

Inspector-General of Defence Bill

Government Bill

Explanatory note

General policy statement

Background

In 2018, the Attorney-General established the Government Inquiry into Operation Burnham and other related matters (the **Inquiry**). The Inquiry examined allegations of wrongdoing by the New Zealand Defence Force (the **Defence Force**) during operations conducted in Afghanistan in 2010 and 2011. It found that the Defence Force's failure to provide full and accurate information to Ministers, and to adequately scrutinise or respond to information, disrupted the principles of democratic oversight of the military and ministerial accountability to Parliament.

The Inquiry recommended establishing an Inspector-General of Defence. This Bill establishes this office, in response to the Inquiry's recommendation.

Purpose, functions and scope of Inspector-General of Defence

The Bill establishes the offices of Inspector-General of Defence (**Inspector-General**) and Deputy Inspector-General of Defence (**Deputy Inspector-General**)—

- to assist the Minister of Defence to oversee the Defence Force and account accurately to the House of Representatives for its activities; and
- to assure the public that the activities of the Defence Force are subject to independent scrutiny.

It provides that the Inspector-General's 2 core functions are—

- to investigate and respond to incidents that have occurred; and
- to assess, and identify potential improvements or additions to, Defence Force policies and procedures.

The Bill permits the Inspector-General to exercise those functions—

- on the Inspector-General's own initiative, in relation to defined Defence Force operational activities that have the most potential to cause harm, undermine public confidence in the Defence Force, and carry reputational risks to New Zealand; or
- where an issue has been referred to the Inspector-General for investigation or assessment by the Minister, Chief of Defence Force, or Secretary of Defence.

The Bill confirms that functions undertaken by Veterans' Affairs New Zealand, and the actions of foreign partners, or other international entities or domestic agencies that the Defence Force may work with, are outside scope.

Duties of Inspector-General

To guide the Inspector-General's oversight and support the Inspector-General's decision making, the Bill requires the Inspector-General to—

- exercise the functions of the office independently, impartially, and in the public interest; and
- have regard to the military context in which the Defence Force operates; and
- take reasonable steps to avoid unnecessary duplication of existing scrutiny of the Defence Force.

Powers and safeguards

To ensure that the Inspector-General is able to undertake functions effectively, the Bill requires the Defence Force to provide the Inspector-General with any reasonable assistance the Inspector-General requests. This includes providing information to support the Inspector-General's oversight and knowledge of Defence Force operational activities. The Inspector-General may also access records in the Defence Force's possession or control.

The Bill provides the Inspector-General with additional powers in the context of an investigation—

- to compel a person to provide relevant information, documents, or things; and
- to summon and examine a person on oath; and
- to enter defence premises.

The Bill makes the Inspector-General's powers subject to a range of safeguards to protect information and participants, national security, and international relationships. In particular, the Bill—

- imposes a duty on the Inspector-General, and any person that may be employed or engaged by the office of the Inspector-General, not to use, make a record of, or disclose information obtained or received in the course of performing the Inspector-General's functions; and
- requires the Inspector-General to secure all information, documents, and other things received, in accordance with protective security requirements; and

- permits the Inspector-General to share information with specified oversight bodies, but only for the purposes of performing the Inspector-General's functions and, in the case of certain Defence Force records, only after consulting the Chief of Defence Force; and
- enables the Minister to certify that information cannot be shared, or only shared subject to certain conditions.

Special protections for Defence Force personnel

To ensure that Defence Force personnel can raise concerns and co-operate with the Inspector-General without fear of reprisal, the Bill—

- confirms that current, former, and prospective Defence Force personnel who raise concerns or otherwise co-operate with the Inspector-General in good faith are protected from discrimination relating to their employment or service; and
- establishes the Inspector-General as the appropriate authority for protected disclosures involving classified defence information and allegations of serious wrongdoing in the Defence Force.

Enforcement

The Bill establishes offences for the following:

- wilfully obstructing, hindering, or resisting the Inspector-General in the exercise of the Inspector-General's functions; and
- wilfully making false statements to, misleading, or attempting to mislead the Inspector-General in the exercise of those functions; and
- wilfully refusing or failing to comply with any lawful requirement of the Inspector-General; and
- wilfully failing to comply with a duty of confidentiality imposed by the Bill; and
- knowingly failing to comply with a confidentiality or privacy order made by the Inspector-General.

Governance and accountability

The Bill establishes the Inspector-General and the Deputy Inspector-General as independent statutory officers, with bespoke governance and accountability arrangements based on the need to safeguard the Inspector-General's ability to seek and receive information, the Inspector-General's small starting size, and the high likelihood of a disproportionate administrative burden. To this end,—

- the Bill requires the Inspector-General to report publicly on the Inspector-General's activities in an annual work programme and an annual report. These will be shared with the Minister, tabled in the House of Representatives, and published on the Inspector-General's website; and

- the Inspector-General will be subject to Ombudsman and Privacy Commissioner oversight; and
- to protect the Inspector-General’s ability to seek and gather information in confidence, the Bill exempts the Inspector-General from the Official Information Act 1982 where information relates to an investigation or assessment (including information the Inspector-General receives in evidence, and correspondence with other oversight bodies, public service agencies, and Ministers).

Departmental disclosure statement

The Ministry of Defence is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2022&no=178>

Regulatory impact statement

The Ministry of Defence produced a regulatory impact statement on 17 February 2022 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- www.defence.govt.nz/publications/publication/establishing-an-independent-inspector-general-of-defence-final-ris
- <https://treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause. It provides that, once enacted, this Bill will be known as the Inspector-General of Defence Act 2023.

Under *clause 2*, the Bill will come into force on the first anniversary of the date on which it receives the Royal assent, or earlier if an Order in Council is made bringing it into force before the 1-year mark.

Part 1

Preliminary provisions

Clause 3 sets out the purpose of the Bill, which, in broad terms, is to provide the Minister with dedicated independent oversight of the activities of the New Zealand Defence Force (the **Defence Force**). In this context, and in the Bill more generally, Minister means the Minister of the Crown assigned responsibility for administering the Bill once it is enacted. This is expected to be the Minister of Defence.

To fulfil its purpose, the Bill creates the offices of Inspector-General of Defence (**Inspector-General**) and Deputy Inspector-General of Defence (**Deputy Inspector-General**) and confers functions on those offices.

Clause 4 defines terms used in the Bill. Key terms include assessment and investigation, which reflect the 2 main functions of the Inspector-General.

Clause 5 and *Schedule 1* deal with transitional, savings, and related provisions. They provide that the Bill applies to incidents occurring before it comes into force as well as incidents occurring afterwards.

Clause 6 states that the Bill binds the Crown.

Part 2

Appointment and functions of Inspector-General and Deputy Inspector-General

Inspector-General of Defence

The office of Inspector-General of Defence is established by *clause 7*. The Inspector-General is appointed by the Governor-General on the recommendation of the House of Representatives and must have an appropriate security clearance.

Clause 8(1) lists the functions of the Inspector-General. The main functions are, broadly,—

- to investigate incidents that have occurred in the course of Defence Force activities (the **investigation function**); and
- to assess Defence Force policies and procedures governing activities of the Defence Force, and identify potential improvements or additions to them (the **assessment function**).

Clause 8(2) to (4) delineates which activities of the Defence Force are within scope of the 2 main functions. In most cases an activity is within scope if—

- it directly furthers any of the purposes for which the Defence Force is maintained (which are listed in section 5 of the Defence Act 1990, and which include the defence of New Zealand, the contribution of forces under collective security agreements, and the provision of assistance in emergencies); or
- the Chief of Defence Force has declared the activity to be an operational activity that falls outside the ambit of the Health and Safety at Work Act 2015; or
- the activity relates to a protected disclosure made by a whistleblower; or
- the Minister, the Secretary of Defence, or the Chief of Defence Force has referred the activity, or an incident that occurred in the course of the activity, for assessment or investigation.

Clause 9 requires the Inspector-General to perform the functions of the office impartially, fairly, independently, and in the public interest, and to have regard to the military context in which the Defence Force operates. The Inspector-General must also

have regard to the functions of other officials and bodies with power to scrutinise the Defence Force, such as the Secretary of Defence and the Auditor-General, and take reasonable steps to avoid any unnecessary duplication of scrutiny (*clause 10*).

Deputy Inspector-General of Defence

Clause 11 establishes the office of Deputy Inspector-General of Defence. Like the Inspector-General, the Deputy Inspector-General is appointed by the Governor-General on the recommendation of the House of Representatives and must have an appropriate security clearance.

Clause 12 gives the Deputy Inspector-General all the functions of the Inspector-General. The Deputy Inspector-General may exercise the functions in the same way as the Inspector-General, subject to the Inspector-General's control.

Administrative provisions

Clause 13 and *Schedule 2* contain further detail about the offices of Inspector-General and Deputy Inspector-General. They—

- enable an Inspector-General to be appointed for an initial term of up to 5 years and reappointed once for up to 3 years, and a Deputy Inspector-General to be appointed initially for up to 3 years and reappointed for further terms of up to 3 years each (*clause 1 of Schedule 2*);
- provide that, although the appointments will normally be made on the House of Representatives' recommendation, if either office becomes vacant while Parliament is not in session the Governor-General may make an interim appointment, with the appointee continuing in office if they are subsequently approved by the House (*clause 2 of Schedule 2*);
- set out the grounds on which an Inspector-General or a Deputy Inspector-General may be removed or suspended from office, which include incapacity, misconduct, and failure to hold the appropriate security clearance (*clause 3 of Schedule 2*);
- deal with remuneration and expenses of the Inspector-General and Deputy Inspector-General, and the disclosure by them of any financial or other conflicts of interest (*clauses 4 and 5 of Schedule 2*).

