

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 March 2019

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**MAY IT PLEASE THE INQUIRY:**

1. In December 2018, the New Zealand Defence Force (NZDF) produced to the Inquiry 20 documents subject to the control of the North Atlantic Treaty Organisation (NATO).<sup>1</sup>
2. As the material is classified, it is subject to the order under s 15(1)(a) of the Inquiries Act 2013, contained in the Inquiry's Ruling No. 1 of 21 December 2018.
3. Consent for these documents to be provided to the Inquiry was obtained from NATO on the understanding that release is for the members of the Inquiry only, that all members of the Inquiry have personal security clearances, and that none of the classified information or the documents themselves will be used or published in the public version of the Inquiry's report.<sup>2</sup> Prior to any use of the documents in a public report, a request for declassification and disclosure would need to be submitted to NATO. Accordingly, if the Inquiry considers that it is required to disclose any of the material beyond the terms of the consent in order to fulfil its function, we invite the Inquiry to liaise with the Crown, for the Crown to discuss the terms of the consent with NATO and, if appropriate, formally request NATO declassify the relevant material. Given timeframes involved with such a request, it is submitted that this will need to occur outside of the timeframes for the classification review process currently underway.

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<sup>1</sup> The material is listed in the index at Appendix 1. The Crown notes that Appendix 1 is itself also classified. Accordingly, the Crown also seeks an order under s 15(1)(a) of the Inquiries Act prohibiting publication of the appendix.

<sup>2</sup> The exchange of letters between the New Zealand Government and NATO setting out the consent of NATO is appended to this memorandum at Appendix 2. Given the convention that diplomatic correspondence is conducted in private (described in the submissions of MF AT on minute 3), and the corresponding likelihood that disclosure of the letters themselves will prejudice New Zealand's relations with NATO, the Crown seeks an order under s 15(1)(a) of the Inquiries Act prohibiting publication of these letters.

4. The Ministry of Foreign Affairs and Trade is currently preparing a further request to NATO for consent to release additional documents subject to its control to the Inquiry, which have been identified by the NZDF during its disclosure process.

21 March 2019



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