

Government Communications Security Bureau Bill

Government Bill

Explanatory note

General policy statement

New Zealand needs independent sources of information on which to base its foreign policy, its defence posture, and its wider economic and trade policies. One of those sources of information is foreign signals intelligence, derived from the interception of communications of foreign governments and other foreign entities.

For many years, dating back to before the Second World War, New Zealand has had a foreign signals intelligence capability. In modern times, since its establishment in 1977, this has been provided by the Government Communications Security Bureau (**GCSB** or the **Bureau**). The Government is committed to maintaining this capability to assist in the vital task of ensuring that New Zealand has access to the information it requires to make the best possible policy decisions.

The Bureau was set up as a non-statutory agency and has remained so to this day. The Director's authority as chief executive officer of the Bureau derives from an instrument of delegation issued by the Prime Minister, but the GCSB has no formal terms of reference, nor are its signals intelligence functions (or its complementary role of ensuring the security of New Zealand government communications and information systems) formally defined.

This state of affairs may be contrasted with the position of the New Zealand Security Intelligence Service (**NZSIS**), which has had its own empowering legislation for 30 years. The New Zealand Security Intelligence Service Act 1969 (amended in 1977, 1996, and twice in 1999) establishes the Service, defines its functions, delineates the

scope of its authority, and makes provision for the issue of interception warrants, together with a range of other “machinery” provisions.

The distinction between the firm statutory footing on which the NZSIS exists and the non-statutory basis position of the GCSB can no longer be justified. The absence of any definition of the GCSB’s foreign intelligence functions has led to criticism; for example, that the Bureau’s signals intelligence operations target the communications of New Zealand citizens and that the Bureau’s operations are beyond the scope of parliamentary scrutiny.

While these particular criticisms are without justification in fact (as the Inspector-General of Intelligence and Security has explicitly reported), there remains a perception that the Bureau is insufficiently accountable and its operational scope inadequately defined.

The primary policy objectives to be achieved by this Bill are—

- to formalise in statute the existing executive arrangements that establish the GCSB and authorise its activities; and
- to fill a gap in the existing legal structure that currently prevents the future expansion of the GCSB’s signals intelligence operations in particular areas that are likely to become increasingly important over time.

This Bill will put the position of the GCSB beyond doubt as a legitimate agency of government. It emphasises that the GCSB’s signals intelligence functions are to be focused on meeting the Government’s foreign intelligence needs. Its aim is to define the functions of the GCSB and to make better provision for its administration and the conduct of its operational activities, thereby placing the GCSB on a similar footing to that of the Security Intelligence Service.

Clause by clause analysis

Clause 1 states the Title of the Act.

Part 1

Preliminary provisions

Clause 2 provides that the Act (apart from **section 32**) comes into force on the day after it receives the Royal assent.

Clause 3 states the purpose of the Act, which is to continue the Government Communications Security Bureau and establish it as a department of State, to specify the objective and functions of the Bureau, to specify when the Bureau needs an interception warrant or a computer access authorisation before it may intercept foreign communications, to specify the conditions that must be met before a warrant or an authorisation may be issued, and to specify when the Bureau may use interception devices without a warrant or an authorisation.

Clause 4 relates to interpretation. Key definitions include—

- **foreign intelligence**, which means information about the capabilities, intentions, or activities of a foreign organisation or a foreign person:
- **foreign organisation**, which means—
 - a government of an overseas country or an entity controlled by 1 of those governments:
 - an overseas company or a subsidiary of an overseas company:
 - an unincorporated body that consists exclusively of foreign organisations or foreign persons and that does not operate in New Zealand:
 - an international organisation:
 - a person acting in his or her capacity as an agent or representative of a foreign organisation:
- **foreign person**, which means an individual who is neither a New Zealand citizen nor a permanent resident.

Clause 5 states that the Act binds the Crown.

Part 2

Organisation, objectives, and functions of Bureau

Clause 6 continues the Bureau and provides that, on the commencement of the Act, the Bureau will be a department of State.

Clause 7 states the objective of the Bureau. This is to contribute to the national security of New Zealand by providing—

- foreign intelligence that the New Zealand Government requires to protect and advance New Zealand's security or defence, New Zealand's international relations, and New

Zealand's international well-being or economic well-being to the extent that they are affected by foreign organisations or foreign persons:

- advice, assistance, and protection to departments of State and other government agencies to protect and enhance the security of their communications, information systems, and computer systems, and to protect them from technological forms of surveillance by foreign organisations or foreign persons.

