

Security Information in Proceedings Legislation Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Security Information in Proceedings Legislation Bill and recommends unanimously that it be passed. We recommend all amendments unanimously.

Introduction

The Security Information in Proceedings Legislation Bill is an omnibus bill. It seeks to create a new standalone Act, as well as to amend several pieces of legislation. This bill would implement a single broad policy for how security information would be used and protected in court proceedings and administrative decision-making.¹ It is the Government's response to the Law Commission's report *The Crown in Court: A Review of the Crown Proceedings Act and National Security Information in Proceedings*, 14 December 2015 (NZLC R135).

The bill provides a single overarching framework for dealing with security information in court proceedings. It aims to protect the rights of affected persons, while allowing the Crown to use security information in court proceedings, and ensuring a clear process for the courts to follow. The bill would also standardise administration decision-making processes in several legislative regimes in cases that involve security information.

The bill's main features are:

¹ "Security information" covers both national security information and classified security information.

- a new regime for disclosing and managing security information in civil proceedings where security information is at issue, including a ministerial certificate option to guarantee the protection of security information in appropriate circumstances
- a standard preliminary closed court hearing in all civil proceedings where security information is at issue, including a security-cleared special advocate to represent the non-Crown party
- replacing, with the bill's civil process, the court proceedings stage provided for in a number of existing Acts that deal with security information in administrative decision-making
- a standard pre-trial closed court hearing for disclosure in all criminal proceedings that involve national security information
- a new, pre-trial admissibility hearing to determine how security information should be protected at trial in criminal proceedings.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Access to security information

Clause 12(1) of the bill provides that the Crown must give the authorised court access to any security information at issue in the specified proceeding. Clause 12(2) would require the Crown to also give any special advocate and any special adviser access to the security information at issue.

We considered clause 12(3), which, as introduced, would give the court discretion not to apply the requirement set out in clause 12(2) if the court decided that a special advocate or special adviser should not have access to that information. We are concerned that clause 12(3) would provide broad discretion to the court that could be used to prevent a non-Crown party's special advocate from having access to the security information that is at issue in a proceeding. The non-Crown party is already at a potential disadvantage in not having access to the security information, and is reliant on the special advocate to represent their interests in the closed part of a proceeding.

Therefore, we are concerned to ensure that the court's discretion is no broader than necessary and does not imply that the court has a new power to withhold information from the party. We recommend that clause 12(3) be amended to incorporate a threshold for the use of the discretion. The threshold would align with the existing powers

and limitations under the Evidence Act 2006, including the threshold for excluding evidence in section 8 of that Act. This would clarify the circumstances in which the court may wish to rely on the discretion provided by clause 12(3).

Clarifying that the bill does not apply to the Criminal Cases Review Commission Act 2019

Clause 29 provides that the bill would apply to civil proceedings under certain Acts that already have procedures for dealing with classified security information (CSI). It would also apply to any civil proceeding in which national security information (NSI) is or may be at issue.

We consider that there is a need to clarify how the bill would apply to investigations of the Criminal Cases Review Commission under the Criminal Cases Review Commission Act 2019 (the CCRC Act). This bill is concerned with proceedings of a judicial character, mostly court proceedings, but also those where a tribunal is constituted and acts like a court. The CCRC is an independent Crown entity with the primary function of investigating and reviewing convictions and sentences, and deciding whether to refer them to the appeal court. The CCRC carries out that function in an investigative manner rather than a judicial one.

We therefore concluded that the CCRC's processes would not constitute a proceeding before a tribunal, as is envisaged by the bill. We recommend adding paragraph (c) to the definition of civil proceeding in clause 4.

Our proposed paragraph (c) would exclude an investigation under the CCRC Act (other than an application by the CCRC to the District Court for an order under sub-part 6 of Part 2 of the CCRC Act) from the definition of civil proceeding in the bill. An application by the CCRC to the District Court is not covered by this exclusion because such an application is a court proceeding and is intended to be treated as a civil proceeding for the purpose of clause 29 of the bill.

Appendix

Committee process

The Security Information in Proceedings Legislation Bill was referred to the committee on 14 December 2021.

The closing date for submissions on the bill was 8 February 2022. We received and considered 19 submissions from interested groups and individuals. We heard oral evidence from three submitters.

We received advice on the bill from the Ministry of Justice. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Ginny Andersen (Chair)

Hon Paul Goldsmith

Dr Emily Henderson

Nicole McKee

Hon Mark Mitchell

Simon O'Connor

Willow-Jean Prime

Vanushi Walters

Arena Williams

Chris Penk participated in some of our consideration of this bill.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Kris Faafoi

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The Parliament of New Zealand enacts as follows:

- 1 Title**
- This Act is the **Security Information in Proceedings Legislation Act 2021**.
- 2 Commencement** 5
- (1) This Act comes into force on—
- (a) the first anniversary of the date of Royal assent; or
- (b) an earlier date appointed by the Governor-General by Order in Council.
- (2) An Order in Council made under this section is secondary legislation (*see Part 3 of the Legislation Act 2019 for publication requirements*). 10

Part 1
Preliminary provisions

- 3 Overview**
- (1) This guide is for explanation only and does not affect the provisions referred to in it. 15

- (2) **Part 1** contains general provisions.
- (3) **Part 2** identifies certain civil and criminal proceedings as specified proceedings (*see section 8(3)*), including proceedings to which the special procedures apply automatically and proceedings to which the special procedures apply only if the court makes an order to that effect. **Part 2** also sets out the following special procedures that apply to those proceedings when security information is at issue: 5
- (a) a non-Crown party's entitlement to a special advocate (*see section 10*):
 - (b) provision for a closed hearing (*see section 11*):
 - (c) access to the security information by certain persons only (*see section 12*): 10
 - (d) a requirement for the Crown to provide a written summary of the security information to participants (*see sections 13 and 14*):
 - (e) the court's power to appoint a special adviser (*see section 15*).
- (4) **Part 3** applies to civil proceedings in which NSI is at issue or in which the Crown proposes to present classified security information in proceedings arising from 4 specified Acts (the Overseas Investment Act 2005, the Passports Act 1992, the Telecommunications (Interception Capability and Security) Act 2013, and the Terrorism Suppression Act 2002). **Part 3** provides— 15
- (a) a process for the Crown to make an SI application in relation to a proceeding (*see section 32*), asking for the court to make orders protecting the confidentiality of security information (*see section 36*); and 20
 - (b) for the Attorney-General and the Minister of Foreign Affairs and Trade to jointly issue an NSI certificate, which certifies that information is national security information without the need for the court to determine this (*see section 41*). 25
- (5) ~~**Part 4 of the Security Information in Proceedings Legislation Act 2021** makes related and consequential amendments to other Acts, including—~~
- ~~(a) the Criminal Disclosure Act 2008 and the Criminal Procedure Act 2011 to provide for the protection of NSI in criminal proceedings. In particular, it provides for the application of the special procedures under **Part 2** to non-party disclosure hearings and applications for disclosure by the prosecutor where disclosure to the defendant may prejudice national security interests and to hearings on the admissibility of evidence that a party asserts is based on NSI: 30~~
 - ~~(b) the Overseas Investment Act 2005, the Passports Act 1992, the Telecommunications (Interception Capability and Security) Act 2013, and the Terrorism Suppression Act 2002, which each provide for the making of administrative decisions for which classified security information may be relevant. Those Acts are amended by— 40~~

- (i) ~~establishing consistent procedural requirements that apply when an administrative decision is made that involves classified security information; and~~
- (ii) ~~applying the special procedures in **Part 2** and the SI application process in **Part 3** to proceedings in order to protect classified security information.~~ 5

4 Interpretation

In this Act, unless the context otherwise requires,—

authorised court means any of the following courts:

- (a) the High Court: 10
- (b) the Court of Appeal:
- (c) the Supreme Court:
- (d) the Employment Court, in the case of proceedings in respect of matters within the jurisdiction of that court under section 187 of the Employment Relations Act 2000 15

civil proceeding—

- (a) means any proceeding (including any public law or judicial review proceeding) before a court or tribunal other than a criminal proceeding; and
- (b) ~~includes, for example, a reference to a hearing and determination of an application for a control order under the Terrorism Suppression (Control Orders) Act 2019; but~~ 20
- (c) excludes an investigation under the Criminal Cases Review Commission Act 2019 other than an application for an order under subpart 6 of Part 2 of that Act

classified security information, in or in connection with a civil proceeding, has the meaning given by one of the following (whichever is relevant to that proceeding): 25

