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Hon Brooke van Velden, Minister of Internal Affairs

Royal Commission of Inquiry into COVID-19 Lessons:
Proactive release of documents related to the establishment of Phase 2
7 October 2024

The following documents have been proactively released:

24 June 2024, Cabinet paper 'Royal Commission of Inquiry into COVID-19 Lessons: Establishing a Second Phase of Inquiry'

24 June 2024, Cabinet Minute CAB-24-MIN-0212.01, 'Royal Commission of Inquiry into COVID-19 Lessons: Establishing a Second Phase of Inquiry'

17 June 2024, Cabinet Minute CAB-24-MIN-0212, 'Royal Commission of Inquiry into COVID-19 Lessons: Establishing a Second Phase of Inquiry'

10 June 2024, Cabinet Business Committee Minute CBC-24-MIN-0051, 'Royal Commission of Inquiry into COVID-19 Lessons: Establishing a Second Phase of Inquiry'

26 August 2024, Cabinet paper 'Phase 2 of the Royal Commission of Inquiry into COVID-19 Lessons'

26 August 2024, Cabinet Minute CAB-24-MIN-0314, 'Phase 2 of the Royal Commission of Inquiry into COVID-19 Lessons'

21 August 2024, Cabinet Social Outcomes Committee Minute SOU-24-MIN-0099, 'Phase 2 of the Royal Commission of Inquiry into COVID-19 Lessons'

Full analysis of public consultation results: Royal Commission of Inquiry into COVID-19 Lessons: Terms of Reference (Global Research, May 2024)

Some parts of this information would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified.

Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to Redaction Code: 9 (2)(f)(iv) – release would contradict the constitutional conventions which protect the confidentiality of advice given by Ministers and public service employees

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Office of the Minister of Internal Affairs

Chair, Cabinet Business Committee

Royal Commission of Inquiry into COVID-19 Lessons: Establishing a Second Phase of Inquiry

Proposal

- 1 This paper seeks agreement to establish a second phase of inquiry under the Royal Commission of Inquiry into COVID-19 Lessons (the Royal Commission).

Relation to government priorities

- 2 The Government has committed in its coalition agreements to expand the terms of reference for the Royal Commission.

Executive Summary

- 3 The ACT-National and NZ First-National coalition agreements both contain commitments to broaden the set of issues that a COVID-19 inquiry should cover. The ACT-National coalition agreement specifies that any broadening of the Royal Commission's terms of reference would be subject to public consultation.
- 4 Approximately 13,000 public submissions on the terms of reference were received between 8 February to 24 March 2024. The areas of most significant ongoing public concern highlighted by submissions related to policies and practices for vaccines, the medium-term social and economic impacts of New Zealand's response policies, how diverse views were managed, and the impacts of the extended lockdowns in Auckland and Northland.
- 5 This paper proposes an approach that delivers on the commitments in the Government's coalition agreements, maintains the integrity of the statutory inquiry system, and ensures a fiscally prudent path forward.
- 6 Accordingly, I seek agreement to establish a second phase of inquiry under the Royal Commission. The proposed second phase of inquiry would have an additional terms of reference constructed around outstanding matters of public concern, including those in the NZ First-National coalition agreement and matters that are practical and appropriate for a statutory inquiry. New Commissioners would be appointed to make findings and recommendations on those matters, and to conduct their inquiry and hear evidence in public settings, when and where appropriate.
- 7 The appointments for the proposed second phase of inquiry would take effect in mid-October 2024. The new Commissioners would then undertake a period of planning before they begin receiving evidence and information from 29 November 2024. A report with recommendations would be delivered by 27 February 2026.

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- 8 This approach involves reframing the current scope and terms of reference as the first phase of inquiry. The current Commissioners would complete their inquiry and deliver a report against the current terms of reference.
- 9 The current Commissioners have requested an extension due to the delay to the Royal Commission's planned activity to accommodate public consultation on the terms of reference. I seek agreement to extend the reporting date for the first phase of inquiry, from 30 September 2024 to 28 November 2024.
- 10 I intend to appoint one new Commissioner for the remainder of the first phase, who will continue into the second phase of the inquiry. This will give a degree of continuity to the Royal Commission. This appointment will go through the Cabinet Appointments and Honours Committee as soon as practicable. The current Chair and Commissioner have confirmed in writing that they will resign once the report for the first phase of inquiry has been delivered.
- 11 Subject to agreement, I intend to seek further decisions on the final terms of reference, additional membership and budget for the second phase of inquiry in August 2024. This enables time for the careful development of the draft terms of reference for the second phase of inquiry, and for due diligence and consideration of the appointment process for the members.
- 12 Subject to Cabinet decisions, an Amendment Order in Council will be required to give effect to the proposed establishment of a second phase of inquiry under the Royal Commission, and to the proposed extension to the reporting date for the first phase of inquiry. This will accompany the Cabinet paper in August 2024 indicated above.

Background

- 13 The Royal Commission was established in December 2022. Its purpose is to strengthen 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.
- 14 The Royal Commission is currently required to deliver a report with recommendations by 30 September 2024, following the approval of a three-month extension in August 2023 [CAB-22-MIN-0388 refers]. Its members are Professor Antony Blakely (Chair) and John Whitehead. Hon Hekia Parata was a member until 15 November 2023. A replacement has not been appointed yet.
- 15 The ACT-National and NZ First-National coalition agreements both contain commitments to broaden the set of issues that a COVID-19 inquiry should cover. This was in response to public concerns that the current terms of reference for the Royal Commission inquiry were too narrow, to the extent that they would not enable a fulsome inquiry into how the pandemic was handled.
- 16 On 20 December 2023, I took an oral item to the Cabinet Business Committee about changing the terms of reference for the Royal Commission into COVID-19 Lessons

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[CBC-23-MIN-0030 refers]. Following authorisation by the Acting Prime Minister for the Committee to have Power to Act, the Committee:

- 16.1 noted that the Government has committed in its coalition agreements to expand the terms of reference for the Royal Commission;
 - 16.2 agreed that the Minister of Internal Affairs would write to the Royal Commission informing them of this commitment before the end of 2023; and
 - 16.3 invited the Minister of Internal Affairs to report back to Cabinet in early 2024 with the proposed expanded terms of reference.
- 17 The ACT-National coalition agreement specifies that any broadening of the Royal Commission's terms of reference would be subject to public consultation. On 30 January 2024, the Cabinet 100-Day Plan Committee agreed to the following question for public consultation on the Royal Commission's terms of reference [100-MIN-24-0007 refers]:
- 17.1 The coalition Government is committed to expanding the terms of reference for the Royal Commission of Inquiry into COVID-19 Lessons based on public input. The Government proposes including these terms of reference, in addition to the Royal Commission's current terms of reference. Do you have specific feedback on the inclusion of these topics?
 - 17.1.1 Use of multiple lockdowns.
 - 17.1.2 Vaccine procurement and efficacy.
 - 17.1.3 The social and economic impacts on both regional and national levels
 - 17.1.4 Whether the decisions made, and steps taken, were justified.
 - 17.1.5 The cost-effectiveness of the Government's policies, and whether the rules set by the Government appropriately balanced Covid-19 elimination with other goals.
 - 17.1.6 The Government's utilisation of partnerships with business and professional groups.
 - 17.1.7 The extent of disruption to New Zealanders' health, education and business as a result of the Government's policies.
 - 17.1.8 If the Government's response was consistent with the rule of law.
 - 17.1.9 How New Zealand's pandemic preparedness compared to other countries.
- 18 Public consultation commenced on 8 February and concluded on 24 March 2024.

