

## Independent Inquiry into State Abuse

Submission by <http://newzealandchildabuse.com/>

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Hi guys, firstly let me thank you for making the process inclusive and calling out to the actual survivors of NZ State care for input. I'm sure you are going to get a lot of input, so I'll minimise the points I make about who and what should be included in the inquiry. For example, I know many are now making calls to have non-State actors also investigated by the inquiry. All I can say about this is that what I would hope for is that all survivors are eventually heard by NZ inquiries (all abuse is equal) surrounding historic institutional child abuse; however, my own thoughts are that the TOR could potentially become far too wide, thereby creating risk of losing control (and credibility) of the inquiry, if both State and non-State actors are investigated for all forms of abuse (sexual, physical and psychological). Further, a CSA specific inquiry investigating both State and non-State institutions (as some are calling for) would fall short on examining the actual all forms of abuse (sexual, physical and psychological) that occurred over generations in State institutions. Either way, those forming the inquiry are now in a tough position because ultimately some will be left unhappy. I would hope though that a State institutional abuse inquiry would investigate all institutions (both State and non-State) where wards were placed (i.e. where the State had duty of care). If this occurs, I expect findings may spark further inquiry into non-State actors re institutional CSA.

Here's my input for the independent public inquiry

- 1) It needs to be a Royal Commission to Guarantee Independence of Government and Integrity for State Abuse Survivors

To date, there has been an almost flippant disregard on the part of successive NZ Governments as to the scope of the human rights violations that have taken place against children, over decades, in New Zealand's State institutions. Recently, I believe, it was the NZHRC that highlighted that children being abused in State-care historically represented what was likely to be New Zealand's single greatest series of human rights violations. Other points that have been highlighted are the State-care situation in New Zealand represents NZs stolen generation (comparable to the Australian and Canadian situations) and Maori were/are grossly overrepresented in the statistics. Today, as a direct result of this care system, Maori are grossly overrepresented in the adult prison system. Additionally, this situation is not 'historic' but in play today; currently 6 out of 10 children who are taken from their families are Maori, while Maori represent just 15 percent of the population.

Thanks to NZHRC, the UN Committee on the Elimination of Racial Discrimination has called on New Zealand to hold an independent inquiry with, to quote: "34. *The Committee recommends that the State party: (a) Immediately set up and empower an independent commission of inquiry into abuse of children and adults with disabilities in state care from 1950 until 1990.*"

It also urged "effective steps" to reduce the number of Maori and Pasifika children in state care, including through whanau first placements for tamariki Maori.

Labour and others supported the UN calls with Jacinda Ardern stating an inquiry is needed because of repeated requests from victims but also because of ongoing reforms of the state care system.

"How can we make sure that we have a robust system unless we have learned from the past, from that historical abuse. It's the least we can do," she said.

Prior to this, Jacinda Ardern had stated in a Labour press release (July 6, 2017) "Child safety is paramount and a Labour-led Government will make sure the voices of the survivors of State abuse are heard through a proper inquiry that shows the State truly cares about Kiwi kids." Release here

<http://www.scoop.co.nz/stories/PA1707/S00102/systemic-abuse-of-kids-in-state-care.htm>

Firstly, to quote Jacinda Ardern *"the voices of the survivors of State abuse are heard through a proper inquiry that shows the State truly cares about Kiwi kids."*

As a survivor that has been in contact with many other survivors over the five or so years I have advocated and lobbied for New Zealand's historic abuse claimants (<http://newzealandchildabuse.com>) I can assure you that most I have spoken to want a Royal Commission over a Commission of Inquiry. So for us – the actual victims of state abuse – we would like to see "a proper inquiry that shows the State truly cares about Kiwi kids".

Secondly, issues that the inquiry must fully investigate are, among other things, systemic racism and structural violence against Maori. Further, the inquiry needs to analyze any and all systemic failings so that these failings might be prevented, ensuring the inquiry leads to systemic change that will prevent abuse in the future. The scope of the inquiry, on these terms alone, is huge and involves multifarious dynamics/components. Inasmuch, the inquiry stands to be one of the most difficult forms of inquiry New Zealand has ever undertaken.

