

New Zealand Security Intelligence Service Amendment Bill

Government Bill

Explanatory note

General policy statement

The New Zealand Security Intelligence Service Amendment Bill implements Government policy decisions to update the interception warrant framework. Amendments are required to update and clarify the New Zealand Security Intelligence Service Act 1969 (the **principal Act**) to address technology changes and to ensure consistency with other legislation.

The following specific issues are addressed in the Bill:

- the principal Act does not expressly provide for the NZSIS to undertake tracking of subjects by electronic means. The Bill will clarify that the warrant framework does cover the use of electronic tracking devices;
- the principal Act needs to be updated to provide a clear framework for facilities to be the subject of surveillance (such as telephone numbers or IP addresses). The Bill will confirm that facilities can be specified as the subject of warrant applications. This is a necessary update in an age where the use of mobile phones and cyber identities is common;
- authorities provided to the NZSIS also require clarification in the area of computer-based surveillance. Section 253 of the Crimes Act 1961 already provides a qualified exemption to

the “access without authorisation” offence for the NZSIS. The current approach of providing a qualified exemption for some activities relating to computers, but not others, creates uncertainty for the intelligence agencies, as well as for other agencies acting under warrant:

- the principal Act does not adequately protect from liability those persons exercising NZSIS entry powers when they are seeking to obtain or facilitate entry. The principal Act also fails to provide consistent protection to all persons acting under NZSIS warrants from liability, regardless of the foreign or domestic status of the warrant. The Bill will clarify protections in the Act for persons acting in accordance with a warrant:
- there is an existing requirement to specify, in advance, all those persons assisting the NZSIS under warrant. The Bill amends this requirement, which will improve efficiency and enable the NZSIS to respond more quickly to changes in circumstances.

Regulatory impact statement

The New Zealand Security Intelligence Service produced a regulatory impact statement on 16 August 2010 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.nzsis.govt.nz/publications/>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause. The Bill amends the New Zealand Security Intelligence Service Act 1969 (the **principal Act**) and also makes related amendments to the Crimes Act 1961. It is proposed to divide the Bill into 2 Bills at the committee of the whole House stage.

Clause 2 states the commencement date of the Act, which is the day after Royal assent.

Part 1

Amendments to principal Act

Clause 3 states that the Act amends the New Zealand Security Intelligence Service Act 1969.

Clause 4 states the purpose of the Act.

Clause 5(1) inserts into the principal Act new definitions of authorised person, delegate of the Director, electronic tracking, facility (in general terms a facility enabling telecommunications or data processing), identity (clarifying that identity can be designated by an alias), removal warrant (a warrant authorising the removal of a device installed under an expired intelligence warrant), and warrant (a generic term covering both intelligence warrants and removal warrants).

Clause 5(2) substitutes definitions in the principal Act to rename interception warrants as intelligence warrants.

Clause 6 amends section 4A of the principal Act, which enables intelligence warrants to be issued. The section is amended to enable the Minister (acting jointly with the Commissioner of Security Warrants, in the case of domestic intelligence warrants) to issue intelligence warrants that authorise electronic tracking. A further amendment updates evidentiary provisions that are now contained in the Evidence Act 2006. Another amendment extends the current protection given to actions taken under intelligence warrants to all warrants and also clarifies that the protection extends to the exercise of powers conferred by or under the principal Act.

Clause 7 amends section 4B of the principal Act, which concerns the subject matter of intelligence warrants. The first amendment enables intelligence warrants to make facilities (for example, mobile phones) subject to such warrants. The second amendment requires the warrant to identify a thing or person that is to be tracked under the warrant.

Clause 8 replaces sections 4D and 4E of the principal Act. Section 4D concerns the persons who may act under warrants. The existing section requires warrants to specify the persons who are requested to assist the person authorised by the warrant. Any changes in an assistant requires an amendment to the warrant, which must be made by the Minister. The *new section 4D* provides that a warrant (including a removal warrant) may be given effect to by the Director (or the person for the time being acting as the Director) or by a delegate of

the Director. These persons may also request assistance in executing the warrant.

Section 4E of the principal Act concerns the powers of officers giving effect to intelligence warrants. The substance of the *new section 4E* is similar to the existing provisions that confer powers of entry and powers to execute the warrants. However, the new section extends the powers to steps required to be taken to gain entry. The provisions are also extended to places where facilities identified in a warrant are likely to be or to which entry is necessary to access facilities.

