



Abuse in Care

Royal Commission of Inquiry

MINUTE 30

Access to Inquiry documents

25 June 2024

1. This Minute addresses the status of the evidence, documents and information the Inquiry has gathered and generated since its inception and access to that material after the Inquiry presents its final report.
2. The starting point is the importance of public transparency and open justice. The Inquiry has sought to advance these interests throughout its existence, including by:
 - a. Holding hearings open to the public and/or live-streamed on its website;
 - b. Making material available on its website including:
 - i. Hearing transcripts and witness statements
 - ii. Video recordings of public hearings
 - iii. Research reports
 - iv. Notes from public engagement hui, fono, and meetings from October 2021 onwards
 - v. Pānui and other communications
 - c. Publishing four interim reports
 - d. Other public activities including round tables, wananga and public engagements.
3. As far as the Inquiry's internal deliberative material is concerned, the Inquiry adopts the position set out by the Royal Commission into the Terrorist Attack on Christchurch Mosques,¹ with appropriate modifications, as summarised in Appendix 2.
4. The evidence and other information generated and received by the Inquiry comprises well over a million documents. The Inquiry seeks to maximise legitimate access to that material in the public interest. In particular:
 - a. The Inquiry does not wish to restrict access to or publication of any documents that are legitimately available publicly, including the material available through its website;
 - b. The Inquiry does not seek to interfere with any existing rights of access - for example under the Official Information Act or Privacy Act. The Inquiry's orders restricting access will not restrict documents independently held by the entity or individual that provided them to the Inquiry. In other words, all documents that were subject to the Official Information Act or Privacy Act before they were provided to the Inquiry will continue to be subject to those statutes. Those who provided documents will be able to use them and may deal with them in the usual way in legal processes such as litigation or redress claims.
 - c. Any individual (for example a survivor of abuse) should, in the Inquiry's view, be able to access the material they provided to the Inquiry including copies of their own witness statements, written accounts, private session recordings or transcripts, or any other documents they provided to the Inquiry. The

¹ <https://christchurchattack.royalcommission.nz/about-the-inquiry/minutes/minute-4/>

Inquiry's orders will not preclude access by individuals to the material they personally supplied or generated. These rights of access should extend to the family members of a deceased individual.

- d. We do not make any order restricting any individual or entity from publishing their submission(s) to the Inquiry.
5. That said, much of the material received or generated by the Inquiry is sensitive, personal, legally privileged, confidential, or otherwise unable to be made public. In many cases, the publication of the material could harm individuals or entities, or could prejudice legal proceedings.
6. The Inquiry's terms of reference make it clear that the Inquiry must do no harm and focus on victims and survivors.² A careful approach is necessary to protect the privacy and interests of those whose experiences of abuse feature in the records.
7. In addition, to allow broad public access to records containing allegations of abuse or wrongdoing could unduly risk the publication of personal and sensitive information and be contrary to the principle of natural justice that binds the Inquiry.³
8. To address the relevant interests, the Inquiry has considered the matters in s 15(2) of the Inquiries Act:
 - a. the benefits of observing the principle of open justice; and
 - b. the risk of prejudice to public confidence in the proceedings of the inquiry; and
 - c. the need for the inquiry to ascertain the facts properly; and
 - d. the extent to which public proceedings may prejudice the security, defence, or economic interests of New Zealand; and
 - e. the privacy interests of any individual; and
 - 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.
9. Having taken those matters into account, the Inquiry makes the Order set out in Appendix 1.

For the Inquiry



Coral Shaw
Chair
25 June 2024

² Terms of Reference, clause 19 (a) and (b)

³ Inquiries Act 2013, section 14(3)

Appendix 1 – Order of the Inquiry

1. Pursuant to s 15(1)(a) of the Inquiries Act 2013, and subject to paragraph 3 below, the Inquiry forbids the publication of the whole or any part of any evidence or submissions presented to the Inquiry;
2. Pursuant to s 15(1)(b) of the Inquiries Act 2013, subject to paragraph 3 below, the Inquiry prohibits public access to the evidence and documents supplied to or generated by the Inquiry.
3. The restrictions in paragraphs (1) and (2) do not:
 - a. apply to any evidence or information that is legitimately in the public domain, including the material available through the Inquiry’s website;
 - b. apply to the evidence or submission held by the individual or entity who provided it to the Inquiry. The intention of this exception is to ensure that pre-existing rights of access (for example under the Official Information Act, Privacy Act or other legal process) continue. This exception also means that an individual or entity may choose to publish their own evidence or submission, subject to any other applicable restrictions (for example prohibiting the publication of names);
 - c. restrict any individual who supplied evidence to the Inquiry (for example a survivor making a witness statement or participating in a private session) from obtaining or using the evidence they supplied. The Inquiry’s intention is that an individual’s rights of access may also be exercised by the family of a deceased individual;
 - d. restrict the use of any evidence or submissions supplied to the Inquiry in any other lawful process for example litigation or a claim for redress.
4. Upon the making of this Order, the Inquiry discharges the Orders listed in Appendix 3, which are no longer necessary. The principal orders remaining in effect are contained in Appendix 4 and **attached** for convenience.
5. In this Order, “evidence” includes any document or material supplied to the Inquiry in any form, electronic or otherwise, whether provided pursuant to s 20 of the Inquiries Act 2013 or otherwise.