Summary of the results of public submissions

- 19 There was a total of 13,222 submissions. Public submissions on the terms of reference gave insight into the areas of significant ongoing public concern about New Zealand's response. These concerns were most acute in relation to policies and practices for vaccines, the medium-term social and economic impacts of New Zealand's response policies, how diverse views were managed, and the impacts of the extended lockdowns in Auckland and Northland.
- 20 These concerns relate especially to New Zealand's minimisation and protection strategy and its associated economic responses, which sat within the COVID-19 Protection Framework.
- 21 Submitters were more likely to give an opinion about the previous Government's COVID-19 response and criticism of the Royal Commission itself than they were to provide specific feedback on the nine topics proposed for inclusion in the term of reference, as sought by the consultation question. Of the proposed topics, 'vaccine procurement and efficacy' received the most commentary, with vaccine mandates, safety and harm the most prevalent issues. However a wide range of issues arose, including disruption to health, education, and business as well as social and economic impacts.

Proposed approach: establishing a second phase of inquiry under the Royal Commission

Context

- 22 The Royal Commission's inquiry to date has involved synthesising the lessons captured in existing reviews and reports, and in institutional knowledge relevant to the handling of the pandemic response. During the establishment of the Royal Commission, it was acknowledged that there was frustration expressed about New Zealand's preparedness, the organisation of the response, the policies adopted, and the unprecedented disruption to people's lives. It was also acknowledged that, in addition to the direct consequences of COVID-19 on people's lives and health, the evolving and uncertain nature of the pandemic over such an extended period took a toll in diverse ways and to varying degrees, on social wellbeing and the economy.

A two-phase approach is proposed

- 23 With this overarching context in mind, I propose to establish a second phase of inquiry under the Royal Commission. The proposed approach involves reframing the current scope and terms of reference as the first phase of inquiry, with a report delivered within a few months.
- 24 The proposed second phase of inquiry would have an additional terms of reference constructed around outstanding matters of public concern, including those in the NZ First-National coalition agreement and other matters that are practical and appropriate for a statutory inquiry. New Commissioners would be appointed to make findings and recommendations on those matters, and to conduct their inquiry and hear evidence in public settings, when and where appropriate.

25 I consider that the proposed approach delivers on the commitments in the Government’s coalition agreements while maintaining the integrity of the statutory inquiry system. This approach also ensures as much value as possible is retained from the work completed to-date by the Royal Commission, and therefore is a fiscally prudent path forward by utilising rather than replicating work completed to date. These points are discussed below.

Coalition agreement commitments

26 As noted above, the ACT-National coalition agreement specifies that any broadening of the Royal Commission’s terms of reference would be subject to public consultation. The results of public submissions have informed the development of an indicative purpose and scope for the second phase of inquiry, which are presented below, and which in turn will inform the development of a draft terms of reference.

27 **Table 1** shows how the proposed approach delivers against the commitments in the NZ First-National coalition agreement. It also notes where some elements of this coalition agreement are within the scope of the Royal Commission’s current terms of reference.

Table 1: How the proposed approach delivers against NZ First-National coalition agreement commitments

NZ First-National coalition agreement commitments	Proposed approach
A full-scale, wide ranging, independent inquiry	Two phase inquiry with statutory independence
Conducted in public	Phase 2 will be conducted in public settings, when and where appropriate
The use of multiple lockdowns	Within scope in both Phase 1 and Phase 2
Vaccine procurement and efficacy	Partially within scope of Phase 1 and in areas where public submissions indicated the greatest concerns in Phase 2
Social and economic impacts	Within scope in both Phase 1 and Phase 2
Whether decisions were justified	Phase 2 delivers a critical assessment of key decisions

Options considered

28 Before settling on a two-phase approach to the Royal Commission, I considered other options. These fell short of my expectation that the path forward should uphold coalition commitments, maintain the integrity of the statutory inquiry system, and be fiscally prudent.

- 29 I considered the option of terminating the Royal Commission and establishing a new statutory inquiry. Ultimately, this would have a significant negative impact on the statutory inquiry system (see below). Creating a separate inquiry would also breach the ACT-National coalition commitment to ‘broaden the terms of reference of the Royal Commission into the Covid-19 response, subject to public consultation’.
- 30 I considered that incorporating public facing components through expanding the current terms of reference of the Royal Commission would be problematic due to the increased risk of legal challenges to the Royal Commission on natural justice grounds. These challenges could involve seeking to prevent the Royal Commission using evidence previously gathered because of the changed terms of reference, or otherwise alleging natural justice breaches.

Maintaining the integrity of the statutory inquiry system

- 31 Statutory inquiries are established under the Inquiries Act 2013 (the Act) for the purpose of inquiring into, and reporting on, matters of public importance. Royal Commissions are reserved for the most serious matters of public concern.
- 32 Inquiries must act independently, impartially, and fairly. This is an essential element of their role in upholding government transparency. Inquiries can determine their own procedures as they consider appropriate within the confines of the Act and their terms of reference. It is possible to amend an inquiry’s terms of reference, and there are precedents for this. While it is also legally possible to discontinue an inquiry, there is no precedent for a government doing so. Terminating the current Royal Commission, with only several months remaining before it is due to report, would have a significant negative impact on public confidence in the integrity of the statutory inquiry system for current and future inquiries

Maximising the value of the investment in the Royal Commission

- 33 While the Government considers that the settings for the current Royal Commission are insufficient, the proposed approach seeks to broaden the scope of the Royal Commission while maintaining fiscal prudence, including both current and future expenditure. It also seeks to retain and enhance the significant amount of work carried out by the Royal Commission to date.
- 34 The Royal Commission has been collecting and considering evidence and seeking input since March 2023. This has included undertaking more than 350 evidence-gathering meetings with over 1,600 people, and direct submissions from almost 400 individuals, community groups, and organisations. The Royal Commission currently has 121,000 pages of evidence to inform its report. Between February and March 2024, the Royal Commission received nearly 13,000 submissions from the public.
- 35 Discontinuing the current Royal Commission before it reports would not only fail to make effective use of the volume of work and input into the inquiry described above, it would also lead to an almost total loss of the investment of public funds to date, which would amount to approximately \$10 million. While there are provisions

in Budget 2024 for a further COVID-19 Inquiry, the quantum of funding available would not be sufficient for a broad inquiry to start from scratch.

I seek agreement to establish a second phase of inquiry...

- 36 For the reasons given above, I seek agreement to establish a second phase of inquiry under the Royal Commission, with an additional terms of reference and new membership. Subject to agreement, I intend to seek decisions on the detailed terms of reference for the second phase of inquiry in August 2024. This enables time for the careful development of, and consultation on, the draft terms of reference. The indicative purpose and scope that will inform the draft terms of reference are set out below.
- 37 Accordingly, I seek agreement to the Royal Commission continuing with its current terms of reference, and functioning as the first phase of inquiry. There may be some overlap between the two phases of inquiry. However, I expect them to run sequentially to the extent that the second phase of inquiry begins receiving evidence after the report of the first phase of inquiry has been delivered.

...and to extend the reporting date for the first phase of inquiry

- 38 The current Commissioners of the Royal Commission have requested an extension to the reporting date for the first phase of inquiry, from 30 September 2024 to 28 November 2024. The reason for the extension request concerns the delay to the Royal Commission's planned activity to accommodate public consultation on the terms of reference. I have been advised that this short extension can be managed within the Royal Commission's current budget envelope. I seek agreement to extend the reporting date for the first phase of inquiry, from 30 September 2024 to 28 November 2024.

