

Ministerial inquiry into the events surrounding the request for a waiver of the diplomatic immunity of a Malaysian diplomat

Terms of Reference

Events surrounding the decision of the Malaysian Government to decline a request from the New Zealand Government for a waiver of immunity in relation to a Malaysian diplomat have undermined public confidence in the performance of the Ministry of Foreign Affairs and Trade.

This Inquiry is tasked with ascertaining the New Zealand actions that led the Malaysian Government to infer that declining a request for a waiver of immunity was acceptable to the New Zealand Government and:

1. whether this was an isolated incident or part of a wider pattern;
2. whether officials met their obligations to inform Ministers; and
3. how any shortcomings revealed can be rectified.

1. The Inquiry will assess the appropriateness and robustness of procedures to deal with circumstances in which a waiver of diplomatic immunity is sought by the New Zealand Government including the following questions:

- a) Is there a formal basis for the stated policy of always seeking the waiver of immunity in relation to legal proceedings against diplomats from other countries or is this a policy that has grown from years of practice?
- b) Was the Malaysian diplomat case unique or have there been other examples in which officials have departed from unambiguously pursuing a waiver of immunity?
- c) Is it accepted practice for Ministry officials to entertain departures from the policy of seeking waivers of immunity? If so, at what level of seniority within the Ministry must authority to do so be sought?
- d) What requirements exist for the Protocol Division to report decisions to decline requests for waiver of immunity by other Governments and to what level of seniority in the Ministry?
- e) Are those arrangements sufficient to enable the Chief Executive to meet his "No Surprises" briefing obligations to the Minister of Foreign Affairs?
- f) Are the arrangements that exist in relation to all of the above consistent with international best practice?
- g) What steps are required to rectify any shortcomings of protocols, policies, systems, or processes identified in relation to the above?

2. The Inquiry will specifically evaluate the events that took place in the Malaysian diplomat case, including both the management of the request for a waiver of diplomatic immunity and the preparation of talking points on the subject, including the following questions:

- a) Did Ministry officials engage with the Malaysian Government in a manner that led the Malaysian Government to believe that a decision on their part to decline a waiver of immunity application would be acceptable to the New Zealand Government?

- b) Were the proposed talking points for the Prime Minister and Minister of Foreign Affairs outlining New Zealand's policy of seeking waivers of immunity consistent with the actions being taken by officials in the Malaysian case? What explanation is there for any conflicts between the proposed talking points and the actions officials were taking?
- c) Were Protocol Division officials fully involved in the preparation of the talking points?
- d) What other Ministry Divisions were both sighted on the management by Protocol Division of the Malaysian case and involved in the preparation of the talking points?
- e) What steps were taken by officials or should have been taken by them in order to meet their obligations to the Government in this case?
- f) What steps are required to address any shortcomings of protocols, policies, systems, or processes identified in relation to the above?

The Inquiry will report in a timely fashion and may, if it sees fit, report findings at any interval in the process.