Clause 8 sets out the functions of the Bureau. The Bureau may perform its functions only to pursue its objective or to protect the safety of a person or to help prevent and detect serious crime. The performance of the Bureau's functions is subject to ministerial control. The Bureau's functions include the following:

- the gathering of foreign intelligence by intercepting communications under the authority of the Act, by co-operating with public authorities or other entities in New Zealand and abroad, and by collecting information in any other lawful manner:
- to decode and translate foreign communications:
- to co-operate with, or to provide advice and assistance to, any public authority or other entity, in New Zealand or abroad, on the protection of the information of the public authority or other entity, or on any matter that is relevant to the functions of the public authority or other entity and that is also relevant to pursuing the Bureau's objective, or to protecting the safety of a person, or to supporting the prevention or detection of serious crime.

Clause 9 provides for the position of the Director of the Bureau. The Director is appointed by the Governor-General, and holds office during the pleasure of the Governor-General.

Clause 10 provides for a person nominated by the Minister to act as Director during the Director's absence or while there is a vacancy in the office of Director.

Clause 11 prohibits a person who is an employee or former employee of the Bureau from disclosing or using information obtained by the person through the person's connection with the Bureau except in the course of the person's official duties or as authorised by the Minister.

Clause 12 requires the Bureau to prepare an annual report. The annual report must be delivered to the Minister, who must submit it to the Intelligence and Security Committee. The annual report must also be presented to the House of Representatives within 30 days after the Minister receives it from the Director. The Minister may direct the deletion of passages from the copy presented to the House. This may be done if the Minister considers that a passage is likely to prejudice New Zealand's security or defence or international relations; or to prejudice the confidential entrusting of information by international organisations, overseas governments, or other agencies; or to endanger the safety of a person; or to prejudice the privacy of an individual. The clause follows closely provisions on annual reports in the New Zealand Security Intelligence Service Act 1969 (as amended in 1999).

Part 3

Interception of communications

Purpose of Part

Clause 13 states the purpose of this Part. This is to enable the Bureau to obtain foreign intelligence, subject to the restrictions imposed by the Act, and to authorise interceptions only for the purpose of obtaining foreign intelligence.

Restrictions imposed on interceptions

Clause 14 provides that the Bureau may not take any action for the purpose of intercepting the communications of a New Zealand citizen or a permanent resident.

Clause 15 sets out the types of interception that the Bureau may not undertake without a warrant or an authorisation. Interceptions that involve physically connecting an interception device to any part of a network or the installation of an interception device in a place without the permission of the occupier may not be undertaken without a warrant. Nor may interception devices be installed in a place without a warrant if the purpose of the installation is to intercept communications made or received in the place. Interceptions that involve accessing computer systems may not be undertaken without an authorisation.

Clause 16 sets out when the Bureau may, without an interception warrant, use interception devices to intercept foreign communications. The Bureau may do this if—

- the interception does not involve physically connecting an interception device to any part of a network, or installing an interception device in a place without the permission of the occupier, or accessing a computer system; and
- the interception is for the purpose of obtaining foreign intelligence; and
- the only private communications to be intercepted are communications that are produced, sent, or received by, or sent to, a foreign organisation or a foreign person, and that contain, or may reasonably be expected to contain, foreign intelligence.

Interception warrants

Clause 17 provides for the issue by the Minister of warrants authorising the use of interception devices to intercept communications not otherwise lawfully obtainable by the Bureau.

The kinds of communication that may be intercepted are, first, foreign communications made or received by one or more specified persons or received in one or more specified places, and, second, foreign communications that are sent from, or are being sent to, an overseas country. A warrant may be issued if—

- the proposed interception is necessary to protect or advance the security or defence of New Zealand, or New Zealand's international relations, or New Zealand's international well-being or economic well-being (to the extent that they are affected by foreign organisations or foreign persons); and
- the value of the information to be obtained justifies the particular interception; and
- the information is not likely to be obtained by other means; and
- if the warrant will authorise the interception of the communications made or received by specified persons or in a specified place, that there are reasonable grounds for believing that the persons specified in the warrant are foreign organisations or foreign persons, and that any place specified is occupied by a foreign organisation or foreign person.

