



ANALYSIS

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1977, No. 50

An Act to amend the New Zealand Security Intelligence Service Act 1969
[16 November 1977]

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 Amendment Act 1977, and shall be read together with and deemed part of the New Zealand Security Intelligence Service Act 1969 (hereinafter referred to as the principal Act).

2. Interpretation—(1) Section 2 of the principal Act is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

“‘Intercept’, in relation to any communication not otherwise lawfully obtainable by the person making the interception, includes hear, listen to, record, monitor, or acquire the communication, or acquire the substance, meaning, or purport thereof; and ‘interception’ has a corresponding meaning:

“‘Interception warrant’ means an interception warrant issued under subsection (1) of section 4A of this Act, as inserted by section 4 of the New Zealand Security Intelligence Service Amendment Act 1977:

“‘New Zealand Intelligence Council’ means the Council of that name established in accordance with an approval given by the Prime Minister on the 3rd day of February 1975:

“‘Terrorism’ means planning, threatening, using, or attempting to use violence to coerce, deter, or intimidate—

“(a) The lawful authority of the State in New Zealand; or

“(b) The community throughout New Zealand or in any area in New Zealand for the purpose of furthering any political aim:”.

(2) Section 2 of the principal Act is hereby further amended—

(a) By omitting from the definition of the term “Commissioner”, the word “appointed”, and substituting the words “holding office”:

(b) By inserting in the definition of the term “security”, after the word “sabotage”, the word “terrorism”:

(c) By omitting, from the definition of the term “State Services”, the words “Armed Services”, and substituting the words “Armed Forces”.

3. Functions of New Zealand Security Intelligence Service—(1) Section 4 of the principal Act is hereby amended by adding to subsection (1) the following paragraph:

“(d) To inform the New Zealand Intelligence Council of any new area of potential espionage, sabotage, terrorism, or subversion in respect of which the Director has considered it necessary to institute surveillance.”

(2) Section 4 of the principal Act is hereby further amended by repealing subsection (2), and substituting the following subsection:

“(2) It shall not be a function of the Security Intelligence Service—

“(a) To enforce measures for security; or

“(b) To institute surveillance of any person or class of persons by reason only of his or their involvement in lawful protest or dissent in respect of any matter affecting the Constitution, laws, or Government of New Zealand.”

4. Issue of interception warrant—The principal Act is hereby amended by inserting, after section 4, the following section:

“4A. (1) On an application made in writing by the Director, or by the person for the time being acting as the Director, the Minister may issue an interception warrant authorising the interception or seizure of any communication not otherwise lawfully obtainable by the person making the interception or seizure, if he is satisfied on evidence on oath given by the applicant that—

“(a) The interception or seizure is necessary either—

“(i) For the detection of activities prejudicial to security; or

“(ii) For the purpose of gathering foreign intelligence information essential to security; and

“(b) The value of the information sought to be obtained is such as to justify the particular interception or seizure; and

“(c) The information is not likely to be obtained by any other means; and

“(d) The communication is not privileged in proceedings in a Court of law under—

“(i) Section 8 of the Evidence Act 1908; or

“(ii) Any rule of law that confers privilege on communications of a professional nature between a law practitioner and his client.

“(2) Any such interception warrant shall:

“(a) Specify the type of communication to be intercepted or seized; and

“(b) State the identity of the persons, if known, whose communications are sought to be intercepted or

seized, or (where the identity of the persons is not known) the place in respect of which communications may be intercepted or seized; and

“(c) Specify the person who may make the interception or seizure; and

“(d) Be valid for the period specified therein.

“(3) Any such interception warrant may include—

“(a) Such other terms and conditions (if any) as the Minister considers advisable in the public interest:

“(b) A request to any person or persons or class of persons to give such assistance as may be specified in the warrant in making the interception or seizure; and, where any such request is made to any persons who are in the employment of another person, the warrant shall also contain a request that the services of the persons who are requested to assist shall be made available to the Security Intelligence Service by the employers of those persons and all other persons who are in any way in control of the persons who are requested to assist.

“(4) Nothing in this Act or in any interception warrant issued under this section shall authorise the interception or seizure of any information stored on the computer system established under the Wanganui Computer Centre Act 1976. Every person who gains or attempts to gain access to that computer system otherwise than as authorised by that Act commits an offence against section 29 (2) (a) of that Act.

