

The Treasury

Budget 2021 Information Release

August 2021

This document has been proactively released and is available on

- the **Budget website** from August 2021 to May 2022 only at <https://budget.govt.nz/information-release/2021>, and on
- the **Treasury website** from later in 2021 at <https://treasury.govt.nz/publications/information-release/budget-2021-information-release>.

Information Withheld

Some parts of this information release 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 sections of the Act under which information has been withheld:

- [1] 6(a) - to avoid prejudice to the security or defence of New Zealand or the international relations of the government
- [23] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [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
- [26] 9(2)(ba)(i) - to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied
- [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.

Where information has been withheld, a numbered reference to the applicable section of the Act has been made, as listed above. For example, a [23] appearing where information has been withheld in a release document refers to section 9(2)(a).

Copyright and Licensing

Cabinet material and advice to Ministers from the Treasury and other public service departments are © **Crown copyright** but are licensed for re-use under **Creative Commons Attribution 4.0 International (CC BY 4.0)** [<https://creativecommons.org/licenses/by/4.0/>].

For material created by other parties, copyright is held by them and they must be consulted on the licensing terms that they apply to their material.

Accessibility

The Treasury can provide an alternate HTML version of this material if requested. Please cite this document's title or PDF file name when you email a request to information@treasury.govt.nz.

Treasury Report: Funding for Royal Commission of Inquiry into Abuse in Care

Date:	4 March 2021	Report No:	T2021/474
		File Number:	DH-18-2-1

Action sought

	Action sought	Deadline
Hon Grant Robertson Minister of Finance	Note the options for funding the Royal Commission to assist with your consideration of the Budget 2021 package.	No specific deadline

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
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)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: No

Treasury Report: Funding for Royal Commission of Inquiry into Abuse in Care

Executive Summary

The Royal Commission of Inquiry into Abuse in Care (the Commission, the Inquiry) has sought an additional [33] operating funding and [33] capital funding, and an extension of its final reporting date from 3 January 2023 to 30 June 2025.

A key consideration is whether Ministers are comfortable with the Commission's preferred approach, including the Inquiry being conducted over a longer timeframe, so that all affected individuals are provided every opportunity to have their experiences recorded, or whether they prefer the Inquiry to focus on developing its findings and recommendations and finalise its report at an earlier date (while still providing an ongoing opportunity for victims to record their experience).

The Department of Internal Affairs (DIA) has provided two scaling options, one of which involves funding the Commission to 30 June 2023 and considering further funding in Budget 2023 following a report back on any further work necessary and the associated costs [33]

We recommend a staged approach to funding given the uncertainty about the number of participants in the Inquiry and volume of evidence that requires analysis. Our recommended approach is to:

- defer any decision to extend the Inquiry to June 2025 but extend the final report back date by 6 months to 30 June 2023
- request that the Commission prioritises its work and reconsiders its operating model, including whether investigations can be rationalised, with a view to completing its final report as quickly as possible, and preferably no later than by 30 June 2023, and
- require it to report back by 1 December 2022 if it considers further work and a later final report date are required, providing the associated benefits and costs of extending the Inquiry further.

We consider there is significant scope for the Commission to operate the Inquiry in a more cost-effective way. This could be done by reconsidering aspects of its operating model, including rationalising the number of investigations being undertaken and reviewing the use of public hearings, reconsidering salary assumptions and staff mix, reducing its reliance on legal advice, reducing its use of consultants, and reconsidering travel assumptions.

The funding for our recommended approach is reflected in the draft Budget package, where we have recommended \$100.000 million operating funding and \$0.390 million capital funding through to June 2023.

There are other options for managing the costs, depending on Ministers' appetite for amending the Commission's terms of reference. The table below provides a summary of some funding options.

