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Hon Barbara Edmonds, Minister of Internal Affairs

Proactive release of Cabinet papers and associated documents related to the establishment of the Royal Commission of Inquiry into Lessons Learned from Aotearoa New Zealand's response to COVID-19 That Should Be Applied in Preparation for a Future Pandemic

15 March 2023

The following documents have been proactively released:

25 October 2022, Cabinet paper: Establishing an inquiry into New Zealand's preparedness for a future pandemic (including Appendix A: A summary of relevant reviews)

25 October 2022, CAB-22-MIN-0464: Cabinet: Minute of Decision

5 December 2022, Cabinet paper 'Establishment of the Royal Commission into lessons learned from Aotearoa New Zealand's response to COVID-19 that should be applied in preparation for any future pandemic

5 December 2022, CAB-22-MIN-0552: Cabinet: Minute of Decision

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 Codes:

- 9 (2)(f)(iv) – release would contradict the constitutional conventions which protect the confidentiality of advice given by Ministers and public service employees
- 9 (2)(a) – the withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons

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Office of the Minister of Internal Affairs

Cabinet

Establishing an inquiry into New Zealand's preparedness for a future pandemic

Proposal

- 1 This paper seeks agreement to establish an inquiry into New Zealand's preparedness for a future pandemic. It also proposes that a Royal commission is established for this matter.

Relation to government priorities

- 2 This paper relates to the COVID-19 pandemic response and ensuring our preparedness for any future pandemics. It also contributes to the broader priority of laying the foundations for the future.

Executive Summary

- 3 On 13 September 2022, with the COVID-19 Protection Framework (Protection Framework) retired, we entered a new phase of our pandemic response and returned to life without most of the extraordinary measures that had characterised the previous two and a half years.
- 4 It is now timely to invest in a process to learn from our COVID-19 experience, to leverage institutional knowledge and use those lessons to strengthen our preparedness for any future pandemics. It is a matter of public importance that we do so, to ensure that New Zealand has appropriate and effective policies and practices in place for the near future.
- 5 Seventy-five reviews have been carried out within New Zealand since 2020. In total, these reviews create a comprehensive record of the pandemic. The settings of the proposed inquiry are important, to ensure we do not duplicate previous reviews. There remains a significant opportunity, however, to carry out a holistic, future-oriented review of our response to the pandemic, to strengthen our future preparedness.
- 6 I seek agreement to establish an inquiry into New Zealand's preparedness for a future pandemic (the Inquiry), under the Inquiries Act 2013. The indicative purpose of the Inquiry is to strengthen New Zealand's preparedness for, and response to, future pandemics by identifying those lessons that can be learnt from New Zealand's response to COVID-19.
- 7 A decision on whether a Royal commission or public inquiry is established for this matter is sought at this time. Both options have identical powers. It is important that

we consider public expectations on this matter, which will have been shaped by the status and style of recent inquiries. These include, for example, the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019, and the Public Inquiry into the Earthquake Commission. I propose that the Inquiry is established as a Royal commission.

- 8 The Inquiry is expected to commence in early 2023 and conclude in mid-2024, when the final report will be delivered. The indicative start date for the Inquiry will enable agencies to develop and consult on the draft terms of reference, as well as finalise the budget and an appointment process for the members of the Inquiry. Cabinet consideration of these matters is proposed to occur in November 2022.
- 9 Given the indicative scope and purpose, and the expected workload, it is likely that the Inquiry will require either three or four members, including a Chair. Officials have advised that, based on these factors, the estimated cost of the Inquiry is \$9-\$13 million.
- 10 I recommend that the Minister of Internal Affairs is designated as the appropriate Minister for the Inquiry, and the Department of Internal Affairs (the Department) as the administering department. A group of Ministers will meet regularly to provide oversight and direction during the development of the Inquiry's draft terms of reference. The group includes the Prime Minister; the Minister of Finance; the Minister for Māori Crown Relations: Te Arawhiti; the Minister for the Public Service; the Minister of Health; the Minister for COVID-19 Response; and the Minister of Internal Affairs.
- 11 Subject to decisions, the Prime Minister and I intend to make a public announcement about the establishment of the Inquiry at an appropriate time.

An inquiry into New Zealand's preparedness for a future pandemic is a matter of public importance

- 12 The COVID-19 pandemic has represented an unparalleled challenge to New Zealand and the international community. In March 2020, the magnitude of its imminent threat to public health warranted an emergency response, the scale of which had never been carried out before in our country. While New Zealand's response has received favourable reviews, it caused an unprecedented disruption to our lives and economy. The elimination strategy implemented at the beginning of the pandemic, a time of considerable uncertainty about the virus, involved a set of extraordinary measures that significantly reduced the threat to public health.

Our public health strategy

- 13 New Zealand's elimination strategy was designed to save lives by keeping the virus out, finding it or stamping it out. This public health strategy was supported by economic measures to maintain lifeline utilities, ensure businesses could retain staff and cover costs while not operating, and support individuals to isolate or quarantine where necessary. The elimination strategy involved a series of COVID-19 alert levels to trigger necessary responses and inform people how to keep themselves safe.

- 14 Once vaccines became available and there had been significant uptake of them, New Zealand shifted to a minimisation and protection strategy, to reduce the spread of the virus in the community, and to protect both the people who were most at risk, and the health system. This public health strategy was supported by high vaccination rates, and a Protection Framework that updated the thresholds for different local or national responses to outbreaks of the virus. Fiscal and economic responses were also updated to reflect the Protection Framework.

The impact of the pandemic

- 15 International comparative analyses suggest that the strategic approach we took to the pandemic has enabled New Zealand to perform well across indicators such as mortality and vaccination rates. However, the pandemic has had, and continues to have, a significant and complex impact. While hospitalisation trends and levels of viral particles in wastewater have been relatively constant, recent case numbers have seen an increase in the seven-day rolling average from 1,598 for the week ending 9 October 2022 to 1,826 by 13 October 2022.
- 16 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 has taken a toll, in diverse ways and to varying degrees, on our social and economic wellbeing.

International and national reviews

- 17 New Zealand's response to the pandemic has been the subject of international and national reviews. The World Health Organisation (the WHO), the Lancet Commission, and the International Science Council have conducted international reviews.
- 18 Seventy-five reviews have been carried out within New Zealand since 2020, generating a total of 1 639 recommendations that cover a wide range of operational and policy issues. Independent reviewers (including the Auditor General, the Ombudsman, the Courts, and the Waitangi Tribunal) and some public sector agencies have conducted these reviews. Most focus on specific issues at a point in time, ranging from contact tracing and border measures, to the nation-wide vaccination rollout and the wage subsidy scheme. In total, these reviews create a valuable record of the pandemic. Appendix A provides a summary of the reviews.
- 19 To date, the United Kingdom, Scotland and Sweden have established inquiries. British Columbia, Canada, has also completed a similar review. In general, they have been tasked with examining pandemic preparation, response and impact, and to advise on the lessons and implications for future preparations. The Australian Federal Government has also recently announced that it plans to conduct an inquiry into Australia's response to the COVID-19 pandemic.

Learning from our experience of the pandemic to prepare for the future

- 20 There remains a significant opportunity and duty to carry out a holistic, future-oriented review of our response to the pandemic, which would include synthesising

the lessons captured in existing reviews and reports, to strengthen our future preparedness. The WHO's report supports this view. Its international review recommended all countries strengthen their national pandemic preparedness.

- 21 On 13 September 2022, with the Protection Framework retired, we entered a new phase of our pandemic response and returned to life without most of the extraordinary measures that had characterised the previous two and a half years.
- 22 It is now timely to invest in a process to learn from our COVID-19 experience and to use those lessons to strengthen our preparedness for any future pandemics. It is a matter of public importance that we do so, and to ensure that New Zealand has appropriate and effective policies and practices in place for the future.

