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Restoring Public Trust and Confidence in New Zealand's Intelligence and Security Agencies

is a parliamentary commissioner for security the missing key?

Abstract

New Zealand's two intelligence and security agencies play crucial roles in preserving our democracy and protecting the public from various harms associated with political violence. Scandals involving intelligence professionals likely diminish public trust and confidence in these agencies, which appears to be very low among some marginalised communities and minority groups. While official secrecy is required for sound strategic and operational reasons, it hampers meaningful articulation of the value proposition underpinning these agencies and their work. Reassuring the public is vital for the intelligence

and security agencies, given their highly intrusive powers. Rather than more reviews of, increased transparency by, or stronger accountability over the New Zealand Security Intelligence Service and the Government Communications Security Bureau, we suggest that a parliamentary commissioner for security is needed to help foster a level of public awareness and build the understanding required for trust and confidence to be restored in these agencies.

Keywords counterterrorism, intelligence and security, parliamentary oversight, royal commission of inquiry, intelligence sector reform

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In the aftermath of the terrorist attack on two Christchurch mosques on 15 March 2019, during which Brenton Harrison Tarrant killed 51 Muslims and attempted to murder a further 40 as they were gathering for Friday prayer, New Zealand parliamentarians, public servants and members of the public began to scrutinise New Zealand's security arrangements, including the roles played by intelligence. This scrutiny has occurred in a context where scandals involving intelligence professionals have likely diminished public trust and confidence in their agencies. Of course, restoring the public's trust and confidence in their work is not the only challenge facing New Zealand's intelligence and security agencies today, but it is one that has taken on increased urgency following the Christchurch terrorist attack. To date, most of the efforts to address this important question of public trust and confidence involve reviews of, and inquiries into, certain aspects of the agencies' conduct, calls for increased levels of transparency by those agencies, and recommendations for stronger public accountability measures over intelligence activities. These laudable efforts tend to support a broader aim of improving the effectiveness and efficiency of agency performance.

Ko tō Tātou Kāinga Tēnei, the report delivered by the royal commission of inquiry into the terrorist attack on the Christchurch masjidain, paints a disturbing picture of New Zealand's current approach to counterterrorism, raising concerns about New Zealand's approach to national security more broadly. It suggests change is needed to the way in which intelligence is collected and used for counterterrorism purposes: specifically, it recommends a new organisation, new strategy, and a new annual 'threat-scape' report, as well as a new group to advise the government, a new programme to fund independent New Zealand-specific research, and an annual hui involving central and local government, communities and civil society, the private sector and researchers. The latter recommendations are important – and radical – because they seek to bring the public's insight and voice into the national security system. Missing from these recommendations, however, is an authoritative, independent and expert perspective that not only assesses New

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Zealand's national security system and its whole-of-government approach, but can also raise public awareness about security and intelligence matters, and build the capacity of the public to engage in informed debate and careful deliberation on those important matters. If the New Zealand government is going to restore the public's trust and confidence in its intelligence and security agencies, then it needs to foster a society of informed citizens who are socially aware and politically literate. Since the government has accepted all of the royal commission's recommendations, the present moment could not be more propitious for bold new thinking.

In what follows we suggest that a parliamentary commissioner for security is the missing key needed to foster an informed citizenry because he or she could provide reliable and independent information, analysis and advice on New Zealand's security challenges to local councils, businesses, tangata whenua, community groups and associations, universities and other public agencies. This would help raise the level of public awareness and build the widespread understanding needed for trust and confidence in these agencies to be restored. The commissioner would not only provide the public with information on New

Zealand intelligence and security matters and help build New Zealanders' ability to understand that information, but would also create congenial spaces where the public can debate these issues and then deliberate on those debates in a manner consistent with our democratic traditions. While the work of such a commissioner would benefit the New Zealand public, parliamentarians and public servants would benefit too. As an officer of Parliament, this commissioner could investigate any matter where New Zealand's security may be adversely affected and could assess New Zealand's national security system, including its intelligence and security agencies. This would help the government better prepare New Zealand for routine, as well as surprise and novel, security challenges.

