



ANALYSIS

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1996, No. 46

An Act to increase the level of oversight and review of intelligence and security agencies by establishing an Intelligence and Security Committee [1 July 1996]

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

1. Short Title and commencement—(1) This Act may be cited as the Intelligence and Security Committee Act 1996.

(2) This Act shall come into force on the day after the date on which this Act receives the Royal assent.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

"Chief executive",—

(a) In relation to the New Zealand Security Intelligence Service, means the Director of Security holding office under the New Zealand Security Intelligence Service Act 1969:

(b) In relation to the Government Communications Security Bureau, means the Director of that Bureau:

(c) In relation to an agency that, by virtue of an Order in Council made under subsection (2) of this section, is an intelligence and security agency for the purposes of this Act, means the chief executive of that agency:

“Committee” means the Intelligence and Security Committee established by section 5 of this Act:

“Intelligence and security agency” means—

(a) The New Zealand Security Intelligence Service:

(b) The Government Communications Security Bureau:

(c) Any other agency declared by the Governor-General from time to time by Order in Council as an intelligence and security agency for the purposes of this Act:

“New Zealand Security Intelligence Service” means the New Zealand Security Intelligence Service referred to in section 3 of the New Zealand Security Intelligence Service Act 1969:

“Nominated member” means a member of the Committee nominated in accordance with section 7 (1) (c) or section 7 (1) (d) of this Act:

“Sensitive information” has the meaning given to it by section 3 of this Act:

“Working day” means any day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and

(b) A day in the period commencing with the 25th day of December in any year and ending with the 15th day of January in the following year.

(2) The Governor-General may from time to time by Order in Council declare any agency to be an intelligence and security agency for the purposes of this Act.

(3) Every Order in Council made under subsection (2) of this section shall be deemed to be a regulation for the purposes of the Acts and Regulations Publication Act 1989 and the Regulations (Disallowance) Act 1989.

3. Definition of “sensitive information”—(1) Subject to subsection (2) of this section, in this Act, unless the context otherwise requires, “sensitive information” means—

(a) Information that might lead to the identification of, or provide details of,—

- (i) Sources of information available to an intelligence and security agency; or
 - (ii) Other assistance or operational methods available to an intelligence and security agency; or
 - (b) Information about particular operations that have been undertaken, or are being or are proposed to be undertaken, in pursuance of any of the functions of an intelligence and security agency; or
 - (c) Information that has been provided to an intelligence and security agency by another department or agency of the Government of New Zealand and is information that cannot be disclosed by the intelligence and security agency without the consent of the department or agency of the Government of New Zealand by which that information has been provided; or
 - (d) Information that has been provided to an intelligence and security agency by the government of any other country or by an agency of such a government and is information that cannot be disclosed by the intelligence and security agency without the consent of the government or agency by which that information has been provided.
- (2) Information to which subsection (1) of this section applies shall be considered to be sensitive information only if the disclosure of the information would be likely—
- (a) To prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
 - (b) To prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by—
 - (i) The government of any other country or any agency of such a government; or
 - (ii) Any international organisation; or
 - (c) To prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
 - (d) To endanger the safety of any person.

4. Act to bind the Crown—This Act shall bind the Crown.

Intelligence and Security Committee

5. Intelligence and Security Committee—There is hereby established a committee to be known as the Intelligence and Security Committee.

6. Functions of Committee—(1) The functions of the Committee are—

- (a) Subject to subsection (2) of this section, to examine the policy, administration, and expenditure of each intelligence and security agency:
- (b) Subject to subsection (2) of this section, to consider any bill, petition, or other matter in relation to an intelligence and security agency referred to the Committee by the House of Representatives:
- (c) To receive and consider the annual report of each intelligence and security agency:
- (d) To consider any matter (not being a matter relating directly to the activities of an intelligence and security agency) referred to the Committee by the Prime Minister by reason of that matter's security or intelligence implications:
- (e) Subject to section 18 of this Act, to report to the House of Representatives on the activities of the Committee.

