

**DRAFT**

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Drafted by Parliamentary Counsel

**RESTRICTED**

## **Countering Terrorist Fighters Legislation Bill**

Government Bill

### **Explanatory note**

#### **General policy statement**

The Countering Terrorist Fighters Legislation Bill is an omnibus Bill, introduced under Standing Order 263(a), that amends the Customs and Excise Act 1996, New Zealand Security Intelligence Service Act 1969, and the Passports Act 1992. It is proposed (at the close of the Bill's committee of the whole House stage in Parliament) to divide the Bill into 3 separate amending Bills.

The threat posed by foreign terrorist fighters (**FTFs**) and other violent extremists locally, regionally, and internationally is continuing to evolve rapidly. New Zealand's domestic threat level was recently increased by officials from **VERY LOW** to **LOW** (a terrorist attack is possible but not likely). Government agencies have a watch list of between 30 and 40 people of concern in the foreign fighter context. In addition to those on the watch list, there are another 30 to 40 on a list of people requiring further investigation. Internationally, the United Nations Security Council (**UNSC**) issued a resolution relating to FTFs (Resolution 2178), which amongst other things urged states to restrict the movement of FTFs.

Cabinet considered the threat posed by FTFs shortly after the election and agreed a targeted review of capacity, capability, and legislation be undertaken, to ensure they are adequate to respond to the evolving

domestic threat, and approved terms of reference for the review. The focus of the review was on interim measures that could be taken in advance of the comprehensive review of legislative settings that will occur in a broader intelligence review that is required to commence before 30 June 2015 under the Intelligence and Security Committee Act 1996. The review specifically considered what measures could add to the safety and security of New Zealand in the short term.

The terms of reference set out four matters for review and report back. They were—

- whether the capacity and capabilities of the New Zealand Security Intelligence Service (**NZSIS**) and other government agencies are sufficient to undertake effective and efficient investigations of suspected and returning FTFs and other violent extremists:
- the statutory powers available to agencies to investigate and monitor suspected and returning FTFs and other violent extremists:
- the statutory powers available to restrict and disrupt the ability of suspected FTFs to travel to conflict zones:
- whether specific criminal offences should be introduced to address the behaviour of suspected and returning FTFs and other violent extremists.

The terms of reference also required the review and any recommendations to be underpinned by—

- respect for human rights, individual privacy, and traditions of free speech in New Zealand:
- compliance with any international obligations and agreements:
- the need to ensure public confidence in the work of the security and intelligence agencies.

Cabinet approved targeted amendments to enhance powers to monitor and investigate, and to restrict and disrupt travel. All of the provisions in the Bill are subject to a sunset clause that expires on 1 April 2018.

The review did not recommend any changes to the criminal law in the short term. The general criminal law and terrorism offences address the most serious forms of offending in relation to FTFs. The development of new criminal offences that more explicitly capture

FTFs, and provide a graduated scale of offending and penalties may be appropriate, but there is no urgent and immediate gap that needs to be addressed at this time. The development of such offences that are consistent with our criminal law are more appropriately addressed by a broader review.

In relation to capacity and capability, Cabinet approved a funding injection for the NZSIS of almost \$7 million across the current and next financial year to increase the number of staff the NZSIS has available to work on monitoring and investigating FTFs.

### **Monitoring and investigating foreign terrorist fighters**

The proposals to enhance the powers to monitor and investigate are to authorise the NZSIS to carry out visual surveillance under warrant, and to allow the NZSIS to conduct surveillance activities without a warrant in situations of emergency or urgency subject to safeguards to recognise human rights values. Both enhanced powers are modelled on the powers provided to the New Zealand Police under the Search and Surveillance Act 2012 and on the Law Commission's work that led to that Act.

The exercise of these powers will be subject to the strengthened oversight regime put in place last year, in particular, the enhanced office of the Inspector-General of Intelligence and Security (the **Inspector-General**).

#### *Visual surveillance*

The NZSIS cannot generally undertake visual surveillance in a private setting or that would involve trespass onto private property. This means, for example, that the NZSIS cannot install a video camera in private premises even if it is for the purpose of observing activities of security concern, like people training with weapons.

The amendments will allow the NZSIS, under warrant, to undertake visual surveillance in a private setting or that would involve trespass onto private property (both with or without a visual surveillance device). Any visual surveillance activity that can currently be undertaken lawfully without a warrant would continue outside the warrant regime.

The safeguards and oversight that apply to other NZSIS warrants will apply to warrants of visual surveillance. The safeguards include

having to satisfy the Minister in charge and the Commissioner of Security Warrants (the **CSW**) that the conditions for issuing warrants apply and oversight by the Inspector General.

*Surveillance in situations of emergency or urgency*

The nature of intelligence investigations means that at times urgent situations arise where immediate action may be necessary. For example, information may come to light that a person not previously identified as a risk is about to travel to a conflict zone. The NZSIS has processes in place to expedite the preparation of warrant applications and place those before the Minister in charge, the CSW, and the Minister of Foreign Affairs, as appropriate. However, despite those processes, a number of hours can pass before a warrant may be issued. In the intervening time vital intelligence may be lost and the person may leave New Zealand.

This issue was considered by the Law Commission in relation to law enforcement, and a regime for surveillance without a warrant in situations of emergency or urgency was included in the Search and Surveillance Act 2012.