- (a) **section 114** of the Overseas Investment Act 2005:
- (b) **section 2AA** of the Passports Act 1992:
- (c) **section 3A** of the Telecommunications (Interception Capability and Security) Act 2013: 30
- (d) **section 4A** of the Terrorism Suppression Act 2002

closed hearing, in relation to a specified proceeding, means an oral hearing in the proceeding conducted in the absence of all persons except the following:

- (a) the Judge or Judges hearing the case: 35
- (b) any person who is a representative of the Crown for the purposes of the specified proceeding and who has an appropriate security clearance:

- (c) any witness who is authorised by the court to be present at the hearing while giving evidence in respect of security information:
- (d) any special advocate appointed to act on behalf of a non-Crown party to the specified proceeding:
- (e) any special adviser appointed for the purposes of advising the court in relation to the specified proceeding: 5
- (f) any court staff member who has an appropriate security clearance:
- (g) any person who has an appropriate security clearance and who is authorised (whether individually or as a member of a class of persons) by the court to attend the hearing 10
- Crown—**
- (a) means the Sovereign in right of the Government of New Zealand, including—
- (i) any Minister of the Crown; and
- (ii) any public service agency; and 15
- (iii) the New Zealand Defence Force; and
- (iv) the New Zealand Police; and
- (b) when used in relation to a non-party disclosure hearing to which **section 26B** of the Criminal Disclosure Act 2008 applies, also includes a Crown agent (within the meaning of section 10(1) of the Crown Entities Act 2004) 20
- designated agency** means the public service agency that is designated by the Prime Minister as responsible for one or both of the following:
- (a) maintaining the special advocate panel (*see section 16*):
- (b) meeting the costs of special advocates and special advisers under **sections 24 and 27**, respectively 25
- exclusion order** has the meaning given by **section 31(2)**
- function** includes a role, duty, or power
- intelligence and security agency** has the meaning given by section 4 of the Intelligence and Security Act 2017 30
- lawyer** has the meaning given by section 6 of the Lawyers and Conveyancers Act 2006
- misconduct** has the meaning given by section 9 of the Lawyers and Conveyancers Act 2006
- national security information** or **NSI—** 35
- (a) means information that, if disclosed in or in connection with a proceeding without any orders in place to protect the information, would be likely to prejudice national security interests; and

- (b) includes—
- (i) information certified as NSI under **section 41**; and
 - (ii) information that is the subject of an SI application and that the Crown asserts is NSI until an authorised court finally dismisses the application under **section 37** 5
- national security interests** means—
- (a) the security or defence of New Zealand; or
 - (b) the international relations of the Government of New Zealand; or
 - (c) the entrusting of information to the Government of New Zealand on a basis of confidence by— 10
 - (i) the Government of any other country; or
 - (ii) an agency of a Government of another country; or
 - (iii) any international organisation (within the meaning of section 2(1) of the Official Information Act 1982); or
 - (d) the security or defence of— 15
 - (i) the self-governing State of the Cook Islands; or
 - (ii) the self-governing State of Niue; or
 - (iii) Tokelau; or
 - (iv) the Ross Dependency; or
 - (e) relations between the Governments of any of the following: 20
 - (i) New Zealand;
 - (ii) the self-governing State of the Cook Islands;
 - (iii) the self-governing State of Niue; or
 - (f) the international relations of the Government of—
 - (i) the self-governing State of the Cook Islands; or 25
 - (ii) the self-governing State of Niue
- non-Crown party**, in relation to a proceeding,—
- (a) means a party to the proceeding that is not, and does not represent, the Crown; and
 - (b) in the case of a specified proceeding that is the hearing of an SI application or another interlocutory application to an authorised court connected with a substantive proceeding, includes a party to the substantive proceeding who is not, and does not represent, the Crown 30
- NSI certificate** has the meaning given by **section 41**
- performing a function** includes exercising a power, and **intending to perform**, in relation to a function, has a corresponding meaning 35
- protective order** has the meaning given by **section 31(3)**

public service agency has the meaning given by section 5 of the Public Service Act 2020

relevant CSI certification, in relation to an SI application in respect of a civil proceeding, means the certification described in whichever of the following provisions applies to that proceeding: 5

- (a) **section 114(1)(b)** of the Overseas Investment Act 2005:
- (b) **section 2AA(1)(c)** of the Passports Act 1992:
- (c) **section 3A(1)(b)** of the Telecommunications (Interception Capability and Security) Act 2013:
- (d) **section 4A(1)(b)** of the Terrorism Suppression Act 2002 10

security clearance means a New Zealand Government-sponsored national security clearance that allows a person holding that clearance to access security information

security information or **SI**, in relation to a proceeding, means—

- (a) classified security information, if one of the following applies to the proceeding: 15
 - (i) **section 113** of the Overseas Investment Act 2005:
 - (ii) **section 29AB** of the Passports Act 1992:
 - (iii) **section 101** of the Telecommunications (Interception Capability and Security) Act 2013: 20
 - (iv) **section 38** of the Terrorism Suppression Act 2002; and
- (b) in any other proceeding, national security information

security information order has the meaning given by **section 31**

SI application means an application to an authorised court under **section 32(1)** 25

special adviser means a person who is appointed as a special adviser under **section 15**

special advocate means a person appointed as a special advocate under **section 17**

special advocate panel means the panel of lawyers maintained under **section 16** 30

special procedures has the meaning given by **section 8(2)**

special procedures order has the meaning given by **section 9(1)**

specially represented party, in relation to a special advocate, means a party for whom the special advocate has been appointed under **section 10** 35

specified proceeding has the meaning given by **section 8(3)**

unsatisfactory conduct has the meaning given by section 12 of the Lawyers and Conveyancers Act 2006.

- 5 Transitional, savings, and related provisions**
The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.
- 6 Act binds the Crown**
This Act binds the Crown. 5
- 7 Act does not apply to proceedings under Immigration Act 2009**
~~**Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021**~~ do This Act does not apply in relation to a proceeding under the Immigration Act 2009 that is a proceeding involving classified information within the meaning of section 7 of that Act. 10

Part 2

Procedures to protect security information in proceedings

Preliminary

- 8 Application of special procedures to certain proceedings**
- (1) The special procedures described in **subsection (2)** apply to proceedings or parts of proceedings before an authorised court that are specified proceedings (as set out in **subsection (3)**). 15
- (2) The **special procedures** are the procedures set out in the following sections:
- (a) **sections 10 and 16 to 24** (relating to the appointment and role of ~~of~~ a special advocate to act on behalf of a non-Crown party): 20
- (b) **section 11** (relating to the hearing being a closed hearing):
- (c) **section 12** (relating to the Crown's obligation to give the court, special advocate, and special adviser access to the security information):
- (d) **sections 13 and 14** (relating to a written summary of the security information): 25
- (e) **sections 15 and 25 to 27** (relating to the appointment and role of a special adviser to advise the court).
- (3) A **specified proceeding** is any of the following:
- Civil proceedings: national security information or classified security information* 30
- (a) the hearing of an SI application (*see* **section 32**):
- Criminal proceedings: national security information*
- (b) a non-party disclosure hearing to which **section 26B** of the Criminal Disclosure Act 2008 applies:

- (c) the hearing of an application to which **section 30A** of the Criminal Disclosure Act 2008 applies:
- (d) the hearing of an application referred to in **section 78(2A) or 101(2A)**, or made under **section 113A**, of the Criminal Procedure Act 2011:
Special procedures order: national security information or classified security information 5
- (e) a proceeding in respect of which the court makes an order under **section 9**.
- 9 Court may make special procedures order applying special procedures to proceeding** 10
- (1) An authorised court may make an order (a **special procedures order**) applying the special procedures (as described in **section 8(2)** and set out in this Part) to a proceeding set out in **subsection (2)** if the court is satisfied that the order is necessary to protect and limit the disclosure of security information in the proceeding. 15
- (2) The court may make a special procedures order in connection with the following proceedings:
- (a) a civil proceeding to which an SI application relates (*see* **section 36**, under which the court may make a special procedures order when making a security information order in determining an SI application, after considering the matters set out in **section 38**), or an appeal from that proceeding: 20
- (b) an application to the court for judicial review of the issue of an NSI certificate, or an appeal from an interlocutory or a final order made in respect of that application: 25
- (c) an appeal to the court from a decision made by another authorised court in a specified proceeding set out in **section 8(3)**.
- (3) A special procedures order may be made in respect of the whole or any part of the proceeding.
- Special procedures generally* 30
- 10 Entitlement to special advocate**
- (1) The authorised court must appoint a special advocate in accordance with **sections 16 to 18** to act on behalf of any non-Crown party to a specified proceeding.
- (2) However, if the court is satisfied that withholding the security information at issue in the specified proceeding from the party and the party's lawyer, in accordance with this Part, would not have any unfairly prejudicial effect on the party, the court is not required to make the appointment (for example, a special advocate may not be required for a non-Crown party who is one of several non-

Crown parties and who is not affected by the matters relating to the security information).

