

# Review of NZSIS cooperation with Police on counter- terrorism

Public Report

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## **INTRODUCTION**

1. Terrorism and violent extremism is both a national security and a law enforcement concern. It is a legitimate subject of intelligence collection and often involves multiple criminal offences. It therefore comes within the functions of both the New Zealand Security Intelligence Service (NZSIS or the Service) and the New Zealand Police. The two agencies need to coordinate their efforts and ensure they operate within their respective mandates.
2. This baseline review examined how the NZSIS and the Police cooperate on investigating and countering terrorism and violent extremism (for convenience, my report will use the umbrella term 'CT investigations'). Necessarily, as I have oversight of the Service but not the Police, it focuses more on how the Service manages its side of the relationship.
3. This is an unclassified version of my classified review. It omits details of specific counter-terrorism (CT) investigations and operational procedures examined in my classified report. My overall findings are the same as in the classified version.

### **Summary of findings**

4. The NZSIS and Police cooperate closely on counter-terrorism. They share information frequently, at multiple levels, from informal exchanges between officers to formal, minuted discussions between middle and senior managers. I found that both agencies have a reasonably clear understanding of their respective roles and functions, with responsibility for particular activities discussed and agreed as required.
5. Formal interactions between the agencies were reasonably well documented by the NZSIS. For informal interactions, however (eg in emails and in-person conversations), the quality of record-keeping varied between individual staff members. I remind NZSIS of the importance of reliable and consistent record-keeping.
6. I note that the Security Information in Proceedings Act 2022, which entered into force in late 2023, established new procedures for dealing with intelligence as evidence in court proceedings. This would seem to increase the likelihood of NZSIS intelligence being sought as evidence in terrorism prosecutions, which to date has been rare. Intelligence gathering has not traditionally been conducted with an expectation that it meets the evidential standards that apply in criminal investigations, or that it may be disclosed to the defence as part of the criminal disclosure process.
7. The Service has taken some steps to anticipate increased demand for use of its intelligence as evidence. I encourage it to further consider the fitness of its investigative procedures for this development.

## **LEGISLATIVE FRAMEWORK**

### **Intelligence and Security Act 2017**

8. It is a function of the NZSIS under the Intelligence and Security Act 2017 (ISA) to collect and analyse intelligence in accordance with Government priorities, which include countering

terrorism and violent extremism, and provide it to approved people and organisations.<sup>1</sup> In performing this function the Service may cooperate with, and provide advice and assistance to the Police.<sup>2</sup> This, along with a more generally stated NZSIS function of cooperating with the Police,<sup>3</sup> is the statutory basis for most interactions between the two organisations.

9. Additionally the Service may:

- request information from any agency, including the Police, if it has reasonable grounds to believe the information is necessary to enable the NZSIS to perform its functions;<sup>4</sup> and
- request assistance from the Police (among others), to give effect to an intelligence warrant.<sup>5</sup>

10. The Service may also provide the Police with advice and assistance:

- to facilitate the performance or exercise of Police functions, duties or powers (s 13(1)(b)); and
- when the Police are responding to an imminent threat to the life or safety of a person (s 14).

11. If acting under s 13(1)(b) the Service is subject to the same controls as the Police. It is in effect 'deputised' by the Police and may only act as the Police can lawfully act. Section 13(1)(b) is not often invoked. The Service has not acted under s 14 to date.

## ROLES AND RESPONSIBILITIES IN COUNTER-TERRORISM

### NZSIS

12. The NZSIS provides intelligence, advice, and assessments on terrorism and violent extremism to the New Zealand Government and others. It identifies and investigates extremist ideologies and threats motivated by identity,<sup>6</sup> political,<sup>7</sup> faith,<sup>8</sup> or single issues.<sup>9</sup> It investigates CT leads, undertakes discovery projects, and conducts human intelligence operations to collect information on CT persons of interest. Most of these activities involve some coordination with the Police, eg to avoid conflicting operations. The Service also hosts the Combined Threat

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<sup>1</sup> The relevant functions are in s 10 ISA. The relevant Government intelligence priority is in the *National Security Intelligence Priorities 2023* (available at [dpmc.govt.nz](http://dpmc.govt.nz)) at 13. A Ministerial authorisation for the Service to share intelligence with the Police (among others) was issued in 2023.

