

Version
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Security Information in Proceedings (Repeals and Amendments) Act 2022

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Commencement see section 2

Contents

		Page
1	Title	7
2	Commencement	7

Part 1

Amendments relating to national security information in criminal proceedings

Amendments to Criminal Disclosure Act 2008

3	Principal Act	8
4	New section 4A inserted (Transitional, savings, and related provisions)	8
	4A Transitional, savings, and related provisions	8
5	Section 6 amended (Interpretation)	8
6	Section 16 amended (Reasons for withholding information)	8
7	New section 26B inserted (National security interests: notification and hearing when non-party is Crown)	9
	26B National security interests: notification and hearing when non-party is Crown	9

Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry of Justice.

8	Section 28 amended, renumbered as section 26A, and repositioned (Procedure if Judge subsequently satisfied that another person holds information sought)	9
9	Section 29 amended (Determination of court following non-party disclosure hearing)	10
10	New section 30A inserted (National security interests: application for order under section 30)	10
	30A National security interests: application for order under section 30	10
11	New Schedule 1AA inserted	10
	<i>Amendments to Criminal Procedure Act 2011</i>	
12	Principal Act	11
13	Section 5 amended (Interpretation)	11
14	Section 5A replaced (Transitional, savings, and related provisions)	11
	5A Interpretation: evidence based on national security information	11
15	Section 78 amended (Court may order pre-trial admissibility hearing if trial to be Judge-alone trial)	11
16	New section 79A inserted (Pre-trial admissibility hearing: national security information)	12
	79A Pre-trial admissibility hearing: national security information	12
17	Section 84 amended (Persons who may give evidence under assumed name)	13
18	Section 90 amended (Application for oral evidence order)	13
19	Section 91 replaced (Application for leave to question undercover Police officer's identity must be dealt with by High Court)	13
	91 Application for leave to question identity of undercover Police officer or intelligence witness to be determined by High Court	13
20	Section 94 amended (Withdrawal of charge if oral evidence order made for examination of undercover Police officer)	14
21	Section 101 amended (Pre-trial order relating to admissibility of evidence: jury trial)	14
22	New section 101A inserted (National security information: pre-trial hearing and order)	15
	101A National security information: pre-trial hearing and order	15
23	Section 112 amended (Court must dismiss charge in certain cases)	15
24	New section 113A and cross-heading inserted	15
	<i>Evidence based on national security information</i>	
	113A National security information: admissibility hearing in course of trial	15
25	Section 146 amended (Withdrawal of charge)	16

26	New section 146A inserted (Withdrawal of charge due to risk to national security interests)	16
	146A Withdrawal of charge due to risk to national security interests	17
27	Section 147 amended (Dismissal of charge)	17
28	New section 147A inserted (Dismissal of charge when information withheld due to risk to national security interests)	17
	147A Dismissal of charge when information withheld due to risk to national security interests	17
29	Section 215 amended (Right of appeal by prosecutor or defendant against certain pre-trial evidential decisions in Judge-alone case)	17
30	Section 217 amended (Right of appeal by prosecutor or defendant against pre-trial decisions in jury trial case)	17
31	Schedule 1AA amended	18

Part 2

**Amendments relating to classified security information:
administrative requirements and proceedings**

Amendments to Overseas Investment Act 2005

32	Principal Act	18
33	Section 4 amended (Overview)	18
34	Section 6 amended (Interpretation)	18
35	Subpart 3 of Part 3 replaced	18
	Subpart 3—Protection of classified security information	
	113 Proceedings involving classified security information	18
	114 Meaning of classified security information	19
36	Schedule 1AA amended	20

Amendments to Passports Act 1992

37	Principal Act	20
38	Section 2 amended (Interpretation)	20
39	New section 2AA inserted (Meaning of classified security information)	20
	2AA Meaning of classified security information	20
40	Section 27GC amended (Person to be notified of action taken under section 27GA)	22
41	New section 27GCA inserted (CSI summary)	22
	27GCA CSI summary	22
42	New section 27GFA inserted (Notification to Inspector-General of Intelligence and Security of provision of classified security information)	23
	27GFA Notification to Inspector-General of Intelligence and Security of provision of classified security information	23