“(5) The Minister shall, as soon as practicable after the close of each year ending with the 31st day of March, review all warrants issued under subsection (1) of this section for the preceding 12 months or at any time in force during those 12 months, and prepare and lay before Parliament a report relating to such of those warrants as were issued for the purposes of subparagraph (i) of paragraph (a) of subsection (1) of this section and the interceptions and seizures made for those purposes in the immediately preceding year, which report shall include information (not being information prejudicial to security) on—

“(a) The number of warrants issued for the purposes of that subparagraph; and

“(b) The average length of time for which the last-mentioned warrants were in force; and

“(c) The methods of interception and seizure used under the last-mentioned warrants,—
and shall provide a general assessment of the importance of the warrants issued for the purposes of that subparagraph.

“(6) Every person who, by any interception warrant issued under subsection (1) of this section, is authorised to intercept or seize any communication, or is requested to give any assistance in making the interception or seizure, is justified in making the interception or seizure, and in taking any reasonable action necessarily involved in making or assisting to make or attempting to make the interception or seizure, in accordance with the terms and conditions of the warrant; and

“(a) No civil or criminal proceedings shall lie against him by reason of his so doing; and

“(b) The issue of the warrant shall not be subject to judicial review under Part I of the Judicature Amendment Act 1972 or otherwise.

“(7) Where it is necessary to prove in any proceedings in any Court that any person was acting at any time pursuant to an interception warrant, it shall not be necessary to produce the warrant to the Court, but a certificate by the Attorney-General as to any matters specified in the warrant shall be conclusive evidence as to all such matters so certified.

“(8) Subsection (6) of this section is in addition to and not in derogation of any other enactment relating to the execution of warrants.

“(9) This section shall have effect notwithstanding anything to the contrary in any other Act.”

5. Destruction of irrelevant records obtained by interception—The principal Act is hereby amended by inserting, after the said section 4A, the following section:

“4B. (1) Subject to subsection (2) of this section, every person who intercepts or seizes any communication in accordance with any interception warrant shall, as soon as practicable after the interception or seizure,—

“(a) Destroy any copy that he may make of the communication or any part thereof, and any record, whether in writing or otherwise, of the information obtained by that interception or seizure, except so far as the information recorded therein relates

directly or indirectly to the detection of activities prejudicial to security or comprises foreign intelligence information essential to security:

“(b) Where the communication has been seized from mail in transit, return it to the mail for delivery in the normal course:

“(c) In the case of any other letter or document or thing that has been intercepted or seized, return it to the place from which it was intercepted or seized if the Director considers that it is practicable to do so.

“(2) Where the Director considers that the return of any communication to the mail might lead to consequences that would endanger life or property, and in any other case where the Director considers that it is not practicable to return any letter or document or thing to the place from which it was intercepted or seized, the Director shall, as soon as practicable after the interception or seizure, consult the Solicitor-General as to the disposition of the communication, and shall dispose of it as the Solicitor-General may require.

“(3) Every person who knowingly fails to comply with the foregoing provisions of this section commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.”

6. Director of Security—(1) Section 5 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) The Director of Security shall be appointed by the Governor-General, and shall hold office under a contract of service for such term, and (subject to any subsequent Order in Council prescribing the salary for the office) on such terms and conditions as to salary, allowances, and otherwise, as the Minister thinks fit.”

(2) Section 5 of the principal Act is hereby further amended by repealing subsection (4).

7. Prohibition on unauthorised disclosure of information—

(1) The principal Act is hereby amended by inserting, after section 12, the following section:

“12A. (1) An officer or employee of the Security Intelligence Service, or a former officer or employee of the Service, shall not disclose or use any information gained by or con-

veyed to him through his connection with the Service otherwise than in the strict course of his official duties or as authorised by the Minister.

“(2) A person who, by any interception warrant, is authorised to intercept or seize any communication, or is requested to give any assistance in making any such interception or seizure, or to make the services of other persons available to the Security Intelligence Service, shall not disclose the existence of the warrant, or disclose or use any information gained by or conveyed to him when acting pursuant to the warrant, otherwise than as authorised by the warrant or by the Minister or the Director.

“(3) A person who acquires knowledge of any information knowing that it was gained as a result of any interception or seizure in accordance with an interception warrant shall not knowingly disclose that information otherwise than in the course of his duty.

“(4) Every person commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine not exceeding \$2,000 who fails to comply with or acts in contravention of the foregoing provisions of this section.”

(2) The Summary Proceedings Act 1957 is hereby amended by inserting in Part II of the First Schedule, in its appropriate alphabetical order, the following item:

“The New Zealand Security Intelligence Service Act 1969	12A	Unauthorised disclosure of information.”
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8. Restriction on publication and broadcasting of information regarding staff—The principal Act is hereby amended by inserting, after section 13, the following section:

“13A. (1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000, who (except with the written consent of the Minister) publishes or causes or allows to be published in a newspaper or other document, or broadcasts or causes or allows to be broadcast by radio or television or otherwise, the fact that any person is—

“(a) A member of the New Zealand Security Intelligence Service other than the Director; or

“(b) Is connected in any way with a member of the New Zealand Security Intelligence Service.