A statutory inquiry is an appropriate mechanism for an inquiry into New Zealand's preparedness for a future pandemic

- 23 It is in this context that I seek agreement to establish an inquiry into New Zealand's preparedness for a future pandemic, under the Inquiries Act 2013. The options for which type of statutory inquiry should be established are discussed below.
- 24 The Inquiry is expected to commence in early 2023 and conclude in mid-2024, when the final report will be delivered. The indicative start date for the Inquiry will enable agencies to develop and consult on the draft terms of reference, as well as finalise the budget and an appointment process for the members of the Inquiry. Cabinet consideration of these matters is scheduled to occur in November 2022.
- 25 The indicative purpose and scope of the Inquiry, including recommendations sought and exclusions from the Inquiry, are presented below. The way they are currently framed indicates the matters to be covered, and how they will form the basis of the draft terms of reference. Some instances of language may change as the draft terms of reference is progressed.

Purpose and scope

- 26 The unprecedented and evolving nature of COVID-19 meant that uncertainty was a constant feature throughout the pandemic. A future pandemic will also bring with it uncertainty, along with a unique set of challenges. It will not replicate our experience of COVID-19. This context informs the indicative purpose and scope of the Inquiry, and confirms why we need to take a holistic, future-oriented review of our experience of the pandemic.
- 27 I propose that the indicative purpose of the Inquiry is to strengthen New Zealand's preparedness for, and response to, future pandemics by identifying those lessons that can be learnt from New Zealand's response to COVID-19.
- 28 In high-level terms, the indicative scope includes those lessons that can be learnt from New Zealand overall public health response to the COVID-19 pandemic and applied to future pandemic planning. This includes the associated economic and

social components of that response, with consideration given to the coherence of the components of the overall response as they evolved and interacted over time.

- 29 The indicative scope of the Inquiry includes the measures that can or should be taken to best prepare New Zealand to respond to any future pandemic, including consideration of:
- 29.1 the settings required to support New Zealand's response to a pandemic, and to maintain important services;
 - 29.2 Government decision-making processes and structures;
 - 29.3 the interests of Māori, including the design and provision of public health initiatives; and
 - 29.4 population groups that could have higher levels of vulnerability during a future pandemic, including, for example, Māori, Pacific peoples, ethnic communities, women, children and young people, seniors and disabled people.

Inquiry matters requiring recommendations

- 30 As suggested through the indicative purpose and scope, the Inquiry will make recommendations on measures to best prepare New Zealand to respond to any future pandemics in relation to the principal matters within scope. This is likely to include, for example, effective practices for communicating with and engaging communities.
- 31 The Inquiry will assess whether New Zealand's overall elimination, and minimisation and protection strategies in response to the COVID-19 pandemic were reasonable and effective in limiting the spread of infection and the impact of the virus on vulnerable groups and on the health system. The assessment should be based on New Zealand's circumstances and what was known at the time, and relative to alternate strategies internationally.

Exclusions from the Inquiry

- 32 There will be exclusions from the 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.
- 33 Based on the number of reviews, reports and court decisions already in the public domain, the Inquiry will not seek to create a detailed record of events and/or decisions during the COVID-19 pandemic. Nor, given its focus on using the lessons of this pandemic to prepare for our future response, will it seek to review and report on any individual public policy or operational decisions made by public authorities as they applied the relevant response frameworks to a given situation during the

COVID-19 pandemic. These will be excluded from the Inquiry, which will also exclude recent reforms to the health system.

- 34 It would not be constitutionally appropriate or an efficient use of public resources for the 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.
- 35 As noted above, the indicative purpose and scope, including recommendations sought and exclusions from the Inquiry, are currently framed to provide an indication of the matters to be covered. There may be some instances where the language or terminology changes during the development of the terms of reference.

Inquiry procedure

- 36 The public will have the opportunity to participate in the Inquiry. Consideration of the method and extent of public engagement and participation will occur during the development of the draft terms of reference.
- 37 The Inquiry will, to the extent practicable, use existing information, avoid legalistic or adversarial approaches, and use efficient and less formal procedures to gather information.

I propose that a Royal commission is established for the Inquiry

- 38 Under the Inquiries Act 2013 (the Act), there are two categories of statutory inquiry available to address matters of public importance: government inquiries and public inquiries. Both have identical powers and vary only in terms of the process of establishment and reporting.
- 39 There are no official criteria to determine which type of inquiry should be held, and determinations on this are a matter of Ministerial judgement. This involves considering the level of public importance that the matter carries, and the degree to which public interest requires a greater perception of status and independence from Government
- 40 Given the immense impact, scale and complexity of the COVID-19 pandemic, along with the anticipated significant level of public interest in the proposed inquiry, I consider that a statutory inquiry within the category of 'public inquiry' is appropriate for this matter. This view is reinforced when we consider that government inquiries 'typically deal with smaller and more immediate issues where a quick and authoritative answer is required' [Cabinet Manual 4.85].
- 41 Public inquiries may be established as either a Royal commission or public inquiry. Both have identical powers and are largely identical in their processes for establishment and reporting (these processes are set out below). The Cabinet Manual differentiates them as follows:

- 41.1 'Royal commissions are typically reserved for the most important matters of public importance' [section 4.81];
- 41.2 'a matter may require a public inquiry when it pertains to a particularly significant or wide-reaching issue that causes a high level of concern to the public and to Ministers' [section 4.83].
- 42 It is important that part of our consideration of this matter includes public expectations, which will be shaped by the status and style of recent inquiries. These include, for example, the:
- 42.1 Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019 (April 2019 – Nov 2020);
- 42.2 Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-Based Institutions (Nov 2018 – June 2023); and
- 42.3 Public Inquiry into the Earthquake Commission (Nov 2018 – March 2020).
- 43 Based on these considerations, I propose that the Inquiry is established as a Royal commission.

Establishment and reporting processes

- 44 Public inquiries (including Royal commissions) are established by the Governor-General by Order in Council. The final report of a public inquiry must be presented to the Governor-General and then by the appropriate Minister to the House of Representatives. The appropriate Minister also submits the Order in Council establishing the inquiry, publicly notifies the terms of reference for an inquiry in the New Zealand Gazette.

Appropriate Minister and administering department

- 45 For public inquiries (including Royal commissions), the Minister of Internal Affairs is typically the appropriate Minister. I recommend that the Minister of Internal Affairs is designated as the appropriate Minister for the Inquiry, and the Department of Internal Affairs (the Department) as the administering department.

Proposed membership of the Inquiry

- 46 Given the indicative scope and purpose, and the expected workload, it is likely that the Inquiry will require either three or four members, including a Chair. The Department's 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

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

- 47 Based on the Inquiry's indicative purpose and scope, the Chair and members should collectively have the following skills and attributes:
- 47.1 the ability to collaborate as part of a group that leads and delivers large-scale reviews;
 - 47.2 an understanding of public health;
 - 47.3 an understanding of public policy, economic policy and/or the public sector; and
 - 47.4 an ability to understand and engage with Māori interests.
- 48 The appointment process for the members of the Inquiry is proposed to be confirmed by Cabinet in November 2022. 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.

Next Steps

- 49 Subject to agreement to establish an inquiry into New Zealand's preparedness for a future pandemic, I intend to seek decisions in November 2022 on the Inquiry's:
- 49.1 final terms of reference;
 - 49.2 membership; and
 - 49.3 budget.
- 50 This enables time for the careful development of, and consultation on, the draft terms of reference, and for due diligence and consideration of the appointment process for the members.
- 51 A group of Ministers will meet regularly to provide oversight and direction during the development of the Inquiry's draft terms of reference. The group includes the Prime Minister; the Minister of Finance; the Minister for Māori Crown Relations: Te Arawhiti; the Minister for the Public Service; the Minister of Health; the Minister for COVID-19 Response; and the Minister of Internal Affairs.
- 52 The Minister of Internal Affairs (as the appropriate Minister) will consult with the Minister for the Public Service to seek agreement to the fee level for the members.
- 53 Once formally established, the Inquiry needs a period of time to undertake initial planning and communication before it is subject to public expectations of formally engaging stakeholders and receiving information.

Financial Implications

- 54 Officials have advised that, based on the indicative purpose and scope, the estimated cost of the Inquiry is \$9-\$13 million. This estimated cost relates only to the cost of carrying out the Inquiry, which includes those costs related to Inquiry members 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 Inquiry.
- 55 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. I note that the recent Royal Commission of Inquiry into the Attack on the Christchurch Mosques took over 18 months and \$14m to complete, while the current Ministerial review into the Future for Local Government has a budget of \$12m and a two-year timeframe.
- 56 As noted above, I intend to seek agreement to the budget for the Inquiry through a subsequent Cabinet paper in November 2022.
- 57 The Department does not have standing baseline funding to support statutory inquiries. There are no reprioritisation opportunities within the Department's baselines to fund the proposed estimated cost of the Inquiry, as a number of financial pressures already exist across the Department in 2022/23. Reprioritisation from the Department's appropriations would compound existing financial pressures and create additional risk to other workstreams.
- 58 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]. As the indicative start date of the Inquiry is early 2023.

