

Reprint
as at 1 July 2013



**Government Communications
Security Bureau Act 2003**

Public Act 2003 No 9
Date of assent 1 April 2003
Commencement see section 2

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

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1 Title

This Act is the Government Communications Security Bureau Act 2003.

**Part 1
Preliminary provisions**

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

The purpose of this Act is to—

- (a) continue the Government Communications Security Bureau and establish it as a department of State;
- (b) specify the objective and functions of the Bureau;
- (c) specify the circumstances in which the Bureau requires an interception warrant or a computer access authorisation to intercept foreign communications;
- (d) specify the conditions that are necessary for the issue of an interception warrant or a computer 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 foreign communications without a warrant or an authorisation.

4 Interpretation

In this Act, unless the context otherwise requires,—

access, in relation to any computer system, means instruct, communicate with, store data in, retrieve data from, or otherwise make use of any of the resources of, the computer system
Bureau means the Government Communications Security Bureau continued by section 6

communication includes signs, signals, impulses, writing, images, sounds, or data that a person or machine produces, sends, receives, processes, or holds in any medium

computer access authorisation or **authorisation** means an authorisation issued under section 19

computer system—

- (a) means—
 - (i) a computer; or
 - (ii) 2 or more interconnected computers; or
 - (iii) any communication links between computers or to remote terminals or any other device; or
 - (iv) 2 or more interconnected computers combined with any communication links between computers or to remote terminals or any other device; and
- (b) includes any part of the items described in paragraph (a) and all related input, output, processing, storage, software, or communication facilities, and stored data

Director means the chief executive of the Bureau; and includes a person who, under section 10, exercises or performs the functions, duties, or powers of the Director

foreign communications means communications that contain, or may reasonably be expected to contain, foreign intelligence

foreign intelligence means information about the capabilities, intentions, or activities of a foreign organisation or a foreign person

foreign organisation means—

- (a) a Government of any country other than New Zealand;
- (b) an entity controlled by the Government of any country other than New Zealand;
- (c) a company or body corporate that is incorporated outside New Zealand, or any company within the meaning of the Companies Act 1993 that is, for the purposes of the Companies Act 1993, a subsidiary of any company or body corporate incorporated outside New Zealand:

- (d) an unincorporated body of persons consisting exclusively of foreign organisations or foreign persons that carry on activities wholly outside New Zealand:
- (e) an international organisation:
- (f) a person acting in his or her capacity as an agent or a representative of any Government, body, or organisation referred to in any of paragraphs (a) to (e)

foreign person means an individual who is neither a New Zealand citizen nor a permanent resident; and includes a person acting in his or her capacity as an agent or a representative of such an individual

intercept includes hear, listen to, record, monitor, acquire, or receive a communication, or acquire its substance, meaning, or sense

interception device means any electronic, mechanical, electromagnetic, optical, or electro-optical instrument, apparatus, equipment, or other device that is used or is capable of being used to intercept communications

interception warrant means a warrant issued under section 17

medium means any form in which communications may be produced, sent, received, processed, or held; and includes electromagnetic, acoustic, or other energy

Minister means the Minister of the Crown who, under any warrant or with the authority of the Prime Minister, is for the time being responsible for the Bureau

network has the same meaning as in section 5 of the Telecommunications Act 2001; but does not include a line (within the meaning of that Act) that is used exclusively by the Bureau

permanent resident means a person who is, or who is deemed to be, the holder of a residence class visa under the Immigration Act 2009

private communication—

- (a) means a communication between 2 or more parties made under circumstances that may reasonably be taken to indicate that any party to the communication desires it to be confined to the parties to the communication; but

- (b) does not include a communication occurring in circumstances in which any party ought reasonably to expect that the communication may be intercepted by some other person not having the express or implied consent of any party to do so

serious crime means,—

- (a) in relation to New Zealand, any offence punishable by 2 or more years' imprisonment; and
- (b) in relation to an overseas country, any offence that, if it occurred in New Zealand, would be an offence punishable by 2 or more years' imprisonment.

