



OFFICE OF THE INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

Work Programme 2016/17¹

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.²

I also have to certify in my annual reports to the Prime Minister and the Minister responsible for each of the agencies the extent to which each of the NZSIS and GCSB's compliance systems are "sound".³ 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,⁴ I submit the work programme to the Minister for approval.⁵ 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.⁶

The work programme sets out how I give effect to my functions under the IGIS Act. The current work programme (2016/2017), consists of the following activities.

Completion of current inquiries⁷

- *Inquiry into possible New Zealand engagement with Central Intelligence Agency (CIA) detention and interrogation, 2001 – 2009, and current intelligence cooperation safeguards.* The inquiry initially arose from the December 2014 report of the US Senate Intelligence Committee on the CIA's detention and interrogation programme. The report documented instances of torture and inhumane treatment of detainees between 17 September 2001 and 22 January 2009. My inquiry

¹ Prepared pursuant to s 11(1)(e) Inspector-General of Intelligence and Security Act 1996 (IGIS Act).

² IGIS Act, s 11(1). I also have functions under other legislation, such as the Protected Disclosures Act 2000.

³ IGIS Act, s 27(2)(ba).

⁴ IGIS Act, s 4.

⁵ IGIS Act, s 11(1)(e).

⁶ From 28 September 2017 the Intelligence and Security Act 2017 will apply. Section 159(2) requires the Inspector-General to "have regard to" any comments received from the Minister on the draft proposed work programme.

⁷ IGIS Act, s 11(1)(a) & (ca). I have a statutory obligation to publish a report on every inquiry I undertake and will do so on completion of each of the inquiries currently underway.

is into whether the New Zealand intelligence agencies knew of or were otherwise connected with the CIA activities discussed in the US Senate report and what safeguards the agencies had at the time, and have now, to avoid the possibility of being implicated in unlawful activity of that sort. This inquiry relates to both the NZSIS and the GCSB.

- *Inquiry into GCSB's process for determining its foreign intelligence activity.* This inquiry was begun after issues arose in 2015 about whether the GCSB provided foreign intelligence assistance to the New Zealand government campaign to have the Hon Tim Groser, then Minister of Trade, selected for the role of Director-General of the World Trade Organisation. A public report of this inquiry was released on 20 June 2017.⁸
- *Inquiry into allegations of GCSB interception of communications in the South Pacific.* In March 2015 various New Zealand news media published allegations that the GCSB had undertaken communications interception activity in the South Pacific. I received complaints from several individuals alleging possible personal adverse effect on account of the alleged activities, or complaining more generally about alleged activities of the GCSB in the South Pacific. I began an inquiry into the complaints and, simultaneously, I am reviewing GCSB's current (and some former) collection practices and procedures, including how it gives effect to legislative safeguards.
- *Inquiry into warnings given by NZSIS officers to members of the public.* This inquiry arose from concerns expressed by my predecessor, the Hon Andrew McGechan QC, in his report into a complaint from a member of the public⁹ that, in the particular situation there the NZSIS had given warnings which were outside their statutory functions and powers.

Completion of current reviews of operational activity¹⁰

- *Holding of vetting information (part two – electronic systems).* This review looked at how the NZSIS holds and uses information collected for assessing security clearances. Part 2 of the report focused on the NZSIS's electronic record-keeping systems. The report on part 2 was released on 3 May 2017.¹¹

New reviews of operational activity¹²

I will report on the following operational reviews to the Director of the relevant agency and the Minister and will summarise the results of each review in my annual report. I anticipate that some of the operational reviews will inform agency practice under the Intelligence and Security Act 2017, such as the new statutory regime for obtaining business records of telecommunications network operators and financial services providers.

⁸ www.igis.govt.nz/publications/investigation-reports/

⁹ www.igis.govt.nz/publications/investigation-reports/

¹⁰ IGIS Act, s 11(1)(d)(ii).

¹¹ www.igis.govt.nz

¹² IGIS Act, s 11(1)(d)(ii).

Reviews relating to GCSB

- *Determinations of “Agents of a Foreign Power”¹³*. This review will look at internal GCSB applications for designation as an AoFP in recent years, decisions on the applications, consequent steps where the application was granted, and relevant GCSB policies and procedure.
- *Section 8C GCSB Act activity¹⁴*. Review of all s 8C requests for advice and assistance received by GCSB in the 2015/16 financial year, how many were approved, what steps were taken as a consequence and whether the criteria in s 8C (1) and (2) were satisfied.

