**The Scottish Parliament**
**Finance and Public Administration Committee**
**Cost-effectiveness of Scottish public inquiries**

Presentation by Wendy McGuinness (Tuesday, 28 October 2025)
[Final Draft as at 17 December 2025]

## Background

On 28 October 2025, Wendy presented to members of the Finance and Public Administration Committee in Edinburgh. This was in response to an invitation by the Committee to learn more about New Zealand's system of inquiry. Committee members were interested in exploring ways to improve the cost-effectiveness of Scottish public inquiries. Representatives from Sweden and Australia with policy expertise in inquiries also attended via Zoom.

The following information was provided to assist Committee members in gaining a better understanding of the New Zealand system of inquiries. In addition to our observations below, three appendices are also included:

Appendix 1: Background to the Inquiries Act 2013
Appendix 2: Royal Commission of Inquiry into COVID-19 Lessons Learned (2022–2026)
Appendix 3: Government Inquiry into Operation Burnham and related matters (2018–2020)

## High-level observations

### Types of inquiries

1. In my view, the Scottish Parliament requires only two forms of statutory inquiry (rather than the three identified under New Zealand law, see Figure 1 below and Appendix 1): public inquiries and government inquiries. While New Zealand legislation refers to three categories, we would argue only two are necessary in practice. Public inquiries could just as readily be described as royal inquiries, since only one public inquiry has ever been conducted that was not a royal inquiry. (Note: This is our understanding, but this point is yet to be confirmed. It forms part of McGuinness Institute OIA 2025/25 to the Department of Internal Affairs.)
2. There should be a clear and deliberate distinction between a public inquiry (representing the people) and a government inquiry (representing the Ministers).

### Public inquiries

3. In a public inquiry, public representation should be front and centre:
    a. We propose that the terms of reference for a public inquiry should be approved by a select committee (this draws on the New Zealand experience of the COVID-19 Inquiry, see Appendix 2). This approach enables input from MPs and parties not in government, ensuring broader democratic representation. Where minority views arise during the committee's formation, these perspectives can be formally recorded and presented to the commissioners to inform the administration of the inquiry.
    b. In addition, all key matters relating to the inquiry, such as extensions, costs, interim findings and the final report, should be reported to the select committee rather than to a Minister or the Governor-General. This ensures that both the terms of reference and the final report are, and are perceived to be, independent and non-partisan.

**Government inquiries**

4. A government inquiry should be established by a Minister and report to that Minister (what we call the appropriate Minister). A good example of a government inquiry is the *Report of the Government Inquiry into Operation Burnham and related matters* (see Appendix 3).

**Both public inquiries and government inquiries**

5. The government should focus on establishing the purpose, scope and timeframe, and appointing suitable commissioners, while entrusting the commissioners with responsibility for determining the process as they carry out the inquiry's mandate. Inquiries cannot be successful without a clear purpose.
6. Annual reports should be prepared by the Commissioners, tabled in the House, and published on the Parliamentary website to improve public access. Each report should outline the costs, risks and benefits since the previous report, while also providing a comprehensive overview of the inquiry from its formation. This recommendation reflects the principle that 'sunlight is the best disinfectant', a metaphor popularised by US Supreme Court Justice Louis Brandeis.
7. Administrative support for inquiries should be centralised. In New Zealand, this function is provided by the Department of Internal Affairs (DIA).

**Figure 1: Illustration of the current inquiry system in New Zealand**

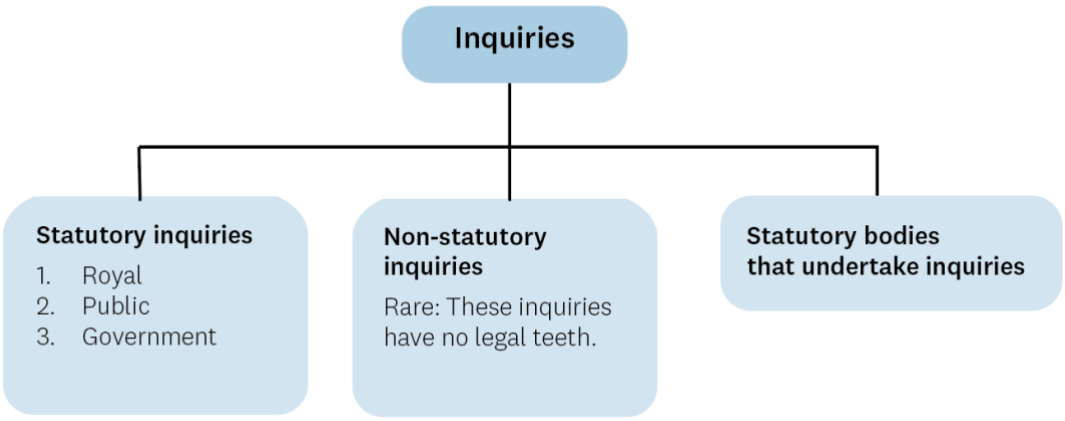


**Table 1: Tentative costs of recent Royal Commissions**

Source: NZ Royal Commission COVID-19 Lessons Learned, *Quarterly Reports*, 2023–2025;[1] Royal Commission of Inquiry into the Attack on Christchurch Mosques on 15 March 2019, *Quarterly Reports*, 2019–2020;[2] Royal Commission of Inquiry into Abuse in Care, *Quarterly Reports*, 2019–2024.[3]

| Royal Commission | Budget (NZD) | Total cost (NZD) | Annual cost (NZD) | Timeline |
|---|---|---|---|---|
| COVID-19 Lessons Learned (Phase 1) | 16.770m | 13.781m (as at 30 September 2024) | FY22/23: 1.945m<br>FY23/24: 9.812m<br>FY24/25: 2.024m[1] | February 2023–November 2024 |
| COVID-19 Lessons Learned (Phase 2) | 14.038m | 4.835m (as at 30 June 2025) | FY24/25: 4.835m<br>FY25/26 (budget): 8.149m | November 2024–February 2026 |
| Royal Commission of Inquiry into the Attack on Christchurch Mosques on 15 March 2019 | 11.911m | 11.014m (as at 30 June 2020)[2] | FY18/19: 1.211m<br>FY19/20: 9.803m | April 2019–November 2020 |
| Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-Based Institutions | 214.418m (excl. FY18/19)[3] | 176.574m (as at 30 April 2024) | FY18/19: 9.147m<br>FY19/20: 17.072m[4]<br>FY20/21: 44.848m<br>FY21/22: 46.224m<br>FY22/23: 42.410m<br>FY23/24: 16.873m<br>(as at 30 April 2024) | January 2019–June 2024 |

**Notes to Table 1:**

1. This is from the final report on Phase 1 and only incorporates costs from 1 July to 30 September 2024. The report states, 'Phase One of the Inquiry is currently on track to complete its work within its appropriated budget and expects to end with a modest underspend', implying that further costs may have been incurred that are not accounted for in the quarterly reports.
2. The last quarterly report disclosed costs for the period 1 April to 30 June 2020. No costs were provided for the period July to November 2020.
3. The quarterly report for the period 1 April to 30 June 2019 only provides a multi-year budget totalling NZ$78.849 million. It is implied that this was the initial budget for the inquiry.
4. No quarterly report was provided for the fourth quarter of the 2019/2020 financial year (i.e. April to June 2020). Therefore, the FY19/20 total reflects costs from 1 July 2019 to 31 March 2020.

## Appendix 1: Background to the Inquiries Act 2013

1A: Excerpt from the Law Commission's *A New Inquiries Act* report (2008)

1B: Excerpt from the Inquiries Bill (later the 2013 Act)

1C: Excerpt from the *Cabinet Manual 2023* relating to inquiries

### High-level observations:

1. The full recommendations of the 2008 Law Commission report *A New Inquiries Act* were not implemented. The Commission's intention was for the term 'royal commission' to be phased out by excluding royal commissions from the new Inquiries Act (see Appendix 1B below, and the 2008 report here). The report noted:

> Sitting at the apex of the inquiry pyramid are commissions of inquiry, including royal commissions. **There is no significant legal distinction between these two forms of inquiry – the distinction lies rather in issues of possible prestige.** Currently in legal terms, a commission of inquiry is the heavy artillery of the existing framework. Commissions have coercive powers to compel the production of information and witnesses. Their findings and recommendations are not legally binding, but are usually highly influential. (p.4)

> We propose that when a new Inquiries Act is introduced, the provisions of **the 1908 Act relating to the appointment of commissions of inquiry and royal commissions should be repealed.** However, for now the other provisions of the Act should remain in force for the purpose of the many bodies taking their powers by reference. **It is undesirable**, **however, that the 1908 linger on the statute book.** (p.19) [bold added]

2. Under the 2013 Act, all public inquiries report to the Governor-General, and their reports are then, after consideration by government, tabled in Parliament. Hence there are really only two types of statutory inquiries, as the only difference between a royal commission and a public inquiry is who established the inquiry. However, even without the Commissions of Inquiry Act 1908 , inquiries can still be called royal under the 2013 Act to indicate a higher level of due diligence, but in practice there is no difference in terms of process.[4]
3. In our experience, royal commissions of inquiry are always established by government (not by the Governor-General).

## 1A: Excerpt from the Law Commission's *A New Inquiries Act* report (2008)

Source: Te Aka Matua o te Ture | Law Commission, *A New Inquiries Act,* May 2008.[5]

# Summary

THE NEED FOR CHANGE

1 In this report, the Law Commission presents its recommendations to reform and modernise the law relating to inquiries. In the course of our review, the Commission has released and consulted on two papers: an issues paper *The Role of Public Inquiries* and a draft report entitled *Public Inquiries*. Accompanying this report is a draft Inquiries Bill that reflects our recommendations.

2 Our review has focused on commissions of inquiry and royal commissions, both of which operate under the Commissions of Inquiry Act 1908, and non-statutory ministerial inquiries.

3 The Law Commission has identified three broad problems with the existing inquiry structure. First, the 1908 Act is antiquated and has been amended many times, sometimes in response to one-off situations. Many of its provisions are confusing and some place constraints on procedure that add time and money to inquiries, without necessarily enhancing their effectiveness. A complete re-examination of the Act is therefore long overdue.

4 In addition, royal commissions and commissions of inquiry are costly. They tend to adopt legalistic procedures and have become constrained by the culture that has developed around them. As a result, the 1908 Act is used infrequently. Changes in both the law and culture are required to enable inquiries to be as effective and efficient as possible so that their use is not deterred.

5 Thirdly, non-statutory ministerial inquiries appear to be increasingly preferred but take place outside a statutory framework. They are often seen as a quick and cost-effective way to have an independent investigation, but do not have any coercive powers, instead relying solely on witness cooperation. They offer no immunities for those taking part; and there is a lack of clarity around how other protections such as judicial review and the Official Information Act 1982 apply to them. Ministers need to be provided with a form of statutory inquiry that they can use for both the less complex, discrete issues requiring investigation, as well as those of greater breadth and complexity.

A NEW INQUIRIES ACT

6 We propose that the 1908 Act be replaced by a new Inquiries Act. The new Act should maximise flexibility and free inquiries from the procedural constraints and traditions that have dogged commissions.

7 The new Act should provide for two forms of inquiry. "Public inquiries" should take over the ground previously inhabited by commissions of inquiry and royal commissions. "Government inquiries" will differ by being simpler and quicker to establish. They will be appointed by and report directly to a Minister. They should deal with smaller and more immediate issues where a quick and authoritative

answer is required from an independent inquiry. The framework we propose should largely remove the need for non-statutory ministerial inquiries. Both forms of inquiry should enjoy the same legal powers and protections, differing only in their manner of appointment and completion.

8 The adversarial concepts of "parties" and "persons entitled to be heard" should be removed from the Act. The automatic provisions that give these participants a right "to appear and be heard" should be abandoned in favour of more flexible provisions which accord with natural justice. The anachronisms of the 1908 Act, including the complicated provisions relating to contempt and differing powers depending on the status of individual inquirers, should also be removed.

9 The new Act should reduce the likelihood of costly and delaying litigation on the periphery of inquiries by enhancing inquirers' powers to conduct the inquiry as they see fit; clarifying the rules surrounding public access to inquiries; and giving directions about natural justice. The creation of new offences directed at controlling behaviour surrounding inquiries will enhance their ability to control abuse of their processes.

10 In this report, we also recommend that guidance be given to those establishing inquiries, by way of the Cabinet Manual, and those conducting them, by way of new Department of Internal Affairs guidelines. In particular, emphasis should be placed on the flexible nature of the new legislation and the less formal procedural options available to inquirers.

11 Not only are these amendments necessary to update and modernise the century-old legislation, they are required to make inquiries effective and efficient. The change in terminology and removal of certain provisions are necessary to encourage a change in the culture which now deters wider use of the 1908 Act. Furthermore, a complete reworking of the legislation is required to provide Ministers with a form of statutory inquiry that they can use when any matter of public importance, no matter its size or complexity, arises for independent review.

SUBSTANCE OF THE ACT

## Appointment, status and conclusion of inquiries

12 The two new forms of inquiry will be established differently. Public inquiries should be appointed by the Governor-General by Order in Council. They should report to the Governor-General and their reports should be tabled in Parliament. Government inquiries should be appointed by, and report directly to a Minister. It would not be necessary for their reports to be tabled in Parliament, although in practice they are likely to be released publicly. The independence of both forms of inquiry should be cemented in legislation.

