

Reprint
as at 4 April 2016



Inspector-General of Intelligence and Security Act 1996

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Commencement see section 1(2)

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Department of the Prime Minister and Cabinet.

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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

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,—

advisory panel means the advisory panel established by section 15A

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), is an intelligence and security agency for the purposes of this Act, means the chief executive of that agency

Deputy Inspector-General means the Deputy Inspector-General of Intelligence and Security holding office under section 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 5

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

Intelligence and Security Committee means the Intelligence and Security Committee established by section 5 of the Intelligence and Security Committee Act 1996

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% of the members are New Zealand persons under subparagraph (i) or subparagraph (ii); 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 1993 that is, for the purposes of that Act, a subsidiary of any body corporate incorporated outside New Zealand; or
 - (ii) any company within the meaning of the Companies Act 1993, or building society, in which—
 - (A) 25% 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% 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

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); and

- (c) includes copies of papers, documents, records or other things that are security records by virtue of paragraph (a) or paragraph (b).
- (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) An Order in Council made under subsection (2) is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 2(1) **advisory panel**: inserted, on 26 September 2013, by section 4 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

Section 2(1) **Deputy Inspector-General**: inserted, on 26 September 2013, by section 4 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

Section 2(1) **Intelligence and Security Committee**: inserted, on 26 September 2013, by section 4 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

Section 2(1) **New Zealand person** paragraph (b)(i): replaced, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 2(1) **New Zealand person** paragraph (b)(ii): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 2(1) **overseas person**: amended, on 25 August 2005, by section 75 of the Overseas Investment Act 2005 (2005 No 82).

Section 2(3): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

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 and Deputy Inspector-General of Intelligence and Security

Heading: replaced, on 26 September 2013, by section 5 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

5 Inspector-General and Deputy Inspector-General of Intelligence and Security

- (1) There must be—
 - (a) an Inspector-General of Intelligence and Security; and
 - (b) a Deputy Inspector-General of Intelligence and Security.

- (2) The Inspector-General and Deputy Inspector-General must be appointed by the Governor-General on the recommendation of the Prime Minister following consultation with the Intelligence and Security Committee.
- (3) The Deputy Inspector-General has and may exercise and perform the powers and functions of the Inspector-General (whether under this Act or any other enactment), but subject to—
 - (a) the control and direction of the Inspector-General; and
 - (b) to avoid doubt, the same duties, obligations, restrictions, and terms under which the Inspector-General exercises and performs his or her powers and functions.
- (4) Sections 7 to 9 and 18 apply to the Deputy Inspector-General as if references in those sections to the Inspector-General were references to the Deputy Inspector-General.
- (5) If there is a vacancy in the office of the Inspector-General, or if the Inspector-General is absent from duty for any reason, the Deputy Inspector-General has and may exercise and perform all the powers, functions, and duties of the Inspector-General for as long as the vacancy or absence continues.
- (6) The fact that the Deputy Inspector-General exercises or performs any power, function, or duty of the Inspector-General is, in the absence of proof to the contrary, conclusive evidence of the Deputy Inspector-General's authority to do so.

Section 5: replaced, on 26 September 2013, by section 5 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

6 Term of office

- (1) Every person appointed as the Inspector-General or Deputy Inspector-General—
 - (a) is to be appointed for a term not exceeding 3 years; and
 - (b) may be reappointed, but in the case of the Inspector-General only once.
- (2) Every person appointed as the Inspector-General or Deputy Inspector-General shall, unless sooner vacating office by death or by resignation, or by removal from office under section 7, continue to hold office, notwithstanding the expiry of that person's term of appointment, until—
 - (a) reappointment as the Inspector-General or Deputy 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 or Deputy Inspector-General may at any time resign his or her office by written notice given to the Governor-General.

