

# The Treasury

## Budget 2021 Information Release

### August 2021

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- [1] 6(a) - to avoid prejudice to the security or defence of New Zealand or the international relations of the government
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- [25] 9(2)(b)(ii) - to protect the commercial position of the person who supplied the information or who is the subject of the information
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- [33] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [34] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [35] 9(2)(g)(ii) - to maintain the effective conduct of public affairs through protecting ministers, members of government organisations, officers and employees from improper pressure or harassment
- [36] 9(2)(h) - to maintain legal professional privilege
- [37] 9(2)(i) - to enable the Crown to carry out commercial activities without disadvantage or prejudice
- [38] 9(2)(j) - to enable the Crown to negotiate without disadvantage or prejudice
- [39] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage
- [40] Not in scope
- [42] 18(d) - information is already publicly available or will be publicly available soon.

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**Treasury Report:** Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions: Cost Structure and Funding

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<b>Date:</b>	19 November 2020	<b>Report No:</b>	T2020/3408
		<b>File Number:</b>	SH-15-1

**Action sought**

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	<b>Action sought</b>	<b>Deadline</b>
Hon Grant Robertson <b>Minister of Finance</b>	<p><b>Indicate</b> your preferred response to the Royal Commission component of DIA's October Baseline Update submission.</p> <p>If agreed, <b>sign</b> the attached letter to the Minister of Internal Affairs outlining your decision.</p>	25 November 2020

**Contact for telephone discussion (if required)**

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<b>Name</b>	<b>Position</b>	<b>Telephone</b>	<b>1st Contact</b>
Ben Quilter	Graduate Analyst, Justice, Security and Government Services	[39]	N/A (mob) ✓
Colin Hall	Manager, Justice, Security and Government Services	[35]	

**Minister's Office actions (if required)**

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**Return** the signed report to Treasury.

If agreed, **dispatch** the signed letter to the Minister of Internal Affairs.

Note any feedback on the quality of the report

**Enclosure:** Yes

## **Treasury Report: Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions: Cost Structure and Funding**

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### **Purpose of Report**

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1. In your October Baseline Update response to the Minister of Internal Affairs you stated you would give further consideration to the request for fiscally neutral adjustments totalling \$20.974 million for the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions (the Commission, the Inquiry). This report proposes you agree to a smaller fiscally neutral transfer to provide sufficient funding for the Commission to operate while Ministers consider its ongoing funding requirements.

### **Background**

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2. Public Inquiries (including Royal Commissions of Inquiry) are set up to operate independently and impartially. The Inquiries Act 2013 sets out the process for the establishment and operation of inquiries, and stipulates they must act independently, impartially, and fairly. The Department of Internal Affairs (DIA) is responsible for administering most public inquiries, including this one.
3. When Cabinet agreed to the terms of reference for the Inquiry in November 2018 (CAB-18-MIN-0572.01 refers), it agreed to total funding of \$78.849 million from 2018/19 to 2022/23, consisting of:
  - departmental funding of \$56.066 million to meet the operational costs of the Commission (i.e. its secretariat functions)
  - non-departmental funding of \$21.458 million for Commissioners' fees and counselling costs for victims, and
  - a repayable capital injection of \$1.325 million in 2018/19 only to cover software and premise fit-out costs.
4. Cabinet noted that the Minister of Internal Affairs may seek additional funding for the second phase of the Inquiry, based on the findings in the Commission's interim report.
5. The Commission is required to provide an interim report by 28 December 2020 in two parts:
  - a substantive report outlining progress and interim findings of substantive matters of the inquiry, and
  - an administrative report including an analysis of the likely workload required to complete the next phase of the inquiry and a detailed assessment of any additional funding required.
6. On 30 September 2019 Cabinet agreed to provide legal assistance funding for individuals specified by the Commission and participating in the Inquiry. A fiscally neutral adjustment of \$8.790 million was agreed from the Commission's departmental multi-year appropriation to a new non-departmental multi-year appropriation (CAB-19-MIN-0503 refers). While the paper noted that additional funding would likely be sought through Budget 2021 following the completion of the administrative report, neither DIA nor the Minister of Internal Affairs raised any significant concerns regarding any potential future cost pressure caused by this transfer.

