



INSPECTOR-GENERAL OF
INTELLIGENCE AND SECURITY

THE HON D.P. NEAZOR CNZM

**INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY
ANNUAL REPORT 2011**

INTRODUCTION:

1. This report for the year ended 2011 is made in accordance with s.27 of the Inspector-General of Intelligence and Security Act 1996 (the "Inspector-General Act"). The mandate and functions of the Inspector-General are set out in Appendix A to the report.
2. The work programme approved by the Prime Minister as the Minister responsible for intelligence and security agencies is Appendix B. During the year it was agreed with the Director of Security that a trial would be made on a random sample basis of testing the product of interception warrants to ensure that information obtained related to people and areas of interest properly within the ambit of the warrant. That would involve selected review of transcripts and discussion with officers engaged. This is regarded as an aspect of the review of procedures in relation to the execution of intelligence warrants provided for s.11(1)(d) of the Inspector-General Act, not requiring a change in the work programme.

COMPLAINTS:

3. When the Inspector-General Act was passed the creation of an office through which complaints could be independently examined was seen as an important function. Complaints may be made about either the New Zealand Security Intelligence Service (NZSIS) or the Government Communications Security Bureau (GCSB). Complaints that the Inspector-General may deal with must be founded on the proposition that the person concerned has been adversely affected by an act, omission, practice, policy

or procedure of an agency. Complaints by an employee or former employee may only be investigated if all established internal remedies have been exhausted or the complainant and the Chief Executive of the agency agree in writing that the Inspector-General should act. In this year both external and internal complaints have been received, in respect of the NZSIS. No new complaints have been received in respect of the GCSB.

GCSB:

4. In the 2010 annual report I recorded that a complaint was under investigation brought by a number of officers of GCSB about the treatment of the employer's notional contribution to the Government Superannuation Fund, and the effect that had on their individual entitlements. The relevant events occurred some years ago when a review of the Bureau's pay structure was made. The Bureau provided strong support in the exercise of unveiling the facts.
5. I found that the scheme as finally developed did have an effect which was inconsistent with the structure and provisions of the Government Superannuation Fund Act. Past effects and future effects were in issue. A recommendation was made, designed to remove future adverse affects in all cases. That has been implemented. Past effects were treated separately in terms of redress because of individual employee's dealings with the Bureau. I did not consider that there was a case for across the board compensation in respect of such effects.

NZSIS:

6. Six complaints were uncompleted as at 30 June 2010. One of those did not require further determination and in another the complainant did not proceed. The remaining four complaints were about security vetting. Two of those were resolved during enquiry, one was not upheld and the last was unresolved at the present date of reporting because the complainant was not in New Zealand to deal with enquiries.
7. Eleven complaints related to the Service were received this year, with 16 last year. A notable aspect has been the reduction in complaints related to vetting for access to classified material. That is an area in which I am aware that the Service has sought actively to improve the system and achieve its purpose.

8. Of the complaints received, two alleged harassment by the Service, two related to internal employment issues, five were in respect of vetting and two related to the refusal of the Service to release personal information. The harassment complaints were not upheld. One of the employment complaints was not upheld and the other was incomplete at the report date. One of the complaints about release of information had already been considered in the same terms by the Privacy Commissioner and I declined to take it up. The second was upheld in part.
9. Two of the complaints about vetting recommendations were resolved during the enquiry when the level of clearance or conditions of employment were reconsidered, two were not upheld and one was incomplete at the reporting date. A sub-inquiry about the quality of information given to public servants in sensitive jobs who go overseas is being embarked upon, because how well the advice is observed may have a bearing on security clearance in the future.
10. The second of the non-disclosure complaints related to the refusal of the Service to disclose information obtained by the Police many years before the Service was established, when the Police carried out the security protection function. The complainant wanted to know the name of the person who had told a Police officer that he might be a Communist. I upheld the refusal of the Service to disclose that information on the basis that it was given by an informant to an organization the function of which was to gather information for a public purpose, and that disclosure of the name of an informant in one case (when there was no apparent countervailing public interest to be served) had the potential to inhibit future disclosures by informants.
11. I should record that the complainant disagreed with my view, on the basis that no harm could come from such a disclosure after a long period of years. That might be correct, but what avenue of harm there might be is unknown and the chance that there will be none in my view is not enough to outweigh the public interest factor.