Indicative purpose and scope of the second phase of inquiry

- 39 The purpose of the proposed second phase of inquiry is to assess the key decisions on policies and practices relating to New Zealand's minimisation and protection strategy, and its associated economic responses. The findings and recommendations will strengthen New Zealand's preparedness for, and response to, future pandemics by identifying further lessons that can be learnt from the response to COVID-19.
- 40 I propose that only the following issues of public importance be included within the scope of the second phase of inquiry, subject to advice from officials:
- 40.1 the use of vaccines during the pandemic, specifically, mandates, approval processes, and safety including the monitoring and reporting of adverse reactions;
 - 40.2 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;

- 40.3 extended lockdowns in Auckland and Northland, specifically whether similar public health benefits could have been realised from shorter lockdowns;
 - 40.4 the utilisation of partnerships with business and professional groups; and
 - 40.5 the utilisation of new technology, methods, and effective international practices.
- 41 Accordingly, the indicative scope of the second phase of inquiry is limited to an assessment of whether:
- 41.1 policy decisions related to the matters in scope were well-informed by, and reflective of, the advice available at the time;
 - 41.2 policy decisions produced unintended consequences; and
 - 41.3 there are lessons that can be learned from the experience of these policies that will best enable New Zealand to prepare for and respond to a future pandemic.

Findings and recommendations

- 42 Congruent with the indicative purpose and scope, the proposed approach for the second phase of inquiry will involve making:
- 42.1 findings on whether the decisions about New Zealand's minimisation and protection strategy in response to the COVID-19 pandemic were well-informed, and whether those decisions had unintended consequences; and
 - 42.2 recommendations on considerations that can or should be explicitly taken into account in future policy decisions to best prepare New Zealand for any future pandemics.

Inquiry procedure and public engagement

- 43 As noted above, and consistent with the relevant commitment in the NZ First-National coalition agreement, some elements of the second phase of inquiry will be conducted in public. This will involve hearing evidence in public where it is consistent with a purpose of addressing public concern, or when and where it is appropriate to do so, within the parameters of the available funding.
- 44 The public will have the opportunity to participate in the second phase of inquiry.

Exclusions from the second phase of inquiry

- 45 There will be exclusions from the proposed second phase of inquiry's scope. In general, the exclusions play an important role in further defining the purpose and scope of an inquiry. They seek to avoid duplication with other work and clarify any matters that are at odds with the purpose of the inquiry, or inappropriate for an inquiry to examine. Exclusions also support an inquiry to meet expectations

associated with timeframes and costs. Further exclusions will be identified during the development of the detailed terms of reference to provide further assurance that the scope of the second phase of inquiry is clearly defined.

- 46 It would not be constitutionally appropriate or an efficient use of public resources for the second phase of inquiry to revisit the facts established by, or legal findings of, courts and tribunals and independent bodies like the Ombudsman, Privacy Commissioner, or the Independent Police Complaints Authority during the pandemic.
- 47 The scope of the second phase of inquiry will not include the operation of the general regulatory system for vaccines in New Zealand, nor questions of civil, criminal, or disciplinary liability (in accordance with section 11 of the Inquiries Act 2013). In addition, the second phase of inquiry must have regard to the implications of making public any commercially sensitive material.

Timing

- 48 Once formally established, the second phase of inquiry will need a period of time to undertake initial planning and communication before it is subject to public expectations of formally engaging stakeholders and receiving information.
- 49 The appointments for the proposed second phase of inquiry would take effect in mid-October 2024. The new Commissioners would then begin receiving evidence and information from 29 November 2024. A report with recommendations would be delivered by 27 February 2026.

Membership matters

- 50 Given the indicative scope and purpose, and the expected workload, it is likely that the proposed second phase of inquiry will require three members, including a Chair. The Department of Internal Affairs' experience with inquiries is that complex and high-profile inquiries need more than one member. This allows for a greater depth and breadth of skills, experience and attributes to be represented on the panel, as well as the ability to cover any personal absences. The Law Commission also recommended that more than one inquirer be appointed to any complex or long-running inquiry.¹

- 51 Based on the indicative purpose and scope, the Chair and members should collectively have the following skills and attributes:

- 51.1 the ability to collaborate as part of a group that leads and delivers large-scale reviews;
- 51.2 an understanding of public health;

¹ Law Commission, *A New Inquiries Act*, Wellington, 2008, para 37.

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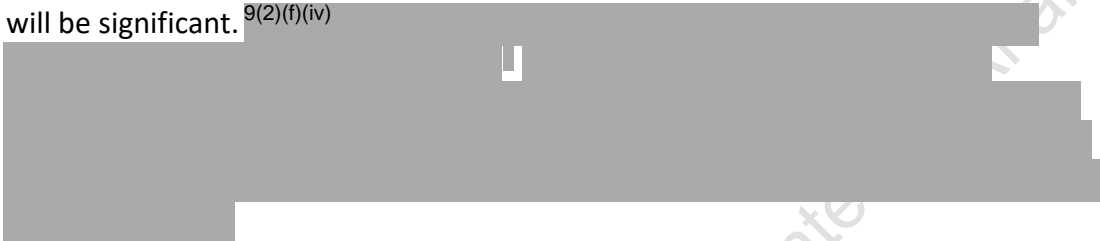
- 51.3 an understanding of public policy, economic policy and/or the public sector; and
- 51.4 skills and expertise to conduct public hearings, with judicial/legal experience an advantage.
- 52 These skills and attributes are largely in line with those that informed the original appointments to the Royal Commission. The key difference is the addition of judicial/legal skills and expertise, which are required to support the inquiry to hear evidence in public.
- 53 The Royal Commission has been carrying a vacancy since Hon Hekia Parata stepped down in November 2023. I intend to appoint one new Commissioner for the remainder of the first phase, who will continue into the second phase of inquiry. This will give a degree of continuity to the Royal Commission. This appointment will go through the Cabinet Appointments and Honours Committee as soon as practicable. The current Chair and Commissioner have confirmed in writing that they will resign once the report for the first phase of inquiry has been delivered. They have also confirmed that they would welcome an additional Commissioner to support their work.
- 54 Additional appointments for the second phase of inquiry will be taken by Cabinet in conjunction with decisions on the detailed terms of reference and budget. This enables time for due diligence and other considerations during the appointment process. As noted above, these appointments would take effect in mid-October 2024.
- 55 Appropriate enquiries concerning probity and actual or perceived conflicts of interest for the members of the Inquiry will be undertaken by the Department. These enquiries will include the completion of formal declarations on any actual or perceived conflicts. The Department will also undertake a background check, including online background checks.

Financial Implications

- 56 A budget of \$16.770 million was approved for the Royal Commission. This total includes \$15.470 million in new funding approved when it was established and expected to report in June 2024. When the Royal Commission was extended until September 2024, \$1.300 million in additional budget was reprioritised from existing Department of Internal Affairs baselines.
- 57 Based on the indicative scope, the second phase of inquiry is estimated to cost close to \$14 million. This amount has been set aside as a tagged operating contingency in Budget 24. As the development of a detailed terms of reference progresses, all options will be examined to ensure the second phase of inquiry can be accommodated within the available budget. A detailed budget will be developed and presented to Cabinet for approval alongside the detailed terms of reference and proposed appointments in the subsequent Cabinet paper.

58 The estimated cost described above relates only to the cost of carrying out the second phase of inquiry. This includes costs related to Commissioners and a secretariat, as well as operating, legal, and administrative support. It does not include any costs that agencies might incur during their engagement with, or response to, the Royal Commission.

59 The costs that fall on participants in an inquiry can vary greatly, given they are dependent on the processes and procedures the inquiry adopts. For inquiries with legal complexity, which includes evidence being heard in public, the participant costs will be significant. ^{9(2)(f)(iv)}



60 The estimated cost is based on the Department's experience of administering recent inquiries, and their specific purpose, subject breadth, legal complexity, expectations for public participation or engagement, and timeframe.

61 Cabinet has previously agreed that statutory inquiries were an all of government responsibility and should be adequately funded [CAB-18-MIN-0352 refers]. Cabinet has also previously agreed that statutory inquiries should not compromise other functions [CAB-18-MIN-0352 refers].

Legislative Implications: submission of Amendment Order in Council

62 Subject to Cabinet decisions, an Amendment Order in Council will be required to give effect to the proposed establishment of a second phase of inquiry under the Royal Commission, and to the proposed extension to the reporting date for the first phase of inquiry. This will accompany the Cabinet paper in August 2024 indicated above.


