



# Office of the Inspector-General of Intelligence and Security

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Review of New Zealand Security Intelligence Service visa screening

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**Public Report**

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**Inspector-General of Intelligence and Security**  
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## INTRODUCTION

1. A function of the New Zealand Security Intelligence Service (NZSIS or the Service) under the Intelligence and Security Act 2017 (ISA) is to provide advice about national security risks, including those associated with citizenship applications and border security.<sup>1</sup> In accordance with this, the Service routinely assists Immigration New Zealand (INZ) with the screening of visa applications from people wanting to travel, work, study or reside in New Zealand.
2. The Service is not the final decision-maker on a visa application but its advice carries significant weight. The applicant is typically unaware that the Service has any input. In rare cases an applicant might learn of concerns raised by the Service and have an opportunity to comment on a summary, but will not see the Service's source material. In those circumstances a fair and disciplined approach to the provision of advice is important.
3. This report is a public, unclassified version of a classified report on a review of the Service's approach to visa screening. It omits information that cannot be disclosed for security reasons. The recommendations are, however, as found in the classified report.

## SUMMARY OF FINDINGS AND RECOMMENDATIONS

4. This review found shortcomings in the Service's policies and procedures for screening and commenting on immigration visa applications. It found also that the Service is well aware, from an internal review, of these shortcomings and has made plans for remedial action.
5. My recommendations are intended to highlight matters that can be addressed within the Service's proposed programme of change, particularly in regard to revision of policy and procedure. I also propose that the Service brief my office on progress, once it has had reasonable time to put its plans into effect.

## REVIEW SCOPE AND APPROACH

6. This review was initially proposed to examine the Service's development of recommendations on citizenship and immigration matters, including both passport and visa decisions. It became apparent, however, that visa application screening is the most voluminous of these activities for the Service and alone comprises a substantial topic for review. Accordingly the review was re-focused on the visa screening process.<sup>2</sup>
7. The review examined the effectiveness and appropriateness of the Service's compliance systems in relation to the advice it provides to INZ on visa applications, including its supporting policies and practices.<sup>3</sup> My office considered the key Service policies and procedures,<sup>4</sup> examined a

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<sup>1</sup> Section 11(3)(c).

<sup>2</sup> The review was originally in the IGIS' work programme for 2017/18. It was postponed, resumed in 2019, but paused for significant periods. I thank the Service staff involved for their patience.

<sup>3</sup> In accordance with s 158(1)(f)(ii) ISA.

<sup>4</sup> The Service has numerous policies in this area: this review focused on those governing the Service's system for visa screening. It did not for example include review of policies on the treatment of visa applications from specific countries.

sample of Service advice to INZ, viewed a demonstration of a national security check on a visa application and spoke to Service staff.

8. INZ criteria for referring visa applications to the NZSIS for national security checks are included in immigration instructions certified by the Minister of Immigration under s 22 of the Immigration Act 2009. These were not within scope of this review.<sup>5</sup> Nor did this review examine the Service's use of the visa screening process as a source of intelligence and leads for purposes other than the provision of advice to INZ.<sup>6</sup>

## **REVIEW CRITERIA**

9. This review applied the following criteria to assess effectiveness and appropriateness of the Service's practices and procedures:

### **Effectiveness**

10. NZSIS should have:

- E1: Clear and coherent policies governing the issuance of recommendations on visa applications, as well as procedures and practices tailored to the specific statutory provisions of the Immigration Act;
- E2: Quality control mechanisms in place to ensure that the contents of any adverse recommendations are verified for accuracy and that the analysis and rationale is tested internally;
- E3: Sound record-keeping of all advice provided, the material relied upon, and any quality-control processes; and
- E4: An established practice of reviewing its recommendations process for the purpose of identifying and addressing any compliance issues, embedding good practice, and making any necessary improvements.

### **Appropriateness**

11. NZSIS advice on visa applications should be:

- A1: Balanced and candid; and
- A2: Relevant, reliable and accurate.

## **RELEVANT LAW**

12. The Immigration Act 2009 provides the key grounds for refusal of a visa to a person who poses a national security risk. Subject to certain exceptions, no visa may be granted to any person the

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<sup>5</sup> The criteria for referral of visa applications for national security checks are classified.

