

David CUNLIFFE

Leader of the Labour Party
MP for New Lynn



1 September 2014

Rt Hon John Key
Prime Minister
Parliament Buildings
Wellington

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Dear Prime Minister

Since Parliament rose for the election a number of serious issues have arisen. These include questions relating to the conduct of Ministers, Ministerial offices, and the practice of government.

Some of these are likely to give rise to investigations, including by the Police as to whether there was a criminal conspiracy to undermine the Serious Fraud Office or the Financial Markets Authority, and the already announced investigation by the Inspector General of Security and Intelligence. Those investigations may or may not find probable breaches of the criminal law or law relating to the SIS.

Those investigations will be limited to the narrower issues under consideration by them. The broader issues highlighted by the media since the publication of the Hager book and subsequent events have given rise to serious concerns.

The issues raised have undermined public confidence in our democracy and the rule of law. Restoring public confidence requires a transparent inquiry which is wide enough to traverse the issues which are now in the public arena.

We believe there should be a public inquiry, as defined by the Inquiries Act 2013. In our view this should be a three person Commission chaired by a High Court judge.

We are in the period between Parliaments. The terms of the Inquiry ought not to be determined by the ruling party, especially in these circumstances.

These issues transcend the interests of any political party. We ought to be able to agree appropriate terms of reference for the sake of the democracy we seek to uphold and the people we serve.

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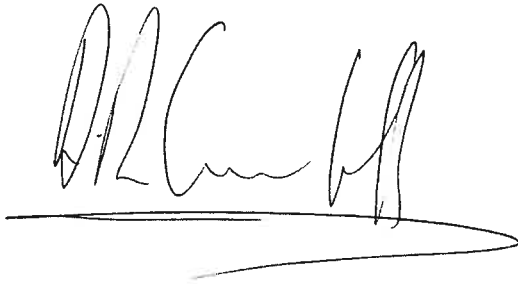
Authorised by David Cunliffe MP, Parliament Buildings, Wellington



We attach draft terms of reference for your consideration, and look forward to receiving your suggestions.

A similar letter is being sent to the leader of each party currently represented in Parliament.

Yours faithfully

A handwritten signature in black ink, appearing to read 'D. Cunliffe', written over a horizontal line that tapers to a point on the right.

Hon David Cunliffe
Leader of the Labour Party

Draft Commission of Inquiry into the conduct of the former Minister of Justice, ministerial offices, Cameron Slater, including into the use of information about the SIS, the SFO, public servants and political parties.

To:

1. The Honourable [], Judge of the High Court of New Zealand;
2. [A former senior public servant with head of department or cabinet office experience];
3. [An experienced lay person with standing and reputation for integrity].

Background

A series of emails, Official Information Act releases and other material have been made public which require investigation. Serious allegations have been made concerning the conduct of the former Minister of Justice, ministerial offices, Cameron Slater and others.

Appointment and order of reference

We hereby commission you, [list the names of the three appointees] to be a public inquiry under the Inquiries Act 2013 to inquire into, report upon, and make any recommendations that you think fit in respect of—

- (a) the conduct of then Minister Collins in relation Oravida including:
 - Whether Minister Collins actions brought her family's financial interests into conflict with her duties as a Minister of the Crown
 - Whether her actions were in breach of the cabinet manual
 - Whether the advice of the Cabinet Office was correct
 - Whether the advice of the Cabinet Office was accurately represented by the Prime Minister and Minister Collins
 - Whether the convention that advice from the Cabinet Office to the Prime Minister is not accessible under the Official Information Act should still apply when the Prime Minister uses that advice to justify his stated position.
- (b) the circumstances surrounding the release of information from the Security Intelligence Service to Cameron Slater concerning a contentious meeting between the head of the SIS and the then leader of the opposition including:
 - Whether Cameron Slater was given preferential access to official information ahead of journalists who had made related requests
 - What knowledge of and what role did Ministers and Ministerial offices, including the Prime Minister and members of his office, have in the release of information to Cameron Slater
 - Whether the objective of the process used was to disguise a political attack upon the then Leader of the Opposition
 - Whether this was proper.
- (c) The circumstances surrounding the release of personal information regarding members of the public service to Cameron Slater including:

- whether the Prime Minister, Minister Collins or and other Minister of the Crown (or any member of their respective offices) disclosed or discussed with Cameron Slater personal information or information likely to identify members of the public service in a manner that was likely to expose those members of the public service to public ridicule or threats or otherwise prejudice their ability to perform there duties or compromise their employment relationship;
 - whether the conduct of the Prime Minister, Minister Collins or and other Minister of the Crown (or any member of their respective offices) regarding personal information or information likely to identify members of the public service is consistent with the duties and obligations of Ministers of the Crown and otherwise proper.
- (d) The involvement of Minister Collins or members of her office in the conduct of Cameron Slater, Cathy Odgers, Carrick Graham and others in relation to the SFO investigation of the affairs of the Hanover Group of Companies including
- Whether Minister Collins used her position as a Minister of the Crown responsible for the Serious Fraud Office (SFO), or any other information obtained in that capacity, to knowingly or otherwise, to assist or facilitate an attempt to influence, prevent or obstruct the SFO investigation into the affairs of the Hanover Group.
 - Whether Minister Collins or members of her office disclosed or discussed details of the SFO investigation into the affairs of the Hanover Group, the operation of the SFO or the employment relationship or performance of the then Director of the SFO, Adam Feeley with Cameron Slater or others in a manner that, knowingly or otherwise, assisted or facilitated an attempt to influence, pervert or obstruct the SFO investigation tin the affairs of the Hanover Group.
 - Whether Minister Collin's relationship, contact or conduct with Cameron Slater and others in relation to the SFO investigation into the Hanover Group conflicted with her duties as a Minister of the Crown.
- (d) The circumstances surrounding collection and release of official information under the Official Information Act or otherwise including:
- Whether Cameron Slater and others were given preferential access to official information ahead of journalists who had made related requests.
 - The practices used or other steps taken to time releases of information to coincide with or cause political attacks upon other parties.
 - Whether official information obtained from government departments and agencies is being used for public purposes or is being misused for other purposes.
 - Whether the fourth estate is being undermined by the calculated release of official information to third party bloggers who are not journalists and whose conduct is not moderated by editorial oversight or peer representative groups like the Press Council or the Broadcasting Complaints Authority.
 - Whether the provisions of Official Information Act are being avoided by Ministers, Ministerial staff, or Ministerial offices through the use of mobile computer devices, and anonymous and dynamic (ie changing) computer and email addresses.
- (e) Any other matters arising out of, or relating to, the foregoing that come to the Commission's notice in the course of its inquiries and that it considers it should investigate:

Matters upon or for which recommendations required

Without limiting reference set out above, we declare and direct that this Commission also requires you to make recommendations upon or for—

- (a) if conduct has been improper, what action should be taken in respect of that conduct.
- (b) if conduct has been improper, what action should be taken, as far as possible, to prevent similar occurrences in the future.
- (c) how events similar to those which are the subject of the Inquiry would be likely to be dealt in other comparable countries.
- (d) whether any changes or additions should be made to relevant laws and practices:

Exclusions from inquiry and scope of recommendations

But, we declare that you are not, under this Commission, to inquire into and report upon any investigation or prosecution by the Police or the Inspector-General of Intelligence and Security.

Appointment of chairperson

And We appoint you, The Honourable [*insert name*], to be the chairperson of the Commission:

Power to adjourn

And for better enabling you to carry this Commission into effect, you are authorised and empowered, subject to the provisions of this Commission, to make and conduct any inquiry or investigation under this Commission in the manner and at any time and place that you think expedient, with power to adjourn from time to time and from place to place as you think fit, and so that this Commission will continue in force and that inquiry may at any time and place be resumed although not regularly adjourned from time to time or from place to place:

Information and views, relevant expertise, and research

And you are directed, in carrying this Our Commission into effect, to consider whether to do, and to do if you think fit, the following:

- (a) adopt procedures that facilitate the provision of information or views related to any of the matters referred to in the order of reference above; and
- (b) use relevant expertise, including consultancy services and secretarial services; and
- (c) conduct, where appropriate, your own research:

General provisions

And, without limiting any of your other powers to hear proceedings in private or to exclude any person from any of your proceedings, you are empowered to exclude any person from any hearing, including a hearing at which evidence is being taken, if you think it proper to do so:

The powers conferred upon the Commission of Inquiry are exercisable despite the absence at any time of any one member appointed, so long as the Chairperson, or a member deputed by the Chairperson to act in the place of the Chairperson, and at least one other member, are present and concur in the exercise of the powers:

You have liberty to report your proceedings and interim findings from time to time if you judge it expedient to do so:

Reporting date

And, you are required to report in writing to His Excellency the Governor-General of New Zealand, as soon as is reasonably practicable but in any event not later than [*insert date to be agreed*].

The final report of an inquiry must set out the findings of the inquiry; and any recommendations of the inquiry.

The final report of this public inquiry must be presented by the appropriate Minister to the House of Representatives as soon as practicable after the inquiry has reported to the Governor General.

Status of the Commission of Inquiry

This Commission is a public inquiry pursuant to the provisions of the Inquiries Act 2013, and will be established by Order in Council of New Zealand.

Governor-General.

By His Excellency's Command—

Prime Minister.

Approved in Council—

Clerk of the Executive Council.