- (3) *See sections 19 to 24*, which contain further provisions relating to special advocates.

11 Hearing closed while security information considered 5

- (1) An oral hearing in the specified proceeding in which security information is being considered must be a closed hearing.
- (2) Any person not excluded from a hearing must ensure that the confidentiality of the security information considered in the hearing remains protected.

Compare: 1992 No 92 s 29AB(1); 2002 No 34 s 38(3)(b); 2005 No 82 s 123(2)(b); 2013 No 91 s 111(2)(b) 10

12 Obligation to give court, special advocate, and special adviser access to security information

- (1) The Crown must give the authorised court access to any security information at issue in the specified proceeding. 15
- (2) The Crown must also give access to the security information to—
- (a) any special advocate appointed to act on behalf of a non-Crown party to the specified proceeding; and
- (b) any special adviser appointed for the purposes of advising the court in relation to the specified proceeding. 20
- (3) However, the Crown is not required to give access to the security information to the special advocate or special adviser ~~to the extent that the court decides that they should not have access to that information if, or to the extent that, the court is satisfied that withholding the information from the special advocate or special adviser would not have any unfairly prejudicial effect on the party or the proceeding (for example, because the information is not admissible under the Evidence Act 2006).~~ 25
- (4) *See sections 21, 22, and 26*, which deal with the obligations of special advocates and special advisers to keep the confidentiality of the security information protected. 30

13 Summary to be given to authorised court and relevant participants

- (1) For the purposes of the specified proceeding, the Crown must give a written summary of the security information at issue to any non-Crown party to the specified proceeding.
- (2) In addition, for the purposes of the specified proceeding, the Crown must give a copy of the summary to— 35
- (a) the authorised court; and
- (b) any special advocate appointed to act on behalf of a non-Crown party to the specified proceeding; and

- (c) any special adviser appointed for the purposes of advising the court in relation to the specified proceeding.
- (3) The summary, as well as any summary modified under **subsection (4)** or **section 14**, must not disclose any security information.
- (4) At any time, the court may consider whether to modify (or to direct the Crown to modify) the summary given for the purposes of the specified proceeding after having regard to—
- (a) the security information; and
- (b) any evidence presented or submissions made to the court by the Crown, the special advocate, or any parties; and
- (c) any other relevant matter.
- (5) The court must ensure that a copy of the modified summary (if any) is given to all of the persons entitled to receive the summary under **subsections (1) and (2)**.
- 14 Waiver or further modification**
- (1) An authorised court may decide to waive the requirement for compliance with **section 13(1) and (2)** for the purposes of a specified proceeding if—
- (a) the court is satisfied that a sufficient summary cannot be prepared without disclosing security information; or
- (b) the Crown has already given a summary under those provisions in a related specified proceeding.
- (2) If the Crown has already given a summary under those provisions in a related specified proceeding,—
- (a) the authorised court may decide, having regard to the matters in **section 13(4)**, to modify (or to direct the Crown to modify) the earlier summary for the purposes of the later specified proceeding; and
- (b) **section 13(5)** applies accordingly.
- 15 Appointment of special advisers**
- (1) An authorised court may appoint a special adviser for the purposes of advising the court about national security, or related issues, in relation to a specified proceeding.
- (2) *See sections 25 to 27*, which contain further provisions relating to special advisers.

Special advocate: appointment

- 16 Lawyers who may be appointed as special advocates**
- (1) The designated agency must maintain a panel of lawyers who may be appointed as special advocates under this Part.

- (2) The designated agency may include a person on the panel if—
- (a) the person is a lawyer; and
 - (b) the person holds an appropriate security clearance; and
 - (c) the designated agency is satisfied that the person has suitable knowledge and experience to be a special advocate. 5
- (3) The designated agency may include a person on the panel for 5 years at most, and may renew the person’s inclusion on the panel for further periods of 5 years at most.
- (4) The designated agency must remove a person from the panel—
- (a) at the request of the person; or 10
 - (b) if the person ceases to hold an appropriate security clearance; or
 - (c) if the person is suspended from practice as a barrister, a solicitor, or both under the Lawyers and Conveyancers Act 2006 or is struck off the roll of barrister and solicitors of the High Court; or
 - (d) if the person ceases to be a lawyer. 15

17 Process for appointing special advocate

Preliminary steps

- (1) An authorised court must notify the designated agency of the name and contact details of any non-Crown party to a specified proceeding as soon as practicable after the court makes a special procedures order or otherwise becomes aware that the proceeding is a specified proceeding. 20
- (2) The designated agency must provide the party with a list of the names of lawyers from the special advocate panel who are reasonably available and could be appointed as a special advocate for the party in the proceeding.
- (3) The party may, by the relevant date, nominate a lawyer from the list as the party’s preferred choice of special advocate. 25
- (4) The **relevant date** is a date, determined by the court, that occurs before the hearing of the specified proceeding commences.

Appointment

- (5) The court must appoint a special advocate from the special advocate panel. 30
- (6) If the court considers that the lawyer whom the party has nominated from the list is suitable to be the party’s special advocate, the court must appoint that lawyer.
- (7) The appointment of a special advocate is on the terms that the court directs.
- Section not applicable if unnecessary to avoid unfairly prejudicial effect* 35
- (8) This section does not apply in relation to a non-Crown party if the court decides under **section 10(2)** not to appoint a special advocate to act on behalf of the party.

18 Reappointment of special advocate for related specified proceedings

- (1) If a lawyer is appointed as a special advocate to act on behalf of a non-Crown party to a specified proceeding,—
- (a) the lawyer may be reappointed as the special advocate for the non-Crown party for the purposes of any later related specified proceeding; 5
and
 - (b) if that lawyer is to be reappointed, the process for appointing a special advocate in **section 17** does not apply in relation to the non-Crown party.
- (2) The reappointment of a special advocate is to be on the terms that the court 10
directs.
- (3) The court must not reappoint a lawyer who has been removed from the special advocate panel.
- (4) Nothing in this section limits the application of section 45 of the Legislation 15
Act 2019.

*Special advocate: role, powers, and functions***19 Role of special advocate**

The role of a special advocate is to act in the interests of the specially represented party for the purposes of the closed hearing of the specified proceeding.

20 Functions of special advocate related to role 20

- (1) Except as otherwise provided by **sections 21 and 22**, the special advocate has all of the functions that a lawyer of the specially represented party has.
- (2) The functions of the special advocate include—
- (a) examining and cross-examining witnesses; and
 - (b) making oral and written submissions to the authorised court concerned; 25
and
 - (c) preparing and making applications (including commencing related proceedings) on behalf of the specially represented party; and
 - (d) assisting in the settlement of the substantive proceeding to which the 30
specified proceeding is connected.

*Special advocate: access to and communications about security information***21 Duty to maintain confidentiality of security information**

- (1) At all times a special advocate—
- (a) must ensure that the confidentiality of the security information to which the special advocate has access under **section 12** remains protected; 35
and

- (b) must not disclose the security information to the specially represented party or that party's lawyer; and
- (c) may disclose the security information to any person only in accordance with **section 22**.
- (2) *See* section 78AA of the Crimes Act 1961, under which it is an offence for a person to knowingly or recklessly, and with knowledge that the person is acting without proper authority, communicate any classified information (within the meaning of that section) to any other person. 5
- 22 Communication between special advocate and other persons about security information** 10
- (1) After the Crown gives a special advocate access to security information under **section 12**, the special advocate may communicate with a person about the security information only in accordance with this section.
- (2) The special advocate may communicate about the security information, without the need for any directions of the court, only with— 15
- (a) the court:
- (b) persons who are representatives of the Crown for the purposes of the specified proceeding and who hold an appropriate security clearance, including (if relevant) the Crown prosecutor.
- (3) The special advocate may communicate about any matter connected with the specified proceeding with any of the following persons (**relevant persons**) only in accordance with directions given by the court on application of the special advocate: 20
- (a) the specially represented party:
- (b) that party's lawyer: 25
- (c) any other person not referred to in **subsection (2)**.
- (4) Before giving directions under **subsection (3)**, the court must give the Crown, the special advocate, and any other party the opportunity to make submissions in relation to the application, the proposed direction, and the proposed terms and conditions. 30
- (5) Directions under this section may be given on any terms and conditions that the court is satisfied are appropriate—
- (a) to maintain effective oversight by the court of communications relating to the security information between the special advocate and relevant persons; and 35
- (b) to allow efficient and effective communication between the special advocate and those persons to the extent possible without the special advocate disclosing the security information.
- (6) Examples of the directions the court may give include directions—

- (a) allowing communication with a relevant person in accordance with a communication plan that sets out how communication on different matters may be dealt with; or
- (b) allowing unlimited communication with a relevant person about certain matters but not others; or 5
- (c) requiring the special advocate to submit, for the approval of the court, all proposed communications with a relevant person in writing before ~~they~~ the communications are forwarded to the person (with or without amendment by the court).