Legislative Implications

- 59 This paper has no legislative implications. However, an Order in Council will be required following agreement to the Inquiry's terms of reference, which is proposed to occur in November 2022. The Inquiry's terms of reference will be a schedule attached to the Order in Council.

Impact Analysis

- 60 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

- 61 As noted above, the proposed indicative scope for the Inquiry includes consideration of:
- 61.1 the interests of Māori in the context of a pandemic, including the design and provision of public health initiatives; and
 - 61.2 population groups that could have higher levels of vulnerability during a future pandemic, including, for example, Māori, Pacific peoples, ethnic communities, women, children and young people, seniors and disabled people.

Human Rights

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

Consultation

- 63 The following departments were consulted: Ministry of Business, Innovation and Employment; Department of Corrections; Ministry of Defence; New Zealand Defence Force; Ministry of Education; Ministry of Foreign Affairs and Trade; Ministry of Health; Ministry of Justice; Office for Māori Crown Relations: Te Arawhiti; Ministry for Pacific Peoples; New Zealand Police; Ministry for Primary Industries; the Department of the Prime Minister and Cabinet; Public Service Commission; Ministry of Social Development; Ministry of Transport; and the Treasury. Crown Law Office was also consulted.

Communications

- 64 Subject to decisions the Prime Minister and I intend to make a public announcement about the establishment of an inquiry into the COVID-19 pandemic response at an appropriate time.
- 65 A media release covering these matters will also be issued following the announcement.

Proactive Release

- 66 The proactive release of this paper will be delayed until the Inquiry's terms of reference, membership and budget have been confirmed.

Recommendations

The Minister of Internal Affairs recommends that Cabinet:

- 1 **agree** that, following the decision to retire the COVID-19 Protection Framework from 13 September 2022, it is now timely to invest in a process to learn from our COVID-19 experience and to use those lessons to strengthen our preparedness for any future pandemics;
- 2 **agree** that it is a matter of public importance that New Zealand is prepared for a future pandemic;
- 3 **agree** to the establishment of an inquiry into New Zealand's preparedness for a future pandemic (the Inquiry), under the Inquiries Act 2013;
- 4 **agree** that the Inquiry is established as a Royal commission;

Purpose and scope of the Inquiry

- 5 **note** that the indicative purpose of the Inquiry is to strengthen New Zealand's preparedness for, and response to, future pandemics by identifying those lessons that can be learnt from New Zealand's response to COVID-19;
- 6 **note** that the indicative scope of the Inquiry includes:
 - 6.1 those lessons that can be learnt from New Zealand's overall public health response to the COVID-19 pandemic and applied to future pandemic planning; and
 - 6.2 the associated economic and social components of that response, with consideration given to the coherence of the components of the overall response as they evolved and interacted over time;
- 7 **note** that the Inquiry will assess whether New Zealand's overall elimination, and minimisation and protection strategies in response to the COVID-19 pandemic were reasonable and effective in limiting the spread of infection and the impact of the virus on vulnerable groups and on the health system, based on New Zealand's circumstances and what was known at the time, and relative to alternate strategies internationally;

Exclusions from the Inquiry

- 8 **note** that, based on the indicative scope and purpose, the indicative exclusions from the Inquiry include:
 - 8.1 a detailed record of events and decisions during the COVID-19 pandemic;
 - 8.2 the individual public policy or operational decisions made by public authorities as they applied to a given situation during the COVID-19 pandemic; and

8.3 recent reforms to the health system;

Indicative timeframe of the Inquiry

9 **note** that the Inquiry is expected to commence in early 2023 and conclude in mid-2024;

Appropriate Minister and administering department

10 **agree** that the Minister of Internal Affairs is the appropriate Minister for the Inquiry;

11 **agree** that the Department of Internal Affairs is the administering department for the Inquiry;

Next steps

12 **invite** the Minister of Internal Affairs to seek Cabinet agreement to the Inquiry's terms of reference, membership and budget in November 2022;

13 **note** that a group of Ministers will meet regularly to provide oversight and direction during the development of the Inquiry's draft terms of reference; and that the group includes the Prime Minister; the Minister of Finance; the Minister for Māori Crown Relations: Te Arawhiti; the Minister for the Public Service; the Minister of Health; the Minister for COVID-19 Response; and the Minister of Internal Affairs;

Communications

14 **note** that the Prime Minister and the Minister of Internal Affairs intend to announce the decision to establish the Inquiry at an appropriate time.

Authorised for lodgement

Hon Jan Tinetti

Minister of Internal Affairs

Appendix A: A summary of relevant reviews

APPENDIX A – Summary of relevant reviews

The table below highlights some of the reviews that have been completed or are underway in relation to the main dimensions of New Zealand's pandemic experience.

Relevant dimension	Relevant Reviews	Summary of findings / recs
Whole-of-Government response	<ul style="list-style-type: none"> Rapid Review of Initial arrangements for the national response to COVID-19 (1st Rapid Review, April 2020) 	Given the urgency, pressure and absence of a credible precedent, the responsiveness of the system, its leadership and flexibility created a solid foundation for the next phase of the response. Rec: a continuation of a refreshed AoG format combined with application of lessons learned would increase the probability.
	<ul style="list-style-type: none"> Second Rapid Review of the COVID-19 all of govt response (the Kitteridge report, Oct 2020) 	The system is in a better space than it was when the first rapid review was conducted. At the same time, a number of short-comings were identified that impacted the response to the August 2020 Auckland COVID-19 cluster. Key recs. had been implemented by first part of 2021.
	<ul style="list-style-type: none"> CICRIAG Review of the Auckland Feb. 2021 COVID-19 outbreak and NZ's current outbreak response capability (June 2021). 	Overall, the Group found that the response to the outbreak built on lessons from previous outbreaks but there were a number of areas where continuous improvements should be made to further enhance and de-risk performance.
	<ul style="list-style-type: none"> CICRIAG Observations from the recent Delta outbreak and their impact on Reconnecting NZers (Sept 2021). 	While there has been immense effort and progress in NZ's response to COVID-19, the goodwill and tolerance of NZers to lock-downs and closed borders is being challenged. A big programme of work is needed as we move towards the phased reopening of borders. It must be a collective and coherent set of actions, not divided up across the system.

	<ul style="list-style-type: none">• OAG has been undertaking a performance review of the central response (co-ordination & management - mainly by DPMC) to COVID-19. In 2021/22 the focus will be evaluating the centralised response, the vaccination roll-out, and reviewing the value for money of significant areas of Covid-19-related spending (ongoing).• Epidemic Response Select Committee reviewed aspects of NZ's response to the pandemic (2020).• Director-General of Health reviewed clusters in aged-care facilities (2020)• The Ombudsman reviewed and inspected: nine prisons while NZ was at Alert Level 3; isolation and secure aged care facilities (2020)• Simpson/Roche report/Advisory Committee to oversee the implementation of the NZ Covid-19 Surveillance Plan and Testing Strategy (Sept 2020).• OAG reviewed the availability and supply of PPE (2020).	
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Border management, travel restrictions and Managed Isolation and Quarantine (MIQ), and isolation at home	<ul style="list-style-type: none"> Border Sector Governance Group commissioned a review to provide assurance that required border measures in the CV-19PHRA (Air Border) Order were in place (Oct 2020). 	<p>Border sector agencies have done a remarkable job in creating end-to-end aviation border processes to manage risk, however this is not sustainable in long-term. Stronger focus needed on effect of new or changed requirements to ensure effective execution and compliance. Better governance, management and coordination needed.</p>
	<ul style="list-style-type: none"> MBIE/MoH commissioned a lessons learned review into managed isolation and quarantine of international marine workers at the Sudima Chch airport hotel (Dec 2020). 	<p>Insufficient integrated, multi-agency planning for the 1st tranche of mariners. Recs made in preparation for, and managing of, an expected 2nd tranche. Recs also made for the wider MIQ system.</p>
	<ul style="list-style-type: none"> Border Exec. Board commissioned an independent review of maritime and aviation border worker testing (Dec 2021). 	<p>Phase 1: looked at testing in MIQF. All recs for phase 1 have been closed or incorporated into BAU activity; Phase 2: assessed compliance with the testing and vaccination orders at the maritime & aviation borders. All recs for phase 2 have been addressed.</p>
	<ul style="list-style-type: none"> Ombudsman reviewed isolation facilities (Oct 2020 - August 2021 (Oct 2020). Air Commodore Webb released a review of the MIQ system (June 2020). Simpson/Roche report focussed on the surveillance and testing strategy at the border (Sept 2020). Ombudsman launched an inquiry into the MIQ booking system. His report is yet to be released (Oct 2021). 	

