

INTELLIGENCE AND SECURITY AGENCIES BILL

AS REPORTED FROM THE COMMITTEE ON THE INTELLIGENCE AND
SECURITY AGENCIES BILL

COMMENTARY

Recommendation

The Committee on the Intelligence and Security Agencies Bill has examined the Intelligence and Security Agencies Bill and recommends that it be passed with the amendments shown.

Conduct of the examination

The Intelligence and Security Agencies Bill was introduced and referred to the Committee on the Intelligence and Security Agencies Bill on 19 December 1995. The closing date for submissions was 1 February 1996. This was later extended to 21 February 1996. Late submissions were also accepted. We received and considered 101 submissions. Witnesses invited to appear before the committee were Sir Thaddeus McCarthy, Rt Hon Sir Geoffrey Palmer, Rt Hon David Lange, Professor Margaret Clark and the Privacy Commissioner, Mr Bruce Slane. Mr Slane had earlier reported to the Minister of Justice on the bill. The Minister in turn referred the report to us for consideration. Advice was received from the New Zealand Security Intelligence Service (NZSIS), the Government Communications Security Bureau (GCSB), and the Department of the Prime Minister and Cabinet.

This commentary sets out the details of our consideration of the bill and the major issues addressed by us.

Purpose

The bill aims to increase the level of parliamentary oversight and accountability of the New Zealand intelligence and security agencies by establishing an Intelligence and Security Committee of Parliamentarians, and by providing for the appointment, in the place of the Commissioner of Security Appeals, of an Inspector-General of Intelligence and Security. The bill consequentially amends the New Zealand Security Intelligence Service Act 1969. The opportunity was

No. 146—2

taken to update the definition of security in the New Zealand Security Intelligence Service Act 1969 and to make other minor amendments.

Background

Established by Order in Council in 1956, the New Zealand Security Intelligence Service gained legislative recognition in 1969. The Service originally concentrated on the risks to New Zealand of internal subversion. In 1977, following Sir Guy Powles' report on the Service, the Service's focus shifted to the threat of international terrorism. The need for surveillance of externally driven espionage that affected New Zealand's government and diplomacy was emphasised. Now, the service is responsible for obtaining and evaluating intelligence used for the protection of New Zealand from acts of espionage, sabotage, terrorism and subversion. It is also responsible for passing intelligence on to, and advising, Ministers of the Crown in matters relating to the security of Government departments and agencies.

The Government Communications Security Bureau (GCSB) does not have a statutory basis. Established in 1977 within the Ministry of Defence, the GCSB was set up in 1989 as a stand-alone government agency responsible to the Prime Minister but subject to oversight by the Officials Committee for Domestic and External Security Coordination. Currently, the Bureau is responsible for providing foreign intelligence to meet approved national foreign intelligence requirements. Its other main function is to provide advice and assistance to New Zealand military and official organisations in connection with the protection of information and other material by technical means.

The Intelligence and Security Agencies Bill was introduced following the Government's review of accountability arrangements for the intelligence and security agencies. The review was in the light of reforms relating to parliamentary accountability and oversight in public sector management. An important consideration was the desirability of closer conformity with accountability practice and procedure in the United Kingdom, Australia and Canada in relation to their intelligence and security agencies. As part of its consultative process, the Government sought the views of a group of eminent New Zealanders. They included members of the judiciary, retired senior public servants, academics, and former Prime Ministers of New Zealand, who have had direct dealings with intelligence and security agencies.

Intelligence and Security Committee

This bill establishes a statutory committee of Parliamentarians, as opposed to a select committee which is appointed by the House of Representatives pursuant to the Standing Orders of the House, to provide for the enhanced accountability of the intelligence and security agencies. The committee is intended to increase parliamentary oversight while remaining sensitive to considerations of national security.

Interpretation

Some submissions suggested that in the bill the expression "sensitive information" is too broadly defined and would allow the withholding of information, the release of which might not be prejudicial. We recommend that the definition be amended to establish clearly that sensitive information is defined on the basis of limited categories of information, the release of which would be likely to prejudice the national interest. This would bring the definition more generally into line with the Official Information Act 1982.

The Privacy Commissioner commented on the interpretation of sensitive information in clause 3. He believed the present definition of sensitive information would allow intelligence and security agency chief executives to withhold information that had been passed to the New Zealand Government by a foreign government without that foreign government being approached and its consent to release sought. In reality, we believe that, if disclosure of sensitive information were denied, the reason would have to be justified. This would include seeking confirmation from a foreign government on the status of the information concerned. We, therefore, recommend no amendment to the clause.

We note that “chief executive” requires a definition not only in respect of the existing intelligence and security agencies (NZSIS and GCSB) but also in respect of other agencies that may be declared by Order in Council to be intelligence and security agencies for the purposes of the statute. Accordingly, we recommend that a new paragraph (c) be added to the definition of “chief executive” in clause 3.

We recommend that the power to make an Order in Council designating an agency as an intelligence and security agency for the purpose of this Act be expressly included in clause 3.

Functions

The functions of the new oversight committee as set out in clause 6 of the bill are to examine the policy, administration, expenditure, and annual reports of intelligence and security agencies. Also, it is to consider other matters relating to those agencies such as relevant bills and petitions referred to the committee by the House. Many submissions claimed that the effectiveness of the oversight functions of the committee would be limited by the committee’s exclusion from examining the day-to-day operations of intelligence and security agencies.

We recommend further definition of day-to-day operations to make explicit the nature of what is being excluded from the scope of the committee’s jurisdiction. Clause 6(2)(b) should be amended by replacing reference to “day-to-day operations” with “inquiry into any matter that is operationally sensitive”. We are of the view that it is not a function of the bill to prevent the committee from studying relevant information, but to protect the intelligence collection and production methods or sources of information. The principle of “need to know” should be preserved in operations. To carry out its oversight function, the committee needs information on what the agencies do, not how they do it. The bill should also protect committee members from being compromised by knowledge of specific intelligence collection and production methods or sources of information.

Some submissions claimed that the effectiveness of the committee is constrained by limits to its access to information, such as the provision for the chief executive of an agency to withhold sensitive information from disclosure to the committee. We considered whether it should be up to the Prime Minister to decide whether information was sensitive and should be withheld. On balance, we feel the chief executive of an agency is well placed to determine the information which for reasons of security needs to be withheld. We note that the decision of the chief executive could be overruled by the Prime Minister. The Privacy Commissioner endorses these arrangements that are set out in clause 16.

Proceedings

Unlike parliamentary select committees, the Intelligence and Security Committee is to be a statutory committee comprised of members of Parliament and established by legislation. Rights and privileges conferred on the select committees of the House of Representatives by Standing Orders will not apply to the committee. Because of this, the bill makes specific provision to extend parliamentary protection to the members of the committee. These provisions are set out in subclauses 6(3), 12(4) and 15(4) of the bill. We feel that subclauses 12(4) and 15(4) deal with privilege and are not in character with other subclauses in their respective clauses. They should be located together in the bill as a separate stand-alone clause entitled 'Privilege'. This change is recommended accordingly.

As the committee will not be a select committee of the House it will be staffed by officials of the Department of the Prime Minister and Cabinet rather than the Office of the Clerk of the House of Representatives. The privileges in clauses 15(1) and 15(2) extend to those persons assisting the committee, appointed under the arrangements set out in clause 13(7). We believe this needs to be expressed with greater clarity. Changes to clause 15(1) incorporating a reference to appointment under clause 13(7) are recommended accordingly.

The bill intends to give the committee a mandate to examine the policy, administration and expenditure of an intelligence and security agency. To give effect to this mandate it is necessary to remove these functions from the Government Administration Committee's terms of reference, as set out in Standing Orders. The exclusive jurisdiction of the oversight committee needs to be established through the qualification of certain Standing Orders. Draft Sessional Orders are set out in the final part of this commentary.

Some submissions proposed that, for greater transparency, the committee's deliberations should be held in public unless otherwise determined by a majority vote of the committee. We recommend that, in order to meet the requirements of security, committee proceedings be conducted in private, unless unanimously resolved otherwise. We recommend no change to clause 12(2).

Clause 18 prohibits the disclosure of certain categories of information that are made available to the committee by persons assisting it. The original clause provides that information is not revealed or published if the Prime Minister thinks it prejudicial. We recommend that the phrase "in the opinion of the Prime Minister" be struck from the clause in order to create certainty. The release of such information becomes a decision of the committee.

We note that the authority of the committee for the disclosure, publication, or recording of information referred to in clauses 18 and 19 should be specified as "the written authority of the committee or its chairperson". Amendments to clauses 18 and 19 are recommended accordingly.

Membership

Clause 7 provides for five members to sit on the oversight committee. They are the Prime Minister, the Leader of the Opposition, two members of the House nominated by the Prime Minister after consultation with the leader of each party in Government, and one member of the House nominated by the Leader of the Opposition after consultation with the leader of each opposition party and with the agreement of the Prime Minister.

Many submissions raised doubts about whether the committee would be sufficiently independent of the Executive to allow for objectivity and impartial oversight. They called for the membership of the committee to be increased, to

include other parliamentary parties, and to reflect a proportionally constituted Parliament.

Given the committee's work will involve scrutiny of aspects of national security, a membership comprising senior Government and Opposition members is clearly desirable. However, an increase in the size of the committee would mean an extension of persons with access to classified information. To protect the confidentiality of this information we feel that the size of the committee as set out in the bill is appropriate.

Clause 10 concerns cessation of committee membership. The original clause did not provide for the consequences in terms of membership of the committee if a member is suspended from the service of the House. We recommend that provision be made for such an eventuality. Clause 10(1)(b) allows for a member to cease to be a member of the committee if he or she dies or retires. Provision has been made elsewhere in clause 10 for the cessation of membership of the House and we recommend omission of clause 10(1)(b) and amendment of clause 11(1)(a).

Some submissions suggested that to invest a greater degree of independence in the oversight committee its membership should be drawn from outside Parliament. One submission pointed to the experience in Canada where committee members of a comparable committee are not members of Parliament. They are instead drawn from the Queen's Privy Council and appointed by the Prime Minister. However, in our view, as Parliament consists of democratically elected representatives, and has a constitutional obligation to oversee and make the public sector accountable, Parliament is the most appropriate institution from which committee members should be drawn. Moreover, the legislation provides for consultation between the Prime Minister, the Leader of the Opposition and the leaders of parties represented in Parliament in recommending appointments to the committee. Parliament has a role endorsing the nominations.

Role of the Prime Minister

Although it is not binding, a convention has developed that the Prime Minister of the day is also the Minister responsible for the intelligence and security agencies. Numerous submissions pointed to a possible conflict of interest where the Prime Minister, as chairperson of the committee, is also the Minister responsible for the intelligence and security agencies. This is a justified concern and we recommend that provision be made for the committee to be chaired by the Prime Minister or by a member of the committee appointed by the Prime Minister. A consequential change is that the clause 13(5) provision for the Prime Minister to have both a deliberative and casting vote is changed to give this authority to the chairperson of the committee.

Other consequential amendments to effect the change to the chairing of the committee will be required in clauses 7(1)(a), 13(2) and 13(3). We note that the quorum for the committee is the chairperson and 3 other members.

Many submissions specifically criticised the sole responsibility and power of the Prime Minister to convene meetings of the committee. We feel that the Prime Minister would be extremely unlikely to refuse to convene a meeting of the committee if it was the strongly expressed will of one or more members of the committee, particularly because of the senior level of Opposition representation on the committee. Therefore, we consider that it is unnecessary to extend the initiative to convene a meeting to include other members of the committee and recommend that there should be no change to clause 13(1).

Inspector-General of Intelligence and Security

This bill aims to enhance oversight of the intelligence and security agencies. It will provide a mechanism for New Zealanders who believe they have been adversely affected by the actions of these agencies to complain by creating the office of Inspector-General of Intelligence and Security. This office will replace the Commissioner for Security Appeals established under the New Zealand Security Intelligence Service Act 1969.

Interpretation

As with clause 3 in Part I of the bill dealing with the Intelligence and Security Committee, clause 21 of Part II of the bill dealing with the Inspector-General requires amendment to extend the definition of “chief executive” to an agency that may be declared by Order in Council to be an intelligence and security agency for the purposes of the statute. An amendment to clause 21 is recommended accordingly. In addition, as in Part I of the bill dealing with the Inspector-General, the power to make an Order in Council designating an agency as an intelligence and security agency for the purpose of this Act should be expressly included in clause 21.

