

AGENDA

SSC Inquiry Discussion

9.30am

Ground Floor, Ministry of Health Offices 133 Molesworth Street, Wellington
20 September 2019

- 1 Communications
 - a Update on current issues
 - b Update on working session on Wednesday
- 2 Report on self-evaluation across the State sector
 - a By exception report
- 3 Update on key entities
 - a Ministry of Primary Industries
 - b DOC
 - c Ministry of Health
 - d Customs
 - e NZTA/MOT
- 4 Other
 - a NZ Police
 - b TCIL
 - c Interested third parties/private citizens
- 5 Scope
 - a Update on legal context
 - i NZ Police
 - ii Crown Research Institutes
- 6 Terms of Reference
 - a Finalisation and public disclosure
- 7 Themes to date/relevance to guidance being developed
 - a Privacy breaches



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- b Attendance at public meetings/surveillance
- c Issues motivated groups
- d Investigative capability outside core enforcement agencies
- e Intelligence networks (horizontal vs vertical accountabilities)
- f Intelligence provided by third parties to support state enforcement functions
- g Assisting third party business development
- h Management and oversight within entities (including flows of information)
- i Health and safety
- j Procurement
- k Legal risk management
- l New topics to be covered
 - i Use of Cyclops Monitoring
 - ii Other private investigators engaged
- 8 Relationship with other regulatory/oversight authorities
 - a SFO
 - b Privacy Commissioner
 - c Ombudsman, PSPLA, Archives etc
 - d Inspector General of Intelligence
 - e Independent Conduct Authority



Stephen Moore [SSC]

From: Sarah Baddeley 9(2)(a) privacy
Sent: Thursday, 20 September 2018 9:06 AM
To: Robert Liberona [SSC]
Cc: Doug Martin; Simon Mount
Subject: SSC Inquiry Weekly Report

Key activities this week:

Follow up discussions have occurred with those entities whose self evaluation has put them within the Inquiry's area of interest. This includes the Department of Conservation, Ministry of Health, and NZSIS. Customs has been delayed awaiting the return of a staff member from overseas.

A further information request will shortly go to NZTA. This entity currently presents one of the largest most complex remaining aspects of the Inquiry.

The Inquiry team continues to liaise closely with the SFO as to the relationship between the Inquiry and their investigation.

The Ombudsman is also likely to conclude an investigation relating to complaints about the release of information regarding SRES – specifically materials related to whose decision it was to engage TCIL. The Inquiry team has been consulted on those papers and has advised we see no grounds for withholding the information under section 6(c).

The Inquiry team interviewed Thompson and Clark Directors at their offices in Auckland. They have now received a subsequent information request and will respond next week. They continue to assist the Inquiry.

Next week the Inquiry team will meet with the Institute of Private Investigators Chair and Deputy Chair (Industry Group) and the Private Investigators Licensing Authority. Interviews are also scheduled with the Ministry of Health.

Kind regards

Sarah

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Leanne Kelly [SSC]

From: Sarah Baddeley 9(2)(a) privacy
Sent: Sunday, 23 September 2018 10:00 PM
To: Catherine Williams [SSC]; Debbie Power [SSC]
Cc: Robert Liberona [SSC]; Doug Martin; Simon Mount
Subject: Inquiry into the use of external security consultants - options for extension
Attachments: 2018-09-23b Options for extension for SSC.pdf

Tena kōrua

On Friday you asked for advice from the Inquiry team on options to extend the scope of the Inquiry into the use of External Security Consultants.

On behalf of Doug and Simon, I attached a note from them to meet that request.

The Inquiry team is very happy to discuss any aspect further.

Ngā mihi


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MEMO

To: Debbie Power and Catherine Williams
Copies: Robert Liberona
From: Doug Martin and Simon Mount QC
Date: 22 September 2018

Subject: Options to extend the Inquiry to CRIs and TEIs

Introduction and summary

We were asked on Friday for advice on the implications of including Crown Research Institutes (CRIs) and Tertiary Education Institutes (TEIs) within the scope of the Inquiry into the use of External Security Consultants.

We set out below our suggested way forward, which in short would involve a targeted approach to CRIs, aiming to conclude the Inquiry in mid-November. We believe this could be done with a slight increase in budget, assuming some in-house capacity can be allocated to assist, and that the CRIs are willing to assist with the necessary work expeditiously.

