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NEW ZEALAND. Inspector-General of
Intelligence and Security.

Annual report 1997/98.

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PRIME MINISTER



ANNUAL REPORT OF THE INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY FOR FINANCIAL YEAR 1997/98

I have reviewed the Annual Report of the Inspector-General of Intelligence and Security for the financial year ending June 1998.

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.

Prime Minister
11 December 1998

INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

ANNUAL REPORT 1998

General

- 1 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 three years.
- 2 The object of the Act and of the office of 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 NZ 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.

- 5 The Act by section 27 requires the IGIS to furnish a report of his activities at the end of each year ending with 30 June. This is the second Annual Report of the IGIS. It is the first which covers a whole year's operation since my appointment in December 1996. It deals with the year ended 30 June 1998.

The Year in Brief

- 6 As anticipated on the creation of the office, it has remained a part time one. There has been no growth in the business of the IGIS. I have continued to operate in the original premises provided under the auspices of the Department of the Prime Minister and Cabinet. There has been no need to appoint any staff to assist me in carrying out my functions. Administrative services have been efficiently provided through the Domestic and External Security Secretariat, DESS. I received and dealt with only one official complaint. I undertook at the request of the Prime Minister one enquiry on which I have made a preliminary report. I have spent time during the year in scrutiny of some of the operations or parts of the operations of the two intelligence services. I attended the first international meeting of Inspector-Generals of Intelligence and Security in Canberra in November 1997.
- 7 An important event in the course of the year was the publication by the New Zealand Security Intelligence Service (NZSIS) of its booklet 'Security in New Zealand Today'. I welcomed that public and open explanation of the Service and its operations. It is, I believe, a timely and useful public record of the work of the Service, providing in one place the information which can be made public. I believe a publication such as this can only help to dispel some of the myths and misconceptions about the Service which have

been given some public currency. An important aspect of this booklet is to explain the checks and controls on the Service in its operation which I think generally were little understood by the public. This will counter the view of some that intelligence organisations such as the NZSIS are self operating, undertaking any task which they might think appropriate without any outside control or supervision. It is an essential aspect of any intelligence and security service that the details of its operations and its methods must remain secret. Disclosure would alert those who act or wish to act in ways contrary to the security interests of New Zealand about those operations and methods which could defeat the effect and efficiency of the NZSIS.

- 8 It is a feature of my office that there is a continuing but small flow of letters of enquiry and grievance from persons who may appear sometimes to be affected by irrational beliefs and obsessions who turn to my office after exhausting the possibilities of other institutions of complaint. It is important to consider each of these with care and compassion, mindful that contrary to appearances there may be a ground of justified complaint. So far I have not found any justified complaint in my jurisdiction arising from any of this class of enquiry and grievance.

Complaints

- 9 One of the principal functions of the IGIS is to enquire into complaints by New Zealand persons and former or existing employees of any of the agencies who may have been adversely affected by any act, omission, practice, policy or procedure of such an agency. In the year under review there were no complaints made by ordinary members of the public which justified an official inquiry. There were, as I have indicated, a number of

letters of complaint or grievance, but on investigation none of these warranted any formal enquiry because they did not involve any adverse effect caused by any act or omission, practice, policy or procedure of either the NZSIS or the GCSB.

- 10 There was one complaint by an employee of one of the agencies which properly fell within my jurisdiction and for which I commenced an inquiry.
- 11 The complainant made a number of allegations about his treatment as an employee of the agency which he claimed had adversely affected his status and his terms and conditions of employment. It was in effect a personal grievance as defined in the Employment and Contracts Act 1991. The employee and the Chief Executive of the agency involved agreed in writing that the matter should be dealt with by me.
- 12 The complaint arose out of events in September 1996 after which the complainant's status and seniority in his employment altered and following further review the complainant was notified of a reduction in salary to take effect approximately 10 weeks later. The complainant in May 1997 submitted a personal grievance to his employer. Throughout the matter, and during the period under which the matter was being considered by me, the complainant remained an employee without reduction in salary but on the altered terms and conditions which had applied from October 1996. The matter did not come before me until October 1997 when the complainant furnished to me the details of his complaint and a large amount of accompanying documents and material in support. A considerable quantity of this documentary material had been provided to the complainant by the agency. It was throughout willing to give all assistance necessary to disclose to the complainant its internal documents and other material which related to the events and to

the later transactions within the agency and between the agency and the complainant and his advocate.