Part 3

Investigations and assessments

Clause 14 sets out the 2 ways in which the Inspector-General can begin an investigation or assessment. These are—

- on the Inspector-General's own initiative; and
- at the request of the Minister, the Secretary of Defence, or the Chief of Defence Force.

However, the Inspector-General must not carry out an investigation on their own initiative into an incident that is already being considered by a court of inquiry assembled under the Armed Forces Discipline Act 1971.

The Inspector-General has the option of declining to carry out an investigation or assessment that has been requested, deferring it, or referring it to another person (*clause 15*).

The process the Inspector-General must follow when initiating an investigation or assessment is detailed in *clause 16*. In most cases, the Inspector-General must develop terms of reference for the investigation or assessment in consultation with the Secretary of Defence and the Chief of Defence Force and, once the terms are finalised, notify the Minister of Defence, the Secretary of Defence, and the Chief of Defence Force of the Inspector-General's intention to begin the investigation or assessment.

The process that the Minister, the Secretary of Defence, or the Chief of Defence Force must follow when requesting an investigation or assessment is slightly different. They must develop draft terms of reference for the investigation or assessment, consult the Inspector-General on the draft terms, and provide a final version to the Inspector-General and each other (*clause 17*).

The Inspector-General may choose what procedure to adopt when carrying out investigations and assessments as long as it is consistent with the Bill (*clause 18*).

Clause 19 states that, on the completion of an investigation or assessment, the Inspector-General must prepare a written report containing findings and recommendations and send it to the Minister, the Secretary of Defence, and the Chief of Defence Force and, in some cases, also to the Inspector-General of Intelligence and Security. The Inspector-General of Defence may also determine the report's security classification.

Clause 20 clarifies that the Inspector-General's report of an investigation may include findings of fault and other findings of fact or law, recommendations as to further steps that may be taken to determine liability, recommendations adverse to the Defence Force, and recommendations for the improvement or benefit of the Defence Force. However, the report must not include a determination of a person's civil, criminal, or disciplinary liability.

Clause 21 requires the Inspector-General to publish reports of investigations and assessments online. The Inspector-General may also send the reports to any relevant Minister of the Crown. However, publication and sending are subject to security, privacy, and other considerations, and in some cases an unclassified summary may be sent or published instead of the full report.

Clause 22 is about what happens after the Inspector-General has published and sent a report. It states that the Chief of Defence Force must notify the Minister, the Inspector-General, and the Secretary of Defence of any action proposed to be taken to implement the recommendations in the report, or give reasons for not implementing them or for departing from them. It also provides that the Inspector-General may

advise the Minister on the adequacy of measures taken by the Defence Force following the investigation or assessment.

Part 4

Inspector-General's powers to obtain information and assistance

General powers

Under *clause 23*, anyone may bring matters to the Inspector-General's attention that they consider may be relevant to the Inspector-General's functions.

Clause 24 entitles the Inspector-General to access Defence Force records directly to support the performance of the functions of the office. The Defence Force must provide the Inspector-General with full access to the records, including by enabling the Inspector-General to browse and search Defence Force databases.

Clause 25 requires the Defence Force to provide the Inspector-General with information about its activities and other assistance on request.

Clause 26 enables the Inspector-General to consult others with relevant supervisory or oversight roles, such as the Inspector-General of Intelligence and Security and the Privacy Commissioner, and to disclose information to them in the process of consultation.

Clause 27 relates to the Armed Forces Discipline Act 1971. It complements *clause 14* by requiring the Chief of Defence Force to notify the Inspector-General of any instances where a court of inquiry is assembled under that Act, or where the Defence Force causes or appears to have caused civilian death or injury.

Additional powers in investigations

Clause 28 allows the Inspector-General to summon and examine people on oath when conducting an investigation. Examinations are treated as judicial proceedings for the purposes of perjury under the Crimes Act 1961. The Inspector-General may also require people to provide information, documents, or other things relevant to an investigation on request (*clause 29*). A person is not excused from providing the Inspector-General with information, documents, or other things just because doing so may tend to incriminate them in respect of an offence (*clause 30*).

Clause 31 allows the Inspector-General to enter Defence Force-controlled areas relevant to the Inspector-General's functions as long as the Chief of Defence Force has been given prior written notice of the entry. The Inspector-General must comply with any conditions of entry set by the officer in charge of the area.

However, under *clause 32* the Chief of Defence Force may refuse a request from the Inspector-General to visit an operational theatre if the visit would significantly impede a military operation, risk the security of a defence area, or risk the safety of the Inspector-General or a person working for the Defence Force.

Disclosure of confidential material

Clause 33 clarifies that the Bill's requirements to provide information, documents, and other things to the Inspector-General override any obligation of non-disclosure or secrecy, except as provided by *clause 40* (which relates to the privileges and immunities of investigation participants).

Protection of information, etc

Clauses 34 and 35 relate to information shared under *clauses 24* (Inspector-General may access defence records directly) and *clause 26* (Inspector-General may consult and co-operate with others).

Clause 34 requires the Inspector-General to ensure that all defence records that they obtain are kept secure. Under *clause 35*, the Inspector-General must make sure that oversight bodies and other recipients under *clause 26* also have appropriate arrangements in place before information is shared with them and must consult the Chief of Defence Force before sharing sensitive information.

Clause 36 limits the circumstances in which the Inspector-General, and people working for the Inspector-General, may use, make a record of, or disclose information that they receive in the course of their work. The clause also enables the Minister to veto disclosure in some cases by certifying the information as non-disclosable.

Clause 37 lists people who are exempt from—

- giving evidence in court or other proceedings about the knowledge they gain in the course of performing functions under this Bill or working for the Inspector-General; and
- providing information, documents, and other things created in the course of those activities to a court or in other proceedings.

However, the exemptions do not apply to proceedings for an offence against *clause 46* (failing to comply with duty of confidentiality) or certain offences under the Crimes Act 1961 to do with espionage, corruption, and dealing with classified or official information.

Clause 38 enables the Inspector-General to make orders forbidding the publication of information relating to an investigation or assessment, such as the identity of participants, evidence provided by witnesses, and ministerial decisions relating to the investigation or assessment.

Additional protections for investigations and investigation participants

Clause 39 requires every investigation to be conducted in private.

Clause 40 gives a person participating in an investigation most of the immunities and privileges that would apply if they were appearing in civil proceedings. This protection doesn't extend to the privilege against self-incrimination, but *clause 41* provides that evidence from an investigation cannot be used in proceedings against a person, except proceedings for perjury or an offence against *clause 45* (obstructing, hindering, resisting, or deceiving the Inspector-General).

Clause 42 requires the Inspector-General to provide a person with adequate notice before including a comment, finding, or recommendation that affects the person in an investigation report. The Inspector-General must also give the affected person an opportunity to be heard.

When an investigation ends, *clause 43* requires the Inspector-General to return documents and other things provided for the purposes of the investigation (or to securely dispose of them if they are copies). The Inspector-General must keep secure, or securely dispose of, other information and documents relating to the investigation.

Protection of Defence Force workers

Clause 44 protects people who provide information or assistance to the Inspector-General in good faith, by prohibiting the Defence Force from penalising them, or otherwise discriminating against them, in relation to any work that they do (or propose to do) for the Defence Force.

Part 5 Offences

Clauses 45 to 47 create offences.

Under *clause 45*, a person may be fined up to \$10,000 if they wilfully obstruct, hinder, or resist the Inspector-General, or fail to do something the Inspector-General lawfully requires them to do, or mislead the Inspector-General, without a reasonable excuse.

Under *clause 46*, a person who wilfully fails to comply with a requirement under *clause 36* not to use, make a record of, or disclose information, documents, or other things commits an offence that can result in imprisonment for up to 2 years or a fine of up to \$10,000.

Clause 47 makes it an offence to publish something knowing that the Inspector-General has ordered, under *clause 38*, that it not be published. The penalty is a fine of up to \$10,000 if the person is an individual or up to \$100,000 in other cases.

Part 6 Miscellaneous provisions and consequential amendments

Advisors and staff

Clauses 48 to 50 deal with the provision of advice to the Inspector-General. They enable the Inspector-General to appoint an advisory panel to provide advice on an ongoing basis and other advisors to provide advice on a case-by-case basis.

Advisors must hold a government-sponsored security clearance and the Inspector-General must publish details of advisory panel members' appointment online. Advisors may be remunerated at the standard rates for statutory bodies.

Clause 51 deals with staffing arrangements.

Clause 52 empowers the Inspector-General to delegate functions to employees.

Reporting and liability

Clauses 53 and 54 are about the Inspector-General's work cycle. The Inspector-General must prepare an annual work programme ahead of each financial year in consultation with the Minister (*clause 53*). The finalised programme must be presented to Parliament and may be published on the Inspector-General's Internet site. After the year has finished, the Inspector-General must provide the Minister with a report detailing the Inspector-General's operations during the year (*clause 54*). The end-of-year report must be presented to Parliament and published on the Inspector-General's Internet site.

Clause 55 protects the Inspector-General, the Deputy Inspector-General, and those working for them from personal liability for things that they do (or fail to do) in connection with exercising the Inspector-General's functions. However, the protection applies only if they acted in good faith and it is not available against proceedings for a failure to comply with the duty of confidentiality under *clause 46* or proceedings for various offences under the Crimes Act 1961 to do with espionage, corruption, and dealing with classified or official information.

