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Minister of State Services

Crown Response to the Royal Commission of Inquiry into Historical Abuse:
Support for Non-Government Organisations and Crown Entities

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Chair
Cabinet Social Wellbeing Committee

CROWN RESPONSE TO THE ROYAL COMMISSION OF INQUIRY INTO HISTORICAL ABUSE: SUPPORT FOR NON-GOVERNMENT ORGANISATIONS (NGOS) AND CROWN ENTITIES

Proposal

- 1 This paper identifies potential impacts of the activity of the Royal Commission of Inquiry into Abuse in State Care and in the Care of Faith-based Institutions (the Royal Commission) on Non-Government Organisations (NGOs) who provide government contracted care services. It also discusses potential impacts on relevant Crown entities, especially schools.
- 2 At this stage in the Royal Commission process, it is not certain whether support for NGOs and Crown entities will be required, or the exact nature, cost, and timing, of that support. However, there is concern in the NGO sector about their capacity to support the work of the Royal Commission, and this paper unpacks these concerns and proposes potential options to address them.
- 3 It is proposed that officials should continue to work with the NGO sector, and relevant Crown entity representatives, to further develop these potential options.

Executive summary

- 4 It is important to the success of the Royal Commission that all parties who might have relevant information can participate effectively, support survivors and be held accountable for any failures. The goal is to enable NGOs and Crown entities to engage appropriately with the Royal Commission, and with survivors of abuse in care, while continuing to provide necessary care-related services for children, families and vulnerable adults.
- 5 NGOs and Crown entities are a key part of the “government care system” (as defined in the Royal Commission terms of reference) as they have been for many decades. For example, every year from 2009 to 2018, between 500 and 630 children were placed with NGO child and family support services under section 396 of the Oranga Tamariki Act 1989.
- 6 Engagement with key NGOs, facilitated by the two peak bodies (Social Services Providers Aotearoa and the New Zealand Council of Christian Social Services) in the development of this report, confirmed that NGOs don't have a strong corporate capability to respond to, and support, Royal Commission activity. There is a risk that this might compromise their ability to support survivors, engage with the Royal Commission, or to deliver government-funded care services that children and families need now.
- 7 Areas where support may be needed include: administrative, records and archiving support (which may also include case management and pastoral support

for those seeking records); communications support; and legal advice or representation.

- 8 The proposed range of options for NGO support includes:
 - 8.1 support for an NGO networking group, to help them share information about the Royal Commission and work on consistent NGO engagement with the Royal Commission and with survivors;
 - 8.2 training for NGO staff, for example on records management and recordkeeping requirements under the Public Records Act and agency-specific legislation, Privacy Act and Official Information Act requirements, and appropriate guidance on access classifications. For example, the Oranga Tamariki Act and its predecessor legislation has quite specific requirements for records that should be created, maintained and retained by contracted service providers;
 - 8.3 a central coordination point for advice and support in relation to the work of the Royal Commission (potentially one of the peak bodies could run this); and
 - 8.4 a contingency fund to reimburse 'fair and reasonable' costs related to the Royal Commission (including the development of guidance about what is fair and reasonable).
- 9 When providing support, agencies will work with NGOs to ensure they act in accordance with the principles guiding the Crown response. These are: manaakitanga, openness, transparency, learning, being joined up and meeting our obligations under the Treaty of Waitangi. The goal is to help NGOs to take an approach that supports both the Royal Commission and survivors.
- 10 The exact nature and timing of the support needed is not yet clear, because information about how the Royal Commission processes are going to develop, and the type of requirements the Royal Commission might have of the NGO sector is still limited. This means costs are not yet clear or cannot yet be estimated. However, it is likely that some types of support can be provided using existing resources, while others would require additional funding.
- 11 Therefore, it is proposed that officials to continue to work with the NGO sector to develop options to provide support to the NGOs that need it. Any proposals that have cost implications which cannot be funded with existing resources may be considered in the regular annual budget process led by the Treasury.
- 12 Some Crown entities are also likely to be impacted by the Royal Commission because of their roles (or that of their predecessors) in the wider government care system, in particular District Health Boards (DHBs) and Schools. These Crown entities are in a different situation to NGOs, as DHBs have strong corporate capabilities and large budgets, while schools have support from the Ministry of Education that NGOs don't have.
- 13 Officials in the education sector will consider the types of support being developed for NGOs and whether these may also meet the needs of schools' boards of trustees (which are Crown entities). Officials will also engage directly with a small number of boards of trustees for key residential schools who are likely to be impacted by the Royal Commission.