Before the Minister responsible for the Bureau issues a warrant, the Minister must consult the Minister of Foreign Affairs and Trade about the warrant.

The clause follows closely provisions on the issue of warrants in the New Zealand Security Intelligence Service Act 1969 (as amended in 1999).

Clause 18 requires a warrant to specify the person or class of person who may make the interception, and provides for requests for assistance. The clause is based on corresponding provisions in the New Zealand Security Intelligence Service Act 1969.

Clause 19 requires every person who, under an interception warrant, intercepts the communication of a person specified in the warrant to take all practicable and reasonable steps to minimise the likelihood of intercepting communications that are not relevant to the person specified in the warrant. The clause is based on a provision in the New Zealand Security Intelligence Service Act 1969 (as amended in 1999).

Computer access authorisation

Clause 20 provides that the Minister may authorise the Bureau to access a computer system of a specified foreign organisation or foreign person. The Minister must be satisfied that—

- the access is necessary to protect or advance the security or defence of New Zealand, or New Zealand's international relations, or New Zealand's international well-being or economic well-being (to the extent that they are affected by foreign organisations or foreign persons); and
- the person whose computer system may be accessed is a foreign person or foreign organisation; and
- the value of the information justifies the access; and
- the information is not likely to be obtained by other means.

Before the Minister responsible for the Bureau issues an authorisation, the Minister must consult the Minister of Foreign Affairs and Trade.

Provisions applicable to warrants and authorisations

Clause 21 provides that the Director of the Bureau may not delegate the Director's function of applying for a warrant or for an authorisation.

Clause 22 provides that a person who is authorised to give effect to an interception warrant or to a computer access authorisation is justified in taking any reasonable action necessarily involved in doing so, as long as the person acts in accordance with the terms and conditions of the warrant or authorisation.

Clause 23 requires every interception warrant and every computer access authorisation to specify the term of the warrant or authorisation, which may not exceed 12 months.

Clause 24 requires every person who intercepts a communication under the Act to destroy the communication if it is not relevant to the interests specified in *clause 7(1)(a)* or to the functions of the Bureau. The clause follows a provision in the New Zealand Security Intelligence Service Act 1969.

Clause 25 permits the Bureau to retain and communicate information for the purpose of preventing or detecting serious crime. The clause follows a provision in the New Zealand Security Intelligence Service Act 1969.

Part 4**Provisions relating to other enactments**

Clauses 26 and 27 make consequential amendments.

Clause 28 amends the Inspector-General of Intelligence and Security Act 1996 to give the Inspector-General the function to review procedures adopted by the Bureau to ensure compliance with *Part 3* of the Act.

Clause 29 makes a consequential amendment.

Clause 30 makes the Bureau subject to the Official Information Act 1982.

Clauses 31 and 32 make consequential amendments.

Clause 33 amends the State Sector Act 1988 to place the Director of the Bureau in the same position as the Solicitor-General, the Controller and Auditor-General, the Commissioner of Police, and the State Services Commissioner. These office-holders are not subject to

the provisions of the State Sector Act 1988 that govern the appointment, conditions of employment, and review of performance of chief executives.

Clause 34 provides that the following sections of the State Sector Act 1988 will not apply to the Bureau:

- section 30 (relating to annual reports of departments):
- section 40 (relating to acting chief executive):
- section 58(2) (relating to information on equal employment opportunities programmes in annual reports of departments; that provision is replicated in *clause 12(3)(d)*):
- section 68 (relating to the negotiation by the State Services Commissioner of collective agreements).

Clause 35 revokes the Crimes (Exemption of Listening Device) Order 1997, which exempts the listening device at the Defence Satellite Communications Unit (Blenheim) from the provisions of Part IXA of the Crimes Act 1961.

