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New Zealand. Inspector-General of Intelligence
and Security

Annual report.

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Prime Minister

9 October 2002

**ANNUAL REPORT OF THE INSPECTOR-GENERAL OF INTELLIGENCE AND
SECURITY FOR FINANCIAL YEAR 2001/2002**

I have reviewed the Annual Report of the Inspector-General of Intelligence and Security for the financial year ending June 2002.

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, reading "Helen Clark".

Helen Clark
Prime Minister

INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

ANNUAL REPORT 2002

This is the sixth 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 2002. The mandate and functions of the Inspector-General are described in an appendix to this report.

General

1. The year under report has been one without any marked events in New Zealand in matters concerning my functions. There have been few complaints or grievances against any of the agencies' activities. I have not been asked to undertake any enquiries and have felt no need to do so on my own initiative. I have carried out the normal duties of supervision of the agencies. The year however has been marked by the events of 11 September 2001 in the United States which no doubt will be looked upon as a watershed, among other places, in institutions of intelligence gathering and interpretation here as elsewhere. Whether and to what extent it may increase the duties of an Inspector-General or other intelligence review agencies it is still to be discovered. It is however a time to be vigilant to ensure that the personal protections that are guaranteed under the rule of law and in accordance with the principles that safeguard human rights are maintained.

Interception Warrants

2. I have examined all warrants issued to the New Zealand Security Intelligence Service during the year. This is one of the particular functions of my office required by

statute. My task is 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. My scrutiny includes an examination of both foreign and domestic warrants though the latter are subject to the approval of both the Commissioner of Security Warrants and the Prime Minister. In each case I have given consideration to the appropriateness of the warrant itself and that its authorisation is justified on the basis of the material available to the NZSIS. I consider also compliance with the statutory requirements for the issue of warrants but I do not limit myself to that. I am satisfied that every warrant that has been issued has been issued in strict accordance with the statutory requirements and that the procedures of the NZSIS are appropriate and effective in the Agency's operations for national security, as well as being appropriate for the protection of the public. It is still only the NZSIS that has jurisdiction to obtain and act under interception warrants. The GCSB has no jurisdiction on this head and does not act under interception warrants.

Complaints

3. During the year there has been correspondence from four individuals which raised matters of complaint. One of them believed that he had been refused employment on the grounds of an adverse security clearance. On investigation it was shown that the NZSIS was not involved in any way and the individual was so informed. The three other cases are persons who have conjectured that the NZSIS or the GCSB have an interest in them and have maintained or are maintaining files about them. In one case the person had applied directly to the NZSIS for a copy of his file and when he was given the usual and appropriate response of neither confirming nor denying the existence of a file he applied to the Privacy Commissioner. Dissatisfied with the response of the Privacy Commissioner he wrote to me. I asked him for some further particulars but have received no further response. In the two other cases I have been investigating the tenor of their complaints but have not concluded these investigations before the end of the year.

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4.

The neither confirm nor deny policy as a response to requests for a file about a person or a subject matter is an established policy of both intelligence agencies in New Zealand and I believe of all agencies around the world. There is a well-founded reason for this policy on what might be called a mosaic principle. If enquiries received a negative or affirmative answer these might be used to create a picture of the activities of an agency. A great deal of intelligence gathering must be secret to counter what is inevitably clandestine activities of those who are attempting or wishing to affect or harm the national security of New Zealand or any other country. If those interested know the subject or the subject matter of the activities of an intelligence agency then steps can be taken to increase the security and ensure that intelligence gathering will be unsuccessful. The policy is not universal or invariably applied. There are exceptional cases when a person has been told that the agency has no interest in him or her and that there are no files. On the other hand there are cases where on an inquiry by me it is accepted that there has been a file or there is a file. For example in the instances of security vetting, on the complaint to me while the contents of the file may not be disclosed the fact that there is a file and the adverse material is inevitably revealed in the course of my inquiry. I am completely satisfied that on every occasion on which I have made any investigation into any individual or any subject matter, relevant files have been furnished to me complete and without any editing. This has enabled me to understand whether or not any person might be or is adversely affected by the existence of the file and the basis on which the adverse comment or effect has been granted. It is part of the essence of my inquiry that they take place in a one-sided way so that a complainant or other person will never be told or know any details which might affect national security. I will be aware of all of these details. In the end a complainant has to accept my rejection or acceptance of a complaint.

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Archives

5. In my report last year I referred to the proposals that were being developed by Archives New Zealand toward the preparation of new legislation which would take the place of and bring up to date the existing provisions of the Archives Act 1957. There

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has been little development on the legislative side of this. Both intelligence agencies have however given consideration to recording and updating policies on the maintenance of records. I have been kept up to date on these matters and have been given an opportunity to comment on any proposals being made.