Clause 9 replaces section 4I of the principal Act, which enables the issue of warrants to remove devices installed under expired intelligence warrants. The *new section 4I* omits provisions in the existing section that concern the identity of the persons authorised to act under the warrant, as this is now dealt with by the *new section 4D*. The new section also authorises the removal of devices from a thing that is not located inside a place.

Clause 10 makes a consequential amendment to section 4K of the principal Act, which relates to statements on warrants to be included in annual reports. The amendment is consequential on the *new sections 4D and 4I*.

Clause 11 makes a consequential amendment to section 4L of the principal Act. The amendment is consequential on the new definition of removal warrant inserted by *clause 5*.

Clause 12 inserts a cross-heading above section 5 of the principal Act.

Clause 13 inserts *new sections 5AA and 5AAB* into the principal Act. The inserted sections enable the Director of the Security Intelligence Service to delegate his or her functions and powers to employees of the Service. The sections are part of the new, streamlined provisions governing the identity of the persons authorised to act under warrants. They are modelled on provisions in the State Sector Act 1988, but a distinguishing feature is that the Director may not delegate the function of applying for a warrant.

Clause 14 amends section 12A of the principal Act, which prohibits unauthorised disclosure of information. The amendments are consequential on the new power to undertake electronic tracking.

Clause 15 and the Schedule make consequential amendments to the principal Act and to the Inspector-General of Intelligence and Secur-

ity Act 1996 required for the redesignation of interception warrants as intelligence warrants.

Part 2

Amendments to Crimes Act 1961

Clause 16 states that *Part 2* amends the Crimes Act 1961.

Clause 17 amends section 248 of the Crimes Act 1961, which sets out definitions for sections 249 and 250 of that Act, dealing with accessing a computer system for a dishonest purpose or damaging, or interfering with, a computer system respectively. The clause extends the definitions set out in section 249 to sections 251 and 252, dealing with making, selling, distributing, or possessing software for committing crime and accessing a computer system without authorisation, respectively. The clause also inserts a new definition of authorisation, which is defined as including an authorisation conferred on a person by or under an enactment or a rule of law, or by an order of a court or judicial process.

Clause 18 repeals section 252(3) of the Crimes Act 1961. Section 252(3) is an avoidance of doubt provision clarifying that the offence of accessing a computer system without authorisation is not committed if the system is accessed by a law enforcement agency under the execution of an interception warrant or search warrant or under the authority of any Act or rule of the common law. This avoidance of doubt provision is unnecessary in view of the definition of authorisation inserted by *clause 17*.

Clause 19 repeals sections 253 and 254 of the Crimes Act 1961, which give the Security Intelligence Service and the Government Communications Security Bureau a qualified exemption from the offence of accessing computer systems without authorisation. These exemptions are no longer needed in view of the definition of authorisation inserted by *clause 17*.

Rt Hon John Key

New Zealand Security Intelligence Service Amendment Bill

Government Bill

Contents

		Page
1	Title	2
2	Commencement	2
Part 1		
Amendments to principal Act		
3	Principal Act amended	2
4	Purpose of Act	2
5	Interpretation	3
6	Issue of interception warrant	4
7	Subject matter of interception warrant	5
8	New sections 4D and 4E and heading substituted	5
	4D Persons acting under warrants	5
	<i>Powers of persons acting under intelligence warrants</i>	
	4E Powers to give effect to intelligence warrants	6
9	New section 4I substituted	7
	4I Issue of removal warrant	7
10	Statement on warrants	7
11	Certificate by Minister	8
12	Heading inserted above section 5	8
	<i>Director of Security</i>	
13	New sections 5AA and 5AAB inserted	8
	5AA Delegation of functions or powers	8

	New Zealand Security Intelligence Service Amendment Bill	
cl 1		
	5AAB Effect of delegations	9
14	Prohibition on unauthorised disclosure of information	9
15	Consequential amendments to enactments relating to names of warrants	9
	Part 2	
	Amendments to Crimes Act 1961	
16	Crimes Act 1961 amended	10
17	Interpretation	10
18	Accessing computer system without authorisation	10
19	Sections 253 and 254 repealed	10
	Schedule	11
	Amendments to principal Act relating to names of warrants	

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the New Zealand Security Intelligence Service Amendment Act **2010**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 5

