

**Reprint
as at 28 September 2017**

**New Zealand Security Intelligence Service Amendment
Act (No 2) 1999**

Public Act 1999 No 91
Date of assent 31 August 1999

New Zealand Security Intelligence Service Amendment Act (No 2) 1999: repealed, on 28 September 2017, pursuant to section 242(3)(a) of the Intelligence and Security Act 2017 (2017 No 10).

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this eprint. See the notes at the end of this eprint for further details.

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

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An Act to amend the New Zealand Security Intelligence Service Act 1969

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 (No 2) 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.

Part 1 Amendments to principal Act

2 Interpretation

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

Commissioner means the Commissioner of Security Warrants holding office under section 5A

Foreign,— Domestic interception warrant means a warrant issued under section 4A(1)

- (a) In relation to capabilities, intentions, or activities, means controlled, entertained, or undertaken by 1 or more foreign organisations or foreign persons:
- (b) In relation to intelligence, means intelligence relating to 1 or more foreign organisations or foreign persons:

Foreign interception warrant means a warrant issued under section 4A(2)

Foreign organisation means—

- (a) A government of any country other than New Zealand:
- (b) An entity controlled by the government of any country other than New Zealand:
- (c) A company or body corporate that is incorporated outside New Zealand, or any company within the meaning of the Companies Act 1993 that is, for the purposes of the Companies Act 1993, a subsidiary of any company or body corporate incorporated outside New Zealand:
- (d) An unincorporated body of persons—
- (i) That is not a body 50% or more of whose members are New Zealand citizens or permanent residents; and
- (ii) That carries on activities wholly or in part outside New Zealand:

Foreign person means an individual who is neither a New Zealand citizen nor a permanent resident

Permanent resident means a person who is, or who is deemed to be, the holder of a residence permit under the Immigration Act 1987

- (2) Section 2 of the principal Act is amended by repealing the definitions of the terms **interception warrant** and **security**, and substituting, in their appropriate alphabetical order, the following definitions:

Interception warrant means a domestic interception warrant or a foreign interception warrant

Security means—

- (a) The protection of New Zealand from acts of espionage, sabotage, terrorism, and subversion, whether or not they are directed from or intended to be committed within New Zealand:
 - (b) The identification of foreign capabilities, intentions, or activities within or relating to New Zealand that impact on New Zealand's international well-being or economic well-being:
 - (c) The protection of New Zealand from activities within or relating to New Zealand that—
 - (i) Are influenced by any foreign organisation or any foreign person; and
 - (ii) Are clandestine or deceptive, or threaten the safety of any person; and
 - (iii) Impact adversely on New Zealand's international well-being or economic well-being:
- (3) Section 2 of the principal Act is amended by adding, as subsection (2), the following subsection:
- (2) Nothing in this Act limits the right of persons to engage in lawful advocacy, protest, or dissent in respect of any matter, and, accordingly, the exercise of that right does not, of itself, justify the Security Intelligence Service in instituting surveillance of any person or entity or any class of person or entity within New Zealand.

3 Functions of New Zealand Security Intelligence Service

- (1) Section 4(1) of the principal Act is amended by inserting, after paragraph (b), the following paragraphs:
- (ba) To advise any of the following persons on protective measures that are directly or indirectly relevant to security:
 - (i) Ministers of the Crown or Government departments:
 - (ii) Public authorities:
 - (iii) Any person who, in the opinion of the Director, should receive the advice:
 - (bb) To conduct inquiries into whether particular individuals should be granted security clearances, and to make appropriate recommendations based on those inquiries:
 - (bc) To make recommendations in respect of matters to be decided under the Citizenship Act 1977 or the Immigration Act 1987, to the extent that those matters are relevant to security:
- (2) Section 4 of the principal Act is amended by repealing subsections (2) and (3), and substituting the following subsection:
- (2) It is not a function of the Security Intelligence Service to enforce measures for security

4 Political neutrality of New Zealand Security Intelligence Service

The principal Act is amended by inserting, after section 4, the following section:

4AA

- (1) The Director must take all reasonable steps to ensure that—
 - (a) The activities of the Security Intelligence Service are limited to those that are relevant to the discharge of its functions;
 - (b) The Security Intelligence Service is kept free from any influence or consideration that is not relevant to its functions;
 - (c) The Security Intelligence Service does not take any action for the purpose of furthering or harming the interests of any political party.
- (2) The Minister may not direct the Security Intelligence Service to institute the surveillance of any person or entity or any class of person or entity within New Zealand.
- (3) The Director must consult regularly with the Leader of the Opposition for the purpose of keeping him or her informed about matters relating to security.
- (4) Subsection (2) prevails over section 4(1).

