

New Zealand Security Intelligence Service Amendment Bill

Government Bill

As reported from the committee of the whole
House

This bill was formerly part of the New Zealand Security Intelligence Service Amendment Bill as reported from the Intelligence and Security Committee. The committee of the whole House has divided it into the following bills:

- this bill comprising clauses 1 and 2, Part 1, and the Schedule
- Crimes Amendment Bill (No 3) comprising Part 2

Rt Hon John Key

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the New Zealand Security Intelligence Service Amendment Act **2011**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 5
- 3 Principal Act amended**
This Act amends the New Zealand Security Intelligence Service Act 1969.
- 4 Purpose of Act** 10
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:
 - (b) enhance the responsiveness of the New Zealand Security Intelligence Service by streamlining the requirements for the issue of warrants: 15
 - (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. 20

5 Interpretation

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

“**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 5

“**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** 10

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

“**facility**—

“(a) means an electronic address, phone number, account, electronic identifier or similar identifier, or device that enables— 15

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

“(ii) communications to be sent to or from an identified individual; or 20

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

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

“(i) a unique device identifier: 25

“(ii) a user account identifier:

“(iii) an Internet Protocol address:

“(iv) an email address:

“(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 30

“**removal warrant** means a warrant issued under **section 41**

“**warrant** means an intelligence warrant or a removal warrant”. 35

- (2) Section 2(1) is amended by repealing the definitions of **domestic interception warrant**, **foreign interception warrant**, and **interception warrant**.
- (3) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order: 5
- “**domestic intelligence warrant** means a warrant issued under section 4A(1)
- “**foreign intelligence warrant** means a warrant issued under section 4A(2)
- “**intelligence warrant** means a domestic intelligence warrant 10 or a foreign intelligence warrant”.

5A New section 4AAA inserted

The following section is inserted after section 4:

“4AAA Principles underpinning performance of functions

- “(1) In performing its functions under this Act, the Security Intel- 15
ligence Service—
- “(a) contributes to keeping New Zealand society secure, independent, and free and democratic:
- “(b) contributes to the participation of New Zealand in the maintenance of international security: 20
- “(c) acts—
- “(i) in accordance with New Zealand law and all human rights standards recognised by New Zealand law, except to the extent that they are, in relation to national security, modified by an enactment: 25
- “(ii) in the discharge of its operational functions, independently and impartially:
- “(iii) with integrity and professionalism:
- “(iv) in a manner that facilitates effective democratic oversight. 30
- “(2) **Subsection (1)** does not impose particular duties on, or give particular powers to, the Security Intelligence Service, the Director, any employee of the Service, or the Minister.”

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,”.
- (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” 5
- (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) 10
and substituting the following subparagraph:
“(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, 15
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 necessarily involved in making or assisting to make or attempting to make the interception or seizure,” and substituting “Every 20
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 25
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” 30
- (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: 35
“(i) a description of the thing or class of thing to be tracked:

- “(ii) the identity of the person to be tracked.”
- (3) Section 4B is amended by adding the following subsections:
- “(4) The Minister or, as the case requires, the Minister and the Commissioner must consider whether to include conditions in an intelligence warrant to minimise any risk that the warrant may affect third parties if, in the opinion of the Minister or, as the case requires, in the opinion of the Minister and the Commissioner, that risk is significant because of—
- “(a) the name, alias, or other description of the person whose communications are sought to be intercepted; or
- “(b) the nature of the place or the facility in respect of which communications may be intercepted.
- “(5) **Subsection (4)** does not limit subsection (2) or (3) or section 4F(1).”
- 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.

“Powers of persons acting under intelligence warrants”

- “4E Powers to give effect to intelligence warrants”** 5
- “(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—**
- “(a) any place that is specified in the warrant; or”** 10
 - “(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; or”** 15
 - “(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; or”**
 - “(ii) that it is necessary to enter in order to access that facility.”** 20
- “(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 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:** 25
- “(a) instal or modify any device or equipment:**
 - “(b) maintain or monitor any device or equipment:** 30
 - “(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:** 35
 - “(g) do any other act that is reasonable in the circumstances and reasonably required to achieve the purposes for which the warrant was issued.”**

8A Destruction of irrelevant records obtained by interception

(1) The heading to section 4G is amended by adding “**or electronic tracking**”

(2) Section 4G is amended by inserting the following subsection after subsection (2): 5

“(2A) As soon as practicable after the expiry of an intelligence warrant that authorises electronic tracking, the Director must ensure that any records resulting from the electronic tracking undertaken under that warrant are destroyed, except to the extent that those records are relevant— 10

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

“(b) to the gathering of foreign intelligence information essential to security.”

