

Protections for New Zealanders

A new authorisation regime for warrants

The New Zealand Intelligence and Security Bill 2016

FACTSHEET NO. 8

What the Bill proposes

- Both agencies must obtain a Type 1 intelligence warrant for intelligence collection activities targeting New Zealanders which would otherwise be unlawful.
- A 'triple lock' system to protect New Zealanders.
- A Type 1 intelligence warrant must be:
 - approved by the Attorney-General
 - approved by a Commissioner of Intelligence Warrants **and**
 - subject to review by the Inspector-General of Intelligence and Security.
- New Zealanders can only be targeted for the purpose of protecting national security or where they are an agent of a foreign power (meaning they are working for a foreign state or organisation).

The current legislation

The Reviewers of the First Independent Review of Security and Intelligence concluded that the provision prohibiting the Government Communications Security Bureau (GCSB) from intercepting New Zealanders' private communications lacks clarity and is difficult to apply in practice. Further, it hinders GCSB's ability to assist other parts of government to protect New Zealand against security threats. There are currently no protections specifically for New Zealanders in the New Zealand Security Intelligence Service (NZSIS) legislation.

The 'triple lock' protection

The Bill proposes removing the current prohibition on GCSB targeting New Zealanders' private communications when performing its intelligence gathering and analysis function. Instead, both agencies will need to apply for a Type 1 intelligence warrant before targeting New Zealanders, which requires the approval of both the Attorney-General and a Commissioner of Intelligence Warrants and is subject to review by the Inspector-General of Intelligence and Security.

NZSIS and GCSB would also be restricted to targeting New Zealanders on the grounds of national security (rather than the broader objectives of international relations and wellbeing, and economic wellbeing) or if they are an agent of a foreign power (working for a foreign state or organisation).

The Reviewers noted this would be a limitation on the agencies' ability to target New Zealanders given, for example, the NZSIS can currently apply for warrants to target New Zealanders on economic or international wellbeing grounds.

No 'mass surveillance'

Neither NZSIS nor GCSB conduct mass surveillance. This has been confirmed by several independent sources, including the Inspector-General of Intelligence and Security and the Privacy Commissioner. The Reviewers, who had unrestricted access to security records, also reached the same conclusion. The Bill does not change this position.

Who is involved?

Attorney-General

The Attorney-General will approve all warrants. The Attorney-General must be satisfied that a proposed warrant is necessary to discharge the intelligence functions of NZSIS or GCSB and proportionate to the purposes for which it is sought. As the senior government law officer, the Attorney-General is well placed to balance the security and legal dimensions of a warrant, including New Zealand's human rights and privacy obligations.

Commissioner of Intelligence Warrants

A Commissioner of Intelligence Warrants (a former High Court judge) must approve any warrant that targets a New Zealander (a Type 1 warrant). These Commissioners will apply their significant judicial experience, ensuring robust scrutiny is applied to these warrants. As independent officers, Commissioners of Intelligence Warrants are free to disagree with the agencies and with the Attorney-General. In such a case, a warrant application would not proceed.

Inspector-General of Intelligence and Security

The Inspector-General of Intelligence and Security (IGIS) is a statutory officer providing independent external oversight and review of the intelligence and security agencies. The IGIS can review any warrants to ensure they are issued and carried out in accordance with the law. This will involve examining all information relevant to the warrant.

