



OFFICE OF THE INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

SUMMARY OF REFERENCE GROUP MEETING – 3 JULY 2019

1. The meeting discussed a range of issues, including the IGIS's new, 2019/20 Work Programme; electoral interference – what's been happening overseas and what implications does that have for New Zealand; and a blog about engagement between oversight bodies and civil society.

Work Programme 2019/2020

The focus of discussion was on new items in the [2019/2020 Work Programme](#), as well as areas that could be looked at (if resources allow). Ideas and observations from members of the group included:

International cooperation and assistance agreements

- There would be value in oversight looking at how New Zealand responds to information sharing and cooperation agreements with foreign partner agencies if there is tasking under the arrangement that might lead to New Zealand acting inconsistently with its own primary interests. The New Zealand public might expect a national interest test in such arrangements.
- Oversight should understand the safeguards in place to protect information a New Zealand agency shares with a foreign partner agency.

Royal Commission of Inquiry into the attack on Christchurch Mosques on 15 March 2019

- IGIS explained the office's role under the Royal Commission's (RC) [Terms of Reference](#), and the background information material she provided to the [Royal Commission](#).
- Some members thought that if the RC adopted a "declassification" process, as the government Inquiry into Operation Burnham has done, it will enhance transparency as well as public trust and confidence.¹

Open source and online operations review

- In discussing what is "open source" members suggested there should be different principles and considerations that apply depending upon the type of information being considered (ie information on a news website vs communications in a closed Facebook group).

¹ The Operation Burnham Inquiry has gone through a process of assessing government agencies classification of documents or other information and then discussing with the agency what can be declassified and made available to the public in whole or in part. A description of the declassification process used is described in Minute 4 of the Commission of Inquiry into Operation Burnham and Related Matters (14 September 2018).

- In terms of physical privacy, we have a social norm that says that matters which occur in public are not private. Understanding the basis for this norm will be important for determining the limits that should be put in place.
- There are likely to be interesting legality/propriety issues such as: How long can open source material collected by the agencies be held for? How deceptive can intelligence agencies be in obtaining it (ie can they use a fake profile to obtain access to a closed forum or group)? Does the act of significant collation of publicly available material change the analysis?
- It may be helpful to consider the issues this review will present in terms of 'data sovereignty' rather than 'privacy'.
- Should the lawful means by which the agencies conduct open source intelligence gathering be classified or subject to public scrutiny?

Other matter

- Members of the Reference Group noted that it was important that when the activities of the agencies are reviewed in any formal context, the review process should be as transparent as possible to ensure the public can have trust and confidence in the review findings.

Electoral interference

2. The Directors-General recently spoke in a public session to the Justice Select Committee in relation to the [Committee's Inquiry into the 2017 General Election and 2016 Local Elections](#). This gave rise to a preliminary discussion about what roles the agencies may have in respect of elections and, in turn, what the implications of that are for oversight. The subject is relevant given local elections are imminent and the General Election is taking place next year. Members of the Reference Group observed:
 - There is a distinction between legitimate exercise of freedom of expression, including "soft political influence", and malicious or anti-democratic spread of "disinformation".
 - Pressure is being put on social media platforms as a consequence of the Christchurch Call. It will be interesting to see the reach of this in terms of electoral interference.
 - Electoral interference may be more of a matter for the Electoral Commission than the NZSIS or GCSB. Whatever steps are taken to combat it must be as transparent as possible as it is a matter that goes to the heart of democracy.
 - To the extent the NZSIS and GCSB have a role in addressing electoral interference, should that be in relation to actions by State actors, or State actors and non-State actors alike?

Engagement between oversight bodies and civil society

3. The Inspector-General has been invited to contribute to a new blog (about:intel) shortly to be published in Europe. The topic for the contribution is: “Is productive engagement on intelligence law, policy and oversight possible between the secret and civilian world?” The Inspector-General shared her draft text for discussion with the Reference Group. Comments and suggestions from Group members included:
 - It is important for oversight bodies to engage with civil society to ‘inoculate’ oversight bodies against ‘regulatory capture’.
 - Having engagement between an oversight body and civilians is important for providing reassurance to civil society that oversight is occurring and builds confidence for the world-at-large.
 - A group such as the Reference Group provides a useful feedback loop between civil society and the oversight body.
 - The Reference Group should be able to provide perspectives that reflect wider societal views, and so needs to increase its own cultural diversity. The current group lacks relevant Māori and Pasifika perspectives and expertise.
 - It would be good to consider refreshing the group’s membership. This could be achieved by periodically having three people step back from the group and three new people step in.
 - The Reference Group can provide insights into how the public understand OIGIS reports and on-going public interest in the subject matter. There might be utility in OIGIS publishing a follow-up report, approximately 6 months after any review or inquiry report, indicating the extent to which recommendations have been implemented.