The Bill allows the Director of Security (or person acting as the Director) to authorise surveillance activities to be undertaken in situations of emergency or urgency. To provide appropriate safeguards and oversight, the following requirements apply:

- the Director must be satisfied that the threshold for issuing a warrant is met:
- the duration of the authorisation is limited to a period not exceeding 48 hours:
- the authorisation can be issued only in circumstances where it is impracticable to obtain a warrant in the timeframe and where the delay is likely to result in a loss of intelligence:
- the Director must notify the Minister in charge, and, where the warrant would have been a domestic warrant, the CSW, as soon as practicable, and no later than 12 hours, after issuing the authorisation:
- the Minister in charge, and where appropriate, the CSW, may direct the NZSIS to discontinue activity under the authorisation and destroy any information collected:

- if no application for a warrant is made, the Director must provide a report to the Minister in charge and, where appropriate, the CSW, and they must determine whether it was appropriate for the authorisation to be given, and if not they must refer the matter to the Inspector-General:
- the Director must notify the Inspector-General as soon as practicable after issuing an authorisation:
- the NZSIS annual report must include the number of times authorisations were issued during the reporting year, and the number of authorisations were followed by an application for a warrant.

#### *Access to Customs information*

As a result of background work to review the Customs and Excise Act 1996, a doubt has been raised about whether the Act permits Customs to provide direct access to the NZSIS and the Police. Providing this access substantially improves the speed and efficiency of investigations. All authorised users have their access logged and the access can be audited to ensure compliance with all privacy and other legal requirements.

To remove all doubt, the Customs and Excise Act 1996 is amended by the Bill to clarify that direct access can be provided to the NZSIS and Police but only for counter-terrorism purposes. The Bill is a focused and targeted measure to address the FTF phenomenon. Any wider issues about direct access to Customs information will have to be addressed by a separate process.

#### **Restricting and disrupting travel**

The Passports Act 1992 currently allows the Minister of Internal Affairs to cancel or refuse to issue a passport or other travel document if the Minister believes on reasonable grounds that a person is a danger to the security of New Zealand.

The review recommended amendments to the cancellation and refusal to issue process to improve its operation and take into account UNSC R 2178 which urges states to restrict the movement of FTFs, including their onward travel if outside their home country.

*Duration of cancellation or refusal to issue*

There are a small number of cases where the circumstances and intentions of an individual have not changed, and when the current 12 month period of cancellation ends a further application to refuse to issue a passport is made. In this small number of cases there is usually information available at the time of cancellation that shows that the person's intentions and circumstances are unlikely to change.

In those situations, the Bill allows the Minister of Internal Affairs to set a cancellation period of up to 3 years if the Minister is satisfied that the person would continue to pose a danger to New Zealand or any other country.

The safeguards include the person being able to make submissions to the Minister on the duration of the cancellation, periodic reviews once every 12 months by the Minister, and the requirement to invite the person to make written submissions as to whether the cancellation should remain in place.

The person would have the ability to appeal or seek a judicial review of the Minister's decision to extend the duration of the cancellation.

*Temporary suspension*

There are cases where information comes to light indicating that a person may be seeking to travel shortly to engage in or facilitate a terrorist act, and the NZSIS would seek to recommend to the Minister of Internal Affairs that the person's passport or other travel document be cancelled. However, in the time it takes to compile the full package of information and present it to the Minister, a person may leave New Zealand.

To address this situation, the Bill allows the Minister to suspend a person's passport or other travel document for no more than 10 working days if the Minister is satisfied that a briefing recommending cancellation is being prepared and the person is likely to travel within the period of temporary suspension. If during the preparation of the briefing it becomes apparent that the grounds for cancellation cannot be established, the Minister must be notified immediately, and the suspension will lapse.

*Giving notice*

Notice must be given to a person that his or her passport or travel document has been cancelled. In some cases involving national security, providing notice to a person may raise operational risks. For example, giving notice could reveal the existence of an intelligence investigation and potentially jeopardise an ongoing investigation, put the safety of the intelligence operators involved at risk, and in some cases give rise to a threat to public safety.

To allow time for steps to be taken to mitigate any risks, the Bill allows the Minister of Internal Affairs to defer notification for up to 30 days if the Minister is satisfied that providing notice immediately would put an investigation at risk or endanger the safety of any person.

Finally, in some cases it is not possible to locate the person and provide him or her with notice despite the best efforts of the Department of Internal Affairs. To address that situation, the Bill amends the Passports Act 1992 (**Passports Act**) to require the Department to take all practicable steps to provide notice.

*Court processes*

The Passports Act currently has special provisions that apply to proceedings where national security is involved. The provisions provide a regime to manage and protect classified security information that may be required to be presented in appeals and applications relating to national security under the Passports Act.

In addition to appeal against the Minister's decision, judicial reviews and other legal challenges of the same decisions under the Passports Act can be sought. To ensure a consistent approach regardless of what form the legal challenge to the Minister's decision takes, the Bill amends the Passports Act so that the special provisions also apply to judicial reviews and any other litigation to challenge the Minister's decisions that involve national security.

The Bill also allows classified information introduced into evidence under closed court proceedings to be withdrawn at any time in the interests of national security or in order to maintain confidentiality obligations of information provided by other countries. Where that occurs the information will not be able to be relied on during the pro-

ceedings. This amendment is similar to section 37 of the Immigration Act 2009.

Finally, the Bill exempts the Crown from liability for loss and damages caused through the cancellation of travel except where those actions are grossly negligent or shown to be in bad faith. This amendment is modelled on section 280E of the Customs and Excise Act 1996.

#### *Clarifications*

In order to better respond to UNSC R 2178 the Bill makes 2 amendments to clarify or make matters explicit. First, the Bill makes explicit that cancellation or refusal to issue a travel document can be on the grounds that a person is a danger to any other country, in addition to New Zealand, because the person intends to engage in or facilitate a terrorist act or the proliferation of weapons of mass destruction. Secondly, the Bill clarifies and makes explicit that a person's travel document may be cancelled when they are outside New Zealand.

#### **Departmental disclosure statement**

The Department of Prime Minister and Cabinet has prepared a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at [PPU to insert URL and link] (if it has been provided for publication).