(2) The functions of the Committee do not include—

- (a) Inquiring into any matter within the jurisdiction of the Inspector-General of Intelligence and Security appointed under section 5 of the Inspector-General of Intelligence and Security Act 1996; or
- (b) Inquiring into any matter that is operationally sensitive, including any matter that relates to intelligence collection and production methods or sources of information; or
- (c) Originating or conducting inquiries into complaints by individuals concerning the activities of an intelligence and security agency that are capable of being resolved under any other enactment.

7. Membership of Committee—(1) The Committee shall consist of—

- (a) The Prime Minister:
- (b) The Leader of the Opposition:
- (c) Two members of the House of Representatives nominated for the purpose by the Prime Minister following consultation with the leader of each party in Government:

(d) One member of the House of Representatives nominated for the purpose by the Leader of the Opposition, with the agreement of the Prime Minister, following consultation with the leader of each party that is not in Government or in coalition with a Government party.

(2) Every person who nominates any person for membership of the Committee shall have regard to the requirements of security.

(3) The chairperson of the Committee shall be the Prime Minister or such other member of the Committee as shall be appointed from time to time by the Prime Minister as the chairperson of the Committee.

(4) For the avoidance of doubt, it is hereby declared that any member of Parliament who acts as a member of the Committee shall be deemed, in so acting, to be acting in his or her official capacity as a member of Parliament.

8. Endorsement of nominated members—(1) The Prime Minister shall, as soon as practicable after the commencement of each Parliament, submit to the House of Representatives, for endorsement, the names of the members of the House of Representatives nominated under paragraphs (c) and (d) of section 7 (1) of this Act as members of the Committee.

(2) If the House of Representatives declines to endorse as a member of the Committee any member of the House of Representatives nominated under this section or section 11 (1) of this Act, the Prime Minister or the Leader of the Opposition, as the case may require, shall, in accordance with the requirements of paragraph (c) or paragraph (d) of section 7 (1) of this Act, as the case may require, nominate another member of the House of Representatives for membership of the Committee and shall submit to the House of Representatives for endorsement the name of the member so nominated for membership of the Committee.

(3) The Committee shall not transact any business until, as required by paragraphs (c) and (d) of section 7 (1) of this Act, three members of the House of Representatives have been nominated and endorsed as members of the Committee.

9. Revocation of nomination—(1) The Prime Minister may at any time revoke the nomination of any person nominated by the Prime Minister under section 7 of this Act as a member of the Committee.

(2) The Leader of the Opposition may at any time revoke the nomination of any person nominated by the Leader of the Opposition under section 7 of this Act as a member of the Committee.

10. Suspension and cessation of membership—

(1) Where a member of the House of Representatives who is a member of the Committee is suspended from the service of the House of Representatives, that member shall be deemed to be suspended from membership of the Committee.

(2) A person ceases to be a member of the Committee—

(a) If that person is a nominated member of the Committee and that person's nomination as a member of the Committee is revoked under section 9 of this Act:

(b) If Parliament is dissolved or expires:

(c) If, before Parliament is dissolved or expires, that member ceases to be a member of the House of Representatives.

(3) A nominated member may at any time resign from the Committee by writing signed by the member and addressed to the Prime Minister or the Leader of the Opposition, as the case may require.

11. Extraordinary vacancies—(1) Where—

(a) Any nominated member ceases, before Parliament is dissolved or expires, to be a member of the House of Representatives; or

(b) The nomination of any nominated member is revoked under section 9 of this Act,—

his or her office as a nominated member of the Committee shall become vacant and the Prime Minister or the Leader of the Opposition, as the case may require, shall nominate another member of the House of Representatives to fill the vacancy and shall submit to the House of Representatives for endorsement the name of the member of the House of Representatives nominated as a member of the Committee.

(2) Where the member who vacated office was nominated by the Prime Minister for membership of the Committee, the nomination for the purposes of subsection (1) of this section shall be made by the Prime Minister following consultation with the leader of each party in Government.