Section 6(1): replaced, on 26 September 2013, by section 6(1) of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

Section 6(2): amended, on 26 September 2013, by section 6(2) of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

Section 6(2)(a): amended, on 26 September 2013, by section 6(2) of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

Section 6(3): amended, on 26 September 2013, by section 6(2) of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

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 affecting 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) 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:
 - (ba) to inquire into any complaint made by the Speaker of the House of Representatives on behalf of 1 or more members of Parliament:
 - (bb) to inquire into a request by a worker who is an employee of the New Zealand Security Intelligence Service or the Government Communications Security Bureau for a determination under section 8(7) of the Health and Safety at Work Act 2015:
 - (c) to inquire at the request of the Minister or the Prime Minister or of the Inspector-General's own motion into any matter where it appears that a New Zealand person has been or may be adversely affected by any act, omission, practice, policy, or procedure of an intelligence and security agency:
 - (ca) to inquire at the request of the Minister or the Prime Minister or of the Inspector-General's own motion into the propriety of particular activities of an intelligence and security agency:
 - (d) without limiting paragraph (a), to review at intervals of not more than 12 months—
 - (i) the effectiveness and appropriateness of the procedures adopted by each intelligence and security agency to ensure compliance with its governing legislation in relation to the issue and execution of warrants and authorisations; and
 - (ii) the effectiveness and appropriateness of compliance systems concerning operational activity, including all supporting policies and practices of an intelligence and security agency relating to—
 - (A) administration; and
 - (B) information management; and

- (C) risk management; and
 - (D) legal compliance generally:
- (da) to conduct unscheduled audits of the procedures and compliance systems described in paragraph (d):
 - (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).
- (2) *[Repealed]*
 - (3) In carrying out any inquiry in accordance with the provisions of subsection (1)(ca), 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), 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) 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).

Section 11(1)(ba): inserted, on 26 September 2013, by section 7(1) of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

Section 11(1)(bb): inserted, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

Section 11(1)(c): replaced, on 26 September 2013, by section 7(2) of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

Section 11(1)(ca): inserted, on 26 September 2013, by section 7(2) of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

Section 11(1)(d): replaced, on 26 September 2013, by section 7(2) of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

Section 11(1)(da): replaced, on 26 September 2013, by section 7(2) of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

Section 11(2): repealed, on 26 September 2013, by section 7(3) of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

Section 11(3): amended, on 26 September 2013, by section 7(4) of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

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) The Inspector-General may—
 - (a) consult any of the persons specified in subsection (3) about any matter relating to the functions of the Inspector-General under section 11; and
 - (b) despite section 26(1), disclose to any of the persons consulted any information that the Inspector-General considers necessary for the purpose of the consultation.
- (3) The persons are—
 - (a) the Controller and Auditor-General;
 - (b) an Ombudsman;
 - (c) the Privacy Commissioner;
 - (d) a Human Rights Commissioner;
 - (e) the Independent Police Conduct Authority.

Section 12(2): replaced, on 26 September 2013, by section 8 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

Section 12(3): inserted, on 26 September 2013, by section 8 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

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 Police employee of any powers which that Police employee 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 shall limit the powers, duties, and responsibilities of the Controller and Auditor-General or of the Ombudsmen, the Privacy Commissioner, a Human Rights Commissioner, or the Independent Police Conduct Authority under any enactment.

Section 15(2): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 15(3): amended, on 26 September 2013, by section 9 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

Advisory panel

Heading: inserted, on 26 September 2013, by section 10 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

15A Advisory panel established

This section establishes an advisory panel.

Section 15A: inserted, on 26 September 2013, by section 10 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

15B Function of advisory panel

- (1) The function of the advisory panel is to provide advice to the Inspector-General.
- (2) The advisory panel may provide advice—
 - (a) on request from the Inspector-General; or
 - (b) on its own initiative.
- (3) To assist the advisory panel to perform its function,—
 - (a) the advisory panel may ask the Inspector-General to provide information; and

- (b) the Inspector-General may provide information to the advisory panel, whether in response to a request under paragraph (a) or on his or her own initiative.
- (4) The advisory panel may make a report to the Prime Minister on any matter relating to intelligence and security, if the advisory panel considers that the matter should be drawn to the attention of the Prime Minister.

