

UNDER THE
IN THE MATTER OF

INQUIRIES ACT 2013
A GOVERNMENT INQUIRY INTO OPERATION
BURNHAM AND RELATED MATTERS

SUBMISSION IN RESPONSE OF MINUTE NO 4 OF INQUIRY

DATED: 4TH OCTOBER 2018

1. This submission supports those presented by counsel for Mr Stephenson.
2. We appreciate that the Inquiry will act in accordance with the Government's Protective Security Requirements. Accordingly, the Inquiry must be able to access all relevant classified information without unnecessary restrictions being imposed upon them. Minute no. 4 of the Inquiry indicates that the Inquiry members do not intend to fetter their discretion unnecessarily. As members of the public, we wish the Inquiry to have as much opportunity as possible to review all documents that they feel will give them insight into the facts under the review.
3. Mr Hager's concern that NZDF operates in both roles: as a custodian of information and also as a subject of the investigation, is valid.¹ The Inquiry must be able to separate NZDF's role of custodian of information from their role as subject. Therefore, the Inquiry is in the best position to select whether information should remain secret.
4. We agree with the Inquiry that 'the Inquiry *must* take into account the principle of open justice and the need to preserve public confidence in the Inquiry's work.'²
5. The Law Commission Issues Paper into the Role of Public Inquiries found "[t]here is however a strong public expectation that formal inquiries will be conducted independently".³ The public *cannot* be assured of the Inquiries independence if information is selectively granted to the Inquiry, or too much of that information is withheld from the Inquiry.
6. This issue goes to the heart of both the real and perceived powers of the Inquiry to hold the NZDF to account.
7. Following the Royal Commission into the Disaster at Pike River Mine, many families were concerned that too much information had been withheld, and remains withheld, from public view. That Royal Commission consequentially lost its mana with the families, and resulting in a perceived lack of accountability of government actions. This mistake should be avoided.

¹ A Government Inquiry Into Operation Burnham and Related Matters, (Minute no.4, 14 September 2018) at [20].

² At [46.f].

³ Law Commission *Issues Paper into the Role of Public Inquiries* (NZLC IP1, 2007) at [19].

8. There must be compelling reason not to provide information to the public, not simply because NZDF has decided that it is classified. We consider that the Inquiry would be best positioned to determine whether the information should be made public, and if it is, to act in accordance with the Government's Protective Security Requirements.
9. As much information as possible should be proactively released on the website, so one could follow the Inquiry in real time. If possible, we should know who is being interviewed, except where that would breach the witness's confidentiality or national security. Again, this should be determined by the Inquiry, not NZDF.

Hazel Armstrong Law

4th of October 2018.