



ANALYSIS

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1969, No. 24

An Act to make better provision for the New Zealand Security Intelligence Service *[11 September 1969]*

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the New Zealand Security Intelligence Service Act 1969.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Commissioner” means the Commissioner of Security Appeals appointed under section 14 of this Act:

- “Director” means the Director of Security holding office under this Act:
- “Employee”, in relation to the Security Intelligence Service, means a person employed as an employee of the Service under paragraph (b) of subsection (1) of section 6 of this Act; and includes a person to whom paragraph (b) of section 9 of this Act applies:
- “Espionage” means any offence against the Official Secrets Act 1951 which could benefit the Government of any country other than New Zealand:
- “Minister” means the Minister in charge of the New Zealand Security Intelligence Service:
- “Officer”, in relation to the Security Intelligence Service, means a person employed as an officer of the Service under paragraph (a) of subsection (1) of section 6 of this Act; and includes a person to whom paragraph (a) of section 9 of this Act applies:
- “Sabotage” means any offence against section 79 of the Crimes Act 1961:
- “Security” means the protection of New Zealand from acts of espionage, sabotage, and subversion, whether or not it is directed from or intended to be committed within New Zealand:
- “State Services” means all instruments of the Crown in respect of the Government of New Zealand, whether the Armed Services, the Police, Departments, corporations, agencies, or other instruments:
- “Subversion” means attempting, inciting, counselling, advocating, or encouraging—
- (a) The overthrow by force of the Government of New Zealand; or
 - (b) The undermining by unlawful means of the authority of the State in New Zealand:
- “The Security Intelligence Service” or “the Service” means the New Zealand Security Intelligence Service.

3. New Zealand Security Intelligence Service—(1) Subject to the provisions of this Act, there shall continue to be a New Zealand Security Intelligence Service.

(2) The New Zealand Security Intelligence Service to which this Act applies is hereby declared to be the same Service as the Service known as the New Zealand Security Service which was established on the 28th day of November, 1956.

4. Functions of New Zealand Security Intelligence Service—(1) Subject to the control of the Minister, the functions of the New Zealand Security Intelligence Service shall be—

- (a) To obtain, correlate, and evaluate intelligence relevant to security, and to communicate any such intelligence to such persons, and in such manner, as the Director considers to be in the interests of security:
 - (b) To advise Ministers of the Crown, where the Director is satisfied that it is necessary or desirable to do so, in respect of matters relevant to security, so far as those matters relate to Departments or branches of the State Services of which they are in charge:
 - (c) To co-operate as far as practicable and necessary with such State Services and other public authorities in New Zealand and abroad as are capable of assisting the Security Intelligence Service in the performance of its functions.
- (2) It shall not be a function of the Security Intelligence Service to enforce measures for security.

5. Director of Security—(1) There shall be a Director of Security who shall control the Security Intelligence Service.

(2) The Director of Security shall be appointed by the Governor-General, and (subject to subsection (4) of this section) shall hold office on such terms and conditions as the Governor-General determines.

(3) The Director of Security shall be responsible to the Minister for the efficient and proper working of the Security Intelligence Service.

(4) The person employed as Director of Security immediately before the commencement of this Act shall be deemed to have been appointed under this section, and shall hold office on the same terms and conditions as are specified in the agreement under which he was so employed unless and until he agrees to accept other terms and conditions.

6. Officers and employees—(1) Subject to the provisions of this Act, the Director may, on behalf of the Government of New Zealand,—

- (a) Employ, under agreements in writing, such officers of the Security Intelligence Service as he thinks necessary for the purposes of this Act; and
- (b) Engage such employees as he thinks necessary for those purposes.

(2) The Director shall not employ a person as an officer, except—

- (a) In an office the grading and scale salary of which has been determined under subsection (1) of section 7 of this Act; and
- (b) Upon the terms and conditions of employment in force under section 8 of this Act in relation to the employment of persons as officers at the date on which that person is so employed.

7. Grading of offices—(1) The salary scales applicable to offices in the Security Intelligence Service (other than the office of Director) shall be such as are determined from time to time by the Director with the concurrence of the Chairman of the State Services Commission.

(2) The designations of offices in the Security Intelligence Service (other than the office of Director) immediately before the commencement of this Act, and the salary scales then applicable to those offices shall be deemed to have been determined under subsection (1) of this section.

8. Conditions of employment—(1) Nothing in the State Services Act 1962 shall apply to the Director or the officers or employees of the Security Intelligence Service.

(2) Subject to the provisions of this Act, the terms and conditions upon which the Director shall employ persons as officers of the Security Intelligence Service and the terms and conditions applicable to employees of that Service, shall be determined from time to time by the Director with the concurrence of the Chairman of the State Services Commission.