Rt Hon Helen Clark

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Government Communications Security Bureau Act **2001**.
- Part 1** 5
Preliminary provisions
- 2 Commencement**
- (1) This Act (other than **section 32**) comes into force on the day after the date on which it receives the Royal assent.
- (2) **Section 32** comes into force on the day on which section 133A of the Radiocommunications Act 1989 comes into force. 10
- 3 Purpose**
The purpose of this Act is to—
- (a) continue the Government Communications Security Bureau and establish it as a department of State: 15
- (b) specify the objective and functions of the Bureau:
- (c) specify the circumstances in which the Bureau requires an interception warrant or a computer access authorisation to intercept foreign communications:
- (d) specify the conditions that are necessary for the issue of an interception warrant or a computer access authorisation and the matters that may be authorised by a warrant or an authorisation: 20
- (e) specify the circumstances in which the Bureau may use interception devices to intercept foreign communications without a warrant or an authorisation. 25
- 4 Interpretation**
In this Act, unless the context otherwise requires,—
- access**, in relation to any computer system, means instruct, communicate with, store data in, retrieve data from, or otherwise make use of any of the resources of the computer system 30
- Bureau** means the Government Communications Security Bureau continued by **section 6**

communication includes signs, signals, impulses, writing, images, sounds, or data that a person or machine produces, sends, receives, processes, or holds in any medium

computer access authorisation or **authorisation** means an authorisation issued under **section 20** 5

computer system—

- (a) means—
 - (i) a computer; or
 - (ii) 2 or more interconnected computers; or
 - (iii) any communication links between computers or to remote terminals; or 10
 - (iv) 2 or more interconnected computers combined with any communication links between computers or to remote terminals; and
- (b) includes all related input, output, processing, storage, software, or communication facilities, and stored data 15

Director means the chief executive of the Bureau; and includes a person who, under **section 10**, exercises or performs the functions, duties, or powers of the Director

foreign communications means communications that contain, or may reasonably be expected to contain, foreign intelligence 20

foreign intelligence means information about the capabilities, intentions, or activities of a foreign organisation or a foreign person 25

foreign organisation means—

- (a) a Government of any country other than New Zealand;
- (b) an entity controlled by the Government of any country other than New Zealand;
- (c) a company or body corporate that is incorporated outside New Zealand, or any company within the meaning of the Companies Act 1993 that is, for the purposes of the Companies Act 1993, a subsidiary of any company or body corporate incorporated outside New Zealand: 30
- (d) an unincorporated body of persons consisting exclusively of foreign organisations or foreign persons that carry on activities wholly outside New Zealand: 35
- (e) an international organisation:

- (f) a person acting in his or her capacity as an agent or a representative of any Government, body, or organisation referred to in any of **paragraphs (a) to (e)**
- foreign person** means an individual who is neither a New Zealand citizen nor a permanent resident 5
- intercept** includes hear, listen to, record, monitor, acquire, or receive a communication, or acquire its substance, meaning, or sense
- interception device** means any electronic, mechanical, electromagnetic, optical, or electro-optical instrument, apparatus, equipment, or other device that is used or is capable of being used to intercept communications 10
- interception warrant** means a warrant issued under **section 17**
- medium** means any form in which communications may be produced, sent, received, processed, or held; and includes electromagnetic, acoustic, or other energy 15
- Minister** means the Minister of the Crown who, under any warrant or with the authority of the Prime Minister, is for the time being responsible for the Bureau
- network** has the same meaning as in section 2(1) of the Telecommunications Act 1987; but does not include a line (within the meaning of that Act) that is used exclusively by the Bureau 20
- permanent resident** means a person who is, or who is deemed to be, the holder of a residence permit under the Immigration Act 1987 25
- private communication**—
- (a) means a communication between 2 or more parties made under circumstances that may reasonably be taken to indicate that any party to the communication desires it to be confined to the parties to the communication; but 30
- (b) does not include a communication occurring in circumstances in which any party ought reasonably to expect that the communication may be intercepted by some other person not having the express or implied consent of any party to do so 35
- serious crime** means,—
- (a) in relation to New Zealand, any indictable offence; and

- (b) in relation to an overseas country, any offence that, if it occurred in New Zealand, would be an indictable offence.

5 Act binds the Crown
This Act binds the Crown.

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Part 2
Organisation, objectives, and functions of Bureau

6 Bureau continued and established as department

- (1) There continues to be an instrument of the Executive Government of New Zealand known as the Government Communications Security Bureau. 10
- (2) On and from the commencement of this Act, the Bureau is a department of State.

