



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

30 August 2019

Further Amended Minute 2: Evidence and Submissions from State Sector Agencies - Orders under Section 15 of the Inquiries Act 2013¹

A need for confidentiality

1. During the course of its proceedings, the Royal Commission of Inquiry into the Attack on Christchurch Mosques on 15 March 2019 (the Royal Commission) will receive a large amount of information that is:
 - classified under the Protective Security Requirements as engaging the security or defence interests of New Zealand or the international relations of the Government of New Zealand and/or held confidentially under arrangements with other countries or international organisations; and/or
 - of a kind which, if published, would disclose the operational tradecraft or capability of one or more of the agencies listed in the first schedule to these orders; and/or
 - of a kind which, if published, might affect fair trial rights of the person accused of offences relating to 15 March 2019 attacks; and/or
 - subject to privacy, confidentiality and natural justice considerations.
2. As set out in this minute, the Terms of Reference for the Royal Commission impose confidentiality requirements in respect of some of this information, The Inquiries Act 2013 (“Act”) and the Terms of Reference also permit the Royal Commission to impose confidentiality requirements for some of this information.

¹ This minute was originally issued on 17 May 2019. It was amended on 17 July 2019 to update the list of State sector agencies in the Schedule. It is now further amended on 30 August 2019 to (1) clarify the reasons for making these interim orders in light of the revised schedules of State sector agencies, (2) explain the application of the Official Information Act 1982, and (3) make adjustments in light of Minute 3, issued initially on 27 June 2019 and amended on 21 August 2019.

3. Having considered the terms of the Act, the Terms of Reference, material that has been supplied to the Royal Commission to date and which the Royal Commission has been told will be supplied to it, the Royal Commission considers it necessary to make orders under section 15(1) of the Act (imposing restrictions on access to the inquiry) that cover national security tradecraft, fair trial rights, privacy, confidentiality and natural justice considerations in relation to evidence and submissions received from State sector agencies named in the attached Schedules. The orders being made, and the reasons for doing so, are set out below.

Orders

4. The orders are as follows:
 - a) Under section 15(1)(a)(iii) of the Act, prohibiting publication of the names and identifying particulars of witnesses or other persons participating in the Royal Commission who are current or former employees of, or current or former secondees or contractors to, the New Zealand Security Intelligence Service (NZSIS), the Government Communications Security Bureau (GCSB) and partner foreign intelligence agencies, or anyone connected to such persons. This does not apply to present Directors-General or former Directors (or equivalent) of those agencies.
 - b) Under section 15(1)(a)(i) of the Act, but subject to further order of the Royal Commission, prohibiting publication of all evidence or submissions to the Royal Commission by the State sector agencies referred to in Schedule 1.
 - c) Under section 15(1)(b) of the Act, but subject to further order of the Royal Commission, that public access shall not be given to any of the material referred to in order 4.b) above or to correspondence passing between the Royal Commission and those State sector agencies referred to in Schedule 1.
 - d) Under section 15(1)(a)(i) of the Act, but subject to further order of the Royal Commission, prohibiting publication of all evidence or submissions to the Royal Commission by the State sector agencies referred to in Schedule 2.
 - e) Under section 15(1)(b) of the Act, but subject to further order of the Royal Commission, that public access shall not be given to any of the material referred to in order 4.d) above or to correspondence passing between the Royal Commission and those State sector agencies referred to in Schedule 2.
5. Orders 4.b) and 4.d) are authorised by section 15(1)(a)(i) of the Act. Its application is necessarily confined to “evidence or submissions” presented to the Royal Commission. The Royal Commission interprets that phrase broadly, as including, for instance draft and preparatory material created by those agencies in the course of providing evidence or preparing submissions for the Royal Commission.