Operating Funding (\$m)	2021/22	2022/23	2023/24	2024/25	2025/26	Total
DIA Options						
Preferred option	[33]					
Scaled option B						
Scaled option C						
Treasury Options						
Recommendation	50.000	50.000				100.000
Final report 3 January 2023	50.000	50.000				100.000
Final report 30 June 2025	50.000	50.000	[33]			
Capital Funding (\$m)						
DIA Options						
[33]						
Treasury Options						
Recommendation	0.260	0.130				0.390
Final report 3 January 2023	0.260	0.130				0.390
Final report 30 June 2025	0.260	0.130	[33]			

Recommended Action

We recommend that you:

- a **note** that we consider there is significant scope to scale the Royal Commission of Inquiry into Abuse in Care's funding request through reconsideration of its operating model and the use of more appropriate cost assumptions
- b **note** that Ministers have a number of choices that impact on the Royal Commission's funding, depending on their appetite to change the terms of reference
- c **note** that the current draft Budget package includes \$100.000 million operating funding and \$0.390 million capital funding through to June 2023 for the Inquiry, and
- d **note** that, depending on the approach Ministers wish to take, further funding is likely to be required in Budget 2023 when a clearer picture of the number of participants in the Inquiry and volume of evidence that requires analysis should be available.

Colin Hall
Manager, Justice, Security and Government Services

Hon Grant Robertson
Minister of Finance

Treasury Report: Funding for Royal Commission of Inquiry into Abuse in Care

Purpose of Report

1. This report provides advice on funding options for the Royal Commission of Inquiry into Abuse in Care.

Background

2. The costs of the Royal Commission have increased significantly since Cabinet agreed its terms of reference. Secretariat operating spending has been at a rate significantly above the available funding agreed by Cabinet in 2018 (\$56.066 million¹ through to June 2023). The Commission has already exhausted this funding and has required an additional \$14.000 million² funding to see it through to 30 June 2021.
3. You have asked that the Commission review its funding and operate within available funding, but we suspect a further funding request will be forthcoming to maintain operations to the end of the current financial year.
4. In its interim report in December 2020, the Commission identified that it wished to extend the report back date for the Inquiry from January 2023 to 30 June 2025 and was seeking an additional \$344.5 million in operating funding - \$225.851 million in baseline funding and a contingency of \$117.900 million, and \$0.746 million in capital funding.
5. We have been engaging with both the Department of Internal Affairs (DIA) and the Commission secretariat to try to get more cost-effective options presented but we have had limited success. The Commission secretariat has declined to provide an option the sees the Inquiry completed by the date mandated by its terms of reference.
6. The Minister of Internal Affairs has submitted a Budget initiative seeking [33] over 4 years, although the contingency funding is no longer sought. The initiative includes two scaling options, neither of which provides material savings.
 - Option B seeks funding of [33] through to December 2025, saving [33] by removing two investigations and relying more heavily on artificial intelligence to assess documents.
 - Option C seeks funding of [33] ; it is based on option B but only seeks funding to 30 June 2023 and shifts final funding decisions to Budget 2023.
7. We understand the Minister of Internal Affairs will lodge a Cabinet Social Wellbeing Committee (SWC) paper in the near future that discusses options for reducing costs, including merging investigations and removing the necessity for the Commission to examine current care settings given there are a number of other investigations or reviews underway into contemporary state care issues.

¹ Original operating funding was \$77.524 million, including \$21.458 million non-departmental funding for Commissioner's fees and victim legal and counselling support.

² A \$6.000 million fiscally neutral transfer from non-departmental funding in the 2020 October baseline update and a \$8.000 million drawdown from a tagged contingency established at Budget 2020 in February 2021.

What is driving costs?