9. Special provisions relating to existing officers and employees—A person who was employed in the Security Intelligence Service immediately before the commencement of this Act shall,—

- (a) If he was so employed under an agreement providing for his services to continue for a period exceeding 1 year from the time when his employment under the agreement commenced, continue to be employed upon the terms and conditions specified in the agreement unless and until he agrees to accept other terms and conditions:

- (b) If he was so employed otherwise than under such an agreement, continue to be employed under the terms and conditions applicable to him immediately before the commencement of this Act unless and until other terms and conditions applicable to him are determined under section 8 of this Act.

10. Officers and employees of Public Service—In the event of a person being or having been appointed (whether before or after the commencement of this Act) as a member of the Security Intelligence Service while he is an officer of or employed in any Department or branch of the Public Service and thereafter having his appointment in the Security Intelligence Service terminated, it shall be the responsibility of the Department or branch of the Public Service to re-employ him—

- (a) At the same grading as he had when he left that Department or branch if there is in the opinion of the permanent head of that Department or branch, an available position with that grading in that Department or branch; or
- (b) If there is no such available suitable position, at a lesser grading.

11. Employment of Director and officers not terminable at will—The appointment of the Director, and the employment of an officer of the Security Intelligence Service, shall be terminated only in accordance with a term or condition of his appointment or employment.

12. Application of Superannuation Act 1956—(1) In any case where a person employed in the Security Intelligence Service immediately before the commencement of this Act (including the person holding office as Director of Security immediately before the commencement of this Act) was immediately before the commencement of this Act contributing to the Government Superannuation Fund, or in any case where a person is appointed after the commencement of this Act as Director or as an officer or employee of the Security Intelligence Service, his service in the Security Intelligence Service shall be deemed for the purposes of the Superannuation Act 1956 to be employment in the Government Service.

(2) For the purposes of the Superannuation Act 1956, the controlling authority in relation to any such person while he is employed in the Security Intelligence Service shall be the Director.

13. Personation—Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months, or to a fine not exceeding \$200, or to both, who (not being the Director or an officer or employee of the Security Intelligence Service) describes himself or otherwise holds himself out as the Director or an officer or employee of the Security Intelligence Service, unless he establishes that the manner and circumstances in which he did the act which is proved were such as to raise no reasonable inference that he was describing himself or otherwise holding himself out as being in reality the Director or such an officer or employee.

Commissioner of Security Appeals

14. Commissioner of Security Appeals—(1) The Governor-General shall from time to time appoint a suitable person to be Commissioner of Security Appeals.

(2) The person appointed to be Commissioner of Security Appeals shall be a barrister or solicitor of the Supreme Court of not less than 7 years' practice, whether or not he holds or has held any judicial office. Any person appointed as Commissioner of Security Appeals may hold that office concurrently with any other office held by him.

(3) The Commissioner of Security Appeals shall hold office for a term of 3 years, but may from time to time be reappointed:

Provided that, unless the Commissioner vacates his office under subsection (4) of this section, he shall continue in office until his successor comes into office.

(4) The Commissioner may be removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Governor-General, or may at any time resign his office by written notice given to the Minister.

15. Remuneration and travelling allowances of Commissioner—There shall be paid out of money appropriated by Parliament for the purpose to the Commissioner remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the Commissioner were a member of a statutory Board within the meaning of that Act.

16. Oath to be taken by Commissioner—(1) Before undertaking the duties of his office the Commissioner shall take an oath that he will faithfully and impartially perform all duties of his office, and will not, except in accordance with subsection (1) of section 20 and section 21 of this Act, divulge any information received by him in the exercise of his functions under this Act.

(2) For the purposes of the Official Secrets Act 1951 the Commissioner shall be deemed to be a person holding office under Her Majesty.

(3) The oath shall be administered by a Judge of the Supreme Court.

17. Function of the Commissioner—(1) The function of the Commissioner shall be to inquire into complaints made in accordance with this Act by any person ordinarily resident in New Zealand that his career or livelihood is or has been adversely affected by an act or omission of the New Zealand Security Intelligence Service.

(2) In pursuing his function under this Act the Commissioner shall have regard to the requirements of security.

18. Mode of complaint—(1) Every complaint to the Commissioner shall be made in writing.

(2) Complaints shall be addressed to the Commissioner of Security Appeals at the office of the Supreme Court at Wellington, and shall be accompanied by the fee of \$2 specified in subsection (3) of this section.

(3) On every complaint to the Commissioner there shall be paid to the Commissioner on behalf of the Crown a fee of \$2.

