

31 March 2020

Te Kōmihana Karouna mō ngā Tūkino o Mua
ki te Hunga I tiakina e te Kāwanatanga
i Tiakina hoki e ngā Whare o te Whakapono

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Chair Judge Shaw, Commissioners,

Tēnā koutou katoa and greetings from the Royal Commission Forum. We do hope that Commissioners and Commission staff are safe and well during this national coronavirus emergency and country-wide lockdown.

We acknowledge and support the early decisions taken by the Commission to defer confidential sessions for survivors and the public redress hearings in response to the COVID-19 crisis. Like you we are concerned, however, at the impact on survivors of further delays in the Royal Commission process; and in particular we are concerned for those survivors who had already scheduled a confidential session or decided to do so.

As you know, we are a group of people who advocated for the establishment of the Royal Commission and since then have taken an active interest in its work. Given its importance, we aim to provide constructive feedback and critical support to the Commission.

On 20 February 2020, we held a workshop at Auckland University to review progress by the Royal Commission in 2019 and discuss how the Commission could further strengthen its effectiveness. This letter summarises the outcome of that workshop and includes some specific suggestions that we would welcome the opportunity to discuss with you. We realise that we are not aware of everything the Commission is doing and that you may be actioning a number of the things we are suggesting.

We also recognise that the extraordinarily changed circumstances in which we are all living may require significant changes to the way the Commission can work. Much of what we suggest will be relevant both under, and once we emerge from, our current restrictions.

Being survivor-centred

The workshop identified the value of clarifying what ‘survivor-centred’ means for the Commission. Both the Commission and other stakeholders would be well-served if the Commission adopted a clear statement on what they understand by a survivor-centred inquiry and made that statement the centrepiece of its work.

Recommendations

The workshop endorsed a briefing by Patricia Lundy that sets out eleven 'survivor justice needs' as potential criteria. Those eleven criteria are: voice, acknowledgement, vindication, apology, redress, rehabilitation measures, intergenerational needs, access to records, authoritative historical record, offender, institutional and systemic accountability/responsibility, and prosecution. The brief by Patricia Lundy is attached as an appendix to this letter.

Transparency

The need for transparency arises with respect to both the Commission's planning and its activities. As will be evident in the following, concerns about transparency were a major theme in many of the discussions. The Commission has too often waited until it felt it was able to announce decisions as opposed to being transparent throughout the decision-making process. Failure to be sufficiently transparent is damaging the Commission's credibility among survivors. Conversely, making the Commission more transparent will enable public engagement that is critical to the Commission's strategic operations.

Recommendations

Participants strongly emphasised the value of transparency and recommend, in the strongest terms, that the Commission become more transparent in terms of both its planning and activities.

The Commission's relations with other state bodies

Throughout our discussion, there were serious concerns that risk-averse elements within the state would attempt to limit the effectiveness of the Commission. That activity might include impeding the Commission's access to information. It also might include Potemkin-village style implementation of the Commission's (anticipated) recommendations, using superficial changes to mask ongoing systemic problems. The relationship of the Commission to the inter-ministerial working group was of significant concern.

Recommendations

The Commission should require government agencies currently developing pre-emptive/proactive responses to report on them to the Commission. The Commission would then need to have the capacity to respond in a credible and timely manner. This Commission should ask the Minister of State Services to instruct the State Services Commissioner to follow this process.

In its final report the Commission should recommend effective ongoing mechanisms of evaluation and accountability that use appropriate metrics (e.g. child-focused standards) to assess the implementation of its recommendations, including those pertaining to care.

Ensuring the implementation of its recommendations might require an independent body or a periodic review process for state and other agencies. The Australian Senate has such a capacity. Here in New Zealand, the task might be given to the Human Rights Commission with the necessary resources or similar body.

Accountability

Some members of the workshop expressed strong preferences for both individual and systemic accountability, including criminal responsibility, for previous wrongdoing. This might include the Commission making recommendations relevant to both criminal prosecutions, either concerning the procedures for prosecutions or pertinent to the prosecution of specific individuals. It should also include findings at the systemic level, looking at how wrongful policy was developed and implemented. Those findings could well implicate both individuals and organisations.

Recommendation

The Commission must examine the operation of out of home care with respect to wrongdoing at both the individual, organisational and systemic levels.

Public Relations

The Commission is to be commended for improvements in communication and presentation, particularly on the website. However, the Commission remains relatively low profile. Some members suggested greater visibility on commercial radio, other media and community events as survivors are more likely to develop trust in the Commission if they see it in action. Some participants suggested that lower-mediated public engagements (being a bit vulnerable) might be good. In general, the workshop tended to think the Commission has lacked a strategic, coherent communications plan with short, medium and long-term goals and with the diverse key audiences identified.

*Recommendations**

As well as current promotional methods, the Commission should consider a high profile advertising campaign, including the full range of engagement techniques, TV, radio, the backs of buses, large roadside billboards, street posters, outdoor signs, full or half page adverts in newspapers and magazines (including in local free community newspapers), and the 'Giggle' screens now common in various shops. Leaflets and posters also need to be printed and widely distributed in the community to such places as: retirement homes, hospitals, prisons, gangs, universities, wānanga, marae, mental health organisations, doctors, lawyers, counsellors, psychologists, women's refuges, churches, charities, community houses, Māori wardens, Citizen's Advice Bureaus, Government Departments, ACC, WINZ, and the Family Court.

The Commission might contact professional advertising agencies and request pro bono assistance.

The Commission should use the media strategically, engaging in TV, radio, newspaper and magazine interviews and articles (including in local free community newspapers). Talkback radio should be explored. The Commission needs to increase the frequency of its press releases.

One suggestion for survivor engagement, based on Canadian experience, was that Commission could use data analytics to assess what sectors of the survivor population are not coming forward and then focus resources upon those areas. It would be good to understand the reasons why engagement varies across different sectors of the population.