Impact Analysis

63 The impact analysis requirements do not apply for this paper as it does not propose anything that involves the potential introduction of new legislation or changes to or the repeal of existing legislation.

Population Implications

64 The Royal Commission's current terms of reference include consideration of the interests of Māori in the context of a pandemic, consistent with the Te Tiriti relationship; and the impact on, and differential support for, essential workers and populations and communities that may be disproportionately impacted by a pandemic.

^{9(2)(f)(iv)}



- 65 The proposed establishment of the second phase of inquiry would inquire into the social impacts on both regional and national levels as well as the extent of disruption to New Zealanders' health, education and business.

Human Rights

- 66 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 67 The following agencies were consulted: the Crown Law Office; the Public Service Commission; the Ministry of Health; the Department of the Prime Minister and Cabinet; and the Treasury. Ministers and coalition partners were consulted.

Communications

- 68 Subject to decisions, I intend to issue a media statement about the establishment of a second phase of inquiry under the Royal Commission, and the retention of the current terms of reference for the purposes of the first phase of inquiry.

Proactive Release

- 69 I intend to delay the proactive release of this paper until after the Amendment Order in Council referred to above is submitted to the Executive Council. This paper and the subsequent Cabinet paper that seeks agreement to the terms of reference, budget and membership will be released as a package. I will also consider including the report on public submissions on the terms of reference consultation process in this package.

Recommendations

The Minister of Internal Affairs recommends that the Cabinet Business Committee:

Background

- 1 **note** that, on 20 December 2023, the Cabinet Business Committee, having been authorised by the Acting Prime Minister to have Power to Act:
- 1.1 noted that the Government has committed in its Coalition Agreements to expand the terms of reference for the Royal Commission;
 - 1.2 agreed that the Minister of Internal Affairs write to the Royal Commission informing them of the above before the end of 2023;
 - 1.3 invited the Minister of Internal Affairs to report back to Cabinet in early 2024 with the proposed expanded terms of reference;

[CBC-23-MIN-0030 refers]

- 2 **note** that public consultation on the terms of reference for the Royal Commission, which ran from 8 February to 24 March 2024, yielded approximately 13,000 submissions;

Proposed approach

- 3 **agree** that the Royal Commission continues with its current terms of reference until a report is delivered, and that it functions as a first phase of inquiry;
- 4 **agree** to extend the reporting date for the first phase of inquiry from 30 September 2024 to 28 November 2024;
- 5 **agree** that a second phase of inquiry be established under the Royal Commission, with new membership and an additional terms of reference, constructed around outstanding matters of public concern, including those in the NZ First-National coalition agreement and other matters appropriate for a statutory inquiry;
- 6 **note** that the purpose of the second phase of inquiry is to assess the key decisions on policies and practices relating to New Zealand's minimisation and protection strategy, and its associated economic responses;
- 7 **agree in principle** that the indicative scope of the second phase of inquiry is limited to an assessment of the decisions that were made during the minimisation and protection phase of New Zealand's response, and whether decisions were well-informed by, and reflective of, the advice available at the time, and whether decisions produced unintended consequences, with the benefit of experience, in the following areas:
- 7.1 the use of vaccines during the pandemic, specifically, mandates, approval processes, and safety including the monitoring and reporting of adverse reactions;
 - 7.2 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;
 - 7.3 extended lockdowns in Auckland and Northland, specifically whether similar public health benefits could have been realised from shorter lockdowns;
 - 7.4 the utilisation of partnerships with business and professional groups; and
 - 7.5 the utilisation of new technology, methods, and effective international practices;

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- 8 **agree in principle** that the proposed second phase of inquiry will include making:
- 8.1 findings on whether the decisions related to the minimisation and protection strategy were well-informed, and whether those decisions had unintended consequences, in relation to the matters within scope; and
 - 8.2 recommendations on considerations that can or should be explicitly taken into account in future policy decisions to best prepare New Zealand to respond to any future pandemics;
- 9 **note** that, based on the indicative scope and purpose, the indicative exclusions from the second phase of inquiry include:
- 9.1 the judgements and decisions of courts and tribunals and independent agencies such as the Ombudsman, Privacy Commissioner, and the Independent Police Complaints Authority during the pandemic;
 - 9.2 the operation of the general regulatory system for vaccines in New Zealand;
 - 9.3 questions of civil, criminal, or disciplinary liability (in accordance with section 11 of the Inquiries Act 2013);
- 10 **note** that the appointments for the proposed second phase of inquiry would take effect in mid-October 2024; that evidence and information would be received from 29 November 2024; and that a report with recommendations would be delivered by 27 February 2026;
- 11 **note** that some elements of the proposed second phase of inquiry will be conducted in public, when and where it is appropriate to do so;

Membership for the first phase of inquiry

- 12 **note** that the Minister of Internal Affairs intends to appoint one new Commissioner to the first phase of inquiry, who will also continue as a Commissioner during the second phase of inquiry, and that this appointment will go through the Cabinet Appointments and Honours Committee as soon as practicable;
- 13 **note** that the Royal Commission's current Chair and Commissioner have confirmed their intention to resign once they have delivered a report for the first phase of inquiry;

Next steps

- 14 **invite** the Minister of Internal Affairs to seek agreement to the final terms of reference, membership and budget for the second phase of inquiry under the Royal Commission in August 2024, in alignment with decisions taken in this Cabinet paper;

- 15 **note** that an Amendment Order in Council is required to give effect to the proposed establishment of the second phase of inquiry under the Royal Commission, and to the proposed extension to the reporting date for the first phase of inquiry;

Communications

- 16 **note** that the Minister of Internal Affairs intends to issue a media statement about the proposed establishment of a second phase of inquiry, and the retention of the current terms of reference for the purposes of the first phase of inquiry.

Authorised for lodgement

Hon Brooke van Velden

Minister of Internal Affairs

Proactively released by the Minister of Internal Affairs

Afairs



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Royal Commission of Inquiry into COVID-19 Lessons: Establishing a Second Phase of Inquiry

Portfolio Internal Affairs

On 24 June 2024, Cabinet:

Background

1 **noted** that in December 2023, the Cabinet Business Committee:

- 1.1 noted that the Government has committed in its Coalition Agreements to expand the terms of reference for the Royal Commission of Inquiry into COVID-19 Lessons (the Royal Commission);
- 1.2 agreed that the Minister of Internal Affairs (the Minister) write to the Royal Commission informing them of the above before the end of 2023;
- 1.3 invited the Minister of Internal Affairs to report back to Cabinet in early 2024 with the proposed expanded terms of reference;

[CBC-23-MIN-0030]

2 **noted** that public consultation on the terms of reference for the Royal Commission, which ran from 8 February to 24 March 2024, yielded approximately 13,000 submissions;

Proposed approach

3 **agreed** that the Royal Commission continues with its current terms of reference until a report is delivered, and that it functions as a first phase of inquiry;

4 **agreed** to extend the reporting date for the first phase of inquiry from 30 September 2024 to 28 November 2024;

5 **agreed** that a second phase of inquiry be established under the Royal Commission, with new membership and an additional terms of reference, constructed around outstanding matters of public concern, including those in the New Zealand First-National Coalition Agreement and other matters appropriate for a statutory inquiry;

6 **noted** that the purpose of the second phase of inquiry is to assess the key decisions on policies and practices relating to New Zealand's minimisation and protection strategy, and its associated economic responses;