Section 4 **permanent resident**: amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 4 **serious crime** paragraph (a): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 4 **serious crime** paragraph (b): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

5 Act binds the Crown

This Act binds the Crown.

Part 2 Organisation, objectives, and functions of Bureau

6 Bureau continued and established as department

- (1) There continues to be an instrument of the Executive Government of New Zealand known as the Government Communications Security Bureau.
- (2) On and from the commencement of this Act, the Bureau is a department of State.

7 Objective of Bureau

- (1) The objective of the Bureau is to contribute to the national security of New Zealand by providing—
 - (a) foreign intelligence that the Government of New Zealand requires to protect and advance—
 - (i) the security or defence of New Zealand; or

- (ii) the international relations of the Government of New Zealand; or
 - (iii) New Zealand's international well-being or economic well-being; and
 - (b) foreign intelligence to meet international obligations and commitments of the Government of New Zealand; and
 - (c) advice, assistance, and protection to departments of State and other instruments of the Executive Government of New Zealand in order to—
 - (i) protect and enhance the security of their communications, information systems, and computer systems; or
 - (ii) protect their environments from electronic or other forms of technical surveillance by foreign organisations or foreign persons.
- (2) For the purposes of subsection (1)(a)(iii), the interests of New Zealand's international well-being or economic well-being are relevant only to the extent that they are affected by the actions or intentions of foreign organisations or foreign persons.

8 Functions of Bureau

- (1) The Bureau has the following functions:
 - (a) to gather foreign intelligence, in accordance with the foreign intelligence requirements of the Government of New Zealand,—
 - (i) by intercepting communications under the authority of this Act; or
 - (ii) by co-operating with public authorities or other entities in New Zealand and abroad; or
 - (iii) by collecting information in any other lawful manner:
 - (b) to decipher, decode, and translate foreign communications:
 - (c) to examine and analyse foreign communications and foreign intelligence:
 - (d) to provide reports on foreign intelligence to the Minister and any person or office holder, whether in New Zealand or abroad, authorised by the Minister:

- (e) to co-operate with, or to provide advice and assistance to, any public authority or other entity, in New Zealand or abroad,—
 - (i) on the protection of information that the public authority or other entity produces, sends, receives, or holds in any medium; or
 - (ii) on any matter that is relevant—
 - (A) to the functions of the public authority or other entity; and
 - (B) to any purpose specified in subsection (2).
- (2) The Bureau may perform its functions only for the following purposes:
 - (a) to pursue its objective;
 - (b) to protect the safety of any person;
 - (c) in support of the prevention or detection of serious crime.
- (3) The performance of the Bureau's functions is subject to the control of the Minister.

9 Director of Bureau

- (1) The Director of the Bureau is appointed by the Governor-General.
- (2) The remuneration of the Director is determined by the Higher Salaries Commission under the Higher Salaries Commission Act 1977.
- (3) The Director holds office during the pleasure of the Governor-General and is subject to any conditions (other than remuneration) determined by the Minister.
- (4) Despite subsection (3), the person who, at the commencement of this Act, holds office as Director—
 - (a) continues to hold that office in accordance with the person's contract of employment; and
 - (b) until a determination of the kind referred to in subsection (2) is made in respect of the person, continues to be remunerated in accordance with that contract; and
 - (c) is eligible to be reappointed as Director.

10 Acting Director

- (1) When there is a vacancy in the position of Director or when the Director is (for whatever reason) absent from duty, the functions, duties, and powers of the Director must be exercised or performed by a person whom the Minister directs to exercise or perform those functions, duties, and powers.
- (2) The Minister may give a direction before the occurrence of any vacancy or absence referred to in subsection (1) or while the vacancy or absence continues.
- (3) No direction and no act done by a person acting under a direction given under this section may, in a proceeding, be questioned on the ground that the occasion for the direction had not arisen or had ceased, or on the ground that the person had not been appointed to a position to which the direction relates.

