

Immunities from legal liability

Provisions for employees of NZSIS, GCSB and those assisting them

The New Zealand Intelligence and Security Bill 2016

FACTSHEET NO. 12

What the Bill proposes

- A single immunities framework for both the New Zealand Security Intelligence Service (NZSIS) and Government Communications Security Bureau (GCSB).
- NZSIS employees gain the exemption from civil liability when acting in good faith that is afforded to all state sector employees under the State Sector Act 1988 (this immunity is already in place for GCSB).
- Exemption from civil liability or criminal prosecution for anyone assisting NZSIS and/or GCSB (such as in producing official identity documents or in the execution of a warrant).

Why provide immunities?

Employees of NZSIS and GCSB at times must act in ways that would normally breach the law. This is because of the types of operations they undertake and the need to maintain cover.

There needs to be certainty that employees and anyone legitimately assisting them will not be exposed to civil or criminal prosecution as a result of their work. In order for immunity to apply, a person must be acting in good faith and in a reasonable manner, and the act must be necessary.

Many of the immunities proposed in the Bill reflect similar immunities that exist for law enforcement officers and other public servants.

What does it mean to ‘act in good faith’?

The term ‘good faith’ is used in many areas of the law. In this context, acting in good faith means that an employee of an intelligence and security agency or anyone assisting them acts in line with any authorisation from the Chief Executive of that agency, and with the law of New Zealand. Good faith is violated when acts are committed arbitrarily, or for private gain.

What are the immunities and exceptions?

There is criminal immunity for employees of the agencies for acts done in good faith (as long as specified conditions, such as being necessary, are met):

- in obtaining an intelligence warrant;
- assisting the Police and NZ Defence Force; and
- in carrying out authorised activity (ie, activities authorised by a warrant).

For use of assumed identities, civil and criminal immunities include acts done in good faith and with reasonable care by:

- the person who is authorised to have the assumed identity; and
- a person who assists in the establishment and maintenance of an assumed identity.

The Bill proposes criminal exceptions for:

- some minor offences and infringements of the Road User Rules (for the NZSIS only); and
- offences relating to accepting unsolicited information (unless obtained by torture or another serious abuse of human rights).

The Bill applies the immunities consistently to both agencies.

What are the safeguards against misuse?

The person with the assumed identity is not allowed to do something that they are not qualified to do (such as flying a plane without a licence).

The employee must establish, on the balance of probabilities, that the immunity applies.