<sup>6</sup> Under the Privacy Act 2020, s 22, Privacy Principle 11(g) INZ may disclose personal information if it believes on reasonable grounds that the disclosure is necessary to enable an intelligence and security agency to perform any of its functions. One of the Service's functions is to collect and analyse intelligence in accordance with Government priorities (s 10 ISA).

Minister of Immigration “has reason to believe” is likely to commit an offence in New Zealand punishable by imprisonment or “is, or is likely to be, a threat or risk to security ...”.<sup>7</sup> Nor may a visa be granted to a person who is a member of a terrorist entity designated under the Terrorism Suppression Act 2002.<sup>8</sup>

13. “Security” is defined for the purposes of the Act, and includes the “protection of New Zealand from acts of espionage, sabotage, and subversion”, the “prevention of any terrorist act and of any activity relating to the carrying out or facilitating of any terrorist act” and “the identification of foreign capabilities, intentions, or activities in or relating to New Zealand that affect adversely New Zealand’s international well-being, reputation, or economic well-being”.<sup>9</sup>
14. The Act provides that the order and manner of processing any application for a visa or entry permission is at the discretion of the Minister or an immigration officer, unless immigration instructions certified by the Minister require otherwise.<sup>10</sup> The instructions are a highly detailed statement of immigration policy, including criteria for the granting or refusal of all forms of visa.<sup>11</sup> They do not specify a role for the NZSIS, but refer to national security considerations in decision-making on visas. As noted earlier, the Service’s functions under the ISA include the provision of advice to public authorities on national security risks, including those associated with citizenship applications and border security.<sup>12</sup>
15. As INZ collects personal information from visa applicants for the express purpose of evaluating their suitability for a visa, including by sharing information with other government agencies, it is able under the Privacy Act 2020 to provide visa applications to the NZSIS.<sup>13</sup>
16. The Immigration Act contains a bespoke regime for the use of classified information in decision-making. The provisions are designed to “allow New Zealand to make decisions based on all available information, while maintaining appropriate levels of fairness.”<sup>14</sup> They enable the NZSIS Director-General to certify that information is classified, and provide it to the Minister of Immigration.<sup>15</sup> The Director-General must ensure that the information is balanced, current and includes any classified or unclassified information favourable to the person who is the subject of the decision.<sup>16</sup> The Minister may rely on the classified information if he or she determines that it relates to matters of security or criminal conduct.<sup>17</sup> For residence class and other visas where the applicant is in New Zealand, the Minister and Director-General must agree to an unclassified summary of the allegations arising from any classified material supplied by NZSIS and this must be forwarded to the applicant for comment before the Minister makes a final decision.<sup>18</sup>

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<sup>7</sup> Immigration Act 2009, s 16. The exceptions are set out in s 17.

<sup>8</sup> Section 16(1)(b).

<sup>9</sup> Section 4.

<sup>10</sup> Section 26.

<sup>11</sup> The immigration instructions are published by INZ, as required by s 25 of the Act, in the INZ Operational Manual.

<sup>12</sup> Intelligence and Security Act 2017, s 11(3)(c).

<sup>13</sup> Privacy Act 2020, s 22, Information Privacy Principle 11(a) and (c).

<sup>14</sup> Immigration Bill 2007 (132-1) (explanatory note) at 3.

<sup>15</sup> Immigration Act 2009, ss 7, 34 and 36.

<sup>16</sup> Section 36.

<sup>17</sup> Section 33(1). The ability to rely on the classified information is non-delegable (s 380(1)(c)).

<sup>18</sup> Section 38(2).