VETTING GENERALLY:

12. Because this has been an area productive of complaints, there was discussion during the year with senior officers of the directorate of the Service which does the vetting work. It covered on one hand the Government requirements in respect of

persons having access to classified information and how the Service makes its assessments, and on the other how the Inspector-General is likely to assess complaints if the statutory right to complain is to be more than a rubber stamp approval of the Service's work.

13. My conclusion after these discussions is that the Inspector-General's task, accepting that what is in issue is a judgment about risk, is to consider the factual issues underlying the recommendation and any inferences of fact which are relied on, and the extent to which relevant background material reasonably affects the risk assessment for the particular candidate. The question on the complaint is whether, in the context of security requirements, the Service's recommendation has been reasonable.
14. With the Service's co-operation, enquiries into complaints have been extended beyond reviewing documentation to discussions with Service officers who, for example, have conducted interviews. In one case Inspector-General enquiries extended to referees. Background papers have also been made available discussing factors which in appropriate cases the Service will be likely to take into consideration.
15. A reporting method which extends to the employing authority as well as the complainant and the Service has been instituted to improve the information available to the employing authority which is the decision maker in respect of access to classified information.

NZSIS RECORDS:

16. In the 2010 report it was recorded that a draft agreement was being prepared relating to the collection and use of information about people who were or became Members of Parliament. A memorandum of understanding has been signed. Review of compliance with its provisions has been entrusted to the Inspector-General.

PROGRAMME OF WORK:

17. I have visited both agencies during the year and have enquired about interception warrants and authorities in particular. Domestic intelligence warrants sought by the

NZSIS have already undergone the scrutiny of the Commissioner of Security Warrants, who makes his own detailed enquiries about the facts supporting each application and is one of the signing authorities. In respect of all such authorities the Inspector-General's function is to review the effectiveness and appropriateness of the procedures adopted by both agencies to ensure compliance with the statutory provisions relating to the issue and execution of warrants. To do that I review all authorities and supporting documentation and make whatever enquiries of Service officers then seem necessary. I also review internal compliance reports produced by GCSB.

18. Two NZSIS warrants gave rise to queries. Discussions with the Service clarified the facts and provided satisfactory answers to the original questions.
19. Two GCSB authorizations gave rise to questions about whether the extent of the authorizations was permitted by the Government Communications Security Bureau Act 2003. In one case it was accepted that the effect of the authorization needed to be limited, which was achieved by administrative direction. In the other the question was shown to involve the tasking process for the execution of the authorization and the relation of that to the terms of the authority. I accept that the process should keep the collection of information within what is allowed and authorized.
20. I was advised by GCSB that an interception authority had not been renewed in time when it was wished to continue with it. A report on the event was made available to me. An improved system for review of expiry dates has been put in place.

LEGISLATION:

21. The New Zealand Security Intelligence Service Amendment Act 2011 had almost completed its Parliamentary passage at the reporting date. The legislation will provide some new areas for consideration by the Inspector-General:
 - (a) compliance with conditions inserted in a warrant because of possible third party effect;
 - (b) destruction of electronic tracking records;
 - (c) the exercise of powers of delegation in respect of interception

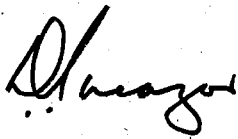
warrants.

SUPPORT:

22. Whatever administrative support has been required has been provided by the Ministry of Justice on request. I am always confident that whatever is necessary will be arranged.

FINANCIAL:

23. The expenditure for the Inspector-General's work as advised by the Ministry of Justice has been \$129 000 for the year, compared with \$144 000 in the previous year. Expenditure has covered remuneration and office and secretarial costs.



Inspector-General

// October 2011