

HON PEENI HENARE, MINISTER OF DEFENCE

Update on Expert Review Group

March 2021

This publication provides documents relating to a submission to the Minister of Defence in December 2020. The submission updates the Minister on the progress 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 established in response to recommendation 1 of the Government Inquiry into Operation Burnham and related matters.

The pack comprises the following documents:

- the December 2020 submission to the Minister of Defence
- annex A: meeting briefing for the Minister's meeting with the Expert Review Group chair
- annex B: biographies of members of the Expert Review Group and international advisers (details of the biographies have been removed to protect the personal information of the members).

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:

- national security information and information that would impact the international relations of the Government of New Zealand [s6(a)]
- the privacy of an individual [s9(2)(a)]
- information on the timing of future proposals to Cabinet [s9(2)(f)(iv)]

Where information is withheld pursuant to section 9(2), it is not considered that the public interest in the public interest in this information outweighs the need to protect it.



MoD ref: 125-2020

November 2020

Minister of Defence

UPDATE ON EXPERT REVIEW GROUP

Purpose

1. This briefing provides you with an update on the work of the Expert Review Group (ERG) that was established to carry out a review of the New Zealand Defence Force's (NZDF) organisational structure and record-keeping and retrieval processes.
2. You are scheduled to meet with the Chair of the ERG, Mrs Lyn Provost, at 4:15 – 4:45pm on 30 November. A meeting brief is attached as **Annex A**. Biographies for Lyn and each of the ERG members and international advisers are attached as **Annex B**.

Background

3. The Government Inquiry into Operation Burnham and related matters (the Inquiry) reported back to the Attorney-General on 17 July and on 31 July the Inquiry's report was publicly released. In response to the Inquiry's first recommendation, the Minister of Defence was invited, in consultation with the Prime Minister, Deputy Prime Minister, Attorney-General and Minister of State Services, to appoint an expert review group to consider the NZDF's organisational structure, record-keeping and retrieval processes.
4. On 5 October, Cabinet agreed to the appointment of the members of the ERG. Cabinet also approved the Terms of Reference (attached as **Annex C**) for the two phases of the review [CAB-20-MIN-0458 refers]. Phase 1 will address the Inquiry's first recommendation and the final report is expected to be provided to you by June 2021.
5. The membership of the ERG consists of the Chair, Lyn Provost (former Controller and Auditor-General, former Deputy Commissioner of New Zealand Police and former Acting Chief Archivist, Archives New Zealand) and members:
 - 5.1 Simon Murdoch, former Secretary of Foreign Affairs and Trade and former Chief Executive of the Department of the Prime Minister and Cabinet;
 - 5.2 Tony Lynch, Deputy Chief Executive of the Department of the Prime Minister and Cabinet and former Deputy Secretary of Defence;
 - 5.3 Richard Foy, Department of Internal Affairs and former Chief Archivist (2017 – 2020), Archives New Zealand;
 - 5.4 Carol Douglass, Deputy Secretary Governance, People and Executive Services, Ministry of Defence; and
 - 5.5 Brigadier Hugh McAslan, New Zealand Defence Force.

6. The ERG is also supported by two international advisers. Dennis Richardson, former Secretary of Defence and former Secretary of Foreign Affairs and Trade (Australia), is the international civilian adviser. Air Marshal (retired) Philip Osborn (Royal Air Force, United Kingdom), former Chief of Defence Intelligence, is the international military adviser. Due to travel restrictions as a result of COVID-19, the international advisers are contributing virtually.
7. The Ministry of Defence is providing the Secretariat for the ERG, and is supported by officials from the NZDF. Operating costs are being funded from within Ministry of Defence baseline funding from the Audit and Assessment appropriation. As a result, the Ministry's Audit and Assessment work programme for financial year 2021 will entirely comprise the work of the ERG.