43	Section 29AA amended (Proceedings where national or international security involved)	23
44	Sections 29AB and 29AC replaced	23
	29AB Proceedings involving classified security information	23
45	Schedule 1 amended	24
	<i>Amendments to Telecommunications (Interception Capability and Security) Act 2013</i>	
46	Principal Act	24
47	Section 3 amended (Interpretation)	24
48	New sections 3A and 3B inserted	24
	3A Meaning of classified security information	24
	3B Transitional, savings, and related provisions	25
49	Section 19 amended (Direction)	25
50	Section 32 amended (Decision-making process)	25
51	Section 36 amended (Decision-making process)	26
52	Section 39 amended (Review)	26
53	Section 40 amended (Direction notice)	26
54	New subpart 7 of Part 2 inserted	26
	Subpart 7—Provisions that apply when classified security information used in decisions	
	44A Application and interpretation	26
	44B Written notice and summary of classified security information	27
55	Section 56 amended (Review by Commissioner of Intelligence Warrants)	27
56	Section 57 amended (Minister may make direction)	27
57	New section 57A inserted (Provisions that apply when classified security information used or provided for decisions)	27
	57A Provisions that apply when classified security information used or provided for decisions	28
58	Subpart 8 of Part 4 replaced	28
	Subpart 8—Classified security information in proceedings	
	101 Proceedings involving classified security information	28
59	Section 123 amended (Consequential amendments)	28
60	New Schedule 1AA inserted	28
61	Schedule amended	28
	<i>Amendments to Terrorism Suppression Act 2002</i>	
62	Principal Act	29
63	Section 4 amended (Interpretation)	29
64	New section 4A inserted (Classified security information defined)	29
	4A Classified security information defined	29

65	Section 21 amended (Further provisions relating to interim designation)	30
66	Section 23 amended (Further provisions relating to final designation)	30
67	Section 26 amended (Content of notice to designated entity)	30
68	Section 27 amended (Content of notice to public and others)	30
69	Section 29A amended (Changes of description of designated entities)	30
70	New cross-heading above section 29B (as renumbered and repositioned by section 78 of this Act) inserted	30
<i>Expiry, renewal, and revocation of designations</i>		
71	New section 29D inserted (Notification of decisions about expiry or revocation of designations)	30
	29D Notification of decisions about expiry or revocation of designations	31
72	Cross-heading above section 30 replaced	32
<i>Material on which designations, renewals, or revocations may be based</i>		
73	Section 30 amended (Information available to Prime Minister)	32
74	New sections 31 and 31A and cross-heading inserted	32
<i>Additional requirements where classified security information used in certain decisions</i>		
	31 Provision of summary of classified security information	32
	31A Notification to Inspector-General of Intelligence and Security of provision of classified security information	33
75	Section 32 repealed (Classified security information defined)	33
76	Cross-heading above section 33 replaced	33
<i>Proceedings arising out of designations, renewals, and revocations</i>		
76A	New section 34 inserted (Proceedings involving classified security information)	33
77	Section 34 renumbered as section 29C and repositioned (Revocation of designations)	34
78	Section 35 renumbered as section 29B and repositioned (Designations under section 22 to expire after 3 years unless renewed by Prime Minister)	34
78A	Section 35B amended (Certain revocation applications stopped)	34
78B	Section 35C amended (Duration of designation extended (3-year period until expiry paused))	34
78C	Section 35D amended (Periodic review whether designation no longer justified)	35
78D	Section 35F amended (Periodic review: procedure)	35

78E	Cross-heading below section 35G repealed	35
79	Section 38 repealed (Procedure in proceedings involving classified security information)	35
80	Section 40 repealed (Ancillary general practices and procedures to protect classified security information)	35
81	Section 42 renumbered as section 35 and repositioned (Notification of revocation, expiry, or invalidity of designations)	35
81A	Section 56 amended (Notice of application under section 55)	35
82	Section 58 amended (Appeal against decision on application under section 55)	36
83	Section 59 amended (Discharge of order under section 55 on appeal)	36
84	Schedule 1AA amended	36

Part 3

Amendments to other related Acts

Amendment to Crown Proceedings Act 1950

85	Principal Act	36
86	Section 27 replaced (Discovery)	36
27	Interrogatories and discovery	36

Amendments to Employment Relations Act 2000

87	Principal Act	37
88	Section 133 amended (Jurisdiction concerning penalties)	37
89	Section 178 amended (Removal to court)	37
90	New section 178AA inserted (Removal to court of proceeding involving national security information)	37
178AA	Removal to court of proceeding involving national security information	37
91	Section 187 amended (Jurisdiction of court)	37

Amendments to Evidence Act 2006

92	Principal Act	37
93	Section 70 amended (Discretion as to matters of State)	37
94	Section 102 amended (Application)	38
95	New sections 109A and 109B and cross-heading inserted	38

Giving of evidence by intelligence officers and intelligence sources

109A	Certificates relating to intelligence officers and intelligence sources	38
109B	Effect of certificate under section 109A	39
96	Section 120 amended (Persons who may sign statements by assumed name)	40
97	Schedule 1AA amended	41