Special advocate: liability and costs 10

23 Protection of special advocates from liability

- (1) A special advocate is not guilty of misconduct or unsatisfactory conduct for any act done or omitted by the special advocate in accordance with this Act.
- (2) This Act applies despite the requirements of any practice rules made under the Lawyers and Conveyancers Act 2006. 15
- (3) A special advocate is immune from liability for any act done or omitted, in good faith, when performing a function of the special advocate under this Act, or when intending to perform such a function.

24 Costs of special advocate

- (1) The designated agency must meet out of money appropriated by Parliament for the purpose the actual and reasonable costs of the special advocate on a basis— 20
 - (a) agreed between the special advocate and the designated agency; or
 - (b) determined by the authorised court (if there is no agreement between the special advocate and the designated agency).
- (2) However, the court may, if satisfied that the circumstances of the case warrant it, include part or all of the costs of the special advocate in an award of costs against any party. 25

Special advisers

25 Person appointed as special adviser

- (1) The court may only appoint as a special adviser under **section 15** a person who holds an appropriate security clearance. 30
- (2) The court may terminate the appointment if satisfied that the special adviser has become unable or unsuitable to carry out the role (for example, because of incapacity, misconduct, or bankruptcy).

26 Duty to maintain confidentiality of security information

- (1) At all times a special adviser must ensure that the confidentiality of the security information to which the special adviser has access under **section 12** remains protected.
- (2) *See* section 78AA of the Crimes Act 1961, under which it is an offence for a person to knowingly or recklessly, and with knowledge that the person is acting without proper authority, communicate any classified information (within the meaning of that section) to any other person. 5

27 Costs of special adviser

- The designated agency must meet out of money appropriated by Parliament for the purpose the actual and reasonable costs of a special adviser on a basis— 10
- (a) agreed between the special adviser and the designated agency; or
- (b) determined by the authorised court (if there is no agreement between the special adviser and the designated agency).

Agreed general practices and procedures 15

28 Agreed general practices and procedures

- (1) The Chief Justice and the Attorney-General may, as soon as practicable after the commencement of this section, agree on any general practices and procedures that may be necessary—
- (a) to implement the special procedures; and 20
- (b) to ensure that security information is protected at all times.
- (2) The Chief Justice and the Attorney-General may revise the general practices and procedures from time to time.
- (3) The general practices and procedures include practices and procedures relating to any of the following: 25
- (a) physical and electronic protection of the information during specified proceedings;
- (b) how the information may be provided to an authorised court;
- (c) preservation of the integrity of the information until any appeals are withdrawn or finally determined: 30
- (d) how the information must be dealt with following the withdrawal or final determination of the proceedings or appeal.

Compare: 1992 No 92 s 29AC; 2002 No 34 s 40; 2005 No 82 s 125; 2013 No 91 s 113

Part 3

Security information in civil proceedings

Application, overview of Part, and definitions

- 29 Application of Part** 5
- This Part applies in relation to the following civil proceedings:
- (a) a civil proceeding described in one of the following, in which the Crown proposes to present classified security information:
 - (i) **section 113(1)** of the Overseas Investment Act 2005:
 - (ii) section 29AA(1) of the Passports Act 1992:
 - (iii) **section 101(1)** of the Telecommunications (Interception Capability and Security) Act 2013: 10
 - (iv) **section 38(1)** of the Terrorism Suppression Act 2002:
 - (b) any civil proceeding in which NSI is or may be at issue in the proceeding.
- 30 Overview of SI application process** 15
- (1) This Part sets out the process by which the Crown may apply for orders to protect the confidentiality of security information in or in connection with a civil proceeding.
 - (2) When the Crown makes an application, the standard process involves the authorised court considering whether the information to which the application relates is security information and, if appropriate, making security information orders to protect the confidentiality of the information. 20
 - (3) This Part also includes the following features:
 - (a) the Crown, when making an application, may submit an NSI certificate identifying the information as NSI. The certificate has the effect of satisfying the court that the information to which the application relates is security information and limiting the types of security information orders that are available for the court to make: 25
 - (b) for civil proceedings described in **section 29(a)** (that is, proceedings under certain Acts in which the Crown proposes to present classified security information), the Crown, when making an application, must submit the relevant CSI certification. This certification has the effect of satisfying the court that the information to which the application relates is security information, but the types of security information order available to the court are not limited (unless the Crown also submits an NSI certificate in respect of the information). 30
 - (4) A general overview of the process for the SI application and decision is set out in the diagram in **Schedule 2**. The diagram is intended as a guide only. 35

- (5) See **section 8(3)(a)**, under which the hearing of an SI application is a specified proceeding, and **section 8(2)**, which sets out the special procedures that apply to specified proceedings.
- (6) This section is for explanation only.
- 31 Security information orders: definitions** 5
- What security information orders are*
- (1) A **security information order** is an order of an authorised court that is one of the following:
- (a) an exclusion order:
- (b) a special procedures order made under **section 9**: 10
- (c) a protective order.
- Nature of exclusion orders and protective orders*
- (2) An **exclusion order** is an order that security information must not be disclosed, or is not required (by any order or direction of the court, or rule of court) to be disclosed, in or in connection with a civil proceeding. 15
- (3) A **protective order**—
- (a) is an order that may be made under other legislation or rules of court to protect the confidentiality of security information by limiting the disclosure of that information, in or in connection with the civil proceeding to which the SI application relates (but does not include an exclusion order or special procedures order); and 20
- (b) includes the following:
- (i) an order requiring the Crown to give to parties and their representatives (or their representatives only), or to enable them to view,—
- (A) a copy of a document that contains the security information and that has been redacted to the extent necessary to prevent the disclosure of that information; or 25
- (B) a copy of a document that summarises the whole or part of the security information and that does not disclose the security information itself; or 30
- (C) a copy of a statement of the facts that the whole or part of the security information would (or would be likely to) establish that does not disclose the security information itself:
- (ii) a suppression order forbidding publication of the security information: 35
- (iii) an order that, while security information is being considered in the substantive proceeding, all persons (except for the parties to the

proceeding and any other specified persons or class of persons) must be excluded from the hearing.

Making of SI application

32 Making of SI application

- (1) In a civil proceeding to which this Part applies, the Crown may make an application (an **SI application**) to an authorised court for 1 or more security information orders to protect the confidentiality of particular information to which the application relates in or in connection with a civil proceeding. 5
- (2) The Crown may make an SI application even if the Crown is not a party to the civil proceeding and, in that case, the court must treat the Crown as a party for the purposes of the application. 10
- (3) The Crown may make a single SI application that—
 - (a) relates to more than 1 item or type of information; and
 - (b) seeks different orders for different items or types of information.
- (4) This section is subject to **sections 33 and 34**. 15

33 SI application made in substantive proceeding

The Crown may make an SI application in the course of a substantive proceeding that is being heard in the High Court or Employment Court.

34 SI application to Court of Appeal or Supreme Court

- (1) The Crown may make an SI application in an appeal being heard by a specified appeal court only if a party to the appeal has sought leave of that court to have the information to which the application relates admitted as further evidence. 20
- (2) In this section, **specified appeal court** means the Court of Appeal or the Supreme Court.

Consideration of SI application

25

35 Dismissal of SI application if order not necessary

- (1) The authorised court may dismiss an SI application on the ground that a security information order is not necessary without deciding whether it is satisfied that the information to which the application relates is security information (for example, because the information is inadmissible in the civil proceeding to which the application relates under any other legislation or rule of law). 30
- (2) In the case of a single SI application relating to more than 1 item or type of information, the authorised court may dismiss the application in respect of all of the information or different items or types of information.

