



## *Ministerial Policy Statement*

# Cooperation of New Zealand intelligence and security agencies (GCSB and NZSIS) with overseas public authorities

### **Summary**

It is important for New Zealand's security for the Government Communications Security Bureau (GCSB) and New Zealand Security Intelligence Service (NZSIS) to cooperate with overseas public authorities, including overseas intelligence agencies.

This ministerial policy statement (MPS) provides guidance for GCSB and NZSIS in relation to all forms of cooperation with overseas public authorities. In making decisions related to foreign cooperation, employees must have regard to the following principles: legality, human rights obligations, necessity, reasonableness and proportionality, protections for New Zealanders, information management and oversight. This MPS also specifies certain additional matters to be included in internal policy and procedures.

### **Definitions**

**The Act** means the *Intelligence and Security Act 2017*.

**Cooperation** means any form of interaction, whether reciprocal or not, with an overseas public authority, including but not limited to training, advice, assistance, and sharing of information, intelligence, analysis, methods and technology.

**GCSB** means the *Government Communications Security Bureau*.

**NZSIS** means the *New Zealand Security Intelligence Service*.

**Overseas public authority** means a foreign person or body that performs or exercises any public function, duty, or power conferred on that person or body by or under law.

**Personal information** means information about an identifiable individual.

## Purpose

1. This MPS is issued by the Minister Responsible for the GCSB and the Minister in Charge of the NZSIS pursuant to section 207(1) of the Act.
2. The purpose of the MPS is to provide guidance to GCSB and NZSIS on the conduct of activities that involve cooperation with overseas public authorities. The MPS comprises the Minister's expectations for how GCSB and NZSIS should properly perform their functions and establishes a framework for good decision-making and best practice conduct.
3. MPSs are also relevant to oversight of the agencies by the Inspector-General of Intelligence and Security in the exercise of her propriety jurisdiction (the Act requires the Inspector-General of Intelligence and Security to take account of any relevant MPS and the extent to which an agency has had regard to it when conducting any inquiry or review). A copy of this MPS will also be provided to the Intelligence and Security Committee of Parliament.
4. Every employee making decisions or taking any action related to cooperating with an overseas public authority must have regard to this MPS. Employees should be able to explain how they had regard to the MPS. This might amount to an explanation of their consideration of any relevant internal policy or procedures that reflect the MPS. The Directors-General are responsible for ensuring the MPS is reflected in their agency's internal policies and procedures. If any action or decision is taken that is inconsistent with the MPS, employees must be able to explain why the action was taken and how they had regard to the MPS.

## Scope

5. This MPS applies to cooperating with an overseas public authority, which includes providing advice and assistance to an overseas public authority and sharing intelligence with an overseas public authority. These activities may occur in relation to any of the functions of GCSB and NZSIS as specified or allowed for in sections 10 to 15 of the Act.
6. For the purposes of this MPS a broad interpretation of cooperation applies, in that specific activities may or may not be reciprocal, but will in some way involve GCSB or NZSIS interaction with an overseas public authority (also referred to as a foreign partner). To this end, it includes the provision of services, advice, assistance and intelligence which is not reciprocated, as well as reciprocally sharing intelligence, acting cooperatively on a project, or providing and receiving services, advice, and assistance. Cooperation may include an overall cooperative relationship between GCSB or NZSIS and an overseas public authority, interactions between employees of GCSB or NZSIS and the overseas public authority, or specific activities that occur as part of cooperation with a foreign partner.
7. GCSB and NZSIS may only request overseas public authorities to carry out activities that, if carried out by GCSB or NZSIS without an authorisation would be unlawful, in accordance with an authorisation issued under part 4 of the Act. In addition, the Directors-General of GCSB and NZSIS may request those authorities (or their personnel) to assist GCSB or NZSIS with giving effect to an authorisation (see section 51(1)). The carrying out of these types of authorised activities must be conducted consistently with the Act and the terms of the relevant authorisation, including any restrictions or conditions set out in the authorisation. This MPS does not apply to requests for assistance and activities which are carried out under an authorisation issued under part 4 of the Act.
8. The primary purpose of this MPS is to provide guidance on determining which overseas public authorities GCSB and NZSIS should engage with, and how that engagement should be

regulated, including guidance on the types of activities that are appropriate to undertake with those parties. To the extent that it arises through cooperation with an overseas public authority, the MPS also addresses issues associated with the operational use of intelligence gained from a foreign partner.