	<i>Amendments to Health and Safety at Work Act 2015</i>	
98	Principal Act	41
99	Section 162 repealed (Proceedings involving classified security information)	41
100	Schedule 4 repealed	41
	<i>Amendment to Outer Space and High-altitude Activities Act 2017</i>	
101	Principal Act	41
102	Section 55 amended (Minister must consult security Ministers about national security)	41
	<i>Amendment to Terrorism Suppression (Control Orders) Act 2019</i>	
103	Principal Act	41
104	Section 36 repealed (Additional requirements for decisions that supporting information is not disclosable)	41
	Schedule 1	42
	New Schedule 1AA inserted into Criminal Disclosure Act 2008	
	Schedule 2	43
	New Part 3 inserted into Schedule 1AA of Criminal Procedure Act 2011	
	Schedule 3	44
	New Part 7 inserted into Schedule 1AA of Overseas Investment Act 2005	
	Schedule 4	45
	New Part 2 inserted into Schedule 1 of Passports Act 1992	
	Schedule 5	46
	New Schedule 1AA inserted into Telecommunications (Interception Capability and Security) Act 2013	
	Schedule 6	48
	New Part 2 inserted into Schedule 1AA of Terrorism Suppression Act 2002	
	Schedule 7	50
	New Part 2 inserted into Schedule 1AA of Evidence Act 2006	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Security Information in Proceedings (Repeals and Amendments) Act 2022.

2 Commencement

- (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).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Part 1

Amendments relating to national security information in criminal proceedings

Amendments to Criminal Disclosure Act 2008

3 Principal Act

Sections 4 to 11 amend the Criminal Disclosure Act 2008.

4 New section 4A inserted (Transitional, savings, and related provisions)

After section 4, insert:

4A Transitional, savings, and related provisions

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

5 Section 6 amended (Interpretation)

- (1) In section 6(1), definition of **criminal proceedings**, paragraph (c)(i), replace “79 or 101” with “78, 101, or 113A”.
- (2) In section 6(1), insert in its appropriate alphabetical order:
- national security interests** has the meaning given by section 4 of the Security Information in Proceedings Act 2022

6 Section 16 amended (Reasons for withholding information)

- (1) After section 16(1)(d), insert:
- (da) the information is subject to sections 109A and 109B 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

7 New section 26B inserted (National security interests: notification and hearing when non-party is Crown)

After section 26A (as renumbered and repositioned by section 8 of this Act), insert:

26B National security interests: notification and hearing when non-party is Crown

- (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 26A; 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.
- (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 subsection (1)(b).
- (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 the Security Information in Proceedings Act 2022 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 the Security Information in Proceedings Act 2022); or
 - (b) a Crown agent (within the meaning of section 10(1) of the Crown Entities Act 2004).

8 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.

9 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.

10 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 the Security Information in Proceedings Act 2022 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.

11 New Schedule 1AA inserted

Insert the Schedule 1AA set out in Schedule 1 of this Act as the first schedule to appear after the last section of the principal Act.

Amendments to Criminal Procedure Act 2011

12 Principal Act

Sections 13 to 31 amend the Criminal Procedure Act 2011.

13 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 the Security Information in Proceedings Act 2022

national security interests has the meaning given to it in section 4 of the Security Information in Proceedings Act 2022

14 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.

15 Section 78 amended (Court may order pre-trial admissibility hearing if trial to be Judge-alone trial)

(1) After section 78(2), insert:

(2A) Subsection (2B) applies if—

- (a) the Judge-alone trial is for—
 - (i) a category 4 offence; or
 - (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:
 - (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,—
- (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—
- (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
 - (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
 - (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.

16 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 the Security Information in Proceedings Act 2022 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)).

17 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.

18 Section 90 amended (Application for oral evidence order)

In section 90(3)(b), replace “91(b)” with “91(3)”.

19 Section 91 replaced (Application for leave to question undercover Police officer’s identity must be dealt with by High Court)

Replace section 91 with:

91 Application for leave to question identity of undercover Police officer or intelligence witness to be determined by High Court

- (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
 - (b) under section 109B(2) 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.
- (3) Both the application referred to in subsection (1) and the application for an oral evidence order must be determined by a High Court Judge.

20 Section 94 amended (Withdrawal of charge if oral evidence order made for examination of undercover Police officer)

- (1) In the heading to section 94, after “officer”, insert “or intelligence witness”.
- (2) In section 94(1)(b), after “section 109(1)(d)”, insert “or 109B(2)”.

21 Section 101 amended (Pre-trial order relating to admissibility of evidence: jury trial)

- (1) After section 101(2), insert:
- (2A) Subsection (2B) 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
 - (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:
- (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—
- (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.