Consequential amendments

Clause 56 and *Schedule 3* make consequential amendments to Acts. As a result of the amendments—

- prisoners are entitled to make phone calls to, and correspond confidentially with, the Inspector-General:
- the Inspector-General and other oversight bodies and health providers may consult each other and share certain information with one another in support of their functions:
- the usual power for clinicians to withhold potentially harmful correspondence sent to or by patients being treated under the Mental Health (Compulsory Assessment and Treatment) Act 1992 does not apply to correspondence with the Inspector-General:
- the Inspector-General's decisions and recommendations may be investigated under the Ombudsmen Act 1975:
- individuals' right under the Privacy Act 2020 to access and correct their personal information does not extend to personal information held by the Inspector-General unless it is held in the Inspector-General's capacity as an employer:
- information about investigations and assessments under the Bill does not become official information that may be made available under that Official Information Act 1982:
- the Inspector-General of Defence takes over from the Inspector-General of Intelligence and Security as the appropriate authority for receiving most whis-

whistleblower disclosures about the Defence Force under the Protected Disclosures (Protection of Whistleblowers) Act 2022:

- the Inspector-General and Deputy Inspector-General are added to the list of officers whose remuneration is determined under the Remuneration Authority Act 1977.

Hon Peeni Henare

Inspector-General of Defence Bill

Government Bill

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Consequential amendments

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Inspector-General of Defence Act **2023**.

2 Commencement

- (1) This Act comes into force— 5
- (a) on a date set by Order in Council; or
- (b) to the extent not brought into force earlier, on the first anniversary of the date on which the Act receives the Royal assent.
- (2) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 10

Part 1

Preliminary provisions

3 Purpose

- (1) The purpose of this Act is to—
- (a) provide the Minister with dedicated independent oversight of the New Zealand Defence Force; and 15
- (b) help the Minister account accurately to the House of Representatives for the activities of the Defence Force; and
- (c) assure the public that the activities of the Defence Force are subject to independent scrutiny, including in relation to New Zealand’s obligations under international law. 20
- (2) To fulfil that purpose, this Act—
- (a) creates the offices of Inspector-General of Defence and Deputy Inspector-General of Defence; and
- (b) confers functions on those offices and makes other provision in relation to them. 25

4 Interpretation

- (1) In this Act, unless the context otherwise requires,—
- advisory panel** means a panel appointed under **clause 48**
- assessment function** has the meaning given in **section 8(1)(b)** and **assessment** has a corresponding meaning 30
- Auditor-General** means the Controller and Auditor-General appointed under section 7 of the Public Audit Act 2001
- Chief of Defence Force** means the officer appointed as Chief of Defence Force under section 8 of the Defence Act 1990 35

- Defence Force** means the New Zealand Defence Force constituted by section 11(1) of the Defence Act 1990
- defence record** means a record of any kind that is made or received by the Defence Force, including—
- (a) a paper, document, register, book, map, plan, drawing, photograph, film, sound recording, or electronic storage medium; or
 - (b) a record received from another government agency, a foreign public agency, or an international organisation; or
 - (c) a copy of a record
- Deputy Inspector-General** means the Deputy Inspector-General of Defence appointed under **section 11(2)**
- foreign public agency** means a body or other person performing a public function conferred on it by or under the laws of a foreign country
- function** includes a duty or a power, and a reference to the conferral or performance of a function includes a reference to the imposition or performance of a duty or the conferral or exercise of a power
- Human Rights Commissioner** means a member of the Human Rights Commission that is continued by section 4 of the Human Rights Act 1993
- Independent Police Conduct Authority** means the Authority established under section 4 of the Independent Police Conduct Authority Act 1988
- Inspector-General** means the Inspector-General of Defence appointed under **section 7(2)** (but *see also sections 12(2) and 52(4)(b)*, which provide for some references to the Inspector-General to be read as including references to the Deputy Inspector-General or a delegate)
- investigation function** has the meaning given in **section 8(1)(a)** and **investigation** has a corresponding meaning
- member of the Defence Force** has the meaning given in section 2(1) of the Defence Act 1990
- New Zealand Security Intelligence Service** means the New Zealand Security Intelligence Service continued by section 7 of the Intelligence and Security Act 2017
- Ombudsman** means an Ombudsman appointed under the Ombudsmen Act 1975
- person working for the Defence Force** means a member of the Defence Force or a contractor of, or secondee to, the Defence Force
- Privacy Commissioner** means the Privacy Commissioner continued under section 13 of the Privacy Act 2020
- protective security requirements** means the New Zealand Government protective security requirements that are published on a publicly accessible Inter-

- net site maintained by or on behalf of the New Zealand Security Intelligence Service
- Secretary of Defence** means the chief executive of the Ministry of Defence
- security classification** means a classification under the New Zealand Government information security classification system that is published on a publicly accessible Internet site maintained by or on behalf of the New Zealand Security Intelligence Service 5
- sensitive** means likely, if publicly disclosed, to—
- (a) endanger the safety of a person; or
 - (b) infringe the privacy of a natural person (including a deceased natural person); or 10
 - (c) prejudice—
 - (i) the continued performance of the functions of the Defence Force or the Ministry; or
 - (ii) the security or defence of New Zealand; or 15
 - (iii) the international relations of the New Zealand Government; or
 - (iv) the entrusting of information to the New Zealand Government on a basis of confidence by the Government of another country or by a foreign public agency or an international organisation
- WorkSafe** means WorkSafe New Zealand established by section 5 of the WorkSafe New Zealand Act 2013. 20
- (2) In this Act, unless the context otherwise requires, a reference to an activity, act, or omission of the Defence Force includes a reference to an activity, act, or omission of a person working for the Defence Force.
- 5 Transitional, savings, and related provisions** 25
- The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.
- 6 Act binds the Crown**
- This Act binds the Crown.

Part 2 30

Appointment and functions of Inspector-General and Deputy Inspector-General

Inspector-General of Defence

- 7 Appointment of Inspector-General**
- (1) The office of Inspector-General of Defence is established. 35

- (2) The Governor-General may appoint a person as Inspector-General of Defence on the recommendation of the House of Representatives.
- (3) The person appointed must hold a government-sponsored security clearance of a level determined by the Minister.
- 8 Functions of Inspector-General** 5
- (1) The functions of the Inspector-General are—
- (a) to investigate—
- (i) incidents that have occurred in the course of activities of the Defence Force that are within scope; and
- (ii) any subsequent acts or omissions of the Defence Force in relation to those incidents 10
- (the **investigation function**):
- (b) to assess, and identify potential improvements or additions to, Defence Force policies and procedures governing activities of the Defence Force that are within scope (the **assessment function**): 15
- (c) any other function conferred on the Inspector-General by this Act or by any other legislation or rule of law.
- (2) In this section, the following activities are **within scope**:
- (a) an activity carried out in New Zealand or elsewhere in direct furtherance of a purpose listed in section 5 of the Defence Act 1990: 20
- (b) an activity that the Chief of Defence Force has declared under section 7 of the Health and Safety at Work Act 2015 to be an operational activity for the purposes of that section:
- (c) an activity that is the subject of, or otherwise relates to, a protected disclosure made or referred to the Inspector-General under the Protected Disclosures (Protection of Whistleblowers) Act 2022: 25
- (d) in the case of an investigation or assessment requested by the Minister, the Secretary of Defence, or the Chief of Defence Force (rather than initiated by the Inspector-General), any activity.
- (3) However, despite **subsection (2)**,— 30
- (a) an activity carried out jointly with another party (for example, in partnership with another government agency, a foreign public agency, or an international organisation), is **within scope** only to the extent that it is carried out by the Defence Force and not the other party:
- (b) an activity of Veterans' Affairs New Zealand is not **within scope**. 35
- (4) For the purposes of **subsection (2)(a)**,—
- (a) activities in **direct furtherance** of a purpose listed in section 5 of the Defence Act 1990 include—

- (i) training carried out in preparation for a specific operation:
 - (ii) intelligence activities carried out in preparation for, or in support of, a specific operation:
 - (b) the following activities are not in **direct furtherance** of a purpose listed in section 5 of the Defence Act 1990: 5
 - (i) general training, including exercises for combat readiness:
 - (ii) disciplinary matters under the Armed Forces Discipline Act 1971:
 - (iii) the day-to-day administration of the Defence Force (such as work-force planning and activities relating to workplace culture) except as it relates to a specific operation. 10
- 9 Inspector-General must act impartially and in public interest and have regard to military context**
- The Inspector-General must, when performing the Inspector-General’s functions,—
- (a) act impartially, fairly, independently, and in the public interest; and 15
 - (b) have regard to the military context in which the Defence Force operates.
- 10 Inspector-General must seek to avoid duplication of scrutiny**
- (1) The Inspector-General must, when performing the Inspector-General’s functions,—
- (a) have regard to the functions of the people specified in **subsection (2)**; 20 and
 - (b) take reasonable steps to avoid any unnecessary duplication of scrutiny of the Defence Force.
- (2) The people are—
- (a) the Secretary of Defence: 25
 - (b) the Chief of Defence Force:
 - (c) WorkSafe:
 - (d) the Auditor-General:
 - (e) the Inspector-General of Intelligence and Security:
 - (f) the Privacy Commissioner: 30
 - (g) a Human Rights Commissioner:
 - (h) an Ombudsman:
 - (i) the Independent Police Conduct Authority.