7. The Minister of Internal Affairs submitted a Budget 2020 initiative seeking contingency funding of [33] to support the Inquiry to completion. This would have brought the total cost of the Inquiry to [33], more than [33] the funding agreed by Cabinet in 2018. We had a number of concerns with the initiative, including that:
  - the Commission's preferred operating model appeared to involve a very large secretariat and high average salary costs, and
  - little explanation was provided to justify the costs and the Commission was yet to assess its likely workload for the next phase of its work.
8. Cabinet agreed to an \$8.000 million tagged operating contingency for 2020/21 only to allow the Commission to operate until Budget 2021 decisions are taken. The Minister of Finance and Minister of Internal Affairs were authorised to draw down funding following the completion of the interim report outlining the Commission's future funding requirements [CAB-20-MIN-0155.19 refers].
9. The Commission has subsequently advised DIA that it requires additional funding to deliver the interim report. The Minister of Internal Affairs' October Baseline Update submission proposed three fiscally neutral adjustments amounting to \$20.974 million from the Inquiry non-departmental appropriations to the departmental multi-year appropriation to cover its operating costs through to June 2021.
10. In addition to exhausting its original five year departmental funding of \$56.066 million two years early, the Commission is seeking a 37% increase in its multi-year appropriation to continue its operations through to June 2021, with funding to be sought in Budget 2021 for future years. The Commission's budgeted secretariat costs for 2020/21 are \$41.903 million, an 82% increase on its 2019/20 costs of \$23.010 million.
11. We understand it is likely the Commission will exhaust its current departmental funding by early-to-mid December 2020 and may result in the Commission scaling back or halting its operation, which may risk the delivery of its interim report.

## Costs and Financial Management

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### **The Commission's financial management and fiscal risk for government**

12. There are different views between the Commission/DIA and Treasury regarding funding for the Inquiry.
  - The Commission/DIA view is that the funding agreed by Cabinet was insufficient to fully meet the Inquiry terms of reference and that the Commission's interim report provided a vehicle for the Government to consider the total funding requirement at a later time.
  - Treasury's view is that it is inappropriate for the Commission/DIA to pre-judge future Cabinet funding decisions and the Commission's operating model should be based on the available funding, rather than proceeding with its preferred operating model in the expectation it will receive additional funding.
13. We understand that in June 2020 the Minister of Internal Affairs sent a letter of expectations to the Chair of the Commission stating that there is no further room to increase the overall costs to June 2021 beyond the Budget 2020 tagged contingency established for the Commission, although there was some flexibility to make adjustments between the current appropriations.

14. DIA appears to consider that the requested \$20.974 million fiscally neutral adjustments are consistent with the Commission operating within its allocated funding. In our view this is not the case as this approach will create future funding shortfalls in the non-departmental appropriations. If the proposed fiscally neutral adjustments were agreed, only \$6.147 million will remain in the non-departmental appropriations to cover future years' costs for Commissioners' fees and victims' legal assistance and counselling.
15. We are concerned about the size of the requested fiscally neutral adjustments which appear to indicate a rapidly increasing cost structure for which funding will be sought in Budget 2021. The Commission's budgeted average monthly spending for the period November 2020 to June 2021 of \$3.760 million is nearly double the average monthly spending in 2019/20 of \$1.918 million, and 27% higher than the average monthly spending in the first four months of the current financial year of \$2.956 million.
16. It may be difficult to reduce the Commission's spending rate in the short term, although there does appear to be options to do so with some costs being potentially scalable. For example, the Commission is budgeting average monthly spending of \$0.172 million for travel, \$0.391 million for legal fees and \$0.525 million for consultants in the period November 2020 to June 2021.
17. We expect that the Minister of Internal Affairs will submit an initiative in Budget 2021 of similar or larger size to that submitted in Budget 2020. Agreement to the requested fiscally neutral transfers is likely to "lock in" the Commission's current spending rate and limit Minister's options in relation to Budget 2021 funding.
18. We consider some level of intervention is required to set clear expectations for DIA and the Commission regarding managing within allocated funding. The existing letter of expectations from the Minister of Internal Affairs sets the expectation to "manage the public's money and assets wisely" and that the Commission must "have regard to the need to avoid unnecessary delay or cost in relation to public funds". We consider there is benefit in:
  - expressing disappointment in the Commission's financial management and asking the Commission to review its cost structure, and
  - being more explicit regarding the requirement to manage within appropriated funding.