Progress so far

8. The ERG met for the first time on 23 October and were briefed by the Inquiry authors Sir Terence Arnold and Sir Geoffrey Palmer. The ERG discussed the Terms of Reference, the process for interviews and how they would work as a group. This included the frequency of meetings and agreement on a forward programme of future meetings at which specific parts of the Terms of Reference will be discussed. The international advisers provided a valuable external perspective.
9. The Secretariat collates background reading for each meeting. In addition to the interviews, NZDF personnel are being asked to brief the ERG on structures, systems and processes within the NZDF.
10. The next meeting of the ERG is scheduled for 27 November and will discuss at a high-level the command and control arrangements of the New Zealand Special Air Service and information management provisions of the Terms of Reference. Subsequent meetings will discuss the establishment of the Special Operations Command Component; public affairs communication processes; the involvement of military lawyers; compartmentalisation of operations; the structure of the Office of Chief of Defence Force; working relationships between Headquarters NZDF, Headquarters Joint Forces New Zealand and the Ministry of Defence.
11. The first interviews of relevant persons by members of the ERG began on 20 November. Around 40-50 interviews are scheduled to be completed by the end of February 2021. People to be interviewed include those who were in a relevant role at the time of Operation Burnham; those who had their role or area specifically mentioned in the Inquiry's report or the ERG's Terms of Reference; or those who have a role or experience relevant to the work of the ERG. The information provided by interviewees will directly feed into the ERG's discussions, analysis, and subsequent report.
12. Information will be sought from partner countries [redacted] s6(a) [redacted] to provide comparative information for the ERG's work.
13. The intention is to have the draft report finalised by s9(2)(f)(iv) for you to present to Ministers by June 2021.

Transparency

14. The Terms of Reference document is publicly available on the Ministry's website. Your office will shortly receive the paper that went directly to Cabinet on the establishment of the ERG for proactive release [CAB-20-SUB-0458 refers].
15. It is proposed that this submission also be proactively released on the Ministry's website at an appropriate time to be agreed with your office. The ERG Chair has been consulted and is agreeable to this.

Next steps

16. You are scheduled to meet with Mrs Provost on 30 November where she will provide an overview of the ERG's work to date, including the intended approach to the overall preparation of the report.
17. On 28 July ERS set out report back requirements for all four recommendations of the Inquiry by mid-December 2020 [ERS-20-MIN-0025 refers]. The Minister of Defence was invited to report back with a progress update from the ERG and on the mechanism that has been put in place for the handling of reports of civilian casualties. It is proposed that these updates are provided to Cabinet Business Committee (CBC) on 9 December.
18. You will have received a standalone Cabinet paper detailing the Defence Force Order that has been put in place in respect of reports of civilian casualties. Crown Law have drafted a Cabinet paper that the Attorney-General will take to CBC with an update on planning for the establishment of an independent Inspector-General of Defence that you will receive for consultation in due course.
19. In addition to those Cabinet papers, a Cabinet paper has been jointly prepared by the Ministry of Defence, the Ministry of Foreign Affairs and Trade and Crown Law that incorporates a short overview of the work underway on recommendations 2 and 3, and provides an update on the work underway in respect of recommendations 1 and 4. It is expected that you will receive this paper for your consideration by 26 November.

Consultation

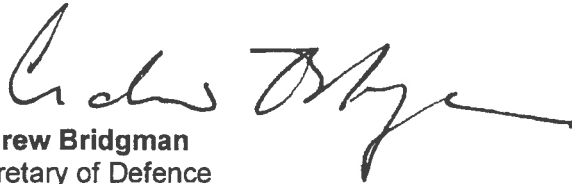
20. The Chair of the ERG and the NZDF have been consulted on this submission.

Recommendations

21. It is recommended that you:
 - a. **note** that the ERG has commenced meetings and interviews as part of its consideration of the substantive matters contained within the Terms of Reference for the review;
 - b. **note** that on 28 July ERS invited the Minister of Defence to report back by mid-December with a progress update from the ERG, with details as to project plans, timelines and monitoring, and on the mechanism that has been put in place for the handling of reports of civilian casualties;
 - c. **note** that on 26 November you will receive a draft Cabinet paper that provides an update against the four recommendations of the Inquiry. This will include an update on the ERG and the mechanism that has been put in place for handling of reports of civilian casualties; and

d. **agree** that this submission be proactively released on the Ministry's website at an appropriate time to be agreed with your office.

