

GOVERNMENT INQUIRY INTO MENTAL HEALTH AND ADDICTION

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MINUTE No. 1

Introduction

1. The Government established the Inquiry into Mental Health and Addiction under gazetted Terms of Reference on 31 January 2018. It is scheduled to report to the Minister of Health (**Minister**) by 31 October 2018.
2. This Minute addresses the status of documents and material supplied to it, and generated by, the Inquiry, and makes specific non-publication orders under s 15 of the Inquiries Act 2013 (**the Act**).

Management of Inquiry records

3. In accordance with s 32 of the Act, all documents created or received by the Inquiry will be subject to the Official Information Act 1982 after the Inquiry has reported, with two exceptions:
 - (a) Material over which the Inquiry has made non-publication orders under s 15 of the Act; and
 - (b) Documents that relate to the internal deliberations of the Inquiry.
4. The Inquiry has, and will continue to receive and generate categories of information and material (including evidence, submissions, summaries of oral submissions, documents, and correspondence in multiple media formats) (**material**), some of which will justify or require restrictions on publication. This may include, but not be limited to, material provided to the Inquiry:
 - (a) on a confidential basis in order that the Inquiry may properly ascertain facts;
 - (b) under an express or implied obligation of confidence;
 - (c) that is personally sensitive or private (for example relating to personal identifying details, health/medical information, employment-related information, interaction with the criminal justice system, financial information);
 - (d) that is commercially sensitive;
 - (e) that may be subject to existing statutory protections (for example under the Privacy Act 1993 and the Health Information Privacy Code 1994)
 - (f) that, if released, may interfere with the conduct of public affairs (for example, that is politically sensitive or affects the Government's capacity to make operational decisions, or the public's confidence in Government);
 - (g) that may prejudice the maintenance of law; or
 - (h) that may be subject to legal professional privilege.

5. In accordance with the principles of openness and transparency under which the Inquiry is being conducted, it has commenced a process of classifying material in the above categories that may justify or require protection in whole, or in part.
6. Submitters providing material with an express request for partial confidentiality have been asked to provide a redacted version, suitable for public release.
7. Where redacted versions are not provided, and partial protection only is justified or required, the Inquiry will undertake a process resulting in redacted versions of the material. This process will take into account the matters set out in s 15(2) of the Act, namely:
 - (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.
8. Where redacted material is provided, the redactions will be checked for consistency with the above principles, and the Inquiry's process.
9. Given the reporting date of 31 October 2018, the volume of material expected to be received, and the complexity of the issues arising, this process will likely not be complete before the Inquiry reports to the Minister.

Order

10. Given the matters in paragraph [9], in order to permit an orderly, consistent and fair process to be undertaken to ensure appropriate protections are extended to the categories of material set out in paragraph [4], while ensuring redacted versions of all possible material suitable for public release are created, the Inquiry makes an order prohibiting publication of un-redacted copies of the following material, subject to paragraph [11] below. The non-publication order applies to the following material, whether in electronic, digital or hard copy:
 - (a) Submissions, including oral submissions or summaries of oral submissions, received by the Inquiry;
 - (b) Documents or material attached to submissions coming within categories set out in paragraph [4];
 - (c) Transcripts or recordings of submissions made by any person at public Inquiry meetings;
 - (d) Documents covered by s 32 of the Act;
 - (e) Documents and correspondence sent or received by the Inquiry;
 - (f) Material provided to the Inquiry in private meetings;
 - (g) Reports, stocktakes and analyses commissioned by the Inquiry;

- (h) Any draft report issued by the Inquiry to permit comment on findings that may be considered adverse, to comply with principles of natural justice.
11. None of the above s 15(1)(a) orders prohibit the Inquiry from discussing the material in its report.
 12. The Inquiry directs that the following material **may** be released pursuant to the Official Information Act 1982 following the Inquiry reporting to the Minister, notwithstanding the order in paragraph [10]:
 - (a) Material that does not contain information coming within the categories in paragraph [4];
 - (b) Redacted versions of relevant material (subject to other grounds for withholding information in the Official Information Act 1982, Public Records Act 2005 or any other enactment);
 - (c) Publicly-available documents and material.
 13. For the avoidance of doubt, with the exception of material covered by paragraph [10(e)], 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.
 14. 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)(a) orders do not prohibit the authoring agency or agencies from making decisions 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.
 15. The Inquiry, either on its own initiative or at the written request of any person or organisation, will review any material subject to these orders, and where possible, lift the non-publication orders where appropriate.
 16. 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 and the careful process undertaken.

Government Inquiry into Mental Health and Addiction:

Issued under the authority of the Inquiry Chair on 21 April 2018.