Appointment

Several submissions proposed that the Prime Minister should consult with the Leader of the Opposition before recommending the appointment of the Inspector-General. We agree and recommend that clause 24 be amended accordingly.

It was suggested that the nominee for position of Inspector-General should be subjected to a parliamentary confirmation process similar to that applying to senior public appointees in the United States. We do not feel that such a process is necessary given that the bill prescribes that the nominee must be a retired High Court Judge, and the inclusion of the Leader of the Opposition in the selection process.

Some submissions questioned the requirement for a nominee to be a retired High Court Judge. We recommend that there be no change to this requirement. The sensitive nature of the position requires the appointee to be demonstrably a person of the utmost integrity and independence with the advantage of a judicial background. We are of the view that a retired High Court Judge will have these qualities and will be perceived by the public as having them.

Functions

Several submissions commented that the bill prevented the Inspector-General from inquiring into complaints from organisations which the Inspector-General considers to have been adversely affected by actions of the intelligence and security agencies. The bill as introduced allowed the Inspector-General to accept and explore the complaints of individuals only. We recommend that the Inspector-General’s jurisdiction be extended to include complaints from New Zealand organisations. A new definition of “New Zealand person” has been recommended in order to effect this change.

Some submissions argued that provision be made for the Inspector-General to possess the ability to initiate an investigation or investigate a complaint if it were felt that such an investigation was in the public interest. We feel that a further extension of the Inspector-General’s jurisdiction to include matters of “the public interest” is not desirable. Such an extension of jurisdiction in our view would unacceptably widen the scope for complaints. This would allow a person not

directly affected in an adverse manner to lodge a complaint. The criteria for lodging a complaint and instituting an inquiry should remain the claim of a direct adverse affect. No change in this respect, therefore, is recommended.

Many submissions criticised the exclusion of the Inspector-General from inquiry into the day-to-day operations of intelligence and security agencies. These criticisms were similar to those made about the Intelligence and Security Committee. It was asserted that this exclusion similarly restricted the functions of the Inspector-General. In fact, the bill treats the Inspector-General differently, allowing his or her jurisdiction to extend to inquiry into day-to-day operations to the extent necessary to carry out his or her functions. We feel the criticism is not valid. However, it would be appropriate to give better definition to day-to-day operations, consistent with the amendment made to clause 16(2)(b) in respect of the Intelligence and Security Committee. Accordingly, we recommend that clause 30(4) be amended to replace the exclusion from inquiry into “day-to-day operations” with exclusion from “inquiry into any matter that is operationally sensitive”. Matters excluded include intelligence collection and production methods or sources of information, except to the extent necessary for the performance of the Inspector-General’s functions.

The Human Rights Commission objected to the limitation on the ability of the Commissioner to transfer to the Inspector-General complaints from persons who are not New Zealand citizens or ordinarily resident in New Zealand relating to alleged breaches of human rights by an intelligence and security agency. It argued that clause 30(1)(d) was inconsistent with the Human Rights Act 1993, which allows human rights complaints to be laid by any person in New Zealand, resident or not. Subsequent to Ministry of Justice advice on this matter, we recommend removal of the transfer provision from the Inspector-General altogether through the omission of clause 30(1)(d). Such an omission will allow concurrent jurisdiction between both offices for certain classes of complaint. We note that this course of action does not remove an existing statutory right but restores the status quo as it applies to the Commissioner of Security Appeals. To overcome any potential problems that may result, we recommend the insertion of a clause to allow for consultation between the Human Rights Commissioner and the Inspector-General.

This bill enables the Inspector-General, where necessary, to consult with the Ombudsman or with the Privacy Commissioner. The Privacy Commissioner has drawn attention to the need for an amendment to the Privacy Act 1993 to enable the Privacy Commissioner to disclose information to the Inspector-General. This drew attention to a similar need in the case of the Ombudsmen Act 1975. Amendments have been incorporated in the bill.

A few submissions voiced criticism that the requirement for an agency chief executive to consent to an inquiry by the Inspector-General into an employee complaint amounted to an effective right of veto by the relevant chief executive. We recommend that the bill be amended to remove the requirement for agreement except in the situation where all other internal remedies are yet to be exhausted.

The Privacy Commissioner, in his report on the bill, recommended that, given that the Inspector-General will be a former High Court Judge, he or she should be permitted some determinative functions in respect of investigating complaints. We recommend that the Inspector-General be given an express power to recommend specific remedies, including compensation, to the Minister responsible as redress for complaints upheld following investigation by the Inspector-General. This is implemented in an amendment to clause 30(6).

Regarding the mode of complaint, the Privacy Commissioner noted that equivalent Australian legislation allows a person in custody to communicate directly with the Inspector-General confidentially and via the High Court, using a sealed envelope. Such a right is recognised elsewhere in New Zealand law. We recommend that provision be made in the case of the Inspector-General, with amendment to clause 35.

Clause 37 requires the Inspector-General to be satisfied that an intelligence and security agency employee has acted in good faith in bringing a matter to his or her attention. If the Inspector-General is satisfied that an employee acted in good faith, that employee should not be subjected to any form of penalty or discrimination from his or her employer. We recommend that presumption should be in favour of the employee. This clause should be amended to make clear that an employee will be protected unless the Inspector-General determines that the employee acted otherwise than in good faith.

Proceedings

Clause 38(3) requires a complainant to support his or her complaint with a statutory declaration if the Inspector-General so requires. This clause omits any power of compulsion in respect of submission of material by a complainant on oath. We recommend that, given members of agencies may be summonsed and examined on oath, there should also be provision for evidence from a complainant to be submitted or confirmed on oath.

With one exception, on the ground of lack of jurisdiction, no proceeding, report, or finding of the Inspector-General can be questioned or reviewed by the Courts. This has led to several submissions criticising the privative nature of clause 38(9) and in some cases urging its omission. We recommend that no change be made to this clause. The Inspector-General is to be a former High Court Judge and the right to seek judicial review would undermine the security considerations that underline the establishment of the position of Inspector-General.

Clause 41 provides for the Inspector-General to hear evidence separately and in private if to do otherwise, in his or her opinion, would be likely to be prejudicial to those interests set out in clause 45(3)(a). The Privacy Commissioner urged that the clause be amended to allow evidence to be heard separately and in private if to do otherwise would prejudice the privacy of an individual or the interests of justice. We recommend that the Privacy Commissioner's proposed amendment be adopted.

In respect of powers of the Inspector-General in relation to inquiries (clause 42), we recommend that provisions be added relating to privilege of witnesses and penalty for non-compliance by witnesses. These are based on similar provisions contained in the Ombudsmen Act 1975. Provisions relating to witnesses and compliance apply to proceedings of the Commissioner of Security Appeals under the New Zealand Security Intelligence Service Act 1969 through reference to the Commissions of Inquiry Act 1908.

Reports

We note that Ministerial certification for withholding disclosure provided for in clause 45(3) is modelled on the same provision in the New Zealand Security Intelligence Service Act 1969. It does not, however, carry over from that model an additional provision that the issue of a certificate by the Minister should be conditional upon consultation with the chief executive of the relevant intelligence and security agency and any other person providing relevant advice. We recommend that provision be made for this by the addition of a new subclause (4).

Some submissions noted that the equivalent Australian legislation allows a copy of the Inspector-General's report to the Prime Minister, including material that has been excluded from the published version tabled in Parliament, to be provided to the Leader of the Opposition. It is appropriate for the inclusion of a similar provision in this bill and we recommend that clause 46 be amended accordingly.

One submission drew attention to the fact that clause 48 of the bill as currently worded would prevent publication of advice provided by the Inspector-General to a complainant under clause 44(2). We consider that, as such advice will already be in terms that will not prejudice security, there would be no valid grounds for preventing its publication. Accordingly, we recommend that clause 48(1) be amended.

Some submissions asserted that the Inspector-General, in respect of inquiries and the annual report, should report to either the Intelligence and Security Committee or Parliament or both, rather than to the Prime Minister. We do not recommend any change. The function of the Inspector-General is to assist the Minister responsible. Because of this fact and the possible sensitivity of the information involved, reports should be made to the Minister responsible, and to the chief executive. In the case of annual reports, again because of the possible sensitivity of the information involved, the report should be to the Minister responsible and to the Prime Minister (if the Prime Minister is not the Minister responsible), and to the Leader of the Opposition before being presented to the House with sensitive information deleted as necessary. We note that the bill makes provision for the Inspector-General to appear before the committee with the concurrence of the Prime Minister.

New Zealand Security Intelligence Service Act 1969

Extended definition of security

The bill amends section 2 of the Act by substituting a new definition of "security". As introduced, the new definition of "security" was extended to include "the ensuring of New Zealand's international well-being or economic well-being". It is the definition of "security" that principally defines the areas of responsibility of the New Zealand Security Intelligence Service. Many submissions commented on the amended definition. Some expressed concern about the vagueness of the new definition. They were concerned that the phrases in the bill relating to international and economic well-being were not expanded upon or more clearly defined.

Many submissions commented that the new definition extends the parameters of operation of the New Zealand Security Intelligence Service. They argued that this would lead to wider surveillance operations resulting in constraints on the rights of individuals to engage in lawful protest against Government policies. Several submissions proposed that a clause be inserted in the bill to emphasize an individual's freedom to engage in lawful protest. We note that a similar provision already exists in the New Zealand Security Intelligence Service Act 1969 (section 4(2)(b)).

Some submissions suggested that the extended definition of security identifies the Service as having the sole role in ensuring the international and economic well-being of New Zealand. Several submissions said that other Government agencies can perform many security functions either already assigned to the Service or possible under the new definition. For example, some suggested that the Ministry of Foreign Affairs and Trade could play a greater role safeguarding New Zealand's interests overseas, or the Ministry of Commerce could play a more active part protecting the nation's economic interests. A few submissions

questioned the need for intelligence and security agencies at all, while others called for a review or a commission of inquiry to examine whether the present intelligence and security agencies should be retained.

We agree that there is a need to tighten the new definition of security and to provide in the legislation assurances of what actions the security services will be prohibited from carrying out. We accept the extended definition of security with the use of the word “ensuring” has been interpreted in some submissions as giving the Service the sole responsibility for achieving New Zealand’s international and economic well-being. This is not the intention. The function of the Service is contributory and we recommend that the definition of security be amended accordingly. The definition of “Security” should be extended to include “the making of a contribution to New Zealand’s international well-being or economic well-being”.

Noting the concerns expressed in many submissions that the extended definition of security appeared to give the Service the power to act against legitimate protest, we agree on the need to provide a clear reassurance that this was not the intention. This would best be achieved by extending the protection that already exists in section 4 of the New Zealand Security Intelligence Service Act 1969. Accordingly, we recommend that section 4(2) of the New Zealand Security Intelligence Service Act 1969 be amended to prohibit action by the Service to further the interest of any political party. A new section 4(3) should be added to affirm that the Act does not limit the right of organisations or entities to engage in lawful advocacy, protest or dissent.

Several submissions also called for the word “subversion” to be removed from the definition of security. They opposed its use suggesting it is too broad and not well defined. We note that subversion is clearly defined in the principal Act and relates to the overthrow of the New Zealand Government by force or undermining the authority of the State by unlawful means. No change is recommended.

New Zealand Intelligence Council

The New Zealand Intelligence Council was replaced in 1987 by the intelligence policy advice committee of senior officials designated as the Officials Committee for Domestic and External Security Coordination (ODESC). We recommend that the principal Act be amended to substitute ODESC for references to the New Zealand Intelligence Council. This recommendation is provided for in clauses 50(2) and 51 of the bill.

The Privacy Commissioner noted that in the principal Act (section 4(1)(d)) it is a function of the NZSIS to inform the New Zealand Intelligence Council—now replaced by ODESC—of any new potential threat relating to espionage, sabotage, terrorism or subversion in respect of which the Director of Security has considered it necessary to begin surveillance. The Privacy Commissioner suggested that this provision required amendment to reflect the expanded definition of security. We agree. This could be accomplished with an amended provision for ODESC to be informed of “any new area of potential relevance to security in respect of which the Director has considered it necessary to institute surveillance”. This recommendation is contained in clause 51(1) of the bill.

