

Royal Commission of Inquiry (COVID-19 Lessons) Amendment Order (No 2) 2024

Charles the Third, by the Grace of God King of New Zealand and his Other Realms and Territories, Head of the Commonwealth, Defender of the Faith:

To—

Professor Antony Blakely, of Melbourne, specialist in epidemiology and public health, Research Professor, Population Interventions Unit and Scalable Health Intervention Evaluation (SHINE), Centre for Epidemiology and Biostatistics, Melbourne School of Population and Global Health, University of Melbourne,

Grant Maxwell Illingworth, KC, of Auckland, Barrister,

John Whitehead, CNZM, KStJ, of Wellington, economist, former Secretary to the Treasury, former Executive Director on the Board of the World Bank Group, and current Chancellor and Board Chair of the Order of St. John,

Judy Margaret Kavanagh, of Waikanae, public policy professional, economist, former Director of Inquiries at the Infrastructure Commission, and former Director of Inquiries at the Productivity Commission,

Anthony Murray Hill, of Wellington, Barrister, former Health and Disability Commissioner, former Deputy Director-General of Health, and former chief legal counsel at the Ministry of Health:

Greeting!

We, by this order, amend the Royal Commission of Inquiry (COVID-19 Lessons) Order 2022 issued at Wellington on the 7th day of December 2022.

This order is made—

- (a) under the authority of the Letters Patent of Her Majesty Queen Elizabeth the Second constituting the office of Governor-General of New Zealand, dated 28 October 1983;* and
- (b) under the authority of section 6 of the Inquiries Act 2013 and subject to the provisions of that Act; and
- (c) on the advice and with the consent of the Executive Council.

*SR 1983/225

**Royal Commission of Inquiry (COVID-19 Lessons)
Amendment Order (No 2) 2024**

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Order

1 Title

This order is the Royal Commission of Inquiry (COVID-19 Lessons) Amendment Order (No 2) 2024.

2 Commencement

This order comes into force on 26 September 2024.

3 Principal order

This order amends the Royal Commission of Inquiry (COVID-19 Lessons) Order 2022.

4 Clause 3 replaced (Interpretation)

Replace clause 3 with:

3 Interpretation

In this order, **inquiry** means, as the context requires,—

- (a) both phases of the Royal Commission of Inquiry into Lessons Learned from Aotearoa New Zealand’s Response to COVID-19 That Should Be Applied in Preparation for a Future Pandemic; or
- (b) phase 1 of that inquiry; or
- (c) phase 2 of that inquiry.

5 Clause 4 amended (Royal Commission of Inquiry established)

In clause 4, insert as subclauses (2) to (4):

- (2) The inquiry will be carried out in 2 phases (**phase 1** and **phase 2**).
- (3) Phase 1 of the inquiry was established on 9 December 2022, began hearing evidence on 1 February 2023, and concludes when the inquiry delivers its report on phase 1 in accordance with clause 10(2) of Schedule 1.
- (4) Phase 2 of the inquiry is established on 26 September 2024, may begin hearing evidence on 29 November 2024, and concludes when the inquiry delivers its final report in accordance with clause 8A.

6 Clause 6 amended (Members and chairperson of inquiry)

- (1) In the heading to clause 6, after “**inquiry**”, insert “(**phase 1**)”.
- (2) In clause 6, after “inquiry”, insert “during phase 1” in each place.
- (3) In clause 6, insert as subclause (3):
- (3) Professor Antony Blakely is appointed as the chairperson of the inquiry during phase 1 from 9 December 2022 until the day on which the inquiry delivers its report on phase 1 in accordance with clause 10(2) of Schedule 1.

7 New clause 6A inserted (Members and chairperson of inquiry (phase 2))

After clause 6, insert:

6A Members and chairperson of inquiry (phase 2)

- (1) The following persons are appointed to be the members of the inquiry during phase 2:
 - (a) Grant Maxwell Illingworth, KC:
 - (b) Judy Margaret Kavanagh:
 - (c) Anthony Murray Hill.
- (2) The person who is to be the chairperson of the inquiry during phase 2 is Grant Maxwell Illingworth, KC.