13 I commenced an inquiry.

14 The agency furnished a chronology and statement of its response to the complaint and the claims made against it. The issues were thus joined and the disputes between the parties made clear. It then became convenient to settle how the matter was best dealt with. I was inclined towards an adjudicative approach. That was the approach which had been recommended by the Samuels Report in Australia for the review of grievances by the staff of the services in that country.¹ I therefore directed that there should be a preliminary conference by telephone to consider an agenda of procedural items. That agenda proposed the adjudicative method including a hearing before me at which the parties, represented by counsel or advocates, would have an opportunity to examine and cross-examine witnesses and make submissions. Thereafter I would make a formal finding and issue my report. I also proposed a timetable to deal with matters of discovery, venue and formal recording of issues.

15 The agency suggested that the matter might be more conveniently dealt with by a less formal approach in which each party would submit to me its case and its evidence separately with right of reply to the complainant. This was in effect the investigative mode in which I would carry out the investigation weighing the evidence on each side separately. The advantage of this method was that it avoided the stress of confrontation and cross examination in a formal hearing and the possible administrative disruption in a

¹ Report on the Australian Secret Intelligence Service. Public Edition. March 1995 para 14.41. (Australian Government and Publishing Service, Canberra)

part of the agency which was relatively small and close knit. It would tend it was suggested, to have lessened the time and the expense.

- 16 I decided that in this case the adjudicative mode that I had proposed should be adopted. There were factual issues involving matters of credibility and reliability and I was satisfied that the best way of dealing with those was by examination and cross examination at which I could reach a finding on the facts. There were no problems foreseen in that open form of hearing which might have compromised security interests which could not have been satisfactorily avoided.
- 17 Having reached the stage of setting up the timetable towards a hearing, the dispute was settled acceptably to both sides and so the complaint did not proceed and was concluded without further intervention on my part. I think it can be said that although there was no hearing and no formal decision was made, the complaint procedure was of some assistance in bringing the parties together, formulating the issues and thus providing a background for settlement.

Inquiry

- 18 Pursuant to section 11(1)(c) of the Inspector-General of Intelligence and Security Act 1996 the Prime Minister, then the Rt Hon J B Bolger, requested me to make an inquiry into the internal rules of the Government Communications Security Bureau in these terms:
- a) the validity and appropriateness of the GCSB's internal rules for the collection and reporting of foreign communications; and

- b) the adequacy of the safeguards for ensuring that only foreign communications are collected.

The Prime Minister in making his request recorded that he was seeking reassurance concerning the operating methods, procedures, and rules that the GCSB has in place to ensure that its operations and activities are at all times lawful, proper, and have no adverse or improper impact on the lives of New Zealand citizens.

- 19 This was a topic that, in earlier briefings on my assumption of office, GCSB had focussed upon as a matter which was an important consideration in the day to day operation of the GCSB in collecting and reporting on foreign intelligence by way of radio and other electronic signals. In the course of those earlier briefings I had spent time at GCSB in Wellington viewing their systems. I also visited the satellite monitoring station at Waihopai near Blenheim inspecting the operations there. I also later visited the station at Tangimoana near Palmerston North which is the centre of radio operations for GCSB and which operates under the same internal rules and systems. I have had further close discussions with officers of the GCSB and have examined their procedures and operational systems in light of this inquiry. It was soon obvious that at this stage a report could only be a preliminary report for two reasons. The first was because GCSB was in the process of a review of the internal rules. Secondly, GCSB under extended authority is proceeding with facilities to enable it to collect foreign voice communication. Until I could consider the procedures for the collection and the reporting of the intelligence obtained under amended rules I could not report as required by the Prime Minister. I did believe, however, that a preliminary report would be useful.

- 20 I issued a report to the Prime Minister, now the Rt Hon Jenny Shipley in June. I recommended that the report, though a preliminary one, should be made public. It was made public on 24 June 1998. The final two paragraphs of my preliminary report are as follows:-

"I am satisfied that I have been given all the information I asked for. I was impressed by the willingness, and indeed the eagerness of the staff to explain and to disclose to me as fully as they can all the intricacies and detail of their operations and procedures. I am sure that nothing was done to conceal anything from me or to mislead me. I am convinced that at all levels the operators and officers in the GCSB are anxious to ensure compliance with the collection and reporting rules. Not to satisfy me but to satisfy their own standards and the standards of the community within which they work both nationally and internationally.

I am satisfied that the collection and reporting rules are valid and appropriate. I am satisfied that the operation of those rules more than adequately ensures that the GCSB collects and reports on foreign communication only. I am sure that the rules and their operation have no adverse or improper impact on the privacy or personal security of New Zealand citizens."