11 Prohibition on unauthorised disclosure of information

- (1) A person who is or was an employee of the Bureau may not disclose or use any information gained by or conveyed to the person through the person's connection with the Bureau except in the strict course of the person's official duties or as authorised by the Minister.
- (2) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$2,000 who contravenes subsection (1).

Compare: 1969 No 24 s 12A(1), (4)

Section 11(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

12 Annual report

- (1) As soon as practicable after each year ending on 30 June, the Director must deliver to the Minister a report on the activities of the Bureau during that year as if it were an annual report under the Public Finance Act 1989.
- (2) When the Minister receives a copy of a report under subsection (1), the Minister must, without delay, submit a copy of the report to the members of the Intelligence and Security Committee established under the Intelligence and Security Committee Act 1996.

- (3) Within 30 sitting days after receiving the report under subsection (1), the Minister must present to the House of Representatives a copy of the report that accords with any directions given under subsection (4), and includes—
- (a) *[Repealed]*
 - (b) a statement as to whether or not any interception warrants were in force during the year to which the report relates; and
 - (c) a statement as to whether or not any computer access authorisations were in force during the year to which the report relates; and
 - (d) a statement setting out—
 - (i) a summary of the Bureau's equal employment opportunities programme for the year to which the report relates; and
 - (ii) an account of the extent to which the Bureau was able to meet, during the year to which the report relates, the equal employment opportunities programme for that year.
- (4) Before presenting a copy of the report to the House of Representatives under subsection (3), the Minister may direct that any material (other than the material referred to in section 45E(1)(c)(i) of the Public Finance Act 1989 and subsection (3)(b) to (d)) be deleted from the report if the Minister considers that the material is likely—
- (a) to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
 - (b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the Government of any other country or any agency of such a Government; or
 - (c) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by any international organisation; or
 - (d) to endanger the safety of any person; or
 - (e) to prejudice unreasonably the privacy of an individual.

Compare: 1969 No 24 s 4J

Section 12(1): amended, on 25 January 2005, by section 37(1) of the Public Finance Amendment Act 2004 (2004 No 113).

Section 12(3)(a): repealed, on 25 January 2005, by section 37(1) of the Public Finance Amendment Act 2004 (2004 No 113).

Section 12(4): amended, on 25 January 2005, by section 37(1) of the Public Finance Amendment Act 2004 (2004 No 113).

Part 3 **Interception of communications**

Purpose of Part

13 Purpose of Part

The purpose of this Part is,—

- (a) subject to the restrictions imposed by this Part, to enable the Bureau to obtain foreign intelligence; and
- (b) to authorise the interception of communications (whether under section 16 or under an interception warrant or a computer access authorisation) only if the purpose of the interception is to obtain foreign intelligence.

Restrictions imposed on interceptions

14 Interceptions not to target domestic communications

Neither the Director, nor an employee of the Bureau, nor a person acting on behalf of the Bureau may authorise or take any action for the purpose of intercepting the communications of a person (not being a foreign organisation or a foreign person) who is a New Zealand citizen or a permanent resident.

15 Interceptions for which warrant or authorisation required

- (1) Unless authorised by an interception warrant to do so, neither the Director, nor an employee of the Bureau, nor a person acting on behalf of the Bureau may—
 - (a) physically connect an interception device to any part of a network; or
 - (b) install an interception device in a place for the purpose of intercepting communications that occur in the place.
- (2) Unless authorised by section 16 or by a computer access authorisation to do so, neither the Director, nor an employee of

the Bureau, nor a person acting on behalf of the Bureau may access a computer system that the person concerned is not otherwise authorised to access.