New Zealand's intelligence and security agencies

Given the serious threats posed by malevolent individuals and groups – such as espionage, sabotage and subversion, including those conveyed through advanced, sophisticated and persistent cyber-attacks – New Zealand needs intelligence and security agencies that ensure the integrity of our democratic institutions. We also need agencies that protect New Zealanders from the harms associated with various forms of political violence, including, but not only, transnational terrorism and violent extremism.

New Zealand has two such agencies designated as intelligence and security agencies under section 7 of the Intelligence and Security Act 2017. Founded in 1956 as the New Zealand Security Service, the New Zealand Security Intelligence Service (NZSIS) operated for 13 years under an order-in-council (Domestic and External Security Secretariat, 2000). Parliament passed the New Zealand Security Intelligence Service Act in 1969, altering the organisation's name and giving it a legislative base. The NZSIS specialises in human intelligence and delivers protective services, most notably recommendations on the fitness of individual public servants to hold the security clearances required to access, store or use classified information.

The Government Communications Security Bureau (GCSB) was formally established in 1977 as a civilian agency

within the Defence establishment, though the government had conducted signals intelligence operations during the Second World War (Ball, Lord and Thatcher, 2011). In addition to providing signals intelligence, the GCSB also delivers information assurance in the form of advice and support to protect the government's communications and information systems, as well as cybersecurity services. The GCSB became an entity separate from the Defence establishment in 1982 and, in 2003, Parliament passed the Government Communications Security Bureau Act.

The relationship between the NZSIS and the GCSB has matured in recent years. Whereas in the early 2000s the agencies seldom referred publicly to one another, by the mid-2000s both were announcing new joint enterprises, such as the Combined Threat Assessment Group and the Counter-Proliferation Joint Service. In the early 2010s the agencies heralded the development of a joint New Zealand intelligence community statement of intent and four-year budget plan, the establishment of a new business unit called Intelligence Community Shared Services, their intent to foster a culture of cooperation and shared purpose, and a One Workforce strategy designed to enable lateral transfers between the NZSIS and the GCSB. The NZSIS's relocation to Pipitea House, near Parliament, alongside the GCSB sought 'to achieve deepened collaboration and an efficiency dividend for NZSIS and GCSB through operations and combined support functions' (New Zealand Security Intelligence Service, 2013, pp.6–7). In 2011 the NZSIS reported that it continued to work closely with the GCSB to counter cyber-related threats, and by 2015 both agencies acknowledged that they worked together on national security operations, including on counterterrorism.

Both agencies have grown in terms of funding and staffing. In 2000/01 NZSIS's expenditure was \$11.5m, whereas for the year ending in June 2020 it was \$91m; over the same period, the GCSB's expenditure grew from \$20m to \$134m. Staffing numbers increased from 115 in 2000 to 367 in 2020 for the NZSIS and from 280 to 488 over the same period for the GCSB.¹ In 2017 New Zealand parliamentarians granted both agencies an array of greater

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information-gathering and surveillance powers, helped formalise their working relationships with businesses operating within the financial and telecommunications sectors, and provided stronger secrecy provisions for their work.

The value of this growth, however, should be assessed against the need to better prepare New Zealand for routine and surprise and novel security challenges. The recent growth of the NZSIS and the GCSB ought to raise some eyebrows because New Zealand intelligence professionals tend to follow a very broad definition of national security. According to officials at the Department of the Prime Minister and Cabinet, national security is

the condition which permits the citizens of a state to go about their daily business confidently free from fear and able to make the most of opportunities to advance their way of life. It encompasses the preparedness, protection and preservation of people, and of property and information, both tangible and intangible. (Department of the Prime Minister and Cabinet, 2016, p.7; see also Department of the Prime Minister and Cabinet, 2011, p.3)

This definition was approved by a Cabinet decision in 2011. The definition is problematic because it renders opaque the distinction between external and domestic security threats, which creates an environment where the New Zealand population might be treated not only as an object worthy of the government's

protection, but also as a source of, or conduit for, serious danger.²

In its search for security the New Zealand government has applied an extremely broad-ranging 'all hazards, all risks' approach to its national security system which covers 'state and armed conflict, transnational organised crime, cyber security incidents, natural hazards, biosecurity events and pandemics' (Department of the Prime Minister and Cabinet, 2016, p.7). The Intelligence and Security Act 2017 omits a definition of national security, even though the key objectives of New Zealand's intelligence and security agencies are:

- (a) the protection of New Zealand's national security; and
- (b) the international relations and well-being of New Zealand; and
- (c) the economic well-being of New Zealand. (s9)

Without defining any of these key terms, this Act presents national security as something distinct from New Zealand's economic well-being. It weakens the once strong connection between intelligence gathering and national security because it provides the NZSIS and the GCSB with an expansive operating environment, limited only by the elasticity of these vaguely worded objectives (Rogers, 2018).

Since the turn of the millennium, senior officials at the Department of the Prime Minister and Cabinet have, to varying extents, asserted their leadership over the NZSIS and the GCSB, hosting the National Assessments Bureau (formerly the External Assessment Bureau) and chairing the Officials Committee on Domestic and External Security Coordination. They have established themselves as *primus inter pares* within the broader national security sector, not least because their proximity to executive power enables them to seize responsibility for coordinating the whole-of-government responses to a dizzyingly broad array of security hazards and risks. More recently, the department has undergone organisational change and now has a National Security Group comprising directorates dealing with the national security system, national security policy and the national security workforce.

As mentioned above, the NZSIS and the GCSB operate under legislative frameworks

that authorise, but also place limits on, their intelligence activities. The New Zealand Security Intelligence Service Act 1969 (amended in 1977, 1996, twice in 1999, and again in 2003, 2011 and 2014) and the Government Communications Security Bureau Act 2003 (amended in 2013) were repealed by the Intelligence and Security Act 2017 (which also repealed the Inspector-General of Intelligence and Security Act 1996 and the Intelligence and Security Committee Act 1996). Other relevant legislation includes the Terrorism Suppression Act 2002, the Search and Surveillance Act 2012, the Telecommunications (Interception Capability and Security) Act 2013, and the Terrorism Suppression (Control Orders) Act 2019. The intelligence activities of the two agencies are monitored by the inspector-general of intelligence and security and agency performance is scrutinised by Parliament's Intelligence and Security Committee.

Low public awareness, trust and confidence

Scandals are likely to diminish the public's trust and confidence in New Zealand's intelligence and security agencies. Like their overseas counterparts, New Zealand's agencies are no strangers to controversy. Given the official secrecy that necessarily surrounds intelligence-gathering activities, it is unsurprising that most New Zealanders do not fully understand the work undertaken by the NZSIS and the GCSB. Surveys indicate that fewer than 10% of New Zealanders can name either of the agencies (Curia Market Research, 2014, 2016). When these agencies appear in the media's spotlight, it is often due to some operational failure, such as when a protective dome was deflated by protestors at the GCSB's Waihopai station (Stuff, 2009), or an NZSIS officer was caught breaking into somebody's home (Manning, 1999), rather than to celebrate some success. Widely reported at the time, the unlawful entry by an NZSIS officer into a private dwelling where a New Zealander had a right to privacy caused concern among the public.

William Sutch, a senior public servant, was suspected of being a spy for Soviet intelligence in the mid-1970s, but was acquitted of charges laid under the Official Secrets Act 1951 (Hunt, 2007). It was subsequently confirmed by the chief

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ombudsman, Guy Powles, that the NZSIS had exceeded its lawful powers in its investigation of Sutch, and had not corrected the prime minister's public statements on the matter even though it knew these comments to be incorrect and misleading (Powles, 1976). Powles did, however, refute several allegations that were circulating in public that were damaging to the NZSIS's credibility reputation. More recently, investigative journalist Nicky Hager has made important contributions to the public's understanding of intelligence and security matters by highlighting particularly controversial aspects in his work (Hager, 1996, 2011, 2014; Hager and Stephenson, 2017).

