

The authorisation framework



DEPARTMENT of the
PRIME MINISTER and CABINET

Te Tari o Te Pirimia me Te Komiti Matua

The Intelligence and Security Act 2017

FACT SHEET NO. 6

The Act provides for a single authorisation regime for the New Zealand Security Intelligence Service (NZSIS) and Government Communications Security Bureau (GCSB). The regime consolidates and clarifies the powers of the NZSIS and GCSB.

When is an authorisation required?

The intelligence and security agencies must obtain an authorisation for any activity that would **otherwise be unlawful** (such as intercepting telephone calls or searching private premises).

Types of authorisations available

Intelligence warrants

The Act provides for two types of intelligence warrants: Type 1 and Type 2 warrants.

- **Type 1** warrants authorise activity which relates directly to New Zealand citizens and permanent residents. Type 1 warrants are jointly issued by the Minister responsible for the particular intelligence and security agency and a Commissioner of Intelligence Warrants.
- **Type 2** warrants allow an agency to target a person who is **not** a New Zealand citizen or permanent resident. Type 2 warrants are issued by the responsible Minister.

A warrant targeting a New Zealand citizen or permanent resident (a Type 1 warrant) can only be obtained where the proposed activity:

- is necessary for the protection of national security **and** is directed at a specified harm of national security concern such as terrorism, espionage or serious transnational crime (for more information on how “national security” is used in the Act see Factsheet 3); or
- will contribute to the international relations and well-being or the economic well-being of New Zealand, **but only** if the New Zealander targeted by the warrant is suspected of acting as an “agent of a foreign power”.

Very urgent authorisations

In special cases of “situations of urgency” – where there is an imminent threat to life and safety, or where the delay associated with applying for a warrant is likely to materially prejudice national security – a streamlined process is available for the issue of intelligence warrants.

In circumstances where an application for the urgent issue of a intelligence warrant needs to be made, but the delay in making such an application would defeat the purpose of obtaining the warrant, the Director-General of an intelligence and security agency may authorise the carrying out of the otherwise unlawful activity.

Such authorisations must be notified to the responsible Minister (and the Chief Commissioner of Intelligence Warrants where a New Zealander is involved) immediately and an application for a warrant must follow within 24 hours.

Practice warrants

Practice warrants allow otherwise unlawful activity to be authorised where necessary for training and testing purposes. All practice warrants must be issued jointly by the responsible Minister and a Commissioner of Intelligence Warrants (regardless of the nationality of those who might be impacted by any activity carried out under the warrant). Additional reporting requirements apply to this type of warrant and the types of powers available to give effect to practice warrants are restricted.

Safeguards

The Act sets out certain information that must be included in a warrant application. This includes details of the activity proposed to be carried out under the warrant and the grounds on which the application is made. This ensures the Minister, and where relevant a Commissioner of Intelligence Warrants, have the level of information necessary to make informed decisions and can impose any appropriate conditions and restrictions. It also facilitates after-the-fact oversight of warrants exercised by the Inspector-General of Intelligence and Security (IGIS).

The responsible Minister (and a Commissioner of Intelligence Warrants, if the warrant relates to a New Zealander) can only approve a warrant if:

- the proposed activity is **necessary** to enable the agency to perform its statutory functions;
- the proposed activity is **proportionate** to the purpose it is sought for;
- the information sought can't reasonably be collected in a **less intrusive way**; and
- all reasonably practicable steps will be taken to **minimise the impact** of the proposed activity on members of the public.

Independent oversight of the authorisation regime

All authorisations are subject to after-the-fact review by the IGIS. The IGIS is empowered to review the propriety of a warrant application, as well as its execution.

To assist the IGIS in carrying out her review function, the intelligence and security agencies are required to keep a register of all intelligence warrants issued to them. The register is accessible by the IGIS at any time.

See Factsheet 8 for more information on the specific protections for New Zealanders.