

No 306

House of Representatives

**Supplementary
Order Paper**

Tuesday, 6 August 2013

**Government Communications Security
Bureau and Related Legislation
Amendment Bill**

*Proposed amendments for the consideration
of the Committee of the whole House*

**Proposed amendments to the
Government Communications Security
Bureau and Related Legislation
Amendment Bill**

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
 - **NOT have the status of an as-reported version of the Bill.**
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**Proposed amendments to the
Government Communications Security
Bureau and Related Legislation
Amendment Bill**

Explanatory note

This Supplementary Order Paper amends the Government Communications Security Bureau and Related Legislation Amendment Bill.

The amendments are as follows:

*Part 1—Amendments to Government Communications
Security Bureau Act 2003*

- *new clause 5A*: this should be read together with *new clauses 25A and 25B* and *Schedule 1*. These provisions give effect to a new drafting development this year whereby application, savings, and transitional provisions are now being located in the Act being amended (usually in a schedule of the Act) rather than being located in amending legislation where it can be overlooked if a reader of the Act on the New Zealand Legislation web site does not look at the amending legislation. The effect of the transitional provisions in the new schedule of the Government Communications and Security Bureau Act 2003 (set out in *Schedule 1* of the Bill) is that the amendments in *Part 1* of the Bill do not apply to warrants and authorisations in force immediately before the amendments come into force. However, those warrants and authorisations are to be treated as having expired at the close of the third month after the Bill receives the Royal assent, unless they have expired earlier:
- *clause 6*: the amendment to *new section 8C(2)* is a drafting amendment for grammatical reasons:
- *clause 14*: *new section 15D*, which specifies the information that an interception warrant or access authorisation must contain, is replaced. The replacement section is more consistent with the terms of *new section 15A* which provides for the issue of warrants and authorisations. Consequential amendments to *new section 15E* are made as a result:

*Part 2—Amendments to Inspector-General of Intelligence
and Security Act 1996*

- *clause 33A*: this clause inserts *new sections 15A to 15F*, which relate to the new advisory panel that is to provide advice to the Inspector-General of Intelligence and Security. The amendment is to *new section 15E*, which provides for clerical and secretarial services to the panel, and requires any

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person providing clerical and secretarial services to have an appropriate security clearance:

Departmental disclosure statement

The Department of the Prime Minister and Cabinet considers that a disclosure statement is not required to be prepared for this Supplementary Order Paper.

Right Honourable John Key, in Committee, to propose the amendments shown in the following document.

Rt Hon John Key

Government Communications Security Bureau and Related Legislation Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Government Communications Security Bureau and Related Legislation Amendment Act **2013**.
- 2 Commencement**
This Act comes into force on the day that is 1 month after the date on which it receives the Royal assent.

Part 1
Amendments to Government
Communications Security Bureau
Act 2003

- 3 Principal Act**
This **Part** amends the Government Communications Security Bureau Act 2003 (the **principal Act**).
- 4 Section 3 amended (Purpose)**
Replace section 3(c) to (e) with:
 - “(c) specify the circumstances in which the Bureau requires an interception warrant or access authorisation to intercept communications:
 - “(d) specify the conditions that are necessary for the issue of an interception warrant or access authorisation and the matters that may be authorised by a warrant or an authorisation:
 - “(e) specify the circumstances in which the Bureau may use interception devices to intercept communications without a warrant or an authorisation.”
- 5 Section 4 amended (Interpretation)**
 - (1) This section amends section 4.

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Part 1 cl 5A

- (2) Repeal the definitions of **computer access authorisation** or **authorisation**, **computer system**, **foreign communications**, **foreign intelligence**, and **network**.
- (3) Insert in their appropriate alphabetical order:
 - “**access authorisation** means an authorisation issued under **section 15A(1)(b)**
 - “**incidentally obtained intelligence** means intelligence—
 - “(a) that is obtained in the course of gathering intelligence about the capabilities, intentions, or activities of foreign organisations or foreign persons; but
 - “(b) that is not intelligence of the kind referred to in **paragraph (a)**
 - “**information infrastructure** includes electromagnetic emissions, communications systems and networks, information technology systems and networks, and any communications carried on, contained in, or relating to those emissions, systems, or networks”.
- (4) In the definition of **access**, replace “computer system” with “information infrastructure”.
- (5) In the definition of **communication**, after “sounds,”, insert “information,”.
- (6) In the definition of **foreign organisation**, paragraph (d), replace “exclusively” with “principally”.
- (7) In the definition of **interception warrant**, replace “section 17” with “**section 15A(1)(a)**”.

5A **New section 5A inserted (Transitional provisions relating to amendments to Act)**

After section 5, insert:

“5A **Transitional provisions relating to amendments to Act**

The **Schedule** contains transitional provisions relating to amendments made to this Act after 1 January 2013.”

6 **Sections 7 and 8 replaced**

Replace sections 7 and 8 with:

“7 **Objective of Bureau**

The objective of the Bureau, in performing its functions, is to contribute to—

- “(a) the national security of New Zealand; and
- “(b) the international relations and well-being of New Zealand; and
- “(c) the economic well-being of New Zealand.