Background

- 14 On 8 April 2019, Cabinet “directed officials to report back to SWC by the end of August 2019 on whether support for NGOs and Crown entities impacted by the inquiry process is needed and if so, options to provide that support, and their financial implications” [CAB-19-MIN-00139.01 refers].
- 15 Cabinet also noted that the inquiry process “will impact on a number of Crown entities and Non-Government Organisations (NGOs), and some may not have the capability or resources to comply with the likely requests from the Royal Commission, which could impact on current government services” [CAB-19-MIN-00139.01 refers].

Rationale and framework for supporting NGOs and Crown entities impacted by Royal Commission activity

- 16 The work of the Royal Commission is important. I have stated previously that I want the public service to do as much as possible to support the Royal Commission, and to ensure survivors are supported to engage with the Royal Commission and (if they wish to) with government. This should include supporting impacted NGOs and Crown entities to engage with the Royal Commission and with survivors of abuse in State care while still delivering the government-funded care services that children, families and vulnerable adults need.
- 17 NGO service providers and Crown entities such as schools and District Health Boards (DHBs) are important parts of the government care system and have been for many decades. It is important that NGOs and Crown entities are supported to engage with the Royal Commission and with survivors of abuse in care, for several reasons:
 - 17.1 to ensure NGOs and Crown entities can provide the Royal Commission with all the information it needs, so the Royal Commission can understand the policies and procedures that were in place historically, reach its conclusions and make the best decisions and recommendations;
 - 17.2 because survivors deserve to have all parts of their stories told - and NGOs and Crown entities are likely to hold important pieces of information about what happened;
 - 17.3 to ensure that service providers are adequately represented to the Royal Commission NGOs and Crown entities must be able to tell their part; and
 - 17.4 to ensure the continued sustainability of the NGO sector, particularly given the current volume of services the sector provides to children and young people, and its key role as part of the current government care system.
- 18 This support is not intended to enable NGOs or Crown entities to avoid responsibility for past actions, but to help them to support survivors and to ensure that past abuses don't cause undue concern for current clients or compromise their ability to provide needed services. Like government agencies, NGOs are interested to learn from the Royal Commission and apply its findings and recommendations to improve the system for children and families.
- 19 In addition, agencies will work with NGOs to ensure they behave towards survivors and the Royal Commission in ways that are consistent with the principles that Cabinet agreed will guide the Crown response to the Royal Commission [CAB-19-

MIN-0139.01 refers]. The principles are: Manaakitanga, openness, transparency, learning, being joined up and meeting our obligations under the Treaty of Waitangi.

The government care system: Government has relied on NGOs and Crown entities to provide “state care” services for many decades

- 20 The Royal Commission’s terms of reference for its inquiry has a wide definition of “state care” which is referred to throughout this paper as “the government care system”. This includes:
- 20.1 educational settings, including early childhood educational facilities, State schools (including boarding schools), residential special schools, regional health schools and teen parent units. School boards of trustees have been Crown entities since 1989;
 - 20.2 children and vulnerable adults in psychiatric hospitals, health camps or disability services settings, whether full-time residential or day support facilities;
 - 20.3 children in formal state care, for example when the former Department of Social Welfare¹ (DSW) had a custodial Court order, when the former Department of Justice had custody of a young person in a borstal or where custody was transferred to an adoptive parent; and
 - 20.4 informal arrangements such as where parents voluntarily placed children in State care or where the DSW was involved in informally placing a child with a family member, or temporary situations such as where the Police were transporting a child or young person or holding them in a Police Station.
- 21 For the purposes of this paper the impact of the Royal Commission on NGO’s and on Crown entities are considered separately, although they are all integral parts of what we are describing as the government care system.

