

# **Security Information in Proceedings Legislation Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

This is an omnibus Bill introduced under Standing Order 267(1)(a) (dealing with an interrelated topic that can be regarded as implementing a single broad policy).

The Bill amends several pieces of legislation and provides an overarching and coherent framework for dealing with security information in court proceedings. These court proceedings encompass civil proceedings, including judicial review of administrative decisions, and criminal proceedings. The Bill is the Government's response to Part 2 of the Law Commission's report *The Crown in Court: A Review of the Crown Proceedings Act and National Security Information in Proceedings*, 14 December 2015 (NZLC R135).

The Law Commission's report found that current frameworks for dealing with national security information either in court or in administrative decisions have developed in an ad hoc manner. This approach lacks clarity and consistent protections for both individuals and national security. Current settings provide insufficient assurance to the Crown that national security information can be adequately protected if it needs to be used in court proceedings. This lack of assurance creates a risk for New Zealand both domestically and internationally in matters relating to security and international relations.

Current settings may disadvantage non-Crown parties who may not know the reason for a decision against them. The non-Crown party may not be in a position to challenge the decisions or actions of the Crown. These disadvantages have implications for fundamental procedural and natural justice rights.

The Bill seeks to create a clear and consistent approach to the use of security information in court proceedings. The Bill does this by clarifying the respective roles and interests of the judiciary and the Executive as well as the interests of the affected individual.

The Bill adds to the Law Commission's recommendations in 2 ways. First, the Bill adds a second civil process in which the Attorney-General and the Minister of Foreign Affairs certify that information is security information and that it cannot be disclosed to other parties in open court. Second, the Bill adds a closed pre-trial criminal process in which the court determines whether the information is security information, before deciding on next steps.

The main changes in the Bill are as follows:

- for civil proceedings,—
  - a new legislative regime to cover the disclosure and management of security information in civil proceedings:
  - a ministerial certificate option, where the Attorney-General and the Minister of Foreign Affairs sign a certificate guaranteeing the use of court orders that ensure a higher degree of protection of security information in appropriate circumstances:
  - a standard closed court procedure that would be available to the court in all civil cases. Where a special procedures order is made, the court will appoint a security-cleared special advocate to represent the non-Crown party:
  - a discretion for the court to dispose of, or otherwise deal with, a civil proceeding that cannot be fairly determined by any of the options available to the court to manage the security information:
- for criminal proceedings,—
  - a standard pre-trial closed court procedure for disclosure that would apply in all criminal cases that involve national security information, where the court considers this is necessary to protect information, which includes providing a security-cleared special advocate to represent the non-Crown party:
  - a new pre-trial admissibility hearing for the court to determine how national security information should be protected at trial in criminal proceedings:
  - confirmation that the closed court procedure excluding the defendant is not available at trial in criminal proceedings:
- for administrative decisions,—
  - minor changes to align processes affecting the rights of individuals whose cases involve security information within different administrative schemes and to standardise provisions that allow for the judicial review of and appeals against those administrative decisions:
  - replacing the court proceedings stage currently included in several existing legislative schemes for managing security information in administrative decision making with the new civil proceedings process in the Bill,

which will apply to judicial review of, and appeals against, those decisions.

It is intended that this Bill be divided into separate Bills at the committee of the whole House stage, as follows:

- *Parts 1 to 3* will become the Security Information in Proceedings Bill:
- *Part 4* will become the Security Information in Proceedings (Amendments) Bill.

### **Departmental disclosure statement**

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2021&no=97>

### **Regulatory impact statement**

The Ministry of Justice produced a regulatory impact statement in November 2019 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—

- <https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. It provides that the Bill, if enacted, comes into force on the first anniversary of the date on which it receives the Royal assent or an earlier date appointed by the Governor-General by Order in Council.

The Ministry of Justice advises that the reason for the deferred commencement is to allow sufficient time for rules of court to be reviewed and amended to reflect changes in court procedure required to comply with the Bill, and for operational systems of courts, the Ministry, and other public sector agencies to be adjusted.

## **Part 1**

### **Preliminary provisions**

*Clause 3* provides an overview of the Bill.

*Clause 4* sets out the definitions for the Bill. Key defined terms include the following:

- security information, which covers—
  - national security information (**NSI**), which means information that, if disclosed in connection with a proceeding without protections in place, would be likely to prejudice national security interests; and
  - classified security information, which is relevant only in relation to proceedings arising from certain Acts that each contain a scheme for protecting that information in civil proceedings and is defined with reference to the definition of classified security information in each of those Acts:
- national security interests, which is based on sections 6(a) and (b) and 7 of the Official Information Act 1982 and covers—
  - the security or defence of New Zealand; and
  - the international relations of the Government of New Zealand; and
  - the entrusting of information to the Government of New Zealand on a basis of confidence by Governments of other countries, agencies of those Governments, and international organisations; and
  - the security or defence, and international relations, of countries or territories within the Realm of New Zealand:
- the Crown, which is defined to include Ministers, public service agencies, the New Zealand Defence Force, and the New Zealand Police:
- authorised court, which is defined to cover the High Court, Court of Appeal, and the Supreme Court, and the Employment Court (but only in respect of matters within the exclusive jurisdiction of that court).

*Clause 5* gives effect to the transitional, savings, and related provisions in *Schedule 1*.

*Clause 6* provides that the Bill binds the Crown.

*Clause 7* provides that the Bill does not apply to proceedings under the Immigration Act 2009 involving classified information (as defined in that Act).

## Part 2

### Procedures to protect security information in proceedings

*Part 2* provides for new special procedures to apply to certain proceedings in authorised courts that involve security information. The purpose of the procedures is to protect that information, while protecting the interests of non-Crown parties from whom it is withheld.

*Clause 8* provides that the special procedures set out in this Part apply to specified proceedings. The specified proceedings comprise—

- an application by the Crown under *Part 3* for an order in respect of the disclosure of security information (an **SI application**):

- certain criminal proceedings involving NSI that arise under the Criminal Disclosure Act 2008 and the Criminal Procedure Act 2011:
- a proceeding in respect of which the court makes a special procedures order under *clause 9*.

*Clause 9* provides that an authorised court may make a special procedures order applying the special procedures to any of the following proceedings:

- a civil proceeding to which an SI application relates:
- an application for judicial review relating to the issue of an NSI certificate under *clause 39* (or an appeal relating to an order made on that application):
- an appeal against a decision of another authorised court in a specified proceeding.

The clause expressly provides that a special procedures order may be made in relation to any part of the proceeding, including the substantive proceeding. This overcomes doubts raised in *Dotcom v Attorney-General* [2019] NZCA 412 at [35] to [43] as to whether a “closed materials procedure” may be conducted at the hearing of a proceeding.

*Clauses 10 to 15* set out the main special procedures applying in relation to the specified proceedings.

*Clause 10* provides that generally the court must appoint a special advocate to act on behalf of any non-Crown party to a specified proceeding.

*Clause 11* provides that an oral hearing in a specified proceeding is a closed hearing (which is defined in *clause 4* to mean that every person, including any non-Crown party, must be excluded except for certain persons, such as the Judge, Crown representatives, witnesses, special advocate, and special adviser). *Clause 11* also places on those present a duty of confidentiality in relation to the security information.

*Clause 12* provides that the Crown must give access to the security information to the authorised court, any special advocate, and any special adviser.

*Clause 13* requires the Crown to give a written summary of the security information to any non-Crown party, as well as the court, any special advocate, and any special adviser.

*Clause 14* allows the authorised court to waive the requirement for the Crown to give a summary if the court considers that a sufficient summary cannot be prepared without disclosing security information or if a summary has already been given in a related proceeding.

*Clause 15* provides for the appointment of a special adviser to advise the court regarding national security.

*Clauses 16 to 24* set out further provisions relating to the appointment and role of special advocates.

*Clause 16* provides for a designated agency (defined in *clause 4*) to maintain a panel of appropriately experienced and security-cleared lawyers who are available to be special advocates.

*Clause 17* sets out the procedure for appointing a special advocate, which includes a power for the non-Crown party to nominate a lawyer from a list of potential special advocates.

*Clause 18* provides that a lawyer may be reappointed as a non-Crown party's special advocate in later, related proceedings.

*Clause 19* provides that the role of a special advocate in relation to a specified proceeding is to act in the interests of the non-Crown party for whom they have been appointed (the **specially represented party**) for the purposes of a closed hearing in the proceeding.

*Clause 20* provides that a special advocate has all of the functions that a lawyer of the specially represented party has, and sets out some of those functions.

*Clause 21* provides that the special advocate must protect the confidentiality of the security information and may only communicate about it in accordance with *clause 22*.

*Clause 22* provides that the special advocate must not engage in communications about the security information with any person (other than the court or Crown representatives) except in accordance with directions of the authorised court. The terms and conditions of the directions are left to the court's discretion, but the court must be satisfied that they would—

- maintain its effective oversight of the communications concerned; and
- allow the communications to be efficient and effective.

*Clause 23* protects a special advocate from liability for acts done or omitted in performing their functions.

*Clause 24* requires the designated agency to meet a special advocate's costs.

*Clauses 25 to 27* relate to the appointment of special advisers, including who may be appointed and termination of the appointment (*clause 25*), the duty to protect the confidentiality of security information (*clause 26*), and costs (*clause 27*).

*Clause 28* requires the Chief Justice and the Attorney-General to agree on a protocol of general practices and procedures for the implementation of the special procedures and the protection of security information. This general provision replaces similar provisions relating to classified security information that are in the Overseas Investment Act 2005, the Passports Act 1992, the Telecommunications (Interception Capability and Security) Act 2013, and the Terrorism Suppression Act 2002 (which are all Acts amended by *Part 4*).

### Part 3

#### Security information in civil proceedings

*Clause 29* provides that *Part 3* applies to civil proceedings, including proceedings in which the Crown proposes to present classified security information under the Overseas Investment Act 2005, the Passports Act 1992, the Telecommunications (Interception Capability and Security) Act 2013, or the Terrorism Suppression Act 2002 (which are all amended by *Part 4*) and any other civil proceeding in which NSI is or may be at issue.

*Clause 30* contains an overview of the SI application process and provides for *Schedule 2*, which contains an overview diagram showing the general process for the making and determination of SI applications. An SI application is one of the specified proceedings to which the special procedures set out in *Part 2* apply.

*Clause 31* sets out the types of orders available to the court as security information orders and explains what these orders are. The security information orders are the following:

- an exclusion order (which is an order that the security information not be disclosed or that it is not required to be disclosed);
- a special procedures order under *clause 9*;
- a protective order (which is an order to protect the confidentiality of security information and limit its disclosure in the proceeding to which the SI application relates).

*Clause 32* provides that the Crown may make an SI application to an authorised court by applying for a security information order in relation to the security information at issue in the proceedings to which the application relates.

The Crown may make an SI application under the clause whether or not it is a party to the proceeding to which the application relates.

*Clause 33* provides that an SI application may be made in the course of a hearing only if the High Court or Employment Court is conducting the hearing. An SI application cannot be made in the case of a proceeding before the District Court or the Employment Relations Authority if the hearing is underway. This is because proceedings must be removed from the District Court to the High Court, or from the Employment Relations Authority to the Employment Court, if the Attorney-General gives notice that the Crown intends to make an SI application (*see clause 44* and *new section 178AA* of the Employment Relations Act 2000, as inserted by *clause 134*).

*Clause 34* allows the Crown to make an SI application on appeal to the Court of Appeal or the Supreme Court only if a party has sought leave to have the information to which the application relates admitted as further evidence.

*Clause 35* provides that the authorised court may dismiss an SI application if it is unnecessary to determine it.

*Clause 36* sets out when an authorised court must make a security information order. The court must make an order if it is satisfied that the information at issue is security

information or if the Crown submits either the certification that the information is classified security information (in the case of a civil proceeding under one of the 4 specified Acts in which the Crown proposes to present classified security information) or an NSI certificate (in the case of a civil proceeding in which NSI is or may be at issue).

In the case where the Crown submits an NSI certificate, the court is limited in the types of security information orders that are available to it, so that it may only make an exclusion order or a special procedures order.

*Clause 37* provides that if no certification or certificate is submitted and the court is not satisfied that the information at issue is security information, the court must dismiss the application.

*Clause 38* sets out the matters the court must consider in determining which type of order to make. These include matters relating to the fair determination of the trial, the protection of the security information, and balancing the public interests involved.

The matters include a test similar to that in section 70 of the Evidence Act 2006, which enables a Judge to direct that information relating to matters of State must not be disclosed in a proceeding if the Judge considers that the public interest in the information being disclosed in the proceeding is outweighed by the public interest in withholding the information. *Clause 138* makes a consequential amendment that ensures that section 70 of the Evidence Act 2006 does not apply if an SI application may be made in relation to the information concerned.

*Clause 39* provides that, if the court is satisfied that none of the security information orders available under *clause 36* would allow the substantive proceeding to which the SI application relates to be fairly determined, the court may instead dismiss the application and make 1 or more specified types of orders to deal with the substantive proceedings without involving the security information.

*Clause 40* requires the Crown, when making an SI application that relates to classified security information, to submit certification under the relevant provision of the Act to which the proceedings relate identifying the information as classified security information.

An NSI certificate may be submitted in respect of the same information. In this case, the purpose of the NSI certificate is not to satisfy the court that the information is security information but to restrict the orders that are available to the court under *clause 36* in respect of the protection of the information.

*Clause 41* enables the Attorney-General and the Minister of Foreign Affairs to jointly issue an NSI certificate to certify that information is NSI. The NSI certificate has the effect of satisfying the court, when it is determining the SI application, that the certified information is security information. Under *clause 36*, there is a more limited range of orders available to the court if an NSI certificate has been submitted.

*Clause 42* provides that the NSI certificate generally has effect for the purposes of an SI application only if the Crown gives it when making the SI application. This means that generally the Crown cannot give an NSI certificate in support of an SI application



after it has made the application (when the court may already be considering the application). There is an exception to this if—

- the Crown amends the SI application to cover information not originally in it; and
- the authorised court grants leave to give an NSI certificate relating to that new information.

*Clause 43* provides that the Solicitor-General may not exercise the Attorney-General's power and may not delegate that power.

*Clause 44* states that the Crown may withdraw an SI application before it is determined.

*Clause 45* provides that a party to a civil proceeding not involving the Crown who believes security information may be disclosed in the proceeding must notify the Attorney-General of the matter. The clause assists the Attorney-General to be made aware of proceedings in relation to which—

- the Attorney-General may wish to intervene under *clause 47*; or
- the Crown may wish to make an SI application under *clause 32*.

*Clause 46* requires the District Court (or other court that is not an authorised court) to remove a civil proceeding before it to the High Court if the Attorney-General notifies the District Court (or other non-authorised court) that the Crown intends to make an SI application in connection with the proceeding.

The High Court may order that the proceeding be removed back to the original court if satisfied that the proceeding does not involve security information or if the Crown does not make an SI application within a relevant period.

*See new section 178AA* of the Employment Relations Act 2000 (as inserted by *clause 135*), which applies *clause 46* to matters before the Employment Relations Authority.

*Clause 47* enables the Attorney-General to intervene in a civil proceeding in which the Crown is not a party, without leave of the court, if the Attorney-General believes that security information may be disclosed in the proceeding.

## **Part 4**

### **Amendments to other Acts**

#### Subpart 1—Amendments relating to national security information in criminal proceedings

*Clauses 48 to 56* make amendments to the Criminal Disclosure Act 2008 in relation to non-party disclosure hearings, and applications for disclosure by the prosecutor, where disclosure to the defendant may prejudice national security interests. The non-party disclosure hearings and applications concerned are specified proceedings to which the special procedures set out in *Part 2* of the Bill apply.

*Clause 48* states that *clauses 49 to 56* amend the Criminal Disclosure Act 2008.

*Clause 49* inserts a provision relating to transitional, savings, and related provisions.

*Clause 50* inserts a definition of national security interests into section 6 so that it has the meaning given by *clause 4* of the Bill. It also makes a consequential amendment to the definition of criminal proceedings related to the amendment made to the Criminal Procedure Act 2011 by *clause 69* (relating to admissibility hearings in the course of a trial).

*Clause 51* expands a ground for withholding information, which currently covers some of the interests defined as national security interests by *clause 4* of the Bill, so that it applies to all of those national security interests. It also makes a consequential amendment related to the amendment to the Evidence Act 2006 made by *clause 141* (relating to intelligence officers and intelligence sources).

*Clause 52* inserts *new section 26B*, which applies if the Crown (which may include a Crown agent) is served with an application for a non-party disclosure hearing and is satisfied that disclosure of information sought by the defendant would be likely to prejudice national security interests. The new section requires—

- the Crown to notify the court before which the proceedings are being conducted; and
- the non-party disclosure hearing to be conducted by the High Court.

*New section 26B* defines Crown more widely than in *clause 4* of the Bill, so that it includes Crown agents.

*Clause 53* renumbers and repositions section 28 as *new section 26A*. The amendment ensures logical sequencing and is a consequence of the insertion of *new section 26B* by *clause 52*.