Issue of warrants

A number of submissions proposed that the authority for issuing warrants should be changed from a Ministerial to a judicial base. Mostly, this proposal was put forward in the context of limiting the authority of the Executive. Ministerial authorisation is used in Australia and Britain. We note the procedures involved in

the authorisation for warrants for the New Zealand Security Intelligence Service already involve stringent provisions set out in the NZSIS Act, to avoid abuse of authority. Moreover, with the passage of the bill, safeguards will be enhanced with the provision for oversight and review of warrants by the Inspector-General. No change is recommended.

Other agencies

Clause 2 of the bill defines intelligence and security agency to mean the New Zealand Security Intelligence Service, the Government Communications Security Bureau, and any other agency declared as such by Order in Council. Several submissions specifically supported the inclusion of the GCSB in the legislation. However, a few submissions suggested that other “intelligence gathering” agencies should also be covered by the legislation, naming the New Zealand Police’s “criminal intelligence unit”, the External Assessments Bureau and the Officials Committee for Domestic and External Security Coordination in particular.

We note that the information gathering processes of the New Zealand Police are subject to oversight and accountability arrangements applicable to the New Zealand Police. Other organisations, mentioned in submissions, are not of the same character as the GCSB or NZSIS and the application of oversight provisions in the bill to these organisations is not considered appropriate.

Access to security records

Some submissions raised the issue of an individual’s right to have access to files relating to them held by the New Zealand Security Intelligence Service. One submission drew our attention to the possibility that some files may contain inaccuracies and that these errors would go undetected without input from the individual concerned.

Access to information held by the Service is governed by the Official Information Act 1982 and the Privacy Act 1993. Because of this, we feel that it is not appropriate to address this matter in the new legislation. We note that, during an investigation of a complaint, the Inspector-General has access to all security records held by the Service relevant to the conduct of that investigation. This follows consultation with the Director. To allow individuals full access to security records relating to them would undermine security.

Proposed Sessional Orders

Definitions

“Intelligence and Security Committee” means the Intelligence and Security Committee established by section 5 of the Intelligence and Security Agencies Act 1996:

“Intelligence and security agency” means the New Zealand Security Intelligence Service and the Government Communications Security Bureau.

Estimates

The Estimates Vote for each intelligence and security agency is examined by the Intelligence and Security Committee (SO 321 is to be read accordingly).

Supplementary Estimates

The Supplementary Estimates Vote for each intelligence and security agency is examined by the Intelligence and Security Committee (SO 327 is to be read accordingly).

Financial review

A financial review of the performance in the previous financial year and the current operations of each intelligence and security agency is conducted by the Intelligence and Security Committee (SO 329 is to be read accordingly).

Other committees

No select committee may examine the policy, administration, or expenditure of an intelligence and security agency.

Bills

A bill relating to an intelligence and security agency may be referred by the House to the Intelligence and Security Committee (SOs 272 and 280 are to be read accordingly).

Petitions

The Clerk shall allocate any petition relating to an intelligence and security agency to the Intelligence and Security Committee (SO 358 is to be read accordingly).

Consequential amendments

The resolution of the House of 22 December 1993 appointing the Government Administration Committee is amended by omitting from paragraph (b) the words "security intelligence".

A further amendment will be required to be made when the Standing Orders are next amended. That is, Standing Order 192(5) will need to be amended by the omission of the words "security intelligence".

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM THE COMMITTEE ON THE INTELLIGENCE AND
SECURITY AGENCIES BILL

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

New (Unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

INTELLIGENCE AND SECURITY AGENCIES

ANALYSIS

Title	
1. Short Title	
PART I	
INTELLIGENCE AND SECURITY COMMITTEE	
2. Commencement	
3. Interpretation	
3A. Definition of "sensitive information"	
4. Act to bind the Crown	
<i>Intelligence and Security Committee</i>	
5. Intelligence and Security Committee	
6. Functions of Committee	
7. Membership of Committee	
8. Endorsement of nominated members	
9. Revocation of nomination	
10. Suspension and cessation of membership	
11. Extraordinary vacancies	
12. Conduct of Proceedings	
13. Meetings of Committee	
14. Attendance before Committee	
15. Judicial proceedings	
15A. Privilege	
<i>Disclosure of Information</i>	
16. Provision of information to Committee	
17. Restrictions on reports to House of Representatives	
18. Secrecy	
19. Offences	
PART II	
INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY	
20. Commencement	
21. Interpretation	
22. Act to bind the Crown	
23. Object	
<i>Inspector-General of Intelligence and Security</i>	
24. Inspector-General of Intelligence and Security	
25. Term of office	
26. Removal of Inspector-General	
27. Remuneration and allowances	
28. Disclosure of interests	
29. Staff	
<i>Functions of Inspector-General</i>	
30. Functions of Inspector-General	
31. Consultation	
32. Requirements of security	
33. Matters occurring before commencement of Act	
34. Jurisdiction of Courts and other agencies not affected	
<i>Complaints</i>	
35. Mode of complaint	
36. Power of Inspector-General to refuse to inquire into complaint	
37. Disclosures to Inspector-General by employees of intelligence and security agencies	
<i>Procedure</i>	
38. Proceedings of Inspector-General	
39. Powers in relation to security records	
40. Power of entry	
41. Power to hear evidence in private	
42. Powers of Inspector-General in relation to inquiries	
43. Proceedings privileged	
44. Reports in relation to inquiries	
45. Disclosure	
46. Reports by Inspector-General	
47. Secrecy	
48. Publication	
<i>Amendments to Ombudsmen Act 1975</i>	
48A. Referral of complaint to Inspector-General of Intelligence and Security	
48B. Consultation with Inspector-General of Intelligence and Security	
<i>Amendments to Privacy Act 1993</i>	
48C. Referral of complaint to Inspector-General of Intelligence and Security	
48D. Consultation with Inspector-General of Intelligence and Security	
PART III	
AMENDMENTS TO NEW ZEALAND SECURITY INTELLIGENCE SERVICE ACT 1969	
49. Part to be read with New Zealand Security Intelligence Service Act 1969	

50. Interpretation	54. Repeal of provisions relating to Commissioner of Security Appeals
50A. Act to bind the Crown	55. Transitional provision in relation to complaints pending before Commissioner of Security Appeals
51. Functions of New Zealand Security Intelligence Service	
52. Issue of interception warrant	
53. Prevention or detection of serious crime	

A BILL INTITULED

An Act—

(a) To increase the level of oversight and review of intelligence and security agencies—

(i) By establishing an Intelligence and Security Committee; and 5

(ii) By providing for the appointment, in the place of the Commissioner of Security Appeals, of an Inspector-General of Intelligence and Security; and 10

(b) To amend the New Zealand Security Intelligence Service Act 1969

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Intelligence and Security Agencies Act 1995. 15

PART I

INTELLIGENCE AND SECURITY COMMITTEE

2. Commencement—This Part of this Act shall come into force on the day after the date on which this Act receives the Royal assent. 20

3. Interpretation—(1) In this Part of this Act, unless the context otherwise requires,—

“Chief executive”,—

(a) In relation to the New Zealand Security Intelligence Service, means the Director of Security holding office under the New Zealand Security Intelligence Service Act 1969: 25

(b) In relation to the Government Communications Security Bureau, means the Director of that Bureau:

New (Unanimous) 30

(c) In relation to an agency that, by virtue of an Order in Council made under subsection (2) of this

New (Unanimous)

section, is an intelligence and security agency for the purposes of this **Part of this** Act, means the chief executive of that agency:

5 “Committee” means the Intelligence and Security Committee established by **section 5** of this Act:

“Intelligence and security agency” means—

(a) The New Zealand Security Intelligence Service:

10 (b) The Government Communications Security Bureau:

(c) Any other agency declared by the Governor-General from time to time by Order in Council as an intelligence and security agency for the purposes of this **Part of this** Act:

15 “New Zealand Security Intelligence Service” means the New Zealand Security Intelligence Service referred to in section 3 of the New Zealand Security Intelligence Service Act 1969:

20 “Nominated member” means a member of the Committee nominated in accordance with **section 7 (1) (c) or section 7 (1) (d)** of this Act:

Struck Out (Unanimous)

“Sensitive information” means—

25 (a) Information that might lead to the identification of, or provide details of,—

(i) Sources of information available to an intelligence and security agency; or

30 (ii) Other assistance or operational methods available to an intelligence and security agency:

(b) Information about particular operations that have been undertaken, or are being or are proposed to be undertaken, in pursuance of any of the functions of an intelligence and security agency:

35 (c) Information that—

(i) Relates to the security or defence of New Zealand or the international relations of the Government of New Zealand; and

Struck Out (Unanimous)

- (ii) Has been provided to an intelligence and security agency by another department or agency of the Government of New Zealand; and 5
- (iii) Is information that cannot be disclosed by the security and intelligence agency without the consent of the department or agency of the Government of New Zealand by which that information has been provided: 10
- (d) Information that—
- (i) Has been provided to an intelligence and security agency by the Government of any other country or by an agency of such a Government; and 15
- (ii) Is information that cannot be disclosed by the intelligence and security agency without the consent of the Government or agency by which that information has been provided: 20

New (Unanimous)

“Sensitive information” has the meaning given to it by **section 3A** of this Act:

- “Working day” means any day of the week other than— 25
- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and
- (b) A day in the period commencing with the 25th day of December in any year and ending with the 15th day of January in the following year. 30

New (Unanimous)

(2) The Governor-General may from time to time by Order in Council declare any agency to be an intelligence and security agency for the purposes of this **Part of this Act**. 35

New (Unanimous)

5 (3) Every Order in Council made under **subsection (2)** of this section shall be deemed to be a regulation for the purposes of the Acts and Regulations Publication Act 1989 and the Regulations (Disallowance) Act 1989.

3A. Definition of “sensitive information”—(1) Subject to **subsection (2)** of this section, in this **Part of this Act**, unless the context otherwise requires, “sensitive information” means—

10 (a) Information that might lead to the identification of, or provide details of,—

(i) Sources of information available to an intelligence and security agency; or

(ii) Other assistance or operational methods available to an intelligence and security agency; or

15 (b) Information about particular operations that have been undertaken, or are being or are proposed to be undertaken, in pursuance of any of the functions of an intelligence and security agency; or

20 (c) Information that has been provided to an intelligence and security agency by another department or agency of the Government of New Zealand and is information that cannot be disclosed by the intelligence and security agency without the consent of the department or agency of the Government of New Zealand by which that information has been provided; or

30 (d) Information that has been provided to an intelligence and security agency by the Government of any other country or by an agency of such a Government and is information that cannot be disclosed by the intelligence and security agency without the consent of the Government or agency by which that information has been provided.

35 (2) Information to which **subsection (1)** of this section applies shall be considered to be sensitive information only if the disclosure of the information would be likely—

(a) To prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or

New (Unanimous)

- | | |
|--|----|
| (b) To prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by— | |
| (i) The government of any other country or any agency of such a government; or | 5 |
| (ii) Any international organisation; or | |
| (c) To prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or | 10 |
| (d) To endanger the safety of any person. | |

4. Act to bind the Crown—This Part of this Act shall bind the Crown.

Intelligence and Security Committee

5. Intelligence and Security Committee—There is hereby established a committee to be known as the Intelligence and Security Committee. 15

6. Functions of Committee—(1) The functions of the Committee are—

- | | |
|--|----|
| (a) Subject to subsection (2) of this section, to examine the policy, administration, and expenditure of each intelligence and security agency: | 20 |
| (b) Subject to subsection (2) of this section, to consider any bill, petition, or other matter in relation to an intelligence and security agency referred to the Committee by the House of Representatives: | 25 |
| (c) To receive and consider the annual report of each intelligence and security agency: | |
| (d) To consider any matter (not being a matter relating directly to the activities of an intelligence and security agency) referred to the Committee by the Prime Minister by reason of that matter's security or intelligence implications: | 30 |
| (e) Subject to section 17 of this Act, to report to the House of Representatives on the activities of the Committee. | 35 |
| (2) The functions of the Committee do not include— | |
| (a) Inquiring into any matter within the jurisdiction of the Inspector-General of Intelligence and Security appointed under section 24 of this Act; or | |

Struck Out (Unanimous)

(b) Examining the day-to-day operations of an intelligence and security agency; or

New (Unanimous)

5 (b) Inquiring into any matter that is operationally sensitive, including any matter that relates to intelligence collection and production methods or sources of information; or

10 (c) Originating or conducting inquiries into complaints by individuals concerning the activities of an intelligence and security agency that are capable of being resolved under any other enactment.

