

# **Government Inquiry into Operation Burnham and related matters Progress Report No 1**

## **Establishing the Inquiry**

The Inquiry was announced by the Attorney-General Hon David Parker on [11 April 2018](#) and its [Terms of Reference](#) published.

In the months following, the Inquiry briefed Counsel Assisting, recruited a Manager Secretariat, found suitable premises and established a team and processes.

Decisions were made on naming the core participants under the Inquiries Act 2013 by [Minute No 1 on 10 July 2018](#). They are the New Zealand Defence Force, Nicky Hager, Jon Stephenson, and Afghan Villagers.

Because much of the relevant documentary material is classified, considerable effort was required to enable the Inquiry to meet the Government's Protective Security Requirements for the handling of classified information. This included: obtaining clearances for personnel and access to suitable secure premises (requiring a purpose-built IT fit-out of a secure room); investing in equipment and information security arrangements, and obtaining a document management system for the electronic management of all information and evidence the Inquiry will receive.

In addition, some of those the Inquiry wishes to take evidence from have sought confidentiality or are vulnerable in some way, meaning that special protections are required.

Once arrangements for dealing with classified information were in place, the Inquiry focused on developing a [process](#) that would strike a balance between protecting information and people, and meeting the principles of natural justice and open justice.

## **Protective security issues and procedure**

On 19 July 2018 the Inquiry published [Minute No 3](#) setting out its preliminary views on how it should deal with the relevant material that has been classified on national security grounds, including its powers in relation to challenges to classifications.

Managing classified information has been a significant and complex challenge for the Inquiry. Submissions were called for on the issues raised by this.

The Inquiry has appointed two barristers to assist it on matters of classification, to review classified material and to test the claims to classification. If no agreement can be reached by the barristers with the relevant government agency, the Inquiry will determine the matter.

At the time of this update the Inquiry is still receiving documents from agencies and this process is expected to continue for some time yet. In total, there are likely to be several thousand relevant documents for the Inquiry to consider.

In [Minute No 4](#) published on 14 September 2018 the Inquiry set out its views on its powers in relation to classified information and its preliminary views on the procedure to be adopted for conducting the Inquiry. It invited written submissions.

Having received written submissions from core participants and other interested parties, the Inquiry conducted public hearings on [21 and 22 November 2018](#). Legal argument was held on the issues. Lawyers for core participants appeared and one core participant attended in person. Other people and organisations also made oral submissions.

On 21 December 2018 the Inquiry published its [Ruling No 1](#) setting out its decisions on the procedure to be followed in the Inquiry.

### **Interviewing witnesses**

Counsel Assisting have been interviewing people who have relevant information and are preparing statements of evidence that can be given by those witnesses. The Inquiry will then interview the most material witnesses under oath. This will not be done in public due to the risks of breaching security requirements.

This is a significant task and will take some months to complete.

### **Public hearings**

The Inquiry has a schedule of public hearings as set out in the Inquiry's Ruling No 1. The aim of the hearings is to enhance transparency by increasing public understanding of the Inquiry's work as far as possible, and to build public trust and confidence in the Inquiry's work. The hearings will also provide a source of

information for both the Inquiry and the public on key issues and to supplement the Inquiry's other investigations.

On 11 February 2019 the Inquiry published [Minute No 8](#) describing the content of Module 1 of the public hearings. Presentations and submissions will cover the history of Afghanistan and the political and military context of the current conflict, including New Zealand's involvement. The Inquiry will also hear from core participants on the issue of location of the events on 21/22 August 2010 (i.e. Operation Burnham).

The hearing will be held on Thursday 4 April in Wellington at the Meetings on The Terrace conference centre, 152 The Terrace.

Further modules are currently planned for May and July.

A Minute will be issued by the Inquiry in respect of each future Module in due course.