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Are Policies Sufficient to Foster Change in Diversity and Inclusion in the Australian and New Zealand Intelligence Sectors?

Abstract: This article examines whether policies alone are sufficient to foster change in diversity and inclusion in the Australian and New Zealand intelligence sectors. It considers the diversity and inclusion policies of Australian intelligence agencies as well as applicable legislation regarding employment and nondiscrimination, as the legislation informs policy and is intended to reflect societal values. By comparing the Australian and New Zealand approaches to diversity and examining the successes and failures of their differing policies, this article reveals which policies have been most effective in fostering change in representation and equality and proposes alternative solutions based on other diversity and inclusion practices, such as mentorship, sponsorship and parenting outreach programs, and flexible working options.

Diversity and inclusion have not historically been prioritized in the Intelligence Community (IC). The nature of intelligence employment and practice requires close adherence to an established set of practices in an attempt to ensure national security. Such practices preclude participation by

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people of diverse backgrounds, including equal representation of women in intelligence agencies and leadership positions. However, the government intelligence agencies of Australia and New Zealand have moved toward an expansion of the traditionally unvaried intelligence narrative, and have implemented diversity and inclusion policies in an attempt to reflect the multiple value sets and cultures of the wider Australian and New Zealand communities.

The research for this article involved extensive examination of the diversity and inclusion policies of Australian and New Zealand intelligence agencies. Statistics for diversity were readily available for Australia and New Zealand's primary governmental agencies, such as the Australian Secret Intelligence Service (ASIS), Australian Security Intelligence Organisation (ASIO), Government Communications Security Bureau (GCSB), and New Zealand Security Intelligence Service (NZSIS), as these agencies publish annual reports that provide details on employment and staffing. However, significant gaps exist in the reporting for the Australian Signals Directorate (ASD), Defence Intelligence Organisation (DIO), and the Australian Geospatial Intelligence Organisation (AGIO). The information was included where found, and gaps primarily occurred in figures of Indigenous staffing across multiple years. Legislation was readily available via legal databases such as AustLII¹ and the Federal Register of Legislation website.²

AUSTRALIAN INTELLIGENCE COMMUNITY

The Australian Intelligence Community generally comprises the following five governmental agencies: ASIS, ASIO, ASD, DIO, and AGIO. These agencies undertake activities including foreign intelligence collection, intelligence communication, assistance to the Australian Defence Force, counterintelligence, foreign liaison, cooperation, and assistance to certain intelligence agencies and prescribed authorities and other activities as the minister for foreign affairs directs.³ Although other agencies exist within the Department of Defence, the Attorney-General's Department and the private sector, this article will focus exclusively on the above five agencies as a representation of the Australian IC and governmental approach toward diversity practices within the intelligence sector. All the organizations have published a diversity and inclusion strategy on their respective websites that outlines their policy approaches toward diversity within their agencies.

Multiple common threads appear in the diversity and inclusion policies of the Australian and New Zealand intelligence agencies examined in this article. For example, most policies established a diversity and inclusion council or internal governing body that operates to implement diversity initiatives such as disability and Indigenous networks. The policies of agencies almost uniformly profess an aim to foster staff and organization

cultural changes through the use of diversity training and network programs. Overall, as highlighted by statistics included in this article, change in representation and equality in the Australia and New Zealand intelligence sectors has been slow. While some agencies have reported a gradual, steady increase in staff diversity, such as higher numbers of Indigenous employees and women in senior leadership positions, the changes and growth in representation have been inconsistent between agencies and diversity indicators examined for the article, notably in gender equality, and Indigenous and disability representation.

The most successful use of policy to foster change in representation was seen following a multifaceted approach to diversity and inclusion, where agencies implemented policy, adhered to governing legislation, and established various trainings, programs, and networks that promote participation and engagement from a wide range of individuals diverse in gender and culture. Agencies' widespread willingness to engage with and implement diversity policies is very positive, and likely reflects broader societal values that are increasingly trending toward acceptance of difference and diversity. The policies also reflect each agency's internal culture in their approach to diversity and inclusion. Some, such as ASIO, reveal an emphasis toward promotion of gender equality, and others, such as GCSB and NZSIS, a greater promotion of Indigenous presentation.

Along with other Australian business entities, Australia's intelligence agencies are required to adhere to legislative standards and protections regarding discrimination in the workplace and hiring process. Such legislation includes the Age Discrimination Act 2004, Disability Discrimination Act 1992, Racial Discrimination Act 1975, Sex Discrimination Act 1984, Inspector-General of Intelligence and Security Act 1986, and the Fair Work Act 2009.⁴ These legislative instruments require that entities do not engage in discriminatory behavior against employees, former employees, or prospective employees because of the person's race, color, sex, sexual orientation, age, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction, or social origin.⁵ Such requirements influence the agencies' diversity and inclusion policies, and will be examined later in this article.