6. Orders 4.d) and 4.e) may be varied where a State sector agency identified in Schedule 2 requests and has been granted permission by the Royal Commission to publish, or allow public access to, all or part of the evidence or submissions presented to the Royal Commission.
7. The Orders in 4 above do not:
 - preclude the publication by the Royal Commission of progress updates of generic information about those with whom the Royal Commission has met, or themes from those initial meetings, meetings or formal interviews including the names of those it has met with other than names and identifying particulars of persons covered by Order 4.a); or
 - prevent the Royal Commission putting the substance of any evidence or submissions received from a State sector agency to any other person; although this is subject to clause 10(2) and (3)(a)(i) and (ii) of the Terms of Reference.

Reasons

Overview of legislative regime

8. Under section 14(1) of the Act, the Royal Commission's discretion in relation to its processes is subject to anything specified in the Act or in the Terms of Reference and, under section 15(3), it must make orders under section 15(1) to give effect to the Terms of Reference to the extent that they restrict "any part or aspect of the inquiry from public access".
9. Clauses 10(2) and (3) of the Terms of Reference provide:
 - (2) *The matters the inquiry is charged with investigating directly concern the operational practices of relevant State sector agencies, including intelligence and security agencies, which are and must remain confidential in the public interest in order to ensure public safety, to avoid prejudice to the international relations of the Government of New Zealand and the entrusting of information to the Government of New Zealand on a basis of confidence, and for the maintenance of the law.*
 - (3) *Accordingly, the inquiry must, wherever it considers it necessary to preserve such confidentiality, hold the inquiry, or any part of it, in private. The inquiry must also restrict access to inquiry information (including evidence, submissions, rulings, hearing transcripts, and the identity of witnesses or other persons) where it considers such steps are required—*
 - (a) *in order to—*
 - (i) *protect the security or defence interests of New Zealand or the international relations of the Government of New Zealand:*

- (ii) *protect the confidentiality of information provided to New Zealand on a basis of confidence by any other country or international organisation:*
 - (iii) *protect the identity of witnesses or other persons:*
 - (iv) *avoid prejudice to the maintenance of the law, including the prevention, investigation, and detection of offences:*
 - (v) *ensure that individual fair trial rights are protected:*
 - (vi) *ensure that current or future criminal, civil, disciplinary, or other proceedings are not prejudiced; or*
- (b) *for any other reason that the inquiry considers appropriate.*

10. Section 15(2) of the Act lists criteria that an inquiry must take into account before making orders under section 15(1). Of these, those provided in sections 15(2)(d) and (f) cover some of the ground dealt with in clause 10(3)(a) of the Terms of Reference. The Royal Commission has taken into account the criteria that might point away from the making of section 15(1) orders, particularly those listed in sections 15(2)(a) and (b) but is of the view that Orders 4.a), 4.b) and 4.c) are necessary to give effect to clause 10(3)(a) of the Terms of Reference.

Prohibiting publication of names

11. Prohibiting publication of the names of those associated with the NZSIS and GCSB (Order 4.a)) is consistent with, and in large measure required by, section 227 of the Intelligence and Security Act 2017. It is also consistent with clause 10(3)(a)(iii) of the Terms of Reference and the usual practice of the courts. Prohibition of the publication of the names of those associated with partner foreign intelligence agencies is also consistent with clause 10(3)(a)(iii) and, as well, required by clause 10(3)(a)(ii).

National security, natural justice, privacy and confidentiality considerations in relation to Schedule 1 State sector agencies

12. 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 security or defence interests of New Zealand, or the international relations of the Government of New Zealand, or the confidentiality of information provided to New Zealand on a basis of confidence by any other country or international organisation (clauses 10(3)(a)(i) and (ii));
- protect the identity of witnesses or other persons (clause 10(3)(a)(iii));
- avoid prejudice to the maintenance of the law, including the prevention, investigation, and detection of offences (clause 10(3)(a)(iv)); and

- ensure that individual fair trial rights are protected (clause 10(3)(a)(v)).

The Royal Commission can also restrict access to inquiry information for any other reason that the inquiry considers appropriate (clause 10(3)(b)).