7. Membership of Committee—(1) The Committee shall consist of—

15 (a) The Prime Minister, *who shall chair the Committee*;

(b) The Leader of the Opposition;

20 (c) Two members of the House of Representatives nominated for the purpose by the Prime Minister following consultation with the leader of each party in Government;

(d) One member of the House of Representatives nominated for the purpose by the Leader of the Opposition, with the agreement of the Prime Minister, following consultation with the leader of each party that is not in Government or in coalition with a Government party.

25 (2) Every person who nominates any person for membership of the Committee shall have regard to the requirements of security.

30 *New (Unanimous)*

(2A) The chairperson of the Committee shall be the Prime Minister or such other member of the Committee as shall be appointed from time to time by the Prime Minister as the chairperson of the Committee.

35 (3) For the avoidance of doubt, it is hereby declared that any member of Parliament who acts as a member of the

Committee shall be deemed, in so acting, to be acting in his or her official capacity as a member of Parliament.

8. Endorsement of nominated members—(1) The Prime Minister shall, as soon as practicable after the commencement of each Parliament, submit to the House of Representatives, for endorsement, the names of the members of the House of Representatives nominated under **paragraphs (c) and (d) of section 7 (1)** of this Act as members of the Committee. 5

(2) If the House of Representatives declines to endorse as a member of the Committee any member of the House of Representatives nominated under this section or **section 11 (1)** of this Act, the Prime Minister or the Leader of the Opposition, as the case may require, shall, in accordance with the requirements of **paragraph (c) or paragraph (d) of section 7 (1)** of this Act, as the case may require, nominate another member of the House of Representatives for membership of the Committee and shall submit to the House of Representatives for endorsement the name of the member so nominated for membership of the Committee. 10 15

(3) The Committee shall not transact any business until, as required by **paragraphs (c) and (d) of section 7 (1)** of this Act, three members of the House of Representatives have been nominated and endorsed as members of the Committee. 20

9. Revocation of nomination—(1) The Prime Minister may at any time revoke the nomination of any person nominated by the Prime Minister under **section 7** of this Act as a member of the Committee. 25

(2) The Leader of the Opposition may at any time revoke the nomination of any person nominated by the Leader of the Opposition under **section 7** of this Act as a member of the Committee. 30

Struck Out (Unanimous)

10. Cessation of membership—(1) A nominated member shall cease to be a member of the Committee—

- (a) If the nomination of that member is revoked under **section 9** of this Act: 35
- (b) If that member dies or resigns:
- (c) If Parliament is dissolved or expires:

Struck Out (Unanimous)

- (d) If, before Parliament is dissolved or expires, that member ceases to be a member of the House of Representatives.
- 5 (2) A nominated member may at any time resign from the Committee by writing signed by the member and addressed to the Prime Minister or the Leader of the Opposition, as the case may require.

New (Unanimous)

- 10 **10. Suspension and cessation of membership—**
(1) Where a member of the House of Representatives who is a member of the Committee is suspended from the service of the House of Representatives, that member shall be deemed to be suspended from membership of the Committee.
- 15 (2) A person ceases to be a member of the Committee—
(a) If that person is a nominated member of the Committee and that person's nomination as a member of the Committee is revoked under **section 9** of this Act:
(b) If Parliament is dissolved or expires:
20 (c) If, before Parliament is dissolved or expires, that member ceases to be a member of the House of Representatives.
- 25 (3) A nominated member may at any time resign from the Committee by writing signed by the member and addressed to the Prime Minister or the Leader of the Opposition, as the case may require.

Struck Out (Unanimous)

- 11. Extraordinary vacancies—**(1) Where—
(a) Any nominated member dies or resigns; or
30 (b) The nomination of any nominated member is revoked under **section 9** of this Act,—
the Prime Minister or the Leader of the Opposition, as the case may require, shall nominate another member of the House of Representatives to fill the vacancy and shall submit to the
35 House of Representatives for endorsement the name of the

Struck Out (Unanimous)

member of the House of Representatives nominated as a member of the Committee.

(2) No person nominated under **subsection (1)** of this section shall take office as a member of the Committee until that person's nomination has been endorsed by the House of Representatives. 5

*New (Unanimous)***11. Extraordinary vacancies**—(1) Where—

(a) Any nominated member ceases, before Parliament is dissolved or expires, to be a member of the House of Representatives; or 10

(b) The nomination of any nominated member is revoked under **section 9** of this Act,—

his or her office as a nominated member of the Committee shall become vacant and the Prime Minister or the Leader of the Opposition, as the case may require, shall nominate another member of the House of Representatives to fill the vacancy and shall submit to the House of Representatives for endorsement the name of the member of the House of Representatives nominated as a member of the Committee. 15 20

(2) Where the member who vacated office was nominated by the Prime Minister for membership of the Committee, the nomination for the purposes of **subsection (1)** of this section shall be made by the Prime Minister following consultation with the leader of each party in Government. 25

(3) Where the member who vacated office was nominated by the Leader of the Opposition for membership of the Committee, the nomination for the purposes of **subsection (1)** of this section shall be made by the Leader of the Opposition, with the agreement of the Prime Minister, following consultation with the leader of each party that is not in Government or in coalition with a Government party. 30

(4) No person nominated under **subsection (1)** of this section shall take office as a member of the Committee until that person's nomination has been endorsed by the House of Representatives. 35

12. Conduct of proceedings—(1) Subject to the provisions of this Act, the proceedings of the Committee shall be conducted in accordance with the Standing Orders of the House of Representatives.

5 (2) The proceedings of the Committee shall be held in private unless the Committee by unanimous resolution resolves otherwise.

10 (3) Where the proceedings of the Committee are conducted in private, the Committee may, having regard to the requirements of security and to such other matters as the Committee thinks fit, give directions as to the persons who may be present.

Struck Out (Unanimous)

15 (4) The proceedings of the Committee shall be deemed to be proceedings in Parliament for the purposes of Article 9 of the Bill of Rights 1688.

13. Meetings of Committee—

Struck Out (Unanimous)

20 (1) The Prime Minister shall convene such meetings of the Committee as the Prime Minister thinks necessary for the efficient performance of the functions assigned to it.

(2) The Prime Minister shall preside at all meetings of the Committee.

25 *New (Unanimous)*

(1) Every meeting of the Committee shall be convened by the Prime Minister.

(2) The chairperson of the Committee shall preside at all meetings of the Committee.

30 (3) The quorum necessary for the transaction of business at any meeting of the Committee shall be the *(Prime Minister) chairperson* and 3 other members of the Committee.

35 (4) Every question arising at any meeting of the Committee shall be determined by a majority of votes of the members present and voting on it.

(5) Where, at any meeting of the Committee, the only members present are the *(Prime Minister)* chairperson and 3 other members of the Committee, the *(Prime Minister)* chairperson shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote. 5

(6) No member of the Committee may be represented at any meeting of the Committee by any other person.

(7) The chief executive of the Department of the Prime Minister and Cabinet shall, with the concurrence of the Committee, appoint such officers as are required to assist the Committee in the conduct of its business. 10

(8) Only a person who has an appropriate security clearance may be appointed to assist the Committee.

14. Attendance before Committee—(1) The chief executive of an intelligence and security agency shall appear before the Committee when requested by the Committee to do so. 15

Struck Out (Unanimous)

(2) The chief executive may in an appropriate case be represented by an officer of the agency or, with the agreement of the Committee, may be accompanied by any such officer. 20

(3) The Committee shall wherever practicable give to the chief executive not less than 5 working days notice of any requirement for attendance or the production of any document or other information. 25

New (Unanimous)

(2) The Committee may request any person other than the chief executive—

- (a) To attend and give evidence before the Committee; or
- (b) To produce any document or other information that is relevant to the proceedings of the Committee. 30

(3) Every request made to a person under **subsection (1) or subsection (2)** of this section shall, wherever practicable, be given to that person by the Committee at least 5 working days before the date on which the person is requested— 35

- (a) To appear; or
- (b) To attend and give evidence; or
- (c) To produce any document or other information.

5 **15. Judicial proceedings**—(1) No proceedings, civil or criminal, shall lie against any member of the Committee, or any person appointed under **section 13 (7)** of this Act to assist the Committee, for anything the member or person may do or report or say or fail to do or report or say in the course of the exercise or intended exercise of the Committee's functions under this Act, unless it is shown that the member or person acted in bad faith.

10 (2) No member of the Committee, or person appointed to assist the Committee, shall be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to that member's or person's knowledge in the exercise of the Committee's functions under this Act.

15 (3) Nothing in **subsection (1)** or **subsection (2)** of this section applies in respect of proceedings for an offence against (*section 21*) **section 19** of this Act.

Struck Out (Unanimous)

20 (4) Anything said or any information supplied or any document, paper, or thing produced by any person in the course of any inquiry or proceedings of the Committee under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings of the House of Representatives.

New (Unanimous)

25 **15A. Privilege**—(1) The proceedings of the Committee shall be deemed to be proceedings in Parliament for the purposes of Article 9 of the Bill of Rights 1688.

30 (2) Anything said or any information supplied or any document, paper, or thing produced by any person in the course of any inquiry or proceedings of the Committee under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings of the House of Representatives.

*Disclosure of Information***16. Provision of information to Committee—***Struck Out (Unanimous)*

(1) If the chief executive of an intelligence and security agency is asked by the Committee to disclose any documents or other information in his or her possession relevant to the matters being considered by the Committee, that chief executive shall, subject to **subsections (2) and (3)** of this section, either—

- (a) Arrange for those documents or that information to be made available to the Committee; or
- (b) Inform the Committee that those documents or that information cannot be disclosed because those documents are, or that information is, sensitive information.

(2) The fact that any particular documents are, or any particular information is, sensitive information shall not prevent their disclosure under **subsection (1) (a)** of this section if the chief executive considers it safe to disclose them.

New (Unanimous)

(1) If the chief executive of an intelligence and security agency or any other person is asked by the Committee to disclose any documents or other information in his or her possession relevant to the matters being considered by the Committee, that chief executive or other person shall, subject to **subsections (2) and (3)** of this section, either—

- (a) Arrange for those documents or that information to be made available to the Committee; or
- (b) Inform the Committee that those documents or that information cannot be disclosed because, in the opinion of the chief executive of the relevant intelligence and security agency, those documents are, or that information is, sensitive information.

(2) The fact that any particular documents are, or any particular information is, sensitive information shall not prevent the disclosure of those documents or that information under **subsection (1) (a)** of this section if,—

New (Unanimous)

- 5 (a) In any case where the documents are, or the information is, in the possession or under the control of the chief executive of an intelligence and security agency, that chief executive considers it safe to disclose them; or
- (b) In any case where the documents are, or information is, in the possession or under the control of any other person, the chief executive of the relevant intelligence and security agency considers it safe to disclose them.

- 10 (3) Subject to **subsection (4)** of this section, information that has not been disclosed to the Committee on the ground specified in **subsection (1) (b)** of this section shall be disclosed to the Committee if the Prime Minister considers it desirable in the public interest.

15 *Struck Out (Unanimous)*

(4) **Subsection (3)** of this section shall not apply to sensitive information within the meaning of **paragraph (d)** of the definition of the term “sensitive information” in **section 3** of this Act.

New (Unanimous)

- 20 (4) **Subsection (3)** of this section shall not apply to information that is sensitive information under **subsections (1) (d) and (2) of section 3A** of this Act.

25 (5) Where any document or other information having a security classification is provided to the Committee, the Committee shall ensure that the document or information—

- (a) Is kept in safe custody in accordance with the requirements applying to the safe custody of documents in the intelligence and security agencies; and
- 30 (b) Is returned to the originating intelligence and security agency when no longer required by the Committee.

35 (6) Where the Committee is responsible for the production of a document that has a security classification, the Committee shall ensure that the document is kept in safe custody in accordance with the requirements applying to the safe custody of documents in the intelligence and security agencies.

17. Restrictions on reports to House of Representatives—(1) The Committee shall in discharging its function of reporting to the House of Representatives, have regard generally to the requirements of security.

(2) The Committee shall not in a report to the House of Representatives disclose— 5

(a) Information the public disclosure of which would be likely to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence— 10

(i) By the government of any other country or any agency of such a government; or

(ii) By any international organisation; or

(b) Information the public disclosure of which would be likely to endanger the safety of any person; or 15

(c) Any sensitive information disclosed to the Committee in accordance with **subsection (2) or subsection (3) of section 16** of this Act.