8. Costs are being driven by the Commission's preferred operating model, the number of investigations being undertaken and their sequencing, and assumptions about the number of participants in the Inquiry and number of documents that require examination.
9. We consider the Commission has taken a liberal approach to fulfilling its terms of reference, its resourcing needs and its cost assumptions. We consider there is considerable scope to reduce costs through a combination of:
 - rationalising investigations
 - managing the uncertainty about the number of participants that will come forward, and
 - requiring the Commission to manage within reduced funding and reconsider the relative value of its proposed expenditure.
10. In the secretariat's view, the terms of reference for the Inquiry³ require it to provide the opportunity for all participants to have their experiences recorded. It has rejected our suggestions that:
 - investigations can be rationalised and/or run concurrently, for example by relaxing the requirement that three Commissioners attend each hearing, and
 - it is not necessary to gather all possible evidence before being able to finalise its findings and recommendations, and that any resulting compensation process provides the opportunity for participants to tell their story.

Terms of reference

11. A key judgement for Ministers is whether they are comfortable taking an approach that the Commission should primarily focus on its findings and recommendations within the current timeframes, as opposed to waiting until it records all participants' experiences. It is likely that a change to the Inquiry terms of reference will be necessary should Ministers ask the Commission to primarily focus on its findings and recommendations.
12. The Commission's approach is driven by its interpretation of the terms of reference and the level of evidence necessary to meet those terms of reference. This interpretation informs its operating model and the total costs of the inquiry.
13. Clause 31 of the terms of reference states the inquiry will report and make general comments and findings on the:
 - nature and extent of abuse that occurred in care
 - factors that caused or contributed to the abuse
 - impacts of abuse, and
 - lessons learned.

³ The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Order 2018 sets out the terms of reference, including the purpose, scope and deliverables of the inquiry.

14. Clause 32 states the inquiry will report and make recommendations on:
 - any gaps and areas for future changes to prevent and respond to abuse in care, and
 - redress and rehabilitation processes for individuals who claim abuse in care.
15. The Commission must gather sufficient evidence to understand the nature, extent and impacts of abuse (clause 31) and make sufficiently robust recommendations on gaps and to prevent and respond to abuse in care (clause 32).
16. We do not consider that the terms of reference necessarily require the Commission to provide an opportunity for all affected individuals to be heard and have their story recorded. By providing an opportunity for all potentially abused individuals to have their experiences recorded, the Commission's interpretation places greatest weight on fully understanding the nature and extent of abuse and the factors that contributed to it.
17. The greater emphasis on gathering detailed evidence requires increased numbers of hearings and investigations and increased costs. It does not appear necessary to allow all affected individuals to be heard to make sufficiently robust recommendations. The Commission's interim report has already commented extensively on its findings to date and it appears that the Commission will be able to provide its findings and recommendations in a much shorter timeframe, and at lower cost.
18. Requiring the Commission to meet an earlier reporting date than it is currently planning will potentially reduce the number of people who are able to "tell their story" to the Commission before it produces its final report. However, we understand the Commission is likely to recommend a compensation process within the next year. If the Government accepts any such recommendation, this process could be used to allow people to have their experiences recorded and recognised. Such an approach is likely to be more cost effective (and may reduce the risk of individuals re-living the trauma of their experiences) than requiring individuals to share their experiences twice - to both the Commission and as part of any compensation process.

Volume uncertainty

19. The requested timeframe extension is also driven by the view that more participants and documentary evidence will come forward through time, and at a rate higher than they have to date. We have not seen any evidence to support that view.
20. The Commission's December interim report identifies that 1,963 survivors have come forward in the 2 years to date, but it was expecting around 10,000 survivors and other participants to come forward by the end of the Inquiry.
21. Likewise, the interim report identified that the Commission is planning on employing up to 128 evidence analysts and junior lawyers to process documents provided by agencies and institutions. The Commission expected to receive 400,000 documents by June 2021, but the Commission's cost model assumes that the eventual total will be 2.7 million documents.
22. Ministers will need to decide how to manage the uncertainty about the number of future participants in the Inquiry and the volume of documentary evidence. The Commission has assumed a more significant uplift in both these factors than has been evidenced in the two and a half years the Inquiry has been running to date. We suggest that some degree of drip-feeding funding as the most appropriate mechanism to manage this uncertainty.

