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Proposed Strategic Approach to Guide the Crown Engagement with and Response to, The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-Based Institutions

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These documents, released by the Hon Chris Hipkins, Minister of State Services, set out how the Crown will engage with the Royal Commission of Inquiry into Historical Abuse.

Chair  
Cabinet Social Wellbeing Committee

## **PROPOSED STRATEGIC APPROACH TO GUIDE THE CROWN ENGAGEMENT WITH, AND RESPONSE TO, THE ROYAL COMMISSION OF INQUIRY INTO HISTORICAL ABUSE IN STATE CARE AND IN THE CARE OF FAITH-BASED INSTITUTIONS**

### **Proposal**

- 1 This paper seeks Cabinet Social Wellbeing Committee's (the Committee's) agreement to a broad strategic approach to guide the Crown's engagement with, and response to, the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (the Royal Commission) and the survivor community.
- 2 The proposed strategic approach comprises a set of principles and outcomes. It will have flow-on effects into other work of the Crown, and this paper proposes further work to identify what these effects might be.
- 3 I am also updating the Committee on the steps the Social Wellbeing Board is taking, and has already taken, to establish a coordinated cross-agency Crown response to the Royal Commission.

### **Executive summary**

- 4 Long-held anger in communities that children and vulnerable adults were abused in the care of the State, particularly between the 1950s and the 1980s, prompted the Government to establish the Royal Commission last year. There is anger that little appears to have been done publicly to acknowledge that abuse, to address the pain of the survivors, and to ensure that such abuse cannot happen again. Setting up the Royal Commission shows our commitment to deliver an open, transformative and compassionate government and to address this issue as a priority. The Prime Minister has also reflected these views, stating "this is a chance to confront our history and make sure we don't make the same mistakes again."
- 5 I am keen for the public service to do as much as possible to support the Royal Commission in its role, while keeping enough distance to ensure the Royal Commission maintains its independence, which will be crucial to its success. I have asked officials to establish a coordinated government response, including all the agencies that have information the Royal Commission may require, so that agencies are prepared to respond and engage in a timely, appropriate and coordinated way.
- 6 I understand the Royal Commission's process is likely to be iterative, responsive to survivors, and focussed on transforming the government care system,<sup>[1]</sup> which means the Crown response will need to be both flexible and on-going throughout the term of the inquiry.
- 7 The Crown's response needs to consider the people that have been affected. In particular, there were disproportionate numbers of Māori in the government care system and they are expected to make up at least fifty per cent of the survivors.

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[1] Note that the "government care system" here includes the care of children and vulnerable adults, and includes education, health, welfare and justice settings, as per the Royal Commission's Terms of Reference.

- 8 Pacific people and disabled people are also important groups that were disproportionately affected, and their needs and interests must be considered as well. In particular, disabled survivors and their advocates have reported that they were denied connection with their families and their communities, and many were exposed to physical and sexual abuse, medical experimentation, sterilisation without consent, seclusion and restraint.
- 9 This paper proposes a strategic approach for the Crown's engagement and response focussed on outcomes and grounded in a set of principles. Officials will focus on outcomes that we understand to be important to the survivors of abuse in state care: that survivors are heard and they feel heard, that harm is acknowledged (recognition and reconciliation), that the government care system is improved, that this type of harm does not happen again to children or vulnerable adults in the government care system, that Māori experiences and their impacts are recognised and respected, and that disabled peoples experiences and their impacts are recognised and respected.
- 10 The Crown's strategic approach must be guided by a strong set of principles. I have asked for all Crown activity that relates to the Royal Commission and survivors of abuse in care, to be consistent with the principles of manaakitanga, openness, transparency, learning, being joined up and meeting our obligations under the Treaty of Waitangi.
- 11 Our legal approach is only a small part of the overall Crown response and it will not drive our engagement or response. I propose that our legal approach to engagement with the Royal Commission and with survivors will be exploratory, seeking to balance the Crown's legal obligations with the principles, and avoid an overly legalistic approach.
- 12 The Crown is not always seen to be acting in alignment with the principles, so we will need to take a range of actions to actively demonstrate our commitment to them. I have asked officials to consider what these actions might involve and report back to this Committee. This includes examining some aspects of existing government business which may not initially be obvious, but where the implications of the principles need to be considered. The Crown's current approach to dispute resolution and litigation from people who claim they were abused in state care is one area of work that should be considered in light of the proposed principles.
- 13 Many Non-Government Organisations (NGOs) and Crown entities will also be impacted by the Royal Commission, and I am concerned that they may not have the capability or resources to both meet the Royal Commission's expectations and maintain their current services. I have asked officials to consider the impact of the Royal Commission from the perspective of NGOs and Crown entities and come back to this Committee with some options for ways the Crown could support them to engage in the Royal Commission's process.
- 14 Cross-agency governance and management arrangements have been established that sit under the Social Wellbeing Board, and an agile, cross-agency work programme involving nine agencies is underway.
- 15 The proactive release of this Cabinet paper without redactions is the first step I would like to take towards demonstrating our intention to be guided by the principles in this paper, in particular it will demonstrate openness and transparency.
- 16 I believe that the Crown response provides an opportunity for us to demonstrate that we are an open, transformative and compassionate government, by confronting the mistakes that have been made in the past, and ensuring they are acknowledged and the same mistakes are never repeated again. I would like to see survivors receiving appropriate recognition through the Royal Commission process, having their experiences honoured, and government learning how to better protect children and vulnerable adults.

## Background

- 17 On 12 November 2018 Cabinet agreed to the final terms of reference for the Royal Commission, which set out its purpose, scope, principles and methods of work [CAB-18-MIN-0572.01 refers].
- 18 The Cabinet submission that supported the final establishment of the Royal Commission [SWC-18-SUB-0163] stated that:
- “Crown agencies involved with children, young persons, and vulnerable adults in State care and in the care of faith-based institutions, are preparing to be ready to support the Royal Commission of Inquiry once it begins its investigations. The Social Wellbeing Board ... recommends taking a joined-up approach to coordinate an appropriate Crown response to the Inquiry.”
- “...the board anticipates the impact on social and justice agencies and their sectors to be substantial, both during the inquiry and after as government responds to the inquiry’s recommendations.”
- 19 On 5 December 2018 the Cabinet Social Wellbeing Committee agreed that the Minister of State Services would be the lead Minister to oversee and coordinate government’s work associated with the Crown’s response to the Royal Commission [SWC-18-MIN-0181 refers].
- 20 This is an incredibly important issue. Any abuse of children and vulnerable adults in State care is unacceptable, and to underscore the seriousness of this work nine government agencies are working together to ensure that government will be able to respond to the requests of the Royal Commission in a timely and appropriate way.
- 21 I have sought Budget funding to support the Crown response via the 2019 Budget process, and this is under active consideration. It would involve funding for seven different agencies, with potential to draw down funds from a proposed contingency at a later date if required.