Australian Secret Intelligence Service

The ASIS Diversity and Inclusion Strategy was launched in 2017 and includes the employment of Aboriginal and Torres Strait Islander people, people with disabilities, people from culturally and linguistically diverse backgrounds, and gender equality.⁶ ASIS established a Diversity in ASIS Committee that strives to continue to improve the agency's "long-term approach" to equity and diversity. Although little reporting on the

committee's activities is available, the ASIS website announced that during 2016–2017 the committee “implemented a range of initiatives including unconscious bias training, a flexible working arrangements policy, development of a diversity and inclusion strategy, launch of a LGBTQI [lesbian, gay, bisexual, transgender, queer, and intersexed] network, and support for employees on long-term leave,” and hosted events such as International Women's Day.⁷

However, despite these initiatives and the agency's diversity and inclusion policy, equal representation of male and female staff members was yet to be achieved, and improvements in female representation were not achieved. For example, between 2014 and 2017, the female percentage of ASIS staff remained static at 43%.⁸ The static rate reveals that it is unlikely the agency's diversity policies and initiatives have thus far been sufficient to foster change in hiring practices and staff representation. Possibly, diversity has improved in other areas of the organization, such as overall cultural acceptance and promotion of staff diversity, following training programs such as unconscious bias training. However, statistical evidence was not found at an unclassified level to support this conclusion.

Australian Security Intelligence Organisation

The ASIO Diversity and Inclusion Strategy 2021–24 outlines that the agency undertakes specific diversity and inclusion development opportunities and initiatives, and applies a “diversity and inclusion lens” to its recruitment campaigns.⁹ ASIO's annual report details its workforce statistics, which reveal a gradual improvement in representation of female and Indigenous staff members. For example, 35% of ASIO's senior executives were female at the end of the 2016 financial year¹⁰ and the figure increased to 40% by the end of 2017.¹¹ Fluctuating representation of women and Indigenous Australians employed at ASIO occurred between 2017 and 2020 (see [Figure 1](#)).¹² Female representation at the senior executive level increased from 35% in June 2016 to 39% in June 2019.¹³ Notably, according to the Australian Bureau of Statistics, in 2016, Aboriginal and Torres Strait Islander people represented 3.3% of the total Australian population,¹⁴ and their equal representation in the workforce should therefore approximate this figure.

ASIO has also implemented diversity and inclusion initiatives beyond its organizational policy. These include the establishment of a Diversity and Inclusion Council that is responsible for developing, implementing, and reviewing strategies that support staff diversity and inclusion in ASIO,¹⁵ as well as offering staff membership of groups such as the Diversity Council of Australia, the Australian Network on Disability, and Pride in Diversity. ASIO has also achieved silver accreditation in the Australian Workplace

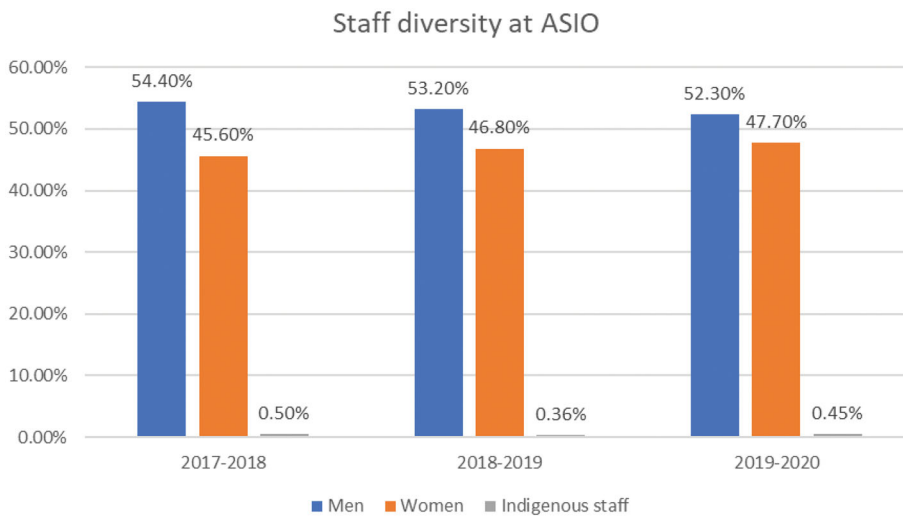


Figure 1. Staff diversity at ASIO.

