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NEW ZEALAND SECURITY INTELLIGENCE SERVICE AMENDMENT BILL

AS REPORTED FROM THE INTELLIGENCE AND SECURITY
COMMITTEE

COMMENTARY

Recommendation

The Intelligence and Security Committee has examined the New Zealand Security Intelligence Service Amendment Bill and recommends that it be passed with the amendments shown.

Conduct of the examination

The New Zealand Security Intelligence Service Amendment Bill was introduced, had its second reading and was referred to the Intelligence and Security Committee on 15 December 1998. The closing date for submissions was 29 January 1999. Late submissions were also accepted. We received and considered 162 submissions. One witness was invited to appear before the committee: Dame Stella Rimington. Advice was received from the New Zealand Security Intelligence Service and the Department of the Prime Minister and Cabinet.

The commentary sets out the details of our consideration of the bill and the major issues addressed by us.

Purpose

The aim of the bill is to confer on officers of the New Zealand Security Intelligence Service (NZSIS) acting under interception warrants, the express powers that are necessary to give effect to those warrants. These powers include the power to enter places, and in appropriate cases, to instal a device or equipment in a place or remove material from the place. The measure has become necessary because of the decision of the Court of Appeal, in the case *Choudry v Attorney-General*, that the New Zealand Security Intelligence Act 1969 does not give officers acting under an interception warrant those powers.

The New Zealand Security Intelligence Service Act 1969 (as amended in 1977 and 1996)

The committee listened carefully to a significant range of issues which were raised through the public process. Accordingly, we have considered these and have agreed to a number of amendments.

The committee agreed to make more explicit the term "thing" when referring to any "device or equipment" being installed, maintained and subsequently removed by virtue of an interception warrant. The term "thing" has been retained in one particular area; that is, when referring to any "document or thing" being accessed or seized by authority of the warrant.

The committee agreed that all interception warrants must specify a period (not exceeding 12 months).

The third issue relates to the duty to minimise the impact of interception warrants on third parties. This is achieved by:

- A requiring the Director of the NZSIS to give prior approval to the entry of third party's premises, other than one specified in the warrant;
- B requiring the Minister in charge of the NZSIS to be informed without delay of the approval;
- C requiring the taking of all practicable steps that are reasonable in the circumstances to minimise the likelihood of intercepting or seizing communications that are not relevant to the person named in the warrant.

The committee has also agreed to add a definition of "document".

Other matters arising as a result of submissions on the bill

The committee was receptive to a number of other concerns raised through submissions on the New Zealand Security Intelligence Service Amendment Bill. However, the consequential initiatives debated by the committee do not fall within the scope of the current bill. As a result, a further New Zealand Security Intelligence Service Amendment Bill (No. 2) will be introduced. The No. 2 Bill addresses concerns about the special powers of the NZSIS. It provides greater certainty as to when those powers may be exercised. It also provides safeguards against potential abuse. In particular, it limits the component of the definition of "security" concerning New Zealand's international or economic well-being to foreign, or foreign-influenced, capabilities, intentions, or activities that impact on New Zealand's international or economic well-being. The bill requires domestic interception warrants, that is those warrants that affect New Zealand citizens or permanent residents, to be issued jointly by the Minister in Charge of the NZSIS and a Commissioner of Security Warrants, who will be a retired High Court Judge. The bill makes explicit the current practice whereby the Minister in Charge of the NZSIS may not direct the NZSIS to put any person in New Zealand under surveillance. Finally, it requires the Director of the NZSIS to consult regularly with the Leader of the Opposition to keep him or her informed about security matters.

The committee anticipates that, as a result of the package of initiatives addressed in both the New Zealand Security Intelligence Service Amendment Bill and the New Zealand Security Intelligence Service Amendment Bill (No. 2), the role of the New Zealand Security Intelligence Service will be more clearly defined.

