



OFFICE OF THE INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

WORK PROGRAMME 2022-23

INTRODUCTION

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

Under the Intelligence and Security Act 2017 (ISA) the IGIS must prepare and publish an annual work programme. The IGIS must consult the Minister (or Ministers) responsible for the agencies on the proposed work programme and have regard to any comments received. The final determination of the work programme rests with the IGIS.

Intelligence oversight involves a combination of repeating tasks (such as reviews of warrants issued to the agencies) and special projects (such as reviews of, or inquiries into, specific areas of agency activity). Reviews and inquiries commence at different times through the year and vary significantly in duration. Work programmes therefore typically combine new items and work carrying over from previous years. The IGIS may also establish new reviews or inquiries as he or she sees fit, whether or not they have been anticipated in the published work programme.

The 2022-23 work programme substantially comprises scheduled and unscheduled reviews carrying over from 2021-22, including an unexpected inquiry into aspects of a terrorism incident in Auckland. The work of the office in 2021-22 was significantly affected by staffing constraints arising from COVID-19 precautions, illness and personnel changes.

IGIS reviews are focused on particular areas of agency activity that appear to require attention, or are 'baseline' reviews aimed at establishing the nature and scope of agency activities in areas that have not yet been examined closely for oversight purposes. The 2022-23 work programme includes both types of review. It also includes possible reviews of two specified areas of agency activity. These have been incorporated to provide flexibility, recognising that planned work can be interrupted, delayed or advanced unpredictably.

2022-23 WORK PROGRAMME

Reviews - both agencies

Data matching. This a baseline review examines agency data matching activities based on the acquisition of bulk personal datasets. It was proposed in the 2020-21 work programme, then rescheduled for 2021-22 and will continue in 2022-23.

A counter-espionage investigation. In 2018-19, following review of a warrant issued to NZSIS, the Inspector-General began reviewing closely the associated counter-espionage investigation of a New Zealand citizen. The investigation now also includes supporting activity by the GCSB. This review continues into 2022-23.

Contribution to Control Order applications under the Terrorism Suppression (Control Orders) Act 2019. The first Control Order in New Zealand was issued by the High Court in late May 2021. This baseline review of any intelligence agencies' contribution to a Control Order application began in 2020-21 and will be completed in 2022-23.

Reviews - NZSIS

Information sharing with Police. This review began in 2020-21 on the Inspector-General's initiative. One of its components, a review of how NZSIS conducts joint counter-terrorism operations with the Police, is near completion, with a public report anticipated in early 2022-23. A related review of a specific instance of NZSIS sharing information on possible crime with the Police was completed and reported publicly in 2021-22.

A warning delivered by NZSIS. This review, initiated by the Inspector-General in 2021, is examining an instance of the Service warning a target it was aware of their activity, which the Service assessed as a risk to national security, and telling the target to stop. The underlying question is the extent of the limitation imposed on the Service by s 16 ISA, which provides that the agency has no function to enforce measures for national security.

Human source recruitment and management. This baseline review of the Service's approach to the recruitment and management of human sources was begun in 2021-22 and continues in the coming year.

Target discovery projects. NZSIS' target discovery effort is directed at finding leads for security investigations. This review, begun in 2021-22, is examining selected target discovery projects.

Use and sharing of vetting information. The Service's use of information provided to it by people being vetted for security clearances is subject to strict statutory controls. This review will examine the Service's policies and practices for compliance with these controls.

Reviews - GCSB

Operations enabling access to information infrastructures. This baseline review was included in the 2021-22 work programme but was unable to be resourced and will be undertaken in 2022-21. It will examine the Bureau's conduct of certain operations enabling it to access information infrastructures for intelligence gathering. The operations concerned are classified to an extent that precludes more specific description in a public document.

Target discovery activity. This review will examine the Bureau’s approach to target discovery, which (as noted above regarding a parallel review of Service activity) is directed at finding leads for further investigation. It was scheduled for 2021-22 but will commence in 2022-23.

Collection against New Zealanders. This review will examine the Bureau’s systems and procedures for ensuring it complies with legal and warrant controls when collecting intelligence on New Zealand citizens and permanent residents. It was included in the 2021-22 work programme but paused while some relevant Bureau policy was under review and will proceed in 2022-23.

Possible reviews

NZSIS – A specific form of online intelligence gathering operation. This review would examine Service conduct of a method of targeted intelligence collection through internet operations.

GCSB – Activity in pursuit of intelligence on transnational organised crime. Collection of intelligence on transnational organised crime is a Government intelligence priority. This baseline review would cover Bureau activity in this area.

Operational inquiries

Coordinated Review of the actions of New Zealand Police, Department of Corrections and New Zealand Security Intelligence Service in relation to the attack at New Lynn Countdown

This inquiry is coordinated with investigations by the Independent Police Conduct Authority and the Department of Corrections Office of the Inspectorate to examine government agency actions preceding the New Lynn Countdown attack on 3 September 2021. The IGIS inquiry is investigating whether the decisions and actions of NZSIS to assess and mitigate the threat posed by the attacker were lawful and proper.

GCSB support to a foreign partner agency signals intelligence system

This inquiry is examining the history and current state of GCSB’s support to a signals intelligence system deployed by a foreign partner agency, with particular attention to the approach GCSB took to approval and authorisation of its contribution.

Inquiries into complaints received

Each year the Inspector-General inquiries into a number of complaints received about acts, omissions, practices, policies or procedures of the intelligence agencies.

Regular review and comment activity

Intelligence warrants. The IGIS reviews all intelligence warrants issued to the Service and the Bureau.

Agreements and authorisations. The IGIS 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 the IGIS is notified. The IGIS reviews the agency's response and seeks further information and assurance where necessary.

Human Rights Risk Assessments. The agencies undertake human rights risk assessments when cooperating with overseas public authorities. They recently adopted a revised joint policy statement on managing human rights risks in overseas cooperation and the IGIS will review a selection of assessments carried out under it. We will also seek to conclude our engagement with the agencies on how they respond to receipt of any intelligence reports likely obtained by torture.

Engagement with ISA review and legislation

The IGIS has unique knowledge of intelligence gathering and so is regularly invited to comment on or contribute information to relevant legislation and policy processes. In 2021-22 this has included engagement with the review of the Intelligence and Security Act 2017 being led by Sir Terence Arnold and Mr Matanuku Mahuika and this is likely to continue into 2022-23.

Community and peer engagement

The IGIS engages with civil society, other integrity agencies (eg the Privacy Commissioner and Ombudsman) public sector peers and the intelligence sector to explain the work of the office and keep in touch with external perspectives on national security and privacy. The office also communicates with intelligence sector oversight bodies internationally, particularly those of the other 'Five Eyes' nations (Australia, Canada, the United Kingdom and the United States). The IGIS engages with news media to the extent possible.