

# Protecting New Zealand as a Free, Open and Democratic Society: The Role of the New Zealand Security Intelligence Service

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## Introduction

Thank you for the opportunity to talk to you today. The theme of my speech today is how the New Zealand Security Intelligence Service – the NZSIS – contributes towards protecting New Zealand as a free, open and democratic society.

My speech today will have a New Zealand focus. But of course, given the closeness of our two countries and the free-flow of people across the Tasman, New Zealand security matters can quickly become issues for Australia and vice-versa. The ability of New Zealand and Australia to understand each other's security environments, and to work together to tackle shared challenges, is a vital component in the defence of both our of countries

The NZSIS plays a critical role in the architecture of the New Zealand state. Our role encompasses domestic security (analogous to the role that ASIO has in Australia), foreign intelligence (the functions of ASIS) and protective security (incorporating vetting and advice on the security of the whole of the government system – similar to AGSVA and the protective security functions of the Attorney-General's Department respectively).

I have been Director of the NZSIS for just over two years. I think this is a good point to stop and reflect on the organisation that I lead. In particular, I want to answer three main questions over the course of this address:

- Firstly, what are the national security challenges that New Zealand faces as a country and how are these changing?

- Secondly, how well equipped is the NZSIS to meet these challenges? and
  - Thirdly, how does the NZSIS achieve the right balance between the need to maintain the secrecy necessary for us to undertake our work while also ensuring as much transparency and openness as we are able?
- Fundamentally, this is an issue of public confidence and trust.

Before I seek to answer these questions I'd like to spend a bit of time going back to the founding legislation of the NZSIS: the New Zealand Security Intelligence Service Act 1969.

The principles that underpin the performance of functions of the NZSIS Contained within the 1969 Act – under the somewhat obscurely numbered section 4AAA(1) – are the principles that underpin the functions of the NZSIS. I'd like to read these principles out to you:

*In performing its functions under this Act, the Security Intelligence Service-*

- a) contributes to keeping New Zealand society secure, independent, and free and democratic:*

This is perhaps the most important section in the whole Act. It sets out in black and white that the NZSIS is there to keep New Zealand *secure, independent, free and democratic*. Everything we do, and the reason we exist, comes back to this primary purpose. It is why I was so motivated to become the Director of Security and why I am just as passionate about the role two years on. This mission – underpinned and legitimised by an Act of Parliament almost fifty years ago – is why my staff and I come to work each day. It is why some NZSIS officers are willing to undertake roles that put them in harm's way. They are there to help keep New Zealand secure and to preserve our society as free, independent and democratic.

The second principle states that the NZSIS:

- b) contributes to the participation of New Zealand in the maintenance of international security:*

This clause is fairly self-explanatory. But it is worth noting that it provides for the NZSIS to contribute to international security, not just domestic security.

The third principle states that the NZSIS:

c) *acts-*

- i. in accordance with New Zealand law and all human rights standards recognised by New Zealand law, except to the extent that they are, in relation to national security, modified by enactment:*
- ii. in the discharge of its operational functions, independently and impartially:*
- iii. with integrity and professionalism:*
- iv. in a manner that facilitates effective democratic oversight.*

This confirms for the avoidance of doubt that the NZSIS must always operate within the law – recognising that we have special but lawful powers to take actions that would otherwise not be legal (such as intercepting communications to find out information from individuals or groups that may want to do harm to New Zealand).

We are also legislatively required to be impartial, independent and to act with integrity and professionalism. This requirement is embedded into the DNA of our staff.

As you may know, the NZ Government is currently considering its response to an Independent Review of Security and Intelligence led by Sir Michael Cullen (a former Deputy Prime Minister) and Dame Patsy Reddy (who will be New Zealand's next Governor General). While I cannot comment publicly on any proposed changes arising from this review – because public policy, as it affects the NZSIS, is a matter for democratically elected Members of Parliament, and the wider public, to consider - I would like to note the reviewers' penultimate paragraph in the foreword to their report:

*"The Act [the new single intelligence and security Act that the Sir Michael and Dame Patsy propose] should state clearly that its fundamental purpose is the protection of New Zealand as a free, open and democratic society. That then becomes the guiding principle by which the activities of the agencies must be undertaken and judged."*

The threats that New Zealand faces

Given the purpose of the NZSIS, the first question I want to address is: what are the threats that New Zealand faces (and, by implication, to what extent should New Zealand be worried by these threats)?

Looking globally, it is clear that the geopolitical 'tectonic plates' are shifting. Just like tectonic plates, when the geopolitical plates shift the world experiences tremors and eruptions at the fault lines.