Government Communications Security Bureau Bill

6. In my report last year I referred to this legislation recording my view that it was welcome. I felt that it would provide a benefit to the public by recording in statute what has been the policy and practice of the GCSB since its inception or establishment. The Bill was reported back in December 2001 but has not yet been enacted. I hope that the new Parliament in New Zealand will see fit to pass this legislation.
7. I note that in Canada and in Australia legislation has been passed which gives statutory recognition to the equivalent organisations in those countries. Under the recent Australian legislation the minister responsible for ASIS and DSD must make written rules regulating the communication and retention by the agency of intelligence information concerning Australian persons. In making the rules the Minister must have regard to the need to ensure that the privacy of Australians is preserved. The Canadian legislation enacted on 24 December 2001 provides, in similar fashion, that the activities of CSE shall be subject to measures to protect the privacy of Canadians in the use and retention of intelligence information. The GCSB bill as presently drafted prohibits interception of communications of a New Zealand citizen or permanent resident who is not an agent of a foreign organisation. It also imposes a duty to minimise impact of interception on third parties.

Consultation with Intelligence Agencies

8. As I have noted previously, review functions deal with matters which have already occurred. I scrutinise interception warrants after they have been issued. I deal with matters of complaint after activities and the policies of the agency have already

affected the complainant. I have undertaken inquiries into matters which are for events in the past. Because my underlying task is to ensure compliance of the law by the agencies, each agency has from time to time advised me on particular aspects of developments, policies and procedures in the exercise of their operations. I have never been asked to consult on any particular operation. That would of course be inappropriate and outside my jurisdiction. It is appropriate however I believe to consult with me on matters which might have some impingement on the law. I welcome this. During this year a number of matters were referred to me. On each occasion I have been satisfied that what has been proposed or under consideration was lawful and appropriate.

Intelligence Review Agencies Conference

9. Following the conference in Ottawa in 1999 arrangements were made to hold a Conference in October 2001 in Washington, USA. The events of September 11 necessitated the immediate cancellation of that conference. A replacement conference was held under the auspices of the Intelligence and Security Committee of the United Kingdom in London in May 2002. I had the pleasure of attending that conference as a representative of New Zealand. Representatives of review agencies including Inspectors-General and members of parliamentary committees attended from Australia, Belgium, Canada, Poland, Slovakia, South Africa, United Kingdom and the USA. It was a time for renewing and reforming associations between the group with which New Zealand is particularly associated, as well as with others, who with all their cultural and political differences face similar questions and problems in the supervision of intelligence agencies.
10. The events of September 11 were among the topics discussed. A result of this has been a requirement of intelligence agencies to increase and broaden their activities to combat the potential terrorist activities throughout the world. This may well require further work by the review agencies. There may be a fear that in the enthusiasms of what has been called the 'war against terrorism' protection of individuals and their human rights under the rule of law may become circumscribed. An early reaction in

common law countries has been to pass legislation which is intended to counteract terrorism and the financing of terrorism by expanding and in some cases providing new criminal offences and making provision for the designation of entities as a terrorist or associated entities and the proscription of dealings with such designated entities. All of this arises from states' obligations under the Convention for the Suppression of Terrorist Bombings and the International Convention for the Financing of Terrorism which were resolved upon by the United Nations Security Council. In some states legislation has already been passed which appears to conflict with the principles of the habeas corpus law in permitting the detention without trial and without right of communication of persons who may be suspected of offences under these conventions. New Zealand, while proposing legislation in conformity with its international obligations under these conventions has safeguarded the rights of individuals by allowing appeals to the Courts, review by the Courts and the right of recourse to diplomatic or consular representatives of a foreign suspect.

11. As Geoffrey Bindman has written in *Amicus Curiae* (Issue 41, May/June 2002), the Journal of the Institute of Advanced Legal Studies, in discussing the prospects for civil liberties:

“On the negative side is the insecurity of governments, which encourages them to secretive, heavy-handed and repressive use of their power. That insecurity is naturally intensified by the events of 11 September and the widespread belief in a worldwide terrorist network capable of unpredictable and devastating violence. In the face of such fear, faith in civil liberties is weakened among many and to defend them becomes more difficult and more unpopular.”

One of the principal objects of my Act is the assurance that the activities of intelligence and security agencies comply with the law. That law includes the underlying principles and foundations of democratic society. This may well require an even closer scrutiny of the activities of intelligence agencies.

Other Statutory Functions

12. The Inspector-General has a review function under the Immigration Act where sensitive security issues arise. I am the appropriate authority to receive complaints under the protected Disclosures Act in respect of intelligence and security agencies. I have not yet been called upon to exercise either of these functions.

Administrative

13. 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 Departmental 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

23 September 2002

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.