Part 1
Amendments to principal Act

- 3 Principal Act amended**
This Act amends the New Zealand Security Intelligence Service Act 1969. 10
- 4 Purpose of Act**
The purpose of this Act is to amend the principal Act to—
 - (a) clarify the authority given to the New Zealand Security Intelligence Service to use modern technology in the performance of its functions: 15

- (b) enhance the responsiveness of the New Zealand Security Intelligence Service by streamlining the requirements for the issue of warrants:
- (c) clarify, in conjunction with the Crimes Amendment Act **2010**, the nature of the protection from liability given to persons executing warrants issued under the principal Act. 5

5 Interpretation

- (1) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order: 10

“**authorised person**, in relation to a warrant, means the Director, or the person for the time being acting as the Director, or a delegate of the Director

“**delegate of the Director**, in relation to any function or power conferred by a provision of this Act or by a warrant, means a person to whom that function or power has been delegated under **section 5AA** 15

“**electronic tracking** means the use of electronic means for the purpose of ascertaining the location, or tracking the movement, of a person or thing 20

“**facility**—

“(a) means an electronic address, phone number, account, electronic identifier or similar identifier, or device that enables—

“(i) communications to take place between individuals; or 25

“(ii) communications to be sent to or from an identified individual; or

“(iii) documents to be processed, stored, or accessed; and 30

“(b) includes, without limitation, any of the following:

“(i) a unique device identifier:

“(ii) a user account identifier:

“(iii) an Internet Protocol address:

“(iv) an email address: 35

“(v) an Internet storage account

- “**identity**, in relation to a person, includes the identification of the person by an alias assumed by the person or given to the person by another person (for example, an Internet provider) or assigned to the person by an automated electronic system
- “**removal warrant** means a warrant issued under **section 41** 5
- “**warrant** means an intelligence warrant or a removal warrant”.
- (2) Section 2(1) is amended by repealing the definitions of **domestic interception warrant**, **foreign interception warrant**, and **interception warrant**. 10
- (3) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:
- “**domestic intelligence warrant** means a warrant issued under section 4A(1)
- “**foreign intelligence warrant** means a warrant issued under 15 section 4A(2)
- “**intelligence warrant** means a domestic intelligence warrant or a foreign intelligence warrant”.
- 6 Issue of interception warrant**
- (1) Section 4A(1) and (2) are amended by inserting “or to undertake electronic tracking,” after “not otherwise lawfully obtainable by the person,”. 20
- (2) Section 4A(2)(b)(i) is amended by omitting “whose communications may be intercepted” and substituting “who is to be subject to the warrant”. 25
- (3) Section 4A(3)(a) and (b) are amended by inserting “or electronic tracking” after “or seizure”.
- (4) Section 4A(3)(d) is amended by repealing subparagraph (i) and substituting the following subparagraph: 30
- “(i) section 58 or 59 of the Evidence Act 2006; or”.
- (5) Section 4A(6) is amended by omitting “Every person who, by any interception warrant issued under subsection (1) of this section, is authorised to intercept or seize any communication, document, or thing, 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 nec- 35

essarily involved in making or assisting to make or attempting to make the interception or seizure,” and substituting “Every person who is an authorised person under an intelligence warrant or a removal warrant, and every person requested under **section 4D(2)** to assist an authorised person to give effect to a warrant, is justified in exercising any powers conferred on the person by or under this Act for the purpose of giving effect to the warrant, and in taking, or attempting to take, any reasonable action necessarily involved in giving effect to the warrant,”.

7 Subject matter of interception warrant

(1) Section 4B(1)(b) and (c)(i) are amended by inserting “or the facility” after “the place”.

(2) Section 4B(1) is amended by adding “; and” and also by adding the following paragraph:

“(d) if electronic tracking is to be undertaken, state either or both of the following:

“(i) a description of the thing or class of thing to be tracked:

“(ii) the identity of the person to be tracked.”

8 New sections 4D and 4E and heading substituted

Sections 4D and 4E, and the heading above section 4E, are repealed and the following sections and heading substituted:

“4D Persons acting under warrants

“(1) Effect may be given to a warrant by the Director (or the person for the time being acting as the Director) or by a delegate of the Director.

“(2) The Director (or the person for the time being acting as the Director) or a delegate of the Director may request any person or organisation to give specified assistance to an authorised person for the purpose of giving effect to a warrant.

“(3) Every request made under **subsection (2)** must be recorded in writing.

