



Government Inquiry into Mental Health and Addiction

MINUTE No. 2

Introduction

1. The Government Inquiry into Mental Health and Addiction is scheduled to report to the Minister of Health by 30 November 2018. This Minute addresses the status of documents and material supplied to, and generated by, the Inquiry ("**Inquiry records**"). It also makes final non-publication orders under section 15(1)(a) of the Inquiries Act 2013 ("**the Act**"), varying the interim non-publication orders made in Minute No. 1 on 21 April 2018, and orders restricting public access under section 15(1)(b) of the Act.

Management of Inquiry records

2. After the Inquiry has reported, the Inquiry records will, under s 32 of the Act, be subject to the Official Information Act 1982, with two exceptions:
 - (a) Material over which the Inquiry has made non-publication orders under section 15(1)(a) of the Act; and
 - (b) Documents that relate to the internal deliberations of the Inquiry.
3. The Inquiry has received and generated several categories of records (including submissions, summaries of themes from public and stakeholder meetings; summaries of submissions, commissioned research, information analyses, other documents, and correspondence) ("**material**"), some of which will justify or require restrictions on publication, on the basis that the factor identified below is not outweighed by considerations of the public interest in publication:
 - (a) Some material contains personal information about the submitter or other persons which is sensitive or private, and restriction is necessary to protect the privacy of natural persons, including deceased natural persons.
 - (b) Some material may be subject to medical / psychological privilege or otherwise be of a sensitive or confidential nature, and publication may cause harm to the submitter or other persons.
 - (c) Requests for confidentiality were made in respect of some material and promised by the Inquiry with respect to other material.
 - (d) Some material contains criticisms of persons or organisations who have not had the opportunity to provide comment. Principles of natural justice have therefore

not been satisfied and public release would be unfair and contrary to the interests of justice.

- (e) Some material contains commercially sensitive information, publication of which could unreasonably prejudice or disadvantage the provider of the material.
 - (f) Some material was provided to the Inquiry on a confidential basis in order to allow the Inquiry to undertake its functions and ascertain the facts properly.
 - (g) Some material, if publicly released, could prejudice measures protecting the health or safety of members of the public.
 - (h) Some material, if publicly released, could prejudice the maintenance of the law.
4. The Inquiry has undertaken a process to identify all Inquiry records, with a particular focus on material that falls within the above categories. The Inquiry has carefully considered the principle that official information should be made available unless there is good reason for withholding it, under section 5 of the Official Information Act 1982. The Inquiry has also considered the matters it is required to take into account pursuant to s 15(2) of the Act:
- (a) the benefits of observing the principle of open justice;
 - (b) the risk of prejudice to public confidence in the proceedings of the inquiry;
 - (c) the need for the inquiry to ascertain facts properly;
 - (d) the extent to which public proceedings may prejudice the security, defence, or economic interests of New Zealand;
 - (e) the privacy interests of any individual;
 - (f) whether it would interfere with the administration of justice, including any person's right to a fair trial, if an order were not made under subsection (1); and
 - (g) any other countervailing interests.
5. Following careful consideration, options and recommendations for managing submissions and meeting notes were outlined in a document titled "Confidentiality Assurance Plan: Submissions, Meeting Notes, and Privacy" dated 12 November 2018. Based on the balance between making information available to the public while protecting the privacy of individuals, honouring obligations of confidentiality, and ensuring adherence to principles of natural justice, the following recommendations were accepted:
- (a) *Release one or more summary of submissions reports that summarise the submissions into key themes while retaining a high level of confidentiality;*
 - (b) *Withhold all individual submissions received via any channel or in any format to extend maximum protection in respect to privacy, confidentiality and natural justice. This would, however, not preclude individuals or their legally appointed*

representative from requesting and being granted access to their individual submission upon appropriate verification by the Department of Internal Affairs;

- (c) Release submissions from organisations and groups that have been checked to ensure they do not contain identifying information or raised natural justice concerns (submissions would be either withheld from release in full or partially redacted if confidentiality was requested OR if the submission contained identifying personal information or breached principles of natural justice);*
 - (d) Withhold notes from public meetings due to the potential risk to privacy of individuals and reputation of organisations that provided their free and frank views to the panel, natural justice considerations when others are mentioned, and the express promise of confidentiality made at the start of each public meeting;*
 - (e) Withhold notes from other stakeholder meetings due to the greater specificity of content contained in them, the potential for other people to identify people's inputs from the meeting notes, the potential harm to the reputation of organisations that provided their free and frank views to the panel, natural justice considerations when others are mentioned, and the express promise of confidentiality that was made at the start of some meetings.*
6. Subject to the final non-publication orders made in accordance with s 15(1)(a), and the orders restricting public access pursuant to s 15(1)(b) of the Inquiries Act below, the Inquiry has commenced the work required to enable public release of the material under recommendations [5a] and [5c], as well as to redact the specific portions of other material, aside from submissions and meeting notes, also falling within the categories in paragraph [3] ("**material intended for public release**"). That will result in redacted versions of that material suitable for public release.
7. Given the volume of material and complexity of the issues arising, the processes identified in paragraphs [6] above will not be complete before the Inquiry reports to the Minister.