Based on the seriousness of the rights violations and the impact they have had, surely this warrants the most serious form of inquiry. That form of inquiry being a Royal Commission. Or, as noted on the Government of New Zealand website re The Canterbury Earth Quakes Royal Commission, "A Royal Commission is the most serious response to an issue available to the New Zealand Government. It investigates matters of great importance and difficulty." Ref <http://canterbury.royalcommission.govt.nz/What-is-a-Royal-Commission>

Further, due to the nature of the inquiry, any inquiry needs to be seen by the survivors of State abuse as fully independent of the State (or as the case is, it needs to be seen as independent as possible from the perpetrator of the abuse). Only a Royal Commission guarantees this and thereby lends integrity to the inquiry. Or, as noted on the

Government of New Zealand website re The Canterbury Earth Quakes Royal Commission “a Royal Commission is independent from the Government and reports to the Governor-General. The way the inquiry is conducted and the Commission is run is decided by the Chair and Commissioners. The Government cannot interfere in the direction taken by an inquiry or influence the findings.” Ref

<http://canterbury.royalcommission.govt.nz/What-is-a-Royal-Commission>

Note “The Government cannot interfere in the direction taken by an inquiry or influence the findings.”

This very much lends weight to the independence and integrity of the inquiry from the outset.

## 2) Power to Compel Testimony

I feel that any credible inquiry/Royal Commission needs to be handled in a similar manner to the Australian Royal Commission into Institutional Responses to Child Sexual Abuse where the institutions responsible for abuse were held to account and their response/s to allegations of abuse were investigated/probed by the Commission. Therefore, the inquiry needs to have full powers to compel testimony so that officials of the State (and/or any other institutions investigated during the inquiry) can be questioned, at length, by the inquiry panel.

For example, it is widely believed by survivors of NZ State care that the State, in a similar vein to the Australian Catholic Church, has sheltered/protected perpetrators of abuse. Certainly, it was only in 2016 that the MSD Care, Claims and Resolution Team began reporting alleged perpetrators of abuse as par for the course to police. This means that for years, the MSD didn't have a mandatory reporting system and instead encouraged victims of State abuse to go to State authority figures (the Police) to seek justice. There, of course, is an obvious contradiction to this in that many State abuse survivors have a strong distrust of the State and any of its instruments and institutions (e.g. the police). The long and short of it is that no doubt many perpetrators of abuse and crimes have gone unreported to police. Supporting this is the fact that there have been very few arrests and convictions of perpetrators as a result of the CLAS and the historic claims processes.

Other very worrying trends on the part of the State include the failure of NZ authorities to prosecute Selwyn Leeks and other Lake Alice staff in the face of numerous compelling/indicting witness testimonies on the part of Lake Alice victims (let's not even talk about the fact that Leeks was barred from practicing psychiatry in Australia while also being convicted in an Australian civil trial of sexually abusing a patient).

Also, as recent media has highlighted, there are strong indications that abuse has been covered up by Government. On this note, I'd direct you to late 2017 media where it is stated:

### [Quote]

*“A former social worker says the Government's refusal to hold an inquiry into historical abuse in state care makes it complicit in a cover-up.*

*An investigation by Three's The Nation reveals complaints about abusers from several former social workers were ignored, or the offender moved to a different facility.”*

### [End Quote]

See <http://www.newshub.co.nz/home/new-zealand/2017/09/state-child-abuse-government-accused-of-being-part-of-a-cover-up.html>

Additionally, I absolutely know and can prove beyond any reasonable doubt that Government representatives covered up my sexual abuse which is all outlined in police records where the head of the institution explains to police (in writing on an official Government letterhead) why they/he quietly asked an alleged pedophile to resign from the institution without reporting the alleged pedophile to police. I.e. documented in a letter by the head of the institution to police, the head of the institution states:

**[Quote]**

“17 November, 1978

As requested I supply information on Gavin Mitchell, ex Assistant Housemaster at this school...

2. Mr Mitchell resigned at my request following an investigation of a report by one pupil of Mr Mitchell allegedly kissing him.

It is relevant to point out that Mr Mitchell’s general performance of his duties was not satisfactory and the incident prompted me to insist on termination of employment. Had Mr Mitchell not resigned, I would have given him notice...

The incident of the kissing of (edited out) was reported to (edited out) on August 15<sup>th</sup> ...”