- (3) Grant Maxwell Illingworth, KC is appointed as the chairperson of the inquiry during phase 2 from the day after the day on which the inquiry delivers its report on phase 1 in accordance with clause 10(2) of Schedule 1 until the day on which the inquiry delivers its final report in accordance with clause 8A.

8 Clause 7 replaced (Date when inquiry may begin considering evidence)

Replace clause 7 with:

7 Date when inquiry may begin considering evidence for purposes of phase 1

The inquiry may begin considering evidence for the purposes of its phase 1 report on 1 February 2023.

9 New clause 7A inserted (Date when phase 2 of inquiry may begin considering evidence)

After clause 7, insert:

7A Date when inquiry may begin considering evidence for purposes of phase 2

The inquiry may begin considering evidence for the purposes of its phase 2 report on 29 November 2024.

10 Clause 8 replaced (Terms of reference)

Replace clause 8 with:

8 Terms of reference

- (1) The terms of reference for phase 1 of the inquiry are set out in Schedule 1.
- (2) The terms of reference for phase 2 of the inquiry are set out in Schedule 2.

11 New clause 8A inserted (Reporting by inquiry)

After clause 8, insert:

8A Reporting by inquiry

The inquiry's final report must be delivered by 26 February 2026 and, in accordance with section 12 of the Inquiries Act 2013, must comprise, at a minimum,—

- (a) the findings and any recommendations from the inquiry's report on phase 1 of the inquiry; and
- (b) the findings and any recommendations from the inquiry's report on phase 2 of the inquiry.

12 Schedule amended

- (1) Replace the Schedule heading with:

Schedule 1
Terms of reference (phase 1)

cl 8(1)

- (2) In the Schedule, replace clause 10(2) with:
- (2) The inquiry must deliver its report on phase 1 to the Minister of Internal Affairs by 28 November 2024.

13 New Schedule 2 inserted

After the Schedule, insert as Schedule 2 the schedule set out in the Schedule of this order.

Schedule

New Schedule 2 inserted

cl 13

Schedule 2

Terms of reference (phase 2)

cl 8(2)

1 Background

- (1) The Government has reviewed the scope and operation of the Royal Commission of Inquiry into Lessons Learned from Aotearoa New Zealand's Response to COVID-19 That Should Be Applied in Preparation for a Future Pandemic (the **inquiry**) and considers that some matters of public concern about that response are not adequately addressed in the inquiry's phase 1 terms of reference.
- (2) Public consultation in 2024 on potential matters for terms of reference for a new or expanded inquiry indicated a broad range of concerns. Some of these are being or will be addressed by phase 1 of the inquiry.
- (3) The Government therefore reaffirms its Coalition Agreement commitment to expand the scope of the inquiry.
- (4) The Government has established phase 2 of the inquiry to provide further recommendations on actions that will strengthen New Zealand's pandemic preparedness. Phase 2 of the inquiry will critically assess key decisions taken by the Government in response to COVID-19 during 2021 and 2022, and the associated economic responses.

2 Matter of public importance

The matter of public importance that the inquiry is directed to examine is the lessons learned from Aotearoa New Zealand's response to COVID-19 that should be applied in preparation for any future pandemic.

3 Purpose of inquiry

The purpose of the inquiry is to strengthen Aotearoa New Zealand's preparedness for, and response to, any future pandemic by identifying those lessons learned from New Zealand's response to COVID-19 that should be applied in preparation for any future pandemic.

4 Scope of phase 2 of inquiry

- (1) In phase 2, the inquiry must review the key decisions taken by Government in New Zealand's response to COVID-19 during 2021 and 2022. The review must be limited to decisions regarding—
 - the use of vaccines in response to COVID-19, specifically—