We see this in the Middle East with the break-down of states following the short-lived optimism of the Arab Spring. Most obviously we have seen a geopolitical eruption with the rise of Da'esh.

But it is not only in the Middle East. We are seeing the resurgence of a more aggressive Russia, as seen in Crimea, Ukraine, Syria and elsewhere. The repositioning of the major powers is also playing out in areas like the South China Sea.

Of course, countries outside of these immediate hot spots are not immune, as you well know. The struggle for geopolitical influence extends around the globe, including South East Asia and the Pacific. Additionally, the internet and social media have broken down geographic boundaries like never before, meaning that cyber-attacks, cyber espionage, and radicalisation can happen anywhere in the world with the click of a button.

That is true for New Zealand, and means that we face security threats like every other country. In some areas, such as counter-terrorism, we are still comparatively fortunate. New Zealand has not suffered an attack at the hands of, or at least inspired by Da'esh. The New Zealand national threat level is LOW, meaning "a terrorist attack ... is assessed as possible, but is not expected." I am confident that the LOW threat assessment remains appropriate, although I think it is also fair to say that while the overall number

of individuals of concern remains small, there is a higher proportion of more concerning individuals than there were 18 months ago.

I have sometimes been asked why we treat terrorist threats differently from other violent or criminal matters. Perhaps this is a question that wouldn't be asked in Australia given the scale of threats and, unfortunately, the attacks that have happened here. But in New Zealand I am sometimes asked what the difference is between a lone-actor terrorist attack and the violence that occurs every week during drunken brawls and domestic violence attacks. My answer is that the purpose of a terrorist attack, as its name suggests, is to cause terror among the populace. So not only is terrorism a calculated and targeted act of violence against civilians, but it is also a symbolic act against the value system of the nation, and that is why it is a concern to security intelligence organisations such as ours.

For me, one of the things that I love about living in New Zealand is that most people walk the streets free from the fear of the type of events that have occurred in like-minded countries. Mostly people go about their lives without worrying that such events could happen in New Zealand.

As I have said, the chances are indeed low and that is wonderful. But ultimately it is my job, and the job of my organisation, to do everything we can to keep it this way. As I have said before, it is our job to worry so that New Zealanders and those who visit New Zealand don't have to. Of course there can be no guarantees, but a professional, competent security agency is a vital part in the government's armour in keeping New Zealand secure.

In talking about terrorism I would like to make the point – which I have regularly made but it never gets reported – that terrorism is not a 'Muslim' issue. The New Zealand magazine, *North and South*, recently had an article focused on radical Islam. In the *North and South* article a member of the Muslim community was reported as saying that within any religion there are fanatics who "steal" the faith or exploit it for political gain. She said "People say they are afraid of Muslims because they think ISIS represents Muslims. That's what they think. But that's only valid if you say that the KKK represents Christianity. If only they could see what ISIS is doing to the Muslim world, what they're doing in my home country Iraq ..."

I think that is a fair perspective. The Muslim community leaders that I have spoken with have stressed that the sort of individuals who are of interest to the NZSIS do not adhere to the interpretation of Islam that represents the vast majority of New Zealand's Muslim population. Using Islam as a justification for violent acts is abhorrent to the vast majority of New Zealand Muslims, who contribute so much to our country. Identifying the underlying causes of radicalisation is the subject of a lot of research internationally, but at least some radicalised individuals are youths who are misguidedly searching for a meaningful cause and who are susceptible to very calculated extremist grooming.

The unfortunate reality is that a terrorist event in New Zealand would probably have a very negative impact on New Zealand Muslims, because of the likely public backlash.

Avoiding such a situation is strongly in the interests of both the NZSIS and the Muslim community. That community is an important part of the New Zealand population that my agency serves.

I believe that we should collectively do all we can to keep a small number of people from threatening our way of life, our diverse communities, and the values – such as inclusiveness and trust – that we cherish so much.

Unsurprisingly, given overseas experience, the NZSIS puts a lot of effort into counter-terrorism, but we are also focused on other significant threats. New Zealand's key institutions – government departments and major businesses – are far more likely to be threatened by those seeking to steal their information and data than they are from a terrorist attack. Countering espionage and helping institutions protect their people, information and assets are also significant, if under-reported, parts of our work. The NZSIS plays a key role in vetting people whose work requires them to access the most sensitive government information. We also run the whole-of-government Protective Security Requirements (PSR). The PSR includes mandatory security requirements for 36 government agencies. It is designed to help agencies work out what security threats face their people (and people who interact with them), their assets and their information. We then help agencies figure out what they can do to keep themselves more secure. The PSR is available online

and it is also being used by non-government organisations and companies in the private sector as an accessible and practical framework to assess and improve security.

