

Phase Two: Minute 2

17 March 2025

Introduction and purpose of this Minute

- [1] The evidence-gathering stage of Phase Two of the Royal Commission of Inquiry into COVID-19 Lessons Learned (**Inquiry**) commenced on 29 November 2024. In our first Minute of 18 December 2024, we set out aspects of the Inquiry’s overall procedure for this phase.
- [2] The purpose of this Minute is to outline and provide further detail for the Inquiry’s evidence-gathering processes over the coming months.

Procedural obligations

- [3] Clause 7(1) of the Inquiry’s terms of reference¹ confirms that the Inquiry must comply with section 14 of the Inquiries Act 2013 (**Act**) which provides (among other things) that, in making decisions as to the procedure or conduct of the Inquiry, we must:
 - (a) Comply with the principles of natural justice (the process must be procedurally fair); and
 - (b) Have regard to the need to avoid unnecessary delay or cost in relation to public funds, witnesses, or other persons participating in the inquiry.
- [4] Subject to those requirements, section 14 of the Act broadly permits the Inquiry to determine matters relating to whether to conduct interviews, call witnesses, hold hearings, or receive oral or written evidence.
- [5] The terms of reference provide, in clause 7(2), that the Inquiry must operate in a way that:

¹ The terms of reference for the second phase of the Inquiry can be found in Schedule 2 to the Royal Commission of Inquiry (COVID-19 Lessons) Order 2022, here: <https://www.legislation.govt.nz/regulation/public/2024/0177/latest/LMS984292.html>

- (a) Does not take a legalistic and adversarial approach:
- (b) Uses information that is publicly available:
- (c) Uses efficient procedures to gather any additional necessary information:
- (d) Ensures that any request for necessary information is specified with due particularity.

[6] Clause 7(3) expressly limits the power to hold public hearings, stating that such hearings may only take place if the Inquiry considers they will “significantly enhance public confidence in the processes of the inquiry, the conclusions it reaches, and the recommendations it makes.”

[7] Clause 8(2) confirms that Phase Two of the Inquiry must not duplicate or repeat work undertaken during Phase One of the inquiry. But this must be read subject to clause 8(4) which provides that:

- Phase Two will not have access or regard to material from Phase One that is subject to restrictions on access to information under section 15 of the Act:
- Nor will Phase Two have access to or pay regard to the internal deliberations of Phase One.

[8] Under clause 8(3) of the terms of reference, all findings made by Phase Two must be based on the evidence available to and received during Phase Two.

Methods of evidence-gathering

[9] When identifying witnesses and designing a process for interviews or hearings, the Inquiry is focused on carrying out its task with:

- (a) Efficiency, in terms of minimising both cost and duplication of effort:
- (b) Procedural fairness, especially ensuring that witnesses are given a fair opportunity to answer any adverse comments that the Inquiry might be minded to make:
- (c) Taking a non-legalistic and non-adversarial approach to the process.

[10] The Inquiry is gathering evidence and information to inform our assessment of the relevant matters set out in our terms of reference, especially key decisions made by Government in New Zealand’s response to COVID-19 during 2021 and 2022. We are doing so by:

- (a) Identifying and reviewing publicly available material:
- (b) Where possible, reviewing submissions to Phase One of the Inquiry:

- (c) Accepting and considering public submissions:
- (d) Issuing notices to various agencies under section 20 of the Act, requiring production of identified information:
- (e) Requesting interviews with:
 - (i) Decision-makers:
 - (ii) Advisors to decision-makers:
 - (iii) Independent parties who may have relevant information but were not necessarily part of the decision-making process.
- (f) Engaging with groups or representative organisations who are likely to be able to provide relevant information in relation to the matters set out in the terms of reference.

Interviews

- [11] Under section 19 of the Act, the Inquiry has authority to gather evidence in various ways. Under section 21 of the Act, the Inquiry is authorised to delegate, in writing, certain powers to officers of the Inquiry, including the power to take evidence, verified on oath or affirmation, and to examine documents produced by a witness. An “officer of an inquiry” is a person who is engaged to work for an inquiry.
- [12] It is important for the Inquiry to hear from key individuals so it can identify lessons that should be learned as part of Aotearoa New Zealand’s preparedness for a future pandemic. The commissioners expect that individuals will be prepared to attend interviews with them and/or with officers of the Inquiry on a voluntary basis. In the unlikely event that it becomes necessary to do so, the Inquiry may summon witnesses under section 23 of the Act.
- [13] Interviews may be conducted online or in person. All interviews will be recorded and may be transcribed. Some interviewees may be requested to execute a statutory declaration (a formal evidential statement) in accordance with section 20(a)(iv) of the Act.

Access to information and confidentiality

- [14] As set out in Phase Two: Minute 1, the Inquiry has made an interim order under section 15 of the Act which restricts to the Inquiry and its officers access to all the information received by the

Inquiry. The effect of the interim order is to make all information submitted to the Inquiry confidential until final decisions have been made, except to the extent that it is necessary for the Inquiry to use information provided for the purposes of its investigations and inquiries. Final decisions concerning permanent restrictions to access will be made after the conclusion of the evidence-gathering process.

- [15] The Inquiry intends to publish the names of the people it has interviewed. For officials, however, publication will only apply to those who hold or held the rank of Deputy Chief Executive (or equivalent) or above.
- [16] Interviewees should therefore assume their responses may be referred to in the Inquiry's final report and that, subject to the above, the final report may include references to the identity of interviewees or witnesses who have provided information on which the final report is ultimately based. Interviewees or witnesses who seek permanent confidentiality in respect of their identity or the information they provide (or both) should identify this at their interview and provide reasons for that request.
- [17] It is anticipated that orders to permanently restrict access to information will be made only where that outcome is clearly justified. Where no order has been made, information will not be confidential, but the absence of permanent confidentiality orders does not imply that the Inquiry will proactively publish all material gathered through the interview process.
- [18] Provided they are not covered by a permanent confidentiality order, the Inquiry may attribute comments to relevant interviewees in its final report. Natural justice processes will apply for any adverse comments in accordance with the terms of reference and section 14 of the Inquiries Act 2013. This means affected parties will be given an opportunity to respond in respect of proposed adverse comments in accordance with the principles of procedural fairness.

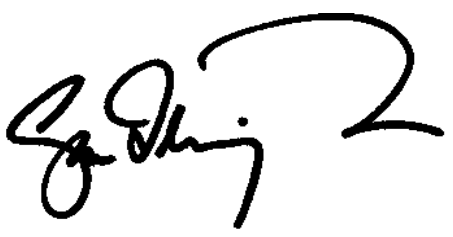
Engagements and public hearings

- [19] As well as the interviews described above, the Inquiry will be conducting a series of engagements with community groups and others who are likely to be able to provide relevant information in relation to the matters set out in the terms of reference. Some of these engagements will be conducted online and others may involve face-to-face meetings. Officers of the Inquiry will be arranging these engagements in the near future. Similar arrangements for recording and restriction of access will apply to these engagements as for individual interviews, subject to any necessary adjustments.

[20] Later in the process, the Inquiry proposes to conduct a carefully limited set of public hearings on some issues. These hearings will be conducted after the Inquiry has had an opportunity to conduct a preliminary assessment of information received pursuant to:

- The public submissions process:
- The orders made under section 20 of the Act:
- The interview process outlined above.

[21] A further Minute will be issued concerning public hearings in due course.

A handwritten signature in black ink, appearing to read 'G. Illingworth', with a large, sweeping flourish extending to the right.

Grant Illingworth KC
Chair of the Inquiry