## Options

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19. We consider you have three options for responding to the requested fiscally neutral adjustments. You may also wish to consult the Minister of Internal Affairs on your preferred approach.
 

*Option 1: agree the fiscally neutral adjustments requested through OBU*
20. This would allow a total \$20.974 million to be transferred from the Commission's three Non-Departmental appropriations to the Departmental appropriation in the 2020/21 financial year. This option risks setting the Commission on an unsustainable spending path, which may be difficult to unwind in the future, resulting in further requests for significant increases in funding.
 

*Option 2: do not agree to any fiscally neutral adjustments*
21. While you have the option to not agree to any funding changes sought through OBU, this is not recommended as it would likely require the Minister of Internal Affairs to urgently seek Cabinet approval for funding from the between-Budget contingency to allow the Commission to continue operating.

22. In our view, while funding requirements are more thoroughly investigated, it is better to agree to some form of fiscally neutral adjustment than provide new funding. There is also a risk that the Minister of Internal Affairs is unable to seek Cabinet approval in time to avoid DIA incurring unappropriated expenditure.

*Option 3: agree limited fiscally neutral adjustments to allow the Commission to continue operating until Cabinet considers its interim report (**recommended option**).*

23. We recommend that you use this opportunity to clarify expectations and improve financial management incentives on the Commission by:
- agreeing to a fiscally neutral adjustment of \$6.000 million to allow Ministers to make a more informed decision on ongoing funding requirements following consideration of the Commission's report on its interim findings, and its administrative report indicating the work and funding required to complete the next phase of the inquiry
  - setting a clear expectation that the Commission needs to manage its operations with its appropriated funding
  - asking the Minister of Internal Affairs to request that the Commission:
    - ensure that the administrative report fully justifies the Commission's cost structure and provides Ministers with scaling options for future funding requirements, and
    - review the Commission's operations with a view to ensuring that costs are minimised ahead of Ministers' consideration of the Commission's interim report.
24. The proposed of \$6.000 million fiscally neutral adjustment will require a degree of tighter fiscal control by the Commission but should allow it to complete its interim reporting requirements and continue operating until the end of February 2021. If the recommended \$6.000 million of funding proved insufficient, once the Commission's interim report is delivered, Ministers have the option of utilising the \$8.000 million tagged contingency previously agreed by Cabinet.

## Next Steps

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25. We have attached a draft letter to the Minister of Internal Affairs for your consideration should you agree to option 3. Should you prefer option 1 or 2 we will draft a substitute letter for your signature to give effect to your preferred approach.

## Recommended Action

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We recommend that you:

**EITHER:**

- a **agree** to the fiscally neutral adjustments for the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions totalling \$20.974 million as set out in the Minister of Internal Affairs' 2020 October Baseline Update submission

*Agree/disagree.*

**Minister of Finance**

**OR**

- b **decline** the fiscally neutral adjustments for the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions requested through the 2020 October Baseline Review

*Agree/disagree.*

**Minister of Finance**

**OR (Treasury recommended)**

- c **agree** to:

- i. provide a fiscally neutral adjustment of \$6.000 million to allow the Commission to meet its interim reporting requirements and continue to operate until February 2021

*Agree/disagree.*

**Minister of Finance**

- ii. ask the Minister of Internal Affairs to set a clear expectation to the Commission that it manages within its appropriated funding and request that it:
- ensures that the administrative report fully justifies the Commission's cost structure and provides Ministers with options for future funding requirements through to 2022/23, and
  - reviews the Commission's operations with a view to ensuring that costs are minimised ahead of Ministers' consideration of the Commission's interim report

*Agree/disagree.*

**Minister of Finance**

- d **sign** the attached letter to the Minister of internal Affairs if you agree to recommendation c above, and

- e **note** that if you agree to options a or b above, Treasury will draft a substitute letter to the Minister of Internal Affairs for your signature.