- vaccine mandates:
 - the approval of specific COVID-19 vaccines:
 - vaccine safety, including the monitoring and reporting of adverse reactions:
 - the imposition and maintenance of lockdowns during this period, and specifically the national lockdown in August and September 2021, and the extended lockdown in Auckland and Northland in September 2021:
 - the procurement, development, and distribution of testing and tracing technologies and non-pharmaceutical public health materials, specifically the impact of private sector involvement or non-involvement.
- (2) For the purposes of these terms of reference, a **key decision** is a decision that has a potential or actual significant impact on large numbers of people or groups of people, or that has a significant cost at a national or regional level (or both).
- (3) In reviewing those decisions, the inquiry must assess—
- whether those decisions were sufficiently informed by advice on any social and economic disruption such decisions were likely to cause, and in particular the effect those decisions might have on—
 - social division and isolation:
 - health and education:
 - inflation, debt, and business activity:
 - whether those decisions reflected the advice that was given to decision makers at the time:
 - whether those decisions took account of the experience and evolving practices from comparable jurisdictions:
 - whether those decisions struck a reasonable balance between COVID-19 public health goals and minimising social and economic disruption:
 - whether those decisions produced unforeseen consequences.
- (4) The inquiry may assess these matters, having regard to New Zealand’s circumstances, what was known at the time, and relevant decisions made by comparable jurisdictions.
- (5) The inquiry must only consider key decisions made on these matters between February 2021 and October 2022, and not outside those months, though it may have regard to any consequences of those decisions that were not apparent until after October 2022.
- (6) Despite subclause (5), the inquiry may consider key decisions made relating to vaccines before February 2021, provided those decisions otherwise fall within these terms of reference.

5 Matters upon which findings and recommendations are sought in phase 2

The inquiry should make, in relation to the matters within the scope of phase 2,—

- findings on whether key decisions were well informed, and whether those decisions had unforeseen consequences:
- recommendations on considerations that should be taken into account in future decisions to best prepare New Zealand to respond to any future pandemics.

6 Limits to inquiry's scope in phase 2

(1) The following matters are outside the scope of the inquiry in phase 2:

- particular clinical decisions made by clinicians or by public health authorities during the COVID-19 pandemic:
- how and when the strategies and other measures devised in response to COVID-19 were implemented or applied in individual cases:
- the operation of the general regulatory system for vaccines, and the approval of vaccines unrelated to COVID-19:
- the specific epidemiology of the COVID-19 virus and its variants:
- the recent reforms to New Zealand's health system, including the organisational arrangements for public health services:
- the judgments and decisions of courts and tribunals and independent agencies such as the Ombudsman, the Privacy Commissioner, or the Independent Police Conduct Authority relating to the COVID-19 pandemic:
- the operation of individual private sector businesses, except where those businesses deliver services integral to a pandemic response:
- particular decisions taken by the Reserve Bank's independent monetary policy committee during the COVID-19 pandemic:
- any adaptation of court procedures by the judiciary during the COVID-19 pandemic:
- any adaptation of parliamentary processes during the COVID-19 pandemic:
- the conduct of the general election during the COVID-19 pandemic.

(2) In accordance with section 11 of the Inquiries Act 2013, the inquiry does not have the power to determine the civil, criminal, or disciplinary liability of any person.

7 Inquiry procedure in phase 2

(1) In accordance with section 14 of the Inquiries Act 2013, the inquiry must comply with the principles of natural justice and avoid unnecessary delay or costs.

- (2) The inquiry must operate in a way that—
 - does not take a legalistic and adversarial approach:
 - uses information that is publicly available:
 - uses efficient procedures to gather any additional necessary information:
 - ensures that any request for necessary information is specified with due particularity.
- (3) Subject to subclause (2), the inquiry may conduct public hearings into any part of its terms of reference only if it considers that such hearings will significantly enhance public confidence in the processes of the inquiry, the conclusions it reaches, and the recommendations it makes.
- (4) The inquiry should review investigations, reports, and reviews (both domestic and international) and any other publicly available material relevant to these terms of reference.
- (5) The inquiry must not duplicate or repeat work already undertaken in any other investigation, report, or review.
- (6) The inquiry is not bound by the conclusions or recommendations of any other investigation, report, or review.
- (7) The inquiry should consider international investigations, reports, and reviews and other material, without travelling internationally or inviting persons to travel to New Zealand.