#### **Regulatory impact statement**

The Department of Prime Minister and Cabinet produced a regulatory impact statement on 14 November 2014 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.dPMC.govt.nz/dPMC/publications>
- <http://www.treasury.govt.nz/publications/information-releases/ris>

### Clause by clause analysis

*Clause 1* is the Title clause. It is intended that the Bill will be divided into the following 3 separate Bills at the committee of the whole House stage:

- Passports Amendment Bill:
- Customs and Excise Amendment Bill:
- New Zealand Security Intelligence Service Amendment Bill.

*Clause 2* is the commencement clause. It provides that the Bill will come into force on 12 December 2014.

## Part 1

### Amendments to Passports Act 1992

*Clause 3* states that this Part amends the Passports Act 1992 (the **principal Act**).

*Clause 4* inserts *new section 45*, which provides that the temporary provisions set out in the *new Schedule* to be inserted into the principal Act by clause 5 apply during the period beginning on 12 December 2014 and ending with the close of 31 March 2018.

*Clause 5* inserts a *new Schedule*, containing a set of temporary provisions, into the principal Act. The temporary provisions replace sections 4A, 8A, 20A, 25A, 27B, and 27E of the principal Act, which concern the Minister's powers to make certain decisions regarding New Zealand travel documents. They also provide for the temporary suspension of those documents, clarify the application of sections 29AA to 29AC to the temporary provisions, and limit Crown liability for certain decisions taken under the temporary provisions.

## Part 2

### Amendments to other enactments

#### Subpart 1—Amendments to Customs and Excise Act 1996

*Clause 6* provides that *subpart 1* amends the Customs and Excise Act 1996 (the **principal Act**).

*Clause 7* inserts *new section 280M* into the principal Act, which gives the chief executive of the New Zealand Customs Service power to allow authorised persons from the New Zealand Security Intelligence

Service and the Police to have direct access to Customs databases to search for information for counter-terrorism investigation purposes. This provision is temporary and will be automatically repealed on 1 April 2018.

### Subpart 2—Amendments New Zealand Security Intelligence Service Act 1969

*Clause 8* provides that *subpart 2* amends the New Zealand Security Intelligence Service Act 1969 (the **principal Act**).

*Clause 9* inserts *new sections 4IA to 4IG* into the principal Act.

*New section 4IA* defines terms used in *new sections 4IB to 4IF*.

*New section 4IB* creates the power to issue visual surveillance warrants that authorise a person to observe private activity in private premises, either with or without a visual surveillance device. A domestic visual surveillance warrant may be jointly issued by the Minister in charge of the New Zealand Security Intelligence Service (the **Minister**) and the Commissioner of Security Warrants (the **Commissioner**), if they are both satisfied that—

- visual surveillance is necessary to detect activities prejudicial to security, or to gather foreign intelligence information that is essential to security; and
- the value of the information sought justifies visual surveillance; and
- the information is not likely to be obtained by any other means; and
- the information is not privileged.

A foreign visual surveillance warrant may be issued by the Minister if the Minister, as well as being satisfied of the matters listed above, is also satisfied that there are reasonable grounds to believe that no New Zealand citizen or permanent resident is to be subject to the warrant and that any place specified in the warrant is occupied by a foreign organisation or foreign person.

As soon as practicable after a visual surveillance warrant expires, records resulting from the surveillance must be destroyed unless they are relevant to the detection of activities prejudicial to security or to the gathering of foreign intelligence information that is essential

to security. It is an offence to knowingly fail to comply with this requirement.

*New section 4IC* applies certain provisions in the principal Act that relate to intelligence warrants to visual surveillance warrants. The sections that are applied—

- confer immunities on persons giving effect to warrants:
- allow the Minister and the Commissioner to impose terms and conditions in the public interest or to minimise the impact on third parties:
- specify that the term of a warrant must not exceed 12 months (but a further application in respect of the same subject matter may be made):
- empower the Director or a delegate to give effect to a warrant and to request third parties to assist:
- confer powers on persons acting under warrants:
- impose a duty to minimise the impact of a warrant on third parties:
- enable the Minister to issue a warrant for the removal of equipment installed under a warrant:
- require the Director to include information in every annual report on the warrants in force during the relevant reporting period:
- require the Minister to certify that the information on warrants in the annual report is correct:
- permit the Director to delegate certain functions and powers in relation to warrants (but not functions or powers involved in applying for a warrant):
- require the Director to record delegations of powers relating to warrants in a register.

*New section 4ID* enables the Director, in situations of emergency or urgency, to authorise a person to exercise powers that would be available under an intelligence warrant or a visual surveillance warrant, without first obtaining a warrant. An authorisation under *new section 4ID* is valid for no more than 48 hours and cannot be renewed. The Director may give an authorisation only if the Director is satisfied that the conditions for obtaining a warrant apply, but obtaining a 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.

*New section 4IE* sets out certain requirements that apply after an authorisation under *new section 4ID* is given. The Director must advise the Minister and the Inspector-General of Intelligence and Security as soon as practicable, and no later than 12 hours, after giving an authorisation, and must also advise the Commissioner (if the authorisation is to exercise powers that would otherwise require a domestic warrant), and the Minister of Foreign Affairs (if the authorisation relates to the identification of foreign capabilities, intentions, or activities in or relating to New Zealand that impact on New Zealand's international or economic well-being). The Minister or the Commissioner may overturn an authorisation.

When an authorisation under *new section 4ID* expires, if no application has been made for a warrant the Director must provide a report to the Minister and (in the case of an authorisation that gives domestic surveillance powers) the Commissioner. The report must set out the reason why the authorisation was given, why no application for a warrant was made, and the nature of the information collected. The Minister (or the Minister and Commissioner jointly) must then determine whether it was appropriate for the authorisation to have been given and, if not, refer the matter to the Inspector-General for investigation.

When an authorisation under *new section 4ID* expires, if no warrant has been obtained in relation to the same subject matter, the records obtained under the authorisation must be destroyed, unless they are relevant to the detection of activities prejudicial to security or to the gathering of foreign intelligence information essential to security. It is an offence to knowingly fail to comply with this requirement.