- 36 Power to make security information order**
- (1) This section applies if an authorised court does not dismiss under **section 35** or **37** an SI application in respect of particular information.
- (2) The authorised court must make 1 or more security information orders to protect the confidentiality of the information in the substantive proceedings to which the SI application relates if—
- (a) the Crown has submitted—
 - (i) the relevant CSI certification under **section 40** in respect of the information; or
 - (ii) an NSI certificate issued under **section 41** in respect of the information; or
 - (iii) both the certification referred to in **paragraph (a)** and the certificate referred to in **paragraph (b)**; or
 - (b) the court, in any other case, is satisfied that the information to which the SI application relates is national security information.
- (3) If the Crown submits an NSI certificate, the only security information orders the court may make under **subsection (2)** are—
- (a) an exclusion order; or
 - (b) a special procedures order (together with any 1 or more of the types of protective order set out in **section 31(3)(b)(i)** that the court considers necessary).
- (4) This section is subject to **section 39**.
- (5) Nothing in this section limits the power of an authorised court to make an order ancillary to an order made under this section.
- 37 Dismissal of SI application if information is not security information**
- (1) The authorised court must dismiss the application if—
- (a) the Crown has not complied with **section 36(2)(a)**; and
 - (b) the court is not satisfied that the information to which the SI application relates is national security information.
- (2) In the case of a single SI application relating to more than 1 item or type of information, the authorised court may dismiss the application in respect of all of the information or different items or types of information.
- 38 Matters for consideration when determining type of security information order**
- The authorised court must consider the following matters in determining which type of security information order or orders to make:
- (a) whether the proceeding could be fairly determined if an order of a particular type were made:

- (b) the type or types of order required to adequately protect the national security interests that would be likely to be prejudiced if that type or those types of order were not in place in respect of the security information:
- (c) whether the public interest in withholding the security information outweighs the public interest of fair and effective administration of justice in disclosing the information in a limited way in accordance with an order. 5
- 39 Court need not make security information order if substantive proceeding cannot be fairly determined** 10
- Despite **section 36(2)**, if the court is satisfied that none of the security information orders would allow the substantive proceeding to which the SI application relates to be fairly determined, the court may—
- (a) dismiss the application; and
- (b) make 1 or more of the following orders in relation to the substantive proceeding in order to dispose of, or otherwise deal with, the substantive proceeding: 15
- (i) an order to strike out the Crown’s statement of claim or statement of defence:
- (ii) an order to join the Attorney-General as a party to the substantive proceeding: 20
- (iii) an order giving judgment against the Crown:
- (iv) any other related order that the court has jurisdiction to make.
- Certification supporting SI application relating to classified security information* 25
- 40 Requirement to submit certification supporting SI application relating to classified security information**
- (1) This section applies if an SI application is made in or in connection with a civil proceeding described in **section 29(a)**.
- (2) When making the SI application, the Crown must submit to the authorised court the relevant CSI certification in respect of the information to which the SI application relates. 30
- (3) The Crown may also submit to the authorised court an NSI certificate in respect of the same information.

*Certificate supporting SI application relating to NSI***41 Power to issue NSI certificate**

The Attorney-General and the Minister of Foreign Affairs may jointly issue a certificate (an **NSI certificate**) in respect of the information to which an SI application relates, certifying that information identified in the certificate is NSI. 5

42 Submission of certificate

- (1) An NSI certificate must be submitted together with the SI application that it supports.
- (2) However, if the Crown amends the SI application by extending it to an item or a type of information not covered by the original application,— 10
 - (a) the authorised court may grant the Crown leave to submit to the court an NSI certificate relating to that item or type of information; and
 - (b) if the court grants that leave, the NSI certificate has effect for the purposes of the amended application. 15

43 Application of sections 9A and 9C of Constitution Act 1986

Despite sections 9A and 9C of the Constitution Act 1986, the Solicitor-General may not—

- (a) exercise the Attorney-General’s power under **section 39** to certify that information is NSI; or 20
- (b) delegate that power to a Deputy Solicitor-General.

*Withdrawal of SI application***44 Withdrawal of SI application**

The Crown may withdraw an SI application at any time before it is determined.

Further matters: role of Attorney-General and removal to High Court 25**45 Notice by non-Crown party to Attorney-General of possible disclosure of security information**

A party to a civil proceeding who believes that security information may be disclosed in or in connection with the proceeding must, without delay, give written notice of the matter to the Attorney-General (unless the Crown is a party to the proceeding). 30

46 Removal of proceeding not commenced in High Court

- (1) If the Attorney-General gives written notice to the District Court that the Crown intends to make an SI application in connection with a civil proceeding

- before the court, the District Court must, without delay, order that the proceeding be removed to the High Court for determination.
- (2) If the High Court is satisfied that a proceeding removed to it under this section does not, or will no longer, involve security information, it may order that the proceeding be removed back to the District Court. 5
- (3) Without limiting **subsection (2)**, the High Court may order that the proceeding be removed back to the District Court if the Crown does not make an SI application in connection with the proceeding within the relevant period.
- (4) The **relevant period** is the period of 20 working days (or any further period that the High Court may allow) after the date on which the Attorney-General gives written notice to the District Court under this section. 10
- (5) The High Court may impose any conditions that it thinks fit on any order it makes under this section for the removal of proceedings back to the District Court.
- (6) This section applies to any other court or tribunal that is not an authorised court as if a reference in this section to the District Court were a reference to the other court or tribunal. 15
- 47 Right of Attorney-General to intervene**
- The Attorney-General may intervene in any civil proceeding in relation to matters concerning security information, without any requirement for a court to grant leave to that intervention, if— 20
- (a) the Attorney-General believes that security information may be disclosed in or in connection with the proceeding; and
- (b) the Crown is not a party to the proceeding.

Part 4

25

Amendments to other legislation

Subpart 1—Amendments relating to national security information in criminal proceedings

Amendments to Criminal Disclosure Act 2008

- 48 Principal Act** 30
- Sections 49 to 56** amend the Criminal Disclosure Act 2008.
- 49 New section 4A inserted (Transitional, savings, and related provisions)**
- After section 4, insert:

- 4A Transitional, savings, and related provisions**
- The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.
- 50 Section 6 amended (Interpretation)**
- (1) In section 6(1), definition of **criminal proceedings**, paragraph (c)(i), replace “79 or 101” with “78, 101, or **113A**”. 5
- (2) In section 6(1), insert in its appropriate alphabetical order:
national security interests has the meaning given by **section 4** of **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021**
- 51 Section 16 amended (Reasons for withholding information)** 10
- (1) After section 16(1)(d), insert:
 (da) the information is subject to **sections 109A and 109B** of the Evidence Act 2006 (which relate to information about the name or address of intelligence officers and intelligence sources); or
- (2) Replace section 16(1)(g) with: 15
 (g) disclosure of the information would be likely to prejudice national security interests; or
- 52 New section 26B inserted (National security interests: notification and hearing when non-party is Crown)**
- After **section 26A** (as renumbered and repositioned by **section 53** of this Act), insert: 20
- 26B National security interests: notification and hearing when non-party is Crown**
- (1) This section applies in relation to a non-party disclosure hearing granted under section 25 if the Crown— 25
- (a) is served with the application for the hearing under section 26(1) or (2) or **26A**; and
- (b) is satisfied that disclosure of all or part of the information sought by the defendant should be refused because its disclosure would be likely to prejudice national security interests. 30
- (2) As soon as practicable after being served with the application, the Crown must notify the court before which the proceedings are being conducted that the Crown—
- (a) has been served with the application; and
- (b) is satisfied of the matter referred to in **subsection (1)(b)**. 35
- (3) The non-party disclosure hearing must be conducted by the High Court.

- (4) The non-party disclosure hearing is a specified proceeding for the purposes of **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021** in respect of which the special procedures in **Part 2** of that Act apply.
- (5) In this section, **Crown** means a person or an agency, other than the prosecutor, that is or acts on behalf of—
- (a) the Crown (within the meaning of **section 4** of **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021**); or
 - (b) a Crown agent (within the meaning of section 10(1) of the Crown Entities Act 2004).
- 53 Section 28 amended, renumbered as section 26A, and repositioned (Procedure if Judge subsequently satisfied that another person holds information sought)**
- (1) In section 28(1), replace “a non-party” with “an application for a non-party”.
 - (2) Renumber section 28 as **section 26A** and reposition it after section 26.
- 54 Section 29 amended (Determination of court following non-party disclosure hearing)**
- After section 29(6), insert:
- (6A) *See* the following sections of the Criminal Procedure Act 2011, which may be relevant if a disclosure would be likely to prejudice national security interests:
- (a) **section 147A**, which enables a charge to be dismissed if the court concerned refuses to order disclosure of information because it would be likely to prejudice national security interests and withholding the information creates a real risk of prejudice to a fair trial:
 - (b) **section 146A**, which enables a charge to be withdrawn before the trial, without leave of the court concerned, if the disclosure of information is ordered under this section or section 30 and the prosecutor is satisfied the disclosure would be likely to prejudice national security interests.
- 55 New section 30A inserted (National security interests: application for order under section 30)**
- After section 30, insert:
- 30A National security interests: application for order under section 30**
- (1) This section applies to an application for an order under section 30 that information be disclosed if the prosecutor refused to disclose the information in reliance on **section 16(1)(g)**.
 - (2) The defendant may only make the application to the High Court.
 - (3) The prosecutor must notify the Solicitor-General as soon as practicable after becoming aware that the defendant has made the application.