*Some of these suggestions may be impractical under the current restrictions, but others could still be adopted and lift the Royal Commission's profile and build confidence in its ability to carry out its terms of reference despite the crisis. And, of course, once the crisis passes, those techniques may become even more important to 're-engage' stakeholders.

Counselling

The Commission has made counselling for survivors a high priority. The workshop understood that the Commission offers four-five counselling sessions at time of reporting. This is a good first step. Moreover, participants understood that there may be a limit to the number of qualified and capable counsellors available.

Workshop participants raised the option of linking survivors up with other agencies' counselling services. ACC was the main alternative canvassed. At the time of the workshop, there was a four-to-six-month waiting list for ACC counsellors in many areas. While there is some merit to the use of the existing ACC infrastructure as an extension to the Commission's counselling services, the Sensitive Claims Unit only deals with sexual abuse - so many survivors would not qualify for ACC counselling at all.

In addition, some participants were dubious about recommending ACC. The sense is that ACC is can adopt a long and drawn-out adversarial approach which often re-traumatises the victims needlessly.

Overall, however, there was consensus that the current Commission counselling provisions available are suboptimal

Recommendations

That the Commission work proactively to augment the provisions for counselling available to survivors.

That the Commission work with other organisations, such as ACC, to ensure that survivors have easy access to available services.

Note that this letter contains further recommendations relevant to counselling in the section concerning private sessions below.

Survivor Advisory Group

The Commission's Survivor Advisory Group is a path-breaking initiative and the workshop recognised that the Commission cannot draw upon well-developed existing practices. Participants emphasised the need for survivors to be involved in planning and decision-making. A strategy of non-transparent 'closed door' decision-making is potentially harmful to survivors and to the work of the Commission.

The workshop understood that the operation of the Survivor Advisory Group is likely to be revised. Consultation meetings are occurring across the country, but one potential outcome is that SAG will not meet regularly as a body, but rather members will be assigned to specific research or investigative programs.

Recommendation

In the interests of transparency, the Commission ought to announce its proposed model or models for the Survivor Advisory Group as soon as possible. Those models should ensure that the Group becomes a key component of the Commission.

Private Sessions

The Commission is to be congratulated on its work with the highly challenging private sessions. These are very difficult for survivors and it is important that the process be as beneficial as possible both for survivors and for the Commission. Participants raised several issues with the sessions, including concerns with supporting survivors and data collection.

The well-being of survivors at private sessions is at significant risk. The workshop understands that support-persons at these sessions are doing their best. However, they are very limited in the time they spend with survivors, generally meeting them on the day of the session and offering a couple of follow up sessions. In general, this support could be improved.

Survivors may need help in constructing their testimony prior to the private sessions, help that is provided in a trauma-informed manner.

Moreover, survivors confront problems in logistics and administration. There remains confusion as to how the 1999 cut-off date affects those eligible for attending private sessions. Survivors experience long delays between first contact with the Commission and subsequent follow up and support. Some survivors are unable to seek the necessary help that is available. The difficulties for survivors may have begun at the point their hopes were raised for the Inquiry and they began thinking again about their abuse. They will continue to be harmed until they see action and outcomes from their participation in the Inquiry and the time it takes to process it in relation to themselves.

Turning to data collection, the format of the private sessions shapes their content. Some things that are important to survivors, and the Commission, might not emerge in those forums. For example, survivors may not emphasise the importance of criminal accountability for offenders, if the session de-legitimises retributive emotions. Moreover, there are particular concerns with the participation of survivors, including prisoners, who distrust psychologists and do not respond well to forms of information-gathering that use questions. Many prisoners have prior negative experiences with official interrogations. The Commission needs to listen to 'what is not being said' in these sessions and work with people who have experience in working with hard-to-engage populations.

Recommendations

The available support should be what the best trauma-informed practice requires. Access to counsellors should be improved/increased and that needs to be a priority. One suggestion is to facilitate iwi/hapū-affiliated support workers to work with survivors over longer periods of time.

Support has to be culturally appropriate. The location of the sessions needs to be carefully thought through, including examining the possibility of running private sessions for prisoners outside the prison.

The Commission should be aware of the effects of discursive ‘framing’ on the content of the sessions.

Survivors are offered four to six follow-up sessions with a registered counsellor or psychologist of their choice. However, survivors may need more counselling, as the act of openly sharing their experiences often creates unexpected new vulnerabilities and re-traumatisation afterwards, once they return home. International experience indicates that many survivors experience a sense of abandonment, that replaces initial feelings of elation. Therefore, we would like to see no limits on counselling and psychological services for survivors, as well as their families. While we recognise resource constraints, ideally the numbers of therapy sessions should be limited only by their needs.

Public hearings

The public hearings are a key forum in which the Commission becomes visible to survivors and the public generally. Given the limited number of hearings that the Commission will undertake, a clear and coherent strategy for determining what hearings will occur, and ensuring that these are accessible as possible, is critical to the operation of the Commission.

In the workshop, it became clear that no participant had a clear understanding of what the general strategy for public hearings would be. Of course, the notes posted for the counsel assisting at the preliminary hearing outline a general strategy. But one must know that information is in that document if one is going to find it. Moreover, that information is very abstract. As of right now, it is hard to know that the Commission has an effective plan ready to implement its strategic goals.

Moreover, it was observed that, if the Commission is to meet its obligation to make ameliorative recommendations applicable to current practice, those hearings will have to encompass post-1999 activity.

Many participants observed that, while the contextual hearings were generally successful across a range of criteria, the court-like setting was off-putting to survivors. In general, to the degree that the proceedings resemble a court, the more likely they will be to harm survivors and discourage widespread participation.

Given the importance of public hearings and with current constraints likely to extend for much of this year, we hope that the commission is exploring alternative ways of holding public hearings.

Recommendations

The Commission should consider publishing its projected series of public hearings, according to topic and place, over the next 12-18 months. That schedule might be clearly specified as provisional and subject to change. However, knowing what is likely to come in the

Commission will help survivors and others understand where they will 'fit' into the work of the Commission, enabling potential participants to prepare for participation.