### **The Royal Commission’s process and approach is likely to be iterative, responsive to survivors and focussed on transforming the care system**

- 22 The approach taken by the Royal Commission will guide how the Crown should respond and engage. Although the process the Royal Commission will use is still evolving and its final report is four years away, it is important for the Crown to be ready and able to respond in an appropriate, helpful and timely way to early requests for information or support. It needs to be clear that the Crown supports the Royal Commission, and wants to learn from it how to create a better system to protect children and vulnerable adults.
- 23 The terms of reference for the Royal Commission requires it to “work in a manner sensitive to the needs of individuals and their families, whānau, hapū, Iwi, or other supporters”. It also includes a principle<sup>1</sup> to “avoid an overly legalistic approach” and another to “ensure fair and reasonable processes for individuals and organisations associated with providing care”. The Royal Commission has recently published its vision, which is: “Transforming the way we, as a nation, care for children, young people and vulnerable adults in our communities.”
- 24 Discussions between officials and the Executive Director of the Royal Commission suggest that:
- 24.1 the Royal Commission will use an iterative process, using the four-year term of the Royal Commission to learn from survivors and others and make recommendations as they proceed, rather than only producing recommendations in a final report;

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<sup>1</sup> The Royal Commission terms of reference contains a set of principles for its operation, which are consistent with, but not the same as, the principles proposed for the Crown response that are presented in this paper

24.2 this process will involve: listening to survivors and their whānau; conducting investigations; developing themes; testing the themes in public hearings; conducting research; and identifying improvements; and

24.3 the Royal Commission will expect the Crown to be ready and able to respond, by providing information and working within the Royal Commission's process, as well as by working to 'fix' things identified by the Royal Commission during its term.

25 The Royal Commission's transparent approach to most of its activities will enable Government agencies to discern the trends and issues and respond accordingly.

26 A summary of the Royal Commission's process (as currently understood) is set out in the following table.

**Anticipated Royal Commission approach and timeframes**

Timing	Inquiry stage/action
Now	<ul style="list-style-type: none"> <li>Meeting with stakeholders (survivors, agencies, academics and other)</li> <li>Research on historical, and current, policy and practice</li> <li>Appointment of staff</li> </ul>
Mid-April 2019	<ul style="list-style-type: none"> <li>"Truth project" style listening (in pilot phase to begin with) - Commissioners will meet with survivors in person and hear their stories</li> </ul>
June/July 2019	<ul style="list-style-type: none"> <li>Preliminary hearing (or two) on procedure, rules of engagement and how the Inquiry will require information</li> </ul>
October/November 2019	<ul style="list-style-type: none"> <li>Contextual hearing with introductory speakers, to set the context and tone for the following hearings</li> </ul>
Not yet planned (expected to be held in the first part of 2020)	<ul style="list-style-type: none"> <li>Hearings and investigations based on listening to survivor accounts (likely to be filtered to investigate a representative set of cases, for example representative themes and institutions)</li> </ul>

**This means the Crown response will need to be both flexible and on-going throughout the term of the inquiry**

27 The iterative and flexible approach being signalled by the Royal Commission has two implications for the Crown's strategic approach:

27.1 Firstly, that government agencies will need to be prepared to engage and respond (including, with information and advice about current practices) for the duration of the inquiry rather than waiting to respond to a final report at the end.

27.2 Secondly, it means government agencies will need to work in a collegial way - with each other, with the Royal Commission, and with survivors, NGOs, Crown entities, faith-based organisations and communities. We will need to understand the context in which the Royal Commission is taking place, including what harm has been done, and respond in ways that demonstrate real commitment to addressing people's hurt and concerns.

28 The Crown has two main roles in relation to the Royal Commission:

28.1 to provide information, evidence and explanation relating to State care, both historically, and in terms of the current system and plans for the future; and

28.2 to respond to any findings or recommendations from the Royal Commission related to State care (for example, recommendations for changes to the current system).

- 29 The Crown should follow the lead of the Royal Commission in terms of timing and sequencing. We will record issues that apply to faith-based institutions, as there will be some overlap with State care, and we will address these when the Royal Commission is ready.
- 30 As we will be following the Royal Commission's lead in designing our response, if the Royal Commission significantly changes its approach the Crown will need to review its response accordingly. However, we must ensure that responsiveness does not overstep - whether in reality or perception - into appearing to influence the Royal Commission. It is important to respect the Royal Commission's independence to preserve its legitimacy with the survivor community, and support its success.

**The Crown's response should consider who has been affected, in particular, the disproportionate numbers of Māori in the government care system<sup>2</sup>**

- 31 Specific consideration needs to be given to the impact of the government care system on Māori children and vulnerable adults, and the intergenerational impact on whānau, hapū and iwi. The terms of reference for the Royal Commission specifically requires it to "give appropriate recognition to Māori interests, acknowledging the disproportionate representation of Māori, particularly in care". It also notes that "the inquiry will be underpinned by Te Tiriti o Waitangi/the Treaty of Waitangi and its principles, and will partner with Māori throughout the inquiry process". It will be important to understand Māori involvement with services for children and vulnerable adults (including in health, education and justice settings) in the broader context of what Māori were experiencing at the time.
- 32 The principles in the Royal Commission's terms of reference require it to "work in partnership with iwi and Māori", and to "work inclusively with Pacific people". This means some special consideration will also need to be given to the impact on Pacific people.
- 33 Māori children have consistently been significantly over-represented among children in State care – to the point where they make up more than half of all children in care. A random sample taken by the former Department of Social Welfare found that more than 53% of children who were the subjects of guardianship orders in 1971 were Māori (while 1971 census data showed that Māori made up 12.3% of 0-14 year olds). Although ethnicity data from the 1950s until the 1980s is not as reliable as now, and likely undercounted both Māori and Pacific people, what we know about the survivor community suggests that at least 50% are Māori. For example, of the claims received to date by the Historic Claims Unit in the Ministry of Social Development, 55% identify as Māori and 4% as Pacific people.
- 34 In 1986 the Minister of Social Welfare released Puao Te Ata Tū, the report of the Ministerial Committee on a Māori perspective for the Department of Social Welfare (DSW). This followed pressure for change both from external activists and from within the agency itself. For example, the Women against Racism Action Group, within DSW, had already identified institutional racism in DSW before Puao Te Ata Tū.
- 35 Puao Te Ata Tū noted that institutional racism "can be combatted only by a conscious effort to make our institutions more culturally inclusive in their character, more accommodating of cultural difference" (p 78). The Director-General, John Grant, commented (in his letter to all staff, on the report's release) that "I would be less than honest if I did not accept a substantial Departmental failure in the delivery of effective Social welfare service to our Māori clientele". This led to a sharp decrease in the number of Māori children in the care of DSW. However, it has since crept up again, and currently 69 % of the children and young people in the care of Oranga Tamariki identify as Māori - up from 59% in 2011.

