

## **HON DAVID PARKER, ATTORNEY-GENERAL and HON PEENI HENARE, MINISTER OF DEFENCE**

### **ESTABLISHMENT OF AN INDEPENDENT INSPECTOR-GENERAL OF DEFENCE: PROGRESS UPDATE: CABINET DOCUMENTS**

November 2021

This publication provides Cabinet's February 2021 decision on the planning for the establishment of the independent Inspector-General of Defence in New Zealand. It comprises:

- the Cabinet minute of decision: *Establishment of an Independent Inspector-General of Defence: Progress Update* [CBC-21-MIN-0002].
- the Cabinet paper: *Establishment of an Independent Inspector-General of Defence: Progress Update* [CBC-21-SUB-0002].

This pack has been released on the Ministry of Defence website, available at: [www.defence.govt.nz/publications](http://www.defence.govt.nz/publications).

It has been necessary to withhold certain information in accordance with the following provisions of the Official Information Act 1982. Where information is withheld, the relevant sections of the Act are indicated in the body of the document. No public interest has been identified that would outweigh the reasons for withholding it.

Information is withheld in order to:

- maintain the constitutional conventions for the timing being which protect the confidentiality of advice tendered by Ministers of the Crown and officials [section 9(2)(f)(iv)].
- maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty [section 9(2)(g)(i)].



# Cabinet Business Committee

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Establishment of an Independent Inspector-General of Defence: Progress Update

Portfolio                      Attorney-General

On 26 January 2021, the Cabinet Business Committee:

- 1        **noted** that in July 2020, the Cabinet External Relations and Security Committee(ERS):
  - 1.1        approved the initial Government response to the report of the Government Inquiry into Operation Burnham and related matters (the Inquiry), accepting in principle all four recommendations, including to establish by legislation an independent Inspector-General of Defence (IGD) to facilitate independent oversight of the New Zealand Defence Force (NZDF) and enhance its democratic accountability;
  - 1.2        directed the Crown Law Office (CLO), in consultation with the Department of the Prime Minister and Cabinet (DPMC), the Public Services Commission (PSC), the Ministry of Defence, and NZDF, to undertake analysis of the nature, form, and functions of an inspector-general role, and establish a senior officials working group to develop a plan for the establishment of an independent IGD;
  - 1.3        invited the Attorney-General to report back by mid-December 2020 with a progress update on planning for the establishment of an independent IGD;

[ERS-20-MIN-0025]
- 2        **agreed** that the government’s intended policy outcome for the establishment of the IGD is “An oversight function, independent of the NZDF, that will strengthen democratic accountability and civilian control of the military and increase public confidence that issues regarding the legality and propriety of its actions are appropriately investigated, with the flexibility and durability to respond to the complexity of the NZDF’s business now and in the future”;
- 3        **agreed** that the government’s objectives for the establishment of the IGD are:
  - 3.1        Independent:
    - 3.1.1        the overseer has complete operational, financial, structural, and reporting independence from the NZDF;
  - 3.2        Robust:
    - 3.2.1        the overseer has appropriate powers and resources to undertake its role in an efficient and timely manner;

3.2.2 the overseer's functions and powers are appropriate for the defence environment and the nature of the information it will handle;

3.2.3 the overseer's functions, powers, and resources are proportionate to the complexity, size, and scale of the NZDF's business;

3.3 Systems approach:

3.3.1 the overseer builds upon and complements existing oversight mechanisms on defence matters and is consistent with similar oversight mechanisms in the national security and intelligence system;

3.4 Transparent set-up process:

3.4.1 build public trust and confidence in the overseer through a full, open, and unclassified policy process;

4 **noted** that the IGD is intended to oversee the NZDF and is not intended to have oversight of decisions made by other parts of the executive branch of government;

5 **noted** that the nature, form and functions of the IGD will be determined through detailed policy analysis over the next six months;

6 **noted** that the senior official's group, referred to in paragraph 1.2 above, has developed a plan for the establishment of the IGD with the following phases;