Equality Index (AWEI) awards—Australia’s national benchmarking instrument for LGBTQI workplace inclusion.¹⁶

ASIO diversity and inclusion policies, combined with membership of various Australian diversity bodies, have resulted in positive changes to the levels of representation of women overall and women in leadership positions. However, the agency would do well to emphasize employment of Indigenous Australians and facilitate development opportunities for Indigenous staff. Certainly, there is potential for change based on the agency’s diversity and inclusion policies, which present an action plan toward greater diverse representation within the agency going forward.

Australian Signals Directorate

The ASD Diversity and Inclusion Strategy 2019–22 focuses on working flexibility, gender and sexuality, careers in science, technology, engineering, and mathematics (STEM), and Aboriginal and Torres Strait Islanders. ASD reporting reveals that representation of women increased between 2017 and 2020 (see Figure 2), and women are well represented at the senior leadership level. However, culturally diverse representation remained static or decreased over the same period. Additionally, between 2017 and 2018, 0.8% of the ASD workforce identified as Aboriginal or Torres Strait Islander, 25.5% were culturally and linguistically diverse, and 1.6% were people with a disability. In 2018 and 2019, 0.7% of the ASD workforce identified as Aboriginal or Torres Strait Islander, 25.8% were culturally and linguistically diverse and 1.3% were people with a disability. In 2019 and 2020, 1.3% of the ASD

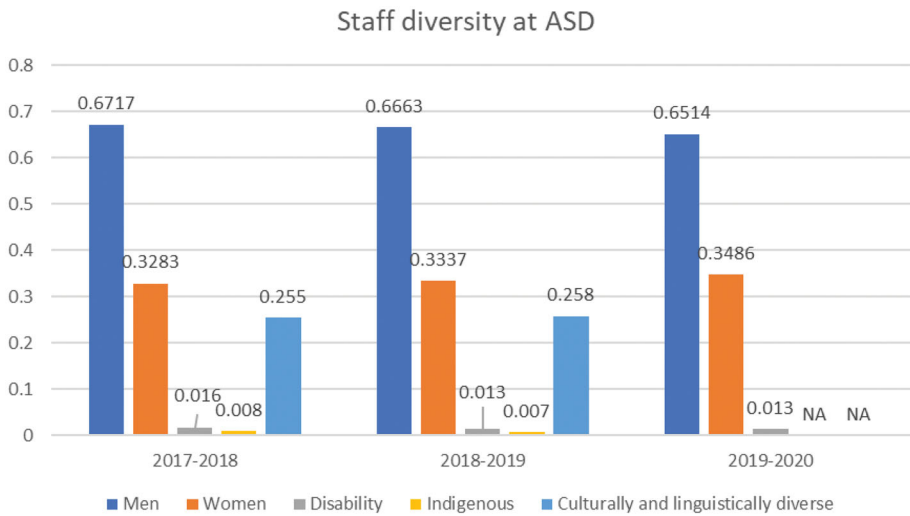


Figure 2. Staff diversity at ASD.

workforce identified as people with a disability. The 2020 report did not include statistics on Aboriginal or Torres Strait Islander staff numbers, nor staff of culturally and linguistically diverse backgrounds.¹⁷

ASD has also implemented diversity and inclusion initiatives beyond its organizational policy, including the Women’s Leadership Council, an Aboriginal and Torres Strait Islander Network, disability for future development program, and LGBTQI network. ASD is also a member of the Diversity Council of Australia and Pride in Diversity. In 2019, ASD achieved a “participating” level at the AWEI awards—Australia’s national benchmarking instrument for LGBTQI workplace inclusion.¹⁸ Overall, ASD’s diversity and inclusion policies and initiatives have not resulted in a high level of change in representation at the agency. ASD’s engagement with the above councils and networks will likely continue to maintain the existing levels of diversity, as they make staff feel recognized and understood. However, ASD’s current strategies are unlikely to result in diversity and inclusion changes that could be better driven by changing recruitment and outreach practices that reflect the focus of organizational diversity goals detailed in its policies.