Colin Hall  
**Manager, Justice, Security and Government Services**

Hon Grant Robertson  
**Minister of Finance**



# Hon Grant Robertson

MP for Wellington Central

Deputy Prime Minister

Minister of Finance

Minister for Infrastructure

Minister for Sport and Recreation

Minister for Racing



Hon Jan Tinetti  
Parliament Buildings  
WELLINGTON

Dear Jan

In my recent October Baseline Update response letter for Vote Internal Affairs, I indicated that I wanted to give further advice to the requested three fiscally neutral adjustments totalling \$20.974 million from the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions (the Commission) non-departmental appropriations to the departmental appropriation that funds the Commission's secretariat costs.

When agreeing to the Inquiry terms of reference, Cabinet agreed to departmental funding of \$56.066 million to meet the operational costs of the Commission through to the final report date of 3 January 2023. Cabinet also noted that it may need to reconsider the Commission's funding following the completion of the Commission's interim report which is due by 28 December 2020.

A further \$8.000 million was placed in a tagged operating contingency in Budget 2020 to cover the Commission's 2020/21 costs while ongoing funding was determined following the completion of the Commission's interim report.

I am concerned that the Commission's forecast departmental costs are significantly above the funding agreed by Cabinet, that the Commission does not appear to be aligning its costs with available funding, and that costs appear to be increasing significantly. I understand the Commission's budgeted secretariat costs for the year through to June 2021 are \$41.9 million, an 82% increase on its 2019/20 costs of \$23.0 million.

On the basis of decisions taken in Budget 2020, I had expected the Commission to operate within its existing departmental appropriation at least until it had delivered its interim report. I do not consider the requested fiscally neutral adjustments from the non-departmental appropriations are consistent with that expectation. If agreed, the fiscally neutral adjustments will result in additional funding being sought from future Budgets to address the funding shortfall for victims' counselling and legal assistance costs, and Commissioners' fees.

I therefore do not agree to the requested \$20.974 million fiscally neutral adjustments.

I am aware that if no new funding is agreed, the Commission may run out of departmental funding in December. To avoid slowing or halting the Commission's activities, and to allow

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the Commission to complete its interim reporting requirements, I am prepared to agree a \$6.000 million fiscally neutral transfer to allow the Commission to operate until Ministers can consider the Commission's interim report and ongoing funding requirements.

In addition to agreeing the smaller fiscally neutral adjustments, I am looking for better financial management from the Commission and ask that you:

- set a clear expectation that the Commission operates within its agreed funding and adjusts its operating model accordingly
- request that the Commission review its operations to ensure that its costs are minimised ahead of Cabinet's consideration of the Commission's interim report and decisions on future funding, and
- set an expectation that the Commission's upcoming administrative report fully justifies the Commission's cost structure and provides Ministers with scaling options for future funding requirements.

Could you please countersign this letter to formalise your agreement to the following recommendations.

a **agree** to the following fiscally neutral adjustment in Vote Internal Affairs:

Vote Internal Affairs Minister of Internal Affairs	\$m – increase/(decrease)				
	2020/21	2021/22	2022/23	2023/24	2024/25 & out-years
Departmental Output Expense: Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions – Operating Expenses MYA	6.000	-	-	-	-
Non-Departmental Other Expense: Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions – Counselling Costs MYA	(6.000)	-	-	-	-
<b>Total Operating</b>	-	-	-	-	-

b **agree** that the proposed changes to appropriations for 2020/21 above be included in the 2020/21 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply.

Yours sincerely

Hon Grant Robertson  
**Minister of Finance**

Hon Jan Tinetti  
**Minister of Internal Affairs**