*Clause 54* amends section 29 by directing attention to new provisions of the Criminal Procedure Act 2011 that enable—

- the charges to be dismissed if the Judge in a non-party disclosure hearing refuses to order disclosure of information because the Judge is satisfied that disclosure would be likely to prejudice national security interests (*see new section 147A* of the Criminal Procedure Act 2011, as inserted by *clause 73*); and
- a prosecutor to withdraw a charge without leave of the court concerned if the relevant Judge orders disclosure and the prosecutor is satisfied that the disclosure is likely to prejudice national security interests (*see new section 146A* of the Criminal Procedure Act 2011, as inserted by *clause 71*).

*Clause 55* inserts *new section 30A*, which applies if a defendant applies under section 30 for disclosure of information that the prosecutor has withheld because disclosure would be likely to prejudice national security interests. The new section—

- requires the prosecutor to notify the Solicitor-General; and
- provides that the defendant may only make the application to the High Court.

*New section 30A* also directs attention to *new sections 146A and 147A* of the Criminal Procedure Act 2011.

*Clause 56* inserts *new Schedule 1AA*, which contains transitional, savings, and related provisions.

*Clauses 57 to 76* make amendments to the Criminal Procedure Act 2011 relating to hearings on the admissibility of evidence that a party asserts is based on national security information. Applications for those hearings are specified proceedings to which the special procedures set out in *Part 2* of the Bill apply.

*Clause 57* states that *clauses 58 to 76* amend the Criminal Procedure Act 2011.

*Clause 58* inserts into section 5 definitions of national security information and national security interests so that they have the meanings given by *clause 4* of the Bill.

*Clause 59* inserts *new section 5A*, which defines evidence that is based on national security information as evidence that is not itself national security information but is a redacted document, a written summary, or an agreed statement of facts.

*Clause 60* amends section 78 to require an application for a pre-trial admissibility hearing in a Judge-alone trial to be made to the High Court if either party asserts that the evidence is based on national security information. The application (the **relevant application**) may generally be made only if the proceedings are for—

- a category 4 offence; or
- a category 3 offence that is punishable for life or by 7 or more years' imprisonment (a **specified category 3 offence**).

The application may also be made, with leave of the High Court, for one of the following offences:

- a category 3 offence that is not a specified category 3 offence;
- an offence against section 48 of the Health and Safety at Work Act 2015.

The offence against section 48 of the Health and Safety at Work Act 2015 is a category 1 offence. Currently, the Criminal Procedure Act 2011 provides for all stages of a category 1 offence to be dealt with by the District Court.

Before the relevant application is made, the applicant must notify the Solicitor-General.

*Clause 61* inserts *new section 79A*. If a pre-trial admissibility hearing is granted in relation to the relevant application, the High Court may make an order that the evidence is admissible only if satisfied that, in addition to the requirements of section 79, the national security interests that would be likely to be prejudiced by fully disclosing the national security information will be adequately protected.

*Clauses 61 to 65, 68, 74, and 75* make consequential amendments to sections 84, 90, 91, 94, 112, 215, and 217 respectively. They are a consequence of an amendment to the Evidence Act 2006 relating to intelligence officers and intelligence sources (*see clause 141*).

*Clause 66* makes amendments to section 101, relating to applications for pre-trial orders about evidence in jury trials. The amendments have a similar effect to the

amendments *clause 60* makes to section 78 in relation to pre-trial admissibility applications about evidence in Judge-alone trials.

*Clause 67* inserts *new section 101A*, which is equivalent to *new section 79A* (inserted by *clause 61*), but applies to the pre-trial admissibility applications about evidence in jury trials.

*Clause 69* inserts *new section 113A*, which enables an application to be made to the High Court, in the course of a trial, for an admissibility hearing relating to evidence that either party asserts is based on NSI. The application may only be made to the High Court, whether the trial is in the course of being conducted by the High Court or the District Court. The new section is in similar terms to the amendments made in relation to pre-trial admissibility applications and hearings.

*Clause 70* makes a consequential amendment to the heading of section 146 that is related to the insertion of *new section 146A* by *clause 71*.

*Clause 71* inserts *new section 146A*, which introduces a specific power for a prosecutor to withdraw a charge before trial if the court has ordered the disclosure of information under section 29 or 30 of the Criminal Disclosure Act 2008 and the disclosure is likely to prejudice national security interests.

*Clause 72* makes a consequential amendment to the heading of section 147 that is related to the insertion of *new section 147A* by *clause 73*.

*Clause 73* inserts *new section 147A*, which enables a court to dismiss a charge under section 147 if—

- the High Court (or, on appeal, the Court of Appeal or Supreme Court) refuses to make an order under the Criminal Disclosure Act 2008 requiring disclosure of information because that disclosure would prejudice national security interests; and
- the court is satisfied that withholding the information creates a real risk of prejudice to a fair trial.

*Clause 76* amends Schedule 1AA, which contains transitional, savings, and related provisions.

### Subpart 2—Amendments relating to classified security information: administrative requirements and proceedings

*Subpart 2* amends the following Acts (the **relevant Acts**) in relation to classified security information:

- the Overseas Investment Act 2005 (the **Overseas Investment Act**):
- the Passports Act 1992 (the **Passports Act**):
- the Telecommunications (Interception Capability and Security) Act 2013 (the **Telecommunications (ICS) Act**):
- the Terrorism Suppression Act 2002 (the **Terrorism Suppression Act**).

The relevant Acts provide for the making of administrative decisions for which classified security information may sometimes be relevant. The amendments introduce consistent procedural requirements that apply when an administrative decision is made that involves classified security information. Those requirements concern natural justice protections for a person who is affected by a decision.

The relevant Acts currently provide for the protection of classified security information in proceedings in similar, but differing, ways. The amendments bring alignment in how the courts may protect that information in proceedings by applying *Parts 2 and 3* of the Bill.

The changes made to the relevant Acts include—

- replacing definitions of classified security information with definitions that generally have the same effect as the definitions replaced (changes made include consequential amendments, minor corrections, and changes to ensure consistency between the Acts); and
- requiring decision makers who have relied on classified security information in making decisions to notify the person to whom the decision applies that they have relied on classified security information and that the person may request a summary of that information (a **CSI summary**) (Passports Act, Telecommunications (ICS) Act, and Terrorism Suppression Act only); and
- requiring a decision maker to provide a CSI summary (as agreed by the decision maker and head of the agency holding the classified security information) if requested by the person at any time (Passports Act, Telecommunications (ICS) Act, and Terrorism Suppression Act only); and
- requiring the Director-General of an intelligence and security agency that provided classified security information to assist a decision maker to provide details to the Inspector-General of Intelligence and Security (Passports Act and Terrorism Suppression Act only); and
- replacing schemes for protecting classified security information in proceedings with a provision requiring the Attorney-General to make an SI application under *Part 3* of the Bill if the Crown proposes to present classified security information.

*Clause 77* states that *clauses 78 to 81* amend the Overseas Investment Act.

*Clause 78* makes a minor amendment to replace the term classified information with classified security information, as the former term is redundant as a result of other amendments.

*Clause 79* inserts into the interpretation section (section 6) a reference to the new definition of classified security information that is inserted as *new section 114* by *clause 78*.

*Clause 80* replaces subpart 3 of Part 3, which contains provisions that protect classified security information when it is used in proceedings, with a *new subpart 3*. In the new subpart, *new section 113* requires the Crown to make an SI application under

*Part 3* of the Bill in proceedings involving that information. *New section 114* contains a definition of classified security information that replaces the definition currently found in section 114.

*Clause 81* amends Schedule 1AA, which contains transitional, savings, and related provisions.

*Clause 82* states that *clauses 83 to 90* amend the Passports Act.

*Clause 83* inserts several definitions into the interpretation section (section 2).

*Clause 84* inserts *new section 2AA*, which contains the definition of classified security information. The definition of classified security information is currently found in section 29AA(5) to (7).

*Clause 85* amends section 27GC, which requires the Minister to notify a person of several particulars if the Minister takes an action specified in 27GA(3) in relation to the person. The amendment introduces the additional notification requirements relating to reliance on classified security information and the right to request a CSI summary.

*Clause 86* inserts *new section 27GCA*, outlining the details of the CSI summary, including its purpose, and stating that the Minister may refuse to provide it if a sufficient summary cannot be produced without disclosing classified security information.

*Clause 87* inserts *new section 27GFA*, which requires the Director-General of an intelligence and security agency to notify the Inspector-General of Intelligence and Security if that agency provides classified security information to assist the Minister with making a decision.

*Clause 88* amends section 29AA by repealing the provisions defining classified security information. The clause also makes a minor amendment to correct an error.

*Clause 89* replaces sections 29AB and 29AC, which contain provisions that protect classified security information in proceedings, with *new section 29AB*. The new section requires the Crown to make an SI application under *Part 3* of the Bill in proceedings involving that information.

*Clause 90* amends Schedule 1, which contains transitional, savings, and related provisions.

*Clause 91* states that *clauses 92 to 106* amend the Telecommunications (ICS) Act.

*Clause 92* replaces the definition of classified information with a definition of classified security information in the interpretation section (section 3).

*Clause 93* inserts *new section 3A*, which contains the definition of classified security information. The definition of classified security information is currently found in section 102(1) to (3). *Clause 93* also inserts *new section 3B*, which relates to transitional, savings, and related provisions.

*Clauses 94 to 98* make minor amendments to sections 19, 32, 36, 39, and 40. These amendments provide consistent wording and a consistent approach in each of the provisions that require a decision maker to notify a party affected by a decision of mat-

ters relating to that decision when classified security information is involved in the decision.

*Clause 99* inserts *new subpart 7 of Part 2*, which provides notification requirements that apply in relation to the exercise of several decision-making powers under the Act. The new provisions introduce notification requirements relating to reliance on classified security information and the right of an affected party to request a CSI summary if the decision maker relied on classified security information in making the decision.

The new provisions outline the details of the CSI summary, including its purpose, and state that the decision maker may refuse to provide it if a sufficient summary cannot be produced without disclosing classified security information.

*Clauses 100 and 101* make minor amendments to sections 56 and 57, replacing the term classified information with the term classified security information.

*Clause 102* inserts *new section 57A*, which applies the notification requirements in *subpart 7 of Part 2* (as inserted by *clause 99*) to a decision of the Minister under section 57, if the Minister relies on classified security information in making the decision.

*Clause 103* replaces subpart 8 of Part 4, which contains provisions that protect classified security information in proceedings, with a *new subpart 8*. The new subpart contains *new section 101*, which requires the Crown to make an SI application under *Part 3* of the Bill in proceedings involving that information.

*Clauses 104 and 106* make amendments to section 123 and the Schedule respectively as a consequence of the insertion of *new Schedule 1AA* by *clause 105*.

*Clause 105* inserts *new Schedule 1AA*, which contains transitional, savings, and related provisions.

*Clause 107* states that *clauses 108 to 129* amend the Terrorism Suppression Act.

*Clause 108* makes a minor consequential amendment related to moving the definition of classified security information from section 32 to *new section 4A*, which is inserted by *clause 109*.

*Clauses 110, 111, 113, 114, 118, and 128* replace cross-references as a consequence of renumbering section 34 as *new section 29C* (see *clause 122*) and section 35 as *new section 29B* (see *clause 123*).

*Clause 112* amends section 26 by introducing the additional notification requirements that apply if the Prime Minister relied on classified security information in making an interim or a final designation of an entity as a terrorist entity under section 20 or 22, including that the entity may request a CSI summary. The clause also replaces a cross-reference as a consequence of renumbering section 35 as *new section 29B* (see *clause 123*).

*Clause 115* inserts a new cross-heading after section 29A. This is a consequential amendment related to renumbering and repositioning sections 34 and 35.

*Clause 116* inserts *new section 29D*. This section re-enacts section 42 to the extent that it relates to the expiry of a designation of an entity as a terrorist entity (a **designa-**

tion) or a decision by the Prime Minister to revoke a designation. It also provides for the same notification requirements as are provided for in the amendments in *clause 112*.

The purpose of moving the provisions from section 42 is to group all of the provisions relating to the expiry of designations, and to their renewal or revocation due to an administrative decision, together in *new sections 29B to 29D*.

*Clause 117* replaces the cross-heading above section 30 to more accurately introduce the matters covered in section 30.

*Clause 119* inserts *new sections 31 and 31A* and a new cross-heading. *New section 31* outlines the details of the CSI summary, including its purpose and when a request for it may be refused. *New section 31A* requires the Director-General of an intelligence and security agency to notify the Inspector-General of Security and Intelligence if that agency provides classified security information to assist the Prime Minister with a decision.

*Clause 120* repeals section 32, which is replaced by *new section 4A* as the section containing the definition of classified security information.

*Clause 121* replaces the cross-heading above section 33 as a consequence of repositioning sections 34 and 35.

*Clauses 122 and 123* involve the renumbering and repositioning of sections 34 and 35. *Clause 122* renumbers section 34 (relating to the revocation of designations) as *new section 29C* and repositions it after *new section 29B* (as renumbered and repositioned by *clause 123*). *Clause 123* renumbers section 35 as *new section 29B* and repositions it after the new cross-heading inserted by *clause 115*. The purpose of rearranging these sections is to group provisions relating to the same types of decision together and to separate these from the provisions relating to classified security information in proceedings.

*Clause 124* replaces section 38, which contains provisions that protect classified security information when it is used in proceedings. *New section 38* requires the Crown to make an SI application under *Part 3* of the Bill in proceedings involving that information.

*Clause 125* repeals section 40 as a consequence of the provision in *clause 28* that requires the Chief Justice and the Attorney-General to agree on a protocol of general practices and procedures for the implementation of the special procedures and the protection of security information in proceedings generally.

*Clause 126* amends section 42 by narrowing the application of the section. The section will no longer provide for notification requirements relating to the expiry or revocation of designations. It will only provide for notification requirements when a designation is found to be invalid in proceedings before a court. This amendment is related to the repositioning of sections and the insertion of the notification requirements relating to the expiry and revocation of designations in *new section 29D* (as inserted by *clause 116*).

*Clause 127* makes a consequential amendment related to the repeal of section 40.



*Clause 129* inserts *new Schedule 1AA*, which contains transitional, savings, and related provisions.

### Subpart 3—Amendments to other related Acts

*Clause 130* states that *clause 131* amends the Crown Proceedings Act 1950.

*Clause 131* replaces section 27, removing a power to make rules providing that a document will not be disclosed in proceedings in which the Crown is a party or third party if—

- the Prime Minister certifies that disclosure of the existence of the document would be likely to prejudice certain national security interests; or
- the Attorney-General certifies that the disclosure is likely to prejudice the prevention, investigation, or detection of offences.

The NSI certificate provided for in *clause 41* in support of an SI application is intended to generally replace this certificate-making power as it relates the protection of national security interests. The certificate-making power as it relates to the prevention, investigation, or detection of offences is not replaced by the Bill, but, if they are matters of State, those interests would be protected by section 70 of the Evidence Act 2006.

*Clause 132* states that *clauses 133 to 136* amend the Employment Relations Act 2000.

*Clauses 133, 134, and 136* amend sections 133, 178, and 187 respectively as a consequence of the insertion of *new section 178AA* by *clause 135*.

*Clause 135* inserts *new section 178AA*, which applies *clause 46* of the Bill to a matter before the Employment Relations Authority if NSI is at issue. This has the effect of requiring the Authority to order that a matter before it be removed to the Employment Court if the Attorney-General gives written notice to the Authority that the Crown intends to make an SI application in connection with the matter.

*Clause 137* states that *clauses 138 to 143* amend the Evidence Act 2006.

*Clause 138* inserts *new section 3A* relating to transitional, savings, and related provisions.

*Clause 139* makes a consequential amendment to section 70 that is related to *clause 38*.

Section 70 enables a Judge to direct that information that relates to matters of State must not be disclosed in a proceeding if the Judge considers that the public interest in the information being disclosed in the proceeding is outweighed by the public interest in withholding the information. A similar test applies under *clause 38* when an authorised court is determining which type of order to make in respect of the security information to which an SI application relates. The amendment provides that section 70 does not apply if an SI application may be made in relation to the information concerned.

Section 70 continues to apply where an SI application is not able to be made, including in the course of a substantive proceeding in the District Court and in criminal proceedings.

*Clauses 140 and 142* make consequential amendments to sections 102 and 120 respectively. Those amendments are related to the insertion of *new sections 109A and 109B* by *clause 141*.

*Clause 141* inserts *new sections 109A and 109B*. The new sections protect the identity of witnesses who are intelligence officers or intelligence sources in a similar way to sections 108 and 109, which protect the identity of witnesses who are undercover police officers. The new sections apply to all civil proceedings and to criminal proceedings for category 3 or 4 offences.

*New section 109A* enables the Director-General of an intelligence and security agency to file a certificate stating that the identity of a witness who is an intelligence officer or intelligence source must not be disclosed.

*New section 109B* outlines the effect of the certificate, including that the witness must not be required to disclose their name or address, except by leave of the Judge.

*Clause 143* inserts *new Schedule 1AA*, which contains transitional, savings, and related provisions.

*Clause 144* states that *clauses 145 and 146* amend the Health and Safety at Work Act 2015.

*Clauses 145 and 146* repeal section 162 and Schedule 4, which contain provisions relating to the protection of classified security information in proceedings. Those provisions include procedures having a similar effect to the special procedures set out in *Part 2* of the Bill. To the extent that the proceedings involve NSI and are civil proceedings, *Part 2* (together with *Part 3*) of the Bill will apply.