Defence Intelligence Organisation

DIO’s annual reports are not available to the public at an unclassified level. However, a report on gender disparity conducted by the Lowy Institute in 2019 revealed that DIO reported to the institute that it has not yet achieved gender parity in its workforce. Fewer than half of its employees at the Australian Public Service (APS) Executive Level 1, Executive Level 2, and

senior executive levels are women. Female employees outnumber male employees only at the lower APS 3 and APS 4 levels.¹⁹ In the only employment diversity statistic found, DIO had 43% female staff in 2016.²⁰

Although a diversity and inclusion policy unique to DIO was not found, as the agency is part of the Australian Department of Defence, it conforms to the Australian Public Service's diversity and inclusion strategies and goals.²¹ The Australian Department of Defence lists the following groups as diversity priorities: women, Indigenous, culturally and linguistically diverse, disability, LGBTQI, mature age, and youth.²² While DIO officially conforms to the APS diversity and inclusion strategy, the agency has thus far not, at least at an unclassified level, produced evidence that it has made progress toward change in diversity representation, particularly within its senior leadership roles.

Australian Geospatial Intelligence Organisation

Similar to DIO, the AGIO is part of the Australian Department of Defence and no unique diversity and inclusion policy was found for the agency, and its annual report was also not found. However, some statistics were available via secondary sources, such as the Australian Strategic Policy Institute and the Lowy Institute. ASPI's *The Strategist* claimed that in 2017 and 2018, women made up approximately 40% of AGIO civilian staff, compared to only 20% of its defense force staff. The overall percentage of female staff increased by approximately 4% in 2016 and 2017, after "remaining steady for several reporting periods."²³ However, the Lowy Institute claimed that women comprised 29% of AGIO staff in 2016 and did not specify differences between civilian and defense force staff. Notably, Australia's first and only female intelligence director led the AGIO for three years between 2012 and 2015. Australia's other intelligence agencies are yet to be led by a female director-general.²⁴

Discussion

While Australian intelligence agencies have established diversity and inclusion policies, the implementation of those policies has yet to yield substantial change in the levels of diversity representation. Women, Indigenous Australians, and those with a disability continue to be underrepresented. Although the agencies' policies cited aims to increase diversity and inclusion, such as "maintaining gender balance" and the "elimination of structural barriers," a more successful approach to the hiring and retention of a diverse workforce could be achieved by establishing numerical recruitment goals, as a specific and measurable aim. The retention of diverse staff can be expected to result in enriched analysis via the different experiences, skills, and perspectives brought by staff. Further, diversity can help to avoid weak

intelligence analysis that is caused by “group think” wherein homogeneity can breed complacency and consensus without critical reasoning or sufficient evaluation of the consequences or alternatives.²⁵

Legislation

The Inspector-General of Intelligence and Security Act 1986 specifies at section 8 that the provisions of the Age Discrimination Act 2004, Disability Discrimination Act 1992, Racial Discrimination Act 1975, or the Sex Discrimination Act 1984 apply to ASIO, DIO, ASIS, AGIO, and ASD in the performance of the agencies’ acts and practices.²⁶ Legislative updates and revisions have likely improved diversity in Australian intelligence agencies by establishing provisions to protect staff against discrimination based on ethnic origin, disability, sex, and age. Updates and amendments to legislation have also possibly prompted the recent establishment of diversity policies and programs in multiple intelligence agencies. However, workplace and staff statistics from Australian intelligence agencies indicate that diversity policies, even combined with legislative requirements, have thus far not been sufficient to foster a high level of change in organizational representation and diversity.

Fair Work Act 2009

According to the Australian Law Reform Commission, the Fair Work Act 2009 regulates employment and workplace relations in that it “provides for terms and conditions of employment and sets out the rights and responsibilities of employees, employers and employee organisations in relation to that employment.”²⁷ The Act explains the circumstances under which discrimination occurs and assists to ensure equal remuneration and equal opportunity regardless of race, color, sex, sexual orientation, age, disability, marital status, family or carer responsibilities, pregnancy, religion, political opinion, and national extraction or social origin.²⁸

The Australian Inspector-General of Intelligence and Security report regarding the establishment of the ASD outlines that employees of intelligence agencies have been able to pursue fair work matters through the Fair Work Commission. However, the employees face “unique barriers” when it comes to seeking redress for complaints against their employers because of the secret and classified nature of their employment.²⁹ The ASD reported that no cases were lodged with the Fair Work Commission in 2014–2015 and the single ongoing case from 2013–2014 was finalized in 2014–2015.³⁰ Searches of Fair Work Commission cases did not reveal cases more recent than 2014 that were brought before the commission by employees of ASIO, ASIS, ASD, DIO, or AGIO. Inspector-General of Intelligence and Security oversight provisions are also an avenue for redress

for employees of intelligence agencies.³¹ Additionally, The ASIO Act 1979 does not specifically refer to diversity, inclusion, or discrimination. However, section 84 of the Act requires that the provisions of the Fair Work Act 2009 apply when terminating the employment of ASIO employees.³²