“(4) Every person who assists the authorised person, in accordance with a request made under **subsection (2)**, is subject to the control of the authorised person.

- “(5) If an organisation is requested under **subsection (2)**, any employee of the organisation whom the organisation nominates to assist the authorised person is taken to have been requested under that subsection.
- “(6) In this section, **organisation** includes a body corporate, an unincorporated body, an association of persons, a government department, and a Crown entity or other instrument of the Crown. 5
- “Powers of persons acting under intelligence warrants 10*
- 4E Powers to give effect to intelligence warrants**
- “(1) A person who is an authorised person under an intelligence warrant or any person who is requested under **section 4D(2)** to assist the authorised person may, for the purpose of giving effect to the warrant, gain entry to— 15
- “(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 (c); or
- “(c) any place where a person identified in the warrant under section 4B(1)(b) or (c) is or is likely to be at any time; 20
or
- “(d) in any case where a facility is identified in the warrant under section 4B(1)(b) or (c), any place—
- “(i) where that facility is or is likely to be at any time; 25
or
- “(ii) that it is necessary to enter in order to access that facility.
- “(2) The power conferred by **subsection (1)(c)** or **(d)** is subject to section 4F.
- “(3) A person who is an authorised person under an intelligence 30
warrant or any person who is requested under **section 4D(2)** to assist the authorised person may, in order to take the actions authorised by the warrant, do any of the following acts that are necessary for the purpose of giving effect to the warrant:
- “(a) instal or modify any device or equipment: 35
- “(b) maintain or monitor any device or equipment:
- “(c) remove any device or equipment previously installed:

- “(d) search a place entered under **subsection (1)**:
- “(e) open any container, box, or receptacle:
- “(f) seize any document or thing authorised to be seized by the warrant:
- “(g) do any other act that is reasonable in the circumstances and reasonably required to achieve the purposes for which the warrant was issued.” 5

9 New section 4I substituted

Section 4I is repealed and the following section substituted:

“4I Issue of removal warrant 10

- “(1) If any device or equipment that has been installed, in accordance with an intelligence warrant, remains in a place or in a thing after the intelligence warrant has ceased to be in force in respect of that place or thing, the Minister may, on a written application by the Director (or the person for the time being acting as the Director), issue a warrant authorising the removal of the device or equipment from the place or thing. 15
- “(2) A person who is an authorised person under a removal warrant and any person requested under **section 4D(2)** may gain entry to the place concerned or take possession of the thing concerned for the purpose of removing the device or equipment, and do any of the following acts that are necessary to achieve that purpose: 20
 - “(a) search the place entered:
 - “(b) open any container, box, or receptacle: 25
 - “(c) obtain access to any document or thing:
 - “(d) do any other act that is reasonable in the circumstances and reasonably required to achieve the purpose for which the warrant was issued.
- “(3) A warrant issued under **subsection (1)** must specify a period not exceeding 12 months for which the warrant is valid.” 30

10 Statement on warrants

- (1) Section 4K(2)(d) is amended by omitting “, made by the Minister under section 4D,”.
- (2) Section 4K(3) is amended by omitting “warrants (**removal warrants**) that were in force at any time during the reporting 35

period, and that were issued under section 4I to remove devices or equipment installed under a domestic interception warrant:” and substituting “removal warrants that were in force at any time during the reporting period:”.

- 11 Certificate by Minister** 5
Section 4L(2)(b) is amended by omitting “warrants issued under section 4I” and substituting “removal warrants”.
- 12 Heading inserted above section 5**
The following heading is inserted above section 5:
“Director of Security”. 10
- 13 New sections 5AA and 5AAB inserted**
The following sections are inserted after section 5:
- “5AA Delegation of functions or powers**
- “(1) The Director may from time to time, either generally or particularly, delegate to a specified employee of the New Zealand Security Intelligence Service or to a specified class of employees of the Service any of the Director’s functions or powers, including functions or powers delegated to the Director under any other Act. 15
- “(2) However, the Director may not delegate any functions or powers delegated to the Director by a Minister without the written consent of that Minister. 20
- “(3) The Director—
- “(a) may delegate any function or power involved in executing a warrant; but 25
- “(b) may not delegate any function or power involved in applying for a warrant.
- “(4) A delegate of the Director may, with the prior approval in writing of the Director, delegate any of those functions or powers that the Director approves to any other employee of the Service. 30
- “(5) A person to whom any functions or powers are delegated under this section may exercise those functions or powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation. 35

“(6) **Subsection (5)** is subject to any general or special directions given or conditions imposed by the Director.