13. Most of the information covered by Orders 4.b) and 4.c) will be within the scope of clauses 10(3)(a)(i), (ii), (iv) and (v). It is not practicable, in advance, to separate out from the material to be supplied to the Royal Commission information that might be published without detrimental consequences. Interim orders are, therefore, necessary at this time to give effect to the Terms of Reference. As drafted, the orders made above at 4.b) and 4.c) also apply to evidence and submissions from Schedule 1 State agencies that will not give rise to national security considerations. In respect of that type of evidence and submissions sub-clauses 10(3)(a)(i) and (ii) of the Terms of Reference are not engaged. That said, there remains a need to:

- protect fair trial rights under sub-clauses 10(3)(a)(v) and (vi) of the Terms of Reference;
- protect the identity of witnesses or other persons under sub-clause 10(3)(a)(iii) of the Terms of Reference;
- protect private and/or confidential information, for instance, where confidentiality has been requested (sub-clause 10(3)(a)(iii) and 10(3)(b) of the Terms of Reference), and
- protect information that has been received by the Royal Commission, release of which, without it having been put to another person, might breach natural justice requirements that are not covered by fair trial rights (sub-clause 10(3)(b) of the Terms of Reference).

Natural justice, privacy and confidentiality considerations in relation to Schedule 2 State sector agencies

14. Evidence and submissions from State sector agencies set out in Schedule 2 are highly unlikely to implicate national security and, accordingly, sub-clauses 10(3)(a)(i) and (ii) of the Terms of Reference are not likely to be engaged. That said, there remains a need to protect fair trial rights (as provided for in sub-clauses 10(3)(a)(v) and (vi) of the Terms of Reference). As well, such evidence and submissions may touch on considerations of privacy, confidentiality (including where confidentiality has been requested and granted or evidence or submissions have been received under an obligation of confidence (express or implied)), and natural justice considerations as provided for in sub-clauses 10(3)(a)(iii), (iv) and 10(3)(b) of the Terms of Reference. For these reasons, interim orders are appropriate in respect of evidence and submissions from the State sector agencies listed in Schedule 2.

Section 15(2) criteria have been considered

15. Section 15(2) of the Act lists criteria that an inquiry must take into account before making orders under section 15(1). Of these, those provided in sections 15(2)(e) and (g) cover some of the ground dealt with in clause 10(3)(a) and (b) of the Terms of Reference. The Royal Commission has taken into account the criteria that might point away from the making of section 15(1) orders, but is of the view that the interim orders made are necessary to give effect to the Terms of Reference.

Interim nature of the orders

16. Orders 4.b) - 4.e) are subject to review. This is primarily because:

- the requirement to protect fair trial rights is time-limited;
- it may transpire that some of the information covered by these orders may be able to be disclosed consistently with clauses 10(2) and (3) of the Terms of Reference;
- at this stage of the process, the Royal Commission is reluctant to make permanent orders that would displace the operation, after the Royal Commission concludes, of the Official Information Act 1982, as provided for by section 32 of the Act; this particularly in respect of information that was not created for purposes which include participation before the Royal Commission;
- a Schedule 2 State sector agency may assess that the information presented to the Royal Commission does not require continuing suppression and the Royal Commission may allow that agency to publish or grant public access to some or all of that information.

17. The Royal Commission also notes that it will be recommending that as much information as possible will be made publicly available at the conclusion of the Inquiry and after it has reported (subject to any permanent orders under section 15 of the Inquiries Act being made).

Application of the Official Information Act 1982 to the orders in paragraph 4

18. As noted in paragraph 5, the Royal Commission construes “evidence or submissions” as encompassing draft and preparatory material created and held by the State sector agencies set out in Schedules 1 and 2. That said, the orders made do not apply (and thus do not preclude the operation of the Official Information Act 1982) in respect of material held by State sector agencies which was not created for the specific purposes of the Royal Commission.

19. Thus, by way of example, in the case of a Cabinet paper, or letter held by a State sector agency, dated 14 March 2019 or 20 July 2019 a copy of which forms part of the evidence submitted to the Royal Commission:

- The copy which forms part of the evidence presented is covered by the orders;
- Correspondence between the Royal Commission and a State sector agency related to evidence and submissions is covered by the orders; but
- The original copy of the Cabinet paper or letter, as received, and held by the State sector agency, is not covered by the orders and remains subject to the Official Information Act.