The Fair Work Act 2009 provides that the director-general of ASIS may, by legislative instrument, declare that all or specified provisions of Part 6-4B of the Act do not apply in relation to a person carrying out work for the director-general. Part 6-4B allows a person who has been bullied at work to apply to the Fair Work Commission for an order to stop the bullying. With regard to these exceptions, the explanatory memorandum of the Act specifies only that the sections “list the categories of employees to whom this Division does not apply” and does not further explain why Part 6-4B does not apply specifically to ASIS.³³ The Fair Work Commission website explains the exception thus: the commission may be unable to make orders under the workers bullied at work section, “or a person may be excused for contravening orders of the Commission, if doing so could reasonably be expected to compromise Australia’s defence or national security, or an operation of the AFP [Australian Federal Police].”³⁴

Sex Discrimination Act 1984

The Explanatory Memorandum of the Sex Discrimination Bill 1983 specifies that the purpose of the Bill is to “make unlawful discrimination on the grounds of sex, marital status and pregnancy in the area of employment.” The Bill, and subsequently the Act, also prohibit discrimination involving sexual harassment in the workplace and in educational institutions. The Act is intended to give effect to certain provisions of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, such as the promotion of equality of men and women, and to eliminate as far as possible discrimination on the ground of sex, marital status, and pregnancy in the workplace.³⁵ In 2013, federal protections for LGBTQI persons were introduced in the Sex Discrimination Act 1984 to provide protection from discrimination on the basis of attributes of sexual orientation, intersex status, and gender identity.³⁶ Complaints made under the Sex Discrimination Act 1984 can be brought to the Australian Human Rights Commission first for attempted resolution via conciliation, then by a hearing at the Federal Court of Australia or the Federal Circuit Court.

Age Discrimination Act 2004

According to the Explanatory Memorandum of the Age Discrimination Bill 2003, the Bill and subsequently the Act prohibit discrimination on the basis of age in key areas of public life, such as employment—including recruitment, training, and promotion—and redundancy/retirement,

education, and administration of Commonwealth laws and programs. The Bill was intended to facilitate the full participation of Australians of all ages in Australian society.³⁷ Complaints are heard by the Australian Human Rights Commission.³⁸

Disability Discrimination Act 1992

The Disability Discrimination Bill 1992 Explanatory Memorandum provides that the Bill and subsequently the Act make unlawful discrimination on the grounds of disability including but not limited to the areas of employment, education, services and facilities, and administration of Commonwealth laws and programs. Harassment of a person on the grounds of disability is also made unlawful by the act. Disability is broadly defined in the Act and includes the concepts of physical, sensory, intellectual, and psychiatric disability. It also includes past, present, future, and imputed disability. The Act establishes the office of Disability Discrimination Commissioner as part of the Human Rights and Equal Opportunity Commission, which function to conciliate complaints that can be enforceable in the Federal Court of Australia.³⁹

Racial Discrimination Act 1975

Section 9 of the Racial Discrimination Act 1975 renders unlawful “any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin” that has the purpose or effect of nullifying the enjoyment of fundamental rights of freedoms.⁴⁰ Complaints made under the Act are administered by the Human Rights and Equal Opportunity Commission, and it is possible for matters to proceed to the Federal Court of Australia.⁴¹

NEW ZEALAND INTELLIGENCE COMMUNITY

The New Zealand Intelligence Community generally comprises two governmental agencies: New Zealand Security Intelligence Service (NZSIS) and the Government Communications Security Bureau (GSBC). These agencies undertake activities including foreign intelligence collection, intelligence communication, assistance to the New Zealand Defence Force, counterintelligence, foreign liaison, cooperation, and assistance to certain intelligence agencies and prescribed authorities of the New Zealand Government.⁴² Although other agencies exist within the New Zealand Defence Force, police, and the private sector, this article will focus exclusively on the above two agencies as the New Zealand Government’s primary two intelligence agencies and as a representation of the New Zealand IC and governmental approach toward diversity practices within the intelligence sector. Both organizations have published a diversity and inclusion strategy

on their respective websites that outline their policy approaches toward diversity within their agencies.

Along with other New Zealand business entities, New Zealand's intelligence agencies are required to adhere to legislative standards and protections regarding discrimination in the workplace and hiring process.⁴³ Such legislation includes the Intelligence and Security Act 2017, Inspector-General of Intelligence and Security Act 1996, Employment Relations Act 2000, Human Rights Act 1993, and the Bill of Rights 1990. These legislative instruments require that entities not engage in discriminatory behavior against employees, former employees, or prospective employees because of the person's sex, marital status, religious belief, ethical belief, color, race, ethnic or natural origins, disability, age, political opinion, employment status, family status, or sexual orientation.⁴⁴ Such requirements influence the agencies' diversity and inclusion policies.