*Deputy Inspector-General of Defence***11 Appointment of Deputy Inspector-General**

- (1) The office of Deputy Inspector-General of Defence is established.
- (2) The Governor-General may appoint a person as Deputy Inspector-General of Defence on the recommendation of the House of Representatives. 5
- (3) The person appointed must hold a government-sponsored security clearance of a level determined by the Minister.

12 Functions of Deputy Inspector-General

- (1) The Deputy Inspector-General—
 - (a) has all the functions of the Inspector-General; and 10
 - (b) may perform those functions in the same manner, subject to the same restrictions, and with the same effect, as if they were performed by the Inspector-General.
- (2) Accordingly, a reference to the Inspector-General in **section 9 or 10** or any of **Parts 3 to 6** includes a reference to the Deputy Inspector-General unless the context otherwise requires. 15
- (3) However, the performance by the Deputy Inspector-General of the Inspector-General's functions is subject to the control of the Inspector-General unless—
 - (a) the office of Inspector-General is vacant; or
 - (b) the Inspector-General is absent from duty. 20
- (4) The fact that the Deputy Inspector-General performs a function of the Inspector-General is, in the absence of evidence to the contrary, conclusive evidence of the Deputy Inspector-General's authority to do so.

*Administrative provisions***13 Administrative provisions relating to Inspector-General and Deputy Inspector-General** 25

Schedule 2 applies in relation to the offices of Inspector-General and Deputy Inspector-General.

Part 3**Investigations and assessments** 30**14 Inspector-General may carry out investigation or assessment on own initiative or on request**

- (1) The Inspector-General may carry out an investigation or assessment—
 - (a) on the Inspector-General's own initiative, including as a result of information obtained under **Part 4** or disclosed to the Inspector-General 35

- under the Protected Disclosures (Protection of Whistleblowers) Act 2022; or
- (b) at the request of the Minister, the Secretary of Defence, or the Chief of Defence Force.
- (2) However, if an incident has been referred to a court of inquiry assembled under the Armed Forces Discipline Act 1971, the Inspector-General must not carry out an investigation in relation to it unless— 5
- (a) the investigation is on the Inspector-General’s own initiative and the inquiry has concluded or has, in the Inspector-General’s opinion, been unreasonably delayed; or 10
- (b) the investigation is at the request of the Minister or the Chief of Defence Force.
- 15 Inspector-General may decline to carry out investigation or assessment**
- (1) The Inspector-General may do any of the following in relation to an investigation or assessment, or part of an investigation or assessment, that has been requested by the Minister, the Secretary of Defence, or the Chief of Defence Force: 15
- (a) decline to carry it out:
- (b) defer it:
- (c) refer it to a person the Inspector-General considers more appropriate to carry it out. 20
- (2) The Inspector-General must notify the Minister, the Secretary of Defence, or the Chief of Defence Force (as applicable) of—
- (a) any decision by the Inspector-General under **subsection (1)** to decline to carry out all or part of an investigation or assessment that they have requested, or to defer it or refer it to another person; and 25
- (b) the reason for the decision.
- (3) The people to whom an investigation or assessment, or part of an investigation or assessment, may be referred under **subsection (1)(c)** include those specified in **section 10(2)** and the New Zealand Police. 30
- (4) A person to whom an investigation or assessment, or part of an investigation or assessment, is referred under **subsection (1)(c)** is not required to carry it out, or do anything else, just because of the referral.
- 16 Initiation of investigation or assessment by Inspector-General**
- (1) When initiating an investigation or assessment, the Inspector-General must— 35
- (a) develop draft terms of reference for it, including statements regarding—
- (i) the purpose of the investigation or assessment; and

-
- (ii) how the Inspector-General has had regard to the obligations in **section 9** in relation to the investigation or assessment; and
 - (iii) the key issues to be considered; and
 - (iv) the Inspector-General's proposed approach to the investigation or assessment; and 5
 - (v) in the case of an assessment, any legislation, policies, processes, or standards by reference to which the assessment will be conducted; and
 - (vi) an estimated time frame for completing the investigation or assessment; and 10
 - (b) consult the Secretary of Defence and the Chief of Defence Force on the draft terms of reference; and
 - (c) finalise the terms of reference, having regard to any comments provided by the Secretary of Defence and the Chief of Defence Force; and
 - (d) notify the Minister, the Secretary of Defence, and the Chief of Defence Force of the Inspector-General's intention to begin the investigation or assessment, unless it is included in the Inspector-General's annual work programme under **section 53**. 15
- (2) A notification under **subsection (1)(d)** must include—
- (a) the finalised terms of reference; and 20
 - (b) at least 5 working days' notice of any public announcement of the investigation or assessment.
- 17 Commencement of investigation or assessment on request**
- (1) When requesting an investigation or assessment, the Minister, the Secretary of Defence, or the Chief of Defence Force must— 25
- (a) provide the Inspector-General with draft terms of reference for the investigation or assessment, including statements regarding—
 - (i) the reason for the request; and
 - (ii) in the case of an investigation, the key issues to be considered as part of the investigation; and 30
 - (iii) in the case of an assessment, any legislation, policies, processes, or standards by reference to which the assessment will be conducted; and
 - (iv) a proposed time frame for completing the investigation or assessment; and 35
 - (b) consult the Inspector-General on the draft terms of reference; and
 - (c) finalise the terms of reference, having regard to any comments provided by the Inspector-General; and

- (d) notify the other relevant parties of the request.
- (2) A notification under **subsection (1)(d)** must include the finalised terms of reference.
- (3) If the Inspector-General decides to carry out the investigation or assessment, they must give the relevant parties at least 5 working days' notice of any public announcement of it. 5
- (4) In this section, **relevant parties** means the Minister, the Secretary of Defence, and the Chief of Defence Force.
- 18 Inspector-General may regulate own procedure**
- When carrying out an investigation or assessment, the Inspector-General may adopt any procedure the Inspector-General considers appropriate that is consistent with this Act. 10
- 19 Inspector-General must prepare report of investigation or assessment**
- (1) On completing an investigation or assessment, the Inspector-General must prepare a written report containing the Inspector-General's findings and recommendations. 15
- (2) The Inspector-General must send the report to the Minister, the Secretary of Defence, and the Chief of Defence Force.
- (3) If the report includes information relating to the activities of an intelligence and security agency, the Inspector-General must also send it to the Inspector-General of Intelligence and Security. 20
- (4) The Inspector-General may, after consulting the Secretary of Defence and the Chief of Defence Force, determine an appropriate security classification for the report or any part of the report.
- (5) Despite **subsection (4)**, if the report quotes or summarises any matter that has a security classification, the quote or summary must not be given a lower security classification. 25
- (6) In this section, **intelligence and security agency** means—
- (a) the New Zealand Security Intelligence Service; or
- (b) the Government Communications Security Bureau continued by section 8 of the Intelligence and Security Act 2017. 30
- 20 Findings of fault, etc**
- (1) A report of an investigation under **section 19** may, among other things, include—
- (a) findings of fault and other findings of fact and law: 35
- (b) recommendations that further steps be taken to determine liability:
- (c) recommendations adverse to the Defence Force, such as a recommendation that it apologise to a person:

- (d) recommendations for the improvement or benefit of the Defence Force.
- (2) However, the report must not include a determination of a person's civil, criminal, or disciplinary liability.

21 Publication of report

- (1) As soon as practicable after sending a report and making any determination as to its security classification under **section 19**, the Inspector-General must publish the report on a publicly accessible Internet site maintained by or on behalf of the Inspector-General. 5
- (2) The Inspector-General may also, with the Minister's permission, send the report to any Minister of the Crown whose portfolio relates to, or is affected by, the report or the report's subject matter. 10
- (3) However,—
- (a) a report, or part of a report, must not be published under **subsection (1)**, or sent under **subsection (2)**, if doing so would breach its security classification; and 15
- (b) a report, or part of a report, published under **subsection (1)** must not include sensitive information.
- (4) If **subsection (3)** prevents the publication or sending of a report, or of part of a report, the Inspector-General may instead publish or send a summarised version of the report or part— 20
- (a) that is unclassified; and
- (b) that, in the case of publication, does not contain sensitive information.

22 Action following report

- (1) The Chief of Defence Force must, as soon as practicable after receiving a recommendation of the Inspector-General under **section 19**,— 25
- (a) notify the Minister, the Inspector-General, and the Secretary of Defence of any action proposed to be taken to implement the recommendation; and
- (b) give reasons for any proposal not to implement, or otherwise to depart from, the recommendation. 30
- (2) The Inspector-General may advise the Minister on the adequacy of any remedial or preventative measures taken by the Defence Force following an investigation or assessment.