The workshop was aware that the Commission should have a new facility for holding hearings and other events in Auckland in 2020. That facility should be designed to be both accessible and welcoming, both physically and aesthetically.

Public hearings should be conducted in a trauma-informed manner. Here the Commission could look to the experience of other Commissions as well as draw upon New Zealand's own innovative history, including alternative legal mechanisms.

The Commission is encouraged to address challenging topics and confront controversial questions. But to do so effectively, people need to know what the Commission will be doing well in advance.

Roundtables

The workshop endorsed the suggestion that the Commission would use roundtables as flexible, policy-oriented mechanisms. The flexibility of the roundtable initiative is a significant benefit, as different roundtables could operate in different ways.

One idea was that roundtables held *in camera* could provide an alternative evidence-gathering practice for two potential groups. Firstly, some survivors may prefer to participate as a group, as an alternative to a private session or public hearing. Second, some public servants may prefer to provide information through an *in camera* roundtable as opposed to a public hearing.

There was some discussion as to whether policy-oriented roundtables should be held *in camera* or in public. Some participants favoured a public approach in the interests of transparency. Others were concerned that some of the beneficial potential of frank advice would be lost if participation was public.

Again, participants stressed that the roundtables would have to reflect upon post-1999 information.

Recommendations

The strategy and topics for roundtables should be published as soon as possible. Like the public hearings, this plan might be provisional. However, knowing what roundtables are likely to be held, when they will happen and how they will proceed, will help people understand how they may participate in the Commission.

The Commission should seek to make flexible use of roundtables, fitting the design to the particular issue and participants.

The Commission should be forthright in focussing appropriate roundtables on post-1999 questions.

Publishing strategy for Royal Commission.

There was firm agreement that Commission should clearly identify its goals in publishing/reporting and adopt an optimising strategy for publication that takes into account changes in the political landscape. A one-size-fits-all-topics approach might not be the best. The workshop noted the importance of identifying the various audiences for Royal Commission material and recognising each audience and each topic requires an appropriate approach. Every public communication should take account of the possible impact on survivors and incorporate a survivor perspective. In addition, publications should be presented so as to have the optimal effect on policy and procedural change

There was some discussion regarding how the Commission should report. On one hand, the idea that the Commission might publish reports on each hearing or issue was seen as valuable because it would ensure that information came in more usable forms and those who would benefit from the reports would be more likely to read them if they were shorter and specific to particular histories/issues. Moreover, the Commission would be continuously productive, enabling media to regularly report on new issues, thereby enabling a higher public profile and superior engagement strategy. Lastly, at least some of the Commission's recommendations might be implemented sooner, making things better for people more quickly.

Recommendations

Internationally, other Commissions have adopted different approaches and New Zealand's Commission should think about its publishing strategy to ensure that it is effective and accessible. However, there was general agreement that the Commission should publish reports on each major hearing or roundtable. These might include findings, but also, those reports might notify observers of salient issues.

Whatever format is chosen, the voices of survivors should be foregrounded. Commissions elsewhere make extensive use of quotation, anonymous or otherwise, to give voice to survivors. Around the world the outcome of Inquiries has depended on the credibility of the work the commissioners do. Survivors voices can illustrate findings and support recommendations and validate the experience of survivors.

A Fifth Commissioner

The Commission remains 'short-staffed', months after the resignation of the original Chair.

There was some concern among the workshop that bringing a new Commissioner 'up to speed' would be challenging. But quickly the workshop judged that, given the large amount of work the Commission needs to accomplish, including a large number of private sessions, a fifth Commissioner would be invaluable. Indeed, given the enormity of the task of the Commission, the workshop discussed whether the number of Commissioners should be increased.

The workshop agreed that the new Commissioner should, if possible, represent Māori survivors and be female. It would preferable if they were not a member of legal profession.

The workshop agreed that the Royal Commission Forum should send a letter requesting the appointment of a new Commissioner to the Minister of Internal Affairs, the Honourable Tracey Martin. That letter was sent on 4 March 2020.

Recommendations

The Commission should actively work to add a new Commissioner, giving preference to a candidate who is Māori and/or female.

Given the broad ambit of its work, the Commission should consider whether the addition of further Commissioners would be beneficial.

Records

The workshop touched only briefly on records. Participants generally endorsed the work of Care Records Aotearoa, which has drafted a set of priorities pertaining to records management and access.

Participants agreed that issues relevant to records are important to a range of the Commission's activities as well as to engagement with the Commission and, as a consequence, should be addressed by the Commission as a matter of urgency.

Recommendations

The Commission should consult the work of Care Records Aotearoa, a preliminary brief compiled by that body is attached to this letter.

Issues pertaining to records would be a good focus for a roundtable. That roundtable should consider whether and how records-access for survivors could be administered by a credible independent body.

Royal Commission resourcing

Participants in the workshop expressed some uncertainty about how much control the Commission has over its own financial resources. One obvious concern, shared by all those who spoke on the topic, was that the Commission needs adequate funding across the duration of its work.

There was some discussion as to whether the Commission has adequate control over its funding and other resources. Some suggested that a previous lack of control over money and staffing had inhibited Commission's activities.

Recommendation

If this is not already the case, the Commission should have full control over the use of its budget, subject only to meeting the standard state sector accountability requirements. Efficiencies may be realised by using DIA or other existing state infrastructure and processes, for example, banking and accounting services, but those activities should be at the instigation of, and responsible to, the Commission. In the end, the Commission must have substantive financial independence.

Thank you very much for considering these points. I ōrea te tuātara ka patu ki waho.

Nāku iti noa, nā

A handwritten signature in black ink, appearing to be 'S. Winter', written in a cursive style.

Dr Stephen Winter

On behalf of the Royal Commission Forum

THROUGH THE LENS OF SURVIVORS: LESSONS FROM THE NORTHERN IRELAND HISTORICAL INSTITUTIONAL ABUSE INQUIRY

Professor Patricia Lundy ¹ | February 2020

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Introduction

Historical institutional child abuse scandals have rocked Church and State institutions across the globe. A frequent government response has been to commission abuse inquiries to investigate allegations of harm and wrongdoing. An estimated 20 countries have established such processes (Swain, et al., 2018), but there is scant research and critical analysis of abuse inquiries, particularly from the perspective of survivors.