7 Objective of Bureau

- (1) The objective of the Bureau is to contribute to the national security of New Zealand by providing— 15
 - (a) foreign intelligence that the Government of New Zealand requires to protect and advance—
 - (i) the security or defence of New Zealand; or
 - (ii) the international relations of the Government of New Zealand; or 20
 - (iii) New Zealand's international well-being or economic well-being; and
 - (b) advice, assistance, and protection to departments of State and other instruments of the Executive Government of New Zealand in order to— 25
 - (i) protect and enhance the security of their communications, information systems, and computer systems; or
 - (ii) protect their environments from electronic or other forms of technical surveillance by foreign organisations or foreign persons. 30
- (2) For the purposes of **subsection (1)(a)(iii)**, the interests of New Zealand's international well-being or economic well-being are relevant only to the extent that they are affected by the actions or intentions of foreign organisations or foreign persons. 35

8 Functions of Bureau

- (1) The Bureau has the following functions:
 - (a) to gather foreign intelligence, in accordance with the foreign intelligence requirements of the Government of New Zealand,— 5
 - (i) by intercepting communications under the authority of this Act; or
 - (ii) by co-operating with public authorities or other entities in New Zealand and abroad; or
 - (iii) by collecting information in any other lawful manner: 10
 - (b) to decipher, decode, and translate foreign communications:
 - (c) to examine and analyse foreign communications and foreign intelligence: 15
 - (d) to provide reports on foreign intelligence to the Minister and any person or office holder authorised by the Minister:
 - (e) to co-operate with, or to provide advice and assistance to, any public authority or other entity, in New Zealand or abroad,— 20
 - (i) on the protection of information that the public authority or other entity produces, sends, receives, or holds in any medium; or
 - (ii) on any matter that is relevant— 25
 - (A) to the functions of the public authority or other entity; and
 - (B) to any purpose specified in **subsection (2)**.
- (2) The Bureau may perform its functions only for the following purposes: 30
 - (a) to pursue its objective:
 - (b) to protect the safety of any person:
 - (c) in support of the prevention or detection of serious crime.
- (3) The performance of the Bureau’s functions is subject to the control of the Minister. 35

9 Director of Bureau

- (1) The Director of the Bureau is appointed by the Governor-General.

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- (2) The remuneration of the Director is determined by the Higher Salaries Commission under the Higher Salaries Commission Act 1977.
- (3) The Director holds office during the pleasure of the Governor-General and is subject to any conditions (other than remuneration) determined by the Minister. 5
- (4) Despite **subsection (3)**, the person who, at the commencement of this Act, holds office as Director—
- (a) continues to hold that office in accordance with the person's contract of employment; and 10
- (b) until a determination of the kind referred to in **subsection (2)** is made in respect of the person, continues to be remunerated in accordance with that contract; and
- (c) is eligible to be reappointed as Director.
- 10 Acting Director** 15
- (1) When there is a vacancy in the position of Director or when the Director is (for whatever reason) absent from duty, the functions, duties, and powers of the Director must be exercised or performed by a person whom the Minister directs to exercise or perform those functions, duties, and powers. 20
- (2) The Minister may give a direction before the occurrence of any vacancy or absence referred to in **subsection (1)** or while the vacancy or absence continues.
- (3) No direction and no act done by a person acting under a direction given under this section may, in a proceeding, be questioned on the ground that the occasion for the direction had not arisen or had ceased, or on the ground that the person had not been appointed to a position to which the direction relates. 25
- 11 Prohibition on unauthorised disclosure of information** 30
- (1) A person who is or was an employee of the Bureau may not disclose or use any information gained by or conveyed to the person through the person's connection with the Bureau except in the strict course of the person's official duties or as authorised by the Minister. 35
- (2) Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 2 years

or to a fine not exceeding \$2,000 who contravenes **subsection (1)**.

Compare: 1969 No 24 s 12A(1), (4)

