

**Reprint
as at 28 September 2017**



**New Zealand Security Intelligence Service Amendment
Act 2014**

Public Act 2014 No 73
Date of assent 11 December 2014
Commencement see section 2

New Zealand Security Intelligence Service Amendment Act 2014: repealed, on 28 September 2017,
pursuant to section 242(3)(a) of the Intelligence and Security Act 2017 (2017 No 10).

Contents

	Page
1 Title	2
2 Commencement	2
3 Principal Act	2
4 New cross-headings and sections 4IA to 4IG inserted	2
<i>Visual surveillance warrants</i>	
4IA Interpretation	2
4IB Issue of visual surveillance warrant	3
4IC Provisions applying to visual surveillance warrants	4
<i>Situations of emergency or urgency</i>	
4ID Intelligence warrant or visual surveillance warrant need not be obtained in some situations of emergency or urgency	5
4IE Requirements after authorisation under section 4ID(1) given	6

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the New Zealand Security Intelligence Service.

	4IF	Provisions applying to authorisations under section 4ID(1)	8
		<i>Repeals</i>	
	4IG	Repeals	9
5		Section 4H amended (Prevention or detection of serious crime)	9
6		Section 5G amended (Exercise of Commissioner's functions during absence, etc)	9
7		Section 12A amended (Prohibition on unauthorised disclosure of information)	9
8		Consequential amendment to Search and Surveillance Act 2012	9
9		Consequential amendment to Telecommunications (Interception Capability and Security) Act 2013	9

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the New Zealand Security Intelligence Service Amendment Act 2014.

2 Commencement

This Act comes into force on 12 December 2014.

3 Principal Act

This Act amends the New Zealand Security Intelligence Service Act 1969 (the **principal Act**).

4 New cross-headings and sections 4IA to 4IG inserted

After section 4I, insert:

Visual surveillance warrants

4IA Interpretation

In sections 4IB to 4IF,—

Inspector-General means the Inspector-General under the Inspector-General of Intelligence and Security Act 1996

visual surveillance means the observation of private activity in private premises, with or without the use of a visual surveillance device, and includes any recording of that observation

visual surveillance device has the same meaning as in section 3(1) of the Search and Surveillance Act 2012

visual surveillance warrant means a domestic visual surveillance warrant issued under section 4IB(1) or a foreign visual surveillance warrant issued under section 4IB(2).

4IB Issue of visual surveillance warrant

- (1) The Minister and the Commissioner may jointly issue a domestic visual surveillance warrant authorising a person to undertake visual surveillance if the Minister and the Commissioner are both satisfied on evidence on oath given by the applicant for the warrant that the conditions specified in subsection (3) apply to the proposed warrant.
- (2) The Minister may issue a foreign visual surveillance warrant authorising a person to undertake visual surveillance if the Minister is satisfied on evidence on oath given by the applicant for the warrant that—
 - (a) the conditions specified in subsection (3) apply to the proposed warrant; and
 - (b) there are reasonable grounds for believing—
 - (i) that no New Zealand citizen or permanent resident is to be identified by the proposed warrant as a person who is to be subject to the warrant; and
 - (ii) that any place to be specified in the proposed warrant is occupied by a foreign organisation or a foreign person.
- (3) The conditions referred to in subsections (1) and (2) are that—
 - (a) the visual surveillance to be authorised by the proposed warrant is necessary for the detection, investigation, or prevention of any actual, potential, or suspected—
 - (i) terrorist act; or
 - (ii) facilitation of a terrorist act; and
 - (b) the value of the information sought to be obtained under the proposed warrant justifies the visual surveillance; and
 - (c) the information is not likely to be obtained by any other means; and
 - (d) any recording of activity that is sought to be obtained under the proposed warrant is not privileged in proceedings in a court of law under—
 - (i) section 58 or 59 of the Evidence Act 2006; or
 - (ii) any rule of law that confers privilege on communications of a professional nature between a lawyer and his or her client.
- (4) Every visual surveillance warrant must specify—
 - (a) the identity of the person to be observed;
 - (b) the place, facility, or thing to be observed.