“(7) A person purporting to act under any delegation under this section is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation. 5

“Compare: 1988 No 20 s 41

“**5AAB Effect of delegations**

“(1) No delegation under **section 5AA** affects or prevents the exercise of any function or power by the Director, or affects the responsibility of the Director for the actions of any employee acting under the delegation. 10

“(2) A delegation under **section 5AA** is revocable at any time in writing.

“(3) A delegation, until it is revoked, continues to have effect according to its terms even if the Director by whom it was made has ceased to hold office. 15

“(4) A delegation made by a Director who has ceased to hold office continues to have effect as if made by the successor in office of that Director.

“Compare: 1988 No 20 s 42” 20

14 Prohibition on unauthorised disclosure of information

(1) Section 12A(2) is amended by inserting—
(a) “or to undertake electronic tracking” after “seize any communication”;

(b) “or electronic tracking” after “or seizure”. 25

(2) Section 12A(3) is amended by inserting “, or electronic tracking,” after “or seizure”.

15 Consequential amendments to enactments relating to names of warrants

(1) The principal Act is amended in the manner indicated in the **Schedule**. 30

(2) Section 11(1)(d) of the Inspector-General of Intelligence and Security Act 1996 is amended by omitting “interception warrants” and substituting “intelligence warrants”.

Part 2
Amendments to Crimes Act 1961

- 16 Crimes Act 1961 amended**
This **Part** amend the Crimes Act 1961.
- 17 Interpretation** 5
(1) Section 248 is amended by omitting “sections 249 and 250”
and substituting “sections 249 to 252”.
(2) Section 248 is amended by inserting the following definition
in its appropriate alphabetical order:
“**authorisation** includes an authorisation conferred on a per- 10
son by or under an enactment or a rule of law, or by an order
of a court or judicial process”.
- 18 Accessing computer system without authorisation**
Section 252(3) is repealed.
- 19 Sections 253 and 254 repealed** 15
Sections 253 and 254 are repealed.
-

Schedule **s 15(1)**
**Amendments to principal Act relating to
names of warrants**

Section 4A

Heading to section 4A: omit “**interception warrant**” and substitute 5
“**intelligence warrant**”.

Subsection (1): omit “domestic interception warrant” and substitute
“domestic intelligence warrant”.

Subsection (2): omit “foreign interception warrant” and substitute
“foreign intelligence warrant”. 10

Subsections (4), (5), (7), and (10): omit “interception warrant” and
substitute in each case “intelligence warrant”.

Heading above section 4B

Omit “*interception warrants*” and substitute “*intelligence warrants*”.

Section 4B

15

Heading to section 4B: omit “**interception warrant**” and substitute
“**intelligence warrant**”.

Subsection (1): omit “interception warrant” and substitute “intelli-
gence warrant”.

Subsection (2): omit “domestic interception warrant” and substitute 20
“domestic intelligence warrant”.

Subsection (3): omit “foreign interception warrant” and substitute
“foreign intelligence warrant”.

Section 4C

Heading to section 4C: omit “**interception warrant**” and substitute 25
“**intelligence warrant**”.

Omit “interception warrant” in each place where it appears and sub-
stitute in each case “intelligence warrant”.

Heading above section 4F

Omit “*interception warrants*” and substitute “*intelligence warrants*”. 30

Section 4F

Heading to section 4F: omit “**interception warrants**” and substitute “**intelligence warrants**”.

Subsections (1), (2), and (3): omit “interception warrant” in each place where it appears and substitute in each case “intelligence war- 5
rant”.

Section 4G(1)

Omit “interception warrant” and substitute “intelligence warrant”.

Section 4K

Subsection (2): omit “domestic interception warrants” in each place 10
where it appears and substitute in each case “domestic intelligence warrants”.

Subsection (4): omit “foreign interception warrants” and substitute “foreign intelligence warrants”.

Section 4L(2)(a)

15

Omit “interception warrants” and substitute “intelligence warrants”.

Section 5A(5)

Omit “interception warrants” wherever it appears and substitute in each case “intelligence warrants”.

Section 12A

20

Subsections (2) and (3): omit “interception warrant” and substitute “intelligence warrant”.