6.1 Phase one – policy development and consultation;

6.2 Phase two – drafting legislation;

6.3 Phase three – legislative process;

6.4 Phase four – implementation and establishment of the IGD;

7  s9(2)(f)(iv), s9(2)(g)(i)

8 **noted** that other work relating to the consideration by an external review group of the NZDF's organisational structure, record keeping, and retrieval processes, and the potential establishment of an ombudsman-type function for handling and addressing complaints of abuse within the NZDF, may have a bearing on the policy options for the nature, form and functions of the IGD;

9 **noted** that, given the nature of the policy work and legislative change required for the establishment of the IGD, the Attorney-General and Minister of Defence are of the view that they should jointly be the responsible Ministers, with support from the Ministry of Defence;

10 **agreed** that the Ministry of Defence will lead the establishment of the IGD, in consultation with DPMC, PSC, NZDF, the Ministry of Justice, and CLO;

11  s9(2)(f)(iv), s9(2)(g)(i)

- 12 **invited** the Attorney-General and Minister of Defence to report back to ERS by 30 September 2021 with detailed policy proposals on the scope, functions, powers, and form of the IGD.

Rachel Clarke  
Committee Secretary

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**Present:**

Rt Hon Jacinda Ardern  
Hon Grant Robertson  
Hon Kelvin Davis  
Hon Dr Megan Woods  
Hon Chris Hipkins  
Hon Carmel Sepuloni  
Hon Andrew Little  
Hon David Parker  
Hon Nanaia Mahuta  
Hon Poto Williams  
Hon Damien O'Connor  
Hon Stuart Nash  
Hon Kris Faafoi  
Hon Peeni Henare  
Hon Jan Tinetti

**Officials present from:**

Office of the Prime Minister  
Department of the Prime Minister and Cabinet

Released by the Minister of Defence and the Attorney-General

Office of the Attorney-General

Cabinet Business Committee

## **PROGRESS UPDATE ON THE ESTABLISHMENT OF AN INDEPENDENT INSPECTOR-GENERAL OF DEFENCE**

### **Proposal**

- 1 This paper reports on progress towards the establishment of an office of the independent Inspector-General of Defence (IGD) and seeks decisions on:
  - 1.1 the policy outcome and objectives for the establishment of the IGD; and
  - 1.2 ministerial responsibility for the establishment of the IGD being jointly shared between the Attorney-General and the Minister of Defence, and agency responsibility transferring from the Crown Law Office to the Ministry of Defence.

### **Relation to government priorities**

- 2 This paper concerns the Government's response to an inquiry stemming from events relating to several military operations occurring in Afghanistan in 2010 and 2011. The response supports the priorities of delivering transparent government, valuing who we are as a country, and having an international reputation we can be proud of.

### **Executive Summary**

- 3 In July 2020, the Cabinet External Relations and Security Committee (ERS), with Power to Act, accepted in principle all the recommendations of the Government Inquiry into Operation Burnham and Related Matters (the Inquiry). One of the recommendations was to establish, by legislation, an office of the independent Inspector-General of Defence (IGD).
- 4 ERS invited me to report back in mid-December 2020 with a progress update on planning for the establishment of the IGD [ERS-20-MIN-0025]. This report back was deferred to the new year.
- 5 Oversight of military decision-making is key to maintaining civilian control of the military, safeguarding democratic accountability, and ensuring compliance with international law. The IGD is intended to strengthen and augment the existing system of New Zealand Defence Force (NZDF) oversight.
- 6 A Senior Officials Group has been convened (with the addition of the Ministry of Justice) and it has developed a plan for the establishment of the IGD. Legislation would be required to establish the IGD and its functions and powers. The plan includes the following four phases:

- 6.1 Phase one – policy development on the scope, functions, powers, and form of the IGD;
  - 6.2 Phase two – Drafting legislation to establish the IGD and its powers and responsibilities;
  - 6.3 Phase three – Budget decisions (if required) and legislative process; and
  - 6.4 Phase four – Implementation of the legislation and set-up of the office of the IGD.
- 7 I propose that Cabinet agree to a draft policy outcome and objectives to guide the further policy work.
  - 8 Determining the nature, scope, functions, powers, and form of the IGD (Phase One) is complex and requires in-depth consideration of the NZDF's business at the policy, operational and tactical level. Detailed policy options are expected to be considered by Cabinet in the second half of 2021.
  - 9 The organisational structure of the IGD will be considered after functions and powers in the policy development process. A range of organisational design options will be considered, as well as whether the IGD's functions and powers could be incorporated into an existing entity, and/or combined with other proposals under consideration.
  - 10 I have discussed ministerial and agency responsibility for the establishment of the IGD with the Minister of Defence. It is our view that that we should jointly lead this work. This is a similar process to the policy work for the Intelligence and Security Act 2017, where the Minister responsible for the intelligence and security agencies and the Minister of National Security and Intelligence had joint Ministerial responsibility.
  - 11 We propose that the Attorney-General and the Minister of Defence jointly provide all further updates to Cabinet. We also propose that the Ministry of Defence becomes the lead agency for the work.

## **Background**

- 12 In 2018, I established a Government Inquiry (the Inquiry) to examine allegations of wrongdoing by the New Zealand Defence Force (NZDF) during a series of operations conducted in Afghanistan in 2010 and 2011. With regard to one of those operations, Operation Burnham, the Inquiry found serious shortcomings in the way the NZDF dealt with, and reported on, the allegations.
- 13 While finding that New Zealand troops acted lawfully and complied with the rules of engagement and international humanitarian law, the Inquiry concluded that the actions of the NZDF following Operation Burnham undermined the constitutional principles of civilian control of the military and ministerial accountability to Parliament.

- 14 As a result of this finding, the Inquiry recommended the establishment, by legislation, of an office of the independent Inspector-General of Defence (IGD) to facilitate oversight of the NZDF and enhance its democratic accountability. The Inquiry emphasised the need for the IGD to be located outside the NZDF.
- 15 In July 2020, the Cabinet External Relations and Security Committee (ERS) accepted in principle this recommendation and [ERS-20-MIN-0025 refers]:
- 15.1 directed the Crown Law Office, in consultation with the Department of the Prime Minister and Cabinet, the Public Service Commission, the Ministry of Defence, and the NZDF, to undertake analysis of the nature, form and functions of an inspector-general role, and to establish a senior officials working group to develop a plan for the establishment of an independent IGD; and
- 15.2 invited the Attorney-General, to report back by mid-December 2020 with a progress update on planning for the establishment of an independent IGD.
- 16 This Cabinet paper was originally due to be considered by the Cabinet Business Committee on 9 December 2020 but was deferred due to other priority papers.

### **Establishment of the IGD**

- 17 Oversight of military decision-making is key to maintaining civilian control of the military, safeguarding democratic accountability, and ensuring compliance with international law. The existing NZDF oversight system includes internal processes and external domestic and international mechanisms.
- 18 The Inquiry highlighted a gap in the external domestic oversight of the NZDF activity and accountability processes. The IGD role is intended to address this gap and to strengthen and augment the existing oversight system over the NZDF.

#### *Proposed outcomes and objectives to guide policy work*

- 19 I seek Cabinet's agreement to a draft policy outcome and set of objectives for the establishment of the IGD. I have developed these to guide the policy work over the coming months.
- 20 The proposed policy outcome of this work is:
- 20.1 An oversight function, independent of the NZDF, that will strengthen democratic accountability and civilian control of the military and increase public confidence that issues regarding the legality and propriety of its actions are able to be appropriately investigated, with the flexibility and durability to respond to the complexity of the NZDF's business now and in the future.

21 The proposed objectives for the establishment of the IGD are based on issues raised in the Inquiry and seek to ensure the efficiency and effectiveness of the role. They are:

21.1 *Independent*

21.1.1 The overseer has complete operational, financial, structural, and reporting independence from the NZDF.

21.2 *Robust*

21.2.1 The overseer has appropriate powers and resources to undertake its role in an efficient and timely manner.

21.2.2 The overseer's functions and powers are appropriate for the defence environment and the nature of the information it will handle.