22 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).
- (2) The hearing is a specified proceeding for the purposes of the Security Information in Proceedings Act 2022 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—
 - (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.
- (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)).

23 Section 112 amended (Court must dismiss charge in certain cases)

In section 112(1), after “section 109(1)(d)”, insert “or 109B(2)”.

24 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—
 - (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:
 - (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.
- (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.
- (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 the Security Information in Proceedings Act 2022 in respect of which the special procedures in Part 2 of that Act apply.
- (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
- (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.
- (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.

25 Section 146 amended (Withdrawal of charge)

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

26 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.

27 Section 147 amended (Dismissal of charge)

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

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

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—
 - (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.
- (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.

29 Section 215 amended (Right of appeal by prosecutor or defendant against certain pre-trial evidential decisions in Judge-alone case)

In section 215(2)(c), after “section 109(1)(d)”, insert “or 109B(2)”.

30 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)”.

31 Schedule 1AA amended

- (1) In the Schedule 1AA heading, delete “5A,”.
- (2) In Schedule 1AA,—
 - (a) insert the Part set out in Schedule 2 of this Act as the last Part; and
 - (b) make all necessary consequential amendments.

Part 2**Amendments relating to classified security information:
administrative requirements and proceedings***Amendments to Overseas Investment Act 2005***32 Principal Act**

Sections 33 to 36 amend the Overseas Investment Act 2005.

33 Section 4 amended (Overview)

In section 4(1)(c)(iii), after “classified”, insert “security”.

34 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

35 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.
- (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 2022 Act for a security information order to protect the confidentiality of the information to be given as evidence in the proceedings; and
 - (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 2022 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).

(4) In this section,—

2022 Act means the Security Information in Proceedings Act 2022

authorised court, national security information, NSI certificate, and security information order have the meanings set out in section 4 of the 2022 Act.

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
- (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),—
 - (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 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
- (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.

(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 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
- (d) to endanger the safety of any person.

36 Schedule 1AA amended

In Schedule 1AA,—

- (a) insert the Part set out in Schedule 3 of this Act as the last Part; and
- (b) make all necessary consequential amendments.

Amendments to Passports Act 1992

37 Principal Act

Sections 38 to 45 amend the Passports Act 1992.

38 Section 2 amended (Interpretation)

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

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

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

After section 2, insert:

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 carry out, engage in, or facilitate an activity of a kind described in section 27GA(1)(a) or (2)(a); or
 - (ii) the refusal to issue the New Zealand travel document concerned, or to cancel or retain the New Zealand travel document, will pre-

- vent or effectively impede the ability of the person to carry out the intended activity; or
- (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
 - (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
 - (ii) disclosure of the information would be disclosure of a kind specified in subsection (3).
- (2) Information falls within subsection (1)(c)(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 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
 - (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 subsection (1)(c)(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 by an agency of such a Government or by an 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.

40 Section 27GC amended (Person to be notified of action taken under section 27GA)

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:
 - (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,—
 - (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 **CSI summary**) of the information concerned be provided to them under section 27GCA;
 - (e) the period during which the person is not entitled to obtain a New Zealand travel document.

41 New section 27GCA inserted (CSI summary)

After section 27GC, insert:

27GCA CSI summary

- (1) The purpose of a CSI summary is to enable the person referred to in section 27GC(1) 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
 - (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.

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

After section 27GF, insert:

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.
- (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.

43 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”.
- (2) Repeal section 29AA(4) to (7).

44 Sections 29AB and 29AC replaced

Replace sections 29AB and 29AC with:

29AB Proceedings involving classified security information

- (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 2022 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 2022 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).
- (3) In this section,—
2022 Act means the Security Information in Proceedings Act 2022

authorised court, national security information, NSI certificate, and security information order have the meanings given to them by section 4 of the 2022 Act

section 29AA proceedings means proceedings to which section 29AA applies.

45 Schedule 1 amended

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

Part 1 Provisions relating to Passports Amendment Act 2015

- (2) In Schedule 1,—
- (a) insert the Part set out in Schedule 4 of this Act as the last Part; and
 - (b) make all necessary consequential amendments.

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

46 Principal Act

Sections 47 to 61 amend the Telecommunications (Interception Capability and Security) Act 2013.

47 Section 3 amended (Interpretation)

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

classified security information has the meaning given by section 3A

48 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.

49 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.

50 Section 32 amended (Decision-making process)

- (1) Repeal section 32(4).
- (2) After section 32(5), insert:
- (6) 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.

- (7) *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.