*Clause 147* states that *clause 148* amends the Outer Space and High-altitude Activities Act 2017.

*Clause 148* amends section 55, which allows the Prime Minister to certify (after taking into account the advice of the intelligence and security agencies) that an activity for which a licence or permit is sought poses a significant risk to national security. The amendment repeals a provision that—

- generally treats the certificate as being conclusive evidence of the matters stated in it; and
- ousts judicial review of the advice given by an intelligence and security agency.

*Clause 149* states that *clause 150* amend the Terrorism Suppression (Control Orders) Act 2019.

*Clause 150* repeals section 36. That section applies when the court is considering making a decision under another law (for example, section 70 of the Evidence Act 2006) that information supporting an application for a control order must not be disclosed to a non-Crown party. When considering making the decision, the court must appoint a special advocate for the non-Crown party. *Part 2* (together with *Part 3*) of

the Bill makes section 36 redundant. *See also* the definition of civil proceeding in *clause 4* of the Bill.



*Hon Kris Faafoi*

## **Security Information in Proceedings Legislation Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**
- This Act is the **Security Information in Proceedings Legislation Act 2021**.
- 2 Commencement** 5
- (1) This Act comes into force on—
- (a) the first anniversary of the date of Royal assent; or
- (b) an earlier date appointed by the Governor-General by Order in Council.
- (2) An Order in Council made under this section is secondary legislation (*see Part 3 of the Legislation Act 2019 for publication requirements*). 10

**Part 1**  
**Preliminary provisions**

- 3 Overview**
- (1) This guide is for explanation only and does not affect the provisions referred to in it. 15

- (2) **Part 1** contains general provisions.
- (3) **Part 2** identifies certain civil and criminal proceedings as specified proceedings (*see section 8(3)*), including proceedings to which the special procedures apply automatically and proceedings to which the special procedures apply only if the court makes an order to that effect. **Part 2** also sets out the following special procedures that apply to those proceedings when security information is at issue: 5
- (a) a non-Crown party's entitlement to a special advocate (*see section 10*):
  - (b) provision for a closed hearing (*see section 11*):
  - (c) access to the security information by certain persons only (*see section 12*): 10
  - (d) a requirement for the Crown to provide a written summary of the security information to participants (*see sections 13 and 14*):
  - (e) the court's power to appoint a special adviser (*see section 15*).
- (4) **Part 3** applies to civil proceedings in which NSI is at issue or in which the Crown proposes to present classified security information in proceedings arising from 4 specified Acts (the Overseas Investment Act 2005, the Passports Act 1992, the Telecommunications (Interception Capability and Security) Act 2013, and the Terrorism Suppression Act 2002). **Part 3** provides— 15
- (a) a process for the Crown to make an SI application in relation to a proceeding (*see section 32*), asking for the court to make orders protecting the confidentiality of security information (*see section 36*); and 20
  - (b) for the Attorney-General and the Minister of Foreign Affairs and Trade to jointly issue an NSI certificate, which certifies that information is national security information without the need for the court to determine this (*see section 41*). 25
- (5) **Part 4 of the Security Information in Proceedings Legislation Act 2021** makes related and consequential amendments to other Acts, including—
- (a) the Criminal Disclosure Act 2008 and the Criminal Procedure Act 2011 to provide for the protection of NSI in criminal proceedings. In particular, it provides for the application of the special procedures under **Part 2** to non-party disclosure hearings and applications for disclosure by the prosecutor where disclosure to the defendant may prejudice national security interests and to hearings on the admissibility of evidence that a party asserts is based on NSI: 30
  - (b) the Overseas Investment Act 2005, the Passports Act 1992, the Telecommunications (Interception Capability and Security) Act 2013, and the Terrorism Suppression Act 2002, which each provide for the making of administrative decisions for which classified security information may be relevant. Those Acts are amended by— 40

- (i) establishing consistent procedural requirements that apply when an administrative decision is made that involves classified security information; and
- (ii) applying the special procedures in **Part 2** and the SI application process in **Part 3** to proceedings in order to protect classified security information. 5

#### 4 Interpretation

In this Act, unless the context otherwise requires,—

**authorised court** means any of the following courts:

- (a) the High Court: 10
- (b) the Court of Appeal:
- (c) the Supreme Court:
- (d) the Employment Court, in the case of proceedings in respect of matters within the jurisdiction of that court under section 187 of the Employment Relations Act 2000 15

**civil proceeding**—

- (a) means any proceeding (including any public law or judicial review proceeding) before a court or tribunal other than a criminal proceeding; and
- (b) includes, for example, a reference to an application for a control order under the Terrorism Suppression (Control Orders) Act 2019 20

**classified security information**, in or in connection with a civil proceeding, has the meaning given by one of the following (whichever is relevant to that proceeding):

- (a) **section 114** of the Overseas Investment Act 2005:
- (b) **section 2AA** of the Passports Act 1992: 25
- (c) **section 3A** of the Telecommunications (Interception Capability and Security) Act 2013:
- (d) **section 4A** of the Terrorism Suppression Act 2002

**closed hearing**, in relation to a specified proceeding, means an oral hearing in the proceeding conducted in the absence of all persons except the following: 30

- (a) the Judge or Judges hearing the case:
- (b) any person who is a representative of the Crown for the purposes of the specified proceeding and who has an appropriate security clearance:
- (c) any witness who is authorised by the court to be present at the hearing while giving evidence in respect of security information: 35
- (d) any special advocate appointed to act on behalf of a non-Crown party to the specified proceeding:

- (e) any special adviser appointed for the purposes of advising the court in relation to the specified proceeding:
- (f) any court staff member who has an appropriate security clearance:
- (g) any person who has an appropriate security clearance and who is authorised (whether individually or as a member of a class of persons) by the court to attend the hearing 5
- Crown—**
- (a) means the Sovereign in right of the Government of New Zealand, including—
- (i) any Minister of the Crown; and 10
- (ii) any public service agency; and
- (iii) the New Zealand Defence Force; and
- (iv) the New Zealand Police; and
- (b) when used in relation to a non-party disclosure hearing to which **section 26B** of the Criminal Disclosure Act 2008 applies, also includes a Crown agent (within the meaning of section 10(1) of the Crown Entities Act 2004) 15
- designated agency** means the public service agency that is designated by the Prime Minister as responsible for one or both of the following:
- (a) maintaining the special advocate panel (*see section 16*): 20
- (b) meeting the costs of special advocates and special advisers under **sections 24 and 27**, respectively
- exclusion order** has the meaning given by **section 31(2)**
- function** includes a role, duty, or power
- intelligence and security agency** has the meaning given by section 4 of the Intelligence and Security Act 2017 25
- lawyer** has the meaning given by section 6 of the Lawyers and Conveyancers Act 2006
- misconduct** has the meaning given by section 9 of the Lawyers and Conveyancers Act 2006 30
- national security information** or **NSI—**
- (a) means information that, if disclosed in or in connection with a proceeding without any orders in place to protect the information, would be likely to prejudice national security interests; and
- (b) includes— 35
- (i) information certified as NSI under **section 41**; and



- (ii) information that is the subject of an SI application and that the Crown asserts is NSI until an authorised court finally dismisses the application under **section 37**

**national security interests** means—

- (a) the security or defence of New Zealand; or 5
- (b) the international relations of the Government of New Zealand; or
- (c) the entrusting of information to the Government of New Zealand on a basis of confidence by—
- (i) the Government of any other country; or
- (ii) an agency of a Government of another country; or 10
- (iii) any international organisation (within the meaning of section 2(1) of the Official Information Act 1982); or
- (d) the security or defence of—
- (i) the self-governing State of the Cook Islands; or
- (ii) the self-governing State of Niue; or 15
- (iii) Tokelau; or
- (iv) the Ross Dependency; or
- (e) relations between the Governments of any of the following:
- (i) New Zealand:
- (ii) the self-governing State of the Cook Islands: 20
- (iii) the self-governing State of Niue; or
- (f) the international relations of the Government of—
- (i) the self-governing State of the Cook Islands; or
- (ii) the self-governing State of Niue

**non-Crown party**, in relation to a proceeding,— 25

- (a) means a party to the proceeding that is not, and does not represent, the Crown; and
- (b) in the case of a specified proceeding that is the hearing of an SI application or another interlocutory application to an authorised court connected with a substantive proceeding, includes a party to the substantive proceeding who is not, and does not represent, the Crown 30

**NSI certificate** has the meaning given by **section 41**

**performing a function** includes exercising a power, and **intending to perform**, in relation to a function, has a corresponding meaning

**protective order** has the meaning given by **section 31(3)** 35

**public service agency** has the meaning given by section 5 of the Public Service Act 2020

**relevant CSI certification**, in relation to an SI application in respect of a civil proceeding, means the certification described in whichever of the following provisions applies to that proceeding:

- (a) **section 114(1)(b)** of the Overseas Investment Act 2005:
- (b) **section 2AA(1)(c)** of the Passports Act 1992: 5
- (c) **section 3A(1)(b)** of the Telecommunications (Interception Capability and Security) Act 2013:
- (d) **section 4A(1)(b)** of the Terrorism Suppression Act 2002

**security clearance** means a New Zealand Government-sponsored national security clearance that allows a person holding that clearance to access security information 10

**security information** or **SI**, in relation to a proceeding, means—

- (a) classified security information, if one of the following applies to the proceeding:
  - (i) **section 113** of the Overseas Investment Act 2005: 15
  - (ii) **section 29AB** of the Passports Act 1992:
  - (iii) **section 101** of the Telecommunications (Interception Capability and Security) Act 2013:
  - (iv) **section 38** of the Terrorism Suppression Act 2002; and
- (b) in any other proceeding, national security information 20

**security information order** has the meaning given by **section 31**

**SI application** means an application to an authorised court under **section 32(1)**

**special adviser** means a person who is appointed as a special adviser under **section 15** 25

**special advocate** means a person appointed as a special advocate under **section 17**

**special advocate panel** means the panel of lawyers maintained under **section 16**

**special procedures** has the meaning given by **section 8(2)** 30

**special procedures order** has the meaning given by **section 9(1)**

**specially represented party**, in relation to a special advocate, means a party for whom the special advocate has been appointed under **section 10**

**specified proceeding** has the meaning given by **section 8(3)**

**unsatisfactory conduct** has the meaning given by section 12 of the Lawyers and Conveyancers Act 2006. 35

- 5 Transitional, savings, and related provisions**  
The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.
- 6 Act binds the Crown**  
This Act binds the Crown. 5
- 7 Act does not apply to proceedings under Immigration Act 2009**  
**Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021** do not apply in relation to a proceeding under the Immigration Act 2009 that is a proceeding involving classified information within the meaning of section 7 of that Act. 10

## Part 2

### Procedures to protect security information in proceedings

#### *Preliminary*

- 8 Application of special procedures to certain proceedings**
- (1) The special procedures described in **subsection (2)** apply to proceedings or parts of proceedings before an authorised court that are specified proceedings (as set out in **subsection (3)**). 15
- (2) The **special procedures** are the procedures set out in the following sections:
- (a) **sections 10 and 16 to 24** (relating to the appointment and role of a special advocate to act on behalf of a non-Crown party): 20
- (b) **section 11** (relating to the hearing being a closed hearing):
- (c) **section 12** (relating to the Crown's obligation to give the court, special advocate, and special adviser access to the security information):
- (d) **sections 13 and 14** (relating to a written summary of the security information): 25
- (e) **sections 15 and 25 to 27** (relating to the appointment and role of a special adviser to advise the court).
- (3) A **specified proceeding** is any of the following:
- Civil proceedings: national security information or classified security information* 30
- (a) the hearing of an SI application (see **section 32**):
- Criminal proceedings: national security information*
- (b) a non-party disclosure hearing to which **section 26B** of the Criminal Disclosure Act 2008 applies:

- (c) the hearing of an application to which **section 30A** of the Criminal Disclosure Act 2008 applies:
- (d) the hearing of an application referred to in **section 78(2A) or 101(2A)**, or made under **section 113A**, of the Criminal Procedure Act 2011:  
*Special procedures order: national security information or classified security information* 5
- (e) a proceeding in respect of which the court makes an order under **section 9**.
- 9 Court may make special procedures order applying special procedures to proceeding** 10
- (1) An authorised court may make an order (a **special procedures order**) applying the special procedures (as described in **section 8(2)** and set out in this Part) to a proceeding set out in **subsection (2)** if the court is satisfied that the order is necessary to protect and limit the disclosure of security information in the proceeding. 15
- (2) The court may make a special procedures order in connection with the following proceedings:
- (a) a civil proceeding to which an SI application relates (*see* **section 36**, under which the court may make a special procedures order when making a security information order in determining an SI application, after considering the matters set out in **section 38**), or an appeal from that proceeding: 20
- (b) an application to the court for judicial review of the issue of an NSI certificate, or an appeal from an interlocutory or a final order made in respect of that application: 25
- (c) an appeal to the court from a decision made by another authorised court in a specified proceeding set out in **section 8(3)**.
- (3) A special procedures order may be made in respect of the whole or any part of the proceeding.
- Special procedures generally* 30
- 10 Entitlement to special advocate**
- (1) The authorised court must appoint a special advocate in accordance with **sections 16 to 18** to act on behalf of any non-Crown party to a specified proceeding.
- (2) However, if the court is satisfied that withholding the security information at issue in the specified proceeding from the party and the party's lawyer, in accordance with this Part, would not have any unfairly prejudicial effect on the party, the court is not required to make the appointment (for example, a special advocate may not be required for a non-Crown party who is one of several non-

Crown parties and who is not affected by the matters relating to the security information).

- (3) *See sections 19 to 24*, which contain further provisions relating to special advocates.

## **11 Hearing closed while security information considered** 5

- (1) An oral hearing in the specified proceeding in which security information is being considered must be a closed hearing.
- (2) Any person not excluded from a hearing must ensure that the confidentiality of the security information considered in the hearing remains protected.

Compare: 1992 No 92 s 29AB(1); 2002 No 34 s 38(3)(b); 2005 No 82 s 123(2)(b); 2013 No 91 s 111(2)(b) 10

## **12 Obligation to give court, special advocate, and special adviser access to security information**

- (1) The Crown must give the authorised court access to any security information at issue in the specified proceeding. 15
- (2) The Crown must also give access to the security information to—
- (a) any special advocate appointed to act on behalf of a non-Crown party to the specified proceeding; and
- (b) any special adviser appointed for the purposes of advising the court in relation to the specified proceeding. 20
- (3) However, the Crown is not required to give access to the security information to the special advocate or special adviser to the extent that the court decides that they should not have access to that information.
- (4) *See sections 21, 22, and 26*, which deal with the obligations of special advocates and special advisers to keep the confidentiality of the security information protected. 25

## **13 Summary to be given to authorised court and relevant participants**

- (1) For the purposes of the specified proceeding, the Crown must give a written summary of the security information at issue to any non-Crown party to the specified proceeding. 30
- (2) In addition, for the purposes of the specified proceeding, the Crown must give a copy of the summary to—
- (a) the authorised court; and
- (b) any special advocate appointed to act on behalf of a non-Crown party to the specified proceeding; and 35
- (c) any special adviser appointed for the purposes of advising the court in relation to the specified proceeding.

- (3) The summary, as well as any summary modified under **subsection (4)** or **section 14**, must not disclose any security information.
- (4) At any time, the court may consider whether to modify (or to direct the Crown to modify) the summary given for the purposes of the specified proceeding after having regard to— 5
- (a) the security information; and
  - (b) any evidence presented or submissions made to the court by the Crown, the special advocate, or any parties; and
  - (c) any other relevant matter.
- (5) The court must ensure that a copy of the modified summary (if any) is given to all of the persons entitled to receive the summary under **subsections (1) and (2)**. 10

#### 14 Waiver or further modification

- (1) An authorised court may decide to waive the requirement for compliance with **section 13(1) and (2)** for the purposes of a specified proceeding if— 15
- (a) the court is satisfied that a sufficient summary cannot be prepared without disclosing security information; or
  - (b) the Crown has already given a summary under those provisions in a related specified proceeding.
- (2) If the Crown has already given a summary under those provisions in a related specified proceeding,— 20
- (a) the authorised court may decide, having regard to the matters in **section 13(4)**, to modify (or to direct the Crown to modify) the earlier summary for the purposes of the later specified proceeding; and
  - (b) **section 13(5)** applies accordingly. 25

#### 15 Appointment of special advisers

- (1) An authorised court may appoint a special adviser for the purposes of advising the court about national security, or related issues, in relation to a specified proceeding.
- (2) *See* **sections 25 to 27**, which contain further provisions relating to special advisers. 30

#### *Special advocate: appointment*

#### 16 Lawyers who may be appointed as special advocates

- (1) The designated agency must maintain a panel of lawyers who may be appointed as special advocates under this Part. 35
- (2) The designated agency may include a person on the panel if—
- (a) the person is a lawyer; and

- (b) the person holds an appropriate security clearance; and
- (c) the designated agency is satisfied that the person has suitable knowledge and experience to be a special advocate.
- (3) The designated agency may include a person on the panel for 5 years at most, and may renew the person's inclusion on the panel for further periods of 5 years at most. 5
- (4) The designated agency must remove a person from the panel—
  - (a) at the request of the person; or
  - (b) if the person ceases to hold an appropriate security clearance; or
  - (c) if the person is suspended from practice as a barrister, a solicitor, or both under the Lawyers and Conveyancers Act 2006 or is struck off the roll of barrister and solicitors of the High Court; or 10
  - (d) if the person ceases to be a lawyer.

