



AFP

AUSTRALIAN FEDERAL POLICE

COMMISSIONER

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The AFP received a referral from the Attorney General on the 22 January 2008, following the recommendations of the Coronial Inquest into the death of one the victims Brian Peters.

The AFP commenced an investigation of these allegations on 20 August 2009. Throughout the process the AFP have been mindful of the importance of this investigation to the families of the victims and have spoken with them during the course of the investigation to ensure they were informed of progress.

The AFP has now completed an extensive review of the investigation and determined there is insufficient evidence to support providing the Commonwealth Director of Public Prosecutions with a brief of evidence for consideration of prosecution under Australian law.

The AFP has now personally communicated this decision to victims' families. I sympathise with the families and understand they may feel disappointment with this outcome. However, the evidence available to the AFP regarding the circumstances leading up to and surrounding the deaths of the men does not satisfy the required legal elements of the appropriate Australia offence available in 1975. Any criminal offences brought into Australian law following the killings cannot be retrospectively applied.

In technical terms, the offence available to the AFP investigators under the Geneva Conventions Act 1957 requires, as one of its elements, proof that the territory of Balibo was occupied by Indonesian forces at the time the men were killed.



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The AFP investigation was not able to uncover sufficient evidence to prove beyond reasonable doubt this state of occupation under the Geneva Conventions. The AFP has sought independent legal advice on these matters of law and consulted with the CDPP.

I firmly believe the AFP has exhausted all available options in undertaking this investigation including reviewing all available material from the NSW Coroner's Inquest, and obtaining statements from all known Australian based witnesses prepared to give evidence.

AFP investigators also travelled to Timor-Leste in 2011 and 2012 and with the support of the Timorese Police, reviewed investigative files and interviewed cooperative potential East Timorese based witnesses.

The AFP has also made a formal request for evidence located overseas through the Attorney General's Department. Some of this material is yet to be provided and its provision is outside the control of the Australian Government. The AFP, however, is aware of the general content of this information and believes it will not provide the necessary grounds to continue the AFP investigation.

As a result, the AFP will not be taking any further action in this investigation at this time.

Chair, Senators: There is no doubt in the minds of the AFP that an unlawful killing occurred with respect to those 5 journalists. The circumstances of those killings is tragic, and the impact on the families has been profound.



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AFP investigators have, over many years now, endeavoured to obtain the evidence required to bring this matter to a resolution, and commence a prosecution in Australia. The fact that we have not been successful is a reflection of the circumstances and the law of the time – not of the efforts taken by our investigators.