## **Context**

9. GCSB's and NZSIS's objectives are set out in the Act. Both agencies contribute to:
  - a) The protection of New Zealand's national security;
  - b) The international relations and well-being of New Zealand; and
  - c) The economic well-being of New Zealand.
10. GCSB and NZSIS do this through the performance of their statutory functions, which include:
  - a) Intelligence collection and analysis;
  - b) The provision of protective security services, advice and assistance;
  - c) Cooperation with other public authorities to facilitate their functions; and
  - d) Cooperation with other entities to respond to imminent threat.
11. MPSs are an important component of the measures put in place by the Act to ensure the functions of GCSB and NZSIS are performed with propriety and in accordance with New Zealand law and all human rights obligations recognised by New Zealand law.

### *New Zealand's intelligence and security relationships*

12. The mandate provided by the agencies' objectives and functions is a New Zealand-centric one. Foreign cooperation is based on furthering New Zealand's interests and fulfilling any international obligations New Zealand has.
13. GCSB and NZSIS may cooperate with overseas public authorities in fulfilling any of GCSB's and NZSIS's functions. New Zealand gains significant value from international intelligence sharing and cooperation arrangements, particularly within the current climate of global and transnational threats. Through foreign intelligence partnerships and other cooperation, GCSB and NZSIS are able to draw on a much greater pool of information, skills and technology than would otherwise be available to them. Close and reliable relationships with overseas public authorities help GCSB and NZSIS to prioritise and focus their limited resources on the areas most important to New Zealand, while having access to resources that would not normally be available.
14. For example, a foreign partner may have access to information that requires specific linguistic, ethnic or cultural backgrounds to collect and analyse which New Zealand does not possess. As part of their intelligence collection and analysis function, GCSB and NZSIS may seek to obtain that intelligence. Similarly, GCSB or NZSIS might provide intelligence to an overseas public authority so that authority can take action to address a threat to New Zealand's national security (such as a threat to New Zealanders overseas), or to contribute to New Zealand's international relations with the partner country.
15. In the context of protective security services, advice and assistance, GCSB or NZSIS might provide technology or expertise to an overseas public authority (which might include seconding staff) to support that authority with its own protective security requirements, such as systems for vetting security cleared personnel, or detecting cybersecurity threats. This

advice and assistance could contribute to New Zealand's national security by mitigating common threats and developing international relations with the partner countries, and contribute to New Zealand's economic well-being by reducing risks to New Zealand companies operating overseas.

16. The closest relationships that GCSB and NZSIS have with overseas public authorities are those with equivalent agencies from Australia, Canada, the United Kingdom and the United States (often referred to as the "Five Eyes" partners). The relationships between Five Eyes partners are long-running, reciprocal, cover a wide range of topics, and involve a high degree of mutual trust, honesty and respect. The relationships provide New Zealand with knowledge and capability far beyond what we can afford on our own.
17. These relationships work effectively due to the shared values and histories of the five countries and the strong relations between the governments of those countries in general. The depth of the Five Eyes relationship means that disparities in size, power and influence do not prevent any member from acting in the best interests of their own government, and members expect to be able to disagree on specific matters without damaging the broader relationship.
18. GCSB and NZSIS may also cooperate with overseas public authorities from other countries. This cooperation may occur on a routine or relatively ad hoc basis. The reasons for cooperating with such authorities may vary widely and may occur in the course of performing any of the agencies' functions and as part of contributing to any of their objectives. It is essential to New Zealand's ability to protect its national security, international relations and economic well-being to share information and intelligence with agencies outside traditional partnerships.