Information must be included in every annual report about the authorisations given in the period covered by that report, including how many authorisations were followed by an application for a warrant in relation to the same subject matter and, in cases where no application for a warrant was made, how many determinations were made by the Minister and the Commissioner that it was not appropriate for the authorisation to have been given.

*New section 4IF* applies certain provisions in the principal Act that relate to intelligence warrants to authorisations under *new section 4ID*. The sections that are applied—

- confer immunities on persons giving effect to warrants:
- empower the Director or a delegate to give effect to a warrant and to request third parties to assist:
- confer powers on persons acting under warrants:
- impose a duty to minimise the impact of a warrant on third parties:
- enable the Minister to issue a warrant for the removal of equipment installed under a warrant.

*New section 4IG* ensures that the power to issue visual surveillance warrants and the power to authorise the exercise of powers without a warrant in situations of emergency or urgency apply only until 1 April 2018, by providing that *new sections 4IA to 4IG* are repealed on that date.

*Clauses 10 to 14* make consequential amendments to insert cross-references to the new provisions.

The *Schedule* sets out the *new Schedule* inserted into the Passports Act 1992.

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*Rt Hon John Key*

# **Countering Terrorist Fighters Legislation Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Countering Terrorist Fighters Legislation Act 2014.
- 2 Commencement**  
This Act comes into force on 12 December 2014.

**Part 1**  
**Amendments to Passports Act 1992**

**3 Principal Act**

This Part amends the Passports Act 1992 (the **principal Act**).

**4 New cross-heading and section 45 inserted**

After section 44, insert:

*“Application*

**“45 Application of temporary provisions in Schedule**

“(1) The temporary provisions set out in the Schedule apply during the period—

“(a) beginning on 12 December 2014; and

“(b) ending with the close of 31 March 2018.

“(2) The temporary provisions have the following effect while they apply:

“(a) clause 1 of the Schedule replaces section 4A:

“(b) clause 2 of the Schedule replaces section 8A:

“(c) clause 3 of the Schedule replaces section 20A:

“(d) clause 4 of the Schedule replaces section 25A:

“(e) clause 5 of the Schedule replaces section 27B:

“(f) clause 6 of the Schedule replaces section 27E:

“(g) clauses 7 to 9 of the Schedule supplement the provisions set out in the body of this Act.

“(3) If a temporary provision replaces a provision in the body of this Act, the application of the replaced provision is suspended.

“(4) If a temporary provision duplicates, modifies, supplements, or is inconsistent with a provision in the body of this Act, the temporary provision prevails.

“(5) To avoid doubt, sections 28 and 29 apply to clauses 1 to 6 of the Schedule as if those clauses were in Part 1.

“(6) This section and the Schedule are repealed on 1 April 2018.”

**5 New Schedule inserted**

After section 45 (as inserted by section 4 of this Part), insert the Schedule set out in the Schedule of this Act.

## Part 2

### Amendments to other enactments

#### Subpart 1—Amendments to Customs and Excise Act 1996

##### 6 **Principal Act**

This subpart amends the Customs and Excise Act 1996 (the **principal Act**).

##### 7 **New section 280M inserted (Direct access to database information for counter-terrorism investigation purposes)**

After section 280L, insert:

###### **“280M Direct access to database information for counter-terrorism investigation purposes**

- “(1) The purpose of this section is to facilitate access by the New Zealand Security Intelligence Service and the New Zealand Police, for counter-terrorism investigation purposes, to information stored in a database.
- “(2) The chief executive may allow the following persons to access a database to search for information, including personal information, for counter-terrorism investigation purposes:
- “(a) the Director of Security:
  - “(b) 1 or more suitable employees or officers of the New Zealand Security Intelligence Service designated by the Director of Security:
  - “(c) the Commissioner of Police:
  - “(d) 1 or more suitable Police employees designated by the Commissioner.
- “(3) Before allowing access to a database in accordance with subsection (2), the chief executive must enter into a written agreement with the Director of Security or the Commissioner of Police (as the case may be).
- “(4) The Director of Security and the Commissioner of Police must take all reasonable steps to ensure that—
- “(a) a record is kept of—
    - “(i) every occasion on which persons access a database; and
    - “(ii) the reason for accessing the database; and

- “(iii) the identity of the person who accessed the database; and
- “(b) every person who accesses a database—
  - “(i) searches only for information for counter-terrorism investigation purposes; and
  - “(ii) complies with the terms of the written agreement referred to in subsection (3).
- “(5) In this section,—
  - “**access a database** includes remote access to a database
  - “**counter-terrorism investigation purposes** means the detection, investigation, and prevention of any actual, potential, or suspected—
    - “(a) terrorist act; or
    - “(b) facilitation of a terrorist act
  - “**database** means any information recording system used by the Customs to store information
  - “**Director of Security** means the Director of Security holding office under the New Zealand Security Intelligence Service Act 1969
  - “**information**—
    - “(a) means—
      - “(i) any information held by the Customs that relates to goods, passengers, or craft and their movements:
      - “(ii) any other border-related information held by the Customs; and
    - “(b) includes, but is not limited to,—
      - “(i) arrival and departure information:
      - “(ii) information collected by the Customs under Part 3A:
      - “(iii) information specified in section 282(1)
      - “(iv) border information (as defined in section 282D):
      - “(v) information collected or generated by the Customs in the course of preventing, detecting, or investigating border-related offences
  - “**terrorist act** has the same meaning as in section 5(1) of the Terrorism Suppression Act 2002.
- “(6) This section is repealed on 1 April 2018.”

Subpart 2—Amendments to New Zealand  
Security Intelligence Service Act 1969**8 Principal Act**

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

**9 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—
    - “(i) for the detection of activities prejudicial to security; or
    - “(ii) for the purpose of gathering foreign intelligence information that is essential to security; 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) Before issuing a visual surveillance warrant in respect of any matter specified in paragraph (b) of the definition of security in section 2(1), the Minister must consult the Minister of Foreign Affairs about the proposed warrant.
- “(8) 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.
- “(9) Subsections (1) to (8) have effect despite anything to the contrary in any other Act.
- “(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 \$1,000.