Yes / No



Andrew Bridgman
Secretary of Defence
Ministry of Defence
Phone: [REDACTED] s9(2)(a)

Annexes:

- A: Meeting brief for meeting with Lyn Provost on 30 November
- B: Biographies of members of the ERG and international advisers
- C: Terms of Reference for the ERG's review of the NZDF's organisational structure and record-keeping and retrieval processes

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Annex A: Meeting brief

Meeting with Mrs Lyn Provost – Chair, Expert Review Group

Purpose of meeting

Lyn will brief you on the progress the Expert Review Group (ERG) has made so far.

Suggested talking points

Introduction

- How do you think everyone (members and the two international advisers) has settled into the Expert Review Group so far?
- I understand the Expert Review Group met with the former members of the Inquiry, Sir Terence Arnold and Sir Geoffrey Palmer, on 23 October. When I was briefed on the outcome of the Operation Burnham Inquiry by Defence officials I heard that this was a useful discussion – what was your perspective Lyn?

Update on progress made by the ERG

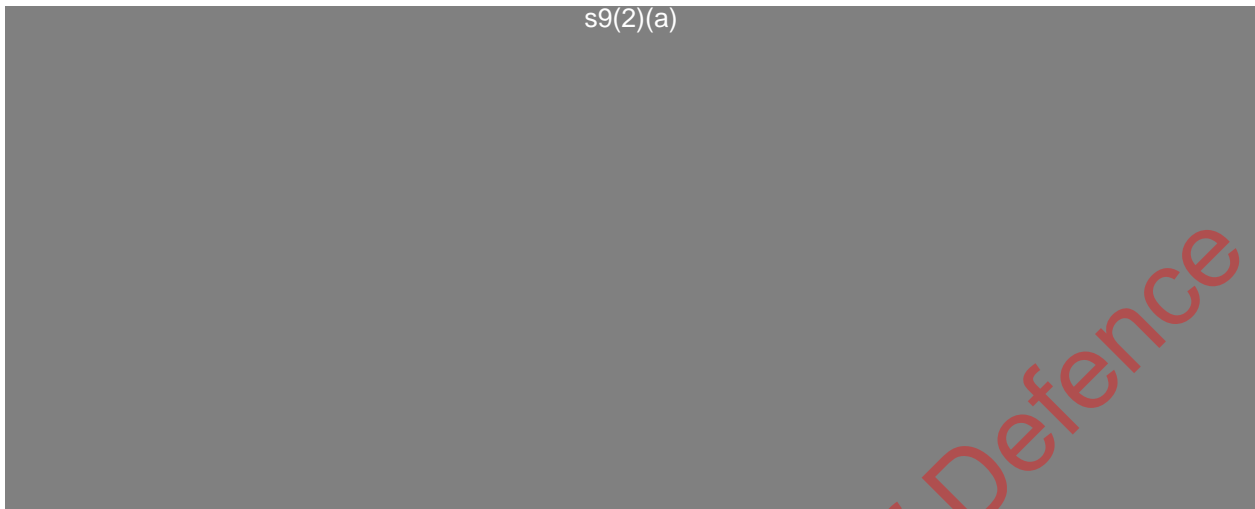
- How is the ERG progressing its work? I understand there is a forward programme of meetings of the Expert Review Group and that interviews of relevant persons are taking place.
- What do you expect the report of the Expert Review Group on Phase 1 to look like? When can I expect to be consulted on the draft report?
- [*Propose how and at what frequency you intend to receive updates from the Expert Review Group as to progress made post-December 2020*]