21.2.3 The overseer's functions, powers, and resources are proportionate to the complexity, size, and scale of the NZDF's business.

21.3 *Systems approach*

21.3.1 The overseer builds upon and complements existing oversight mechanisms on defence matters and is consistent with similar oversight mechanisms in the national security and intelligence system.

21.4 *Transparent set-up process*

21.4.1 Build public trust and confidence in the overseer through a full, open, and unclassified policy process.

**Progress update on analysis of the nature, form, and functions of the inspector-general role**

22 An update on the work being undertaken to develop policy options on the nature, scope, functions, powers, and form of the IGD is set out below.

*The policy development process is relatively complex*

23 Determining the nature, scope, functions, powers, and form of the IGD involves relatively complex analysis because it requires in-depth consideration of the NZDF's business at the policy, operational and tactical level.

24 There are risks if the IGD's role is not well designed. Excessive oversight could inhibit timely responses to national security threats and unreasonably interfere with the efficient and effective use of expertise by military professionals. On the other hand, inadequately structured oversight could be ineffective and fail to address the issues identified by the Inquiry.



- 25 To be effective, the role of the IGD would need to be calibrated to:
- 25.1 ensure NZDF's compliance and accountability, while permitting operational flexibility and timely deployment of military expertise; and
  - 25.2 fit within an existing oversight system of complementary mechanisms with distinct and defined roles and responsibilities.

*Analysis on the nature of the IGD*

- 26 As recommended by the Inquiry, and accepted in principle by ERS, the role of the IGD is to provide independent oversight of the NZDF as a mechanism to increase civilian control of the military and enhance Ministerial accountability. I do not consider it appropriate for the IGD to directly oversee the activities or decisions of Ministers and Cabinet.
- 27 The IGD will not be concerned with the activities of foreign partners, coalitions or international entities that the NZDF may work with. However, the actions of the NZDF as part of, or resulting from, working with international partners will fall within the scope of the IGD.
- 28 While the Inquiry found that Ministers made incorrect statements to Parliament which undermined the principle of Ministerial accountability to Parliament, the Inquiry report is clear that the Ministers had, in good faith, relied on information provided by the NZDF.
- 29 There is nothing to suggest that existing oversight mechanisms for Ministers are inadequate. I note that the similar role of Inspector-General of Intelligence and Security does not include wider oversight of Ministerial decisions.

*Initial analysis of the scope, functions, powers, and form of the IGD*

- 30 The scope of the IGD will be determined as part of detailed policy development that will take place over the coming months. In the broadest terms, the IGD role could span:
- 30.1 NZDF operational activities;
  - 30.2 military intelligence;
  - 30.3 military justice; and
  - 30.4 NZDF workforce and organisational culture.
- 31 However, analysis may determine that it is more appropriate for the scope of the IGD's role to be narrowed to specific areas of military activity that would most benefit from external oversight (for example, it may not have a role in overseeing NZDF workforce and organisational culture issues).
- 32 Regardless of whether the scope of the IGD is narrow or wide, the types of functions the IGD could undertake include: review, audit/assessment, inquiry/investigatory, inspection, reporting, advisory, and quasi-judicial

activities. There may also be a role for the IGD in ensuring NZDF's compliance with international treaties such as the Convention Against Torture (CAT) and the Optional Protocol to CAT.