- (4) The non-party disclosure hearing is a specified proceeding for the purposes of **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021** in respect of which the special procedures in **Part 2** of that Act apply.
- (5) See the following sections of the Criminal Procedure Act 2011, which may be relevant if the High Court refuses to order disclosure of information under section 30:
- (a) **section 146A**, which enables a charge to be withdrawn before the trial, without leave of the court concerned, if the prosecutor is satisfied the disclosure would be likely to prejudice national security interests: 10
- (b) **section 147A**, which enables a charge to be dismissed if the High Court is satisfied that the disclosure would be likely to prejudice national security interests.
- 56 New Schedule 1AA inserted** 15
 Insert the **Schedule 1AA** set out in **Schedule 3** of this Act as the first schedule to appear after the last section of the principal Act.
- Amendments to Criminal Procedure Act 2011*
- 57 Principal Act**
Sections 58 to 76 amend the Criminal Procedure Act 2011.
- 58 Section 5 amended (Interpretation)** 20
 In section 5, insert in their appropriate alphabetical order:
- evidence based on national security information** has the meaning given to it in **section 5A**
- national security information** has the meaning given to it in **section 4** of **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021** 25
- national security interests** has the meaning given to it in **section 4** of **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021**
- 59 Section 5A replaced (Transitional, savings, and related provisions)** 30
 Replace section 5A with:
- 5A Interpretation: evidence based on national security information**
 In this Act, evidence is **evidence based on national security information** if it is not itself national security information but is any of the following:
- (a) a document that contains national security information and that has been redacted to the extent necessary to prevent the disclosure of that information: 35

- (b) a written summary of national security information that does not disclose that information:
- (c) an agreed statement of the facts that the whole or part of the national security information establishes that does not disclose that information.
- 60 Section 78 amended (Court may order pre-trial admissibility hearing if trial to be Judge-alone trial)** 5
- (1) After section 78(2), insert:
- (2A) **Subsection 2B** applies if—
- (a) the Judge-alone trial is for—
- (i) a category 4 offence; or 10
- (ii) a specified category 3 offence; or
- (iii) one of the following offences and the High Court grants leave for the application to be made:
- (A) a category 3 offence that is not a specified category 3 offence: 15
- (B) an offence against section 48 of the Health and Safety at Work Act 2015; and
- (b) either party asserts that the evidence is evidence based on national security information.
- (2B) If this subsection applies,— 20
- (a) the party must notify the Solicitor-General that it intends to make the application under subsection (2); and
- (b) the application under subsection (2) must be made to the High Court.
- (2) Replace section 78(4) with:
- (4) The court may grant a pre-trial admissibility hearing if— 25
- (a) the court is satisfied that it is more convenient to deal with the issues before the trial and—
- (i) the evidence raises a complex admissibility issue and the decision about whether it is admissible is likely to make a substantial difference to the overall conduct of the proceeding; or 30
- (ii) the outcome of the pre-trial admissibility hearing may obviate the need for a trial; or
- (b) the court is satisfied that the complainant or witness is particularly vulnerable and resolving the admissibility issue is in the interests of justice; or 35
- (c) the trial is to be in the District Court and the evidence has been obtained under an order made, or warrant issued, by the High Court; or
- (d) the application is an application to which **subsection (2A)** applies.

- (3) In section 78(6), after “(4)(c)”, insert “or **(d)**”.
- (4) After section 78(6), insert:
- (7) In this section, **specified category 3 offence** means a category 3 offence that—
- (a) is punishable by imprisonment for life or by imprisonment for 7 years or more; or
 - (b) if committed by a body corporate, is punishable only by a fine, but that, if committed by an individual, would be punishable by imprisonment for life or by imprisonment for 7 years or more.
- 61 New section 79A inserted (Pre-trial admissibility hearing: national security information)**
- After section 79, insert:
- 79A Pre-trial admissibility hearing: national security information**
- (1) This section applies in relation to a pre-trial admissibility hearing under section 79 if the application for the hearing is an application to which **section 78(2A)** applies.
 - (2) The hearing is a specified proceeding for the purposes of **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021** in respect of which the special procedures in **Part 2** of that Act apply.
 - (3) The High Court may make an order under section 79(2) that evidence based on national security information is admissible only if satisfied that—
 - (a) the requirements of section 79 are met; and
 - (b) the national security interests that would be likely to be prejudiced by fully disclosing the national security information will be adequately protected.
 - (4) Nothing in this section affects the discretion of the court to make any additional orders it thinks fit to protect the confidentiality of national security information (for example, an order under section 197 (power to clear court) or 205 (court may suppress evidence and submissions)).
- 62 Section 84 amended (Persons who may give evidence under assumed name)**
- (1) In the heading to section 84, after “**assumed name**”, insert “**or anonymously**”.
 - (2) After section 84(1), insert:
 - (1A) An intelligence officer or intelligence source (as those terms are defined in **section 109A** of the Evidence Act 2006)—
 - (a) may make a formal statement,—
 - (i) in the case of an intelligence officer who has acquired an assumed identity under subpart 1 of Part 3 of the Intelligence and Security Act 2017, in the name of their assumed identity; or

	(ii) in any other case, using the term “witness” followed by an initial or a mark; and	
	(b) may authenticate that statement, or any record of evidence prepared under section 99, in that name or manner.	
63	Section 90 amended (Application for oral evidence order)	5
	In section 90(3)(b), replace “91(b)” with “ 91(3) ”.	
64	Section 91 replaced (Application for leave to question undercover Police officer’s identity must be dealt with by High Court)	
	Replace section 91 with:	
91	Application for leave to question identity of undercover Police officer or intelligence witness to be determined by High Court	10
(1)	This section applies if the defendant wishes to apply,—	
	(a) under section 109(1)(d) of the Evidence Act 2006, for leave to put any questions relating to the identity of a witness called by the prosecutor who is an undercover Police officer; or	15
	(b) under section 109B(2) of the Evidence Act 2006, for leave to put any questions relating to the identity of a witness called by the prosecutor who is an intelligence officer or an intelligence source.	
(2)	The application must be made at the same time as the application is made for an oral evidence order allowing the oral examination of the person to whom those questions are proposed to be put.	20
(3)	Both the application referred to in subsection (1) and the application for an oral evidence order must be determined by a High Court Judge.	
65	Section 94 amended (Withdrawal of charge if oral evidence order made for examination of undercover Police officer)	25
(1)	In the heading to section 94, after “ officer ”, insert “ or intelligence witness ”.	
(2)	In section 94(1)(b), after “section 109(1)(d)”, insert “or 109B(2) ”.	
66	Section 101 amended (Pre-trial order relating to admissibility of evidence: jury trial)	
(1)	After section 101(2), insert:	30
(2A)	Subsection 2B applies to an application if—	
	(a) it relates to a jury trial for—	
	(i) a category 4 offence; or	
	(ii) a specified category 3 offence; or	
	(iii) any other category 3 offence and the High Court grants leave for the application to be made; and	35

- (b) either party asserts that evidence to which the application relates is evidence based on national security information.
- (2B) If this subsection applies, the party must notify the Solicitor-General that it intends to make the application under subsection (2).
- (2) Replace section 101(7) with: 5
- (7) The application must be made to the High Court if—
- (a) the evidence has been obtained under an order made, or a warrant issued, by the High Court; or
- (b) it is an application to which **subsection (2A)** applies.
- (8) In this section, **specified category 3 offence** means a category 3 offence that— 10
- (a) is punishable by imprisonment for life or by imprisonment for 7 years or more; or
- (b) if committed by a body corporate, is punishable only by a fine, but that, if committed by an individual, would be punishable by imprisonment for life or by imprisonment for 7 years or more. 15
- 67 New section 101A inserted (National security information: pre-trial hearing and order)**
- After section 101, insert:
- 101A National security information: pre-trial hearing and order**
- (1) This section applies in relation to a hearing of an application for a pre-trial order if the application is an application referred to in **section 101(2A)(b)**. 20
- (2) The hearing is a specified proceeding for the purposes of **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021** in respect of which the special procedures in **Part 2** of that Act apply.
- (3) The High Court may make an order under section 101(5) that evidence that is based on national security information is admissible only if satisfied that— 25
- (a) the requirements of section 101 are met; and
- (b) the national security interests that would be likely to be prejudiced by fully disclosing the national security information will be adequately protected. 30
- (4) Nothing in this section affects the discretion of the court to make any additional orders it thinks fit to protect the confidentiality of national security information (for example, an order under section 197 (power to clear court) or 205 (court may suppress evidence and submissions)).
- 68 Section 112 amended (Court must dismiss charge in certain cases)** 35
- In section 112(1), after “section 109(1)(d)”, insert “or **109B(2)**”.