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<sup>2</sup> Note that the "government care system" here includes the care of children and vulnerable adults in education, health, welfare and justice settings, and decisions that led to individuals being taken into care, as per the Royal Commission's Terms of Reference.

- 36 This overrepresentation in itself underlines an important aspect of the inquiry for Māori, which concerns the circumstances that led to individuals being taken into or placed into care and the appropriateness of such placements (as described in section 10.4 of the Royal Commission's terms of reference). A key question for Māori will be how this overrepresentation happened – where it began and what the causes were.
- 37 I have provided this context to show that the Crown response needs a strong Māori perspective throughout it. We need to recognise that, because a large proportion of the survivors the Royal Commission will be listening to will be Māori, specific consideration needs to be given to how Māori needs can be met in the Crown response. Meeting our obligations under the Treaty of Waitangi and honouring its principles, so that whānau, hapū, and iwi know their views of the world matter, must be a key part of our strategic approach.

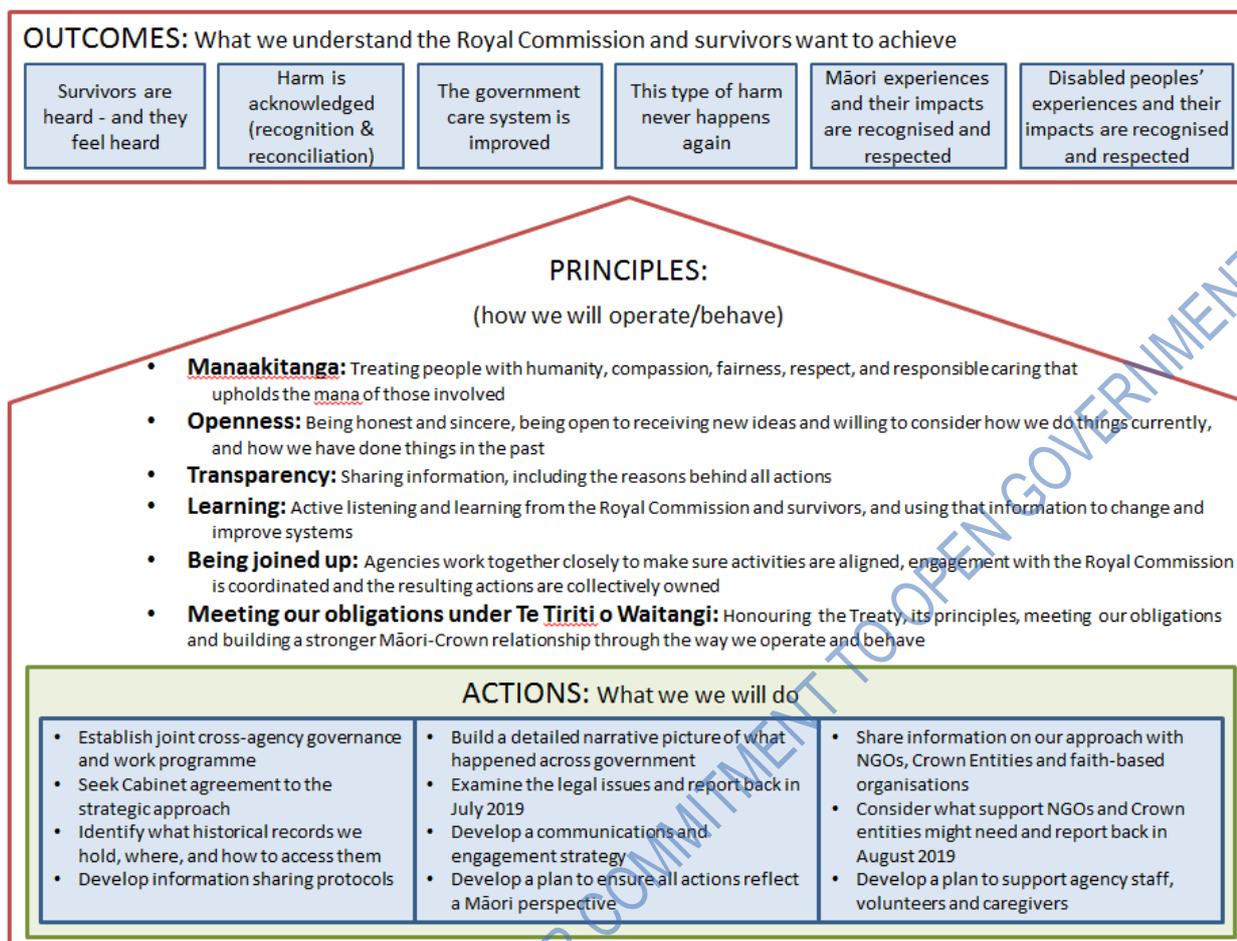
**People with disabilities and mental illnesses who were in State care are also an important group of survivors**

- 38 The principles in the Royal Commission's terms of reference also require it to "facilitate the meaningful participation of those with disabilities, mental illness or both." There were a number of institutions that catered specifically to disabled children, and children often stayed in these institutions well into adulthood. Disabled survivors and their advocates have reported that they were denied connection with their families and their communities, and many were exposed to physical and sexual abuse, including medical experimentation, sterilisation without consent, seclusion and restraint.

**The Crown's strategic approach should be outcomes focussed and principles based**

- 39 I propose a strategic approach that includes a set of principles, outcomes and actions that will guide the Crown's activity and operating style. This strategic approach is pictured below.