How well placed is the NZSIS to respond to these threats?

Considering the nature of current and likely future threats, the next obvious question is: how well placed is the NZSIS to help keep New Zealand society secure?

When I started as Director of Security two years ago, it was on the back of a significant Central Agency review into the NZSIS. I think a polite summary of the report was that the NZSIS, along with the wider New Zealand Intelligence Community, had many 'challenges'. In reality the review showed that this was an organisation that had major short-comings.

With the benefit of hindsight, the secrecy that the NZSIS had operated under since its inception had, in some respects, done it considerable damage. Because of its impenetrable exterior and isolation, I don't think anybody was aware how far it had fallen behind over a period of decades, in terms of the systems, policies and procedures that one would find in any modern organisation.

So the last two years have involved a significant series of internal improvements within the NZSIS. In almost every aspect, from strategy and planning to HR and finance systems, to introducing a proper compliance framework, we are building or rebuilding core systems. Moreover, we had to do this while the operational tempo had never been greater. To give you a sense of this, when I first applied for the job, ISIL nor terrorism were mentioned in my job interview and even the Central Agency review devoted only a handful of words to the issue. Since then the NZSIS has been transformed from having a 5 day a week, 9 to 5 operation to an organisation that is regularly operating 24/7.

You may have heard about the additional investment that the NZSIS received in last week's New Zealand Budget. This investment was made following a rigorous process. The Minister of Finance sets a very high bar for Budget bids. The New Zealand Intelligence Community developed its capability bid collectively over two years, involving more than 20,000 hours of work. One of

the benefits of this process is that I suspect that the New Zealand Intelligence Community knows its business better than just about any other government department.

The money represents, I think, an endorsement from Ministers in the direction that the NZSIS is heading, a confidence that we can deliver and a clear expectation that we will need to continue to lift our ability to keep New Zealanders secure.

The additional investment will enable us, firstly, to continue our programme of ensuring that our core systems are fit-for-purpose and able to support the demands of a modern business; and secondly, to grow our capability to respond to the threats we are facing.

For obvious reasons I can't specify where the investment will be targeted. But some of the operational areas in which we will invest include:

- additional investigators and collection staff to increase coverage of domestic and international security threats, including counter-terrorism, counter-espionage and counter-intelligence; and
- ensuring that government departments' systems, people and communications are protected, including making the vetting process more effective, efficient and customer-focused.

It will take us the full four years of the investment pathway to safely and successfully grow our capabilities. But at the end of that time we will be in a significantly better position to meet the demands we face and the technological support we need to do our work. Of course we will never be the size of our sister agencies in Australia – we will always have to be selective about what we can and cannot do. But the investment will go a long way to delivering my vision for the NZSIS, which is an organisation that is 'ahead of the curve': providing indispensable security and intelligence services underpinned by high public confidence and trust.



How do we ensure public confidence and trust when much of our work is secret?

The final question that I wish to answer is: how do we ensure public confidence and trust when much of our work necessarily has to be carried out away from the public spotlight?

The reality is that the NZSIS cannot disclose a lot of what it does publicly. There are several reasons for this. The first is security. The NZSIS has lawful, covert capabilities to find out information that individuals or groups do not want us to know – such as their intention to carry out acts of terror or to steal information. The more we say about the people we are investigating, and the particular approaches we use to find out information, the more our adversaries will learn and adapt. One of the consequences of the Snowden leaks is that it is now standard for our targets to use encrypted communications, making it harder for us to understand their intentions and motivations. So security is a big reason for not providing detailed information about our work.

Another reason is privacy. We are often dealing with incomplete information about individuals. In many cases we are combining snippets of information and strands of intelligence to build up a coherent intelligence picture, which can be especially challenging when these individuals are often actively trying to conceal their activities. A picture may emerge that a person is definitely of security concern, but in other cases the investigation ends when we rule an individual *out* in terms of being of security interest, much in the same way a criminal investigation by Police seeks to rule out suspects. Keeping secret means that we can determine that individuals are not of concern without the loss of privacy that would occur if we had publicly identified them or provided enough information that they were able to be publicly identified.

So, if secrecy will continue to play a significant part in what we do, how do we ensure the appropriate level of transparency and openness, and how do we create public trust? I'd like to propose four ways:

- Firstly, I think that as Director of Security, I have a responsibility to communicate in fora such as this about the work that we do and why it

matters. It is about openly and honestly explaining what we do and the checks and balances under which we operate.