(3) The Committee shall not in a report to the House of Representatives disclose— 20

(a) The identity of any person who is or has been an officer, employee, or agent of an intelligence and security agency other than the chief executive, or any information from which the identity of such a person could reasonably be inferred; or 25

(b) Information the public disclosure of which would be likely—

(i) To prejudice the continued discharge of the functions of an intelligence and security agency; or

(ii) To prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand,— 30

unless the Committee considers that there are compelling reasons in the public interest why the information should be so disclosed or published. 35

18. Secrecy—(1) No person who is, or has at any time been, a person assisting the Committee by virtue of an appointment under **section 13 (7)** of this Act, or a person appearing before the Committee in any capacity, shall, except in the performance of that person's functions or duties under this Act, or in the exercise of that person's powers under this Act, or with the authority of the Committee, disclose or publish or cause to be disclosed or published— 40

- (a) Any sensitive information disclosed to the Committee in accordance with **subsection (2) or subsection (3) of section 16** of this Act; or
- 5 (b) Any other information provided to the Committee by an intelligence and security agency the further disclosure of which would *(, in the opinion of the Prime Minister,)* be likely to prejudice any of the interests referred to in **paragraphs (a) to (c) of section 17 (2)** or **paragraphs (a) and (b) of section 17 (3)** of this Act.

10 *New (Unanimous)*

(2) No person shall disclose to any other person any minutes or other record relating to the proceedings of any meeting of the Committee unless—

- 15 (a) The disclosure of the minutes or record is necessary for the purposes of—
- (i) A report to the House of Representatives (being a report that complies with **section 17** of this Act); or
- (ii) The conduct of the business of the Committee; or
- 20 (b) The disclosure is authorised in writing by the Committee or its chairperson.

19. Offences—(1) No person who is, or has at any time been, a person assisting the Committee by virtue of an appointment under **section 13 (7)** of this Act or a person appearing before the Committee in any capacity, shall, either directly or indirectly, except in the performance of that person's functions or duties under this Act, or in the exercise of that person's powers under this Act, or with the *(authority of the Committee)* written authority of the Committee or its chairperson,—

- 30 (a) Make a record of, or disclose to any person, any information acquired by the person assisting the Committee in his or her capacity as a person assisting the Committee or acquired by the person appearing before the Committee by virtue of that person's appearance before the Committee; or
- 35 (b) Make use of any such information.

Struck Out (Unanimous)

(2) Nothing in **subsection (1)** of this section applies in relation to the disclosure or use of any information after its disclosure has been approved in writing by the Chairperson of the Committee.

5

(3) Every person commits an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$10,000 or to both who acts in contravention of **section 18** of this Act or **subsection (1)** of this section.

10

(4) No prosecution for an offence against this section shall be commenced except with the leave of the Attorney-General.

(5) The Summary Proceedings Act 1957 is hereby amended by inserting in Part II of the First Schedule, in its appropriate alphabetical order, the following item:

15

"The Intelligence and Security Agencies Act 1995	19	Unauthorised making or disclosure of records."
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PART II

INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

20. Commencement—This **Part of this** Act shall come into force on the day after the date on which this Act receives the Royal assent.

20

21. Interpretation—(1) In this **Part of this** Act, unless the context otherwise requires,—

“Chief executive”,—

25

(a) In relation to the New Zealand Security Intelligence Service, means the Director of Security holding office under the New Zealand Security Intelligence Service Act 1969:

(b) In relation to the Government Communications Security Bureau, means the Director of that Bureau:

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New (Unanimous)

(c) In relation to an agency that, by virtue of an Order in Council made under **subsection (2)** of this section, is an intelligence and security agency for the

35

New (Unanimous)

purposes of this Part of this Act, means the chief executive of that agency:

5 “Employee”, in relation to an intelligence and security agency, means a person employed in any capacity in that agency:

“Inspector-General” means the Inspector-General of Intelligence and Security holding office under **section 24** of this Act:

10 “Intelligence and security agency” means—

(a) The New Zealand Security Intelligence Service:

(b) The Government Communications Security Bureau:

15 (c) Any other agency declared by the Governor-General from time to time by Order in Council as an intelligence and security agency for the purposes of this **Part of this Act**:

20 “Minister” means, in relation to an intelligence and security agency, the Minister of the Crown responsible for that intelligence and security agency:

New (Unanimous)

“New Zealand person”—

(a) Means any person, being—

25 (i) A New Zealand citizen; or

(ii) A person ordinarily resident in New Zealand; or

30 (iii) An unincorporated body of persons, being a body of which more than 50 percent of the members are New Zealand persons under **subparagraph (i) or subparagraph (ii)** of this paragraph; or

(iv) A body corporate which is incorporated in New Zealand; but

35 (b) Does not include—

(i) Any company within the meaning of the Companies Act 1955 or the Companies Act 1993, as the case may be, that is, for the purposes of the Companies Act 1955 or the Companies Act 1993, a subsidiary

New (Unanimous)

- of any company or body corporate incorporated outside New Zealand; or
- (ii) Any company within the meaning of the Companies Act 1955 or the Companies Act 1993, as the case may be, or building society, in which—
- (A) Twenty-five percent or more of any class of shares is held by any overseas person or overseas persons; or
- (B) The right to exercise or control the exercise of 25 percent or more of the voting power at any meeting of the company or building society is held by any overseas person or overseas persons; or
- (iii) Any nominee of an overseas person, whether or not the nominee is also an overseas person:

“New Zealand Security Intelligence Service” means the New Zealand Security Intelligence Service referred to in section 3 of the New Zealand Security Intelligence Service Act 1969:

“Official information” means official information as defined in section 2 (1) of the Official Information Act 1982; and includes security records:

“Ombudsman” means an Ombudsman holding office under the Ombudsmen Act 1975:

New (Unanimous)

“Overseas person” has the meaning given to it by section 2 (1) of the Overseas Investment Act 1973:

“Privacy Commissioner” means the Privacy Commissioner appointed under section 12 of the Privacy Act 1993:

“Security records”—

(a) Means all papers, documents, or records of any kind whatsoever, whether bearing a security classification or not, officially made or received—

(i) By an intelligence and security agency in the conduct of its affairs; or

(ii) By any employee of an intelligence and security agency in the course of that employee's official duties; and

5 (b) Includes registers, books, maps, plans, drawings, photographs, cinematographic films, sound recordings, and electronic storage media made or received by an agency or employee of the kind described in paragraph (a) of this definition; and

10 (c) Includes copies of (*paper*) papers, documents, records or other things that are security records by virtue of paragraph (a) or paragraph (b) of this definition.

New (Unanimous)

(2) The Governor-General may from time to time by Order in Council declare any agency to be an intelligence and security agency for the purposes of this Part of this Act.

(3) Every Order in Council made under subsection (2) of this section shall be deemed to be a regulation for the purposes of the Acts and Regulations Publication Act 1989 and the Regulations (Disallowance) Act 1989.

20 **22. Act to bind the Crown**—This Part of this Act shall bind the Crown.

23. Object—The object of this Part of this Act is to provide for the appointment of an Inspector-General who will assist each Minister who is responsible for an intelligence and security agency in the oversight and review of that intelligence and security agency and who will, in particular,—

25 (a) Assist the Minister to ensure that the activities of that intelligence and security agency comply with the law (*and are consistent with human rights*); and

30 (b) Ensure that complaints relating to that intelligence and security agency are independently investigated.

Inspector-General of Intelligence and Security

24. Inspector-General of Intelligence and Security—
35 (1) There shall be an Inspector-General of Intelligence and Security.

(2) The Inspector-General shall be appointed by the Governor-General on the recommendation of the Prime Minister following consultation with the Leader of the Opposition.

(3) No person shall be appointed as the Inspector-General unless that person has previously held office as a Judge of the High Court of New Zealand.

25. Term of office—(1) Every person appointed as the Inspector-General shall be appointed for a term of 3 years and may from time to time be reappointed. 5

(2) Every person appointed as the Inspector-General shall, unless sooner vacating office by death or by resignation, or by removal from office under **section 26** of this Act, continue to hold office, notwithstanding the expiry of that person's term of appointment, until— 10

(a) Reappointment as the Inspector-General; or

(b) Appointment of a successor; or

(c) The person is informed in writing by the Prime Minister that the person is not to be reappointed and is not to hold office until a successor is appointed. 15

(3) The person appointed as the Inspector-General may at any time resign his or her office by written notice given to the Governor-General.

26. Removal of Inspector-General—The person appointed as Inspector-General may be removed or suspended from office by the Governor-General, upon an address from the House of Representatives, for disability affecting performance of duty, bankruptcy, neglect of duty, or misconduct. 20
25

27. Remuneration and allowances—There shall be paid to the Inspector-General out of public money, without further appropriation than this section, remuneration by way of fees, salary, or allowances and travelling allowances and travelling expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the Inspector-General were a member of a statutory board and the travelling were in the service of a statutory board. 30

28. Disclosure of interests—The Inspector-General shall give written notice to the Prime Minister of all interests, pecuniary or otherwise, which the Inspector-General has or acquires and which could conflict with the proper performance by the Inspector-General of his or her functions under this Act. 35

5 **29. Staff**—(1) Subject to the provisions of this section, the Inspector-General may appoint such employees, including part-time or temporary employees, as may be necessary for the efficient carrying out of the Inspector-General's functions, powers, and duties under this Act.

10 (2) Employees appointed under **subsection (1)** of this section shall be employed on such terms and conditions of employment and shall be paid such salaries and allowances as the Inspector-General may from time to time determine in consultation with the Chief Executive of the Department of the Prime Minister and Cabinet.

15 (3) No person employed by the Inspector-General shall have access to any information in the possession of an intelligence and security agency except in accordance with the rules, applying from time to time within the intelligence and security agency concerned, governing access to such information.

(4) Only a person who has an appropriate security clearance may be appointed as an employee of the Inspector-General.

Functions of Inspector-General

20 *Struck Out (Unanimous)*

30. Functions of Inspector-General—(1) Subject to the provisions of this Act, the functions of the Inspector-General shall be—

25 (a) To inquire, of the Inspector-General's own motion or at the request of the Minister, into any matter that relates to the compliance by an intelligence and security agency with the law of New Zealand:

30 (b) To inquire at the request of the Minister or of the Inspector-General's own motion but subject to the concurrence of the Minister, into—

35 (i) Any matter where it appears that a New Zealand citizen or any person ordinarily resident in New Zealand has or may have been adversely affected in a personal capacity by any act, omission, practice, policy, or procedure of an intelligence and security agency:

(ii) The propriety of particular activities of an intelligence and security agency:

40 (c) To inquire into any complaint by—

(i) A New Zealand citizen; or

Struck Out (Unanimous)

- (ii) Any person ordinarily resident in New Zealand;
or
- (iii) An employee or former employee of an intelligence and security agency,— 5
that he or she has or may have been adversely affected in a personal capacity by any act, omission, practice, policy, or procedure of an intelligence and security agency:
- (d) To inquire into any complaint by a New Zealand citizen 10
or any person ordinarily resident in New Zealand, being a complaint made to the Human Rights Commission in accordance with the Human Rights Act 1993 and referred to the Inspector-General by the Human Rights Commission, relating to any act, 15
omission, practice, policy or procedure of an intelligence and security agency that is or may be inconsistent with or contrary to human rights:
- (e) Without limiting the generality of **paragraph (a)** of this subsection, to review from time to time the 20
effectiveness and appropriateness of the procedures adopted by the New Zealand Security Intelligence Service to ensure compliance with the provisions of sections 4A and 4B of the New Zealand Security Intelligence Service Act 1969 in relation to the issue 25
and execution of interception warrants:
- (f) To prepare and submit to the Minister from time to time for his or her approval programmes for the general oversight and review of each intelligence and security agency and for the discharge by the Inspector-General, in relation to each intelligence and security agency, of the particular functions specified in this section: 30
- (g) To carry out any programme or amended programme or substituted programme approved by the Minister 35
under **paragraph (f)** of this subsection.
- (2) The Inspector-General shall not, of his or her own motion or in response to a complaint made to the Inspector-General, perform any of the functions set out in **subsection (1)** of this section in relation to any activity of an intelligence and security agency except to the extent that— 40

Struck Out (Unanimous)

- (a) A New Zealand citizen or any person ordinarily resident in New Zealand has or may have been adversely affected in a personal capacity; or
- 5 (b) The law of New Zealand may have been contravened.
- (3) In carrying out any inquiry in accordance with the provisions of **subsection (1) (b) (ii)** of this section, it shall not be a function of the Inspector-General to inquire into any action taken by the Minister.
- 10 (4) The Inspector-General shall not inquire into the day to day operations of an intelligence and security agency except to the extent strictly necessary for the performance of his or her functions under **subsection (1)** of this section.
- (5) The Inspector-General shall not conduct an inquiry in accordance with the provisions of **subsection (1) (c) (iii)** of this section unless—
- 15 (a) The employee or former employee and the chief executive of the relevant intelligence and security agency so agree in writing; and
- 20 (b) All established internal remedies have been exhausted.
- (6) In any case where the Inspector-General carries out an inquiry in accordance with the provisions of **subsection (1) (c) (iii)** of this section, he or she may make such recommendations as he or she considers desirable including recommendations
- 25 providing for reimbursement, reinstatement, or compensation.