5 Issue of interception warrant

Section 4A of the principal Act is amended by repealing subsections (1) to (5), and substituting the following subsections:

- (1) The Minister and the Commissioner may jointly issue a domestic interception warrant, authorising a person to intercept or seize any communication, document, or thing not otherwise lawfully obtainable by the person, if the Minister and the Commissioner are both satisfied on evidence on oath given by the applicant for the warrant that the conditions specified in subsection (3) apply to the proposed warrant.
- (2) The Minister may issue a foreign interception warrant authorising a person to intercept or seize any communication, document, or thing not otherwise lawfully obtainable by the person, if the Minister is satisfied on evidence on oath given by the applicant for the warrant that—
 - (a) The conditions specified in subsection (3) apply to the proposed warrant; and
 - (b) There are reasonable grounds for believing—
 - (i) That no New Zealand citizen or permanent resident is to be identified by the proposed warrant as a person whose communications may be intercepted; and
 - (ii) That any place to be specified in the proposed warrant is occupied by a foreign organisation or a foreign person.

- (3) The conditions referred to in subsections (1) and (2) are that—
- (a) The interception or seizure to be authorised by the proposed warrant is necessary—
 - (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 under the proposed warrant justifies the particular interception or seizure; and
 - (c) The information is not likely to be obtained by any other means; and
 - (d) Any communication sought to be intercepted or seized under the proposed warrant is not privileged in proceedings in a court of law under—
 - (i) Any of sections 31 to 33 of the Evidence Amendment Act (No 2) 1980; or
 - (ii) Any rule of law that confers privilege on communications of a professional nature between a lawyer and his or her client.
- (4) An interception warrant may be issued only on an application made in writing by the Director or by the person for the time being acting as the Director.
- (5) Before issuing an interception warrant in respect of any matter specified in paragraph (b) of the definition of the term **security** in section 2 (1), the Minister must consult the Minister of Foreign Affairs and Trade about the proposed warrant.

6 New sections and headings inserted

The principal Act is amended by repealing sections 4AB to 4C, and substituting the following sections and headings:

Matters to be stated in interception warrants

4B Subject matter of interception warrant

- (1) Every interception warrant must—
- (a) Specify the type of communication, document, or thing to be intercepted or seized; and
 - (b) State the identity of the persons, if known, whose communications are sought to be intercepted, or (if the identity of the persons is not known) the place in respect of which communications may be intercepted; and
 - (c) If documents or things are to be seized, state either or both of the following:
 - (i) The place where the documents or things to be seized are located;
 - (ii) The identity of the person in whose possession or control the documents or things are likely to be.

- (2) A domestic interception warrant may contain any terms and conditions that the Minister and the Commissioner both consider advisable in the public interest.
- (3) A foreign interception warrant may contain any terms and conditions that the Minister considers advisable in the public interest.

4C Term of interception warrant

- (1) Every interception warrant must specify a period not exceeding 12 months for which the interception warrant is valid.
- (2) The expiry of an interception warrant does not prevent a further application for an interception warrant in respect of the same subject matter.

4D Persons acting under warrant

- (1) Every interception warrant must specify the person who may make the interception or seizure.
- (2) An interception warrant may also request 1 or more persons or class of persons to give any assistance that is specified in the warrant in making the interception or seizure.
- (3) If a request is made, under subsection (2), to 1 or more persons or class of persons who are employees (**the employees**), the warrant must also request the persons who are the employers or the employees, or any other persons in any way in control of the employees, to make the services of the employees available to the Security Intelligence Service.
- (4) 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 (1):
 - (b) By substituting another person or another class of persons for a person or class of persons requested under subsection (2):
 - (c) By adding any person or class of persons to the persons requested under subsection (2).