“**8 Functions of Bureau**

- “(1) **Sections 8A to 8C** set out the functions of the Bureau.
- “(2) The order in which the functions are set out is not to be taken as specifying any order of importance or priority.
- “(3) The performance of the Bureau’s functions and the relative importance and priority of the functions, if any, are to be determined, from time to time, by the Director, subject to the control of the Minister.
- “(4) Without limiting **subsection (3)**, the performance of the Bureau’s functions under **section 8A** (information assurance and cybersecurity) and **section 8C** (co-operation with other entities to facilitate their functions) is at the discretion of the Director.
- “(5) In addition to the functions set out in **sections 8A to 8C**, the Bureau has the functions (if any) conferred on it by or under any other Act.

“**8A Information assurance and cybersecurity**

This function of the Bureau is—

- “(a) to co-operate with, and provide advice and assistance to, any public authority whether in New Zealand or overseas, or to any other entity authorised by the Minister, on any matters relating to the protection, security, and integrity of—
 - “(i) communications, including those that are processed, stored, or communicated in or through information infrastructures; and
 - “(ii) information infrastructures of importance to the Government of New Zealand; and
- “(b) without limiting **paragraph (a)**, to do everything that is necessary or desirable to protect the security and integrity of the communications and information infrastructures referred to in **paragraph (a)**, including iden-

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Part 1 cl 6

tifying and responding to threats or potential threats to those communications and information infrastructures; and

- “(c) to report on anything done under **paragraphs (a) and (b)** and provide any intelligence gathered as a result and any analysis of the intelligence to—
 - “(i) the Minister; and
 - “(ii) any person or office holder (whether in New Zealand or overseas) authorised by the Minister to receive the report or intelligence.

“8B Intelligence gathering and analysis

- “(1) This function of the Bureau is—
 - “(a) to gather and analyse intelligence (including from information infrastructures) in accordance with the Government’s requirements about the capabilities, intentions, and activities of foreign persons and foreign organisations; and
 - “(b) to gather and analyse intelligence about information infrastructures; and
 - “(c) to provide any intelligence gathered and any analysis of the intelligence to—
 - “(i) the Minister; and
 - “(ii) any person or office holder (whether in New Zealand or overseas) authorised by the Minister to receive the intelligence.
- “(2) For the purpose of performing its function under **subsection (1)(a) and (b)**, the Bureau may co-operate with, and provide advice and assistance to, any public authority (whether in New Zealand or overseas) and any other entity authorised by the Minister for the purposes of this subsection.

“8C Co-operation with other entities to facilitate their functions

- “(1) This function of the Bureau is to co-operate with, and provide advice and assistance to, the following for the purpose of facilitating the performance of their functions:
 - “(a) the New Zealand Police; and
 - “(b) the New Zealand Defence Force; and

- “(c) the New Zealand Security Intelligence Service; and
 - “(d) any department (within the meaning of the Public Finance Act 1989) or part of any department or to a department but only in relation to a specified function or service performed or provided by the department specified for the purposes of this section by the Governor-General by Order in Council made on the recommendation of the Minister.
- “(2) To avoid doubt, the Bureau may perform its function under **subsection (1) only**—
- “(a) only to the extent that the advice and assistance are provided for the purpose of activities that the entities may lawfully undertake; and
 - “(b) subject to and in accordance with any limitations, restrictions, and protections under which those entities perform their functions and exercise their powers; and
 - “(c) even though the advice and assistance might involve the exercise of powers by, or the sharing of the capabilities of, the Bureau that the Bureau is not, or could not be, authorised to exercise or share in the performance of its other functions.
- “(3) Any advice or assistance provided by the Bureau under **subsection (1)** to another entity is subject to—
- “(a) the jurisdiction of any other body or authority to the same extent as the other entity’s actions are subject to the other body’s or authority’s jurisdiction (for example, the Independent Police Conduct Authority in relation to advice and assistance provided to the New Zealand Police); and
 - “(b) the oversight of the Inspector-General of Intelligence and Security under his or her functions in section 11 of the Inspector-General of Intelligence and Security Act 1996.

“**8CA Principles underpinning performance of Bureau’s functions**

- “(1) In performing its functions under this Act, the Bureau acts—
- “(a) in accordance with New Zealand law and all human rights standards recognised by New Zealand law, ex-

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Part 1 cl 7

cept to the extent that they are, in relation to national security, modified by an enactment:

“(b) in the discharge of its operational functions, independently and impartially:

“(c) with integrity and professionalism:

“(d) in a manner that facilitates effective democratic oversight.

“(2) **Subsection (1)** does not impose particular duties on, or give particular powers to, the Bureau, the Director, or any employee of the Bureau.

“(3) The Director must take all reasonable steps to ensure that—

“(a) the activities of the Bureau are limited to those that are relevant to the discharge of its functions:

“(b) the Bureau is kept free from any influence or consideration that is not relevant to its functions:

“(c) the Bureau does not take any action for the purpose of furthering or harming the interests of any political party in New Zealand.

“(4) The Director must consult regularly with the Leader of the Opposition for the purpose of keeping him or her informed about matters relating to the Bureau’s functions under **sections 8A to 8C**.

“**8D Director has full powers for purpose of performing Bureau’s functions**

“(1) The Director has all the powers that are necessary or desirable for the purpose of performing the functions of the Bureau.

“(2) **Subsection (1)** applies subject to this Act, any other enactment, and the general law.”

7 Section 9 replaced (Director of Bureau)

Replace section 9 with:

“**9 Appointment of Director**

“(1) The Director of the Bureau is appointed by the Governor-General, on the recommendation of the Prime Minister, for a term not exceeding 5 years, and may from time to time be reappointed.

“(2) To avoid doubt, the mere fact that a person holds the position of Director does not entitle the person to be reappointed or to expect to be reappointed.

