

UNDER

THE INQUIRIES ACT 2013

IN THE MATTER OF

A GOVERNMENT INQUIRY INTO  
OPERATION BURNHAM AND  
RELATED MATTERS

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MEMORANDUM OF COUNSEL FOR THE CROWN

21 December 2018

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**MAY IT PLEASE THE INQUIRY:**

1. In accordance with minute number 6 of the Inquiry, the Ministry of Foreign Affairs and Trade (MFAT), under cover of this memorandum and as set out in the statutory declaration of Gabrielle Rush, produces all material relevant to the terms of reference of the Inquiry which is in its possession and control.
2. A number of the documents carry national security classifications, on the basis that their disclosure would prejudice New Zealand's national security or international relations. This material will accordingly be subject to the Inquiry's procedure for handling classified information. Some of this material also engages partner equities. Although MFAT does not consider partner consent is required to provide this material to the Inquiry, it would be required for any further disclosure or publication.
3. As the material is produced to the Inquiry before the final determination of the Inquiry's procedure for handling classified information, the Crown applies for an order under s 15(1) of the Inquiries Act – to remain in place pending further order of the Inquiry – to prohibit publication of, and to prohibit access by the public or non-Crown core participants to, any classified material. The Crown understands that the application may not be determined until the Inquiry has had an opportunity to review the material in accordance with its proposed review procedure. The Crown also understands that, should the Inquiry be minded to lift the s 15(1) order (if issued) or otherwise consider disclosure of the material, the Crown would be given an opportunity to make an application under ss 15 and 22 of the Inquiries Act, with reference to s 70 of the Evidence Act, prohibiting the disclosure of the material to non-Crown core participants on a permanent basis.
4. Some of the material that is not marked with a national security classification may nevertheless contain information for which disclosure would be likely to adversely affect New Zealand's international relations. This includes information that engages partner equities, for example where documents contain information or opinions relating to partners, or confidentiality obligations, for example if the information was shared with the New Zealand government on the basis of an understanding of confidentiality, albeit at an unclassified level. Accordingly, although the Crown does not currently seek s

15 orders in relation to this material, should the Inquiry be minded to publish or order disclosure of any documents, MFAT would appreciate advance notification of this so that it can consider making an application for orders in respect of specific information.

5. There are also a small number of documents which contain legal advice. Privilege in this advice is held by the Attorney-General. Accordingly, this material will be provided to the Inquiry by Crown Law, rather than MFAT.

21 December 2018



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Toby Fisher/ Ian Auld  
Counsel for the Crown

