

UNDER

THE INQUIRIES ACT 2013

IN THE MATTER

A GOVERNMENT INQUIRY INTO OPERATION
BURNHAM AND RELATED MATTERS

MEMORANDUM OF COUNSEL FOR THE CROWN CONCERNING
ENGAGEMENT WITH POTENTIAL INQUIRY WITNESSES

5 November 2018

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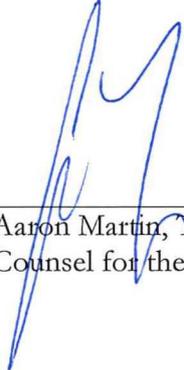
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MAY IT PLEASE THE INQUIRY:

1. This memorandum is filed on behalf of the Crown and addresses a single issue: the immediate need for some Crown agencies to engage with personnel who may become witnesses of the Inquiry.
2. In Inquiry Minute No. 4, the Inquiry indicated that all witnesses will be witnesses of the Inquiry. All Crown agencies will seek to facilitate the Inquiry's access to all relevant personnel, making any arrangements necessary for security or privacy reasons.
3. Non-Crown Core Participants have suggested in their responses to Inquiry Minute No. 4 that the Inquiry should prohibit Crown agencies from engaging with, or providing support to, potential witnesses.
4. The Crown is acutely aware of the need to avoid influencing or prejudicing the evidence to be given by Inquiry witnesses or any perception of that kind. However, it is not realistic or practical for Crown agencies to avoid engaging with potential witnesses.
 - 4.1 First, Crown agencies have a duty to offer pastoral support to staff who may be called to give evidence.
 - 4.2 Secondly, Crown agencies need to speak to staff who have direct knowledge of the events falling within the Inquiry's terms of reference in order to prepare an informed response and, as regards GCSB/NZSIS staff, prepare evidence for the parallel inquiry by the Inspector-General of Intelligence and Security. To be clear, the NZDF intends to have only minimal involvement with the NZSAS members who are likely to be witnesses in the Inquiry.
5. As a result, Crown agencies will need to continue to have some limited engagement with staff who may be called to give evidence. In carrying out this process of engagement, Crown agencies have taken, and will take, care not to influence any evidence that may subsequently be given to the Inquiry.
6. Crown agencies have addressed this issue now as a result of the current need to engage with potential witnesses. They will address wider submissions of

non-Crown Core Participants on Inquiry Minute No. 4 at the hearing on 21 and 22 November. In order to assist the Inquiry with submissions on legal issues arising in the memoranda filed by non-Crown Core Participants, and to record Crown submissions on those points for ease of reference, the Crown anticipates filing a written summary seven days before the hearing.

5 November 2018



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