Government Communications Security Bureau

The GCSB Diversity and Inclusion Strategy 2017–2020 applies to the ethnicity, culture heritage, gender, age, religion, language skills, differing abilities, sexual orientation, and gender identification of GCSB staff.⁴⁵ The agency has also partnered with the New Zealand Security Intelligence Service since 2018 to implement a joint Diversity and Inclusion Strategy. Further actions of the GCSB toward diversity and inclusion include the implementation of a Gender Pay Gap Action Plan that outlines the agency's actions to address issues of gender representation, such as review of salaries and establishment of Remuneration Policies geared toward equal commencing salaries for equal skills, knowledge, and experience. The joint GCSB and NZSIS diversity and inclusion policies are comprehensive and include clear and actionable strategies to increase diversity, such as undertaking research to inform understanding of the attractions and barriers for women, and Maori and Pacific people joining the IC, and reviewing website and marketing material accordingly. The agencies professed an aim to develop a targeted diversity marketing strategy and recruitment campaign, as well as a GCSB tertiary scholarship program targeting women in STEM subjects and prioritizing diversity events, such as Women in Tech and Maori Language Week. The agencies also planned to train all managers in unconscious bias, cultural diversity and inclusion, flexible work policies, and neurodiversity.⁴⁶

According to the GCSB Gender Pay Gap report, women accounted for 36.9% of staff in 2015–2016, 36.4% in 2016–2017, 37.6% in 2017–2018, 36.2% in 2018–2019, and 35.6% in 2019–2020. However, women were well represented at the senior management level, with 53% of GCSB senior management staff positions held by women in 2015–2016, 60% in 2016–2017, 57.1% in 2017–2018, 52% in 2018–2019, and 45.5% in 2019–2020.⁴⁷

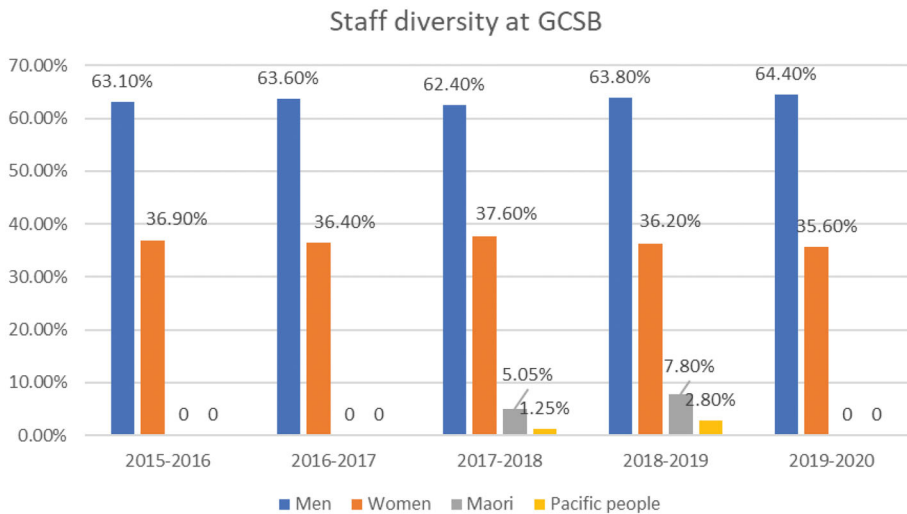


Figure 3. Staff diversity at GCSB.

Additionally, GCSB and NZSIS reporting reveals the low levels of representation of Maori and Pacific peoples in employment at these agencies. Maori people comprised 5.05% of staff at GCSB in 2017, Pacific peoples were 1.25% of staff in 2017,⁴⁸ compared to 7.8% Maori in 2018 and 2.8% Pacific peoples’ representation in 2018 (see Figure 3).⁴⁹ New Zealand Maoris comprised 16.5% of the total New Zealand population at the 2018 Census, and non-Māori Pacific Islanders were 9% of the population.⁵⁰

New Zealand Security Intelligence Service

As outlined above, the NZSIS partnered with GCSB on diversity and inclusion policies and strategies. With regard to gender and ethnic representation at NZSIS, from 2015 to 2016 women comprised 40.6% of the NZSIS workforce, 43.3% from 2016 to 2017, 42.2% from 2017 to 2018, and 46.7% from 2018 to 2019. Maori representation steadily decreased between 2015 and 2019, while Pacific Island representation steadily increased over the same period (see Figure 4).⁵¹

Employment statistics for NZSIS show positive change regarding diversity in the agency’s gender and Pacific Islander representation, contrasted with a steady decrease in Maori representation. Diversity programs, recruitment, and training at NZSIS could benefit from a focus on Maori representation.