**[End Quote]**

Further, when I applied for records of these events, with the Ministry concerned, during my historic claim, in late 2011, I was denied these records on the basis that they (the MOE) destroyed records after 25 years. In short, after 25 years, this particular Government Department (they tell me) shreds evidence of historic criminal offences committed by their staff against onetime children in their care. Serious questions need to be raised about such practices and this can only occur if officials of the Government are questioned over past and current practices.

Which brings me to my next point.

**3) Thorough Investigation into Human Rights Violations in New Zealand’s Historic Abuse Claims Processes**

As you may be aware I filed a shadow report to New Zealand’s UNCAT periodic review in 2014 found @ [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/NZL/INT CAT CSS NZL 20011 E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/NZL/INT_CAT_CSS_NZL_20011_E.pdf)

This submission played some role in having the Committee highlight that they were concerned the NZ State was failing to provide adequate redress with:

**(Quote)**

“19. While welcoming the commitment of the State Party to provide compensation to victims of historic claims of abuse, the Committee is concerned at the fact that victims have not been awarded with full redress, including compensation and rehabilitation, as prescribed by [general comment No. 3 \(2012\)](#) on the implementation of article 14 by States parties.

... The State party should establish the legislative and structural framework necessary for ensuring that all victims of torture receive redress, including medical and psychological assistance, full compensation and the means for full rehabilitation.”

**(End Quote)**

My submission/shadow report to the UNCAT outlined a series of human rights violations (according to international norms as outlined in the UNCAT General Comment 3) which I encountered (was subjected to) during the course of my claim. Among these violations was the denial of legal aid, failing to provide an independent and impartial investigation, failing to provide a meaningful apology (my apology came with a legal disclaimer and failed to acknowledge the facts of the abuse), and failing to provide adequate redress. I outlined a series of human rights violations to the UNCAT that I saw in the historic claims processes such as the State's denial of systemic abuse (which has only recently – Nov 2017 - been corrected with an admission, on the part of the National Government, of systemic abuse) and which equated to failing to publicly acknowledge the extent of the abuse, failing to provide a public apology, failing to provide adequate redress while rigorously invoking statute of limitations in all historic claims that went before the Courts, and highlighting erratic processes across the ministries dealing with claims. So, for example, a victim who was abused while in the care of the MSD has redress capped at \$50,000 (through the Fast Track scheme), while a victim abused in the care of the MOE would face a cap of \$30,000 for the same level of abuse, while a victim in the care of the MOH may get \$9,000 (ex-gratia) – 18,000 (settlement). Of course, these irregularities are ludicrous when considering redress. I.e. are we to believe that the same level of abuse was more traumatic if it occurred in the MSD than if it had occurred in the MOE or MOH?

My point here is that, from a human rights perspective, the inquiry needs to scrutinize, in depth, the National Government's historic claims processes? The fact is, in my mind, and I expect the mind of many others, there have been two sets of human rights violations enacted by the State against many (if not all) of the historic abuse claimants. The first set of rights violations occurred when we were children, where representatives of the State (and indeed perhaps the State itself through systemic failings) violated our rights; the second set of violations occurred years later, as adults, when State representatives callously retraumatized many of us through dishing out a second round of rights violations known as the historic claims.

For myself, any testimony I give at the inquiry will largely be about being retraumatized and having my rights violated by the historic claims processes, not about the abuse I was subjected to as a child while in State-care. My childhood sexual abuse, in fact, is dead simple and can be spoken about in several sentences with official documents to support every single word I utter. I was sexually abused over several months. I was beaten and called a liar by a State representative when I reported this abuse. The pedophile was a short time later reported by at least one other student to staff at the institution. The pedophile was asked to resign by the head of the institution. The pedophile was not reported to police by any member of the institution or by the ministry concerned at the time he was asked to resign. Three to four months later he was arrested after being reported to police by a father of a victim who was not in State-care. It was an easy bust. Cops found photos of some of the children he was sexually abusing in his possession when they searched his home. Photos of me were among these. Cops showed at my home and informed my mother that her child had been sexually abused; she set about bashing her head against the floor and screaming "NO!NO!NO!WHY?WHY?WHY?". Presumably, this is why the cops interviewed an 11-year old child without an adult being present (the only adult in the house – my mother - having had a meltdown upon being told the news). Not one single representative of the institution contacted me or any member of my family to say sorry and/or offer assistance. The pedophile was sentenced to 3 years but not before sexually abusing my brother in the 3-4 months between being asked to resign quietly from the institution and his eventual arrest. All it took was for anyone to report him and the State failed to do this. As a result innocent children, including my brother, were irreparably harmed as a direct result of the inaction on the part of representatives of the State (presumably given that the letter to police by the head of the institution was written on an official Government letterhead a copy of this would have been filed with the Ministry concerned – implying a broader systemic failing).

