



OFFICE OF THE INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY WORK PROGRAMME JULY 2015

The Inspector-General of Intelligence and Security Act 1996 (IGIS Act) requires me to prepare a programme of work for general oversight and review of the agencies that I oversee. The agencies that I oversee are the New Zealand Security Intelligence Service (NZSIS) and the Government Communications Security Bureau (GCSB). The bulk of the work programme is directed at the functions which are specified in the IGIS Act.¹

I also have to certify in my annual reports to the Prime Minister and the Minister responsible for each of the agencies (currently the Hon Christopher Finlayson QC), the extent to which each of the NZSIS and GCSB's compliance systems are "sound".² All elements of the work programme go towards reaching a view on that certification.

Consistent with the Inspector-General's role in assisting the Minister to ensure that the activities of the agencies comply with the law,³ I submit the work programme to the Minister for approval.⁴ The requirement for approval does not mean that the Minister does or must approve each specific item of my office's work, such as each inquiry into a complaint or each inquiry that I initiate of my own motion. The IGIS Act specifically states that I am to independently investigate complaints relating to each of the agencies. The Act also gives me power to initiate my own inquiries into any matter that relates to the compliance by the NZSIS or GCSB with the law of New Zealand or into the propriety of particular activities of either agency. It is implicit in those powers that the approval of the Minister is not required. In practice, the Minister is informed of the work programme and asked if he has any suggestions about it.

The work programme sets out how I give effect to my functions under the IGIS Act. The current work programme (July 2015), which is the first to be made public, consists of the following activities.

Review & audit of compliance systems

A review (at least annually) of all operational and corporate policies and practices of each agency, to ensure they have effective and appropriate compliance systems governing their operational activities, and unscheduled audits of those systems. Some policies and practices are considered in much more detail. My office presently has one in-depth review of the policies and practices in a particular area of one agency's operational activities under way.

¹ Inspector-General of Intelligence and Security Act (IGIS Act), s 11(1). I also have functions under other legislation, such as the Protected Disclosures Act 2000.

² IGIS Act, s 27(2)(ba).

³ IGIS Act, s 4.

⁴ IGIS Act, s 11(1)(e).

Review of warrants and authorisations

A review of all interception warrants, access authorisations and “Director’s authorisations”⁵ issued under the Government Communications Security Bureau Act 2003 (GCSB Act) and all domestic and foreign intelligence warrants and visual surveillance warrants issued under the New Zealand Security Intelligence Service Act 1969 (NZSIS Act). These reviews are carried out as soon as practicable after the warrants and authorisations have been signed. The purpose of each review is to check that all statutory requirements are met, including:

- that it is for the purpose of performing one of the agency’s statutory functions and is necessary and proportionate
- that it is signed by the Commissioner of Security Warrants, as well as the Minister, where that is required
- that consultation with the Minister of Foreign Affairs has taken place, where that is required
- the requirement that the GCSB does not target New Zealand citizens or permanent residents for intelligence-gathering purposes is complied with and, in relation to NZSIS foreign intelligence warrants, the requirement that no New Zealand citizen or permanent resident is subject to the warrant is complied with
- how each agency ensures that the impact of the warrant or authorisation on third parties is minimised
- the destruction of irrelevant records obtained by interception or tracking occurs as soon as practicable
- to identify any systemic issues.

My office carries out a “deep dive” or “end-to-end” review of a selected number of warrants and authorisations. This looks at the process and path by which the warrant or authorisation application was formulated, the signed application, execution and collection under the warrant, through to review and cancellation/non-renewal or renewal, to ensure that all steps of the process are within the relevant statutory requirements and restrictions.⁶

Where the Director of the NZSIS authorises action in a situation of emergency or urgency and without an intelligence warrant or visual surveillance warrant,⁷ I check that:

- all statutory preconditions for such an authorisation are met

⁵ Government Communications Security Bureau Act 2003, s 16.

⁶ I will report on the total number of warrants and authorisations reviewed, including “deep dives”, and any issues arising from the review, in the 2014/15 annual report.

⁷ The 2014 amendments to the New Zealand Security Intelligence Act 1969 (NZSIS Act) provided for authorisations of this kind: s 41D. To date I have inspected two visual surveillance warrants; no emergency/urgent authorisations have been advised to me.