Discussion

A high level of change in diverse representation does not appear to have occurred at the GCSB since the commencement of the agency’s Diversity and

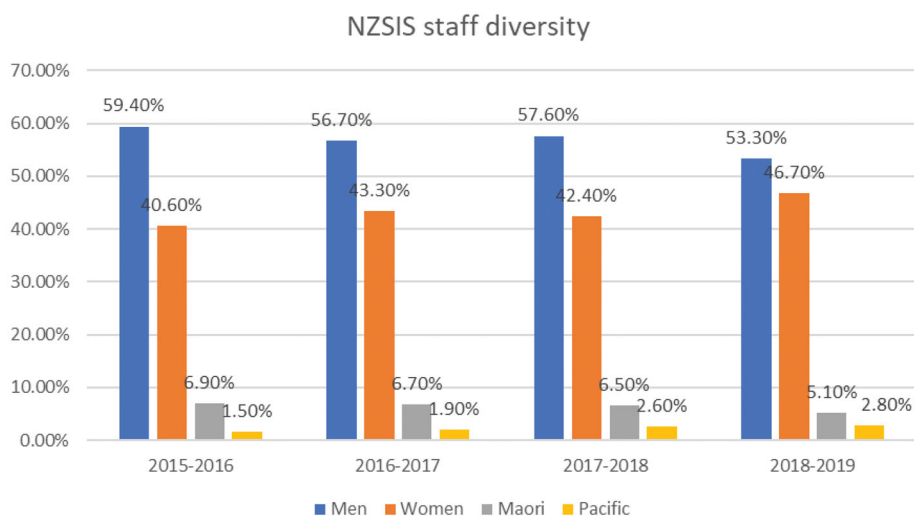


Figure 4. NZSIS staff diversity.

Inclusion Strategy 2017–2020 and the 2018 joint Diversity and Inclusion Strategy. While the agency professes greater gender equality at senior levels compared to Australian intelligence agencies, its Indigenous and gender parity at other levels remains unequal and unrepresentative of the wider population. Additionally, further inquiry into the decline of Maori representation should inform future diversity policies at NZSIS. It is possible that Maori have been uniquely affected by a lack of opportunity or lack of cultural recognition and sensitivity at NZSIS, which should be addressed within diversity policies to further improve inclusion at the agency in the future. Having a joint diversity and inclusion policy operating across both agencies holds great potential for change in diversity representation, as the joint policy eases coordination and implementation that could not be as easily achieved across Australia's five major intelligence agencies. Both New Zealand intelligence agencies should consider the implementation of measurable diversity hiring goals and the setting of achievable and ongoing benchmarks for internal diversity. A more diverse workforce with varied skills and experiences would be better equipped to respond to ever-changing intelligence and technological landscapes.

Legislation

Intelligence and Security Act 2017

Without the protections of the State Sector Act 1988, employees of NZSIS were not afforded the same protections as state-sector employees. The GCSB was only partially covered by the rules, procedures, and codes of the State Sector Act 1988. The Intelligence and Security Bill 2017 strongly

recommended that the NZSIS in its entirety and GCSB be further brought under the jurisdiction of the State Sector Act 1988, establishing the NZSIS as a public service department. The Intelligence and Security Act 2017 duly established the NZSIS as a government department and applied relevant provisions of the State Sector Act 1988 to the agency. NZSIS staff then gained rights, protections, and access to the procedures of the Employment Relations Act 2000, such as the freedom of association and collective bargaining rights, and access to dispute resolution services, including mediation services and the Employment Relations Authority.⁵² Additionally, although the State Sector Act 1988 was replaced in August 2020 by the Public Service Act 2020, the Employment Relations Act 2000 continues to apply to public service.⁵³

Inspector-General of Intelligence and Security Act 1996 (NZ)

The Inspector-General of Intelligence and Security Act 1996 provides for the appointment of an inspector-general of intelligence and security to provide oversight and review of intelligence and security agencies, including NZSIS and GCSB, as well as “any other agency declared by the Governor-General from time to time by Order in Council as an intelligence and security agency for the purposes of the Act.” Section 4 of the Act provides that the Inspector-General is responsible for independently investigating complaints relating to New Zealand intelligence and security agencies and inquiring into whether the activities of the agencies comply with the law. Complaints can be brought by both New Zealand citizens and employees of the intelligence agencies regarding the complainant being “adversely affected by any act, omission, practice, policy, or procedure of an intelligence and security agency.”⁵⁴