Perhaps the most high-profile scandal concerns the GCSB's unlawful surveillance of Kim Dotcom. The bureau had monitored Dotcom, a German-Finnish entrepreneur, to assist the New Zealand Police with the execution of a search warrant on 22 January 2012. Dotcom and his associates were arrested that day for alleged violations of US copyright law in accordance with a Mutual Legal Assistance Treaty between New Zealand and the United States (see Cullen and Reddy, 2016, p.14, note 4). The New Zealand public become aware on 9 August 2012 that the GCSB had conducted surveillance, which was unlawful because Dotcom had been granted permanent resident status in New Zealand, when Detective Inspector Grant Wormald admitted, under questioning at the High

Court in Auckland, that the GCSB had assisted the raid he led on Dotcom's home (Winkelmann, 2013). The Dotcom affair was sufficiently scandalous for the GCSB to commission a review of its compliance systems and processes, and for the reviewer, Rebecca Kitteridge, to write that the report was released, in part, to restore public trust and confidence in the GCSB following the revelation of unlawful surveillance (Kitteridge, 2013). Kitteridge's review made the public aware that the GCSB had conducted surveillance of a further 55 cases involving 88 individuals to support law enforcement agencies, and that this surveillance may also have been unlawful because it appeared to directly contravene New Zealand law at the time, as section 14 of the Government Communications Security Bureau Act 2003 stated that: 'the Director, any employee of the Bureau, and any person acting on behalf of the Bureau must not authorise or do anything for the purpose of intercepting the private communications of a person who is a New Zealand citizen or a permanent resident of New Zealand'.

More damaging, perhaps, was the unauthorised disclosure of classified material from the US National Security Agency by Edward Snowden in 2013. This disclosure revealed the invasive nature and global scope of National Security Agency surveillance operations. Unlike high-profile cases of espionage involving an insider procuring secret information for a foreign government, Snowden's disclosure was made to the media to better inform US citizens. The vast quantity of documents and the exposure they received worldwide means that Snowden's disclosure must surely rank among the most serious leaks of all time. It raised uncomfortable questions here about the GCSB's surveillance of New Zealand's Pacific Island neighbours, as well as 'mass surveillance' of New Zealanders. Snowden's revelations, and the use of these leaks by political parties, were so important that the 2014 general election was dubbed by political analysts as 'moments of truth' (Johansson and Levine, 2015).

If these scandals diminish public trust and confidence in the NZSIS and the GCSB, then allegations of war crimes committed by the New Zealand Defence Force in Afghanistan do little to alleviate those fears

and suspicions. The close working relationship between the intelligence and security agencies and the New Zealand Special Air Service (NZSAS) featured in the inquiry into Operation Burnham, which, led by Supreme Court judge Terence Arnold and former prime minister Geoffrey Palmer, examined serious allegations that members of the NZSAS intentionally killed civilians in Afghanistan. The inquiry did not result in any charges being laid, but the potential involvement of the intelligence and security agencies in committing alleged war crimes was sufficient grounds for the inspector-general of intelligence and security to take an interest and open an investigation.

Surveys of public opinion suggest that most New Zealanders do not feel safer after the significant growth of New Zealand's intelligence and security agencies, which followed the terrorist attacks on New York and Washington on 11 September 2001 and two decades of the so-called 'war on terror'. This sense of insecurity is acutely experienced by minority groups and marginalised communities, which was powerfully demonstrated by comments made at He Whenua Taurikura, the recent hui on countering terrorism and violent extremism held last year in Christchurch. These fears, and the frustration of not having these fears acknowledged by intelligence and security professionals, are plain to see in the report prepared by the royal commission as well (see below).

While the veil of official secrecy is a strategic and operational necessity for the NZSIS and the GCSB to conduct intelligence and security work, it hampers those agencies when they seek to demonstrate their value proposition to the New Zealand public. Cheryl Gwyn, the former inspector-general of intelligence and security, questioned the need for so much of the material held by the agencies to be classified, but we have yet to see a greater degree of agency transparency in response (Office of the Inspector-General of Intelligence and Security, 2018).

Restoring public trust and confidence

Maintaining public trust and confidence is important for any public service organisation, but it is crucial for intelligence and security agencies that exercise what Brendan Horsley, the current inspector-general, describes as

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'intrusive and far-reaching powers' (Office of the Inspector-General of Intelligence and Security, 2021, p.2). Parliamentarians and public servants have made serious attempts to restore this trust and confidence in the NZSIS and the GCSB.

