



Inspector-General of Defence Bill

Legislative Statement – Second Reading

Presented to the House of Representatives in accordance with Standing Order 272

Introduction

1. The Inspector-General of Defence Bill (the Bill) is a Government Bill that would establish the roles of the Inspector-General of Defence (the IGD) and Deputy Inspector-General of Defence.
2. Its purpose is to help the Minister of Defence to oversee the activities of the New Zealand Defence Force (NZDF), and assure the public that there is independent scrutiny of those activities.
3. The Bill was examined by the Foreign Affairs, Defence and Trade Committee (the Committee), which recommended by majority that the Bill should be passed with amendments. The key changes recommended by the Committee are outlined below.

Background

4. The *Inquiry into Operation Burnham and related matters* (the Inquiry) was established in 2018 to examine allegations of wrongdoing by the NZDF during a series of operations conducted in Afghanistan in 2010 and 2011. It found that there were significant shortcomings in the way in which the NZDF dealt with and reported on allegations of civilian casualties. Specifically, NZDF personnel failed to provide full and accurate information to Ministers, and to adequately scrutinise or respond to the information available to them.
5. To help address these issues, the Inquiry recommended establishing an oversight body to independently look at NZDF activities.

Key Features of the Bill

The Bill establishes an independent IGD

6. The Bill's objective is to enhance independent scrutiny of, and regenerate public confidence in, the NZDF. It would achieve this by:
 - establishing the IGD as an independent statutory officer external to the NZDF, independent of Government policy and Ministerial decision-making (clause 7(1));
 - enabling the House of Representatives to recommend who should be appointed as the IGD (clause 7(2));
 - ensuring that the IGD has control of its own work plan and is able to perform functions on its own initiative (clause 14 and 53); and
 - enabling the IGD to make recommendations to the NZDF, and requiring these to be reported publicly (clauses 20 and 21).

7. In response to the Committee's recommendations, the Bill increases the IGD's control and discretion over its operations, by no longer requiring the IGD to accept the Minister of Defence's feedback on its annual work programme, or to seek the Minister of Defence's permission to share its reports with relevant portfolio Ministers.

The Bill establishes the IGD's functions, duties, and the scope of its oversight

8. The Bill establishes two core functions for the IGD (clause 8(1)):
 - to investigate incidents that have occurred during NZDF activities; and
 - to assess and identify potential improvements or additions to policies and procedures governing NZDF activities.
9. The Bill permits the IGD to exercise these functions on its own initiative or by request from the Minister, Chief of Defence Force, or Secretary of Defence.
10. To guide the IGD's oversight and support its decision-making about what to investigate and when, the Bill requires the IGD to exercise its functions impartially, fairly, independently, and in the public interest, and to have regard to the military context in which the NZDF operates (clause 9),
11. In response to the Committee's recommendations, the Bill now:
 - enables the IGD to examine both operational and non-operational NZDF activities (except the activities of Veterans' Affairs New Zealand) on its own initiative.
 - clarifies that the IGD should consider the functions of existing bodies with oversight of the NZDF, and consult and co-operate with them with a view to avoiding unnecessary duplication in scrutiny of the same issue (clause 10).
 - clarifies the IGD's role in examining operations that the NZDF conducts jointly with another agency or nation, and specifies that the IGD is unable, in its investigation reports, to make findings or recommendations related to the conduct of an agency or nation that the NZDF partners with (clause 20).

Powers to gather information

12. The Bill gives the IGD powers to ensure effective oversight. These align with public inquiries and other oversight bodies, such as the Inspector-General of Intelligence and Security. At any time the IGD may directly access NZDF records (clause 24(1)) and request NZDF information and any other reasonable assistance (clause 25).
13. Additional powers are available during an investigation, to ensure that the IGD is able to access all the information it needs to understand the context and cause of an incident. These include powers to examine people under oath (clause 28) and enter NZDF premises, such as defence areas or assets like ships (clause 31).
14. In response to the Committee's recommendations, the Bill now requires the Chief of Defence Force to notify the IGD where the NZDF causes or contributes to, or is likely to have caused or contributed to, a civilian death or injury, both in peace time and in situations of armed conflict (clause 27). This amendment further secures the IGD's access to information relevant to its functions.

Protections for people and information

15. To encourage open honest participation in the IGD's proceedings, the Bill contains a number of protections for people that the IGD would engage with. In particular, the Bill protects whistleblowers by confirming that the NZDF cannot penalise or disadvantage any person (including NZDF personnel) who co-operates with the IGD (clause 44).

16. In the course of performing its functions, the IGD would handle classified information. To protect this information and national security interests, the Bill imposes a number of safeguards including:
- security clearance requirements for the IGD, Deputy IGD, staff and advisors (clauses 7, 11, 48, 49 and 51);
 - an offence for wilfully failing to comply with a duty of confidentiality (clauses 36 and 46).

The Bill makes it an offence to obstruct or lie to the IGD

17. The Bill creates a number of offences to encourage good faith interactions with the IGD. These are set out in Part 5 of the Bill and include wilfully obstructing or misinforming the IGD. A person who commits one of these offences can be fined up to \$10,000 (clause 45), in line with penalties for similar offences for other oversight bodies.

The IGD determines what to report on and the NZDF is obliged to respond

18. The Bill requires the IGD to make a report when it completes an investigation or assessment (clause 19). The IGD is responsible for determining the content of the report; the Bill only requires that it include findings and any recommendations. Once prepared, the IGD must share its report with the Minister of Defence, Secretary and Chief of Defence Force (CDF), and to the extent possible with regard to sensitive information, make its findings publicly available (clause 21).
19. The Bill obliges the CDF to respond to the IGD's recommendations, by notifying the Minister of Defence, the IGD, and the Secretary of any actions it proposes to take to implement the recommendations. If it does not propose to implement them, the NZDF must explain its reasoning (clause 22).
20. In response to the Committee's recommendations, the Bill now:
- more closely aligns the grounds available for the IGD to withhold sensitive information from its published reports with the Official Information Act 1982 (see the definition of "sensitive" in clause 4).
 - makes it compulsory for the IGD to publish a summary of its investigation or assessment reports where a full report is unable to be released (clause 21).
 - enables the IGD to publish information about the NZDF's progress implementing its recommendations (clause 22).
 - requires the IGD to publish information on investigation and assessment requests it has declined, deferred, or referred to another oversight body (clause 54).
21. These amendments are intended to enhance the transparency of, and public's confidence in, the IGD's operations.