

HON PEENI HENARE, MINISTER OF DEFENCE

Report of the Expert Review Group: Cabinet Documents

November 2021

This publication provides documents on Cabinet's November 2021 consideration of the *Report of the Expert Review Group* that was established to carry out a review of the New Zealand Defence Force's organisational structure and record-keeping and retrieval processes. The Expert Review Group was established in response to recommendation one of the Government Inquiry into Operation Burnham and related matters.

The pack comprises the following documents:

- the Cabinet minute *Report of the Expert Review Group Established in Response to the Operation Burnham Inquiry* [ERS-21-MIN-0036]
- the redacted Cabinet paper *Report of the Expert Review Group Established in Response to the Operation Burnham Inquiry* [ERS-21-SUB-0036]

This pack has been released on the Ministry of Defence website, available at:

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.

Information is withheld in order to protect:

- information on the timing of future proposals to Cabinet [s9(2)(f)(iv)]
- the provision of free and frank by Defence [s9(2)(g)(i)]

It is not considered that the public interest in this information outweighs the need to protect it.



Cabinet External Relations and Security 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.

Report of the Expert Review Group Established in Response to the Operation Burnham Inquiry

Portfolio **Defence**

On 26 October 2021, the Cabinet External Relations and Security Committee (ERS):

- 1 **noted** that on 28 July 2020, ERS:
 - 1.1 approved the initial government response to the report of the *Government Inquiry into Operation Burnham and Related Matters* (the Inquiry), which accepted in principle the Inquiry's four recommendations;
 - 1.2 invited the Minister of Defence, in consultation with relevant Ministers, to appoint an Expert Review Group to consider the New Zealand Defence Force's (NZDF) organisational structure, record keeping and retrieval processes;

[ERS-20-MIN-0025]
- 2 **noted** that the Minister of Defence has reviewed and accepted the report of the Expert Review Group and its nine recommendations;
- 3 **directed** Defence agencies (NZDF and Ministry of Defence) to:
 - 3.1 provide regular reports to the Minister of Defence on the implementation of the individual recommendations;
 - 3.2 provide the Minister of Defence with a full report on the implementation of the recommendations by 30 June 2023;
- 4 **noted** that in order to have sufficient time to implement these recommendations, Defence agencies will not undertake Phase 2 of the Expert Review Group work stream;
- 5 **noted** that:
 - 5.1 Defence agencies will initially fund activities from baselines;
 - 5.2 additional funding will likely be required for the implementation of some of the recommendations [REDACTED] s9(2)(f)(iv)

Janine Harvey
Committee Secretary

Present: (see over)

Present:

Rt Hon Jacinda Ardern (Chair)
Hon Grant Robertson
Hon Kelvin Davis
Hon Andrew Little
Hon David Parker
Hon Nanaia Mahuta
Hon Poto Williams
Hon Kris Faafoi
Hon Peeni Henare

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet
Officials Committee for ERS

Released by the Minister of Defence

Office of the Minister of Defence

Chair, External Relations and Security Committee

Report of the Expert Review Group established in response to the Operation Burnham Inquiry

Proposal

- 1 To advise on the outcomes of the Expert Review Group Report on Phase 1 of the work stream as directed by Cabinet in response to the Government Inquiry into Operation Burnham and related matters (the Inquiry), and advise on next steps for implementation.
- 2 This paper sits alongside a companion paper from the Minister of Defence on the scope, functions, powers, and form of an independent Inspector-General of Defence (Recommendation 2 of the Inquiry).

Relation to government priorities

- 3 The Report and its recommendations support the key constitutional principles of democratic oversight of the military and ministerial accountability to Parliament. The outcomes further support Government priorities as follows:
 - 3.1 *Objective 1: To keep New Zealanders safe from COVID-19:* The New Zealand Defence Force (NZDF) is making a significant contribution to the all of Government response to COVID-19 through Operation Protect, as well as supporting our Pacific Island neighbours. While the recommendations in the Report are focused on complex military operations which typically take place overseas, strengthening the mechanisms that provide for better reporting and oversight of defence activities will also support the priorities of delivering transparent government and having an international reputation we can be proud of, while keeping New Zealanders safe and secure.
 - 3.2 *Objective 3: Laying the foundations for a better future:* Implementing the recommendations of the Expert Review Group will better enable Defence to support New Zealand's interests over the longer term. The stronger foundation from which to deliver Defence outputs will also contribute to broader outcomes related to organisation resilience, process and decision transparency, advice assurance and associated checks and balances.