**Issued under the authority of the Members of the Royal Commission,
Sir William Young and Jacqui Caine, on 30 August 2019**

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Schedule 1

1. Department of Internal Affairs;
2. Department of the Prime Minister and Cabinet;
3. Government Communications Security Bureau;
4. Inspector-General of Intelligence and Security;
5. Independent Police Conduct Authority of New Zealand;
6. Inland Revenue;
7. Ministry of Business, Innovation and Employment;
8. Ministry of Foreign Affairs and Trade;
9. Ministry of Justice;
10. New Zealand Customs Service;
11. New Zealand Police;
12. New Zealand Security Intelligence Service.

Schedule 2

1. Crown Law Office;
2. Department of Conservation;
3. Department of Corrections;
4. Education Review Office;
5. Land Information New Zealand;
6. Ministry for Culture and Heritage;
7. Ministry of Defence;
8. Ministry of Education;
9. Ministry for the Environment;
10. Ministry of Health;
11. Ministry of Housing and Urban Development;
12. Ministry of Social Development;
13. Ministry for Pacific Peoples;
14. Ministry for Primary Industries;
15. Ministry for Women;
16. Oranga Tamariki - Ministry for Children;
17. Serious Fraud Office;
18. Statistics New Zealand;
19. Ministry of Transport;
20. New Zealand Defence Force;
21. Office for Māori Crown Relations - Te Arawhiti;
22. Pike River Recovery Agency;
23. Social Investment Agency;
24. State Services Commission;
25. Te Puni Kōkiri;
26. The Treasury;
27. Office of the Clerk of the House of Representatives;
28. Parliamentary Service;
29. Parliamentary Counsel Office;

30. Inspector-General of Intelligence and Security;
31. Accident Compensation Corporation;
32. Callaghan Innovation;
33. Civil Aviation Authority;
34. Auckland District Health Board;
35. Bay of Plenty District Health Board;
36. Canterbury District Health Board;
37. Capital and Coast District Health Board;
38. Counties Manukau District Health Board;
39. Hawke's Bay District Health Board;
40. Health Promotion Agency;
41. Hutt Valley District Health Board;
42. Lakes District Health Board;
43. MidCentral District Health Board;
44. Nelson Marlborough District Health Board;
45. Northland District Health Board;
46. South Canterbury District Health Board;
47. Southern District Health Board;
48. Taranaki District Health Board;
49. Tairāwhiti District Health Board;
50. Waikato District Health Board;
51. Waitemata District Health Board;
52. Whanganui District Health Board;
53. Wairarapa District Health Board;
54. West Coast District Health Board;
55. Earthquake Commission;
56. Education New Zealand;
57. Energy Efficiency and Conservation Authority;
58. Environmental Protection Authority;
59. Health Quality and Safety Commission;

60. Health Research Council;
61. Maritime New Zealand;
62. Antarctica New Zealand;
63. New Zealand Blood Service;
64. Housing New Zealand Corporation;
65. Fire and Emergency New Zealand;
66. New Zealand Qualifications Authority;
67. Tourism New Zealand;
68. New Zealand Trade and Enterprise;
69. New Zealand Transport Agency;
70. New Zealand Walking Access Commission;
71. PHARMAC;
72. Real Estate Authority;
73. Social Workers Registration Board;
74. Sport New Zealand;
75. WorkSafe New Zealand;
76. Tertiary Education Commission;
77. Creative New Zealand;
78. NZ On Air;
79. Annuitas Management Limited;
80. New Zealand Super Fund;
81. Te Papa Tongarewa;
82. New Zealand Artificial Limb Service;
83. New Zealand Film Commission;
84. Heritage New Zealand;
85. New Zealand Lotteries Commission;
86. New Zealand Symphony Orchestra;
87. Public Trust;
88. Commission for Financial Capability;
89. Te Taura Whiri I Te Reo Māori;