**“4IC 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—
- “(a) the Director (or the person acting as the Director) is satisfied that,—
    - “(i) in the case of an intelligence warrant, the conditions set out in section 4A(3) apply; or
    - “(ii) in the case of a visual surveillance warrant, the conditions set out in section 41B(3) apply; and
  - “(b) 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 48 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 41D(1) given**

- “(1) As soon as practicable, and no later than 12 hours, after an authorisation is given under section 41D(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; and
  - “(d) if the authorisation relates to any matter specified in paragraph (b) of the definition of security in section 2(1), the Minister of Foreign Affairs.
- “(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 expiry of an authorisation under section 41D(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.
- “(5) A report under subsection (4) 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.
- “(6) After receiving a report under subsection (4) the Minister, or the Minister and the Commissioner jointly (as the case may be), must determine whether it was appropriate for that authorisation to have been given and, if not, refer the matter to the Inspector-General for investigation.

- “(7) As soon as practicable after the expiry of an authorisation under section 41D(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.
- “(8) Every person who knowingly fails to comply with subsection (7) commits an offence and is liable on conviction to a fine not exceeding \$1,000.
- “(9) 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 41D(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) 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:
  - “(d) how many determinations were made under subsection (6) that it was not appropriate for an authorisation under section 41D(1) to have been given.
- “4IF Provisions applying to authorisations under section 41D(1)**
- “(1) The following provisions apply, with any necessary modifications, to an authorisation under section 41D(1) as if references to an intelligence warrant or a warrant in those provisions were references to an authorisation under section 41D(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).
- “(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 2018.”

**10 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(7), 4G(1)(a), and 4G(2A),”.

**11 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 4ID”.

**12 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)”.

**13 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), 41B(1) or (2), or 41D(1)”.

**14 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), 41B(1) or (2), or 41D(1)”.
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**Schedule**

s 5

**New Schedule inserted**

**Schedule**

s 45

**Temporary provisions**

- 1 Refusal to issue passport on grounds of national security**
- (1) The Minister may refuse to issue a New Zealand passport to a person if the Minister believes on reasonable grounds that—
- (a) the person is a danger to the security of New Zealand because the person intends to engage in, or facilitate,—
    - (i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or
    - (ii) the proliferation of weapons of mass destruction; or
    - (iii) any unlawful activity designed or likely to cause devastating or serious economic damage to New Zealand, carried out for purposes of commercial or economic gain; and
  - (b) the danger to the security of New Zealand cannot be effectively averted by other means; and
  - (c) the refusal to issue a passport will prevent or effectively impede the ability of the person to carry out the intended action.
- (2) The Minister may also refuse to issue a New Zealand passport to a person if the Minister believes on reasonable grounds that—
- (a) the person is a danger to the security of a country other than New Zealand because the person intends to engage in, or facilitate,—
    - (i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or
    - (ii) the proliferation of weapons of mass destruction; and
  - (b) the danger to the security of that country cannot be effectively averted by other means; and
  - (c) the refusal to issue a passport will prevent or effectively impede the ability of the person to carry out the intended action.

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- (3) To avoid doubt, the Minister may refuse to issue a New Zealand passport to a person who is outside New Zealand.
- (4) If the Minister refuses to issue a passport under this clause,—
- (a) the Minister must notify the person in writing of the refusal, and the reasons for it; and
  - (b) the person is not entitled to obtain a New Zealand passport during the 12-month period starting with the date of the decision, unless the Minister’s decision under this clause is revoked by the Minister or by a court.
- (5) Despite subclause (4)(a),—
- (a) the Minister may defer notifying the person for a period not exceeding 30 days if the Minister is satisfied that giving notice sooner would prejudice an ongoing investigation or put the security or safety of any person at risk;
  - (b) notice is to be treated as given if the Minister has taken all practicable steps to provide it.
- (6) Despite subclause (4)(b), the Minister may specify a longer period in the notice, not exceeding 36 months, if the Minister is satisfied that the person would continue to pose a danger to New Zealand or any other country.
- (7) If the period exceeds 12 months,—
- (a) the person may, within 30 days after the date on which the notice was issued, make a written submission to the Minister about the length of the period and, if a submission is made, the Minister must review the length of the period, having regard to the person’s submission; and
  - (b) the Minister must, every 12 months after the date on which the notice was issued (if yet to expire), review the decision by—
    - (i) inviting the person to make a written submission to the Minister about the decision; and
    - (ii) determining whether the decision should be revoked, having regard to the person’s submission (if any).
- (8) The Minister may, at any time before the expiry of the period referred to in subclause (4)(b) or (6), apply to a Judge of the High Court for an order to extend for a further period not

exceeding 12 months the period during which the person is not entitled to obtain a New Zealand passport.

- (9) The Judge must make the order applied for if satisfied that—
- (a) the information presented in support of the application is credible, having regard to its source or sources; and
  - (b) the information reasonably supports a finding that sub-clause (1) or (2) still applies in relation to the person concerned.

