

# The authorisation framework

## Types and scope of Intelligence Warrants

The New Zealand Intelligence and Security Bill 2016

FACTSHEET NO. 7

## What the Bill proposes

- A single warranting framework for both the New Zealand Security Intelligence Service (NZSIS) and the Government Communications Security Bureau (GCSB).
- 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).
- Whether a Type 1 or Type 2 warrant is sought is determined by whether New Zealanders are likely to be involved.
- Warrants can target persons or classes of persons.
- New purpose-based warrants for specific operational reasons.
- Warranted activity must be **necessary** for intelligence functions of the agencies and **proportionate** to the purposes for which the warrant is sought.

## Why is a new authorisation framework needed?

Intelligence agencies have intrusive capabilities that can impact on an individual's privacy and human rights. Before GCSB or NZSIS can carry out any

activities that would otherwise be unlawful (such as intercepting phone calls) they must apply for and be granted a warrant.

At present, NZSIS and GCSB have separate warranting regimes and different provisions for gaining warrants in urgent situations.

The Reviewers of the First Independent Review of Intelligence and Security in New Zealand identified separate warranting regimes as a significant barrier to cooperation between NZSIS and GCSB and proposed a single authorisation framework to support cooperation and improve the transparency and accountability of the agencies.

## The Framework

### Type 1 intelligence warrant:

- Required for intelligence collection activities targeting New Zealanders that would otherwise be unlawful (such as intercepting telephone calls).
- Must be approved by the Attorney-General **and** a Commissioner of Intelligence Warrants **and** are subject to review by the Inspector-General of Intelligence and Security ('triple lock').

### Type 2 intelligence warrant:

- Required for intelligence collection activities targeting a non-New Zealander that would otherwise be unlawful.
- Must be approved by the Attorney-General **and** are subject to review by the Inspector-General of Intelligence and Security.

### Ministerial Policy Statement:

- The Minister may issue Ministerial Policy Statements to regulate lawful activities.
- A Ministerial Policy Statement would not affect the lawfulness of an activity but provide a mechanism by which a Minister can issue guidance on how an activity should be conducted.

## Flexibility in the targeting of warrants

Flexibility in the targeting of intelligence collection is necessary for modern intelligence agencies to fulfil their national security roles, particularly in the initial stages of an investigation. For example, if GCSB or NZSIS are alerted to reports of a group of unidentified New Zealanders in Syria, they cannot currently target those people unless they have sufficient information on their identities.

Warrants for classes of people and purpose-based warrants, as recommended by the Reviewers, fill this critical gap.

The Bill proposes increased flexibility in targeting, subject to a range of limitations.

## The scope of intelligence warrants in the Bill

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**Targeted warrants:** For these warrants, applications would need to specify the focus of the warrant – meaning the person, class of person, place, information infrastructure (a website, computer or phone).

*Examples:*

- A warrant to intercept the communications of a known Islamic State recruiter based in Syria.
- A warrant targeting persons and associated computers and phones engaged in an illegal, unreported and unregulated fishing operation.

**Purpose-based warrants:** A purpose-based warrant is one that specifies the type of information sought and the operational reasons requiring its collection. This is vital for the purpose of conducting activities to identify threats to New Zealand.

*Example:* A warrant to intercept communications for the purpose of identifying whether New Zealanders are fighting with Islamic State in Syria.

A purpose-based warrant will only be approved if the objectives of the warrant cannot be accomplished through a targeted warrant. The Attorney-General and/or a Commissioner of Intelligence Warrants must also be satisfied a purpose-based warrant is necessary and proportionate.

## Urgent warrants

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In special cases of “situations of urgency” – where there is an imminent threat to life and safety – a streamlined process is available.

The Bill allows use of this streamlined process if:

- a delay in applying for a warrant would defeat the purpose of obtaining the warrant; **and**
- someone’s life and safety is at stake or there is a serious threat to New Zealand’s national security.

In an urgent situation an intelligence warrant must still be applied for within 24 hours. If that warrant is not authorised, all information collected would need to be destroyed as soon as practicable.

The Bill includes a number of procedures to ensure this is a last resort measure which would very rarely be used. For example, warrant applications can be made verbally.

**See Factsheets 6 and 8 for more information on warrants.**