New Zealand? How will the improvement in conditions implied by an apology be produced?

# The Scope of the Royal Commission of Inquiry

**4.1 The State is ultimately responsible for the wellbeing of NZ citizens in all situations; abuse should be included wherever it occurred in institutions outside the family.** The NZ RC should be empowered to consider all situations in which physical, sexual and emotional abuse has taken place outside the supervision of the child’s birth or permanent adoptive family. All New Zealand children and young people are ultimately in the care of the State and the State is responsible for policing such situations and preventing abuse from taking place in the future. We must ask; if not us, then who, if not now, then when?

4.2 **The definition of an institution provided in the Terms of Reference for the Australian Royal Commission into Institutional Responses to Child Sexual Abuse** [ARC] **should be followed:**

***“Institution*** means any public or private body, agency, association, club, institution, organisation or other entity or group of entities of any kind (whether incorporated or unincorporated), and however described, and:

1. includes, for example, an entity or group of entities (including an entity or group of entities that no longer exists) that provides, or has at any time provided, activities, facilities, programs or services of any kind that provide the means through which adults have contact with children, including through their families; and
2. does not include the family.”[[2]](#footnote-2)

**4.3 Church-run institutions must be included because evidence shows they were the major site of sexual abuse of children.**  One major reason for a wide scope is that children and young people in the residential or daily care of the Churches must be included. The ARC found that 58.1% of the 7,981 survivors (people who appeared before the ARC and reported they had been sexually abused) said that the abuse took place in an institution managed by a religious organisation and only 32.5 per cent in a government-run institution. Of those who reported abuse in a religious institution, nearly two thirds (61.4%) said this had taken place in a Catholic Church institution, with 14.8% reporting abuse in an Anglican Church institution and 7.2% in the institutions of the much smaller Salvation Army.[[3]](#footnote-3)

**4.3.1 The courage of the Catholic Bishops conference and the Religious Orders in asking to be included in the NZ RC is remarkable and their offer must be accepted.**[[4]](#footnote-4) Globally the Catholic Church has fought against inquiries into sexual and other abuse in Catholic institutions in numerous other countries. Throughout the 20th century, the Catholic Church has been a bastion of prejudice and resistance to a more open, kind and just sexual order in every possible respect. The agents of the Church resisted even the most basic sex education in schools, availability of effective contraception and safe legal abortion, and the acceptance of lesbian, gay and transsexual people. In Ireland, public discovery of the efforts to conceal the sexual abuse of children at every level of the Church[[5]](#footnote-5) has led to the collapse of respect and rejection of the authority of the Irish Catholic Church. In this context, the courage and humility of the NZ Bishops should surely be met with acceptance of their offer.

**4.4 Abuse occurs at all levels of NZ society and the Royal Commission must reflect this.** TheCL&AS 2015 found that: “Some of these foster families were, on the face of it, of high standing in the community, but behind closed doors there was neglect and cruelty” (p.13). They commented on “Respectable’ or highly regarded people in the community failing to make a supportive home or being cruel behind closed doors”(p.24). All forms of residential care should be included in the Inquiry, including boarding schools, summer camps, sports camps and any other form of care. The inclusion of residential care institutions for more privileged children will enable a fuller picture of abuse and may limit the association of abuse with poverty, ‘lower’ class and non-white ethnicities. This association is challenged in relation to domestic violence. The sexual and other abuse of more economically privileged children also has a profound lifelong impact upon them. There is no basis on which they should be excluded.

**4.5 Care workers conditions of employment and training are important determinants of the quality of care provided and should be part of the investigations carried out.** The terms of reference should include investigation into the working conditions, support for training and pay rates of those who care for children. The CL&ASR recommended that: “There is also a need for well-trained social workers to be a continuous factor in the child’s life, with the child able to speak to them regularly and in private to share real concerns.”[[6]](#footnote-6) If there is a high turnover of social workers due to poor working conditions then this becomes an impossible demand. The same applies to care workers in other professions. This also applies to foster families. It has been known for decades that they need better support. There is a shortage of foster families.

# Treaty of Waitangi

The Royal Commission must respect the Treaty of Waitangi. Colonisation and the denial of Treaty Rights to Māori, including being forbidden to use te reo and disrespect for the culture, caused enduring trauma. It is needful to acknowledge that Māori experience varied and, in this inquiry, I believe it would be useful to learn about the variation in Māori experience.