### *International obligations*

19. New Zealand may be subject to international obligations to cooperate with overseas partners, in order to promote the exchange of information to help improve international responses to threats to global peace and security. For example, United Nations Security Council Resolution 1373 (2001) calls on states to "find ways of intensifying and accelerating the exchange of operational information, especially regarding actions and movements of terrorist persons or networks". Under this resolution, Member States are required to have in place procedures and mechanisms that encourage exchange of information in accordance with international and domestic law, which includes international human rights obligations.
20. The many positive benefits of New Zealand's participation in foreign intelligence and security relationships do not override the rights of New Zealanders and the international human rights obligations New Zealand has adopted through their incorporation into domestic law. New Zealand is also subject to other international obligations, including through customary international law and as a member of the United Nations. For example, New Zealand is bound by United National Security Council Resolution 1456 (2003), which requires Member states to "ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee and humanitarian law".
21. New Zealand's core international human rights obligations, including those at customary international law, are detailed at Appendix One. They include the right to life, the right not to be subjected to torture, the right not to be subjected to cruel, inhuman or degrading treatment or punishment, and the right to liberty and security of the person.

22. The New Zealand Government has a long-standing and strong opposition to the use of torture, cruel, inhuman or degrading treatment or punishment (including the death penalty) in all cases and under all circumstances, including in response to threats to national security. New Zealand is committed to actively preventing torture, cruel, inhuman or degrading treatment or punishment, and will not, by act or omission, encourage, aid, or abet such action.

#### *Duty to act with due diligence*

23. Section 17(a) of the Act imposes a general duty on GCSB and NZSIS to act in accordance with New Zealand law and all human rights obligations recognised by New Zealand law. Sections 10(3) and 12(7) also explicitly impose an obligation on the responsible Minister to be satisfied the agencies will be acting consistently with such law when authorising the sharing of intelligence, analysis and threat reporting with foreign partners. Compliance with this obligation necessitates a practice of due diligence by the Directors-General of GCSB and NZSIS in relation to cooperation with overseas public authorities. The guidance in this MPS provides a framework for exercising that due diligence when determining whether it will be appropriate to engage with a particular overseas public authority, and when determining that the proposed activities are consistent with the law – particularly with respect to ensuring that GCSB and NZSIS do not become complicit in human rights abuses.
24. The Directors-General have a duty to take steps as are reasonable in the circumstances of each particular situation to identify risks of human rights being breached by partner countries and international actors. To ensure that agencies are not associated (either directly or indirectly) with activities that may be unlawful or improper, as a result of cooperation with an overseas public authority, it is expected that GCSB and NZSIS will establish an awareness of and regularly monitor the human rights practices of any overseas public authorities with which the agencies cooperate. The agencies are also expected to further enquire when there is an indication that human rights breaches might occur in a situation, and decline or stop cooperating with the overseas public authority where a real or substantial risk of breach of human rights obligations (such as the prohibition of torture) is identified.
25. Failure to act in accordance with the provisions of the Act and this MPS could lead to possible criminal responsibility for employees of GCSB and NZSIS. For example, Section 3 of the Crimes of Torture Act 1989, which applies to activities conducted within or outside New Zealand, makes it a crime for a public official or anyone acting in an official capacity to attempt or to commit an act of torture, to act or omit to act in a way that aids any person to commit an act of torture, to abet any person in the commission of an act of torture, or to incite, counsel, procure or conspire with any person to commit an act of torture, and to be an accessory after the fact to an act of torture.

#### *Unsolicited intelligence*

26. The absolute prohibition in international law (and which is incorporated in New Zealand law) on the use of information gained through torture for evidentiary purposes arises from the need to remove any incentives to torture and recognises that such information is inherently unreliable. This obligation is non-derogable – it cannot be violated by states under any circumstances.

27. There may be exceptional circumstances where unsolicited intelligence is received by GCSB or NZSIS that indicates a credible national security threat to New Zealand or risk to New Zealanders that has been, or is suspected to have been, obtained through human rights abuses committed by another party.
28. GCSB and NZSIS do not have an enforcement function in relation to measures to protect national security. If intelligence is received that indicates a credible risk to the safety of New Zealanders that requires action to be taken to protect lives and property, GCSB and NZSIS must provide that information to the relevant enforcement agency. The information will not be used for evidentiary purposes in legal proceedings.