<sup>2</sup> ISA, s 10(2).

<sup>3</sup> ISA, s 13(1)(a).

<sup>4</sup> ISA, s 121.

<sup>5</sup> ISA, s 51.

<sup>6</sup> Identity-motivated violent extremism is defined by NZSIS as "promoting the use of violence to advance one's own perception of identity and/or denigrate other perceived identities."

<sup>7</sup> Politically-motivated violent extremism is defined as "promoting the use of violence to achieve change to, or within, an existing political system."

<sup>8</sup> Faith-motivated violent extremism is defined by NZSIS as "promoting the use of violence to advance one's own spiritual or religious objectives."

<sup>9</sup> Single-issue violent extremism promotes the use of violence to achieve a desired outcome to a specific issue.

Assessment Group (CTAG), which is staffed from government agencies including the Police and provides independent assessments on threats to New Zealand or New Zealand's interests.<sup>10</sup>

## Police

13. Under the Policing Act 2008, the Police have responsibility for, among other things, maintaining public safety, law enforcement, and national security.<sup>11</sup> The Police lead the response to a terrorist attack, investigate potential terrorist activity, and seek to prevent or disrupt violent extremism through intervention, warnings, arrests, and prosecution.<sup>12</sup>
14. Police are the current kaitiaki (guardians) of He Aranga Ake, a multi-agency early intervention programme to deter individuals from violent extremism.<sup>13</sup>
15. Police receive and analyse financial information under the Anti-Money Laundering and Countering the Financing of Terrorism Act 2009, and can pass relevant financial intelligence to the NZSIS.<sup>14</sup>

## NZSIS COOPERATION WITH POLICE ON COUNTER-TERRORISM

### Executive and non-investigative collaboration

16. The high-level relationship between the NZSIS and Police is managed through two senior managerial forums, the Executive Relationship Group (ERG), which sets strategies and priorities, including for CT, and the Joint Management Committee (JMC), which oversees specific work programmes (eg implementing recommendations from the Royal Commission of Inquiry into the Christchurch mosque attacks).<sup>15</sup>

### CT discovery

17. The Service conducts CT discovery projects to find new investigative leads and identify previously unknown threats.<sup>16</sup> The Police support NZSIS projects, where they hold relevant information, by sharing it with the Service.

### CT Leads

18. The NZSIS CT Unit conducts lead enquiries. A lead is a piece of information on a potential threat to national security. The NZSIS investigates leads to determine if there is a credible threat requiring a formal national security investigation.<sup>17</sup>

<sup>10</sup> See "The Combined Threat Assessment Group" at [nzs.govt.nz](https://nzs.govt.nz). CTAG has staff from NZSIS, GCSB, the New Zealand Defence Force, the Department of Corrections and the Civil Aviation Authority/Aviation Security Services.

<sup>11</sup> Policing Act 2008, s 9.

<sup>12</sup> Independent Police Conduct Authority, Office of the Inspectorate, and IGIS *The Coordinated Review of the Lynn Mall Attack* (14 December 2022) at [61].

<sup>13</sup> "He Aranga Ake" on [police.govt.nz](https://police.govt.nz)

<sup>14</sup> Anti-Money Laundering and Countering the Financing of Terrorism Act 2009, s 139.

<sup>15</sup> See *Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019* (26 November 2020) Volume 3: Part 8, Chapter 12 at [14].

<sup>16</sup> Above n 15 at Part 8, Chapter 10 at [4]; *NZSIS Annual Report 2022/23* (30 June 2023) at 21.

<sup>17</sup> "Security intelligence investigations" on [nzs.govt.nz](https://nzs.govt.nz).