17. Although the ISA identifies the provision of advice on national security risks as a function of the Service, it does not specify how this is to be done. The general duties of the Service under the Act apply, however: it must act in accordance with New Zealand law and all human rights obligations recognised by New Zealand law; in the performance of its operational functions, independently and impartially; with integrity and professionalism; and in a manner that facilitates effective democratic oversight.<sup>19</sup>

## **NZSIS POLICY AND PROCEDURE**

### **Policy**

18. Overall guidance on the provision of advice from the Service to INZ in response to a visa referral is set out in NZSIS policies. These describe how national security checks are to be carried out on visa applications.
19. A national security check begins with an initial assessment of the information supplied by INZ. Depending on the outcome of this assessment, the Service might return the application to INZ because necessary information is missing; “elevate” it internally for further checks (in which case INZ is told to put the application on hold); or advise INZ that the application is of no security concern and can be processed further. If an application is elevated within NZSIS for further checks, Service policy requires an assessment of whether there is a clear national security concern relating to the applicant, or a plausible explanation for the information NZSIS holds about them that does not give rise to a national security concern. This assessment can involve inquiries beyond existing NZSIS data holdings.
20. Policy requires any formal comment from the Service to another public agency (eg INZ) to be based on a clear national security concern, rationally connected with accurate and reliable material, meeting a specified level of risk that has been assessed using a prescribed methodology. Any proposed comment to another agency is subject to internal checks and final approval by the Director-General (or in some cases a delegated Deputy Director or senior manager). Comment is to be provided in writing. The policy notes that in providing comment NZSIS should be aware that procedural fairness might require adverse allegations about a visa applicant to be put to them by immigration officials.

### **Procedure**

21. A suite of NZSIS Standard Operating Procedures (SOPs) covers specific tasks for visa screening. They set out step-by-step instructions for dealing with various types of application and are supplemented by online training. Procedure for investigating an elevated visa application sets out specific questions to be considered in assessing whether information held by NZSIS is relevant and current. Procedure for supplying comment to INZ prescribes the format and terminology to be used in describing the security threat the Service associates with the applicant.

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<sup>19</sup> Section 17.

## MOU BETWEEN NZSIS AND INZ

22. An MOU between NZSIS and INZ was signed in 2014 and remains in effect. It is classified. It states high-level principles for cooperation between the two agencies. It identifies visa screening as a contribution by the Service to INZ's assessment of "good character" for immigration and border entry purposes. Schedules address in detail the national security check process and the sharing of classified information.
23. A key element of the MOU is that NZSIS can choose to provide classified information to INZ as "lead intelligence", to support INZ investigation processes, or as "certified classified information" in accordance with the process set out in the Immigration Act (see paragraph 16 above). The MOU expresses a clear preference for the former. This means NZSIS generally supplies information to INZ on the basis that INZ will not be able to use it directly to inform or influence its decision-making process, but can use it as a lead to help it find relevant open source information. In short INZ can usually only use the Service's information as a starting point for an attempt to reconstruct the classified intelligence from publicly available sources. NZSIS and INZ will generally only consider using the "certified classified information" process if the reconstruction effort fails.

## PRACTICE

24. Visa screening is a significant work stream for the Service. Annually it screens tens of thousands of visa applications. Its initial assessments are necessarily conducted rapidly at high volumes: relatively few applications require further investigation and the Service provides comment to INZ on fewer still.
25. Despite the policy that NZSIS will only provide comment on a visa application if it identifies a specific level of risk, the Service advised my office that:
  - 25.1. comments do not always clearly indicate the level of risk posed by an individual and/or may use different terminology to describe the nature and level of risk, as a result of the different subject matter concerns of investigative teams; and
  - 25.2. it would not necessarily comment every time it identified the relevant level of risk, given that assessments were conducted "case-by-case".
26. The Service and INZ have seldom used the Immigration Act process for certification and use of classified information in visa decision-making. My review found two examples in recent years. In those cases I found that the classified reports the Service provided to INZ showed due concern for balance in their presentation of adverse information, included proposed unclassified summaries for the applicant where necessary and met the policy threshold for the level of risk justifying comment.

## INTERNAL REVIEW

27. My office learned through our review that the Service and INZ did their own review of the national security screening system in 2018-19. The review report (which is classified) is a frank,

insightful and unsparing assessment of shortcomings in the system. It was concerned with how well the screening system identifies and treats national security threats, rather than being focused on compliance. Many of its findings were relevant to compliance, however. For example, it found issues with operational guidance, communication of NZSIS advice, and quality assurance processes within the Service.