Section 15B: inserted, on 26 September 2013, by section 10 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

15C Membership of advisory panel

- (1) The advisory panel consists of—
 - (a) 2 members appointed under subsection (2), one of whom must also be appointed as the chairperson of the panel; and
 - (b) the Inspector-General.
- (2) The members and chairperson appointed under this subsection are appointed by the Governor-General on the recommendation of the Prime Minister after consulting the Intelligence and Security Committee.
- (3) One of the members appointed under subsection (2) must be a lawyer within the meaning of the Lawyers and Conveyancers Act 2006 who has held a practising certificate as a barrister or barrister and solicitor for not less than 7 years.
- (4) Both of the members appointed under subsection (2) must have an appropriate security clearance.
- (5) A member appointed under subsection (2)—
 - (a) holds office for a term not exceeding 5 years; and
 - (b) may from time to time be reappointed; and
 - (c) may at any time resign office by notice in writing to the Prime Minister; and
 - (d) may be removed from office by notice in writing from the Prime Minister for misconduct, inability to perform the functions of office, or neglect of duty.

Section 15C: inserted, on 26 September 2013, by section 10 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

15D Remuneration of appointed members of advisory panel

- (1) A member of the advisory panel appointed under section 15C(1)(a) is entitled—
 - (a) to receive remuneration not within paragraph (b) for services as a member at a rate and of a kind determined by the Minister in accordance with the fees framework; and

- (b) in accordance with the fees framework, to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out his or her office as a member.
- (2) For the purposes of subsection (1), **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.

Section 15D: inserted, on 26 September 2013, by section 10 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

15E Clerical and secretarial services

- (1) The Department of the Prime Minister and Cabinet is responsible for providing to the advisory panel the clerical and secretarial services necessary for the advisory panel to perform its function effectively and efficiently.
- (2) A person providing clerical and secretarial services under subsection (1) must have an appropriate security clearance.

Section 15E: inserted, on 26 September 2013, by section 10 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

15F Advisory panel to determine own procedure

The advisory panel may determine its own procedure.

Section 15F: inserted, on 26 September 2013, by section 10 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

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 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), 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), 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), 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 1 or more of the interests referred to in section 26(3)(a); 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), 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 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)) 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 Criminal Procedure Act 2011—
 - (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); 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 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)

Section 23(5): amended, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 23(6): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 23(8): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

24 Proceedings privileged

- (1) Subject to subsection (2),—
 - (a) no proceedings, civil or criminal, may be brought against the Inspector-General, an appointed member of the advisory panel, or against any employee of the Inspector-General, for anything done or reported or said by the Inspector-General, appointed member, 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, appointed member, or employee acted in bad faith:
 - (b) neither the Inspector-General nor an appointed member of the advisory panel nor any employee of the Inspector-General nor any person who has held the appointment of Inspector-General or who has been an appointed member of the advisory panel or who has been an employee of the Inspector-General is to 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) 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)

Section 24(1): replaced, on 26 September 2013, by section 11 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

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.
- (6) As soon as practicable after receiving a report from the Inspector-General, the Minister—
- (a) must provide his or her response to the Inspector-General and the chief executive of the intelligence and security agency concerned; and
 - (b) may provide his or her response to the Intelligence and Security Committee.
- (7) Subsection (6) does not apply to the extent that a report relates to employment matters or security clearance issues.
- (8) For the purposes of this section,—
- (a) the Inspector-General may, after consulting the chief executive of the intelligence and security agency concerned, determine the security classification of a report prepared under this section; and
 - (b) any matter quoted or summarised in the report must be given a security classification not less than the security classification of the matter quoted or summarised.

