



## Minute 4: Non-publication orders

Issued: 15 August 2024

### Background

1. The purpose of phase 1 of the Inquiry is to strengthen Aotearoa New Zealand's preparedness for, and response to, any future pandemic by identifying those lessons learned from New Zealand's response to COVID-19 that should be applied in preparation for any future pandemic.
2. In addition to gathering publicly and non-publicly available information the Inquiry has met with organisations, decision-makers and a range of others and sought submissions from the public and organisations.
3. The Inquiry has also been guided by the procedural requirements of the Order establishing the Inquiry (the Order)<sup>1</sup>.
4. This Inquiry was, in general, held in private. While this potentially had some disadvantages in terms of public transparency and opportunities to test evidence, it allowed us to speak frankly with key individuals involved in the pandemic response and to get their evidence, uninhibited by concerns about publicity which may have swayed them in a more public setting.
5. In an inquiry focused on a particular event, such as a natural disaster, it is possible to overcome individuals' natural reluctance to speak frankly about the subject matter in public through careful questioning and even cross-examination. But that process requires extensive preliminary investigation and preparation. Lawyers become involved. It is time and resource intensive.
6. In the case of this Inquiry, the event in question affected the entire country for an extended period of time, and required responses from all quarters of the state, private enterprise and civil society. Given we were charged with identifying lessons learned across a very broad range of topics, we considered it was not tenable to take such a forensic approach to the evidence we gathered from individuals. The Order directs us to use publicly available information, and further information where it is necessary. In view of the time and resources available to us, and the direction in our Order to avoid formal, legalistic, and adversarial processes, we judged that a private process would get us closest to understanding what happened and why, with a view to, as required, identifying lessons learned.

### Previous orders and subsequent process

7. This process was established by a series of orders under section 15 of the Act. The orders we made:
  - a. on an interim basis, forbade publication of evidence and submissions to the Inquiry (paragraph 5 of Minute 1)<sup>2</sup>;

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<sup>1</sup> [Royal Commission of Inquiry \(COVID-19 Lessons\) Order 2022.](#)

<sup>2</sup> [Minute 1: Interim non-publication – evidence and submissions received by the Royal Commission of Inquiry into COVID-19 Lessons.](#)

- b. permanently forbade publication of notes and recordings of Inquiry meetings with current or former employees of public service agencies (paragraph 12 of Minute 2)<sup>3</sup>;
  - c. anticipated permanently forbidding publication of notes and recordings of meetings with other interviewees unless orders were made to the contrary at the beginning of meetings (paragraph 12 of Minute 2);
  - d. permanently forbade publication of agency narratives provided to the Inquiry (orders made by correspondence);
  - e. permanently forbade publication of certain other material provided by interviewees (orders made by correspondence);
  - f. permanently forbade publication of the personal and personally identifying information and (where requested) submissions of members of the public made through the Inquiry's public submissions process (paragraph 10 of Minute 3)<sup>4</sup>; and
  - g. permanently forbade publication of those parts of the submission made by an organisation where confidentiality was requested, along with the submitter's name where that was requested (paragraph 10 of Minute 3).
8. Broadly we received three categories of information:
  - a. documents that already existed at the time the Inquiry was established, and that were likely created for some purpose unrelated to the Inquiry and later shared with us;
  - b. submissions and evidence prepared for the Inquiry by public sector agencies, organisations and members of the public; and
  - c. information shared with us by interviewees in meetings.
9. Following the conclusion of the Inquiry, the Inquiry records will be transferred to Archives New Zealand. In determining the access status of public records transferred to Archives New Zealand, under and in accordance with section 33 of the Inquiries Act 2013, the "relevant department" (which at the date of this Minute is the Department of Internal Affairs) must take into account any orders that the Inquiry has made under section 15 (1) of the Inquiries Act.
10. In deciding what permanent orders the Inquiry might make, we have considered the criteria set out under section 15 (2) of the Inquiries Act and in particular the benefits of observing the principle of open justice, the risk of prejudice to public confidence in the proceedings of the Inquiry and the privacy interests of any individual. We have also had regard to clause 8 of the Order.
11. Documents already in existence at the time the Inquiry was established will generally be unaffected by any section 15 orders we make. Inquiry-held copies of these documents will be transferred to Archives New Zealand. To the extent those documents were held by organisations to whom the Official Information Act 1982 (OIA) applies, copies held by those organisations will remain subject to the OIA. In some cases, such organisations have asked for non-publication orders over non-redacted copies of documents where the Inquiry also received redacted copies of those documents, and over certain sensitive documents. We will make these orders with respect to the Inquiry-held copy which is to be transferred to Archives New Zealand (but subject to the caveat in paragraph 16 below). The OIA will continue to apply to the original copy in the organisation's hands, which will not cease to be "official information" under the OIA.