12 Annual report

- (1) As soon as practicable after each year ending on 30 June, the Director must deliver to the Minister a report on the activities of the Bureau during that year. 5
- (2) When the Minister receives a copy of a report under **subsection (1)**, the Minister must, without delay, submit a copy of the report to the members of the Intelligence and Security Committee established under the Intelligence and Security Committee Act 1996. 10
- (3) Within 30 sitting days after receiving the report under **subsection (1)**, the Minister must present to the House of Representatives a copy of the report that accords with any directions given under **subsection (4)**, and includes— 15
- (a) the statement specified in section 39(3) of the Public Finance Act 1989 as set out in section 70I of that Act; and
- (b) a statement as to whether or not any interception warrants were in force during the year to which the report relates; and 20
- (c) a statement as to whether or not any computer access authorisations were in force during the year to which the report relates; and 25
- (d) a statement setting out—
- (i) a summary of the Bureau's equal employment opportunities programme for the year to which the report relates; and
- (ii) an account of the extent to which the Bureau was able to meet, during the year to which the report relates, the equal employment opportunities programme for that year. 30
- (4) Before presenting a copy of the report to the House of Representatives under **subsection (3)**, the Minister may direct that any material (other than the material referred to in **subsection (3)(a) to (d)**) be deleted from the report if the Minister considers that the material is likely— 35

- (a) to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
- (b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the Government of any other country or any agency of such a Government; or 5
- (c) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by any international organisation; or 10
- (d) to endanger the safety of any person; or
- (e) to prejudice the privacy of an individual.

Compare: 1969 No 24 s 4J

Part 3

Interception of communications 15

Purpose of Part

13 Purpose of Part

The purpose of this Part is,—

- (a) subject to the restrictions imposed by this Part, to enable the Bureau to obtain foreign intelligence; and 20
- (b) to authorise the interception of communications (whether under **section 16** or under an interception warrant or a computer access authorisation) only if the purpose of the interception is to obtain foreign intelligence. 25

Restrictions imposed on interceptions

14 Interceptions not to target domestic communications

Neither the Director, nor an employee of the Bureau, nor a person acting on behalf of the Bureau may authorise or take any action for the purpose of intercepting the communications of a person (not being a foreign organisation) who is a New Zealand citizen or a permanent resident. 30

15 Interceptions for which warrant or authorisation required

- (1) Unless authorised by an interception warrant to do so, neither the Director, nor an employee of the Bureau, nor a person acting on behalf of the Bureau may—
 - (a) physically connect an interception device to any part of a network; or
 - (b) install an interception device in a place—
 - (i) without the permission of the occupier of the place; or
 - (ii) for the purpose of intercepting communications made or received in the place.
- (2) Unless authorised by a computer access authorisation to do so, neither the Director, nor an employee of the Bureau, nor a person acting on behalf of the Bureau may access a computer system or part of a computer system that the person concerned is not otherwise authorised to access.

16 Certain interceptions permitted without interception warrant

- (1) The Director, or an employee of the Bureau, or a person acting on behalf of the Bureau may, without an interception warrant, intercept foreign communications only if the interception is authorised by this Act or by another enactment.
- (2) The Director, or an employee of the Bureau, or a person acting on behalf of the Bureau may, without an interception warrant, intercept foreign communications by using an interception device only if—
 - (a) the interception does not involve any activity specified in **section 15**; and
 - (b) the interception is carried out by the Director or with the authority of the Director for the purpose of obtaining foreign intelligence; and
 - (c) the foreign communications do not contain private communications other than private communications that—
 - (i) are produced, sent, or received by, or sent to, a foreign organisation or a foreign person; and
 - (ii) contain, or may reasonably be expected to contain, foreign intelligence.

- (3) This section is subject to **section 14**.

Interception warrants

17 Issue of interception warrant

- (1) The Director may apply in writing to the Minister for the issue of an interception warrant authorising the use of interception devices to intercept communications not otherwise lawfully obtainable by the Bureau. 5
- (2) If satisfied on evidence given on oath by the Director that the conditions specified in **subsection (3)** apply to the proposed warrant, the Minister may issue the warrant to authorise the interception of either or both of the following kinds of communication: 10
- (a) foreign communications made or received by 1 or more persons specified in the warrant or made or received in 1 or more places specified in the warrant: 15
- (b) foreign communications that are sent from, or are being sent to, an overseas country.
- (3) The conditions referred to in **subsection (2)** are that—
- (a) the interception to be authorised by the proposed warrant is essential for the protection or advancement of 1 or more of the interests specified in **section 7(1)(a)**; and 20
- (b) the value of the information sought to be obtained under the proposed warrant justifies the particular interception; and
- (c) the information is not likely to be obtained by other means; and 25
- (d) if the communications to be intercepted are of the kind specified in **subsection (2)(a)**, that there are reasonable grounds for believing—
- (i) that any person specified in the proposed warrant as a person whose communications may be intercepted is a foreign person or a foreign organisation; and 30
- (ii) that any place to be specified in the proposed warrant is occupied by a foreign organisation or a foreign person. 35
- (4) Before issuing a warrant, the Minister must consult the Minister of Foreign Affairs and Trade about the proposed warrant.

