



SSC Report: Findings in relation to the New Zealand Security Intelligence Service's management of the security clearance vetting of Stephen Wilce

Date:	13 December 2010	SSC Report no:	12/10-MoSS/1654
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To:	Action Sought:	Deadline and reason
Rt Hon John Key Prime Minister	Note and agree to recommendations	
Hon Tony Ryall Minister of State Services	For information	

Purpose of report

1. You wrote on 27 October 2010 asking me to reconsider the recommendations of Mr Neil Walter relating to the New Zealand Security Intelligence Service's (NZSIS) vetting of Mr Stephen Wilce in light of the findings of the Court of Inquiry convened by the New Zealand Defence Force (NZDF). In light of these reviews, I am proposing steps additional to those recommended by Mr Walter to address the performance concerns identified out of the Wilce affair. As confidence in the vetting system is important, I will report to you further in March 2011 as to the need for any further action.

Executive summary

2. Both Mr Walter's report and the Court of Inquiry overlapped in their inquiries in considering the NZSIS security clearance vetting process of Mr Wilce. Their findings are largely consistent.
3. While both reviews identified that the NZSIS security vetting process for Mr Wilce was generally in compliance with requirements and expectations of the time, there were several basic lapses from expected performance. Neither inquiry considered that these lapses would have likely changed the outcome of the decision to grant Mr Wilce a security clearance.
4. I do not consider that this should be the end of the matter. Further action to that recommended by Mr Walter needs to be taken to demonstrate confidence in the vetting system. Basic procedures were not carried out in the case of Mr Wilce's vetting. We need assurance that there were not similar failings in other Top Secret vettings carried out at around the time of Mr Wilce's vetting. Similarly, while it is clear that NZSIS has markedly

improved the vetting system since 2005, Mr Walter reported that the system was not yet fit for purpose in some important respects. This issue need to be addressed promptly.

5. Following discussion with the Director of Security, a programme of action has started with twin objectives. First, a sampling of Top Secret vettings that occurred around the time of Mr Wilce's is underway to provide more assurance around the quality of vetting at that time. Secondly, an independent, international review of the current vetting system will be initiated together with other work to provide better information on the performance of the vetting system. The results of this work will be reported to ODESC(G) in the first quarter of 2011. Following ODESC(G)'s assessment of these reports, I propose to report to you in March 2011 with advice on what further steps, if any, may need to be taken.

Background

6. Mr Neil Walter's independent review examined the adequacy of the vetting process used by NZSIS in 2005, and more latterly. He found Mr Wilce's vetting was generally in compliance with the requirements and expectations of the day, and that while the current system was adequate it was not yet "fit for purpose" in terms of efficiency and client focus.
7. The Court of Inquiry's terms of reference required it to reach findings on a broader range of issues. Its proceedings were more substantive; witnesses were examined on oath and its report provided deeper analysis. While the Court also found that the Top Secret clearance vetting was conducted in accordance with the *Security in the Government Sector* manual it did not uncover information about the NZSIS security vetting of Mr Wilce that was not already known to Mr Walter.

Lapses in the vetting process

8. Both reports addressed, to varying extent, the same three lapses in the vetting process:
 - that NZSIS did not check with counterpart overseas agencies to see what they knew about Mr Wilce. This was contrary to standard practice in cases where the applicant for a security clearance had worked overseas;
 - that NZSIS did not follow up on Mr Wilce's failure to disclose convictions once the Police check had revealed that he had convictions; and
 - that NZSIS did not record or follow up on information received on Mr Wilce after the announcement of his appointment in the NZDF.

Failure to check with overseas agencies

9. The oversight to check Mr Wilce with overseas counterpart agencies was a failing in practice that NZSIS discovered on reviewing the file in 2010. Retrospective checking revealed that nothing adverse about Mr Wilce was known by the counterpart agencies in the

United Kingdom and Australia. In my view, however, this remained a failing in the context of an important process which needed to be carried out thoroughly.

Failure to establish Mr Wilce's criminal convictions

10. Mr Walter considered Mr Wilce's failure to disclose his criminal convictions was "on the surface serious enough to warrant further inquiries being made" and that "while it may not have changed the outcome of the review, it is an unfortunate oversight on the part of the vetting staff concerned".
11. The Court of Inquiry looked at this slightly differently accepting the NZSIS witness' conjecture as to what might have influenced the original vetting officer. Its report noted the "inaccurate statement by Mr Wilce is troubling at first glance" but the Court found it plausible Mr Wilce's inaccurate statement was the result of a mistake (in interpreting the Criminal Records (Clean Slate) Act 2004), rather than an attempt to deceive. However, the Court also felt that "he [Wilce] was not permitted to deny convictions in respect to applying for a position involving national security of New Zealand or when completing a NZSIS vetting form".
12. Behind Mr Walter's view is the notion that had NZSIS detected this omission by Mr Wilce, it may have prompted further inquiries. That is my view also. The failure to detect this detail precluded NZSIS from properly following up and scrutinising Mr Wilce's *bona fides*.