“**9A Appointment process**

The State Services Commissioner—

“(a) is responsible for managing the process for the appointment of the Director; and

“(b) must provide advice on the nominations for Director to the Prime Minister.

“**9B Remuneration and conditions of appointment of Director**

“(1) The Director is paid the remuneration and allowances determined by the Remuneration Authority.

“(2) The other terms and conditions of the Director’s appointment are determined from time to time by the State Services Commissioner.

“**9C Removal from office**

“(1) The Governor-General may at any time for just cause, on the recommendation of the Prime Minister, remove the Director from office.

“(2) The removal must be made by written notice to the Director.

“(3) The notice must—

“(a) state the date on which the removal takes effect, which must not be earlier than the date on which the notice is received; and

“(b) state the reasons for the removal.

“(4) The State Services Commissioner is responsible for advising the Prime Minister on any proposal to remove the Director from office.

“(5) In this section, **just cause** includes misconduct, inability to perform the functions of office, and neglect of duty.

“**9D Review of performance of Director**

“(1) The Minister may direct the State Services Commissioner or another person to review, either generally or in respect of any particular matter, the performance of the Director.

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Part 1 cl 8

“(2) The person conducting a review under **subsection (1)** must report to the Minister on the manner and extent to which the Director is fulfilling all of the requirements imposed on the Director, whether under this Act or otherwise.

“(3) No review under this section may consider any security operations undertaken, or proposed to be undertaken.”

8 Section 11 amended (Prohibition on unauthorised disclosure of information)

In section 11(2),—

- (a) replace “2 years” with “3 years”; and
- (b) replace “\$2,000” with “\$5,000”.

9 Section 12 amended (Annual report)

- (1) In section 12(2), replace “without delay” with “as soon as practicable”.
- (2) In section 12(3)(c), delete “computer”.

10 Part 3 heading replaced

Replace the Part 3 heading with:

**“Part 3
“Intercepting communications and
accessing information infrastructures”.**

11 Section 13 replaced (Purpose of Part)

Replace section 13 with:

“13 Purpose of Part

The purpose of this Part is—

- “(a) to authorise the Bureau to intercept communications and access information infrastructures for the purpose of performing its functions under **sections 8A and 8B**; and
- “(b) to place restrictions and limitations on—
 - “(i) the interception of communications and the accessing of information infrastructures; and
 - “(ii) the retention and use of information derived from the interception of communications and the accessing of information infrastructures.”

12 Section 14 replaced (Interceptions not to target domestic communications)

Replace section 14 with:

“14 Interceptions not to target New Zealand citizens or permanent residents for intelligence-gathering purposes

“(1) In performing the Bureau’s function in **section 8B**, the Director, any employee of the Bureau, and any person acting on behalf of the Bureau must not authorise or do anything for the purpose of intercepting the private communications of a person who is a New Zealand citizen or a permanent resident of New Zealand, unless (and to the extent that) the person comes within the definition of foreign person or foreign organisation in section 4.

“(2) Any incidentally obtained intelligence obtained by the Bureau in the performance of its function in **section 8B**—

“(a) is not obtained in breach of **section 8B**; but

“(b) must not be retained or disclosed except in accordance with sections 23 and **25**.”

13 Section 15 amended (Interceptions for which warrant or authorisation required)

(1) In section 15(1)(a), replace “a network” with “an information infrastructure”.

(2) In section 15(2),—

(a) replace “a computer access authorisation” with “an access authorisation”; and

(b) replace “a computer system” with “an information infrastructure”.

14 New sections 15A to 15F and cross-heading inserted

After section 15, insert:

“Authorisations to intercept communications or access information infrastructures

“15A Authorisation to intercept communications or access information infrastructures

“(1) For the purpose of performing the Bureau’s functions under **section 8A or 8B**, the Director may apply in writing to the Minister for the issue of—

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Part 1 cl 14

- “(a) an interception warrant authorising the use of interception devices to intercept communications not otherwise lawfully obtainable by the Bureau of the following kinds:
 - “(i) communications made or received by 1 or more persons or classes of persons specified in the authorisation or made or received in 1 or more places or classes of places specified in the authorisation;
 - “(ii) communications that are sent from, or are being sent to, an overseas country;
 - “(b) an access authorisation authorising the accessing of 1 or more specified information infrastructures or classes of information infrastructures that the Bureau cannot otherwise lawfully access.
- “(2) The Minister may grant the proposed interception warrant or access authorisation if satisfied that—
- “(a) the proposed interception or access is for the purpose of performing a function of the Bureau under **section 8A or 8B**; and
 - “(b) the outcome sought to be achieved under the proposed interception or access justifies the particular interception or access; and
 - “(c) the outcome is not likely to be achieved by other means; and
 - “(d) there are satisfactory arrangements in place to ensure that nothing will be done in reliance on the warrant or authorisation beyond what is necessary for the proper performance of a function of the Bureau; and
 - “(e) there are satisfactory arrangements in place to ensure that the nature and consequences of acts done in reliance on the warrant or authorisation will be reasonable, having regard to the purposes for which they are carried out.
- “(3) Before issuing a warrant or an authorisation, the Minister must consult the Minister of Foreign Affairs about the proposed warrant or authorisation.
- “(4) The Minister may issue a warrant or an authorisation subject to any conditions that the Minister considers desirable in the public interest.

“(5) This section applies despite anything in any other Act.