19. The Police and NZSIS have established a joint leads process to triage and share lead information.<sup>18</sup> They determine which agency will investigate the lead, assess its credibility and decide if further investigation is required.<sup>19</sup>

### **National security investigations**

20. The Service notifies the Police when a lead progresses to a national security investigation. Early consultation is intended to ensure each organisation has information relevant to its functions and their operational activity does not conflict.
21. When information is shared at a formal meeting, the discussions, actions, and responsibilities are minuted. NZSIS record-keeping practices for other developments in investigations, eg intelligence shared with or received from Police, are not prescribed in policy and are variable.
22. Interactions between NZSIS and Police on CT matters are frequent, including regular inter-agency meetings, in-person communications (usually undocumented) between NZSIS officers and Police officers, ad hoc meetings on specific investigations, and participation by both agencies in broader national security forums involving other agencies and departments.
23. NZSIS is a member, and attends meetings, of He Aranga Ake, with a remit limited to providing subject matter expertise and advice on violent extremism.

### *Lead and support roles*

24. NZSIS and Police may have overlapping interests in investigations. To avoid duplication of effort they agree on which agency is the lead and which is the supporting agency.
25. The lead is often determined by the phase of the investigation:
- in the intelligence phase, NZSIS is the lead, gathering intelligence to understand the threat and risk posed by an individual, with Police support;
  - in the public safety phase, Police take the lead, when there are public safety concerns (eg an imminent attack). NZSIS provides intelligence support to Police.
26. The lead agency may change over the course of an investigation.

### *Joint Operations*

27. For some investigative operations the Service and Police set up Operational Coordination Groups, which meet as required, depending on investigative activity or operational tempo. Other agencies may be invited to attend if they have relevant interests or information.<sup>20</sup>

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<sup>18</sup> “Kāpuia collated feedback July 2021 – August 2023” on [dpmc.govt.nz](https://dpmc.govt.nz); *NZSIS Annual Report 2022/23* (30 June 2023) at 22; above n 17.

<sup>19</sup> Above n 17.

<sup>20</sup> Above n 15 at Part 8, Chapter 12 at [14]; above n 12 at [74].

*NZSIS requests to Police for information*

28. The NZSIS can request information from the Police if it has reasonable grounds to believe the information is necessary to enable it to perform its functions.<sup>21</sup> Requests must be necessary, proportionate, and provide enough information for the Police to make an informed decision on disclosure.<sup>22</sup> Requests must be overt and declared, and accurate records must be kept.<sup>23</sup>

*Police assistance with NZSIS warrants*

29. The NZSIS can request assistance from others, including the Police, to give effect to an intelligence warrant.<sup>24</sup>

*Closing investigations, ongoing monitoring and tripwire reporting*

30. The NZSIS notifies the Police when it closes a CT investigation. It may ask the Police for periodic updates on any further interactions between the Police and the former subject of investigation, or any ongoing Police investigation.

**Use of NZSIS intelligence in Police warrants and criminal proceedings**

31. Intelligence collected for counter-terrorism can potentially be information that supports a Police application for a search or surveillance warrant, or evidence relevant to a prosecution (including evidence relevant to a defence).
32. The usual position, however, is that the NZSIS provides intelligence to the Police (among others) for intelligence purposes only, unless otherwise agreed. If the Police want to use NZSIS intelligence in Court, the understanding is that they will make a formal request to the Service for it, explaining why there is no alternative to using the intelligence, and specifying how the Service's sources and methods will be protected. Such requests have not been common.

**FINDINGS**

33. Overall it is evident from my review that the NZSIS and Police cooperate closely on counter-terrorism. They share information frequently, at multiple levels, from informal exchanges between officers to formal, minuted discussions between middle and senior managers.
34. It appears to me that the CT relationship is based on a reasonably clear understanding, within both organisations, of their respective roles and functions. Some key concepts, such as lead and support roles, are not precisely or formally defined, but that does not seem to cause any significant operational problems. The Service and Police agree, pragmatically, on who will be responsible for what and when.
35. I observed that there is no guidance on how to manage unintentional information sharing (eg overheard conversations) where NZSIS and Police personnel are co-located. While I

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<sup>21</sup> ISA, s 121(1).

<sup>22</sup> Ministerial Policy Statement *Section 121 Requests* (1 March 2022) at [4], [15]-[17].

<sup>23</sup> Above n 22 at [29].

<sup>24</sup> ISA, s 51.

acknowledge the benefits of co-location, both agencies need to consider their information sharing obligations when discussing work-related matters in a co-located office, to avoid unintentional information sharing.

