



ANALYSIS

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1999, No. 14

An Act to amend the New Zealand Security Intelligence Service Act 1969 [31 March 1999]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the New Zealand Security Intelligence Service Amendment Act 1999, and is part of the New Zealand Security Intelligence Service Act 1969 (“the principal Act”).

(2) This Act comes into force on the day after the date on which it receives the Royal assent.

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

“‘Copy’ includes to copy by any electronic, optical, photographic, or other process:

“‘Document’ has the meaning given to it by section 2 (1) of the Official Information Act 1982:

“‘Place’ includes any land, building, premises, dwellinghouse, vehicle, vessel, or aircraft:

“‘Seize’, in relation to any communication, document, or thing not otherwise lawfully obtainable by the person making the seizure, includes the taking, removal, or

copying of the communication, document, or thing; and 'seizure' has a corresponding meaning:".

(2) Section 2 of the principal Act is amended by repealing the definition of the term "interception warrant", and substituting the following definition:

"'Interception warrant' means an interception warrant issued under this Act:".

3. Issue of interception warrant—(1) Section 4A (1) of the principal Act is amended by inserting, after the words "any communication", the words ", document, or thing".

(2) Section 4A (1)(d) of the principal Act is amended by repealing subparagraph (i), and substituting the following subparagraph:

"(i) Any of sections 31 to 33 of the Evidence Amendment Act (No. 2) 1980; or".

(3) Section 4A (2)(a) of the principal Act is amended by inserting, after the word "communication", the words ", document, or thing".

(4) Section 4A (2) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraphs:

"(b) State the identity of the persons, if known, whose communications are sought to be intercepted, or (where the identity of the persons is not known) the place in respect of which communications may be intercepted; and

"(ba) If documents or things are to be seized, state the place where the documents or things are or are likely to be; and".

(5) Section 4A (2) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:

"(d) Specify a period not exceeding 12 months for which the interception warrant is valid."

(6) Section 4A of the principal Act is amended by inserting, after subsection (3), the following subsections:

"(3A) On an application made in writing by the Director, or by the person for the time being acting as the Director, the Minister may amend an interception warrant—

"(a) By substituting another person for the person specified in the warrant under subsection (2)(c):

"(b) By substituting another person or another class of persons for a person or class of persons included in the warrant under paragraph (b) of subsection (3), or

adding any person or class of persons to the persons included under that paragraph.

“(3B) A person who is authorised by an interception warrant to intercept the communications of persons, and any person who is requested in accordance with the warrant to assist in making the interception, may enter—

“(a) Any place that is specified in the warrant; or

“(b) Any place that is owned or occupied by a person whose communications are sought to be intercepted; or

“(c) With the prior approval of the Director (or the person for the time being acting as the Director), any place where a person whose communications are sought to be intercepted is or is likely to be at any time.

“(3C) A person who is authorised by an interception warrant to seize documents or things, and any person who is requested in accordance with the warrant to assist in making the seizure, may enter a place specified in the warrant.

“(3D) If by virtue of an interception warrant a person is authorised under subsection (3B) to enter a place, the person may do in the place any of the following acts that are necessary for the purposes of giving effect to the warrant:

“(a) Install or modify any device or equipment in the place:

“(b) Maintain any device or equipment in the place:

“(c) Remove from the place any device or equipment previously installed in the place:

“(d) Any other act that is reasonably required to achieve the purposes for which the interception warrant was issued.

“(3E) If by virtue of an interception warrant a person is authorised under subsection (3C) to enter a place, the person may do in the place any of the following acts that are necessary for the purposes of giving effect to the warrant:

“(a) Search the place:

“(b) Open any container, box, or receptacle that is in the place:

“(c) Obtain access to any document or thing that is in the place:

“(d) Seize any document or thing authorised to be seized by the warrant:

“(e) Remove from the place any device or equipment previously installed in the place:

“(f) Any other act that is reasonably required to achieve the purposes for which the interception warrant was issued.”

(7) Section 4A (6) of the principal Act is amended by inserting, after the word “communication”, the words “, document, or thing”.

(8) Section 4A of the principal Act is amended by adding, as subsection (10), the following subsection:

“(10) The expiry of an interception warrant does not prevent an application under subsection (1) in respect of the same subject matter.”

4. Removal of device or equipment after warrant ceases to be in force—The principal Act is amended by inserting, after section 4A, the following section:

“4AB. (1) If any device or equipment that has been installed, in accordance with an interception warrant, remains in a place after the interception warrant has ceased to be in force in respect of that place, the Minister may issue a warrant authorising the removal of the device or equipment from the place.

“(2) A warrant issued under subsection (1)—

“(a) Must specify the person who may remove the device or equipment; and

“(b) Must specify a period not exceeding 12 months for which the warrant is valid; and

“(c) May include a request to any person or persons or class of persons to give such assistance as may be specified in the warrant in removing the device or equipment; and, where any such request is made to any persons who are in the employment of another person, the warrant must also contain a request that the services of the persons who are requested to assist are to 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.

“(3) A warrant issued under subsection (1) authorises the person specified under subsection (2)(a) or the person or persons referred to under subsection (2)(c) to enter the place concerned for the purpose of removing the device or equipment, and to do in that place any of the following acts that are necessary to achieve that purpose:

“(a) Search the place:

“(b) Open any container, box, or receptacle that is in the place:

“(c) Obtain access to any document or thing that is in the place:

“(d) Any other act that is reasonably required to achieve the purpose for which the interception warrant was issued.

“(4) A warrant may be issued under subsection (1) only on an application made in writing by the Director, or by the person for the time being acting as the Director.”

5. Duty to minimise impact of interception warrants on third parties—The principal Act is amended by inserting, after section 4B, the following section:

“4BA. (1) In any case where an interception warrant authorises the interception or seizure of the communications of a person (‘person A’), everyone who makes, or assists in making, the interception or seizure under the interception warrant must take all practicable steps that are reasonable in the circumstances to minimise the likelihood of intercepting or seizing communications that are not relevant to person A.

“(2) The Director (or the person for the time being acting as the Director) must advise the Minister without delay of any approval given, under section 4A (3B) (c), to enter a place without the consent of the owner or occupier, if that place is neither—

- “(a) Owned or occupied by person A; nor
- “(b) Specified in the interception warrant.”

6. Operation of section 4A of principal Act before commencement of this Act—(1) It is declared that section 4A of the principal Act (as in force immediately before the commencement of this Act) conferred at all times on persons authorised under subsection (2) (c) of that section, and on persons requested under subsection (3) (b) of that section, the powers set out in subsections (3B) to (3E) of that section (as enacted by this Act).

(2) If any issue concerning a power or a purported power under the principal Act needs to be determined in proceedings commenced before 16 December 1998, it must be determined as if subsection (1) had not been enacted.