**Figure One: Proposed principles and outcomes to guide the Crown response**



40 There needs to be integrity and consistency in the way the Crown responds to the Royal Commission. This includes consideration of the potential need to balance the principles against each other. For example, ‘transparency’ should be carefully balanced with ‘manaakitanga’ so that when information is released we consider how its publication might impact on survivors, and take steps to ensure that they are not further harmed by any information release.

**The Crown’s strategic approach should focus on the outcomes the Royal Commission and survivors want to achieve**

41 Consistent messages about the outcomes survivors and their advocates want to see have appeared in the media. These are mostly focussed on improving current services (so that this type of harm ‘does not happen again’) and acknowledging past wrongs (the need to be heard and to get justice). The Prime Minister has reflected these views by stating that “this is a chance to confront our history and make sure we don’t make the same mistakes again”.

42 With this context in mind, I propose six key outcomes that are important to survivors, the Royal Commission and the Crown, as the focus for the Crown strategy. These proposed outcomes are:

42.1 **Survivors are heard and they feel heard:** There is a powerlessness that comes from being a child or a vulnerable adult without support, and some survivors have said that their complaints were not listened to. A desired outcome of the Royal Commission’s

work often raised in media reports (and from the Royal Commission itself) is to redress that balance and allow survivors' voices to be heard. To support the achievement of this outcome, the Crown should show through our actions and behaviours that we are hearing survivors, who in the past have not felt heard.

- 42.2 **Harm is acknowledged (recognition and reconciliation):** Although some work has been done to acknowledge past harm (for example, the Ministries of Health, Education and Social Development all offer letters of apology as part of their historic claims processes, and apologies were made in relation to Lake Alice Hospital), the calls for the establishment of the Royal Commission show that this has not been enough. The Royal Commission may help to identify what else is needed to address this issue. It will fall to the Crown to deliver an effective acknowledgement of harm.
- 42.3 **An improved government care system<sup>3</sup>:** Improving the Government care system to increase its safety and responsiveness across all settings, is a key outcome reflected in the vision of the Royal Commission, and in the words of the Prime Minister “to “confirm our commitment to considering future measures to help protect all children”. The establishment of the Royal Commission gives the Crown an opportunity to improve the care system, informed by past mistakes and by survivors' views and experiences.
- 42.4 **This type of harm never happens again:** This is one of the main concerns expressed repeatedly by survivors – that others should not suffer the same type of harm in the future. It should follow from an improved care system that the type of harm caused to children and vulnerable adults in the past should never occur again.
- 42.5 **Māori experiences, and their impacts, are recognised and respected:** An understanding of the experience of Māori in State care needs to be reflected in how the Crown engages with the Royal Commission, hears the voices of Māori survivors, acknowledges their experiences, works to improve care systems, and prevents similar harm from occurring again. Abuse of Māori in care can cause disconnection from whānau, hapū and iwi, and have intergenerational and multi-dimensional impacts on total wellbeing. Further consequences can include stigma, poor self-esteem and loss of cultural identity. The system also needs to recognise the Treaty of Waitangi and its principles and honour the Treaty so that whānau, hapū, and iwi know that their views of the world matter.
- 42.6 **Disabled peoples experiences, and their impacts, are recognised and respected:** An understanding of the experience of disabled people in State care needs to be reflected in how the Crown engages with the Royal Commission, hears the voices of disabled survivors, acknowledges their experiences, works to improve care systems, and prevents similar harm from occurring again. Abuse of disabled people in care can cause disconnection from society, and have intergenerational and multi-dimensional impacts on total wellbeing. Further consequences can include stigma, poor self-esteem and mental health issues. The system also needs to recognise and honour the UN Convention on the Rights of Persons with Disabilities so that disabled people are recognised and their experiences valued.

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<sup>3</sup> Note that the “government care system” here includes the care of children and vulnerable adults, and includes education, health, welfare and justice settings, as per the Royal Commission’s Terms of Reference.

**The Crown should be guided by the principles of manaakitanga, openness, transparency, learning, being joined up and recognising of the Treaty of Waitangi**

- 43 I propose a set of principles<sup>4</sup> to guide all Crown activity in response to the Royal Commission, and any other government actions that interact with, or impact on, the survivor community (survivors and their supporters and advocates). Given the harm that individuals, whānau and communities have experienced, the principles show our intent to behave with compassion and to be open, transparent and to learn from the Royal Commission and survivors.
- 44 The proposed principles are:
- 44.1 **Manaakitanga:** The Crown recognises that people and their experiences are at the heart of this issue and they will be treated with humanity, respect and responsible caring that upholds the mana of those involved.
- 44.2 **Openness:** That government should be honest and sincere in all its dealings with the Royal Commission and the survivor community. We should be open to receiving, considering and acting on new ideas, and willing to reconsider how we do things currently and how we have done things in the past.
- 44.3 **Transparency:** Access should be available to knowledge and information held by the Crown as much as possible<sup>5</sup> and the Crown should proactively share any relevant information, including information about past actions and current processes. This principle must be balanced with manaakitanga, as care should be taken when releasing information that its release does not cause further harm to survivors.
- 44.4 **Learning:** Crown agencies should listen and learn from the Royal Commission and the survivor community as the inquiry progresses, in ways that are both deliberate and reflective, and use that information to change current systems, where relevant.
- 44.5 **Cross-agency alignment and ownership:** The Crown will take a ‘whole of government’ ownership of the response, align activities and coordinate engagement with the Royal Commission. Oversight from the Social Wellbeing Board and sponsorship from a subgroup of Chief Executives will support this.
- 44.6 **Meeting our obligations under Te Tiriti o Waitangi:** The Crown response needs to recognise the principles of the Treaty of Waitangi, meet Treaty obligations as they apply and build a stronger Māori-Crown relationship through the way we operate and behave.
- 45 These principles will need to flow through into the way the Crown behaves in providing information to the Royal Commission, in responding to their requests and recommendations, and in the Crown’s wider behaviour that impacts on survivors of abuse in the government care system.

**Our legal approach to engagement with the Royal Commission will be exploratory, seeking to balance the Crown’s legal obligations with the principles**

- 46 The Crown’s legal approach to engagement with the Royal Commission will only be a small part of the overall strategic approach. The legal approach will need to be aligned with the proposed principles and led by the tikanga of the Royal Commission.

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<sup>4</sup> Note that these principles are consistent with, but not the same as, the principles set out in the Royal Commission’s terms of reference, as they are intended for different purposes.

<sup>5</sup> Subject to any legislative parameters (for example, privacy of individuals).