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Annex B: Biographies

Lyn Provost, CNZM

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Simon Murdoch, CNZM

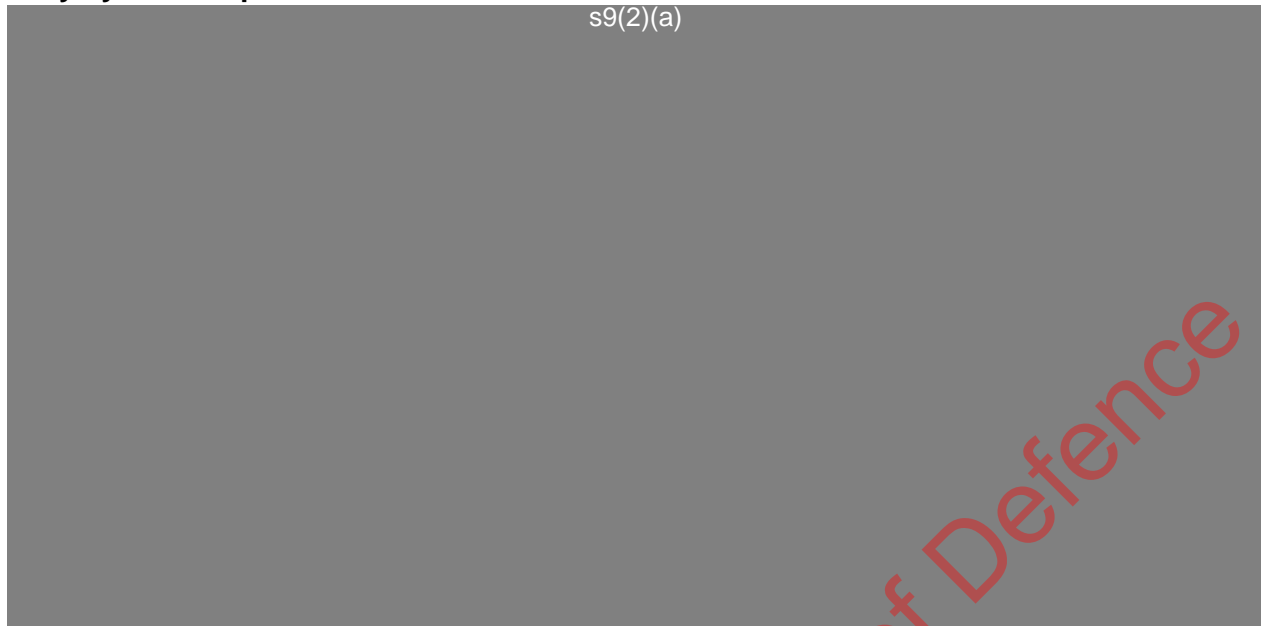
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Tony Lynch – Department of the Prime Minister and Cabinet

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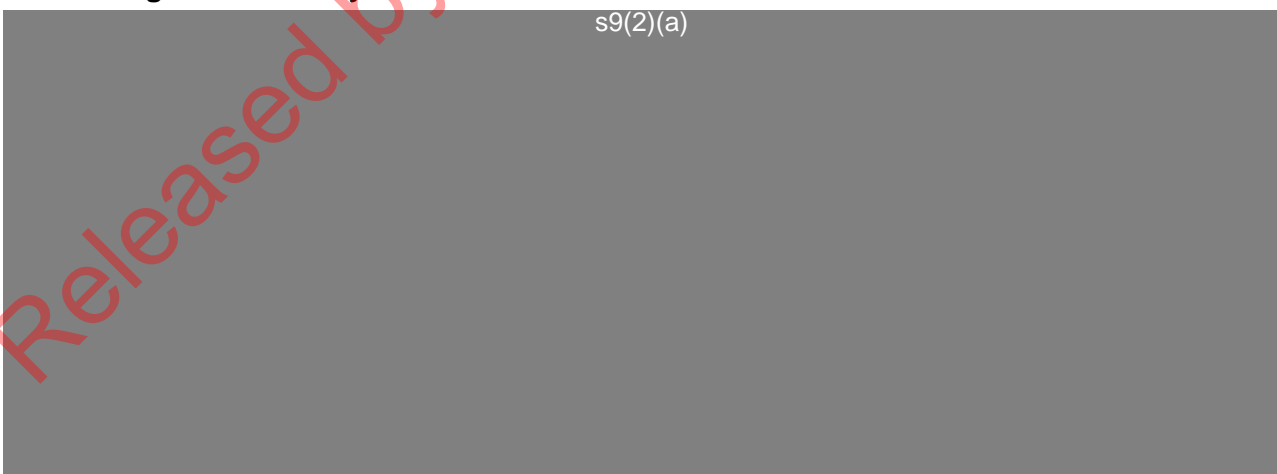
Richard Foy – Department of Internal Affairs

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Carol Douglass – Ministry of Defence

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Brigadier Hugh McAslan, DSD – New Zealand Defence Force

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Dennis Richardson, AC – International civilian adviser (Australia)

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**Air Marshal (retired) Philip Osborn, CBE – International military adviser
(United Kingdom)**

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