This policy brief discusses in-depth research on the Northern Ireland Historical Institutional Abuse Inquiry (HIAI) from October 2014 to date. Research has been collated using a mixed methods participatory action research (PAR) ² approach including 43 in-depth interviews with survivors, five focus groups with 75 participants, observation of the HIAI, a survey post-Inquiry, and analysis of the HIAI transcripts ³. This paper examines survivors' experiences and assessments of the HIAI, what they hoped to achieve, and to what extent their justice needs were met. It gives a unique insight into an abuse inquiry from the perspective of survivors and lessons learned.

The Historical Institutional Abuse Inquiry

The Historical Institutional Abuse Inquiry (HIAI) was established in Northern Ireland in response to survivors' campaigns for justice, and in 2013 the Northern Ireland Assembly enacted legislation to establish an inquiry into the scale of child abuse in institutions run by the Catholic Church and the state. The HIAI's remit included sexual, physical and emotional abuse, neglect, and unacceptable practices in children's residential institutions (other than schools) between 1922 and 1995. In public hearings between January 2014 and July 2016, 22 institutions were investigated, as well as the circumstances surrounding the sending of child migrants from Northern Ireland to Australia, and the abuses committed by Fr. Brendan Smyth, a notorious paedophile Catholic priest.

The HIAI had two components: a confidential Acknowledgement Forum that provided survivors with the opportunity to tell their story; and a Statutory Inquiry where evidence was given in public. Survivors could choose to participate in the Acknowledgement Forum only, or both components. Four-hundred and twenty-seven survivors spoke to the Acknowledgement Forum, and one individual gave a written account. Three-hundred and thirty-three survivors gave evidence to the Statutory Inquiry (246 in person and 87 via witness statements) (Hart et al., 2017).

The Inquiry also heard from 194 witnesses who were not former residents (staff, police, and public officials). The HIAI Report was published in January 2017 and found evidence of systemic failings in residential institutions, i.e. that there was "sexual, physical, and emotional abuse, neglect and unacceptable practices across the institutions and homes examined" (Hart et al., 2017, 8-42).

Research Findings

One of the key challenges in researching responses to historical institutional abuse is to clarify what is required for survivors to achieve justice (Lundy, 2020). I identify eleven survivor justice needs, namely: voice, acknowledgement, vindication (includes validation), apology, redress (monetary/symbolic), rehabilitation measures, intergenerational needs, access to records, authoritative historical record, offender accountability and taking responsibility, and prosecution. They form the basis of the analytical framework to assess the Inquiry from the survivors' perspective. Survivors' identified justice needs are discussed below.

Voice, Acknowledgement, Vindication:

Of the 43 survivors interviewed, most stated that the motivation to participate in the Inquiry was to "have a voice." They wanted to "tell their story" and "to speak for those unable to testify." Survivors wanted their voices to be heard and the abuse and harms to be publicly acknowledged. Thus, a further motivation for taking part in the HIAI was acknowledgement (45%). A recurring theme in interviews was that victims wanted to be believed. Overwhelmingly participation was about achieving vindication and validation.

Apologies were perceived as vindication and validation. 63% of interviewees said they wanted an apology, whereas 29% believed an apology had no benefit. Apologies had to have consequences: "what good is an apology without action?" [Interview with F4, July 2016]. Apologies as stand-alone gestures are not sufficient in meeting survivors' justice needs, although, if perceived as satisfactory, they can be an important form of symbolic redress.

Redress (monetary/symbolic):

Compensation was the most frequently cited justice need in interviews. Almost 80% prioritized compensation. Participants in all five focus groups discussed compensation at length as a priority. In the Inquiry itself a lower proportion (33%) stated that compensation should be recommended, which may be related to the official and public nature of the Inquiry. In interviews with the author, some said they were reluctant to talk publicly about financial compensation, concerned that they might be seen as "in it for the money."

Others found it difficult and offensive to “put a price” on their suffering. The HIAI specifically asked survivors about their views on a form of memorial. There were mixed views on this: some welcomed the idea as a form of acknowledgement; others were strongly opposed to it as a painful reminder that might even be harmful: 13% were in favor and 26% were not. In the Inquiry, 11% were not in favor and 12% were.

“**Repair**” or **rehabilitation** measures were a constant theme in interviews and survivors discussed this at length in focus groups.⁴ Measures to help repair and rebuild shattered lives were emphasized, including healthcare services, long-term counselling, education and training, **intergenerational needs**, and reunion with family/siblings. As with compensation above, a lower proportion (2%) mentioned family compensation/intergenerational needs at the public Inquiry. This, again, underscores the context of reticence in an official public arena.

Access to records emerged as a key justice need in most interviews and all focus groups. A major source of distress, trauma, struggle, and frustration for survivors was gaining access to their personal historical files and establishing meaningful information. Survivors shared accounts of their disappointment when records retrieved were inadequate and/or heavily redacted. “I was trying to understand my childhood...I thought I would get to understand me as a person.” [Interview with F2, Jan. 2016] It cannot be overstated the depth of distress this has caused: “Our lives are in a file somewhere and we can’t find out who we are” [Male participant, Focus Group 4].

Accountability, Prosecution, Historical Record:

A key motivation for participating in the Inquiry was to get “the truth”. Some described the same principle in other ways, e.g. the need to find out why the abuse happened, why them and how people could justify what they did. Others said they wanted “the truth to be known” and documented so that society understood the extent of the abuse and harm they had suffered as children. Truth was linked to establishing an authoritative historical record. Others said that they already knew the truth; all they wanted was for perpetrators and institutions to take responsibility and be accountable. A significant number of survivors (71%) expressed a strong desire for those who abused them to be criminally prosecuted or “punished through the courts”. Accountability emerged as an important aspect linked to acceptance of responsibility, and vindication, and validation:

When people stand up and say, what we did was wrong – we shouldn’t have done that ... Then you get to think, you know what, maybe I’m not scum – maybe I didn’t deserve this [Int: M10, Nov. 2016].