This I guess sounds horrific but I (and my brother) have done our best to move on. Going back to it (my abuse), through the historic claims process, however, broke me when the State denied me legal aid and told me years of PTSD and all that entails was worth 30 grand with a subpar apology that came with a legal disclaimer and failed to acknowledge their responsibility and/or even the facts of my case. It was like being re-abused all over again and frankly I wish I had never heard of the historic claims. As you may know, as a result of my treatment by the NZ

State (human rights violations part 2) during and after the resolution of my claim, I have spent thousands of dollars (over \$10,000 AUD) on undertaking an MA in human rights, spent hundreds of hours writing articles for a website I have produced and funded myself (<http://newzealandchildabuse.com/>), spent many more hours writing emails to Government officials and putting in applications for OIA and spent many more hours producing a submission/shadow report that was lodged with the UNCAT in 2014. Further, I have spent hundreds more hours networking through social media and other channels with State abuse survivors in order to achieve some form of meaningful justice for myself and others. In many ways the historic claim I lodged irreparably and negatively changed my world. Such was the injustice of the treatment I received during my claim that I simply wasn't going to let the NZ State once again violate my rights without going after them for these violations. However, going after the State has been exhausting and psychologically taxing. I.e. there was a cost beyond what it cost me in time and money.

The thing is, the guilty in my CSA case are all probably dead now (certainly the perp of the abuse – Gavin Mitchell - died long ago in prison); however, the cynical bastards who refused me legal aid and then told me my life was worth 30 grand while offering up a subpar apology have some explaining to do. In other words, those responsible for the initial human rights violations cannot be held accountable but those responsible for the second round of human rights violations (the NZ National Party) have some explaining to do. Not to put too fine a point on things, I and I expect many others, want and need an explanation. Just how in the hell did they determine my life was so worthless? How is it that they sat in their lofty tax funded towers feeding us swill about doing the “right” and “moral” thing when in reality it was anything but (at least from an International human rights perspective). I and I expect others need this question answered to move on. Just as Catholic abuse survivors in Australia needed questions answered about the now broadly condemned ‘Towards Healing’ process, instituted by the Australian Catholic Church (where incidentally the Catholic Church used the exact same rhetoric as the Nats of doing the “right” and “moral” thing), it seems only fitting that New Zealand’s survivors get the same level of justice and answers as their Australian counterparts.

### **The Australian Royal Commission into Institutional Responses to Child Sexual Abuse should be looked at closely as a Model of Best Practice for the Inquiry**

New Zealand lags behind most other developed countries in that, to date, NZ has never held a comprehensive, independent inquiry into institutional child abuse.

This is perhaps advantageous in that New Zealand can learn from other countries that have held or are currently holding inquiries. For example, the UK inquiry (the IICSA) is a disaster which is overburdened by highly paid solicitors and hampered by bureaucratic processes and procedures, and it has proven to be very non-inclusive for the actual survivors. This has led to much controversy and distrust from victims of abuse who have been very vocal in expressing their distrust and faith in the IICSA. Today, the IICSA, in fact, is looking towards the Australian RC in order to rectify the problems the inquiry has encountered. In short, to date, the IICSA has been a costly, lengthy exercise which has yielded very little.

Conversely, the Australian RC has been extremely successful in meeting outcomes and putting forward recommendations and policy changes.

My own view is why reinvent the wheel when a very good model already exists? For this reason, I would hope those behind the inquiry look very closely at what did and didn't work for the Australian RC and shape the NZ inquiry around this.