13 Both public and government inquiries should be appointed to inquire and report on "any matter of public importance", but it should be made clear that they are not to determine civil, criminal, or disciplinary liability. We also propose that, in consultation with government, inquirers be given express power to temporarily suspend their inquiry where to continue could prejudice a pending or ongoing investigation into the same matter. Where this would mean going beyond their reporting date, a change to the terms of reference would be required.

14 To ensure that the time and cost of an inquiry is not wasted, we recommend that consideration should be given to whether Government should respond to inquiry recommendations within 6 months of them reporting.

### Procedure, natural justice and participation

15 The provisions of the 1908 Act encourage the adoption of unnecessarily adversarial practices. Arguments about an inquiry's procedural powers can be minimised by setting some of these powers out in legislation, while still emphasising that inquiries are free to regulate their own proceedings. The Act should make it clear that, subject to the rules of natural justice, the inquirer is free to decide whether oral hearings are held; and whether to allow or restrict cross-examination, call witnesses, and receive oral evidence and submissions from or on behalf of a participant.

16 Inquiries should be able to proceed by a wide variety of means, such as informal meetings and interviews. Formal hearings akin to court processes would only be required in the minority of instances. The legislation should not force such formal procedures upon inquiries where they are not effective or efficient or required by natural justice.

17 The provisions relating to "parties", the right to appear and be heard and the right to representation should be replaced, but inquirers should be given some direction as to when to accord some participants greater involvement in the inquiry than others. They should be able to appoint "core participants", but core participants should not automatically have the rights previously accorded to parties. While they should have a right to give evidence and make submissions to the inquiry, the manner in which this is done should be at the discretion of the inquiry.

18 The well-established rules of natural justice relating to adverse comment should be set out clearly in the legislation. The Act should also provide that inquirers are to act impartially.

### Powers to inquire

19 The powers currently contained in the 1908 Act are adequate and should for the most part merely be updated. In contrast with developments in Australia, we do not think that inquiries should have access to search and seizure powers. We also propose restrictions on the delegation of an inquiry's inquisitorial powers.

20 The provisions of the 1908 Act relating to an inquiry's power to disclose information it receives to other participants in the inquiry; the service of witnesses summonses; and witness expenses should be clarified and modernised.

### Public access to inquiries and documentation

21 Case law has established that inquiries have the power to decide whether proceedings are held in public or in private, but the 1908 Act is silent on the matter. The new Act should codify this power, and should provide that where an inquiry is considering whether to restrict public access, or to suppress information, it should take account of the following criteria:

(a) the risk that private hearings will inhibit public confidence in the inquiry's proceedings;

(b) the need for the inquiry to properly ascertain the facts;

(c) the extent to which a public hearing may prejudice the security or defence or economic interests of New Zealand;

(d) the privacy interests of natural or other persons;

(e) whether public hearings would interfere with the administration of justice, including the right to a fair trial.

22 A great deal can be done to enhance public access to inquiry documentation, and we suggest that greater use be made of the internet to publish inquiry material.

23 We also consider the status of inquiry documentation after an inquiry has completed its task. The existing treatment of inquiries by the Official Information Act 1982 and Public Records Act 2005 is, for the most part, appropriate, but there are some practical problems surrounding the transfer of documentation to Archives New Zealand. A particular problem relates to the current status of non-statutory ministerial inquiry documentation under the Official Information Act 1982 and Public Records Act 2005. We propose a process which seeks to clarify the roles of the various agencies, and facilitates public access to documents once they are lodged with Archives.

24 We also recommend that the Official Information Act 1982 be amended to make it clear that notes relating to the internal deliberations of an inquiry should not be subject to disclosure under that regime. We also suggest that the blanket exclusion on access to evidence and submissions be removed, unless it is subject to a suppression order by the inquiry. However, government, in consultation with the inquirer, should specify the date on which restrictions on access to the evidence, submissions and notes should be removed.

### Cost orders and funding legal representation

25 At present, the 1908 Act grants inquiries the power to make cost orders. We question the general application of costs orders to inquiries which are established by governments and are inquisitorial processes. We conclude, however, that they may be appropriate to the extent that a person has unduly lengthened, obstructed or added undue cost to an inquiry. Inquirers should retain the ability to deter such action by recourse to a cost order.

26 Legal aid is not available to participants before inquiries, yet there will be circumstances where legal representation is required to protect a participant's interests, ensure equality, or ensure the inquiry is able to satisfy its task. We consider that funding for legal representation should be made available based on a consideration of:

(a) The prospect of hardship to the person if assistance is declined;

(b) The significance of the evidence that the person is giving or appears likely to give;

(c) Any other matter relating to the public interest.

27 An inquiry should, after considering these factors, be able to make a recommendation to the responsible department (usually the Department of Internal Affairs) that a participant's legal representation be funded, although this may be on certain terms.

### Sanctions

28 At present, disobedience with an inquiry's orders can be punished by summary conviction and a $1,000 fine or by punishment for contempt. Inquirers have different powers to punish for contempt depending on their judicial status.

29 In the light of the purpose of contempt and its severe nature, we do not think that inquirers should be able to punish for contempt. Instead, the new Act should contain offences designed to deal with disobedience with inquiry orders and with conduct in the face of and on the periphery of inquiries. The penalty for these offences should be increased to $10,000. In addition, however, the new Act should expressly provide that the Solicitor-General may commence proceedings for contempt of an inquiry.

30 Some existing sanctions in the 1908 Act are qualified: a refusal to answer must be "without sufficient cause" to attract criminal consequences and powers of detention can be exercised where a person refuses to answer without "just excuse". We suggest that a consistent approach be taken to the qualifications in the new Act. As in the new Coroners Act 2006, the qualification of "lawful excuse" should be adopted and defined.

### Evidence, privilege and inquiries

31 We propose that inquiries should continue to be able to receive evidence that would not be admissible in a court of law. The Evidence Act 2006 made certain adjustments to the common law privileges, and we suggest that ss 54 and 56 of that Act (relating to legal professional privilege) and s 69 (relating to confidentiality) should expressly apply to inquiries.

32 In line with the approach in the 2006 Act to the privilege against self-incrimination in civil proceedings, we suggest that the privilege be abrogated in relation to inquiries and replaced with an immunity which applies to the use in criminal proceedings of information directly or indirectly obtained as a consequence of the incriminating evidence.

33 We propose a new power for inquirers or authorised inquiry officers to inspect documents in respect of which privilege or confidentiality is asserted to determine whether or not the document should be disclosed.

### Immunities

34 It is desirable that a consistent approach is adopted to immunities and that inquiries should have no immunity beyond that necessary to allow its functions to be performed. On this basis, we do not consider that inquirers should be treated differently depending on their judicial status. An inquiry and its members should have no liability for anything it may report, say, do or fail to do in the exercise or intended exercise of its functions unless it is shown that the inquiry

or inquirer acted in bad faith. In addition, inquirers should not be compellable witnesses in relation to the inquiry except if bad faith is alleged. And, the new Act should state that the inquiry as a whole should be cited as defendant in review proceedings.

35 Witnesses and counsel should continue to have the same immunities as witnesses and counsel in a court of law.

### Court supervision of inquiries

36 We suggest that inquiries should retain the ability to state a case to the High Court; but that the existing provision that cases stated by a commission including a current or former High Court judge are made to the Court of Appeal should not be retained in the new Act.

### Membership

37 In the case of public inquiries, inquirers should be appointed by the Governor-General. Government inquirers should be appointed by the Minister. There should be no statutory requirement as to their qualifications or numbers. However, composition of an inquiry is fundamental to its success and we suggest that guidance about the appointment of inquirers be contained in the Cabinet Manual. In particular, we suggest that more than one inquirer be appointed to any complex or long-running inquiry.

38 Legislation should also provide for the replacement of members when they leave, subject to the principles of natural justice. Inquirers should only be removed from office by the Governor-General or Minister, as the case may be, due to misconduct, inability to perform the functions of office or neglect of duty.

### Counsel assisting

39 The new Act should provide that where the appointment of counsel assisting is considered appropriate, he or she should be appointed by the Solicitor-General, after discussion with the inquirers. The Solicitor-General should also be responsible for setting terms and conditions of appointment and for approving invoices. We also suggest that the Solicitor-General develops guidelines setting out the role of counsel assisting.

### Funding and administration

40 Inquiries are public bodies and should be fiscally accountable, notwithstanding their need to preserve independence as to outcomes. The expenditure and administration of inquiries under the Act should be overseen by the Department of Internal Affairs unless the subject-matter of a particular inquiry would give rise to bias or a perception of bias in respect of that Department.

41 If the Department of Internal Affairs' role in inquiries is formalised and its responsibilities increased as suggested in this report, we suggest that it may be desirable for the Department to receive a specific allocation for inquiries.

## Other inquiry bodies and the status of the 1908 Act

42 Many statutory tribunals, standing commissions and officers take their powers by reference to the 1908 Act. In addition, there are many powers to establish inquiries with functions very similar to those of the one-off inquiries considered in this paper. As a general proposition, we consider that the incorporation of powers by reference, and the proliferation in inquiry powers on the statute book are undesirable.

43 We propose that when a new Inquiries Act is introduced, the provisions of the 1908 Act relating to the appointment of commissions of inquiry and royal commissions should be repealed. However, for now the other provisions of the Act should remain in force for the purpose of the many bodies taking their powers by reference. It is undesirable, however, that the 1908 linger on the statute book.

44 Work needs to be done to review the powers needed by the bodies which currently have recourse to the 1908 Act, and to rationalise the various inquiry powers on the statute book, with a view to finally repealing the 1908 Act. We recommend that the Government consider giving the Law Commission a further reference to do this work. In addition, we propose the inclusion of a provision in the new Act which requires such a review to take place with 5 years of the commencement of the new Act.

## 1B: Excerpt from the Inquiries Bill (later the 2013 Act)

### Regulatory impact statement

#### *Executive Summary*

The Law Commission's report *A New Inquiries Act* NZLC R 102 reviewed the law governing commissions of inquiry, Royal commissions, and non-statutory ministerial inquiries. It concluded that inquiries play a key role in our democratic system. However, it considered that the Commissions of Inquiry Act 1908 (the **Act**) is outdated and that some of its provisions may contribute to the high cost of inquiries. It also concluded that the legislation is lacking because it fails to provide Ministers with a flexible form of statutory inquiry that they can use for the less complex, discrete issues that require independent investigation.

Consequently, it is proposed that the law relating to public inquiries should be reformed and modernised through a new Inquiries Act. The Act would provide for flexible, effective, and efficient inquiries that would take place within an appropriate legal framework. A draft Inquiries Bill was appended to the Law Commission's report.

#### *Adequacy statement*

The Department of Internal Affairs has reviewed this regulatory impact statement and considers that it fulfils the adequacy criteria.

#### *Status quo and problem*

Commissions of inquiry and Royal commissions are governed by the Commissions of Inquiry Act 1908. Among other things, the Act gives those inquiries powers to obtain information, sets out procedural provisions and provides protections for those taking part. However, the Act is outdated and has been amended many times, in a piecemeal manner. The following problems exist:

- The impact of some of its provisions is unclear. For example, the Act creates 3 classes of persons who are statutorily recognised as having standing before an inquiry. This approach is not replicated in any other jurisdictions. There is little validity in the distinction between these classes and participants' respective access to procedural rights and liability for costs requires amendment.
- While the Act generally enables a flexible approach to inquiries, some of its procedural provisions place unnecessary and potentially costly constraints on procedure. For example, the Act gives some participants rights of participation that go beyond what is required by natural justice. These provisions tend to emphasise an adversarial and legalistic approach to inquiries.
- In other instances, the Act is silent about modern principles and rules of public law, for example, in respect of access to information and natural justice.
- There has been a practice of giving many other investigatory and adjudicative bodies the powers of a commission of inquiry. This has led to a confused jurisprudence about the application of the Act and has further limited its effectiveness.

In addition, the Act has become constrained by the culture that has developed alongside it. Practice and the legalistic provisions of the Act have meant that Royal commissions and commissions of inquiry tend to become adversarial processes. As a result, they tend to take a long time and cost a great deal of money. These factors appear to have deterred their use in recent years.

A consequence is that many inquiries (ministerial inquiries) take place outside a statutory framework. They are often seen as a quick and cost-effective way to have an independent investigation, but do not have any powers to obtain information and rely on witness cooperation. They offer no immunities for those taking part and there is a lack of clarity around how other protections such as judicial review and the Official Information Act 1982 apply to them. This is unsatisfactory.

*Royal commissions*

Within the preferred option there are 2 further alternatives, relating to the retention or otherwise of a statutory form of Royal commission. At present, Royal commissions are appointed by the Governor-General by Order in Council, acting under the Letters Patent. Otherwise, all the provisions of the 1908 Act apply to them. Thus, presently, there are no significant legal distinctions between commissions of inquiry and Royal commissions.