36. The Service has reasonable records of formal interactions with the Police on CT, such as formal meeting minutes. These records are important for oversight purposes. Some records are inconsistently filed, however, which is inefficient for oversight and presumably also the NZSIS itself.
37. For less formal interactions the quality of records depends significantly on the individual staff concerned. Some “tracker” documents created to record developments in investigations have obvious value for oversight and presumably also for the NZSIS, which created them for its own purposes. Tracker documents are not required by policy, however, and follow no set template.
38. The Service is introducing new tools to track decisions and investigative work, which will replace the ad hoc use of tracking documents. I expect that to improve its record-keeping. Until then, I have advised the Service I expect to see good record-keeping practices adhered to in CT investigations, by the use of a tracker document or other means.
39. I add one broader observation, on the Service’s readiness for possible increasing pressure from Police to allow use of its intelligence as evidence, particularly for CT prosecutions.
40. Amendments to counter-terrorism legislation enacted in 2021 created new terrorism offences, criminalising travel with intent to commit an act of terror, planning or preparation for terrorism, and a widened range of forms of material support for terrorist activities or organisations.<sup>25</sup> The Security Information in Proceedings Act 2022 (SIPA), which entered into force in late 2023, established new procedures for dealing with intelligence as evidence in proceedings, intended to be more workable than previous arrangements. In February 2024 the Attorney-General and Chief Justice agreed procedures and practices for the handling of security information in court.<sup>26</sup>
41. There were also consequential amendments to the Criminal Disclosure Act 2008. The amendments make it clear Police will have to disclose that they hold such intelligence (security information) and that the Service may be the subject of non-party disclosure applications.
42. In combination I expect these developments will increase the likelihood that NZSIS intelligence will be relevant as evidence to terrorism prosecutions, while also increasing the practicability of bringing it to court. At the very least it will become more relevant to the pre-trial criminal disclosure process.
43. The Service told me it had considered the implications of SIPA and the use of intelligence as evidence. Its legal team had received training on the new legislation and would support training for other personnel. The Service had reviewed the procedures agreed between the Attorney-

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<sup>25</sup> Terrorism Suppression Act 2002, ss 5A, 6A, 6B, 13AA-13F.

<sup>26</sup> “Protocol for the handling of security information in court proceedings agreed between the Chief Justice and the Attorney-General under section 28 of the Security Information in Proceedings Act 2022” (9 February 2024) on [courtsofnz.govt.nz](https://www.courtsofnz.govt.nz).



General and Chief Justice. A number of intelligence teams regularly considered potential use of intelligence as evidence, seeking legal advice case-by-case. This advice was usually verbal.

44. As I noted earlier, the long-standing position is that NZSIS intelligence will usually not be available for use in proceedings, even if it has evidential value. This position already looks out of date and inconsistent with recent developments.
45. The Service's British equivalent states its position as follows:<sup>27</sup>

Beginning in the 1990s, changing threats to national security and developments in the law have seen us become more engaged in the criminal justice process.

MI5 officers have been witnesses for the prosecution in a number of high profile criminal trials, and MI5 material has either been admitted in evidence or disclosed to the defence in various cases. This has occurred mostly in the context of our counter-terrorism work.

Our greater involvement in criminal proceedings means that we keep in mind the needs of both the law of evidence and the Crown's duty of disclosure when we plan and carry out intelligence investigations which may lead to a criminal prosecution.

Our officers work closely with members of law enforcement agencies. They ensure that operations are properly coordinated so that resulting intelligence product can potentially be used as evidence in court. For these reasons, as well as to ensure proper internal controls and compliance with our legal obligations ... we keep detailed records of our operations. This includes meetings with agents (CHIS),<sup>28</sup> and eavesdropping, search and surveillance operations.

46. While the NZSIS has taken some steps, as above, to improve its ability to meet any increased demand for use of intelligence as evidence, I think it has more to do. It will need to update its processes for sharing intelligence with Police. The Service will need to train its operational staff on what is required, in investigations, to meet evidential standards. As noted by the UK agency quoted above, detailed records of operations are important. NZSIS has room for improvement there.

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<sup>27</sup> "Evidence and Disclosure" on [mi5.gov.uk](http://mi5.gov.uk).

<sup>28</sup> Covert Human Intelligence Sources.