69 New section 113A and cross-heading inserted

After section 113, insert:

Evidence based on national security information

113A National security information: admissibility hearing in course of trial

- | | | |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| (1) | This section applies if— | 5 |
| | (a) the proceedings are for— | |
| | (i) a category 4 offence; or | |
| | (ii) a specified category 3 offence; or | |
| | (iii) 1 or more of the following offences and the High Court grants leave for the application to be made: | 10 |
| | (A) a category 3 offence that is not a specified category 3 offence: | |
| | (B) an offence against section 48 of the Health and Safety at Work Act 2015; and | |
| | (b) either party asserts that evidence that it or the other party wishes to adduce, during the trial, is evidence based on national security information. | 15 |
| (2) | The party may apply to the High Court for an order to the effect that the evidence is admissible. | |
| (3) | The party must notify the Solicitor-General that it intends to make the application before the application is made. | 20 |
| (4) | The High Court must give each party an opportunity to be heard in respect of the application before deciding whether to make the order. | |
| (5) | The hearing of the application is a specified proceeding for the purposes of Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021 in respect of which the special procedures in Part 2 of that Act apply. | 25 |
| (6) | The High Court may order that the evidence based on national security information is admissible if the court is satisfied that— | |
| | (a) the evidence is admissible; and | 30 |
| | (b) the national security interests that would be likely to be prejudiced by fully disclosing the national security information will be adequately protected. | |
| (7) | The court may make an order under this section on any terms and subject to any conditions that the court thinks fit. | 35 |
| (8) | Nothing in this section affects the discretion of the court to make any additional orders it thinks fit to protect the confidentiality of national security information | |

(for example, an order under section 197 (power to clear court) or 205 (court may suppress evidence and submissions)).

- (9) In this section, **specified category 3 offence** means a category 3 offence that—
- (a) is punishable by imprisonment for life or by imprisonment for 7 years or more; or
 - (b) if committed by a body corporate, is punishable only by a fine, but that, if committed by an individual, would be punishable by imprisonment for life or by imprisonment for 7 years or more.

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70 Section 146 amended (Withdrawal of charge)

In the heading to section 146, after “**charge**”, insert “**generally**”.

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71 New section 146A inserted (Withdrawal of charge due to risk to national security interests)

After section 146, insert:

146A Withdrawal of charge due to risk to national security interests

- (1) A prosecutor conducting a public prosecution may withdraw a charge before the trial, without the leave of the court, if—
 - (a) the High Court (or, on appeal, the Court of Appeal or the Supreme Court) makes an order under section 29 or 30 of the Criminal Disclosure Act 2008 requiring disclosure of information to the defendant in the proceedings; and
 - (b) the prosecutor is satisfied that the disclosure of the information would be likely to prejudice national security interests.
- (2) The withdrawal of a charge under this section is not a bar to any other proceeding in the same matter.
- (3) Nothing in this section prevents a charge from being withdrawn before the trial under section 192 as an alternative to withdrawal under this section.

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72 Section 147 amended (Dismissal of charge)

In the heading to section 147, after “**charge**”, insert “**generally**”.

73 New section 147A inserted (Dismissal of charge when information withheld due to risk to national security interests)

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After section 147, insert:

147A Dismissal of charge when information withheld due to risk to national security interests

- (1) Without limiting section 147, a court may dismiss a charge under that section if—

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- (a) the High Court (or, on appeal, the Court of Appeal or Supreme Court) refuses to make a relevant order because it is satisfied that disclosure of the information concerned would prejudice national security interests; and
- (b) the court is satisfied that withholding the information creates a real risk of prejudice to a fair trial. 5
- (2) In this section, **relevant order** means an order under section 29 or 30 of the Criminal Disclosure Act 2008 requiring disclosure of information to a defendant in proceedings.
- 74 Section 215 amended (Right of appeal by prosecutor or defendant against certain pre-trial evidential decisions in Judge-alone case)** 10
In section 215(2)(c), after “section 109(1)(d)”, insert “or **109B(2)**”.
- 75 Section 217 amended (Right of appeal by prosecutor or defendant against pre-trial decisions in jury trial case)**
In section 217(2)(j), after “section 109(1)(d)”, insert “or **109B(2)**”. 15
- 76 Schedule 1AA amended**
- (1) In the Schedule 1AA heading, delete “5A,”.
- (2) In Schedule 1AA,—
- (a) insert the Part set out in **Schedule 4** of this Act as the last Part; and
- (b) make all necessary consequential amendments. 20
- Subpart 2—Amendments relating to classified security information:
administrative requirements and proceedings
- Amendments to Overseas Investment Act 2005*
- 77 Principal Act**
Sections 78 to 81 amend the Overseas Investment Act 2005. 25
- 78 Section 4 amended (Overview)**
In section 4(1)(c)(iii), after “classified”, insert “security”.
- 79 Section 6 amended (Interpretation)**
In section 6(1), insert in its appropriate alphabetical order:
classified security information has the meaning set out in **section 114** 30
- 80 Subpart 3 of Part 3 replaced**
Replace subpart 3 of Part 3 with:

Subpart 3—Protection of classified security information

113 Proceedings involving classified security information

- (1) This section applies to any civil proceedings (including public law and judicial review proceedings) in a court relating to the administration or enforcement of this Act. 5
- (2) If the Crown proposes to present classified security information in proceedings, the Attorney-General must—
- (a) make an application to an authorised court under **section 32** of the **2021** Act for a security information order to protect the confidentiality of the information to be given as evidence in the proceedings; and 10
- (b) submit to the court the certification described in **section 114(1)(b)**.
- (3) If the classified security information is also national security information, the Crown may submit with the application and certification referred to in **subsection (2)** an NSI certificate under **section 41** of the **2021** Act and seek a security information order as set out in **section 36(3)** of that Act (under which the types of orders available to the court are limited). 15
- (4) In this section,—
- 2021 Act** means **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021**
- authorised court, national security information, NSI certificate, and security information order** have the meanings set out in **section 4** of the **2021** Act. 20

114 Meaning of classified security information

- (1) In this Act, **classified security information** means information—
- (a) that is held by an agency listed in section 126(2); and 25
- (b) that the head of the agency (in the case of information held by an intelligence or security agency) or the Attorney-General (in the case of information held by any other agency) certifies in writing cannot be disclosed (except as authorised by or under an Act or other rule of law) because, in the opinion of the head of the agency or the Attorney-General (as applicable),— 30
- (i) the information is information of a kind specified in **subsection (2)**; and
- (ii) disclosure of the information would be disclosure of a kind specified in **subsection (3)**. 35
- (2) Information falls within **subsection (1)(b)(i)** if it—
- (a) might lead to the identification of, or provide details of,—
- (i) the source of the information; or

- (ii) the nature, content, or scope of the information; or
- (iii) the nature or type of the assistance or operational methods available to the agency; or
- (b) is about particular operations that have been undertaken, or are being or are proposed to be undertaken, in relation to any of the functions of the agency; or 5
- (c) has been provided to the agency by the Government of another country or by an agency of such a Government or by an international organisation, and is information that cannot be disclosed by the agency because the Government, agency, or organisation that provided the information will not consent to the disclosure. 10
- (3) Disclosure of information falls within **subsection (1)(b)(ii)** if the disclosure would be likely—
 - (a) to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or 15
 - (b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the Government of another country or by an agency of such a Government or by any international organisation; or
 - (c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences and the right to a fair trial; or 20
 - (d) to endanger the safety of any person.

81 Schedule 1AA amended

In Schedule 1AA,—

- (a) insert the Part set out in **Schedule 5** of this Act as the last Part; and 25
- (b) make all necessary consequential amendments.

Amendments to Passports Act 1992

82 Principal Act

Sections 83 to 90 amend the Passports Act 1992.