The Law Commission concluded that the retention of Royal commissions would add unnecessary complexity to the inquiry landscape. It considered that the provisions of the new Act should not apply to Royal commissions. This, it hoped, would also assist in the aim of modernising the law relating to inquiries. It noted that statute law has now replaced the Royal prerogative in most areas and that there would be no legal distinction between its proposed public inquiry and Royal commissions.

This option would mean that, while Royal commissions could still be appointed under the Letters Patent, none of the provisions of the new Act would apply. If any Royal commissions were appointed in the future, they would operate as a form of non-statutory inquiry. It would be desirable, therefore, for the practice of appointing Royal commissions to cease.

The alternative view is that the new Act should apply to Royal commissions in a similar way as the 1908 Act does at present. In response to the Law Commission's draft report, the Department of Internal Affairs, Crown Law, and the Cabinet Office were in favour of retaining Royal commissions because they are perceived by the public to have added gravitas. One of the purposes of inquiries is to reassure the public that a matter is being given serious, independent consideration and there are some occasions where only the appointment of a Royal commission will provide that reassurance.

There is, therefore, a valid policy reason for retaining Royal commissions. It is therefore proposed that they should be included in the new Act in a similar manner to the existing position under the 1908 Act. Thus, Royal commissions would be appointed by the Governor-General in Council under the Letters Patent. In every other aspect they would be treated in the same way as public inquiries. All the powers and protections of the new Act would apply. The result would be that the new Act would allow for 3 forms of statutory inquiry.

There is no difference in respect of compliance costs between these 2 alternatives.

However, there is a risk that the culture change that the Law Commission hopes will result from the introduction of a new Act will be harder to achieve if Royal commissions are retained.

## *Consultation*

The Law Commission consulted widely between 2006 and 2008. It met with and received written submissions from members of the public, past inquirers, those who have participated in inquiries, and the following government agencies (see also NZLC R 102, pp 7–8): Archives New Zealand, Cabinet Office, Crown Law, Department of Internal Affairs, Department of Prime Minister and Cabinet, Gambling Commission, Ministry of Justice, Ministry of Social Development, Office of the Auditor-General, Office of the Ombudsmen, State Services Commission, Statistics New Zealand, Transport Accident Investigation Commission, and The Treasury.

Particular concerns were raised in relation to the retention or otherwise of Royal commissions; and the need for a form of statutory inquiry that can be appointed by a Minister alone. As noted above, in response to these concerns it is proposed that the new Act should provide for 2 forms of inquiry, and that government inquiries should be appointed by a Minister alone. It is also proposed that the provisions of the new Act should apply to Royal commissions.

The following agencies have been consulted in respect of the Cabinet Paper and this regulatory impact statement: Archives New Zealand, Cabinet Office, Crown Law, Department of Internal Affairs, Department of Prime Minister and Cabinet, Ministry of Justice, State Services Commission, and The Treasury.

## 1C: Excerpt from the *Cabinet Manual 2023* relating to inquiries

Source: Cabinet Office, *Cabinet Manual 2023*, 2023.[6]



# Inquiries

## General

4.74 This guidance provides information on the different types of inquiry, and the principles that apply to their establishment.

4.75 Statutory inquiries, non-statutory ministerial inquiries, and standing statutory bodies with powers of inquiry have different powers and privileges, which should be considered when deciding on the most appropriate form of inquiry. Ministers and agencies may seek advice from the Attorney-General or Solicitor-General, and from the Cabinet Office and the Department of Internal Affairs, on matters relating to the establishment of an inquiry. Further guidance on statutory inquiries can be found in the Inquiries Act 2013 and on the Department of Internal Affairs' website.

4.76 All inquiries act independently of the government. Those conducting an inquiry may nonetheless consult with officials on technical matters and on the practical implications of any draft proposals.

4.77 All inquiries must follow the principles of natural justice.

## Statutory inquiries

4.78 The Inquiries Act 2013 provides for three types of inquiry:

(a) Royal commissions;

(b) public inquiries; and

(c) government inquiries.

4.79 These three types of inquiry have identical powers, and differ only in status, method of appointment, and the way they report back. The options allow a flexibility of approach in establishing an inquiry.

4.80 The Inquiries Act 2013 is largely enabling. Where Ministers are satisfied that a matter of public importance requires an inquiry, the decision to then establish an inquiry is a judgement made by Ministers. There is no statutory threshold that determines whether or not an inquiry will be held.

4.81 The Inquiries Act 2013 distinguishes between the roles of the appointing and the appropriate Minister. In the case of a government inquiry, the Minister who establishes the inquiry under section 6(3) of the Inquiries Act 2013 is known as the "appointing Minister". A government inquiry reports to the appointing Minister, and the appointing Minister makes the decision about any public release of the inquiry's report.

4.82 The "appropriate Minister" in relation to any type of inquiry is the Minister who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the relevant agency administering the inquiry. The choice of appropriate Minister may simply follow from the choice of the relevant agency best suited to support the inquiry. In the case of a government inquiry, a Minister may be both the appointing Minister and the appropriate Minister.

4.83 Which Minister will take responsibility for an inquiry is ultimately a matter for the Prime Minister to decide.

### Royal commissions

4.84 Royal commissions are typically reserved for the most serious matters of public importance. They are appointed by the Governor-General, in the name of the Sovereign and on the advice of the Executive Council, under clause X of the Letters Patent Constituting the Office of Governor-General of New Zealand 1983 (see appendix B).

4.85 The Inquiries Act 2013 applies to Royal commissions as if they were public inquiries.

### Public inquiries

4.86 Public inquiries may be established under the Inquiries Act 2013 for the purpose of inquiring into, and reporting on, any matter of public importance. A matter may require a public inquiry when it pertains to a particularly significant or wide-reaching issue that causes a high level of concern to the public and to Ministers.

4.87 A public inquiry is established by the Governor-General by Order in Council. The final report of a public inquiry is presented to the Governor-General, and must be presented by the appropriate Minister to the House of Representatives as soon as practicable thereafter.

### Government inquiries

4.88 Government inquiries may be established under the Inquiries Act 2013 for the purpose of inquiring into, and reporting on, any matter of public importance. In practice, government inquiries typically deal with smaller and more immediate issues where a quick and authoritative answer is required from an independent inquirer.

4.89 A government inquiry is established by one or more Ministers by notice in the *New Zealand Gazette* and reports directly to the appointing Minister(s). There is no requirement that the report of a government inquiry be tabled in Parliament.

## Duties, powers, immunities, and privileges of statutory inquiries

4.90 All inquiries must act independently, impartially, and fairly.

4.91 An inquiry may regulate its own procedures as it considers appropriate, unless otherwise specified by the Inquiries Act 2013 or by the inquiry's terms of reference. This broad discretion allows a degree of flexibility in the level of formality required.

4.92 However, all public inquiries and government inquiries have statutory powers to require the production of evidence, to compel witnesses, and to take evidence on oath. Where powers of search and seizure are considered necessary, investigation by a specialist agency with these powers is more appropriate.

4.93 Where an inquiry is established under the Inquiries Act 2013, the exercise of statutory powers in relation to members of Parliament and parliamentary agencies will require the recognition of parliamentary privilege.

4.94 Witnesses and counsel are protected by the same immunities and privileges that they would have before the courts. Commissioners are also protected.

4.95 Inquiries may refer questions of law for determination by a court.

4.96 Inquiries usually hold open hearings with public and media access, but may restrict access as the need arises. The inquiry's terms of reference may also limit public access. An inquiry may make orders to forbid the publication of certain information, including evidence and submissions, or to restrict public access to any part or aspect of the inquiry. Before doing so the inquiry must take into account certain specified criteria, such as privacy and the benefits of open justice.

4.97 Statutory inquiries are excluded from the definition of "New Zealand agency" in the Privacy Act 2020, which means that the requirements of the Act do not apply to such inquiries. However, inquiries may still choose to handle personal information they collect and hold in accordance with some or all of the privacy principles in the Privacy Act 2020.

4.98 An inquiry is subject to the Official Information Act 1982 once it has presented a final report. However, information that is the subject of an order imposing restrictions on access and certain documents that relate to the internal deliberations of the inquiry are not official information for the purposes of the Official Information Act 1982.

## Administrative support for inquiries

4.99 The Inquiries Act 2013 is administered by the Department of Internal Affairs.

4.100 The Department of Internal Affairs is the default agency for providing administrative support to inquiries (known under the Inquiries Act 2013 as the "relevant department"). However, another agency may be appointed the relevant department, under the terms of reference for the inquiry, if it is better placed to provide technical or subject matter expertise, or if it is determined that it would be inappropriate for the Department of Internal Affairs to be appointed the relevant department (for example, because of an actual or perceived conflict of interest).

## Establishing an inquiry

4.101 A Minister must consult the Prime Minister and the Attorney-General when assessing whether to establish an inquiry, prior to submitting any proposal to Cabinet. Cabinet papers proposing the establishment of an inquiry are often joint papers from the portfolio Minister and the Minister responsible for the Inquiries Act 2013. More than one Cabinet paper may be required during the establishment of an inquiry. The Cabinet paper(s) should address the matters covered in paragraphs 4.103 – 4.114.

4.102 Further guidance on the process for obtaining Cabinet approval for the establishment of an inquiry is contained in guidance material issued by the Department of Internal Affairs.

### Subject of inquiry

4.103 An inquiry may be established to inquire into any matter of public importance. An inquiry should not usually be appointed, however, where an existing body has jurisdiction to carry out the investigation.

4.104 Although inquiries are not prevented from making findings of fault or making recommendations that further steps be taken to determine liability, an inquiry has no power to determine the civil, criminal, or disciplinary liability of any person.

### Purpose of inquiry

4.105 The purpose of an inquiry may include:

(a) establishing facts or developing policy;

(b) learning from events;

(c) providing an opportunity for reconciliation and resolution; or

(d) holding people and organisations to account.

### Terms of reference

4.106 Terms of reference can be used to give direction to or place restrictions on the inquiry, and to give specific procedural directions not set out in the Inquiries Act 2013. The terms of reference should be precise and yet sufficiently flexible to allow the inquiry to respond to issues that come to light in the course of the inquiry.

4.107 The relevant agencies should be consulted on the terms of reference, along with, ideally, the proposed commissioner or inquirer, and directly interested or involved persons.

4.108 The commission appointing a Royal commission and the Order in Council establishing a public inquiry are drafted by the Parliamentary Counsel Office.

4.109 A *New Zealand Gazette* notice establishing a government inquiry is drafted by the responsible agency, in consultation with the Crown Law Office and any other relevant agencies.

### Appointment of inquirer or commissioner

4.110 The Inquiries Act 2013 does not specify any requirements about the number or expertise of inquirers. Nonetheless, decisions about the appointment of commissioners or inquirers are fundamental to an inquiry's success. The commissioners or inquirers should be people whose expertise best suits the subject matter and purpose of the inquiry. Where an inquiry exercises powers of compulsion and undertakes formal examination and cross-examination of witnesses, legal experience may be essential. If it is proposed that a sitting or retired judge be appointed, the Attorney-General must consult the Chief Justice. If the nominated appointee is a sitting judge, the relevant Head of Bench should also be consulted.

4.111 Depending on the size, complexity, and likely length of an inquiry, more than one inquirer may be appointed. Where more than one inquiry member is appointed, members should have complementary skills and experience. If one inquirer is unable to continue, the remaining inquiry members should still have the broad skills required to complete the task. Fees for commissioners are set under the fees framework set out in Cabinet Office circular CO (22) 2 *Revised Fees Framework for members appointed to bodies in which the Crown has an interest*.

### Budget and timeframe

4.112 The budget for an inquiry should allow for the inquiry to have access to discrete resources and, in most cases, a secretariat established for the purpose of the inquiry. Inquiries are usually funded by an increase in appropriation in Vote Internal Affairs, typically by a charge against the Budget contingency. If a different responsible agency is appointed, the inquiry will be funded from the relevant Vote. The Treasury and the Department of Internal Affairs should be consulted on the budget.

4.113 Realistic timeframes should be set, acknowledging that the scope of the issues may not be clear until considerably further along in the process.

4.114 Inquiries must be fiscally accountable. The Department of Internal Affairs or the responsible agency, as appropriate, will establish the process for monitoring the budget and the reporting timeframe.

## Other inquiries

### Non-statutory ministerial inquiries

4.115 In some cases, it may be considered appropriate or desirable for a Minister to establish a non-statutory inquiry into an area for which they have portfolio responsibility. However, the ability to establish a government inquiry under the Inquiries Act 2013 means there are likely to be fewer circumstances than previously in which a non-statutory inquiry would be established.

4.116 Non-statutory inquiries have no coercive powers, and therefore rely solely on witnesses' cooperation. They offer no immunities for those taking part, including inquirers, lawyers, and witnesses. Information relating to a non-statutory ministerial inquiry will be subject to the Official Information Act 1982 in the normal way.

4.117 In order to establish a non-statutory inquiry, the Minister should seek the Prime Minister's agreement to the matters referred to in paragraphs 4.103 – 4.114 and advise Cabinet as soon as possible of these details.