Reviews relating to NZSIS

- *Review of NZSIS collection of data from financial services providers without warrant*. The intelligence and security agencies sometimes request information from telecommunications providers, financial services providers and utility companies outside the warrant and authorisation regimes in the New Zealand Security Intelligence Service Act 1969 and the Government Communications Security Bureau Act 2003. The agency to whom the request is made decides on a voluntary basis whether or not to provide the information sought. Given the extent of personal information that may be sought and provided without a warrant, this review focuses on the NZSIS request process to ensure that the access mechanisms used are lawful and proportionate. It also examines how the NZSIS uses and stores the information provided. The review focuses on customer information provided by Banks to the NZSIS within a defined period.
- *Review of the existing New Zealand security classification system*: As part of the New Zealand Intelligence Community’s broader Personnel Security (PERSEC) review, this review will look at the current classification system and its operation to identify changes that could be made to the system to improve security, reduce costs and increase transparency.
- *Review a sample of NZSIS recommendations in respect of citizenship and immigration*: One of the NZSIS’s statutory functions¹⁵ is to make recommendations under the Citizenship Act 1977 and the Immigration Act 2009 to the extent there are matters relevant to security. This review will look at a sample of NZSIS recommendations under both Acts and supporting documentation to establish whether the NZSIS has adequate compliance systems in place to ensure that the recommendations are made lawfully and properly.
- *Review NZSIS treatment of privileged material*: The NZSIS Act prohibits the NZSIS from seeking to intercept or seize privileged communications under intelligence warrants. The NZSIS Act identifies

¹³ Under the Government Communications Security Bureau Act 2003 (GCSB Act) (ss 14 & 4) the GCSB must not do anything for the purpose of intercepting the private communications of a person who is a New Zealand citizen or a permanent resident of New Zealand, unless (and to the extent that) the person comes within the definition of a foreign person or foreign organisation (known as an “agent of a foreign power” or AoFP).

¹⁴ The GCSB is authorised to cooperate with and provide advice and assistance to the New Zealand Police, the New Zealand Defence Force and the New Zealand Security Intelligence Service, for the purpose of facilitating those agencies’ performance of their functions: GCSB Act, s 8C.

¹⁵ New Zealand Security Intelligence Services Act 1969, s 4(1)(bc).

legal, religious and medical privilege. The purpose of this review is to assess the effectiveness and appropriateness of the NZSIS's policies, procedures and practices in identifying and handling privileged communications, from the application for a warrant through to execution of the warrant, and including controls around inadvertent interceptions.

- *Review selected security clearance decisions*: The NZSIS has a statutory mandate to conduct inquiries into whether particular individuals should be granted security clearances and to make appropriate recommendations based on those inquiries.¹⁶ This review will examine a specified number or proportion of adverse and qualified clearance decisions over a specified period.

Regular review of warrants & authorisations¹⁷

- Regular review of all intelligence and interception warrants and authorisations issued to both the NZSIS and the GCSB to ensure compliance with the relevant statutory requirements; “end to end” review, from the intelligence case put forward for seeking a warrant or authorisation through to the intelligence collected, of some of those warrants and authorisations.

Implementation of new legislation

The substantive provisions of the Intelligence and Security Act 2017 take effect from 28 September 2017. It will be necessary to:

- Review the Office of the Inspector-General's own processes in light of changes to the legislation governing the office and the intelligence and security agencies.
- Where appropriate, work with the agencies' legislative implementation team.
- Monitor GCSB & NZSIS implementation of the new legislation.

Protected disclosures (“whistleblowing”)

- Under the Protected Disclosures Act 2000, the Inspector-General is the only “appropriate authority” – an external body - to whom employees of the intelligence and security agencies may make a protected disclosure of serious wrongdoing in their workplace. The Office is working with NZSIS & GCSB on the development of an internal protected disclosures policy for the Intelligence Community as a whole, which will replace the current policies of each of the agencies.
- Once the Intelligence and Security Act 2017 takes effect the Inspector-General will become the appropriate authority for a broader range of public sector employees: those who hold or have access to classified information or information relating to the activities of an intelligence and

¹⁶ NZSIS Act, s 4(1)(bb).

¹⁷ IGIS Act, s 11(1)(d)(i).

security agency.¹⁸ This will require the Office to develop new internal procedures for receiving and handling protected disclosures and will also require liaison with the additional agencies affected to discuss their internal protected disclosures policies.

¹⁸ Intelligence and Security Act 2017, s 320.