



# Internal Affairs briefing

Hon Brooke van Velden  
Minister of Internal Affairs

Title: **Royal Commission of Inquiry into COVID-19 Lessons: Further advice on Out of scope [redacted] and on receiving a report from the Inquiry**

Date: 16 May 2024

## Key issues

- Out of scope
- [redacted]
- In the context of the proposal to establish a second phase of the Royal Commission, there are two potential options to be considered for the receipt of the report from phase 1 of the Inquiry. The report may be delivered to the Governor General, presented to Parliament, and made public. Alternatively, as the statutory requirements relating to inquiry reports only refer to final reports, the report may be presented to the Minister of Internal Affairs and made public. In either case, the preferred arrangement will need to be set out in the amended terms of reference for the Royal Commission.

## Action sought

Out of scope

## Timeframe

20 May 2024

Contact for telephone discussions (if required)


Name	Position	Contact Number	Suggested 1 <sup>st</sup> contact
Anita Balakrishnan	Acting Director Inquiries	9(2)(a) [redacted]	✓
Alan Edwards	Principal Advisor	9(2)(a) [redacted]	

Return electronic document to:	<a href="mailto:Alan.Edwards@dia.govt.nz">Alan.Edwards@dia.govt.nz</a>
Cohesion document reference	<a href="#">BRF - Royal Commission into COVID-19 Lessons - advice on appointing a third Commissioner and receiving reports -16 May 2024.docx (cohesion.net.nz)</a>
Ministerial database reference	IA20242191


## Purpose

1. As requested, this briefing provides advice Out of scope and on receiving a first report from the Royal Commission. In both cases, the context for this advice includes your recent direction to prepare Cabinet papers proposing the creation of a second phase of the Royal Commission.
2. Our references here to the Royal Commission, to the Inquiry, and to a report relate to the Inquiry and report required under the current terms of reference of the Royal Commission. The current terms of reference and the report required under it would become phase 1 of the Royal Commission under the proposal to introduce a second phase of the Royal Commission.


Out of scope



Out of scope



Out of scope



### **Receiving a report from the Royal Commission**

13. There are statutory requirements relating to the final reports of inquiries set out in section 12 of the Act. Royal Commission reports must be presented to the Governor General, and then as soon as practicable the appropriate Minister must present them to Parliament. The provisions in section 12 of the Act refer to final reports and contain no specific requirements relating to interim or other reports that may be produced by an inquiry. The policy intention of the requirement in the Act for the appropriate Minister to present a report to Parliament is to ensure that the reports are made public.

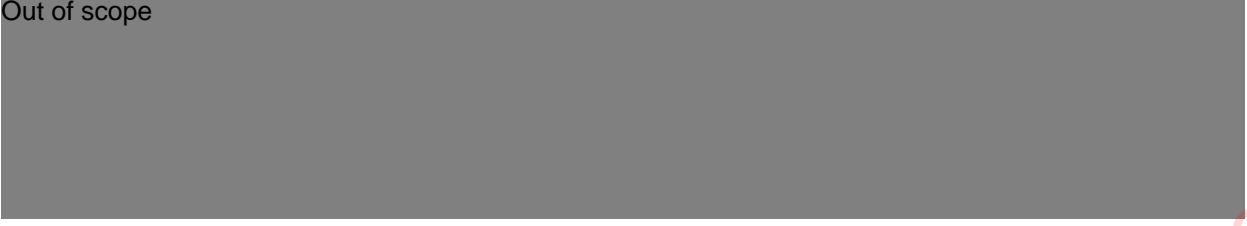
14. All reports delivered by statutory inquiries are subject to the Official Information Act. While there may be a short delay in their public release, either because they are under active consideration, or because they are about to be presented to Parliament, it is unlikely they could be withheld from the public for an extended period.
15. Since the Inquiries Act came into force, most inquiries established under it have only produced a single, final report. Inquiries often produce other or related publications such as summaries, translations, or discussion documents, which are made public as the inquiry progresses, or at the conclusion of the inquiry.
16. A significant exception to this pattern of reporting has been the Royal Commission of Inquiry into Historical Abuse in Care. The terms of reference for that Inquiry required it to produce at least two interim reports, in advance of its final report. The terms of reference also provide that all its interim reports are to be presented to the Governor General and presented to Parliament by the appropriate Minister, following the same procedure that applies to final reports. That Inquiry has now produced four interim reports, and each one has been presented to the Governor General and to Parliament.
17. In the context of the proposal to establish a second phase of the Royal Commission, there are two potential options to be considered for the receipt of the report from phase 1 of the Inquiry:
  - 17.1 The report may be delivered to the Governor General, presented to Parliament as soon as practicable, and made public; or
  - 17.2 The report may be presented to the Minister of Internal Affairs and then made public.
18. In either case, the preferred arrangement will need to be set out in the amended terms of reference for the Royal Commission.