### Statutory bodies with inquiry powers

4.118 A wide variety of statutory bodies has powers to inquire into events or issues. Examples include the Public Service Commissioner, the Ombudsmen, the Auditor-General, the Law Commission, the Health and Disability Commissioner, the Independent Police Conduct Authority, the Privacy Commissioner, and the Inspector-General of Intelligence and Security. Some inquiries may be initiated by a statutory body; in other cases, a Minister may ask a statutory body to investigate certain issues.

4.119 Before an inquiry is established, consideration should be given to whether any of these existing bodies can more appropriately conduct the inquiry. Factors to consider will be the size and complexity of the matter at hand, and the capacity of the body to conduct the inquiry within its existing resources.

4.120 In some circumstances, consideration should be given to whether it may be more appropriate to refer information to the police or to another investigative agency.

### Select committee inquiries

4.121 A select committee may hold an inquiry within its subject area. After considering evidence and advice, a committee may report to the House with its conclusions and recommendations, which may be addressed to the government. The government must respond to such recommendations within 60 working days. See paragraphs 7.123 – 7.126 for more information on government responses to select committee reports. Select committee powers and natural justice procedures are set out in the chapter on select committees in the *Standing Orders*.

4.122 A select committee inquiry is usually initiated by the committee itself and is likely to focus on scrutinising a specific area of government activity. The House may, however, refer a matter to a select committee for inquiry, particularly where the matter is outside the committee's normal subject area.

4.123 Issues suitable for a select committee inquiry are likely to be those that would benefit from input from a wide range of interested groups and the general public, and on which the holding of an inquiry would have support from a number of parliamentary parties. Other matters to consider include the expertise and resources of the committee, and its legislative or other competing workload.

4.124 If a Minister considers that an issue may be suitable for a select committee inquiry, the Minister should first discuss the issue with the Prime Minister and the Leader of the House. If this course of action is agreed, the Minister may, after consulting other parliamentary parties, write to the select committee inviting it to initiate an inquiry. Alternatively, the Minister may, by motion, seek to have the matter referred by the House to the select committee. Occasionally the House may establish an ad hoc select committee to conduct an inquiry.

**Related information**

- Cabinet Office circular CO (16) 2 *Cabinet Directions for the Conduct of Crown Legal Business 2016,* Cabinet Office circular CO (19) 2 *Attorney-General's Protocol for Release of Draft Government Legislation Outside the Crown,* and Cabinet Office circular CO (22) 2 *Revised Fees Framework for members appointed to bodies in which the Crown has an interest* are available on the Department of the Prime Minister and Cabinet's website, dpmc.govt.nz/publications/cabinet-office-circulars-and-notices.
- The *New Zealand Gazette* is available at gazette.govt.nz.
- Information on establishing inquiries under the Inquiries Act 2013 is published by the Department of Internal Affairs on its website, dia.govt.nz. Further information is available through the Department's Inquiries Directorate.
- The *Standing Orders of the House of Representatives* are available on Parliament's website, parliament.nz.

The guidance listed here was current at the time of going to press. For updates, see the online version of this manual at dpmc.govt.nz/cabinet-manual.

**Appendix 2: Royal Commission of Inquiry into COVID-19 Lessons Learned (2022–2026)**

2A: Excerpts from *COVID-19 Nation Dates* (2nd edition): by dates

2B: Excerpts from *COVID-19 Nation Dates* (2nd edition): Chapter 5 on Royal Commission of Inquiry

2C: Royal Commission of Inquiry (COVID-19 Lessons) Order 2022 [Phase 1]

2D: Royal Commission of Inquiry (COVID-19 Lessons) Amendment Order (No 2) 2024 [Phase 2]

2E: Articles in the press about the issue of Ministers refusing to be interviewed in public before Phase 2 Commissioners

A: Ministers refusing to be interviewed in public before Phase 2 Commissioners (13 August 2025)

B: Public pay the legal costs of ex-Ministers who refused to be interviewed in public (28 August 2025)

**High-level observations:**

1. The terms of reference in Appendix 2C and 2D (below) both rely on the *Letters Patent Constituting the Office of Governor-General of New Zealand 1983* (which formally establishes the office of the Governor-General and Commander-in-Chief for New Zealand) and the Inquiries Act 2013 (not the Commissions of Inquiry Act 1908).
2. Numerous interim orders have been made, see here.
3. Transparency remains a continuing challenge for the commissioners. For instance, submitters have expressed concern that they were unable to publish their submissions online until the commissioners' reports were released. The Chair of Phase 2 has stated: 'The inquiry currently has interim section 15 orders in place [under the Inquiries Act 2013] that prevent publication of submissions or evidence that the inquiry has gathered as set out in procedural Minute 1.'[7]
4. A Minister of the incoming government (Hon Winston Peters) wanted to replace the inquiry rather than extend it, due to the narrow scope.
5. The need for past Ministers to be interviewed in public has been tested and found to not be required, provided Ministers contributed to the Commission behind closed doors. The Chair revealed that he considered issuing a summons compelling them to appear but decided it was 'undesirable' given their cooperation in giving evidence to the inquiry. 'It is our opinion that the use of summonses to achieve their participation at a public hearing would be legalistic and adversarial, which our terms of reference prohibit.' See minute here.
6. The legal costs for the above-mentioned Ministers have been tested and have been paid from public funds.
7. An assessment of recommendations contained in the Phase 1 has not yet been reviewed in a public manner.
8. Phase 2 of the Royal Commission is due to deliver its final report by the end of February 2026.

## 2A: Excerpts from COVID-19 Nation Dates (2nd edition): by date

**25 May 2020**

**First calls for Royal Commission of Inquiry**

On 25 May 2020, ACT leader David Seymour starts a petition on Facebook to establish a Royal Commission of Inquiry into the COVID-19 response. On 30 May 2020, an editorial is published in the *New Zealand Herald* demanding a Royal Commission. It cautions there are a number of lessons for New Zealand to learn from how the pandemic has been handled so far. 'The handling of COVID-19 in New Zealand must be the subject of a Royal Commission of Inquiry. Commissioners need to be appointed with authority in epidemiology, health and crisis management. Terms of reference need to be broad enough to provide useful recommendations to this generation and the next.'

*(*NZ Herald, *2020b; Seymour, D., 2020)*

**8 Dec 2022**

**Royal Commission of Inquiry appointed to investigate Government's COVID-19 response**

A Royal Commission is created to analyse the government's overall COVID-19 response. It has a broad focus, including elimination, minimisation and protection strategies, border closure, community care, isolation and quarantine decisions, consideration of Māori interests and economic management, with a focus on a potential future response. While DIA is managing the Secretariat function of the Inquiry, DPMC is hosting an all-of-government function to coordinate input from agencies into the Inquiry process in addition to its own evidence. The commission will be chaired by Australia-based epidemiologist Tony Blakely. It begins in February 2023 and is initially expected to finish on 26 June 2024. However, it is further extended to 30 September 2024 by the Royal Commission of Inquiry (COVID-19 Lessons) Amendment Order 2023 (see 5 October 2023 entry). The report delivery date is further extended to 28 November 2024 (see 25 June 2024 entry).

*(Beehive, 2022cc; 2023; DPMC, 2023b; DPMC, pers. comm., 19 August 2024; RNZ, 2022x; Royal Commission of Inquiry COVID-19 Lessons Learned, pers. comm., 7 August 2024)*

**2 Jun 2023**

**Royal Commission of Inquiry forbids submitters from making their submissions public until Inquiry reports**

The Royal Commission of Inquiry into COVID-19 Lessons publishes Minute 1: Interim non-publication – evidence and submissions received. The Minute states, 'The Commissioners consider that publication of, or public access to, evidence, submissions and meetings of the Inquiry, as well as correspondence relating to these, would frustrate the Inquiry's ability to properly ascertain the facts.' It notes that the Commissioners forbid the publication of any evidence or submissions to the Inquiry. They forbid public access to meetings of the Inquiry and correspondence relating to information requests, and require all meetings to be held in private. The New Zealand Council for Civil Liberties is disturbed by the Royal Commission's decisions and considers them an attack on New Zealand's norms of openness. They comment, 'Since public confidence and trust in state institutions is at the heart of much of the pandemic response being examined by the Inquiry, it is paradoxical that it should have adopted secrecy measures that provide comfort to those inside and at the top of those institutions while damaging the ability of the public to scrutinise their claims.'

*(NZCCL, 2024; Royal Commission of Inquiry COVID-19 lessons learned, 2023)*

**5 Oct 2023**

**Royal Commission of Inquiry on the Government's COVID-19 response extended**

The Royal Commission of Inquiry (COVID-19 Lessons) Amendment Order 2023 is enacted, extending the Royal Commission of Inquiry into the government's overall COVID-19 response by three months, from 26 June 2024 to 30 September 2024. However, it is further extended to 28 November 2024 by the Royal Commission of Inquiry (COVID-19 Lessons) Amendment Order 2024 (see 25 June 2024 entry).

**24 Nov 2023**

**Coalition agreement between National and ACT calls for terms of reference of Royal Commission of Inquiry to be broadened**

The coalition agreement includes a section on delivering better public services. As part of it, the parties agree that they will 'improve the effectiveness, efficiency and responsiveness of public services' and broaden 'the terms of reference of the Royal Commission into the Covid-19 response, subject to public consultation'.
*(National Party & ACT Party, 2023)*

**26 Mar 2024**

**Over 13,000 submissions received by Royal Commission of Inquiry**

The submission process runs from 8 February to 24 March 2024. During that time, the Inquiry hears from people of all ages and ethnicities across New Zealand and living overseas. The submissions cover a broad range of topics and events. Inquiry Chair Professor Tony Blakely states: 'I want to express my thanks to everyone who provided a submission to the Inquiry – either from a personal perspective, or on behalf of their whānau, their business, or their community. The COVID-19 pandemic impacted all of us, and we know that sharing COVID-19 experiences isn't always easy. We really appreciate and value the contributions we've received.' Over 11,000 people submit feedback specifically on the terms of reference. This will be sent to the Department of Internal Affairs, which will provide advice to the Minister of Internal Affairs. 'The Minister has said decisions about an expanded terms of reference will be made by Cabinet later this year.' Professor Blakely responds that 'as a result of this feedback process, the Inquiry may be asked to look at additional aspects of the COVID-19 response, and we'll work with the Government on what that might look like once public feedback has been considered'.
*(Beehive, 2024a; Royal Commission of Inquiry COVID-19 lessons learned, 2024)*

**25 Jun 2024**

**New Zealand First invokes 'agree to disagree' provision over COVID-19 Inquiry**

This is the first use of the 'agree to disagree' provisions in the coalition agreements. NZ First leader Winston Peters states that although the current Royal Commission will continue as 'phase one' until November (see below), 'We disagree with this decision but accept it as a coalition partner.' He emphasises that the 2022 terms of reference were 'too narrow in scope and remains compromised by the current Chair's direct involvement with the previous government's administration'. NZ First's policy was to stop the current Royal Commission altogether and establish a new public inquiry in its place.
*(New Zealand First Party, 2024; Swift, M. & Lynch, J., 2024; RNZ, 2024e)*

**25 Jun 2024**

**A second phase of the Royal Commission of Inquiry announced**

Minister of Internal Affairs Brooke van Velden announces a second phase of the COVID-19 Royal Commission, which will include new commissioners and expanded terms of reference in response to criticism. The Royal Commission of Inquiry (COVID-19 Lessons) Amendment Order 2024 announces Grant Illingworth as the new commissioner to replace Hekia Parata, who resigned on 15 November 2023. The existing inquiry will now be known as phase one with a new extended deadline of 28 November 2024. Commissioners Professor Tony Blakely and John Whitehead will resign once the phase one report is delivered. The second phase will begin with the third commissioner and two new commissioners and will have a deadline of February 2026. It is expected to cost about $14 million. Van Velden understands the first phase has already cost about $17 million. Cabinet has agreed that the second phase will also have wider terms of reference, including:

1. the use of vaccines during the pandemic, specifically mandates, approval processes and safety including the monitoring and reporting of adverse reactions;
2. the social and economic disruption of New Zealand's response policies, specifically the impacts on social division and isolation, health and education, and on inflation, debt and business activity, and the balance of these impacts against COVID-19 minimisation and protection goals;
3. extended lockdowns in Auckland and Northland, specifically whether similar public health benefits could have been realised from shorter lockdowns;
4. the utilisation of partnerships with business and professional groups; and
5. the utilisation of new technology, methods, and effective international practices.

The Royal Commission of Inquiry (COVID-19 Lessons) Amendment Order (No 2) 2024 comes into force on 26 September 2024, amending the Royal Commission of Inquiry (COVID-19 Lessons) Order 2022 (see Appendix 6). As a result, at the end of phase one, Professor Tony Blakely and John Whitehead resign and in their place two new Commissioners are appointed: Judy Kavanagh and Anthony Hill. Grant Illingworth continues as a member of the Royal Commission and becomes the chairperson of phase two.