The role of NGOs in the government care system

- 22 NGOs have played a key role in the government care system, for many decades, and the care system continues to rely heavily on their services. They provide a wide range of contracted services including: foster care placements, residential care services, early childhood education, family therapy, counselling, transition services for teenagers leaving care, teen parents’ services and parenting services. For example, in each year from 2009 to 2018, between 500 and 630 children were placed with NGO residential care service providers under section 396 of the Oranga Tamariki Act 1989. Oranga Tamariki has around fifty section 396 providers in total.
- 23 Most NGOs provide more than one type of service for more than one government agency. Some examples (to show the range of services NGOs provide) are:
- 23.1 Barnardos provides a range of direct social services for children and their families and whanau, as well as early learning services and systemic advocacy. Barnardos’ provides a full continuum of child and family services;

1 Or the Child Welfare Division of the Department of Education prior to 1972

- including foster care placements, specialist group homes, residential care, family violence prevention and postvention, parenting education and support, early help to support children and families facing negative experiences where children may be at risk of entering Oranga Tamariki care, and 0800 What's Up, a phone and web-based counselling helpline for children and teenagers;
- 23.2 Youth Horizons trust provides services for children and young people with severe behavioural or emotional challenges including Multi-Systemic Therapy and Cognitive Behavioural Therapy;
- 23.3 Nga Puhī Iwi Social Services provides foster care services (for children in the care or Oranga Tamariki), parenting programmes, intensive and general social work support, counselling (family violence or sexual abuse), Social Workers In Schools and programmes for young offenders; and
- 23.4 Open Home Foundation (OHF) provides a range of foster care placements for Oranga Tamariki (short-term, long-term, specialist, one-to-one) and holds custody or guardianship of children in its own right. OHF also provides social work-based services, such as preventing entry to care, safety planning, Family Group Conference monitoring, and a live-in parenting support service for teen mothers referred by Oranga Tamariki. OHF also provides out of home respite for families with a child with an intellectual disability or autism and intensive family wraparound support, funded by the Ministry of Health.
- 24 Discussion with NGOs was facilitated by two peak bodies: The Social Service Providers Aotearoa (SSPA) and the New Zealand Council of Christian Social Services (NZCCSS).

Areas of concern for NGOs about their current capacity and capability to respond to the potential impacts of Royal Commission activity

- 25 There are many direct and indirect ways the activity of the Royal Commission might impact on NGOs. The Royal Commission may choose to engage with one or more NGOs, individuals (who were previously in the care of an NGO) may be prompted by publicity about the Royal Commission to seek information about their time in care or other interested parties (such as journalists) may seek more general information about care an NGO previously provided.
- 26 The NGOs coordinated by SSPA identified some concerns about the potential impacts. They reported that NGOs ability to respond to potential impacts, which mostly relate to corporate activities such as information management, communications support and legal advice, is quite mixed. This is consistent with government contracting agencies experience of NGOs which also suggests that many NGOs have a limited in-house capacity for corporate functions.
- 27 Approximately a quarter (14 out of 52) of the NGOs who are approved to provide residential care services under section 396 of the Oranga Tamariki Act 1989, are iwi or Māori social service providers. It is not known how many Māori providers of residential care services were in operation during the period the Royal Commission is considering, but their numbers have increased, and their capability has grown significantly, in more recent years. The support outlined in this paper will be available to Maori providers, and we will work with Maori service providers to identify if they have any additional or alternative support needs.

28 Faith-based organisations who provide care services on contract to government were also contacted via the NZCCSS, and their feedback was broadly consistent with the other NGOs, but some differences are detailed further in paragraphs 39 and 40.

29 Areas of concerns that NGO sector stakeholders raised include:

29.1 Information provision: Royal Commission activity may result in additional demands for information. When NGOs receive requests for personal records from people who were in care it is important they can respond promptly. NGOs may also need to provide case management and pastoral support to the requestor. The Royal Commission may also request information from NGOs. This could include individual client records, staff records or more general information about policies and processes used in the past. NGOs typically have very limited resources to process such requests.

29.2 Communications support: If historic abuse in a specific NGO comes to light (for example, through the public hearings) they may need to respond to media requests, reflect publicly on what happened, and provide information to current clients, staff, caregivers, and other stakeholders. This would require media and communications skills, which some NGOs don't have;

29.3 Legal advice (including representation and legal liability): The Royal Commission has indicated that NGOs may need to provide evidence, or have legal representation, at public hearings to enable a fully open discussion of any abuse that may have happened under their care, so they can be held accountable. NGOs are committed to supporting survivors, but are concerned about potential litigation and legal liability, as an increase in claims of past abuse against NGOs is likely in response to publicity generated by the Royal Commission. As with the other corporate functions, NGOs are not currently well-resourced to do this.