Investigative approach

23. The approach the Commission is taking involves undertaking 17⁴ separate investigations of care settings - eight state care⁵, five faith-based⁶, and four cross-cutting⁷. Many people will qualify for multiple investigations, having been through several care settings, as well as qualifying for the cross-cutting themes.
24. The investigations are being run largely sequentially as the Commission considers it important that the Commissioners themselves lead each investigation. Planning is based on three Commissioners attending each hearing. In addition, participants have the option of having a one-on-one session with a Commissioner.
25. We consider there are opportunities for the Commission to reduce the number of investigations and reconsider its operating model. Investigations could be rationalised further either by reducing the number of care settings investigated or combining investigations.
26. We understand that the Minister of Internal Affairs has considered whether the number of care settings investigated could be reduced further and decided this is not appropriate.
27. There are still likely to be significant cost savings through combining investigations into some care settings given the fixed costs associated with each investigation and as such an approach is likely to allow the proposed reporting timeframe to be brought forward. The timeframe over which the investigations are completed could be reduced further by relaxing the assumption that three Commissioners attend each hearing.
28. There are other options for the Commission to adjust its operating model to improve cost-effectiveness. For example, there are a range of avenues in which participants will engage with the Inquiry within each investigation - public hearings, private sessions with a commissioner, witness interviews, written submissions, participation in hui and fono.
29. Public hearings are the most expensive engagement avenue and are budgeted to cost \$15.663 million over the life of the Inquiry. It is assumed that each survivor participating in hearings will require one day of hearings and 310 hearing days are planned, meaning that the average cost for each survivor that participates in this process is approximately \$50,526. Much of this cost is for legal expenses, \$30,566 for survivor's legal assistance and \$2,505 for departmental legal costs. These costs seem inconsistent with the requirement in the terms of reference for the Inquiry to "avoid an overly legalistic approach". Other costs are for non-legal victim support, secretariat costs, commissioner fees and overheads.
30. By comparison 2,700 survivors are assumed to participate in private sessions with Commissioners at an average cost of approximately \$1,635 per participant, raising questions about the relative cost-effectiveness of public hearings. The Commission originally intended to hold 100 days of public hearings based on an assumed 14,000 survivors and other participants (compared to 310 days of public hearings for 10,000 survivors now assumed) so there appears to be room to reconsider the relative value of public hearings compared to private sessions.

⁴ The Commission's interim report commented that 20 investigations are planned – 2 of these were contingency investigations and 1 did not relate to a care setting (redress).

⁵ Psychiatric, Residential, Adoption, Education, Foster, Monitoring Agencies, Youth Justice and Transitional Facilities (excluded from scaled options).

⁶ Anglican, Catholic, Presbyterian, Salvation Army, Other Faith-based (excluded from scaled options).

⁷ Māori, Pacific, Disability, Rainbow.

Cost Assumptions

[33]

Options

33. We consider Ministers have options to reduce costs further than the two scaled options provided by DIA.
34. There are two key factors that Ministers will need to consider in determining the approach to funding:
 - whether they wish the Inquiry to focus on developing its findings and recommendations or whether they are comfortable with the Inquiry being conducted over a longer timeframe so that all participants have every opportunity to have their experiences recorded, and
 - how to manage the uncertainty about the extent to which participants will come forward as the Inquiry progresses and the volume of documentation uncovered that requires review.

Inquiry focus

35. If Ministers prefer that the Inquiry focus on developing its findings and recommendations rather than recording participants' experiences, it could ask the Commission to take this focus and provide an option that concludes the Inquiry by the January 2023 as specified in the terms of reference. Amendments to the terms of reference are likely to be necessary to achieve this. We understand that this option has been considered by the Minister of Internal Affairs but rejected as the risk associated with the significant changes required to the terms of reference are too high compared to the potential benefits.
36. If Ministers accept that it is important that all participants have the opportunity to have their experiences recorded by the Commission, we consider that the best approach is to fund the Commission in Budget 2021 through to June 2023 and require it to report back on the work, and associated costs, necessary to complete the Inquiry to allow decisions on further funding to be taken in Budget 2023.