*(Beehive, 2024d; Cheng, D., 2023; Swift, M. & Lynch, J., 2024; RNZ, 2024e; Royal Commission of Inquiry COVID-19 Lessons Learned, pers. comm., 7 August 2024; Trevett, C. & Pearse, A., 2024)*

**28 Nov 2024**

**Royal Commission of Inquiry on the Government's COVID-19 Response Phase 1 report published**

Minister of Internal Affairs Brooke van Velden receives the report from Phase 1 of the Royal Commission of Inquiry into COVID-19 Lessons Learned. The report identifies six thematic lessons for the future. These describe the high-level elements Commissioners think are necessary to ensure New Zealand is 'better prepared for the next pandemic ahead of time, and ready to respond in ways that take care of all aspects of people's lives'. These lessons, in brief, are set out in Figure A1.1.

*(Beehive, 2024; Royal Commission of Inquiry COVID-19 Lessons Learned, 2024)*

**13 Aug 2025**

**Former Ministers refuse to answer Commissioners' questions in public, but will in private**

A New Zealand Royal Commission COVID-19 Lessons Learned Inquiry Phase 2 minute notes that former Prime Minister Dame Jacinda Ardern, former Prime Minister Chris Hipkins and former Ministers Grant Robertson and Dr Ayesha Verrall declined to be interviewed during a public hearing planned in late August for the following reasons:

- 'There is a convention that ministers and former ministers are interviewed by inquiries in private; there is no reason for a departure from that convention in this case; and that acting contrary to that convention would undermine rather than enhance public confidence in this instance.
- Because all former ministers had been co-operative in attending interviews and answering questions, repeating such questions at a public hearing would be performative rather than informative.
- Livestreaming and publication of recordings of the hearing creates a risk of those recordings being "tampered with, manipulated or otherwise misused", a risk which the Inquiry "ought to have foreseen and planned for".'

The Commissioners stated, 'We remain of the view that the public being able to see former ministers questioned about those decisions at a public hearing of a Royal Commission of Inquiry would significantly enhance public confidence in our processes.' Nevertheless, 'we consider that proceeding with a "decisionmakers" hearing in the absence of the central decision-makers could undermine the public confidence that would otherwise be achieved by hearing evidence in public.' And '[a]fter consideration of each of the above factors, we have decided that proceeding with the August public hearing – either in the absence of former ministers, or with former ministers attending under compulsion – is not justified.' This leads to a public discussion on whether it is acceptable for the former ministers not to appear. Views are mixed. On 18 August 2025, Christopher Luxon claims Labour leader Chris Hipkins is trying to 'politically gaslight' New Zealanders by not appearing at the COVID-19 Inquiry. New Zealand Herald journalist Thomas Coughlan argues that Phase 1 of the inquiry's terms of reference should have included a review of monetary policy decisions and vaccine efficacy and that there was a feeling among NZ First and ACT that the Phase 1 terms of reference 'screwed the scrum in favour of a glowing final report'. Phase 2 reviewed both issues, but over a narrower time frame. A number of journalists note that the risk is that future inquiries become political footballs and inquisitions into the mistakes of their forebears, rather than lessons learned exercises. A lesson may be to gain, where possible, nonpartisan agreements on inquiries in the future.

*(Conservative Party, 2025; Coughlan, T., 2025; Hehir, L., 2025; Lyth, J., 2025; NZ Herald, 2025; Royal Commission of Inquiry COVID-19 Lessons Learned, 2025)*

## 2B: Excerpts from *COVID-19 Nation Dates* (2nd edition): Chapter 5 on Royal Commission of Inquiry

### Independent inquiries

Independent inquiries, including Royal Commissions, have a long history in Commonwealth and Westminster democracies (including the UK, Australia, Canada and New Zealand). The Commissions of Inquiry Act 1908 and the Inquiries Act 2013 are administered by the Department of Internal Affairs. The 2013 Act lists three types of commissions: (a) Royal Commissions (established under the Letters Patent); (b) public inquiries (established by the Governor-General); and (c) government inquiries (established by one or more ministers).

Royal Commissions offer independent investigations into serious matters of public importance. They play a rare but critical role in the checks and balances of power in New Zealand. Historically, Royal Commissions have been appointed to: investigate accidents where there has been a major loss of life; consider social policy initiatives with a big public impact; make adjustments to the institutional structure of government; or take a moral issue out of the political arena in order to give non-partisan advice and build a consensus on how to proceed (Simpson, A., 2012). Before the Inquiries Act 2013, the Governor-General established all commissions. Hence the only way to know whether a commission was indeed a 'Royal Commission' was whether the term 'Royal' was used in the terms of reference, the title, the resulting report, or in a few cases, in newspapers of the time (McGuinness Institute, 2022).

In 2019, the Institute collated and reviewed New Zealand's Royal Commissions in their entirety. The resulting paper, *Working Paper 2020/10: A List of Royal Commissions between 1868 and 2020*, found 130 New Zealand Royal Commissions (McGuinness Institute, 2022). Given the Institute's interest in pandemics, the Working Paper also includes a summary of the report of the Influenza Epidemic Commission (1919). See Figure A6.1 (p. 457) for a list of the recommendations from the 1919 report.

### Why a COVID-19 inquiry is important

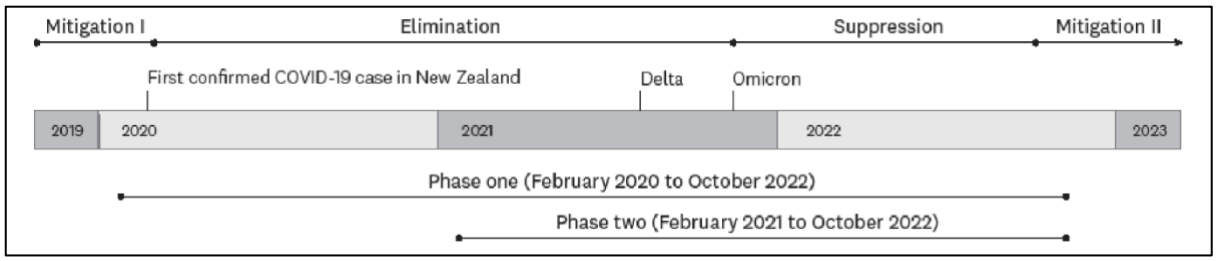
Learning lessons for preventing and/or minimising impacts when a similar event occurs is one of the purposes of an independent inquiry. In his 1964 book *Challenge for Health*, New Zealand public health historian Francis Maclean noted that although there was some doubt as to how influenza arrived in Auckland in 1919, there was no doubt that it spread from Auckland to Western Samoa, where the mortality rate was 25% on the two largest islands. The recommendations of the 1919 Inquiry (p. 458), along with World War I, led to a general reorganisation of the structure and functions of the Department of Public Health. The resulting Health Act 1920 reduced the powers of medical officers of health and strengthened the powers of local authorities (Maclean, F. S., 1964). The 1919 Inquiry (which was a Commission rather than a Royal Commission) took four months, whereas New Zealand's COVID-19 Inquiry (the Royal Commission of Inquiry (COVID-19 Lessons)), is expected to take three years (see clause 10 in Figure A6.2 (p. 466) and clause 11 in Figure A6.3 (p. 478)).

### COVID-19 inquiries

Many countries, including New Zealand, have established inquiries into their handling of the COVID-19 pandemic. The intention is generally to identify lessons to create a more agile and robust governance structure and health care system: one that can withstand future pandemics. New Zealand's COVID-19 Inquiry has a two-phase approach, see Figure 5.1 below. A copy of the terms of reference for each phase can be found in Figure A6.2 on p. 461 and in Figure A6.3 on p. 473. The background to the two-phased approach is discussed in the 25 June 2024 entry.

**Figure 5.1: Phase one and phase two of New Zealand's COVID-19 Inquiry**

Adapted from the terms of reference (see Figure A6.2 on p. 459 and Figure A6.3 on p. 468)




**Notes to Figure 5.1**

1. Phase one: Covers proportionality of impacts, consideration of Te Tiriti, and specific legislative and regulatory settings, strategies and measures. These include, for example, MIQ, contact tracing, testing, vaccine mandates, modelling and surveillance systems, communication, supply of goods and services (including PPE) and the initial economic response to a future pandemic.
2. Phase two: Covers the vaccine mandates, imposition of lockdowns and testing and tracing technologies (hence there is likely to be some repetition between phase one and two).

New Zealand's COVID-19 Inquiry is significantly narrower than the UK COVID-19 Inquiry in terms of how much time is inquired into; the range of topics covered; and transparency and therefore accountability (see the three-page UK terms of reference reproduced as Figure A6.4 on p. 480). While some differences are to be expected, they are two very different inquiries.

Firstly, unlike New Zealand's COVID-19 Inquiry, the UK COVID-19 Inquiry terms of reference were shaped by the Chair (Rt Hon the Baroness Hallett). Hallett, who was appointed in December 2021, undertook a significant amount of public consultation on the terms of reference. She wrote to the UK Prime Minister to recommend major changes to the initial draft terms of reference, including the 'mandate to publish interim reports' so as to ensure recommendations could be considered and implemented in a timely manner. The final terms of reference were confirmed in June 2022. Hallett later notes in the introduction to Module 1: 'The pandemic and the response spared no part of British life and so there is almost no part of that life excluded from our investigations' (UK COVID-19 Inquiry, 2024; n.d.). In New Zealand, public consultation on the terms of reference appears to have been much less extensive, with phase one not mentioning any public consultation at all. This may (or may not) explain why New Zealand's terms of reference have a much narrower scope and place several constraints and limitations on what the commissioners can inquire into. Both phase one and phase two identify 11 'excluded matters' that are outside the scope of the Inquiry (see clause 6 on p. 464 of the Schedule, in Figure A6.2, and clause 6 on p. 475 of Schedule 2 in Figure A6.3). These excluded matters are the same for both phases, except
that 'vaccine efficacy' in phase one becomes 'the operation of the general regulatory system for vaccines, and the approval of vaccines unrelated to COVID-19' in phase two.)

The range of time under examination also differs. The UK's COVID-19 Inquiry has no defined starting date but covers the period to 28 June 2022, meaning that it can inquire into what preparation was done/in place (or not) before January 2020, and the response in January 2020. In contrast, New Zealand's COVID-19 Inquiry does not cover these critical months (see Figure 5.1 on p. 82). The terms of reference specifically state that its coverage is February 2020 to October 2022, and 'not outside those dates'.

The UK COVID-19 Inquiry will publish at least nine modules (reports) over the course of the Inquiry. The first module, *Module 1: The resilience and preparedness of the United Kingdom*, was published on 18 July 2024 (UK COVID-19 Inquiry, 2024; n.d.). In contrast, New Zealand's COVID-19 Inquiry will publish two reports.

There are also major differences in transparency (and therefore accountability). The UK's COVID-19 Inquiry hearings are live streamed on their YouTube channel and they publish recordings of each hearing on YouTube as soon as they are available. Transcripts of the hearings and supporting documents are also available from their website. The Inquiry has also developed an initiative for individuals to share their experiences, all of which will be collated and analysed to contribute to the historical record (UK COVID-19 Inquiry, pers. comm., 5 September 2024). In contrast, New Zealand's COVID-19 Inquiry has put in place interim restrictions on submitters: they are not to publish their submissions in the public arena (see discussion in the 2 June 2023 entry). There is an implication that this might be made a permanent requirement (see clause 8 of the 2024 Order). This means that the public will not understand what, and most importantly who, has been relied upon when providing information to shape the recommendations. This creates a risk of more disinformation, with the potential to erode trust (something that the UK has worked hard to rebuild).

There are also differences in terms of costs and risks. The UK's Inquiry is led by one appointed Chair, whereas New Zealand's Inquiry will, over its course, employ six commissioners. Although there are benefits to having a diverse range of commissioners, there are additional risks and costs. For example, strategic or operational information gaps might occur (e.g. something heard by one commissioner might not be passed on to another commissioner/s) and costs might be higher (e.g. the additional remuneration costs, and phase two commissioners may need more time to get up to speed).

**Final thoughts on inquiries**

Inquiries play an important role in public accountability. They should not be swayed by politics or partisanship. Perhaps one of the more important lessons, in retrospect, is that the epidemic select committee should not have been disestablished by the Labour Government. Instead, the committee (with its institutional knowledge of a pandemic) could have helped the country by developing a shared terms of reference for New Zealand's COVID-19 Inquiry, reviewing the OAG's 2022 recommendations, overseeing the update of the 2017 pandemic plan, and establishing smaller targeted inquiries, in order to reduce costs and implement obvious changes at pace.

There is a balance between taking too little time to inquire into an issue (and therefore not identifying the lessons) and taking too much time and doing nothing (and therefore not actioning the lessons). Two risks exist: the risk of another pandemic occurring before the report's recommendations are published and implemented, and/or the risk of a long gap meaning the government loses its institutional memory and sense of urgency, and as such, fails to prioritise improvements in governance before the next pandemic.