	<ul style="list-style-type: none"> Report of the independent review panel (chaired by the chief medical officer at Waitematā DHB) found that the deaths of two people with Covid-19 isolating at home were “potentially preventable” (Nov 2021) 	
Covid-19 vaccine roll-out	<ul style="list-style-type: none"> OAG reviewed how well the Govt. is planning and managing the COVID-19 vaccine roll-out (Feb 2021). 	Audit confirmed MoH working hard to roll the programme out but a significant scale up is required if Govt’s vaccinations goals are to be addressed. Made six recs including improving communication with the public; completing contingency plans; more guidance and clarity to the wider health sector. All recs acted on by MoH.
Adequacy of the health response	<ul style="list-style-type: none"> PM’s Chief Science Advisor commissioned Prof. Michael Bunce & Dr Marie Estcourt to report on the then current state of CV-19 lab. tests within the context of NZ’s pandemic response (March 2020) 	PCR testing method is the best way to track and trace virus. NZ must do all it can to maintain and optimise capacity. Antibody testing will become a crucial part of testing hospitalised patients but must never be regarded as a replacement for PCR tests
	<ul style="list-style-type: none"> Dr Ayesha Verrall, Univ. of Otago, undertook a rapid audit of contact tracing for COVID-19 in NZ (April 2020) 	Rapid case detection & contact tracing is central to COVID-19 elimination in NZ. The capacity of the 12 public health units is the primary factor in limiting NZ’s ability to scale up its case management and contact tracing response. In March 2020, workload of PHUs exceeded their ability to rapid contact trace even only 100 cases per day. Expansion of the PHU workforce is an urgent need. Measuring performance indicators to drive improvement an urgent priority. Report proposes a set of indicators.
	<ul style="list-style-type: none"> Waitemata DHB convened a panel to investigate and provide an incident review report into COVID-19 staff infections at Waitakere hospital (April 2020) 	Staff provided exemplary care to the six patients on the ward. Full PPE was available to staff at all times however there were problems with usability and changes in types of PPE provided. Recs were made concerning planning, PPE and information & communication.

	<ul style="list-style-type: none"> MoH commissioned Allen & Clarke to undertake a rapid review/ deep dive of COVID-19 contact tracing at 3 PHUs (May 2020) 	Found PHUs operating models are better placed now to respond to surge in cases than previously, however sustainability remains in question with centralised support needed into the future. Main limits across all PHUs relates to info. management and data collection, resulting in PHUs being limited in their ability to report performance against indicators.
	<ul style="list-style-type: none"> Prof. Michael Bunce undertook a rapid review of the role genomics can play in contact tracing etc (Sept 2020) 	NZ's genome sequencing to date has been world leading. The challenge ahead is to build capacity, redundancy, precision, dynamic reporting and speed (of sample delivery, processing and reporting).
	<ul style="list-style-type: none"> MoH commissioned COVID-19 Testing Technical Advisory Group to undertake a rapid review of COVID-19 Testing in Aotearoa NZ (Oct 2021) 	Diagnostic testing plays a critical role in NZ's COVID-19 response. Performance of labs good overall. Because of elimination strategy there has been a relative slowness to introduce saliva testing and to prepare for rapid antigen testing. With move from elimination phase , and the implementation of the reconnection plan, there is need to ensure COVID-19 testing is adaptable and fit for purpose.
Aged care facilities	<ul style="list-style-type: none"> Ombudsman inspected secure aged care facilities following Covid-19 related deaths in NZ in order to provide an independent assessment of how these facilities were responding to Covid-19 (June 2021). Director-General of Health reviewed aged-care facilities (June 2020). 	
Adequacy of the legal framework for the tier system, lock downs and managing the health response	<ul style="list-style-type: none"> Finance and Expenditure Select Committee reported on its inquiry into the operation of the COVID-19 Public Health Response Act (July 2020). 	The committee found the Act was necessary and appropriate. Rec that Govt. develop legislation that would provide a modern, enduring legal framework to respond to future public health emergencies.

	<ul style="list-style-type: none"> Epidemic Response Select Committee reviewed the legal framework for the response (2020) 	
Adequacy of response for, and impact on, Māori and Pacific communities (including vaccinations/ communication)	<ul style="list-style-type: none"> Waitangi Tribunal held a special hearing from 6 December 2021 into the disproportionate numbers of Māori vaccination rates and Covid-19 cases. The Waitangi Tribunal's inquiry will also ask whether the Crown's vaccination strategy and the Traffic Light system is consistent with Te Tiriti O Waitangi and what (if any) changes are required. 	
Adequacy of response for, and impact on, disabled people	<ul style="list-style-type: none"> HRC released its report "Inquiry into the Support of Disabled People and Whanau During Omicron" 	Inquiry found that responses to the spread of Omicron caused considerable stress and confusion and put the well-being of disabled people at risk. Note: work programme across Govt. is underway to address these concerns.
	<ul style="list-style-type: none"> Independent Monitoring Mechanism (Ombudsman /Disabled People's Organisations Coalition / HRC) reported on the Govt's response to COVID-19 – "Making Disability Rights Real in a Pandemic (Jan 2021) 	The inquiry identified six key issues with the Government's response to COVID-19: significant concerns with communications; staying safe during the pandemic; support to isolate safely; disrupted disability services; health services available; and lack of support in educational settings.
Economic response to the pandemic	<ul style="list-style-type: none"> OAG began reporting monthly on the Govt's additional expenditure on COVID-19 to provide assurance the expenditure had been correctly authorised (March 2020). 	Generally, throughout 2020 & 2021, authority for COVID-19 spending was in line with approvals provided by Parliament and Cabinet. The Controller function was able to identify two instances only where expenditure was unappropriated. OAG worked with agencies to resolve.

	<ul style="list-style-type: none"> OAG undertook annual / performance audits in to how well the Wage Subsidy Scheme was managed (Sept 2020). 	Govt. used a “high - trust” approach re. applications and eligibility for payments. Had greater risk of fraud and error. MSD took steps to manage / mitigate these risks. Some applications required further investigation. Rec. MSD prioritise its remaining enforcement work , including pursuing prosecutions.
	<ul style="list-style-type: none"> OAG undertook an inquiry into aspects of the Strategic Tourism Asset Protection Programme (Feb 2021) 	A high-trust approach. Concerns were noted about aspects of the programme criteria, assessment process and transparency in decision-making.
Testing capacity	<ul style="list-style-type: none"> MoH commissioned Allen & Clarke to review the events leading up to the PCR testing backlog during the early stages of the Omicron outbreak (June 2022). 	The review found a number of areas contributed to the issues including: laboratory capacity; planning; reporting; and organisational design. Nine recs. are made. MoH has responded to each.
Social cohesion/ licence (human rights, equity, fairness)	<ul style="list-style-type: none"> HRC released a set of 3 briefings outlining the human rights and treaty implications of the COVID-19 Protection Framework (Nov 2021). 	The briefings underline that the Government’s response to COVID-19 does not exist in a health and science vacuum. The goal of social cohesion (heavily linked to human rights and Te Tiriti) should also inform any response.



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated ^{Classification removed} 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.