Part 4

Inspector-General's powers to obtain information and assistance

General powers

- 23 Person may bring matter to Inspector-General's attention** 5
- Any person, including a person working for the Defence Force, may bring any matter to the Inspector-General's attention that the person considers may be relevant to the performance of the Inspector-General's functions.
- 24 Inspector-General may access defence records directly**
- (1) The Inspector-General may access directly all defence records that are in the possession or control of the Defence Force and that the Inspector-General considers may be relevant to the performance of the Inspector-General's functions. 10
- (2) The Defence Force must provide the Inspector-General with full and direct access to those records, including by enabling the Inspector-General to browse and search Defence Force databases (and must not make access in any particular case dependent on a request, an approval, or any other administrative step that is not reasonably necessary). 15
- 25 Defence Force must provide information and assistance on request**
- (1) The Defence Force must, on request, provide the Inspector-General with—
- (a) information about the activities of the Defence Force that are within scope and about incidents that have occurred in the course of those activities: 20
- (b) any other assistance that the Inspector-General reasonably requires for the performance of the Inspector-General's functions.
- (2) A request under this section may—
- (a) relate to a particular investigation or assessment; or 25
- (b) be made for the purpose of obtaining information about the Defence Force's activities more generally.
- (3) In this section, **within scope** has the same meaning as in **section 8**.
- 26 Inspector-General may consult and co-operate with others**
- (1) The Inspector-General may— 30
- (a) consult any of the people specified in **subsection (2)** about any matter relating to the Inspector-General's functions; and
- (b) co-operate with any of those people in connection with any matter relating to the functions of the Inspector-General (for example, by carrying out an investigation or assessment in co-ordination with an inquiry being carried out by the other person into the same matter); and 35

- (c) disclose to any of those people any information, document, or other thing that the Inspector-General considers necessary for the purposes of the consultation or co-operation.
- (2) The people are—
- (a) the Secretary of Defence: 5
 - (b) the Chief of Defence Force:
 - (c) WorkSafe:
 - (d) the Auditor-General:
 - (e) the Inspector-General of Intelligence and Security:
 - (f) the Privacy Commissioner: 10
 - (g) a Human Rights Commissioner:
 - (h) an Ombudsman:
 - (i) the Independent Police Conduct Authority.
- (3) This section is subject to **section 35**.
- 27 Chief of Defence Force must notify Inspector-General of courts of inquiry and civilian deaths and injuries** 15
- (1) The Chief of Defence Force must, as soon as practicable, notify the Inspector-General of—
- (a) any court of inquiry assembled under the Armed Forces Discipline Act 1971; and 20
 - (b) the purpose for which the court of inquiry is assembled and its terms of reference.
- (2) If the Defence Force causes, or appears to have caused, death or injury to a civilian in a situation of armed conflict, the Chief of Defence Force must as soon as practicable notify the Inspector-General of— 25
- (a) the details of the incident in which the death or injury occurred; and
 - (b) the findings of any Defence Force procedure for responding to the incident.
- (3) In this section, **civilian** has the same meaning as in the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (*see* paragraph 1 of Article 50 of that Protocol, as set out in Schedule 5 of the Geneva Conventions Act 1958). 30

Additional powers in investigations

28 Inspector-General may examine witnesses

- (1) The Inspector-General may— 35

- (a) examine a person on oath if the Inspector-General considers the person may be able to provide information relevant to an investigation; and
- (b) summon, and administer an oath to, a person for that purpose.
- (2) **Subsection (1)** applies—
- (a) to a person working for the Defence Force or to any other person: 5
- (b) whether or not the information would be admissible in a court of law.
- (3) For the purposes of section 109 of the Crimes Act 1961 (which relates to perjury), an examination under this section must be treated as a **judicial proceeding** within the meaning of section 108 of that Act.
- (4) The Inspector-General may pay fees, allowances, and expenses to anyone who appears as a witness before the Inspector-General. 10
- (5) Any fees, allowances, and expenses paid under this section must be as set out in the scales prescribed by regulations made under the Criminal Procedure Act 2011.
- (6) Despite **subsection (5)**, the Inspector-General may disallow part of a sum payable to a witness under this section. 15
- 29 Inspector-General may require provision of information, document, or other thing**
- (1) A person must, on request, provide the Inspector-General with any information, document, or other thing that is in the person's possession or control and that the Inspector-General considers may be relevant to an investigation. 20
- (2) This section applies—
- (a) to a person working for the Defence Force or to any other person:
- (b) whether or not the information, document, or other thing would be admissible in a court of law. 25
- 30 Disclosure may be required despite self-incrimination**
- A person is not excused from providing any information, document, or other thing to the Inspector-General in the course of an investigation just because doing so may incriminate or tend to incriminate the person in respect of any offence. 30
- 31 Inspector-General may enter Defence Force premises**
- (1) The Inspector-General may, at any reasonable time, enter any of the following places if the Inspector-General considers that the place is relevant to an investigation:
- (a) a defence area: 35
- (b) a naval ship:
- (c) any other ship, aircraft, or vehicle used by the Defence Force.

- (2) The Inspector-General must give the Chief of Defence Force prior written notice of an entry under this section.
- (3) When entering a place under this section, the Inspector-General must comply with any conditions of entry that the officer in charge of the place imposes under regulations made under section 101 of the Defence Act 1990 for the purposes of section 93 of that Act (security of defence areas). 5
- (4) In this section, **aircraft**, **defence area**, **naval ship**, **officer**, and **ship** have the meanings given in section 2(1) of the Defence Act 1990.
- (5) This section is subject to **section 32**.
- 32 Special procedure for visiting operational theatres** 10
- (1) The Inspector-General must not visit an operational theatre unless the Chief of Defence Force has consented to the visit.
- (2) The Chief of Defence Force must consent to a request by the Inspector-General to visit an operational theatre unless the Chief of Defence Force considers that the visit would— 15
- (a) significantly impede a military operation; or
- (b) risk the security of a defence area or the safety of the Inspector-General or a person working for the Defence Force.
- (3) Consent to a visit under this section may be given subject to any conditions that the Chief of Defence Force considers necessary to prevent the visit from— 20
- (a) significantly impeding a military operation; or
- (b) risking the security of a defence area or the safety of the Inspector-General or a person working for the Defence Force.
- (4) If consent under this section to visit an operational theatre is refused or is given subject to conditions, the Chief of Defence Force must— 25
- (a) inform the Inspector-General of the reason for the refusal or conditions; and
- (b) if a change in circumstances means that the reason no longer applies, reconsider the Inspector-General's request in the light of the change of circumstances and notify the Inspector-General of any change in the Chief of Defence Force's decision. 30
- (5) If, after being refused consent or given consent subject to conditions to visit an operational theatre, the Inspector-General decides that they no longer wish to visit it, they must inform the Chief of Defence Force of that fact.
- (6) **Subsection (4)(b)** does not apply if the Inspector-General has informed the Chief of Defence Force that the Inspector-General no longer wishes to visit the operational theatre. 35
- (7) In this section,—
- defence area** has the meaning given in section 2(1) of the Defence Act 1990

operational theatre means a geographic area in which a military campaign or a series of major military operations is being conducted.

Disclosure of confidential material

33 Disclosure may be required despite obligation of secrecy

- (1) A requirement under this Act to provide information, a document, or another thing to the Inspector-General overrides any obligation (under legislation or otherwise) of non-disclosure or secrecy and, accordingly,— 5
- (a) the person must comply with the requirement; and
- (b) compliance with the requirement is not to be treated as a breach of the obligation of non-disclosure or secrecy or of any legislation by which the obligation is imposed. 10
- (2) This section is subject to **section 40**.

Protection of information, etc

34 Security of material received by Inspector-General

The Inspector-General must ensure that all information, documents, and other things received by the Inspector-General under this Act, including defence records accessed under **section 24**, are kept secure in accordance with protective security requirements. 15

35 Protection of material disclosed by Inspector-General to others

Before disclosing information, a document, or another thing under **section 26**, the Inspector-General must— 20

(a) confirm that the recipient has appropriate arrangements in place to keep it secure in accordance with protective security requirements; and

(b) consult the Chief of Defence Force if the information, document, or other thing— 25

(i) was provided by the Defence Force; and

(ii) is sensitive or is subject to an obligation of secrecy or non-disclosure.

36 Duty of confidentiality

- (1) This section applies to any information, document, or other thing that is— 30
- (a) obtained by the Inspector-General under any of **sections 23 to 31**; or
- (b) otherwise received for the purposes of, or in the course of performing, the investigation function or the assessment function.
- (protected material)**.
- (2) The people specified in **subsection (3)** must not use, make a record of, or disclose protected material unless the use, record, or disclosure— 35

- (a) is for or to the Minister, or is for the purpose of performing the Inspector-General's functions or working for, or providing a service to, the Inspector-General; and
- (b) does not contravene **subsection (4)**.
- (3) The people are— 5
- (a) the Inspector-General:
- (b) the Deputy Inspector-General:
- (c) an employee or a contractor of, or a secondee to, the Inspector-General:
- (d) an independent person to whom any information, document, or other thing is referred under **section 40**: 10
- (e) a member of an advisory panel:
- (f) an advisor appointed under **section 49**:
- (g) a person who was formerly a person within any of **paragraphs (a) to (f)**.
- (4) The people specified in **subsection (3)** must not disclose protected material if— 15
- (a) the Minister has certified under **subsection (5)** that it should not be disclosed; or
- (b) the Minister has certified under **subsection (5)** that it should be disclosed only on specified terms and conditions and the disclosure would not be on those terms and conditions. 20
- (5) The Minister may certify that protected material should not be disclosed, or that it should be disclosed only on terms and conditions specified in the certificate, if the Minister considers that the disclosure of the material, or its disclosure otherwise than on those terms or conditions, would be likely to— 25
- (a) endanger the safety of any person; or
- (b) infringe the privacy of a natural person (including a deceased natural person); or
- (c) prejudice—
- (i) the continued performance of the functions of the Defence Force or the Ministry; or 30
- (ii) the security or defence of New Zealand; or
- (iii) the international relations of the New Zealand Government; or
- (iv) the entrusting of information to the New Zealand Government on a basis of confidence by the Government of another country or by a foreign public agency or an international organisation. 35
- (6) The Minister must not give a certificate under **subsection (5)** unless the Minister has consulted—

- (a) the Chief of Defence Force; and
- (b) anyone else the Minister considers capable of helping determine the relevant circumstances and information.