## **Principles**

29. The following principles constitute a framework for good decision-making and must be taken into account by GCSB and NZSIS when cooperating with overseas public authorities in the performance of one or more of the agencies' functions. All forms of cooperation with overseas public authorities, at all levels, should be subject to ongoing review as to whether it continues to be consistent with these principles.

### *Legality*

30. GCSB and NZSIS must ensure that cooperation with overseas public authorities is conducted in accordance with New Zealand law and all human rights obligations recognised by New Zealand law. GCSB and NZSIS should also have regard to New Zealand's human rights obligations at international law, including customary international law (see Appendix One).
31. For all forms of cooperation with overseas public authorities, GCSB and NZSIS must have internal policies in place that ensure the agencies act in accordance with New Zealand law and all human rights obligations recognised by New Zealand law; and must have procedures in place to ensure those policies have been adhered to. Where appropriate, legal advice should be sought.
32. Where Ministerial approval for cooperation is required, GCSB and NZSIS have a positive obligation to provide sufficient information regarding the legality of cooperation with overseas public authorities to the Minister, in order for the Minister to determine whether the requirements under sections 10(3) and 12(7) of the Act are met.
33. Where there may be uncertainty or cause for concern as to whether cooperation with an overseas public authority is lawful, specific information detailing the nature of the cooperation and the factors that gave rise to that uncertainty or concern (such as examples of previous actions by the foreign partner, external reports, or advice from the Ministry of Foreign Affairs and Trade) should be provided to the responsible Minister (in the case of Ministerial approvals) to assist decision-making, or to the Director-General (in the case of internal approvals).
34. Where necessary, the Ministry of Justice should be consulted on New Zealand's human rights law and information sought from the Ministry of Foreign Affairs and Trade regarding New Zealand's international human rights obligations and the adherence of other countries to these obligations.

### *Human rights obligations*

35. GCSB and NZSIS must not undertake any activity in cooperation with an overseas public authority, including receiving or sharing any intelligence, where GCSB or NZSIS knows or assesses that there is a real risk that the activity will lead to or has been obtained as a result of human rights breaches in any country, against any person(s). In these circumstances, the continued receipt or sharing of intelligence should cease, subject to a reassessment in accordance with legal obligations, the principles in this MPS and relevant policies.
36. This provides a duty to apply due diligence: GCSB and NZSIS are to assess the likelihood of human rights breaches occurring (or having occurred) in connection with any sharing of intelligence or cooperation by the agencies with an overseas public authority, including in any subsequent actions taken by that public authority as a result of the cooperation or sharing of intelligence.
37. To avoid any complicity in human rights breaches by an overseas public authority, when assessing this likelihood, GCSB and NZSIS must take into account factors such as:
  - the human rights record of the country or public authority, and any other country or public authority that may also be involved, including consideration of reports from credible international, governmental and non-governmental organisation sources;
  - whether the country has ratified relevant international human rights treaties, including any reservations that may have been made;
  - whether the country has mechanisms for independently investigating breaches of human rights;
  - whether the country has an independent judiciary with jurisdiction to hear cases relating to breaches of human rights;
  - whether the country has an established history of compliance with human rights obligations;
  - whether the country has an established history of investigating and prosecuting human rights breaches; and
  - whether the country has a legal framework and institutional arrangements that guide and appropriately constrain the activities of the country's intelligence and security sector.
38. When authorising the provision of intelligence and analysis, or the provision of threat reports produced from the provision of information assurance and cybersecurity activities, to an overseas public authority, the responsible Minister must be satisfied that GCSB and NZSIS will be acting in accordance with New Zealand domestic law, including all human rights obligations recognised by New Zealand law.
39. The Minister must be satisfied of this on the basis of information provided to him or her by GCSB or NZSIS about the particular proposal to share intelligence, analysis or threat reporting. The Minister's authorisation may be made on a case-by-case basis or may take the form of a broader standing authorisation, for example to share specific categories of intelligence, analysis or threat reporting with certain overseas public authorities, or to share the full range of intelligence, analysis or threat reporting within an established intelligence and security relationship with a foreign country, groups of countries or overseas public authority.