### **Discussion surrounding an Independent Panel for Resolving Claims of Abuse should be included in the scope of the Inquiry**

One major issue I encountered during my claim, and something that has been raised by many others (see Cooper Legal et al), is the fact that survivors of State abuse are forced to go hat in hand to seek

redress from the very institution that is/was responsible for their abuse. Thus, the investigation of the State by the State is completely non-independent. This is not on and if justice isn't seen to be done by the victim, this confirms and solidifies feelings of distrust towards the State. Further, if justice isn't seen to be done, the process retraumatizes the victim. Or, as one historic abuse claimant put it, his compensation offer was "another kick in the guts". See <http://newzealandchildabuse.com/govt-compo-offer-kick-in-the-guts-for-abuse-victim/>

The inquiry should be responsible for investigating and defining as effective as possible an independent of Government claims process.

A redress scheme should be considered with these factors:

1. It should ensure full and effective participation of survivors and others whose rights are affected in all decisions on the means of realising the rights of effective access to justice, effective remedies and reparation;
2. Ensure accountability for human rights violations including through effective official investigations, or a mechanism capable of determining State liability, and prosecutions where appropriate;
3. Consider further the role for accountability in the successor(s) and to identify where reasonable grounds exist for effective official investigations, as well as supporting survivors to identify and access effective remedies and proportionate reparation according to their needs and wishes;
4. Ensure effective access to justice through identifying and addressing barriers which survivors of childhood abuse face in practice in exercising this right, making necessary adjustments or developing new mechanisms as required;
5. Develop as effective as possible an independent (of State) reparations program for survivors of historic childhood abuse. This should include restitution, adequate compensation, rehabilitation, satisfaction and guarantees of non-repetition. The reparations for individuals should be appropriate for each individual, and based on the principles of proportionality (according to the nature of the violation and the harm done) and participation (of survivors to identify their needs and wishes);
6. Consider the development of legislation to facilitate apologies by institutions;
7. Make available each of the elements of effective access to justice, effective remedies and reparation to all survivors of childhood abuse without discrimination;

8. Develop a comprehensive communications and outreach strategy to raise awareness of past and present childhood abuse, the human rights of all of those affected and the remedies available;

#### **Recognition that Many Survivors of New Zealand's Institutions Now Reside Outside of New Zealand**

Many survivors of New Zealand's institutions now reside outside of New Zealand. For example, I myself left New Zealand in 1989. Additionally, during my time lobbying and advocating for survivors of NZ State care I have spoken to numerous survivors who live in Australia or elsewhere in the world. This is perhaps not too surprising when considering the mass migration that has occurred over decades as Kiwis jump the ditch for Australia or elsewhere.

One thing that concerns me is that where the CLAS was concerned there was no real effort made to alert expatriate New Zealanders that the CLAS was taking place. Other than this, many expatriates were likely excluded from having their stories heard when they did contact the CLAS. For example, I was told that as I reside outside of New Zealand it would be impractical for me to return to NZ to speak to the CLAS. I.e. when I contacted the CLAS their response was:

*"I note that you live in Singapore (actually this was wrong – I was in Indonesia at the time) and it would prove difficult for you to meet with our panel without you returning to New Zealand."* (Email correspondence from Gordon McFadyen, CLAS, 22/12/2011)

What New Zealand did do with the CLAS was contact CLAN Australia to have them alert their ex New Zealand members of the existence of the CLAS. This really was an extremely limited way of informing victims that an inquiry was taking place. I.e. CLAN Australia has a very limited, small member base (mostly old white people) which is largely Australian and not expatriate New Zealanders. Other than this, many choose not to have contact with survivor organisations. For example, I myself had never heard of CLAN until months after I had finalized my claim. Further, having contacted CLAN some time ago I chose not to have any further dealings with them.

The point really being that New Zealand needs to alert survivors around the world of the inquiry so that the participation of those residing outside of New Zealand can occur. At a guess I would have to say that at least 20 - 30% of the living survivors of New Zealand's State-run institutions now reside in Australia with fewer numbers in countries such as the UK.

Many of these people survive on benefits and therefore the cost of returning to New Zealand to be heard by the inquiry would be prohibitive and likely exclude many from attending the inquiry. There needs to be some recognition of this and procedures and funding put in place so that expatriates are firstly informed through media and other channels of the existence of the inquiry and secondly, not excluded from attending the inquiry due to economics and geographic location.

{End}

Thanks, that's my input.

