



Prime Minister

17 October 2001

**ANNUAL REPORT OF THE INSPECTOR-GENERAL OF INTELLIGENCE  
AND SECURITY FOR FINANCIAL YEAR 2000/2001**

I have reviewed the Annual Report of the Inspector-General of Intelligence and Security for the financial year ending June 2001.

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.

A handwritten signature in cursive script that reads "Helen Clark".

Helen Clark  
Prime Minister

# INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

## ANNUAL REPORT 2001

This is the fifth annual report of the Inspector-General of Intelligence and Security. It is made in compliance with the statutory requirement upon the Inspector-General to furnish a report of his activities at the end of each year ending with 30 June. This report deals with the year ended 30 June 2001. The mandate and functions of the Inspector-General are described in an appendix to this report.

### General

1. It is five years since the Office of the Inspector-General was established on the passing of the Inspector-General of Intelligence and Security Act 1996 on 1 July 1996. In fact the office did not commence operations until 1 December 1996 when I was first appointed. I think it is appropriate nonetheless on this occasion to review the past five years in light of the changes that have taken place in the security and intelligence community in New Zealand.
2. The Office of Inspector-General was expected to be a part-time one. That expectation has been proved correct. There have been very few complaints through the years. I have been able to deal with them and my programme of surveillance and supervision of the security and intelligence agencies without the need of further assistance than the purely administrative assistance which has been provided through the Department of the Prime Minister and Cabinet. There has been no growth in the business of the Inspector-General. Not all would agree but I believe that that is a good sign. It is a sign that the activities and operations

of the New Zealand Security Intelligence Service and the Government Communications Security Bureau have no adverse impact on New Zealand citizens. That has been confirmed by my conclusions on the complaints that I have investigated, the other enquiries I have made and the continuing investigation and consideration of the agencies' activities. I am satisfied that the activities of the agencies comply with the law and are in all respects carried out with propriety and with proper regard to the interests of New Zealand and New Zealand citizens. I have not had occasion to disapprove or to criticise any actions or conduct by either of the agencies.

3. Since I was appointed there has been a general election and a change in Government. There have been changes in the Minister responsible for the intelligence and security agencies with the changes that have taken place in the Office of the Prime Minister. There have been consequential changes in the membership of the Intelligence and Security Committee. As I reported last year there have been changes at the top in the NZSIS, the GCSB, the Intelligence Coordinator, Directorate of the Domestic and External Security Secretariat and the External Assessments Bureau. An important new position has been created in the appointment of a Commissioner of Security Warrants who, with the Prime Minister, issues domestic interception warrants under the New Zealand Security Intelligence Service Act 1969.
  
4. In the last five years there has been an increased openness for the activities of the NZSIS and the GCSB. The NZSIS produced and published a brochure *Security in New Zealand Today* in April 1998 which gathered together information about the NZSIS and its activities. This year a publication *Securing Our Nation's Safety* brought together and made public descriptions of the security and intelligence community in New Zealand giving details I believe for the first time of the background, organisation and purposes of the Government Communications Security Bureau, the External Assessments Bureau and the Directorate of Defence Intelligence and Security as well as repeating what had already been published

about the NZSIS. In addition to these there have been statutory steps in relation to both the NZSIS and the GCSB which clarify, define and delimit the establishment and operations of those two agencies. All of these initiatives are for the good in making information available to the general public which it is hoped will dispel myths and misinformation and at the same time provide a clearer and firmer base for making these agencies accountable to the public and to the Parliament. The requirement in the new legislation that the Director of Security and the Director of the GCSB are to make an annual report which is to be presented to the House of Representatives albeit with such deletions as may be required for security purposes is a major step towards openness and responsibility. It would I think have surprised and even dismayed those who in the past have controlled these agencies.

5. Other statutory measures under the Immigration Act and the Protected Disclosures Act have added to the functions of the Inspector-General as an authority to which complaints relating to security matters are directed. No occasion has yet arisen for the exercise of those functions.