Executive Summary

- 4 In July 2020 Cabinet directed that that the Minister of Defence, in consultation with the Prime Minister, Deputy Prime Minister, Attorney-General and Minister of State Services “*appoint an expert review group to consider NZDF’s organisational structure, record keeping and retrieval purposes*” (Recommendation 1 of the Inquiry).

- 5 Phase 1 of this work stream is now complete. I have accepted the Report from the Expert Review Group, and its nine associated recommendations.
- 6 Defence will update me regularly on the implementation progress of individual recommendations. I will receive a full report on implementation by June 2023.
- 7 Due to the increased scope and breadth of matters considered under Phase 1, and to ensure that the Defence agencies have an appropriate length of time to implement the resulting recommendations, I am not seeking Cabinet approval to commence Phase 2.

Background

Establishment and terms of reference

- 8 On 5 October 2020, Cabinet confirmed the Minister of Defence's intended appointees to the Expert Review Group, including two international advisers. The terms of these appointments expired on 5 October 2021.
- 9 Cabinet also approved the terms of reference for the Expert Review Group which sets out two separate phases of work [CAB-20-MIN-0458 refers]. Phase 1 directly addressed the matters contained within Recommendation 1 of the Inquiry report. The terms of reference required the group to assess whether the NZDF's organisational structure and record-keeping and retrieval processes are in accordance with international best practice, and whether they are sufficient to remove or reduce the possibility of organisational and administrative failings of the type identified in the Inquiry report occurring in the future¹.
- 10 Cabinet directed that the Expert Review Group submit a Report on Phase 1. While this was initially intended to be submitted to Cabinet External Relations and Security Committee (ERS) by 30 June 2021 [CAB-20-MIN-0458 refers], the scope of the review became broader than originally intended and in some areas, assessed issues originally envisaged as part of Phase 2. An extension until September 2021 was sought and agreed between the Chair, Mrs Lyn Provost, and myself. The Prime Minister, the Attorney-General and ERS were informed.

Previous progress updates

- 11 In January 2021, Cabinet Business Committee considered progress updates on all four work streams resulting from the Inquiry [CBC-21-MIN-0007 refers], including on the establishment of the Expert Review Group.
- 12 The Chair of the Expert Review Group regularly provided me with progress updates throughout the Review.

Overview of key milestones in the review process

- 13 The Expert Review Group's approach included fortnightly meetings to consider written material and presentations from subject matter experts within the NZDF and Ministry of Defence on the topics in the terms of reference. The review

¹ Phase 2 refers to the potential work stream in which the Expert Review Group will consider whether the current form, function and structure of the NZDF is fit for purpose within the current and future operational environment.

considered a range of international perspectives and members conducted 47 interviews with individuals from the NZDF, Ministry and wider public sector whose current or former role and/or experience meant they were well-placed to inform the work. Some of those interviewed also met and presented to the full group. The Chair and a member spent a day at Papakura Military Camp with New Zealand Special Air Service (NZSAS) personnel from all ranks. The Chair met regularly with the Chief of Defence Force and Secretary of Defence, who were also interviewed.

- 14 A natural justice consultation process was undertaken on the draft Report with NZDF and Ministry personnel, and senior officials from the Ministry of Foreign Affairs and Trade, Department of the Prime Minister and Cabinet, Te Kawa Mataaho, Crown Law, and the Department of Internal Affairs. International defence partners were also consulted on the information they had provided where this was included in the Report.