51 Section 36 amended (Decision-making process)

- (1) Repeal section 36(5).
- (2) After section 36(6), insert:
- (7) 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.
- (8) *See* subpart 7, which applies when the Minister uses classified security information in making a decision to grant, vary, or revoke an exemption.

52 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.

53 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.

54 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 make 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.

55 Section 56 amended (Review by Commissioner of Intelligence Warrants)

In section 56(2) and (4)(b), after “classified”, insert “security”.

56 Section 57 amended (Minister may make direction)

In section 57(5), after “classified”, insert “security”.

57 New section 57A inserted (Provisions that apply when classified security information used or provided for decisions)

After section 57, insert:

57A Provisions that apply when classified security information used or provided for decisions

Subpart 7 of Part 2 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).

58 Subpart 8 of Part 4 replaced

Replace subpart 8 of Part 4 with:

Subpart 8—Classified security information in proceedings**101 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.
- (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 2022 Act for a security information order to protect the confidentiality of the information to be given as evidence in the proceedings; and
 - (b) submit to the court the certification described in section 3A(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 2022 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).
- (4) In this section,—

2022 Act means the Security Information in Proceedings Act 2022

authorised court, national security information, NSI certificate, and security information order have the meanings given to them by section 4 of the 2022 Act.

59 Section 123 amended (Consequential amendments)

In section 123, replace “the Schedule” with “Schedule 1”.

60 New Schedule 1AA inserted

Insert the Schedule 1AA set out in Schedule 5 of this Act as the first schedule to appear after the last section of the principal Act.

61 Schedule amended

In the Schedule heading, replace “Schedule” with “Schedule 1”.

Amendments to Terrorism Suppression Act 2002

62 Principal Act

Sections 63 to 84 amend the Terrorism Suppression Act 2002.

63 Section 4 amended (Interpretation)

In section 4(1), definition of **classified security information**, replace “section 32(1)” with “section 4A”.

64 New section 4A inserted (Classified security information defined)

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,—
 - (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 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
 - (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 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.

65 Section 21 amended (Further provisions relating to interim designation)

In section 21(e) and (f), replace “section 34” with “section 29C”.

66 Section 23 amended (Further provisions relating to final designation)

In section 23(h), replace “section 34” with “section 29C”.

67 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:

- (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:

68 Section 27 amended (Content of notice to public and others)

In section 27(2)(c), replace “section 35” with “section 29B”.

69 Section 29A amended (Changes of description of designated entities)

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

70 New cross-heading above section 29B (as renumbered and repositioned by section 78 of this Act) inserted

Immediately after section 29A, insert:

Expiry, renewal, and revocation of designations

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

After section 29C (as renumbered and repositioned by section 77 of this Act), insert:

29D Notification of decisions about expiry or revocation of designations

Expiry or revocation of designation

- (1) If a designation under this Act expires or is revoked under section 29B , 29C, or 35D, the Prime Minister must—
 - (a) ensure that notice of the expiry or revocation is published in the *Gazette* as soon as practicable; and
 - (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
 - (ii) who is not already aware of the expiry or revocation.

Decision to decline application for revocation of designation

- (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.
- (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.

Decision under section 35D that designation continues to be justified

- (4) If the Prime Minister decides that the result of a review under section 35D is that the designation continues to be justified, the Prime Minister must take all reasonable steps to ensure that notice of the result of the review is given to the designated entity or a representative of the designated entity (in the prescribed manner and form (if any)) with all reasonable speed.
- (5) If the Prime Minister relied on classified security information in deciding that the result of a review under section 35D is that the designation continues to be justified, 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.

Section 71: amended, on 10 May 2023, by section 15(1) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 71: amended, on 10 May 2023, by section 15(2) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 71: amended, on 10 May 2023, by section 15(3) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 71: amended, on 10 May 2023, by section 15(4) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

72 Cross-heading above section 30 replaced

Replace the cross-heading above section 30 with:

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

73 Section 30 amended (Information available to Prime Minister)

In section 30, replace “34, 35,” with “29B, 29C,”.

Section 73: replaced, on 10 May 2023, by section 16 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

74 New sections 31 and 31A and cross-heading inserted

After section 30, insert:

Additional requirements where classified security information used in certain decisions

31 Provision of summary of classified security information

- (1) This section applies if a designated terrorist entity requests a summary (as referred to in section 26(da) or section 29D(3)(b) or (5)(b)) of the classified security information that the Prime Minister relied on in deciding—
 - (a) to make a designation under section 20 or 22; or
 - (b) to decline an application for revocation of a designation under section 29C; or
 - (c) the result of a review under section 35D is that the designation continues to be justified.
- (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).
- (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
 - (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.