Failing to record information

13. Mr Walter describes as "an unexplained mystery" the absence of any NZSIS record of it having received information from Witness A concerning Mr Wilce's integrity and "suitability for the Director of the Defence Technology Agency position in a telephone conversation with the NZSIS while the vetting process was in train".
14. The Court of Inquiry also reports NZSIS being approached by Witness A who had "serious doubts about the veracity of Mr Wilce". It commented further that "NZSIS has been unable to locate any record of that conversation taking place and was unable to assist the Court with an indication of who Witness A spoke to." The Court said it is "unable to reach a firm conclusion on the misgivings expressed by Witness A about the character of Mr Wilce in 2005, because it has been unable to determine what action, if any, was taken by the NZSIS. On the face of the evidence, it appears that no action was taken, which is troubling."
15. The failure by NZSIS staff to record critical information about Mr Wilce's character, and pass it through to the vetting file, at this early juncture of Mr Wilce's employment with NZDF was significant.

Recommended action

16. Ministers and the public deserve to have a high level of confidence in the NZSIS vetting system. Decisions to grant security clearances for access to higher level national security material are based at least in part on the outcome of the vetting process which requires the NZSIS to be very thorough and methodical in undertaking checks and inquiries. On the basis of Mr Walter's comments and the Court of Inquiry's finding "that checks made collectively by the NZDF and the NZSIS as a precursor to granting Mr Wilce a Top Secret clearance were inadequate", I have looked carefully at what both reports have to say about the NZSIS. It is evident to me the NZSIS failed to follow basic procedures in the provision of a professional security service. While these failings may not have altered the outcome in this case, the Wilce case raises doubts about the quality of the overall vetting system at the time.
17. I have sought reassurance from the Director of Security that the Wilce case failings were not symptomatic of broader systemic failure at the time. In this regard, the Director is sampling 5% of the Top Secret vettings that were undertaken around the same time as Mr Wilce's in order to provide assurance the vetting failures were an exceptional event. Results of this work will be reported to ODESC(G) in February 2011.
18. Mr Walter commented the NZSIS vetting systems were "struggling to cope" during the mid 2000s but it has been improved and strengthened since 2005. While it is "adequate in terms of the standards of thoroughness and reliability...further fine tuning of its recent management system improvements is needed before it can be said to be fully fit for purpose". The Director has assured me (and this is confirmed by both reports), that since 2005 NZSIS has strengthened the criteria and rigour of scrutiny it applies to high level security clearance vetting. In the past 15 months a new electronic Online Vetting Requests (OVR) process has been implemented reducing risks associated with the paper-based vetting; interviews are conducted with candidates for Top Secret clearances and a different set of referees are nominated by candidates to provide a broader insight of a candidate's life and lifestyle.
19. Mr Walter recommended NZSIS do more, particularly to reduce vetting times, 'triage' clearances according to a candidate's position, and to improve user appreciation of the vetting process. I agree with his suggestions. In addition, given the questions that have arisen over the credibility of the overall system, I consider that independent assurance is required about the performance of the current vetting system. Following discussions with the State Services Commission (SSC), the Director of NZSIS has instituted a programme of work to:
 - *Review the security clearance vetting process:* A terms of reference for a review of the security clearance process by an international reviewer is being developed. The results of the review will be reported to ODESC(G) with a target date of March 2011;

- *Design a management reporting regime:* A management performance reporting regime for the security clearance system is being developed which involves broad consultation;
 - *Establish client satisfaction measures:* A technical review of the OVR system has been commissioned which will source client feedback about the usability of the vetting process. Results will be provided to the Director by the end of February 2011; and
 - *Establish a Vetting User Panel:* A 'Security Clearance User Panel' comprised of major clients, is to be established. It will meet quarterly to discuss usage, performance and emerging issues.
20. I will report to you in March 2011 on the outcome of the work described above along with any further recommendations I consider are necessary to improve confidence in the vetting system.

Conclusion

21. The Director of NZSIS accepts the findings of both Mr Walter and the Court of Inquiry. He also accepts my finding that the anomalies occurring in Mr Wilce's vetting process amounted to failings by the NZSIS in the provision of a professional security service.
22. As I have now re-considered Mr Walter's recommendations, I recommend that you release the unclassified version of Mr Walter's report previously provided to you.

Recommendations

It is recommended that you:

- 1 **note** my view that the three lapses in the security clearance vetting of Mr Stephen Wilce which were identified by Mr Neil Walter, and by the Court of Inquiry, amounted to failings by the NZSIS in the provision of a professional security service. **Yes/No**
- 2 **note** my view that assurance is required on the quality of other vettings carried out at the time of Mr Wilce's vetting and the performance of the current vetting system. **Yes/No**
- 3 **note** that the Director of NZSIS is sampling 5% of the Top Secret vettings that were undertaken around the same time as Mr Wilce's and this result will be reported to ODESC(G) in February 2011. **Yes/No**

- 4 **note** that the Director of NZSIS has initiated a programme of work to further strengthen the security clearance vetting process which includes: **Yes/No**
- (a) an independent, international review of the security clearance vetting process;
 - (b) designing a management reporting system;
 - (c) establishing client satisfaction measures; and
 - (d) establishing a Vetting User Panel.
- 5 **note** that I will report to you in March 2011 on the outcomes of the work described above with advice on any further actions that may need to be taken to assure confidence in the vetting system. **Yes/No**
- 6 **agree** that the unclassified version of Mr Walter's report be released. **Yes/No**

Iain Rennie
State Services Commissioner

Prime Minister's Comments:

Prime Minister's Signature:

Date: ____/____/____