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<sup>3</sup> [Minute 2: Inquiry meeting procedure and information gathering.](#)

<sup>4</sup> [Minute 3: Inquiry procedures for public and other submissions.](#)

12. Early in the Inquiry, we asked agencies to prepare a narrative of their involvement in the pandemic, including reflections on what worked well and what didn't. To encourage frankness, we made permanent non-publication orders to address publicity concerns, which we understood to be certain agencies' main concern. These narratives are now made subject to permanent non-publication orders, subject to any permissions given by the Inquiry for agencies who wish to publish their narrative after the Inquiry reports.
13. We also now make permanent non-publication orders for direct submissions from members of the public or organisations who have requested confidentiality because they provided their submissions on that basis, and there is no public interest in publication.

## Orders

14. In accordance with the provisions of our earlier Minutes and by correspondence, we now make orders permanently forbidding publication of:
  - a. Agency narratives provided to the Inquiry at the Inquiry's request (other than those for which the Inquiry has given written permission for publication after this Inquiry reports).
  - b. Unredacted copies of documents received from or on behalf of an organisation subject to the OIA where the Inquiry holds a redacted copy of that document and the originating organisation has requested that the unredacted copy not be openly available to the public, but on the basis that those unredacted documents do not cease to be official information under the OIA in the hands of those organisations (subject to paragraph 16 below).
  - c. Copies of documents received from or on behalf of an organisation subject to the OIA where the originating organisation has requested on certain grounds that all or part of that document not be available as part of the public record under the Public Records Act 2005, and that request has been granted by Commissioners, but on the basis that, as relevant, all or part of those documents do not cease to be official information under the OIA in the hands of those organisations (subject to paragraph 16 below).
  - d. All notes and recordings of all meetings with the Inquiry, wherever held, (including information provided by interviewees where confidentiality was requested for that information) unless Commissioners specifically agreed otherwise at that meeting.
  - e. Personal or other identifying information relating to submissions made by members of the public, along with the submissions made to the Inquiry by organisations and members of the public who have requested that their submission be kept confidential.
  - f. Documents provided to the Inquiry where the provider, not being an organisation subject to the OIA, requested the Inquiry make a permanent non-publication order in respect of the document.
15. In addition, we make an order permanently forbidding publication of responses received (or to be received) from persons or organisations provided with extracts of the draft report as part of the Inquiry's natural justice process.
16. The orders made in paragraphs 14b and 14c above are subject to the caveat that after the Inquiry records are transferred to Archives New Zealand, should a requester ask for the original or unredacted documents or information from the originating organisation, and the originating organisation cannot find those documents or that information, or it transpires that the originating organisation's copies of those documents or that information have been authorised for disposal by destruction by the Chief Archivist, those documents forming part

of the Inquiry records that are otherwise subject to section 15 orders can be considered for release from Archives New Zealand by the originating organisation<sup>5</sup>.

17. These orders:

- a. apply only to documents relating to this phase of the Inquiry;
- b. replace all interim orders made in Minutes 1 to 3; and
- c. take effect from the date of this Minute, being 15 August 2024.

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<sup>5</sup> As used in this Minute, “originating organisation” extends to any successor organisation, in the event that the original organisation no longer exists.