40. A request to share intelligence, analysis and threat reporting with a foreign partner, whether on a case-by-case basis, or within the context of a broader standing authorisation, must include information about the specific proposal and must include an assessment of the human rights practices of the foreign partner, or describe the process by which the agencies will make that assessment. The assessment must be based on:
- the human rights record of the country (as reflected in the considerations at paragraph 37 above)
  - any particular risks to human rights associated with the proposed cooperation and how likely it is that breaches could occur; and
  - factors that mitigate the likelihood of human rights breaches occurring. Such factors might include the existence and effectiveness of mechanisms for monitoring or reviewing compliance with human rights obligations, the reliability of any assurances provided by the foreign partner about how information will be used or how information to be provided was obtained, and how likely the foreign partner is to comply with caveats associated with cooperation or use of information.
41. The decision to authorise the sharing of intelligence, analysis or threat reporting with a foreign partner, whether made by the Minister on a case-by-case basis or by the agencies within a broader standing authorisation, must also consider:
- all applicable legal obligations under New Zealand and international law, and any relevant international commitments New Zealand may have; and
  - the purpose of the intelligence sharing, including how it contributes to GCSB's and NZSIS's statutory objectives to contribute to the protection of New Zealand's national security, the international relations and well-being of New Zealand, and the economic well-being of New Zealand.
42. The responsible Minister may issue standing authorisations for GCSB or NZSIS to share specific classes of intelligence, analysis and threat reporting with certain overseas public authorities, or to share intelligence, analysis and threat reporting with a specific overseas public authority or with a particular country or group of countries. When issuing a standing authorisation, the Minister must be satisfied on the basis of an assessment which considers the same factors in paragraphs 40 and 41 above. Standing authorisations may specify conditions, limits or exclusions that apply in respect of the sharing of intelligence, analysis and threat reporting under the authorisation. The Minister will specify thresholds of risk at which decisions made under a standing authorisation must be referred back to the responsible Minister.
43. The existence of a standing authorisation does not excuse GCSB and NZSIS of the obligation to undertake ongoing monitoring to ensure that cooperation undertaken under the authorisation remains consistent with the framework in this MPS. In particular, the agencies must conduct a risk assessment of human rights breaches occurring if there is any reason to believe a specific instance of cooperation might lead to such an infringement. Further, if there is evidence that a human rights breach has occurred, or there are changes to domestic policy or practice in any country subject to a standing authorisation that may increase the likelihood of violations of human rights, the standing authorisation must be reviewed by the responsible Minister.

44. Where Ministerial authorisation for cooperation is not required, GCSB and NZSIS must have processes that require internal authorisation to cooperate with an overseas public authority to be granted by appropriately senior staff, according to an assessment of the risk of human rights breaches connected with that cooperation. Where there is a reasonable basis for concern about a country's human rights record or that the cooperation in question might involve complicity in breaches of human rights, GCSB and NZSIS must seek authorisation from the responsible Minister before undertaking any cooperation. GCSB and NZSIS must provide the Minister with an assessment that addresses the factors outlined at paragraphs 40 and 41.
45. If GCSB or NZSIS become aware that their cooperation with an overseas public authority means GCSB or NZSIS may have been complicit in human rights breaches the agency must immediately suspend cooperation with that authority (and any others related to it) and notify the responsible Minister and the Inspector-General of Intelligence and Security, and if necessary, the Solicitor-General. An internal review to determine whether agency policies and procedures were correctly applied in respect of the cooperation must also be conducted by the relevant agency.
46. In the event GCSB or NZSIS receives unsolicited information indicating a credible national security risk to New Zealand or risk to the safety of New Zealanders, but that has been, or is suspected to have been, obtained through human rights abuses committed by another party the Directors-General will consider the need to ensure public safety and the protection of life and property in determining whether to pass that information to the relevant enforcement agency. In considering whether to pass on the information for operational purposes, GCSB and NZSIS must be mindful that the reliability of such information may be limited. Where information of this nature is passed on, the responsible Minister and the Inspector-General of Intelligence and Security must be informed as soon as practicable.

### *Necessity*

47. Cooperation by GCSB or NZSIS with any foreign partner must be for the purpose of protecting New Zealand's national security, the international relations and well-being of New Zealand, and the economic well-being of New Zealand. Specific cooperation with overseas public authorities should only occur for purposes necessary to support the agencies to perform their statutory functions. This may include building the capacity of GCSB or NZSIS to perform a particular statutory function, or for establishing or maintaining an international relationship that will support GCSB or NZSIS to perform their statutory functions.