Establishing an Inquiry into New Zealand's Preparedness for a Future Pandemic

Portfolio **Internal Affairs**

On 25 October 2022, the Cabinet:

- 1 **agreed** that, following the decision to retire the COVID-19 Protection Framework from 13 September 2022, it is now timely to invest in a process to learn from New Zealand's COVID-19 experience and to use those lessons to strengthen New Zealand's preparedness for any future pandemics;
- 2 **agreed** that it is a matter of public importance that New Zealand is prepared for a future pandemic;
- 3 **agreed** to the establishment of an inquiry into New Zealand's preparedness for a future pandemic (the Inquiry), under the Inquiries Act 2013;
- 4 **agreed** that the Inquiry be established as a Royal Commission;

Purpose and scope of the Inquiry

- 5 **noted** that the indicative purpose of the Inquiry is to strengthen New Zealand's preparedness for, and response to, future pandemics by identifying those lessons that can be learnt from New Zealand's response to COVID-19;
- 6 **noted** that the indicative scope of the Inquiry includes:
 - 6.1 those lessons that can be learnt from New Zealand's overall public health response to the COVID-19 pandemic and applied to future pandemic planning;
 - 6.2 the associated economic and social components of that response, with consideration given to the coherence of the components of the overall response as they evolved and interacted over time;
- 7 **noted** that the Inquiry will assess whether New Zealand's overall elimination, and minimisation and protection strategies in response to the COVID-19 pandemic were reasonable and effective in limiting the spread of infection and the impact of the virus on vulnerable groups and on the health system, based on New Zealand's circumstances and what was known at the time, and relative to alternate strategies internationally;

Exclusions from the Inquiry

- 8 **noted** that, based on the indicative scope and purpose, the indicative exclusions from the Inquiry include:
- 8.1 a detailed record of events and decisions during the COVID-19 pandemic;
 - 8.2 the individual public policy or operational decisions made by public authorities as they applied to a given situation during the COVID-19 pandemic;
 - 8.3 recent reforms to the health system;

Indicative timeframe of the Inquiry

- 9 **noted** that the Inquiry is expected to commence in early 2023 and conclude in mid 2024;

Appropriate Minister and administering department

- 10 **agreed** that the Minister of Internal Affairs be the appropriate Minister for the Inquiry;
- 11 **agreed** that the Department of Internal Affairs be the administering department for the Inquiry;

Next steps

- 12 **invited** the Minister of Internal Affairs to seek Cabinet agreement to the Inquiry's terms of reference, membership and budget in November 2022;
- 13 **noted** that a group of Ministers will meet regularly to provide oversight and direction during the development of the Inquiry's draft terms of reference, and that the group includes the Prime Minister, the Minister of Finance, the Minister for Māori Crown Relations: Te Arawhiti, the Minister for the Public Service, the Minister of Health, the Attorney-General, the Minister for COVID-19 Response, and the Minister of Internal Affairs;

Communications

- 14 **noted** that the Prime Minister and the Minister of Internal Affairs intend to announce the decision to establish the Inquiry at an appropriate time.

Rachel Hayward
Acting Secretary of the Cabinet

Classification removed

Office of the Minister of Internal Affairs

Cabinet

Establishment of the Royal Commission into lessons learned from Aotearoa New Zealand's response to COVID-19 that should be applied in preparation for any future pandemic

Proposal

- 1 This paper seeks agreement to the terms of reference, membership and funding for the Royal Commission of Inquiry into Lessons Learned from Aotearoa New Zealand's Response to COVID-19 That Should Be Applied in Preparation for a Future Pandemic (the Royal Commission).
- 2 It also seeks authorisation to submit an Order in Council (the establishment instrument) to the Executive Council on 5 December 2022.

Relation to government priorities

- 3 This paper relates to the COVID-19 pandemic response and ensuring our preparedness for any future pandemics. It also contributes to the broader priority of laying the foundations for the future.

Executive Summary

- 4 On 25 October 2022, Cabinet agreed to establish an inquiry into New Zealand's preparedness for a future pandemic, under the Inquiries Act 2013, and that it would be established as a Royal Commission [CAB-22-MIN-0464 refers].
- 5 I seek agreement to the terms of reference for the Royal Commission (see Appendix A). Officials have engaged with the proposed Chair of the Royal Commission on the terms of reference, as per Cabinet Manual guidance (4.103). This step in the process is to ensure that the proposed Chair and the Government have a shared understanding of the terms of reference.
- 6 The terms of reference state that the purpose of the Royal Commission is to strengthen Aotearoa New Zealand's preparedness for, and response to, any future pandemic by identifying those lessons learned from New Zealand's response to COVID-19 that should be applied in preparation for any future pandemic.
- 7 I propose that the Royal Commission may begin considering evidence from 1 February 2023, and that it is required to deliver a report with recommendations by 26 June 2024.

- 8 I propose that Professor Antony Blakely is appointed as the Royal Commission's Chair, and that Hon Hekia Parata and John Whitehead are appointed as its members. I seek agreement to recommend these appointments to the Governor-General.
- 9 I seek agreement for \$15.470 million to fund the Royal Commission. As the Royal Commission will commence immediately, the request for funding cannot be deferred until Budget 2023. Funding for the Royal Commission is therefore sought from the Between-Budget Contingency, established as part of Budget 22.
- 10 I seek authorisation to submit the Order in Council, made under the authority of the Letters Patent and the Inquiries Act 2013, to the Executive Council on 5 December 2022. This instrument, which will incorporate the terms of reference, is required to establish the Royal Commission. I propose to waive the rule that legislative instruments come into force at least 28 days after they have been notified in the *New Zealand Gazette*, on the grounds that the Royal Commission should be established as soon as possible.

Background

- 11 On 25 October 2022, Cabinet agreed that it is a matter of public importance that New Zealand is prepared for a future pandemic, and to establish an inquiry into New Zealand's preparedness for a future pandemic (the Inquiry), under the Inquiries Act 2013 [CAB-22-MIN-0464 refers]. Cabinet also agreed that the Inquiry be established as a Royal Commission, and invited the Minister of Internal Affairs to seek agreement to the Inquiry's terms of reference, membership and budget in November 2022.
- 12 On 25 October 2022, Cabinet noted that a group of Ministers will meet regularly to provide oversight and direction during the development of the Inquiry's draft terms of reference, and that the group includes: the Prime Minister; the Minister of Finance; the Minister for Māori Crown Relations: Te Arawhiti; the Minister for the Public Service; the Minister of Health; the Attorney-General; the Minister for COVID-19 Response; and the Minister of Internal Affairs.
- 13 Cabinet agreed that the Minister of Internal Affairs would be the appropriate Minister for the Inquiry, and that the Department of Internal Affairs (the Department) would be the administering department for the Inquiry.

The terms of reference for the Royal Commission

- 14 I seek agreement to the terms of reference for the Royal Commission (see Appendix A), and for the terms of reference to be incorporated into an Order in Council establishing the Royal Commission.
- 15 The terms of reference state that the purpose of the Royal Commission is to strengthen Aotearoa New Zealand's preparedness for, and response to, any future pandemic by identifying those lessons learned from New Zealand's response to COVID-19 that should be applied in preparation for any future pandemic.

- 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 and the terms of reference.
- 17 A group of Ministers (see paragraph 12) and relevant agencies have supported the development of the terms of reference. Officials have engaged with the proposed Chair of the Royal Commission on the terms of reference, as per Cabinet Manual guidance (4.103). This step in the process is to ensure that the proposed Chair and the Government have a shared understanding of the terms of reference. An opportunity to clarify an area of the 'Inquiry procedure' [clause 7] was identified during discussions between the proposed Chair and officials. Some minor amendments have been made to this regard, with no material effect.
- 18 The terms of reference recognise the Department of Internal Affairs as the relevant department for the Royal Commission, under section 4 of the Inquiries Act.
- 19 Funding is being sought to enable the Department to support the Royal Commission and to establish a secretariat, which will provide administrative and logistical support for the Chair and members (see Financial Implications). While the secretariat's support for the Chair and members will include seeking input from agencies, its role will not extend to coordinating individual agencies' responses or making connections between agencies with related questions.

All-of-government central coordination

- 20 Given the number of agencies that will be involved in supporting the Royal Commission, officials propose to establish an all-of-government central coordination role, similar to the way the COVID-19 Group, hosted by the Department of the Prime Minister and Cabinet (DPMC), provided coordination across agencies during the COVID-19 response. A small team would help bring consistency and efficiency to a potentially time-consuming process across agencies, to reduce the risk of duplication of effort, gaps, and high transaction costs in relation to all-of-government collateral.