### Next steps

19. Out of scope

## Recommendations

Out of scope



Anita Balakrishnan  
Acting Director Inquiries

Hon Brooke van Velden  
Minister of Internal Affairs

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Released under the Official Information Act 1982

## Note on receiving and releasing the COVID Inquiry Phase 1 report – 8 November 2024

The purpose of this note is to:

- recap previous advice from the Department on receiving the Phase 1 report.
  - The Department's previous advice of 16 May 2024 is attached as an Appendix.
- cover how the Official Information Act (the OIA) applies to the Phase 1 report.
- **Out of scope** [REDACTED]

### Obligations under the Inquiries Act 2013

- ***There is no statutory obligation for the appropriate Minister to present the Phase 1 report to the House.***
- Section 12 of the Inquiries Act requires the final report of a Royal Commission of Inquiry to be presented to the House of Representatives by the appropriate Minister as soon as practicable. The report becomes public at that point.
- Section 12 is silent on the requirements for receiving other reports from a Royal Commission of Inquiry. The terms of reference for that Inquiry generally make specific provisions for the receipt of those reports. This is the case for the Phase 1 report.
- Following Cabinet agreement in August, the establishment of Phase 2 of the Royal Commission of Inquiry means the report on Phase 1 is not the Royal Commission's final report. The revised terms of reference for Phase 1 now require the report on Phase 1 to be presented to the appropriate Minister.
- Section 12 requires the final report of a Royal Commission of Inquiry to contain all the findings and recommendations of the Inquiry. The Amendment Order establishing Phase 2 of the Royal Commission also includes this statutory requirement.
- The findings and recommendations from phase 1 must be included, in some form, with the report on Phase 2, which will be the final report of the Royal Commission, and which must be presented to the House by the appropriate Minister as soon as practicable after the final report is received.

### Obligations to Parliament

- ***It is not clear whether there is an obligation to treat the Phase 1 report as a parliamentary paper.***
- The report of Phase 1 could be regarded as a parliamentary paper. The relevant guidance from the New Zealand Parliament states: 'The fact that the Governor-General has established a Royal Commission is, in itself, sufficient to establish that the report is of a high degree of public importance and should be a parliamentary paper.'

- This guidance, however, refers to the Section 12 requirement to present the final report of a Royal Commission of Inquiry to the House. No reference is made to other reports by a Royal Commission.
- Parliamentary papers are presented to, and published under the authority of, the House. We are not aware of any additional guidance on the timeframe within which a parliamentary paper must be presented to the House, other than observing any applicable timeframes required by the statute that the paper relates to.

#### Obligations under the Official Information Act

- ***Once the appropriate Minister receives a report from an Inquiry, the reports are subject to the OIA.***
- There are two applicable grounds for withholding the Phase 1 report in response to an OIA request:
  - The report may be withheld because the constitutional conventions for the time being protect the confidentiality of advice tendered by Ministers and officials [section 9(2)(f)(iv)]. This would rely on the Phase 1 report being under active consideration by Ministers and officials such as a decision-making process (which could include the Budget process) by Ministers and Cabinet that the report was directly connected to.
  - A request for the report may be refused because the report will soon be publicly available [section 18(d)]. Guidance from the Ombudsman states that good practice for such a refusal would advise the requestor of an approximate date by which the report would be available. If the report was to be made public more than 12 weeks after a request was received, this ground for refusal could not be relied upon.
- A requestor may complain to the Ombudsman about any decision to withhold or refuse a request for information under the OIA.