## 17 Process for appointing special advocate

### *Preliminary steps* 15

- (1) An authorised court must notify the designated agency of the name and contact details of any non-Crown party to a specified proceeding as soon as practicable after the court makes a special procedures order or otherwise becomes aware that the proceeding is a specified proceeding.
- (2) The designated agency must provide the party with a list of the names of lawyers from the special advocate panel who are reasonably available and could be appointed as a special advocate for the party in the proceeding. 20
- (3) The party may, by the relevant date, nominate a lawyer from the list as the party's preferred choice of special advocate.
- (4) The **relevant date** is a date, determined by the court, that occurs before the hearing of the specified proceeding commences. 25

### *Appointment*

- (5) The court must appoint a special advocate from the special advocate panel.
- (6) If the court considers that the lawyer whom the party has nominated from the list is suitable to be the party's special advocate, the court must appoint that lawyer. 30
- (7) The appointment of a special advocate is on the terms that the court directs.

### *Section not applicable if unnecessary to avoid unfairly prejudicial effect*

- (8) This section does not apply in relation to a non-Crown party if the court decides under **section 10(2)** not to appoint a special advocate to act on behalf of the party. 35

**18 Reappointment of special advocate for related specified proceedings**

- (1) If a lawyer is appointed as a special advocate to act on behalf of a non-Crown party to a specified proceeding,—
- (a) the lawyer may be reappointed as the special advocate for the non-Crown party for the purposes of any later related specified proceeding; 5  
and
  - (b) if that lawyer is to be reappointed, the process for appointing a special advocate in **section 17** does not apply in relation to the non-Crown party.
- (2) The reappointment of a special advocate is to be on the terms that the court 10  
directs.
- (3) The court must not reappoint a lawyer who has been removed from the special advocate panel.
- (4) Nothing in this section limits the application of section 45 of the Legislation 15  
Act 2019.

*Special advocate: role, powers, and functions***19 Role of special advocate**

The role of a special advocate is to act in the interests of the specially represented party for the purposes of the closed hearing of the specified proceeding.

**20 Functions of special advocate related to role** 20

- (1) Except as otherwise provided by **sections 21 and 22**, the special advocate has all of the functions that a lawyer of the specially represented party has.
- (2) The functions of the special advocate include—
- (a) examining and cross-examining witnesses; and
  - (b) making oral and written submissions to the authorised court concerned; 25  
and
  - (c) preparing and making applications (including commencing related proceedings) on behalf of the specially represented party; and
  - (d) assisting in the settlement of the substantive proceeding to which the 30  
specified proceeding is connected.

*Special advocate: access to and communications about security information***21 Duty to maintain confidentiality of security information**

- (1) At all times a special advocate—
- (a) must ensure that the confidentiality of the security information to which the special advocate has access under **section 12** remains protected; 35  
and



- (b) must not disclose the security information to the specially represented party or that party's lawyer; and
- (c) may disclose the security information to any person only in accordance with **section 22**.
- (2) *See* section 78AA of the Crimes Act 1961, under which it is an offence for a person to knowingly or recklessly, and with knowledge that the person is acting without proper authority, communicate any classified information (within the meaning of that section) to any other person. 5
- 22 Communication between special advocate and other persons about security information** 10
- (1) After the Crown gives a special advocate access to security information under **section 12**, the special advocate may communicate with a person about the security information only in accordance with this section.
- (2) The special advocate may communicate about the security information, without the need for any directions of the court, only with— 15
- (a) the court:
- (b) persons who are representatives of the Crown for the purposes of the specified proceeding and who hold an appropriate security clearance, including (if relevant) the Crown prosecutor.
- (3) The special advocate may communicate about any matter connected with the specified proceeding with any of the following persons (**relevant persons**) only in accordance with directions given by the court on application of the special advocate: 20
- (a) the specially represented party:
- (b) that party's lawyer: 25
- (c) any other person not referred to in **subsection (2)**.
- (4) Before giving directions under **subsection (3)**, the court must give the Crown, the special advocate, and any other party the opportunity to make submissions in relation to the application, the proposed direction, and the proposed terms and conditions. 30
- (5) Directions under this section may be given on any terms and conditions that the court is satisfied are appropriate—
- (a) to maintain effective oversight by the court of communications relating to the security information between the special advocate and relevant persons; and 35
- (b) to allow efficient and effective communication between the special advocate and those persons to the extent possible without the special advocate disclosing the security information.
- (6) Examples of the directions the court may give include directions—

- (a) allowing communication with a relevant person in accordance with a communication plan that sets out how communication on different matters may be dealt with; or
- (b) allowing unlimited communication with a relevant person about certain matters but not others; or 5
- (c) requiring the special advocate to submit, for the approval of the court, all proposed communications with a relevant person in writing before they are forwarded to the person (with or without amendment by the court).

*Special advocate: liability and costs*

**23 Protection of special advocates from liability** 10

- (1) A special advocate is not guilty of misconduct or unsatisfactory conduct for any act done or omitted by the special advocate in accordance with this Act.
- (2) This Act applies despite the requirements of any practice rules made under the Lawyers and Conveyancers Act 2006.
- (3) A special advocate is immune from liability for any act done or omitted, in good faith, when performing a function of the special advocate under this Act, or when intending to perform such a function. 15

**24 Costs of special advocate**

- (1) The designated agency must meet out of money appropriated by Parliament for the purpose the actual and reasonable costs of the special advocate on a basis— 20
  - (a) agreed between the special advocate and the designated agency; or
  - (b) determined by the authorised court (if there is no agreement between the special advocate and the designated agency).
- (2) However, the court may, if satisfied that the circumstances of the case warrant it, include part or all of the costs of the special advocate in an award of costs against any party. 25

*Special advisers*

**25 Person appointed as special adviser**

- (1) The court may only appoint as a special adviser under **section 15** a person who holds an appropriate security clearance. 30
- (2) The court may terminate the appointment if satisfied that the special adviser has become unable or unsuitable to carry out the role (for example, because of incapacity, misconduct, or bankruptcy).

**26 Duty to maintain confidentiality of security information**

- (1) At all times a special adviser must ensure that the confidentiality of the security information to which the special adviser has access under **section 12** remains protected.
- (2) *See* section 78AA of the Crimes Act 1961, under which it is an offence for a person to knowingly or recklessly, and with knowledge that the person is acting without proper authority, communicate any classified information (within the meaning of that section) to any other person. 5

**27 Costs of special adviser**

- The designated agency must meet out of money appropriated by Parliament for the purpose the actual and reasonable costs of a special adviser on a basis— 10
- (a) agreed between the special adviser and the designated agency; or
- (b) determined by the authorised court (if there is no agreement between the special adviser and the designated agency).

*Agreed general practices and procedures* 15

**28 Agreed general practices and procedures**

- (1) The Chief Justice and the Attorney-General may, as soon as practicable after the commencement of this section, agree on any general practices and procedures that may be necessary—
- (a) to implement the special procedures; and 20
- (b) to ensure that security information is protected at all times.
- (2) The Chief Justice and the Attorney-General may revise the general practices and procedures from time to time.
- (3) The general practices and procedures include practices and procedures relating to any of the following: 25
- (a) physical and electronic protection of the information during specified proceedings;
- (b) how the information may be provided to an authorised court;
- (c) preservation of the integrity of the information until any appeals are withdrawn or finally determined: 30
- (d) how the information must be dealt with following the withdrawal or final determination of the proceedings or appeal.

Compare: 1992 No 92 s 29AC; 2002 No 34 s 40; 2005 No 82 s 125; 2013 No 91 s 113

## Part 3

### Security information in civil proceedings

#### *Application, overview of Part, and definitions*

- 29 Application of Part** 5
- This Part applies in relation to the following civil proceedings:
- (a) a civil proceeding described in one of the following, in which the Crown proposes to present classified security information:
    - (i) **section 113** of the Overseas Investment Act 2005:
    - (ii) section 29AA(1) of the Passports Act 1992:
    - (iii) **section 101(1)** of the Telecommunications (Interception Capability and Security) Act 2013: 10
    - (iv) **section 38(1)** of the Terrorism Suppression Act 2002:
  - (b) any civil proceeding in which NSI is or may be at issue in the proceeding.
- 30 Overview of SI application process** 15
- (1) This Part sets out the process by which the Crown may apply for orders to protect the confidentiality of security information in or in connection with a civil proceeding.
  - (2) When the Crown makes an application, the standard process involves the authorised court considering whether the information to which the application relates is security information and, if appropriate, making security information orders to protect the confidentiality of the information. 20
  - (3) This Part also includes the following features:
    - (a) the Crown, when making an application, may submit an NSI certificate identifying the information as NSI. The certificate has the effect of satisfying the court that the information to which the application relates is security information and limiting the types of security information orders that are available for the court to make: 25
    - (b) for civil proceedings described in **section 29(a)** (that is, proceedings under certain Acts in which the Crown proposes to present classified security information), the Crown, when making an application, must submit the relevant CSI certification. This certification has the effect of satisfying the court that the information to which the application relates is security information, but the types of security information order available to the court are not limited (unless the Crown also submits an NSI certificate in respect of the information). 30
  - (4) A general overview of the process for the SI application and decision is set out in the diagram in **Schedule 2**. The diagram is intended as a guide only. 35

- (5) See **section 8(3)(a)**, under which the hearing of an SI application is a specified proceeding, and **section 8(2)**, which sets out the special procedures that apply to specified proceedings.
- (6) This section is for explanation only.
- 31 Security information orders: definitions** 5
- What security information orders are*
- (1) A **security information order** is an order of an authorised court that is one of the following:
- (a) an exclusion order:
- (b) a special procedures order made under **section 9**: 10
- (c) a protective order.
- Nature of exclusion orders and protective orders*
- (2) An **exclusion order** is an order that security information must not be disclosed, or is not required (by any order or direction of the court, or rule of court) to be disclosed, in or in connection with a civil proceeding. 15
- (3) A **protective order**—
- (a) is an order that may be made under other legislation or rules of court to protect the confidentiality of security information by limiting the disclosure of that information, in or in connection with the civil proceeding to which the SI application relates (but does not include an exclusion order or special procedures order); and 20
- (b) includes the following:
- (i) an order requiring the Crown to give to parties and their representatives (or their representatives only), or to enable them to view,—
- (A) a copy of a document that contains the security information and that has been redacted to the extent necessary to prevent the disclosure of that information; or 25
- (B) a copy of a document that summarises the whole or part of the security information and that does not disclose the security information itself; or 30
- (C) a copy of a statement of the facts that the whole or part of the security information would (or would be likely to) establish that does not disclose the security information itself:
- (ii) a suppression order forbidding publication of the security information: 35
- (iii) an order that, while security information is being considered in the substantive proceeding, all persons (except for the parties to the

proceeding and any other specified persons or class of persons) must be excluded from the hearing.

### *Making of SI application*

#### **32 Making of SI application**

- (1) In a civil proceeding to which this Part applies, the Crown may make an application (an **SI application**) to an authorised court for 1 or more security information orders to protect the confidentiality of particular information to which the application relates in or in connection with a civil proceeding. 5
- (2) The Crown may make an SI application even if the Crown is not a party to the civil proceeding and, in that case, the court must treat the Crown as a party for the purposes of the application. 10
- (3) The Crown may make a single SI application that—
  - (a) relates to more than 1 item or type of information; and
  - (b) seeks different orders for different items or types of information.
- (4) This section is subject to **sections 33 and 34**. 15

#### **33 SI application made in substantive proceeding**

The Crown may make an SI application in the course of a substantive proceeding that is being heard in the High Court or Employment Court.

#### **34 SI application to Court of Appeal or Supreme Court**

- (1) The Crown may make an SI application in an appeal being heard by a specified appeal court only if a party to the appeal has sought leave of that court to have the information to which the application relates admitted as further evidence. 20
- (2) In this section, **specified appeal court** means the Court of Appeal or the Supreme Court.

### *Consideration of SI application*

25

#### **35 Dismissal of SI application if order not necessary**

- (1) The authorised court may dismiss an SI application on the ground that a security information order is not necessary without deciding whether it is satisfied that the information to which the application relates is security information (for example, because the information is inadmissible in the civil proceeding to which the application relates under any other legislation or rule of law). 30
- (2) In the case of a single SI application relating to more than 1 item or type of information, the authorised court may dismiss the application in respect of all of the information or different items or types of information.

- 36 Power to make security information order**
- (1) This section applies if an authorised court does not dismiss under **section 35** or **37** an SI application in respect of particular information.
- (2) The authorised court must make 1 or more security information orders to protect the confidentiality of the information in the substantive proceedings to which the SI application relates if—
- (a) the Crown has submitted—
    - (i) the relevant CSI certification under **section 40** in respect of the information; or
    - (ii) an NSI certificate issued under **section 41** in respect of the information; or
    - (iii) both the certification referred to in **paragraph (a)** and the certificate referred to in **paragraph (b)**; or
  - (b) the court, in any other case, is satisfied that the information to which the SI application relates is national security information.
- (3) If the Crown submits an NSI certificate, the only security information orders the court may make under **subsection (2)** are—
- (a) an exclusion order; or
  - (b) a special procedures order (together with any 1 or more of the types of protective order set out in **section 31(3)(b)(i)** that the court considers necessary).
- (4) This section is subject to **section 39**.
- (5) Nothing in this section limits the power of an authorised court to make an order ancillary to an order made under this section.
- 37 Dismissal of SI application if information is not security information**
- (1) The authorised court must dismiss the application if—
- (a) the Crown has not complied with **section 36(2)(a)**; and
  - (b) the court is not satisfied that the information to which the SI application relates is national security information.
- (2) In the case of a single SI application relating to more than 1 item or type of information, the authorised court may dismiss the application in respect of all of the information or different items or types of information.
- 38 Matters for consideration when determining type of security information order**
- The authorised court must consider the following matters in determining which type of security information order or orders to make:
- (a) whether the proceeding could be fairly determined if an order of a particular type were made:

- (b) the type or types of order required to adequately protect the national security interests that would be likely to be prejudiced if that type or those types of order were not in place in respect of the security information:
- (c) whether the public interest in withholding the security information outweighs the public interest of fair and effective administration of justice in disclosing the information in a limited way in accordance with an order. 5
- 39 Court need not make security information order if substantive proceeding cannot be fairly determined** 10
- Despite **section 36(2)**, if the court is satisfied that none of the security information orders would allow the substantive proceeding to which the SI application relates to be fairly determined, the court may—
- (a) dismiss the application; and
- (b) make 1 or more of the following orders in relation to the substantive proceeding in order to dispose of, or otherwise deal with, the substantive proceeding: 15
- (i) an order to strike out the Crown’s statement of claim or statement of defence:
- (ii) an order to join the Attorney-General as a party to the substantive proceeding: 20
- (iii) an order giving judgment against the Crown:
- (iv) any other related order that the court has jurisdiction to make.
- Certification supporting SI application relating to classified security information* 25
- 40 Requirement to submit certification supporting SI application relating to classified security information**
- (1) This section applies if an SI application is made in or in connection with a civil proceeding described in **section 29(a)**.
- (2) When making the SI application, the Crown must submit to the authorised court the relevant CSI certification in respect of the information to which the SI application relates. 30
- (3) The Crown may also submit to the authorised court an NSI certificate in respect of the same information.



*Certificate supporting SI application relating to NSI***41 Power to issue NSI certificate**

The Attorney-General and the Minister of Foreign Affairs may jointly issue a certificate (an **NSI certificate**) in respect of the information to which an SI application relates, certifying that information identified in the certificate is NSI. 5

**42 Submission of certificate**

- (1) An NSI certificate must be submitted together with the SI application that it supports.
- (2) However, if the Crown amends the SI application by extending it to an item or a type of information not covered by the original application,— 10
  - (a) the authorised court may grant the Crown leave to submit to the court an NSI certificate relating to that item or type of information; and
  - (b) if the court grants that leave, the NSI certificate has effect for the purposes of the amended application. 15

**43 Application of sections 9A and 9C of Constitution Act 1986**

Despite sections 9A and 9C of the Constitution Act 1986, the Solicitor-General may not—

- (a) exercise the Attorney-General's power under **section 39** to certify that information is NSI; or 20
- (b) delegate that power to a Deputy Solicitor-General.

*Withdrawal of SI application***44 Withdrawal of SI application**

The Crown may withdraw an SI application at any time before it is determined.