- 21 9(2)(f)(iv) [Redacted]
Further information is presented in the Financial Implications section.

Timing of the Royal Commission

- 22 I propose that the Royal Commission commences on the day that the Order in Council comes into force and that it may begin considering evidence from 1 February 2023.
- 23 Once formally established, the Royal Commission 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. This avoids a risk of unplanned and reactive work by the Royal Commission or later

rework if initial engagements were not well planned. Based on the Department's experience of setting up Royal Commissions and other inquiries, this will take four to eight weeks from the establishment date.

- 24 The terms of reference note that the Royal Commission is required to deliver a report with recommendations by 26 June 2024.

Membership

- 25 Based on the expected workload, I am proposing that three members, including a Chair, are appointed to the Royal Commission. The Department's experience with inquiries is that efficiency, particularly with decision-making, is achieved through more than one member for such complex and high-profile inquiries. It 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
- 26 The Cabinet Manual (4.106) states that the members 'should be people whose expertise best suits the subject matter and purpose of the inquiry'. Based on the Royal Commission's terms of reference, the collective skills and attributes required of the members are:
- 26.1 the ability to collaborate as part of a group that leads and delivers large-scale reviews;
 - 26.2 an understanding of public health;
 - 26.3 a significant understanding of public policy, economic policy and/or the public sector; and
 - 26.4 an ability to understand and engage with Māori interests.
- 27 I propose that Professor Antony Blakely is appointed as the Chair of the Royal Commission, and seek agreement to recommend his appointment to the Governor-General.
- 28 Professor Antony Blakely, of Melbourne, works in academia and specialises in epidemiology and public health. He is currently a Research Professor at the University of Otago, and a Professorial Fellow in Epidemiology at Melbourne University. His understanding of public health is extensive, and he has published over 300 peer reviewed journal articles, including on the management of COVID-19.
- 29 I propose that Hon Hekia Parata and John Whitehead are appointed as members of the Royal Commission, and seek agreement to recommend their appointments to the Governor-General.

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

- 30 Hon Hekia Parata (Ngati Porou, Ngai Tahu), of Ruatoria, is a former Member of Parliament, whose Ministerial experience spans numerous portfolios, including Education, Women's Affairs, Pacific Island Affairs, and Ethnic Affairs. She has a broad understanding of public and economic policy, as well as significant public sector experience and a demonstrated ability to understand and engage with Māori interests. Before becoming a Member of Parliament, she served as the Deputy Chief Executive of Te Puni Kōkiri, and on the Board of Ngai Tahu Development Corporation.
- 31 John Whitehead, CNZM, KStJ, of Wellington, is an economist who has extensive public sector experience that includes serving as Minister (economic) at the New Zealand High Commission in London, Secretary and Chief Executive of the Treasury New Zealand, and as an Executive Director of the World Bank. He has been appointed to multiple government committees and has previous experience in government inquiries. He most recently served as Chancellor and Board Chair of the Order of St. John.
- 32 Subject to decisions, the proposed appointments of Professor Antony Blakely as the Royal Commission's Chair, and Hon Hekia Parata and John Whitehead as its members will be included in the Order in Council and will take effect once the Order in Council comes into force.
- 33 Appropriate enquiries concerning probity and actual or perceived conflicts of interest for the proposed Chair and members of the Royal Commission were undertaken by the Department. These enquiries included the completion of formal declarations on any actual or perceived conflicts. The Department also carried out a background check, including online background checks.
- 34 The Candidate CV Form for each proposed appointment and the APH Organisation Form are attached.

Fee level for the Chair and members

- 35 I seek agreement to a daily fee of \$1,680 for the Chair, and \$1,620 for the members. These fee levels are 20 percent higher than the daily fees for current and recent members of Royal Commissions, who have received a daily fee of \$1,350, and for the current Chair of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-Based Institutions.²
- 36 These fee levels were agreed in late 2018 for the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-Based Institutions, and again in early 2019 for the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019.

² Justice William Young was the Chair of the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Mosques on 15 March 2019, and was paid his salary as a sitting Judge of the Supreme Court of New Zealand.

Financial Implications

Budget for the Royal Commission

- 37 The estimated operating funding required for the Royal Commission is \$15.470 million. A breakdown of the budget is provided in **Table 1** below. The proposed budget relates only to the costs of carrying out the Royal Commission, 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, or for an all-of-government coordination role (see paragraphs 20-21 and 46-51).

Table 1: The Royal Commission's forecast cost summary

Cost category	Forecast cost (\$ million)
Secretariat Personnel	6.740
Operating & Support	6.058
Legal Counsel	0.500
Commissioner Fees	2.171
TOTAL	15.470

- 38 The proposed budget assumes that the Royal Commission will:
- 38.1 primarily focus on seeking lessons that should be learned and which are applicable for the future, and not deal with events involving significant failure or fault-finding, and so will not incur significant legal costs;
 - 38.2 utilise a considerable amount of existing material as an input to its work, and not duplicate or repeat that work;
 - 38.3 consider how best to hear from, or engage with, individuals, groups and communities in order to examine the matters within its scope;
 - 38.4 need significant capacity to examine a large volume and breadth of material and information, both material already in the public domain and material supplied to it by individuals, groups, communities and by government agencies; and
 - 38.5 be able to rely on existing government agency networks to establish connections with key people or groups within the specific subject matter areas and communities within its scope, and then will be supported by agencies to connect with those people and groups, so will not require resources to establish and maintain those relationships entirely of its own accord, beyond what it may naturally have by virtue of the experience of its members and secretariat.

- 39 I note that the proposed budget is in line with recent inquiries. For example, the Royal Commission of Inquiry into the Attack on the Christchurch Mosques on 15 March 2019 took over 18 months and cost approximately \$14 million to complete, while the current Ministerial review into the Future for Local Government has a budget of \$12.3 million and a two-year timeframe.
- 40 The Department does not have standing baseline funding to support statutory inquiries. There are no reprioritisation opportunities within the Vote Internal Affairs baselines to fund the estimated cost of the Royal Commission, as a number of financial pressures already exist across the Department in 2022/23 and outyears.
- 41 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].
- 42 As the Royal Commission will commence immediately, the request for funding cannot be deferred until Budget 2023. Funding for the Royal Commission is therefore sought from the Between-Budget Contingency, established as part of Budget 22.
- 43 Accordingly, I seek approval for a total of \$15.470 million increase to the Vote Internal Affairs appropriations from 2022/23 to 2024/25 to cover the costs of the Royal Commission.
- 44 If the Royal Commission's expenditure is lower than budgeted after its close down, then I propose that any underspend associated with the Royal Commission be returned to the Centre.
- 45 The funding sought is an informed estimate of what will be required and reasonable for the Royal Commission to complete its work. Once the Royal Commission commences and plans its work in detail, there may be some variation in the budget that requires it to be rephased. There have been previous statutory inquiries that have required more funding and time than originally allocated. I note that there is the potential for the Royal Commission to experience a short delay to its work due to the likely challenges of staffing the secretariat at this time. Such a delay could then pose a possible risk to the Royal Commission delivering its report and recommendations by 26 June 2024.

All-of-government coordination team

- 46 Officials propose that an all-of-government coordination team be established, hosted by DPMC, to coordinate and support input from across agencies to the Royal Commission. This team would enable efficient and comprehensive support for the Royal Commission across a large number of agencies, as well as bringing together DPMC's own input. This input will include collating Cabinet papers and minutes, material that relates to COVID-19 Independent Advisory Groups as well as work that DPMC's COVID-19 Group led in bringing together input from many agencies such as Alert Level Cabinet briefings. The combined costs of these functions is \$708,000 in 2022/23 and \$1.699 million in 2023/24. **Table 2** below sets out the details.