New (Unanimous)

- 30. Functions of Inspector-General**—(1) Subject to the provisions of this Act, the functions of the Inspector-General shall be—
- 30 (a) To inquire, of the Inspector-General's own motion or at the request of the Minister, into any matter that relates to the compliance by an intelligence and security agency with the law of New Zealand:
- (b) To inquire into any complaint by—
- 35 (i) A New Zealand person; or
- (ii) A person who is an employee or former employee of an intelligence and security agency,— that that person has or may have been adversely

New (Unanimous)

- affected by any act, omission, practice, policy, or procedure of an intelligence and security agency:
- (c) To inquire at the request of the Minister or of the Inspector-General's own motion but subject to the concurrence of the Minister, into— 5
- (i) Any matter where it appears that a New Zealand person has or may have been adversely affected by any act, omission, practice, policy, or procedure of an intelligence and security agency: 10
- (ii) The propriety of particular activities of an intelligence and security agency:
- (d) Without limiting the generality of **paragraph (a)** of this subsection, to review from time to time the effectiveness and appropriateness of the procedures adopted by the New Zealand Security Intelligence Service to ensure compliance with the provisions of sections 4A and 4B of the New Zealand Security Intelligence Service Act 1969 in relation to the issue and execution of interception warrants: 15 20
- (e) To prepare and submit to the Minister from time to time for his or her approval programmes for the general oversight and review of each intelligence and security agency and for the discharge by the Inspector-General, in relation to each intelligence and security agency, of the particular functions specified in this section: 25
- (f) To carry out any programme or amended programme or substituted programme approved by the Minister under **paragraph (e)** of this subsection. 30
- (2) The Inspector-General shall not, of his or her own motion or in response to a complaint made to the Inspector-General, perform any of the functions set out in **subsection (1)** of this section in relation to any activity of an intelligence and security agency except to the extent that— 35
- (a) A New Zealand person or an employee or former employee of an intelligence and security agency has or may have been adversely affected; or
- (b) The law of New Zealand may have been contravened.
- (3) In carrying out any inquiry in accordance with the provisions of **subsection (1) (c) (ii)** of this section, it shall not be a 40

New (Unanimous)

function of the Inspector-General to inquire into any action taken by the Minister.

5 (4) Except to the extent strictly necessary for the performance of his or her functions under **subsection (1)** of this section, the Inspector-General shall not inquire into any matter that is operationally sensitive, including any matter that relates to intelligence collection and production methods or sources of information.

10 (5) The Inspector-General shall not conduct an inquiry into a complaint made under **subsection (1)** of this section by an employee or former employee of an intelligence and security agency unless—

15 (a) All established internal remedies have been exhausted; or
(b) The employee or former employee and the chief executive of the relevant intelligence and security agency otherwise agree in writing.

20 (6) Where an inquiry has been conducted by the Inspector-General following a complaint, the Inspector-General may make such recommendations for the redress of that complaint as the Inspector-General thinks fit (including remedies that involve the payment of compensation).

25 **31. Consultation**—(1) The Inspector-General shall in the exercise of the Inspector-General's functions under this Act have regard to the functions of the Controller and Auditor-General in relation to an intelligence and security agency and may consult with the Controller and Auditor-General in relation to any matter with a view to avoiding inquiries being
30 conducted into that matter by both the Inspector-General and the Controller and Auditor-General.

Struck Out (Unanimous)

35 (2) Notwithstanding the provisions of **section 45 (1)** of this Act, the Inspector-General may from time to time undertake consultation with an Ombudsman or with the Privacy Commissioner in relation to any matter relating to the functions of the Inspector-General under **section 30** of this Act, and, for the purposes of any such consultation, the Inspector-General may disclose to an Ombudsman or to the Privacy

Struck Out (Unanimous)

Commissioner such information as the Inspector-General considers necessary for that purpose.

New (Unanimous)

(2) Notwithstanding the provisions of **section 45 (1)** of this Act, the Inspector-General may from time to time undertake consultation with the Controller and Auditor-General or with an Ombudsman or with the Privacy Commissioner or with a Human Rights Commissioner in relation to any matter relating to the functions of the Inspector-General under **section 30** of this Act, and, for the purposes of any such consultation, the Inspector-General may disclose to the Controller and Auditor-General or to an Ombudsman or to the Privacy Commissioner or to a Human Rights Commissioner such information as the Inspector-General considers necessary for that purpose.

32. Requirements of security—In carrying out his or her functions, duties, and powers under this Act, the Inspector-General shall, in addition to all other matters to which the Inspector-General may properly have regard, have regard to the requirements of security.

33. Matters occurring before commencement of Act—Notwithstanding any other provision of this Act, but subject to (**section 57**) **section 55** of this Act, the Inspector-General may inquire into any matter that occurred before the commencement of this **Part of this** Act only if—

- (a) The Prime Minister has, by notice in writing to the Inspector-General, authorised the Inspector-General to inquire into the matter; or
- (b) The matter is one that could, before the commencement of **this Part of this** Act, have been inquired into by the Commissioner of Security Appeals if the complainant had made, in relation to that matter, a complaint under section 18 of the New Zealand Security Intelligence Service Act 1969.

34. Jurisdiction of Courts and other agencies not affected—(1) For the avoidance of doubt it is hereby declared

that the exercise by the Inspector-General of his or her functions under this Act shall not limit the jurisdiction of any court.

5 (2) The exercise by the Inspector-General of his or her functions under this Act shall not affect the exercise by any member of the Police of any powers which that member of the Police may lawfully exercise in relation to an intelligence and security agency or in relation to the chief executive or any employee of an intelligence and security agency.

10 (3) Nothing in section 31 of this Act shall limit the powers, duties, and responsibilities of the Controller and Auditor-General or of the Ombudsmen or of the Privacy Commissioner under any enactment.

Complaints

15 **35. Mode of complaint**—(1) Every complaint to the Inspector-General shall be made in writing.

20 (2) Every complaint shall be addressed to the Inspector-General care of the Registrar or Deputy Registrar of the High Court at Wellington, who shall forward it to the Inspector-General as soon as practicable.

New (Unanimous)

(3) Notwithstanding any provision in any enactment, where any letter appearing to be written by any person in custody on a charge or after conviction of any offence, or by any patient of any hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992, is addressed to the Inspector-General, it shall be immediately forwarded, unopened, to the Inspector-General by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which he or she is a patient.

Cf. 1969, No. 24, s. 18 (1), (2)

35 **36. Power of Inspector-General to refuse to inquire into complaint**—(1) The Inspector-General may in his or her discretion decide not to inquire into any complaint if, in his or her opinion,—

- (a) The subject-matter of the complaint is trivial; or
- (b) The complaint is frivolous or vexatious or is not made in good faith.

(2) If in the course of his or her inquiries it appears to the Inspector-General that—

(a) Having regard to all the circumstances of the case, further inquiries are unnecessary; or

(b) The matter is one which should be heard by a court or tribunal constituted by statute,—

the Inspector-General may refuse to inquire into the matter further.

(3) In any case where the Inspector-General decides not to inquire into a complaint or proceed with his or her inquiries or in any case where the Inspector-General is precluded by section 33 of this Act from inquiring into a complaint, the Inspector-General shall, as the case may require, advise the complainant of that decision or of the fact that the Inspector-General is so precluded.

Cf. 1969, No. 24, s. 19; 1988, No. 20, s. 87

37. Disclosures to Inspector-General by employees of intelligence and security agencies—Where any employee of an intelligence and security agency brings any matter to the attention of the Inspector-General, that employee shall not be subjected by the intelligence and security agency to any penalty or discriminatory treatment of any kind in relation to his or her employment by reason only of having brought that matter to the attention of the Inspector-General *(if the Inspector-General is satisfied that the employee acted in good faith in bringing that matter to the attention of the Inspector-General)* unless the Inspector-General determines that in so doing the employee acted otherwise than in good faith.

Procedure

38. Proceedings of Inspector-General—(1) The Inspector-General, on commencing an inquiry,—

(a) Shall notify the chief executive of the relevant intelligence and security agency of both the commencement of the inquiry and the nature of the inquiry; and

(b) If the inquiry relates to a complaint, shall provide the chief executive with a copy of the complaint.

(2) Where an inquiry is initiated by the Inspector-General of his or her own motion in accordance with the provisions of section 30 (1) (a) of this Act, the Inspector-General shall advise the Minister of both the commencement of the inquiry and the nature of the inquiry.

Struck Out (Unanimous)

5 (3) If an inquiry relates to a complaint, the Inspector-General may require the complainant to support his or her complaint with a statutory declaration; but nothing in this section shall make it obligatory for the complainant to submit to examination or cross-examination, on oath or otherwise, as to his or her complaint or statutory declaration or any other matter that arises in the examination by the Inspector-General.

New (Unanimous)

10 (3) If the inquiry relates to a complaint, the Inspector-General may require the complainant to give on oath any information relating to the complaint, and may for that purpose administer an oath to the complainant.

15 (4) The Inspector-General shall permit the complainant to be heard, and to be represented by counsel or any other person, and to have other persons testify to the complainant's record, reliability, and character.

20 (5) In accordance with the foregoing provisions of this section, the Inspector-General may receive such evidence as the Inspector-General thinks fit, whether admissible in a Court of law or not.

(6) Every inquiry by the Inspector-General shall be conducted in private.

25 (7) If at any time during the course of an inquiry it appears to the Inspector-General that there may be sufficient grounds for making any report or recommendation that may adversely affect an intelligence and security agency, or any employee of an intelligence and security agency, or any other person, the Inspector-General shall give to that intelligence and security agency, employee, or person an opportunity to be heard.

30 (8) Subject to the provisions of this Act, the Inspector-General shall regulate his or her procedure in such a manner as the Inspector-General thinks fit.

35 (9) Except on the ground of lack of jurisdiction, no proceeding, report, or finding of the Inspector-General shall be challenged, reviewed, quashed, or called in question in any Court.

Cf. 1969, No. 24, s. 20 (1), (2), (4), (5), (9); 1977, No. 50, s. 11 (3)

Struck Out (Unanimous)

39. Powers in relation to files, etc.—(1) Subject to **section 45 (3)** of this Act, the Inspector-General shall, for the purposes of any inquiry, have access to all files and information which are in the custody or control of an intelligence and security agency and which are, in the opinion of the Inspector-General, relevant to the inquiry.

5

(2) Where any document or information that is normally kept in the custody of an intelligence and security agency is held by the Inspector-General in the course of an inquiry, the Inspector-General shall ensure that the document or information is kept in safe custody in accordance with the requirements applying to the safe custody of documents in the intelligence and security agencies.

10

(3) Where the Inspector-General is responsible for the production of a document that has a security classification, the Inspector-General shall ensure that the document is kept in safe custody in accordance with the requirements applying to the safe custody of documents in the intelligence and security agencies.

15

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New (Unanimous)

39. Powers in relation to security records—(1) Subject to **section 45 (3)** of this Act, the Inspector-General shall, for the purposes of any inquiry, have access to all security records which are in the custody or control of an intelligence and security agency and which are, in the opinion of the Inspector-General, relevant to the inquiry.

25

(2) Where any security records that are normally kept in the custody of an intelligence and security agency are held by the Inspector-General in the course of an inquiry, the Inspector-General shall ensure that the security records are kept in safe custody in accordance with the requirements applying to the safe custody of security records in the intelligence and security agencies.