Section s15(1)(a) Inquiries Act 2013 Orders

8. In order to protect the categories of material set out in paragraph [3] above, and allow for the time it will take to produce one or more summaries of submissions and check and produce redacted versions of material intended for public release, the Inquiry makes orders prohibiting publication of the following material, **subject to** paragraphs [9] and [10] below. The s 15(1)(a) orders apply to the following material, in whatever format, including electronic, digital or hard copy:
- (a) All individual submissions received by the Inquiry;

- (b) All submissions where confidentiality was expressly requested or promised by the Inquiry;
 - (c) All group or organisation submissions raising privacy, confidentiality or natural justice concerns which are unable to be appropriately redacted to ensure protection from possible harm within time and resources available to the Inquiry before reporting to the Minister;
 - (d) All meeting notes taken during private or public Inquiry meetings;
 - (e) Transcripts or recordings of oral submissions made by any person at private or public Inquiry meetings;
 - (f) Unredacted material provided by Government or other agencies or organisations at the request of the Inquiry;
 - (g) Social media (e.g. Facebook) communications not published by the Inquiry because they contain sensitive, personal or confidential information, or raise issues of natural justice;
 - (h) Documents and correspondence sent or received by the Inquiry, excepting formal correspondence to or from the Inquiry Chair or Secretariat, which are in the public domain;
 - (i) Communications sent or received by the Inquiry which contain personal, sensitive, confidential or prejudicial information, or raise issues of natural justice;
 - (j) Material covered by s 32 of the Inquiries Act (including but not limited to the NVivo database, reports, stocktakes, research, analyses or other material created by a member of the Inquiry, created by an officer of the Inquiry, provided to an officer of the Inquiry, or commissioned by the Inquiry) for the purposes of internal panel deliberations, except where expressly approved by the Inquiry for public release;
 - (k) Draft material (e.g. summary or summaries of submissions) prepared for the purposes of publication, but not completed and/or approved for publication by the Inquiry prior to reporting to the Minister; and
 - (l) Any draft reports prepared by or for the Inquiry.
9. For the avoidance of doubt, the material covered by the s 15(1)(a) orders is also subject to orders pursuant to s 15(1)(b) of the Inquiries Act, restricting public access to that material. **However**, notwithstanding the s 15(1) orders in paragraph [8] and this paragraph, the Inquiry directs that, the following material **may** be released pursuant to the Official Information Act 1982 or the Privacy Act 1993 following the Inquiry reporting to the Minister in the limited circumstances outlined:

- (a) Individual submissions upon verification the individual making the request is the person who originally made the submission;¹
- (b) Material that does not contain information coming within the categories in paragraph [3] above;
- (c) Redacted versions of material ‘cleansed’ of all information in the categories set out in paragraph [3] above (subject to other grounds for withholding information in the Official Information Act 1982, Public Records Act 2005 or any other enactment);
- (d) Material within paragraphs [8(c)] and [8(k)] that has subsequently been reviewed and redacted and/or approved by the Department of Internal Affairs for public release;
- (e) Material coming within s 32 of the Inquiries Act which has expressly been approved for public release by the Inquiry;
- (f) Publicly-available documents and material.

Additional Section 15(1)(b) Inquiries Act 2013 Orders

10. In addition to the material set out at paragraph [3] which is subject to orders pursuant to both s (15(1)(a) and s 15(1)(b) of the Act, the Inquiry makes orders that public access to the following categories of material is restricted under section 15(1)(b) of the Act, in order to protect personal, sensitive or confidential information, or ensure natural justice:
 - (a) Information and records, including associated metadata, contained in the Inquiry’s “Closed” or “Requires Redaction or Consultation” libraries and folders within Cohesion.

Application of Inquiry’s s 15(1) Inquiries Act 2013 Orders

11. For the avoidance of doubt, the Inquiry’s orders attach only to release of the material held in the Inquiry’s own records and do not apply to copies of the same material independently held by individuals or organisations submitting such material.
12. Requests for access to material created by a Government Department or other organisation subject to the Official Information Act 1982 and provided to the Inquiry should be directed to the relevant Department or organisation under that Act. These s 15(1) orders do not prohibit the authoring agency or agencies from making decisions

¹ or where that individual is deemed legally incompetent, or dead, their legally appointed representative

on any request under the Official Information Act for the release of the material, or from releasing the material in accordance with any such request.

13. In making these orders the Inquiry has given careful consideration to the benefits of observing the principles of open justice, which is a mandatory relevant consideration under s 15(2)(a) of the Act, as well as the other considerations in that provision. The Inquiry especially notes that the public interest in open justice is satisfied in part by the requirement that Government Departments and organisations release documents directly in accordance with the Official Information Act 1982. The Inquiry considers that the principles of open justice and the need for public confidence will also be met by release of its report, one or more summaries of submissions, open access to group and organisation submissions where they can appropriately be released, approval for public release of material that could be withheld under s 32 of the Act, and the careful process undertaken.

Government Inquiry into Mental Health and Addiction:

Issued under the authority of the Inquiry Chair on 27 November 2018.