

Privacy Commissioner's submission to the Foreign Affairs, Defence and Trade Committee on the Inspector-General of Defence Bill (178-1)

1. I am pleased to provide a submission on the Inspector-General of Defence Bill (the Bill).
2. The Privacy Act 2020 is New Zealand's main privacy statute. One of the Privacy Commissioner's functions under the Privacy Act is to examine proposed legislation that may affect the privacy of individuals.
3. The Bill establishes the offices of the Inspector-General of Defence and Deputy Inspector-General of Defence (Inspector-General) to assist the Minister of Defence to oversee the Defence Force (NZDF) and provide additional independent scrutiny of the functions of the NZDF. The Inspector-General's core functions are to investigate and respond to incidents that have occurred and to assess and identify potential improvements to NZDF policies and procedures.

Independent oversight is a critical feature of a functioning democracy

4. External scrutiny and oversight are essential parts of a functioning integrity system. I support the purpose of the Bill to provide the Minister with dedicated independent oversight of the NZDF, account accurately to the House of Representatives for the activities of the NZDF and assure the public that activities of the NZDF are subject to independent scrutiny, including in relation to New Zealand's obligations under international law.
5. This Bill also recognises that the NZDF are already subject to other oversight regimes and seeks to ensure that there is no unnecessary duplication of scrutiny in performing the Inspector-General of Defence's functions. This includes the ability for the Inspector-General of Defence to consult, co-operate and share information with other oversight bodies (and a consequential amendment to the Privacy Act 2020 enabling me to share information back to the Inspector-General). Given I consider there may be matters that are necessary for the Inspector-General and myself to share with each other as they relate to each other's functions, I support this arrangement.

Privacy-related features of the Bill

6. The Bill features a consequential amendment to the Privacy Act which will mean that personal information collected by the Inspector-General (except for that relating to employees or former employees of the Inspector-General in their capacity as employees) will not be subject to information privacy principles 6 and 7, which provide for access and correction of personal information. While this is an exclusion of the ordinary rights available to individuals under the Privacy Act, I am satisfied that it is appropriate given that the operational agency (NZDF) who will also likely hold information held by the Inspector-General, will still have an obligation to respond to access requests. Further, this approach is consistent with other oversight bodies, and recognises the confidentiality and secrecy requirements of an oversight body.

7. The Bill also contains provisions which enable the Inspector-General to ensure that sensitive information is not included in published reports, and to make confidentiality orders to protect witnesses, and measures to ensure natural justice (such as provisions relating to self-incrimination). I consider that these are appropriate mechanisms that are necessary for the proper functioning of such an oversight body.

Conclusion

8. Finally, I would like to commend officials for their constructive work with my Office on the proposal to establish an Inspector-General and resulting Bill.
9. I trust my comments are of use to the Committee. I do not seek to be heard on my submission but am happy to appear before the Committee if that would be of assistance.



Michael Webster
Privacy Commissioner

31 January 2023