“**15B Involvement of Commissioner of Security Warrants**

“(1) An application for, and issue of, an interception warrant or access authorisation under **section 15A** must be made jointly to, and issued jointly by, the Minister and the Commissioner of Security Warrants if anything that may be done under the warrant or authorisation is for the purpose of intercepting the private communications of a New Zealand citizen or permanent resident of New Zealand under—

“(a) **section 8A**; or

“(b) **section 8B**, to the extent that intercepting the person’s private communications under that section is not precluded by **section 14**.

“(2) For the purposes of **subsection (1)**, **section 15A** applies—

“(a) as if references to the Minister were references to the Minister and the Commissioner of Security Warrants; and

“(b) with any other necessary modifications.

“(3) In this section, **Commissioner of Security Warrants** means the Commissioner of Security Warrants appointed under section 5A of the New Zealand Security Intelligence Service Act 1969.

“**15C Privileged communications**

“(1) No interception warrant or access authorisation is to be issued under **section 15A**, and no powers are to be exercised under an interception warrant or access authorisation issued under **section 15A**, for the purpose of intercepting the privileged communications of New Zealand citizens or permanent residents of New Zealand.

“(2) In **subsection (1)**, **privileged communications** means communications that are privileged in proceedings in a court of law under section 54, 56, 58, or 59 of the Evidence Act 2006.

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Part 1 cl 14

~~“15D Information that interception warrant or access authorisation must contain~~

~~Every interception warrant and access authorisation must specify the following information:~~

- ~~“(a) the date of issue;~~
- ~~“(b) the person, persons, or classes of persons authorised to make the interception or obtain the access;~~
- ~~“(c) the period for which the warrant or authorisation is issued, being a period not exceeding 12 months;~~
- ~~“(d) the function or functions of the Bureau to which the warrant or authorisation relates;~~
- ~~“(e) any person, persons, or classes of persons whose communications may be intercepted under the warrant or authorisation;~~
- ~~“(f) any place, places, or classes of places that the warrant or authorisation applies to;~~
- ~~“(g) the information infrastructure, information infrastructures, or classes of information infrastructures that the warrant or authorisation applies to;~~
- ~~“(h) any conditions under which interception may be made or access may be obtained.~~

“15D Information that interception warrant or access authorisation must contain

“(1) Every interception warrant and access authorisation must specify the following information:

- “(a) the date of issue;
- “(b) the person, persons, or classes of persons authorised to make the interception or obtain the access;
- “(c) the period for which the warrant or authorisation is issued, being a period not exceeding 12 months;
- “(d) the function or functions of the Bureau to which the warrant or authorisation relates;
- “(e) the purpose of the warrant or authorisation;
- “(f) any conditions under which interception may be made or access may be obtained.

“(2) Every interception warrant must also specify the following information:

- “(a) if the purpose of the warrant is to authorise the interception of the communications of 1 or more persons, the person, persons, or classes of persons whose communications may be intercepted:
- “(b) if the purpose of the warrant is to intercept communications at 1 or more places, the place, places, or classes of places that the warrant applies to.
- “(3) Every access authorisation must also specify the information infrastructure, information infrastructures, or classes of information infrastructures that the authorisation applies to.

“15E Warrant or authorisation may authorise persons to assist person giving effect to warrant or authorisation

- “(1) A warrant or an authorisation may request 1 or more persons or classes of persons to give any assistance that is reasonably necessary to give effect to the warrant or authorisation.
- “(2) If a request is made, under **subsection (1)**, to 1 or more persons or classes of persons who are employees (the **employees**), the warrant or authorisation 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.
- “(3) On an application made in writing by the Director, the Minister may amend a warrant or authorisation (as appropriate)—
- “(a) by substituting a person, persons, or classes of persons for the person, persons, or classes of persons specified in the warrant or authorisation under **section 15D(e) 15D(2)(a)**:
- “(b) by substituting another person, other persons, or other classes of persons for a person, persons, or classes of persons requested under **subsection (1)**:
- “(c) by adding any person, persons, or classes of persons to the persons requested under **subsection (1)**.

“15F Expiry of warrant or authorisation not to prevent further application

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.”

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Part 1 cl 15

15 Section 16 amended (Certain interceptions permitted without interception warrant or computer access authorisation)

- (1) In the heading to section 16, delete “**computer**”.
- (2) In section 16, before subsection (1), insert:

“(1A) This section—

 - “(a) applies to the interception of communications for the purpose of the Bureau’s functions in **sections 8A and 8B**; but
 - “(b) does not authorise anything to be done for the purpose of intercepting the private communications of a New Zealand citizen or permanent resident of New Zealand.”
- (3) In section 16(1), delete “foreign”.
- (4) Replace section 16(2) with:

“(2) The Director, or an employee of the Bureau, or a person acting on behalf of the Bureau may, without an interception warrant, or, as the case requires, without an access authorisation, intercept communications by using an interception device or by accessing an information infrastructure, but only if—

 - “(a) the interception does not involve any activity specified in section 15(1); and
 - “(b) any access to an information infrastructure is limited to access to 1 or more communication links between computers or to remote terminals; and
 - “(c) the interception is carried out by the Director or with the authority of the Director for the purpose of performing the Bureau’s function in **section 8A or 8B**.”