- 47 This does not mean that legal issues will be unimportant, or that we will take everything at face value. Some legal issues will require some consideration and legal advice. But I do not want the legal issues to drive the Crown's strategic approach. We should take an open-minded, exploratory approach.
- 48 A number of legal process issues will likely arise during the course of the inquiry, for example, the legal status of information provided to the Royal Commission. Careful legal contribution from the Crown on such issues will contribute to the efficient running of the inquiry.
- 49 In the context of broader government actions that impact on the survivor community, although many claims proceed to settlement, those claimants have the right to litigate their claims. The Crown will need to better understand and think about the implications of these principles for conduct of the Crown's defence in litigation.
- 50 I propose to ask officials to report back to this Committee in October 2019, with a view about whether the approach to the conduct of current historic claims litigation could better reflect the principles set out in this paper.
- 51 Claimant's allegations can have serious consequences for current or former Crown employees or caregivers, including criminal, employment or civil legal consequences. Therefore, work on the Crown's approach to litigation will also involve considering natural justice for those who have allegations made against them, bearing in mind that ensuring "fair and reasonable process for individuals and organisations associated with providing care" is one of the principles in the Royal Commission's terms of reference.

**The Crown is not always seen to be acting in accordance with the proposed principles, so we will need to take a range of actions to actively demonstrate our commitment to them**

- 52 Anecdotal evidence suggests the survivor community and their advocates do not perceive the Crown as always operating in accordance with the principles. For example, on 15 September 2018 Elizabeth Stanley, an advocate for survivors, was quoted in the NZ Herald as saying that "amid the fanfare, there is a creeping feeling of state self-protection" and, further, that "I am sure many senior civil servants and politicians are feeling quietly comfortable at the confirmation the commission will not have any great impact on them or their institutional operations". Other events have contributed to this impression, such as the release of the State Services Commission report that included reference to past use of private investigators as part of the Crown response to historic claims.
- 53 In the press release that accompanies the release of this paper, I intend to make it clear that I expect the Royal Commission to have a significant impact on State agencies that care for children and vulnerable adults, and that I do not expect those agencies to be complacent about the impact of this work.
- 54 In recent years, some changes have been made to some government settings and practices that are consistent with the principles. For example, the Ministry of Social Development has reviewed its historic claims process after consultation with survivors. This included a separate consultation process for Māori survivors facilitated by Māori researchers to ensure that Māori views are adequately reflected in the new process.
- 55 An important example of change currently underway is the establishment of the Oranga Tamariki operating model. Oranga Tamariki is developing and implementing a new child-centred operating model to transform the service response to this country's most at-risk children and young people and make a positive difference in their lives, and those of their families and whānau. The implementation of the operating model will need to deliver on a range of legislative changes in the Oranga Tamariki Act 1989 (the Act) which come into force

on 1 July 2019. In particular, the Chief Executive of Oranga Tamariki has specific duties in relation to the Treaty of Waitangi under section 7AA of the Act. These duties require Oranga Tamariki to set measurable outcomes for Māori, establish strategic partnerships with iwi and Māori organisations, and ensure policies, practices and services have regard to the principles of mana tamaiti, whakapapa and whanaungatanga. The Royal Commission may want to look at this and other aspects of the work being done as part of the Oranga Tamariki transformation process, to see whether this might help to address some of the concerns raised by survivors, or whether additional action is required.

56 However, I think we need to do more to shift perceptions that are long held. We should take a series of actions over time to actively demonstrate our commitment to the principles, so they are genuinely seen, heard and believed. These actions might be a mix of small, large, practical, symbolic, proactive and/or reactive actions. Some of them might be public, and others targeted to specific groups. We must also be mindful of a range of initiatives already in progress across government to improve the care system (such as the Oranga Tamariki transformation programme mentioned above), so we will need to consider how this existing work and the work of the Royal Commission can complement each other.

57 These actions would:

57.1 reassure survivors and their advocates that government has a genuine desire to confront the past and improve the future;

57.2 enable us to engage more effectively with the Royal Commission and with survivors and their advocates, by creating an environment where the levels of trust (particularly the trust of survivors and their advocates) in government are improved; and

57.3 reduce the level of suspicion that characterises the environment in which the inquiry is taking place (but which is not unreasonable given survivors' experiences).

58 As a first step, to demonstrate our commitment to the principles (particularly around openness and transparency), I will publicly release this Cabinet paper with an accompanying media release describing the principles and outlining how I expect to see them reflected by agencies when they are engaging with the Royal Commission and with survivors and their advocates.

59 Other actions may include considering whether to:

59.1 publicly release other information concerning past or current government activity, that we give to the Royal Commission in response to its requests<sup>6</sup>;

59.2 be more open and transparent in how we decide what information is released to the public, and what is withheld;

59.3 refer to the principles when making public announcements about existing work (for example, the release of statistics on children who are harmed in Oranga Tamariki care which show that the Crown is trying to be more open and transparent); and

59.4 seek to develop a terms of engagement with the Commission underpinned by these principles, which could be publicly released.

60 It is not possible to identify all the actions now, as new actions will become apparent as opportunities arise and the Royal Commission progresses. However, I would like Ministers whose agencies are involved in this work to consider whether there are ways they can

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<sup>6</sup> Subject to any legislative parameters (for example, privacy of individuals).

connect the principles to work their agencies are planning or progressing, and consider the actions they are taking, to ensure they don't undermine the principles.

**We will also need to consider the implications of the principles for some of our existing government business which may not initially be apparent**

- 61 Establishing a unified set of principles to cover all agencies in the social sector, and have these guide activity for a specific group of people, is a new way of operating which could have implications on work areas that are not initially apparent.
- 62 This means that action to align with the principles should also look at some regular 'business as usual' activity, where it impacts on survivors of abuse in care. Agencies will need to look at whether we are living the principles in existing strategies, policies and ways of working. This will require agencies to think about what these principles mean for their work and come back to this Committee. For example, the Chief Archivist, in exercising their statutorily independent role, will need to ensure the framework for agencies' information management practices responds to the Royal Commission's findings (for example, in terms of access and retention of records).
- 63 Agencies will need to consider the implications of the principles for existing government business, and identify other work that may be required to give effect to the principles. The Crown Secretariat (coordinating the Crown response) will coordinate agencies to provide a "whole of Crown" report back to this Committee on these matters by the end of July 2019.