(4) The Commissioner shall cause all fees paid to him under this section to be paid into the Public Account.

(5) The Commissioner may if he thinks fit direct that the fee paid by the complainant under this Act shall be refunded to him.

19. Commissioner may refuse to inquire into complaint—

(1) The Commissioner may in his discretion decide not to inquire into any complaint if—

(a) In his opinion the subject matter of the complaint is trivial; or

(b) In his opinion the complaint is frivolous or vexatious or is not made in good faith; or

(c) The complainant is not a New Zealand citizen.

(2) If in the course of his inquiries it appears to the Commissioner—

(a) That there is an adequate remedy or right of appeal under section 38 of the State Services Act 1962 or otherwise; or

(b) That, having regard to all the circumstances of the case, further inquiries are unnecessary,—

he shall refuse to inquire into the matter further.

(3) In any case where the Commissioner decides not to inquire into a complaint or proceed with his inquiries, he shall advise the complainant of that decision.

20. Proceedings of Commissioner—(1) On receipt of a complaint made under this Act the Commissioner shall provide the Director with a copy of the complaint.

(2) The Commissioner shall regulate his procedure in such manner as he thinks fit having regard to the requirements of security.

(3) In arriving at his conclusions the Commissioner shall hear separately and in private such evidence (if any) as may be tendered by the complainant and any witnesses whom he may wish to adduce, and shall hear separately and in private such evidence (if any) as may be tendered by the Director and any witnesses whom he may wish to adduce.

(4) The Commissioner shall permit the complainant to be heard, and to be represented by counsel or any other person, and to have other persons testify to his record, reliability, and character.

(5) In accordance with the foregoing provisions of this section, the Commissioner may receive such evidence as he thinks fit, whether admissible in a Court of law or not.

(6) Subject to the provisions of subsection (7) of this section, the Commissioner may summon before him and examine on oath any person, and for that purpose may administer an oath. Every such examination by the Commissioner shall be deemed to be a judicial proceeding within the meaning of section 108 of the Crimes Act 1961.

(7) The Commissioner may require the complainant to support his complaint with a statutory declaration; but nothing in this section shall make it obligatory for the complainant to submit himself to examination or cross examination, on oath or otherwise, as to his complaint or statutory declaration or any other matter that arises in the examination by the Commissioner.

(8) Where any person is required by the Commissioner to attend before him for the purposes of this section, the person shall be entitled to the same fees, allowances, and expenses as if he were a witness in a Court, and the provisions of any regulations in that behalf made under the Summary Proceedings Act 1957 and for the time being in force shall apply accordingly. For the purposes of this subsection the Commissioner shall have the powers of a Court under any such regulations to fix or disallow, in whole or in part, or increase the amounts payable thereunder.

(9) No proceeding, report, or finding of the Commissioner shall be challenged, reviewed, quashed, or called in question in any Court.

21. Action by Commissioner—(1) After completing his inquiries, and having regard to the requirements of security, the Commissioner shall—

- (a) Forward to the complainant his findings regarding the complainant; and
- (b) Report to the Minister, and (together with his report) forward to the Minister all documents and materials relating to the complaint, including his findings regarding the complainant; and the report, documents, materials, and findings shall be placed on the appropriate file of the Service.

(2) If at any stage during the course of his inquiries the Commissioner is of the opinion that there is evidence of any breach of duty or misconduct on the part of any officer or employee of the Service, he shall inform the Director immediately.

22. Action by Minister—The Minister shall take such further action as he considers appropriate, and may if he thinks fit direct that any file be noted appropriately.

23. Restriction on publication and broadcasting—(1) Except with the written consent of the Minister, no report or account of any application, evidence, or proceedings before the Commissioner or of any decision of the Commissioner or the Minister shall be published in any newspaper or other document or broadcast by radio or television or otherwise:

Provided that nothing in this subsection shall restrict the broadcasting or reporting of proceedings in Parliament.

(2) Every person who publishes or causes to be published any report or account, or who broadcasts any report or account, in contravention of this section commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$200.

24. Proceedings and findings privileged—(1) Except in the case of proceedings for an offence against the Official Secrets Act 1951,—

(a) No proceedings, civil or criminal, shall lie against the Commissioner for anything he may do or report or say in the course of the exercise or intended exercise of his functions under this Act, unless it is shown that he acted in bad faith:

(b) The Commissioner shall not be called to give evidence in any Court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions.

(2) Anything said or any information supplied or any document or material produced by any person in the course of any inquiry by or proceedings before the Commissioner under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a Court.

This Act is administered in the New Zealand Security Intelligence Service.