**2 Cancellation of passport on grounds of national security**

- (1) The Minister may, by notice in writing, recall any New Zealand passport, and cancel it or retain possession of it, if the Minister believes on reasonable grounds that—
- (a) the person is a danger to the security of New Zealand because the person intends to engage in, or facilitate,—
    - (i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or
    - (ii) the proliferation of weapons of mass destruction; or
    - (iii) any unlawful activity designed or likely to cause devastating or serious economic damage to New Zealand, carried out for purposes of commercial or economic gain; and
  - (b) the danger to the security of New Zealand cannot be effectively averted by other means; and
  - (c) the cancellation of the passport, or its retention by the Minister, will prevent or effectively impede the ability of the person to carry out the intended action.
- (2) The Minister may also, by notice in writing, recall any New Zealand passport, and cancel it or retain possession of it, if the Minister believes on reasonable grounds that—
- (a) the person is a danger to the security of a country other than New Zealand because the person intends to engage in, or facilitate,—
    - (i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or
    - (ii) the proliferation of weapons of mass destruction; and

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- (b) the danger to the security of that country cannot be effectively averted by other means; and
    - (c) the cancellation of the passport, or its retention by the Minister, will prevent or effectively impede the ability of the person to carry out the intended action.
  - (3) To avoid doubt, the Minister may recall, cancel, or retain possession of a New Zealand passport for a person who is outside New Zealand.
  - (4) If the Minister cancels or retains possession of a passport under this clause,—
    - (a) the Minister must notify the person in writing of the cancellation or retention, and the reasons for it; and
    - (b) the person is not entitled to obtain that passport or another New Zealand passport during the 12-month period starting with the date of the decision, unless the Minister's decision under this clause is revoked by the Minister or by a court.
  - (5) Despite subclause (4)(a),—
    - (a) the Minister may defer notifying the person for a period not exceeding 30 days if the Minister is satisfied that giving notice sooner would prejudice an ongoing investigation or put the security or safety of any person at risk:
    - (b) notice is to be treated as given if the Minister has taken all practicable steps to provide it.
  - (6) Despite subclause (4)(b), the Minister may specify a longer period in the notice, not exceeding 36 months, if the Minister is satisfied that the person would continue to pose a danger to New Zealand or any other country.
  - (7) If the period exceeds 12 months,—
    - (a) the person may, within 30 days after the date on which the notice was issued, make a written submission to the Minister about the length of the period and, if a submission is made, the Minister must review the length of the period, having regard to the person's submission; and
    - (b) the Minister must, every 12 months after the date on which the notice was issued (if yet to expire), review the decision by—

- (i) inviting the person to make a written submission to the Minister about the decision; and
  - (ii) determining whether the decision should be revoked, having regard to the person's submission (if any).
- (8) The Minister may, at any time before the expiry of the period referred to in subclause (4)(b) or (6), apply to a Judge of the High Court for an order to extend for a further period not exceeding 12 months the period during which the person is not entitled to obtain the passport or another New Zealand passport.
- (9) The Judge must make the order applied for if satisfied that—
  - (a) the information presented in support of the application is credible, having regard to its source or sources; and
  - (b) the information reasonably supports a finding that subclause (1) or (2) still applies in relation to the person concerned.

### **3 Cancellation of certificate of identity on grounds of national security**

- (1) The Minister may, by notice in writing, recall any certificate of identity issued to any person by or on behalf of the New Zealand Government, and cancel it or retain possession of it, if the Minister believes on reasonable grounds that—
  - (a) the person is a danger to the security of New Zealand because the person intends to engage in, or facilitate,—
    - (i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or
    - (ii) the proliferation of weapons of mass destruction; or
    - (iii) any unlawful activity designed or likely to cause devastating or serious economic damage to New Zealand, carried out for purposes of commercial or economic gain; and
  - (b) the danger to the security of New Zealand cannot be effectively averted by other means; and
  - (c) the cancellation of the certificate of identity, or its retention by the Minister, will prevent or effectively impede the ability of the person to carry out the intended action.

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- (2) The Minister may also, by notice in writing, recall any certificate of identity issued to any person by or on behalf of the New Zealand Government, and cancel it or retain possession of it, if the Minister believes on reasonable grounds that—
- (a) the person is a danger to the security of a country other than New Zealand because the person intends to engage in, or facilitate,—
    - (i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or
    - (ii) the proliferation of weapons of mass destruction; and
  - (b) the danger to the security of that country cannot be effectively averted by other means; and
  - (c) the cancellation of the certificate of identity, or its retention by the Minister, will prevent or effectively impede the ability of the person to carry out the intended action.
- (3) To avoid doubt, the Minister may recall, cancel, or retain possession of a certificate of identity for a person who is outside New Zealand.
- (4) If the Minister cancels or retains possession of a certificate of identity under this clause,—
- (a) the Minister must notify the person in writing of the cancellation or retention, and the reasons for it; and
  - (b) the person is not entitled to obtain that certificate of identity or another New Zealand travel document during the 12-month period starting with the date of the decision, unless the Minister’s decision under this clause is revoked by the Minister or by a court.
- (5) Despite subclause (4)(a),—
- (a) the Minister may defer notifying the person for a period not exceeding 30 days if the Minister is satisfied that giving notice sooner would prejudice an ongoing investigation or put the security or safety of any person at risk;
  - (b) notice is to be treated as given if the Minister has taken all practicable steps to provide it.
- (6) Despite subclause (4)(b), the Minister may specify a longer period in the notice, not exceeding 36 months, if the Minister

is satisfied that the person would continue to pose a danger to New Zealand or any other country.

- (7) If the period exceeds 12 months,—
- (a) the person may, within 30 days after the date on which the notice was issued, make a written submission to the Minister about the length of the period and, if a submission is made, the Minister must review the length of the period, having regard to the person's submission; and
  - (b) the Minister must, every 12 months after the date on which the notice was issued (if yet to expire), review the decision by—
    - (i) inviting the person to make a written submission to the Minister about the decision; and
    - (ii) determining whether the decision should be revoked, having regard to the person's submission (if any).
- (8) The Minister may, at any time before the expiry of the period referred to in subclause (4)(b) or (6), apply to a Judge of the High Court for an order to extend for a further period not exceeding 12 months the period during which the person is not entitled to obtain the certificate of identity or another New Zealand travel document.
- (9) The Judge must make the order applied for if satisfied that—
- (a) the information presented in support of the application is credible, having regard to its source or sources; and
  - (b) the information reasonably supports a finding that subclause (1) or (2) still applies in relation to the person concerned.

