

Media Release

21 December 2018

How the Government Inquiry into Operation Burnham will proceed

This release is provided to assist in the understanding of today's Ruling by the Government Inquiry into Operation Burnham and related matters. The full text of the Ruling is the only authoritative document.

The [Government Inquiry into Operation Burnham](#) has now established its procedures and the [Ruling](#) released today sets those out.

The Inquiry is determined to get to the truth of the matter. In doing so it must adopt a procedure that will assist and not hinder that aim.

The Inquiry stated in [Minute No 4, issued in September 2018](#), its provisional views. It took submissions on those proposals, conducted a public hearing, and received further submissions after the hearing on the topics canvassed in the Ruling.

This is likely to be the most complex inquiry ever conducted in New Zealand in procedural terms. It has been rendered complex by many factors, but principally the number of witnesses who will need confidentiality when giving evidence and the volume of secret and top secret documents it must examine.

The witnesses who will need anonymity protections when giving evidence include the Afghan nationals, journalists' sources, whistle-blowers, members of the NZSAS and intelligence and security agencies' personnel.

The Inquiry has instituted a review process in relation to the classified material, much of which originates from New Zealand's overseas partners. Based on the analytical work the Inquiry has carried out to date, its present assessment is that many of the important relevant documents will likely remain classified and will not be able to be disclosed for legitimate reasons involving New Zealand's national security and diplomatic relationships.

The Inquiry was established and operates under the Inquiries Act 2013. That statute was clearly designed to reform the old law under the Inquiries Act 1908. The procedures under that Act were criticised by the Law Commission as

costly, time consuming, and involving cumbersome and adversarial legal procedures such as cross-examination. An Inquiry is not a court.

The new Act provides a flexible approach that empowers each inquiry to adopt a range of procedures that best suit the particular circumstances of the Inquiry. The Act recognises that no two inquiries are ever the same and therefore provides discretion as to what procedures to adopt.

Our aim is to ensure the Inquiry is as transparent as possible. This will enhance public confidence in the Inquiry's processes and highlight the issues at stake.

To advance openness the Inquiry has decided to have public hearings organised around modules on a number of important topics. The procedural details of these hearings and dates will be announced in detail in later minutes. They will include:

- i The nature of Afghanistan, its history and its people. The decisions by Government and Parliament to deploy the NZDF in Afghanistan and why the NZSAS was selected. The nature of the conflict in Afghanistan. The NZSAS, its capabilities and command structure. Issues concerning the precise location of the events under review.
- ii The process for setting the Rules of Engagement and the checks and balances against the undue exercise of lethal force and the methods used to safeguard civilians.
- iii Issues concerning detention and transportation of those detained, including the need to prevent those detained being tortured.
- iv The predetermined and offensive use of lethal force against specified individuals other than in direct battle.

These hearings will not canvass material that remains classified, but they will allow important issues to be discussed and shed light on relevant events.

After carefully considering submissions the Inquiry has reaffirmed much of its provisional view in relation to process as follows:

- The taking of evidence will largely take place in private. All witnesses will be witnesses of the Inquiry. Testing of their evidence will be carried out by Counsel Assisting the Inquiry and the members of the Inquiry.

- In general core participants will not be entitled to cross-examine witnesses, except in circumstances where the Inquiry believes it would be helpful or where there is no other way to meet the inquiry's obligations to follow the rules of natural justice. However, core participants will be able to suggest lines of inquiry to be considered when the Inquiry questions witnesses.
- The Inquiry will rigorously follow the rules of natural justice.

Background

In April 2018 the New Zealand Government announced that an inquiry into Operation Burnham and related matters would be held.

Operation Burnham was undertaken in Afghanistan by NZSAS troops and other nations' forces operating as part of the International Security Assistance Force in 2010.

In 2017 the book *Hit & Run* was published which contained a number of serious allegations against NZDF personnel.

The Inquiry aims to establish the facts in connection with the allegations, examine the treatment by NZDF of reports of civilian casualties following the operation, and assess the conduct of NZDF forces.

Anyone who has information relevant to the Inquiry's Terms of Reference is invited to come forward and speak with the Inquiry.

The Inquiry's full terms of reference are available [here](#).

Contact can be made in strict confidence if required and can be made through any of the below methods:

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