16 Certain interceptions permitted without interception warrant or computer access authorisation

- (1) 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 a computer access authorisation, intercept foreign communications only if the interception is authorised by this Act or by another enactment.
- (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 a computer access authorisation, intercept foreign communications by using an interception device, but only if—
 - (a) the interception does not involve any activity specified in section 15(1); and
 - (b) any access to a computer system 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 obtaining foreign intelligence; and
 - (d) the foreign communications do not contain private communications other than private communications that—
 - (i) are produced, sent, or received by, or sent to, a foreign organisation or a foreign person; and
 - (ii) contain, or may reasonably be expected to contain, foreign intelligence.
- (3) This section is subject to section 14.

Interception warrants

17 Issue of interception warrant

- (1) The Director may apply in writing to the Minister for the issue of an interception warrant authorising the use of interception devices to intercept communications not otherwise lawfully obtainable by the Bureau.

- (2) If satisfied on evidence given on oath by the Director that the conditions specified in subsection (3) apply to the proposed warrant, the Minister may issue the warrant to authorise the interception of either or both of the following kinds of communication:
 - (a) foreign communications made or received by 1 or more persons specified in the warrant or made or received in 1 or more places specified in the warrant;
 - (b) foreign communications that are sent from, or are being sent to, an overseas country.
- (3) The conditions referred to in subsection (2) are that—
 - (a) the interception to be authorised by the proposed warrant is essential for the protection or advancement of 1 or more of the interests specified in section 7(1)(a); and
 - (b) the value of the information sought to be obtained under the proposed warrant justifies the particular interception; and
 - (c) the information is not likely to be obtained by other means; and
 - (d) if the communications to be intercepted are of the kind specified in subsection (2)(a), that there are reasonable grounds for believing—
 - (i) that any person specified in the proposed warrant as a person whose communications may be intercepted is a foreign person or a foreign organisation; and
 - (ii) that any place to be specified in the proposed warrant is occupied by a foreign organisation or a foreign person.
- (4) Before issuing a warrant, the Minister must consult the Minister of Foreign Affairs and Trade about the proposed warrant.
- (5) The Minister may issue a warrant subject to any conditions that the Minister considers advisable in the public interest.
- (6) This section is subject to section 14.
Compare: 1969 No 24 ss 4A(2)–(5), 4B(3)

18 Persons acting under warrant

- (1) Every interception warrant must specify the person or class of person who may make the interception authorised by the warrant.
- (2) A warrant may also request 1 or more persons or class of persons to give any assistance that is reasonably necessary to give effect to the warrant.
- (3) If a request is made, under subsection (2), to 1 or more persons or class of persons who are employees (the **employees**), the warrant 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.
- (4) On an application made in writing by the Director, the Minister may amend a warrant—
 - (a) by substituting another person for the person specified in the warrant under subsection (1):
 - (b) by substituting another person or another class of persons for a person or class of persons requested under subsection (2):
 - (c) by adding any person or class of persons to the persons requested under subsection (2).

Compare: 1969 No 24 s 4D

*Computer access authorisation***19 Authorisation to access computer system**

- (1) The Minister may, on the written application of the Director, authorise the Director or a specified employee, or a specified class of employees, of the Bureau to access a computer system of a specified foreign organisation or foreign person.
- (2) Before the Minister grants an authorisation, he or she must be satisfied on evidence given on oath by the Director that—
 - (a) the access to be authorised is essential for the protection or advancement of 1 or more of the interests specified in section 7(1)(a); and
 - (b) that the persons whose computer system is to be accessed are foreign persons or foreign organisations; and

- (c) the value of the information sought to be obtained under the authorisation justifies the access; and
 - (d) the information is not likely to be obtained by other means.
- (3) Every authorisation must be in writing.
 - (4) Before issuing an authorisation, the Minister must consult the Minister of Foreign Affairs and Trade about the proposed authorisation.
 - (5) The Minister may issue an authorisation subject to any conditions that the Minister considers advisable in the public interest.

*Provisions applicable to warrants,
authorisations, and powers under section 16*

20 Director's functions in relation to warrants and authorisations not to be delegated

Despite section 41 of the State Sector Act 1988, the Director may not delegate to any person the Director's functions under section 17 or section 19.