## **OUR ASSESSMENT**

28. Oversight reviews such as this are focused on the systems, policies and practices of the agency concerned. The object is to assess how well these organisational controls function, to ensure operations are lawful, proper and reasonably consistent with relevant standards. The focus is not on the performance or particular decisions of agency personnel.
29. I am happy to acknowledge, however, that the NZSIS operational staff spoken to for this review impressed my office as dedicated, insightful and aware of the challenges posed by the national security screening system in general and visa screening in particular.
30. The following assessment of the Service's visa screening systems, policies and practices applies the criteria set out at the beginning of this report (paragraphs 9-11) for effectiveness and appropriateness.

### **Effectiveness**

31. The effectiveness criteria for this review were (in short) that the Service should have (1) clear and coherent policies on the production of security advice on visa applications; (2) quality control mechanisms to ensure accurate and robust comment on security risks; (3) sound record-keeping; and (4) an established practice of reviewing its process to identify any shortcomings and necessary improvements.

#### *E1: Clear and coherent policies, practices and procedures*

32. Service policies and procedures relating to visa screening were unsettled during the period of this review. Their currency was difficult to establish. The Service advised that several were outdated and under review. As a whole the suite of policies and procedures governing visa screening was not entirely clear in scope or coherent in its organisation.
33. Policy matters in this area. The Service provides advice to INZ on national security risk. The Immigration Act defines "security", but the ISA does not. When the Service supplies advice to support decision-making under the Immigration Act it should make the relevance of that advice as clear as possible. Immigration decision-makers will need to determine how Service advice relates to "security" as the Immigration Act defines it. The Service should frame its advice with that in mind, considering the terminology of the Immigration Act definition. Service policy should encourage and guide this, but currently it does not.

### **Recommendation 1**

**In updating its policies and procedures for the provision of advice on immigration applications, the Service provides guidance on how to make the relevance of advice to decision-making under the Immigration Act 2009 as clear as possible.**

34. The Service acknowledged during this review that some of its core policy on visa screening was not being applied in practice. In particular it was not consistently following policy on the level of risk required for comment on visa and other applications. Nor was it necessarily applying the specified procedure for risk assessment.
35. It is unsurprising in the circumstances that the Service-INZ internal review found INZ was often unsure what NZSIS advice meant. This arose from uncertainty about how Service advice related to immigration legislation, but also from uncertainty about the probabilistic language used in NZSIS advice.
36. It is open to the Service, in my view, to apply the threshold for comment specified in its policy. Neither the Immigration Act nor the ISA specifies how severe a security threat or risk must be to be relevant to an immigration decision. As a specialist security agency the Service can exercise its judgement on that. The important thing is that it does so with a reasonable level of consistency and transparency. If the policy and risk assessment procedure were current and consistently followed, the Service would have reasonable foundations for its advice to INZ. But, as noted, the policy and procedure are neither current nor consistently followed.
37. Examples of NZSIS advice to INZ examined for this review illustrated this. None included a clear risk assessment. Often they included comment on matters relevant to security, but the overall thrust of the advice was unclear on whether or not the applicant posed a security risk, either on Service criteria or in relation to the Immigration Act definition of security.

### **Recommendation 2**

**In updating its policies and procedures for the provision of advice on immigration applications, the Service:**

- **reaffirms and requires compliance with:**
    - **a standard for the level of security risk at which it will comment on an immigration application; and**
    - **a methodology for assessing and describing risk levels.**
38. The NZSIS-INZ MOU does not add clarity to the Service's approach. Its identification of visa screening as a contribution by the Service to INZ's assessment of good character for immigration and border entry purposes is questionable. The Service has a statutory function to provide advice on security risk and expertise in doing so. It is not a statutory advisor or source of particular expertise on character. The Immigration Act allows reliance on 'certified' classified information in decision-making only "if the Minister determines that the classified information relates to matters of security or criminal conduct".<sup>20</sup> It is difficult to see why classified information

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<sup>20</sup> Immigration Act 2009, s 33(1).

otherwise provided by the Service to INZ should be relied upon in relation to matters of character.

39. In one example examined for this review, the Service assessed a visa applicant as unlikely to pose a risk to New Zealand’s national security but nonetheless provided information “in the event it informs Immigration New Zealand’s character assessment”. Even if this was a valid action (which I question), the relevance to character, on the facts or the particular case, was difficult to see.

