

Inspector-General of Intelligence and Security Amendment Bill

Government Bill

As reported from the committee of the whole
House

This bill was formerly part of the Government Communications Security Bureau and Related Legislation Amendment Bill as reported from the Intelligence and Security Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- Government Communications Security Bureau Amendment Bill comprising clauses 1 and 2, Part 1, and Schedules 1 and 2
 - this bill comprising Part 2
 - Intelligence and Security Committee Amendment Bill comprising Part 3.
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**Inspector-General of Intelligence and
Security Amendment Bill**

Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

Rt Hon John Key

Inspector-General of Intelligence and Security Amendment Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Inspector-General of Intelligence and Security Amendment Act **2013**.
- 2 Commencement** 5
This Act comes into force on the day that is 1 month after the date on which it receives the Royal assent.
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- 27 Principal Act**
This **Part** amends the Inspector-General of Intelligence and Security Act 1996 (the **principal Act**). 10
- 28 Section 2 amended (Interpretation)**
In section 2(1), insert in their appropriate alphabetical order:
“**advisory panel** means the advisory panel established by **section 15A**
“**Deputy Inspector-General** means the Deputy Inspector-General of Intelligence and Security holding office under **section 5** 15

“**Intelligence and Security Committee** means the Intelligence and Security Committee established by section 5 of the Intelligence and Security Committee Act 1996”.

29 Section 5 and cross-heading replaced

Replace section 5 and the cross-heading above section 5 with: 5

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

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

10

“(1) There must be—

- “(a) an Inspector-General of Intelligence and Security; and
- “(b) a Deputy Inspector-General of Intelligence and Security.

“(2) The Inspector-General and Deputy Inspector-General must be appointed by the Governor-General on the recommendation of the Prime Minister following consultation with the Intelligence and Security Committee. 15

“(3) The Deputy Inspector-General has and may exercise and perform the powers and functions of the Inspector-General (whether under this Act or any other enactment), but subject to— 20

- “(a) the control and direction of the Inspector-General; and
- “(b) to avoid doubt, the same duties, obligations, restrictions, and terms under which the Inspector-General exercises and performs his or her powers and functions. 25

“(4) Sections 7 to 9 and 18 apply to the Deputy Inspector-General as if references in those sections to the Inspector-General were references to the Deputy Inspector-General.

“(5) If there is a vacancy in the office of the Inspector-General, or if the Inspector-General is absent from duty for any reason, the Deputy Inspector-General has and may exercise and perform all the powers, functions, and duties of the Inspector-General for as long as the vacancy or absence continues. 30

“(6) The fact that the Deputy Inspector-General exercises or performs any power, function, or duty of the Inspector-General 35

is, in the absence of proof to the contrary, conclusive evidence of the Deputy Inspector-General's authority to do so."

30 Section 6 amended (Term of office)

(1) Replace section 6(1) with:

"(1) Every person appointed as the Inspector-General or Deputy Inspector-General—

"(a) is to be appointed for a term not exceeding 3 years; and

"(b) may be reappointed, but in the case of the Inspector-General only once."

(2) In section 6(2) and (3), after "Inspector-General", insert "or Deputy Inspector-General" in each place.

31 Section 11 amended (Functions of Inspector-General)

(1AA) After section 11(1)(b), insert:

"(ba) to inquire into any complaint made by the Speaker of the House of Representatives on behalf of 1 or more members of Parliament:".