It is about explaining that while the work we do is undoubtedly “beyond ordinary” – it *is* “cool” working on the kinds of things we are asked to do – our work is underpinned by agency systems and processes that are, in most ways, as normal as any other government department (although I don’t think I’ll ever quite get used to the intense security measures in our headquarters: speed gates, the greyed-out blinds and not being able to have my mobile with me at work). But despite the unusual aspects of working in an intelligence agency, the NZSIS is still a very normal part of the state, which is why our legislation dates back almost fifty years and the NZSIS itself is coming up for its sixtieth birthday.

It is also about ensuring that we openly and transparently respond to Privacy Act and Official Information Act requests and proactively put as much information into the public domain as possible. So, for example, we will be releasing publicly a summary of the New Zealand Intelligence Community’s Four Year Plan and redacted versions of the 2016 Budget Bid Cabinet papers as part of Treasury’s proactive OIA release. This will be a first for the New Zealand Intelligence Community and a further step towards us being as open and transparent as we can.

- Secondly, while the public cannot see everything that we do, we have independent overseers who can. The Inspector-General of Intelligence and Security - or the “IGIS” as she is commonly known in the New Zealand Intelligence Community – has the primary role as the ‘watcher of the watchers’. She can and does investigate what we do and makes her findings and recommendations public. The publication of those reports can be painful for us, especially while we are in the process of addressing the underlying problems, but I have no doubt that the Inspector-General’s constant gaze keeps us focused and motivated to improve. On behalf of the public, the Inspector-General beams the sunshine into the intelligence agencies that is the best disinfectant. But it would be both simplistic and unsatisfactory to characterise the

situation as one where public trust rests upon the Inspector-General's ability to investigate an untrustworthy NZSIS. Such a characterisation would be inaccurate for several reasons. For a start, it puts unrealistic expectations and responsibilities on the Inspector-General. It is not physically possible for her and her staff to review every single thing that we do. The Inspector-General does undertake detailed investigations, and they are very important, but her influence is more profound and widespread than that. She is interested in more than specific operations or warrants; her focus is also on our work at a system level. She wants to know that our underlying policies and processes are robust enough to ensure that we are effective and compliant. She also has a very significant influence at a cultural level. Within the NZSIS we all know that she *may* choose to review or investigate anything we are working on. Her ability to investigate anything means that we are always asking: what would the IGIS think of this? I regularly hear my staff ask this question in the context of decisions they are taking, and I regularly ask myself the same question. I sometimes think of it as the "IGIS on my shoulder". This means that the Inspector-General's influence is culturally profound, and more far-reaching than the specific investigations she and her staff undertake.

- My third point about how we create public trust and confidence is connected to this. Our great systems, processes and people need to be obvious to everybody who comes across us, whether it's independent reviewers, the Auditor-General, Ministers, the Leader of the Opposition, journalists, members of the public, or liaison partners with whom we interact, or those reading our Annual Report. Our story should be consistent, and based on facts that we are proud of and for which we have evidence.

And as we strengthen our foundations I feel increasingly confident about that narrative. In many areas – and particularly those involving intrusive capabilities and formal legal authorisation – our processes are already strong. For example, the process to obtain an intelligence warrant involves putting together a meticulously crafted application where each

statement is supported by carefully documented and assessed intelligence, review by our in-house lawyers, sign-off at the Deputy Director level, a full review by me as Director followed by my affirmation before an external lawyer that the content of the application is true to the best of my knowledge, a further review (in the case of a domestic interception warrant) by the Commissioner of Security Warrants, and then joint approval by the Commissioner and the Minister In Charge of the NZSIS. Every warrant is inspected after the fact by the Office of the Inspector-General.

That is one example of careful process. But systems and procedures are only as good as the staff who follow them. That is why trust and integrity are “baked in” to our recruitment processes. When national security organisations such as the NZSIS recruit, we require candidates to go through a highly intrusive vetting process: we ask about everything from their most detailed financial information to their personal relationships. The purpose of the vetting process is to ensure that the people who have access to the most sensitive classified information are not open to coercion or blackmail, and are trustworthy. We also need to model integrity at every level of the organisation.