Our present understanding is that there is no ability to extend the Inquiry to include TEIs.

Context

As you know, this Inquiry is a response to public concerns that:

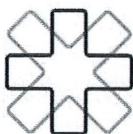
- Crown agencies have used Thompson and Clark or others to spy on individuals unlawfully, unethically or improperly;¹
- State servants have had unlawful, unethical or improper contact with Thompson and Clark or other private security consultants.

The thrust of the public concern is that the ethics and integrity of the public service generally are in question.² A number of Crown agencies or their employees have been publicly linked to Thompson and Clark including:

- Southern Response
- MBIE
- The Security Intelligence Service
- Department of Conservation
- Ministry of Health
- MFAT
- NZ Police
- MPI
- AgResearch

¹ For present purposes, "unethically or improperly" includes acting in breach of the State Services Code of Conduct.

² NBR, 21 June 2018, "Thompson and Clark have been doing the dirty work of the state: < <https://www.nbr.co.nz/opinion/thompson-and-clark-has-been-doing-dirty-work-state>>



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Against that background the Inquiry's terms of reference were broadened on 19 June 2018 to include engagement between Thompson and Clark and all "state services agency employees".³ The definition of "State services" in the Act includes all the agencies listed above, including CRIs and the Police. However, the CRIs and Police are currently excluded from scope in the absence of a direction or request under s 11 of the Act.

9(2)(g)(i) free and frank



The way forward – CRIs

We understand that four of the seven CRIs may have had a relationship with TCIL (AgResearch, Scion, GNS and NIWA). The full list of CRIs is addressed in Appendix 1.

In our view, if it is desired to include CRIs within the Inquiry, the best way forward would be for the Inquiry to take a targeted approach, focusing on the four CRIs for whom there is credible information of possible use of external security consultants.⁶ We would continue to follow the Inquiry's approach to date, which is well known to you.

³ Letter from Debbie Power to Doug Martin, 19 June 2018.

⁴ 9(2)(g)(i) free and frank



⁵

⁶ We would seek information from all CRIs, but focus our attention on the four with known matters to address.

We do not presently see any possibility to include CRIs within scope without some implication for timeline and budget. Having said that, we believe a short extension to mid-November may add approximately ^{(2)(b)(ii) prejudice commercial position} to the total cost of the Inquiry. The assumptions include the availability of some in-house capacity to assist, and the willingness of CRIs to carry out the necessary searches expeditiously.

If it is preferred to leave investigation of the Police and CRIs to other bodies, we suggest that this Inquiry's timeframes should also take into account those parallel processes.

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the State Services Commission



APPENDIX 1 – CROWN RESEARCH INSTITUTES

Table 1: Crown Research Institutes

| CRI | Function | Known relationship with TCIL |
|--|--|---|
| <u>AgResearch</u> | AgResearch's purpose is to enhance the value, productivity and profitability of New Zealand's pastoral, agri-food and agri-technology sector value chains to contribute to economic growth and beneficial environmental and social outcomes for New Zealand. | We understand that TCIL held a longstanding relationship with AgResearch that included provision of TCIL's full risk assessment offering. There is some evidence that this relationship ended in 2016 but this is not confirmed |
| <u>Institute of Environmental Science Research (ESR)</u> | ESR's purpose is to deliver world class knowledge, research and laboratory services to help New Zealand get the most out of its investment in science and innovation. ESR use the power of science to help their partners and clients solve complex problems and protect people and products in New Zealand, and around the world. ESR's science lies behind the decisions that safeguard people's health, protect our food-based economy, improve the safety of our freshwater and groundwater resources and provide the justice sector with expert forensic science. | We have no evidence that ESR have any material relationship with ESR. Although we are aware that TCIL provided services to MOH that included the delivery of evidence to ESR. |
| <u>Institute of Geological and Nuclear Science (GNS Science)</u> | GNS Science's purpose is to undertake research that drives innovation and economic growth in New Zealand's geologically-based energy and minerals industries, that develops industrial and environmental applications of nuclear science, that increases New Zealand's resilience to natural hazards and that enhances understanding of geological and earth-system processes. | We have no evidence as to whether GNS has had a relationship with TCIL. Media coverage indicates a relationship over 2016/17 but the extent of the relationship is unclear. |
| <u>Landcare Research</u> | Landcare Research's purpose is to drive innovation in New Zealand's management of terrestrial biodiversity and land resources in order to both protect and enhance the terrestrial environment and grow New Zealand's prosperity | We currently have no evidence as to whether Landcare has had a relationship with TCIL. |
| <u>National Institute of Water and Atmospheric Research (NIWA)</u> | NIWA's purpose is to enhance the economic value and sustainable management of New Zealand's aquatic resources and environments, to provide understanding of climate and the atmosphere and increase resilience to weather and climate hazards to improve the safety and wellbeing of New Zealanders. | We understand that NIWA has a longstanding relationship with TCIL. Some of this relates to enforcement of the Crown Minerals Act and security of vessels. |