31A 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 Prime Minister or department to assist the Prime Minister to decide whether to—
 - (a) make a designation under section 20 or 22 in relation to an entity; or
 - (b) to decline an application for revocation of a designation under section 29C; or
 - (c) the result of a review under section 35D is that the designation continues to be justified.
- (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.

Section 74: amended, on 10 May 2023, by section 17(1) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 74: amended, on 10 May 2023, by section 17(2) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 74: amended, on 10 May 2023, by section 17(3) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

75 Section 32 repealed (Classified security information defined)

Repeal section 32.

76 Cross-heading above section 33 replaced

Replace the cross-heading above section 33 with:

Proceedings arising out of designations, renewals, and revocations

76A New section 34 inserted (Proceedings involving classified security information)

After section 33, insert:

34 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.
- (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 2022 Act for a security information order to protect the confidentiality of the information to be given as evidence in the proceedings; and
- (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 2022 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).
- (4) In this section,—
- 2022 Act** means the Security Information in Proceedings Act 2022
- authorised court, national security information, NSI certificate, and security information order** have the meanings given to them in section 4 of the 2022 Act.

Section 76A: inserted, on 10 May 2023, by section 18 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

77 Section 34 renumbered as section 29C and repositioned (Revocation of designations)

Renumber section 34 as section 29C and reposition it after section 29B (as renumbered and repositioned by section 78 of this Act).

78 Section 35 renumbered as section 29B and repositioned (Designations under section 22 to expire after 3 years unless renewed by Prime Minister)

- (1) Renumber section 35 as section 29B and reposition it after the new cross-heading inserted after section 29A by section 70 of this Act.
- (2) In section 35(1)(a), replace “section 34” with “section 29C”.

78A Section 35B amended (Certain revocation applications stopped)

In section 35B, replace “section 34(1)(a) or (b) on the ground specified in section 34(3)(b)” with “section 29C(1)(a) or (b) on the ground specified in section 29C(3)(b)”.

Section 78A: inserted, on 10 May 2023, by section 19 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

78B Section 35C amended (Duration of designation extended (3-year period until expiry paused))

In section 35C(1) and (2), replace “35” with “29B”.

Section 78B: inserted, on 10 May 2023, by section 19 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

78C Section 35D amended (Periodic review whether designation no longer justified)

In section 35D(2), replace “42” with “29D”.

Section 78C: inserted, on 10 May 2023, by section 19 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

78D Section 35F amended (Periodic review: procedure)

In section 35F(a)(ii), replace “34(2)” with “29C(2)”.

Section 78D: inserted, on 10 May 2023, by section 19 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

78E Cross-heading below section 35G repealed

Repeal the cross-heading below section 35G.

Section 78E: inserted, on 10 May 2023, by section 19 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

79 Section 38 repealed (Procedure in proceedings involving classified security information)

Repeal section 38.

Section 79: replaced, on 10 May 2023, by section 20 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

80 Section 40 repealed (Ancillary general practices and procedures to protect classified security information)

Repeal section 40.

81 Section 42 renumbered as section 35 and repositioned (Notification of revocation, expiry, or invalidity of designations)

(1AAA) Renumber section 42 as section 35 and reposition it after section 34 (as inserted by section 76A of this Act).

- (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, 35, or 35D” with “is found to have been invalid”.
- (3) In section 42(1)(a) and (b), delete “ revocation or expiry or”.

Section 81 heading: amended, on 10 May 2023, by section 21(1) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 81(1AAA): inserted, on 10 May 2023, by section 21(2) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Section 81(2): replaced, on 10 May 2023, by section 21(3) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

81A Section 56 amended (Notice of application under section 55)

In section 56(4), replace “38” with “34”.

Section 81A: inserted, on 10 May 2023, by section 22 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

82 Section 58 amended (Appeal against decision on application under section 55)

In section 58(2), replace “sections 38 and 40” with “section 34”.

Section 82: amended, on 10 May 2023, by section 23 of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

83 Section 59 amended (Discharge of order under section 55 on appeal)

- (1) In section 59(2), replace “section 34” with “section 29C”.
- (2) In section 59(2), replace “section 35(2)” with “section 29B(2)”.

84 Schedule 1AA amended

In Schedule 1AA,—

- (a) insert the Part set out in Schedule 6 of this Act as the last Part; and
- (b) make all necessary consequential amendments.

Part 3
Amendments to other related Acts

Amendment to Crown Proceedings Act 1950

85 Principal Act

Section 86 amends the Crown Proceedings Act 1950.

86 Section 27 replaced (Discovery)

Replace section 27 with:

27 Interrogatories and discovery

- (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.
- (2) Subsection (1) is subject to any rules of court.
- (3) Any order of the court under subsection (1) 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—
 - (a) the application to the Crown of the Security Information in Proceedings Act 2022; 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.