- 33 Powers that the IGD could have are directly related to its functions. The types of powers it could have include: the ability to undertake own motion investigations/inquiries, to require information be provided to it, to enter premises or places, to handle classified information, to preserve confidentiality of witnesses, to publicly report, to summon and examine on oath, and to report to responsible Ministers or to Parliament.
- 34 In keeping with the Public Service Commission's machinery of government guidance that 'form is based on governance of functions and powers', the organisational structure of the IGD will be considered after functions and powers in the policy development process. Independent functions and powers do not necessarily require the creation of new entities.
- 35 That said, initial analysis of organisational design choices suggests that there are certain organisational forms that the IGD is not likely to take, such as a stand-alone government department, a departmental agency within a department, a Crown agent, or an Autonomous Crown Entity.
- 36 Detailed analysis will be provided to Cabinet on all potential forms, with the main options likely to include: a stand-alone statutory body, a statutory body within an existing department or departmental agency, an Independent Crown Entity, or an Officer of Parliament. By way of comparison, the Inspector-General of Intelligence and Security is a stand-alone statutory body, independent of Government but associated with a Ministerial portfolio.
- 37 Consideration will also be given to whether the IGD's functions and powers could be incorporated into an existing entity, and/or combined with other proposals under consideration (e.g. the NZDF is currently considering a proposal to set up a body to handle and address complaints of abuse within it).
- 38 Following the establishment plan for the IGD described below, Cabinet would be due to consider policy proposals on the scope, functions, powers and form of the IGD in the second half of 2021. Legislation would be required to establish the IGD and its functions and powers.

### **Progress update on planning for the establishment of the IGD**

- 39 A Senior Officials Group has been convened (with the addition of the Ministry of Justice) and it has developed a plan for the establishment of the IGD.

#### *Timeline for establishing the IGD*

- 40 The earliest an IGD could be established (subject to policy and funding decisions, and enabling legislation being passed) is in the first half of 2023, followed by the appointments process. The timelines presented below are indicative and relatively ambitious to ensure that the oversight function can be

in place as soon as possible. The timeline is subject to the proposed legislation securing a place in the 2021 and 2022 Legislation Programmes and the timing of the legislative process itself. The plan includes the following four phases:

**40.1 Phase one – Policy development on the nature, scope, functions, powers, and form of the IGD:**

40.1.1 I expect policy proposals on the nature, functions, powers, and form of the IGD to be considered by Cabinet in August 2021 at an in-principle level. The analysis would follow the guidelines agreed by Cabinet for policy-makers to consider the Treaty of Waitangi/Tiriti o Waitangi in policy development and implementation [CO (19) 5, refers].

40.1.2 At that stage, Cabinet would be invited to consider whether there is merit in undertaking consultation given the high level of interest some stakeholders have shown in matters related to the Inquiry. Consultation could be public or more targeted (e.g. the Law Commission, media organisations, the Human Rights Commission, with Māori, academics, and service persons and veterans' organisations).

40.1.3 Should Cabinet agree to consultation, then final policy and funding proposals (if any) would be considered by Cabinet by November 2021.

**40.2 Phase two – Drafting legislation to establish the IGD and its powers and responsibilities:**

40.2.1 As anticipated by the Inquiry, it is likely that legislation will be needed to establish the role. Draft legislation would come to Cabinet for consideration <sup>s9(2)(g)(i), s9(2)(f)(iv)</sup>. This includes any changes to existing legislation that may be required to give effect to the functions and powers of the IGD.

**40.3 Phase three – Legislative process and budget decisions (if required)**

40.3.1 <sup>s9(2)(f)(iv), s9(2)(g)(i)</sup>

40.3.2 <sup>s9(2)(f)(iv), s9(2)(g)(i)</sup>

**40.4 Phase four – Implementation of the legislation and set-up of the office:** Planning for the final phase of establishment could commence

while legislation is progressing through the House. Once the legislation has been passed, the office of the IGD will be set up, including the appointments and recruitment processes. These processes will run into 2023.