#### **Interception Warrants**

6. I continued during this year my inspection and review of the issue of the interception warrants. It is a particular function of my office to review the effectiveness and appropriateness of the procedures adopted by the NZSIS to ensure compliance with the law in the issue of the warrants. I examine all warrants including those domestic warrants which are subject to the jurisdiction of the Commissioner of Security Warrants and the Prime Minister. My scrutiny includes a consideration of the statutory requirements but as well I take into account the appropriateness of the warrant and that its authorisation is based on well grounded information. I have been satisfied that on each occasion that the warrant issued both complies with the law and is justified on the grounds of security.

## Personnel Security Assessments

7. In my report last year I recorded that I had enquired into the operation by the NZSIS of this function as it relates to the assessment of people requiring access to classified New Zealand government information in their employment and in assessments in respect of applications for visas and other immigration and citizenship requests. During this year the SIS undertook a review of the forms that it has used in the vetting of people who require security clearances in their employment. The SIS consulted widely on this and has redrafted a set of forms. These are an improvement in format and content and I have approved them.

## Complaints

8. In the first years of my office there were a considerable number of complaints which were in the nature of grievances about conduct or a state of affairs which the person concerned had, additionally in many cases, alleged against the NZSIS. These were sometimes marked by what appeared to be irrational beliefs and obsessions and had no foundation in fact. This class of complaint or grievance has almost stopped. It may be that the novelty of my office gave an impetus to some persons to grasp at a new authority to present their grievance.
9. There were two complaints during the last year on which I commenced and concluded an inquiry. Both of these related to the vetting procedures of the NZSIS. In each case the complainant was required to have a security clearance in the course of employment. In each case the Director of Security made an adverse report which the employer acted upon thus denying employment or continued employment to the complainant. In each of these cases the complainant had suffered an adverse effect of a serious kind. I interviewed each of the complainants, one of whom had instructed a solicitor. My enquiries focussed especially on the interviewing officers in the NZSIS and the information which they had received and the conclusion they had come to. I took the opportunity to

interview the employer in each case whose decision it was to adopt the recommendation of the Director of Security. Since there were such serious consequences in each case I was particularly anxious to ensure that the decision was made on a proper foundation of fact and was appropriate in the particular circumstances of the employment and the security rating. In each case I was satisfied clearly that the recommendation of the Director of Security was appropriate and that the adoption of the recommendation by the employer was equally appropriate. The complaints were not upheld.

### **Protected Disclosures Act 2000**

10. This Act, commonly known as the Whistleblowers Act, provides that an employee of an organisation may disclose information about serious wrongdoing if the employee believes on reasonable grounds that the information is true and the disclosure is made so that the wrongdoing can be investigated. Procedures for disclosure are to be set up by each organisation. An appropriate authority may receive the disclosure if the head of the organisation or other person under the internal procedures fails to act in a timely manner or there is some particular urgency. The Inspector-General is the only appropriate authority for intelligence and security agencies.
11. Both the NZSIS and the GCSB have promulgated internal procedures. I have considered and approved these.
12. As I have noted there has been no occasion for the exercise of my functions under that Act.

### **Maintenance of Records**

13. This year I continued to keep under review the obligations of and compliance by the NZSIS and the GCSB with the provisions of the Archives Act 1957. While

some further consideration is appropriate under the present regime, there has been a new development which proposes new legislation in the form of a public records statute. Archives New Zealand has published a draft discussion paper of May 2001 and a compliance regime options papers of June 2001. These publications present various issues and questions for consideration, discussion and review with the intention of bringing forward new legislation to take the place of the present act. It is contemplated that special provisions will be made for security agencies among other bodies with particular security issues. While these discussions and proposals are going forward, it seems appropriate to await their outcome rather than institute new regimes which may be superseded by legislation in the relatively near future.

#### **Government Communications Security Bureau Bill**

14. This Bill which has been introduced into the House of Representatives marks a significant advance to the benefit of the public. It continues the Bureau but establishes it under the Statute as a department of state. It thereby becomes a public body identifiable and responsible for its activities. The Bill defines and limits the objectives and functions of the Bureau. It makes it clear that the Bureau is focussed on foreign organisations and foreign persons and that no interceptions are to target the communications of New Zealand citizens or permanent residents. To fortify that public accountability the Director must deliver a report each year on the activities of the GCSB which is to be submitted to the Intelligence and Security Committee and then to the House of Representatives. The copy of the report to the House of Representatives may have deleted from it matters which may prejudice security and international relations that may endanger safety of any person or prejudice the privacy of any individual. That report no doubt can be debated in the Parliament. I have been consulted at various stages of the drafting of this Bill and I have made a number of comments about it. I welcome its introduction and approve its intentions and its provisions.