*Further matters: role of Attorney-General and removal to High Court* 25**45 Notice by non-Crown party to Attorney-General of possible disclosure of security information**

A party to a civil proceeding who believes that security information may be disclosed in or in connection with the proceeding must, without delay, give written notice of the matter to the Attorney-General (unless the Crown is a party to the proceeding). 30

**46 Removal of proceeding not commenced in High Court**

- (1) If the Attorney-General gives written notice to the District Court that the Crown intends to make an SI application in connection with a civil proceeding

- before the court, the District Court must, without delay, order that the proceeding be removed to the High Court for determination.
- (2) If the High Court is satisfied that a proceeding removed to it under this section does not, or will no longer, involve security information, it may order that the proceeding be removed back to the District Court. 5
- (3) Without limiting **subsection (2)**, the High Court may order that the proceeding be removed back to the District Court if the Crown does not make an SI application in connection with the proceeding within the relevant period.
- (4) The **relevant period** is the period of 20 working days (or any further period that the High Court may allow) after the date on which the Attorney-General gives written notice to the District Court under this section. 10
- (5) The High Court may impose any conditions that it thinks fit on any order it makes under this section for the removal of proceedings back to the District Court.
- (6) This section applies to any other court or tribunal that is not an authorised court as if a reference in this section to the District Court were a reference to the other court or tribunal. 15
- 47 Right of Attorney-General to intervene**
- The Attorney-General may intervene in any civil proceeding in relation to matters concerning security information, without any requirement for a court to grant leave to that intervention, if— 20
- (a) the Attorney-General believes that security information may be disclosed in or in connection with the proceeding; and
- (b) the Crown is not a party to the proceeding.

## Part 4

25

### Amendments to other legislation

#### Subpart 1—Amendments relating to national security information in criminal proceedings

##### *Amendments to Criminal Disclosure Act 2008*

- 48 Principal Act** 30
- Sections 49 to 56** amend the Criminal Disclosure Act 2008.
- 49 New section 4A inserted (Transitional, savings, and related provisions)**
- After section 4, insert:

<b>4A</b>	<b>Transitional, savings, and related provisions</b>	
	The transitional, savings, and related provisions set out in <b>Schedule 1AA</b> have effect according to their terms.	
<b>50</b>	<b>Section 6 amended (Interpretation)</b>	
(1)	In section 6(1), definition of <b>criminal proceedings</b> , paragraph (c)(i), replace “79 or 101” with “78, 101, or <b>113A</b> ”.	5
(2)	In section 6(1), insert in its appropriate alphabetical order: <b>national security interests</b> has the meaning given by <b>section 4</b> of <b>Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021</b>	
<b>51</b>	<b>Section 16 amended (Reasons for withholding information)</b>	10
(1)	After section 16(1)(d), insert: (da) the information is subject to <b>sections 109A and 109B</b> of the Evidence Act 2006 (which relate to information about the name or address of intelligence officers and intelligence sources); or	
(2)	Replace section 16(1)(g) with: (g) disclosure of the information would be likely to prejudice national security interests; or	15
<b>52</b>	<b>New section 26B inserted (National security interests: notification and hearing when non-party is Crown)</b>	
	After <b>section 26A</b> (as renumbered and repositioned by <b>section 53</b> of this Act), insert:	20
<b>26B</b>	<b>National security interests: notification and hearing when non-party is Crown</b>	
(1)	This section applies in relation to a non-party disclosure hearing granted under section 25 if the Crown— (a) is served with the application for the hearing under section 26(1) or (2) or <b>26A</b> ; and (b) is satisfied that disclosure of all or part of the information sought by the defendant should be refused because its disclosure would be likely to prejudice national security interests.	25 30
(2)	As soon as practicable after being served with the application, the Crown must notify the court before which the proceedings are being conducted that the Crown— (a) has been served with the application; and (b) is satisfied of the matter referred to in <b>subsection (1)(b)</b> .	35
(3)	The non-party disclosure hearing must be conducted by the High Court.	

- (4) The non-party disclosure hearing is a specified proceeding for the purposes of **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021** in respect of which the special procedures in **Part 2** of that Act apply.
- (5) In this section, **Crown** means a person or an agency, other than the prosecutor, that is or acts on behalf of—
- (a) the Crown (within the meaning of **section 4** of **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021**); or
  - (b) a Crown agent (within the meaning of section 10(1) of the Crown Entities Act 2004).
- 53 Section 28 amended, renumbered as section 26A, and repositioned (Procedure if Judge subsequently satisfied that another person holds information sought)**
- (1) In section 28(1), replace “a non-party” with “an application for a non-party”.
  - (2) Renumber section 28 as **section 26A** and reposition it after section 26.
- 54 Section 29 amended (Determination of court following non-party disclosure hearing)**
- After section 29(6), insert:
- (6A) *See* the following sections of the Criminal Procedure Act 2011, which may be relevant if a disclosure would be likely to prejudice national security interests:
- (a) **section 147A**, which enables a charge to be dismissed if the court concerned refuses to order disclosure of information because it would be likely to prejudice national security interests and withholding the information creates a real risk of prejudice to a fair trial:
  - (b) **section 146A**, which enables a charge to be withdrawn before the trial, without leave of the court concerned, if the disclosure of information is ordered under this section or section 30 and the prosecutor is satisfied the disclosure would be likely to prejudice national security interests.
- 55 New section 30A inserted (National security interests: application for order under section 30)**
- After section 30, insert:
- 30A National security interests: application for order under section 30**
- (1) This section applies to an application for an order under section 30 that information be disclosed if the prosecutor refused to disclose the information in reliance on **section 16(1)(g)**.
  - (2) The defendant may only make the application to the High Court.
  - (3) The prosecutor must notify the Solicitor-General as soon as practicable after becoming aware that the defendant has made the application.

- (4) The non-party disclosure hearing is a specified proceeding for the purposes of **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021** in respect of which the special procedures in **Part 2** of that Act apply.
- (5) See the following sections of the Criminal Procedure Act 2011, which may be relevant if the High Court refuses to order disclosure of information under section 30:
- (a) **section 146A**, which enables a charge to be withdrawn before the trial, without leave of the court concerned, if the prosecutor is satisfied the disclosure would be likely to prejudice national security interests:
- (b) **section 147A**, which enables a charge to be dismissed if the High Court is satisfied that the disclosure would be likely to prejudice national security interests.
- 56 New Schedule 1AA inserted**
- Insert the **Schedule 1AA** set out in **Schedule 3** of this Act as the first schedule to appear after the last section of the principal Act.
- Amendments to Criminal Procedure Act 2011*
- 57 Principal Act**
- Sections 58 to 76** amend the Criminal Procedure Act 2011.
- 58 Section 5 amended (Interpretation)**
- In section 5, insert in their appropriate alphabetical order:
- evidence based on national security information** has the meaning given to it in **section 5A**
- national security information** has the meaning given to it in **section 4** of **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021**
- national security interests** has the meaning given to it in **section 4** of **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021**
- 59 Section 5A replaced (Transitional, savings, and related provisions)**
- Replace section 5A with:
- 5A Interpretation: evidence based on national security information**
- In this Act, evidence is **evidence based on national security information** if it is not itself national security information but is any of the following:
- (a) a document that contains national security information and that has been redacted to the extent necessary to prevent the disclosure of that information:

- (b) a written summary of national security information that does not disclose that information:
- (c) an agreed statement of the facts that the whole or part of the national security information establishes that does not disclose that information.
- 60 Section 78 amended (Court may order pre-trial admissibility hearing if trial to be Judge-alone trial)** 5
- (1) After section 78(2), insert:
- (2A) **Subsection 2B** applies if—
- (a) the Judge-alone trial is for—
- (i) a category 4 offence; or 10
- (ii) a specified category 3 offence; or
- (iii) one of the following offences and the High Court grants leave for the application to be made:
- (A) a category 3 offence that is not a specified category 3 offence: 15
- (B) an offence against section 48 of the Health and Safety at Work Act 2015; and
- (b) either party asserts that the evidence is evidence based on national security information.
- (2B) If this subsection applies,— 20
- (a) the party must notify the Solicitor-General that it intends to make the application under subsection (2); and
- (b) the application under subsection (2) must be made to the High Court.
- (2) Replace section 78(4) with:
- (4) The court may grant a pre-trial admissibility hearing if— 25
- (a) the court is satisfied that it is more convenient to deal with the issues before the trial and—
- (i) the evidence raises a complex admissibility issue and the decision about whether it is admissible is likely to make a substantial difference to the overall conduct of the proceeding; or 30
- (ii) the outcome of the pre-trial admissibility hearing may obviate the need for a trial; or
- (b) the court is satisfied that the complainant or witness is particularly vulnerable and resolving the admissibility issue is in the interests of justice; or 35
- (c) the trial is to be in the District Court and the evidence has been obtained under an order made, or warrant issued, by the High Court; or
- (d) the application is an application to which **subsection (2A)** applies.

- (3) In section 78(6), after “(4)(c)”, insert “or **(d)**”.
- (4) After section 78(6), insert:
- (7) In this section, **specified category 3 offence** means a category 3 offence that—
- (a) is punishable by imprisonment for life or by imprisonment for 7 years or more; or
  - (b) if committed by a body corporate, is punishable only by a fine, but that, if committed by an individual, would be punishable by imprisonment for life or by imprisonment for 7 years or more.
- 61 New section 79A inserted (Pre-trial admissibility hearing: national security information)**
- After section 79, insert:
- 79A Pre-trial admissibility hearing: national security information**
- (1) This section applies in relation to a pre-trial admissibility hearing under section 79 if the application for the hearing is an application to which **section 78(2A)** applies.
  - (2) The hearing is a specified proceeding for the purposes of **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021** in respect of which the special procedures in **Part 2** of that Act apply.
  - (3) The High Court may make an order under section 79(2) that evidence based on national security information is admissible only if satisfied that—
    - (a) the requirements of section 79 are met; and
    - (b) the national security interests that would be likely to be prejudiced by fully disclosing the national security information will be adequately protected.
  - (4) Nothing in this section affects the discretion of the court to make any additional orders it thinks fit to protect the confidentiality of national security information (for example, an order under section 197 (power to clear court) or 205 (court may suppress evidence and submissions)).
- 62 Section 84 amended (Persons who may give evidence under assumed name)**
- (1) In the heading to section 84, after “**assumed name**”, insert “**or anonymously**”.
  - (2) After section 84(1), insert:
    - (1A) An intelligence officer or intelligence source (as those terms are defined in **section 109A** of the Evidence Act 2006)—
      - (a) may make a formal statement,—
        - (i) in the case of an intelligence officer who has acquired an assumed identity under subpart 1 of Part 3 of the Intelligence and Security Act 2017, in the name of their assumed identity; or

(ii)	in any other case, using the term “witness” followed by an initial or a mark; and	
(b)	may authenticate that statement, or any record of evidence prepared under section 99, in that name or manner.	
<b>63</b>	<b>Section 90 amended (Application for oral evidence order)</b> In section 90(3)(b), replace “91(b)” with “ <b>91(3)</b> ”.	5
<b>64</b>	<b>Section 91 replaced (Application for leave to question undercover Police officer’s identity must be dealt with by High Court)</b> Replace section 91 with:	
<b>91</b>	<b>Application for leave to question identity of undercover Police officer or intelligence witness to be determined by High Court</b>	10
(1)	This section applies if the defendant wishes to apply,—	
(a)	under section 109(1)(d) of the Evidence Act 2006, for leave to put any questions relating to the identity of a witness called by the prosecutor who is an undercover Police officer; or	15
(b)	under <b>section 109B(2)</b> of the Evidence Act 2006, for leave to put any questions relating to the identity of a witness called by the prosecutor who is an intelligence officer or an intelligence source.	
(2)	The application must be made at the same time as the application is made for an oral evidence order allowing the oral examination of the person to whom those questions are proposed to be put.	20
(3)	Both the application referred to in <b>subsection (1)</b> and the application for an oral evidence order must be determined by a High Court Judge.	
<b>65</b>	<b>Section 94 amended (Withdrawal of charge if oral evidence order made for examination of undercover Police officer)</b>	25
(1)	In the heading to section 94, after “ <b>officer</b> ”, insert “ <b>or intelligence witness</b> ”.	
(2)	In section 94(1)(b), after “section 109(1)(d)”, insert “or <b>109B(2)</b> ”.	
<b>66</b>	<b>Section 101 amended (Pre-trial order relating to admissibility of evidence: jury trial)</b>	
(1)	After section 101(2), insert:	30
(2A)	<b>Subsection 2B</b> applies to an application if—	
(a)	it relates to a jury trial for—	
(i)	a category 4 offence; or	
(ii)	a specified category 3 offence; or	
(iii)	any other category 3 offence and the High Court grants leave for the application to be made; and	35



- (b) either party asserts that evidence to which the application relates is evidence based on national security information.
- (2B) If this subsection applies, the party must notify the Solicitor-General that it intends to make the application under subsection (2).
- (2) Replace section 101(7) with: 5
- (7) The application must be made to the High Court if—
- (a) the evidence has been obtained under an order made, or a warrant issued, by the High Court; or
- (b) it is an application to which **subsection (2A)** applies.
- (8) In this section, **specified category 3 offence** means a category 3 offence that— 10
- (a) is punishable by imprisonment for life or by imprisonment for 7 years or more; or
- (b) if committed by a body corporate, is punishable only by a fine, but that, if committed by an individual, would be punishable by imprisonment for life or by imprisonment for 7 years or more. 15

**67 New section 101A inserted (National security information: pre-trial hearing and order)**

After section 101, insert:

- 101A National security information: pre-trial hearing and order**
- (1) This section applies in relation to a hearing of an application for a pre-trial order if the application is an application referred to in **section 101(2A)(b)**. 20
- (2) The hearing is a specified proceeding for the purposes of **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021** in respect of which the special procedures in **Part 2** of that Act apply.
- (3) The High Court may make an order under section 101(5) that evidence that is based on national security information is admissible only if satisfied that— 25
- (a) the requirements of section 101 are met; and
- (b) the national security interests that would be likely to be prejudiced by fully disclosing the national security information will be adequately protected. 30
- (4) Nothing in this section affects the discretion of the court to make any additional orders it thinks fit to protect the confidentiality of national security information (for example, an order under section 197 (power to clear court) or 205 (court may suppress evidence and submissions)).

- 68 Section 112 amended (Court must dismiss charge in certain cases)** 35
- In section 112(1), after “section 109(1)(d)”, insert “or **109B(2)**”.

**69 New section 113A and cross-heading inserted**

After section 113, insert:

*Evidence based on national security information*

**113A National security information: admissibility hearing in course of trial**

- |     |   |    |
|-----|---|----|
| (1) | This section applies if—  | 5  |
|     | (a) the proceedings are for—  |    |
|     | (i) a category 4 offence; or  |    |
|     | (ii) a specified category 3 offence; or   |    |
|     | (iii) 1 or more of the following offences and the High Court grants leave for the application to be made:   | 10 |
|     | (A) a category 3 offence that is not a specified category 3 offence:  |    |
|     | (B) an offence against section 48 of the Health and Safety at Work Act 2015; and  |    |
|     | (b) either party asserts that evidence that it or the other party wishes to adduce, during the trial, is evidence based on national security information.   | 15 |
| (2) | The party may apply to the High Court for an order to the effect that the evidence is admissible.   |    |
| (3) | The party must notify the Solicitor-General that it intends to make the application before the application is made.   | 20 |
| (4) | The High Court must give each party an opportunity to be heard in respect of the application before deciding whether to make the order.   |    |
| (5) | The hearing of the application is a specified proceeding for the purposes of <b>Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021</b> in respect of which the special procedures in <b>Part 2</b> of that Act apply. | 25 |
| (6) | The High Court may order that the evidence based on national security information is admissible if the court is satisfied that—   |    |
|     | (a) the evidence is admissible; and   | 30 |
|     | (b) the national security interests that would be likely to be prejudiced by fully disclosing the national security information will be adequately protected.   |    |
| (7) | The court may make an order under this section on any terms and subject to any conditions that the court thinks fit.  | 35 |
| (8) | Nothing in this section affects the discretion of the court to make any additional orders it thinks fit to protect the confidentiality of national security information   |    |

(for example, an order under section 197 (power to clear court) or 205 (court may suppress evidence and submissions)).

- (9) In this section, **specified category 3 offence** means a category 3 offence that—
- (a) is punishable by imprisonment for life or by imprisonment for 7 years or more; or
  - (b) if committed by a body corporate, is punishable only by a fine, but that, if committed by an individual, would be punishable by imprisonment for life or by imprisonment for 7 years or more.

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**70 Section 146 amended (Withdrawal of charge)**

In the heading to section 146, after “**charge**”, insert “**generally**”.

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**71 New section 146A inserted (Withdrawal of charge due to risk to national security interests)**

After section 146, insert:

**146A Withdrawal of charge due to risk to national security interests**

- (1) A prosecutor conducting a public prosecution may withdraw a charge before the trial, without the leave of the court, if—
- (a) the High Court (or, on appeal, the Court of Appeal or the Supreme Court) makes an order under section 29 or 30 of the Criminal Disclosure Act 2008 requiring disclosure of information to the defendant in the proceedings; and
  - (b) the prosecutor is satisfied that the disclosure of the information would be likely to prejudice national security interests.
- (2) The withdrawal of a charge under this section is not a bar to any other proceeding in the same matter.
- (3) Nothing in this section prevents a charge from being withdrawn before the trial under section 192 as an alternative to withdrawal under this section.

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**72 Section 147 amended (Dismissal of charge)**

In the heading to section 147, after “**charge**”, insert “**generally**”.