Table 2: All-of-government coordination team forecast cost summary

	TOTAL (\$ million)
Personnel (salaries & on-costs)	1.640
CASS and Corporate overheads	0.510
Other costs (incl. contingency)	0.239
Travel	0.018
TOTAL	2.407

- 47 9(2)(f)(iv) [REDACTED]
 This could include redeploying some staff remaining in the COVID-19 Group, which enables fast establishment and the retention of institutional knowledge.
- 48 Funding for the COVID-19 Group is held in the departmental output expense appropriation "COVID-19 All of Government Response" in Vote Prime Minister and Cabinet and this appropriation has sufficient scope for the proposed functions of the team.
- 49 This paper proposes that it is preferable to apply existing funding capacity to the costs of this team rather than to return the full underspend to the Centre and seek new funding of \$2.407 million over two years from the Between-Budget contingency (\$708,000 in 2022/23 and \$1.699 million in 2023/24).
- 50 The commensurate impact of this approach will be that a lower amount will be returned to the Centre for the 2022/23 COVID-19 underspend.
- 51 9(2)(f)(iv) [REDACTED]

The Royal Commission's financial transparency and accountability

- 52 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.
- 53 As per the terms of reference, the Royal Commission will 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.

- 54 The Royal Commission will also provide a quarterly report 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 Order in Council

- 55 I seek authorisation to submit the Order in Council, made under the authority of the Letters Patent and the Inquiries Act 2013, to the Executive Council on 5 December 2022. This instrument is required to establish the Royal Commission and it will incorporate the terms of reference. Subject to decisions, it will confirm Professor Antony Blakely as the Royal Commission's Chair, and Hon Hekia Parata and John Whitehead as its members.
- 56 Section 7 of the Inquiries Act 2013 requires the Order in Council to include specific matters relevant for the establishment of the Royal Commission. I confirm that the Order in Council complies with these requirements as well as the principles of the Treaty of Waitangi; the rights and freedoms contained in the New Zealand Bill of Rights Act 1990; the Human Rights Act 1993; the principles and guidelines set out in the Privacy Act 1993; and relevant international standards and obligations.
- 57 Subject to Cabinet decisions, the Order in Council will be submitted to the Executive Council on 5 December 2022 and come into force on the day after its notification.
- 58 I propose to waive the rule that legislative instruments come into force at least 28 days after they have been notified in the *New Zealand Gazette*, on the grounds that the Royal Commission should be established as soon as possible.
- 59 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 Order in Council has been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet (see Appendix A).

Impact Analysis

- 60 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

- 61 As per the terms of reference, the Royal Commission's scope includes consideration of:
- 61.1 the interests of Māori in the context of a pandemic, consistent with Te Tiriti relationship; and
 - 61.2 the impact on, and differential support for, essential workers and populations and communities that may be disproportionately impacted by a pandemic.

Human Rights

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

Consultation

- 63 The following departments were consulted: Ministry of Business, Innovation and Employment; Department of Corrections; New Zealand Customs Service; Ministry of Defence; New Zealand Defence Force; Ministry for Disabled People; Ministry of Education; National Emergency Management Agency; Ministry of Foreign Affairs and Trade; Ministry of Health; Ministry of Justice; Office for Māori Crown Relations: Te Arawhiti; Ministry for Pacific Peoples; New Zealand Police; Ministry for Primary Industries; the Department of the Prime Minister and Cabinet; Public Service Commission; Ministry of Social Development; Ministry of Transport; and the Treasury. Crown Law Office and Parliamentary Counsel Office were also consulted.

Communications

- 64 Subject to decisions, the Prime Minister and I intend to make a public announcement about the establishment of the Royal Commission at an appropriate time.
- 65 A media release will also be issued.

Proactive Release

- 66 I intend to proactively release this paper and the Cabinet paper 'Establishing an inquiry into New Zealand's preparedness for a future pandemic' within 30 business days, subject to redaction as appropriate under the Official Information Act 1982.

Recommendations

The Minister of Internal Affairs recommends that Cabinet:

- 1 **note** that, on 25 October 2022, Cabinet agreed:
- 1.1 to establish an inquiry into New Zealand's preparedness for a future pandemic (the Inquiry), under the Inquiries Act 2013;

- 1.2 that the Inquiry be established as a Royal Commission;
- 1.3 that the Minister of Internal Affairs would be the appropriate Minister for the Inquiry;
- 1.4 that the Department of Internal Affairs would be the administering department for the Inquiry;
- 1.5 to invite the Minister of Internal Affairs to seek agreement to the Inquiry's terms of reference, membership and budget in November 2022 [CAB-22-MIN-0464 refers];

Terms of reference

- 2 **agree** that the purpose of the Royal Commission is to strengthen Aotearoa New Zealand's preparedness for, and response to, any future pandemic by identifying those lessons learned from New Zealand's response to COVID-19 that should be applied in preparation for any future pandemic;
- 3 **agree** to the terms for reference for the Royal Commission, as contained in the establishment instrument attached as Appendix A;
- 4 **agree** that the Royal Commission's terms of reference are incorporated into an Order in Council that will establish the Royal Commission;
- 5 **agree** that the Royal Commission may begin considering evidence from 1 February 2023, and that it is required to deliver a report with recommendations by 26 June 2024;

Appointments

- 6 **agree** that the Minister of Internal Affairs recommends the appointment of Professor Antony Blakely as the Chair of the Royal Commission to the Governor-General
- 7 **agree** that the Minister of Internal Affairs recommends the appointment of Hon Hekia Parata as a member of the Royal Commission to the Governor-General;
- 8 **agree** that the Minister of Internal Affairs recommends the appointment of John Whitehead as a member of the Royal Commission to the Governor-General;
- 9 **note** that appropriate due diligence, background checks and conflict of interest processes were carried out by the Department of Internal Affairs for the proposed Chair and additional members of the Royal Commission;
- 10 **agree** to a daily fee of \$1,680 for the Chair of the Royal Commission;
- 11 **agree** to a daily fee of \$1,620 for the members of the Royal Commission;
- 12 **note** that these fee levels are 20 percent higher than the daily fees for current and recent members of Royal Commissions;

Financial Implications

- 13 **agree** to increase funding in Vote Internal Affairs by \$15.470 million to meet the costs of the Royal Commission;
- 14 **note** that the request for funding is urgent, cannot be met from Vote Internal Affairs baselines, and cannot be deferred until Budget 2023;
- 15 **approve** the following changes to appropriations to meet the costs of the Royal Commission, with a corresponding impact on the operating balance and net debt:

	\$million – increase/(decrease)				
Vote Internal Affairs Minister of Internal Affairs	2022/23	2023/24	2024/25	2025/26	2026/27 & 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)	4.046	8.527	0.726	-	-
Non-Departmental Other Expense: Statutory Inquiries	0.811	1.360	-	-	-
Total Operating	4.857	9.887	0.726	-	-

- 16 **agree** that the proposed changes to appropriations for 2022/23 above be included in the 2022/23 Supplementary Estimates and that, in the interim, the increases be met from Imprest Supply;
- 17 **agree** that the operating expenses incurred under recommendation 15 above be charged against the Between-Budget Contingency, established as part of Budget 2022;
- 18 **agree** in principle to transfer from 2022/23 to 2023/24, and from 2023/24 to 2024/25, 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;

- 19 **agree** that any underspend associated with the Royal Commission be returned to the Centre after its close down;
- 20 **note** that the Department of the Prime Minister and Cabinet (DPMC) proposes to establish and host an all-of-government coordination team for the duration of the Royal Commission;
- 21 **note** that there is an existing departmental output expense appropriation “COVID-19 All of Government Response” in Vote Prime Minister and Cabinet with sufficient scope and funding remaining in 2022/23 to fund the cost of hosting the function described in recommendation 20 above, estimated at \$2.407 million over two years (\$708,000 in 2022/23 and \$1.699 million in 2023/24);
- 22 **note** that Cabinet has previously agreed [CAB-22-MIN-0487 refers] that any underspend remaining in the above appropriation for 2022/23 once functions previously undertaken by DPMC have been transferred to other line agencies should be returned to the Centre, with a high bar for DPMC to retain it;
- 23 **agree** that applying \$2.407 million of that underspend to the cost of hosting the function described in recommendation 22 above is a preferred approach to returning the full underspend to the Centre and seeking new funding of \$2.407 million over two years from the Between-Budget contingency;
- 24 **agree** to apply \$708,000 in 2022/23 and \$1.699 million in 2023/24 to enable all-of-government coordination and DPMC input to the Royal Commission by applying forecast 2022/23 underspend in the Vote Prime Minister and Cabinet departmental output expense COVID-19 All of Government Response appropriation, as discussed in recommendations 21 to 23 above;
- 25 **agree** to transfer \$1.699 million from 2022/23 to 2023/24, to ensure funding is available for the all-of-government coordination function and DPMC input for the duration of the Royal Commission;
- 26 **approve** the following changes to appropriations to give effect to the decisions in recommendation 25 above, with no impact on the operating balance and net debt across the forecast period:

