

## **Media Q and A – Operation Burnham Inquiry**

### **How did this decision come about?**

It was the pre-election policy of the three parties in Government to consider an inquiry. Prime Minister Jacinda Ardern asked Attorney-General David Parker to consider and recommend whether an inquiry should be held.

### **Was the decision the Attorney-General's alone?**

Yes the final recommendation was the responsibility of the Attorney-General and the inquiry will report to him. Of course he was advised by Crown Law and other officials in making his decision, and it has been endorsed by Cabinet

### **Why a Government Inquiry?**

It was considered preferable to hold a Government Inquiry over the other options set out in the Inquiries Act because of its reporting requirements. If necessary two versions of the report may be presented, one a public version and a second referring to classified information and protecting confidential witness information. It was felt this would enable the inquiry to provide a thorough report to the Attorney-General detailing sensitive evidence including classified material.

### **Who will undertake the inquiry?**

Two eminent New Zealanders of the highest repute: Supreme Court Judge Sir Terence Arnold and Sir Geoffrey Palmer.

### **Will the inquiry have the power to summon witnesses?**

Yes

### **Will it be able to take evidence under oath?**

Yes

### **Will it be able to preserve the anonymity of those giving evidence?**

Yes, if it considers that is necessary.

### **Will all the evidence and hearings be open to the public?**

Public access to the Inquiry and documents may be restricted, where appropriate, to protect the identity of witnesses and protect sensitive information. This will be a matter for the inquiry to decide.

## **Will evidence be gathered from Afghanistan authorities and/or the villagers?**

It is expected to consider available evidence from Afghan nationals, but ultimately that will be a matter for the inquiry to decide and may require liaison with other States.

## **Does the decision to hold an inquiry show that the authors of *Hit & Run* were right?**

As today's press release makes clear, in forming his view that an inquiry was warranted the Attorney-General said material he reviewed did not seem to corroborate some key aspects of the book. No amount of video footage would conclusively answer some of the questions. As he says:

“In light of that, and bearing in mind the need for the public to have confidence in the NZDF, I have decided in the public interest that an inquiry is warranted.”

## **Is this a vote of no confidence in the NZDF, the SAS or the Chief of Defence Forces?**

The inquiry has been set up to establish the facts and determine the truth as far as is possible. Its findings have not been prejudged. Nor does it mean the Government accepts the criticisms of the actions of SAS forces on the ground, although their conduct is squarely within the inquiry's purview and will be thoroughly examined. It will also examine the treatment by NZDF of reports of civilian casualties. It will be up to the inquiry to make findings on these matters.

## **Will the inquiry have access to the footage of the raid?**

The inquiry is expected to seek access to the footage of the raid but this does not belong to New Zealand. The extent to which it will have access will be determined in the course of the inquiry.

## **Will that footage be made public?**

That seems unlikely. It would require the approval of the United States, which owns the footage.

## **Will the inquiry be able to seek evidence from, or make findings against, the forces of other nations such as the US or Afghanistan?**

The inquiry can seek evidence from all sources but would have no power to compel production of documents or evidence from other States or their

forces. Otherwise its focus will be on the NZDF and it has no jurisdiction to make determinations about the actions of other States' forces or officials.

**Will it investigate the alleged mistreatment of Qari Miraj, which was also covered in the book?**

Only in as much as it relates to his transfer or transport to the Afghan National Directorate of Security in Kabul. His treatment before that has been the subject of an investigation already.

**Will it consider whether the SAS was acting outside its brief or terms of engagement?**

Yes. Whether the SAS acted within the rules of engagement and international humanitarian law will be examined. Separately from Operation Burnham it will also examine the rules of engagement and whether they authorised the predetermined and offensive use of force against specified individuals (other than in the course of direct battle) and if so whether this was, or should have been, apparent to NZDF members who approved the rules of engagement and to responsible ministers.

**Will it determine if the villagers were unarmed, or if some were insurgents?**

It will be asked to report on the assessments made by NZDF regarding whether or not Afghan nationals in the area were taking direct part in the hostilities or otherwise legitimate targets.

**Will it look at the return operation to Tirgiran Valley in October?**

Yes.

**Will it be able to investigate the Battle of Baghak and the events covered in the Stuff series *The Valley*?**

The Battle of Baghak is not included in the Terms of Reference. It has already been the subject of an Army Court of Inquiry. The report produced by that COI is available online.

**Will it make findings of criminal activity or be able to recommend criminal proceedings against individuals?**

The inquiry, in common with all inquiries under the Inquiries Act, has no power to determine the civil, criminal, or disciplinary liability of any person.

However it may, if justified, make findings of fault and recommend further steps be taken to determine liability.

**How long will it take?**

It is estimated it will take up to a year. The administrative set up is not expected to be finalised until the end of May.