(5) The Minister may issue a warrant subject to any conditions that the Minister considers advisable in the public interest.

(6) This section is subject to **section 14**.

Compare: 1969 No 24 ss 4A(2)–(5), 4B(3)

18 Persons acting under warrant

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(1) Every interception warrant must specify the person or class of person who may make the interception authorised by the warrant.

(2) A warrant may also request 1 or more persons or class of persons to give any assistance that is reasonably necessary to give effect to the warrant.

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(3) If a request is made, under **subsection (2)**, to 1 or more persons or class of persons who are employees (the **employees**), the warrant must also request the persons who are the employers of the employees, or any other persons in any way in control of the employees, to make the services of the employees available to the Bureau.

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(4) On an application made in writing by the Director, the Minister may amend a warrant—

(a) by substituting another person for the person specified in the warrant under **subsection (1)**:

20

(b) by substituting another person or another class of persons for a person or class of persons requested under **subsection (2)**:

(c) by adding any person or class of persons to the persons requested under **subsection (2)**.

25

Compare: 1969 No 24 s 4D

19 Duty to minimise impact of interception on third parties

Every person who, under an interception warrant, intercepts or assists in intercepting the communications of 1 or more persons specified in the warrant must take all practicable steps that are reasonable in the circumstances to minimise the likelihood of intercepting communications that are not relevant to the persons whose communications are to be intercepted.

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Compare: 1969 No 24 s 4F(1)

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Computer access authorisation

- 20 Authorisation to access computer system**
- (1) The Minister may, on the written application of the Director, authorise the Director or a specified employee, or a specified class of employees, of the Bureau to access a computer system or part of computer system of a specified foreign organisation or foreign person. 5
- (2) Before the Minister grants an authorisation, he or she must be satisfied on evidence given on oath by the Director that—
- (a) the access to be authorised is essential for the protection or advancement of 1 or more of the interests specified in **section 7(1)(a)**; and 10
- (b) that the persons whose computer system is to be accessed are foreign persons or foreign organisations; and 15
- (c) the value of the information sought to be obtained under the authorisation justifies the access; and
- (d) the information is not likely to be obtained by other means. 20
- (3) Every authorisation must be in writing. 20
- (4) Before issuing an authorisation, the Minister must consult the Minister of Foreign Affairs and Trade about the proposed authorisation.
- (5) The Minister may issue an authorisation subject to any conditions that the Minister considers advisable in the public interest. 25

Provisions applicable to warrants and authorisations

- 21 Director's functions in relation to warrants and authorisations not to be delegated**
- Despite section 41 of the State Sector Act 1988, the Director may not delegate to any person the Director's functions under **section 17 or section 20**. 30
- 22 Action taken in accordance with warrant or authorisation justified**
- (1) Every person who is authorised to give effect, or to assist in giving effect, to an interception warrant or to a computer access authorisation is justified in taking, in accordance with 35

the terms and conditions of the warrant or authorisation, any reasonable action necessarily involved in giving, or assisting to give, effect to the warrant or authorisation.

- (2) In any proceedings, a certificate by the Attorney-General as to any matters specified in a warrant or authorisation is sufficient evidence of those matters and, if such a certificate is produced, it is not necessary to produce the warrant or authorisation to which the certificate relates. 5

Compare: 1969 No 24 s 4A(6), (7)

23 Term of warrant or authorisation 10

- (1) Every interception warrant and every computer access authorisation must specify a period not exceeding 12 months for which the warrant or authorisation is valid.
- (2) The expiry of an interception warrant or of an authorisation does not prevent a further application for an interception warrant or an authorisation in respect of the same subject matter. 15

Compare: 1969 No 24 s 4A

24 Destruction of irrelevant records obtained by interception

- (1) Every person who intercepts any communication under **section 16** or under an interception warrant or a computer access authorisation must, as soon as practicable after the interception, destroy any copy that he or she may make of the communication, or any part of the communication, and any record, whether in writing or otherwise, of the information obtained by that interception, except to the extent that the information recorded in the copy or record is relevant to— 20
- (a) the protection or advancement of 1 or more of the interests specified in **section 7(1)(a)**; or 25
- (b) any of the Bureau's functions under **section 8**. 30
- (2) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who knowingly fails to comply with **subsection (1)**.

