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NEW ZEALAND. Inspector-General of
Intelligence and Security.

Annual report 2000.

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Prime Minister

20 November 2000

**ANNUAL REPORT OF THE INSPECTOR-GENERAL OF
INTELLIGENCE AND SECURITY FOR FINANCIAL YEAR 1999/2000**

I have reviewed the Annual Report of the Inspector-General of Intelligence and Security for the financial year ending June 2000.

In accordance with Section 27 (3) of the Inspector-General of Intelligence and Security Act 1996 (the Act), I confirm that no matters, as set out in Section 27 (4) of the Act, have been excluded from the report.

There are no matters to bring to the attention of the House.

Helen Clark
Prime Minister

INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

ANNUAL REPORT 2000

This is the fourth annual report of the Inspector-General of Intelligence and Security. It is made in compliance with the statutory requirement upon the Inspector-General to furnish a report of his activities at the end of each year ending with 30 June. This report deals with the year ended 30 June 2000. The mandate and functions of the Inspector-General are described in an appendix to this report.

General

1. The year under review has seen a number of changes in the intelligence community. These have not affected the functions or status of my office. It has remained a part-time office in which I have continued my general supervisory function. I completed the first three-year term of my office and was reappointed for a further three years commencing from 1 December 1999. In other parts of the community there have been changes in the offices. Lieutenant General McIver retired as Director of Security. Mr Richard Woods was appointed in his place and took up his office for a five-year term commencing 1 November 1999. Mr Woods has had a career in Foreign Affairs

having been New Zealand's ambassador in Tehran, Athens, Moscow and Paris. His appointment marks a departure for the NZSIS. Nearly all past directors of security have been former senior military officers. There was a change at the top of the GCSB with the retirement of Mr Ray Parker who had headed the Bureau for some eleven years. The new director is Dr Warren Tucker, who took up office on 1 January 2000. He has a Doctorate in Electrical Engineering, has spent some time in the GCSB but for some four years has been the Intelligence Coordinator in the Department of the Prime Minister and Cabinet. That office has been filled by Mr Michael McBurney who is an experienced public servant. During the year there was a further change in the Directorate of the Domestic and External Security Secretariat. Mr Paul Tipping completed his secondment as Director and returned to the Ministry of Foreign Affairs and Trade. In his place David Hill was appointed. He is an aeronautical engineer and has had a distinguished career in the Royal New Zealand Air Force completing his career as Deputy Chief of Defence Staff with the rank of Air Vice Marshal.

2. Another important appointment in the Intelligence Community was the appointment of Sir John Jeffries as the Commissioner of Security Warrants. This office was created by the New Zealand Security Intelligence Service Amendment No.2 Act 1999, which was passed and came into force on 31 August 1999. Under that Act domestic interception warrants are issued jointly by the Minister-in-Charge of the SIS, usually the Prime Minister, and the Commissioner.

Interception Warrants

3. Since I commenced in this office in 1996 I have considered it an important part of the general supervision of the SIS that I should scrutinise the issue of interception

warrants. I have continued that throughout each year. My scrutiny is done irregularly but involves a review of every warrant issued to the SIS. My review of the file includes the legality of the procedures in each case. I assure myself that the proper steps have been taken in compliance with the statutory prescription for the issue of warrants. I also consider the justification for the warrant. It is not for me to second guess the desirability of the issue of any warrant but I do wish to assure myself that in each case there is a satisfactory basis on properly grounded information to support the issue of the warrant. In respect of domestic warrants that has already been done by the Commissioner and the Prime Minister. Every warrant is required to be necessary for the detection of activities which are prejudicial to security or for the purpose of gathering foreign intelligence information essential to security, and the value of the information justifies the particular interception. I have never had cause to challenge or disapprove the issue of any interception warrant.

Personnel Security Assessments

4. During this year I spent some time reviewing the procedures and operations of the SIS in undertaking personnel security assessments. The NZSIS undertakes security assessments of people requiring access to classified New Zealand Government information. My particular interest in this arose from the complaint that I dealt with during the year. The programme operated by the NZSIS covers a wide range of personnel and a considerable number of security vettings. Something over 4000 security vettings are undertaken in each year. The actual numbers have fallen slightly but there is an increase in vetting work because there has been an increase in the higher security categories which require more extensive and detailed enquiry. The vetting extends not only to persons in government service but also to those in private

employment who may require in the course of their employment to have access to classified government information. The Service does not however provide any security assessments for the private sector and any assessment which refers to a person in the private sector is clearly limited to the government function.