### Cooperation with Agencies

15. The tendency of my functions is to deal with things that have already occurred. Enquiries are made to investigate complaints where conduct is said to have caused adverse effects and my task is to consider the past conduct and operations to see if they have complied with the law and are appropriate. My scrutiny of the issue of interception warrants is similar. The occasions on which I have been asked to undertake a particular inquiry has arisen from concerns that what has happened in the past may or ought to be called into question. In all of my enquiries and surveillance of the agencies, I have been satisfied that they and each of them and all their officers and staff have cooperated fully giving me all the information that I might require. Arising out of that there have been a number of occasions when the agencies have asked me to consider some particular aspect of their operations before undertaking them so as to ensure that they are in my opinion within the law and appropriate. I have never been consulted on any particular operation. That of course is entirely a matter for the Director of each of the agencies. There have been however general areas and general procedures upon which I have been consulted in advance. On all occasions I have been satisfied that the proposals are both lawful and appropriate and I have approved them. I believe that this is a beneficial process and one which is properly within my function as a prospective one to ensure compliance with the law by the agencies.

### "Echelon Interception System"

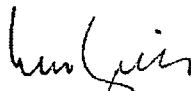
16. In May this year there was published a draft report by the temporary committee on the "Echelon Interception System" by the European Parliament. The system, which the report alleges to be operated by the United Kingdom, the United States of America, Canada, Australia and New Zealand, was said to exist on the basis of a number of circumstantial items of information gathered from numerous sources around the world. It was stated in the report that "no sources whatsoever contend that there is any involvement of community bodies and institutions in a



surveillance system and the reporter has absolutely no grounds for assuming this to be the case", para 7.2.1. The report concludes that "an Echelon" type of intelligence system would not be in breach of the European Union law because surveillance measures for the purposes of enforcing law, maintaining domestic order and safeguarding national security, are all lawful and acceptable. The report also accepts that any such system could have access to only a very limited proportion of cable and radio communications and, owing to the large number of persons that are required, could analyse only a limited proportion of those communications, para 13.2. The principle concern of the report was as to the possibility of industrial espionage by which a state might use interception systems to obtain information which would be provided to a national firm or company to give that firm some competitive advantage. Although the report lists a number of alleged instances of industrial espionage it concludes that in no case has it been substantiated that the so-called "Echelon system" is implicated. There is nothing in this report which has led me to question or reconsider any conclusion I have made about the lawfulness or propriety of the operations of the New Zealand intelligence and security agencies.

#### Administrative

17. The Domestic and External Security Secretariat has continued to provide all the administrative services that I have required. I continue to have the benefit of accommodation within the environs of the Department of the Prime Minister and Cabinet. The services that have been provided by these organisations have been more than adequate to meet my needs. I have received every assistance that I have required. I see no need to change the system which has operated satisfactorily since my original appointment.

  
L M Greig  
Inspector-General of Intelligence and Security  
18 September 2001

## APPENDIX

**Mandate and Functions of Inspector-General of Intelligence and Security**

1. The Office of the 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. I was re-appointed for a further three year term commencing on 1 December 1999.
2. The object of the Act and of the office of the 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 New Zealand 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. Under Part IVA of the Immigration Act 1987 as amended by the Immigration Amendment Act 1999, the Inspector-General of Intelligence and Security has a function to review the decision to make a security risk certificate issued by the Director of Security in respect of about whom decisions are to be made under the Act. Under the Protected Disclosures Act 2000, the Inspector-General of Intelligence and Security is the only appropriate authority in respect of protected disclosures to be made by employees of the security agencies.
6. The postal address of the Inspector-General is Executive Wing, Parliament Buildings, Wellington. The telephone number is 04 471 9571 and the fax number 04 473 2789. Under the Act complaints to the Inspector-General are made in writing addressed to the Inspector-General C/- The Registrar or Deputy Registrar of the High Court at Wellington.

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