



Te Kawa Mataaho

Public Service Commission

5 July 2024

Ms Pania Gray & Mr Michael Heron KC

By email: pania@kororaconsulting.co.nz & michael@mhkc.co.nz

Tēna koe Pania and Michael

Re: Acting Public Service Commissioner's expectations as to how the inquiry will undertake its functions

Thank you for agreeing to the appointment to lead the Commission's Inquiry into how government agencies protected personal information provided for the 2023 Census and COVID 19 vaccination purposes (the Inquiry). As my delegates for the purposes of this Inquiry, this letter sets out my expectations to you both as to how the Inquiry will be conducted, including the central importance of your role in maintaining the political neutrality of the Public Service.

Political neutrality of the public service

Political neutrality is one of the core public service principles set out in s 12 of the Public Service Act 2020. The Public Service must always act in a way that maintains the confidence of the current government and ensure the same relationship can be established with future governments, regardless of their composition. As the Acting Public Service Commissioner, I have a responsibility to ensure that the agency I lead upholds the principle of political neutrality and public service chief executives owe the same duty to me in relation to their agencies. As my delegates for the purpose of the inquiry, I ask that you support me in upholding this responsibility and that you make sure that that the inquiry is conducted in such a way as to maintain this very important principle.

This Inquiry is of high public interest and deals with allegations that go to the heart of trust and confidence in New Zealand's democratic processes and institutions. It concerns the 2023 election and there are related allegations, outside of scope of the inquiry, against political actors. Against this background, it is crucial that the political neutrality of the Public Service is maintained to preserve the trust and confidence of current and successive governments.

My expectations relating to political neutrality are consistent with the obligations in section 10 of the Inquiries Act 2013 that the Inquiry must act independently,¹ impartially and fairly in the exercise of its powers and the performance of its duties under the Inquiries Act.

¹ Note – The duty to act independently needs to be read in the context of the delegation of my powers. It is a duty to act independently of actors outside of the inquiry and the Public Service Commission.

Conduct of Inquiry

Given the seriousness of allegations at the heart of this Inquiry and the need for it to be completed in September, it is appropriate that there are two Inquirers working together to conduct this important work. My expectation is that you will reach a consensus and jointly make each of the findings in the final report. This will add to the robustness of the overall process.

Similarly, any significant Inquiry decisions should also be made jointly, including information requests or invitations to interview. You will note that you are both jointly responsible for all deliverables for this Inquiry, with the exception of your individual Inquiry Budgets.

If there is a disagreement between you that is unable to be resolved through your internal moderation process, I am available to assist you in resolving the matter.

Requirements for the use of statutory powers

Under the Terms of Reference of this Inquiry, you have been delegated functions and powers under the Public Service Act. The Terms of Reference also confirm that specified provisions under the Inquiries Act apply and for the avoidance of doubt, I confirm that through this letter you are delegated all the powers under the Inquiries Act that I have certified apply to this Inquiry.

As you know these powers can only be used in furtherance of my functions relating to the integrity and performance of agencies in the public and state services, consequently the focus of this Inquiry must stay firmly on the agencies identified as being within scope of the Terms of Reference (the subject agencies).

The Public Service Act powers delegated to you broadly allow you to enter the premises of the subject agencies, to require them to produce information, and to require the employees of the subject agencies to answer your questions. As long as you are acting in accordance with the Terms of Reference, you may exercise these powers as you see fit.

If you wish to exercise any of my powers under the Inquiries Act however, you will need to obtain my approval in advance, by submitting your reasoning for why you consider it necessary to use the power in question. This requirement is made under schedule 3, clause 6(6) of the Public Service Act 2020. I may seek advice from Crown Law before making my decision to approve the use of an Inquiries Act power, especially if the proposal is to summon a person to interview who is not a public servant.

Communications regarding the Inquiry

All communications with the public at large regarding the Inquiry shall be through the Commission including any communications with media. Any communications with members of parliament or political parties regarding the Inquiry shall also occur through the Commission, unless I have agreed to a different approach. It is too soon to say, whether this inquiry will require a press conference at the end, or simply a media statement. But if a press conference is required, our Principal Media Adviser will work closely with the three of us to prepare.

Point of contact

Hugo Vitalis, Deputy Public Service Commissioner Integrity and Ethics will be your primary point of contact throughout the Inquiry. I expect you to work closely with Hugo and his team through this process, including providing regular updates about the matters contained in this letter.

Please reach out to Hugo if you have any question regarding any of the matters I have raise in this letter. I look forward to working with you both.

Nga mihi



Heather Baggott (she/her)

Te Tumu Whakarae mō Te Kawa Mataaho

Acting Public Service Commissioner, Head of Service