5. The Service has developed a sophisticated system which involves the completion of questionnaires and the reference to various referees who may be subject to interview. There is a skilled team which undertakes the interviews and the final assessment. There is considerable care taken to ensure the confidentiality of the material which is gathered. It is not generally available even within the Service itself and interviews with referees are maintained under strict security. In the course of my inquiry I spent some time with the senior officers who carry out the interviews and assessments. I reviewed a number of the files as examples of the methods and systems employed. I reviewed the questionnaires and other documents which are used to provide the basic information for the assessment. I was favourably impressed by the care and discretion brought to bear in what is a substantial and delicate task. I have no adverse comment to make about the operations of the section of the SIS which undertakes this task. I did have some comment about some of the forms which were used. The Service is undertaking a review of the forms.
6. In addition to that review I also considered the system and the procedures which the Service carries out for security clearances in respect of visas and other immigration and citizenship requests. Very large numbers of requests are dealt with in the course of a year. These are handled in a special section of the Service. In all cases both urgency and accuracy is required. The system operates on a negative response basis.

That means if there is no response from the SIS within seven days then it is assumed that there is no adverse response. In certain cases the Service may ask for a delay if there is some particular interest but in most cases the matter is dealt with within the set period on the basis of the information available to the Service. The importance of the accurate identification of the subject was stressed to me. Not only are there difficulties with the transliteration of non-European languages but there are also the problems of misspellings and the possibility of a deliberate misidentification. There are remarkably few adverse reports. The Service appears to err in favour of the applicant if there is any doubt. I was satisfied that the system and the procedures adopted complied with the law and were appropriate in the circumstances.

Complaints

7. I dealt with one complaint during the year. This was a complaint by an employee in private employment. His employer was in a contract with a government agency and the employee in the course of that contract was required to have access to confidential information and material. As a result he was required to undergo a security vetting by NZSIS. He made application on the standard form of questionnaire. The form did not and does not require any information as to previous convictions or other such matters but it does give the authority to the NZSIS to make inquiries and to receive information from the New Zealand Police or the Police of any country outside New Zealand. The inquiry in the case of the complainant produced a list of convictions of a minor nature, the latest of which was some 15 years earlier. All these early convictions were treated as having no relevance to the assessment of the complainant. There was however in addition to these convictions a note that within the last two years the complainant had been subject to a caution for possessing a drug. That was a

matter which while not a conviction was a matter of some concern. After interview with the complainant the NZSIS reported to the head of the government agency in response to the request for the security vetting and recommended that the confidential clearance should be withheld. The agency accepted the recommendation and declined the security clearance. The complainant appealed that decision by way of complaint to me. I received the file from the NZSIS and discussed the matter with the complainant and with his employer and with the officers in the government agency who had been concerned with the complainant and his employment. I agreed with the Service that the information received was a matter of concern which it did need to disclose to the head of the agency as a matter of potential security threat. I felt that although the matter was of some concern in light of the character and the general background that it was not a matter of great weight. In my opinion the access to confidential and sensitive records in the department concerned would not be likely to be endangered by the employee in his particular task. I felt therefore that a negative recommendation which was made was more than was required. I upheld the complaint to that extent and recommended that a copy of the report be provided to the head of the agency and that he be invited to reconsider the decision. In the circumstances this was not a case where monetary compensation was appropriate. The complainant had not suffered any pecuniary loss or any other adverse effect. In the end the head of the agency did reconsider his decision. By that stage no further employment was involved in this agency. The agency endorsed the original request with a reference to my findings on the matter. The need for any security clearance had passed.

Legislation

8. The New Zealand Security Intelligence Service Amendment No.2 Act came into force on 31 August 1999. This Act came into being as a result of submissions which were made on the earlier Amendment Bill of 1999 which I commented upon in my last report. It was thought appropriate to separate out and enact the provisions which dealt with the question of the right of entry which had come into controversy and challenge on the Chaudry case and the decision in the Court of Appeal. The other matters in the bill were then left over for further consideration and the drafting of a new bill. The second Amendment Act established the office of the Commissioner for Security Warrants and the new system for the issue of domestic warrants which has already been mentioned. The Act also alters the definition of "security" which is of course the basis for all of the functions and operations of the NZSIS. A number of public submissions on the bill commented on what was stated to be a too wide authority for intelligence gathering with particular emphasis on the reference in the earlier definition to New Zealand's international or economic well-being. The new definition of security focuses on the protection of New Zealand from acts of espionage, sabotage, terrorism and subversion and other activities influenced by foreigners that are clandestine, deceptive or threaten the safety of any person and that impact adversely on New Zealand's international well-being or economic well-being. That provides a more limited definition but makes it more easily understood and applied. I have discussed with the Director of Security some aspects of this new definition of security and the effect it may have on the operations of the Service. The Service is alert to the need to keep this under review. I intend to maintain a watch on this particular aspect. The intelligence gathering aspect of security is now also specified in the definition of security in terms of the identification of foreign