The Expert Review Group's key findings and recommendations

- 15 Overall, the Expert Review Group found that changes implemented by the NZDF and Ministry of Defence since Operation Burnham in August 2010 are encouraging, and those changes have been reflected in the Report. However, it is their view, which I accept, that more work needs to be done to reduce the likelihood of repeating the failings identified by the Inquiry.
- 16 The Report was informed by three interlinked and overarching themes of social licence, democratic oversight of the military and appropriate transparency of military activities. Strengthening Defence systems and processes that support advice, oversight, and transparency will be central to enhancing my trust and confidence in Defence to deliver complex operations with appropriate democratic oversight.
- 17 The Report has nine recommendations across four dimensions:
- 17.1 Strengthen integration between the NZDF and Ministry of Defence throughout the deployment lifecycle and at all levels of both organisations;
 - 17.2 Review the suitability of particular elements of Headquarters NZDF for the future;
 - 17.3 Integrate the NZSAS into the wider NZDF and national security sector, including through leadership development; and
 - 17.4 Improve NZDF's information management systems and practices and the flow of defence knowledge to the Minister of Defence.
- 18 A table containing all recommendations with comment from Defence, including indicative resources required, agency leads and timeframes is at [Appendix 1](#).
- 19 A key focus for the Expert Review Group was to produce a report that is fair, balanced, and workable for the Defence agencies to implement. I consider the Expert Review Group has done this, and I have accepted the Report and its recommendations.

Implementation of the Expert Review Group's recommendations

- 20 Officials from the NZDF and Ministry of Defence have completed an initial high-level assessment as to implementation of the Expert Review Group's recommendations, reflected in the table at Appendix 1. I note that all of the recommendations will require changes across Defence, which will take time to embed.
- 21 Defence intends to approach their implementation of the recommendations as an integrated programme of work, which is consistent with the Expert Review Group's advice that the recommendations are mutually reinforcing. The Vice Chief of Defence Force and Deputy Secretary Policy and Planning in the Ministry of Defence will be responsible for steering implementation on behalf of the Chief Executives.
- 22 Some recommendations can be delivered through programmes already underway or ready to commence, and via existing personnel management functions. For example, an Information Management Programme Business Case will be ready for Cabinet to consider by the end of 2021. Other recommendations require new work. Developing new integrated strategic and military policy functions to support complex operations and a review of current NZDF spans of control will require Defence to develop and analyse options. Any change proposals that impact existing civilian roles will also require Defence to meet its obligations to consult with affected staff prior to implementation.
- 23 The Expert Review Group suggested that, to provide assurance to Ministers, a full report on implementation of recommendations will be provided to me by June 2023. Additionally, I will be requesting that the Secretary of Defence and Chief of Defence Force provide me with regular interim reports on the implementation process.
- 24 In establishing implementation timelines I am conscious of the considerable impact the COVID-19 pandemic continues to have on the NZDF's capacity and training, and the challenge associated with recovering from that and regenerating to pre-COVID levels. In addition, Defence is in the middle of a generational replacement of major capabilities (particularly aircraft and ships). Given this substantial change programme, and noting the Expert Review Group recognised progress made since Operation Burnham, it is important that the further organisational changes recommended by the Expert Review Group are executed in a considered and methodical manner, and resourced accordingly for success.

Interdependencies

- 25 This paper sits alongside a companion paper on the scope, functions, powers and form of an independent Inspector-General of Defence (Recommendation 2 of the Inquiry). The Inspector-General of Defence work stream considers the findings of the Report, particularly in relation to the need for strengthened integration between the NZDF and Ministry of Defence to ensure meaningful participation by both agencies in decision-making before, during, and after an operational activity.

26 s9(2)(f)(iv)

- 27 The Defence Force's planned Information Management Programme (Business Case will be ready for Cabinet consideration by the end of 2021) will provide better access to information across all of the NZDF corporate systems. This will enable personnel to enact more robust processes to receive, sort, store, retrieve and dispose of information, in line with the Report's recommendations.

Phase 2

- 28 Phase 2 refers to the potential work stream in which the Expert Review Group could consider whether the current form, function and structure of the NZDF is fit for purpose within the current and future operational environment, following the completion and consideration of Phase 1.
- 29 Phase 1 was of greater scope and breadth than initially anticipated, and considered matters originally envisaged for Phase 2. With this consideration, and in order to ensure that the Defence agencies have an appropriate length of time to implement the recommendations resulting from this Report, I am not seeking Cabinet approval to commence Phase 2.

Risks

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s9(2)(g)(i)

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- 32 The emergence of a complex operation before the Expert Review Group recommendations are implemented could risk repeating the same issues outlined in the Report, and could put pressure on available resources for the implementation process.