Did the Inquiry meet Survivor’s Justice needs?

A clearer understanding of survivors’ justice needs allows for a more critical analysis of the potential and limits of the format of the HIAI in meeting those needs, from the perspective of survivors who engaged in the Inquiry. The next section considers the confidential Acknowledgement Forum, followed by the public Statutory Inquiry.

The Acknowledgement Forum

The Acknowledgement Forum sought to provide “an opportunity for victims and survivors to recount their experiences on a confidential basis” (Hart et al., 2017, p.5). The Forum was private, confidential and had therapeutic aspirations seeking to hear testimony and accept without challenge.

Out of the 43 interviews conducted with survivors, more than half said that the Forum was a positive experience. Survivors said it conferred acknowledgement (53%), gave voice (50%) and regarded it as “helpful” (39%). Most described the Forum as meeting their needs to be listened to:

The Acknowledgement Forum was a channel I felt I could best cope with. The Acknowledgement Forum personally brought a sense of relief without being intrusive or judgemental. For me, it afforded me a platform as an individual to give me confidence to speak out and people will listen. While the Acknowledgment Forum provided a relaxed environment, I can’t say the same for the statutory element [Int: M2, Nov 2015].

Some survivors were of the opinion that the Acknowledgement Forum was all that was required and that the more intrusive Public Inquiry was not necessary. “You could have actually written the report just on the Acknowledgement Forum” [Int: M5 Nov 2015].

For many the Forum was a positive first step in breaking the silence and denial, however, only a small number described the experience as healing or cathartic (18%). Furthermore, a sizeable number said they “felt exposed” or “vulnerable” (39%), and experienced longer term emotional consequences (29%) after attending the Forum.

There were mixed views as to the adequacy of support provided during and after the Forum. Some said that adequate support and help had been provided (29%), others felt more support was needed (37%), while others still were highly critical. The HIAI felt every effort had been made to ensure that sufficient emotional support had been provided, yet the survivors’ groups felt they have been left to “pick up the pieces” (BBC, 2013).

The Public Inquiry

Giving Voice: The Trauma of Testifying

Survivors spoke in interviews of being re-traumatized and re-victimised by the experience of giving evidence to the Public Inquiry. It was an “emotional experience” (55%), “traumatizing” or “abusive” (47%); or they “felt vulnerable” (42%). A small number said it was an “intimidating experience” (18%), and others felt “victimized” (18%). Existing research on the psychological effects of giving testimony to such inquiries questions the therapeutic value and healing effects (Hamber, 2009). The “glow quickly fades” once survivors return home, which is when many feel a sense of abandonment (Stover, 2004: 107).

When survivors received their testimony in the form of a written statement in the post to their home, this created new vulnerabilities:

A lot of our guys would have gone more or less secretly and then a letter arrives in your post box with 15 pages or whatever...So someone is going to have to go off on their own and read through this statement word for word - and that's a point of vulnerability. You need to have somebody to contact people, and somebody that they're able to contact; because this is going to be really emotionally charging for people. [Int: M 5, Nov 2015].

Adequate information is crucial to ensure participants fully understand what the process involves. Of the 43 survivors interviewed, 42% said that they had "insufficient information and understanding" of the public hearing procedures. Just 5% said they were well informed. This falls far short of a victim-centred approach. Even those who described the process as very positive felt that they could have been better prepared:

I found the court thing intimidating...that court was packed - then you've got that panel and all of the electronics and the TV up on the wall - and all the people sitting in the background - and you're not sure who they are - and what they're doing - why they are there - and I'm thinking are these press or social workers. I just didn't know...Maybe a little bit more information about who everybody is and what their role is. [Int: M10, Nov. 2016].

Although witness support officers and a representative from Contact NI counselling services were available at all times to provide assistance, and survivors were signposted to appropriate agencies, half of those interviewed said "more victim support was needed"; strong criticism was also expressed about the adequacy of support.

Inquisitorial or Adversarial?

The Inquiry stated that public hearings would not be conducted like a trial, it would be inquisitorial and all questions would be directed to ascertaining facts (*Hart et al., 2017, p.12 para 28 & 30*). A significant number of survivors regarded the process as adversarial (39%). To some it felt like they were the ones being "held to account" (39%):

It actually felt as if you were on trial. We were specifically told it would never have felt like that - but it did, it did - it was terrible...It was an experience I wouldn't want to do again...Honestly, I wouldn't want to put myself through that again. [Int: F1b, June 2017]⁵

Many survivors considered that they should have been better prepared in advance. Only 29% said that Counsel "explained clearly" the public hearing's procedure. What might be considered as "sympathetic" questioning by Counsel was perceived by some survivors as deeply intrusive and unnecessarily challenging of their integrity. Some strongly objected to what they saw as irrelevant details about their past being brought up (37%). This made some feel like they "were offenders" or "the guilty party" and that made them defensive.

Timely Disclosure

The nature, extent, and timing of disclosure emerged as a significant factor. As one survivor put it, "why are we finding out about ourselves in front of everyone in the dock?" [Int: M13, Jan 2016]. Some survivors said that they were given personal and sensitive information in the briefing session immediately prior to testifying. Ill-timed disclosure "surprised" and "shocked" survivors and this had a destabilizing effect:

It was a really hard day because I had to find things out about my mother, and stuff that I had never known in my life. I didn't know that my younger sister was born with [named disease]. I didn't know my mother was in such a hospital...And then I discovered there was a letter... [Counsel] said, "I know you won't have seen this before but we're going in now; and by the way did you know your mother had syphilis..." And you are supposed to just deal with that and then answer questions. [Int: F15, Sept. 2016].