From the day I started I have always been impressed by the level of care shown by my staff. But it is not just attention to detail or to the letter of the law, it is also hard-wired into the culture of the organisation to ask always whether an investigation or a form of collection is necessary and proportionate. I can think of an example that happened within the last year where the Deputy Director responsible for the intelligence directorate approached me with a warrant involving a particularly intrusive form of surveillance. The Deputy Director said that he supported the use of this form of intelligence collection, and considered that it was both legal and proportionate. He wanted me to know, however, that there had been a lot of internal debate in his team. He suggested that I speak with one of the managers who had a different perspective – not about legality, but about proportionality – as to whether the proposed way forward was justified in all the

circumstances. I then had a separate, one-on-one conversation with that manager, and she had a very thoughtful and valid perspective. Then I slept on it. The result of hearing both sides of the issue was that we did undertake the surveillance operation, but we made a number of modifications to our approach. We reduced the length of time for which the warrant was sought and introduced a mandatory weekly review to determine whether the warrant should be continued or cancelled, depending on the value of the intelligence being collected and any other relevant factors. In the end, the form of collection did prove its worth, but the surveillance was only required for a matter of weeks and after that the warrant was cancelled. I thought that this was a sign of a healthy organisational culture, in which we encourage every person to ask the hard questions and we actively seek different perspectives.

- The fourth way in which we build public trust and confidence is by owning our mistakes. No organisation is perfect and ours isn't either. Especially while we are still in the process of improving our systems – and growing at the same time – we have and will make mistakes. Something I learned from a previous Chief of Defence Force and New Zealand's current Governor General, Sir Jerry Mateparae, is the phrase "own it, fix it, learn from it and move on." I think that applies as much at the organisational level as it does at the individual level. Acknowledging our mistakes honestly and learning from them is essential.

#### Final thoughts

I've traversed a lot of ground during this address, including the legislative basis that defines our work, the threats facing New Zealand, the capability requirements of the NZSIS, and fundamental questions about the balance between secrecy and transparency.

As I have said, one of the difficulties of my role is working out how much information I can publicly reveal. Every time I deny something, I implicitly confirm something else later on if I don't deny this also. A lack of denial is automatically taken as confirmation, but sometimes I am not in a position to explain the actual situation because it involves delicate sources or classified information. So how to correct inaccuracies can be a real challenge.

Recently this problem played out in the case of a high priority investigation that the NZSIS undertook. As I explained earlier, obtaining an intelligence warrant involves a meticulous process. However, in 2014 the Government passed legislation that enables the NZSIS to initiate urgent surveillance for a 24 hour period if the Director of Security is satisfied that this is needed for the “detection, investigation or prevention of any terrorist activity”. The NZSIS is also required to report publicly on how many times urgent authorisations have been granted.

In March, I reported that I approved an urgent authorisation for the first time. This led to media speculation as to who the potential individual of concern might have been. Indeed, one media outlet actually named an individual whom they thought may have been the subject of the investigation. I was not able to comment on that speculation. The irony in this case was that the NZSIS was seeking to protect peoples’ privacy (the individual or individuals whom we were investigating), while the news media were seeking to expose the identity of someone whom they thought may have been the target. If I correct a mis-statement in the media, then I implicitly confirm another if I don’t do the same in another case. If I don’t correct a mis-statement then an individual may have been wrongly tarred.

So how do we strike the right balance between secrecy and transparency? At the height of another local media furore recently – a long-serving staff member, who has been in the Service for 32 years and worked for five directors during her time said to me: “well, you’re experiencing what all of your predecessors have experienced. They all arrived with the intention of increasing transparency and all of them threw up their hands and said it’s just too hard.”

I have a lot of sympathy for my predecessors – believe me! – but times have changed and I understand clearly that public support and our authorising environment depend very much on our providing greater openness and transparency. I hope that the greater public engagement that the Director of the Government Communications Security Bureau (GCSB) and I have been

undertaking will help New Zealand to have a more measured, better informed public debate and discussion about the issues involving security and intelligence. As part of that increasing maturity, I want to get beyond being caricatured as either the “hero” or the “zero.” I am neither. I am a public servant doing the best job I can to lead an organisation mandated by Parliament to do its work. And my staff are neither Inspector Clouseau nor James Bond. They are dedicated, hard-working New Zealanders that go the extra mile to keep New Zealand and New Zealanders safe and secure. They do work in an environment that is beyond ordinary, and many of them have skills and attributes that are also beyond ordinary. Because they operate in a complex operational environment they will sometimes make mistakes. But overwhelmingly the work they do is valuable and useful.

That’s why giving addresses such as this one is so important. Not everyone will always ‘get’ what we do, understand why it matters, or really appreciate the difficulties of working in a covert environment. Some people will always misrepresent what we do or be opposed to our existence. But I am confident that most of the public understand our value and why we are needed. We see this every day when we ask members of the public to help us and they are happy to do so. That public support was confirmed a couple of years ago in some polling undertaken by the New Zealand Intelligence Community that showed that over 76% of New Zealanders believe that the NZSIS is “good” or “very good” for New Zealand.

So today is another step in explaining what we do and why it matters. Hopefully you have a better sense of the NZSIS and the role we play in keeping New Zealand society secure, free, open and democratic.

Thank you for your time.