**Options to support Crown Entities and NGOs to engage with the Royal Commission will be considered**

- 64 The Royal Commission will impact on some Crown entities (such as school Boards of Trustees and District Health Boards (DHBs)) and many NGOs. Some NGOs and Crown entities will be included in their own right if they are also faith-based organisations (for example, Barnardos, Presbyterian Support Services, faith-based schools), while others will be included because they have provided contracted services to the Crown. Some may be in both groups.
- 65 The Royal Commission's requirements of these organisations are likely to be similar to those for Government agencies. They can be asked to find and collate information, to release it in accordance with the law (protecting privacy etc.) and to advise on current practice.
- 66 Crown entities may be able to access support through their monitoring agencies (the Ministry of Health for DHBs and the Ministry of Education for schools). The Ministry of Education is currently planning how to best support school Boards of Trustees with any requests from the Royal Commission. The Ministry will be working closely with the Education Review Office, Teaching Council and New Zealand School Trustees Association in this work.
- 67 However, many NGOs are incorporated under the Charitable Trusts Act, and have no recourse to Government support. The capability and resource levels of both NGOs and Crown entities suggests that some may struggle to resource this work. This has implications for agencies which rely on these organisations as part of the Government's current care system.
- 68 Therefore, I would like to consider whether Government should provide extra support for Crown entities and NGOs to participate in the Royal Commission's process. Officials have identified several levels of potential engagement and support:

- 68.1 To share general information about the Crown process and activity to support the Royal Commission, with the Crown entities and NGOs. This is a basic requirement, and I have asked officials, through the Crown Secretariat, to engage with NGOs and Crown entities on this basis already.
- 68.2 To help NGOs and Crown entities to gather and present the information they will need for the Royal Commission. This would help with the capability and resourcing needs they will face to comply with Royal Commission requests (for example, document management skills they may not have). Some funding for this is included in the Budget bid currently being considered as part of the budget process.
- 68.3 Support for legal representation. It is unlikely that most NGOs or Crown entities (with the exception of large DHBs) will have the capability or resources to provide their own legal representation if it became necessary.
- 68.4 To collaborate on processes to help improve the system. For example, on ways to improve their current 'care' practices or on new or redesigned programmes. This activity could occur as part of the contracting process for the contracted service providers.
- 69 Further discussion is needed between agencies and Crown entities and NGOs, to determine if the NGOs need support and if so, what the options are to provide it to them and the resulting financial implications. I proposed the Crown Secretariat with support from agencies begin this policy work by approaching the two peak bodies whose membership includes the majority of affected organisations in the NGO sector, the New Zealand Council of Christian Social Services (NZCCSS) and the Social Service Providers, Aotearoa (SSPA). I propose to report back on this issue by the end of August 2019.

### **Cross-agency governance and management arrangements have been established that sit under the Social Wellbeing Board**

- 70 The overall governance and management structure for the Crown response to the Historical Abuse Inquiry is set out in the attached A3 (Appendix 1). The structure is based on standard programme good practice, and is designed to be agile so the Crown can provide effective and timely participation over the life of the Royal Commission.
- 71 Sponsoring oversight is provided by a sub-set of five Chief Executives from the Social Wellbeing Board, with decisions about resourcing, risks and the work programme handled by an Interagency Group of senior managers from relevant agencies.
- 72 Day-to-day coordination of the Crown response components is handled by a small Crown Secretariat. It is not intended for the Secretariat to progress all the work required to ready the Crown's response to the Royal Commission but to coordinate, and ensure consistency across, government agencies' responses. Among other things, the Secretariat will develop frameworks and templates for agency responses, coordinate agency work and act as a conduit for communication with the Royal Commission.
- 73 A set of individual work-streams will form the Crown response, with cross-agency working groups driving particular aspects of the work. The individual work streams may be led by Secretariat members or by representatives of the participating agencies.

## **An agile, cross-agency work programme is underway**

- 74 The Crown work programme is moving ahead at pace, with the collaboration of all agencies and coordinated by the Crown Secretariat. Work is underway across the initial work items as described in the “actions” section of the “Strategic approach” diagram on page seven. In this initial phase, the focus is on preparation for information requests from, and hearings by, the Royal Commission.
- 75 In addition to the work items already discussed above (to establish the governance and work programme; develop the strategic approach; examine the legal issues; and work to help support the NGO sector) there are several other key work items worth noting, as follows:
- 75.1 The Crown Secretariat is working with agencies to identify all the historical records they hold, and how these can best be accessed (in the case of records held by contracted agencies and off-site storage), so that they can be collated and provided to the Royal Commission when needed.
- 75.2 Protocols are being developed for sharing information with the Royal Commission, and between agencies. Agencies are required by law to provide information to the Royal Commission when requested, but there are still legal requirements which mean that having protocols will make the process quicker and more efficient.
- 75.3 Agencies are working to build a detailed narrative picture of what happened in terms of the approaches to state care for children and vulnerable adults in each sector, and across government. The picture of what happened will be important to determining the next phase of work-streams.
- 75.4 Agencies are considering what assistance is to be provided to staff who are requested to appear at a Royal Commission hearing or where allegations are made against an individual. The Royal Commission’s terms of reference has an operating principle that they must “ensure fair and reasonable processes for individuals and organisations providing care,” and the Inquiries Act confirms the need to comply with the principles of natural justice for those against whom there might be an adverse finding.<sup>7</sup> Agencies may need to provide a range of support, depending on the particular agency and the individual’s situation. Assistance options will be confirmed later in 2019, and will be reported back to Cabinet if there are substantive resource implications for agencies.
- 75.5 A communications and engagement strategy is being developed by a group of communications staff from all the agencies to ensure consistent messaging and support the proactive release of information, when required.
- 76 In addition, the New Zealand Police are working with the Royal Commission to establish protocols for handling any allegations of abuse against current staff or caregivers and the subsequent investigations. Agencies will cooperate fully with the Police as they do for any allegation of abuse currently.

## **Consultation**

- 77 This paper has been developed and agreed collaboratively by an interagency working group made up of the Ministries of Health, Education, Justice, and Social Development, Oranga Tamariki, the State Services Commission, Crown Law, the New Zealand Police and the Department of Corrections, and coordinated by the inter-agency Crown Secretariat.

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<sup>7</sup> The Inquiries Act (2013) Section 14, subsection 2, paragraph (a)

- 78 Advice was provided by Archives New Zealand and Te Puni Kōkiri. The Ministry for Pacific Peoples, the Office for Disability Issues and the Ministry for Women were also consulted.
- 79 The Department of Prime Minister and Cabinet and the Treasury have been informed.