# Powers of the Royal Commission

**The NZ RC requires wide powers in order to carry out appropriate and necessary investigations.** The NZ RC must be able to require or compel people to attend a meeting; be permitted to reach conclusions about what might or might not have happened, including recommending a particular course of action to address issues raised; attempt to resolve differences of views; and acknowledge liability or make an apology for past actions by any official. These powers will mean that is necessary that some participants are permitted to have legal representation at meetings. It is of great importance to the success of the RC that it report to Ministers and provide detailed comment available to the public on the proceedings and the conclusions reached.

# The dates within which the Inquiry should consider people’s experiences of abuse and neglect

**7.1 The proposed dates would have an inequitable impact on participants (or survivors) and the need for such limits is questionable.** The dates proposed in the Draft Terms of Reference are:

The Inquiry shall consider the experiences of any individual who was in state care between 1 January 1950 and 31 December 1999 inclusive, irrespective of whether they were a child, young person or an adult at the time. The Inquiry may at its discretion consider cases prior to 1950.

A person who was aged ten in 1950 would be only 80 years of age today. Increasing mortality means there are more people living into their 80s and 90s. The oldest survivor who spoke to the ARC was aged 93 years.[[7]](#footnote-7) Extending the date backward would not swamp the NZRC: less than 1% of participants in the Confidential Forum for Former In-Patients of Psychiatric Hospitals described experiences in the 1940s. Eight percent spoke about the 1950s; 28 percent the 1960s; 43 percent the 1970s; 53 percent the 1980s; and 43 percent of experiences in the 1990s.[[8]](#footnote-8) The older generations’ experience of abuse is equally deserving of being heard and they are equally deserving of an apology.

**7.2 The NZRC should be required to hear children who have experiences of abuse.** An upper limit of 1999 means that no children will be heard. This is unacceptable and ironic given that listening to children, ensuring their voices are heard and that adults attend to what they say, is central to preventing abuse. Again, the ARC provides an example; the youngest person heard in private session was aged nine years at the time.[[9]](#footnote-9) Why should NZ children who have been abused be denied the right to speak to the NZRC?

**7.3 Any limits on the period covered should still ensure that consideration is possible of the impact on care and protection systems of major changes in systems and processes and of changes in funding priorities.** The time period covered should not begin or end at dates when major changes in the systems of care and protection take place. Rather the time period should overlap with such changes in order to contribute to understanding of the actual impact.The NZ RC should attempt to establish whether such changes have been at all effective in improving the care of children. For example, did the highly contentious abolition of corporal punishment (1990) end or diminish the use of corporal punishment on children in care, as judged from the perspective of those children?

**8. Other matters I ask to be considered in relation to the Draft Terms of Reference**

**8.1 The NZ RC should be required to be being open and direct in addressing sexual abuse, including encouragement of media coverage of the proceedings.** The CL&A 2015 commented that “ high levels of physical and sexual abuse [are] an immense problem in New Zealand society, not only in the past but in the present.”[[10]](#footnote-10) This reflects the national sexual culture, largely inherited from the strongly inhibited and censorious British sexual culture, which emphasised the necessity for concealment of sexuality. Within this culture, those who experience abuse are stigmatised and shamed, while those who commit abuse are enabled to conceal their activity.[[11]](#footnote-11) An emphasis on confidentiality reinforces the values of this sexual culture, in which abuse could remain unseen and unthinkable, while taking place with monotonous regularity. Openness, or the disinfectant of sunlight, that would result from the sharing of the proceedings with the people of New Zealand, has the potential to challenge the sexual culture that makes abuse possible. There is an important place for private sessions, but on-going media coverage of the Royal Commission’s sessions should be encouraged. This will provide an opportunity to educate the New Zealand public about the experiences and the reasoning that supports the eventual report and recommendations. Many New Zealanders have been educated since the 1980s to believe that they are responsible for no one but themselves and that any adult individual’s failure is the fault of that individual. If the government truly wishes to make a difference, they must find means of funding adequate services and that means persuading the community of voters that these services are required to prevent abuse.

