TE TIRA ĀRAI URUTĀ
NZ ROYAL COMMISSION
COVID-19 LESSONS LEARNED

Phase Two – Minute 4

Public hearings

13 August 2025

Introduction and background

[1] This minute concerns the public hearing scheduled for 20 August 2025 to 27 August 2025.

[2] In Minute 1 dated 18 December 2024 we recorded our preliminary view that some public hearings would significantly enhance public confidence in the findings and recommendations of the Inquiry (at [15]).

[3] In Minute 2 dated 17 March 2025 we recorded our intention to conduct a carefully limited set of public hearings on some issues, after we had had an opportunity to conduct a preliminary assessment of information received in other ways, including document requests, public submissions and interviews (at [20]).

[4] In Minute 3 dated 26 June 2025 we recorded our decision, made iteratively over several weeks, to hold two live-streamed public hearings.

[5] We stated that in the second hearing, we would hear from government ministers, public servants and government advisers concerning key decisions, the advice that was made available to decision-makers, whether those decisions had unforeseen consequences, and recommendations on considerations that should be taken into account to best prepare New Zealand to respond to any future pandemics (Minute 3, [7]).

[6] Since that time, we have gathered evidence in writing and through interviews with decision-makers, including both senior officials and former ministers.

[7] We also invited several public officials, former government ministers, and experts to the public hearing scheduled to begin on 20 August 2025.

[8] On Thursday 7 August 2025 former Prime Minister Rt Hon Dame Jacinda Ardern, former Prime Minister Rt Hon Chris Hipkins, and former Ministers Hon Grant Robertson and Hon Dr Ayesha Verrall (hereafter "the former ministers") declined our invitation, citing concerns during correspondence which can be summarised as follows:

a. There is a convention that ministers and former ministers are interviewed by inquiries in private; there is no reason for a departure from that convention in this case; and that acting contrary to that convention would undermine rather than enhance public confidence in this instance.

b. Because all former ministers had been co-operative in attending interviews and answering questions, repeating such questions at a public hearing would be performative rather than informative.

c. Livestreaming and publication of recordings of the hearing creates a risk of those recordings being "tampered with, manipulated or otherwise misused", a risk which the Inquiry "ought to have foreseen and planned for".

[9] Some other invited witnesses have also provided evidence that appearing at a public hearing will bring risks of abuse being directed at them and their families, online or in person. There is evidence of such abuse being directed at witnesses and others following our July hearing.

[10] Given these events, the Inquiry must now consider whether and, if so, how to proceed with the second public hearing.

Decision whether to proceed with a decision-makers public hearing

Framework

[11] The Inquiry can hold a public hearing only if Commissioners consider that it will *significantly enhance public confidence in the processes, findings and recommendations of the Inquiry*. Public hearings are just one of the tools that we have available to us – we have also gathered a vast amount of evidence through interviews, engagements and document requests.

[12] In making decisions about procedure, we are also required to take into account:

a. The requirement to comply with the principles of natural justice (procedural fairness);

b. The need to avoid unnecessary delay or cost in relation to public funds, witnesses, or other persons participating in the Inquiry;

c. The requirement under our terms of reference that the Inquiry must operate in a way that does not take a legalistic and adversarial approach, and uses efficient procedures to gather any additional necessary information.

[13] We considered all these factors in our original decision to hold a public hearing with decision-makers. We are now faced, however, with a decision whether to:

a. proceed with a hearing where former ministers do not attend;

b. exercise our powers to compel former ministers to attend by exercising the summons procedure under s 23 of the Inquiries Act; or

c. not proceed with the hearing, and proceed with alternative means of gathering further evidence from the witnesses who were to appear.

Public confidence

[14] The COVID-19 pandemic was a significant event that affected every New Zealander. The government at the time, through its ministers, made decisions about how we as a nation responded to that pandemic, which had ramifications for all New Zealanders in many and varied ways. We have been tasked to review those decisions.

[15] We remain of the view that the public being able to see former ministers questioned about those decisions at a public hearing of a Royal Commission of Inquiry would significantly enhance public confidence in our processes.

[16] The Inquiries Act gives us wide powers to determine who to call as a witness, and the manner and form in which evidence is received. There is no restriction in the Act against calling former ministers, and we have not identified any principle or convention that prohibits such an action. Former ministers can and do appear before Commissions of Inquiry both in New Zealand, and overseas.[1] We do not accept that the act of having former ministers appear at a public hearing would undermine public confidence.

[17] Looking at the options now before us, however, we consider that proceeding with a "decision-makers" hearing in the absence of the central decision-makers could undermine the public confidence that would otherwise be achieved by hearing evidence in public.

Efficient processes to gather any additional necessary information

[18] The interviews we have conducted with former ministers and senior officials have provided a significant amount of information. All have been co-operative with answering the wide array of questions that we have put to them, have provided helpful material in writing and/or in interview, and have agreed to answer further questions as required.

[19] There is additional information we need from former ministers and from other witnesses we invited to the hearing, including about the reasoning and advice behind several key decisions, not specifically covered in interviews to date.

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1 For example, ministers can and do appear in the Waitangi Tribunal, and the Court of Appeal recently upheld the power of that body to summons a sitting minister to give evidence at a hearing: *Skerret-White v Minister of Children* [2024] NZCA 160.

[20] We have determined that proceeding with the hearing without former ministers would not be an efficient process to obtain the remaining evidence we require. We also consider that compelling the former ministers to attend a hearing would risk a more adversarial situation than putting the remaining questions to them at further interviews. Our terms of reference direct us to operate in a way that does not take a legalistic and adversarial approach.

Other concerns: broadcasting and recordings, and risk of abuse

[21] We note the concerns of the former ministers about recordings being manipulated or misused, but these risks reflect the modern communications environment, and few public hearings are immune to misrepresentation or misuse by those intent on it. It is also relevant that the former ministers are public figures whose images widely appear in the media in other contexts. In our view, these risks do not, on their own, outweigh the benefits of having a public hearing.

[22] We have also considered the concerns that have been raised with us about the abuse of witnesses, including those who are not routinely in the public eye, and particularly that some witnesses have received abuse following their appearance at our July hearing.

Conclusion

[23] After consideration of each of the above factors, we have decided that proceeding with the August public hearing – either in the absence of former ministers, or with former ministers attending under compulsion – is not justified.

[24] We are confident that we are not hampered in our ability to obtain the information we need to be able to properly complete our task. Public hearings are only one mechanism for obtaining evidence. We need to be clear that the refusal of former ministers in this case to attend the public hearing is not a refusal to provide information, just to answer questions at a public hearing.

[25] We are currently considering the procedure we will adopt to gather remaining evidence from the witnesses who were to appear at the hearing, and a further minute will be issued shortly which will reflect our conclusions about this.