Parliamentarians introduced a statutory requirement for periodic reviews of New Zealand's intelligence and security agencies. The government appointed Michael Cullen and Patsy Reddy in 2015 to review the legislative framework of the NZSIS and the GCSB. In the immediate aftermath of the terrorist attack in Christchurch on 15 March 2019, Prime Minister Jacinda Ardern announced that the government would establish a royal commission of inquiry. The royal commission was chaired by William Young and Jacqui Caine was appointed as member. The reports that conclude these two reviews are substantive documents: written for public consumption, they make far-reaching recommendations, such as enacting a single piece of legislation to govern the operation of New Zealand's intelligence and security agencies (Cullen and Reddy, 2016), and establishing a new national intelligence and security agency responsible for strategic

intelligence and security leadership functions (Young and Caine, 2020).

Senior public servants have also commissioned their own reviews on various aspects of the work performed by the two intelligence and security agencies. Consultants hired (or seconded) include Simon Murdoch, Michael Wintringham, Rebecca Kitteridge, Peter Bushnell, Garry Wilson, Sandi Beattie, Geoff Dangerfield, Doug Martin and Simon Mount. Their resumes are impressive and most include experience as senior public servants. Even though their reports focus on enhancing the effectiveness and efficiency of the agencies' performance as a means of demonstrating greater public value from the government's ongoing investment in these agencies, most of the reviewers point to the public release of their reports as an important act of transparency.

The governance arrangements over the agencies has evolved appreciably too. In 2014 Prime Minister John Key created a new ministerial portfolio for national security and intelligence, and shifted the ministerial responsibility for the two intelligence and security agencies elsewhere within Cabinet. Whereas under the previous arrangement the prime minister was, in effect, holding him or herself to account, the minister responsible for the NZSIS and the GCSB is now held accountable for the proper and efficient performance of agency functions by the House of Representatives through the Intelligence and Security Committee.

Parliamentarians introduced a new check on agency operations in the form of an authorisation regime using two types of intelligence warrants under the Intelligence and Security Act 2017. This standardised the procedure for both agencies. Type 1 intelligence warrants must be sought by the agencies when their focus is a New Zealand citizen or permanent resident and are issued jointly by the minister responsible for the NZSIS and/or the GCSB and a commissioner of intelligence warrants. Type 2 intelligence warrants relate to everyone else and are issued only by the authorising minister(s), but can involve the minister of foreign affairs in certain situations. This new authorisation regime seeks to introduce a special measure through Type 1 warrants

that protects the privacy rights of New Zealanders, leaving foreigners fair game for intelligence collectors. Both types of warrants can be issued for the purposes of New Zealand's national security, international relations and well-being, and economic well-being.

Not only has the scope of powers granted to the inspector-general of intelligence and security been recalibrated to match the intelligence and security agencies' new, wider statutory functions; the previous prohibition on inquiring into any matter that is operationally sensitive, including matters relating to intelligence collection, methods and sources, has also been removed under the 2017 Act. The Office of the Inspector-General of Intelligence and Security (IGIS) can now inquire into the lawfulness as well as the propriety of the agencies' activities, and review any activities undertaken by those agencies when they use their powers in response to an imminent threat to life. The IGIS now possesses investigative powers like those enjoyed by a royal commission, such as the power to compel persons to answer questions, produce documents or give sworn evidence. Put simply, the IGIS is now much more productive than it was previously and has produced an impressive array of high-quality reports.³ Between 1996 and 2014 it produced eight public reports, whereas during Cheryl Gwyn's term (2014–17) the office produced 11 substantive reports. Matters examined in these reports included the NZSIS's disclosure of information concerning its briefings to the leader of the opposition, the GCSB's intelligence activities in the South Pacific, the engagement between the NZSIS and the GCSB with the US Central Intelligence Agency's detention and interrogation programme, and the NZSIS and the GCSB's role in Afghanistan. In addition to inquiring into the lawfulness of these agencies' activities, these reports also set a standard of propriety (see especially Office of the Inspector-General of Intelligence and Security, 2019).