**73 New section 147A inserted (Dismissal of charge when information withheld due to risk to national security interests)**

30

After section 147, insert:

**147A Dismissal of charge when information withheld due to risk to national security interests**

- (1) Without limiting section 147, a court may dismiss a charge under that section if—

35

- (a) the High Court (or, on appeal, the Court of Appeal or Supreme Court) refuses to make a relevant order because it is satisfied that disclosure of the information concerned would prejudice national security interests; and
- (b) the court is satisfied that withholding the information creates a real risk of prejudice to a fair trial. 5
- (2) In this section, **relevant order** means an order under section 29 or 30 of the Criminal Disclosure Act 2008 requiring disclosure of information to a defendant in proceedings.
- 74 Section 215 amended (Right of appeal by prosecutor or defendant against certain pre-trial evidential decisions in Judge-alone case)** 10  
In section 215(2)(c), after “section 109(1)(d)”, insert “or **109B(2)**”.
- 75 Section 217 amended (Right of appeal by prosecutor or defendant against pre-trial decisions in jury trial case)**  
In section 217(2)(j), after “section 109(1)(d)”, insert “or **109B(2)**”. 15
- 76 Schedule 1AA amended**
- (1) In the Schedule 1AA heading, delete “5A,”.
- (2) In Schedule 1AA,—
- (a) insert the Part set out in **Schedule 4** of this Act as the last Part; and
- (b) make all necessary consequential amendments. 20
- Subpart 2—Amendments relating to classified security information:  
administrative requirements and proceedings
- Amendments to Overseas Investment Act 2005*
- 77 Principal Act**  
**Sections 78 to 81** amend the Overseas Investment Act 2005. 25
- 78 Section 4 amended (Overview)**  
In section 4(1)(c)(iii), after “classified”, insert “security”.
- 79 Section 6 amended (Interpretation)**  
In section 6(1), insert in its appropriate alphabetical order:  
**classified security information** has the meaning set out in **section 114** 30
- 80 Subpart 3 of Part 3 replaced**  
Replace subpart 3 of Part 3 with:

## Subpart 3—Protection of classified security information

**113 Proceedings involving classified security information**

- (1) This section applies to any civil proceedings (including public law and judicial review proceedings) in a court relating to the administration or enforcement of this Act. 5
- (2) If the Crown proposes to present classified security information in proceedings, the Attorney-General must—
- (a) make an application to an authorised court under **section 32** of the 2021 Act for a security information order to protect the confidentiality of the information to be given as evidence in the proceedings; and 10
- (b) submit to the court the certification described in **section 114(1)(b)**.
- (3) If the classified security information is also national security information, the Crown may submit with the application and certification referred to in **subsection (2)** an NSI certificate under **section 41** of the 2021 Act and seek a security information order as set out in **section 36(3)** of that Act (under which the types of orders available to the court are limited). 15
- (4) In this section,—
- 2021 Act** means **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021**
- authorised court, national security information, NSI certificate, and security information order** have the meanings set out in **section 4** of the 2021 Act. 20

**114 Meaning of classified security information**

- (1) In this Act, **classified security information** means information—
- (a) that is held by an agency listed in section 126(2); and 25
- (b) that the head of the agency (in the case of information held by an intelligence or security agency) or the Attorney-General (in the case of information held by any other agency) certifies in writing cannot be disclosed (except as authorised by or under an Act or other rule of law) because, in the opinion of the head of the agency or the Attorney-General (as applicable),— 30
- (i) the information is information of a kind specified in **subsection (2)**; and
- (ii) disclosure of the information would be disclosure of a kind specified in **subsection (3)**. 35
- (2) Information falls within **subsection (1)(b)(i)** if it—
- (a) might lead to the identification of, or provide details of,—
- (i) the source of the information; or

- (ii) the nature, content, or scope of the information; or
- (iii) the nature or type of the assistance or operational methods available to the agency; or
- (b) is about particular operations that have been undertaken, or are being or are proposed to be undertaken, in relation to any of the functions of the agency; or 5
- (c) has been provided to the agency by the Government of another country or by an agency of such a Government or by an international organisation, and is information that cannot be disclosed by the agency because the Government, agency, or organisation that provided the information will not consent to the disclosure. 10
- (3) Disclosure of information falls within **subsection (1)(b)(ii)** if the disclosure would be likely—
  - (a) to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or 15
  - (b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the Government of another country or by an agency of such a Government or by any international organisation; or
  - (c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences and the right to a fair trial; or 20
  - (d) to endanger the safety of any person.

## 81 Schedule 1AA amended

In Schedule 1AA,—

- (a) insert the Part set out in **Schedule 5** of this Act as the last Part; and 25
- (b) make all necessary consequential amendments.

### *Amendments to Passports Act 1992*

## 82 Principal Act

**Sections 83 to 90** amend the Passports Act 1992.

## 83 Section 2 amended (Interpretation) 30

In section 2, insert in their appropriate alphabetical order:

**classified security information** has the meaning given by **section 2AA**  
**CSI summary** means the summary referred to in **section 27GC(1)(d)(ii)**  
**Director-General of an intelligence and security agency** has the meaning given by section 4 of the Intelligence and Security Act 2017 35  
**intelligence and security agency** has the meaning given by section 4 of the Intelligence and Security Act 2017

**specified agency** means—

- (a) an intelligence and security agency; or
- (b) the New Zealand Police

#### 84 New section 2AA inserted (Meaning of classified security information)

After section 2, insert:

5

#### 2AA Meaning of classified security information

- (1) In this Act, **classified security information** means information—
- (a) that is relevant to whether there are or may be grounds for believing that—
    - (i) the person concerned is a danger to the security of New Zealand or another country because the person intends to engage in, or facilitate, an activity of a kind described in section 27GA(1)(a) or (2)(a); or 10
    - (ii) the refusal to issue the New Zealand travel document concerned, or to cancel or retain the New Zealand travel document, will prevent or effectively impede the ability of the person to carry out the intended activity; or 15
    - (iii) the danger to the security of New Zealand or the other country cannot be effectively averted by other means; and
  - (b) that is held by a specified agency; and 20
  - (c) that the head of the specified agency certifies in writing cannot be disclosed (except as authorised by or under an Act or other rule of law) because, in the opinion of the head of the specified agency,—
    - (i) the information is information of a kind specified in **subsection (2)**; and 25
    - (ii) disclosure of the information would be disclosure of a kind specified in **subsection (3)**.
- (2) Information falls within **subsection (1)(b)(i)** if it—
- (a) might lead to the identification of, or provide details of,—
    - (i) the source of the information; or 30
    - (ii) the nature, content, or scope of the information; or
    - (iii) the nature or type of the assistance or operational methods available to the specified agency; or
  - (b) is about particular operations that have been undertaken, or are being or are proposed to be undertaken, in relation to any of the functions of the specified agency; or 35
  - (c) has been provided to the specified agency by the Government of another country or by an agency of such a Government or by an international

	organisation, and is information that cannot be disclosed by the specified agency because the Government, agency, or organisation that provided the information will not consent to the disclosure.	
(3)	Disclosure of information falls within <b>subsection (1)(b)(ii)</b> if the disclosure would be likely—	5
(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 another country or by an agency of such a Government or by an international organisation; or	10
(c)	to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences and the right to a fair trial; or	
(d)	to endanger the safety of any person.	
<b>85</b>	<b>Section 27GC amended (Person to be notified of action taken under section 27GA)</b>	15
	Replace section 27GC(1) with:	
(1)	If the Minister takes an action specified in section 27GA(3) in relation to a person, the Minister must, as soon as practicable, notify the person of the following:	20
(a)	the action that has been taken:	
(b)	the date on which the decision to take that action was made:	
(c)	the reasons for making that decision (except those parts of the reasons that would disclose classified security information):	
(d)	if the Minister relied on classified security information in making the decision,—	25
(i)	that the Minister relied on that kind of information in making the decision; and	
(ii)	that the person may request that a summary (a <b>CSI summary</b> ) of the information concerned be provided to them under <b>section 27GCA:</b>	30
(e)	the period during which the person is not entitled to obtain a New Zealand travel document.	
<b>86</b>	<b>New section 27GCA inserted (CSI summary)</b>	
	After section 27GC, insert:	35
	<b>27GCA CSI summary</b>	
(1)	The purpose of a CSI summary is to enable the person referred to in <b>section 27GC(1)</b> to have a sufficient understanding of—	



- (a) the classified security information the Minister relied on in making the decision (without that information being disclosed to the person); and
  - (b) the reasons for the decision based on that information.
- (2) If the person requests a CSI summary,—
- (a) the Minister and the head of the specified agency that holds the information must agree on the contents of the summary; and 5
  - (b) the Minister must provide the agreed summary to the person within a reasonable time.
- (3) However, the Minister may refuse to provide a CSI summary if the Minister and the head of the specified agency are not satisfied that a summary can be provided that is sufficient to meet its purpose without disclosing classified security information. 10

**87 New section 27GFA inserted (Notification to Inspector-General of Intelligence and Security of provision of classified security information)**

After section 27GF, insert:

15

**27GFA Notification to Inspector-General of Intelligence and Security of provision of classified security information**

- (1) The Director-General of an intelligence and security agency must notify the Inspector-General of Intelligence and Security if the agency provides classified security information to the Minister or department to assist the Minister in deciding whether to take an action specified in section 27GA(3) in relation to a person. 20
- (2) The Director-General must make the notification as soon as practicable after providing the classified security information to assist the Minister.
- (3) In this section, **department** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act. 25

**88 Section 29AA amended (Proceedings where national or international security involved)**

- (1) In section 29AA(2)(b)(ii), replace “to cancel or retain” with “the cancellation or retention of”. 30
- (2) Repeal section 29AA(4) to (7).

**89 Sections 29AB and 29AC replaced**

Replace sections 29AB and 29AC with:

**29AB Proceedings involving classified security information**

35

- (1) If the Crown proposes to present classified security information in section 29AA proceedings, the Attorney-General must—

- (a) make an application to an authorised court under **section 32** of the 2021 Act for a security information order to protect the confidentiality of the information to be given as evidence in proceedings; and
- (b) submit to the court the certification described in **section 2AA(1)(c)**.
- (2) If the classified security information is also national security information, the Crown may submit with the application and certification referred to in **subsection (1)** an NSI certificate under **section 41** of the 2021 Act and seek a security information order as set out in **section 36(3)** of that Act (under which the types of orders available to the court are limited). 5
- (3) In this section,— 10
- 2021 Act** means **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021**
- authorised court, national security information, NSI certificate, and security information order** have the meanings given to them by **section 4** of the 2021 Act 15
- section 29AA proceedings** means proceedings to which section 29AA applies.

## 90 Schedule 1 amended

- (1) In Schedule 1, before clause 1, insert:

**Part 1**  
**Provisions relating to Passports Amendment Act 2015**

- (2) In Schedule 1,— 20
- (a) insert the Part set out in **Schedule 6** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

*Amendments to Telecommunications (Interception Capability and Security) Act 2013* 25

## 91 Principal Act

**Sections 92 to 106** amend the Telecommunications (Interception Capability and Security) Act 2013.

## 92 Section 3 amended (Interpretation)

In section 3(1), replace the definition of **classified information** with: 30

**classified security information** has the meaning given by **section 3A**

## 93 New sections 3A and 3B inserted

After section 3, insert:

**3A Meaning of classified security information**

- (1) In this Act, **classified security information** means information—
- (a) that is held by a surveillance agency; and
  - (b) that the head of the surveillance agency certifies in writing cannot be disclosed (except as authorised by or under an Act or other rule of law) because, in the opinion of the head of the surveillance agency,—
    - (i) the information is information of a kind specified in **subsection (2)**; and
    - (ii) disclosure of the information would be disclosure of a kind specified in **subsection (3)**.
- (2) Information falls within **subsection (1)(b)(i)** if it—
- (a) might lead to the identification of, or provide details of,—
    - (i) the source of the information; or
    - (ii) the nature, content, or scope of the information; or
    - (iii) the nature or type of the assistance or operational methods available to the surveillance agency; or
  - (b) is about particular operations that have been undertaken, or are being or are proposed to be undertaken, in relation to any of the functions of the surveillance agency; or
  - (c) has been provided to the surveillance agency by the Government of another country or by an agency of such a Government or by an international organisation, and is information that cannot be disclosed by the surveillance agency because the Government, agency, or organisation that provided the information will not consent to the disclosure.
- (3) Disclosure of information falls within **subsection (1)(b)(ii)** if the disclosure would be 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 another country or any agency of such a Government, or by any international organisation; or
  - (c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences and the right to a fair trial; or
  - (d) to endanger the safety of any person.

**3B Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

**94 Section 19 amended (Direction)**

- (1) In section 19(3), replace “in writing” with “by written notice”.
- (2) After section 19(5), insert:
- (5A) *See* **subpart 7**, which applies when the Minister uses classified security information in making a decision to make a direction under this section. 5

**95 Section 32 amended (Decision-making process)**

- (1) Repeal section 32(4).
- (2) After section 32(5), insert:
- (5A) The reasons for the decision must be set out in the written notice, except those parts of the reasons that would reveal classified security information. 10
- (5B) *See* **subpart 7**, which applies when a designated officer uses classified security information in making a decision to grant, vary, or revoke an exemption under section 29.

**96 Section 36 amended (Decision-making process)**

- (1) Repeal section 36(5). 15
- (2) After section 36(6), insert:
- (6A) The reasons for the decision must be set out in the written notice, except those parts of the reasons that would reveal classified security information.
- (6B) *See* **subpart 7**, which applies when the Minister uses classified security information in making a decision to grant, vary, or revoke an exemption. 20

**97 Section 39 amended (Review)**

- (1) In section 39(6), after “classified”, insert “security”.
- (2) After section 39(6), insert:
- (7) *See* **subpart 7**, which applies when a review panel uses classified security information in making recommendations under this section and the Minister decides to confirm or vary the direction. 25

**98 Section 40 amended (Direction notice)**

- (1) In section 40(1), after “classified”, insert “security”.
- (2) After section 40(2), insert:
- (2A) *See* **subpart 7**, which applies when the Minister uses classified security information in making a decision to make a direction under section 38. 30

**99 New subpart 7 of Part 2 inserted**

After section 44, insert:

## Subpart 7—Provisions that apply when classified security information used in decisions

### 44A Application and interpretation

- (1) This subpart applies in relation to the relevant decisions.
- (2) In this subpart,—
- affected party**, in relation to a relevant decision, means a network operator, a member of the class of network operators, or a telecommunications service provider (as the case may be) to which the decision applies
- decision maker**, in relation to a relevant decision, means the person or persons who makes the decision
- relevant decision** means any of the following decisions:
- (a) a decision of the Minister to make a direction under section 19:
- (b) a decision of a designated officer or the Minister under section 29 or 34 to grant, vary, or revoke an exemption:
- (c) a decision of the Minister to make a direction under section 38:
- (d) a decision of a review panel as to recommendations under section 39.

### 44B Written notice and summary of classified security information

- (1) If a decision maker relies on classified security information in making a relevant decision, the written notice of the decision must state that—
- (a) the decision maker relied on that kind of information; and
- (b) the affected party may request a summary (a **CSI summary**) of the classified security information; and
- (c) the affected party may be able to make a complaint to the Inspector-General of Intelligence and Security under section 171 of the Intelligence and Security Act 2017 in relation to any advice given to the decision maker by an intelligence and security agency.
- (2) The purpose of the CSI summary is to enable the affected party to have a sufficient understanding of—
- (a) the classified security information the decision maker relied on in making the decision (without that information being disclosed to the affected party); and
- (b) the reasons for the decision based on that information.
- (3) If the affected party requests a CSI summary,—
- (a) the decision maker and the head of the surveillance agency that holds the classified security information must agree on the contents of a summary; and

	(b) the decision maker must provide the agreed summary to the affected party within a reasonable time.	
	(4) However, the decision maker may refuse to provide a CSI summary if the decision maker and the head of the surveillance agency are satisfied that a summary cannot be provided that is sufficient to meet its purpose without disclosing classified security information.	5
<b>100</b>	<b>Section 56 amended (Review by Commissioner of Intelligence Warrants)</b> In section 56(2) and (4)(b), after “classified”, insert “security”.	
<b>101</b>	<b>Section 57 amended (Minister may make direction)</b> In section 57(5), after “classified”, insert “security”.	10
<b>102</b>	<b>New section 57A inserted (Provisions that apply when classified security information used or provided for decisions)</b> After section 57, insert:	
<b>57A</b>	<b>Provisions that apply when classified security information used or provided for decisions</b> <b>Subpart 7 of Part 2</b> applies, with all necessary modifications, in relation to decisions to make a direction under section 57 in the same way as it applies in relation to relevant decisions (within the meaning of that subpart).	15
<b>103</b>	<b>Subpart 8 of Part 4 replaced</b> Replace subpart 8 of Part 4 with:	20
	Subpart 8—Classified security information in proceedings	
<b>101</b>	<b>Proceedings involving classified security information</b>	
(1)	This section applies to any civil proceedings (including public law and judicial review proceedings) in a court relating to the administration or enforcement of this Act.	25
(2)	If the Crown proposes to present classified security information in proceedings, the Attorney-General must—	
(a)	make an application to an authorised court under <b>section 32</b> of the 2021 Act for a security information order to protect the confidentiality of the information to be given as evidence in the proceedings; and	30
(b)	submit to the court the certification described in <b>section 3A(1)(b)</b> .	
(3)	If the classified security information is also national security information, the Crown may submit with the application and certification referred to in <b>sub-section (2)</b> an NSI certificate under <b>section 41</b> of the 2021 Act and seek a security information order as set out in <b>section 36(3)</b> of that Act (under which the types of orders available to the court are limited).	35

