

UNDER

THE INQUIRIES ACT 2013

IN THE MATTER

**A GOVERNMENT INQUIRY INTO OPERATION BURNHAM
AND RELATED MATTERS**

Memorandum of New Zealand Defence Force relating to Minute No 4 of the Inquiry

25 September 2018

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1. Following Minute No 4 of the Inquiry dated 14 September 2018 (**the Minute**), this is a covering memorandum to provide documents and information to the Inquiry in response to the expectation expressed in the Minute that classified information will be provided to the Inquiry as soon as practicable.
2. This memorandum provides an update on the New Zealand Defence Force (**the NZDF**) efforts to provide the following material to the Inquiry:
 - (a) classified material subject to the control of the NZDF;
 - (b) classified material subject to the control of other New Zealand Government agencies or the Attorney-General's approval for disclosure;
 - (c) classified material subject to the control of foreign governments or international organisations.

A. Classified material subject to the control of the NZDF

3. As requested in the Minute, the NZDF has provided a bundle of classified material that is subject to the control of the NZDF, or the NZDF and the Ministry of Defence. For reasons of resources, and the time-consuming nature of identifying and securing copies, this material has not been subject to a rigorous review process.
4. The material provided represents that which the NZDF has been able to identify to date that is within the scope of the Inquiry's Terms of Reference. The NZDF will continue to provide to the Inquiry further material of this nature as it is identified and copies secured.

5. The further material that the NZDF will provide will include documents that are primarily NZDF-generated, but which have a discrete and identifiable component, such as a photographic image, which is subject to the control of a foreign government or international organisation. This material will be provided to the Inquiry initially with the component of foreign government or international organisation material redacted.

B. Classified material subject to the control of other New Zealand Government agencies or the Attorney-General's approval for disclosure

6. The NZDF has identified material that it holds which originated from other New Zealand government agencies, and which it considers is within scope of the Inquiry's Terms of Reference. The NZDF also holds legal advice provided by the Solicitor-General and by the NZDF's in-house counsel.
7. The NZDF is working with those agencies, and with the Crown Law Office in respect of the items of legal advice, to secure the Inquiry's access to this material.

C. Classified material subject to the control of foreign governments or international organisations

8. The NZDF is working with relevant agencies to seek the approvals for the Inquiry's access to material that the NZDF holds, but which is controlled by foreign governments or international organisations, in particular, the North Atlantic Treaty Organisation (NATO) and the United States Government.
9. In summary, the NZDF will continue conscientiously to identify and secure copies of material that is within the scope of the Inquiry's Terms of Reference, to enable the provision of that material to the Inquiry. The NZDF will continue to liaise, to that end, with counsel assisting the Inquiry.

Dated 25 September 2018



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Paul Radich QC
Counsel for New Zealand Defence Force