In addition, information of a highly personal and potentially traumatic nature was casually introduced while survivors were on the stand giving oral evidence. Of the 43 survivors interviewed, almost 40% said "disclosure was distressing" and should have been "communicated in advance" of public hearings. Some survivors asked for copies of the disclosed documents but were refused. Since many survivors had spent decades looking for snippets of information about their childhood, this appears particularly harsh, even cruel. For some survivors, the experience was disempowering, undermining, and traumatizing.

Legal Representation and Equality of Arms

Some survivors expressed disappointment that they were denied their own personal legal representation (34%), which was stated by the Inquiry Chairman to be unnecessary because "it is the role of the Inquiry legal team to gather the relevant evidence and to interview each applicant to ascertain what that person can say about the matters that have to be investigated by the Inquiry."⁶ In contrast, only those against whom allegations were made (alleged perpetrators/institutions) had "a right to legal representation and, if not otherwise indemnified or without sufficient financial resources, to have their legal representation paid out of public funds."⁷

In some circumstances, where those accused of abuse were unidentified, “dead, or very elderly, and too physically frail to give evidence in person, or their mental health or memory had failed to such a degree that they were not able to give reliable evidence” (Hart et al., 2017: 1-15), spokespersons for the respondent religious orders with no personal experience of the events gave generic evidence from written records. Survivors were not afforded the same opportunity to present a “collective account” of an institution. Alleged perpetrators, having had sight of all the evidence in advance, appeared better prepared for oral hearings and not dependent on memory. By comparison survivors having had no advance access to documents were expected at short notice and under pressure to recall specific details of events that took place 30 or 40 years earlier.⁸

Accountability and Prosecutions

Accountability and Prosecution was clearly a justice goal for many of the survivors. Analysis of HIAI transcripts show that of the 177 survivors who gave evidence in person, only 6% stated they wanted prosecutions. However in interviews with the author a significant number of survivors (71%) expressed a strong desire for those who abused them to be “punished through the courts”.

That’s a big thing to me, if people are going and giving evidence at an inquiry and naming individuals who have done such horrific crimes on them, there should be prosecutions. [Int: F2, Jan 2016].

The HIAI did refer 190 complainants to the PSNI, from which 77 matters relating to the complaints were reported to the Public Prosecution Service (PPS) for consideration. However, to date, in Northern Ireland there have been no prosecutions emanating from cases referred to the PSNI by the HIAI.¹⁰

Apology, Memorials and Compensation

The HIAI recommended that the NI Executive and those responsible for each institution where systemic failings were found should make a public apology. A memorial should be erected in Parliament Buildings or on the Stormont Estate to remind legislators and others of what many children experienced in residential homes. On monetary compensation (see Research Findings: Compensation above), the Inquiry did make recommendations for redress which were published in January 2017¹¹. However, research shows that the recommendations fall far short of meeting survivors’ justice needs (Lundy & Mahoney, 2018). In April 2017, the Panel of Experts on Redress (see footnote 3 above) published a Position Paper which set out a detailed critique of the Inquiry’s redress recommendations and proposals to improve redress to meet survivors’ needs (Panel of Experts on Redress, 2017). This was used as a lobbying/campaign tool and led directly to “significant changes” being made to the historical abuse redress legislation which passed through Westminster in November 2019. These changes helped bring compensation closer to meeting survivors’ needs (some issues remain and are still under discussion).

Reflections and Recommendations

- The potential risk to mental health through re-traumatization and re-victimization raises important questions about the appropriateness of this model to deal with historical child abuse. Policy-makers should explore a less intrusive, more humane, inclusive, and empowering way in which to acknowledge, vindicate, and establish an authoritative historical record. It is crucial that any harmful aspects of existing processes are not repeated, and lessons are learned.
- The very nature of public inquiries, their processes, and structures are limited in terms of addressing the full range of justice needs. A conversation should take place to explore creatively, sensitively, and imaginatively a model for dealing with historical child abuse which embraces survivors’ justice needs. The starting point should be to determine what survivors want, i.e. their justice needs. Thereafter, addressing those needs would be centre-stage and drive the initiation, shaping, design, and implementation of approaches to dealing with historical child abuse.
- Fundamental to developing a model to address the legacy of historical child abuse is the full participation of survivors from an early stage in its development, design, and implementation.
- Support services should be designed in consultation with survivors. It is important that complementary processes are set in place such as counselling, witness briefing and debriefing, victim-sensitive questioning, support to assist survivors to attend processes, avoiding delays, supporting families and NGOs to offer additional support, as well as supporting culturally appropriate approaches to healing and dealing with harm. Victim-centredness should underpin processes.
- Survivors bring knowledge, resilience and resources. But capacity-building, resources, and appropriate support should be put in place to enable genuine survivor engagement; so that survivors have and can exercise power. Supporting existing local initiatives and advocacy should be encouraged in this regard.
- The development of a model (or strategy) that could embrace survivors’ justice needs would require political will, resources, and paradigm shift towards a victim-led approach to historical institutional abuse.
- A single mechanism is unlikely to address all of survivors’ needs.

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Footnotes:

- ¹ The author wishes to acknowledge and thank the Leverhulme Trust for a Major Research Fellowship Grant (MRF-2015-124) that enabled the research to be conducted.
- ² In collaboration with survivors, a Panel of Experts on Redress was established. It involved survivor groups, human rights NGOs, legal reps and academics – national and international. The survivor led Panel was a platform to facilitate survivors' voice, and that, their needs and concerns were heard. To this end, Prof Lundy's research was used to co-create with the Panel lobbying and campaign 'tools'.
- ³ Percentages are used to compare as the number of people in the different data sets are not the same (e.g. forty-three interview/177 Inquiry transcript responses).
- ⁴ See Lundy, 2016 and Lundy & Mahoney, 2018.
- ⁵ F1a & F1b interviews were conducted at the same time.
- ⁶ Anthony Hart, (Inquiry Chairman) "Remarks at the Third Public Session of the HIAI Inquiry" (Ramada Encore Hotel, St Anne's Square, Belfast, 4 Sep. 2013), 16.
- ⁷ "In the Matter of a Decision of the Inquiry into Historical Institutional Abuse 1922 to 1995," NIQB 3 (2015): 10–11, para 30.
- ⁸ The HIAI Chairman's decision not to allow victims personal representation was judicially reviewed. It was upheld at first instance but overturned on appeal.
- ⁹ freedom of Information, Historical Institutional Abuse Inquiry FOI 2017, F-2017-02046.
- ¹⁰ UN Commission Against Torture, pointed to similar low numbers of prosecutions stemming from the Ryan Report when the Republic of Ireland was examined in 2011 and again referenced the matter in 2017.
- ¹¹ Hart et al., 2017.
- ¹² See also, Brandon Hamber and Patricia Lundy, "Lessons from Transitional Justice? Toward a New Framing of a Victim-Centred Approach in the Case of Historical Institutional Abuse," (forthcoming, 2020). This article discusses in detail the positive and negatives of transitional justice and makes recommendations for an alternative approach.