(1) Replace section 11(1)(c), (d), and (da) with:

"(c) to inquire at the request of the Minister or the Prime Minister or of the Inspector-General's own motion into any matter where it appears that a New Zealand person has been or may be adversely affected by any act, omission, practice, policy, or procedure of an intelligence and security agency:

"(ca) to inquire at the request of the Minister or the Prime Minister or of the Inspector-General's own motion into the propriety of particular activities of an intelligence and security agency:

"(d) without limiting paragraph (a), to review at intervals of not more than 12 months—

"(i) the effectiveness and appropriateness of the procedures adopted by each intelligence and security agency to ensure compliance with its governing legislation in relation to the issue and execution of warrants and authorisations; and

"(ii) the effectiveness and appropriateness of compliance systems concerning operational activity, in-

cluding all supporting policies and practices of an intelligence and security agency relating to—	
“(A) administration; and	
“(B) information management; and	
“(C) risk management; and	5
“(D) legal compliance generally:	
“(da) to conduct unscheduled audits of the procedures and compliance systems described in paragraph (d) .”	
(2) Repeal section 11(2).	
(3) In section 11(3), replace “(1)(c)(ii)” with “ (1)(ca) ”.	10
32 Section 12 amended (Consultation)	
Replace section 12(2) with:	
“(2) The Inspector-General may—	
“(a) consult any of the persons specified in subsection (3) about any matter relating to the functions of the Inspector-General under section 11; and	15
“(b) despite section 26(1), disclose to any of the persons consulted any information that the Inspector-General considers necessary for the purpose of the consultation.	
“(3) The persons are—	20
“(a) the Controller and Auditor-General:	
“(b) an Ombudsman:	
“(c) the Privacy Commissioner:	
“(d) a Human Rights Commissioner:	
“(e) the Independent Police Conduct Authority.”	25
33 Section 15 amended (Jurisdiction of courts and other agencies not affected)	
In section 15(3), replace “or of the Privacy Commissioner” with “, the Privacy Commissioner, a Human Rights Commissioner, or the Independent Police Conduct Authority”.	30
33A New sections 15A to 15F and cross-heading inserted	
After section 15, insert:	
<i>“Advisory panel</i>	
“15A Advisory panel established	
This section establishes an advisory panel.	35

“15B Function of advisory panel

“(1) The function of the advisory panel is to provide advice to the Inspector-General.

“(2) The advisory panel may provide advice—

“(a) on request from the Inspector-General; or 5

“(b) on its own initiative.

“(3) To assist the advisory panel to perform its function,—

“(a) the advisory panel may ask the Inspector-General to provide information; and

“(b) the Inspector-General may provide information to the advisory panel, whether in response to a request under **paragraph (a)** or on his or her own initiative. 10

“(4) The advisory panel may make a report to the Prime Minister on any matter relating to intelligence and security, if the advisory panel considers that the matter should be drawn to the attention of the Prime Minister. 15

“15C Membership of advisory panel

“(1) The advisory panel consists of—

“(a) 2 members appointed under **subsection (2)**, 1 of whom must also be appointed as the chairperson of the panel; and 20

“(b) the Inspector-General.

“(2) The members and chairperson appointed under this subsection are appointed by the Governor-General on the recommendation of the Prime Minister after consulting the Intelligence and Security Committee. 25

“(3) One of the members appointed under **subsection (2)** must be a lawyer within the meaning of the Lawyers and Conveyancers Act 2006 who has held a practising certificate as a barrister or barrister and solicitor for not less than 7 years. 30

“(4) Both of the members appointed under **subsection (2)** must have an appropriate security clearance.

“(5) A member appointed under **subsection (2)**—

“(a) holds office for a term not exceeding 5 years; and

“(b) may from time to time be reappointed; and 35

“(c) may at any time resign office by notice in writing to the Prime Minister; and

“(d) may be removed from office by notice in writing from the Prime Minister for misconduct, inability to perform the functions of office, or neglect of duty.

“**15D Remuneration of appointed members of advisory panel**

“(1) A member of the advisory panel appointed under **section 15C(1)(a)** is entitled— 5

“(a) to receive remuneration not within **paragraph (b)** for services as a member at a rate and of a kind determined by the Minister in accordance with the fees framework; and 10

“(b) in accordance with the fees framework, to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out his or her office as a member.

