

Work Programme 2024-25

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INTRODUCTION

As Inspector-General of Intelligence and Security (IGIS), I provide independent oversight of New Zealand's intelligence and security agencies, the New Zealand Security Intelligence Service (NZSIS) and the Government Communications Security Bureau (GCSB). My oversight is directed at ensuring the agencies operate lawfully and in a manner New Zealanders would think proper.

The work of my office includes repeating tasks, such as reviews of warrants issued to the agencies, and self-initiated reviews or inquiries that examine specific areas of agency activity. The Intelligence and Security Act 2017 (ISA) requires me to prepare and publish a work programme each year. This, along with my annual report and public reports of inquiries and reviews, is an opportunity to inform the public of what oversight involves. Some details cannot be published, to avoid disclosing sensitive information. I aim to be as transparent as possible, however, to assure the public that oversight of the agencies is active and wide-ranging.

This year I present my work programme more thematically than in the past, focusing on the topics I will be examining rather than the means of examination. Experience has shown the need for flexibility in determining the scope and direction of my reviews of agency activity. The issues or risks that seem apparent at the outset are not necessarily those that remain after research and analysis. Sometimes an area of intelligence activity selected for review turns out not to require a full review, eg if key questions are answered quickly. Equally a topic that initially prompts only a few questions can turn out to require deeper investigation. For these reasons I have organised this work programme not as a list of inquiries and/or reviews, but as a list of topics I intend to focus on, whether by review, inquiry, monitoring, or other forms of engagement with the agencies.

In identifying topics I aim to cover areas of compliance risk, follow up on issues arising from past reviews and inquiries, and keep abreast of changes in the nature and scope of agency activities. Over time I aim for balanced scrutiny of both agencies, though the number of reviews relating to each is not necessarily equal from year to year. This year, like the last, the balance tilts toward the NZSIS. The Service is seeking to transform its operations by increasing its data sources, holdings and analytical capabilities. This kind of change naturally brings risk, which brings more attention from oversight.

I expect to begin 2024-25 with 3.8 of 5.0 FTE investigators at work. These investigators, the Deputy Inspector-General and myself are the oversight workforce of the office, supported by an office manager (0.8 FTE). One further investigator (1.0 FTE) has been recruited and will join the office in the first half of 2024-25. To enable a reduction in budget I am not filling a vacancy for a security and IT manager. The functions of that position will be spread among other staff.



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OVERSIGHT TOPICS

These are the matters I expect to concentrate on in the coming year. I may add, remove or defer items, depending on resourcing needs and any emerging priorities (eg complaints requiring substantial investigation, unforeseen issues for inquiry or review).

Target discovery (both agencies)

Target discovery is the search for individuals or groups who might pose a national security threat or be sources (witting or unwitting) of valuable intelligence. In 2023-24 I reviewed the GCSB's approach to target discovery and the NZSIS's approach to target discovery for counter-terrorism purposes. In the coming year I intend to review the NZSIS's approach to target discovery for counter-espionage purposes. I will monitor GCSB's ongoing target discovery activity in light of the findings of my review.

Execution of class warrants (both agencies)

A class warrant enables otherwise unlawful intelligence activities against a class of persons, rather than a specific individual. Both agencies now operate predominantly under class warrants. In 2023-24 I began a review of how each agency operates under class warrants, including how they determine whether a person falls within a class, how that determination is reviewed, and compliance controls. I expect to finalise a classified report on this review in the first part of the coming year.

Use of artificial intelligence (both agencies)

In the past year I began an examination of current or planned use of artificial intelligence by the agencies for intelligence purposes. The review aims to identify any good practice principles or models emerging internationally, and understand and assess the New Zealand agencies' approach. I expect to complete a report in the coming year.

Conflict-related intelligence activity (both agencies)

The New Zealand agencies can produce intelligence of value to participants in international armed conflicts; collect intelligence relevant to the security of New Zealand forces deployed overseas; and have a legitimate interest in how international conflicts might influence or draw support from violent extremists in New Zealand. Intelligence activity relating to armed conflict generally merits oversight because of the risks involved. Given the conflicts under way in Ukraine, Israel/Gaza and Yemen, I will be monitoring related intelligence activity in the coming year, including intelligence sharing, associated human rights risk assessments, and any support to military operations. This monitoring will be planned and systematic, but I am not committed to undertaking any specific reviews. Monitoring might indicate where review is necessary, or might be sufficient to answer the questions arising.