- (5) A visual surveillance warrant may be issued only on an application made in writing by the Director or by the person for the time being acting as the Director.
- (6) A combined application for both a visual surveillance warrant and an intelligence warrant may be made, in which case the Minister and the Commissioner (in the case of a domestic warrant), or the Minister (in the case of a foreign warrant), may issue—
 - (a) a visual surveillance warrant only; or
 - (b) an intelligence warrant only; or
 - (c) both.
- (7) The expiry of a visual surveillance warrant does not prevent a further application under subsection (1) or (2) in respect of the same subject matter.
- (8) Subsections (1) to (7) have effect despite anything to the contrary in any other Act.
- (9) As soon as practicable after a visual surveillance warrant is issued under subsection (1), the Director (or the person for the time being acting as the Director) must provide a copy of the visual surveillance warrant to the Inspector-General.
- (10) As soon as practicable after the expiry of a visual surveillance warrant, the Director must ensure that any records resulting from the visual surveillance undertaken under that warrant are destroyed, except to the extent that those records are relevant—
 - (a) to the detection of activities prejudicial to security; or
 - (b) to the gathering of foreign intelligence information that is essential to security.
- (11) Every person who knowingly fails to comply with subsection (10) commits an offence and is liable on conviction to a fine not exceeding \$10,000.

41C Provisions applying to visual surveillance warrants

- (1) The following provisions apply, with any necessary modifications, as if references to an intelligence warrant or a warrant in those provisions were references to a visual surveillance warrant:
 - (a) section 4A(6) to (8) (which confers immunities on persons giving effect to warrants):
 - (b) section 4B(2) to (5) (which allows the Minister and the Commissioner to impose terms and conditions in the public interest or to minimise the impact on third parties):
 - (c) section 4C (which relates to the term of a warrant):
 - (d) section 4D (which empowers the Director or a delegate of the Director to give effect to a warrant and to request third parties to assist):

- (e) section 4E (which provides powers to persons acting under warrants):
 - (f) section 4F (which imposes a duty to minimise the impact of a warrant on third parties):
 - (g) section 4I (which enables the Minister to issue a warrant for the removal of equipment installed under a warrant):
 - (h) section 4K (which requires the Director to include information in every annual report on the warrants in force during the relevant reporting period):
 - (i) section 4L (which requires the Minister to certify that the information on warrants in the annual report is correct):
 - (j) section 5AA (which permits the Director to delegate certain functions or powers relating to warrants, but not the function involved in applying for a warrant):
 - (k) section 5AAC (which requires delegations involving the execution of warrants to be entered in a register).
- (2) The immunities referred to in subsection (1)(a) have effect despite anything to the contrary in any other Act.

Situations of emergency or urgency

4ID Intelligence warrant or visual surveillance warrant need not be obtained in some situations of emergency or urgency

- (1) The Director (or the person for the time being acting as the Director) may authorise a person to exercise a power specified in subsection (2) without an intelligence warrant or a visual surveillance warrant if the Director (or the person acting as the Director) is satisfied—
- (a) that the exercise of the power is necessary for the detection, investigation, or prevention of any actual, potential, or suspected—
 - (i) terrorist act; or
 - (ii) facilitation of a terrorist act; and
 - (b) that,—
 - (i) in the case of an intelligence warrant, the conditions set out in section 4A(3)(b) to (d) apply; or
 - (ii) in the case of a visual surveillance warrant, the conditions set out in section 4IB(3)(b) to (d) apply; and
 - (c) that obtaining an intelligence warrant or a visual surveillance warrant within the time in which it is proposed to exercise the power is impracticable in the circumstances and a delay is likely to result in a loss of intelligence.
- (2) The powers are the power to,—