(3) Section 4G(3) is amended by inserting “or **(2A)**” after “subsection (1)”. 15

9 New section 4I substituted

Section 4I is repealed and the following section substituted:

“4I Issue of removal warrant

“(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. 20 25

“(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: 30

“(a) search the place entered:

“(b) open any container, box, or receptacle:

“(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. 35

“(3) A warrant issued under **subsection (1)** must specify a period not exceeding 12 months for which the warrant is valid.”

10 Statement on warrants

(1) Section 4K(2)(d) is amended by omitting “, made by the Minister under section 4D,”. 5

(2) Section 4K(3) is amended by omitting “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.” and substituting “removal warrants that were in force at any time during the reporting period.”. 10

11 Certificate by Minister

Section 4L(2)(b) is amended by omitting “warrants issued under section 4I” and substituting “removal warrants”.

12 Heading inserted above section 5 15

The following heading is inserted above section 5:
“*Director of Security*”.

13 New sections 5AA to 5AAC inserted

The following sections are inserted after section 5:

“5AA Delegation of functions or powers 20

“(1) The Director may from time to time, either generally or particularly, delegate to a specified employee of the 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. 25

“(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.

“(3) The Director— 30

“(a) may delegate any function or power involved in executing a warrant; but

“(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.
- “(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. 5
- “(6) **Subsection (5)** is subject to any general or special directions given or conditions imposed by the Director. 10
- “(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.
“Compare: 1988 No 20 s 41
- “**5AAB Effect of delegations** 15
- “(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.
- “(2) A delegation under **section 5AA** is revocable at any time in writing. 20
- “(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.
- “(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. 25
“Compare: 1988 No 20 s 42
- “**5AAC Register of delegations involving warrants**
- “(1) As soon as practicable after a function or power involved in the execution of a warrant is delegated under **section 5AA(1)** or **(4)**, the Director must enter in a register kept for the purpose the following particulars: 30
- “(a) the warrant, warrants, or class of warrants involved:
- “(b) the functions and powers that have been delegated: 35

- “(c) the specified employee or employees or class of employees to whom the functions and powers have been delegated:
- “(d) any directions or conditions to be observed by the delegate or delegates. 5
- “(2) As soon as practicable after a delegation of the kind described in **subsection (1)** is revoked, the Director must enter the revocation in the register kept under that subsection.
- “(3) The Director must, on request, make the register kept under **subsection (1)** available for inspection to each of the following persons: 10
- “(a) the Minister:
- “(b) the Commissioner, so far as the register relates to domestic intelligence warrants:
- “(c) the Inspector-General under the Inspector-General of Intelligence and Security Act 1996.” 15

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”: 20
- (b) “or electronic tracking” after “or seizure”.
- (2) Section 12A(3) is amended by inserting “, or electronic tracking,” after “or seizure”.

15 Consequential amendments to enactments relating to names of warrants 25

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

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Schedule**s 15(1)****Amendments to principal Act relating to
names of warrants****Section 4A**

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

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

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

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

Heading above section 4B

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

Section 4B

Heading to section 4B: omit “**interception warrant**” and substitute 15
“**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*”.

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 warrant”.

Section 4G(1)

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

Section 4K

Subsection (2): omit “domestic interception warrants” in each place 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)

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

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

**New Zealand Security Intelligence
Service Amendment Bill**

Legislative history

6 December 2010	Introduction (Bill 259–1)
9 December 2010	First reading and referral to Intelligence and Security Committee
17 May 2011	Reported from Intelligence and Security Committee (Bill 259–2)
14 June 2011	Second reading
22 June 2011	Divided from New Zealand Security Intelligence Service Amendment Bill by committee of the whole House as Bill 259–3