- 7 **agreed** that the indicative scope of the second phase of inquiry is limited to an assessment of the decisions that were made during the minimisation and protection phase of New Zealand's response, and whether decisions were well-informed by, and reflective of, the advice available at the time, and whether decisions produced unintended consequences, with the benefit of experience, in the following areas:
- 7.1 the use of vaccines during the pandemic, specifically mandates, approval processes, and safety including the monitoring and reporting of adverse reactions;
 - 7.2 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;
 - 7.3 extended lockdowns in Auckland and Northland, specifically whether similar public health benefits could have been realised from shorter lockdowns;
 - 7.4 the utilisation of partnerships with business and professional groups; and
 - 7.5 the utilisation of new technology, methods, and effective international practices;
- 8 **agreed** that the second phase of inquiry will include making:
- 8.1 findings on whether the decisions related to the minimisation and protection strategy were well-informed, and whether those decisions had unintended consequences, in relation to the matters within scope; and
 - 8.2 recommendations on considerations that can or should be explicitly taken into account in future policy decisions to best prepare New Zealand to respond to any future pandemics;
- 9 **noted** that, based on the indicative scope and purpose, the indicative exclusions from the second phase of inquiry include:
- 9.1 the judgments and decisions of courts and tribunals and independent agencies such as the Ombudsman, Privacy Commissioner, and the Independent Police Complaints Authority during the pandemic;
 - 9.2 the operation of the general regulatory system for vaccines in New Zealand;
 - 9.3 questions of civil, criminal, or disciplinary liability (in accordance with section 11 of the Inquiries Act 2013);
- 10 **noted** that:
- 10.1 the appointments for the second phase of inquiry would take effect in mid-October 2024;
 - 10.2 that evidence and information would be received from 29 November 2024; and
 - 10.3 a report with recommendations would be delivered by 27 February 2026;
- 11 **noted** that some elements of the second phase of inquiry will be conducted in public, when and where it is appropriate to do so;

12 **noted** that:

12.1 the New Zealand First Party supports the actions taken to expand the terms of reference for the Royal Commission, including to address outstanding matters of public concern;

12.2 in accordance with agreed coalition processes, the party leaders of National, ACT and New Zealand First have agreed that the New Zealand First Party will be free to differentiate publicly on details relating to the first phase of inquiry;

Membership for the first phase of inquiry

13 **noted** that the Minister intends to appoint one new Commissioner to the first phase of inquiry, who will also continue as a Commissioner during the second phase of inquiry, and that this appointment will go through the Cabinet Appointments and Honours Committee as soon as practicable;

14 **noted** that the Royal Commission's current Chair and Commissioner have confirmed their intention to resign once they have delivered a report for the first phase of inquiry;

Next steps

15 **invited** the Minister to seek agreement to the final terms of reference, membership, and budget for the second phase of inquiry under the Royal Commission in August 2024, in alignment with decisions taken in the Cabinet paper under CAB-24-SUB-0212;

16 **noted** that an Order in Council is required to give effect to the establishment of the second phase of inquiry under the Royal Commission, and to the extension to the reporting date for the first phase of inquiry;

Communications

17 **noted** that the Minister intends to issue a media statement about the establishment of a second phase of inquiry, and the retention of the current terms of reference for the purposes of the first phase of inquiry.

Rachel Hayward
Secretary of the Cabinet



Cabinet

Minute of Decision

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Royal Commission of Inquiry into COVID-19 Lessons: Establishing a Second Phase of Inquiry

Portfolio Internal Affairs

On 17 June 2024, following reference from the Cabinet Business Committee, Cabinet **deferred** consideration of the submission *Royal Commission of Inquiry into COVID-19 Lessons: Establishing a Second Phase of Inquiry* [CAB-24-MIN-0212] until Cabinet on 24 June 2024.

Rachel Hayward
Secretary of the Cabinet



Cabinet Business Committee

Minute of Decision

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Royal Commission of Inquiry into COVID-19 Lessons: Establishing a Second Phase of Inquiry

Portfolio **Internal Affairs**

On 10 June 2024, the Cabinet Business Committee **referred** the submission *Royal Commission of Inquiry into COVID-19 Lessons: Establishing a Second Phase of Inquiry* [CBC-24-SUB-0051] to the Cabinet meeting on 17 June 2024 for further discussion.

Jenny Vickers
Committee Secretary

Present:

Rt Hon Christopher Luxon (Chair)
Hon David Seymour
Hon Nicola Willis
Hon Chris Bishop
Hon Brooke van Velden
Hon Dr Shane Reti
Hon Simeon Brown
Hon Erica Stanford
Hon Judith Collins KC
Hon Louise Upston

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet
Office of the Minister for Child Poverty Reduction

[In Confidence]

Office of the Minister of Internal Affairs

Chair, Cabinet Legislation Committee

Phase 2 of the Royal Commission of Inquiry into COVID-19 Lessons

Proposal

- 1 This paper seeks agreement to the terms of reference, membership and budget for the second phase of inquiry of the Royal Commission into COVID-19 Lessons (the Royal Commission).
- 2 It also seeks authorisation to submit an Amendment Order in Council to the Executive Council on 26 August 2024.

Executive Summary

- 3 On 24 June 2024, Cabinet agreed to establish a second phase of inquiry under the Royal Commission (Phase 2), with new membership and an additional terms of reference.
- 4 This paper seeks agreement to the terms of reference for Phase 2, attached as Appendix A, and proposes that Grant Illingworth KC is appointed as the Phase 2 Chair, and that Judy Kavanagh and Anthony Hill are appointed as its members.
- 5 Phase 2 will begin receiving evidence and information on 29 November 2024, following the delivery of the Phase 1 report on 28 November 2024. The Phase 2 report is required by 26 February 2026.
- 6 With the establishment of Phase 2, the Phase 1 report is no longer the final report of the Royal Commission. I seek agreement, therefore, to update the Phase 1 terms of reference so that the Royal Commission delivers the Phase 1 report to the Minister of Internal Affairs. The Phase 1 report will be publicly released at a time that reflects the Government's approach to responding to the report and considers the timing of any public engagement and submissions processes for Phase 2.
- 7 Phase 2 will be funded from the *Inquiry into COVID-19 Pandemic* tagged operating contingency of \$14.050 million established in Budget 2024 [CAB-24-MIN-0148.42 refers]. Accordingly, I seek approval for a total of \$14.038 million increase to the Vote Internal Affairs appropriations from 2024/25 to 2025/26 to cover the costs of the Royal Commission.
- 8 I seek authorisation to submit an Amendment Order in Council, made under the authority of the Letters Patent and the Inquiries Act 2013, to the Executive Council on 26 August 2024. The Amendment Order will incorporate the terms of reference for Phase 2.

Policy

- 9 On 24 June 2024, Cabinet agreed to establish Phase 2, with new membership and an additional terms of reference, constructed around outstanding matters of public concern [CAB-24-MIN-0212.01 refers].
- 10 Accordingly, Cabinet agreed that the Royal Commission's original scope and terms of reference would constitute Phase 1, which will cease upon the delivery of a report against those terms of reference by 28 November 2024.¹
- 11 On 24 June 2024, Cabinet noted that the purpose of Phase 2 is to assess the key decisions on policies and practices relating to New Zealand's minimisation and protection strategy, and its associated economic responses. It agreed that the indicative scope of Phase 2 is limited to an assessment of the decisions that were made during the minimisation and protection phase of New Zealand's response, and whether decisions were well-informed by, and reflective of, the advice available at the time, and whether decisions produced unintended consequences, with the benefit of experience, in the following areas:
- 11.1 the use of vaccines during the pandemic, specifically, mandates, approval processes, and safety including the monitoring and reporting of adverse reactions;
 - 11.2 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;
 - 11.3 extended lockdowns in Auckland and Northland, specifically whether similar public health benefits could have been realised from shorter lockdowns;
 - 11.4 the utilisation of partnerships with business and professional groups; and
 - 11.5 the utilisation of new technology, methods, and effective international practices;
- 12 Cabinet also agreed that Phase 2 will involve making:
- 12.1 findings on whether the decisions related to the minimisation and protection strategy were well-informed, and whether those decisions had unintended consequences, in relation to the matters within scope; and
 - 12.2 recommendations on considerations that can or should be explicitly taken into account in future policy decisions to best prepare New Zealand to respond to any future pandemics.