	\$million – increase/(decrease)				
Vote Prime Minister and Cabinet Minister for COVID-19 Response	2022/23	2023/24	2024/25	2025/26	2026/27 & Outyears
Departmental Output Expense:	(1.699)	1.699	-	-	-

COVID-19 All of Government Response (funded by revenue Crown)					
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27 **agree** that the proposed change to appropriations for 2022/23 above be included in the 2022/23 Supplementary Estimates;

Submission of Order in Council

28 **authorise** the submission of the Order in Council, made under the authority of the Letters Patent and the Inquiries Act 2013, to the Executive Council on 5 December 2022;

29 **note** that a waiver of the 28-day rule is sought so that the Order in Council can come into force on the day after its notification, on the grounds that the Royal Commission should be established as soon as possible;

30 **agree** to a waiver of the 28-day rule.

Authorised for lodgement

Hon Jan Tinetti

Minister of Internal Affairs

[Appendix A: Royal Commission of Inquiry (COVID-19 Lessons) Order 2022 (which contain the terms of reference as a Schedule)]

This document is publicly available at:

https://www.legislation.govt.nz/regulation/public/2022/0323/latest/LMS792965.html?search=ts_regulation%40deemedreg_inquiry_resele_25_a&p=1

[Appendix B: APH Organisation Form and Candidate CV Forms]

These documents have been withheld under 9 (2)(a)



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated ^{Classification removed} 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.

Establishment of the Royal Commission Into Lessons Learned From Aotearoa New Zealand's Response to COVID-19 That Should Be Applied In Preparation For Any Future Pandemic

Portfolio Internal Affairs

On 5 December 2022, following reference from Cabinet Business Committee, Cabinet:

- 1 **noted** that, on 25 October 2022, Cabinet:
 - 1.1 agreed to establish an inquiry into New Zealand's preparedness for a future pandemic (the Inquiry), under the Inquiries Act 2013;
 - 1.2 agreed that the Inquiry be established as a Royal Commission (the Royal Commission);
 - 1.3 agreed that the Minister of Internal Affairs is the appropriate Minister for the Inquiry, and that the Department of Internal Affairs be the administering department for the Inquiry;
 - 1.4 invited the Minister of Internal Affairs to seek agreement to the Inquiry's terms of reference, membership and budget in November 2022;

[CAB-22-MIN-0464]

Terms of reference

- 2 **agreed** that the purpose of the Royal Commission is to strengthen Aotearoa New Zealand's preparedness for, and response to, any future pandemic by identifying those lessons learned from New Zealand's response to COVID-19 that should be applied in preparation for any future pandemic;
- 3 **agreed** to the terms for reference for the Royal Commission, as contained in the establishment instrument attached as Appendix A under CAB-22-SUB-0552;
- 4 **agreed** that the Royal Commission's terms of reference are incorporated into an Order in Council that will establish the Royal Commission;
- 5 **agreed** that the Royal Commission may begin considering evidence from 1 February 2023, and that it is required to deliver a report with recommendations by 26 June 2024;

Appointments

- 6 **agreed** that the Minister of Internal Affairs recommend that the Governor-General appoint Professor Antony Blakely as the Chair of the Royal Commission;
- 7 **agreed** that the Minister of Internal Affairs recommend that the Governor-General appoint Hon Hekia Parata as a member of the Royal Commission;
- 8 **agreed** that the Minister of Internal Affairs recommend that the Governor-General appoint John Whitehead as a member of the Royal Commission;
- 9 **noted** that appropriate due diligence, background checks and conflict of interest processes were carried out by the Department of Internal Affairs for the proposed Chair and additional members of the Royal Commission;
- 10 **agreed** to a daily fee of \$1,680 for the Chair of the Royal Commission;
- 11 **agreed** to a daily fee of \$1,620 for the members of the Royal Commission;
- 12 **noted** that the above fee levels are 20 percent higher than the daily fees for current and recent members of Royal Commissions;

Financial Implications

- 13 **agreed** to increase funding in Vote Internal Affairs by \$15 470 million to meet the costs of the Royal Commission;
- 14 **noted** that the request for funding is urgent, cannot be met from Vote Internal Affairs baselines, and cannot be deferred until Budget 2023;
- 15 **approved** the following changes to appropriations to meet the costs of the Royal Commission, with a corresponding impact on the operating balance and net debt:

Vote Internal Affairs Minister of Internal Affairs	\$million – increase/(decrease)				
	2022/23	2023/24	2024/25	2025/26	2026/27 & 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)	4.046	8.527	0.726	-	-
Non-Departmental Other Expense: Statutory Inquiries	0.811	1.360	-	-	-
Total Operating	4.857	9.887	0.726	-	-

- 16 **agreed** that the changes to appropriations for 2022/23 above be included in the 2022/23 Supplementary Estimates and that, in the interim, the increases be met from Imprest Supply;
- 17 **agreed** that the operating expenses incurred under paragraph 15 above be charged against the Between-Budget Contingency, established as part of Budget 2022;
- 18 **agreed in principle** to transfer from 2022/23 to 2023/24, and from 2023/24 to 2024/25, 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;
- 19 **agreed** that any underspend associated with the Royal Commission be returned to the Centre after its closedown;
- 20 **noted** that the Department of the Prime Minister and Cabinet (DPMC) proposes to establish and host an all-of-government coordination team for the duration of the Royal Commission;
- 21 **noted** that there is an existing departmental output expense appropriation “COVID-19 All of Government Response” in Vote Prime Minister and Cabinet with sufficient scope and funding remaining in 2022/23 to fund the cost of hosting the function described in paragraph 20, estimated at \$2.407 million over two years (\$708,000 in 2022/23 and \$1.699 million in 2023/24);
- 22 **noted** that Cabinet has previously agreed that any underspend remaining in the above appropriation for 2022/23 once functions previously undertaken by DPMC have been transferred to other line agencies should be returned to the Centre, with a high bar for DPMC to retain it [DEV-21-MIN-0235];
- 23 **agreed** that applying \$2.407 million of that underspend to the cost of hosting the function described in recommendation 20 above is a preferred approach to returning the full underspend to the Centre and seeking new funding of \$2.407 million over two years from the Between-Budget contingency;
- 24 **agreed** to apply \$708,000 in 2022/23 and \$1.699 million in 2023/24 to enable all-of-government coordination and DPMC input to the Royal Commission by applying forecast 2022/23 underspend in the Vote Prime Minister and Cabinet departmental output expense COVID-19 All of Government Response appropriation;
- 25 **agreed** to transfer \$1.699 million from 2022/23 to 2023/24, to ensure funding is available for the all-of-government coordination function and DPMC input for the duration of the Royal Commission;
- 26 **approved** the following changes to appropriations to give effect to the above decisions, with no impact on the operating balance and net debt across the forecast period:

	\$million – increase/(decrease)				
Vote Prime Minister and Cabinet Minister for COVID-19 Response	2022/23	2023/24	2024/25	2025/26	2026/27 & Outyears
Departmental Output Expense:					
COVID-19 All of Government Response (funded by revenue Crown)	(1.699)	1.699	-	-	-

- 27 **agreed** that the change to appropriations for 2022/23 above be included in the 2022/23 Supplementary Estimates;

Submission of Order in Council

- 28 **authorised** the submission of the Royal Commission of Inquiry (COVID-19 Lessons) Order 2022 [PCO 25137/4.0] to Executive Council on 5 December 2022;
- 29 **noted** that a waiver of the 28-day rule is sought so that the Order in Council can come into force on the day after its notification, on the grounds that the Royal Commission should be established as soon as possible;
- 30 **agreed** to a waiver of the 28-day rule.

Rachel Hayward
Secretary of the Cabinet

Proactively Released by the Minister of Internal Affairs