- 21 The matters dealt with in the report touch on questions and procedures that are highly sensitive; dealing as they do with the principal functions and operations of the GCSB. Like the NZSIS and its explanatory booklet, already mentioned in this annual report, details of the operations and methods of the GCSB must remain secret. This is specially important

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where there are, as is the case here, particular links with similar organisations in the United States, Canada, Australia and the United Kingdom and their operations and rules. These links have been noted in the Annual Report of the Communications Security Establishment Commissioner in Canada and in the reports of the Inspector-General of Intelligence and Security in Australia. In the Canadian report it was noted that "a corner stone of CSE's Sigint policies deals with safeguarding the privacy of Canadians". Reference was made to the corresponding procedures in Australia and New Zealand, United Kingdom and the United States, and the reciprocal undertaking to ensure that the corresponding agencies in each of these various countries "does not target each others' communications or circumvent their own legislation by targeting each others' communications at each others' behest. In other words, they do not do indirectly what would be unlawful for them to do directly"². I can confirm that such undertaking applies equally to the GCSB.

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- 22 This matter is not yet concluded and I will be considering the further aspects of this matter in light of continuing development and in particular the development of the facilities for interception of voice communication.
- 23 One of the aspects of concern which has been raised in public and directly with me is the fear that the GCSB gathers a great deal of information about New Zealanders within New Zealand. Reference is sometimes made to sweeping up all fax messages or email messages. I am satisfied there is nothing in any such belief and that the GCSB limits its operations, as it is bound to do, to foreign communications and is in no way concerned or interested in the private communications of New Zealanders. A further aspect, however, is the

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suggestion that has been made that intelligence which is collected by GCSB is in its raw form transmitted out of New Zealand direct to allied organisations and that it is the latter and not the GCSB who then report on it. That is a matter about which I intend to take further in my enquiry as it continues.

General Scrutiny

- 24 In the course of this year I have begun and continued a review of the effectiveness and appropriateness of the procedures of NZSIS to ensure compliance with the statutory conditions for the issue and execution of interception warrants by the Service. I have undertaken this on the basis not only of the formal legality of the procedure and compliance with the statutory restrictions on the NZSIS, but also on the general justification for the warrants, the propriety of them, and the safeguards, if any, for any intelligence information which may not in the end be related to national security. I have been satisfied in each case that I have examined that the warrant has in all cases been issued in strict compliance with the statutory conditions and has been appropriately justified on the grounds of national security. I am satisfied that great care is taken to ensure that all extraneous information is excluded from any permanent record and that only what is necessary for national security reasons is retained in permanent record. I have a concern that such material can sometimes involve New Zealand persons and that a permanent record may then be maintained in respect of that. To the extent that there is or may be some breach of national security then it is appropriate and indeed necessary that there should be a permanent record. On the other hand, there can be cases where the information gathered in the execution of the warrant has not implicated a particular individual in any question of security but nonetheless a permanent record is retained. The

justification for that is to ensure that on any later enquiry there will be an accurate record of the innocent association or the lack of association of that individual. It is appropriate in those circumstances to retain a record to negate any possible adverse notice in the future. I intend to consider in greater depth the maintenance of records within the NZSIS.

The First International Conference

- 25 I had the benefit of being present at the first international meeting of Inspector-Generals of Intelligence and Security held under the auspices of the Inspector-General of Intelligence and Security in Australia in Canberra during 17-18 November 1997. Representatives from Canada, United Kingdom, USA and South Africa took part in the conference. They included Inspector-Generals and members of Parliamentary and other review committees. Although there is generally a common purpose and common interest, among the various organisations represented there are a number of differences and distinctions between them which are no doubt due to the constitutional background of the country and the immediate history which lead to the setting up of their inspector organisations.
- 26 In the United States the Inspector General is a not uncommon professional, operating in various branches of government and government institutions. Many are set up under the auspices of the Inspector-General Act of 1978 with the stated purpose of increasing economy, efficiency and effectiveness in the administration of government and to further the detection and elimination of fraud, waste and abuse in the programmes and operations of government services. Not all Inspector-Generals are appointed under the auspices of that statute but are appointed within the government body and strive to establish and

maintain independence within their own organisation. Congressional enquiry through congressional committees is a very lively and active system which operates in national security as in all other fields of endeavour.