Powers of persons acting under interception warrants

4E Powers to give effect to warrant

- (1) A person who is authorised by an interception warrant to intercept the communications of persons or to seize documents or things, and any person who is requested in accordance with the warrant to assist in making the interception or seizure, may enter—
 - (a) Any place that is specified in the warrant; or
 - (b) Any place that is owned or occupied by a person identified in the warrant under section 4B(1)(b) or (1)(c); or

- (c) Any place where a person identified in the warrant under section 4B(1)(b) or (1)(c) is or is likely to be at any time.
- (2) The power conferred by subsection (1)(c) is subject to section 4F.
- (3) If a person enters a place under subsection (1) in order to intercept communications in accordance with an interception warrant, 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) Instal 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 reasonable in the circumstances and reasonably required to achieve the purposes for which the warrant was issued.
- (4) If a person enters a place under subsection (1) in order to seize documents or things in accordance with an interception warrant, 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 reasonable in the circumstances and reasonably required to achieve the purposes for which the warrant was issued.

Actions to mitigate impact of interception warrants

4F Duty to minimise impact of interception warrants on third parties

- (1) In any case where an interception warrant authorises the interception or seizure of the communications of a person, 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 the person whose communications are to be intercepted or seized.
- (2) A person acting under an interception warrant may not exercise a power to enter a place without the prior approval of the Director (or the person for the time being acting as the Director), if that place is neither—
 - (a) Owned or occupied by a person identified in the warrant under section 4B(1)(b) or (1)(c); nor

- (b) Specified in the interception warrant.
- (3) As soon as an approval is given under subsection (2), the Director (or the person for the time being acting as the Director) must—
 - (a) Advise the Minister of the approval; and
 - (b) If the interception warrant concerned is a domestic interception warrant, also advise the Commissioner of the approval.
- (4) When the Minister is advised under subsection (3)(a) of an approval, the Minister may direct every person acting under the warrant concerned not to proceed with, or to discontinue, interceptions or seizures of communications or documents or things at the place to which the approval relates.
- (5) When the Commissioner is advised under subsection (3)(b) of an approval, the Commissioner, after consultation with the Minister, may direct every person acting under the warrant concerned not to proceed with, or to discontinue, interceptions or seizures of communications or documents or things at the place to which the approval relates.
- (6) The Director (or the person for the time being acting as the Director) must ensure that every direction under this section is carried out without delay.

4G Destruction of irrelevant records obtained by interception

- (1) Every person who intercepts or seizes any communication in accordance with an interception warrant must, as soon as practicable after the interception or seizure,—
 - (a) Destroy any copy that he or she may make of the communication or any part of the communication, and any record, whether in writing or otherwise, of the information obtained by that interception or seizure, except to the extent that the information recorded in the copy or record relates directly or indirectly to the detection of activities prejudicial to security or comprises foreign intelligence information essential to security;
 - (b) If 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) However, if the Director considers that the return of any communication to the mail might lead to consequences that would endanger life or property, or if 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 must, as soon as practicable after the interception or seizure, consult the Solicitor-General as to the disposition of the communication, and must dispose of it as the Solicitor-General requires.

- (3) Every person who knowingly fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.

4H Prevention or detection of serious crime

- (1) Despite sections 4(1)(a) and 4G(1)(a), the Director, for the purpose of preventing or detecting serious crime in New Zealand or in any other country, may retain any information that comes into the possession of the Security Intelligence Service and may communicate any such information to members of the New Zealand Police or to any other persons, and in any manner, that the Director thinks fit.
- (2) In subsection (1), **serious crime** means,—
- (a) In relation to New Zealand, any indictable offence; and
 - (b) In relation to an overseas country, any offence that, if it occurred in New Zealand, would be an indictable offence.

Retrieval of previously installed devices

4I Removal of devices after warrant ceases to be in force

- (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, on a written application by the Director (or by the person for the time being acting as the Director), issue a warrant authorising the removal of the device or equipment from the place.
- (2) A warrant issued under subsection (1) must specify the person who may remove the device or equipment, and the warrant may also request 1 or more persons or class of persons to give any assistance that may be specified in the warrant in removing the device or equipment.
- (3) If a request is made, under subsection (2), to 1 or more persons or class of persons who are employees (**the employees**), the warrant must also request the persons who are the employers of the employees, or any other persons in any way in control of the employees, to make the services of the employees available to the Security Intelligence Service.
- (4) A warrant issued under subsection (1) authorises the person specified, under subsection (1), or requested, under subsection (2), 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 reasonable in the circumstances and reasonably required to achieve the purpose for which the warrant was issued.

- (5) A warrant issued under subsection (1) must specify a period not exceeding 12 months for which the warrant is valid.