33

s9(2)(g)(i)

Financial Implications

- 34 Both the Ministry of Defence and the NZDF will require additional temporary dedicated staff resources to scope and guide the changes required to address the Report's recommendations. Both organisations will need to fund this from within baselines to 30 June 2023.

35 Permanent additional civilian and military personnel are likely to be needed to implement the changes at steady state, subject to options selected. s9(2)(f)(iv)

Legislative Implications

36 The Report's recommendations have no immediate legislative implications. The proposed integrated arrangements between the NZDF and Ministry are not envisaged to require changes to the Defence Act. The Report notes, however, that the Defence Act is over 30 years old and may need a refresh in the medium term. It encourages making Vice Chief of Defence Force the statutory deputy of Chief of Defence Force as part of any refresh to the Act.

Regulatory, Climate, Population and Human Rights Implications

37 There are no regulatory, climate, population or human rights implications.

Consultation

38 I have consulted this paper with my Ministerial and caucus colleagues. The paper was jointly produced by the Ministry of Defence and the New Zealand Defence Force. The Ministry of Foreign Affairs and Trade, Crown Law Office, Department of the Prime Minister and Cabinet, The Treasury and Te Kawa Mataaho Public Service Commission have been consulted.

Communications

39 I intend to release a media statement announcing the publication of the Report shortly after its consideration by Cabinet. The Report will be published on the Beehive and agency websites.

Proactive Release

40 This paper will be proactively released in conjunction with the published Report.

Recommendations

The Minister of Defence recommends that the Committee:

- 1 **note** that I have reviewed and accepted the Expert Review Group's Report and its nine recommendations;
- 2 **note** that Defence agencies will provide me with regular reports on implementation of individual recommendations;
- 3 **note** that I will be provided with a full report on the implementation of recommendations by 30 June 2023;
- 4 **note** that in order to have sufficient time to implement these recommendations, Defence agencies will not undertake Phase 2 of the Expert Review Group work stream; and

5 **note** that both organisations will initially fund activities from baselines, but additional funding will likely be required for implementation of some recommendations [REDACTED] s9(2)(f)(iv)

Authorised for lodgement

Hon Peeni Henare
Minister of Defence

Released by the Minister of Defence

APPENDIX 1: SUMMARY OF REPORT RECOMMENDATIONS AND DEFENCE COMMENT

PART ONE: POLICY AND MILITARY INTEGRATION					
Recommendation	Sub-recommendation	Intended Approach	Timeline	Agency Lead/Resources	Linked Rec
<p>Recommendation 1: We recommend the Minister of Defence direct the Secretary of Defence and Chief of Defence Force to strengthen integration between the NZDF and Ministry of Defence throughout the deployment lifecycle and at all levels of both organisations.</p>			s9(2)(f)(iv), s9(2)(g)(i)		
	<p>As part of this direction, the Chief of Defence Force's terms of reference and the Secretary of Defence's performance expectations should state that the statutory term "major matters of defence policy" includes complex military operations that impact on national or international security.</p>				
<p>Recommendation 2: We recommend the NZDF and Ministry of Defence strengthen integration throughout the deployment lifecycle and at all levels of both organisations. In particular, we recommend:</p>	<p>2.1 the Vice Chief of Defence Force and Deputy Secretary Policy and Planning, in consultation with other national security agencies, develop and document an integrated deployment lifecycle with clear accountabilities and participation rights for NZDF and the Ministry of Defence across the whole deployment.</p>		s9(2)(f)(iv), s9(2)(g)(i)		
	<p>2.2 the Secretary of Defence and Chief of Defence Force, together with the Ministry of Foreign Affairs and Trade and the Department of the Prime Minister and Cabinet, institutionalise the use of senior reference groups for complex and extended deployments to strengthen interagency cooperation and knowledge sharing across relevant government agencies throughout the deployment lifecycle.</p>				2.1
	<p>2.3 the Secretary of Defence and Chief of Defence Force: work together to ensure measures of success are included in advice to Cabinet on the mandate for complex operational deployments; put in place post-deployment reviews to evaluate performance against these measures.</p>				2.1

