

REPORT TO THE STATE SERVICES COMMISSIONER

Intelligence Agencies Review

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Table of Contents

Table of Contents	2
Introduction.....	3
The Way Ahead for the Contemporary NZIC; Findings, Propositions, Suggestions.....	4
Appendices.....	8
Annex 1: Intelligence Agencies Review Terms of Reference - 27 May 2009	9
Annex 2: History.....	
Annex 3: NZIC Culture and Doctrine: Formative Influences	
Annex 4: Resourcing; Budgets, Savings and Future Efficiencies	
Annex 5: Governance of NZIC, Accountability and Authorising Regime.....	
Annex 6: Allied Partnerships; Governance Changes and Relationship Management	
Annex 7: The Intra-Community Conversation: NZIC Communication Habits.....	
Annex 8: Performance and Capability: Agency Self Assessments	
Annex 9: People Interviewed or Consulted During the Review.....	
Annex 10: Glossary.....	

Introduction

- 1 The New Zealand Intelligence Community (NZIC) exists in its current shape because of historical legacies and the ways in which occupational cultures can dictate organisational form. It looks institutionally the way it does today because its member entities grew in stages, a bit like “Topsy”, and were modelled on doctrine and precepts taken from overseas partners. If it sometimes acts in ways different from other parts of the New Zealand public sector that is because intelligence, as a state function, requires particular kinds of restrictions on processes and behaviours (see Annex 3). These can give rise to distinctive, sometimes highly tribal, professional cultures within and between the intelligence organisations themselves. Up to a point this is inevitable, and it is not necessarily a problem given the right internal and external accountability frameworks. By and large, in New Zealand, as far as the control of secret agencies goes, we have strong and internationally orthodox external public accountability arrangements; they were validated in a report by Sir Geoffrey Palmer in 2000. That said, anything to do with intelligence attracts close media and civil society scrutiny, and political bipartisanship cannot always be taken as a given.
- 2 For quite a long period the NZIC was seen predominantly as a foreign intelligence construct; the product was about international events, situations and actors, and mostly used to support the offshore engagements to which successive governments were committed. The principal linkages were those of the External Assessments Bureau (EAB), Directorate of Defence Intelligence and Security (DDIS) and Government Communications Security Bureau (GCSB) to the Ministry of Foreign Affairs and Trade (MFAT) and the New Zealand Defence Force (NZDF). New Zealand Security Intelligence Service (NZSIS) participation was more case-by-case. But that began to change around the 1990s, and more recently the NZIC has been in a period of significant growth and considerable flux, adapting itself, in terms of its membership and its outputs, to the contemporary national security agenda of our government. This agenda embraces shifting New Zealand indigenous or sovereign security concerns, especially in regard (post 9/11) to “homeland security”, as well as a variety of new foreign policy engagements with an international or regional security dimension, often collective in nature. Significant additional budget, enough to cope overall, if not entirely, with these multiple demand pressures has been available and new capital and operating funding has flowed into the sector’s infrastructure and processing machinery. Until now this has involved a bid scrutiny process by Officials’ Domestic and External Security Committee (Intelligence) (ODESC(I)) which, by general budget practice, and notwithstanding qualitative changes in Treasury access, may still seem lacking in contestability.
- 3 By the same token New Zealand’s national technical capacity to generate intelligence has achieved some critical mass. NZIC’s value to this and future governments lies in its overall operational consistency in its protective functions and in its offering timely and well-integrated assessments that enable national security decision makers to manage risks, short and medium term to our domestic and external interests. If it performs well, the NZIC can

help protect the state and give advantages that negate the limitations of small nations in the modern world.

- 4 The contemporary national security agenda is both wider and more complex than what has gone before; it is inherently more risk-laden and more demanding.
- 5 Given the emerging need for quite firm and ongoing fiscal restraint, it is only sensible to be asking what could be done, structurally or managerially to assure Ministers about NZIC's future performance.

The Way Ahead for the Contemporary NZIC; Findings, Propositions, Suggestions

- 6 From the conversations I and my review support team have conducted with NZIC principals and other stakeholders ideas about ways ahead for NZIC have emerged.
- 7 Some are generic propositions and suggestions; others are specific. The generic are:
 - i. Rearticulate the purposes of the NZIC and redefine its membership via updating the 2005 Domestic and External Security (DES) Committee of Cabinet "charter" (and Palmer's 2000 organogram). These are the "founding documents" for the national security system and the integration of the intelligence community within it. This update should identify roles and responsibilities of all those stakeholders in national security who create or consume intelligence as an all-sources product. And it should specify their relationships with the centre i.e. the coordination and integration machinery in terms of the accountability of individuals as well as committees and other collective bodies. In particular reconsider the purposes of ODESC(I) and the Officials' Domestic and External Security Committee (Policy) (ODESC(P)) from two perspectives; the ongoing need to integrate the intelligence community and the national security/emergency response community for broadly operational purposes; and the requirement to govern the intelligence system on behalf of Ministers, at a cross agency level, in terms of setting future direction, determining resourcing/capability priorities and performance-managing.
 - ii. Codify the connections between the national security agenda and the capabilities of intelligence products to clarify policy choices and enhance operational results. Measure if possible or at least weigh up carefully the NZIC's systemic capability to sustain quality inputs to national security goals and tasks.
 - iii. If necessary adjust, but do not lose the balance between those intelligence outputs directed at present risk mitigation and what needs to be devoted to revealing and understanding medium-term trends and intentions.
 - iv. Ensure, by means of regular Coordinator-convened meetings with all agency heads, that the NZIC as a whole is focussed on the nature of the value-add which different, specialist streams of collection or assessment can bring to particular tasks; manage from the centre to minimise duplication of input, oversubscription of effort and task-creep, whether self-selected or involuntary within agencies.
 - v. Develop a more dynamic process for priority setting, adjusting and monitoring; don't just impose a hierarchy on a plethora of 'subjects of possible interest' to consumers, but