16 Section 17 and cross-heading repealed
Repeal section 17 and the cross-heading above section 17.

17 Section 18 repealed (Persons acting under warrant)
Repeal section 18.

18 Section 19 and cross-heading replaced
Replace section 19 and the cross-heading above section 19 with:

*“Register of interception warrants and access
authorisations*

**“19 Register of interception warrants and access
authorisations**

- “(1) The Director must keep a register of interception warrants and access authorisations issued under this Part.
- “(2) The following information must be entered in the register in relation to every interception warrant and access authorisation issued under this Part:
- “(a) the information specified in **section 15D**; and
 - “(b) whether the warrant or authorisation contains a request to give assistance under **section 15E(1)**; and
 - “(c) any person, persons, or classes of persons substituted or added under **section 15E(3)**.
- “(3) The Director must make the register available to the Minister or the Inspector-General of Intelligence and Security as and when requested by the Minister or the Inspector-General.

“Urgent issue of warrants and authorisations

“19A Urgent issue of warrants and authorisations

- “(1) This section applies if—
- “(a) the Minister is unavailable to issue an interception warrant or access authorisation; and
 - “(b) circumstances make it necessary to issue a warrant or an authorisation before the Minister is available to do so.
- “(2) Any of the following may issue a warrant or an authorisation:
- “(a) the Attorney-General;
 - “(b) the Minister of Defence;
 - “(c) the Minister of Foreign Affairs.
- “(3) A person issuing a warrant or an authorisation under **subsection (2)** may do so only to the same extent and subject to the same terms and conditions as apply to the issue of a warrant or an authorisation by the Minister.
- “(4) A person issuing a warrant or an authorisation under **subsection (2)** must, as soon as practicable after the Minister becomes available, advise the Minister about the issue of the warrant.”

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Part 1 cl 19

- 19 Section 20 amended (Director’s functions in relation to warrants and authorisations not to be delegated)**
In section 20, replace “section 17 or section 19” with “**section 15A**”.
- 20 Section 21 replaced (Action taken in accordance with warrant or authorisation justified)**
Replace section 21 with:
- “21 Immunity from civil and criminal liability**
- “(1) Every person is immune from civil or criminal liability—
- “(a) for any act done in good faith in order to obtain a warrant or an authorisation under this Act:
- “(b) for anything done in good faith under a warrant or an authorisation under this Act or under section 16, if done in a reasonable manner.
- “(2) Every person is immune from civil and criminal liability for any act done in good faith and in a reasonable manner in order to assist a person to do anything authorised by a warrant or an authorisation under this Act or under section 16.
- “(3) In any civil proceeding in which a person asserts that he or she has an immunity under this section, the onus is on the person to prove the facts necessary to establish the basis of the claim.
- “(4) Section 86 of the State Sector Act 1988 applies to the Director and any employee of the Bureau subject to this section.”
- 21 Section 22 repealed (Term of warrant or authorisation)**
Repeal section 22.
- 22 Section 23 amended (Destruction of irrelevant records obtained by interception)**
- (1) In section 23(1), delete “computer”.
- (2) In section 23(1), after “except to the extent”, insert “permitted by **section 25** or to the extent”.
- (3) In section 23(1)(a), replace “section 7(1)(a)” with “**section 7**”.
- (4) In section 23(1)(b), replace “section 8” with “**section 8A or 8B**”.

- 23 Section 24 amended (Duty to minimise impact of interception on third parties)**
In section 24, replace “a computer” with “an”.
- 24 Section 25 replaced (Prevention or detection of serious crime)**
Replace section 25 with:
- “25 When incidentally obtained intelligence may be retained and communicated to other persons**
- “(1) Despite section 23, the Director may—
- “(a) retain incidentally obtained intelligence that comes into the possession of the Bureau for 1 or more of the purposes specified in **subsection (2)**; and
 - “(b) communicate that intelligence to the persons specified in **subsection (3)**.
- “(2) The purposes are—
- “(a) preventing or detecting serious crime in New Zealand or any other country;
 - “(ab) preventing or avoiding the loss of human life on the high seas;
 - “(b) preventing or responding to threats to human life in New Zealand or any other country;
 - “(c) identifying, preventing, or responding to threats or potential threats to the security or defence of New Zealand or any other country.
- “(3) The persons are—
- “(a) any employee of the New Zealand Police;
 - “(b) any member of the New Zealand Defence Force;
 - “(c) the Director of Security under the New Zealand Security Intelligence Service Act 1969;
 - “(d) any public authority (whether in New Zealand or overseas) that the Director thinks fit to receive the information.”
- 25 New sections 25A and 25B and cross-heading inserted**
After section 25, insert:

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Part 1 cl 25

*“Protection and disclosure of personal
information*

“25A Formulation of policy on personal information

- “(1) As soon as is reasonably practicable after the commencement of this section, the Director must, in consultation with the Inspector-General of Intelligence and Security and the Privacy Commissioner, formulate a policy that applies to the Bureau (in a manner compatible with the requirements of national security) the principles set out in **section 25B**.
- “(2) The policy must require—
- “(a) all employees and persons acting on behalf of the Bureau to comply with the policy; and
 - “(b) the level of compliance with the policy to be regularly audited.
- “(2A) The Director must advise the Privacy Commissioner of the results of audits conducted under the policy.
- “(2B) The Privacy Commissioner may provide a report to the Inspector-General of Intelligence and Security if the results of the audits disclose issues that need to be addressed.
- “(3) The Director must regularly review the policy at intervals of not more than 3 years and, if he or she considers it appropriate to do so, revise the policy in consultation with the Inspector-General of Intelligence and Security and the Privacy Commissioner.