### **Recommendation 3**

**In updating its policies and procedures for the provision of advice on immigration applications, the Service clarify that it provides advice on national security risk, not on whether an immigration applicant is of good character.**

40. The policy preference in the NZSIS-INZ MOU for the Service to supply information to INZ as “lead intelligence” is significant given the existence of the Immigration Act procedure for use of classified information in immigration decision-making. I think it is lawfully open to the Service and INZ: the statutory requirements apply if classified information is to be relied upon, but if classified holdings can be replicated from publicly available information there is no such reliance and no need to apply the statutory procedure. There are also sound and proper reasons for it: as the MOU recognises, it protects the sources and methods of the Service and the interests of the immigration applicant, who is able to see and respond to adverse information if it is unclassified.
41. The interests of the applicant are only safeguarded, however, if relevant classified information can in fact be replicated from open source research. According to the NZSIS- INZ internal review this has become increasingly difficult for most high threat cases. If adverse classified information can be reconstructed only in part, or not at all, obvious risks arise. The decision-maker might not be properly informed of relevant national security risks. Alternatively, reliance on other grounds for declining an application, such as failure to meet the “good character” requirement, might obfuscate an underlying national security concern. Again according to the internal review this seems to occur in some cases.
42. It is important therefore that the Service and INZ have a functional procedure for incorporating classified information in decision-making when necessary. Difficulties with implementing the existing statutory procedure are not all within the Service’s ability to remedy – eg the non-delegable Ministerial role in the process; the need for INZ staff with sufficient security clearances. The Service can however be ready to supply “certified” classified information to INZ when it is important to an immigration decision but cannot be sufficiently reconstructed by INZ from open sources. It can also, in consultation with INZ, seek to identify and implement practicable measures that will make the process more functional when it is needed.

### **Recommendation 4**

**In updating its policies and procedures for the provision of advice on immigration applications, the Service works with INZ to mitigate, as far as practicable, difficulties with the procedure for providing certified classified information in accordance with sections 33-42 of the Immigration Act 2009.**

*E2: Quality control mechanisms*

43. Service policy provides for a reasonable framework for the review and approval of advice to INZ. Internal checks are specified before final approval by the Director-General or a delegated senior officer.
44. It is not clear however that these checks are consistently applied. My office reviewed four examples of advice provided to INZ. None had been subject to all the relevant internal checks or approved by the appropriate officer. This was a small sample, but consistent with the internal review finding that NZSIS does not have a robust quality assurance capability.

**Recommendation 5**

**In updating its policies and procedures for the provision of advice on immigration applications, the Service reviews its quality assurance checks and the level of compulsion attaching to them.**

*E3: Sound record-keeping*

45. Robust record-keeping is necessary for NZSIS to facilitate effective democratic oversight, meet its obligations under the Public Records Act 2005 and ministerial policy<sup>21</sup> and fulfil basic good practice for a government agency.
46. Records of NZSIS advice provided to INZ were readily accessible for this review. The Service also now keeps a record of visa applications on which it has commented and the outcome as advised by INZ. This was reasonably comprehensive in relation to examples checked.
47. This review found no clear record, however, of the material the Service relied upon in providing advice in any particular case. My office attempted to identify the material relied upon from footnotes in the advice and searches of Service systems. In one case we were able to infer what classified records the Service likely relied upon. In others we could not. Some open source material was referenced in advice to INZ; some was not. When we raised this with the Service, it advised that it had amended its work process to incorporate a new internal document referencing all material used (both classified and open source) for any comment to external agencies.
48. In the examples we reviewed, NZSIS managerial approval to provide visa advice to INZ was by email that had not been saved into the document management system but remained in personal mailboxes. We raised this with the Service: it advised that it had amended its processes to save these records.
49. Through engagement with this review, therefore, the Service improved its record-keeping in some key areas. It advised, however, that email between NZSIS and INZ is not typically saved to the Service document management system.<sup>22</sup>

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<sup>21</sup> Ministerial Policy Statement "The management of information obtained by GCSB and NZSIS, including retention and disposal of that information".