Recommended approach

37. Our recommended approach is to:
 - defer any decision to extend the Inquiry to June 2025 but extend the report back date by 6 months to 30 June 2023
 - request that the Commission prioritise its work and reconsider its operating model, including whether investigations can be rationalised, with a view to completing its final report as quickly as possible, and preferably by 30 June 2023, and
 - require it to report back by 1 December 2022 if it considers further work and a later final report date are required, outlining the associated benefits and costs of extending the Inquiry further.
38. It is not practical, or appropriate, for Treasury to determine the Commission's operating model or make judgements about the relative importance of various proposed spending. However, in our view the Commission has considerable scope to make such trade-offs and achieve its outcomes in a more cost-effective way. We therefore recommend providing a reasonable level of funding that still requires the Commission to make the necessary trade-offs to operate more effectively. In addition to rationalising investigations, this could include:

- its choice of staff mix, including the seniority and salary levels needed
- the use of consultants
- the secretariat's need for such significant use of legal advisors
- travel assumptions
- overhead costs (including DIA charges).

39. In our assessment of the Budget 2021 initiative we have proposed operating funding of \$100.000 million and Capital funding of \$0.390 million through to June 2023. We have based this on the initiative's scaled option C, with additional scaling to reflect some rationalisation of investigations and reviewed cost assumptions to improve cost effectiveness. The table below summarises the options in the initiative and our recommended funding.

Operating Funding (\$m)	2021/22	2022/23	2023/24	2024/25	2025/26	Total
[33]						
Treasury recommendation	50.000	50.000				100.000
Capital Funding (\$m)						
[33]						
Treasury recommendation	0.260	0.130				0.390

40. We consider the recommended funding provides sufficient funding for the Commission given it is a step up from its spending levels to date, as shown in the table below. There may be options to scale further.

	2018/19 Actual	2019/20 Actual	2020/21 Year to January	2020/21 Year to January Extrapolated	2020/21 Commission Forecast
Operating costs to date (\$m)	7.771	23.010	21.068	36.117	48.778

Final report date

41. If Ministers' preference is to not extend the inquiry and require the Commission to complete its report by the 3 January 2023 date currently specified by the terms of reference, we consider our recommended funding of \$100.000 million should be sufficient for this purpose.
42. If Ministers' preference is to agree to a reporting extension to June 2025 and fund the Inquiry to its completion in Budget 2021, we recommend a scaling factor of around 20% be applied to DIA's costings. This recognises the ability of the Commission to rationalise investigations, adapt the approach to hearings, and to adjust for generous costing assumptions. This approach should incentivise cost effectiveness and will require the Commission to make trade-offs between the relative value of each component of its preferred operating approach. The funding implications of this approach are outlined in the table below.

Operating Funding (\$m)	2021/22	2022/23	2023/24	2024/25	2025/26	Total
Operating funding	[33]					
Capital funding						

43. There is a risk that the Commission will seek further funding for the 2020/21 year. Should this be the case, to reinforce the need for financial discipline, we recommend any further funding required before 1 July 2023 is deducted from any funding allocated for 2021/22 and 2022/23 in Budget 2021.
44. Given the Commission's poor record of financial management, we have considered whether it is appropriate to revert to annual appropriations rather than continue with the current multi-year appropriation. On balance, we think there are still benefits in maintaining the multi-year appropriation but we consider this needs to be accompanied with a strong message that no further funding will be provided in advance of Budget 2023 decisions and the Commission must manage within its available funding.

Next Steps

45. Our funding recommendation outlined above has been included in Treasury's advice on the draft Budget package [refer T2021/359].
46. We understand the Minister of Internal Affairs proposes to take a paper to SWC in March on the implications of the Commission's administration report provided in November 2020. This paper seeks to explore whether the requested final report extension until 30 June 2025 is appropriate and whether other changes are required to ensure the work of the Commission responds suitably to the issues it is required to address.