- the information put to the Director in support of such an authorisation is sufficient to justify the decision sought
- any terms and conditions of the authorisation are complied with
- any information collected was destroyed without delay where the Minister or Commissioner of Security Warrants directed that the activity authorised by the Director not proceed or be discontinued.

Visit regional facilities

My staff and I regularly visit the GCSB's two communications interception stations, at Waihopai and Tangimoana, and the NZSIS's northern regional office, as part of my regular scrutiny of the activities of the agencies.

Complaints

As well as carrying out the regular review and inspection of the agencies' functions, I also independently inquire into any complaints received by my office. The Inspector-General's jurisdiction covers complaints from New Zealand persons, or current or former employees of the NZSIS or the GCSB, who have or may have been adversely affected by some act, omission, practice, policy, or procedure of the NZSIS or GCSB. Some inquiries can be satisfactorily handled administratively, without the need to initiate a formal complaints process, but where it is necessary I will fully investigate the complaint.

I will report more fully on the nature and status of the complaints currently under inquiry in the 2014/15 annual report.

Own-motion inquiries

I may initiate an inquiry into any matter that relates to the compliance by the GCSB or the NZSIS with the law of New Zealand or into the propriety of particular activities of one of the agencies. "Propriety" is not defined in the IGIS Act, but it goes beyond specific questions of legality; for example, whether the agency acted in a way that a fully informed and objective observer would consider appropriate and justifiable in the particular circumstances.

The factors I consider when deciding whether to start an inquiry include: does the matter relate to a systemic issue? are a large number of people affected by the issue? does it raise a matter of significant public interest? would the issue benefit from the use of formal interviews and other powers that are available in the context of an inquiry? are recommendations required to improve agency processes? is it the best use of my office's resources?

I will report on the status of the current own-motion inquiries in the 2014/15 annual report or earlier if any of them are concluded before the annual report is published.

Inquiries at request of Minister or Prime Minister

The Minister may ask me to inquire into a matter that relates to the compliance by the NZSIS or the GCSB with the law of New Zealand. In addition, the Minister or Prime Minister may ask me to inquire into the propriety of particular activities of either agency or to inquire into a situation where it appears that a New Zealand person has or may have been adversely affected by any act, omission, practice, policy, or procedure of either agency.

There are no current inquiries requested by the Minister or Prime Minister.

Inquiry into complaint by the Speaker

The Speaker of the House of Representatives may make a complaint to me on behalf of one or more members of Parliament.

There are no current complaints by the Speaker.

Legislative review

The government has initiated a review of the intelligence and security agencies, the legislation governing them and the oversight legislation.⁸ The reviewers (Sir Michael Cullen and Dame Patsy Reddy) may ask me to provide information to assist the review⁹ and I anticipate providing information on the legislation that governs my role and on oversight mechanisms and best practice generally. I can also offer a view on any proposals to change the legislation governing the NZSIS and GCSB, particularly whether those proposals include proper accountability and oversight mechanisms; whether they pose risks to legality and propriety and are consistent with human rights. I think it is necessary for amended legislation to more clearly explain the powers that the agencies have and the constraints on those powers.

Reporting on the work programme

It is important that my office provides clear and up to date information on the work of the office. I publish a report on the completion of each inquiry that I undertake. Reports are published on the IGIS website. I also present an annual report to the Prime Minister and the Minister, which the Prime Minister must in turn present to the Parliament. This gives an opportunity for other members of Parliament to ask questions about the report. In addition, the Intelligence and Security Committee may invite me to attend before it to discuss my annual report. It did so in respect of the 2013/14 annual report. A copy of the annual report is also published on the IGIS website.

Other activities

I meet regularly with the members of my Advisory Panel, Christopher Hodson QC (Chair) and Angela Foulkes and we convene to address particular issues as they arise.

⁸ Intelligence and Security Committee Act 1996, s 21.

⁹ Intelligence and Security Committee Act 1996, s 23.

I also meet regularly with the Privacy Commissioner, Chief Ombudsman and Auditor-General, each of whom has a role in oversight of the intelligence and security agencies, to discuss areas of overlap in our responsibilities and broader issues of common interest.

I look for opportunities for public engagement to talk about the Inspector-General's Office, with a view to shedding more light on what the intelligence and security agencies do and how I oversee and review those activities.