For the Inquiry



Coral Shaw
Chair
25 June 2024

Appendix 2 – Summary of approach taken by Royal Commission into the Terrorist Attack on Christchurch Mosques as to internal deliberative material

1. The phrase “internal deliberations” is not defined in the Inquiries Act.
2. Section 32(2)(b) of the Inquiries Act uses the wording “any documents that relate to” immediately before the phrase “internal deliberations”. This suggests the section was intended to cover material broader than simply documents that evidence the internal deliberations of the Royal Commission.
3. The need to interpret this phrase broadly is supported by case law in the context of discovery applications for internal deliberative materials produced by bodies other than inquiries.⁴
4. These cases support the view that there is significant public interest in ensuring deliberative bodies do not have to disclose documents relating to their internal deliberations. Any records of internal memoranda, draft versions of reports and documents which record the thinking of members of deliberative bodies while reaching decisions will inherently be fragmented and incomplete, and possibly quite misleading in the impression they give of the reasons for decisions. Relatedly, any documents bearing on internal deliberations only reflect the decision-making process at a particular point in time. The release of such documents does not account for the ability to change, refine and develop thinking. More broadly, the release of internal deliberations may jeopardise the exchange of free and frank views that is required within deliberative bodies to reach sound decisions. And, finally, public confidence in the effectiveness of deliberative bodies may be lowered if internal deliberative documents are released.
5. Accordingly, the phrase “any documents that relate to the internal deliberations of the inquiry” in the Inquiries Act should be interpreted broadly and, in particular, in a way that gives significant weight to the importance of allowing the Royal Commission to deliberate confidentially. The phrase, therefore, covers any documents that directly, or indirectly, relate to the decision-making process of the Royal Commission. It includes, but is not restricted to, documents such as:
 - a. Internal correspondence (including emails) to or from any Commissioner or Inquiry staff member or counsel.
 - b. Correspondence (including emails) between Commissioners, staff or counsel of the Royal Commission and experts engaged by the Royal Commission.
 - c. Internal memoranda, including research and analysis.
 - d. Notes prepared in relation to (both prior to and following) any public or private hearings, meetings or interviews with witnesses, or persons

⁴ See, for example, *Comalco New Zealand Ltd v Broadcasting Standards Authority* [1995] 3 NZLR 469 (HC) at 473-474; *ENZA Ltd v Apple and Pear Export Permits Committee* [2001] 3 NZLR 456 (CA) at [21]-[22]; *Air New Zealand Ltd v Commerce Commission (No 4)* [2004] 3 NZLR 550 (HC) at [32]-[36]; and *Commerce Commission v Powerco Ltd* CA123/06, 9 November 2006 at [22].

interviewed by the Royal Commission. This includes any correspondence between the Royal Commission and actual or potential interviewees.

- e. Records and notes relating to meetings with the Inquiry's Advisory and Reference Groups,⁵ other than those which have been published on the Royal Commission's website. If, contrary to our view, these do not relate to "internal deliberations", they are, in any event, dealt with by the orders we make as to evidence and submissions.
 - f. File notes taken by the Royal Commission.
 - g. Working papers prepared by the Royal Commission.
 - h. Legal advice (which is also subject to solicitor-client privilege, in any event).
 - i. Internal meeting notes, minutes and action points.
 - j. Draft versions of reports, including:
 - i. annotations to or comments on such drafts and internal communications; and
 - ii. draft extracts of the report provided to individuals or entities through our due diligence process including for fact checking, classification and sensitive information review, seeking consent to the use of quotes, and for natural justice purposes.
 - k. Requests for information by the Royal Commission to individuals or entities. These requests reveal the thinking of the Royal Commission at a particular point in time and therefore are properly characterised as internal deliberations. We also see this material, in any event, as forming part of the evidence given and submissions made to the Royal Commission, as we will explain.
6. It also includes, where applicable, any drafts of the documents listed above.