| CRI | Function | Known relationship with TCIL |
|--------------------------------|--|---|
| <u>Plant and Food Research</u> | Plant & Food Research's purpose is to enhance the value and productivity of New Zealand's horticultural, arable, seafood and food and beverage industries to contribute to economic growth and the environmental and social prosperity of New Zealand | We currently have no evidence as to whether Plant and Food has had a relationship with TCIL. |
| <u>Scion</u> | Scion's purpose is to drive innovation and growth from New Zealand's forestry, wood product and wood-derived materials and other biomaterial sectors, to create economic value and contribute to beneficial environmental and social outcomes for New Zealand. | We have limited evidence as to the nature of the relationship between Scion and TCIL. A recent OIA release indicates Scion may have considered engagement and that the CRI did receive regular situation reports. |

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APPENDIX 2: TEI SUBSIDIARIES

Our review of TEI subsidiary arrangements has revealed a complex layer of institutional arrangements including:

- one or more jointly owned subsidiaries in partnership with at least one other entity (the other parent/s can include polytechnics, universities, schools, territorial local authorities, district health boards, or Crown research institutes);
- one or more individually owned subsidiaries;
- a subsidiary that owns a subsidiary, while also being a subsidiary of another subsidiary;
- a subsidiary of a subsidiary being jointly owned by another subsidiary;
- an individually owned subsidiary that owns one or more subsidiaries by itself;
- an individually owned subsidiary that owns one or more subsidiaries in partnership with at least one other entity; and
- a jointly owned subsidiary that owns one or more subsidiaries.



Stephen Moore

From: Sarah Baddeley 9(2)(a) privacy
Sent: Wednesday, 26 September 2018 4:23 PM
To: Robert Liberona
Cc: Simon Mount; Doug Martin
Subject: SSC Inquiry Weekly Update - period ending Wednesday 26 September

Key activities this week:

The Inquiry has progressed review of those entities whose self-evaluation has put them within the Inquiry's focus. We have particularly focussed efforts on NZTA and the Ministry of Health. With respect to NZTA, this includes specific review of potentially inappropriate access to the Motor Vehicle Register.

The Inquiry also met with the SIS to discuss aspects of the Inquiry as it related to them including interviewing a member of the original protective security services procurement panel. 6(c) maintenance of the law
6(c) maintenance of the law A meeting was also held with NZ Police to bring them up to speed with the Inquiry.

Advice was prepared for SSC related to the scope of the Inquiry.

The Inquiry interviewed the Chair and Deputy Chair of the Institute of Private Investigators to gain their views on standard industry practise in providing external security services to the State Sector. The Inquiry also met with the Private Security Personnel Licensing Authority to discuss maturity of the sector, code as it applies, complaint process, number of complaints and issues related to the concerns of public trust and confidence expressed to the Inquiry to date.

The Inquiry team has also undertaken a further review of individual agency responses in the next lower level category. This has resulted in a further information request to ACC to understand their standard operating procedure and mechanism for issuing instruction to external security consultants engaged to detect fraud.

The first batch of agency responses has also been provided to SSC to begin clearance with the agencies of origin ahead of any eventual proactive release of documents associated with the Inquiry.

An information request has gone to TCIL seeking a greater degree of specificity around the use of surveillance for SRES. A further information request is expected to be sent next week. An interview will also be held with TCIL regarding MPI related matters. TCIL continues to be engaged with the Inquiry process.

6(c) maintenance of the law

Notwithstanding ongoing activity, the Inquiry team intends to undertake a preliminary deliberation session on Tuesday 2 October.

Kind regards

Sarah

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Manager, Consulting

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