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NEW ZEALAND. Inspector-General of
Intelligence and Security.

Annual report 1997.

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Inspector-General of Intelligence and Security

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Preliminary

The office of 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 3 years. The Act by S.27 requires the IGIS to furnish a report of his activities at the end of each year ending with 30 June. This is the first annual report of the IGIS. It is for the period from my appointment to the end of June 1997.

Background to establishment of IGIS

The establishment of the IGIS was a part of a legislative initiative to increase the accountability of the intelligence and security services and to provide for a widened and independent oversight of the conduct and procedure of the services within the law. In addition to the IGIS a Committee of Parliamentarians, the Intelligence and Security Committee, was established by the Intelligence and Security Committee Act 1996. Its principal function is to examine the policy administration and expenditure of the intelligence and security services. The intelligence and security services recognised and defined in the Acts are the New Zealand Security Intelligence Service (NZSIS) and the Government Communications Security Bureau (GCSB). An additional effect of the legislation was to give statutory recognition to the GCSB but without creating a statutory base for it. The opportunity was taken, as well, to make amendments to the statutory base for the New Zealand Security Intelligence Service (NZSIS) by the New Zealand Security Intelligence Service Amendment Act 1996.

To some extent this legislation was based on a review of the practice and the procedures that have been adopted in the Commonwealth countries with which New Zealand and its intelligence agencies have particular associations, namely Australia, Britain and Canada. The

effect of the 1996 Legislation brought New Zealand into closer conformity with the more open operation and oversight and supervision of these other Commonwealth intelligence and security communities.

The office of IGIS has developed from the institution of the Security Review Authority which operated within the State Services Commission when the New Zealand Security Intelligence Service was first established by statute in 1969. A Commissioner of Security Appeals was later created to enquire into complaints made by any New Zealand person who might claim his career or livelihood had been adversely affected by any act or omission of the NZSIS. The new office of the IGIS carries forward and replaces that function but it is now extended to the GCSB.

Purpose and Functions of IGIS

The object of the Inspector-General of Intelligence and Security Act is to provide for the appointment of the IGIS who is to assist the Minister responsible for intelligence and security services in the oversight and review of each of them, and in particular to assist in ensuring that the activities of these services comply with the law of New Zealand. The Minister responsible for the services has always been and remains the Prime Minister. The functions of the IGIS include the power to inquire into any matter that relates to the compliance of a service with the law of New Zealand, the duty to inquire into complaints by New Zealand persons or former or existing employees of a service that they may have been adversely affected by any act, omission, practice, policy or procedure of such a service and the power to inquire into the propriety of particular activities of a service. An important additional function is to prepare for the approval of the Prime Minister and then to carry out programmes of general oversight and review of the services.

New Zealand Security Intelligence Service

The NZSIS was originally established as the New Zealand Security Service in November 1956 by Order in Council. The agency under its present name was given a statutory base in 1969 by the enactment of the New Zealand Security Intelligence Service Act 1969. Its principal functions then and now are the gathering and evaluation of intelligence relevant to security and

the communication of that intelligence to the appropriate Minister and agencies of the State. It has a general function to advise the State and its agencies and departments in matters relating to security. The focus of the NZSIS over the years since its establishment, with the changes in the nature and aim of intelligence requirements throughout the world, has seen a movement away from what might be described as internal espionage, sabotage and subversion to give a greater emphasis to the international and economic well-being of New Zealand as well as what might be described as traditional matters to which are now added terrorism and the prevention or detection of serious crime in New Zealand or elsewhere. What is a matter of security is strictly and exclusively defined by its statute. There is thereby an inbuilt limitation and control of the activities and conduct of the NZSIS. The NZSIS has other functions which are accessory to those principal functions and include the undertaking of security vetting enquiries and qualification of officers and prospective officers of the State Services and other Governmental agencies who are involved in or may handle classified information. NZSIS has further advisory and educational functions in security on a protective and preventative basis in assisting State Services and Governmental agencies on these matters.

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Government Communications Security Bureau

The GCSB unlike NZSIS has no statutory base. It originated in the Ministry of Defence but since about 1989 has been an independent stand-alone service subject to policy requirements and general oversight by the Officials Committee for Domestic and External Security Coordination. Its principal function is the gathering of foreign intelligence by way of radio and other electronic signals. It has subsidiary functions in information security and is thus principal adviser to the Government and departments and agencies of the State on electronic security and computer security including cryptography. GCSB has particular links with New Zealand's other principal allies, the US, Canada, Australia and the United Kingdom. These links enable the provision of intelligence to New Zealand and its State Services which would otherwise be unavailable.

Briefing of IGIS

632736 Since my appointment I have spent a considerable time being briefed by the Directors and other officers of NZSIS and GCSB. Before I can undertake any oversight or supervision of

the procedures and conduct of the services or enquire into complaints or other matters it is necessary to obtain an understanding of what they do and how they operate. Both Directors and their officers have willingly given full cooperation to the briefings. They and their staff, readily and, I believe, without reservation, have revealed to me a great deal of the inner workings of the agencies. I have met with a number of their staff in the work places. They have explained to me the particular operations that they conduct. I have been greatly impressed with the dedication of the staff at all levels, their enthusiasm and their obvious professional responsibility in what is a difficult and onerous execution of public and Government policy.

