

Activities allowed under intelligence warrants



DEPARTMENT of the
PRIME MINISTER and CABINET

Te Tari o Te Pirimia me Te Komiti Matua

What are the proposed powers for NZSIS and GCSB?

The New Zealand Intelligence and Security Bill 2016

FACTSHEET NO. 6

What the Bill proposes

- Clear and simple legislation, with all powers consolidated and described in a single Act.
- The agencies must obtain a warrant for any activity that would otherwise be unlawful (such as intercepting telephone calls).
- The same activities (such as surveillance) for the agencies (except for one solely for the GCSB, concerning cyber security) but different powers to conduct those activities.
- Warrants can only be obtained for:
 - acts necessary for the proper performance of the agencies' functions; or
 - testing, maintaining or developing capabilities and training employees in order to perform the agencies' functions.
- Joint warrants to facilitate cooperation between the agencies.

Consolidating and clarifying powers

The First Independent Review of Intelligence and Security recommended a single warranting regime which would have resulted in the New Zealand

Security Intelligence Service (NZSIS) and Government Communications Security Bureau (GCSB) having the same powers to collect intelligence and carry out their other functions.

The Government has proposed to take a modified approach, because this would significantly expand the powers of GCSB in particular. For instance, under the Reviewers' model, the GCSB would gain the ability to enter and search a private premises.

It is proposed that NZSIS and GCSB can conduct the same overarching activities, such as 'search', but will have different powers to carry out these activities. For example, GCSB can conduct a remote search of a computer, while NZSIS can carry out a physical search of private property. This would recognise that NZSIS operates primarily in the physical world and GCSB primarily in the electronic.

When NZSIS and GCSB are operating under a joint warrant, they will both be able to carry out the full suite of activities to put these powers into practice.

See Factsheets 7 and 8 for more information on warrants.

Joint warrants

The authorisation regime also provides for joint warrants to be issued which will enable NZSIS and GCSB to conduct joint operations using the specialist capabilities of both agencies, where this is judged to be appropriate.

Safeguards

The Attorney-General (and Commissioner of Intelligence Warrants if the warrant relates to a New Zealander) can only approve a warrant if:

- the proposed activity is proportionate to the purpose it is sought for; and
- the information sought can't be reasonably collected in a less intrusive way.

The Inspector-General of Intelligence and Security has full access to review the issue and execution of any warrant.

Warrantable powers and activities

Activities which may be authorised and conducted by both NZSIS and GCSB under a warrant

- **Interception:** intercept communications, for example a phone call.
- **Search:** search places, such as a private premises, or things, such as a computer network or device.
- **Seizure:** seize physical things, such as documents, or non-physical things, such as information on a computer network.
- **Surveillance:** conduct warranted surveillance, such as visual surveillance of a private place.

- **Human intelligence:** collect intelligence through human sources or intelligence officers (including online) where the officer or source may be required to undertake an unlawful act (joining a terrorist group, for instance).
- **Requests to foreign partners:** ask a partner to carry out activities under a GCSB or NZSIS warrant. This ensures the agencies cannot use a foreign partner to circumvent the warranting process and New Zealand law.
- Anything else necessary and reasonable to maintain or keep secret collection capabilities.
- **Additional activity for GCSB only – any other act necessary or desirable** to protect communications or information infrastructures of importance to the New Zealand Government.

To conduct these activities, the agencies can:

NZSIS only

- **Install, use, maintain or remove** a visual surveillance device.
- **Install, use, maintain or remove** a tracking device.
- **Break open** or interfere with any vehicle or other thing.
- **Enter** any place, vehicle or other thing authorised by the warrant.
- **Take photographs, sound and video recording, and drawings** of a place, vehicle or other thing searched, and of anything found in or on that place, vehicle or other thing searched.

- **Use any force** in respect of any property that is reasonable for the purposes of carrying out a search or seizure.
- **To bring and use** any equipment in a search of a place, vehicle or other thing.
- **To bring and use** a dog to assist with a search (for example, an explosive detection dog).

NZSIS and GCSB

- **Access** an information infrastructure.
- **Extract** and use any electricity.
- **Install, use, maintain or remove** an interception device.
- **Install, maintain, use or remove** an audio or visual surveillance device to maintain the operational security of a warranted activity.
- Any other act that is reasonable in the circumstances and reasonably required to achieve the purpose of the warrant.
- Anything reasonably necessary to conceal the fact that anything has been done under the warrant, or reasonably necessary to keep warranted activities of the agencies covert.

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