30 The Crown will not need to support all NGOs in all of these areas. However, given what is currently known about the Royal Commission's processes and about NGO capability, it is likely that a number of NGOs will require support in at least one of these areas, and some may require support in all of them.

31 More will be known about the impact of the Royal Commission on NGOs, including what type of engagement and information the Royal Commission will want from them, as the inquiry progresses and the themes for the investigations and public hearings are announced. Further information on the Royal Commission's detailed operations and processes is also needed.

32 There may also be longer-term impacts on NGOs operational and business models from the recommendations of the Royal Commission. These impacts will be addressed as part of the process to respond to the Royal Commission's recommendations as they arise, so are not discussed in this paper.

Information provision

33 Many NGOs have quite rudimentary record keeping systems, particularly for older files - where they exist at all. Most report that their pre-2000 files are paper-based and 'patchy'. They are often handwritten, in less formal language (even shorthand) and a file can involve 100-150 pages or several boxes that can take

over a week to examine. If they were not required to keep records, NGOs may not have kept them. For example, under the Health (Retention of Health Information) Regulations 1996, providers were only required to keep individual health records for 10 years after health services to that individual ceased.

- 34 NGOs have told officials that requests for personal files tend to come in waves often sparked by media reports or other government activity, such as the Confidential Listening and Assistance Service. NGOs have reported an increase in requests for personal records from people who were in care since the Royal Commission was announced (but the numbers are currently still low). This suggests that information requests from people who were in state care may increase as the hearings start, and further publicity is generated.
- 35 Some NGOs may not have the skills or training to review requests for personal files to ensure redactions are consistent with the Privacy Act, particularly when files hold a lot of “mixed” information - personal information about other people than the requestor. This means NGOs may struggle to provide survivors with their records in a timely manner and may find it difficult to provide survivors with assistance in understanding the records and pastoral support to process the contents. A case management approach may be needed for this.
- 36 The Royal Commission may also request information directly from NGOs, for example about their past policies and practices (as it has already from Government agencies) or personnel records for previous staff or volunteers, to identify where particular individuals were working, or whether complaints were made and how they were dealt with. NGOs have not routinely retained these types of documents and work may be needed to establish each NGO’s organisational understanding and historical record, of its past services.

Communications support

- 37 Publicity about historical abuse generated by the Royal Commission’s public hearings could cause reputational risk that may impact on current services for children and families. There would be a need to discuss past events and negative reports with current clients, staff and stakeholders and respond to media enquiries. Some NGOs are not well-equipped to manage this type of situation, and at worst this could compromise their ability to provide services by diverting resources from their day to day business.

Legal advice (including representation to the Royal Commission)

- 38 Most NGOs have very limited or no experience participating in a Court or Inquiry hearing process, and some have expressed concern that the Royal Commission may expect them to have legal representation at public hearings (though it is not known who will be expected to appear or be present at hearings at this stage).
- 39 Along with the potential for increased requests for personal information, NGOs may also get an increase in claims of abuse from people who were previously in their care. Some NGOs have reported that claims have increased already since the Royal Commission was announced. Several NGOs have previously had historic abuse claims, but they have tended to respond on a one-off basis, meaning that there are some outstanding issues for how these are processed, for example:

- 39.1 how to ensure a fairer (and more collaborative) approach to claims across NGOs;
 - 39.2 the skills staff need to process historic claims (for example to make sure the privacy of other people (including those who may have been in care) is protected when information is released); and
 - 39.3 how to support clients to get the services they need from government agencies, for example ACC and/or other funded counselling services.
- 40 Most NGOs have a relationship with a law firm, but do not have law firms on retainers, so the question of legal advice (and how to afford it) sits across these issues. Some NGOs may have experience at representing themselves in hearings, but most will not, so the cost of representation will need to be considered.
 - 41 Whether for legal advice or other support, we will expect NGOs who access State support to act in ways that are consistent with the guiding principles across all actions related to the Royal Commission; information provision, legal representation or dealing with survivors.

