

Terms of Reference

Government Inquiry into Operation Burnham: Formation of the Expert Review Group and review of the New Zealand Defence Force's organisational structure and record-keeping and retrieval processes

Background

1. On 31 July 2020, the Attorney-General released the Report of the Government Inquiry into Operation Burnham and related matters (the Report). The Inquiry made four recommendations, which the Government accepted in principle.
2. Recommendation 1 of the Report provides that the Minister of Defence take steps to satisfy him or herself that the New Zealand Defence Force's (NZDF) (a) organisational structure and (b) record-keeping and retrieval processes are in accordance with international best practice, and are sufficient to remove or reduce the possibility of organisational and administrative failings of the type identified in the Report. The Inquiry recommended that an expert review group (comprising people from within and outside the NZDF, including overseas military personnel with relevant expertise) be appointed to enable the Minister to do so and to ensure public confidence in the outcome.
3. The Minister of Defence has also identified an opportunity to look at the broader organisational, systemic and cultural issues outlined in the Report, to test whether the NZDF is fit for purpose to meet the strategic challenges it is facing and will face in the coming years.
4. These strategic challenges include the NZDF's role in the all-of-Government response to COVID-19 and more generally in providing aid to the civil power; increasing national security demands; utilisation of new capabilities; an increasingly complex and dynamic international security environment; economic disruption; and rapid technological change.

Purpose

5. To this end, the following two separate tranches of work are envisioned:
 - 5.1. **Phase 1 – Addressing Recommendation 1 of the Report:** The Expert Review Group will 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 Report occurring in the future.
 - 5.2. **Phase 2 – Positioning Defence for the future:** After Phase 1 is complete, the Minister of Defence will seek Cabinet agreement on Phase 2, which would look at broader New Zealand Defence Force (NZDF) organisational matters. Should a Phase 2 be agreed by Cabinet, the Expert Review Group would consider whether the current form, function and structure of the NZDF is fit for purpose for the current and future operational environment.

Scope of Expert Review Group

6. The overarching consideration to guide the scope of the work of the Expert Review Group is that the Minister of Defence must be satisfied that they will receive full, accurate and timely reporting from the NZDF in the future.

7. Having regard to its purpose, the Expert Review Group will assess and report on the following:

Phase 1 – Addressing recommendation 1 of the Report

(a) Organisational structure

8. The Expert Review Group is to consider whether the current structure of the NZDF is best suited to remove or reduce the possibility of the failings identified in the Report reoccurring, including by consideration of:
 - 8.1. Whether the establishment of the Special Operations Component Command has delivered the most effective command, control and accountability, when considering the location of Special Operations Forces elements within the NZDF organisational structure;
 - 8.2. Relevant aspects of Headquarters NZDF functions, specifically:
 - 8.2.1. the structure of the Office of the CDF (OCDF), and whether this is optimised to fulfil the Chief of Defence Force's (CDF) responsibilities to Ministers in relation to operational deployments;
 - 8.2.2. how information regarding operational deployments is provided to the OCDF;
 - 8.2.3. how information regarding operational deployments is shared between the CDF and the Vice Chief of Defence Force;
 - 8.2.4. how information about operational deployments is communicated to Defence Public Affairs; and
 - 8.2.5. how formal NZDF communications products about operational deployments are drafted, approved and promulgated.
 - 8.3. The nature of the working relationship between Headquarters NZDF, Headquarters Joint Forces New Zealand and the Ministry of Defence in regards to operational deployments, including the levels of engagement and information sharing.
 - 8.4. The extent to which the Defence Act 1990 does, or should, reflect a role for the Ministry of Defence, working alongside the NZDF, in advising the Minister of Defence and Cabinet on operational deployments;
 - 8.5. How military lawyers are kept informed on the details of operational deployments, including in-theatre and at headquarters elements in New Zealand; and
 - 8.6. How the compartmentalisation of certain operational deployments is determined, and what policies and processes are applied to such deployments.