(3) Where the member who vacated office was nominated by the Leader of the Opposition for membership of the Committee, the nomination for the purposes of subsection (1) of this section shall be made by the Leader of the Opposition,

with the agreement of the Prime Minister, following consultation with the leader of each party that is not in Government or in coalition with a Government party.

(4) No person nominated under subsection (1) of this section shall take office as a member of the Committee until that person's nomination has been endorsed by the House of Representatives.

12. Conduct of proceedings—(1) Subject to the provisions of this Act, the proceedings of the Committee shall be conducted in accordance with the Standing Orders of the House of Representatives.

(2) The proceedings of the Committee shall be held in private unless the Committee by unanimous resolution resolves otherwise.

(3) Where the proceedings of the Committee are conducted in private, the Committee may, having regard to the requirements of security and to such other matters as the Committee thinks fit, give directions as to the persons who may be present.

13. Meetings of Committee—(1) Every meeting of the Committee shall be convened by the Prime Minister.

(2) The chairperson of the Committee shall preside at all meetings of the Committee.

(3) The quorum necessary for the transaction of business at any meeting of the Committee shall be the chairperson and 3 other members of the Committee.

(4) Every question arising at any meeting of the Committee shall be determined by a majority of votes of the members present and voting on it.

(5) Where, at any meeting of the Committee, the only members present are the chairperson and 3 other members of the Committee, the chairperson shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote.

(6) No member of the Committee may be represented at any meeting of the Committee by any other person.

(7) The chief executive of the Department of the Prime Minister and Cabinet shall, with the concurrence of the Committee, appoint such officers as are required to assist the Committee in the conduct of its business.

(8) Only a person who has an appropriate security clearance may be appointed to assist the Committee.

14. Attendance before Committee—(1) The chief executive of an intelligence and security agency shall appear before the Committee when requested by the Committee to do so.

(2) The Committee may request any person other than the chief executive—

- (a) To attend and give evidence before the Committee; or
- (b) To produce any document or other information that is relevant to the proceedings of the Committee.

(3) Every request made to a person under subsection (1) or subsection (2) of this section shall, wherever practicable, be given to that person by the Committee at least 5 working days before the date on which the person is requested—

- (a) To appear; or
- (b) To attend and give evidence; or
- (c) To produce any document or other information.

15. Judicial proceedings—(1) No proceedings, civil or criminal, shall lie against any member of the Committee, or any person appointed under section 13 (7) of this Act to assist the Committee, for anything the member or person may do or report or say or fail to do or report or say in the course of the exercise or intended exercise of the Committee's functions under this Act, unless it is shown that the member or person acted in bad faith.

(2) No member of the Committee, or person appointed under section 13 (7) of this Act to assist the Committee, shall be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to that member's or person's knowledge in the exercise of the Committee's functions under this Act.

(3) Nothing in subsection (1) or subsection (2) of this section applies in respect of proceedings for an offence against section 20 of this Act.

16. Privilege—(1) The proceedings of the Committee shall be deemed to be proceedings in Parliament for the purposes of Article 9 of the Bill of Rights 1688.

(2) Anything said or any information supplied or any document, paper, or thing produced by any person in the course of any inquiry or proceedings of the Committee under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings of the House of Representatives.

Disclosure of Information

17. Provision of information to Committee—(1) If the chief executive of an intelligence and security agency or any other person is asked by the Committee to disclose any documents or other information in his or her possession relevant to the matters being considered by the Committee, that chief executive or other person shall, subject to subsections (2) and (3) of this section, either—

- (a) Arrange for those documents or that information to be made available to the Committee; or
- (b) Inform the Committee that those documents or that information cannot be disclosed because, in the opinion of the chief executive of the relevant intelligence and security agency, those documents are, or that information is, sensitive information.

(2) The fact that any particular documents are, or any particular information is, sensitive information shall not prevent the disclosure of those documents or that information under subsection (1) (a) of this section if,—

- (a) In any case where the documents are, or the information is, in the possession or under the control of the chief executive of an intelligence and security agency, that chief executive considers it safe to disclose them; or
- (b) In any case where the documents are, or information is, in the possession or under the control of any other person, the chief executive of the relevant intelligence and security agency considers it safe to disclose them.