#### **4 Cancellation of emergency travel document on grounds of national security**

- (1) The Minister may, by notice in writing, recall any emergency travel document issued to any person (other than a journey-specific emergency travel document issued under section 23(3)), and cancel it or retain possession of it, if the Minister believes on reasonable grounds that—
- (a) the person is a danger to the security of New Zealand because the person intends to engage in, or facilitate,—

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- (i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or
    - (ii) the proliferation of weapons of mass destruction; or
    - (iii) any unlawful activity designed or likely to cause devastating or serious economic damage to New Zealand, carried out for purposes of commercial or economic gain; and
  - (b) the danger to the security of New Zealand cannot be effectively averted by other means; and
  - (c) the cancellation of the emergency travel document, or its retention by the Minister, will prevent or effectively impede the ability of the person to carry out the intended action.
- (2) The Minister may also, by notice in writing, recall any emergency travel document issued to any person (other than a journey-specific emergency travel document issued under section 23(3)), and cancel it or retain possession of it, if the Minister believes on reasonable grounds that—
- (a) the person is a danger to the security of a country other than New Zealand because the person intends to engage in, or facilitate,—
    - (i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or
    - (ii) the proliferation of weapons of mass destruction; and
  - (b) the danger to the security of that country cannot be effectively averted by other means; and
  - (c) the cancellation of the emergency travel document, or its retention by the Minister, will prevent or effectively impede the ability of the person to carry out the intended action.
- (3) To avoid doubt, the Minister may recall, cancel, or retain possession of an emergency travel document for a person who is outside New Zealand.
- (4) If the Minister cancels or retains possession of an emergency travel document under this clause,—
- (a) the Minister must notify the person in writing of the cancellation or retention, and the reasons for it; and

- (b) the person is not entitled to obtain that emergency travel document or another New Zealand travel document (other than a journey-specific emergency travel document issued under section 23(3)) during the 12-month period starting with the date of the decision, unless the Minister's decision under this clause is revoked by the Minister or by a court.
- (5) Despite subclause (4)(a),—
  - (a) the Minister may defer notifying the person for a period not exceeding 30 days if the Minister is satisfied that giving notice sooner would prejudice an ongoing investigation or put the security or safety of any person at risk:
  - (b) notice is to be treated as given if the Minister has taken all practicable steps to provide it.
- (6) Despite subclause (4)(b), the Minister may specify a longer period in the notice, not exceeding 36 months, if the Minister is satisfied that the person would continue to pose a danger to New Zealand or any other country.
- (7) If the period exceeds 12 months,—
  - (a) the person may, within 30 days after the date on which the notice was issued, make a written submission to the Minister about the length of the period and, if a submission is made, the Minister must review the length of the period, having regard to the person's submission; and
  - (b) the Minister must, every 12 months after the date on which the notice was issued (if yet to expire), review the decision by—
    - (i) inviting the person to make a written submission to the Minister about the decision; and
    - (ii) determining whether the decision should be revoked, having regard to the person's submission (if any).
- (8) The Minister may, at any time before the expiry of the period referred to in subclause (4)(b) or (6), apply to a Judge of the High Court for an order to extend for a further period not exceeding 12 months the period during which the person is not entitled to obtain the emergency travel document or another New Zealand travel document.

- (9) The Judge must make the order applied for if satisfied that—
- (a) the information presented in support of the application is credible, having regard to its source or sources; and
  - (b) the information reasonably supports a finding that subclause (1) or (2) still applies in relation to the person concerned.

**5 Refusal to issue refugee travel document on grounds of national security**

- (1) The Minister may refuse to issue a New Zealand refugee travel document to a person if the Minister believes on reasonable grounds that—
- (a) the person is a danger to the security of New Zealand because the person intends to engage in, or facilitate,—
    - (i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or
    - (ii) the proliferation of weapons of mass destruction; or
    - (iii) any unlawful activity designed or likely to cause devastating or serious economic damage to New Zealand, carried out for purposes of commercial or economic gain; and
  - (b) the danger to the security of New Zealand cannot be effectively averted by other means; and
  - (c) the refusal to issue a refugee travel document will prevent or effectively impede the ability of the person to carry out the intended action.
- (2) The Minister may also refuse to issue a New Zealand refugee travel document to a person if the Minister believes on reasonable grounds that—
- (a) the person is a danger to the security of a country other than New Zealand because the person intends to engage in, or facilitate,—
    - (i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or
    - (ii) the proliferation of weapons of mass destruction; and
  - (b) the danger to the security of that country cannot be effectively averted by other means; and

- (c) the refusal to issue a refugee travel document will prevent or effectively impede the ability of the person to carry out the intended action.
- (3) To avoid doubt, the Minister may refuse to issue a New Zealand refugee travel document to a person who is outside New Zealand.
- (4) If the Minister refuses to issue a refugee travel document under this clause,—
  - (a) the Minister must notify the person in writing of the refusal, and the reasons for it; and
  - (b) the person is not entitled to obtain a New Zealand refugee travel document during the 12-month period starting with the date of the decision, unless the Minister's decision under this clause is revoked by the Minister or by a court.
- (5) Despite subclause (4)(a),—
  - (a) the Minister may defer notifying the person for a period not exceeding 30 days if the Minister is satisfied that giving notice sooner would prejudice an ongoing investigation or put the security or safety of any person at risk;
  - (b) notice is to be treated as given if the Minister has taken all practicable steps to provide it.
- (6) Despite subclause (4)(b), the Minister may specify a longer period in the notice, not exceeding 36 months, if the Minister is satisfied that the person would continue to pose a danger to New Zealand or any other country.
- (7) If the period exceeds 12 months,—
  - (a) the person may, within 30 days after the date on which the notice was issued, make a written submission to the Minister about the length of the period and, if a submission is made, the Minister must review the length of the period, having regard to the person's submission; and
  - (b) the Minister must, every 12 months after the date on which the notice was issued (if yet to expire), review the decision by—
    - (i) inviting the person to make a written submission to the Minister about the decision; and

- (ii) determining whether the decision should be revoked, having regard to the person's submission (if any).
- (8) The Minister may, at any time before the expiry of the period referred to in subclause (4)(b) or (6), apply to a Judge of the High Court for an order to extend for a further period not exceeding 12 months the period during which the person is not entitled to obtain a New Zealand refugee travel document.
- (9) The Judge must make the order applied for if satisfied that—
  - (a) the information presented in support of the application is credible, having regard to its source or sources; and
  - (b) the information reasonably supports a finding that subclause (1) or (2) still applies in relation to the person concerned.