8 Relationship between phase 1 and phase 2 of the inquiry

- (1) Although the matter of public importance for phases 1 and 2 of the inquiry is the same, the terms of reference for phases 1 and 2 of the inquiry are different, and the processes for each phase differ because—
 - phase 1 of the inquiry has been conducted in private, with persons appearing before it on conditions of confidentiality:
 - phase 1 of the inquiry has made interim non-publication orders under section 15 of the Inquiries Act 2013, and is contemplating permanent non-publication orders under that section:
 - phase 2 of the inquiry may, in accordance with these terms of reference, conduct public hearings.
- (2) Phase 2 of the inquiry must consider the report on phase 1 of the inquiry, and any other publicly available information received during phase 1 of the inquiry, but must not duplicate or repeat work undertaken during phase 1 of the inquiry.
- (3) Phase 2 of the inquiry may reach different conclusions or make different recommendations from those set out in the report on phase 1 of the inquiry, but only on matters falling within the scope of phase 2 of the inquiry. All findings and recommendations in the report on phase 2 of the inquiry must be based on the evidence available to and received during phase 2 of the inquiry.

- (4) Phase 2 of the inquiry will not access or have regard to any material that is subject to orders made by phase 1 of the inquiry under section 15 of the Inquiries Act 2013, or to the internal deliberations of phase 1 of the inquiry.

9 Access to inquiry information

The inquiry must restrict access to inquiry information where it considers such steps are required in order to—

- protect the international relations of the Government of New Zealand:
- protect the confidentiality of information provided to New Zealand on a basis of confidence by any other country or international organisation:
- avoid prejudice to the maintenance of the law, including the prevention, investigation, and detection of offences:
- ensure that current or future criminal, civil, disciplinary, or other proceedings are not prejudiced:
- protect commercially sensitive information, including commercial information subject to an obligation of confidence:
- protect information for any other reason that the inquiry considers appropriate.

10 Administration

The inquiry must—

- support the relevant department (the Department of Internal Affairs) to meet its administrative and reporting requirements relevant to the inquiry by providing the department with regular information and reports on the administration and finances of the inquiry:
- provide a quarterly report to the Minister of Internal Affairs on progress on delivery of the findings and recommendations required under these terms of reference that—
 - sets out the critical activities the inquiry needs to complete:
 - reports on—
 - the expected cost of completing the activities:
 - the expected timing for completing the activities:
 - the progress towards completing the activities (including costs to date):
 - explains what steps the inquiry is taking, or proposing to take, to mitigate any risk that it may not complete its activities in accordance with these terms of reference.

11 Timing of phase 2

- (1) The inquiry may begin considering evidence relating to the matters that are within the scope of phase 2 on 29 November 2024.
- (2) The inquiry must deliver its report on phase 2 by 26 February 2026.

In witness whereof We have caused this Our Commission to be issued and the Seal of New Zealand to be hereunto affixed at Wellington this day of 2024.

Witness our Trusty and Well-beloved The Right Honourable Dame Cindy Kiro, Chancellor and Principal Dame Grand Companion of Our New Zealand Order of Merit, Principal Companion of The Queen's Service Order, Governor-General and Commander-in-Chief in and over Our Realm of New Zealand.

Governor-General.

By Her Excellency's Command,

Prime Minister.

Approved in Council,

for Clerk of the Executive Council.

Explanatory note

This note is not part of the order but is intended to indicate its general effect.

This order, which comes into force on 26 September 2024, amends the Royal Commission of Inquiry (COVID-19 Lessons) Order 2022 to—

- establish phase 2 of the Royal Commission of Inquiry into Lessons Learned from Aotearoa New Zealand's Response to COVID-19 That Should Be Applied in Preparation for a Future Pandemic (the **inquiry**), including terms of reference:

**Royal Commission of Inquiry (COVID-19 Lessons)
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Explanatory note

- appoint Judy Margaret Kavanagh and Anthony Murray Hill as members of the inquiry during phase 2 in place of Professor Antony Blakely and John Whitehead:
- appoint Grant Maxwell Illingworth as chairperson of the inquiry during phase 2 in place of Professor Antony Blakely:
- provide that phase 2 may begin hearing evidence on 29 November 2024:
- provide that the inquiry must deliver its report on phase 1 to the Minister of Internal Affairs by 28 November 2024:
- provide that, for the purposes of the Inquiries Act 2013, the inquiry's final report must comprise, at a minimum, the findings and any recommendations of the reports of phase 1 and phase 2 of the inquiry.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

This order is administered by the Department of Internal Affairs.