**‘The Friday Group’
Find and Connect Aotearoa**

Consortium Workshop

Summary and Actions

22/11/2019

DRAFT

Participants

Consortium workshop

- » Dr Belinda Battley, senior archivist at Archives New Zealand.
- » Associate Professor Joanne Evans of Monash University, Melbourne.
- » Dr Judith Aitken CNZM, a member of the Royal Commission Forum.
- » Pat McNair of CLAN (NZ), the New Zealand part of the Care Leavers Australasia Network (CLAN).
- » Barry McNair, Care-experience survivor and CLAN member.
- » Rosslyn Noonan, director of the New Zealand Centre for Human Rights Law Policy and Practice, University of Auckland.
- » Professor Tracey McIntosh, Professor in Indigenous Studies and Co-Head, Wānanga o Waipapa, University of Auckland.
- » Professor Michael Myers, Department of Information Systems and Operations Management, University of Auckland.
- » Dr Stephen Winter, Department of Politics and International Relations, University of Auckland.
- » Nic Mason, Kairangahau Matua Research Leader, VOYCE Whakarongo Mai, Auckland.
- » Dr Spencer Lilley, Te Putahi-a-Toi, School of Māori Knowledge, Massey University, Palmerston North.
- » Dr Nicolas Pirsoul, Lecturer, Massey University.
- » Associate Professor Anna Brown, Toi Āria: Design for Public Good, Massey University, Wellington.
- » Andrew Tobin, Associate at Toi Āria: Design for Public Good, Massey University, Wellington.
- » Ana Reade, Associate at Toi Āria: Design for Public Good, Massey University, Wellington.
- » Dr Simon Mark, Senior Advisor, Strategy & Policy, College of Creative Arts, Massey University, Wellington.

Unable to attend but expressed interest in being kept updated.

- » Keith Wiffin, Member, Survivor Advisory Group, Royal Commission.
- » Matthew Bartlett, Director / Founder, Citizen AI.
- » Ria Waikerepuru, Kaiwhakarato Parongo Rangahau Maori, Manawatu Library, Massey University.

How did we get here?

The genesis of a story

Find and Connect Australia

The project's genesis — Find and Connect in Australia — is an online resource 'for Forgotten Australians, Former Child Migrants and anyone interested in the history of child welfare in Australia' that seeks to help discovery of where records relating to care experiences may be held and provide details of how they can be accessed. It is part of a suite of services and projects funded initially following the 2009 National Apology and then subsequently renewed through to 30 June 2020. Find and Connect provides a full programme of access guidelines and principles.

For many people who grew up in 'care', the search for records and information — so vital to identity and to the process of reconnecting with family — can be frustrating, complicated, time-consuming, expensive and traumatic.

Find and Connect Australia contains information that is relevant to anyone who experienced out-of-home 'care' in Australia, not only the Forgotten Australians and Former Child Migrants, but also members of the Stolen Generations, foster children, wards of the state and adopted children.

<https://www.findandconnect.gov.au>

The New Zealand opportunity

Having been offered the use of the Find and Connect software developed in Australia, we now have responsibility to know what is needed and wanted by care-experienced communities in Aotearoa New Zealand.

The following pages are a synthesis of our conversation late last year and provide some potential first steps for continuing this conversation.

We would like to note that the meeting held at the University of Auckland in late November 2019 was notable for the extraordinary commitment shown by those attending to making a significant and lasting impact on this issue.

Problems / Issues

Rights in access

Issues of Access

Access to, and policies concerning, records of those in 'care' held in archives by institutions represent a source of ongoing discrimination, for a number of reasons. These include;

- » These may be the only records of a person's earlier life and seeking access can be traumatic and difficult to exercise.
- » The process of accessing records, and having these handed over, may be difficult, time and/or resource intensive, insensitive or disrespectful.
- » Records may be restricted, and in fact may be more restricted for care-experienced people than for others, such as for instance researchers.
- » Records may be heavily redacted, and the redactions may be inconsistent or unfair. In addition, the redactions may be undertaken primarily for the benefit of the institution doing the redaction rather than for the record subject.
- » Records may be libellous, disrespectful, unfair, inaccurate, negative or incomplete.

Questions of Ownership

In addition to these issues of access are questions of ownership and control. Who has the right of access and who holds control and ownership of these records is part of the issue, including:

- » Who owns the records? Is it the person whom the record is about, the institution who created them or the place the records currently resides? This is murky.
- » Where are the records kept? Is it with individual agencies or in public institutions?
- » Whose interests are protocols of security and privacy serving?
- » Who makes the decisions about the records?
- » What if the records are incorrect or inconsistent? Who has the right to correct or change the records?
- » What is the extent of the Public Records Act of 2005? Access restrictions are set by Agency and negotiated with the Chief Archivist.

Independence

Another area for exploration is the concept of 'independence':

- » What is the current provision in law?
- » Is there is legislative guarantee?
- » What is the decision making criteria?
- » How can the influence of individuals be reduced?