“(2) For the purposes of **subsection (1)**, **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest. 15

“**15E Clerical and secretarial services**

“(1) The Department of the Prime Minister and Cabinet is responsible for providing to the advisory panel the clerical and secretarial services necessary for the advisory panel to perform its function effectively and efficiently. 20

“(2) A person providing clerical and secretarial services under **subsection (1)** must have an appropriate security clearance. 25

“**15F Advisory panel to determine own procedure**

The advisory panel may determine its own procedure.”

33B Section 24 amended (Proceedings privileged)

Replace section 24(1) with:

“(1) Subject to subsection (2),— 30

“(a) no proceedings, civil or criminal, may be brought against the Inspector-General, an appointed member of the advisory panel, or against any employee of the Inspector-General, for anything done or reported or

- said by the Inspector-General, appointed member, or employee in the course of the exercise or intended exercise of their functions under this Act, unless it is shown that the Inspector-General, appointed member, or employee acted in bad faith: 5
- “(b) neither the Inspector-General nor an appointed member of the advisory panel nor any employee of the Inspector-General nor any person who has held the appointment of Inspector-General or who has been an appointed member of the advisory panel or who has been an employee of the Inspector-General is to be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions under this Act.” 10 15
- 34 Section 25 amended (Reports in relation to inquiries)**
- After section 25(5), insert:
- “(6) As soon as practicable after receiving a report from the Inspector-General, the Minister—
- “(a) must provide his or her response to the Inspector-General and the chief executive of the intelligence and security agency concerned; and 20
- “(b) may provide his or her response to the Intelligence and Security Committee.
- “(7) **Subsection (6)** does not apply to the extent that a report relates to employment matters or security clearance issues. 25
- “(8) For the purposes of this section,—
- “(a) the Inspector-General may, after consulting the chief executive of the intelligence and security agency concerned, determine the security classification of a report prepared under this section; and 30
- “(b) any matter quoted or summarised in the report must be given a security classification not less than the security classification of the matter quoted or summarised.”
- 35 New section 25A inserted (Publication of Inspector-General’s reports under section 25)** 35
- After section 25, insert:

“25A Publication of Inspector-General’s reports under section 25

“(1) As soon as practicable after forwarding a report as required by section 25(1), the Inspector-General must make a copy of the report publicly available on an Internet site maintained by or on behalf of the Inspector-General. 5

“(2) However, the Inspector-General must not, in the copy of a report made publicly available under **subsection (1)**, disclose—

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

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

“(ii) by any international organisation; or 15

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

“(c) the identity of any person who is or has been an officer, employee, or agent of an intelligence and security agency other than the chief executive, or any information from which the identity of such a person could reasonably be inferred; or 20

“(d) information the public disclosure of which would be likely to prejudice—

“(i) the continued discharge of the functions of an intelligence and security agency; or 25

“(ii) the security or defence of New Zealand or the international relations of the Government of New Zealand; or

“(e) any information about employment matters or security clearance issues.” 30

35A Section 26 amended (Disclosure)

In section 26(1), after “Act, the Inspector-General”, insert “and an appointed member of the advisory panel”.

36 Section 27 amended (Reports by Inspector-General)

(1) After section 27(2)(b), insert:

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- “(ba) certify the extent to which each intelligence and security agency’s compliance systems are sound; and”.
- (2) In section 27(3), replace “lay a copy of the report before” with “present a copy of the report to”.
- (3) In section 27(4) and (6), replace “laid before” with “presented to”.
- (4) After section 27(6), insert:
- “(6A) As soon as practicable after a copy of the report is presented to the House of Representatives under subsection (3), the Inspector-General must make a copy of the report (as presented to the House of Representatives) publicly available on an Internet site maintained by or on behalf of the Inspector-General.”
- 36A Section 28 amended (Secrecy)**
 In section 28(1), after “been, the Inspector-General”, insert “or an appointed member of the advisory panel”.

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Legislative history

20 August 2013

Divided from Government Communications Security Bureau and Related Legislation Amendment Bill (Bill 109–2) by the committee of the whole House as Bill 109–3B