Amendments to Employment Relations Act 2000

87 Principal Act

Sections 88 to 91 amend the Employment Relations Act 2000.

88 Section 133 amended (Jurisdiction concerning penalties)

In section 133(2)(a), replace “and 178 (which allow” with “, 178, and 178AA (which provide”.

89 Section 178 amended (Removal to court)

In the heading to section 178, after “court”, insert “generally”.

90 New section 178AA inserted (Removal to court of proceeding involving national security information)

After section 178, insert:

178AA Removal to court of proceeding involving national security information

If the Attorney-General gives written notice to the Authority that the Crown intends to make an SI application (under section 32 of the Security Information in Proceedings Act 2022) in connection with proceedings before the Authority, section 44 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.

91 Section 187 amended (Jurisdiction of court)

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

Amendments to Evidence Act 2006

92 Principal Act

Sections 93 to 97 amend the Evidence Act 2006.

93 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 the Security Information in Proceedings Act 2022 in relation to the communication or information concerned (*see also* section 33 of that Act).

94 Section 102 amended (Application)

After section 102(b), insert:

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

95 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—
 - (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
 - (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.
- (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.
- (5) For the purposes of subsections (2)(c) and (4),—
- (a) it is sufficient that the certificate includes—

- (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.
- (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
- 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
- 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.

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.

96 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

- (b) in any other case, using the term “witness” followed by an initial or a mark.

97 Schedule 1AA amended

In Schedule 1AA,—

- (a) insert the Part set out in Schedule 7 of this Act as the last Part; and
(b) make all necessary consequential amendments.

Amendments to Health and Safety at Work Act 2015

98 Principal Act

Sections 99 and 100 amend the Health and Safety at Work Act 2015.

99 Section 162 repealed (Proceedings involving classified security information)

Repeal section 162.

100 Schedule 4 repealed

Repeal Schedule 4.

Amendment to Outer Space and High-altitude Activities Act 2017

101 Principal Act

Section 102 amends the Outer Space and High-altitude Activities Act 2017.

102 Section 55 amended (Minister must consult security Ministers about national security)

Repeal section 55(5).

Amendment to Terrorism Suppression (Control Orders) Act 2019

103 Principal Act

Section 104 amends the Terrorism Suppression (Control Orders) Act 2019.

104 Section 36 repealed (Additional requirements for decisions that supporting information is not disclosable)

Repeal section 36.

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

s 11

Schedule 1AA
Transitional, savings, and related provisions

s 4A

Part 1
**Provisions relating to Security Information in Proceedings (Repeals
and Amendments) Act 2022**

1 Interpretation

In this Part, unless the context otherwise requires,—

2022 Act means sections 3 to 11 of the Security Information in Proceedings (Repeals and Amendments) Act 2022

commencement date means the date on which the 2022 Act comes into force.

2 Proceedings affected by amendments

- (1) The amendments made to this Act by the 2022 Act (except for this clause) apply only to proceedings commenced on or after the commencement date.
- (2) To avoid doubt, subclause (1) 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
 - (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.

Schedule 2
**New Part 3 inserted into Schedule 1AA of Criminal Procedure Act
2011**

s 31

Part 3
**Provisions relating to Security Information in Proceedings (Repeals
and Amendments) Act 2022**

5 Interpretation

In this Part, unless the context otherwise requires,—

2022 Act means sections 12 to 31 of the Security Information in Proceedings (Repeals and Amendments) Act 2022

commencement date means the date on which the 2022 Act comes into force.

6 Proceedings affected by amendments

- (1) The amendments made to this Act by the 2022 Act (except for this clause) apply only to proceedings commenced on or after the commencement date.
- (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 3
**New Part 7 inserted into Schedule 1AA of Overseas Investment Act
2005**

s 36

Part 7
**Provisions relating to Security Information in Proceedings (Repeals
and Amendments) Act 2022**

52 Interpretation

In this Part, unless the context otherwise requires,—

2022 Act means sections 32 to 36 of the Security Information in Proceedings (Repeals and Amendments) Act 2022

commencement date means the date on which the 2022 Act comes into force.

53 Proceedings involving classified security information

- (1) The amendments made to this Act by the 2022 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.
- (2) To avoid doubt, subclause (1) 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 2022 Act had not been enacted.

Schedule 4
New Part 2 inserted into Schedule 1 of Passports Act 1992

s 45

Part 2
**Provisions relating to Security Information in Proceedings (Repeals
and Amendments) Act 2022**

2 Interpretation

In this Part, unless the context otherwise requires,—

2022 Act means sections 37 to 45 of the Security Information in Proceedings (Repeals and Amendments) Act 2022

commencement date means the date on which the 2022 Act comes into force

section 29AA proceedings means proceedings to which section 29AA applies.