Complaints and Enquiries

In discussing the office before my appointment, it was anticipated that the office would be a part-time office. That so far has been correct. In the period upon which I am reporting I enquired into two complaints and undertook one inquiry.

The complaints were made by two persons who were both involved in the one incident. I dealt with that as one complaint, completed one report to the Prime Minister and gave advice of my decision to the complainants in similar form.

The complaint was that on Saturday, 13 July 1996 while the complainants were involved in a GATT watchdog conference, organised as an alternative opposed to the APEC Trade Ministers meeting which was to be held in Christchurch the following day, one of the complainants discovered two men leaving the premises of the other complainant, his residential address. In fact these persons had entered the house. A complaint was made to the Police about that matter. On Thursday, 18 July when the APEC conference was over there was a bomb scare in which a device, which appeared to be a bomb but had no explosives in it, was discovered near the offices of the Christchurch City Council. Thereafter the Police issued search warrants against the two complainants and executed these. No further action was taken in respect of either of these incidents.

My inquiry into that matter included interviews with the two complainants, enquiries of the Police and discussions with the NZSIS. I was satisfied that all those persons that I interviewed

and with whom I discussed the matter were fully cooperative with me. My conclusion was that the actions and procedures which affected the complainants directly or indirectly were lawful, reasonable and justified. No crime or offence was committed on 13 July. In the result I decided that the complaints could not be upheld and that this was not a case for any recommendation of any form of redress or other remedy.

The inquiry was undertaken at the request of the Prime Minister at the instigation of Mr Matt Robson, MP who had requested an inquiry following a number of press reports and other media items in November 1996. The basis of the request was, in terms, that the Department of Social Welfare had used the New Zealand Security Intelligence Service to sweep for bugs.

The background of the matter was the belief on the part of senior officials in the Department of Social Welfare that there had been some leaks of information by members of the staff. The NZSIS and the GCSB as a result of these concerns within the department upon request from its officers gave some advice and undertook an examination of the office of the Director-General and a neighbouring boardroom. That examination found no electronic listening device in those rooms. Neither of the services took part in any investigation into the alleged leaks or to identify those who may have been responsible for them. It did not take any steps to enforce any security arrangements or to act as an enquiry or other agency to police or uncover any of the alleged infractions of general confidentiality or departmental security. Their role was limited to the giving of general advice about protective security, short advice on the procedure for carrying out an enquiry and on the part of the GCSB an investigation and sweep of the premises.

My conclusion was recorded in my report to the Prime Minister on the enquiry in these words " I am satisfied too that the conduct of the NZSIS and the GCSB in this matter was entirely appropriate in accordance with their powers and functions and in accordance with the general Government policy and directives which have been enforced subject to amendments since the enactment of the Official Information Act. I am satisfied about the lawfulness and propriety of their actions and the conduct of the NZSIS and the GCSB."

General

As at the end of June 1997 there were no complaints or enquiries or other matters outstanding.

Because of the close association with Australia, Canada and the United Kingdom and the general similarity of the organisations and offices providing supervision and oversight of the intelligence community in these countries I have communicated with the corresponding officers in those countries. I believe it will be useful to maintain contact with these officers to provide and continue a comparative study and to exchange information and views which no doubt will be of value in the duties I have to perform.

Future Activities

It is now appropriate that I should concentrate activity in the immediate future in drafting and proposing programmes of supervision for the consideration and approval of the Prime Minister. That will be a continuing and perhaps developing part of the office to provide a continuing oversight in respect of the matters which may from time to time require consideration to ensure that the procedures, practices and methods of the agencies comply with the law. That includes the law, by statute or otherwise, that applies directly to the services. I will be concerned to see that each service carries out its activities within the confines of its authority and powers. Beyond that I will be concerned to see that each agency complies with the general law of New Zealand as it affects and regulates the conduct of all citizens and entities in New Zealand.

Since the end of June 1997 I have been requested by the Prime Minister to examine the established internal procedures and practices employed by the GCSB to ensure that the Bureau complies with constraints imposed, in particular, by the Crimes (Exemption of Listening Device) Order 1997. That Order enables GCSB to collect foreign voice communications. That new authorisation is strictly confined to the interception of private communications of a foreign state, foreign organisation or foreign person or a representative or agent of any of them, and, which also contain or may reasonably be expected to contain foreign intelligence.

I have commenced an inquiry accordingly.

Administrative

I have been provided with adequate and secure office premises in association with the Department of the Prime Minister & Cabinet. Administrative services are provided through the directorate of the Domestic and External Security Secretariat (DESS). That has certainly been adequate and I have received every assistance that I require. It does not seem to me to be necessary at this stage to employ any of my own staff. Adequate financial support has been provided to enable me to carry out the office. That support forms part of the financial programme of the Department of the Prime Minister & Cabinet.

An important consideration in the establishment and operation of the IGIS is the maintenance of its independence. The object of the office is, as I have noted, to assist the Prime Minister, but it is important to maintain an independence from his office and Department as well as from the two services and their offices. I have been continually alert to this aspect of the matter and I am satisfied that the arrangements that have been made for the administration of the office and the conduct of all of those with whom I have been in contact has in no way prejudiced or diminished the independence of my office.