KEY TO SYMBOLS USED IN REPRINTED BILL
AS REPORTED FROM A STATUTORY COMMITTEE

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

New (Unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously



Rt Hon Jenny Shipley

**NEW ZEALAND SECURITY INTELLIGENCE SERVICE
AMENDMENT**

ANALYSIS

| Title | |
|--|---|
| 1. Short Title and commencement | 4A. Duty to minimise impact of interception warrants on third parties |
| 2. Interpretation | 5. Operation of section 4A of principal Act before commencement of this Act |
| 3. Issue of interception warrant | |
| 4. Removal of things after warrant ceases to be in force | |

A BILL INTITULED

An Act to amend the New Zealand Security Intelligence Service Act 1969

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title and commencement**—(1) This Act may be cited as the New Zealand Security Intelligence Service Amendment Act 1998, and is part of the New Zealand Security Intelligence Service Act 1969* (“the principal Act”).

10 (2) This Act comes into force on the day after the date on which it receives the Royal assent.

15 **2. Interpretation**—(1) Section 2 of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

“‘Copy’ includes to copy by any electronic, optical, photographic, or other process:

New (Unanimous)

“‘Document’ has the meaning given to it by section 2(1) of the Official Information Act 1982:

*R.S. Vol. 21, p. 559
Amendment: 1996, No. 48

“‘Place’ includes any land, building, premises, dwellinghouse, vehicle, vessel, or aircraft:

“‘Seize’, in relation to any communication, document, or thing not otherwise lawfully obtainable by the person making the seizure, includes the taking, removal, or copying of the communication, document, or thing; and ‘seizure’ has a corresponding meaning.”

(2) Section 2 of the principal Act is amended by repealing the definition of the term “interception warrant”, and substituting the following definition:

“‘Interception warrant’ means an interception warrant issued under this Act.”

3. Issue of interception warrant—(1) Section 4A (1) of the principal Act is amended by inserting, after the words “any communication”, the words “, document, or thing”.

(2) Section 4A (1)(d) of the principal Act is amended by repealing subparagraph (i), and substituting the following subparagraph:

“(i) Any of sections 31 to 33 of the Evidence Amendment Act (No. 2) 1980; or”

(3) Section 4A (2)(a) of the principal Act is amended by inserting, after the word “communication”, the words “, document, or thing”.

(4) Section 4A (2) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraphs:

“(b) State the identity of the persons, if known, whose communications are sought to be intercepted, or (where the identity of the persons is not known) the place in respect of which communications may be intercepted; and

“(ba) If documents or things are to be seized, state the place where the documents or things are or are likely to be; and”.

New (Unanimous)

(4A) Section 4A (2) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:

“(d) Specify a period not exceeding 12 months for which the interception warrant is valid.”

(5) Section 4A of the principal Act is amended by inserting, after subsection (3), the following subsections:

5 “(3A) On an application made in writing by the Director, or by the person for the time being acting as the Director, the Minister may amend an interception warrant—

“(a) By substituting another person for the person specified in the warrant under subsection (2)(c):

10 “(b) By substituting another person or another class of persons for a person or class of persons included in the warrant under paragraph (b) of subsection (3), or adding any person or class of persons to the persons included under that paragraph.

Struck Out (Unanimous)

15 “(3B) A person who is authorised by an interception warrant to intercept the communications of persons, and any person who is requested in accordance with the warrant to assist in making the interception, may enter any place—

20 “(a) Where the persons whose communications are sought to be intercepted are or are likely to be at any time; or

“(b) That is specified in the warrant.

New (Unanimous)

25 “(3B) A person who is authorised by an interception warrant to intercept the communications of persons, and any person who is requested in accordance with the warrant to assist in making the interception, may enter—

“(a) Any place that is specified in the warrant; or

“(b) Any place that is owned or occupied by a person whose communications are sought to be intercepted; or

30 “(c) With the prior approval of the Director (or the person for the time being acting as the Director), any place where a person whose communications are sought to be intercepted is or is likely to be at any time.

“(3C) A person who is authorised by an interception warrant to seize documents or things, and any person who is requested in accordance with the warrant to assist in making the seizure, may enter a place specified in the warrant.

“(3D) If by virtue of an interception warrant a person is authorised under subsection (3B) to enter a place, the person may

4 *New Zealand Security Intelligence Service
Amendment*

do in the place any of the following acts that are necessary for the purposes of giving effect to the warrant:

Struck Out (Unanimous)

“(a) Instal any thing in the place:

New (Unanimous)

“(a) Instal or modify any device or equipment in the place:

“(b) Maintain *(a thing)* any device or equipment in the place:
“(c) Remove from the place *(a thing)* any device or equipment previously installed in the place:

New (Unanimous)

“(d) Any other act that is reasonably required to achieve the purposes for which the interception warrant was issued.