### **Financial implications**

- 80 While this work will have financial impacts for agencies, these are not addressed in this paper. Cabinet has previously noted that if any additional finding is required to support the Government's work associated with the Royal Commission, then the Minister of State Services would coordinate a budget bid [CAB-18-MIN-0609 refers].
- 81 A budget bid was subsequently submitted in December 2018 and it is currently being assessed through the Budget 2019 process.

### **Human rights implications**

- 82 A strong rationale for this work, and the work of the Royal Commission itself, is to uphold human rights. While this work will not determine individual cases, it is an important part of investigating and understanding what happened, and identifying what would help to prevent abuse in the future. Human rights implications also include procedural fairness for all parties, whether they are complainants or persons whose conduct is being examined by the inquiry.
- 83 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 and will support New Zealand to meet its obligations under various relevant international treaties and obligations. These include the UN Convention on the Rights of the Child, the UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the UN Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the UN International Convention on the Elimination of All Forms of Racial Discrimination and the UN Declaration on the Rights of Indigenous People.
- 84 The principles and methods of working outlined in this paper will ensure the Crown response to the Royal Commission is consistent with a human rights approach. In addition, because the Royal Commission's terms of reference will support it to take a human rights approach, the Crown response will also be consistent with human rights as long as it is aligned with the Royal Commission's activity.

### **Legislative implications**

- 85 This paper has no legislative implications, although it is possible that there may be subsequent legislative implications from the work of the Royal Commission at some time in the future.

### **Regulatory impact and compliance cost statement**

- 86 This paper has no regulatory or compliance implications.

### **Gender implications**

- 87 This work needs to be consistent with the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). In particular the Committee on the Elimination of Discrimination Against Women noted in their 2012 report that they were

“concerned about the situation of disadvantaged groups of women, including women with disabilities, women of ethnic and minority communities, rural women and migrant women.”

- 88 This work may have some gender implications, particularly as it relates to family and whānau impacts, as caregivers are often women, although women appear to be under-represented among survivors of abuse in care. Abuse in care can and does happen to all genders. Data from the Ministry of Social Development’s Historic Claims Unit shows that 72% of their 3631 claimants are male and 28% are female, with a very small number identifying as transgender.
- 89 The reasons for the under-representation of women in the survivor community is not known, but this is one of the issues that will be examined as part of the research and analysis that will be done to build a detailed narrative picture of what happened in each sector (referred to under the “actions’ in the diagram on page seven and under work-stream three in the governance diagram in Appendix 1).

### **Disability perspective**

- 90 One in four New Zealanders identify as disabled. Disabled adults are up to two times more likely to be a victim of violence than those without a disability. Māori are over-represented in the disability population (at 26%). Disabled people are also over-represented in the youth and adult care systems, and law enforcement settings. Many children, young persons, and vulnerable adults affected by abuse, who come under this inquiry, were people with disabilities, mental illness, or both. Many disabled people were deprived of their liberty or in care due to their physical, intellectual, disability, or mental health status. Disabled people and their experiences of abuse in State care need to be recognised and respected.
- 91 In addition, any new services or changes to Government systems and processes need to actively consider how they will work for disabled people (from the beginning) to ensure services are available to all, while also recognising that there may need to be disability-specific responses created as well. This is an opportunity to acknowledge that disabled people are a valued group in our society on an equal basis with others, and put the UN Convention on the rights of Persons with Disabilities into practice.

### **Publicity**

- 92 A communications work-stream has been established comprised of communications staff from all the agencies involved. A joint communications strategy is being developed to ensure that the messages coming from government about the Royal Commission are consistent and constructive. It is also important that information is provided in accessible formats, and in a timely manner, so that disabled people can fully engage and understand the Government response to the Royal Commission.

### **Proactive release**

- 93 The proactive release of this Cabinet paper is the first step towards demonstrating our intention to be guided by the principles in this paper, in particular the principles of openness and transparency (see paragraph 44).
- 94 As this work is directly relevant to several different Ministerial portfolios, including Education, Health, Justice, Police, Social Development and Oranga Tamariki, and has indirect implications for others, such as Māori Development, Disabilities, Youth, Women and Pacific peoples, I am seeking the Committee’s support for the proactive release of this Cabinet paper without redactions.

95 I will ask the State Services Commission to publish this Cabinet paper on its website, and to encourage all the other agencies involved in this work to do likewise. I will also prepare my own press release (as mentioned in paragraph 53).

## Recommendations

96 It is recommended that the Cabinet Social Wellbeing Committee:

- 1 **note** that the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (the Royal Commission) is expected to begin its first stage of work, a 'truth' project that involves listening to survivors, in April 2019;
- 2 **note** that the Royal Commission's approach is expected to be iterative, responsive to survivors and focussed on transforming the care system (including the care of children and vulnerable adults in health, education, welfare and justice settings);
- 3 **note** that this means the Crown response will likely need to be flexible, involving on-going responsiveness and practice change throughout the course of the inquiry, and will need to change if the Royal Commission changes direction;
- 4 **note** that the Crown's strategic approach for engaging with and responding to the Royal Commission needs to be agreed now to guide our preparation this year, because we expect to be asked to provide information to the Royal Commission both now and in an iterative way throughout the duration of the inquiry;
- 5 **agree** to the proposed strategic approach set out in this paper, which consists of principles, outcomes and work programme actions;
- 6 **note** that the outcomes we understand the Royal Commission and survivors want to achieve include that:
  - 6.1 survivors are heard and they feel heard;
  - 6.2 harm is acknowledged (recognition and reconciliation);
  - 6.3 the government care system is improved;
  - 6.4 this type of harm does not happen again to children or vulnerable adults in the government care system;
  - 6.5 Māori experiences and their impacts are recognised and respected; and
  - 6.6 Disabled peoples experiences and their impacts are recognised and respected;
- 7 **agree** to the following principles, of:
  - 7.1 Manaakitanga: Treating people with humanity, compassion, fairness, respect and responsible caring that upholds the mana of those involved;
  - 7.2 Openness: Being honest and sincere, open to receiving new ideas and willing to consider how we do things currently and how we have done things in the past;
  - 7.3 Transparency: Sharing information, including the reasons behind all actions;