### *Reasonableness and proportionality*

48. The impact of cooperation with overseas public authorities (including any specific activities carried out as part of that cooperation) should be reasonable and proportionate to the purpose for carrying out that cooperation, the benefit gained from the cooperation, and the reputational risk to GCSB, NZSIS or the New Zealand Government.
49. Relevant factors in determining the reasonableness and proportionality of cooperation with an overseas public authority include:
  - having a clear understanding of the nature and purpose of the specific activities and any subsequent actions that are likely to result;

- having a clear understanding of the nature and purpose of the intelligence and security relationship with the particular overseas public authority;
  - being aware of the status of the bilateral relationship with the country as a whole (especially any issues or areas of sensitivity between New Zealand and the partner country that could have a bearing on the proposed activities);
  - any limitations or restrictions on activity that either party has; and
  - any protections that may be in place in relation to the activity or to intelligence provided or received.
50. For example, when New Zealand is seeking assistance or intelligence or information from partners, GCSB or NZSIS should be clear as to why they seek the assistance or intelligence or information from the partner country, and about the expectations of the New Zealand Government that no human rights breaches occur in the provision of that assistance or in the collection or provision of the intelligence or information.
51. Where New Zealand is asked to provide assistance, intelligence or information by overseas partners, GCSB or NZSIS should be as informed as is possible about the particular situation. This should include being aware of the purpose and value of the proposed activity and that there is sufficient evidence, not based on human rights breaches, of the need for the activity.
52. For example, when sharing intelligence, this would include consideration of whether this was reciprocal sharing of intelligence on a routine and systematic basis, as part of a wider intelligence relationship; regular sharing of intelligence but on a case-by-case basis; responding to one-off ad hoc (and potentially urgent) requests for intelligence; or pro-active ad hoc sharing by the agencies to mitigate a risk to a third country.

### *Protections for New Zealanders*

53. When cooperating with overseas public authorities, GCSB and NZSIS must continue to apply the same protections for New Zealand citizens and permanent residents that would normally apply in New Zealand in relation to the specific activity. GCSB and NZSIS must not cooperate with an overseas public authority for the purposes of avoiding or circumventing those protections.
54. Where cooperation with an overseas public authority involves the sharing of intelligence or personal information relating to New Zealanders, GCSB and NZSIS must have particular regard to the privacy interests of the New Zealanders when determining whether to disclose that personal information to overseas partners, or when requesting such information from overseas partners. This includes adherence to the [information privacy principles](#) contained in Part 2 of the Privacy Act 1993 as they apply to GCSB and NZSIS. GCSB and NZSIS must be satisfied that the overseas public authority has adequate protections in place for the use and storage of New Zealanders' information, including adequate protections against further sharing with third parties without express consent from GCSB or NZSIS.

### *Information management*

55. GCSB and NZSIS will take steps to ensure that information obtained by GCSB and NZSIS and subsequently shared with overseas public authorities is managed in accordance with all information management requirements, standards and guidelines that relate to that information (such as the New Zealand Protective Security Requirements, New Zealand

Government Security Classification System, and New Zealand Information Security Manual), and any other obligations as addressed in the MPS on *Management of information obtained by GCSB and NZSIS*.

56. GCSB and NZSIS are to specify the protection, storage and use (including restrictions on the passing on of that information to any third parties) requirements that are to be adhered to in respect of any information, including personal information about New Zealanders, shared with an overseas public authority. Those requirements will be consistent with the principles in this MPS and the MPS on *Management of information obtained by GCSB and NZSIS*. It is recognised that the overseas public authority may be required to adhere its own national requirements when managing received information and this may conflict with conditions imposed by GCSB or NZSIS. GCSB and NZSIS should seek to be consulted regarding any national requirements of an overseas partner that may lead to shared information being used in a manner that conflicts with restrictions that would apply in New Zealand.

