



OFFICE OF THE INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

IGIS Reference Group meeting – 26 July 2018

The [IGIS Reference Group](#) held its second meeting on 26 July 2018 in Wellington, with some members participating by video link from Auckland. Key themes of discussion included the role and independence of the Inspector-General, the work programme for 2018-19 (announced in June – see media release [here](#)) and international developments in intelligence and security law and oversight.

There was broad agreement in the group that the independence of the office is not in question. The nature of reports produced was seen as a key factor in assessing independence. Public reporting of inquiries was stressed as critical for increasing understanding of the function of the office and of intelligence and security issues more generally. Our recent [report](#) on complaints arising from reports of GCSB activity in relation to the South Pacific was seen as a good example of how the IGIS can give the public more information about the way in which the intelligence agencies operate, without compromising their operations.

Members saw room for more public engagement by the Inspector-General, including public speaking, and for making reports more accessible, eg with simpler summaries.

It was suggested that the Inspector-General was in a unique position to look at the adequacy of New Zealand's intelligence and security law, not just at agency compliance with it.

There were strong views that the Protected Disclosures Act 2000 offered no real protection for 'whistleblowers' and that the option under s 160 of the Intelligence and Security Act 2017 for intelligence and security agency employees to make disclosures directly to the Inspector-General was preferable and should be made better known.

Regarding the 2018-19 work programme there was keen interest in reviews of how the Intelligence and Security Act 2017 is being put into practice. This included the planned reviews of agency use of new provisions governing access to the business records of companies. Members commented on the importance of contributing to public understanding of what these new provisions mean in practice. There was also strong interest in the office's planned review of NZSIS relationships with other agencies at the New Zealand border (especially regarding approaches to Muslim travellers). There was strong support for the IGIS inquiry into the role of the GCSB and NZSIS, if any, in relation to events in Afghanistan.

The group was interested in whether the Inspector-General could look at intelligence agencies' training programmes and efforts to increase employee diversity, considering their relevance to agency cultures.

Members expressed concern at over-classification of agency information and its effects on the operation of the Official Information Act 1982. It was observed that that the legal or other authority under which the agencies classify information was not understood by the public. As a result there was interest in the forthcoming IGIS report on a review of the New Zealand security classification system.

Legal experts in the group commented on two recent significant court decisions – one from the US Supreme Court and the other from the New Zealand Supreme Court. In the US decision, [Carpenter v United States](#) the court considered the question of when an intelligence agency request to a telecommunications provider for customer cell site location information is a search requiring a warrant. The New Zealand Supreme Court’s decision in [R v Alford](#) concerns a similar issue. It stands for the proposition that when a New Zealand government agency asks a third party agency to “voluntarily” hand over personal information relating to its customers in most cases a “search” will occur, and s 21 of the NZ Bill of Rights Act 1990 is engaged.

Members noted the value of voluntary transparency reporting by New Zealand companies of their disclosures of customers’ information, with TradeMe cited as a leading example. In recent years TradeMe has reported annually on requests it has received from government agencies for information, including data in its 2017 report on requests from the NZSIS.

Recent [reports](#) from the United Kingdom Parliamentary Intelligence and Security Committee on detainee rendition and mistreatment were noted for their frank discussion of intelligence agencies’ refusal to provide certain information, to avoid harm to relationships with United States agencies. Members thought these reports would provide useful international context to the IGIS inquiry now under way into whether the New Zealand intelligence agencies knew of or were otherwise connected with the CIA detention and interrogation programme. There was some concern expressed about the likely difficulty for New Zealand intelligence agencies and their employees in asserting independent values and acting in accordance with New Zealand government and public expectations when working closely with much larger Five Eyes agencies.

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