capabilities, intentions or activities that impact on New Zealand's international or economic well-being. The Act added a new requirement that the Director of Security must ensure political neutrality. It prohibits any direction of the Service to institute surveillance of any person or entity within New Zealand and requires the Director to consult regularly with the Leader of the Opposition. There are a number of amendments which clarify the procedures and the rights and authorities which are given by a warrant. There is a duty to minimise the impact of interception warrants on third parties. A further addition is the requirement that the Director must report on the activities of the Service during the year. That report is made to the Minister which is to be furnished to the members of the Intelligence and Security Committee and must, within 30 days, be presented to the House of Representatives. The copy so presented may have deleted from it any material which may have prejudice to security or defence interests.

Maintenance of Records

9. During the year I began a consideration of the application of the Archives Act 1957 to the NZSIS and the GCSB. The Act applies to both Services as government offices and to the records made and kept by them. These are within the definition of public records under the Act. The Act restricts the use and destruction of public archives which are public records of a government office that have ceased to be in current use. Destruction may be permitted subject to the approval of the Chief Archivist. Both Services have a form of approval which permits the destruction of certain routine records. The second primary obligation of government offices and the Services is to deposit with the National Archives public archives of the age of 25 years or over. That obligation may be deferred on a ministerial certificate that the release of the

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 2 information may adversely effect the national security of New Zealand or relations
 5 between the government of New Zealand and governments of any other country.

2 Both Services have received certificates to permit the deferral of deposit with
 National Archives.

10. I have discussed this topic with the Director of Security and the Director of the
 Government Communications Security Bureau. I have also discussed the matter in a
 general way with the Chief Archivist and one of his senior officers. I believe that the
 requirements of the National Archives Act is a matter which requires renewed and
 continued attention.

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 11. The National Archives Office has in recent years promulgated standards for storage,
 appraisal and transfer of records to National Archives. These are codes of best
 practice to be followed in the management and preservation of government records
 which take into account further developments and thinking since 1957. In particular
 the National Archives has developed an electronic records policy which takes into
 account the increasing amount of information and records which are kept by
 electronic means rather than on paper.

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 12. Both Services are already giving consideration to the questions of storage and
 destruction of records and the requirements under the Archives Act. There is of
 course no question as to the adequacy of the security and the storage system which
 these Services employ. Likewise the policy of both Services is to maintain the
 records and not to destroy them. In any event the resources required for adequate
 appraisal with a view to destruction or other disposal of files is probably outside the

budget of either of the Services. This is a matter that I intend to keep under review as the Services develop and amend their policies and systems on this matter.

Administrative

13. All administrative services that I have required have been provided through the Domestic and External Security Secretariat. That has been more than adequate to my needs. I have received every assistance that I have required willingly and promptly. I see no need to change the system which has operated satisfactorily for four years.

Laurie Greig
Laurie Greig
Inspector-General of Intelligence and Security
October 2000

APPENDIX

Mandate and Functions of Inspector-General of Intelligence and Security

1. The Office of the Inspector-General of Intelligence and Security (IGIS) was established by the enactment of the Inspector-General of Intelligence and Security Act 1996 on 1 July 1996. In accordance with that Act, I was appointed by the Governor-General on the recommendation of the Prime Minister following consultation with the Leader of the Opposition to the office of the IGIS on 1 December 1996 for a term of three years. I was re-appointed for a further three year term commencing on 1 December 1999.
2. The object of the Act and of the office of the IGIS is to assist the Minister responsible for an intelligence and security agency in the oversight and review of that agency. In particular the IGIS assists the Minister to ensure that the activities of an agency comply with the law. A further object is to ensure that complaints about an agency are independently investigated.
3. The intelligence and security agencies subject to the Act and the IGIS's responsibilities are the New Zealand Security Intelligence Service and the Government Communications Security Bureau. The Minister responsible for these agencies is the Prime Minister.
4. The IGIS is authorised to inquire into complaints by New Zealand persons and persons employed or formerly employed by those agencies who claim to have been adversely affected by the activities of an agency. The IGIS undertakes other inquiries into the activities of those agencies at the request of the Minister or on his own motion. Such inquiries may examine the propriety of particular activities of an agency. In addition the IGIS may carry out a programme or programmes of general supervision of those agencies.