“25B Principles to protect personal information

The principles referred to in **section 25A(1)** are as follows:

- “(a) the Bureau must not collect personal information unless—
- “(i) the information is collected for a lawful purpose connected with a function of the Bureau; and
 - “(ii) the collection of the information is reasonably necessary for that purpose, having regard to the nature of intelligence gathering:
- “(b) the Bureau must ensure—
- “(i) that any personal information it holds is protected by such security safeguards as it is reasonable in the circumstances to take against—

- “(A) loss; and
- “(B) access, use, modification, or disclosure, except with the authority of the Bureau; and
- “(C) other misuse; and
- “(ii) that if it is necessary for any personal information that it holds to be given to a person in connection with the provision of a service to the Bureau, everything reasonably within the power of the Bureau is done to prevent unauthorised use or unauthorised disclosure of the information:
- “(c) the Bureau must not use personal information without taking such steps (if any) as are, in the light of the interests and constraints of national security and the nature of intelligence gathering, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date, complete, relevant, and not misleading:
- “(d) the Bureau must not keep personal information longer than is required for the purposes for which the information may be lawfully used.”

25A **New Part 3A inserted**

Before Part 4, insert:

“Part 3A

**“Transitional provisions relating to
amendments to Act**

“25C **Transitional provisions relating to amendments to Act**

The transitional provisions set out in the **Schedule**, which relate to amendments made to this Act after 1 January 2013, have effect for the purposes of this Act.”

25B **Schedule inserted**

Insert the **Schedule** set out in **Schedule 1**.

26 **Consequential amendments**

The Acts listed in the **Schedule 2** are consequentially amended in the manner indicated in that schedule.

Part 2
**Amendments to Inspector-General of
Intelligence and Security Act 1996**

27 Principal Act

This **Part** amends the Inspector-General of Intelligence and Security Act 1996 (the **principal Act**).

28 Section 2 amended (Interpretation)

In section 2(1), insert in their appropriate alphabetical order:

“**advisory panel** means the advisory panel established by **section 15A**

“**Deputy Inspector-General** means the Deputy Inspector-General of Intelligence and Security holding office under **section 5**

“**Intelligence and Security Committee** means the Intelligence and Security Committee established by section 5 of the Intelligence and Security Committee Act 1996”.

29 Section 5 and cross-heading replaced

Replace section 5 and the cross-heading above section 5 with:

*“Inspector-General and Deputy
Inspector-General of Intelligence and
Security*

**“5 Inspector-General and Deputy Inspector-General of
Intelligence and Security**

“(1) There must be—

“(a) an Inspector-General of Intelligence and Security; and

“(b) a Deputy Inspector-General of Intelligence and Security.

“(2) The Inspector-General and Deputy Inspector-General must be appointed by the Governor-General on the recommendation of the Prime Minister following consultation with the Intelligence and Security Committee.

“(3) The Deputy Inspector-General has and may exercise and perform the powers and functions of the Inspector-General (whether under this Act or any other enactment), but subject to—

- “(a) the control and direction of the Inspector-General; and
 - “(b) to avoid doubt, the same duties, obligations, restrictions, and terms under which the Inspector-General exercises and performs his or her powers and functions.
- “(4) Sections 7 to 9 and 18 apply to the Deputy Inspector-General as if references in those sections to the Inspector-General were references to the Deputy Inspector-General.
- “(5) If there is a vacancy in the office of the Inspector-General, or if the Inspector-General is absent from duty for any reason, the Deputy Inspector-General has and may exercise and perform all the powers, functions, and duties of the Inspector-General for as long as the vacancy or absence continues.
- “(6) The fact that the Deputy Inspector-General exercises or performs any power, function, or duty of the Inspector-General is, in the absence of proof to the contrary, conclusive evidence of the Deputy Inspector-General’s authority to do so.”

30 Section 6 amended (Term of office)

- (1) Replace section 6(1) with:
- “(1) Every person appointed as the Inspector-General or Deputy Inspector-General—
- “(a) is to be appointed for a term not exceeding 3 years; and
 - “(b) may be reappointed, but in the case of the Inspector-General only once.”
- (2) In section 6(2) and (3), after “Inspector-General”, insert “or Deputy Inspector-General” in each place.

31 Section 11 amended (Functions of Inspector-General)

- (1AA) After section 11(1)(b), insert:
- “(ba) to inquire into any complaint made by the Speaker of the House of Representatives on behalf of 1 or more members of Parliament.”.
- (1) Replace section 11(1)(c), (d), and (da) with:
- “(c) to inquire at the request of the Minister or the Prime Minister or of the Inspector-General’s own motion into any matter where it appears that a New Zealand person has been or may be adversely affected by any act, omis-

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sion, practice, policy, or procedure of an intelligence and security agency:

“(ca) to inquire at the request of the Minister or the Prime Minister or of the Inspector-General’s own motion into the propriety of particular activities of an intelligence and security agency:

“(d) without limiting paragraph (a), to review at intervals of not more than 12 months—

“(i) the effectiveness and appropriateness of the procedures adopted by each intelligence and security agency to ensure compliance with its governing legislation in relation to the issue and execution of warrants and authorisations; and

“(ii) the effectiveness and appropriateness of compliance systems concerning operational activity, including all supporting policies and practices of an intelligence and security agency relating to—

“(A) administration; and

“(B) information management; and

“(C) risk management; and

“(D) legal compliance generally:

“(da) to conduct unscheduled audits of the procedures and compliance systems described in **paragraph (d)**.”.

(2) Repeal section 11(2).

(3) In section 11(3), replace “(1)(c)(ii)” with “**(1)(ca)**”.