evaluate risk and set/reset collection and assessment tasks, and give to the Coordinator the responsibility to recommend to ODESC either scaled up or scaled down effort across agencies; monitor progress towards achieving in practice greater flexibility of effort.

- vi. Encourage cross-agency flexibility and mobility in the use of human resources, particularly amongst staff whose professional role contributes to “finished” (assessed) intelligence product; a deeper assessment pool should permit a greater level of subject or sector specialisation across NZIC as a whole in areas of enduring importance to New Zealand.
 - vii. Guard against bad habits. Under pressure “dodgy” assessments can arise from policy or collector bias/capture. Reiterate the importance of objectivity, integrity and independence in intelligence assessments. Revalidate the role of the Director EAB to lead i.e. quality control a national assessments programme and an all sources current intelligence product that should bear upon national security matters at hand (including economic and trade risks) that should draw upon inputs from across the national security agenda, and be accessible to relevant Ministers/senior officials, and used in formal advice and decision taking. This might require revised TOR for the National Assessments Committee (NAC).
 - viii. Plan for something akin to an “efficiency dividend” from the NZIC. Require agency heads and their second tier managers to develop plans for cross-agency service delivery in selected areas where savings are clearly achievable and the risks of compromise of frontline effectiveness are manageable. Pooled corporate and back-office functions and shared processing and distribution technologies should be characteristic of the future NZIC. Set savings/reprioritisation targets for NZIC collectively. A framework for this process is set out in Annex 4.
- 8 There are also some specific suggestions about things not to do, and things to do structurally, which could help accomplish these goals. They go to the present set of arrangements for NZIC governance/authorisation, and performance accountability:
- i. There is not a strong case for restructuring i.e. a two or even three agency merger. Major machinery-of-government projects tend to have more hidden costs and longer payoff timelines than foreseen. NZSIS and GCSB would not fit easily together in terms of core outputs or culture and business practice, and both have unique centres of expertise that require specialised training and development regimes. They both collect secret intelligence, but in very different ways, and each has compartmentalising requirements for sensitive information from offshore partners. They already interact effectively on operations and projects where they need to, as the law permits. There is no “high-hanging” operational synergy that it would need a merger to unlock.
 - ii. It is more likely NZIC, especially NZSIS, will need to find synergies with the “homeland security” agencies (i.e. border/law enforcement/organised crime) in future as part of a contemporary national security agenda. These agencies which have always collected and used intelligence as part of their domestic missions are now approaching a new

threshold of integration as a public sector border cluster. But their targets have become far more globalised, and they are increasingly part of supranational intelligence networks, capable of a range of clandestine operations aimed at both prevention and pre-emption. Getting this new interface right operationally and legally is arguably the higher priority.

- iii. There is a case to look at actual or virtual integration on the assessment side.
- iv. The senior officials' committee, ODESC and the DES Committee of Cabinet to which it would normally report on intelligence matters should undertake NZIC governance at the systemic level. This means setting expectations and endorsing priorities (i.e. scale up/scale down) for intelligence outputs; reviewing performance at the strategic level against national security risks, determining institutional capabilities and resourcing levels. A structure for this – 'ODSEC (G)' is proposed. The Treasury and the State Services Commission (SSC) which have the tools and expertise but have not had the necessary levels of access or familiarity should be core contributors at this level (see Annex 8). But the central agency leadership and ultimate accountability should remain with the CE of the Department of the Prime Minister and Cabinet (DPMC) and operate through a DPMC based unit. Even if, in future, the Prime Minister were not the portfolio Minister for all three agencies, he/she would still be the essential actor on national security issues, and would chair the Cabinet DES Committee.
- v. The Domestic and External Security Group in DPMC drives the coordination machinery to accomplish whole-of-government response to national security risk. The Wintringham report, which follows up some recommendations by the Auditor-General in 2005, is likely to propose a methodology and process to better define and integrate the government's national security goals. It may also address roles and responsibilities within DESG. The Intelligence Coordinator, a second-tier position within DESG, has had a limited mandate and limited authority. In other jurisdictions the comparable function has been strengthened in recent years. The evolution of the NZIC and the recommended need to give direction to future performance and capability in systemic ways argue for a similar strengthening. But it will need to be considered in light of what is seen to be the appropriate span of responsibilities for the DESG Director, and having regard to what should continue to be the clear financial control and legal accountability expectations upon agency heads. This consideration will, of course, be sensitive to "what works in Wellington" but it can take advantage of some of the greater clarity of the role and function specification from other jurisdictions, (i.e. where, in the New Zealand system, and in whom, should the accountability for performing the function be located and the authority vested?).
- vi. In the UK, the Intelligence Coordinator equivalent has responsibility for the "single intelligence account", which I understand to mean that agency budget bids put up through the separate Ministers are scrutinised from a collective angle, and adjustments may be recommended. I am not sure whether, in fact, there is a single appropriation (for multiple agencies). But some closer understanding of how this works, in reality as well as in theory, might yield some practice that could be adapted for NZIC. And there may be closer to home models e.g. the Justice Sector budget management system.