“(2) Nothing in this section shall restrict the broadcasting or reporting of proceedings in Parliament.

“(3) The written consent of the Minister in relation to any proceedings in any Court may be filed in the Court, and when so filed shall be sufficient authority to all persons to act in accordance therewith.”

9. Commissioner of Security Appeals—The principal Act is hereby amended by repealing section 14, and substituting the following section:

“14. There shall be a Commissioner of Security Appeals, who shall be the person for the time being holding the office of Chairman of the Security Review Authority constituted under section 38 of the State Services Act 1962.”

10. Commissioner may refuse to inquire into complaint—Section 19 (1) of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraph:

“(c) The complainant is not able to satisfy the Commissioner that he is ordinarily resident in New Zealand.”

11. Proceedings of Commissioner—(1) Section 20 of the principal Act is hereby amended by inserting, after subsection (2), the following subsections:

“(2A) In accordance with his function, under section 17 (2) of this Act, to have regard to the requirements of security, the Commissioner shall—

“(a) Consult with the Director and with any person other than the complainant to assist in the determination of the circumstances and information that should not in the interests of security be disclosed in the course of or in relation to the inquiry;

“(b) Take all precautions that are necessary to prevent the disclosure, in the course of or in relation to the inquiry, of any circumstances and information that in his opinion should not in the interests of security be so disclosed; and

“(c) Take all precautions that are necessary to protect the secrecy of any source from which he learned of the circumstances and information referred to in paragraph (b) of this subsection and of any other classified material or information.

“(2B) The Commissioner shall, subject to the provisions of this section and the other provisions of this Act, examine all files and obtain all information that are in the custody or control of the Service and are in his opinion relevant to the inquiry.

“(2c) The Commissioner shall, subject to the provisions of this section and all the other provisions of this Act, provide the complainant with a statement prepared by the Service summarising such of the circumstances and information relating to the complainant as will, in the opinion of the Commissioner, enable the complainant to be as fully informed as possible of the opinions (if any) held by the Service and its officers and employees regarding the information relevant to the complaint.”

(2) Section 20 of the principal Act is hereby further amended by repealing subsection (6), and substituting the following subsection:

“(6) Subject to the provisions of subsection (7) of this section, the Commissioner shall have the same powers and authority to summon witnesses and receive evidence as are conferred upon Commissions of Inquiry by the Commissions of Inquiry Act 1908, and the provisions of that Act, except sections 11 and 12 (which relate to costs), shall apply accordingly.”

(3) Section 20 of the principal Act is hereby further amended by inserting in subsection (9), before the words “No proceeding”, the words “Except on the ground of lack of jurisdiction”.

12. Disclosure of certain matters not to be required—The principal Act is hereby amended by inserting, after section 20, the following section:

“20A. (1) Subject to the provisions of subsection (2) of this section, where the Minister certifies—

“(a) That the giving of any information or the answering of any question or the production of any document or other material is likely to prejudice security; and

“(b) That in the interests of security—

“(i) The information or answer should not be given, or the document or other material should not be produced; or

“(ii) The information or answer should not be given or the document or other material should not be produced, except to the Commissioner; or

“(iii) Some other restrictions or conditions should be placed on the giving of the information or answer or the production of the document or other material—

the Commissioner shall act in accordance with the certificate.

“(2) The Minister shall not exercise his power under subsection (1) of this section until the consultations referred to in paragraph (a) of subsection (2A) of section 20 of this Act and relating to the particular information, question, document, or other material have been completed.”

13. Action by Commissioner—The principal Act is hereby amended by repealing section 21, and substituting the following section:

“21. (1) After completing his inquiries, and having regard to his function (under section 17 (2) of this Act) to have regard to the requirements of security, the Commissioner shall—

“(a) Forward to the complainant his findings regarding the complaint; and

“(b) Report to the Minister, making such recommendations, if any, as he thinks appropriate, and (together with his report) forward to the Minister all documents and material relating to the complaint, including his findings; 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 Minister and the Director immediately.”

14. Restriction on publication and broadcasting of account of proceedings before Commissioner—Section 23 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Except with the written consent of the Minister, no report or account of any 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.”

15. Appointment of officers and employees of Security Intelligence Service to Public Service—Section 31 of the State Services Act 1962 is hereby amended by inserting, after the words “Legislative Department”, the words “or the New Zealand Security Intelligence Service”.

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