<sup>22</sup> Email NZSIS Legal to OIGIS (21 April 2021).

### **Recommendation 6**

**In updating its policies and procedures for the provision of advice on immigration applications, the Service ensures all substantive correspondence with INZ regarding immigration applications is saved to the document management system.**

#### *E4: Review and improvement processes*

50. The Service deserves credit, in my view, for having undertaken (with INZ) a rigorous review of the national security screening process, including its processes for screening visa applications.
51. The internal review has not yet resulted in substantive change. The Service has, however, produced a business case for improvements to the national security screening system. While not a direct outcome of the internal Review, it aims at relevant issues. The business case proposed changes including:
- redesigning the threat framework that sets priorities for security risk assessments, in conjunction with relevant agencies (including INZ);
  - tailoring assessments more closely to partner agencies' needs;
  - enabling more use of open source information in NZSIS analysis and reporting of security risk;
  - engaging with recipients of NZSIS reporting (such as INZ) to clarify the language used to describe and quantify risk.
52. The project is to run from 2021-23. Given the seriousness and extent of the issues identified by the internal Review, I am concerned to see progress made.

### **Briefing request**

**The Service briefs my office, no later than the end of the 2021-22 financial year, on action taken to improve the functioning of the national security screening system.**

### **Appropriateness**

#### *A1: Balance and candour*

53. Balance and candour in official advice is particularly important when that advice is provided in secret to a decision-maker and the subject of the decision has no opportunity to see or comment on it. Ensuring that advice is appropriately balanced is critical where, as in many immigration matters, the consequent decision can have profound implications for the applicant. As NZSIS acknowledges, its recommendations are given considerable weight. Advice that an immigration applicant presents a security risk can have grave consequences; an adverse visa decision could, for example, keep an applicant from his or her family or limit employment opportunities.
54. Section 36 of the Immigration Act addresses this by imposing specific obligations on the Chief Executive of an agency that provides classified information to support an immigration decision:

### 36 Classified information must be balanced

- (1) The chief executive of a relevant agency who provides classified information to the Minister under this Act must ensure that—
  - (a) the information is provided in a manner that does not, by reason of the omission of any other relevant classified or non-classified information, give a misleading view of the information supplied; and
  - (b) any classified or non-classified information that is favourable to the person subject to the decision or proceedings is also provided; and
  - (c) any further classified information that becomes available and that is relevant to the decision or proceedings is provided.
- (2) The obligation to provide further information ceases on the date—
  - (a) the decision concerned is made:
  - (b) a decision on the proceedings concerned is made.

55. “Classified information” in s 36 means information that the chief executive (eg the Director-General of the NZSIS) has certified in writing cannot be disclosed under the Immigration Act.<sup>23</sup> As noted earlier, NZSIS and INZ in their MOU distinguish “certified classified information” from that routinely supplied by NZSIS to INZ in reports as “lead intelligence”.<sup>24</sup>

56. Even if s 36 applies only to information expressly certified by the Director-General under s 7, however, the standards expressed in the section represent good practice for all classified advice provided by the Service to INZ. As a matter of integrity and professionalism (s 17 ISA) the Service should, when providing classified advice on security risk to INZ, avoid misleading by omission, balance its advice by including both favourable and unfavourable information, and supply new relevant information as it comes to hand.

57. Service Policy states that NZSIS comment must be based on a clear national security concern, rationally connected with accurate and reliable material and the Service should consider what procedural fairness obligations might apply to an applicant adversely affected by its advice. It advises relevant staff to seek advice from NZSIS lawyers on procedural fairness obligations. Beyond that, relevant policies and SOPs give no guidance on the need to provide candid and balanced advice and how to do so, eg by ensuring both adverse and favourable information is included.

58. A relatively new SOP in another area addresses this, however, eg stating that assessments must “give due regard to alternative perspectives and contrary reporting, and acknowledge new developments”; draw on “all relevant classified and open sources, with due consideration to the reliability and access of each information source”; and “identify and explain the strengths and weaknesses of alternative hypotheses, viewpoints or outcomes in light of both available

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<sup>23</sup> Immigration Act 2009, s 7.