There are a range of options to support NGOs - either for immediate action or for action within the next year

- 42 Given the areas of concern identified by NGOs who provide contracted care services, I consider the most appropriate areas for government to provide support should be:
 - 42.1 Networking support: To enable NGOs to monitor trends, share information, compare approaches and share their responses, to ensure survivors are supported across the NGO sector;
 - 42.2 Administrative, records and archiving support: Including Privacy Act requirements for the release of personal information and OIA training for more general requests;
 - 42.3 Communications support: Including responding to media inquiries and keeping current clients, staff and caregivers informed; and
 - 42.4 Legal support: Including representation for hearings.
- 43 Because the Royal Commission is still in the early stages of framing up its hearings and its areas of investigation, further details are needed to quantify exactly which type of support NGOs are likely to require, and when. Agencies will continue to engage with NGOs for the rest of the year and await further information from the Royal Commission about their processes, to better work through the likely requirements for support.
- 44 The broad options for delivering NGO support include:
 - 44.1 An NGO networking group could be set up supported by the Crown Secretariat responding to the Abuse in Care Inquiry to share information and develop more consistent approaches to record keeping, claims and representation to the Royal Commission. This could be based on the groups already consulted via the SSPA and the NZCCSS and using existing resources;

44.2 Training for NGO staff could be developed for specific purposes, such as to ensure survivors' privacy is protected. Technical supports such as software for OIA and Privacy Act redactions could also be provided (where the files are electronic). This could be done either on a one-off basis or as required via a central coordination point and may require additional resourcing depending on its content and how heavily subscribed it is.

44.3A central coordination point for advice and support – for example, on how to respond to information requests, how other NGOs are responding, how to prepare for hearings and access legal advice or administrative support. Potentially a peak body such as the SSPA could be funded to do this, which is likely to require a small amount of additional resource.

44.4A 'contingency' fund could be established that can be called on to reimburse administration, records, archiving, communications or legal support via:

44.4.1 **Reimbursing fair and reasonable costs:** This would require a centralised body or group that makes decisions about what is 'fair and reasonable'; or

44.4.2 **Set rate costs for specific purposes:** A schedule could be developed that sets arbitrary amounts and caps for specific purposes, for example ACC allows health providers like DHBs to invoice up to a set amount to cover the cost of finding records and doing a privacy check (if needed to identify whether a claimant has a mental injury). Another option could be to develop a list of approved contractors (for example, researchers or archivists that have the right type of expertise) that NGOs could use for legal and administrative support – and then charge back up to an identified cap. Preliminary work to determine the state of NGO's files might be needed in the first instance.

45 The details of these options will need to be worked through as more information is gained about the Royal Commission process.

Timeframes and funding mechanisms

46 There are different timeframes for when support might be needed, and different potential funding options. The Crown response funding approved in Budget 2019/20 included a modest amount to be held to meet response demands across agencies, such as legal representation and support and processing surges in information requests. There is some flexibility in this contingency, which could be drawn on to support NGOs and Crown entities. Agencies are responding to the Royal Commission using either resources allocated in Budget 2019/20 or absorbing costs within their baselines.

47 Some types of support might require additional funding and take longer to set up, while others can be done more immediately using existing in-house resourcing. For example, the networking option could be set up immediately at little cost by building on the engagement that has already begun in the process of developing this report.

48 Most other options would require further detail and analysis to develop them, including determining how much they would cost, whether part of the cost could be absorbed under current funding and whether it is appropriate for the Crown to

provide that type of support. It is proposed for agencies to do further work in the next few months as more information becomes available from the Royal Commission.

- 49 Any options that require additional funding, may then be put forward as part of the usual budget process later this year, and compared against other budget priorities.
- 50 The key will be to work with the NGO service provider sectors over the next few months to identify what demands they are starting to face so we can be as responsive as possible.

Faith-based organisations

- 51 Some faith-based organisations provide contracted care services to government and did so during the period covered by the Royal Commission. The six major faith-based organisations² who provide contracted care services were contacted via their peak body NZCCSS.
- 52 There are some complexities associated with faith-based institutions that do not apply to other NGOs. Some faith-based organisations have centralised social service arms closely tied to their churches, while others run independent regional operations. Some services were historically owned by a church before becoming independent trusts, others have closed and the accountability for them is unclear. The lines of accountability in church organisations can be very complex, but the public perception of accountability tends to fall to the church structure, regardless of whether they had any influence in the governance, monitoring and service delivery. In addition, the range of settings in which abuse may have taken place are more varied for faith-based institutions – in particular, there are a wide range of non-care settings such as pastoral, church or school-based activities.
- 53 Faith-based organisations' views on the potential impacts were similar to NGOs, but their approaches to those impacts were quite varied. Two have already retained lawyers and are clear that they do not want support from government, while others were quite concerned about their ability to respond to the Royal Commission. This needs to be further tested. In terms of the options described above, there may be a need for similar supports for some faith-based service providers, but this needs to be worked through as the focus may need to be slightly different. This work will be done over the next few months, as part of the wider work with the NGO sector on further developing the options in this paper.
- 54 NZCCSS reports that the faith-based institutions are planning how they may respond to the good practice identified and apply the findings from the Royal Commission as they emerge.