37 Inspector-General and others not compellable witnesses

- (1) The following people cannot be required to give evidence in court, or in other proceedings of a judicial nature, in respect of anything that comes to their knowledge in the course of performing the Inspector-General's functions or working for, or providing a service to, the Inspector-General: 5
- (a) the Inspector-General:
 - (b) the Deputy Inspector-General: 10
 - (c) an employee or a contractor of, or a secondee to, the Inspector-General:
 - (d) an independent person to whom any information, document, or other thing is referred under **section 40**:
 - (e) a member of an advisory panel:
 - (f) an advisor appointed under **section 49**: 15
 - (g) a person who was formerly a person within any of **paragraphs (a) to (f)**.
- (2) The people specified in **subsection (1)(a) to (g)** cannot be required to provide to a court, or in other proceedings of a judicial nature, any working document or internal record, or any other information, document, or other thing, that is created in the course of— 20
- (a) performing the Inspector-General's functions; or
 - (b) working for, or providing a service to, the Inspector-General.
- (3) **Subsections (1) and (2)** do not apply to proceedings for—
- (a) an offence against **section 46**: 25
 - (b) an offence against section 78, 78AA(1), 78A(1), 105, 105A, or 105B of the Crimes Act 1961:
 - (c) an offence of conspiring to commit an offence against any of those sections of the Crimes Act 1961:
 - (d) an offence of attempting to commit an offence against any of those sections of the Crimes Act 1961. 30

38 Inspector-General may make order protecting privacy or confidentiality

- (1) The Inspector-General may make an order prohibiting the publication, broadcast, distribution, or other disclosure of—
- (a) any matter that is the subject of, or otherwise relates to, an investigation or assessment: 35

- (b) any information, document, or other thing provided, to the Inspector-General in the course of an investigation or assessment, or any report of the information, document, or other thing:
- (c) the name of a person participating in an investigation or assessment or other details likely to lead to the person's identification: 5
- (d) a finding, recommendation, or other decision of the Inspector-General relating to an investigation or assessment:
- (e) a report of an investigation or assessment:
- (f) a decision of the Minister relating to an investigation or assessment.
- (2) Before making an order under this section, the Inspector-General must be satisfied that the matter or other thing covered by the order is sensitive, or that its public disclosure would— 10
 - (a) breach its security classification; or
 - (b) be likely to prejudice the Inspector-General's ability to carry out an investigation or assessment. 15
- (3) A prohibition imposed by an order under this section may be permanent or for a period specified in the order.
- (4) An order under this section does not apply to a report or programme published under **section 21, 53, or 54**, or anything included in such a report or programme. 20

Additional protections for investigations and investigation participants

39 Investigations must be conducted in private

Every investigation must be conducted in private.

40 Immunities and privileges of investigation participants

- (1) A person participating in an investigation has the same immunities and privileges as if they were appearing in civil proceedings, and subpart 8 of Part 2 of the Evidence Act 2006 applies to the investigation, to the extent that it is relevant, as if— 25
 - (a) the investigation were a civil proceeding; and
 - (b) every reference to a Judge were a reference to the Inspector-General. 30
- (2) The Inspector-General may examine any information, document, or other thing for which privilege is claimed, or refer the information, document, or other thing to an independent person, to determine whether—
 - (a) the person claiming privilege has a justifiable reason for maintaining the privilege; or 35
 - (b) the information, document, or other thing should be disclosed.
- (3) This section is subject to **section 30**.

- 41 Evidence provided in investigation not admissible in other proceedings**
- Any information, document, or other thing provided to the Inspector-General in the course of an investigation is not admissible as evidence in—
- (a) disciplinary proceedings for an offence against Part 2 of the Armed Forces Discipline Act 1971: 5
 - (b) any other proceedings against a person, except proceedings against the person who provided the information, document, or other thing for—
 - (i) perjury as defined in section 108 of the Crimes Act 1961; or
 - (ii) an offence against **section 45**.
- 42 Right of response** 10
- The Inspector-General must not, in a report of an investigation, make a comment, finding, or recommendation that affects a person without providing them with—
- (a) adequate notice of the material that the Inspector-General proposes to rely on in making the comment, finding, or recommendation; and 15
 - (b) an opportunity to be heard.
- 43 Return, disposal, or retention of material after investigation**
- (1) **Subsection (2)** applies to any document or other thing provided to the Inspector-General for the purposes of an investigation.
 - (2) On completion of the investigation, the Inspector-General must either— 20
 - (a) return the document or other thing to the person who provided it; or
 - (b) if the document or other thing is a copy of a document or other thing held by the person who provided it, return it to the person or dispose of it in accordance with secure disposal procedures.
 - (3) All other information, documents, and other things held by the Inspector-General and relating to the investigation must, subject to the requirements of the Public Records Act 2005, be— 25
 - (a) kept secure by the Inspector-General in accordance with protective security requirements; or
 - (b) disposed of by the Inspector-General in accordance with secure disposal procedures. 30

Protection of Defence Force workers

- 44 Protection against retaliation for co-operating with Inspector-General**
- (1) This section applies to anyone who does any of the following things:
 - (a) brings a matter to the Inspector-General's attention under **section 23**: 35

- (b) helps to provide the Inspector-General with access to defence records under **section 24** or information or assistance under **section 25**;
 - (c) submits to examination by the Inspector-General under **section 28**;
 - (d) provides the Inspector-General with information, a document, or another thing under **section 29**. 5
- (2) The Defence Force must not, by reason of the person's having done the thing, subject them to a penalty, or to discriminatory treatment of any kind, in relation to any work that they do, or propose to do, for the Defence Force.
- (3) However, **subsection (2)** does not apply if the Inspector-General determines that the person acted in bad faith. 10

Part 5 Offences

45 Obstructing, hindering, resisting, or deceiving Inspector-General

- (1) A person commits an offence if the person wilfully, without reasonable excuse,— 15
- (a) obstructs, hinders, or resists the Inspector-General in the performance of the Inspector-General's functions;
 - (b) refuses or fails to comply with a lawful requirement of the Inspector-General;
 - (c) makes a false statement to, or misleads or attempts to mislead, the Inspector-General. 20
- (2) A person who commits an offence against this section is liable on conviction to a fine not exceeding \$10,000.

46 Failing to comply with duty of confidentiality

- (1) A person commits an offence if the person wilfully fails to comply with a requirement under **section 36**— 25
- (a) not to use, make a record of, or disclose any information, document, or other thing; or
 - (b) to disclose any information, document, or other thing only in accordance with specified terms and conditions. 30
- (2) A person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000, or both.
- (3) A prosecution for an offence against this section must not be commenced without the leave of the Attorney-General. 35

47 Failing to comply with confidentiality or privacy order

- (1) A person commits an offence if the person knowingly fails to comply with an order under **section 38**.
- (2) A person who commits an offence against this section is liable on conviction to a fine not exceeding—
 - (a) \$10,000 if the person is an individual:
 - (b) \$100,000 in any other case.

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Part 6**Miscellaneous provisions and consequential amendments***Advisors and staff*

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48 Advisory panel

- (1) The Inspector-General may appoint an advisory panel of 2 or more people to provide the Inspector-General with advice on an ongoing basis.
- (2) The advisory panel may provide its advice—
 - (a) at the Inspector-General's request; or
 - (b) on its own initiative.
- (3) Each member of the advisory panel must hold a government-sponsored security clearance of a level determined by the Minister.
- (4) The Inspector-General must publish details of a person's appointment under this section on a publicly accessible Internet site maintained by or on behalf of the Inspector-General.
- (5) The Inspector-General may—
 - (a) set the advisory panel's terms of reference:
 - (b) determine the panel's procedure:
 - (c) give the panel any information that the Inspector-General considers may help the panel to provide the Inspector-General with advice.
- (6) Subject to **subsection (5)(b)**, the advisory panel may determine its own procedure.

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49 Other advisors

- (1) The Inspector-General may, from time to time, appoint advisors to provide the Inspector-General with advice on a case-by-case basis.
- (2) Advisors appointed under this section must hold a government-sponsored security clearance of a level determined by the Minister.

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- (3) The Inspector-General may give advisors appointed under this section any information that the Inspector-General considers may help them to provide their advice.