- (4) In this section,—  
**2021 Act** means **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021**  
**authorised court, national security information, NSI certificate, and security information order** have the meanings given to them by **section 4** of the 2021 Act. 5
- 104 Section 123 amended (Consequential amendments)**  
 In section 123, replace “the Schedule” with “**Schedule 1**”.
- 105 New Schedule 1AA inserted**  
 Insert the **Schedule 1AA** set out in **Schedule 7** of this Act as the first schedule to appear after the last section of the principal Act. 10
- 106 Schedule amended**  
 In the Schedule heading, replace “**Schedule**” with “**Schedule 1**”.
- Amendments to Terrorism Suppression Act 2002*
- 107 Principal Act** 15  
**Sections 108 to 129** amend the Terrorism Suppression Act 2002.
- 108 Section 4 amended (Interpretation)**  
 In section 4(1), definition of **classified security information**, replace “section 32(1)” with “**section 4A**”.
- 109 New section 4A inserted (Classified security information defined)** 20  
 After section 4, insert:
- 4A Classified security information defined**
- (1) In this Act, **classified security information** means information—
- (a) that is held by a specified agency; and
- (b) that the head of the specified agency certifies in writing (in the prescribed form (if any)) cannot be disclosed (except as authorised by or under an Act or other rule of law) because, in the opinion of the head of the specified agency,— 25
- (i) the information is information of a kind specified in **subsection (2)**; and 30
- (ii) disclosure of the information would be disclosure of a kind specified in **subsection (3)**.
- (2) Information falls within **subsection (1)(b)(i)** if it—
- (a) might lead to the identification of, or provide details of,—

- (i) the source of the information; or
- (ii) the nature, content, or scope of the information; or
- (iii) the nature or type of the assistance or operational methods available to the agency; or
- (b) is about particular operations that have been undertaken, or are being or are proposed to be undertaken, in relation to any of the functions of the specified agency; or 5
- (c) has been provided to the specified agency by the Government of another country or by an agency of such a Government or by an international organisation, and is information that cannot be disclosed by the specified agency because the Government, agency, or organisation that provided the information will not consent to the disclosure. 10
- (3) Disclosure of information falls within **subsection (1)(b)(ii)** if the disclosure would be likely—
- (a) to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or 15
- (b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the Government of another country or any agency of such a Government, or by any international organisation; or 20
- (c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences and the right to a fair trial; or
- (d) to endanger the safety of any person.
- 110 Section 21 amended (Further provisions relating to interim designation)**
- In section 21(e) and (f), replace “section 34” with “**section 29C**”. 25
- 111 Section 23 amended (Further provisions relating to final designation)**
- In section 23(h), replace “section 34” with “**section 29C**”.
- 112 Section 26 amended (Content of notice to designated entity)**
- (1) In section 26(c), replace “section 35” with “**section 29B**”.
- (2) After section 26(d), insert: 30
- (da) must, if the Prime Minister relied on classified security information in making the designation, state that—
- (i) the Prime Minister relied on that kind of information; and
- (ii) the entity may request a summary of the classified security information under **section 31**: 35
- 113 Section 27 amended (Content of notice to public and others)**
- In section 27(2)(c), replace “section 35” with “**section 29B**”.



**114 Section 29A amended (Changes of description of designated entities)**

In section 29A(4), replace “section 35(1)” with “**section 29B(1)**”.

**115 New cross-heading above section 29B (as renumbered and repositioned by section 123 of this Act) inserted**

Immediately after section 29A, insert:

5

*Expiry, renewal, and revocation of designations*

**116 New section 29D inserted (Notification of decisions about expiry or revocation of designations)**

After **section 29C** (as renumbered and repositioned by **section 122** of this Act), insert:

10

**29D Notification of decisions about expiry or revocation of designations**

(1) If a designation under this Act expires or is revoked under **section 29B** or **29C**, the Prime Minister must—

(a) ensure that notice of the expiry or revocation is published in the *Gazette* as soon as practicable; and

15

(b) take all reasonable steps to ensure that notice of the expiry or revocation is given, in the manner and form required by section 21(d) or 23(f), to every person and body—

(i) to whom notice of the designation was given under section 21(d) or 23(f); and

20

(ii) who is not already aware of the expiry or revocation.

(2) If the Prime Minister declines an application for revocation of a designation, the Prime Minister must take all reasonable steps to ensure that notice of the decision is given to the applicant (in the prescribed manner and form (if any)) with all reasonable speed.

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(3) If the applicant is the designated entity, or a representative of the designated entity, and the Prime Minister relied on classified security information in declining the application, the notice must state that—

(a) the Prime Minister relied on that kind of information; and

(b) the entity may request that a summary of the classified security information be provided to them under **section 31**.

30

**117 Cross-heading above section 30 replaced**

Replace the cross-heading above section 30 with:

*Material on which designations, renewals, or revocations may be based*

**118 Section 30 amended (Information available to Prime Minister)**

In section 30, replace “or section 22 or section 34” with “, 22, **29B, or 29C**”.

**119 New sections 31 and 31A and cross-heading inserted**

After section 30, insert:

<i>Additional requirements where classified security information used in certain decisions</i>	5
<b>31 Provision of summary of classified security information</b>	
(1) This section applies if a designated terrorist entity requests a summary (as referred to in <b>section 26(da)</b> or <b>29D(3)(b)</b> ) of the classified security information that the Prime Minister relied on in deciding—	10
(a) to make a designation under section 20 or 22; or	
(b) to decline an application for revocation of a designation under <b>section 29C</b> .	
(2) The purpose of the summary is to enable the designated terrorist entity to have a sufficient understanding of the classified security information the Prime Minister relied on in making the decision (without that information being disclosed to the entity).	15
(3) If the designated terrorist entity requests a summary,—	
(a) the Prime Minister and the head of the specified agency that holds the classified security information must agree on the contents of the summary; and	20
(b) the Prime Minister must provide the agreed summary to the entity with all reasonable speed.	
(4) However, the Prime Minister may refuse to provide a summary if the Prime Minister and the head of the specified agency are not satisfied that a summary can be provided that is sufficient to meet its purpose without disclosing classified security information.	25
<b>31A Notification to Inspector-General of Intelligence and Security of provision of classified security information</b>	
(1) The Director-General of an intelligence and security agency must notify the Inspector-General of Intelligence and Security if the agency provides classified security information to the Prime Minister or department to assist the Prime Minister to decide whether to—	30
(a) make a designation under section 20 or 22 in relation to an entity; or	
(b) decline an application for revocation of a designation under <b>section 29C</b> .	35

- (2) The Director-General must make the notification as soon as practicable after providing the classified security information to assist the Prime Minister.
- (3) In this section, **department** has the meaning given to it in section 5 of the Public Service Act 2020.
- 120 Section 32 repealed (Classified security information defined)** 5  
Repeal section 32.
- 121 Cross-heading above section 33 replaced**  
Replace the cross-heading above section 33 with:
- Proceedings arising out of designations, renewals, and revocations*
- 122 Section 34 renumbered as section 29C and repositioned (Revocation of designations)** 10  
Renumber section 34 as **section 29C** and reposition it after **section 29B** (as renumbered and repositioned by **section 123** of this Act).
- 123 Section 35 renumbered as section 29B and repositioned (Designations under section 22 to expire after 3 years unless renewed by Prime Minister)** 15
- (1) Renumber section 35 as **section 29B** and reposition it after the new cross-heading inserted after section 29A by **section 115** of this Act.
- (2) In section 35(1)(a), replace “section 34” with “**section 29C**”.
- 124 Section 38 replaced (Procedure in proceedings involving classified security information)** 20  
Replace section 38 with:
- 38 Proceedings involving classified security information**
- (1) This section applies to any civil proceedings (including public law and judicial review proceedings) in a court relating to the administration or enforcement of this Act. 25
- (2) If the Crown proposes to present classified security information in proceedings, the Attorney-General must—
- (a) make an application to an authorised court under **section 32** of the 2021 Act for a security information order to protect the confidentiality of the information to be given as evidence in the proceedings; and 30
- (b) submit to the court the certification described in **section 4A(1)(b)**.
- (3) If the classified security information is also national security information, the Crown may submit with the application and certification referred to in **subsection (2)**, an NSI certificate under **section 41** of the 2021 Act and seek a security information order as set out in **section 36(3)** of that Act (under which the types of orders available to the court are limited). 35

- (4) In this section,—  
**2021 Act** means **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021**  
**authorised court, national security information, NSI certificate, and security information order** have the meanings given to them in **section 4** of the 2021 Act. 5
- 125 Section 40 repealed (Ancillary general practices and procedures to protect classified security information)**  
 Repeal section 40.
- 126 Section 42 amended (Notification of revocation, expiry, or invalidity of designations)** 10
- (1) In the heading to section 42, delete “**revocation, expiry, or**”.
- (2) In section 42(1), replace “expires or is revoked or is found to be or to have been invalid, under section 34 or section 35 or” with “is found to have been invalid”. 15
- (3) In section 42(1)(a) and (b), delete “ revocation or expiry or”.
- 127 Section 58 amended (Appeal against decision on application under section 55)**  
 In section 58(2), replace “sections 38 and 40” with “**section 38**”.
- 128 Section 59 amended (Discharge of order under section 55 on appeal)** 20
- (1) In section 59(2), replace “section 34” with “**section 29C**”.
- (2) In section 59(2), replace “section 35(2)” with “**section 29B(2)**”.
- 129 Schedule 1AA amended**  
 In Schedule 1AA,—
- (a) insert the Part set out in **Schedule 8** of this Act as the last Part; and 25
- (b) make all necessary consequential amendments.
- Subpart 3—Amendments to other related Acts
- Amendment to Crown Proceedings Act 1950*
- 130 Principal Act**  
**Section 131** amends the Crown Proceedings Act 1950. 30
- 131 Section 27 replaced (Discovery)**  
 Replace section 27 with:

<b>27</b>	<b>Interrogatories and discovery</b>	
(1)	In any proceedings (other than criminal proceedings) to which the Crown is a party or third party, the court may require the Crown to answer interrogatories, or to make discovery of documents and produce documents, as if the Crown were a private person of full age and capacity.	5
(2)	<b>Subsection (1)</b> is subject to any rules of court.	
(3)	Any order of the court under <b>subsection (1)</b> requiring the Crown to answer interrogatories must specify the officer of the Crown who is to answer the interrogatories.	
(4)	Nothing in this section affects—	10
(a)	the application to the Crown of the <b>Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021</b> ; or	
(b)	any other rule of law that authorises or requires the Crown to withhold any document or to refuse to answer any question on the ground that disclosing the document or answering the question would be injurious to the public interest.	15

*Amendments to Employment Relations Act 2000*

<b>132</b>	<b>Principal Act</b>	
	<b>Sections 133 to 136</b> amend the Employment Relations Act 2000.	
<b>133</b>	<b>Section 133 amended (Jurisdiction concerning penalties)</b>	20
	In section 133(2)(a), replace “and 178 (which allow” with “, 178, and <b>178AA</b> (which provide”.	
<b>134</b>	<b>Section 178 amended (Removal to court)</b>	
	In the heading to section 178, after “ <b>court</b> ”, insert “ <b>generally</b> ”.	
<b>135</b>	<b>New section 178AA inserted (Removal to court of proceeding involving national security information)</b>	25
	After section 178, insert:	
<b>178AA</b>	<b>Removal to court of proceeding involving national security information</b>	
	If the Attorney-General gives written notice to the Authority that the Crown intends to make an SI application (under <b>section 32</b> of <b>Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021</b> ) in connection with proceedings before the Authority, <b>section 44</b> of that Act applies as if a reference in that section to the District Court were a reference to the Authority and a reference to the High Court were a reference to the Employment Court.	30
		35

**136 Section 187 amended (Jurisdiction of court)**

In section 187(1)(e), after “section 178”, insert “or **178AA**”.

*Amendments to Evidence Act 2006*

**137 Principal Act**

**Sections 138 to 143** amend the Evidence Act 2006.

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**138 New section 3A inserted (Transitional, savings, and related provisions)**

After section 3, insert:

**3A Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

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**139 Section 70 amended (Discretion as to matters of State)**

After section 70(3), insert:

- (4) This section does not apply if an application may be made under **section 32** of **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021** in relation to the communication or information concerned (*see also section 33* of that Act).

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**140 Section 102 amended (Application)**

After section 102(b), insert:

- (ba) **sections 109A and 109B** (which relate to intelligence officers and intelligence sources):

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**141 New sections 109A and 109B and cross-heading inserted**

After section 109, insert:

*Giving of evidence by intelligence officers and intelligence sources*

**109A Certificates relating to intelligence officers and intelligence sources**

- (1) This section and **section 109B** apply—
- (a) to a civil proceeding; or
- (b) to a criminal proceeding for a category 3 or 4 offence.
- (2) If a party to the proceeding intends to call an intelligence officer or an intelligence source as a witness, a Director-General of an intelligence and security agency may file in the court in which the proceeding is to be held a certificate, signed by the Director-General, stating that,—
- (a) during the period specified in the certificate, the witness was—

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- (i) an intelligence officer of the intelligence and security agency or of a foreign intelligence agency; or
- (ii) an intelligence source of the intelligence and security agency; and
- (b) the identity of the witness must not be disclosed because that disclosure would adversely affect the ability of the intelligence and security agency or (if applicable) the foreign intelligence agency to carry out its activities while maintaining the secrecy of its activities; and 5
- (c) the witness has not been convicted of any offence or (as the case may require) the witness has not been convicted of any offence other than the offence, or offences, described in the certificate. 10
- (3) The Director-General must file the certificate,—
- (a) in the case of a civil proceeding, in accordance with rules of court; or
- (b) in the case of a criminal proceeding, as soon as is reasonably practicable after a defendant has pleaded not guilty.
- (4) If the Director-General knows that the credibility of the witness in giving evidence in any other proceeding has been the subject of adverse comment by the Judge in that proceeding, the Director-General must also include in the certificate a statement of the relevant particulars. 15
- (5) For the purposes of **subsections (2)(c) and (4)**,—
- (a) it is sufficient that the certificate includes— 20
- (i) a statement of the nature of any offence or comment referred to in the certificate; and
- (ii) the year in which the offence was committed or the comment was made; and
- (b) it is not necessary to include the venue or precise date of the proceeding or any other particulars that might enable the true name or address of the witness to be discovered. 25
- (6) In this section and in **section 109B**,—
- Director-General of an intelligence and security agency** has the same meaning as in section 4 of the Intelligence and Security Act 2017 30
- foreign intelligence agency** means an agency that has responsibility for intelligence gathering for a country with which New Zealand has an intelligence sharing arrangement
- intelligence and security agency** has the same meaning as in section 4 of the Intelligence and Security Act 2017 35
- intelligence officer** means—
- (a) an employee of an intelligence and security agency; or
- (b) an individual employed or engaged in a foreign intelligence agency

**intelligence source** means any individual who has provided intelligence to an intelligence and security agency on a confidential basis.

- (7) This section also applies, with any necessary modification, in any case where a person is being, or is to be, proceeded against under—
- (a) the Criminal Proceeds (Recovery) Act 2009; or
  - (b) sections 142A to 142Q of the Sentencing Act 2002.

#### **109B Effect of certificate under section 109A**

##### *Effect*

- (1) In any proceeding in which a Director-General of an intelligence and security agency has filed a certificate under **section 109A(2)** relating to a party's witness,—
- (a) if the witness states that, during the period specified in the certificate, the witness acted as an intelligence officer or intelligence source as specified in the certificate, it must be presumed, in the absence of proof to the contrary, that the certificate has been given in respect of that witness; and
  - (b) it is sufficient if the witness is referred to in the way specified by the Director-General in the certificate, and, except if leave is given under **subsection (2)**, the witness must not be required to state the true name or address of the witness or to give any particulars likely to lead to the discovery of that name or address; and
  - (c) except if leave is given under **subsection (2)**, no lawyer, officer of the court, or other person involved in the proceeding may state in court the true name or address of the witness or give any particulars likely to lead to the discovery of that name or address.
- Leave to give evidence or ask question about name or address*
- (2) No evidence may be given, and no question may be put to the witness, or to any other witness, that relates directly or indirectly to the true name or address of the witness except by leave of the Judge.
- (3) On an application for that leave, the certificate is, in the absence of evidence to the contrary, sufficient evidence of the particulars stated in it.
- (4) If there is a jury, the Judge must not grant the leave unless the Judge is satisfied that—
- (a) there is some evidence before the Judge that, if believed by the jury, could call into question the credibility of the party's witness; and
  - (b) it is necessary in the interests of justice that other parties be enabled to test properly the credibility of the witness; and
  - (c) it would be impracticable for other parties to test properly the credibility of the witness if those parties were not informed of the true name or address of the witness.