Human Rights Act 1993

The Human Rights Act 1993 and subsequent amendments enumerate prohibited grounds of discrimination in the public sector in relation to employment, sexual harassment, racial disharmony, racial harassment, and victimization. The Act also establishes a Human Rights Commission and a Human Rights Review Tribunal.⁵⁵ Section 21 of the Act specifies the following prohibited grounds of discrimination in the public sector, including: pregnancy, marital status, religious belief, ethical belief, color, race, ethnic or national origins, disability, age, political opinion, employment status, and sexual orientation. Although the Act provides at section 22 that it is unlawful for an employer to refuse employment, offer less favorable terms of employment, or terminate employment by reason of any of the prohibited grounds of discrimination, section 25 goes on to provide that section 22 does not apply to any restrictions on the employment of any person on work involving the national security of New Zealand, regarding religious or ethical

belief, political opinion, disability, family status, or national origin. Additionally, section 25(2) provides that it is not a breach of section 22, and it is therefore permissible to refuse employment of a person who is under 20 years of age on work involving the national security of New Zealand where that work requires a secret or top-secret security clearance, a provision that would directly apply to New Zealand's intelligence agencies.⁵⁶

CONCLUSION

Detailed statistical review of both Australian and New Zealand intelligence agencies' diversity and inclusion reveals an ongoing inequality in representation across women and Indigenous staff. Both New Zealand and Australian agencies have established strategies beyond their diversity and inclusion policies that attempt to address the imbalance of representation, such as managerial diversity training, scholarships for women, and commemoration of diversity days such as Maori Language Week. While statistics across both countries appear to be slowly increasing toward equality, the representation of women, disabled, and Indigenous staff remains low. New Zealand's intelligence agencies have seen more marked fluctuation in their representation figures, largely trending upward, while Australia's have remained somewhat static over the past five years. This could indicate that the diversity and inclusion policies of New Zealand's intelligence agencies and their additional strategies, such as scholarships and targeted marketing, have been more effective at improving diversity and inclusion in the country's IC. Notably, however, New Zealand has only two primary intelligence agencies that have produced a joint diversity and inclusion policy, no doubt facilitating ease of wider implementation than would be possible across Australia's five different and somewhat disconnected agencies. This puts the onus on Australia's intelligence agencies to take action individually toward achieving higher levels of staff representation and diversity, action that could be effectively achieved by participating in joint diversity and inclusion programs with other intelligence agencies or by attempting to achieve wider application of their existing programs.

In order to foster change in the intelligence sector, agencies should establish, implement, and maintain additional diversity and inclusion programs, such as unconscious bias training; LGBTQI, disability, and Indigenous networks; flexible working arrangements; and recruitment outreach specifically directed at fostering diverse employment. Additionally, increased reporting on staff diversity would also enable change in policies, culture, and recruitment by showing measurable progress, or lack thereof, in agencies' diversity over time. Analysis and reporting would enable agencies to set achievable and ongoing benchmarks for internal diversity. Organizations that have an ongoing lack of staff diversity risk homogeneity stifling

creativity and innovation, aspects of intelligence analysis that cannot be underestimated. Staff of different experiences, backgrounds, and training bring a richness of perspective to intelligence conversations that facilitate change via new ideas and creative thinking across the intelligence cycle, from planning to collection and analysis. A lack of diversity can also result in high staff turnover wherein staff who feel their differences are unrecognized or unwelcome will move on, further perpetuating a lack of organizational diversity that can create varied perspectives and collaboration that are needed for innovative intelligence collection and analysis in an ever-changing intelligence and technological landscape.

The legislation considered in this article serves to provide an overview of applicable laws that inform the diversity and inclusion policies of Australia and New Zealand's intelligence agencies. This includes legislation relating to discrimination, employment, and responsibilities of public services agencies in both countries. Statistics were primarily included to demonstrate the disparity in employment in the IC between men, women, and Indigenous populations. Statistics across intelligence agencies for other areas of discrimination referred to in the legislation, such as age, religion, marital status, and sexual orientation, were not available for analysis and as such were not the main focus of this article.

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- ⁸ *Ibid.*; Kate Grayson, “Addressing the Gender Gap in Australia’s Intelligence Community,” *The Strategist*, 11 September 2017. Statistics for Indigenous staff members at ASIS were not found.
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