**2C: Royal Commission of Inquiry (COVID-19 Lessons) Order 2022 [Phase 1]**

# Royal Commission of Inquiry (COVID-19 Lessons) Order 2022

Charles the Third, by the Grace of God King of New Zealand and his Other Realms and Territories, Head of the Commonwealth, Defender of the Faith:

To—

Professor Antony Blakely, of Melbourne, specialist in epidemiology and public health, Research Professor, Population Interventions Unit and Scalable Health Intervention Evaluation (SHINE), Centre for Epidemiology and Biostatistics, Melbourne School of Population and Global Health, University of Melbourne,

Hon Hekia Parata (Ngati Porou, Ngai Tahu), of Ruatoria, former Member of Parliament, and current Chair/Moderator of Education Policy Reform Dialogues, OECD, Dublin, Education Policy Ministerial 2022, Paris, and Chair of Tā Harawira Gardiner Centre for the Child, Te Whare Wānanga o Awanuiārangi,

John Whitehead, CNZM, KStJ, of Wellington, economist, former Secretary to the Treasury, former Executive Director on the Board of the World Bank Group, and current Chancellor and Board Chair of the Order of St. John:

Greeting!

We, by this Our Commission, establish the Royal Commission of Inquiry into Lessons Learned from Aotearoa New Zealand's Response to COVID-19 That Should Be Applied in Preparation for a Future Pandemic.

This Order in Council, constituting Our Commission, is made—

(a) under the authority of the Letters Patent of Her Majesty Queen Elizabeth the Second constituting the office of Governor-General of New Zealand, dated 28 October 1983;* and

(b) under the authority of section 6 of the Inquiries Act 2013 and subject to the provisions of that Act; and

(c) on the advice and with the consent of the Executive Council.

*SR 1983/225

**1 Title**

This order is the Royal Commission of Inquiry (COVID-19 Lessons) Order 2022.

**2 Commencement**

This order comes into force on the day after the date of its notification in the *Gazette*.

**3 Interpretation**

In this order, unless the context otherwise requires, **inquiry** means the Royal Commission of Inquiry into Lessons Learned from Aotearoa New Zealand's Response to COVID-19 That Should Be Applied in Preparation for a Future Pandemic.

**4 Royal Commission of Inquiry established**

The Royal Commission of Inquiry into Lessons Learned from Aotearoa New Zealand's Response to COVID-19 That Should Be Applied in Preparation for a Future Pandemic is established.

**5 Matter of public importance that is the subject of inquiry**

The matter of public importance that is the subject of the inquiry is the lessons learned from Aotearoa New Zealand's response to COVID-19 that should be applied in preparation for any future pandemic.

**6 Members and chairperson of inquiry**

(1) The following persons are appointed to be the members of the inquiry:

(a) Professor Antony Blakely:

(b) Hon Hekia Parata:

(c) John Whitehead, CNZM, KStJ.

(2) The person who is to be the chairperson of the inquiry is Professor Antony Blakely.

**7 Date when inquiry may begin considering evidence**

The inquiry may begin considering evidence on 1 February 2023.

**8 Terms of reference**

The terms of reference for the inquiry are set out in the Schedule.

**9 Relevant department**

For the purposes of section 4 of the Inquiries Act 2013, the Department of Internal Affairs is the **relevant department** for the inquiry and responsible for administrative matters relating to the inquiry.

# Schedule
# Terms of reference

cl 8

## 1 Background

(1) The COVID-19 pandemic presented a significant threat to public health in New Zealand and the world. At first, there was uncertainty about COVID-19's characteristics or how it might evolve, and there were no vaccines or effective disease-specific treatments. New Zealand had not experienced anything similar in several generations. Existing pandemic planning was specific to combatting influenza and was therefore not appropriate for responding to COVID-19. There was no international consensus on how to respond either; other countries adopted different and rapidly changing strategies, and the pandemic placed systems for multilateral co-operation under stress. The nature of the threat from COVID-19 changed as more was learned, as the virus evolved, and as treatments and strategies were developed and implemented. The emergency phase of the pandemic continued over an extended period.

(2) New Zealand's initial response was an elimination strategy. The strategy included limiting passenger flows across international borders to keep the virus out, extensive testing to detect community transmission, and a set of public health measures to stamp out outbreaks quickly when they appeared. That public-health-informed strategy was supported by economic and other measures to maintain basic services, ensure that businesses could retain staff and cover their costs when they could not operate, and support people to isolate where necessary. The strategy involved a set of alert levels, which triggered public health responses calibrated to the risk of virus transmission and informed people how to protect themselves.

(3) By December 2021, a high proportion of New Zealanders had been vaccinated against COVID-19. New Zealand then moved to a national strategy of minimisation and protection to minimise the spread of the virus in the community, protect those who were most at risk, and protect the capacity of the health system to respond to non-COVID health needs. A new COVID-19 Protection Framework set out graduated public health responses to outbreaks and how people could keep themselves safe. Economic and other measures were also updated.

(4) In September 2022, the COVID-19 Protection Framework was retired and the Government indicated that powers in COVID-19 legislation would be narrowed, signalling the end of the emergency phase of the pandemic.

(5) The measures New Zealand put in place to respond to COVID-19 generally enjoyed high levels of public support, and were positively reviewed by independent experts. But there has also been criticism of New Zealand's preparedness to deal with COVID-19, of the organisation of its response, and of particular public health measures and their impact on people's lives.

(6) New Zealand's response to the pandemic has already been the subject of expert scrutiny. The World Health Organization, the *Lancet* Commission on lessons for the future from the COVID-19 pandemic, and the International Science Council have conducted reviews. Within New Zealand, 75 individual reviews have been undertaken across government since 2020, generating 1,639 recommendations covering a broad range of issues and subjects. Independent reviews have been conducted by reviewers such as the COVID-19 Independent Continuous Review, Improvement and Advice Group, the Auditor-General, and the Ombudsman. New Zealand courts and the Waitangi Tribunal have determined several challenges to the lawfulness, Te Tiriti consistency, and appropriateness of actions taken in response to the pandemic. The Government has also proactively released COVID-19 papers and decisions. As a consequence, there is now a substantial amount of publicly available information on New Zealand's pandemic response.

(7) There will be future pandemics. They will not be exactly the same as COVID-19 and New Zealand's preparation for future pandemics needs to be flexible enough to respond effectively to a broad range of potential events. It is necessary and timely to inform our preparedness for such events by considering New Zealand's response to COVID-19, synthesising the lessons captured in existing investigations, reports, and reviews, both domestic and international, and drawing on institutional knowledge about those matters while it is still fresh in our minds. The Government has therefore decided to establish a Royal Commission of Inquiry to provide recommendations on actions that will strengthen New Zealand's pandemic preparedness.

**2 Matter of public importance**

The matter of public importance that the inquiry is directed to examine is the lessons learned from Aotearoa New Zealand's response to COVID-19 that should be applied in preparation for any future pandemic.

**3 Purpose of inquiry**

The purpose of the inquiry is to strengthen Aotearoa New Zealand's preparedness for, and response to, any future pandemic by identifying those lessons learned from New Zealand's response to COVID-19 that should be applied in preparation for any future pandemic.

**4 Scope of inquiry**

(1) The scope of the inquiry is the lessons learned from New Zealand's response to COVID-19 that should be applied in preparation for any future pandemic in the following areas:

- the legislative, regulatory, and operational settings required to support New Zealand's public health response to a pandemic, relating to—

- isolation and quarantine arrangements for international arrivals and limiting the movement of people through the international system:
- community isolation and quarantine arrangements, contact tracing and case management systems, and limiting the internal movement of people through local boundary controls:
- the regulatory approval of, and the making available and mandating of, vaccines and other pharmaceutical and testing measures:
- modelling and surveillance systems:
- non-pharmaceutical public health measures, including vaccine passes, gathering limits, and personal protective equipment and its procurement and distribution:
- tools, systems, and frameworks developed in response to COVID-19:
- the settings needed to ensure that New Zealand's health system continues to deliver necessary services during a pandemic:

- communication with, engagement of, and enabling people and communities to mobilise and act in support of both personal and community public health outcomes over an extended period:
- the legislative, regulatory, and operational settings needed to ensure the continued supply of goods and services required to enable people to isolate or otherwise take protective measures for an extended period during a pandemic, relating to the provision of—
  - lifeline utilities and other necessary services:
  - education and childcare:
  - other government services:
- the legislative, regulatory, and operational settings required to support New Zealand's immediate economic response to a future pandemic, relating to—
  - fiscal and monetary policy responses, including co-ordination and preparedness to implement large-scale changes quickly and monitor their impacts:
  - temporary financial support to individuals, businesses, and sectors, including how such support might be quickly implemented, appropriately and accurately distributed, monitored, and ended:
  - short-term measures, such as exemptions, to sustain specific industries during a pandemic:
- the decision-making structures and arrangements that might be used or put in place during an evolving pandemic of extended length:

- consideration of the interests of Māori in the context of a pandemic, consistent with the Te Tiriti o Waitangi relationship:
- consideration of the impact on, and differential support for, essential workers and populations and communities that may be disproportionally impacted by a pandemic.

(2) The inquiry may assess whether New Zealand's initial elimination strategy and later minimisation and protection strategy in response to the COVID-19 pandemic, and supporting economic and other measures, were effective in limiting the spread of infection and limiting the impact of the virus on vulnerable groups and the health system, having regard to New Zealand's circumstances, what was known at the time, and the strategies adopted by comparable jurisdictions.

(3) The inquiry should consider the strategies, settings, and measures identified above as they existed or operated between February 2020 and October 2022, and not outside those dates.

**5 Matters upon which recommendations are sought**

The inquiry should make recommendations on the public health strategies and supporting economic and other measures that New Zealand should apply in preparation for any future pandemic, in relation to the principal matters within the inquiry's scope, by applying relevant lessons learned from New Zealand's response to COVID-19 and the response from comparable jurisdictions.

**6 Limits to inquiry's scope**

The following matters are outside the scope of the inquiry:

- particular clinical decisions made by clinicians or by public health authorities during the COVID-19 pandemic:
- how and when the strategies and other measures devised in response to COVID-19 were implemented or applied in particular situations or in individual cases:
- the specific epidemiology of the COVID-19 virus and its variants:
- vaccine efficacy:
- the recent reforms to New Zealand's health system, including the organisational arrangements for public health services:
- the judgments and decisions of courts and tribunals and independent agencies such as the Ombudsman, the Privacy Commissioner, or the Independent Police Conduct Authority relating to the COVID-19 pandemic:
- the operation of the private sector, except where the private sector delivers services integral to a pandemic response:

- particular decisions taken by the Reserve Bank's independent monetary policy committee during the COVID-19 pandemic:
- any adaptation of court procedures by the judiciary during the COVID-19 pandemic:
- any adaptation of parliamentary processes during the COVID-19 pandemic:
- the conduct of the general election during the COVID-19 pandemic.

### 7 Inquiry procedure

(1) In accordance with section 14 of the Inquiries Act 2013, the inquiry must comply with the principles of natural justice and avoid unnecessary delay or costs.

(2) The inquiry must operate in a way that—

- does not take a legalistic and adversarial approach:
- uses information that is publicly available:
- uses the most efficient and least formal procedures to gather any additional necessary information:
- ensures that any request for necessary information is specified with due particularity.

(3) The inquiry should review investigations, reports, and reviews (both domestic and international) and any other publicly available material relevant to these terms of reference.

(4) The inquiry must not duplicate or repeat work already undertaken in any other investigation, report, or review.

(5) The inquiry is not bound by the conclusions or recommendations of any other investigation, report, or review.

(6) The inquiry should consider international investigations, reports, and reviews and other material, without travelling internationally or inviting persons to travel to New Zealand.

### 8 Access to inquiry information

The inquiry must restrict access to inquiry information where it considers such steps are required in order to—

- protect the international relations of the Government of New Zealand:
- protect the confidentiality of information provided to New Zealand on a basis of confidence by any other country or international organisation:
- avoid prejudice to the maintenance of the law, including the prevention, investigation, and detection of offences:
- ensure that current or future criminal, civil, disciplinary, or other proceedings are not prejudiced:

- protect commercially sensitive information, including commercial information subject to an obligation of confidence:
- protect information for any other reason that the inquiry considers appropriate.

**9 Administration**

The inquiry must—

- support the relevant department (the Department of Internal Affairs) to meet its administrative and reporting requirements relevant to the inquiry by providing the department with regular information and reports on the administration and finances of the inquiry:
- provide a quarterly report to the Minister of Internal Affairs on progress on delivery of the findings and recommendations required under these terms of reference that—
  - sets out the critical activities the inquiry needs to complete:
  - reports on—
    - the expected cost of completing the activities:
    - the expected timing for completing the activities:
    - the progress towards completing the activities (including costs to date):
  - explains what steps the inquiry is taking, or proposing to take, to mitigate any risk that it may not complete its activities in accordance with these terms of reference.

**10 Timing**

(1) The inquiry may begin considering evidence on 1 February 2023.

(2) The inquiry must deliver its report by 26 June 2024.

In witness whereof We have caused this Our Commission to be issued and the Seal of New Zealand to be hereunto affixed at Wellington this 7th day of December 2022.

Witness our Trusty and Well-beloved The Right Honourable Dame Cindy Kiro, Chancellor and Principal Dame Grand Companion of Our New Zealand Order of Merit, Principal Companion of The Queen's Service Order, Governor-General and Commander-in-Chief in and over Our Realm of New Zealand.

Cindy Kiro,
Governor-General.

By Her Excellency's Command,

Jacinda Ardern,
Prime Minister.

Approved in Council,

Rachel Hayward,
for Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2019.
Date of notification in *Gazette*: 8 December 2022.
This order is administered by the Department of Internal Affairs.