¹ On 24 June 2024, Cabinet agreed to extend the reporting due date for Phase 1 from 30 September 2024 to 28 November 2024 [CAB-24-MIN-0212.01 refers]. This policy decision was implemented through Royal Commission of Inquiry (COVID-19 Lessons) Amendment Order 2024, which came into effect on 2 August 2024.

- 13 Cabinet invited the Minister of Internal Affairs to seek agreement to the final terms of reference, membership and budget for Phase 2 in August 2024.

The terms of reference for Phase 2

- 14 I seek agreement to the terms of reference for Phase 2 (see Appendix A). The terms of reference set out its background, purpose, scope, limits to scope, matters upon which recommendations are sought, procedure, access to information, administration, and timing. These matters reflect the Cabinet decisions outlined above, where relevant, or are otherwise consistent with the Royal Commission as it is established.
- 15 Some changes were needed to the terminology that was agreed by Cabinet in its June 2024 decision. Specifically, the phrase “minimisation and protection phase of New Zealand’s response” (in paragraph 11 above) is replaced with “the key decisions taken by Government on New Zealand’s response to COVID-19 during 2021 and 2022”. This change signifies the period of time within scope. It also enables Phase 2 to consider decisions taken prior to the onset of the minimisation and protection phase but which were relevant to that phase.
- 16 The terms of reference are an essential component of the process for establishing an inquiry under the Inquiries Act 2013. The Royal Commission has statutory authority to conduct its work as it considers appropriate, in line with the Inquiries Act 2013 (the Act) and the terms of reference.
- 17 As the Phase 1 report is due on 28 November 2024, Phase 2 will begin considering evidence and engaging with stakeholders from 29 November 2024. This timeframe also enables a planning period of 6-8 weeks.
- 18 Phase 2 is required to deliver a report with recommendations by 26 February 2026.

Agreement is sought to update the delivery requirements for the Phase 1 report

- 19 Section 12 of the Act requires that the final report of a Royal Commission of Inquiry be delivered to the Governor-General, and then as soon as practicable the appropriate Minister must present the report to the House of Representatives, at which point the report becomes publicly available. The Act contains no specific provisions relating to the interim or other reports of Royal Commissions of Inquiry. Requirements for the delivery of those reports are dealt with in the terms of reference.
- 20 With the establishment of Phase 2 the Phase 1 report is no longer the final report of the Royal Commission of Inquiry. I seek agreement, therefore, to update the Phase 1 terms of reference so that the Royal Commission delivers the Phase 1 report to the Minister of Internal Affairs. The timing of the public release of the Phase 1 report will reflect the Government’s approach to responding to the report and take into consideration the timing of any public engagement and submissions process for Phase 2.

Membership

Background

- 21 On 24 June 2024, Cabinet noted that:
- 21.1 the Royal Commission's current Chair, Professor Tony Blakely, and Commissioner John Whitehead have confirmed their intention to resign once they have delivered a report for the first phase of inquiry;
 - 21.2 the appointments for Phase 2 would take effect in mid-October 2024;
 - 21.3 the Minister of Internal Affairs would appoint one new Commissioner to Phase 1 as soon as practicable, and that this Commissioner would continue into Phase 2 [CAB-24-MIN-0212.01 refers].
- 22 On 2 August 2024, Grant Illingworth KC commenced as a Commissioner of the Royal Commission, following Cabinet's agreement on 22 July 2024 [CAB-24-MIN-0260 refers].

Proposed appointments for Phase 2

- 23 The collective skills and attributes for Phase 2 are:
- 23.1 the ability to collaborate as part of a group that leads and delivers large-scale reviews;
 - 23.2 an understanding of public health;
 - 23.3 an understanding of public policy, economic policy and/or the public sector; and
 - 23.4 skills and expertise to conduct public hearings, with judicial/legal experience an advantage.
- 24 These skills and attributes are largely in line with those that informed the original appointments to the Royal Commission. The key difference is the addition of judicial/legal skills and expertise, which are required to support the inquiry to hear evidence in public.
- 25 I propose to appoint Grant Illingworth KC as the Chair of Phase 2 and seek agreement to recommend his appointment to the Governor-General.
- 26 As noted above, Mr Illingworth was recently appointed to the Royal Commissioner as a replacement member [CAB-24-MIN-0260 refers]. His transition to the Chair of Phase 2 will provide continuity across the two phases of the Royal Commission.
- 27 Mr Illingworth is a litigation specialist, and he has conducted his own practice since 1975. During this time, he has conducted a wide range of civil, criminal, and immigration cases, and tribunal proceedings. Mr Illingworth has appeared as counsel

IN CONFIDENCE

at every level of the New Zealand legal system, including in the Court of Appeal, Privy Council, and the Supreme Court.

- 28 His area of expertise is in public law, including constitutional law, administrative law, and judicial review. He has experience in tribunal proceedings, particularly disciplinary proceedings for medical, legal, and accountancy professions. Mr Illingworth has acted as counsel in proceedings involving two constitutional crises in Fiji.
- 29 I propose to appoint Judy Kavanagh as a member of Phase 2 and seek agreement to recommend her appointment to the Governor-General.
- 30 Ms Kavanagh is a public policy professional with experience and expertise in evaluating evidence and in making evidence-based policy recommendations to Government. She has held Director of Inquiries roles including at the Infrastructure Commission and ten years at the Productivity Commission. She has a background in economics with a particular interest in urban economics, infrastructure pricing and policy. Ms Kavanagh worked as a lecturer in Economics for fifteen years and produced research on regulatory systems amongst other things.
- 31 I propose to appoint Anthony Hill as a member of Phase 2 and seek agreement to recommend his appointment to the Governor-General.
- 32 Mr Hill is a practicing barrister, and has a background in health and disability sectors, having held senior positions at the Ministry of Health for 15 years. Mr Hill served as the Health and Disability Commissioner for 10 years, after six years as a Deputy Director-General of Health. This involved oversight of the funding and performance of the District Health Boards, and a range of health crown entities. He also served as the Ministry of Health's chief legal counsel and was a solicitor with the Ministry of Commerce.
- 33 The previous government agreed to a daily fee of \$1,680 for the Chair and \$1,620 for the members of the Royal Commission [CAB-22-MIN-0552]. I seek agreement to the same daily fees for the proposed appointments.
- 34 Appropriate enquiries concerning probity and actual or perceived conflicts of interest for the members of the Inquiry were undertaken by the Department of Internal Affairs (the Department). These enquiries included the completion of formal declarations on any actual or perceived conflicts, and online background checks.
- 35 The APH Organisation Form and Candidate CV Forms are attached as Appendix B.

Financial Implications

Budget for the Royal Commission

- 36 The estimated cost for Phase 2 is \$14.038 million. The estimated cost is based on the Department's experience of administering recent inquiries, and their specific

purpose, subject breadth, legal complexity, expectations for public participation or engagement, and timeframe.

- 37 **Table 1** provides a breakdown of the costs. These estimates only relate only to the costs of carrying out Phase 2, which include those costs related to members’ fees and a secretariat, as well as operating, legal, and administrative support. It does not include any costs that agencies might incur during their engagement with, or response to, the Royal Commission. Agencies will be expected to manage participation costs associated with Phase 2 within baselines.