- vii. The employment, remuneration and performance management of the Directors of NZSIS and GCSB are not standard. (NZSIS, by law, sits outside the State Sector Act altogether, and, in the case of GCSB, performance review by the State Services Commissioner is precluded). Although sharing a common Minister, the Prime Minister, and, by virtue of chairing ODESC, having greater visibility of performance than either of the other central agencies, the CEO of DPMC has no formal oversight role either. Both agencies do, in fact, behave as part of the state sector/public service in several important respects e.g. their HR and financial management regimes. In the appointment of agency heads recent practice (as with NZDF Chiefs and the Police Commissioner) has been for the Prime Minister to invite the State Services Commissioner to conduct a merit-based process. The momentum is clearly towards both agencies being drawn into the wider public management regime.
- viii. To take the next step and “mainstream” performance management, the two Acts could be amended. Alternatively the Prime Minister as Minister and by law, employer, could advise the two Directors that he wishes to introduce a new condition to their contracts of employment to enable regular performance reviews. The State Services Commissioner could then be appointed to undertake them. The present Directors, in my view, would accept this provided the more sensitive activities they undertake nationally, and with international partners, were not put at risk of compromise of the “need-to-know” principle by an overly intrusive review process which forced disclosure on them. I understand that the State Services Commissioner deals with similar caveats in respect of the performance of heads of other agencies who exercise statutory powers. And both agencies have established audit arrangements which are satisfactory to the Controller and Auditor-General. So it should be possible to find a modality. It would need to take account of the proposal in (iv) above for a new ODESC governance configuration.

Appendices

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Annex 1: Intelligence Agencies Review Terms of Reference - 27 May 2009

- 1 The Prime Minister has traditionally taken Ministerial responsibility for the two principal intelligence agencies, the Government Communications Security Bureau (GCSB), and the New Zealand Security Intelligence Service (NZSIS). In addition, within the Department of the Prime Minister and Cabinet (DPMC), the External Assessments Bureau (EAB) has a critical intelligence assessments role. These three entities are the only ones established solely for the collection and/or analysis of intelligence. Whilst other agencies collect and use intelligence in the course of their other roles it is GCSB, NZSIS, and EAB which form the core of the New Zealand Intelligence Community.
- 2 It has long been recognised that there needs to be effective coordination and oversight at a 'sectoral' level. This is provided via the Officials' Committee for Domestic and External Security Coordination (ODESC), which forms part of the intelligence system. Cabinet has agreed that ODESC, "shall provide oversight and policy direction to, and shall monitor the performance of, the New Zealand intelligence community and individual agencies. The Committee shall ensure there is full and effective co-ordination and co-operation with the New Zealand intelligence community and that there is no unnecessary overlap of activities or responsibilities".

The Review

- 3 There is a need to examine:
 - How we can optimise the effectiveness of our intelligence and security arrangements across the New Zealand intelligence community as a whole;
 - How we can extract further efficiency gains from the funding already provided, so as to be able to reinvest those gains back into more effective intelligence and security capability and delivery of results.
- 4 A review will be undertaken of the structure of New Zealand's current intelligence activities, to assess whether the present configuration across three agencies is optimal, or whether an alternative arrangement would be preferable. The Review will examine the three core intelligence agencies and assess whether their current structures and modes of operation are optimal for the Minister, and the government as a whole.
- 5 The review may, as appropriate, examine linkages with other agencies which generate or use intelligence, and may consider coordination mechanisms including ODESC(I).
- 6 The review will determine whether there are practical options for change in the way the intelligence agencies work to improve overall intelligence outcomes.
- 7 The Review will be undertaken under delegation from the State Services Commission acting in terms of his functions in section 6(a) of the State Sector Act 1988 and, in respect of the NZSIS, at the invitation of the Prime Minister in terms of section 11 of the State Sector Act 1988. Funding will be sought from GCSB and NZSIS to cover the costs of a suitable reviewer. A contribution will also be sought from DPMC.

- 8 Simon Murdoch will be appointed as reviewer by the State Services Commissioner. The aim is to conclude the review by 30 September 2009.
- 9 The reviewer will work with the relevant CEs to establish an effective process for the review. This may include inviting the relevant CEs to form a steering or reference group, and seeking whatever participation or assistance is needed from DPMC, SSC, or the Treasury.

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