50 Administrative provisions relating to advisors

- (1) The terms of a person's appointment under **section 48 or 49** are as determined by the Inspector-General. 5
- (2) Those terms may include—
- (a) the term for which the person is appointed:
 - (b) the circumstances in which the person may be removed from office:
 - (c) remuneration for the person's services or reimbursement of their expenses. 10
- (3) Any remuneration or reimbursement under **subsection (2)(c)** must be in accordance with the framework determined by the Government for the classification and remuneration of statutory and other bodies in which the Crown has an interest. 15

51 Staff

- (1) The Inspector-General may appoint any employees that the Inspector-General considers necessary for the efficient performance of the Inspector-General's functions.
- (2) The power conferred by **subsection (1)** includes the power to appoint employees on a part-time or temporary basis, or for any period that the Inspector-General and an employee agree. 20
- (3) An employee under this section is employed on the terms and conditions, and paid the salary and allowances, that the Inspector-General determines in consultation with the Secretary for Justice. 25
- (4) The Inspector-General must operate an employment policy that complies with the principle of being a good employer as set out in section 118 of the Crown Entities Act 2004.
- (5) Employees appointed under this section must hold a government-sponsored security clearance of a level determined by the Minister. 30

52 Delegations

- (1) The Inspector-General may, either generally or particularly, delegate functions of the Inspector-General to employees appointed under **section 51**.
- (2) However, the Inspector-General must not delegate the power under this section to make delegations. 35
- (3) A delegation under this section must be in writing.
- (4) Subject to any general or special directions given, or conditions imposed, by the Inspector-General,—

- (a) an employee to whom a function is delegated under this section may perform the delegated function in the same manner, subject to the same restrictions, and with the same effect as if it were performed by the Inspector-General; and
- (b) accordingly, a reference in any of the following provisions to the Inspector-General, in relation to the delegated function or anything done or omitted to be done in the performance of, or otherwise in connection with, the delegated function, includes a reference to the employee unless the context otherwise requires:
- (i) **sections 9 and 10:** 10
- (ii) **Parts 3 to 5:**
- (iii) a provision of this Part other than this section.
- (5) The employee must, in the absence of evidence to the contrary, be presumed to be acting within the terms of the delegation.
- (6) The delegation does not affect or prevent the performance of the delegated function by the Inspector-General or affect the Inspector-General's responsibility for the actions of the employee. 15

Reporting and liability

53 Annual work programme

- (1) At least 60 days before the beginning of each financial year, the Inspector-General must— 20
- (a) prepare a draft proposed work programme for that year; and
- (b) consult the Minister about the proposed work programme.
- (2) The Inspector-General must finalise the programme after having regard to any comments received from the Minister. 25
- (3) The finalised programme—
- (a) must include any change requested by the Minister under **subsection (1)(b)** unless the Inspector-General considers that there is a compelling reason against its inclusion; and
- (b) must not include sensitive information. 30
- (4) As soon as practicable after the programme is finalised, the Inspector-General must—
- (a) give a copy to the Minister; and
- (b) publish it on a publicly accessible Internet site maintained by or on behalf of the Inspector-General. 35
- (5) The Minister must present a copy of the annual work programme to the House of Representatives—
- (a) as soon as practicable after receiving it; or

- (b) at the same time that the annual report for the preceding financial year is presented under **section 54(4)**.

54 Annual report

- (1) As soon as practicable after the end of each financial year, the Inspector-General must provide a report of the Inspector-General's operations during that year to the Minister. 5
- (2) The report must—
- (a) specify the number of investigations and assessments undertaken during the year; and
- (b) contain a brief description of the outcome of each investigation or assessment; and 10
- (c) contain information on the Inspector-General's financial performance; and
- (d) contain any other information that the Inspector-General believes is necessary. 15
- (3) The report must not include sensitive information.
- (4) As soon as practicable after receiving the report, the Minister must present a copy of it to the House of Representatives.
- (5) As soon as practicable after a copy of the report is presented to the House of Representatives under **subsection (4)**, the Inspector-General must publish the report on a publicly accessible Internet site maintained by or on behalf of the Inspector-General. 20

55 Inspector-General and others protected against liability

- (1) The following people are not personally liable for doing, or omitting to do, an act in the performance or intended performance of the Inspector-General's functions, or in the course of working for or providing a service to the Inspector-General, if the act or omission was in good faith: 25
- (a) the Inspector-General:
- (b) the Deputy Inspector-General:
- (c) an employee or a contractor of, or a secondee to, the Inspector-General: 30
- (d) an independent person to whom any information, document, or other thing is referred under **section 40**:
- (e) a member of an advisory panel:
- (f) an advisor appointed under **section 49**.
- (2) **Subsection (1)** does not apply to proceedings for— 35
- (a) an offence against **section 46**:
- (b) an offence against section 78, 78AA(1), 78A(1), 105, 105A, or 105B of the Crimes Act 1961:

- (c) an offence of conspiring to commit an offence against any of those sections of the Crimes Act 1961:
- (d) an offence of attempting to commit an offence against any of those sections of the Crimes Act 1961.

Consequential amendments

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56 Consequential amendments

Amend the Acts specified in **Schedule 3** as set out in that schedule.

Schedule 1
Transitional, savings, and related provisions

s 5

Part 1
Provisions relating to this Act as enacted

5

1 Incidents occurring before commencement of this Act

This Act applies to incidents that occur before the commencement of its provisions (as well as incidents that occur afterwards).

Schedule 2

Administrative provisions relating to Inspector-General and Deputy Inspector-General

s 13

- 1 Term of office of Inspector-General and Deputy Inspector-General** 5
- (1) A person holds office as the Inspector-General for an initial term (which must not be more than 5 years) that the Governor-General, on the recommendation of the House of Representatives, specifies in the person's appointment.
- (2) A person holding office as the Inspector-General may be reappointed for 1 further term of not more than 3 years. 10
- (3) A person holds office as the Deputy Inspector-General for an initial term (which must be not more than 3 years) that the Governor-General, on the recommendation of the House of Representatives, specifies in the person's appointment.
- (4) A person holding office as the Deputy Inspector-General may be reappointed for 1 or more further terms of not more than 3 years each. 15
- (5) Unless they have died, resigned, or been removed, a person holding office as the Inspector-General or the Deputy Inspector-General continues to hold office until one of the following occurs, even if the term for which they were appointed has ended: 20
- (a) the person is reappointed;
- (b) the person's successor is appointed.
- (6) The Inspector-General and Deputy Inspector-General may at any time resign by written notice to the Governor-General.
- (7) A notice of resignation under **subclause (6)** must state the date on which the resignation takes effect. 25
- 2 Filling of vacancy**
- (1) If the office of Inspector-General becomes vacant, the vacancy must be filled by the appointment of a successor in accordance with **section 7(2) and (3)**.
- (2) If the office of Deputy Inspector-General becomes vacant, the vacancy must be filled by the appointment of a successor in accordance with **section 11(2) and (3)**. 30
- (3) **Subclause (4)** applies if—
- (a) the office of Inspector-General or Deputy Inspector-General becomes vacant while Parliament is not in session, or is vacant at the close of a session; and 35
- (b) the House of Representatives has not recommended an appointment to fill the vacancy.

- (4) When this subclause applies, the vacancy may, at any time before the commencement of the next session of Parliament, be filled by the appointment of a successor by the Governor-General in Council.
- (5) An appointment made under **subclause (4)** lapses and the office again becomes vacant unless, before the end of the 24th sitting day of the House of Representatives following the date of the appointment, the House confirms the appointment. 5
- 3 Removal or suspension from office**
- (1) The Inspector-General or Deputy Inspector-General may be removed or suspended from office by the Governor-General, on an address from the House of Representatives, for any of the following: 10
- (a) incapacity:
 - (b) bankruptcy:
 - (c) neglect of duty:
 - (d) misconduct: 15
 - (e) failure to hold the appropriate security clearance.
- (2) If the Inspector-General or Deputy Inspector-General is suspended from office while Parliament is not in session, the suspension does not continue in force beyond 2 months after the beginning of the next session of Parliament.
- 4 Remuneration and expenses** 20
- (1) The Inspector-General and Deputy Inspector-General must be paid, out of public money and without further appropriation than this clause,—
- (a) salaries at the rates determined by the Remuneration Authority; and
 - (b) allowances (if any) determined by the Remuneration Authority.
- (2) The Inspector-General and Deputy Inspector-General are entitled to receive 25 from the funds of the Inspector-General's office the actual and reasonable costs for travelling and other expenses that relate to the performance of their functions.
- 5 Disclosure of interests**
- The Inspector-General and the Deputy Inspector-General must each give written notice to the Minister of all financial and other interests that they have or acquire that could conflict with the proper performance of their functions. 30

Schedule 3

Consequential amendments

s 56

Corrections Act 2004 (2004 No 50)

In section 3(1), definition of **official agency**, after paragraph (k), insert: 5

- (l) the Inspector-General of Defence

Health Act 1956 (1956 No 65)

After section 22C(2)(l), insert:

- (m) the Inspector-General of Defence, for the purposes of exercising or performing any of that person's powers, duties, or functions under the Inspector-General of Defence Act **2023**. 10

Intelligence and Security Act 2017 (2017 No 10)

After section 161(3)(f), insert:

- (g) the Inspector-General of Defence.

In section 161(4), replace “or the Public Service Commissioner” with “the Public Service Commissioner, or the Inspector-General of Defence”. 15

Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46)

After section 123(3)(h), insert:

- (i) the Inspector-General of Defence.

Official Information Act 1982 (1982 No 156) 20

In section 2(1), definition of **official information**, after paragraph (m), insert:

- (n) does not include information that relates to any investigation or assessment under the Inspector-General of Defence Act **2023**, other than information that existed before the commencement of that investigation or assessment 25

Ombudsmen Act 1975 (1975 No 9)

After section 21C, insert:

21D Consultation with Inspector-General of Defence

Notwithstanding anything in section 21, an Ombudsman may from time to time undertake consultation with the Inspector-General of Defence holding office under **section 7** of the Inspector-General of Defence Act **2023** in relation to any matter, including (without limitation) consultation— 30

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

Ombudsmen Act 1975 (1975 No 9)—continued

(b) in relation to any matter that is within the jurisdiction of the Inspector-General of Defence, 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 Defence such information as the Ombudsman considers necessary for that purpose.

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In Schedule 1, Part 2, insert in its appropriate alphabetical order:

Inspector-General of Defence

Privacy Act 2020 (2020 No 31)

After section 29(1)(e), insert:

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(f) personal information held by the Inspector-General of Defence, the Deputy Inspector-General of Defence, or any employee of the Inspector-General of Defence in connection with the performance or exercise of the Inspector-General of Defence's functions, duties, or powers that is not personal information about any employee or former employee of the Inspector-General of Defence in their capacity as an employee.

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After section 208(1)(c), insert:

(d) the Inspector-General of Defence.