<sup>24</sup> See paragraphs 23-23 above.

information and information gaps". This SOP is not referenced by the procedures and policies directly associated with visa screening, although this could be remedied as those are reviewed.

**Recommendation 7**

**In updating its policies and procedures for the provision of advice on immigration applications, the Service ensures its policies incorporate or reference guidance on the importance and characteristics of balanced and candid advice.**

*A2: Relevance, accuracy and reliability*

59. NZSIS policies and procedures on national security checks provide some guidance on the need for relevance, reliability and accuracy in advice on security risks. This includes the requirement for comment to be based on a clear national security concern, rationally connected with accurate and reliable material. The procedure for investigating an elevated application poses appropriate questions for an investigator to work through to determine if information is relevant and current. Other factors in assessing and communicating accuracy and reliability in intelligence, such as source quality and type, corroboration and any analytical caveats on the information relied upon, though not noted in the policies and SOPs directly concerned with national security checks and comments on immigration applications, are found elsewhere in Service guidance and could easily be referenced.
60. Relevance includes currency and section 36 of the Immigration Act reflects this in the requirement for the chief executive of an agency providing classified information to ensure that "any *further* classified information that becomes available and that is relevant to the decision ... is provided" (emphasis added). The obligation ceases only when the relevant decision is made. As above (paragraph 56) I am satisfied that the requirement for currency must apply to all classified advice provided by the Service to INZ as a matter of good practice. It has practical significance: when there is a delay between delivery of Service advice and a decision on a visa application, relevant and credible information might emerge that could alter the Service's risk assessment.
61. Service procedure sets out appropriate questions for an investigator assessing the currency of any intelligence. As noted earlier, the Service now tracks the outcomes of applications it has commented on. Its procedure for responding to any new, relevant information can be improved, however.

**Recommendation 8**

**In updating its policies and procedures for the provision of advice on immigration applications, the Service identifies how, when it has provided advice to INZ on a visa application and a decision on the application remains outstanding, it will ensure as far as possible that any new relevant information acquired by the Service is considered and any necessary revision to the advice is notified to INZ.**

## CONCLUSION

62. This review found shortcomings, from a compliance perspective, in the Service's policies and procedures for screening and commenting on immigration visa applications. At the same time it found the Service is well aware, from an internal review conducted jointly with INZ, that the national security screening system as a whole has significant failings. That review was focused on the system's efficiency and effectiveness in identifying and treating security risk, but its recommended improvements would reduce compliance risk at the same time. The Service has made plans for remedial action. Substantial change is yet to result. I am concerned to see that it occurs, but at this point do not think progress is likely to be assisted by recommendations directed at fundamental revision of the Service's existing plans. My recommendations are intended to highlight matters that can be addressed within the proposed programme, particularly in regard to revision of policy and procedure. I also propose that the Service brief my office on progress with its change programme, once it has had reasonable time to put its plans into effect.

### Consolidated recommendations

In updating its policies and procedures for the provision of advice on immigration applications, the Service:

1. provides guidance on how to make the relevance of advice to decision-making under the Immigration Act 2009 as clear as possible;
2. reaffirms and requires compliance with:
  - 2.1. a standard for the level of security risk at which it will comment on an immigration application; and
  - 2.2. a methodology for assessing and describing risk levels;
3. clarify that it provides advice on national security risk, not on whether an immigration applicant is of good character;
4. works with INZ, to mitigate, as far as practicable, difficulties with the procedure for providing certified classified information in accordance with sections 33-42 of the Immigration Act 2009;
5. reviews its quality assurance checks and the level of compulsion attaching to them;
6. ensures all substantive correspondence with INZ regarding immigration applications is saved to the document management system;
7. ensures its policies incorporate or reference guidance on the importance and characteristics of balanced and candid advice;
8. identifies how it will ensure, as far as possible, that when it has provided advice to INZ on a visa application and a decision on the application remains outstanding, any new relevant information acquired by the Service is considered and any necessary revision to the advice is notified to INZ.

**Briefing request**

The Service briefs my office, no later than the end of the 2021-22 financial year, on action taken to improve the functioning of the national security screening system.