30

(3) Where the Inspector-General is responsible for the production of any security records that have a security classification, the Inspector-General shall ensure that the security records are kept in safe custody in accordance with the

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New (Unanimous)

requirements applying to the safe custody of security records in the intelligence and security agencies.

Cf. 1969, No. 24, s. 20 (2B); 1977, No. 50, s. 11 (1)

- 5 **40. Power of entry**—For the purposes of any inquiry under this Act, the Inspector-General may, after giving notice to the chief executive of an intelligence and security agency of the Inspector-General's intention to do so, enter, at any reasonable time, any premises or place occupied or used by the agency.

10 *Struck Out (Unanimous)*

- 15 **41. Power to hear evidence in private**—In conducting any inquiry under **section 30 (1)** of this Act, the Inspector-General may hear separately and in private such evidence (if any) as may be tendered by any party to the proceedings and any witnesses whom any party to the proceedings may wish to call if, in the opinion of the Inspector-General, to do otherwise would be likely to prejudice one or more of the interests referred to in **section 45 (3) (a)** of this Act.

New (Unanimous)

- 20 **41. Power to hear evidence in private**—In conducting any inquiry under **section 30 (1)** of this Act, the Inspector-General may hear separately and in private such evidence (if any) as may be tendered by any party to the proceedings and any witnesses whom any party to the proceedings may wish to call if, in the opinion of the Inspector-General,—
- 25 (a) The interests of justice so require; or
- (b) To do otherwise—
- (i) Would be likely to prejudice one or more of the interests referred to in **section 45 (3) (a)** of this Act; or
- 30 (ii) Would be likely to prejudice the privacy of any individual.

Cf. 1969, No. 24, s. 20 (3)

42. Powers of Inspector-General in relation to inquiries—(1) The Inspector-General may require any person who, in the Inspector-General's opinion, is able to give information relating to any matter to which an inquiry relates to furnish such information, and to produce such documents or things in the possession or under the control of that person, as in the opinion of the Inspector-General are relevant to the subject-matter of the inquiry. 5

(2) The Inspector-General may summon and examine on oath any person who in the opinion of the Inspector-General is able to give any information relating to any matter to which an inquiry relates, and may for the purpose administer an oath to any person so summoned. 10

(3) Every such examination by the Inspector-General shall be deemed to be a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury). 15

New (Unanimous)

(3A) Subject to **subsection (3B)** of this section, every person who appears as a witness before the Inspector-General shall have the same privileges in relation to the giving of information, the answering of questions, and the production of documents and papers and things as witnesses have in Courts of law. 20

(3B) Where any person is bound by the provisions of any enactment (being an Act of Parliament or any regulations within the meaning of the Regulations (Disallowance) Act 1989 made by Order in Council) to maintain secrecy in relation to, or not to disclose, any matter, compliance by that person with a requirement of the Inspector-General (being a requirement made pursuant to **subsection (1)** of this section) is not a breach of the relevant obligation of secrecy or non-disclosure or of the enactment by which that obligation is imposed. 25
30

(4) Witnesses' fees, allowances, and travelling expenses according to the scales for the time being prescribed by regulations made under the Summary Proceedings Act 1957—

(a) Shall be paid by the Inspector-General to any person who appears as a witness before the Inspector-General pursuant to a summons under **subsection (2)** of this section; and 35

(b) May, if the Inspector-General so decides, be paid by the Inspector-General to any other person who appears as a witness before the Inspector-General;— 40

and those regulations, with all necessary modifications, shall apply accordingly.

5 (5) For the purposes of this section the Inspector-General shall have the powers of a Court under any such regulations to fix or disallow, in whole or in part, or increase the amounts payable thereunder.

New (Unanimous)

- 10 (6) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 who—
- (a) Without lawful justification or excuse, wilfully obstructs, hinders, or resists the Inspector-General or any other person in the exercise of his or her powers under this Part of this Act:
- 15 (b) Without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Inspector-General or any other person under this Part of this Act:
- 20 (c) Wilfully makes any false statement to or misleads or attempts to mislead the Inspector-General or any other person in the exercise of his or her powers under this Part of this Act.

Cf. 1969, No. 24, s. 20, (6), (8); 1977, No. 50, s. 11 (2)

43. Proceedings privileged—(1) Subject to subsection (2) of this section,—

- 25 (a) No proceedings, civil or criminal, shall lie against the Inspector-General, or against any employee of the Inspector-General, for anything done or reported or said by the Inspector-General or employee in the course of the exercise or intended exercise of their functions under this Act, unless it is shown that the Inspector-General or employee acted in bad faith:
- 30 (b) Neither the Inspector-General nor any employee of the Inspector-General nor any person who has held the appointment of Inspector-General or who has been an employee of the Inspector-General shall be called to give evidence in any Court, or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions under this Act.
- 35 (2) Nothing in subsection (1) of this section applies in respect of proceedings for—
- 40

- (a) An offence against **section 47** of this Act; or
 - (b) An offence against **section 78** or **section 78A(1)** or **section 105** or **section 105A** or **section 105B** of the Crimes Act 1961; or
 - (c) The offence of conspiring to commit an offence against **section 78** or **section 78A(1)** or **section 105** or **section 105A** or **section 105B** of the Crimes Act 1961; or
 - (d) The offence of attempting to commit an offence against **section 78** or **section 78A(1)** or **section 105** or **section 105A** or **section 105B** of the Crimes Act 1961.
- (3) Anything said or any information given or any document or thing produced by any person in the course of any inquiry by or proceedings before the Inspector-General under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a Court.

Cf. 1969, No. 24, s. 24; 1987, No. 8, s. 25 (1); 1993, No. 28, s. 129 (1)

- 44. Reports in relation to inquiries**—(1) On completion of an inquiry, the Inspector-General shall prepare a written report containing his or her conclusions and recommendations and shall forward such report to the Minister and to the chief executive of the intelligence and security agency to which the inquiry relates.
- (2) Where an inquiry has been conducted by the Inspector-General following a complaint, the Inspector-General shall also advise the complainant of his or her conclusions in terms that will not prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand.
- (3) If, in the course of the Inspector-General's inquiries, the Inspector-General is of the opinion that there is evidence of a breach of duty or misconduct by an employee of an intelligence and security agency the Inspector-General shall inform the chief executive and the Minister immediately.
- (4) On completion of an inquiry, all documents and material relating to that inquiry which the Inspector-General has obtained from an intelligence and security agency shall be returned by the Inspector-General to that agency and all other papers, documents, or records relating to that inquiry in the possession of the Inspector-General and all copies of the Inspector-General's report shall be kept in safe custody in accordance with the requirements applying to the safe custody of documents in the intelligence and security agencies or disposed of by the Inspector-General in accordance with the

requirements applying to the disposal of documents by the intelligence and security agencies.

(5) The Inspector-General may report to the Minister—

5 (a) On the compliance by an intelligence and security agency with the Inspector-General's recommendations as the result of an inquiry by the Inspector-General; and

(b) On the adequacy of any remedial or preventative measures taken by an intelligence and security agency following such inquiry.

10 Cf. 1969, No. 24, s. 21; 1977, No. 50, s. 13

45. Disclosure—(1) Subject to the provisions of this Act, the Inspector-General and any person employed on the staff of the Inspector-General and any person assisting the Inspector-General shall not disclose to any person any security records or
15 other official information whatsoever relating to the activities of an intelligence and security agency.

(2) Nothing in **subsection (1)** of this section shall limit the disclosure to the Minister of information concerning the activities of an intelligence and security agency.

20 (3) Subject to **subsection (4)** of this section, where the Minister certifies—

(a) That the disclosure either to or by the Inspector-General of any security records or any other official information would be likely—

25 (i) To prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or

(ii) To prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the government of any other country or any agency of such a government; or

30 (iii) To prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by any international organisation; or

35 (iv) To endanger the safety of any person; and

(b) That such disclosure—

(i) Should not be made; or

40 (ii) Should be made only on such terms and conditions as are, in the Minister's opinion, necessary in the interests of security,—

the Inspector-General shall act in accordance with the certificate.

New (Unanimous)

(4) The Minister shall not exercise his or her power under **subsection (3)** of this section until the Inspector-General has consulted with—

- (a) The chief executive of the relevant intelligence and security agency; and 5
- (b) Any other person (not being, in the case of a complaint, the complainant) capable of assisting in the determination of the circumstances and information relevant to the inquiry, being circumstances and information that should not in the interests of security be disclosed in the course of or in relation to the inquiry. 10

Cf. 1969, No. 24, s. 20A (1); 1977, No. 50, s. 12

46. Reports by Inspector-General—(1) As soon as practicable after the end of each year ending with the 30th day of June, the Inspector-General shall furnish a report of the Inspector-General's operations during that year to— 15

- (a) Each Minister who is responsible for an intelligence and security agency; and 20
- (b) The Prime Minister.
- (2) The report shall—
- (a) Specify the number of inquiries undertaken by the Inspector-General during the year; and
- (b) Contain a brief description of the outcome of each inquiry; and 25
- (c) Contain such other information as the Inspector-General believes it is necessary, in order to fulfil the object of this Act, to make available to the Ministers specified in **subsection (1)** of this section. 30

(3) The Prime Minister shall, as soon as practicable after receiving a report under **subsection (1)** of this section, lay a copy of that report before the House of Representatives, together with a statement as to whether any matter has, under **subsection (4)** of this section, been excluded from that copy. 35

(4) If it appears to the Prime Minister, after consultation with the Inspector-General, that the publication of any matter in an annual report would be likely—

- (a) To prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or 40

- (b) To prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the government of any other country or any agency of such a government; or
- 5 (c) To prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by any international organisation; or
- (d) To endanger the safety of any person,—
- 10 the Prime Minister may exclude that matter from the copy of the report to be laid before the House of Representatives.

New (Unanimous)

- (4A) The Prime Minister shall provide the Leader of the Opposition with a copy of the report furnished to the Prime Minister under **subsection (1)** of this section.
- 15 (4B) Where the copy supplied to the Leader of the Opposition under **subsection (4A)** of this section contains matter excluded by the Prime Minister, under **subsection (4)** of this section, from the copy laid before the House of Representatives, the Leader of the Opposition shall not disclose that matter to any other
- 20 person.

- (5) The Inspector-General may at any time, with the concurrence of the Prime Minister, report either generally or in respect of any particular matter to the Intelligence and Security Committee established by **section 5** of this Act.

- 25 **47. Secrecy**—(1) No person who is, or has at any time been, the Inspector-General or an employee of the Inspector-General or a person assisting the Inspector-General shall, either directly or indirectly, except in the performance of that person's functions or duties or in the exercise of that person's powers
- 30 under this Act,—

- (a) Make a record of, or disclose to any person, any information acquired by reason of the person holding or acting in that office; or
- (b) Make use of any such information.

- 35 (2) Nothing in **subsection (1)** of this section applies in relation to the disclosure or use of any information after its disclosure or use has been approved in writing by the Minister.

- (3) Every person commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000 or to both, who acts in contravention of **subsection (1)** of this section.
- 40

(4) The Inspector-General and any employee of the Inspector-General shall be deemed for the purposes of sections 105 and 105A of the Crimes Act 1961 to be officials.

(5) No prosecution for an offence against this section shall be commenced except with the leave of the Attorney-General.

(6) The Summary Proceedings Act 1957 is hereby amended by inserting in Part II of the First Schedule, in its appropriate alphabetical order, the following item:

"The Intelligence and Security Agencies Act 1995	47	Unauthorised making or disclosure of records."
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48. Publication—

Struck Out (Unanimous)

(1) Except with the written consent of the Minister, no report or account of any inquiry by the Inspector-General, or any complaint before the Inspector-General or any decision of the Inspector-General or the Minister relating to such inquiry or complaint shall be published in any newspaper or other document or broadcast by radio or television or otherwise distributed or disclosed in any manner whatsoever, unless the report or account is confined to material that the Inspector-General has approved for release (the approval being an approval given in writing after the Inspector-General had consulted, in relation to security requirements, with the chief executive of the intelligence and security agency to which the inquiry or complaint relates).