*There are opportunities to consider synergies from other work underway*

- 41 Outcomes of other work underway in the defence sector may have a bearing on the shape of the IGD's role. These are:
- 41.1 The expert review group, established at the direction ERS in July 2020, is considering the NZDF's organisational structure, record keeping, and retrieval processes. This group is to report to the Minister of Defence by June 2021;
- 41.2 The NZDF is currently considering the recommendation of an internal review to consult with the Chief Ombudsman with a view to establishing a function for handling and addressing complaints of abuse within the NZDF.
- 42 The findings and conclusions of these processes may influence the scope and functions of the IGD and will be taken into account when policy proposals come to Cabinet for consideration in 2021.
- 43 There may also be opportunities to consider whether the IGD role could support the military justice system and support the civilian casualty response procedure outlined in the Minister of Defence's paper *Update on Defence Implementation of the Government Inquiry into Operation Burnham Recommendation 3: Civilian Casualties*.

#### **Ministerial and departmental responsibility for the establishment of the IGD**

- 44 Under the Inquiries Act 2013, I was the appointing Minister for the Inquiry. This role came to an end at the completion of the Inquiry and delivery of the final report.
- 45 As the focus of the IGD is the NZDF, I have discussed the lead responsibilities with the Minister of Defence. Our view is that it is appropriate that we share joint responsibility for this work. This is a similar process to the policy work for the Intelligence and Security Act 2017, which included strengthening and clarifying the Inspector-General of Intelligence and Security's oversight of the intelligence agencies. In that case, the responsible ministers were the Minister responsible for the intelligence and security agencies and the Minister for National Security and Intelligence.
- 46 We consider that, given the Secretary of Defence's statutory role as the principal civilian advisor to Government on Defence matters, the Ministry of Defence is the appropriate agency to lead the further development of the IGD role.
- 47 The Inquiry emphasised the need for the IGD to be independent, of and located outside, the NZDF. The Inquiry did not see the need for the same

degree of separation from the Ministry of Defence as it is part of the mainstream public service. I see no conflict with the Ministry of Defence undertaking the work and providing advice on the establishment of the office of the IGD.

- 48 Furthermore, the Ministry of Defence will not be working in isolation. The senior officials group will continue to provide support for the work but will operate in a steering capacity rather than as a working group. This will ensure the necessary independent perspective and cross-government input is maintained. The Ministry of Defence, while taking leadership of the work, will continue to deliver it in collaboration with relevant agencies. The Ministry of Justice and Public Services Commission have indicated that they will provide support for this work.
- 49 With Cabinet's agreement, the Minister of Defence and I will jointly provide all further updates and proposals to Cabinet for the establishment of the IGD.

### Financial Implications

- 50 There are no financial implications arising from this paper.

s9(2)(f)(iv), s9(2)(g)(i)

- 51 The establishment and operational costs of the IGD would require additional funding. Details of these costs will be provided in subsequent papers.

### Legislative Implications

- 52 There are no legislative implications arising from this paper. Policy options on the scope, functions, powers and form of the IGD will have legislative implications and these will be detailed in subsequent papers.

### Regulatory Impact Statement

- 53 There are no regulatory proposals in this paper, and therefore Cabinet's Regulatory Impact Analysis requirements do not apply. A Regulatory Impact Statement will be developed for the paper presenting policy options on the scope, function, powers, and form of the IGD role.

### Human Rights

- 54 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. Advice on the rights implications of the IGD will be provided when policy decisions are made. The intention of this project is to strengthen the protection of human rights by improving the oversight of operations that could limit those rights.

55 Military operations naturally touch upon core human rights affirmed in the New Zealand Bill of Rights Act 1990. These include the right not to be deprived of life, the right not to be subjected to cruel treatment, the right to be free from unreasonable search and seizure, and the liberty of the person. Strong accountability mechanisms are an important part of human rights protections in this field.

### Consultation

56 The Ministry of Defence, NZDF, Ministry of Justice, Public Services Commission, Ministry of Foreign Affairs and Trade, The Treasury and Department of the Prime Minister and Cabinet (National Security Group) have been consulted on this paper. The Department of the Prime Minister and Cabinet (Policy Advisory Group) have been informed.

57 The Ministry of Defence has confirmed its agreement to the transfer of responsibility for the establishment of the IGD.