- (a) in relation to an intelligence warrant,—
 - (i) intercept or seize any communication, document, or thing not otherwise lawfully obtainable by the person:
 - (ii) undertake electronic tracking:
- (b) in relation to a visual surveillance warrant, undertake visual surveillance.
- (3) An authorisation under subsection (1) is valid for a period not exceeding 24 hours that is specified by the person giving the authorisation.
- (4) On the expiry of an authorisation under subsection (1), no further application may be made for an authorisation under subsection (1) in respect of the same subject matter.
- (5) An authorisation under subsection (1) may contain any terms and conditions that the Director (or the person for the time being acting as the Director) considers advisable—
 - (a) in the public interest; or
 - (b) to minimise any risk that the warrant may affect third parties, if, in the opinion of the Director (or the person for the time being acting as the Director), that risk is significant because of—
 - (i) the name, alias, or other description of the person whose communications are sought to be intercepted; or
 - (ii) the nature of the place or the facility in respect of which communications may be intercepted.
- (6) Subsections (1) to (4) have effect despite anything to the contrary in any other Act.

4IE Requirements after authorisation under section 4ID(1) given

- (1) Immediately after an authorisation is given under section 4ID(1), the Director (or the person for the time being acting as the Director) must advise the following persons of the authorisation:
 - (a) the Minister; and
 - (b) the Inspector-General; and
 - (c) if the authorisation is to exercise a power that would otherwise be required to be exercised under a domestic intelligence warrant or a domestic visual surveillance warrant, the Commissioner.
- (2) When the Minister or the Commissioner is advised under subsection (1) of an authorisation, the Minister or the Commissioner may direct every person acting under the authorisation—
 - (a) not to proceed with, or to discontinue, any or all activity under the authorisation:
 - (b) to destroy any or all of the information collected.

- (3) The Director (or the person for the time being acting as the Director) must ensure that every direction under subsection (2) is carried out without delay.
- (4) As soon as practicable after the Minister or the Commissioner issues a direction under subsection (2), the Director (or the person for the time being acting as the Director) must refer the matter to the Inspector-General for investigation.
- (5) As soon as practicable after the expiry of an authorisation under section 4ID(1), if no application has been made for an intelligence warrant or a visual surveillance warrant in relation to the same subject matter, the Director (or the person for the time being acting as the Director) must provide a report—
 - (a) to the Minister; or
 - (b) if the authorisation was to exercise a power that would otherwise be required to be exercised under a domestic intelligence warrant or a domestic visual surveillance warrant, to the Minister and the Commissioner.
- (6) A report under subsection (5) must include the following information:
 - (a) the reason why the authorisation was given; and
 - (b) the reason why no application for a warrant was made; and
 - (c) the nature of the information collected under the authorisation.
- (7) As soon as practicable after receiving a report under subsection (5), the Minister (in the case of an authorisation to exercise a power that would otherwise be required to be exercised under a foreign intelligence warrant or a foreign visual surveillance warrant) or the Minister and the Commissioner (in the case of an authorisation to exercise a power that would otherwise be required to be exercised under a domestic intelligence warrant or a domestic visual surveillance warrant) must—
 - (a) determine whether it was appropriate for that authorisation to have been given; and
 - (b) refer the matter to the Inspector-General for investigation.
- (8) If an authorisation under section 4ID(1) is followed by an application for a visual surveillance warrant or an intelligence warrant in relation to the same subject matter, and that application is refused, the Director must refer the matter to the Inspector-General for investigation.
- (9) As soon as practicable after the expiry of an authorisation under section 4ID(1), if no warrant is issued in relation to the same subject matter, the Minister must ensure that any records resulting from activities undertaken pursuant to that authorisation are destroyed, except to the extent that those records are relevant—
 - (a) to the detection of activities prejudicial to security; or
 - (b) to the gathering of foreign intelligence information that is essential to security.