## **6 Cancellation of refugee travel document on grounds of national security**

- (1) The Minister may, by notice in writing, recall any New Zealand refugee travel document, and cancel it or retain possession of it, if the Minister believes on reasonable grounds that—
  - (a) the person is a danger to the security of New Zealand because the person intends to engage in, or facilitate,—
    - (i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or
    - (ii) the proliferation of weapons of mass destruction; or
    - (iii) any unlawful activity designed or likely to cause devastating or serious economic damage to New Zealand, carried out for purposes of commercial or economic gain; and
  - (b) the danger to the security of New Zealand cannot be effectively averted by other means; and
  - (c) the cancellation of the New Zealand refugee travel document, or its retention by the Minister, will prevent or effectively impede the ability of the person to carry out the intended action.
- (2) The Minister may also, by notice in writing, recall any New Zealand refugee travel document, and cancel it or retain pos-

- session of it, if the Minister believes on reasonable grounds that—
- (a) the person is a danger to the security of a country other than New Zealand because the person intends to engage in, or facilitate,—
    - (i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or
    - (ii) the proliferation of weapons of mass destruction; and
  - (b) the danger to the security of that country cannot be effectively averted by other means; and
  - (c) the cancellation of the New Zealand refugee travel document, or its retention by the Minister, will prevent or effectively impede the ability of the person to carry out the intended action.
- (3) If the Minister cancels or retains possession of a New Zealand refugee travel document under this section,—
- (a) the Minister must notify the person in writing of the cancellation or retention, and the reasons for it; and
  - (b) the person is not entitled to obtain that New Zealand refugee travel document or another New Zealand refugee travel document during the 12-month period starting with the date of the decision, unless the Minister's decision under this section is revoked by the Minister or by a court.
- (4) Despite subclause (3)(a),—
- (a) the Minister may defer notifying the person for a period not exceeding 30 days if the Minister is satisfied that giving notice sooner would prejudice an ongoing investigation or put the security or safety of any person at risk;
  - (b) notice is to be treated as given if the Minister has taken all practicable steps to provide it.
- (5) Despite subclause (3)(b), the Minister may specify a longer period in the notice, not exceeding 36 months, if the Minister is satisfied that the person would continue to pose a danger to New Zealand or any other country.
- (6) If the period exceeds 12 months,—

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- (a) the person may, within 30 days after the date on which the notice was issued, make a written submission to the Minister about the length of the period and, if a submission is made, the Minister must review the length of the period, having regard to the person's submission; and
  - (b) the Minister must, every 12 months after the date on which the notice was issued (if yet to expire), review the decision by—
    - (i) inviting the person to make a written submission to the Minister about the decision; and
    - (ii) determining whether the decision should be revoked, having regard to the person's submission (if any).
- (7) The Minister may, at any time before the expiry of the period referred to in subclause (3)(b) or (5), apply to a Judge of the High Court for an order to extend for a further period not exceeding 12 months the period during which the person is not entitled to obtain the New Zealand refugee travel document or another New Zealand refugee travel document.
- (8) The Judge must make the order applied for if satisfied that—
- (a) the information presented in support of the application is credible, having regard to its source or sources; and
  - (b) the information reasonably supports a finding that subclause (1) or (2) still applies in relation to the person concerned.
- (9) Nothing in this section authorises the Minister to cancel a New Zealand refugee travel document at a time when its holder is outside New Zealand.
- 7 Temporary suspension of New Zealand travel documents**
- (1) The Minister may suspend a person's New Zealand travel document for a period not exceeding 10 working days if the Minister is satisfied that—
- (a) a report is, in respect of clause 2, 3, 4, or 6, being prepared regarding the danger that the person presents to the security of New Zealand or another country; and
  - (b) the person is likely to travel before the report is prepared.

- (2) If, during the preparation of the report, it becomes apparent that the grounds for cancellation (as specified in clause 2, 3, 4, or 6) cannot be established,—
- (a) the Minister must be notified immediately; and
  - (b) the suspension lapses when the Minister is notified.

### **8 Proceedings where national security involved**

- (1) Sections 29AA to 29AC also apply to—
- (a) any application for judicial review of a decision made under clause 1, 2, 3, 4, 5, 6, or 7; and
  - (b) any other proceedings that challenge a decision made under this Act that involves matters of security.
- (2) With respect to section 29AA, if a decision, which may be made at any time, is made to withdraw any classified security information,—
- (a) the classified security information—
    - (i) must be kept confidential and must not be disclosed by the court; and
    - (ii) must be returned to the relevant agency; and
  - (b) the court must continue to make the decision or determine the proceedings—
    - (i) without regard to that classified security information; and
    - (ii) in the case of an appeal or a review of proceedings, as if that information had not been available in making the decision subject to the appeal or review.

Compare: 2009 No 51 s 37(4), (5)

### **9 Limitation of Crown liability**

- (1) This clause applies to any decision made under clause 1, 2, 3, 4, 5, 6, or 7.
- (2) The Crown is not liable to any person for any loss or damage as a result of, or in connection with, a decision referred to in subclause (1) unless the person or persons taking those actions, or any employee of the Crown performing any function directly or indirectly connected with those actions, has not acted in good faith or has been grossly negligent.

Compare: 1996 No 27 s 280E(1), (2)