Released to the Minister of Defence

Recommendation	Sub-recommendation	Intended Approach	Timeline	Agency Lead/Resources	Linked Rec
Recommendation 3: We recommend the Secretary of Defence and Chief of Defence Force work together to develop the capability required to embed the integrated deployment lifecycle. In particular, we recommend the:	3.1 Secretary of Defence work with the Chief of Defence Force to build a policy adviser (POLAD) capability, including agreeing clear accountabilities, reporting lines and required skill sets. Other national security agencies could be involved in growing this capability.		s9(2)(f)(iv), s9(2)(g)(i)		2.1
	3.2 Chief of Defence Force mandate exposure to the broader policy context as part of a structured training and development programme for NZDF future leaders, including through secondments to other government agencies, the Office of the Minister of Defence and the Office of Chief of Defence Force.				3.3
	3.3 Commander Joint Forces New Zealand, NZDF Strategic Commitments and Engagements Branch and Ministry of Defence identify opportunities to test the effectiveness of integrated working arrangements, including the POLAD function.				2.1 3.1

PART TWO: HEADQUARTERS NEW ZEALAND DEFENCE FORCE					
Recommendation	Sub-recommendation	Intended Approach	Timeline	Agency Lead/Resources	Linked Rec
Recommendation 4: We recommend the Chief of Defence Force, in consultation with the Secretary of Defence, review the suitability of particular elements of Headquarters NZDF for the future.	4.1 establish with the Secretary of Defence an integrated strategic military and policy function that provides for the end-to-end strategic management of operations.		s9(2)(f)(iv), s9(2)(g)(i)		3
	4.2 reduce the span of control of the Office of Chief of Defence Force and prioritise its core functions, including those related to the Chief of Defence Force's operational and strategic responsibilities and external accountabilities for democratic oversight.				4.2
	4.3 direct that <i>NZDF Public Affairs Strategy 25</i> be revised to reflect key accountability relationships and position NZDF communications to meet contemporary accountability and transparency expectations.				2.1 4.1

PART THREE: NEW ZEALAND'S SPECIAL FORCES

Recommendation	Sub-recommendation	Intended Approach	Timeline	Agency Lead/Resources	Linked Rec
Recommendation 5: We recommend the Chief of Defence Force ensure that steps continue to be taken to integrate the New Zealand Special Air Service (NZSAS) into the wider NZDF and national security sector. In particular, we recommend the Chief of Defence Force:	5.1 integrate one or more Special Operations staff officer roles into the strategic military and policy function (see Recommendation 4) to enable appropriate transparency, oversight, assurance and strategic awareness of Special Operations.		s9(2)(f)(iv), s9(2)(g)(i)		2.1
	5.2 facilitate, in consultation with the Secretary of Defence, a broader discussion with other New Zealand defence, security and foreign affairs agencies about the role of the NZSAS in modern warfare and national security and its contribution to government priorities now and in the future.				3.2
	5.3 take a strategic and proactive approach to developing NZSAS leadership capability for the future and regularly monitor the leadership climate created by NZSAS leaders; in particular, by providing current commanders and high-potential personnel with opportunities to develop political acumen and a better understanding of the wider government authorising environment, including policy advice processes, the importance of democratic oversight and how to develop networks across the national security sector.				4.1
					5.3
					3.1
					3.2
					3.3

PART FOUR: INFORMATION MANAGEMENT AND FLOW OF DEFENCE KNOWLEDGE

Recommendation	Sub-recommendation	Intended Approach	Timeline	Agency Lead/Resources	Linked Rec
Recommendation 6: We recommend the Chief of Defence Force improve the management of stored information by:	6.1 defining and identifying NZDF's high-interest and high-value information and the records needed to support defence interests across all systems and locations (including legacy information).		s9(2)(f)(iv), s9(2)(g)(i)		
	6.2 prioritising the appraisal, declassification and disposal (as appropriate) of high-interest and high-value information.				
Recommendation 7: [to] reconsider the balance of leadership, accountabilities and responsibilities between the Chief Information Officer and Chief Data Officer to ensure they properly reflect the importance of information and knowledge.					
Recommendation 8: [that] Vice Chief of Defence Force be given overall accountability and responsibility for the end-to-end stewardship of the flow and fidelity of operational knowledge of public and political interest across the NZDF.					
Recommendation 9: [that] Commander Joint Forces New Zealand identify opportunities to test information management systems and practices and knowledge flow, focusing on scenarios requiring the transfer of operational knowledge that is likely to be of public and political interest across multiple classifications and locations.					
					3.3