Opportunities

Aotearoa New Zealand

Aotearoa New Zealand

In light of the opportunity to use the Australia software in Aotearoa New Zealand, we need to understand the context of our place and what the needs of 'care survivors' in Aotearoa are, including exploring issues of:

- » rights of access
- » rights of ownership
- » cultural context
- » co-ownership
- » organisational independence
- » co-determination
- » Pakeha views / collective views
- » indigenous data sovereignty
- » organisational accountability
- » legal frameworks

Ideal / Shared Vision

The following is a set of best practice concepts / improvements discussed by the group. These are exploratory and based on our knowledge to date:

- » Principles for access must be developed and agreed with 'those most affected'. This process and subsequent principles would be respectfully co-designed and developed
- » The access process will dignify the human journey
- » The process and principles will result in improvements to the creation of records, improvements to the access of records, improvements to the maintenance of records and improvements to the disposal of records
- » The process might have multiple models and will be based on a relationship of trust

Possible Governance Frameworks

At the meeting some possible Governance frameworks were offered up as being useful to explore, including the Global Indigenous Data Alliance (GIDA) and a current PhD framework being developed (Name?) with the following concepts:

- » Tapu: Who has access
- » Noa: Level of accessibility
- » Tika: Level of value
- » Pono: Level of trust
- » Mauri: Originality of data
- » Wairua: Spirit / intent
- » Wānanga: Responsibility
- » Whakapapa: Relationships
- » Pūkenga: Expertise
- » Kaitiaki: Protection

The Friday Group renamed

Draft Options

The Toi Āria team discussed possible names for 'The Friday Group' — a collection of like-minded supporters of reform of rights in records for those in care.

The options we would very much like your feedback on (or any other suggestions) are below.

We are very aware that as agreed, the final name chosen will be in both Te Reo and English. Might this involve agreeing on a Māori whakataukī?

We would be very grateful if we could seek from you Tracey a process for this.

Options

- » Alliance for Rights in Record
- » Consortium for Rights in Record
- » Rights in Care Records Action Group
- » Rights in Care Records Taskforce
- » Rights in Care Records Alliance
- » Rights in Care Records Partnership

Toi Āria's preference is:

Rights in Care Records Partnership

We like the term 'partnership', as it conveys to us the feeling there was in the room, and provides a sense of joint action by committed people and groups with equal status.

Your feedback and thoughts are very welcome. Some quick examples of visualisations provided here.

Rights in Care

Records

Partnership



Opportunities

Shared responsibilities

01.

Agree on our consortium name

ALL

02.

Connect with the Royal Commission

Rosslyn Noonan to lead?

Consortium to contact the Royal Commission to tell them of the consortium and our aims

03.

Best Practice framework

Dr. Joanne Evans / Belinda Battley to lead?

Seek from Find and Connect Australia its feedback on what co-design process in Australia and the best practice framework for access would look like

04.

Co-design workshops/hui (*see next page)

Anna Brown and Toi Aria team to lead with Belinda Battley. (Potential funding for this is being secured)

Undertake a series of co-design workshops with those most affected to better determine what they actually want (in a tool such as Find and Connect or otherwise) rather than what we assume they might want.

05.

Contact State Services Commission

Judith Aitken to lead?

Contact the State Services Commissioner, Peter Hughes, asking him to convene a meeting of state sector CEOs to discuss access to records

06.

Media approach

Rosslyn Noonan with Tracey McIntosh?

Approach empathetic journalists such as Aaron Smale and Mike Wesley Smith to enable public conversation and currency in the project

07.

Petition to amend the Human Rights Act

Rosslyn Noonan with Tracey McIntosh?

Petition to add 'Care-experienced people' to the list of those who cannot be unlawfully discriminated against Section 19 of the Human Rights Act 1993

08.

Prepare a 'Briefing' paper

ALL, Lead by Auckland University team?

Draft a paper with recommendations for the Royal Commission

09.

Build a..... (TBC)

TBC once we know what is needed!

Co-design workshops/hui

Initial explorations

Involve, through co-design and a series of workshops those who have been, and remain, most affected. Explore the following:

- » what are the needs, values and expectations of care-experienced people in New Zealand concerning access to records?
- » how can a co-design process be used to co-create research on the needs of care-experienced people in Aotearoa New Zealand for access to records of their time in care?
- » how can stakeholders in the research be identified and included in the process from the beginning to the degree that best suits their needs, in particular Māori and Pacific partners?

'How Might We' framing

- » How might we enable processes to empower people in care or with care experience to self-determine their identity using care records?
- » How might we empower people to be more in charge of the role of records in their life?

Some initial starting points for workshop thinking:

- » Build a representative sample of care leavers in Aotearoa
- » Understand the role of records in their life during- and post-care including questions like 'what is a record?' and 'what kinds are there?'
- » What is most important in thinking about making and collecting records over time?
- » CLAN: who does this cover/represent and who is missing?
- » Diversity? Cultural contexts?

Ownership

- » Accountability
- » Rights
- » Control

What is a record? What is its role?

- » Creation
- » Access
- » Maintenance
- » Disposal

Past vs Future?

Further reading

Appendix

Web resources

<https://www.findandconnect.gov.au/>

<https://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/find-and-connect-services-and-projects>

<https://www.dss.gov.au/families-and-children/programmes-services/family-relationships/find-and-connect-services-and-projects/evaluation-of-find-and-connect-services-final-report>

<https://www.royalcommissionforum.org/>

<https://www.findandconnectwrblog.info/2018/06/update-on-the-nz-royal-commission-into-historical-abuse-in-state-care/>

<https://www.abuseincare.org.nz/>

<https://www.gida-global.org/>

<http://www.legislation.govt.nz/act/public/1993/0082/latest/whole.html#DLM304474>

<https://www.stolenlives.co.nz/385429/>

Books and more

— Stanley, E 2016 book *The Road to Hell: State Violence against Children in Postwar New Zealand* (Auckland University Press).

— MIRRA (Memory, Identity, Rights in Records, Archives) project in the UK, a collaborative project between care-leavers and UCL researchers:
<https://youtu.be/xs28tczL3yA>