3 Decision of Minister under section 27GA

(1) This clause applies to a decision of the Minister to take an action specified in section 27GA(3)—

(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 2022 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).

4 Proceedings involving classified security information

(1) The amendments made to this Act by the 2022 Act (except for this clause) apply only to section 29AA proceedings commenced on or after the commencement date.

(2) To avoid doubt, subclause (1) 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 2022 Act had not been enacted.

Schedule 5
**New Schedule 1AA inserted into Telecommunications (Interception
Capability and Security) Act 2013**

s 60

Schedule 1AA
Transitional, savings, and related provisions

s 3B

Part 1
**Provisions relating to Security Information in Proceedings (Repeals
and Amendments) Act 2022**

1 Interpretation

In this Part, unless the context otherwise requires,—

2022 Act means sections 46 to 61 of the Security Information in Proceedings (Repeals and Amendments) Act 2022

commencement date means the date on which the 2022 Act comes into force

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

section 101 proceedings means proceedings to which section 101 applies.

2 Administrative decisions

The amendments made to this Act by the 2022 Act apply only in relation to any relevant decision made on or after the commencement date.

3 Proceedings involving classified security information

- (1) The amendments made to this Act by the 2022 Act (except for this clause) apply only to section 101 proceedings commenced on or after the commencement date.
- (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 2022 Act had not been enacted.

Schedule 6
**New Part 2 inserted into Schedule 1AA of Terrorism Suppression
Act 2002**

s 84

Part 2
**Provisions relating to Security Information in Proceedings (Repeals
and Amendments) Act 2022**

3 Interpretation

In this Part, unless the context otherwise requires,—

2022 Act means sections 62 to 84 of the Security Information in Proceedings (Repeals and Amendments) Act 2022

commencement date means the date on which the 2022 Act comes into force

relevant action means one of the following:

- (a) a decision of the Prime Minister to make a designation under section 20 or 22;
- (b) the expiry of a designation under section 29B (as renumbered and repositioned by section 78 of the Security Information in Proceedings (Repeals and Amendments) Act 2022);
- (c) a decision of the Prime Minister to renew a designation under section 29B (as renumbered and repositioned by section 78 of the Security Information in Proceedings (Repeals and Amendments) Act 2022);
- (d) a decision of the Prime Minister to revoke a designation or to decline an application to revoke a designation under section 29C (as renumbered and repositioned by section 77 of the Security Information in Proceedings (Repeals and Amendments) Act 2022);
- (e) a decision of the Prime Minister that the result of a review under section 35D is that a designation continues to be justified

section 34 proceedings means proceedings to which section 34 applies.

4 Administrative decisions

The amendments made to this Act by the 2022 Act apply only in relation to any relevant action that occurs on or after the commencement date.

5 Proceedings involving classified security information

- (1) The amendments made to this Act by the 2022 Act (except for this clause) apply to section 34 proceedings commenced on or after the commencement date.

- (2) To avoid doubt, subclause (1) applies to section 34 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.
- (3) Proceedings to which section 38 (as in force before the commencement date) applied, and that were not finally determined before the commencement date (including any rehearing, retrial, or appeal), continue as if the amendments made to this Act by the 2022 Act had not been enacted.

Schedule 6: amended, on 10 May 2023, by section 24(1) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Schedule 6: amended, on 10 May 2023, by section 24(2) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Schedule 6: amended, on 10 May 2023, by section 24(3) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Schedule 6: amended, on 10 May 2023, by section 24(4) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Schedule 6: amended, on 10 May 2023, by section 24(5) of the Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18).

Schedule 7**New Part 2 inserted into Schedule 1AA of Evidence Act 2006**

s 97

Part 2**Provisions relating to Security Information in Proceedings (Repeals
and Amendments) Act 2022****2 Interpretation**

In this Part, unless the context otherwise requires,—

2022 Act means sections 92 to 97 of the Security Information in Proceedings (Repeals and Amendments) Act 2022

commencement date means the date on which the 2022 Act comes into force.

3 Proceedings involving classified security information

- (1) The amendments made to this Act by the 2022 Act (except for this clause) apply to proceedings commenced on or after 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, events, or decisions that occurred before, on, or after the commencement 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 the amendments made to this Act by the 2022 Act had not been enacted.

Notes

1 *General*

This is a consolidation of the Security Information in Proceedings (Repeals and Amendments) Act 2022 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Counter-Terrorism Acts (Designations and Control Orders) Amendment Act 2023 (2023 No 18): sections 15–24