32 Section 12 amended (Consultation)

Replace section 12(2) with:

“(2) The Inspector-General may—

“(a) consult any of the persons specified in **subsection (3)** about any matter relating to the functions of the Inspector-General under section 11; and

“(b) despite section 26(1), disclose to any of the persons consulted any information that the Inspector-General considers necessary for the purpose of the consultation.

“(3) The persons are—

“(a) the Controller and Auditor-General:

“(b) an Ombudsman:

“(c) the Privacy Commissioner:

- “(d) a Human Rights Commissioner:
- “(e) the Independent Police Conduct Authority.”

33 Section 15 amended (Jurisdiction of courts and other agencies not affected)

In section 15(3), replace “or of the Privacy Commissioner” with “, the Privacy Commissioner, a Human Rights Commissioner, or the Independent Police Conduct Authority”.

33A New sections 15A to 15F and cross-heading inserted

After section 15, insert:

“Advisory panel

“15A Advisory panel established

This section establishes an advisory panel.

“15B Function of advisory panel

- “(1) The function of the advisory panel is to provide advice to the Inspector-General.
- “(2) The advisory panel may provide advice—
 - “(a) on request from the Inspector-General; or
 - “(b) on its own initiative.
- “(3) To assist the advisory panel to perform its function,—
 - “(a) the advisory panel may ask the Inspector-General to provide information; and
 - “(b) the Inspector-General may provide information to the advisory panel, whether in response to a request under **paragraph (a)** or on his or her own initiative.
- “(4) The advisory panel may make a report to the Prime Minister on any matter relating to intelligence and security, if the advisory panel considers that the matter should be drawn to the attention of the Prime Minister.

“15C Membership of advisory panel

- “(1) The advisory panel consists of—
 - “(a) 2 members appointed under **subsection (2)**, 1 of whom must also be appointed as the chairperson of the panel; and
 - “(b) the Inspector-General.

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- “(2) The members and chairperson appointed under this subsection are appointed by the Governor-General on the recommendation of the Prime Minister after consulting the Intelligence and Security Committee.
- “(3) One of the members appointed under **subsection (2)** must be a lawyer within the meaning of the Lawyers and Conveyancers Act 2006 who has held a practising certificate as a barrister or barrister and solicitor for not less than 7 years.
- “(4) Both of the members appointed under **subsection (2)** must have an appropriate security clearance.
- “(5) A member appointed under **subsection (2)**—
 - “(a) holds office for a term not exceeding 5 years; and
 - “(b) may from time to time be reappointed; and
 - “(c) may at any time resign office by notice in writing to the Prime Minister; and
 - “(d) may be removed from office by notice in writing from the Prime Minister for misconduct, inability to perform the functions of office, or neglect of duty.

“**15D Remuneration of appointed members of advisory panel**

- “(1) A member of the advisory panel appointed under **section 15C(1)(a)** is entitled—
 - “(a) to receive remuneration not within **paragraph (b)** for services as a member at a rate and of a kind determined by the Minister in accordance with the fees framework; and
 - “(b) in accordance with the fees framework, to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out his or her office as a member.
- “(2) For the purposes of **subsection (1)**, **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.

“**15E Clerical and secretarial services**

- “(1) The Department of the Prime Minister and Cabinet is responsible for providing to the advisory panel the clerical and secre-

terial services necessary for the advisory panel to perform its function effectively and efficiently.

“(2) A person providing clerical and secretarial services under **sub-section (1)** must have an appropriate security clearance.

“**15F Advisory panel to determine own procedure**

The advisory panel may determine its own procedure.”

33B Section 24 amended (Proceedings privileged)

Replace section 24(1) with:

“(1) Subject to subsection (2),—

“(a) no proceedings, civil or criminal, may be brought against the Inspector-General, an appointed member of the advisory panel, or against any employee of the Inspector-General, for anything done or reported or said by the Inspector-General, appointed member, or employee in the course of the exercise or intended exercise of their functions under this Act, unless it is shown that the Inspector-General, appointed member, or employee acted in bad faith:

“(b) neither the Inspector-General nor an appointed member of the advisory panel nor any employee of the Inspector-General nor any person who has held the appointment of Inspector-General or who has been an appointed member of the advisory panel or who has been an employee of the Inspector-General is to be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions under this Act.”

34 Section 25 amended (Reports in relation to inquiries)

After section 25(5), insert:

“(6) As soon as practicable after receiving a report from the Inspector-General, the Minister—

“(a) must provide his or her response to the Inspector-General and the chief executive of the intelligence and security agency concerned; and

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- “(b) may provide his or her response to the Intelligence and Security Committee.
- “(7) **Subsection (6)** does not apply to the extent that a report relates to employment matters or security clearance issues.
- “(8) For the purposes of this section,—
 - “(a) the Inspector-General may, after consulting the chief executive of the intelligence and security agency concerned, determine the security classification of a report prepared under this section; and
 - “(b) any matter quoted or summarised in the report must be given a security classification not less than the security classification of the matter quoted or summarised.”