### *Oversight*

57. GCSB and NZSIS must carry out all cooperation with overseas public authorities in a manner that facilitates effective accountability, transparency and oversight. This includes the use of clear authorisation procedures, the keeping of appropriate records, maintaining up-to-date internal policies and procedures and guidance for staff, and reporting to the responsible Minister on the nature and outcomes of cooperation with overseas public authorities. Reporting must include a specific section in GCSB and NZSIS annual reports on the agencies' intelligence and security relationships with overseas partners.

### **Matters to be reflected in internal policies and procedures**

58. GCSB and NZSIS must have, and act in compliance with, internal policies and procedures that are consistent with the requirements and principles above, and must have systems in place to support and monitor compliance. Those policies and procedures must also address the following additional matters:

#### **Human rights policy**

GCSB and NZSIS must have a policy setting out the factors that must be considered when assessing whether a real risk of human rights breaches may exist in connection with cooperation with overseas public authorities. This policy must also include what specific information is required to be provided to the responsible Minister before authorisation (either on a case-by-case basis or in the form of a broader standing authorisation) is given to share intelligence or analysis to an overseas public authority.

This policy is important to ensure that employees do not inadvertently place themselves or the New Zealand Government at legal risk by their action or inaction.

#### **Consultation with the Ministry of Foreign Affairs and Trade**

Foreign policy objectives should be considered in the development and framing of cooperation arrangements with foreign partners. The Ministry of Foreign Affairs and Trade is to be consulted on any proposal to enter into an arrangement with a foreign jurisdiction or international organisation.

GCSB and NZSIS should also seek information from, and have regard to any information provided by, the Ministry of Foreign Affairs and Trade on the status of the bilateral

relationship with a country, and when weighing up factors related to a country's ratification of international human rights treaties and the human rights record of a particular country.

### **Written basis for new formal arrangements**

All new bilateral or multilateral arrangements relating to cooperation and intelligence sharing with a foreign jurisdiction or overseas public authority must be referred to the Intelligence and Security Committee of Parliament for noting. Such arrangements should be recorded in writing.

GCSB and NZSIS must formulate standard terms for ad hoc cooperation and intelligence sharing, which are to be recorded in an internal policy. These terms are to establish consistent principles, standards and practices that will be applied to ad hoc cooperation and intelligence sharing activities to ensure that GCSB and NZSIS complies with New Zealand law and all human rights obligations recognised by New Zealand law. Those terms should be consistent with this MPS. These terms must be forwarded in draft to the Inspector-General of Intelligence and Security for comment and the final version referred to the Intelligence and Security Committee of Parliament for noting.

### **Training**

All employees of GCSB and NZSIS must be provided training on all relevant law, policies and procedures in relation to the agencies' human rights obligations. This training should be provided for all existing employees and for new employees at induction, and whenever there are changes or updates to the policies and procedures, to ensure that at all times employees are aware of their obligations.

### **Compliance with State Services Code of Conduct**

The Directors-General of GCSB and NZSIS must issue policies and procedures that reflect their agencies' obligations under the State Sector Act 1988.

### **Health and safety**

All cooperation with overseas public authorities must be undertaken consistently with GCSB's and NZSIS's obligations under the Health and Safety at Work Act 2015.

## **Authorisation procedures**

59. Within the context of this MPS, the responsible Minister must authorise the following:
  - The provision of any intelligence collected and any analysis of that intelligence to an overseas public authority
  - The provision of threat reports produced as a result of information assurance and cybersecurity activities to an overseas public authority
60. In determining whether to authorise the sharing of intelligence, analysis and threat reporting to an overseas public authority, the Minister must be satisfied that GCSB and NZSIS will be acting in accordance with New Zealand law including all human rights obligations recognised by New Zealand law.
61. The Minister will authorise the sharing of intelligence, analysis or threat reporting with a foreign partner on the basis of information provided to him or her by GCSB and NZSIS. This authorisation may be on a case-by-case basis or in the form of a broader standing authorisation. All requests for authorisation to share intelligence, analysis and threat reporting must include an assessment that addresses all factors listed in paragraphs 40 and 41 of this MPS, or describe how the agencies will make that assessment.