90. Te Māngai Pāho;
91. International Accreditation New Zealand;
92. Broadcasting Standards Authority;
93. Office of the Children's Commissioner;
94. Commerce Commission;
95. Drug Free Sport New Zealand;
96. Electoral Commission;
97. Electricity Authority;
98. External Reporting Board;
99. Financial Markets Authority;
100. Office of the Health and Disability Commissioner;
101. Human Rights Commission;
102. Law Commission;
103. Productivity Commission;
104. Office of Film and Literature Classification;
105. Office of the Privacy Commissioner;
106. Takeovers Panel;
107. Transport Accident Investigation Commission;
108. Crown Irrigation Investments Limited;
109. AgResearch;
110. Institute of Environmental Science and Research;
111. GNS Science;
112. Manaaki Whenua Landcare Research;
113. National Institute of Water and Atmospheric Research;
114. Scion;
115. Plant and Food Research;
116. New Zealand Venture Investment Fund Limited;
117. Radio New Zealand;
118. City Rail Link Limited;
119. Television New Zealand;

120. Auckland University of Technology;
121. Lincoln University;
122. Massey University;
123. University of Auckland;
124. University of Canterbury;
125. University of Otago;
126. University of Waikato;
127. Victoria University of Wellington;
128. Ara Institute of Canterbury;
129. Eastern Institute of Technology;
130. Manukau Institute of Technology;
131. Nelson Marlborough Institute of Technology;
132. Northland Polytechnic;
133. Open Polytechnic of New Zealand;
134. Southern Institute of Technology;
135. Tai Poutini Polytechnic;
136. Unitec New Zealand;
137. Toi Ohomai Institute of Technology;
138. Universal College of Learning;
139. Waikato Institute of Technology;
140. Whitireia New Zealand;
141. Western Institute of Technology at Taranaki;
142. Te Wānanga o Aotearoa;
143. Te Wānanga o Raukawa;
144. Te Whare Wānanga o Awanuiārangi;
145. Fish & Game New Zealand;
146. NZ Game Animal Council;
147. Crown Asset Management Limited;
148. Crown Infrastructure Partners Limited;
149. Network for Learning;

150. Ōtākaro Limited;
151. Predator Free 2050 Limited;
152. Research and Education Advanced Network New Zealand;
153. Southern Response;
154. Tāmaki Regeneration Company;
155. Agricultural and Marketing Research and Development Trust;
156. Asia New Zealand Foundation;
157. Ngāi Tahu Ancillary Claims Trust;
158. Pacific Business Trust;
159. Māori Trustee;
160. Office of the Controller and Auditor-General;
161. Office of the Ombudsman;
162. Parliamentary Commissioner for the Environment;
163. Reserve Bank of New Zealand;
164. AsureQuality;
165. KiwiRail;
166. Kordia;
167. Pāmu;
168. MetService;
169. New Zealand Post;
170. Quotable Value;
171. Transpower;
172. Orillion;
173. Genesis Energy;
174. Mighty River Power;
175. Meridian Energy;
176. Remuneration Authority;
177. Māori Television;
178. New Zealand Council For Educational Research;
179. QEII National Trust;

180. Te Mātāwai;
181. Hobsonville Land Company;
182. Telarc;
183. High Performance Sport New Zealand;
184. New Zealand Food Innovation Network;
185. Otago Polytechnic;
186. Regenerate Christchurch;
187. Education Payroll Limited;
188. National Pacific Radio Trust;
189. New Zealand Game Bird Habitat Trust Board;
190. Pacific Co-operation Foundation;
191. Te Ariki Trust;
192. New Zealand Lotteries Grants Board;
193. Electricity Corporation of New Zealand;
194. New Zealand Railways Corporation;
195. Auckland/Waikato Fish and Game Council;
196. Central South Island Fish and Game Council;
197. Eastern Region Fish and Game Council;
198. Hawke's Bay Fish and Game Council;
199. Nelson/Marlborough Fish and Game Council;
200. North Canterbury Fish and Game Council;
201. Northland Fish and Game Council;
202. Otago Fish and Game Council;
203. Southland Fish and Game Council;
204. Taranaki Fish and Game Council;
205. Wellington Fish and Game Council; and
206. West Coast Fish and Game Council.