Wellington, New Zealand:
Published under the authority of the New Zealand Government—2022

## 2D: Royal Commission of Inquiry (COVID-19 Lessons) Amendment Order (No 2) 2024 [Phase 2]

16/08/2024
PCO 26625/8.0

# Royal Commission of Inquiry (COVID-19 Lessons) Amendment Order (No 2) 2024

Charles the Third, by the Grace of God King of New Zealand and his Other Realms and Territories, Head of the Commonwealth, Defender of the Faith:

To—

Professor Antony Blakely, of Melbourne, specialist in epidemiology and public health, Research Professor, Population Interventions Unit and Scalable Health Intervention Evaluation (SHINE), Centre for Epidemiology and Biostatistics, Melbourne School of Population and Global Health, University of Melbourne,

Grant Maxwell Illingworth, KC, of Auckland, Barrister,

John Whitehead, CNZM, KStJ, of Wellington, economist, former Secretary to the Treasury, former Executive Director on the Board of the World Bank Group, and current Chancellor and Board Chair of the Order of St. John,

Judy Margaret Kavanagh, of Waikanae, public policy professional, economist, former Director of Inquiries at the Infrastructure Commission, and former Director of Inquiries at the Productivity Commission,

Anthony Murray Hill, of Wellington, Barrister, former Health and Disability Commissioner, former Deputy Director-General of Health, and former chief legal counsel at the Ministry of Health:

Greeting!

We, by this order, amend the Royal Commission of Inquiry (COVID-19 Lessons) Order 2022 issued at Wellington on the 7th day of December 2022.

This order is made—

(a) under the authority of the Letters Patent of Her Majesty Queen Elizabeth the Second constituting the office of Governor-General of New Zealand, dated 28 October 1983;* and

(b) under the authority of section 6 of the Inquiries Act 2013 and subject to the provisions of that Act; and

(c) on the advice and with the consent of the Executive Council.

*SR 1983/225

## Contents



## Order

### 1 Title

This order is the Royal Commission of Inquiry (COVID-19 Lessons) Amendment Order (No 2) 2024.

### 2 Commencement

This order comes into force on 26 September 2024.

### 3 Principal order

This order amends the Royal Commission of Inquiry (COVID-19 Lessons) Order 2022.

**4 Clause 3 replaced (Interpretation)**

Replace clause 3 with:

**3 Interpretation**

In this order, **inquiry** means, as the context requires,—

(a) both phases of the Royal Commission of Inquiry into Lessons Learned from Aotearoa New Zealand's Response to COVID-19 That Should Be Applied in Preparation for a Future Pandemic; or

(b) phase 1 of that inquiry; or

(c) phase 2 of that inquiry.

**5 Clause 4 amended (Royal Commission of Inquiry established)**

In clause 4, insert as subclauses (2) to (4):

(2) The inquiry will be carried out in 2 phases (**phase 1** and **phase 2**).

(3) Phase 1 of the inquiry was established on 9 December 2022, began hearing evidence on 1 February 2023, and concludes when the inquiry delivers its report on phase 1 in accordance with clause 10(2) of Schedule 1.

(4) Phase 2 of the inquiry is established on 26 September 2024, may begin hearing evidence on 29 November 2024, and concludes when the inquiry delivers its final report in accordance with clause 8A.

**6 Clause 6 amended (Members and chairperson of inquiry)**

(1) In the heading to clause 6, after "**inquiry**", insert "**(phase 1)**".

(2) In clause 6, after "inquiry", insert "during phase 1" in each place.

(3) In clause 6, insert as subclause (3):

(3) Professor Antony Blakely is appointed as the chairperson of the inquiry during phase 1 from 9 December 2022 until the day on which the inquiry delivers its report on phase 1 in accordance with clause 10(2) of Schedule 1.

**7 New clause 6A inserted (Members and chairperson of inquiry (phase 2))**

After clause 6, insert:

**6A Members and chairperson of inquiry (phase 2)**

(1) The following persons are appointed to be the members of the inquiry during phase 2:

(a) Grant Maxwell Illingworth, KC:

(b) Judy Margaret Kavanagh:

(c) Anthony Murray Hill.

(2) The person who is to be the chairperson of the inquiry during phase 2 is Grant Maxwell Illingworth, KC.

(3) Grant Maxwell Illingworth, KC is appointed as the chairperson of the inquiry during phase 2 from the day after the day on which the inquiry delivers its report on phase 1 in accordance with clause 10(2) of Schedule 1 until the day on which the inquiry delivers its final report in accordance with clause 8A.

**8 Clause 7 replaced (Date when inquiry may begin considering evidence)**

Replace clause 7 with:

**7 Date when inquiry may begin considering evidence for purposes of phase 1**

The inquiry may begin considering evidence for the purposes of its phase 1 report on 1 February 2023.

**9 New clause 7A inserted (Date when phase 2 of inquiry may begin considering evidence)**

After clause 7, insert:

**7A Date when inquiry may begin considering evidence for purposes of phase 2**

The inquiry may begin considering evidence for the purposes of its phase 2 report on 29 November 2024.

**10 Clause 8 replaced (Terms of reference)**

Replace clause 8 with:

**8 Terms of reference**

(1) The terms of reference for phase 1 of the inquiry are set out in Schedule 1.

(2) The terms of reference for phase 2 of the inquiry are set out in Schedule 2.

**11 New clause 8A inserted (Reporting by inquiry)**

After clause 8, insert:

**8A Reporting by inquiry**

The inquiry's final report must be delivered by 26 February 2026 and, in accordance with section 12 of the Inquiries Act 2013, must comprise, at a minimum,—

(a) the findings and any recommendations from the inquiry's report on phase 1 of the inquiry; and

(b) the findings and any recommendations from the inquiry's report on phase 2 of the inquiry.

**12 Schedule amended**

(1) Replace the Schedule heading with:

## Schedule 1
## Terms of reference (phase 1)

cl 8(1)

(2) In the Schedule, replace clause 10(2) with:

(2) The inquiry must deliver its report on phase 1 to the Minister of Internal Affairs by 28 November 2024.

**13 New Schedule 2 inserted**

After the Schedule, insert as Schedule 2 the schedule set out in the Schedule of this order.

# Schedule
# New Schedule 2 inserted

cl 13

## Schedule 2
## Terms of reference (phase 2)

cl 8(2)

### 1 Background

(1) The Government has reviewed the scope and operation of the Royal Commission of Inquiry into Lessons Learned from Aotearoa New Zealand's Response to COVID-19 That Should Be Applied in Preparation for a Future Pandemic (the **inquiry**) and considers that some matters of public concern about that response are not adequately addressed in the inquiry's phase 1 terms of reference.

(2) Public consultation in 2024 on potential matters for terms of reference for a new or expanded inquiry indicated a broad range of concerns. Some of these are being or will be addressed by phase 1 of the inquiry.

(3) The Government therefore reaffirms its Coalition Agreement commitment to expand the scope of the inquiry.

(4) The Government has established phase 2 of the inquiry to provide further recommendations on actions that will strengthen New Zealand's pandemic preparedness. Phase 2 of the inquiry will critically assess key decisions taken by the Government in response to COVID-19 during 2021 and 2022, and the associated economic responses.

### 2 Matter of public importance

The matter of public importance that the inquiry is directed to examine is the lessons learned from Aotearoa New Zealand's response to COVID-19 that should be applied in preparation for any future pandemic.

### 3 Purpose of inquiry

The purpose of the inquiry is to strengthen Aotearoa New Zealand's preparedness for, and response to, any future pandemic by identifying those lessons learned from New Zealand's response to COVID-19 that should be applied in preparation for any future pandemic.

### 4 Scope of phase 2 of inquiry

(1) In phase 2, the inquiry must review the key decisions taken by Government in New Zealand's response to COVID-19 during 2021 and 2022. The review must be limited to decisions regarding—

- the use of vaccines in response to COVID-19, specifically—

- vaccine mandates:
- the approval of specific COVID-19 vaccines:
- vaccine safety, including the monitoring and reporting of adverse reactions:

- the imposition and maintenance of lockdowns during this period, and specifically the national lockdown in August and September 2021, and the extended lockdown in Auckland and Northland in September 2021:
- the procurement, development, and distribution of testing and tracing technologies and non-pharmaceutical public health materials, specifically the impact of private sector involvement or non-involvement.

(2) For the purposes of these terms of reference, a **key decision** is a decision that has a potential or actual significant impact on large numbers of people or groups of people, or that has a significant cost at a national or regional level (or both).

(3) In reviewing those decisions, the inquiry must assess—

- whether those decisions were sufficiently informed by advice on any social and economic disruption such decisions were likely to cause, and in particular the effect those decisions might have on—
  - social division and isolation:
  - health and education:
  - inflation, debt, and business activity:
- whether those decisions reflected the advice that was given to decision makers at the time:
- whether those decisions took account of the experience and evolving practices from comparable jurisdictions:
- whether those decisions struck a reasonable balance between COVID-19 public health goals and minimising social and economic disruption:
- whether those decisions produced unforeseen consequences.

(4) The inquiry may assess these matters, having regard to New Zealand's circumstances, what was known at the time, and relevant decisions made by comparable jurisdictions.

(5) The inquiry must only consider key decisions made on these matters between February 2021 and October 2022, and not outside those months, though it may have regard to any consequences of those decisions that were not apparent until after October 2022.

(6) Despite subclause (5), the inquiry may consider key decisions made relating to vaccines before February 2021, provided those decisions otherwise fall within these terms of reference.

**5 Matters upon which findings and recommendations are sought in phase 2**

The inquiry should make, in relation to the matters within the scope of phase 2,—

- findings on whether key decisions were well informed, and whether those decisions had unforeseen consequences:
- recommendations on considerations that should be taken into account in future decisions to best prepare New Zealand to respond to any future pandemics.

**6 Limits to inquiry's scope in phase 2**

(1) The following matters are outside the scope of the inquiry in phase 2:

- particular clinical decisions made by clinicians or by public health authorities during the COVID-19 pandemic:
- how and when the strategies and other measures devised in response to COVID-19 were implemented or applied in individual cases:
- the operation of the general regulatory system for vaccines, and the approval of vaccines unrelated to COVID-19:
- the specific epidemiology of the COVID-19 virus and its variants:
- the recent reforms to New Zealand's health system, including the organisational arrangements for public health services:
- the judgments and decisions of courts and tribunals and independent agencies such as the Ombudsman, the Privacy Commissioner, or the Independent Police Conduct Authority relating to the COVID-19 pandemic:
- the operation of individual private sector businesses, except where those businesses deliver services integral to a pandemic response:
- particular decisions taken by the Reserve Bank's independent monetary policy committee during the COVID-19 pandemic:
- any adaptation of court procedures by the judiciary during the COVID-19 pandemic:
- any adaptation of parliamentary processes during the COVID-19 pandemic:
- the conduct of the general election during the COVID-19 pandemic.

(2) In accordance with section 11 of the Inquiries Act 2013, the inquiry does not have the power to determine the civil, criminal, or disciplinary liability of any person.

**7 Inquiry procedure in phase 2**

(1) In accordance with section 14 of the Inquiries Act 2013, the inquiry must comply with the principles of natural justice and avoid unnecessary delay or costs.

(2) The inquiry must operate in a way that—

- does not take a legalistic and adversarial approach:
- uses information that is publicly available:
- uses efficient procedures to gather any additional necessary information:
- ensures that any request for necessary information is specified with due particularity.

(3) Subject to subclause (2), the inquiry may conduct public hearings into any part of its terms of reference only if it considers that such hearings will significantly enhance public confidence in the processes of the inquiry, the conclusions it reaches, and the recommendations it makes.

(4) The inquiry should review investigations, reports, and reviews (both domestic and international) and any other publicly available material relevant to these terms of reference.

(5) The inquiry must not duplicate or repeat work already undertaken in any other investigation, report, or review.

(6) The inquiry is not bound by the conclusions or recommendations of any other investigation, report, or review.

(7) The inquiry should consider international investigations, reports, and reviews and other material, without travelling internationally or inviting persons to travel to New Zealand.

**8 Relationship between phase 1 and phase 2 of the inquiry**

(1) Although the matter of public importance for phases 1 and 2 of the inquiry is the same, the terms of reference for phases 1 and 2 of the inquiry are different, and the processes for each phase differ because—

- phase 1 of the inquiry has been conducted in private, with persons appearing before it on conditions of confidentiality:
- phase 1 of the inquiry has made interim non-publication orders under section 15 of the Inquiries Act 2013, and is contemplating permanent non-publication orders under that section:
- phase 2 of the inquiry may, in accordance with these terms of reference, conduct public hearings.

(2) Phase 2 of the inquiry must consider the report on phase 1 of the inquiry, and any other publicly available information received during phase 1 of the inquiry, but must not duplicate or repeat work undertaken during phase 1 of the inquiry.

(3) Phase 2 of the inquiry may reach different conclusions or make different recommendations from those set out in the report on phase 1 of the inquiry, but only on matters falling within the scope of phase 2 of the inquiry. All findings and recommendations in the report on phase 2 of the inquiry must be based on the evidence available to and received during phase 2 of the inquiry.