Reporting by service

4J Annual report

- (1) As soon as practicable after each year ending on 30 June, the Director must deliver to the Minister a report on the activities of the Service during that year.
- (2) When the Minister receives a copy of a report under subsection (1), the Minister must, without delay, submit a copy of the report to the members of the Intelligence and Security Committee established under the Intelligence and Security Committee Act 1996.
- (3) Within 30 sitting days after receiving the report under subsection (1), the Minister must present to the House of Representatives a copy of the report that—
- (a) Accords with any directions given under subsection (4); and
 - (b) Includes the statement on warrants required by section 4K; and
 - (c) Includes the statement specified in section 39(3) of the Public Finance Act 1989 as set out in section 70I of that Act.
- (4) Before presenting a copy of the report to the House of Representatives under subsection (3), the Minister may direct that any material (other than the statements referred to in subsection (3)(b) and (3)(c)) be deleted from the report, if the Minister considers that the material is likely—
- (a) To prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
 - (b) To prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the government of any other country or any agency of such a government; or
 - (c) To prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by any international organisation; or
 - (d) To endanger the safety of any person; or
 - (e) To prejudice the privacy of an individual.
- (5) Subsections (1) and (3) apply to the Security Intelligence Service instead of the provisions in section 39(4) and (5) of the Public Finance Act 1989 as set out in section 70I of that Act.

4K Statement on warrants

- (1) The Director must include in every annual report prepared under section 4J a statement on warrants that sets out the information specified in subsections (2) to (4) in respect of the period (**the reporting period**) to which the report relates.

- (2) The statement must include the following information on the domestic interception warrants that were in force at any time during the reporting period:
- (a) The number of those domestic interception warrants:
 - (b) The average length (expressed in days) for which those domestic interception warrants were in force during the reporting period:
 - (c) Whether those domestic interception warrants included any warrants under which no action was taken during the reporting period, and, if so, the number of such warrants:
 - (d) The number of any amendments, made by the Minister under section 4D, to any of those domestic interception warrants:
 - (e) The methods of interception and seizure used under those domestic interception warrants:
 - (f) A general assessment of the importance of those domestic interception warrants.
- (3) The statement must include the following information on warrants (**removal warrants**) that were in force at any time during the reporting period, and that were issued under section 4I to remove devices or equipment installed under a domestic interception warrant:
- (a) The number of those removal warrants:
 - (b) The average length (expressed in days) for which those removal warrants were in force during the reporting period.
- (4) The statement must indicate whether any foreign interception warrants were in force during the reporting period.

4L Certificate by Minister

- (1) The Minister must—
- (a) Certify that the information set out in the statement on warrants prepared under section 4K is correct; and
 - (b) Endorse the certificate on the annual report in which the statement is set out.
- (2) Before giving the certificate under subsection (1), the Minister must review—
- (a) All interception warrants that were in force at any time during the period to which the annual report relates; and
 - (b) All warrants issued under section 4I that were in force at any time during the period to which the annual report relates.

7 New heading and sections inserted

The principal Act is amended by inserting, after section 5, the following heading and sections:

Commissioner of Security Warrants

5A Commissioner of Security Warrants

- (1) There is a Commissioner of Security Warrants.
- (2) The Commissioner is appointed by the Governor-General on the recommendation of the Prime Minister following consultation with the Leader of the Opposition.
- (3) No person may be appointed as the Commissioner unless that person has previously held office as a Judge of the High Court.
- (4) No person may at the same time hold office as Commissioner and as Inspector-General under the Inspector-General of Intelligence and Security Act 1996.
- (5) The functions of the Commissioner are—
 - (a) To advise the Minister on applications for domestic interception warrants:
 - (b) To consider with the Minister applications for domestic interception warrants:
 - (c) To deliberate with the Minister on applications for domestic interception warrants:
 - (d) To issue domestic interception warrants jointly with the Minister in accordance with section 4A:
 - (e) To consider advice, given to the Commissioner under section 4F(3), concerning approvals to enter certain places:
 - (f) After consulting the Minister, to give directions under section 4F(5) (which relates to directions not to proceed with, or to discontinue, interceptions or seizures of communications at certain places).

Compare: 1996 No 47 s 5

5B Term of office

- (1) Every person appointed as the Commissioner must be appointed for a term of 3 years, and may from time to time be reappointed.
- (2) When a person's term as Commissioner expires, the person, unless sooner vacating office by death or by resignation, or by removal from office under section 5C, continues to hold office until—
 - (a) The person is reappointed as Commissioner; or
 - (b) The person's successor comes into office.
- (3) The person appointed as Commissioner may at any time resign his or her office by written notice given to the Minister.