Out of scope



## Appendix: Previous advice on receiving a report from the Royal Commission

The following content has been taken from the briefing, 'Royal Commission of Inquiry into COVID-19 Lessons: Further advice on **Out of scope** and on receiving a report from the Inquiry' (dated: 16 May 2024)

1. There are statutory requirements relating to the final reports of inquiries set out in section 12 of the Act. Royal Commission reports must be presented to the Governor General, and then as soon as practicable the appropriate Minister must present them to Parliament. The provisions in section 12 of the Act refer to final reports and contain no specific requirements relating to interim or other reports that may be produced by an inquiry. The policy intention of the requirement in the Act for the appropriate Minister to present a report to Parliament is to ensure that the reports are made public.
2. All reports delivered by statutory inquiries are subject to the Official Information Act. While there may be a short delay in their public release, either because they are under active consideration, or because they are about to be presented to Parliament, it is unlikely they could be withheld from the public for an extended period.
3. Since the Inquiries Act came into force, most inquiries established under it have only produced a single, final report. Inquiries often produce other or related publications such as summaries, translations, or discussion documents, which are made public as the inquiry progresses, or at the conclusion of the inquiry.
4. A significant exception to this pattern of reporting has been the Royal Commission of Inquiry into Historical Abuse in Care. The terms of reference for that Inquiry required it to produce at least two interim reports, in advance of its final report. The terms of reference also provide that all its interim reports are to be presented to the Governor General and presented to Parliament by the appropriate Minister, following the same procedure that applies to final reports. That Inquiry has now produced four interim reports, and each one has been presented to the Governor General and to Parliament.
5. In the context of the proposal to establish a second phase of the Royal Commission, there are two potential options to be considered for the receipt of the report from phase 1 of the Inquiry:
  - 5.1 The report may be delivered to the Governor General, presented to Parliament as soon as practicable, and made public; or
  - 5.2 The report may be presented to the Minister of Internal Affairs and then made public.
6. In either case, the preferred arrangement will need to be set out in the amended terms of reference for the Royal Commission





# Internal Affairs aide memoire

Hon Brooke van Velden  
Minister of Internal Affairs

**Title:** Royal Commission into COVID-19 Lessons: oral item at Cabinet about the phase 1 report

**Date:** 14 November 2024

## Key issues

This aide memoire provides you with information and suggested talking points to support your oral item about the phase 1 report of the Royal Commission into COVID-19 Lessons at Cabinet on 18 November 2024.

## Action sought

Advise officials if you require any additional information or materials to support your oral item at Cabinet on 18 November 2024.

## Timeframe

18 November 2024

Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 <sup>st</sup> contact
Anita Balakrishnan	Director Inquiries	9(2)(a)	✓
Alan Edwards	Principal Advisor	9(2)(a)	

Return electronic document to:	Alan.Edwards@dia.govt.nz
Cohesion document reference	<a href="https://dia.cohesion.net.nz/Sites/INQ/DHB/ECOV/_layouts/15/DocIdRedir.aspx?ID=ADXRF2XRTY-KY-875013860-509">https://dia.cohesion.net.nz/Sites/INQ/DHB/ECOV/_layouts/15/DocIdRedir.aspx?ID=ADXRF2XRTY-KY-875013860-509</a>
Ministerial database reference	IA20244974

Anita Balakrishnan  
Director Inquiries

## Purpose

1. This aide memoire provides you with information and suggested talking points to support your oral item about the phase 1 report of the Royal Commission into COVID-19 Lessons (the phase 1 report) at Cabinet on 18 November 2024.

## Background

2. Following Cabinet agreement on 26 August 2024, the terms of reference for phase 1 of the Royal Commission require the phase 1 report to be delivered to you by 28 November 2024 [CAB-24-MIN-0314 refers]. The establishment of phase 2 of the Royal Commission means that the phase 1 report does not constitute a final report, and therefore there is no statutory obligation for you to present it to the House.
3. Your August Cabinet paper, 'Phase 2 of the Royal Commission of Inquiry into COVID-19 Lessons', notes that the phase 1 report will be publicly released at a time that reflects the Government's approach to responding to the report and considers the timing of any public engagement and submissions processes for phase 2 [CAB-24-MIN-0314 refers].
4. Phase 2 may begin receiving evidence from 29 November 2024. Out of scope [REDACTED]  
[REDACTED]  
[REDACTED]

## Oral item at Cabinet

5. Your oral item presents an opportunity to advise your Cabinet colleagues of your upcoming receipt of the phase 1 report, and of some of the details that will support your consideration of when to publicly release it.
6. **Appendix A** provides you with suggested talking points. **Appendix B** provides you with backpocket Q&A about the obligations related to the phase 1 report under the Inquiries Act 2013 and the Official Information Act 1982.