Data and records management (both agencies)

Both intelligence agencies have substantial projects afoot to expand or update their data and records systems and capabilities. The GCSB is responsible for a new data centre to hold highly classified information from across government. The NZSIS is updating a range of data management systems, policies and procedures. I will monitor relevant projects, to understand them, ensure they facilitate oversight and assess whether any particular systems or procedures should be reviewed.

Processes for official information disclosure (both agencies)

In the past year I engaged with the Chief Ombudsman on the agencies' approaches to the assessment of security risk in disclosing information about their activities, including in response to requests under the Official Information Act 1982. The focus was on the concept of "mosaic risk" as a grounds for withholding information. I remain interested in the agencies' systems and procedures for dealing with official information requests, but conscious of the need to identify clearly where my oversight can complement rather than overlap with the role of the Ombudsman. I intend to engage further with the Ombudsman in the coming year on this, and with the agencies on the scope and purpose of any further work I undertake.

Political neutrality (both agencies)

Foreign interference and malicious cyber activity are possible threats to the integrity of general elections and the intelligence agencies have a role in identifying, assessing and reporting on relevant activity. At the same time they are obliged by law to be politically neutral (ISA, s 18(a)(iii)) and to respect the right to freedom of expression, including advocacy, protest and dissent (s 19). In the coming year I propose to examine and if necessary review how the agencies understand political neutrality and what policies and practices they have to ensure it. This may include reviewing activity in relation to the 2023 general election.

Human source recruitment and management (NZSIS)

In 2022 I began a baseline review of the Service's approach to the recruitment and management of human sources. This has been a challenging review for both my office and the Service due to the high level of security protection given to the source material. At the beginning of 2024-25 I expect to be engaging with the NZSIS on a final draft classified report and the scope for a public report.

Online intelligence operations (NZSIS)

Late in 2023-24 I began a review of a specific form of online intelligence gathering undertaken by the NZSIS. I expect to be concluding this review by the end of the coming year.

Use of Business Records Directions (NZSIS)

Under the Intelligence and Security Act 2017 the agencies can issue Business Records Directions (BRDs) to obtain customer records from financial institutions (eg banks) and telecommunications providers. BRDs are an important collection tool for the NZSIS and I intend to explore how I might effectively assess the Service's use of them. This might be by sampling, audit or review. I will engage with the Service on method and timing.

New Zealanders and international terrorist screening databases (NZSIS)

In 2023-24 my office began examining the NZSIS' engagement with international terrorist screening databases, including 'No Fly' lists, in relation to the inclusion, review and removal of New Zealanders. I am now reviewing this activity and expect to complete this work in 2024-25.

Disruption (NZSIS)

“Disruption” or “threat mitigation” is action by an intelligence agency aimed at removing or reducing a security threat. While the NZSIS has some scope in law to undertake disruption, eg by issuing warnings, the limits of this are unclear given the statutory bar on it taking action to “enforce” measures for national security (ISA s 16). The Service increasingly seeks to identify disruption opportunities. I propose to review action it has taken.

Collection of intelligence on transnational organised crime (GCSB)

Collection of intelligence on transnational organised crime is a niche area of intelligence collection for GCSB. I began a review of this activity in 2023-24, seeking a baseline understanding of GCSB’s approach, and expect to conclude it in the coming year.

Research and development (GCSB)

The GCSB researches, develops and tests various signals intelligence capabilities, including resources and tools needed for computer and network exploitation. These activities have not previously been examined by oversight and I intend to remedy this in the coming year. I propose to engage with the Bureau to build understanding within my office of the scope and direction of the Bureau’s research and development activities, then consider what further research and/or review might be required.

Hosting of foreign partner intelligence capabilities (GCSB)

In 2023-24 I completed an inquiry into the GCSB’s support to a signals intelligence system deployed by a foreign partner agency. I found significant shortcomings in how the Bureau agreed to host the system and a lack of attention to its subsequent operation. The GCSB agreed to complete a stocktake of all partner systems it hosts in New Zealand. I will be examining that closely, pursuing whatever further information is necessary and determining whether any further review or inquiry is required.

UPCOMING PUBLIC REPORTING

My reviews result in classified reports, provided to the Minister responsible for the relevant agency and to the relevant Director-General. As far as possible I seek also to report publicly. This involves crafting public reports carefully, taking account of views of the affected agency, to ensure that my reporting is as informative as possible without compromising security or international partnerships. In some cases, where relatively little can be disclosed, I will report on a review only in my annual report.