Table 1: The forecast cost summary for Phase 2

Cost category	Forecast cost (\$ million)
Secretariat Personnel	5.577
Operating & Support	6.295
Legal Counsel	0.976
Commissioner Fees	1.190
TOTAL	14.038

- 38 The proposed budget assumes that Phase 2 will:
- 38.1 primarily focus on examining the decisions made, and their consequences, on the matters in scope relating to the key decisions taken by Government on New Zealand’s response to COVID-19 during 2021 and 2022;
 - 38.2 utilise a considerable amount of existing publicly available material as an input to its work, and not duplicate or repeat that work; and
 - 38.3 need significant capacity to hear some evidence in public, including in formal public hearings.
- 39 Phase 2 will be funded from the *Inquiry into COVID-19 Pandemic* tagged operating contingency of \$14.050 million established in Budget 2024 [CAB-24-MIN-0148.42 refers].
- 40 Cabinet has previously agreed that statutory inquiries were an all of government responsibility and should be adequately funded [CAB-18-MIN-0352 refers]. Cabinet has also previously agreed that statutory inquiries should not compromise other functions [CAB-18-MIN-0352 refers]. The Department does not have standing baseline funding to support statutory inquiries.
- 41 Accordingly, I seek approval for a total of \$14.038 million increase to the Vote Internal Affairs appropriations from 2024/25 to 2025/26 to cover the costs of Phase 2.

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- 42 If the Royal Commission's expenditure after its close down is lower than any appropriated funding, then I propose that any underspend associated with the Royal Commission be returned to the Centre.
- 43 The funding sought is an informed estimate of what will be required and reasonable for the Royal Commission to complete its work. Once Phase 2 commences and plans its work in detail, there may be some variation in the budget that requires it to be rephased.

The Royal Commission's financial transparency and accountability

- 44 While it is essential that statutory inquiries have investigative independence, they must also be fiscally accountable for, and transparent in, the way they use public funds to deliver on their mandate. The Department is responsible for establishing the process for monitoring the Royal Commission's budget and the reporting timeframe.
- 45 As per the terms of reference, the Royal Commission will continue to support the Department to comply with its administrative and financial planning (relevant to the Royal Commission) by providing regular information and reporting on administrative and financial matters.
- 46 The Royal Commission will also continue to provide quarterly reports to the Minister of Internal Affairs to assure the Minister that the Royal Commission is on track to deliver the reports and recommendations required under these terms of reference. The quarterly reports will set out the critical activities it needs to complete and how, along with the expected cost and timing associated with those activities.

Legislative Implications: submission of Amendment Order in Council

- 47 I seek authorisation to submit an Amendment Order in Council, made under the authority of the Letters Patent and the Inquiries Act 2013, to the Executive Council on 26 August 2024. The Amendment Order, which incorporates the terms of reference, is required to establish Phase 2. It also gives effect to the proposed amendment to the delivery requirements of the Phase 1 report. The Amendment Order in Council will come into force on 26 September 2024.
- 48 I confirm that the Amendment Order complies with: the rights and freedoms contained in the New Zealand Bill of Rights Act 1990; and the Human Rights Act 1993; the principles and guidelines set out in the Privacy Act 2020; relevant international standards and obligations; and the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 49 I am not aware of any grounds on which the Order in Council should be drawn to the attention of the House of Representatives under Standing Order 327 'Drawing attention to regulation'. The draft Amendment Order in Council has been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 50 The impact analysis requirements do not apply for this paper as it does not propose anything that involves the potential introduction of new legislation or changes to or the repeal of existing legislation.

Population Implications

- 51 Phase 2 will inquire into the social impacts on both regional and national levels as well as the extent of disruption to New Zealanders' health, education and business.

Human Rights

- 52 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 53 The following agencies were consulted: the Crown Law Office; the Ministry of Business, Innovation and Employment; the Ministry of Education; the Ministry of Health; the Parliamentary Counsel Office; the Public Service Commission; the Ministry of Social Development; the Department of the Prime Minister and Cabinet; and the Treasury. Ministers and coalition partners were consulted.

Communications

- 54 Subject to decisions, I intend to issue a media statement about the establishment of Phase 2.

Proactive Release

- 55 I intend to proactively release this paper within 30 business days of Cabinet decisions. I will also consider including the report on public submissions on the terms of reference consultation process in this package.

Recommendations

The Minister of Internal Affairs recommends that the Cabinet Legislation Committee:

Background

- 1 **note** that, on 24 June 2024, Cabinet:
- 1.1 agreed that the Royal Commission of Inquiry into COVID-19 Lessons (the Royal Commission) continues with its current terms of reference until a report is delivered, and that it functions as a first phase of inquiry (Phase 1);
 - 1.2 agreed that a second phase of inquiry be established under the Royal Commission (Phase 2), with new membership and an additional terms of reference;

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- 1.3 agreed that the purpose of Phase 2 is to assess the key decisions on policies and practices relating to New Zealand's minimisation and protection strategy, and its associated economic responses;
- 1.4 agreed that the indicative scope of Phase 2 is limited to an assessment of the decisions that were made during the minimisation and protection phase of New Zealand's response, and whether decisions were well-informed by, and reflective of, the advice available at the time, and whether decisions produced unintended consequences, with the benefit of experience, in the following areas:
 - 1.4.1 the use of vaccines during the pandemic, specifically, mandates, approval processes, and safety including the monitoring and reporting of adverse reactions;
 - 1.4.2 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;
 - 1.4.3 extended lockdowns in Auckland and Northland, specifically whether similar public health benefits could have been realised from shorter lockdowns;
 - 1.4.4 the utilisation of partnerships with business and professional groups; and
 - 1.4.5 the utilisation of new technology, methods, and effective international practices;
- 1.5 agreed that Phase 2 begins receiving evidence and information on 29 November 2024 and concludes on 26 February 2026;

[CAB-24-MIN-0212.01 refers]

Terms of reference

- 2 **agree** that the Phase 1 report is delivered to the Minister of Internal Affairs;
- 3 **agree** to the terms of reference for Phase 2 attached as Appendix A;

Membership

- 4 **agree** that the Minister of Internal Affairs recommends the appointment of Mr Grant Illingworth as the Chair of Phase 2 to the Governor-General;
- 5 **agree** that the Minister of Internal Affairs recommends the appointment of Judy Kavanagh as a member of Phase 2 to the Governor-General;

IN CONFIDENCE

- 6 **agree** that the Minister of Internal Affairs recommends the appointment of Anthony Hill as a member of Phase 2 to the Governor-General;
- 7 **note** that the previous government agreed to a daily fee of \$1,680 for the Chair and \$1,620 for the members of the Royal Commission [CAB-22-MIN-0552];
- 8 **agree** to a daily fee of \$1,680 for the Chair of Phase 2;
- 9 **agree** to a daily fee of \$1,620 for the members of Phase 2;

Financial Implications

- 10 **note** that as part of Budget 2024, Cabinet [CAB-24-MIN-0148.42 refers]:
- 10.1 **agreed** to establish an operating tagged contingency 'Inquiry into COVID-19 Pandemic' associated with Vote Internal Affairs:

	\$m – increase/(decrease)				
	2023/24	2024/25	2025/26	2026/27	2027/28 & Outyears
Inquiry into COVID-19 Pandemic – Tagged Operating Contingency	1.000	6.525	6.525	-	14.050

- 10.2 **noted** that his operating tagged contingency has been established to meet any potential additional costs associated with Cabinet's final decision on an expanded terms of reference for the Royal Commission of Inquiry into COVID-19 Lessons;
- 11 **approve** the following changes to appropriations to provide for the decisions in recommendations 3 through 9 above, with a corresponding impact on the operating balance and net debt:

Vote Internal Affairs Minister of Internal Affairs	\$million – increase/(decrease)				
	2023/24	2024/25	2025/26	2026/27	2027/28 & Outyears
Multi-Category Expenses and Capital Expenditure: Support for Statutory and Other Bodies MCA Departmental Output Expense: Commissions of Inquiry and Similar Bodies (funded by revenue Crown)	-	5.289	7.559	-	-
Non-Departmental Other Expense: Statutory Inquiries	-	0.600	0.590	-	-
Total Operating	-	5.889	8.149	-	-