21 Action taken in accordance with warrant or authorisation justified

- (1) Every person who is authorised to give effect, or to assist in giving effect, to an interception warrant or to a computer access authorisation is justified in taking, in accordance with the terms and conditions of the warrant or authorisation, any reasonable action necessarily involved in giving, or assisting to give, effect to the warrant or authorisation.
- (2) In any proceedings, a certificate by the Attorney-General as to any matters specified in a warrant or authorisation is sufficient evidence of those matters and, if such a certificate is produced, it is not necessary to produce the warrant or authorisation to which the certificate relates.

Compare: 1969 No 24 s 4A(6), (7)

22 Term of warrant or authorisation

- (1) Every interception warrant and every computer access authorisation must specify a period not exceeding 12 months for which the warrant or authorisation is valid.
- (2) 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.
Compare: 1969 No 24 s 4C

23 Destruction of irrelevant records obtained by interception

- (1) Every person who intercepts any communication under section 16 or under an interception warrant or a computer access authorisation must, as soon as practicable after the interception, destroy any copy that he or she may make of the communication, or any part of the communication, and any record, whether in writing or otherwise, of the information obtained by that interception, except to the extent that the information recorded in the copy or record relates directly or indirectly to—
 - (a) the protection or advancement of 1 or more of the interests specified in section 7(1)(a); or
 - (b) any of the Bureau's functions under section 8.
- (2) Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000 who knowingly fails to comply with subsection (1).

Compare: 1969 No 24 s 4G

Section 23(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

24 Duty to minimise impact of interception on third parties

Every person who, in accordance with section 16 or with an interception warrant or with a computer access authorisation, intercepts or assists in intercepting the communications of 1 or more persons must take all practicable steps that are reasonable in the circumstances to minimise the likelihood of intercepting communications that are not relevant to the persons whose communications are to be intercepted.

Compare: 1969 No 24 s 4F(1)

25 Prevention or detection of serious crime

Despite section 23, the Director, for the purpose of preventing or detecting serious crime in New Zealand or in any other country, may retain any information that comes into the possession of the Bureau and may communicate that information to employees of the New Zealand Police or to any other persons, and in any manner, that the Director thinks fit.

Compare: 1969 No 24 s 4H

Section 25: amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Part 4

Provisions relating to other enactments

26 Amendment to Crimes Act 1961

Amendment(s) incorporated in the Act(s).

27 Amendment to Higher Salaries Commission Act 1977

Amendment(s) incorporated in the Act(s).

28 Amendment to Inspector-General of Intelligence and Security Act 1996

Amendment(s) incorporated in the Act(s).

29 Amendment to New Zealand Security Intelligence Service Act 1969

Amendment(s) incorporated in the Act(s).

30 Amendment to Official Information Act 1982

Amendment(s) incorporated in the Act(s).

31 Amendment to Public Finance Act 1989

Amendment(s) incorporated in the Act(s).

32 Amendment to Radiocommunications Act 1989

Amendment(s) incorporated in the Act(s).

33 Amendments to State Sector Act 1988

Amendment(s) incorporated in the Act(s).

- 34 Certain provisions of State Sector Act 1988 not to apply**
Sections 30, 40, 58(2), and 68 of the State Sector Act 1988 do not apply to the Government Communications Security Bureau.
- 35 Revocation**
The Crimes (Exemption of Listening Device) Order 1997 (SR 1997/145) is revoked.
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Contents

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Notes

1 *General*

This is a reprint of the Government Communications Security Bureau Act 2003. The reprint incorporates all the amendments to the Act as at 1 July 2013 as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint
(most recent first)***

Criminal Procedure Act 2011 (2011 No 81): section 413

Immigration Act 2009 (2009 No 51): section 406(1)

Policing Act 2008 (2008 No 72): section 130(1)

Public Finance Amendment Act 2004 (2004 No 113): section 37(1)