“(3E) If by virtue of an interception warrant a person is authorised under **subsection (3c)** to enter a place, the person may do in the place any of the following acts that are necessary for the purposes of giving effect to the warrant:

“(a) Search the place:

“(b) Open any container, box, or receptacle that is in the place:

“(c) Obtain access to any document or thing that is in the place:

“(d) Seize any document or thing authorised to be seized by the warrant:

“(e) Remove from the place *(a thing)* any device or equipment previously installed in the place:

New (Unanimous)

“(f) Any other act that is reasonably required to achieve the purposes for which the interception warrant was issued.”

(6) Section 4A (6) of the principal Act is amended by inserting, after the word “communication”, the words “, document, or thing”.

New (Unanimous)

(7) Section 4A of the principal Act is amended by adding, as subsection (10), the following subsection:

5 “(10) The expiry of an interception warrant does not prevent an application under subsection (1) in respect of the same subject matter.”

4. Removal of things after warrant ceases to be in force—The principal Act is amended by inserting, after section 4A, the following section:

10 “4AB. (1) If any *(thing)* device or equipment that has been installed, in accordance with an interception warrant, remains in a place after the interception warrant has ceased to be in force in respect of that place, the Minister may issue a warrant authorising the removal of the *(thing)* device or equipment

15 from the place.
“(2) A warrant issued under **subsection (1)**—
“(a) Must specify the person who may remove the *(thing)* device or equipment; and

New (Unanimous)

20 “(ab) Must specify a period not exceeding 12 months for which the warrant is valid; and

“(b) May include a request to any person or persons or class of persons to give such assistance as may be specified in the warrant in removing the *(thing)* device or equipment; and, where any such request is

25 made to any persons who are in the employment of another person, the warrant must also contain a request that the services of the persons who are requested to assist are to be made available to the Security Intelligence Service by the employers of those persons and all other persons who are in any way in control of the persons who are requested to assist.

30 “(3) A warrant issued under **subsection (1)** authorises the person specified under **subsection (2) (a)** or the person or persons referred to under **subsection (2) (b)** to enter the place concerned for the purpose of removing the *(thing)* device or equipment, and to do

in that place any of the following acts that are necessary to achieve that purpose:

“(a) Search the place:

“(b) Open any container, box, or receptacle that is in the place: 5

Struck Out (Unanimous)

“(c) Obtain access to any thing that is in the place.

New (Unanimous)

“(c) Obtain access to any document or thing that is in the place: 10

“(d) Any other act that is reasonably required to achieve the purpose for which the interception warrant was issued.

“(4) A warrant may be issued under **subsection (1)** only on an application made in writing by the Director, or by the person for the time being acting as the Director.” 15

New (Unanimous)

4A. Duty to minimise impact of interception warrants on third parties—The principal Act is amended by inserting, after section 4B, the following section: 20

“4BA. (1) In any case where an interception warrant authorises the interception or seizure of the communications of a person (“person A”), everyone who makes, or assists in making, the interception or seizure under the interception warrant must take all practicable steps that are reasonable in the circumstances to minimise the likelihood of intercepting or seizing communications that are not relevant to person A. 25

“(2) The Director (or the person for the time being acting as the Director) must advise the Minister without delay of any approval given, under **section 4A (3B) (c)**, to enter a place without the consent of the owner or occupier, if that place is neither— 30

“(a) Owned or occupied by person A; nor

“(b) Specified in the interception warrant.”

5. Operation of section 4A of principal Act before commencement of this Act—(1) It is declared that section 4A of the principal Act (as in force immediately before the commencement of this Act) conferred at all times on persons authorised under subsection (2) (c) of that section, and on persons requested under subsection (3) (b) of that section, the powers set out in **subsections (3B) to (3E)** of that section (as enacted by this Act).

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(2) If any issue concerning a power or a purported power under the principal Act needs to be determined in proceedings commenced before **16 December 1998**, it must be determined as if **subsection (1)** had not been enacted.

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