**35 New section 25A inserted (Publication of
Inspector-General’s reports under section 25)**

After section 25, insert:

“25A Publication of Inspector-General’s reports under section 25

- “(1) As soon as practicable after forwarding a report as required by section 25(1), the Inspector-General must make a copy of the report publicly available on an Internet site maintained by or on behalf of the Inspector-General.
- “(2) However, the Inspector-General must not, in the copy of a report made publicly available under **subsection (1)**, disclose—
 - “(a) information the public disclosure of which would be likely to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence—
 - “(i) by the government of any other country or any agency of such a government; or
 - “(ii) by any international organisation; or
 - “(b) information the public disclosure of which would be likely to endanger the safety of any person; or
 - “(c) the identity of any person who is or has been an officer, employee, or agent of an intelligence and security agency other than the chief executive, or any information from which the identity of such a person could reasonably be inferred; or

- “(d) information the public disclosure of which would be likely to prejudice—
 - “(i) the continued discharge of the functions of an intelligence and security agency; or
 - “(ii) the security or defence of New Zealand or the international relations of the Government of New Zealand; or
- “(e) any information about employment matters or security clearance issues.”

35A Section 26 amended (Disclosure)

In section 26(1), after “Act, the Inspector-General”, insert “and an appointed member of the advisory panel”.

36 Section 27 amended (Reports by Inspector-General)

- (1) After section 27(2)(b), insert:
 - “(ba) certify the extent to which each intelligence and security agency’s compliance systems are sound; and”.
- (2) In section 27(3), replace “lay a copy of the report before” with “present a copy of the report to”.
- (3) In section 27(4) and (6), replace “laid before” with “presented to”.
- (4) After section 27(6), insert:
 - “(6A) As soon as practicable after a copy of the report is presented to the House of Representatives under subsection (3), the Inspector-General must make a copy of the report (as presented to the House of Representatives) publicly available on an Internet site maintained by or on behalf of the Inspector-General.”

36A Section 28 amended (Secrecy)

In section 28(1), after “been, the Inspector-General”, insert “or an appointed member of the advisory panel”.

Part 3
**Amendments to Intelligence and Security
Committee Act 1996**

37 Principal Act

This **Part** amends the Intelligence and Security Committee Act 1996 (the **principal Act**).

38 Section 6 amended (Functions of Committee)

Replace section 6(1)(e) with:

- “(e) subject to section 18,—
 - “(i) to present an annual report to the House of Representatives on the activities of the Committee; and
 - “(ii) to make an annual report publicly available on the Internet site of the New Zealand Parliament:
- “(f) to consider and discuss with the Inspector-General of Intelligence and Security his or her annual report as presented to the House of Representatives under section 27(3) of the Inspector-General of Intelligence and Security Act 1996.”

39 New section 7A inserted (Further provisions relating to chairperson and Leader of the Opposition)

After section 7, insert:

“7A Further provisions relating to chairperson and Leader of the Opposition

- “(1) **Subsection (2)** applies if—
 - “(a) the Committee is, in the course of conducting a financial review of an intelligence and security agency, discussing any matter relating to the performance of the intelligence and security agency; and
 - “(b) the Prime Minister is the responsible Minister under the legislation governing the intelligence security agency.
- “(2) If the Prime Minister is chairing the meeting of the Committee at which the matter is discussed,—
 - “(a) the Prime Minister must not act as chairperson of the Committee; and

- “(b) another member of the Committee nominated by the Prime Minister, being one of the 2 members appointed under section 7(1)(c), must act as chairperson.
- “(3) The chairperson of the Committee may appoint either of the following (if not already a member of the Committee) to be an alternate chairperson to act as chairperson at the discretion of the chairperson in the absence of the chairperson at a meeting of the Committee:
- “(a) the Deputy Prime Minister:
- “(b) the Attorney-General.
- “(4) The Leader of the Opposition may appoint the person who acts as his or her deputy in the House of Representatives to act in place of the Leader of the Opposition in the absence of the Leader of the Opposition at a meeting of the Committee.”

39A Section 13 amended (Meetings of Committee)

After section 13(6), insert:

- “(6A) Subsection (6) applies subject to **section 7A.**”

40 Section 18 amended (Restrictions on reports to House of Representatives)

In section 18(1), replace “reporting” with “presenting an annual report or other report”.

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Schedule 1

Schedule 1
New Schedule inserted

s 25B

Schedule
Transitional provisions relating to
amendments made to Act after 1 January
2013

ss 5A, 25C

- (1) Clauses (2) and (3) apply to computer access authorisations and interception warrants issued under this Act and in force immediately before the commencement of **Part 1 of the Government Communications Security Bureau and Related Legislation Amendment Bill**.
 - (2) The computer access authorisations and interception warrants continue in force as if the amendments made by **Part 1 of the Government Communications Security Bureau and Related Legislation Amendment Bill** had not come into force.
 - (3) The computer access authorisations and interception warrants are to be treated as having expired at the close of the third month after the date on which **Part 1 of the Government Communications Security Bureau and Related Legislation Amendment Bill** received the Royal assent, unless they have expired earlier.
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Schedule 2

s 26

Consequential amendments

Radiocommunications Act 1989 (1989 No 148)

In section 133A(2)(c)(ii), replace “foreign intelligence” with “intelligence about the capabilities, intentions, and activities of foreign persons and foreign organisations”.

Repeal section 133A(3)(a).

Search and Surveillance Act 2012 (2012 No 24)

In section 47(1)(c)(ii), replace “17” with “**15A(1)(a)**”.

Telecommunications (Interception Capability) Act 2004 (2004 No 19)

In section 3(1), definition of **interception warrant**, paragraph (c), replace “17” with “**15A(1)(a)**”.

In section 3(1), definition of **other lawful interception authority**, replace paragraph (a)(ii) with:

- “(ii) to access an information infrastructure (within the meaning of the Government Communications Security Bureau Act 2003) that is granted under **section 15A(1)(b)** of that Act; and”.