

**Royal Commission of Inquiry into Lessons Learned from Aotearoa New Zealand’s Response to  
COVID-19 That Should Be Applied in Preparation for a Future Pandemic**

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**Phase Two: Minute 1**

18 December 2024

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**Introduction**

- [1] The Royal Commission of Inquiry (COVID-19 Lessons) Amendment Order (No 2) 2024 established a second phase of this Royal Commission under which newly appointed commissioners are broadly required to review key decisions made by the Government in response to the COVID-19 pandemic during 2021 and 2022 together with the economic, social and other impacts of those decisions (“**Inquiry**”).

**Terms of reference and procedure**

- [2] The terms of reference for the second phase of the Inquiry (“**Phase Two**”) are set out on the New Zealand Legislation website and can be accessed at:

<https://www.legislation.govt.nz/regulation/public/2024/0177/latest/LMS984292.html>

- [3] The Inquiries Act 2013 (“**Act**”) governs the conduct of commissions of inquiry. It authorises the Inquiry to determine the procedures it will follow. The Act can be accessed on the New Zealand Legislation website:

<https://www.legislation.govt.nz/act/public/2013/0060/latest/whole.html>

- [4] This Minute sets out aspects of the Inquiry’s overall procedure for Phase Two. All directions in this Minute are provisional and reflect current circumstances. The Inquiry may revise its directions as matters proceed, including if circumstances change.

## Commissioners and counsel assisting

- [5] The Commissioners appointed to undertake Phase Two are Grant Illingworth KC (chair), Judy Kavanagh, and Anthony Hill. Introductory videos can be found on the Inquiry’s website:

<https://www.covid19lessons.royalcommission.nz/about-us/meet-the-commissioners/>

- [6] Kristy McDonald KC and Nick Whittington of Hawkestone Chambers have been appointed by the Solicitor-General as counsel assisting the Inquiry in Phase Two.

## Key decisions

- [7] Clause 4 in the terms of reference requires the Inquiry to review “**key decisions**” taken by the Government in New Zealand’s response to COVID-19 during 2021 and 2022.

- [8] A “key decision” is defined as:

“... a decision that has a potential or actual significant impact on large numbers of people or groups of people, or that has a significant cost at a national or regional level (or both)”.

- [9] This broad category is limited both temporally and by subject-matter:

- (a) We must only consider key decisions made between February 2021 and October 2022 (“**period under inquiry**”).

- (b) The subject-matter to be considered by the Inquiry is limited to:

(i) issues related to COVID-19 vaccines, including vaccine safety, vaccine mandates, and vaccine approvals,

(ii) the imposition and maintenance of lockdowns,

(iii) the procurement, development, and distribution of:

- testing and tracing technologies
- non-pharmaceutical public health materials

including, in particular, the impacts of private sector involvement or non-involvement in these issues.

[10] The definition of “key decision” potentially covers a large number of official decisions made in the period under inquiry. This means the Inquiry will need to determine which decisions fall within the scope of the terms of reference. For each key decision the Inquiry decides to review, we are required to assess several specified matters:

- (a) whether those decisions were sufficiently informed by advice on any social and economic disruption such decisions were likely to cause and, in particular, the effect those decisions might have on—
  - (i) social division and isolation
  - (ii) health and education
  - (iii) inflation, debt, and business activity.
- (b) whether those decisions reflected the advice that was given to decision-makers at the time.
- (c) whether those decisions took account of the experience and evolving practices from comparable jurisdictions.
- (d) whether those decisions struck a reasonable balance between COVID-19 public health goals and minimising social and economic disruption.
- (e) whether those decisions produced unforeseen consequences.

[11] We anticipate being able to provide a preliminary list of key decisions in early 2025.

**Out-of-scope issues**

[12] Clause 6 of the terms of reference lists matters that fall beyond the scope of the Inquiry. The list includes topics such as the operation of the general regulatory system for vaccines, recent reforms to New Zealand’s health system, and judgments and decisions of courts and tribunals relating to the COVID-19 pandemic.

[13] The full list of excluded topics can be found on the New Zealand Legislation website:

<https://www.legislation.govt.nz/regulation/public/2024/0177/latest/whole.html#LMS98430>

### **Procedural requirements & public hearings**

[14] Clause 7 of the terms of reference sets out what the Inquiry must consider in determining its procedure. Notably:

- (a) it must not take a legalistic and adversarial approach.
- (b) it may conduct public hearings only if it considers that such hearings will significantly enhance public confidence in the processes of the Inquiry, the conclusions it reaches, and the recommendations it makes.

[15] Our preliminary view is that some public hearings may significantly enhance public confidence in the findings and recommendations of the Inquiry.

[16] Any public hearings are likely to be held in or around mid-2025. If public hearings do take place, the scope of those hearings will be tightly focussed, in accordance with the terms of reference.

### **Restrictions on access to information**

[17] Under section 15 of the Act, the Inquiry is authorised to make orders restricting access to information provided by witnesses and submitters. Before exercising the power to make orders of that kind, the Inquiry must take certain matters into account, including:

- (a) the benefits of observing the principle of open justice,
- (b) the risk of prejudice to public confidence in the proceedings of the inquiry,
- (c) the need for the inquiry to ascertain the facts properly, and
- (d) the privacy interests of any individual.

### **Interim order restricting access to submissions and evidence**

[18] Having considered the requirements of section 15 of the Act, **the Inquiry orders** that, pending completion of the final report or further order of the Inquiry, access to submissions and/or evidence in Phase Two shall be limited to the commissioners and officers of the Inquiry, except where limited disclosure is necessary to fulfil the purposes and objectives of the Inquiry.

[19] Witnesses and submitters may request interim or permanent confidentiality orders in respect of their evidence or submissions or both. More information about how to do this will be provided in a future Minute.

### **How and when to make submissions or provide evidence**

- [20] We are currently making arrangements to facilitate the receipt of submissions and evidence in relation to the matters under inquiry in Phase Two. These arrangements will be in place by 3 February 2025 and will continue to be available until 27 April 2025.
- [21] We anticipate that these arrangements will enable most people to provide information to the Inquiry and for that information to be considered and analysed. We will be providing details of these arrangements in early 2025 and will publish further details on the Inquiry’s website.
- [22] We encourage you to wait until those arrangements are in place before making submissions or providing evidence. If you need to communicate with the Inquiry before 3 February 2025, please email: [InquiryintoCOVID-19lessons@dia.govt.nz](mailto:InquiryintoCOVID-19lessons@dia.govt.nz)
- [23] Please note that the Phase Two Commissioners have not been authorised to engage in detailed communication concerning evidence used to inform the Phase One report and its findings. We will not be responding to communications in respect of those aspects of the report.

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**Grant Illingworth KC**  
**Chair of Phase Two**