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- 12 **agree** that the proposed changes to appropriations for 2024/25 above be included in the 2024/25 Supplementary Estimates and that, in the interim, the increases be met from Imprest Supply;
- 13 **agree** that the expenses incurred under recommendation 11 above be charged against the 'Inquiry into COVID-19 Pandemic – Tagged Operating Contingency', established as part of Budget 2024 described in recommendation 10 above;
- 14 **agree** to an in-principle expense transfer from 2024/25 to 2025/26, and from 2025/26 to 2026/27, of any underspend in the above appropriations, with the final amounts to be transferred to be confirmed as part of the relevant October Baseline Update, once audited accounts for each financial year are available;
- 15 **agree** that any underspend associated with Phase 2 be returned to the Centre after its close down;

Submission of an Amendment Order in Council

- 16 **note** that an Amendment Order in Council is required to give effect to the establishment of Phase 2, and the amendment to the delivery requirements for the Phase 1 report;
- 17 **authorise** the submission of the Amendment Order in Council, made under the authority of the Letters Patent and the Inquiries Act 2013, to the Executive Council;
- 18 **note** that the Amendment Order in Council will come into force on 26 September 2024;

Communications

- 19 **note** that the Minister of Internal Affairs intends to issue a media statement about the establishment of Phase 2.

Authorised for lodgement

Hon Brooke van Velden

Minister of Internal Affairs



Cabinet

Minute of Decision

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Report of the Cabinet Social Outcomes Committee: Period Ended 23 August 2024

On 26 August 2024, Cabinet made the following decisions on the work of the Cabinet Social Outcomes Committee for the period ended 23 August 2024:

Out of scope

Out of scope

SOU-24-MIN-0099	Phase 2 of the Royal Commission of Inquiry into COVID-19 Lessons Portfolio: Internal Affairs	CONFIRMED
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Out of scope

Out of scope

Rachel Hayward
Secretary of the Cabinet



Cabinet Social Outcomes Committee

Minute of Decision

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Phase 2 of the Royal Commission of Inquiry into COVID-19 Lessons

Portfolio Internal Affairs

On 21 August 2024, the Cabinet Social Outcomes Committee:

Background

1 **noted** that in June 2024, Cabinet:

- 1.1 agreed that the Royal Commission of Inquiry into COVID-19 Lessons (the Royal Commission) continues with its current terms of reference until a report is delivered, and that it functions as a first phase of inquiry (Phase 1);
- 1.2 agreed that a second phase of inquiry be established under the Royal Commission (Phase 2), with new membership and an additional terms of reference;
- 1.3 agreed that the purpose of Phase 2 is to assess the key decisions on policies and practices relating to New Zealand's minimisation and protection strategy, and its associated economic responses;
- 1.4 agreed that the indicative scope of Phase 2 is limited to an assessment of the decisions that were made during the minimisation and protection phase of New Zealand's response, and whether decisions were well-informed by, and reflective of, the advice available at the time, and whether decisions produced unintended consequences, with the benefit of experience, in the following areas:
 - 1.4.1 the use of vaccines during the pandemic, specifically mandates, approval processes, and safety, including the monitoring and reporting of adverse reactions;
 - 1.4.2 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;
 - 1.4.3 extended lockdowns in Auckland and Northland, specifically whether similar public health benefits could have been realised from shorter lockdowns;
 - 1.4.4 the utilisation of partnerships with business and professional groups; and

1.4.5 the utilisation of new technology, methods, and effective international practices;

1.5 agreed that Phase 2 begins receiving evidence and information on 29 November 2024 and concludes on 26 February 2026;

[CAB-24-MIN-0212.01]

Terms of reference

2 **agreed** that the Phase 1 report is delivered to the Minister of Internal Affairs (the Minister);

3 **agreed** to the terms of reference for Phase 2, attached as Appendix A to the submission under SOU-24-SUB-0099;

Membership

4 **noted** that the Minister intends to recommend the appointment of Mr Grant ILLINGWORTH as the Chair of Phase 2 to the Governor-General;

5 **agreed** that the Minister intends to recommend the appointment of Judy KAVANAGH as a member of Phase 2 to the Governor-General;

6 **agreed** that the Minister intends to recommend the appointment of Anthony HILL as a member of Phase 2 to the Governor-General;

7 **noted** that the previous government agreed to a daily fee of \$1,680 for the Chair and \$1,620 for the members of the Royal Commission [CAB-22-MIN-0552];

8 **agreed** to a daily fee of \$1,680 for the Chair of Phase 2;

9 **agreed** to a daily fee of \$1,620 for the members of Phase 2;

Financial Implications

10 **noted** that as part of Budget 2024, Cabinet:

10.1 agreed to establish an operating tagged contingency ‘Inquiry into COVID-19 Pandemic’ associated with Vote Internal Affairs:

	\$m – increase/(decrease)				
	2023/24	2024/25	2025/26	2026/27	2027/28 & Outyears
Inquiry into COVID-19 Pandemic – Tagged Operating Contingency	1.000	6.525	6.525	-	14.050

10.2 noted that this operating tagged contingency has been established to meet any potential additional costs associated with Cabinet’s final decision on an expanded terms of reference for the Royal Commission of Inquiry into COVID-19 Lessons;

[CAB-24-MIN-0148.42]

- 11 **approved** the following changes to appropriations to provide for the decisions in paragraphs 3 through 9 above, with a corresponding impact on the operating balance and net debt:

Vote Internal Affairs Minister of Internal Affairs	\$million – increase/(decrease)				
	2023/24	2024/25	2025/26	2026/27	2027/28 & Outyears
Multi-Category Expenses and Capital Expenditure:					
Support for Statutory and Other Bodies MCA					
Departmental Output Expense:					
Commissions of Inquiry and Similar Bodies (funded by revenue Crown)	-	5.289	7.559	-	-
Non-Departmental Other Expense:					
Statutory Inquiries	-	0.600	0.590	-	-
Total Operating	-	5.889	8.149	-	-

- 12 **agreed** that the changes to appropriations for 2024/25 above be included in the 2024/25 Supplementary Estimates and that, in the interim, the increases be met from Imprest Supply;
- 13 **agreed** that the expenses incurred under paragraph 11 above be charged against the ‘Inquiry into COVID-19 Pandemic – Tagged Operating Contingency’, established as part of Budget 2024 described in paragraph 10 above;
- 14 **agreed** to an in-principle expense transfer from 2024/25 to 2025/26, and from 2025/26 to 2026/27, of any underspend in the above appropriations, with the final amounts to be transferred to be confirmed as part of the relevant October Baseline Update, once audited accounts for each financial year are available;
- 15 **agreed** that any underspend associated with Phase 2 be returned to the centre after its close down;

Submission of an Amendment Order in Council

- 16 **noted** that an Amendment Order in Council is required to give effect to the establishment of Phase 2, and the amendment to the delivery requirements for the Phase 1 report;
- 17 **authorised** the submission of the Royal Commission of Inquiry (COVID-19 Lessons) Amendment Order (No 2) 2024 [PCO 26625/8.0] to the Executive Council;
- 18 **noted** that the Amendment Order in Council will come into force on 26 September 2024;

Communications

19 **noted** that the Minister intends to issue a media statement about the establishment of Phase 2.

Jenny Vickers
Committee Secretary

Present:

Rt Hon Winston Peters
Hon David Seymour
Hon Nicola Willis (Chair)
Hon Chris Bishop
Hon Brooke van Velden
Hon Dr Shane Reti
Hon Erica Stanford
Hon Paul Goldsmith
Hon Louise Upston
Hon Judith Collins KC
Hon Tama Potaka
Hon Melissa Lee
Hon Nicole McKee
Hon Penny Simmonds
Hon Chris Penk
Hon Karen Chhour

Officials present from:

Office of the Prime Minister
Officials Committee for SOU
Office of the Minister of Education