Protected Disclosures (Protection of Whistleblowers) Act 2022 (2022 No 20)

In section 4, insert in its appropriate alphabetical order:

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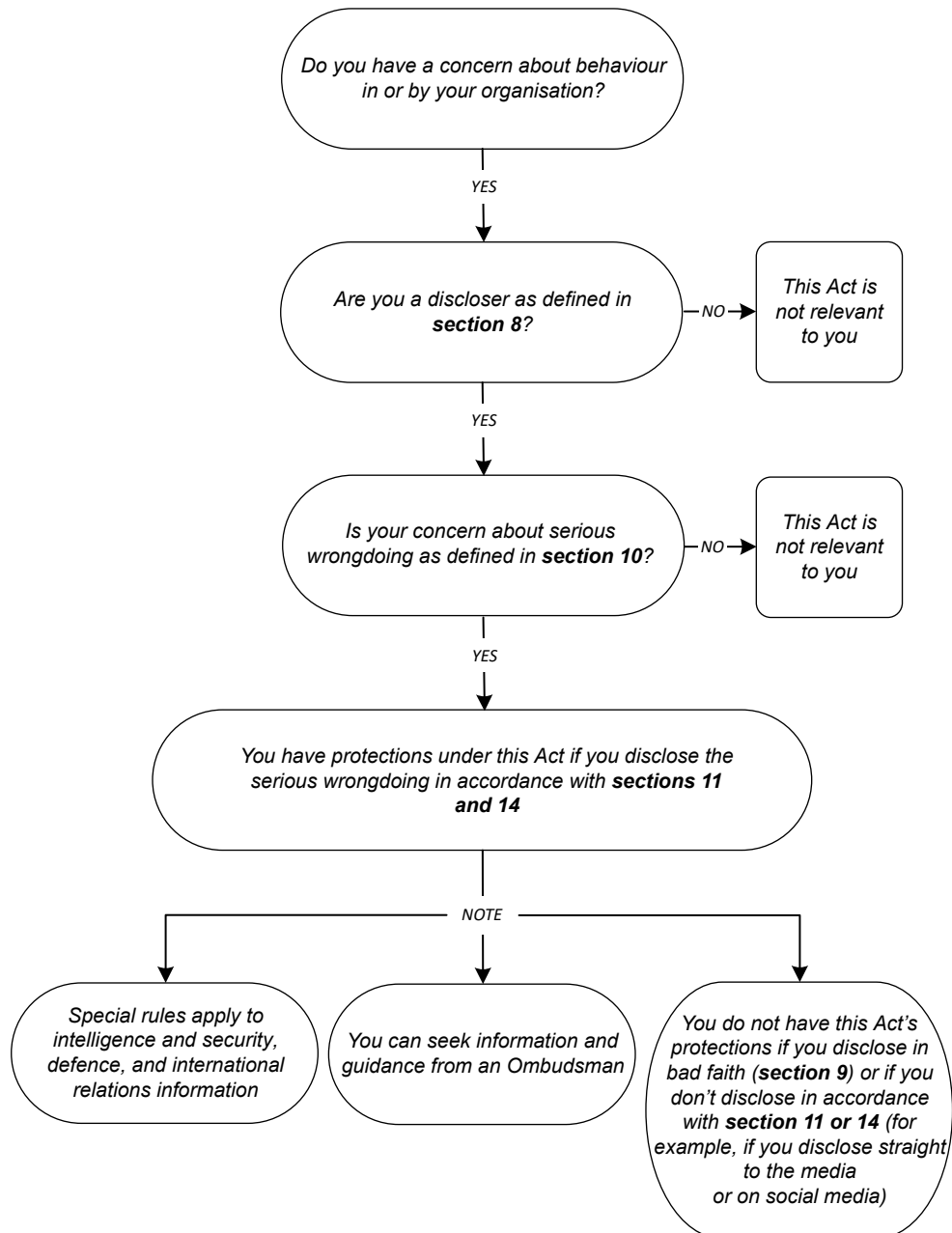
defence information means information that relates to the activities of the New Zealand Defence Force other than activities of Veterans' Affairs New Zealand

In section 4, definition of **international relations agency**, revoke paragraph (d).

In section 7(1), replace the flowchart with:

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Protected Disclosures (Protection of Whistleblowers) Act 2022 (2022 No 20)—
continued



Replace section 11(5) with:

- (5) If the disclosure is or includes intelligence and security information, defence information, or international relations information, this section is subject to sections 25(2), 27, **27A**, and 28.

Replace section 14(5) with:

Protected Disclosures (Protection of Whistleblowers) Act 2022 (2022 No 20)—
continued

(5) However, if the disclosure is or includes intelligence and security information, defence information, or international relations information, this section is subject to sections 27, **27A**, and 28.

After section 16(7), insert:

(8) The Inspector-General of Defence may refer a disclosure under this section in a way that is consistent with **section 27A(1)**. 5

In section 17(7), after “information”, insert “and **section 27A** for special rules relating to defence information”.

In section 18(2)(c), replace “section 27” with “sections 27 and **27A**”.

Replace section 25(2)(b)(i) and (ii) with: 10

- (i) section 27(3) for a disclosure relating to serious wrongdoing in or by the office of the Inspector-General of Intelligence and Security:
- (ii) section 16(7) for the ability of the Inspector-General of Intelligence and Security to refer:

After section 25(2)(b), insert: 15

- (c) the **appropriate authority** for a protected disclosure that is or includes defence information is the Inspector-General of Defence only. *See—*
 - (i) section **27A(3)** for a disclosure relating to serious wrongdoing in or by the office of the Inspector-General of Defence: 20
 - (ii) section 16(8) for the ability of the Inspector-General of Defence to refer:
 - (iii) sections 14 and **27A** for the discloser’s entitlement to disclose further.

After section 27, insert:

27A Special rules for defence information 25

- (1) A person may only disclose defence information to someone who holds an appropriate security clearance and is authorised to have access to the information.
- (2) A discloser who has made, or is considering making, a protected disclosure that is or includes defence information may seek information and guidance from the Inspector-General of Defence only (and not from an Ombudsman). 30
- (3) A discloser is entitled to protection under this Act for a protected disclosure made to the Minister responsible for defence if the disclosure—
 - (a) is or includes defence information; and
 - (b) relates to serious wrongdoing in or by the office of the Inspector-General of Defence— 35

Protected Disclosures (Protection of Whistleblowers) Act 2022 (2022 No 20)—
continued

- and sections 11(4) and 12 apply accordingly.
- (4) The New Zealand Defence Force, and any other public sector organisation that holds or has access to defence information, must—
- (a) have internal procedures that reflect **subsections (1) to (3)**; and
 - (b) apply sections 13, 17, and 29 in a way that is consistent with this section (in relation to defence information). 5
- (5) The Inspector-General of Defence may disclose defence information disclosed or referred under this Act only in accordance with the Inspector-General of Defence Act **2023**.
- (6) This section overrides section 17(5). 10
- (7) For the purposes of section 14(2), the only Minister a discloser may disclose defence information to is the Prime Minister or the Minister responsible for defence.
- After section 30(4), insert:
- (5) This section does not apply to a disclosure that is or includes defence information (and **section 27A** applies instead). 15
- Replace section 31(2) with:
- (2) However,—
- (a) the Inspector-General of Intelligence and Security, and not an Ombudsman, has the power described in subsection (1) in relation to an intelligence and security agency; and 20
 - (b) the Inspector-General of Defence, and not an Ombudsman, has the power described in subsection (1) in relation to the New Zealand Defence Force. 25
- After section 32(5), insert:
- (5A) This section does not apply if a disclosure is or includes defence information (and **section 27A** applies instead). 25
- Replace section 33(3) with:
- (3) However,—
- (a) this section does not apply to a disclosure that is or includes intelligence and security information (and section 27 applies instead); and 30
 - (b) this section does not apply to a disclosure that is or includes defence information (and **section 27A** applies instead). 35
- Replace section 34(2) with:
- (2) However,—

Protected Disclosures (Protection of Whistleblowers) Act 2022 (2022 No 20)—
continued

- (a) subsection (1) does not apply to a disclosure that is or includes intelligence and security information (and section 27 applies instead); and
- (b) subsection (1) does not apply to a disclosure that is or includes defence information (and **section 27A** applies instead).

In Schedule 1,—

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- (a) insert the following Part as the last Part; and
- (b) make all necessary consequential amendments.

Part 2**Provision relating to the Inspector-General of Defence Act 2023****3 Disclosures made before appointment of Inspector-General of Defence** 10

- (1) This clause applies to any protected disclosure made to the Inspector-General of Intelligence and Security before the amendments made to this Act by the Inspector-General of Defence Act **2023** (the **relevant amendments**) come into force.
- (2) The Inspector-General of Intelligence and Security may refer the disclosure to the Inspector-General of Defence in accordance with section 16, in which case this Act as amended by the relevant amendments applies to the disclosure from the time of the referral. 15
- (3) If no referral is made as described in **subclause (2)**, this Act continues to apply to the disclosure as if the relevant amendments had not been made. 20
- (4) The Inspector-General of Intelligence and Security may consult the Inspector-General of Defence before deciding whether or not to refer the disclosure to the Inspector-General of Defence.

In Schedule 2, after the item relating to crime, insert:

Defence information	Inspector-General of Defence only (<i>see</i> section 27A)
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Remuneration Authority Act 1977 (1977 No 110) 25

In Schedule 4, insert in its appropriate alphabetical order:

The Inspector-General of Defence and the Deputy Inspector-General of Defence