

INQUIRY INTO OPERATION BURNHAM

Date of
Minute: 30 May 2018

MINUTE OF CHAIR

[1] This Minute addresses two issues raised at the teleconference on Tuesday 29 May 2018.

[2] The first concerns funding for legal assistance in the Inquiry. Section 18 of the Inquiries Act 2013 provides:

Recommendation as to legal assistance

- (1) An inquiry may, at any time, make a recommendation to the chief executive of the relevant department that funding be granted for the purpose of providing legal assistance to 1 or more specified persons—
 - (a) who wish, or who are required, to appear before the inquiry; or
 - (b) who have an interest in the inquiry.
- (2) In determining whether to make a recommendation under subsection (1), the inquiry must consider—
 - (a) the likelihood of hardship to a person if legal assistance is declined; and
 - (b) the nature and significance of the contribution that the person will, or is likely to, make to the inquiry; and
 - (c) the extent to which legal assistance is, or is likely to be, required to enable the inquiry to fulfil its purpose; and
 - (d) any other matters relating to the public interest.
- (3) If a recommendation is made under subsection (1), the chief executive may—

- (a) grant funding for the legal assistance recommended under that subsection; and
 - (b) impose any conditions that he or she considers appropriate.
- (4) In this section, **legal assistance** means—
- (a) legal representation; or
 - (b) legal advice or help (for example, help with drafting submissions to an inquiry); or
 - (c) both.

[3] Several parties raised the issue of funding in memoranda filed for the teleconference. I asked that any parties seeking funding for legal assistance make formal applications in which they address the issues identified in s 18(2) of the Inquiries Act. Sir Geoffrey and I will deal with the applications as soon as possible after 21 June 2018. Accordingly, I ask that the applications be filed by email to the Inquiry’s email address (operationburnham@inquiry.govt.nz) by 5 pm on Wednesday 20 June 2018 and copied to Counsel Assisting by email. Sir Geoffrey and I will deal with the initial “core participant” designations at the same time as we deal with the applications for funding.

[4] The other issue concerns the identification of the allegations referred to in the terms of reference. Sir Geoffrey and I thought it useful that they be identified at the outset. Counsel Assisting prepared a schedule of the allegations on the basis of the book, *Hit & Run*. I understand from the teleconference that there may be comments on, and/or additions to, that summary. If so, it would be helpful to receive those as soon as reasonably possible. This leaves open (for future determination if necessary) the question raised by Mr Radich QC as to the scope of the Inquiry, in particular, the relationship between the allegations and the matters identified under the heading “Scope of the Inquiry” in the terms of reference.

[5] Finally, as noted at the teleconference, the Inquiry plans to have a more formal hearing in late July in order to deal with the important substantive issues that must be addressed before the Inquiry can proceed in earnest. We will issue a further minute in early July identifying the issues that we see as needing resolution. The parties will have the opportunity to identify any additional issues.

[6] As previously advised, Ms McDonald QC will be away from New Zealand during June. Parties should feel free to contact Mr Isac in her absence should the need arise.

Terence Arnold

Parties:

Dr Harrison QC for the Afghan Villagers
Mr Radich QC for New Zealand Defence Force
Mr Hager
Mr Stephenson