⁵ Advisory groups: Survivor Advisory Group of Experts (SAGE), Te Taumata, Pou Tikanga, Royal Commission Forum, and Te Ara Takatū. Report reference groups: Disability reference group, Mental Health reference group, Faith reference group, Social Welfare reference group, Pacific reference group, Deaf reference group, Lake Alice reference group, and Rangatahi rōpū.

Appendix 3 – Section 15 orders discharged

Date of order	Title of order (and description of order, if applicable)
05 November 2019	Section 15 Order – Exhibit 12 of Dallas Pickering’s witness statement
28 November 2019	Section 15 Order – Private Session material
06 December 2019	Interim Section 15 Order – Information supplied by Crown Agencies Pursuant to Notice to Produce No. 1
27 January 2020	Interim Section 15 Order – Information supplied by Crown Agencies Pursuant to Notices to Produce Nos. 2 - 4
18 February 2020	Interim Section 15 Order – Information supplied by Crown Agencies Pursuant to Notice to Produce No. 5
27 February 2020	Minute 7 following Procedural hearing on 25 February 2020 (Paragraphs 14 - 20)
09 December 2020	Section 15 Order – identifying information of Mr A
28 October 2021	Section 15 Order – Non-publication of Material Disclosed for Natural Justice
04 March 2022	Section 15 Order – identifying information of specified witnesses
06 October 2022	Section 15 Order – Specified Information used in faith institutional response hearing
25 November 2022	Section 15 Order – draft copies of Inquiry reports

Appendix 4 – Principal section 15 orders continuing

Date of order	Title of order (and description of order, if applicable)
13 October 2022	General Restriction Order
25 November 2022	Section 15 order – draft copies of Inquiry reports



Abuse in Care

Royal Commission of Inquiry

UNDER

THE INQUIRIES ACT 2013

**IN THE MATTER OF The Royal
Commission of Inquiry into
Historical Abuse in State Care and
in the Care of Faith-based
Institutions**

GENERAL SECTION 15 RESTRICTION ORDER

**Dated: 11 June 2020
Re-issued: 2 September 2020
Re-issued: 13 October 2022**

RESTRICTION ORDER PURSUANT TO SECTION 15 OF THE INQUIRIES ACT 2013

General Restriction Order

The Inquiry has the power under section 15 of the Inquiries Act 2013 (“the Act”) to make orders forbidding or restricting public access to any part or aspect of the Inquiry and / or forbidding publication of evidence, submissions, reports, accounts, names or other particulars presented or given to the Inquiry.

This general restriction order applies to all matters protected by this order which are described in A to F below.

In exercise of the power, IT IS ORDERED THAT:

In the absence of express written authority from the Inquiry, the publication of matters described in A-F below is forbidden (whether evidence, submissions or other information received in private session or during an investigation or public hearing) and public access to the relevant part or aspect of the Inquiry is restricted.

A. Anonymity Order (GRO-A)

1. The maker of any written statement or other document disclosed or published by the Inquiry which is marked “Anonymous” is granted anonymity. The name and address of the witness and any other identifying information that is redacted in the witness’s written statement cannot be disclosed or published in any form, whether oral, written or electronic, or in any other way, unless express written permission is given by the Inquiry, or Solicitor Assisting acting on its behalf.
2. A confidential schedule of witnesses to whom this Order relates will be maintained by the Inquiry.
3. Any person who has applied and has been determined to fall within this Order may apply to the Inquiry to vary their anonymity at any time.

B. Identifying Information (GRO-B)

4. Identifying information in respect of the following persons must not be disclosed and/or made public:

- a. Persons who tell the Inquiry that they were abused in circumstances which fall within the Inquiry's Terms of Reference;
 - b. Any person who is or was in care in New Zealand as defined by the Inquiry's Terms of Reference;
 - c. Family members of the those listed in a. and b. above;
 - d. Foster carers;
 - e. Children living in families with foster carers who are themselves not in care;
 - f. Any person who has made a complaint that they were abused whether they fall within the Inquiry's Terms of Reference or not.
5. Identifying information must not be disclosed and/or made public about persons who are the subject of one or more allegations of abuse but who have not been convicted in respect of the allegation(s), unless the Inquiry is satisfied that publication of the allegations is consistent with (i) applicable natural justice obligations and (ii) the determination of any specific applications for restriction orders under s 15 of the Inquiries Act.

C. Personal Information (GRO-C)

6. Personal information may be redacted from evidence and documents where the Inquiry considers it to be conducive to the Inquiry fulfilling its Terms of Reference or to be necessary in the public interest.

D. Medical Information (GRO-D)

7. Where medical information has been provided to or obtained by the Inquiry, the identity of the person to whom the medical information relates may not be published or disclosed by any person, unless express permission is given by the Inquiry, or the Solicitor Assisting acting on its behalf.