- 27 In the United Kingdom, on the other hand, the inspectorial offices it appears, have hardly operated at all. They were not represented at Canberra. The Commissioner and Tribunal which have jurisdiction over the issue and operation of warrants of interception have limited themselves, so it is said, to the formal legalities of the warrants and have not ventured further. It is said that no complaint has been upheld by the Tribunal or Security Service Commissioner under the Security Service Act 1989 or the Intelligence Services Act 1994. On the other hand, the Committee of Parliamentarians in the United Kingdom, the Intelligence and Security Committee, which was represented at Canberra, is an active body sitting frequently, with a broad scope of enquiry into the affairs of the three security intelligence organisations in the United Kingdom.
- 28 In Canada, the Inspector-General's office is a statutory office and is responsible to the Solicitor-General. His reports are classified and are not made public. His function is to monitor and review the operations of the Canadian SIS. He does not deal with complaints. The office of the Communication Security Establishment Commissioner is non statutory, being appointed on the recommendation of the Minister of National Defence, under a warrant of the Privy Council in Canada. It is an independent office and makes public reports. The Canadian parliamentary body the Security Intelligence Review Committee is not constituted by Members of Parliament but by 5 Privy Councillors. It has a staff of 14. It appears to be an active body which undertakes enquiries and scrutiny of the offices

of the intelligence and security services in Canada, largely based on complaints from members of the public.

- 29 In Australia the Inspector-General of Intelligence and Security has a similar constitution to the office in New Zealand. It is an active body dealing with a number of complaints. These have averaged over the last 10 years 21 cases per year. It is involved in the general oversight and scrutiny of the intelligence security organisations in Australia. Their Parliamentary body is also an active body which meets regularly but does not have jurisdiction over all agencies. There is a proposal to expand its activities by extending its jurisdiction to include all the intelligence and security services.
- 30 I was given an opportunity, while I was in Canberra in light of the conference, to visit the Directors and other officers of the Australian Security Intelligence Organisation, the Australian Secret Intelligence Service, Defence Signals Directorate and the Defence Security and Olympics Branch of the Prime Minister and Cabinet Department.
- 31 The attendance at the conference and these other visits were valuable to me in obtaining directly some knowledge of the scope and operations of other oversight agencies and of the Australian intelligence community. Such meetings are helpful too in creating useful personal contacts.

Legal Issues

- 32 The Privacy Commissioner undertook a review of the Privacy Act 1993. One of the topics for review was the position of intelligence organisations under the Act. A discussion paper

posed a number of questions about the application of privacy principles to those organisations.

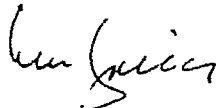
- 33 I made submissions to the Privacy Commissioner on those questions and on a draft of the Commissioner's proposals on the topic. I approve generally the proposed extension of privacy principles to NZSIS and GCSB subject to appropriate safeguard of security concerns. I approved also the proposal by the Commissioner that the IGIS could have a role in cooperation with the Commissioner in resolving privacy issues which relate to intelligence organisations.
- 34 The Director of the NZSIS invited my comment on proposals for amendment to the Immigration Act 1987 which were being canvassed with Government advisers. The proposals included a suggested procedure for dealing with sensitive security issues through the IGIS. I agreed with these proposals. I made a number of comments on these proposals and the subsequent drafting instructions. I have since perused the Immigration Amendment Bill recently introduced into Parliament which develops those proposals. I will make further comment on these to the Minister in charge of the Bill.
- 35 In my Annual Report 1997 I described the circumstances of the one complaint I had dealt with during the period under report. One of the complainants has begun proceedings in the High Court against the Attorney-General on behalf of the NZSIS claiming damages of \$150,000 for trespass into his home and compensation for a breach of the NZ Bill of Rights Act 1990. Two preliminary issues have been raised by the plaintiff.

- 36 One is whether the interception warrant, on which the Attorney-General relies as a defence, authorised entry into the plaintiff's home. In his decision delivered on 19 August 1998 Panckhurst J found in favour of the Attorney-General on that issue.
- 37 The second issue arose out of the plaintiff's application for better or further discovery of documents in the possession or control of the Attorney-General and NZSIS. The defendant objects to the production to the plaintiff and his advisers of a number of documents claiming a public interest immunity on the grounds of prejudice to the security of New Zealand. The claim is founded on a certificate given by the Prime Minister as Minister in charge of the NZSIS. On this issue the Judge was not satisfied that it would be appropriate to uphold the certificate, in spite of the deference to be accorded to it, without an inspection by the Judge of the documents themselves.
- 38 The judgement raises important concerns on both issues. An appeal and cross-appeal have been made to the Court of Appeal. The appeal is to be heard later this year.

Administration

- 39 As I said there has been no expansion in the business of the IGIS. It will, as far as I can foresee, remain a part time operation. There has been no need in my view for any further staff or services. The administrative services are provided through the Domestic and External Security Secretariat (DESS). I have found it to be most satisfactory and I have received every assistance that I require. I do not believe that it is necessary to employ

any staff directly by the IGIS. Adequate financial support has been provided to enable me to carry out the office.



Laurie Greig

Inspector-General of Intelligence and Security

24 November 1998