Compare: 1969 No 24 s 4G

25 Prevention or detection of serious crime 35

Despite **section 24**, the Director, for the purpose of preventing or detecting serious crime in New Zealand or in any other

country, may retain any information that comes into the possession of the Bureau and may communicate that information to members of the New Zealand Police or to any other persons, and in any manner, that the Director thinks fit.

Compare: 1969 No 24 s 4H

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Part 4 Provisions relating to other enactments

26 Amendment to Crimes Act 1961

- (1) Section 216B(2)(b) of the Crimes Act 1961 is amended by inserting, after subparagraph (iii), the following subparagraph: 10

“(iiia) the Government Communications Security Bureau Act 2001; or”.

- (2) Section 216D(2) of the Crimes Act 1961 is amended by inserting, after the words “New Zealand Security Intelligence Service” in both places where they appear, the words “or the Government Communications Security Bureau”. 15

27 Amendment to Higher Salaries Commission Act 1977

The Fourth Schedule of the Higher Salaries Commission Act 1977 is amended by inserting, after the item relating to the Chief of the Employment Relations Authority and other members of the Employment Relations Authority, the item “Director of the Government Communications Security Bureau.” 20

28 Amendment to Inspector-General of Intelligence and Security Act 1996 25

Section 11(1) of the Inspector-General of Intelligence and Security Act 1996 is amended by inserting, after paragraph (d), the following paragraph:

“(da) without limiting the generality of paragraph (a), to review the effectiveness and appropriateness of the procedures adopted by the Government Communications Security Bureau to ensure compliance with the provisions of Part 3 of the Government Communications Security Bureau Act 2001 in relation to the issue and execution of interception warrants and computer access authorisations:”. 30
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- 29 Amendment to New Zealand Security Intelligence Service Act 1969**
Section 4J of the New Zealand Security Intelligence Service Act 1969 is amended by repealing subsection (5).
- 30 Amendment to Official Information Act 1982** 5
The First Schedule of the Official Information Act 1982 is amended by inserting, in its appropriate alphabetical order, the item “Government Communications Security Bureau”.
- 31 Amendment to Public Finance Act 1989** 10
Section 39 of the Public Finance Act 1989, as set out in section 70I of that Act, is amended by repealing subsections (4) and (5), and substituting the following subsection:
“(4) The statement required by subsection (3) must be included in the department’s annual report prepared under the New Zealand Security Intelligence Service Act 1969 or the Government Communications Security Bureau Act 2001, as the case may require.” 15
- 32 Amendment to Radiocommunications Act 1989**
(1) Section 133A(2)(e) of the Radiocommunications Act 1989 is amended by inserting, after subparagraph (ii), the following subparagraph: 20
“(ia) the Government Communications Security Bureau Act 2001; or”.
(2) Section 133A is amended by repealing subsection (3), and substituting the following subsection: 25
“(3) For the purposes of this section,—
“(a) **foreign intelligence** has the same meaning as in **section 4** of the Government Communications Security Bureau Act 2001:
“(b) **security** has the same meaning as in section 2 of the New Zealand Security Intelligence Service Act 1969.” 30
- 33 Amendments to State Sector Act 1988**
(1) Section 44(1) of the State Sector Act 1988 is amended by repealing paragraph (d), and substituting the following paragraphs: 35

- “(d) the Director of the Government Communications Security Bureau; or
“(e) the State Services Commissioner.”
- (2) Section 44(2) of the State Sector Act 1988 is amended by adding the following paragraph: 5
“(e) the Director of the Government Communications Security Bureau is the chief executive of the Government Communications Security Bureau.”
- (3) The First Schedule of the State Sector Act 1988 is amended by inserting, in its appropriate alphabetical order, the item 10
“Government Communications Security Bureau.”
- 34 Certain provisions of State Sector Act 1988 not to apply**
Sections 30, 40, 58(2), and 68 of the State Sector Act 1988 do not apply to the Government Communications Security Bureau. 15
- 35 Revocation**
The Crimes (Exemption of Listening Device) Order 1997 (SR 1997/145) is revoked.