- (5) An application for leave under **subsection (2)**—
- (a) may be made from time to time and at any stage of the proceeding; and
  - (b) must, where practicable, be made and dealt with in chambers; and
  - (c) if the application is made during a trial before a jury, must be dealt with and determined by the Judge in the absence of the jury. 5
- Service of certificate*
- (6) If a Director-General of an intelligence and security agency files a certificate under **section 109A(2)** in respect of any party’s witness, the Director-General must serve a copy of the certificate on the other parties, or on any lawyer acting for another party, at least 14 days before the witness is to give evidence. 10
- 142 Section 120 amended (Persons who may sign statements by assumed name)**
- (1) In the heading to section 120, after “**name**”, insert “**or anonymously**”.
  - (2) After section 120(1), insert:
- (1A) A deposition or other written statement of evidence given by an intelligence officer or intelligence source (within the meaning of **section 109A**) may be given and signed,—
- (a) in the case of an intelligence officer who has acquired an assumed name under subpart 1 of Part 3 of the Intelligence and Security Act 2017, in that name; or 15
  - (b) in any other case, using the term “witness” followed by an initial or a mark. 20
- 143 New Schedule 1AA inserted**
- Insert the **Schedule 1AA** set out in **Schedule 9** of this Act as the first schedule to appear after the last section of the principal Act. 25
- Amendments to Health and Safety at Work Act 2015*
- 144 Principal Act**
- Sections 145 and 146** amend the Health and Safety at Work Act 2015.
- 145 Section 162 repealed (Proceedings involving classified security information)** 30
- Repeal section 162.
- 146 Schedule 4 repealed**
- Repeal Schedule 4.

*Amendment to Outer Space and High-altitude Activities Act 2017***147 Principal Act****Section 148** amends the Outer Space and High-altitude Activities Act 2017.**148 Section 55 amended (Minister must consult security Ministers about national security)**

5

Repeal section 55(5).

*Amendment to Terrorism Suppression (Control Orders) Act 2019***149 Principal Act****Section 150** amends the Terrorism Suppression (Control Orders) Act 2019.**150 Section 36 repealed (Additional requirements for decisions that supporting information is not disclosable)**

10

Repeal section 36.

## Schedule 1

### Transitional, savings, and related provisions

s 5

#### Part 1

#### Provisions relating to this Act as enacted

5

#### 1 General practices and procedures relating to classified security information

- (1) Any general practices and procedures that are in force, immediately before the commencement of **section 28**, under any of the following provisions are to continue in force, with any necessary modifications, as if they had been agreed under that provision: 10
- (a) section 125 of the Overseas Investment Act 2005:
  - (b) section 29AC of the Passports Act 1992:
  - (c) section 113 of the Telecommunications (Interception Capability and Security) Act 2013: 15
  - (d) section 40 of the Terrorism Suppression Act 2002.
- (2) The general practices and procedures referred to in **subclause (1)** may be revoked or replaced by general practices and procedures agreed to under **section 28**.

#### 2 Proceedings affected by Act

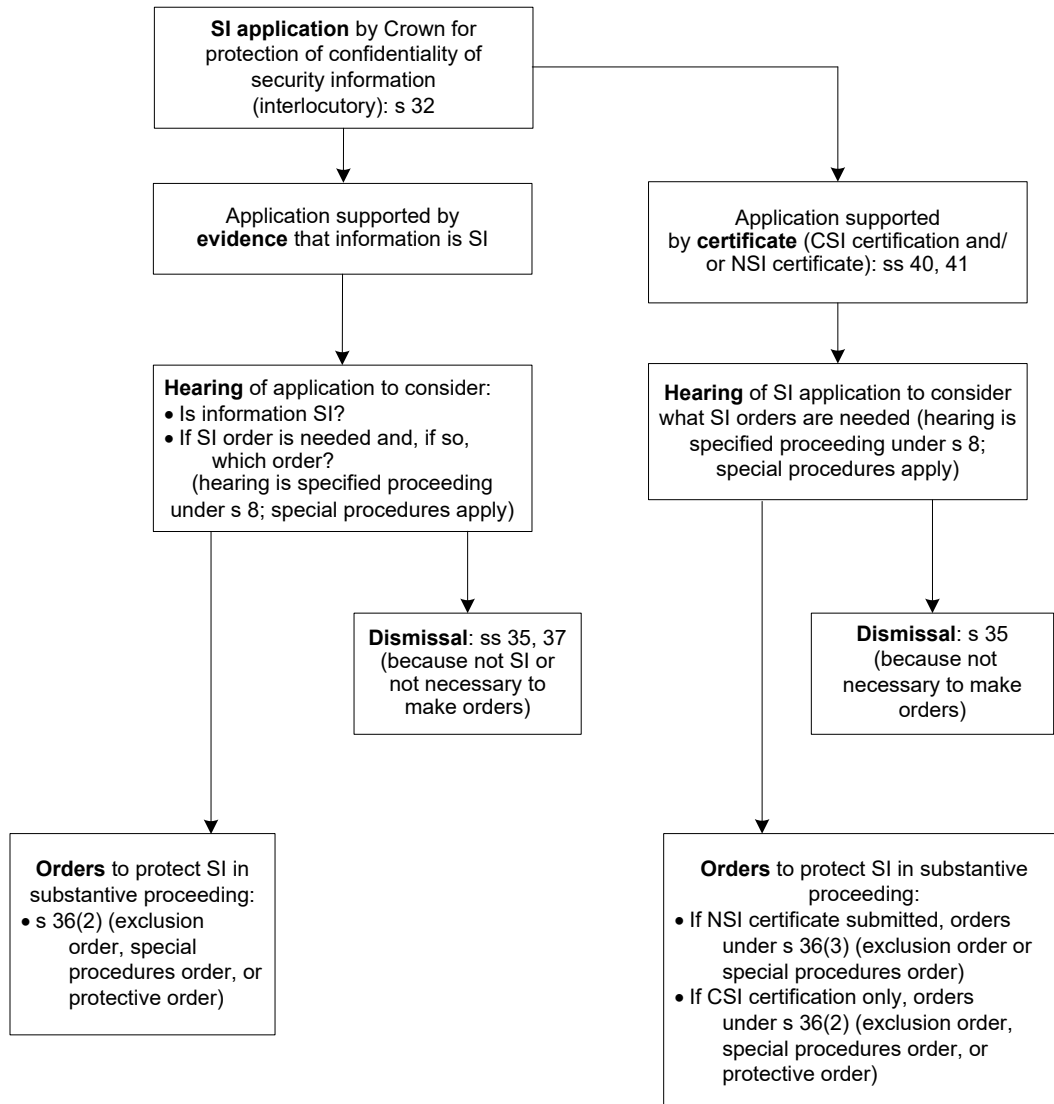
20

- (1) A provision of this Act applies to any proceeding commenced on or after the date of the commencement of that provision (the **commencement date**).
- (2) To avoid doubt, **subclause (1)** applies to proceedings that commence on or after the commencement date, but that relate to circumstances, applications, or decisions that occurred before, on, or after that date. 25
- (3) Proceedings commenced before the commencement date, and not finally determined before that date (including any rehearing, retrial, or appeal), continue as if the provision had not been enacted.

## Schedule 2

### Overview of SI application process

s 30



**Schedule 3**  
**New Schedule 1AA inserted into Criminal Disclosure Act 2008**

s 56

**Schedule 1AA**  
**Transitional, savings, and related provisions**

5

s 4A

**Part 1**  
**Provisions relating to Part 4 of Security Information in Proceedings Legislation Act 2021**

- |          |  |    |
|----------|--|----|
| <b>1</b> | <b>Interpretation</b>  | 10 |
|          | In this Part, unless the context otherwise requires,—  |    |
|          | <b>2021 Act</b> means <b>sections 48 to 56 of Part 4 of the Security Information in Proceedings Legislation Act 2021</b>   |    |
|          | <b>commencement date</b> means the date on which the 2021 Act comes into force.  |    |
| <b>2</b> | <b>Proceedings affected by amendments</b>  | 15 |
| (1)      | The amendments made to this Act by the 2021 Act (except for this clause) apply only to proceedings commenced on or after the commencement date.  |    |
| (2)      | To avoid doubt, <b>subclause (1)</b> applies to proceedings that relate to the commission or possible commission of an offence if—   |    |
| (a)      | the commission or possible commission occurred before the commencement date; and   | 20 |
| (b)      | the proceedings are commenced on or after that date.   |    |
| (3)      | Proceedings commenced before the commencement date, and not finally determined before the commencement date (including any rehearing, retrial, or appeal), continue as if those amendments had not been enacted. | 25 |

**Schedule 4**  
**New Part 3 inserted into Schedule 1AA of Criminal Procedure Act**  
**2011**

s 76

	<b>Part 3</b>	5
	<b>Provisions relating to Part 4 of Security Information in Proceedings Legislation Act 2021</b>	
<b>5</b>	<b>Interpretation</b>	
	In this Part, unless the context otherwise requires,—	
	<b>2021 Act</b> means <b>sections 57 to 76 of Part 4 of the Security Information in Proceedings Legislation Act 2021</b>	10
	<b>commencement date</b> means the date on which the 2021 Act comes into force.	
<b>6</b>	<b>Proceedings affected by amendments</b>	
(1)	The amendments made to this Act by the 2021 Act (except for this clause) apply only to proceedings commenced on or after the commencement date.	15
(2)	Proceedings commenced before the commencement date, and not finally determined before the commencement date (including any rehearing, retrial, or appeal), continue as if those amendments had not been enacted.	

**Schedule 5**  
**New Part 7 inserted into Schedule 1AA of Overseas Investment Act**  
**2005**

s 81

<b>Part 7</b>	5
<b>Provisions relating to Part 4 of Security Information in Proceedings Legislation Act 2021</b>	
<b>52 Interpretation</b>	
In this Part, unless the context otherwise requires,—	
<b>2021 Act</b> means <b>sections 77 to 81 of Part 4 of the Security Information in Proceedings Legislation Act 2021</b>	10
<b>commencement date</b> means the date on which the 2021 Act comes into force.	
<b>53 Proceedings involving classified security information</b>	
(1) The amendments made to this Act by the 2021 Act (except for this clause) apply to proceedings to which subpart 3 of Part 3 of this Act applies that are commenced on or after the commencement date.	15
(2) To avoid doubt, <b>subclause (1)</b> applies to proceedings to which subpart 3 of Part 3 of this Act applies that commence on or after the commencement date, but that relate to a decision that occurred before, on, or after that date.	
(3) Proceedings to which subpart 3 of Part 3 of this Act applies that are commenced before the commencement date, and not finally determined before the commencement date (including any rehearing, retrial, or appeal), continue as if the amendments made to this Act by the 2021 Act had not been enacted.	20

**Schedule 6**  
**New Part 2 inserted into Schedule 1 of Passports Act 1992**

s 90

<b>Part 2</b>		
<b>Provisions relating to Part 4 of Security Information in Proceedings Legislation Act 2021</b>		5
<b>2</b>	<b>Interpretation</b>	
	In this Part, unless the context otherwise requires,—	
	<b>2021 Act</b> means <b>sections 82 to 90 of Part 4 of the Security Information in Proceedings Legislation Act 2021</b>	10
	<b>commencement date</b> means the date on which the 2021 Act comes into force	
	<b>section 29AA proceedings</b> means proceedings to which section 29AA applies.	
<b>3</b>	<b>Decision of Minister under section 27GA</b>	
(1)	This clause applies to a decision of the Minister to take an action specified in section 27GA(3)—	15
	(a) that is made before the commencement date; but	
	(b) in relation to which the person affected by the decision had not been notified under section 27GC before that date.	
(2)	The amendments made to this Act by the 2021 Act apply in relation to the decision, except the amendment made by section 85 (which applies only in relation to a decision that is made on or after the commencement date).	20
<b>4</b>	<b>Proceedings involving classified security information</b>	
(1)	The amendments made to this Act by the 2021 Act (except for this clause) apply only to section 29AA proceedings commenced on or after the commencement date.	25
(2)	To avoid doubt, <b>subclause (1)</b> applies to section 29AA proceedings that commence on or after the commencement date, but that relate to a decision of the Minister to take an action specified in section 27GA(3) that was made before, on, or after the commencement date.	
(3)	Section 29AA proceedings commenced before the commencement date, and not finally determined before the commencement date (including any rehearing, retrial, or appeal), continue as if the amendments made to this Act by the 2021 Act had not been enacted.	30



**Schedule 7**  
**New Schedule 1AA inserted into Telecommunications (Interception  
 Capability and Security) Act 2013**

s 105

**Schedule 1AA**  
**Transitional, savings, and related provisions**

5

s 3B

**Part 1**  
**Provisions relating to Part 4 of Security Information in  
 Proceedings Legislation Act 2021**

10

**1 Interpretation**

In this Part, unless the context otherwise requires,—

**2021 Act** means **sections 91 to 106 of Part 4 of the Security Information in Proceedings Legislation Act 2021**

**commencement date** means the date on which the 2021 Act comes into force

15

**relevant decision** means one of the following decisions:

- (a) a decision of the Minister to make a direction under section 19:
- (b) a decision of a designated officer or the Minister under section 29 or 34 to grant, vary, or revoke an exemption:
- (c) a decision of the Minister to make a direction under section 38:
- (d) a decision of a review panel as to recommendations under section 39:
- (e) a decision of the Minister to make a direction under section 57

20

**section 101 proceedings** means proceedings to which **section 101** applies.

**2 Administrative decisions**

The amendments made to this Act by the 2021 Act apply only in relation to any relevant decision made on or after the commencement date.

25

**3 Proceedings involving classified security information**

(1) The amendments made to this Act by the 2021 Act (except for this clause) apply only to **section 101** proceedings commenced on or after the commencement date.

30

(2) To avoid doubt, **subclause (1)** applies to **section 101** proceedings that commence on or after the commencement date, but that relate to a relevant decision that was made before, on, or after the commencement date.

- (3) **Section 101** proceedings commenced before the commencement date, and not finally determined before the commencement date (including any rehearing, retrial, or appeal), continue as if the amendments made to this Act by the 2021 Act had not been enacted.

**Schedule 8**  
**New Part 2 inserted into Schedule 1AA of Terrorism Suppression**  
**Act 2002**

s 129

	<b>Part 2</b>	5
	<b>Provisions relating to Part 4 of Security Information in Proceedings Legislation Act 2021</b>	
3	<b>Interpretation</b>	
	In this Part, unless the context otherwise requires,—	
	<b>2021 Act</b> means <b>sections 107 to 129 of Part 4 of the Security Information in Proceedings Legislation Act 2021</b>	10
	<b>commencement date</b> means the date on which the 2021 Act comes into force	
	<b>relevant action</b> means one of the following decisions of the Prime Minister:	
	(a) a decision of the Prime Minister to make a designation under section 20 or 22:	15
	(b) the expiry of a designation under <b>section 29B</b> (as renumbered and repositioned by <b>section 123 of Part 4 of the Security Information in Proceedings Legislation Act 2021</b> ):	
	(c) a decision of the Prime Minister to renew a designation under <b>section 29B</b> (as renumbered and repositioned by <b>section 123 of Part 4 of the Security Information in Proceedings Legislation Act 2021</b> ):	20
	(d) a decision of the Prime Minister to revoke a designation or to decline an application to revoke a designation under <b>section 29C</b> (as renumbered and repositioned by <b>section 122 of Part 4 of the Security Information in Proceedings Legislation Act 2021</b> )	25
	<b>section 38 proceedings</b> means proceedings to which <b>section 38</b> applies.	
4	<b>Administrative decisions</b>	
	The amendments made to this Act by the 2021 Act apply only in relation to any relevant action that occurs on or after the commencement date.	
5	<b>Proceedings involving classified security information</b>	30
	(1) The amendments made to this Act by the 2021 Act (except for this clause) apply to <b>section 38</b> proceedings commenced on or after the commencement date.	
	(2) To avoid doubt, <b>subclause (1)</b> applies to <b>section 38</b> proceedings that commence on or after the commencement date, but that relate to a relevant action that occurred before, on, or after the commencement date.	35

- (3) **Section 38** proceedings commenced before the commencement date, and not finally determined before the commencement date (including any rehearing, retrial, or appeal), continue as if the amendments made to this Act by the 2021 Act had not been enacted.

**Schedule 9**  
**New Schedule 1AA inserted into Evidence Act 2006**

s 143

**Schedule 1AA**  
**Transitional, savings, and related provisions**

5

s 3A

**Part 1**  
**Provisions relating to Part 4 of Security Information in Proceedings Legislation Act 2021**

- |          |   |    |
|----------|---|----|
| <b>1</b> | <b>Interpretation</b>   | 10 |
|          | In this Part, unless the context otherwise requires,—   |    |
|          | <b>2021 Act</b> means <b>sections 137 to 143 of Part 4 of the Security Information in Proceedings Legislation Act 2021</b>  |    |
|          | <b>commencement date</b> means the date on which the 2021 Act comes into force.   |    |
| <b>2</b> | <b>Proceedings involving classified security information</b>  | 15 |
| (1)      | The amendments made to this Act by the 2021 Act (except for this clause) apply to proceedings commenced on or after the commencement date.  |    |
| (2)      | To avoid doubt, <b>subclause (1)</b> applies to proceedings that commence on or after the commencement date, but that relate to circumstances, events, or decisions that occurred before, on, or after the commencement date.                   | 20 |
| (3)      | Proceedings commenced before the commencement date, and not finally determined before the commencement date (including any rehearing, retrial, or appeal), continue as if the amendments made to this Act by the 2021 Act had not been enacted. |    |