### Communications

58 I do not propose to make any public announcements in relation to this paper.

### Proactive Release

59 I do not propose to proactively release the paper at this time but intend for it to be released at the same time final policy decisions are made by Cabinet in 2021.

### Recommendations

The Attorney-General recommends that the Cabinet Business Committee:

1 **note** that in July 2020, the Cabinet External Relations and Security Committee (ERS), with Power to Act [ERS-20-MIN-0025];

1.1 approved the initial Government response to the report of the Government Inquiry into Operation Burnham and related matters (the Inquiry), accepting in principle all four recommendations, including to establish by legislation an independent Inspector-General of Defence (IGD) to facilitate independent oversight of the NZDF and enhance its democratic accountability;

1.2 directed the Crown Law Office (CLO), in consultation with the Department of the Prime Minister and Cabinet (DPMC), the Public Services Commission (PSC), the Ministry of Defence, and the New Zealand Defence Force (NZDF), to undertake analysis of the nature, form, and functions of an inspector-general role, and establish a senior officials working group to develop a plan for the establishment of an independent IGD;

- 1.3 invited the Attorney-General to report back by mid-December 2020 with a progress update on planning for the establishment of an independent IGD;
- 2 **note** that this paper was originally scheduled for consideration by the Cabinet Business Committee on 9 December 2020 but was deferred due to other priorities;
- 3 **agree** that the Government's intended policy outcome for the establishment of the IGD is "An oversight function, independent of the NZDF, that will strengthen democratic accountability and civilian control of the military and increase public confidence that issues regarding the legality and propriety of its actions are able to be appropriately investigated, with the flexibility and durability to respond to the complexity of the NZDF's business now and in the future.";
- 4 **agree** that the Governments objectives the establishment of the IGD are:
- 4.1 Independent:
    - 4.1.1 The overseer has complete operational, financial, structural, and reporting independence from the NZDF;
  - 4.2 Robust:
    - 4.2.1 The overseer has appropriate powers and resources to undertake its role in an efficient and timely manner;
    - 4.2.2 The overseer's functions and powers are appropriate for the defence environment and the nature of the information it will handle;
    - 4.2.3 The overseer's functions, powers, and resources are proportionate to the complexity, size, and scale of the NZDF's business;
  - 4.3 Systems approach:
    - 4.3.1 The overseer builds upon and complements existing oversight mechanisms on defence matters and is consistent with similar oversight mechanisms in the national security and intelligence system;
  - 4.4 Transparent set-up process:
    - 4.4.1 Build public trust and confidence in the overseer through a full, open, and unclassified policy process;
- 5 **note** that the IGD is intended to oversee the NZDF and is not intended to have oversight of decisions made by other parts of the Executive branch of Government;

6 **note** that the nature, form and functions of the IGD will be determined through detailed policy analysis over the next six months;

7 **note** that the senior officials group has developed a plan for the establishment of the IGD with the following phases;

7.1 Phase one – policy development and consultation;

7.2 Phase two – drafting legislation;

7.3 Phase three – legislative process;

7.4 Phase four – implementation and establishment of the IGD;

8 s9(2)(f)(iv), s9(2)(g)(i)

9 **note** that other work relating the consideration by an external review group of the NZDF's organisational structure, record keeping, and retrieval processes, and the potential establishment of an ombudsman-type function for handling and addressing complaints of abuse within the NZDF may have a bearing on the policy options for the nature, form and functions of the IGD;

10 **note** that, given the nature of the policy work and legislative change required for the establishment of the IGD, the Minister of Defence and I are of the view that we should jointly be the responsible Ministers, with support from the Ministry of Defence;

11 **agree** that the Ministry of Defence will lead the establishment of the IGD, in consultation with DPMC, PSC, NZDF, the Ministry of Justice, and the CLO;

12 s9(2)(f)(iv), s9(2)(g)(i)

13 **invite** the Attorney-General and the Minister of Defence to report back to Cabinet by September 2021 with detailed policy proposals on the scope, functions, powers, and form of the IGD.

Authorised for lodgement

Hon David Parker

Attorney-General