- 7.4 Learning: Active listening and learning from the Royal Commission and survivors, and using that information to change and improve systems;
- 7.5 Being joined up: Agencies work together closely to make sure activities are aligned, engagement with the Royal Commission is coordinated and the resulting actions are collectively owned; and
- 7.6 Meeting our obligations under Te Tiriti o Waitangi: Honouring the Treaty, its principles, meeting our obligations and building a stronger Māori-Crown relationship through the way we operate and behave;
- 8 **note** that the Royal Commission’s terms of reference contains a principle about accessibility – it is required to “facilitate the meaningful participation of those with disabilities, mental illness or both”;
- 9 **note** that government is not currently perceived as always acting in accordance with the proposed principles in its treatment of survivors;
- 10 **agree** that agencies will need to:
- 10.1 take actions to actively demonstrate the government’s commitment to the principles; and
- 10.2 consider the implications for existing government business (strategies, policies and ways of working);
- 11 **agree** that, to ensure consistency with the principles, the Crown’s legal approach should be exploratory, seeking to balance the Crown’s legal obligations with the principles;
- 12 **direct** officials to consider whether the approach to the conduct of current historic claims litigation could better reflect the proposed principles, and report back on this to the Social Wellbeing Committee by the end of October 2019;
- 13 **note** that as a first step to demonstrate the proposed principles, I will proactively release this Cabinet paper with an accompanying media release describing the principles and outlining how I expect to see them reflected by agencies when they are engaging with the Royal Commission and with survivors and their advocates;
- 14 **direct** officials to identify actions that can be taken to demonstrate the principles and then, coordinated through the Crown Secretariat, provide a “whole of Crown” report back to the Social Wellbeing Committee by the end of July 2019;
- 15 **note** that the inquiry process will also impact on a number of Crown entities and non-Government Organisations (NGOs), and some may not have the capability or resources to comply with the likely requests from the Royal Commission, which could impact on current government services; and
- 16 **direct** officials to report back to the Social Wellbeing Committee by the end of August 2019 on whether support for NGOs and Crown entities is needed and if so, options to provide that support, and their financial implications.

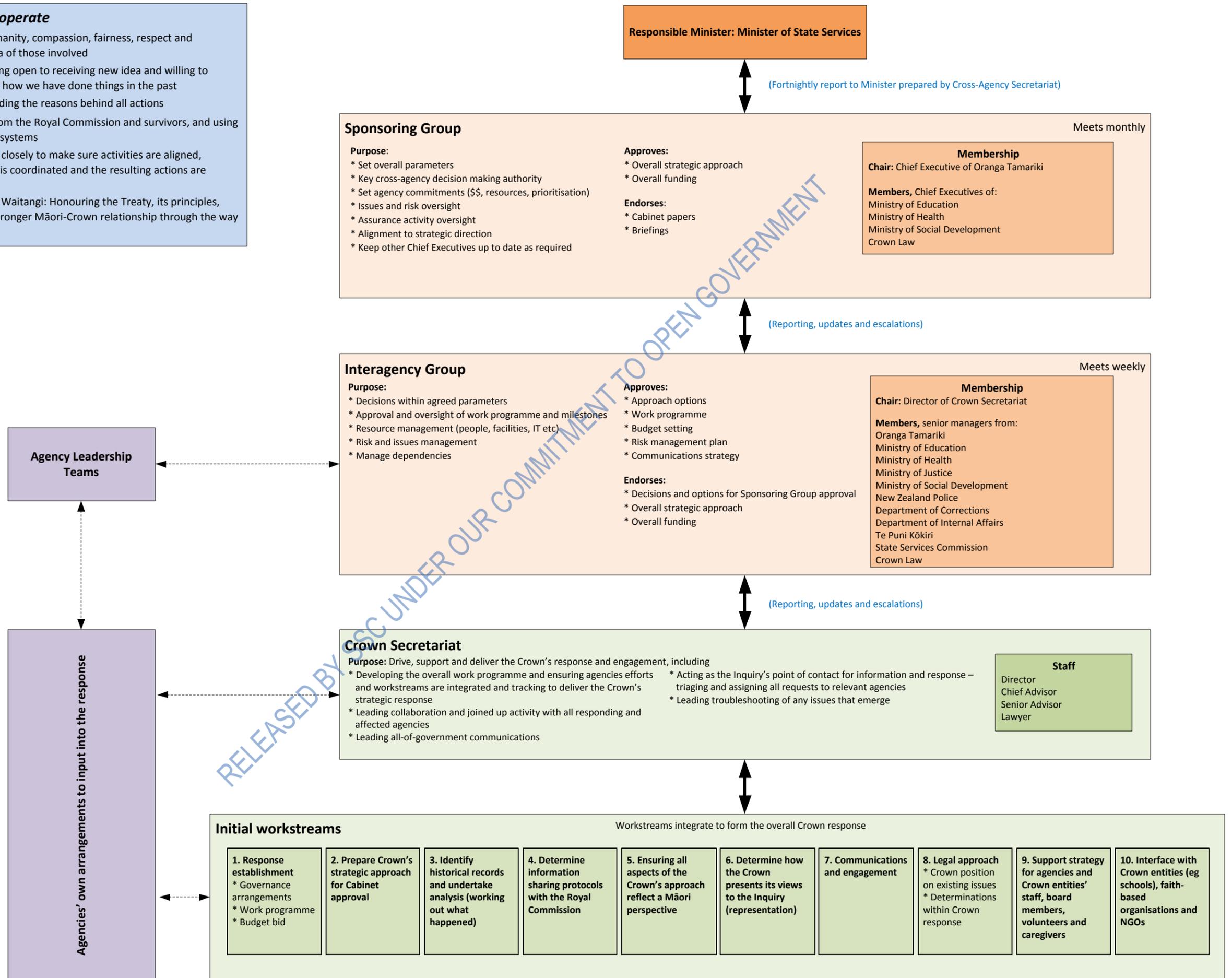
Hon Chris Hipkins  
Minister of State Services

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RELEASED BY SSC UNDER OUR COMMITMENT TO OPEN GOVERNMENT

**Principles – How the Crown will operate**

- Manaakitanga: Treating people with humanity, compassion, fairness, respect and responsible caring that upholds the mana of those involved
- Openness: Being honest and sincere, being open to receiving new idea and willing to consider how we do things currently and how we have done things in the past
- Transparency: Sharing information, including the reasons behind all actions
- Learning: Active listening and learning from the Royal Commission and survivors, and using that information to change and improve systems
- Being joined up: Agencies work together closely to make sure activities are aligned, engagement with the Royal Commission is coordinated and the resulting actions are collectively owned
- Meeting our obligations under Te Tiriti o Waitangi: Honouring the Treaty, its principles, meeting our obligations and building a stronger Māori-Crown relationship through the way we operate and behave



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