



Te Kōmihana Uiui a te Karauna mō te
parekura i Ngā Whare Kōrana o Ōtautahi
i te 15 o Poutū-te-rangi 2019

Royal Commission of Inquiry into the
Attack on Christchurch Mosques
on 15 March 2019

21 August 2019

Amended Minute 3: Further Orders under Section 15 of the Inquiries Act 2013¹

Further consideration about the need for confidentiality in respect of information originated by a foreign partner agency

1. On 16 May 2019, the Royal Commission of Inquiry into the Attack on Christchurch Mosques on 15 March 2019 (the Royal Commission) issued *Minute 2: Orders under section 15 of the Inquiries Act 2013* (the Act). In that minute the Royal Commission issued two interim orders prohibiting:
 - publication of all evidence and submissions to the Royal Commission from named State sector agencies; and
 - public access to such evidence and submissions and correspondence between the Royal Commission and those State sector agencies.
2. This minute applies to:
 - information originated by a foreign partner agency – that is, an international organisation or the Government of any other country, including any agency of such a Government – and supplied in confidence to the Royal Commission or to the Government of New Zealand on the basis that further dissemination is subject to the consent of the foreign partner agency. In this minute, we refer to such information as partner originated confidential information; and
 - information originated by a foreign partner agency and supplied directly to the Royal Commission.
3. The Royal Commission considers it is now in a position to make permanent orders in respect of such information. The orders made, and the reasons for them, are set out below.

¹ This Minute was originally issued on 27 June 2019. It was amended on 21 August 2019 to include the Ministry of Business, Innovation and Employment.

Orders

4. The orders are as follows:

- a) Under section 15(1)(a)(i) of the Act, prohibiting publication of any evidence or submissions provided to the Royal Commission by the Department of the Prime Minister and Cabinet, the Government Communications Security Bureau, the Ministry of Business, Innovation and Employment, the New Zealand Customs Service or the New Zealand Security Intelligence Service that is or incorporates partner originated confidential information except where the relevant foreign partner agency consents to publication.
- b) Under section 15(1)(a)(i) of the Act, prohibiting publication of any evidence or submissions provided to the Royal Commission directly by foreign partner agencies except where the relevant foreign partner agency consents to publication.
- c) Under section 15(1)(b) of the Act, prohibiting public access to any information provided to the Royal Commission:
 - (i) by the Department of the Prime Minister and Cabinet, the Government Communications Security Bureau, the Ministry of Business, Innovation and Employment, the New Zealand Customs Service or the New Zealand Security Intelligence Service that is or incorporates partner originated confidential information except where the relevant foreign partner agency consents to publication; or
 - (ii) directly by foreign partner agencies.

5. The orders made in paragraphs 4a) and 4c)(i) apply only to:

- information incorporated in material provided to the Royal Commission (including copies and drafts of such material held by a State sector agency) and identified as partner originated confidential information; and
- other formats of that information if supplied by the foreign partner agency to a State sector agency for the purposes of the Royal Commission.

Reasons

6. On 16 May 2019, the Royal Commission issued Minute 2 relating to orders under section 15 of the Act. In that minute the Royal Commission made interim orders under sections 15(1)(a)(i) and (b) of the Act:

- prohibiting publication of all evidence or submissions to the Royal Commission by the agencies referred to in the schedule to that minute; and
- that public access shall not be given to such material or to correspondence passing between the Royal Commission and those agencies.

7. Section 15(2) of the Act lists criteria that an inquiry must take into account before making section 15(1) orders. In Minute 2, the Royal Commission noted that the criteria in sections 15(2)(d) and (f) cover points dealt with in clause 10(3)(a) of the Terms of Reference, and took into account the criteria that might point away from the making of section 15(1) orders (particularly sections 15(2)(a) and (b)). In summary, the Royal Commission considered that orders were necessary to give effect to the Terms of Reference. The Royal Commission also noted that the directions given in clauses 10(2) and (3) of the Terms of Reference are expressed in mandatory terms. The Royal Commission, therefore, “must” restrict access to Royal Commission information, where it considers that this is necessary to protect the confidentiality of information provided to New Zealand on a basis of confidence by any other country or international organisation (clause 10(3)(a)(ii)). As the Royal Commission also noted in Minute 2, these considerations are material to the making of permanent as well as the interim orders which were made in that Minute.
8. Agencies receive and share information with foreign partner agencies, sometimes in accordance with longstanding treaties and sometimes on the basis of less formal arrangements or understandings, in terms of which the information is supplied in confidence and, in particular, on the basis that the consent of the supplier of the information is to be obtained before it is further disseminated. Such information is partner originated confidential information, as defined in this minute. By reason of clause 10(3)(a)(ii) of the Terms of Reference and sections 14(1)(b) and 15(3) of the Act, the Royal Commission is required to protect the confidentiality of partner originated confidential information, including information provided directly by foreign partner agencies to the Royal Commission, which in turn requires the making of permanent section 15 orders.
9. To date, five of the agencies named in the schedule to Minute 2 have sought permanent section 15(1)(a)(i) and (b) orders in reliance on clause 10(3)(a)(ii) of the Terms of Reference. They are the Department of the Prime Minister and Cabinet, the Government Communications Security Bureau, the Ministry of Business, Innovation and Employment, the New Zealand Customs Service, and the New Zealand Security Intelligence Service. They have received and propose to make available to the Royal Commission partner originated confidential information. For the reasons given, section 15 orders under the Act are required in respect of that information.
10. It is anticipated that other State sector agencies may seek similar orders in the future.

11. During the course of the inquiry, the Royal Commission may receive information of a factual nature or by way of expert opinion directly from foreign partner agencies. Such information will be “evidence” for the purposes of the Act. Because this information will be supplied directly to the Royal Commission rather than to the Government of New Zealand, it is not strictly partner originated confidential information as defined in paragraph 2 above and likewise is not directly within clause 10(3)(a)(ii) of the Terms of Reference. The reality is, however, that the extent to which foreign partner agencies will be prepared to supply information direct to the Royal Commission is very much subject to the Royal Commission being able to provide an assurance of confidentiality corresponding to that applicable to partner originated confidential information as defined in paragraph 2.

**Issued under the authority of the Members of the Royal Commission,
Sir William Young and Jacqui Caine, on 21 August 2019**

Contact details:

Email: info@christchurchattack.royalcommission.nz

Ph: 0800 222 987

Postal address: Royal Commission (Christchurch), P O Box 680, Wellington, New Zealand