**8.2 The expectation that children will be heard should be included in the Terms of Reference.** Article 12 of the United Nations Convention on the Rights of the Child provides:

1. States Parties shall assure to the child who is capable of forming his or her own views

the right to express those views freely in all matters affecting the child, the views of the child

being given due weight in accordance with the age and maturity of the child.

2. For this purpose the child shall in particular be provided the opportunity to be heard in

any judicial and administrative proceedings affecting the child, either directly, or through a

representative or an appropriate body, in a manner consistent with the procedural rules of

national law.

The NZRC should model support for this vital principle of child protection by ensuring that children can participate. Enabling children in institutional contexts to speak in private to adults other than those responsible for their care ensures that the child has the opportunity to challenge the version of events presented by the adults in charge of them. The CL&AS and the CFFI-PPH found that those in all forms of care were denied such opportunities to make their abuse known.

**8.3 The Inquiry should provide opportunity for those who were abused to mention experiences of good care and affection if and where these occurred.**

“The positive experiences recounted at the Forum often involved instances of good communication between staff and the patient and family, and where the patient was treated with respect.”[[12]](#footnote-12)

There are several comments and a paragraph on “acts of kindness and caring by staff members” in Te Āiotanga while there appeared to be no comment on positive experiences in the CL&AS report. One source of the abuse of children in care is the devaluing of those who care for them. This takes many forms, including inadequate pay and poor working conditions, and reflects the low value placed on caring. By focusing unremittingly on the negative, this Inquiry could unintentionally contribute to the devaluing of those who did not commit abuse but rather did their best to provide a caring and affectionate environment for children. There is already a shortage of, especially, foster carers and those willing to work in residential homes, which are still required for some children.

Direct discussion of this issue may also contribute to undermining attempts, such as the baseless claim made by the previous Minister Ann Tolley, to claim that “the majority of young persons in care had positive experiences with no abuse or neglect,” as the basis for rejecting an apology. [[13]](#footnote-13)

**8.4 The NZ RC should be funded to establish investigation units to support the inquiry where this is deemed necessary**.

## Conclusion: What is the value placed upon children in New Zealand?

A number of issues that have been important and controversial in NZ will be raised in the course of this Royal Commission Inquiry, including the need for change in the sexual culture, the place of corporal punishment and the value placed upon children in New Zealand – which has seen itself as an ideal place to bring up children. Inclusion of all institutions and organisations involved in the care of children would provide an invaluable picture of children’s experience and the work that must be done to end emotional, physical and sexual abuse. An apology will acknowledge the importance of all people and their right to be treated with dignity and respect.

1. From notes on Verbal presentation Shurlee Swain, European Social Science and History Conference, Belfast 2018. [↑](#footnote-ref-1)
2. <https://www.childabuseroyalcommission.gov.au/terms-reference> [↑](#footnote-ref-2)
3. *Royal Commission into Institutional Approaches to Child Abuse, Final Information Update,* 24 Nov. 2017 [↑](#footnote-ref-3)
4. Letter concerning the Royal Commission of Inquiry into Historical Abuse in State Care from Catholic Bishops of Aotearoa and representation from Catholic religious orders, 26 Mar 2018. [↑](#footnote-ref-4)
5. G. Robertson, *The Case of the Pope. Vatican Accountability for Human Rights Abuses*, 2010. [↑](#footnote-ref-5)
6. CL&A 2015, p.35. [↑](#footnote-ref-6)
7. *Royal Commission into Institutional Approaches to Child Abuse, Final Information Update,* 24 Nov. 2017 [↑](#footnote-ref-7)
8. *Te Āiotanga: Report of the Confidential Forum for Former In-Patients of Psychiatric Hospitals*, June 2007, p.16. [↑](#footnote-ref-8)
9. *Royal Commission into Institutional Approaches to Child Abuse, Final Information Update,* 24 Nov. 2017 [↑](#footnote-ref-9)
10. P.30. [↑](#footnote-ref-10)
11. H. Cook, *The Long Sexual Revolution: English Women, Sex and Contraception, 1800-1975,* Oxford University Press, 2004. [↑](#footnote-ref-11)
12. *Te Āiotanga: Report of the Confidential Forum for Former In-Patients of Psychiatric Hospitals*, June 2007, p.2. [↑](#footnote-ref-12)
13. *Government Response to the Final Report of the Confidential Listening and Assistance Service* 2016, p.5 para 33. [↑](#footnote-ref-13)