In the coming year I expect to report publicly on some oversight activity that was completed, or nearly so, in 2023-24, including:

- a review of the Bureau’s systems and procedures for sharing raw (unevaluated) data with partner agencies;
- the review (noted above) of NZSIS target discovery for counter-terrorism purposes;
- a review of the NZSIS’ coordination with the New Zealand Police on counter-terrorism; and

- a ‘deep dive’ review of the NZSIS’ execution of a warrant for the seizure of a dataset.

REGULAR REVIEW AND COMMENT

- **Intelligence warrants.** My office reviews all intelligence warrants issued to the Service and the Bureau. Late in 2023-24 I began a close review of two NZSIS warrants under which compliance incidents have occurred and I expect some work on this to carry through to the coming year.
- **Agreements and authorisations.** My office reviews, or is consulted on, a range of legal instruments and agreements that enable intelligence gathering. These include:
 - Direct Access Agreements, enabling agency access to specified government databases;
 - Business Records Approvals and Directions, authorising agency acquisition of information from telecommunications and financial service providers;
 - Assistance and cooperation agreements with foreign partner agencies.
- **Compliance incidents.** Both agencies encourage staff to self-report inadvertent breaches of law or policy controlling intelligence activity. These incidents are examined to identify any systemic issues and I am notified of those confirmed as breaches requiring investigation. My office reviews the agency’s response and seeks further information and assurance where necessary.
- **Progress on recommendations.** Where I have made (and the agencies have accepted) recommendations for change to systems, policies and procedures, my office engages with the agencies on implementation.
- **Ministerial Policy Statements.** Under the ISA there are 11 Ministerial Policy Statements providing guidance to the agencies on lawful activities (eg conducting surveillance in a public place). All were issued in March 2022 for three years and will require review in 2024-25. The Minister responsible for the agencies is required by the Act to consult the Inspector-General before issuing a statement and I expect this to require work in the coming year.
- **Assessment of agency compliance systems.** Each year in my annual report I am required to certify the extent to which the agencies’ compliance systems are sound. This requires compilation and analysis of a broad range of information on the relevant systems and practices.
- **Site visits.** In the coming year I and my staff will be visiting operational sites for both the NZSIS and the GCSB, to observe and acquire information on surveillance technologies and practices.

COMPLAINT INVESTIGATIONS

Each year I investigate complaints received about acts, omissions, practices, policies or procedures of the intelligence agencies. These investigations vary widely in duration and the resources required. By law they must be investigated in private, though public reporting of a completed inquiry is required to the extent possible.

[At the time of preparing this work programme one complaint inquiry begun in 2022-23 remained under way, likely to be completed in early 2024-25.]

CONTRIBUTION TO LEGISLATIVE REFORM

Over the past two years I have been consulted by the independent reviewers of the Intelligence and Security Act 2017 and officials working on the Government response to the reviewers' report. My office continues to provide input, on request, to the policy process led by the Department of the Prime Minister and Cabinet. This includes advice on matters relating to oversight of the intelligence and security agencies.

PUBLIC AND PEER ENGAGEMENT

I engage regularly with other New Zealand integrity agencies, such as the Privacy Commissioner and Ombudsman, public sector peers, the intelligence sector and public interest groups to explain the work of my office and keep in touch with external perspectives on national security and privacy.

I also engage with intelligence sector oversight bodies internationally, particularly those of the other 'Five Eyes' countries (Australia, Canada, the United Kingdom and the United States). In the coming year I will be preparing for and attending a conference of the Five Eyes oversight bodies in Canberra. My office will also contribute to working groups set up by the Five Eyes oversight bodies. Staff from my office attend local conferences and seminars on intelligence and security matters each year.

In the past year Commissioners of Intelligence warrants have shown increased interest in engaging with my office to take advantage of our knowledge of the agencies' operations. I anticipate more engagement with the Commissioners in the coming year.

IMPROVEMENT OF IGIS SYSTEMS AND PROCEDURES

In the past year my office has developed a revised framework for the development of our annual work programme. We have tested it in the development of this programme and I anticipate publishing an overview in the coming year. We are also revising our registers of recommendations made to the agencies, reviewing internal guidance material and updating documentation of security procedures.