(4) Phase 2 of the inquiry will not access or have regard to any material that is subject to orders made by phase 1 of the inquiry under section 15 of the Inquiries Act 2013, or to the internal deliberations of phase 1 of the inquiry.

**9 Access to inquiry information**

The inquiry must restrict access to inquiry information where it considers such steps are required in order to—

- protect the international relations of the Government of New Zealand:
- protect the confidentiality of information provided to New Zealand on a basis of confidence by any other country or international organisation:
- avoid prejudice to the maintenance of the law, including the prevention, investigation, and detection of offences:
- ensure that current or future criminal, civil, disciplinary, or other proceedings are not prejudiced:
- protect commercially sensitive information, including commercial information subject to an obligation of confidence:
- protect information for any other reason that the inquiry considers appropriate.

**10 Administration**

The inquiry must—

- support the relevant department (the Department of Internal Affairs) to meet its administrative and reporting requirements relevant to the inquiry by providing the department with regular information and reports on the administration and finances of the inquiry:
- provide a quarterly report to the Minister of Internal Affairs on progress on delivery of the findings and recommendations required under these terms of reference that—
  - sets out the critical activities the inquiry needs to complete:
  - reports on—
    - the expected cost of completing the activities:
    - the expected timing for completing the activities:
    - the progress towards completing the activities (including costs to date):
  - explains what steps the inquiry is taking, or proposing to take, to mitigate any risk that it may not complete its activities in accordance with these terms of reference.

**11 Timing of phase 2**

(1) The inquiry may begin considering evidence relating to the matters that are within the scope of phase 2 on 29 November 2024.

(2) The inquiry must deliver its report on phase 2 by 26 February 2026.

In witness whereof We have caused this Our Commission to be issued and the Seal of New Zealand to be hereunto affixed at Wellington this day of 2024.

Witness our Trusty and Well-beloved The Right Honourable Dame Cindy Kiro, Chancellor and Principal Dame Grand Companion of Our New Zealand Order of Merit, Principal Companion of The Queen's Service Order, Governor-General and Commander-in-Chief in and over Our Realm of New Zealand.

Governor-General.

By Her Excellency's Command,

Prime Minister.

Approved in Council,

for Clerk of the Executive Council.

## Explanatory note

*This note is not part of the order but is intended to indicate its general effect.*

This order, which comes into force on 26 September 2024, amends the Royal Commission of Inquiry (COVID-19 Lessons) Order 2022 to—

- establish phase 2 of the Royal Commission of Inquiry into Lessons Learned from Aotearoa New Zealand's Response to COVID-19 That Should Be Applied in Preparation for a Future Pandemic (the **inquiry**), including terms of reference:

- appoint Judy Margaret Kavanagh and Anthony Murray Hill as members of the inquiry during phase 2 in place of Professor Antony Blakely and John Whitehead:
- appoint Grant Maxwell Illingworth as chairperson of the inquiry during phase 2 in place of Professor Antony Blakely:
- provide that phase 2 may begin hearing evidence on 29 November 2024:
- provide that the inquiry must deliver its report on phase 1 to the Minister of Internal Affairs by 28 November 2024:
- provide that, for the purposes of the Inquiries Act 2013, the inquiry's final report must comprise, at a minimum, the findings and any recommendations of the reports of phase 1 and phase 2 of the inquiry.

Issued under the authority of the Legislation Act 2019.
Date of notification in *Gazette*:
This order is administered by the Department of Internal Affairs.

## 2E: Articles in the press about the issue of Ministers refusing to be interviewed in public before Phase 2 Commissioners

### Article A: Covid-19 Royal Commission: Jacinda Ardern, other ministers refuse to appear in public before commission, but will co-operate (*NZ Herald*, 13 August 2025)[8]

The second set of public hearings for the Covid-19 Royal Commission has been axed after key witnesses, including former Prime Minister Dame Jacinda Ardern, refused to appear.

Those witnesses, including Labour leader Chris Hipkins and former ministers Grant Robertson and Ayesha Verrall, continue to co-operate with the inquiry.

The National-led coalition Government decided in June last year to establish a 'phase two' of the Royal Commission of Inquiry into Covid-19 Lessons, to take place after the completion of the original inquiry set up under the previous Labour Government. The ministers have already appeared before the inquiry in private.

Chairman Grant Illingworth has the power to summon people to appear before the inquiry, but said he would not use it on Ardern and the other ministers.

'On balance, we are of the view that a summons is undesirable, given that the former ministers continue to co-operate with the evidence-gathering of the inquiry.

'It is our opinion that the use of summonses to achieve their participation at a public hearing would be legalistic and adversarial, which our terms of reference prohibit,' Illingworth said.

He said he still believed public hearings would enhance public confidence in the inquiry's processes by enabling the public to see former ministers, who have critical insights into the pandemic response, questioned in public.

A minute, published by the inquiry, recorded the objections of Ardern and the other ministers.

These objections included the convention that ministers and former ministers are interviewed by inquiries in private, and departing from that convention would undermine confidence.

They were also concerned that the livestreaming and publication of recordings of the hearing creates a risk of those recordings being 'tampered with, manipulated or otherwise misused', a risk the inquiry 'ought to have foreseen and planned for'.

Other witnesses raised concerns that providing evidence at public hearings might bring risks of abuse being directed at them and their families.

This afternoon, Hipkins affirmed he was not hiding from the hearings.

'We have shown up to the inquiry, I have shown up to the inquiry. I have been interviewed by them twice,' he told reporters.

'I have provided written evidence to the inquiry, I answered every question they had and I attended the interview they scheduled for me.

'They asked for two hours, but they ran out of questions after an hour.'

Hipkins said he did not co-ordinate his approach with Ardern.

'She is still a very close friend of mine. We have people representing us in common, but any suggestion we colluded with this is wrong.'

He said it was inappropriate for him to speak on behalf of Ardern.

**'Deserve the basic respect of accountability'**

National MP Chris Bishop has accused Hipkins of running from his record.

'Fresh from fobbing off Treasury's report into Labour's spending, [he] is avoiding accountability by refusing to front up to the Royal Commission,' he said.

'By first dismissing Treasury's report and now refusing to front, Chris Hipkins is telling New Zealanders he does not care about the effects his decisions have had on Kiwis.'

Deputy Prime Minister David Seymour said Ardern, Verrall and Hipkins' refusal to publicly appear before the commission was a change from 'invading our living rooms daily'.

'Hipkins and co loved the limelight at 1pm every day. They wielded extraordinary powers over citizens' lives, dismissing those who questioned them as uncaring. Now they're refusing to even show up, what a contrast,' he said.

'Tens of thousands of New Zealanders have already engaged with the inquiry, sharing experiences of how their lives were upended.

'They deserve the basic respect of accountability,' Seymour said.

**'Conspiracy theorist views'**

Last month, in a brief statement, a spokesperson said Ardern would provide evidence to assist the commission 'in meeting its terms of reference'.

'We are in discussions about the best way for this to occur.

'She is also happy for the commission to access her previous testimony from RC1 [Commission of Inquiry first stage].'

Hipkins, appearing on Herald NOW last month, said he had issues with the way the second phase of the Royal Commission had been set up, particularly the decision to exclude from consideration the years that NZ First was governing with Labour.

'The fact that the [Royal Commission] terms of reference specifically exclude decisions made when NZ First were part of the [Labour-led coalition] Government … I think the terms of reference have been deliberately constructed to achieve a particular outcome, particularly around providing a platform for those who have conspiracy theorist views.

'That seems to have been specifically written into the terms of reference that they get maximum airtime.'

[underline added]

**Article B: Covid inquiry legal advice for Dame Jacinda Ardern, Chris Hipkins, Grant Robertson, Ayesha Verrall cost taxpayer $70k** (29 August 2025)[9]

Legal representation provided to four former Labour ministers, including former Prime Minister Dame Jacinda Ardern, cost the taxpayer more than $70,000.

It is usual process for the Crown to pay the legal costs of ministers or former ministers in proceedings or inquiries that spin out of their current or previous duties. For example, legal issues involving then Speaker Trevor Mallard cost taxpayers hundreds of thousands of dollars in costs.

The *Cabinet Manual* says former ministers should be indemnified over things done or decisions made in the course of their ministerial duties.

A foursome of former Labour ministers, including Ardern, Chris Hipkins, Dr Ayesha Verrall and Grant Robertson, gave evidence as part of the second phase of the Royal Commission of Inquiry into the Covid-19 pandemic.

This phase of the inquiry was established by the coalition Government and fulfilled sections of National's agreements with NZ First and Act. It has a focus on vaccines, including the use of mandates and vaccine safety, lockdowns such as the one in Auckland in late 2021, and the use of public health tools.

A spokeswoman for Crown Law told the Herald that as of July 31, $70,574 had been spent by the Crown on legal representation for the four former ministers in relation to this phase of the Covid inquiry. This covered work undertaken in May to July.

'The decision to meet these expenses was made under the usual *Cabinet Manual* process, which specifies how the Crown may meet the legal expenses of a former minister's participation in proceedings or inquiries arising from their former ministerial duties.'

As of the end of June, legal expenses for Crown Law and external counsel to provide legal support to Government departments in relation to the second phase of the inquiry totalled $359,116. This is for work from February to June.

A spokesman for Ardern told the Herald that the budget, costs and terms of reference of the second phase were set by Cabinet and were a matter for the Government.

'Dame Jacinda is using shared legal representation to lower any legal costs, and continues to work with the commission to achieve its terms of reference.'

A Labour spokeswoman said: 'Cabinet decided on this inquiry and its costs. All legal appointments were approved by minister Judith Collins as Attorney-General and payments handled by Crown Law.'

According to the *Cabinet Manual*, the Attorney-General forms a view on whether to indemnify a minister or former minister's expenses, considering whether it has arisen as a result of carrying out ministerial duties.

If it's agreed the minister or former minister will have expenses paid, they refer bills to the Crown Law Office for certification.

Earlier this month, ahead of a so-called 'decision-makers' hearing, the inquiry released a minute saying the former Labour ministers had refused to appear publicly.

Their reasons included that they had already provided evidence in interviews, that the recordings of public hearings could be manipulated, and that it could break a convention that former ministers are interviewed privately.

That didn't go down well with many Kiwis. A snap poll conducted by Curia Market Research for the Taxpayers' Union showed 53% of respondents disagreed with their decision. Just 28% agreed and the rest were unsure.

The commission decided not to compel the former ministers to appear publicly, saying that risked creating an adversarial situation and the inquirers could get further information in other ways if needed.

Hipkins, the current Labour leader and former Prime Minister and Covid Response Minister, did various interviews following the release of the inquiry's minute, highlighting that he was open to answering questions from the media at any time about the pandemic.

'I have provided written evidence to the inquiry,' he said. 'I answered every question they had and I attended the interview they scheduled for me. They asked for two hours, but they ran out of questions after an hour.'

Appearing on Newstalk ZB, Hipkins said the former ministers had 'representatives in common who corresponded with the Royal Commission, but each of us individually briefed that representative'.

He said the law firm Dentons raised with the Labour figures that 'no ministers had previously done this and that it would create precedent if we did so'.

'The second thing they raised was concerns about the fact that people who had already appeared publicly before the Royal Commission had been the subject of significant abuse.'

Hipkins confirmed at the time that the Dentons advice had been paid for by the public.

Ardern previously told RNZ in a statement that she had co-operated fully with the inquiry by providing extensive evidence, including through a three-hour interview.

'The commission's work is important and she will continue supporting them in reaching their terms of reference.'

Robertson, who was Finance Minister at the time, said he had given more than two hours of testimony but was concerned about the precedent appearing in public may create.

'I feel we have been accountable: I have given extensive evidence to both phases of the inquiry,' he told the Otago Daily Times.

There have been previous instances of the taxpayer being on the hook for legal issues ministers or former ministers faced.

In 2022, the Crown paid $55,000 in legal bills after Mallard trespassed Winston Peters from Parliament. That came after $330,000 was spent on legal fees after Mallard falsely accused a Parliamentary staff member of rape.

The Government also covered the legal costs of former National ministers Paula Bennett and Anne Tolley when they were involved in legal action filed by Peters over the leak of his superannuation information.

[underline added]

## Appendix 3: Government Inquiry into Operation Burnham and related matters (2018–2020)

Except from the 2020 report:[10]

> [91] In summary, the Protective Security Requirements have greatly complicated our work and mean that the Inquiry has taken longer and been more expensive that it needed to be. We are concerned that a public Inquiry looking into the conduct of New Zealand forces operating within a coalition overseas should face the constraints that we have faced in first, obtaining and second, being able to use information because it remains classified, in circumstances where the particular information does not appear to require protection because it reveals nothing other than what happened a decade ago.
>
> [92] As we acknowledged in Minute No 4 and Ruling No 1, we accept that there are legitimate security interests to be protected in an inquiry such as this, including information about sources and methods of gathering information, operational methods and tactics, and other matters of that sort. But factual information about what happened on an operation that occurred in 2010 as part of a coalition that no longer exists seems to us to be, in general, of a different order.

**High-level observation:**

Constraints exist in regard to timely and complete military information.

## Endnotes

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