The office's powers are not unlimited, however. The IGIS cannot, for example, declare warrants invalid where serious deficiencies are identified in those authorisations. Furthermore, its powers are easily undermined when the intelligence

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and security agencies refuse to cooperate, which occurred during 2015, 2016 and 2017 when Gwyn undertook a review of the NZSIS's access and use of information held on a system managed by the New Zealand Customs Service, but found the NZSIS 'reluctant to engage with [her] office on the substantive issues' (Office of the Inspector-General of Intelligence and Security, 2017, p.16). Even though the IGIS produces more high-quality reports on a broader range of issues than ever before, this does not mean that the IGIS alone can help restore public trust and confidence in the agencies, especially if the public is unaware of those reports, is unable to understand the reports' content and importance, and has no place to discuss and deliberate on those reports.

The annual reports produced by the NZSIS and the GCSB articulate their respective organisational visions and frame their organisational activities, outputs and the outcomes they are seeking. Within these key public accountability documents, the directors-general point to an array of public-facing activities, such as public speeches, news media interviews, and talks given to various groups and communities of interest, as evidence of their increased transparency. The directors-general also make opening statements to the Intelligence and Security Committee before that committee closes its doors to the public.⁴

A fresh approach to security

Commissioning reviews and inquiries, strengthening governance arrangements, and offering greater transparency of

agency activity are positive steps towards restoring public trust and confidence in the NZSIS and the GCSB, but this approach has obvious limits. We believe those limits have now been reached. What is now needed is a fresh approach that is based on building a level of public awareness and understanding of New Zealand's intelligence and security activities. With New Zealand's security arrangements on the cusp of change, the time seems ripe for bold thinking.

The royal commission of inquiry into the terrorist attack on the Christchurch mosques made 44 recommendations, 18 of which focused on improving New Zealand's counterterrorism effort. This included, *inter alia*: establishing a new intelligence and security agency responsible for strategic intelligence and security leadership functions (recommendation 2); developing and implementing a public-facing strategy that addresses extremism and preventing, detecting and responding to current and emerging threats of violent extremism and terrorism (recommendation 4); strengthening the role of the Parliamentary Intelligence and Security Committee (recommendation 6); and publishing the national security and intelligence priorities during every election cycle and a threat-scape report each year (recommendation 17). While recommendation 2 removes an important intelligence leadership role from the Department of the Prime Minister and Cabinet and allocates that responsibility to a new agency, the status quo whole-of-government arrangements are largely retained. The current arrangement, which is based in large part on a separation between human intelligence and signals intelligence, would be supplemented with a new agency leading New Zealand's counterterrorism efforts.

The royal commission's recommendations also called for a much greater level of public involvement in intelligence and security matters. This includes establishing an advisory group comprising representatives from communities, civil society, local government and the private sector to advise the government on counterterrorism (recommendation 7). It also includes establishing a programme to fund independent New Zealand-specific research

on the causes of, and measures to prevent, violent extremism and terrorism (recommendation 14), creating opportunities to improve understanding of extremism, violent extremism and terrorism in New Zealand (recommendation 15), and hosting an annual hui involving central and local government, communities and civil society, the private sector and researchers (recommendation 16). These recommendations are quite radical because they seek to bring the public's insight and voice into the national security system.

The government has accepted all of the royal commission's recommendations 'in principle' and their implementation creates an opportunity to rethink New Zealand's approach to national security. A parliamentary commissioner for security, we believe, would complement the royal commission's recommendations by taking an independent, systemic view of the national security system. As an officer of Parliament and therefore independent of the executive, the commissioner would be supported by a relatively small team of experienced and qualified researchers, analysts and advisors. The commissioner's functions would be to review security issues against the system of agencies and processes established by the government to manage security, including its intelligence-gathering activities, and regularly report the findings to Parliament. Put simply, the commissioner could investigate any matter where, in his or her opinion, New Zealand's security may be, or has been, adversely affected, and could assess the capability, performance and effectiveness of New Zealand's national security system, its intelligence and security agencies, and the wider intelligence and security communities.