The role of Crown entities in the government care system

- 55 Several of the organisations that are key parts of the government care system (as defined by the Royal Commission's terms of reference) have subsequently become Crown entities under the Crown Entities Act (2004). The most significant of these are schools and DHBs.

² Catholic, Anglican, Presbyterian, Baptist and Methodist social services organisations and the Salvation Army.

56 The information collection and retention situation is different for Crown entities, as is the level of corporate capability. DHB's and Schools have their own disposal authorities and retention and disposal schedules. The Schools Disposal Authority is administered by the Ministry of Education and applies to Boards of Trustees records as well as the everyday business of school records whereas the DHB's manage their own.

Schools

57 The management, governance and leadership of the schooling sector is the responsibility of largely autonomous boards of trustees. Each School board of trustees is an individual Crown entity and could potentially face similar issues to those faced by NGOs, especially in regard to information and advice that the Royal Commission may require. Schools are subject to the Official Information Act (and the Privacy Act) and are legally required to respond to requests from individuals within the parameters of those Acts.

58 It is not anticipated that all schools will be impacted by the Royal Commission and at this stage it is unclear which boards of trustees may be impacted and to what extent they will need support from the Crown to adequately respond to these issues.

59 The Ministry of Education's regional network has relationships with schools in each area and can provide support to a school if required. The New Zealand School Trustees Association, as the peak body for boards of Trustees and a member of the education sector steering committee on the Royal Commission, can also support its members where needed.

60 As the options for NGO support are developed officials will also consider whether and how they may also be applicable to school boards of trustees.

61 Officials will be engaging directly with the small number of residential special schools and regional health schools to understand whether there are any specific concerns from these type of education providers.

DHBs

62 DHBs have not been considered as part of this paper, because they have their own separate funding and support processes via the Ministry of Health, and most of them already have strong and robust corporate processes in the areas discussed in this paper (information management, communications and legal advice). This includes having their own disposal authorities approved by the Chief Archivist and having their own legal and communications teams.

Consultation

63 This paper has been developed collaboratively by an interagency working group made up of the Ministries of Health, Education, Justice, and Social Development, Oranga Tamariki, the New Zealand Police, Archives New Zealand, Te Puni Kōkiri, the State Services Commission, Crown Law, the Accident Compensation Commission and the Department of Corrections, and coordinated by the inter-agency Crown Secretariat for the Historical Abuse Inquiry Response.

- 64 Engagement with selected group of key stakeholders from the NGO sector was also undertaken as part of the process for developing this paper. This involved meetings with the peak bodies SSPA and NZCCSS, who were responsible for engaging their members, and one half-day workshop with key NGOs identified by SSPA to consider the potential impacts of the Royal Commission and discuss how well the sector was positioned to respond to these.
- 65 The Ministry for Pacific Peoples, Te Arawhiti, the Office for Disability Issues and the Ministry for Women were also consulted, and the Department of Prime Minister and Cabinet and the Treasury have been informed.

Financial implications

- 66 This paper has no immediate financial implications. However, some of the future work identified may lead to the development of a budget bid which will be presented for discussion as part of the usual budget process, and subject to the usual budget process requirements, later this year.

Human rights implications

- 67 A strong rationale for this work, and for the work of the Royal Commission, is to uphold human rights. This work will not determine individual cases, but it is an important part of making changes to create a system that is more transparent and supportive for survivors of abuse in care and their whānau hapū, iwi, families and family groups.
- 68 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 and will support New Zealand to meet its obligations under various relevant international treaties and obligations. These include the UN Convention on the Rights of the Child, the UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the UN Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of all Forms of Discrimination Against Women, the UN International Convention on the Elimination of All Forms of Racial Discrimination and the UN Declaration on the Rights of Indigenous People.

Legislative implications

- 69 This paper has no legislative implications.

