

Inspector-General of Intelligence and Security Act 1996

Public Act 1996 No 47
Date of assent 1 July 1996

Contents

		Page
	Title	2
1	Short Title and commencement	2
2	Interpretation	2
3	Act to bind the Crown	5
4	Object	5
Inspector-General of Intelligence and Security		
5	Inspector-General of Intelligence and Security	6
6	Term of office	6
7	Removal of Inspector-General	6
8	Remuneration and allowances	7
9	Disclosure of interests	7
10	Staff	7
Functions of Inspector-General		
11	Functions of Inspector-General	8
12	Consultation	10
13	Requirements of security	10
14	Matters occurring before commencement of Act	11
15	Jurisdiction of Courts and other agencies not affected	11
Complaints		
16	Mode of complaint	11
17	Power of Inspector-General to refuse to inquire into complaint	12
18	Disclosures to Inspector-General by employees of intelligence and security agencies	13
Procedure		
19	Proceedings of Inspector-General	13
20	Powers in relation to security records	14
21	Power of entry	15

Note

This Act is administered in the Department of the Prime Minister and the Cabinet

22	Power to hear evidence in private	15
23	Powers of Inspector-General in relation to inquiries	15
24	Proceedings privileged	17
25	Reports in relation to inquiries	18
26	Disclosure	19
27	Reports by Inspector-General	20
28	Secrecy	21
29	Publication	22
Amendments to Ombudsmen Act 1975		
30	Referral of complaint to Inspector-General of Intelligence and Security	23
31	Consultation with Inspector-General of Intelligence and Security	24
Amendments to Privacy Act 1993		
32	Referral of complaint to Inspector-General of Intelligence and Security	25
33	Consultation with Inspector-General of Intelligence and Security	26

An Act to increase the level of oversight and review of intelligence and security agencies by providing for the appointment of an Inspector-General of Intelligence and Security

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

1 Short Title and commencement

- (1) This Act may be cited as the Inspector-General of Intelligence and Security Act 1996.
- (2) This Act shall come into force on the day after the date on which this Act receives the Royal assent.

2 Interpretation

- (1) In 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:

- (b) In relation to the Government Communications Security Bureau, means the Director of that Bureau:
- (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 purposes of this Act, means the chief executive of that agency:

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 5 of this Act

Intelligence and security agency means—

- (a) The New Zealand Security Intelligence Service:
- (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 Act:

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

New Zealand person—

- (a) Means any person, being—
 - (i) A New Zealand citizen; or
 - (ii) A person ordinarily resident in New Zealand; or
 - (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
- (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 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

Overseas person has the meaning given to it by section 7 of the Overseas Investment Act 2005

overseas person: this definition was amended, as from 25 August 2005, by section 75 Overseas Investment Act 2005 (2005 No 82) by substituting the words “section 7 of the Overseas Investment Act 2005” for the words “section 2(1) of the Overseas Investment Act 1973”. See sections 76 to 79 of that Act as to the transitional provisions. See clause 2 Overseas Investment Act Commencement Order 2005 (SR 2005/219).

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

3 Act to bind the Crown

This Act shall bind the Crown.

4 Object

The object 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,—

- (a) Assist the Minister to ensure that the activities of that intelligence and security agency comply with the law; and

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

Inspector-General of Intelligence and Security

5 Inspector-General of Intelligence and Security

- (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.

6 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.
- (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 7 of this Act, continue to hold office, notwithstanding the expiry of that person's term of appointment, until—
 - (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.
- (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.

7 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 af-

fecting performance of duty, bankruptcy, neglect of duty, or misconduct.

8 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.

9 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.

10 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.
- (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.
- (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

11 Functions of Inspector-General

- (1) Subject to the provisions of this Act, the functions of the Inspector-General shall be—
- (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—
 - (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 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—
 - (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:
 - (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 to 4G of the New Zealand Security Intelligence Service Act 1969 in relation to the issue and execution of interception warrants:
 - (da) without limiting the generality of paragraph (a), to review the effectiveness and appropriateness of the procedures adopted by the Government Communications Security Bureau to ensure compliance with the provi-

sions of Part 3 of the Government Communications Security Bureau Act 2003 in relation to the issue and execution of interception warrants and computer access authorisations:

- (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:
 - (f) To carry out any programme or amended programme or substituted programme approved by the Minister under paragraph (e) 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—
- (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 function of the Inspector-General to inquire into any action taken by the Minister.
- (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.
- (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—
- (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.
- (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).

Subsection (1)(d) was amended, as from 1 September 1999, by section 8 New Zealand Security Intelligence Service Amendment (No 2) Act 1999 (1999 No 91), by substituting the expression “to 4G” for the expression “and 4B”.