(b) Record-keeping and retrieval processes

9. The Expert Review Group is to determine a benchmark or measure of international best practice in relation to record-keeping and retrieval processes, and assess the likely cost-benefit analysis to the NZDF of reaching that benchmark or measure and identify steps to implement that benchmark or measure. In determining that benchmark or measure, the Expert Review Group should consider the following factors:
 - 9.1. The current state of NZDF-wide information management systems in terms of both ICT and policies, processes and procedures;
 - 9.2. The current state of information management resourcing, including professional information management staff and skill sets;

- 9.3. The current state of information management systems, processes and resourcing in theatre on operational deployments;
- 9.4. The progress of any information management-related change programmes that are already underway; and
- 9.5. Whether there is a systematic classification review programme within the NZDF and if so, how is it being implemented;

(c) *Any other matter the Expert Review Group considers material to the scope of the Terms of Reference*

Phase 2 - Positioning Defence for the future

10. The membership of the Expert Review Group and the Terms of Reference will be reviewed after the report on Phase 1 has been presented to the Minister of Defence.
11. The findings and insights from Phase 1 would underpin the final form of, and approach, to Phase 2. The Expert Review Group will develop a Phase 2 project plan and timeline for the Minister of Defence to consider.
12. The Minister of Defence will seek Cabinet agreement on Phase 2, including any revisions to the Terms of Reference and membership of the Expert Review Group.
13. Should Phase 2 be agreed by Cabinet, at this stage it is expected that the Expert Review Group would consider whether the current form, function and structure of the NZDF is fit for purpose for the current and future operational environment, particularly in view of the strategic challenges the NZDF will face in the coming years.
14. The findings or report of the Expert Review Group on Phase 2 would contribute to the Defence White Paper process, should Cabinet decide to commission a White Paper. The Defence Assessment that is currently underway will provide a comprehensive review of New Zealand's strategic environment and the implications for defence policy settings and NZDF roles and tasks to provide a basis for future analysis and decisions on force structure.
15. Phase 2 should explore previous reviews that considered Defence organisational arrangements. The Expert Review Group should examine why certain recommendations have been implemented and whether others that have not been, should be implemented.

Meeting Frequency

16. The Expert Review Group will have its first meeting no later than two weeks from the date of appointment.
17. The Expert Review Group will meet on a regular basis, at a frequency agreed to between the Chair and the Minister of Defence, and sufficient to make timely progress on their work programme.

Regular Reporting

18. The Expert Review Group is to report back to the Minister of Defence by early November 2020 with a progress update on initial planning, and thereafter on a regular basis at a frequency agreed to between the Chair and the Minister of Defence.
19. The Expert Review Group will provide the Minister of Defence with a progress report prepared in time for presentation to Cabinet by mid-December 2020, with details as to project plans, timelines and monitoring.
20. The Minister of Defence may choose to share subsequent updates with ministerial colleagues and/or Cabinet.

Timeframe for completion

Phase 1

21. The Expert Review Group will complete all work on Phase 1 and present a report on their findings to the Minister of Defence by June 2021.

Phase 2

22. Should Cabinet agree to Phase 2, at this stage it is assessed that the Expert Review Group would need to present a report on their findings to the Minister of Defence by the end of 2021, in order to contribute to the Defence White Paper process. However, this timeframe will be assessed prior to Cabinet agreement being sought on Phase 2.

Membership

23. The Expert Review Group is appointed by the Minister of Defence. It comprises persons who possess the necessary skills/expertise/experience to fulfil the positions of:

Chairperson
External adviser
Department of the Prime Minister and Cabinet (DPMC) senior official
Department of Internal Affairs senior official (information governance expertise)
Ministry of Defence senior official
NZDF senior military officer

24. The Expert Review Group will be supported by two international advisers:

Senior civilian public official (serving or retired)
Senior military officer (serving or retired)

25. The Expert Review Group may choose to seek input from the academic community to inform its work. It may also seek expert advice on any matter within the scope of the Terms of Reference.

Review of membership and Terms of Reference

26. The Terms of Reference and membership of the Expert Review Group will be reviewed after the Phase 1 report has been considered by the Minister of Defence. Cabinet agreement will be sought on Phase 2, including any revisions to the Terms of Reference and membership of the Expert Review Group. Should Cabinet agree to Phase 2, it would be desirable to retain some continuity of membership.

Resourcing Requirements

27. The Expert Review Group is classified as a Group 4, Level 1 body under the Cabinet Fees Framework. The fee for the Chair is NZD1,150 per day, and the fee for the external member and international advisers is NZD865 per day.
28. The Ministry of Defence will provide secretariat and research support to the Expert Review Group.

Handling of classified information

29. The Chair, after receiving advice from the Ministry of Defence and the NZDF, will seek agreement from the Minister of Defence to an appropriate process and settings for the handling of classified information that may be required to be accessed, distributed and discussed by the Group.
30. The agreed process and settings for the handling of classified information will be included in the progress report prepared for the Minister of Defence in time for presentation to Cabinet by mid-December 2020.

Official Information Act 1982

31. All information held and generated by the Expert Review Group will be official information for the purpose of the Official Information Act 1982 (the Act) unless the Act stipulates otherwise.

Approved by Cabinet on 5 October 2020