Regulatory impact and compliance cost statement

- 70 This paper has no regulatory or compliance implications.

Gender implications

- 71 This work may have some gender implications, as many of those who work in NGOs and are involved in the caring sector are women. Women are also over-represented among the staff of schools and health care organisations.
- 72 This work needs to be consistent with the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The CEDAW

Committee was concerned about the persistence of multiple barriers impeding women and girls from obtaining access to justice and effective remedies. It makes this observation with particular reference to Māori, Pasefika, Asian, migrant and refugee women, women with disabilities, transgender, lesbian and bisexual women and intersex persons.

Disability perspective

- 73 Disabled people and their experiences of abuse in State care need to be recognised and respected.
- 74 Many disabled children and adults were deprived of their liberty or taken into State care solely due to their physical or intellectual, disability, or mental health status, particularly in the period before de-institutionalisation in the early 1990s. Most of these services were psychopedic institutions, which were a mix of hospitals and residential schools. The last of these, the Kimberley Centre for the intellectually disabled, closed ten years ago. There were also some specialist schools which were run by charities or churches. It is estimated that at the peak of enrolments, about 460 disabled children were in nine State-funded residential special schools. Where they remain, special schools are now education sector Crown entities, such as Kelston deaf education centre in Auckland.
- 75 Disabled people may need additional support to access records from their care experience, and the relevant NGOs may need some help to provide that. This Inquiry is an opportunity to acknowledge that disabled people are a valued group in our society on an equal basis with others. By hearing the voices of disabled people, it also gives effect to the UN Convention on the Rights of Persons with Disabilities.

Proactive release

- 76 I propose to proactively release this paper in whole within 30 working days of its noting by Cabinet. It will be published on the State Services Commission website, with other agencies linking to the page as required. I do not propose to issue a separate press release at the time this paper is proactively released.

Recommendations

- 77 It is recommended that the Committee:
- 1 **note** that Cabinet has expressed concern that the inquiry process will “impact on a number of Crown entities and Non-Government Organisations (NGOs), and some may not have the capability or resources to comply with the likely requests from the Royal Commission, which could impact on current government services” [CAB-19-MIN-00139.01 refers [CAB-19-MIN-00139.01 refers];
 - 2 **note** that officials were directed to “report back to SWC by the end of August 2019 on whether support for NGOs and Crown entities impacted by the inquiry process is needed and if so, options to provide that support, and their financial implications” [CAB-19-MIN-00139.01 refers];

- 3 **agree** that it is important for NGOs and Crown entities to be able to fully engage with the Royal Commission and support survivors of abuse in care, while still providing care-related services to children and young people in need;
- 4 **note** that discussion with NGOs facilitated by the two peak bodies (Social Services Providers Aotearoa and the New Zealand Council of Christian Social Services) suggests that NGOs and Crown entities may need support in the areas of:
 - 4.1 **information management:** to provide personal files to people who were in care (and who may also require case management and pastoral support), and wider information about past policies and practices to the Royal Commission as requested;
 - 4.2 **communications support:** to respond to media requests and provide information and support to current clients, staff or caregivers if needed; and
 - 4.3 **legal advice:** to ensure people's privacy is protected, full representation can be made at Royal Commission hearings, and engagement with the Royal Commission is timely and complete;
- 5 **note** that as the current level of support required is uncertain, Officials will be monitoring the Royal Commission process as it develops to better assess which types of support are most likely to be needed.
- 6 **note** the proposed range of options discussed in this paper, including options to:
 - 6.1 support the establishment of an NGO networking group to enable information sharing and learning, and to support survivors and engagement with the Royal Commission;
 - 6.2 establish a central coordination point for advice and support (possibly in one of the peak bodies);
 - 6.3 develop training for NGOs, for example on records management and on meeting Privacy Act and Official Information Act requirements;
 - 6.4 establish a small contingency fund to reimburse "fair and reasonable" costs of information management, communications support and legal advice, to support survivors and engagement with the Royal Commission (this will involve developing frameworks and processes to determine what is fair and reasonable);
- 7 **direct** officials to continue to work with peak NGO bodies and the NGO sector to further develop the options set out in this paper;
- 8 **note** that any proposals which have cost implications that cannot be absorbed within baselines may be considered in the regular annual budget process led by the Treasury;
- 9 **note** that the Ministry of Education will be monitoring the Royal Commission's work to see how it impacts schools and other education providers and understand any support they may need;
- 10 **note** that the Ministry of Education will also be monitoring the support provided to NGOs with a view to considering whether such support would be appropriate for schools and other education providers as well; and

- 11 **note** that if any support options for schools and other education providers have cost implications for the Ministry of Education that cannot be absorbed within baselines these may be included in the regular annual budget process led by the Treasury.