## Recommendation

7. We recommend that you:
  - a) **advise** officials if you require any additional information or materials to support your oral item at Cabinet on 18 November 2024. **Yes/No**

Hon Brooke van Velden  
Minister of Internal Affairs

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## **Appendix A: Suggested talking points for an oral item at Cabinet**

### ***Background***

- The terms of reference for phase 1 of the Royal Commission of Inquiry into COVID-19 Lessons requires the phase 1 report to be delivered to me by 28 November 2024.
- The report is not the final report of the Royal Commission, and there is no statutory requirement to present the report to the House. However, I recognise the high degree of interest.

### ***Considering the public release of the Phase 1 report***

- There are several considerations for the timing of the public release of the phase 1 report, including the Government's response to the report, phase 2 of the Royal Commission, and the Official Information Act.
- If the report were to be released at a time after phase 2 public submissions have concluded, such as in May for example, it would enable:
  - More time for the Government to consider its initial response to the report.
  - Phase 2 to seek public submissions in a way that focuses the public on the phase 2 terms of reference.
- However, there are some risks involved with this possible approach:
  - Phase 2 will need to ensure it has taken the procedural steps as per its statutory requirement that the conduct of the inquiry complies with the principles of natural justice by not questioning a participant about a report the participant has not read.
  - Those procedural steps may include delaying some interviews or interviewing people twice. This may create timing and cost pressure risks for phase 2.
- If the report were to be released within the next three months, for example, it would enable phase 2 to operate without having to make any significant allowance for participants being unaware of the content of the phase 1 report.
  - However, there is a risk that this approach may put undue pressure on the phase 2 public submissions processes, with the public relitigating or being overly influenced or constrained by the phase 1 report.
- Until I have received the phase 1 report, it is not possible to quantify the likelihood or extent of any impacts on phase 2.
- I intend to wait until the phase 1 report is delivered before I make any decision on the timing of its public release.
- The Official Information Act provides adequate grounds for withholding the report while it is being actively considered or soon to be publicly released.

### ***Next steps***

- I am aware that it is standard practice to provide lead Ministers and their agencies with embargoed copies of Royal Commission reports after they are delivered. I will make decisions on how and when embargoed distribution will occur after I have considered the report.
- I intend to issue a simple press release that acknowledges receipt of the phase 1 report.

## Appendix B: Backpocket Q&A

### What are the appropriate Minister's obligations under the Inquiries Act 2013

- There is no statutory obligation for the Minister of Internal Affairs, who is the appropriate Minister, to present the phase 1 report to the House.
- Section 12 of the Inquiries Act requires the final report of a Royal Commission of Inquiry to be presented to the House by the appropriate Minister as soon as practicable. The report becomes public at that point.
- Section 12 is silent on the requirements for receiving other reports from a Royal Commission of Inquiry. The terms of reference for that Inquiry generally make specific provisions for the receipt of those reports. This is the case for the phase 1 report.
- Following Cabinet agreement in August, the establishment of phase 2 of the Royal Commission means the report on phase 1 is not the Royal Commission's final report.
- The revised terms of reference for phase 1 now require the report on Phase 1 to be presented to the appropriate Minister.

### What are the obligations under the Official Information Act?

- Once the appropriate Minister receives a report from an Inquiry, the reports are subject to the Official Information Act (the OIA).
- There are two applicable grounds for withholding the phase 1 report in response to an OIA request.
- First, the report may be withheld because the constitutional conventions for the time being protect the confidentiality of advice tendered by Ministers and officials [section 9(2)(f)(iv)].
- This would rely on the Phase 1 report being under active consideration by Ministers and officials such as a decision-making process (which could include the Budget process) by Ministers and Cabinet that the report was directly connected to.
- Second, a request for the report may be refused because the report will soon be publicly available [section 18(d)].
- Guidance from the Ombudsman states that good practice for such a refusal would advise the requestor of an approximate date by which the report would be available.
- If the report was to be made public more than 12 weeks after a request was received, this ground for refusal could not be relied upon.
- A requestor may complain to the Ombudsman about any decision to withhold or refuse a request for information under the OIA.

### Public release of reports from other Royal Commission's received in late November

- Over the past five years, a number of reports from other Royal Commissions have been publicly released within one month of receipt by the Governor-General or Minister, including three interim reports from the Royal Commission of Inquiry into Abuse in Care in 2020, 2021, and 2022, and its final report this year, and the final report of the Royal Commission of Inquiry into the Terrorist Attack on the Christchurch Mosques in 2020.