Subsection (1)(da) was inserted, as from 2 April 2003, by section 28 Government Communications Security Bureau Act 2003 (2003 No 9).

12 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 conducted into that matter by both the Inspector-General and the Controller and Auditor-General.
- (2) Notwithstanding the provisions of section 26(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 11 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.

13 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.

14 Matters occurring before commencement of Act

Notwithstanding any other provision of this Act, but subject to section 8 of the New Zealand Security Intelligence Service Amendment Act 1996, the Inspector-General may inquire into any matter that occurred before the commencement 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 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.

15 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.
- (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.
- (3) Nothing in section 12 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

16 Mode of complaint

- (1) Every complaint to the Inspector-General shall be made in writing.
- (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.

- (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.

Compare: 1969 No 24 s 18(1), (2)

17 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 14 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.

Compare: 1969 No 24 s 19; 1988 No 20 s 87

18 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 unless the Inspector-General determines that in so doing the employee acted otherwise than in good faith.

Procedure

19 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 11(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.
- (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.
- (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.
- (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.

- (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.
- (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.
- (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.

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

20 Powers in relation to security records

- (1) Subject to section 26(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.
- (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.
- (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 requirements applying to the safe custody of security records in the intelligence and security agencies.

Compare: 1969 No 24 s 20(2B); 1977 No 50 s 11(1)

21 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.

22 Power to hear evidence in private

In conducting any inquiry under section 11(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,—

- (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 26(3)(a) of this Act; or
 - (ii) Would be likely to prejudice the privacy of any individual.

Compare: 1969 No 24 s 20(3)

23 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.
- (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.
- (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).

- (4) Subject to subsection (5) 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.
- (5) 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.
- (6) 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
 - (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;—
- and those regulations, with all necessary modifications, shall apply accordingly.
- (7) 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.
- (8) 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 Act:
 - (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 Act:

- (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 Act.

Compare: 1969 No 24 s 20, (6), (8); 1977 No 50 s 11(2)

24 Proceedings privileged

- (1) Subject to subsection (2) of this section,—
 - (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:
 - (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.
- (2) Nothing in subsection (1) of this section applies in respect of proceedings for—
 - (a) An offence against section 28 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.

Compare: 1969 No 24 s 24; 1987 No 8 s 25(1); 1993 No 28 s 129(1)

25 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—
 - (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.

Compare: 1969 No 24 s 21; 1977 No 50 s 13

26 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 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.
- (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—
- (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
- (iii) To prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by any international organisation; or
- (iv) To endanger the safety of any person; and
- (b) That such disclosure—
- (i) Should not be made; or
- (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.

- (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
 - (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.

Compare: 1969 No 24 s 20A(1); 1977 No 50 s 12

27 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—
- (a) Each Minister who is responsible for an intelligence and security agency; and
 - (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
 - (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.
- (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.
- (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
 - (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
 - (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,—
the Prime Minister may exclude that matter from the copy of the report to be laid before the House of Representatives.
- (5) 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.
- (6) Where the copy supplied to the Leader of the Opposition under subsection (5) 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 person.
- (7) 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 the Intelligence and Security Committee Act 1996.

28 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 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.

- (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.
- (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 2 of Schedule 1, in its appropriate alphabetical order, the following item:

The Inspector-General of Intelligence and Security Act 1996	28	Unauthorised making or disclosure of records.
---	----	---

29 Publication

- (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 25(2) of this Act; and
 - (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).

- (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.
- (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—
 - (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.
- (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.

Compare: 1969 No 24 s 23; 1977 No 50 s 14

Amendments to Ombudsmen Act 1975

30 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:

“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 of the Inspector-General of Intelligence and Security holding office under section 5 of the Inspector-General of Intelligence and Security 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.

- “(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.
- “(3) If the Ombudsman determines that the complaint should be dealt with, in whole or in part, under the Inspector-General of Intelligence and Security 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.”

31 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:

“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 5 of the Inspector-General of Intelligence and Security Act 1996 in relation to any matter relating to the functions of the Ombudsman, including (without limitation) consultation—

- “(a) For the purposes of making a determination under section 17C of this Act:
- “(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,—

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

Amendments to Privacy Act 1993

32 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:

“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 the Inspector-General of Intelligence and Security 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.
- “(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.
- “(3) If the Commissioner determines that the complaint should be dealt with, in whole or in part, under the Inspector-General of Intelligence and Security 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.”

33 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:

“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 the Inspector-General of the Intelligence and Security Act 1996 in relation to any matter relating to the functions of the Commissioner under this Act, including (without limitation) consultation—

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

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

“(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,—

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.”