Hon Chris Hipkins
Minister of State Services

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Cabinet Social Wellbeing Committee

Minute of Decision

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Crown Response to the Royal Commission of Inquiry into Historical Abuse: Support for Non-Government Organisations and Crown Entities

Portfolio State Services

On 25 September 2019, the Cabinet Social Wellbeing Committee:

- 1 **noted** that Cabinet has expressed concern that the inquiry process will “impact on a number of Crown entities and Non-Government Organisations (NGOs), and some may not have the capability or resources to comply with the likely requests from the Royal Commission, which could impact on current government services” [CAB-19-MIN-0139.01];
- 2 **noted** that officials were directed to “report back to SWC by the end of August 2019 on whether support for NGOs and Crown entities impacted by the inquiry process is needed and if so, options to provide that support, and their financial implications” [CAB-19-MIN-0139.01];
- 3 **agreed** that it is important for NGOs and Crown entities to be able to fully engage with the Royal Commission and support survivors of abuse in care, while still providing care-related services to children and young people in need;
- 4 **noted** that discussion with NGOs facilitated by the two peak bodies (Social Services Providers Aotearoa and the New Zealand Council of Christian Social Services) suggests that NGOs and Crown entities may need support in the areas of:
 - 4.1 information management: to provide personal files to people who were in care (and who may also require case management and pastoral support), and wider information about past policies and practices to the Royal Commission as requested;
 - 4.2 communications support: to respond to media requests and provide information and support to current clients, staff or caregivers if needed;
 - 4.3 legal advice: to ensure people’s privacy is protected, full representation can be made at Royal Commission hearings, and engagement with the Royal Commission is timely and complete;
- 5 **noted** that as the current level of support required is uncertain, Officials will be monitoring the Royal Commission process as it develops to better assess which types of support are most likely to be needed;

- 6 **noted** the proposed range of options discussed in the paper under SWC-19-SUB-0134, including options to:
- 6.1 support the establishment of an NGO networking group to enable information sharing and learning, and to support survivors and engagement with the Royal Commission;
 - 6.2 establish a central coordination point for advice and support (possibly in one of the peak bodies);
 - 6.3 develop training for NGOs, for example on records management and on meeting Privacy Act and Official Information Act requirements;
 - 6.4 establish a small contingency fund to reimburse “fair and reasonable” costs of information management, communications support and legal advice, to support survivors and engagement with the Royal Commission (this will involve developing frameworks and processes to determine what is fair and reasonable);
- 7 **directed** officials to continue to work with peak NGO bodies and the NGO sector to further develop the options set out in the paper under SWC-19-SUB-0134;
- 8 **noted** that agencies received a total of \$9.7 million to support participation in the Royal Commission, and that this should be considered first as a source of funding for NGO’s;
- 9 **noted** that any further requests for funding would need to be considered through the normal Budget process;
- 10 **noted** that the Ministry of Education will be monitoring the Royal Commission’s work to see how it impacts schools and other education providers and understand any support they may need;
- 11 **noted** that the Ministry of Education will also be monitoring the support provided to NGOs with a view to considering whether such support would be appropriate for schools and other education providers as well;
- 12 **noted** that if any support options for schools and other education providers have cost implications for the Ministry of Education that cannot be absorbed within baselines these may be included in the regular annual budget process led by the Treasury.

Jenny Vickers
Committee Secretary

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Cabinet

Minute of Decision

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Report of the Cabinet Social Wellbeing Committee: Period Ended 27 September 2019

On 30 September 2019, Cabinet made the following decisions on the work of the Cabinet Social Wellbeing Committee for the period ended 27 September 2019:

Out of Scope

SWC-19-MIN-0134 **Crown Response to the Royal Commission of Inquiry into Historical Abuse: Support for Non-Government Organisations and Crown Entities** CONFIRMED
 Portfolio: State Services

Out of Scope

Out of Scope



Michael Webster
Secretary of the Cabinet

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