62. GCSB and NZSIS may seek a standing authorisation from the Minister that covers the sharing of specific classes of intelligence, analysis and threat reporting with certain overseas public authorities, or to share intelligence, analysis and threat reporting with a specific overseas public authority or with a particular country or group of countries. A request for a standing authorisation must include an assessment which considers the factors outlined in paragraphs 40 and 41 of this MPS, or describe how the agencies will make that assessment.
63. The Minister may specify conditions, limits or exclusions that are to apply in respect of the sharing of intelligence, analysis and threat reporting with an overseas public authority or country under a standing authorisation. The Minister will specify thresholds of risk at which decisions made under a standing authorisation must be referred back to the Minister. Standing authorisations must be reviewed when this MPS is amended, revoked or replaced, and if a human rights breach occurs or there are changes to domestic policy or practice in the country that may increase the likelihood of violations of human rights.
64. Where Ministerial authorisation for cooperation is not required, there must be clear levels of decision-making for each type of activity that may involve foreign cooperation, which must be documented. GCSB and NZSIS must have in place approval levels that are proportionate to the operational, reputational, legal and health and safety risks in cooperation with overseas public authorities: the greater the risk, the more senior the level of approval required. An assessment of the risk of human rights breaches connected with the foreign cooperation must be carried out, that includes the considerations outlined at paragraphs 40 and 41 of this MPS. Approval levels will include seeking authorisation from the Minister at agreed levels of risk, in particular where there is a reasonable basis for concern about a country's human rights record or that the cooperation in question might involve complicity in breaches of human rights.
65. The Directors-General of GCSB and NZSIS may authorise the passing of unsolicited intelligence indicating a credible national security risk to New Zealand or risk to the safety of New Zealanders that has been, or is suspected to have been, obtained through human rights abuses committed by another party, to an enforcement agency. The Directors-General must consider the need to ensure public safety and the protection of life and property, and must be mindful that the reliability of such information is likely to be limited. If such information is passed on to an enforcement agency the responsible Minister and Inspector-General of Intelligence and Security must be informed as soon as practicable.

## Duration of ministerial policy statement

66. This MPS will take effect from 28 September 2017 for a period of three years. The Minister who issued an MPS may, at any time, amend, revoke or replace the MPS.
67. At the time of issue of this MPS, the Inspector-General of Intelligence and Security is undertaking an Inquiry into possible New Zealand engagement with Central Intelligence Agency (CIA) detention and interrogation, 2001-2009, and current intelligence cooperation safeguards. When completed, the conclusions from that inquiry may give cause for the issuing Minister to review and reissue this MPS.

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Ministerial Policy Statement issued by:



Hon Christopher Finlayson  
Minister responsible for the Government Communications Security Service  
Minister in charge of the New Zealand Security Intelligence Service

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# Appendix One:

## New Zealand's Core Human Rights Obligations

### *Domestic law*

To ensure that New Zealand meets its human rights obligations, GCSB and NZSIS employees must act consistently with domestic law under (but not limited to) the following statutes:

- New Zealand Bill of Rights Act 1990
- Human Rights Act 1993
- Privacy Act 1993
- Crimes Act 1961
- Crimes of Torture Act 1989
- Geneva Conventions Act 1958
- International Crimes and International Criminal Court Act 2000

### *International Obligations*

New Zealand is a party to the following core international human rights instruments of the United Nations, and in doing so is bound by, and must regularly report on, the obligations within those instruments. Actions or activities that run contrary to the obligations within these instruments may constitute a human rights breach in the context of this MPS.

- The International Covenant on Civil and Political Rights
- Second Optional Protocol to the International Covenant on Civil and Political Rights
- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- The International Covenant on Economic, Social and Cultural Rights
- The Convention on the Elimination of All forms of Racial Discrimination
- Convention on the Rights of Persons with Disabilities
- Convention on the Elimination of all forms of Discrimination against Women
- Convention Relating the Status of Refugees
- Convention on the Rights of the Child

New Zealand is also a party to other international criminal and international humanitarian instruments, of which the following may be relevant in the context of GCSB and NZSIS cooperating with overseas public authorities:

- Rome Statute of the International Criminal Court
- Geneva Conventions and their protocols

New Zealand may also have other relevant obligations under customary international law.