E. Requests and Notices

8. Where the Inquiry issues a Statement Request, or a notice pursuant to section 20 of the Inquiries Act 2013, the person to whom the request or notice is addressed must keep confidential any information and documents included within the request or notice and must not disclose that information and those documents to any other person unless express permission is given by the Inquiry, or the Solicitor Assisting acting on its behalf.

F. Written statements containing criticism

9. Where a written statement provided to the Inquiry contains criticism of a named person or organisation, the witness' written statement may be disclosed to the person or organisation criticised for the purpose of obtaining their response to the criticism raised. Anyone to whom information is disclosed in this way must keep it confidential and it must not be disclosed to any other person unless express permission is given by the Inquiry, or the Solicitor Assisting acting on its behalf.

G. General Exceptions

10. The general provision does not apply where:
 - a. publication or disclosure is required by law;
 - b. disclosure is for the purpose of obtaining legal or other professional advice, the person providing the disclosure must ensure that their professional advisor(s) agree(s) to keep the information confidential before the information and documents are shared;
 - c. the publication and/or disclosure of information where the person to whom the information principally relates consents to its publication and/or disclosure;
 - d. information which is already available to the public;
 - e. disclosure to any legal representative acting for the individual to whom the information relates;
 - f. in accordance with paragraph 19 of the Practice Note on Section 15 Orders – Anonymity and Redactions, the witness statement of the witness granted anonymity contains criticism of another person or organisation, the identity of the witness and the nature of the criticism may be disclosed to the person or organisation being criticised subject to any application to prevent such disclosure. Anyone to whom information is disclosed in this way must keep it confidential and not disclose it to any other person, without the express permission of the Inquiry, or Solicitor Assisting acting on its behalf;
 - g. the person concerned is deceased, subject to any specific order of the Inquiry.

H. General

11. The Inquiry may use information protected by the General Restriction Order by disclosing that information on a strictly confidential basis to any persons or organisations where it may assist the Inquiry to fulfil its Terms of Reference;
12. The material is disclosed between members of staff of the Inquiry (which expression includes counsel to or instructed by the Inquiry), or to any person carrying out processing of information on behalf of the Inquiry, solely for the purposes of the work of the Inquiry.
13. Redactions applied in accordance with this Order will be signified and overwritten with the prefix GRO-A, GRO-B, GRO-C or GRO-D as applicable.
14. This Order remains in force for the duration of the Inquiry and at all times thereafter, unless otherwise ordered.
15. The Inquiry may vary or revoke this Order by making a further order during the course of the Inquiry.
16. This Order should be read in conjunction with the [Practice Note 4 – Section 15 Orders – Anonymity and Redaction](#).

Produced by:

**The Royal Commission of Inquiry into Historical Abuse in
State Care and in the Care of Faith-based Institutions**
PO Box 10071
The Terrace
WELLINGTON 6143



Signed: Judge Coral Shaw
Chair

Dated: 11 June 2020
Re-issued 2 September 2020
Re-issued 13 October 2022



Abuse in Care

Royal Commission of Inquiry

UNDER

THE INQUIRIES ACT 2013

**IN THE MATTER OF
The Royal Commission into
Historical Abuse in State Care
and in the Care of Faith-based
Institutions**

Section 15 Order – Specified Information and Material

25 November 2022

- [1] The Inquiry, pursuant to section 15(1)(b) of the Inquiries Act 2013 and having considered the matters it must take into account under section 15(2), forbids public access to:
- [a] Any draft versions or copies of any and all case studies, interim or final reports that have been or are under development by the Inquiry. This includes draft versions of the following reports:
 - i. Tāwharautia: Pūrongo o te Wā - Interim Report dated December 2020
 - ii. He Purapura Ora, He Māra Tipu – From Redress to Puretumu Torowhānui dated December 2021
 - iii. Lake Alice Case Study
 - iv. Marylands Case Study
 - v. Final Report
- [2] The Inquiry, pursuant to section 15(1)(a) of the Inquiries Act 2013 and having considered the matters it must take into account under section 15(2) of the Act, forbids the publication of:
- [a] any information contained within the material described above, including without limitation information contained within draft versions, any references or material referred to in the references, names and particulars likely to lead to the identification of witnesses or other persons participating in the Inquiry;
 - [b] any copy, extract or version of the information described above.
- [3] Under section 29(1)(e) of the Act, it is an offence to breach an order made under section 15(1) of the Act.

Produced by the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions.

25 November 2022

A handwritten signature in blue ink that reads "Coral Shaw". The signature is written in a cursive, flowing style.

Judge Coral Shaw

Chair