(3) Subject to subsection (4) of this section, information that has not been disclosed to the Committee on the ground specified in subsection (1) (b) of this section shall be disclosed to the Committee if the Prime Minister considers it desirable in the public interest.

(4) Subsection (3) of this section shall not apply to information that is sensitive information under subsections (1) (d) and (2) of section 3 of this Act.

(5) Where any document or other information having a security classification is provided to the Committee, the Committee shall ensure that the document or information—

- (a) Is kept in safe custody in accordance with the requirements applying to the safe custody of documents in the intelligence and security agencies; and
- (b) Is returned to the originating intelligence and security agency when no longer required by the Committee.

(6) Where the Committee is responsible for the production of a document that has a security classification, the Committee shall ensure that the document is kept in safe custody in accordance with the requirements applying to the safe custody of documents in the intelligence and security agencies.

18. Restrictions on reports to House of Representatives—(1) The Committee shall in discharging its function of reporting to the House of Representatives, have regard generally to the requirements of security.

(2) The Committee shall not in a report to the House of Representatives disclose—

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

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

(ii) By any international organisation; or

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

(c) Any sensitive information disclosed to the Committee in accordance with subsection (2) or subsection (3) of section 17 of this Act.

(3) The Committee shall not in a report to the House of Representatives disclose—

(a) 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

(b) Information the public disclosure of which would be likely—

(i) To prejudice the continued discharge of the functions of an intelligence and security agency; or

(ii) To prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand,—

unless the Committee considers that there are compelling reasons in the public interest why the information should be so disclosed or published.

19. Secrecy—(1) No person who is, or has at any time been, a person assisting the Committee by virtue of an appointment under section 13 (7) of this Act, or a person appearing before

the Committee in any capacity, shall, except in the performance of that person's functions or duties under this Act, or in the exercise of that person's powers under this Act, or with the authority of the Committee, disclose or publish or cause to be disclosed or published—

- (a) Any sensitive information disclosed to the Committee in accordance with subsection (2) or subsection (3) of section 17 of this Act; or
- (b) Any other information provided to the Committee by an intelligence and security agency the further disclosure of which would be likely to prejudice any of the interests referred to in paragraphs (a) to (c) of section 18 (2) or paragraphs (a) and (b) of section 18 (3) of this Act.

(2) No person shall disclose to any other person any minutes or other record relating to the proceedings of any meeting of the Committee unless—

- (a) The disclosure of the minutes or record is necessary for the purposes of—
 - (i) A report to the House of Representatives (being a report that complies with section 18 of this Act); or
 - (ii) The conduct of the business of the Committee; or
- (b) The disclosure is authorised in writing by the Committee or its chairperson.

20. Offences—(1) No person who is, or has at any time been, a person assisting the Committee by virtue of an appointment under section 13 (7) of this Act or a person appearing before the Committee in any capacity, shall, either directly or indirectly, except in the performance of that person's functions or duties under this Act, or in the exercise of that person's powers under this Act, or with the written authority of the Committee or its chairperson,—

- (a) Make a record of, or disclose to any person, any information acquired by the person assisting the Committee in his or her capacity as a person assisting the Committee or acquired by the person appearing before the Committee by virtue of that person's appearance before the Committee; or
- (b) Make use of any such information.

(2) Every person commits an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$10,000 or to both

who acts in contravention of section 19 of this Act or subsection (1) of this section.

(3) No prosecution for an offence against this section shall be commenced except with the leave of the Attorney-General.

(4) The Summary Proceedings Act 1957 is hereby amended by inserting in Part II of the First Schedule, in its appropriate alphabetical order, the following item:

"The Intelligence and Security Committee Act 1996	20	"Unauthorised making or disclosure of records."
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This Act is administered in the Department of the Prime Minister and Cabinet.