Compare: 1996 No 47 s 6

5C Removal of Commissioner

The person appointed as Commissioner may be removed or suspended from office by the Governor-General, upon an address from the House of Representatives, for disability affecting performance of duty, bankruptcy, neglect of duty, or misconduct.

Compare: 1996 No 47 s 7

5D Protection of Commissioner

The Commissioner has all the immunities of a Judge of the High Court.

5E Remuneration and allowances

- (1) The Commissioner is to be paid out of public money, without further appropriation than this section, remuneration by way of fees, salary, or allowances and travelling allowances and travelling expenses in accordance with the Fees and Travelling Allowances Act 1951.
- (2) The provisions of the Fees and Travelling Allowances Act 1951 apply as if the Commissioner were a member of a statutory board and any travelling undertaken by the Commissioner were in the service of a statutory board.

Compare: 1996 No 47 s 8

5F Disclosure of interests

The Commissioner must give written notice to the Prime Minister of all interests, pecuniary or otherwise, that the Commissioner has or acquires and that could conflict with the proper performance by the Commissioner of his or her functions under this Act.

Compare: 1996 No 47 s 9

5G Exercise of Commissioner's functions during absence, etc

- (1) This section applies when—
 - (a) There is a vacancy in the office of Commissioner; or
 - (b) The Commissioner is absent from New Zealand; or
 - (c) The Commissioner is unable, for any reason, to perform the functions of the Commissioner.
- (2) When this section applies, the references to the Commissioner in sections 4A and 4F must be read as references to the Attorney-General (but not to the Solicitor-General).

Part 2

Consequential and transitional provisions

8 Consequential amendment to Inspector-General of Intelligence and Security Act 1996

Section 11(1)(d) of the Inspector-General of Intelligence and Security Act 1996 is consequentially amended by omitting the expression “and 4B”, and substituting the expression “to 4G”.

9 Consequential repeals

The following enactments are consequentially repealed:

- (a) Section 5 of the New Zealand Security Intelligence Service Amendment Act 1977:
- (b) So much of Schedule 6 of the Privacy Act 1993 as relates to section 4A of the principal Act:
- (c) Sections 4(2) and 6 of the New Zealand Security Intelligence Service Amendment Act 1996.

10 Transitional provisions relating to warrants

- (1) This section applies to every warrant issued under section 4A or section 4AB of the principal Act (as in force immediately before the commencement of this Act) that is in force immediately before the commencement of this Act.
- (2) Every warrant to which this section applies continues in force in accordance with the term specified in the warrant.
- (3) If a warrant to which this section applies was issued for the purposes of section 4A(1)(a)(i) of the principal Act (as in force before the commencement of this Act), the principal Act applies as if it were a domestic interception warrant.
- (4) If a warrant to which this section applies was issued for the purposes of section 4A(1)(a)(ii) of the principal Act (as in force before the commencement of this Act), the principal Act applies as if it were a foreign interception warrant.
- (5) If a warrant to which this section applies was issued under section 4AB of the principal Act (as in force before the commencement of this Act), the principal Act applies as if it had been issued under section 4I of the principal Act (as enacted by section 6 of this Act).

11 Transitional provisions relating to statement on warrants

- (1) As soon as practicable after the commencement of this Act, the Director must submit to the Minister a statement (**the statement on warrants**) that sets out the information specified in section 4K of the principal Act (as enacted by section 6) in respect of the period commencing on 1 April 1998 and ending with the close of 30 June 1999.

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- (2) Within 10 sitting days after receiving the statement on warrants, the Minister must—
- (a) Certify the information set out in the statement in accordance with the provisions in section 4L of the principal Act (as enacted by section 6), modified as appropriate; and
 - (b) Present the statement to the House of Representatives.
- (3) Any obligation under section 4A(5) of the principal Act (as in force immediately before the commencement of this Act) in respect of the period specified in subsection (1) is discharged if the requirements set out in subsections (1) and (2) are complied with in respect of that period.

Eprint notes

1 *General*

This is an eprint of the New Zealand Security Intelligence Service Amendment Act (No 2) 1999 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *About this eprint*

This eprint is not an official version of the legislation under section 18 of the Legislation Act 2012.

3 *Amendments incorporated in this eprint*

Intelligence and Security Act 2017 (2017 No 10): section 242(3)(a)