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

Section 25(6): inserted, on 26 September 2013, by section 12 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

Section 25(7): inserted, on 26 September 2013, by section 12 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

Section 25(8): inserted, on 26 September 2013, by section 12 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

25A Publication of Inspector-General's reports under section 25

- (1) As soon as practicable after forwarding a report as required by section 25(1), the Inspector-General must make a copy of the report publicly available on an Internet site maintained by or on behalf of the Inspector-General.
- (2) However, the Inspector-General must not, in the copy of a report made publicly available under subsection (1), disclose—
 - (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—
 - (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
- (c) 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
- (d) information the public disclosure of which would be likely to prejudice—
 - (i) the continued discharge of the functions of an intelligence and security agency; or
 - (ii) the security or defence of New Zealand or the international relations of the Government of New Zealand; or
- (e) any information about employment matters or security clearance issues.

Section 25A: inserted, on 26 September 2013, by section 13 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

26 Disclosure

- (1) Subject to the provisions of this Act, the Inspector-General and an appointed member of the advisory panel 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) shall limit the disclosure to the Minister of information concerning the activities of an intelligence and security agency.
- (3) Subject to subsection (4), 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) 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

Section 26(1): amended, on 26 September 2013, by section 14 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

27 Reports by Inspector-General

- (1) As soon as practicable after the end of each year ending with 30 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
 - (ba) certify the extent to which each intelligence and security agency's compliance systems are sound; 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).
- (3) The Prime Minister shall, as soon as practicable after receiving a report under subsection (1), present a copy of the report to the House of Representatives, together with a statement as to whether any matter has, under subsection (4), 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 presented to 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).
- (6) Where the copy supplied to the Leader of the Opposition under subsection (5) contains matter excluded by the Prime Minister, under subsection (4), from the copy presented to the House of Representatives, the Leader of the Opposition shall not disclose that matter to any other person.
- (6A) As soon as practicable after a copy of the report is presented to the House of Representatives under subsection (3), the Inspector-General must make a copy of the report (as presented to the House of Representatives) publicly available on an Internet site maintained by or on behalf of the Inspector-General.
- (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.

Section 27(2)(ba): inserted, on 26 September 2013, by section 15(1) of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

Section 27(3): amended, on 26 September 2013, by section 15(2) of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

Section 27(4): amended, on 26 September 2013, by section 15(3) of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

Section 27(6): amended, on 26 September 2013, by section 15(3) of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

Section 27(6A): inserted, on 26 September 2013, by section 15(4) of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

28 Secrecy

- (1) No person who is, or has at any time been, the Inspector-General or an appointed member of the advisory panel 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) 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 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).
- (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) *Amendment(s) incorporated in the Act(s).*

Section 28(1): amended, on 26 September 2013, by section 16 of the Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58).

Section 28(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

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); 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) 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).
- (4) Every person who commits an offence against subsection (3) is liable on 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

Section 29(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Amendments to Ombudsmen Act 1975

30 Referral of complaint to Inspector-General of Intelligence and Security

Amendment(s) incorporated in the Act(s).

31 Consultation with Inspector-General of Intelligence and Security

Amendment(s) incorporated in the Act(s).

Amendments to Privacy Act 1993

32 Referral of complaint to Inspector-General of Intelligence and Security

Amendment(s) incorporated in the Act(s).

33 Consultation with Inspector-General of Intelligence and Security

Amendment(s) incorporated in the Act(s).

Reprints notes

1 *General*

This is a reprint of the Inspector-General of Intelligence and Security Act 1996 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Health and Safety at Work Act 2015 (2015 No 70): section 232

Companies Amendment Act 2013 (2013 No 111): section 14

Inspector-General of Intelligence and Security Amendment Act 2013 (2013 No 58)

Legislation Act 2012 (2012 No 119): section 77(3)

Criminal Procedure Act 2011 (2011 No 81): section 413

New Zealand Security Intelligence Service Amendment Act 2011 (2011 No 28): section 17(2)

Policing Act 2008 (2008 No 72): section 130(1)

Overseas Investment Act 2005 (2005 No 82): section 75

Government Communications Security Bureau Act 2003 (2003 No 9): section 28

New Zealand Security Intelligence Service Amendment (No 2) Act 1999 (1999 No 91): section 8