- (10) As soon as practicable after a decision is made to retain records under subsection (9)(a) or (b), the Minister must refer the matter to the Inspector-General for investigation.
- (11) Every person who knowingly fails to comply with subsection (9) commits an offence and is liable on conviction to a fine not exceeding \$10,000.
- (12) The Director must include in every annual report prepared under section 4J a statement, in relation to the reporting period to which the report relates, of—
- (a) the number of authorisations given under section 4ID(1):
 - (b) how many of those authorisations were to exercise powers that would otherwise be required to be exercised under—
 - (i) intelligence warrants:
 - (ii) visual surveillance warrants:
 - (c) the length of time, expressed in 12-hour bands, that those authorisations remained in force before expiring or being replaced by an intelligence warrant or a visual surveillance warrant:
 - (d) how many of those authorisations were followed by an application for an intelligence warrant or a visual surveillance warrant in relation to the same subject matter:
 - (e) how many determinations were made under subsection (7) that it was not appropriate for an authorisation under section 4ID(1) to have been given.
- (13) As soon as practicable after each year ending on 31 December, the Director must deliver to the Minister an interim report of the matters in subsection (12)(a) to (e) in relation to the 6-month period from 1 July to 31 December.
- (14) Section 4J(2) to (4) (except section 4J(3)(b)) applies to an interim report under subsection (13).

4IF Provisions applying to authorisations under section 4ID(1)

- (1) The following provisions apply, with any necessary modifications, to an authorisation under section 4ID(1) as if references to an intelligence warrant or a warrant in those provisions were references to an authorisation under section 4ID(1):
- (a) section 4A(6) to (8) (which confers immunities on persons giving effect to warrants):
 - (b) section 4D (which empowers the Director or a delegate of the Director to give effect to a warrant and to request third parties to assist):
 - (c) section 4E (which provides powers to persons acting under warrants):
 - (d) section 4F(1) and (2) (which imposes a duty to minimise the impact of a warrant on third parties):

- (e) section 4I (which enables the Minister to issue a warrant for the removal of equipment installed under a warrant):
 - (f) section 5AA (which permits the Director to delegate certain functions or powers relating to warrants, but not the function involved in applying for a warrant):
 - (g) section 5AAC (which requires delegations involving the execution of warrants to be entered in a register).
- (2) The immunities conferred under subsection (1)(a) have effect despite anything to the contrary in any other Act.

Repeals

4IG Repeals

Sections 4IA to 4IF and this section are repealed on 1 April 2017.

5 Section 4H amended (Prevention or detection of serious crime)

In section 4H(1), replace “sections 4(1)(a) and 4G(1)(a),” with “sections 4(1)(a), 4IB(10), 4IE(9), 4G(1)(a), and 4G(2A),”.

6 Section 5G amended (Exercise of Commissioner’s functions during absence, etc)

In section 5G(2), replace “sections 4A and 4F” with “sections 4A, 4F, 4IB, and 4IE”.

7 Section 12A amended (Prohibition on unauthorised disclosure of information)

- (1) In section 12A(2), replace “intelligence warrant” with “intelligence warrant, visual surveillance warrant, or authorisation under section 4ID(1)”.
- (2) In section 12A(3), replace “intelligence warrant” with “intelligence warrant, visual surveillance warrant, or authorisation under section 4ID(1)”.

8 Consequential amendment to Search and Surveillance Act 2012

- (1) This section amends the Search and Surveillance Act 2012.
- (2) In section 47(1)(c)(i), replace “section 4A(1) or (2)” with “section 4A(1) or (2), 4IB(1) or (2), or 4ID(1)”.

9 Consequential amendment to Telecommunications (Interception Capability and Security) Act 2013

- (1) This section amends the Telecommunications (Interception Capability and Security) Act 2013.
- (2) In section 3(1), definition of **interception warrant**, paragraph (b), replace “section 4A(1) or (2)” with “section 4A(1) or (2), 4IB(1) or (2), or 4ID(1)”.

Reprints notes

1 *General*

This is a reprint of the New Zealand Security Intelligence Service Amendment Act 2014 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Intelligence and Security Act 2017 (2017 No 10): section 242(3)(a)