New (Unanimous)

(1) Except with the written consent of the Minister, no report or account of any inquiry by the Inspector-General, or any complaint before the Inspector-General, or any decision of the Inspector-General or the Minister relating to such inquiry or complaint shall be published in any newspaper or other document or broadcast by radio or television or otherwise distributed or disclosed in any manner whatsoever, unless the report or account is confined,—

(a) In the case of a complaint, to advice provided to the complainant by the Inspector-General in accordance with **section 44 (2)** of this Act; and

New (Unanimous)

5 (b) In any other case, to material that the Inspector-General has approved for release (the approval being an approval given in writing after the Inspector-General has consulted, in relation to security requirements, with the chief executive of the intelligence and security agency to which the inquiry or complaint relates).

10 (2) No person contravenes **subsection (1)** of this section by reason only of publishing, or broadcasting, or distributing, or disclosing the fact that any inquiry has been conducted by the Inspector-General.

15 (3) Every person commits an offence who publishes or broadcasts or causes to be published or broadcast or otherwise distributes or discloses any report or account in contravention of **subsection (1)** of this section.

(4) Every person who commits an offence against **subsection (3)** of this section is liable on summary conviction—

20 (a) In the case of a company or other corporation, to a fine not exceeding \$50,000; and

(b) In the case of a natural person to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$10,000 or to both.

25 (5) No prosecution for an offence against this section shall be commenced except with the leave of the Attorney-General.

(6) Nothing in this section shall restrict the broadcasting or reporting of proceedings in Parliament.

Cf. 1969, No. 24, s. 23; 1977, No. 50, s. 14

New (Unanimous)

30 *Amendments to Ombudsmen Act 1975*

48A. Referral of complaint to Inspector-General of Intelligence and Security—The Ombudsmen Act 1975 is hereby amended by inserting, after section 17B (as inserted by section 76 (1) of the Health and Disability Commissioner Act 1994), the following section:

35 “17c. (1) Where, on receiving a complaint under this Act, an Ombudsman considers that the complaint relates, in whole or in part, to a matter that is more properly within the jurisdiction

New (Unanimous)

of the Inspector-General of Intelligence and Security holding office under **section 24 of the Intelligence and Security Agencies Act 1996**, the Ombudsman shall forthwith consult with the Inspector-General of Intelligence and Security in order to determine the appropriate means of dealing with the complaint. 5

“(2) As soon as practicable after consulting with the Inspector-General of Intelligence and Security under **subsection (1)** of this section, the Ombudsman shall determine whether the complaint should be dealt with, in whole or in part, under this Act. 10

“(3) If the Ombudsman determines that the complaint should be dealt with, in whole or in part, under **Part II of the Intelligence and Security Agencies Act 1996**, the Ombudsman shall forthwith refer the complaint or, as the case requires, the appropriate part of the complaint to the Inspector-General of Intelligence and Security to be dealt with accordingly, and shall notify the complainant of the action that has been taken.” 15

48B. Consultation with Inspector-General of Intelligence and Security—The Ombudsmen Act 1975 is hereby further amended by inserting, after section 21B (as inserted by section 76 (2) of the Health and Disability Commissioner Act 1994), the following section: 20

“21c. Notwithstanding anything in section 21 of this Act, an Ombudsman may from time to time undertake consultation with the Inspector-General of Intelligence and Security holding office under **section 24 of the Intelligence and Security Agencies Act 1996** in relation to any matter relating to the functions of the Ombudsman, including (without limitation) consultation— 25

“(a) For the purposes of making a determination under **section 17c** of this Act: 30

“(b) In relation to any matter arising out of or in the course of an investigation under this Act or any other enactment:

“(c) In relation to any matter that is within the jurisdiction of the Inspector-General of Intelligence and Security, whether or not the matter arises out of a particular complaint made under this Act,— 35

and for the purposes of any such consultation, an Ombudsman may disclose to the Inspector-General of Intelligence and 40

New (Unanimous)

Security such information as the Ombudsman considers necessary for that purpose.”

Amendments to Privacy Act 1993

5 **48c. Referral of complaint to Inspector-General of Intelligence and Security**—The Privacy Act 1993 is hereby amended by inserting, after section 72A (as inserted by section 81 (1) of the Health and Disability Commissioner Act 1994), the following section:

10 “72B. (1) Where, on receiving a complaint under this Part of this Act, the Commissioner considers that the complaint relates, in whole or in part, to a matter that is more properly within the jurisdiction of the Inspector-General of Intelligence and Security under **Part II of the Intelligence and Security Agencies Act 1996**, the Commissioner shall forthwith consult with the Inspector-General of Intelligence and Security in order to determine the appropriate means of dealing with the complaint.

15 “(2) As soon as practicable after consulting with the Inspector-General of Intelligence and Security under **subsection (1)** of this section, the Commissioner shall determine whether or not the complaint should be dealt with, in whole or in part, under this Act.

20 “(3) If the Commissioner determines that the complaint should be dealt with, in whole or in part, under **Part II of the Intelligence and Security Agencies Act 1996**, the Commissioner shall forthwith refer the complaint or, as the case requires, the appropriate part of the complaint to the Inspector-General of Intelligence and Security to be dealt with accordingly, and shall notify the complainant of the action that has been taken.”

30 **48d. Consultation with Inspector-General of Intelligence and Security**—The Privacy Act 1993 is hereby further amended by inserting, after section 117A (as inserted by section 81 (3) of the Health and Disability Commissioner Act 1994), the following section:

35 “117B. Notwithstanding anything in section 116 of this Act, the Commissioner may from time to time undertake consultation with the Inspector-General of Intelligence and Security under **Part II of the Intelligence and Security Agencies Act 1996** in relation to any matter relating to the functions of the

New (Unanimous)

Commissioner under this Act, including (without limitation) consultation—

“(a) For the purposes of making a determination under section 72B of this Act: 5

“(b) In relation to any matter arising out of or in the course of an investigation under Part VIII of this Act: 5

“(c) In relation to any matter that is within the jurisdiction of the Inspector-General of Intelligence and Security, whether or not the matter arises out of a particular complaint made under Part VIII of this Act,— 10

and, for the purposes of any such consultation, the Commissioner may disclose to the Inspector-General of Intelligence and Security such information as the Commissioner considers necessary for that purpose.” 15

PART III

AMENDMENTS TO NEW ZEALAND SECURITY INTELLIGENCE SERVICE ACT 1969

49. Part to be read with New Zealand Security Intelligence Service Act 1969—(1) This Part of this Act shall be read together with and deemed part of the New Zealand Security Intelligence Service Act 1969* (in this Part referred to as the principal Act). 20

(2) This Part of this Act shall come into force on the day after the date on which this Act receives the Royal assent. 25

*R.S. Vol. 21, p. 559

50. Interpretation—(1) Section 2 of the principal Act is hereby amended—

(a) By repealing the definition of the term “Commissioner” (as amended by section 2 (2) (a) of the New Zealand Security Intelligence Service Amendment Act 1977); and 30

(b) By repealing the definition of the term “New Zealand Intelligence Council” (as inserted by section 2 (1) of the New Zealand Security Intelligence Service Amendment Act 1977). 35

(2) Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “officer”, the following definition:

“ ‘Officials Committee for Domestic and External Security Coordination’ means the committee established by the Cabinet on the 23rd day of August 1993:”.

5 (3) Section 2 of the principal Act is hereby amended by repealing the definition of the term “security” (as amended by section 2 (2) (b) of the New Zealand Security Intelligence Service Amendment Act 1977), and substituting the following definition:

Struck Out (Unanimous)

10 “ ‘Security’ means the ensuring of New Zealand’s international well-being or economic well-being and the protection of New Zealand from acts of espionage, sabotage, terrorism, and subversion,
15 whether or not it is directed from or intended to be committed within New Zealand:”.

New (Unanimous)

20 “ ‘Security’ means the making of a contribution to New Zealand’s international well-being or economic well-being; and the protection of New Zealand from acts of espionage, sabotage, terrorism, and subversion, whether or not it is directed from or intended to be committed within New Zealand:”.

25 (4) Section 2 of the principal Act is hereby amended by repealing the definition of the term “State Services” (as amended by section 2 (2) (c) of the New Zealand Security Intelligence Service Amendment Act 1977), and substituting the following definition:

“ ‘State services’ means the State services as defined in section 2 of the State Sector Act 1988:”.

30 (5) Section 2 of the New Zealand Security Intelligence Service Amendment Act 1977 is hereby consequentially amended by repealing subsection (2).

New (Unanimous)

35 **50A. Act to bind the Crown**—The principal Act is hereby amended by inserting, after section 2, the following section:
“2A. This Act shall bind the Crown.”

Struck Out (Unanimous)

51. Functions of New Zealand Security Intelligence Service—Section (4) (1) of the principal Act is hereby amended by omitting from paragraph (d) (as added by section 3 (1) of the New Zealand Security Intelligence Service Amendment Act 1977) the words “New Zealand Security Intelligence Council”, and substituting the words “Officials Committee for Domestic and External Security Coordination”. 5

New (Unanimous)

51. Functions of New Zealand Security Intelligence Service—(1) Section 4 (1) of the principal Act is hereby amended by repealing paragraph (d) (as added by section 3 (1) of the New Zealand Security Intelligence Service Amendment Act 1977), and substituting the following paragraph: 10

“(d) To inform the Officials Committee for Domestic and External Security Coordination of any new area of potential relevance to security in respect of which the Director has considered it necessary to institute surveillance.” 15

(2) Section 4 of the principal Act is hereby further amended by repealing subsection (2) (as substituted by section 3 (2) of the New Zealand Security Intelligence Service Amendment Act 1977), and substituting the following subsections: 20

“(2) It shall not be a function of the Security Intelligence Service— 25

“(a) To further the interests of any political party; or

“(b) To enforce measures for security.

“(3) This Act shall not limit the right of persons to engage in lawful advocacy, protest, or dissent in respect of any matter and the exercise of that right shall not, of itself, justify the Security Intelligence Service in instituting surveillance of any person or entity or any class of persons or entities within New Zealand.” 30

(3) Section 3 of the New Zealand Security Intelligence Service Amendment Act 1977 is hereby consequentially repealed. 35

52. Issue of interception warrant—Section 4A (5) of the principal Act (as inserted by section 5 of the New Zealand Security Intelligence Service Amendment Act 1977) is hereby

amended by repealing paragraph (b), and substituting the following paragraph:

5 “(b) The average length of time for which all warrants issued under subparagraph (i) of paragraph (a) of subsection (1) of this section and in force at any time in the immediately preceding year (whether issued under that paragraph in the immediately preceding year or any earlier year) have been in force in the immediately preceding year; and”.

10 **53. Prevention or detection of serious crime**—The principal Act is hereby amended by inserting, after section 4B (as inserted by section 5 of the New Zealand Security Intelligence Service Amendment Act 1977), the following section:

15 “4c. (1) Notwithstanding anything in sections 4 (1) (a) and 4B (1) (a) of this Act, the Director, for the purpose of preventing or detecting serious crime in New Zealand or in any other country, may retain any information that comes into the possession of the Security Intelligence Service and may
20 communicate any such information to members of the New Zealand Police or to such other persons, and in such manner, as the Director thinks fit.

 “(2) In subsection (1) of this section, ‘serious crime’ means—

25 “(a) In relation to New Zealand, any indictable offence; and

 “(b) In relation to any foreign country, any offence that, if it occurred in New Zealand, would be an indictable offence.”

30 **54. Repeal of provisions relating to Commissioner of Security Appeals**—(1) The principal Act is hereby amended by repealing sections 14 to 24.

 (2) The following enactments are hereby consequentially repealed:

35 (a) Sections 10 to 15 of the New Zealand Security Intelligence Service Amendment Act 1977:

 (b) So much of the Third Schedule to the Official Information Amendment Act 1987 as relates to the New Zealand Security Intelligence Service Act 1969:

40 (c) So much of the Fifth Schedule to the State Sector Act 1988 as relates to section 14 of the New Zealand Security Intelligence Service Act 1969.

55. Transitional provision in relation to complaints pending before Commissioner of Security Appeals—
Where any complaint made under section 18 of the New Zealand Security Intelligence Service Act 1969 is pending at the commencement of this Act, the person holding office as the Commissioner of Security Appeals immediately before the commencement of this **Part of this** Act may deal with any such complaint as if this Act had not been passed and as if sections 14 to 24 of the New Zealand Security Intelligence Service Act 1969 and the other enactments repealed by **section 54** of this Act were still in force.

