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# LAW COMMISSION TE AKA MATUA O TE TURE

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## MEDIA RELEASE

14 December 2015

Hon Sir Grant Hammond KNZM  
President  
Law Commission

### **LAW COMMISSION REVIEW OF THE USE OF NATIONAL SECURITY INFORMATION IN LEGAL PROCEEDINGS**

What should happen when information is relevant to legal proceedings, but disclosing it might prejudice national security?

This is the question at the heart of the Law Commission's review of the use and protection of national security information. The Law Commission has focused on ensuring that any reform recognises the right to a fair hearing as well as the need to protect national security information.

The President of the Law Commission, Sir Grant Hammond, said:

“At the heart of the project is the tension between national interests and individual rights. Questions about how to balance these interests are not new, but they have been brought into sharp focus by recent international events.”

The Law Commission has today released a Report, *The Crown in Court: A Review of the Crown Proceedings Act and National Security Information in Proceedings*. The report recommends clearer guidance for judges dealing with cases involving national security information. The aim is to ensure judges have the tools to properly consider the interests for and against disclosure of such information.

One of the recommendations is that a court should be able to order a “closed” procedure when dealing with national security information in civil and administrative proceedings. This would replace the current approach under which the Crown can withhold information by issuing a “public interest immunity” certificate.

If the recommendations are adopted, it would be for the courts to decide, in particular cases, how to manage national security information and whether risks of disclosing the national security information are sufficiently serious to justify withholding. In cases where it would be in the interests of justice to exclude that information from the proceedings, it will be withheld completely, but in cases where the information should still be taken into account, the court would be able to use a closed procedure.

A key recommendation is for “special advocates” in closed procedures. Special advocates will be security-cleared lawyers who act for people who are not allowed to see national security information in their case because the court has decided that disclosure to them will have a security risk.

Closed hearings and special advocates are already used in some immigration proceedings and the Commission suggests these processes should be used for other cases involving national security information.

Beyond court proceedings, the Commission recommends two reforms around administrative decisions that affect individual rights:

- If information relevant to a decision that affects a person’s rights is withheld for national security reasons, a summary must be provided instead.
- Individuals affected by decisions made on the basis of national security information must be informed if they have a right to complain to the Inspector-General of Intelligence and Security. The Inspector-General will be given a copy of material taken into account in such decisions, so he or she can oversee how national security information is used when individual rights are being determined by ministers and officials.

The Commission considers special advocates should not be used in criminal trials. The Report recommends retaining the current position that information used against an accused person must be disclosed to him or her. The Report does, however, recommend providing for the use of special advocates in challenges to search warrants that involve national security information where the Crown claims that information should be withheld on national security grounds. The Report also recommends that the Evidence Act be amended to allow sources and intelligence officers to give evidence anonymously, as undercover Police officers are able to currently.

Sir Grant Hammond said:

“The question of how to protect individual rights while upholding security interests has no easy answer. This result of this review is a set of reforms that will improve New Zealand’s ability to respond to the rare cases which might present these issues in a principle and practical way.”

-ENDS-

**For further information and comment, contact:**

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