This review-and-advise function, which focuses on the national security system, is not currently performed by any existing agency; and, if it was, the function would lack the necessary independence to be considered credible. The scope of this function must include the Office of the Inspector-General of Intelligence and Security, which, as mentioned, ensures that the intelligence and security agencies act lawfully and with propriety. As its *te reo Māori* name, *Te Pourewa Mātaki* – the watchtower within the pā – acknowledges,

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the IGIS is very much part of the national security system which includes the two agencies it monitors (Office of the Inspector-General of Intelligence and Security, 2021, p.2). The function must also include the new intelligence and security agency focused on New Zealand counterterrorism efforts recommended by the royal commission.

Taking an independent and system-wide perspective, this function would help the government better prepare New Zealand for routine, as well as surprise and novel, security challenges. The work of such a commissioner would benefit the House of Representatives in assisting parliamentarians, as well as the researchers, analysts and advisors who support and advise them, to further develop their own ability to think independently on intelligence and security matters. The commissioner's work would benefit the public service, too, by better enabling public servants to reflect on the possible weaknesses and limitations of their current approach to security.

Perhaps most importantly, however, a parliamentary commissioner for security would complement the royal commission's recommendations by building public awareness of New Zealand's various security challenges and developing the

public's capacity to better understand and engage in informed debate on those important matters.⁵ This is especially important because, as mentioned earlier, public surveys indicate that the New Zealand public is not well informed about security and intelligence matters. The commissioner could provide local councils, businesses, *tangata whenua*, community groups and associations, universities and other public agencies with reliable and independent information, analysis and advice on how national security is conceptualised, how security issues are assessed, and how security challenges are dealt with. The New Zealand public would benefit from a parliamentary commissioner for security who creates congenial spaces where they can debate these issues and then deliberate on those debates in a manner consistent with our democratic traditions. If the New Zealand government is going to restore the public's trust and confidence in the NZSIS and the GCSB, then it needs to foster a society of informed citizens who are socially aware and politically literate.

While a parliamentary commissioner for security might be the missing key needed to foster an informed citizenry, and the present moment could not be more propitious for such a bold but much-needed initiative, there are some potential limitations that are worth mentioning. First, insufficient resourcing would hamper the commissioner's effectiveness; if it is to build the public's capability to understand complex intelligence and security matters, its outreach budget will need to be significant. Second, any commissioner will be heavily dependent on information provided by the intelligence and security agencies. If the commissioner's reports were overly critical of the agencies, there is a risk that those agencies would withhold information (though the commissioner's power to inquire could compel that information if necessary).⁶ Third, and perhaps most importantly, the commissioner's credibility would be at stake if a person was appointed to the role who was not a *bona fide* expert in intelligence and security matters, with university qualifications, responsible for a body of respected work on these matters, and who has this expertise recognised as such by other experts in the field. This

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expertise is crucial, as the commissioner would be in the business of producing independent security knowledge on behalf of, and for, the public. It would speak truth to bureaucratic and executive power. Without such expertise, the commissioner would likely reflect and entrench the status quo arrangements when he or she ought to be challenging the logic of conventional thinking on behalf of the New Zealand

public, moving the national security discussion beyond its problem-solving approach to thinking through more deeply the structural issues sustaining these arrangements. The commissioner would be vulnerable, too, to institutional capture by the wider bureaucracy, which could fatally undermine the value of the initiative.

1 Budget and staffing figures for 2000/01 are taken from Domestic and External Security Secretariat, 2000. All other expenditure and staffing figures are taken from the annual

reports submitted to the House of Representatives, available at <https://www.gcsb.govt.nz/publications/annual-reports/> and <https://www.nzsis.govt.nz/resources/annual-reports/>.

- 2 This blurring is most evident in the intensified concern about home-grown terrorism. Referring to the threat of violence by extremist groups, such as Islamic State, Al Qaeda and Al Shabaab, the NZSIS 'remain concerned about individuals in New Zealand who subscribe to these groups' extremists views' (see Kitteridge, 2020).
- 3 See <https://www.igis.govt.nz/publications/investigation-reports/>.
- 4 The text of these statements is available at <https://www.nzsis.govt.nz/news/> and at <https://www.gcsb.govt.nz/news/>.
- 5 Compare to the objective and functions of the parliamentary commissioner for the environment found in section 16 of the Environment Act 1986.
- 6 We are grateful to the reviewer who alerted us to this potential weakness.

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