83 Section 2 amended (Interpretation) 30

In section 2, insert in their appropriate alphabetical order:

classified security information has the meaning given by **section 2AA**
CSI summary means the summary referred to in **section 27GC(1)(d)(ii)**
Director-General of an intelligence and security agency has the meaning given by section 4 of the Intelligence and Security Act 2017 35
intelligence and security agency has the meaning given by section 4 of the Intelligence and Security Act 2017

specified agency means—

- (a) an intelligence and security agency; or
- (b) the New Zealand Police

84 New section 2AA inserted (Meaning of classified security information)

After section 2, insert:

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2AA Meaning of classified security information

- (1) In this Act, **classified security information** means information—
- (a) that is relevant to whether there are or may be grounds for believing that—
 - (i) the person concerned is a danger to the security of New Zealand or another country because the person intends to carry out, engage in, or facilitate, an activity of a kind described in section 27GA(1)(a) or (2)(a); or 10
 - (ii) the refusal to issue the New Zealand travel document concerned, or to cancel or retain the New Zealand travel document, will prevent or effectively impede the ability of the person to carry out the intended activity; or 15
 - (iii) the danger to the security of New Zealand or the other country cannot be effectively averted by other means; and
 - (b) that is held by a specified agency; and 20
 - (c) that the head of the specified agency certifies in writing cannot be disclosed (except as authorised by or under an Act or other rule of law) because, in the opinion of the head of the specified agency,—
 - (i) the information is information of a kind specified in **subsection (2)**; and 25
 - (ii) disclosure of the information would be disclosure of a kind specified in **subsection (3)**.
- (2) Information falls within **subsection (1)(b)(i)** if it—
- (a) might lead to the identification of, or provide details of,—
 - (i) the source of the information; or 30
 - (ii) the nature, content, or scope of the information; or
 - (iii) the nature or type of the assistance or operational methods available to the specified agency; or
 - (b) is about particular operations that have been undertaken, or are being or are proposed to be undertaken, in relation to any of the functions of the specified agency; or 35
 - (c) has been provided to the specified agency by the Government of another country or by an agency of such a Government or by an international

	organisation, and is information that cannot be disclosed by the specified agency because the Government, agency, or organisation that provided the information will not consent to the disclosure.	
(3)	Disclosure of information falls within subsection (1)(b)(ii) if the disclosure would be likely—	5
(a)	to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or	
(b)	to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the Government of another country or by an agency of such a Government or by an international organisation; or	10
(c)	to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences and the right to a fair trial; or	
(d)	to endanger the safety of any person.	
85	Section 27GC amended (Person to be notified of action taken under section 27GA)	15
	Replace section 27GC(1) with:	
(1)	If the Minister takes an action specified in section 27GA(3) in relation to a person, the Minister must, as soon as practicable, notify the person of the following:	20
(a)	the action that has been taken:	
(b)	the date on which the decision to take that action was made:	
(c)	the reasons for making that decision (except those parts of the reasons that would disclose classified security information):	
(d)	if the Minister relied on classified security information in making the decision,—	25
(i)	that the Minister relied on that kind of information in making the decision; and	
(ii)	that the person may request that a summary (a CSI summary) of the information concerned be provided to them under section 27GCA:	30
(e)	the period during which the person is not entitled to obtain a New Zealand travel document.	
86	New section 27GCA inserted (CSI summary)	
	After section 27GC, insert:	35
	27GCA CSI summary	
(1)	The purpose of a CSI summary is to enable the person referred to in section 27GC(1) to have a sufficient understanding of—	

- (a) the classified security information the Minister relied on in making the decision (without that information being disclosed to the person); and
 - (b) the reasons for the decision based on that information.
- (2) If the person requests a CSI summary,—
- (a) the Minister and the head of the specified agency that holds the information must agree on the contents of the summary; and 5
 - (b) the Minister must provide the agreed summary to the person within a reasonable time.
- (3) However, the Minister may refuse to provide a CSI summary if the Minister and the head of the specified agency are not satisfied that a summary can be provided that is sufficient to meet its purpose without disclosing classified security information. 10

87 New section 27GFA inserted (Notification to Inspector-General of Intelligence and Security of provision of classified security information)

After section 27GF, insert:

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27GFA Notification to Inspector-General of Intelligence and Security of provision of classified security information

- (1) The Director-General of an intelligence and security agency must notify the Inspector-General of Intelligence and Security if the agency provides classified security information to the Minister or department to assist the Minister in deciding whether to take an action specified in section 27GA(3) in relation to a person. 20
- (2) The Director-General must make the notification as soon as practicable after providing the classified security information to assist the Minister.
- (3) In this section, **department** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act. 25

88 Section 29AA amended (Proceedings where national or international security involved)

- (1) In section 29AA(2)(b)(ii), replace “to cancel or retain” with “the cancellation or retention of”. 30
- (2) Repeal section 29AA(4) to (7).

89 Sections 29AB and 29AC replaced

Replace sections 29AB and 29AC with:

29AB Proceedings involving classified security information

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- (1) If the Crown proposes to present classified security information in section 29AA proceedings, the Attorney-General must—

- (a) make an application to an authorised court under **section 32** of the **2021** Act for a security information order to protect the confidentiality of the information to be given as evidence in proceedings; and
- (b) submit to the court the certification described in **section 2AA(1)(c)**.
- (2) If the classified security information is also national security information, the Crown may submit with the application and certification referred to in **subsection (1)** an NSI certificate under **section 41** of the **2021** Act and seek a security information order as set out in **section 36(3)** of that Act (under which the types of orders available to the court are limited). 5
- (3) In this section,— 10
- 2021 Act** means **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021**
- authorised court, national security information, NSI certificate, and security information order** have the meanings given to them by **section 4** of the **2021** Act 15
- section 29AA proceedings** means proceedings to which section 29AA applies.

90 Schedule 1 amended

- (1) In Schedule 1, before clause 1, insert:

Part 1
Provisions relating to Passports Amendment Act 2015

- (2) In Schedule 1,— 20
- (a) insert the Part set out in **Schedule 6** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

Amendments to Telecommunications (Interception Capability and Security) Act 2013 25

91 Principal Act

Sections 92 to 106 amend the Telecommunications (Interception Capability and Security) Act 2013.

92 Section 3 amended (Interpretation)

In section 3(1), replace the definition of **classified information** with: 30

classified security information has the meaning given by **section 3A**

93 New sections 3A and 3B inserted

After section 3, insert:

3A Meaning of classified security information

- (1) In this Act, **classified security information** means information—
- (a) that is held by a surveillance agency; and
 - (b) that the head of the surveillance agency certifies in writing cannot be disclosed (except as authorised by or under an Act or other rule of law) because, in the opinion of the head of the surveillance agency,—
 - (i) the information is information of a kind specified in **subsection (2)**; and
 - (ii) disclosure of the information would be disclosure of a kind specified in **subsection (3)**.
- (2) Information falls within **subsection (1)(b)(i)** if it—
- (a) might lead to the identification of, or provide details of,—
 - (i) the source of the information; or
 - (ii) the nature, content, or scope of the information; or
 - (iii) the nature or type of the assistance or operational methods available to the surveillance agency; or
 - (b) is about particular operations that have been undertaken, or are being or are proposed to be undertaken, in relation to any of the functions of the surveillance agency; or
 - (c) has been provided to the surveillance agency by the Government of another country or by an agency of such a Government or by an international organisation, and is information that cannot be disclosed by the surveillance agency because the Government, agency, or organisation that provided the information will not consent to the disclosure.
- (3) Disclosure of information falls within **subsection (1)(b)(ii)** if the disclosure would be likely—
- (a) to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
 - (b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the Government of another country or any agency of such a Government, or by any international organisation; or
 - (c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences and the right to a fair trial; or
 - (d) to endanger the safety of any person.

3B Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

94 Section 19 amended (Direction)

- (1) In section 19(3), replace “in writing” with “by written notice”.
- (2) After section 19(5), insert:
- (5A) *See* **subpart 7**, which applies when the Minister uses classified security information in making a decision to make a direction under this section.

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95 Section 32 amended (Decision-making process)

- (1) Repeal section 32(4).
- (2) After section 32(5), insert:
- (5A~~6~~) The reasons for the decision must be set out in the written notice, except those parts of the reasons that would reveal classified security information.
- (5B~~7~~) *See* **subpart 7**, which applies when a designated officer uses classified security information in making a decision to grant, vary, or revoke an exemption under section 29.

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96 Section 36 amended (Decision-making process)

- (1) Repeal section 36(5).
- (2) After section 36(6), insert:
- (6A~~7~~) The reasons for the decision must be set out in the written notice, except those parts of the reasons that would reveal classified security information.
- (6B~~8~~) *See* **subpart 7**, which applies when the Minister uses classified security information in making a decision to grant, vary, or revoke an exemption.

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97 Section 39 amended (Review)

- (1) In section 39(6), after “classified”, insert “security”.
- (2) After section 39(6), insert:
- (7) *See* **subpart 7**, which applies when a review panel uses classified security information in making recommendations under this section and the Minister decides to confirm or vary the direction.

25

98 Section 40 amended (Direction notice)

- (1) In section 40(1), after “classified”, insert “security”.
- (2) After section 40(2), insert:
- (2A) *See* **subpart 7**, which applies when the Minister uses classified security information in making a decision to make a direction under section 38.

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99 New subpart 7 of Part 2 inserted

After section 44, insert:

Subpart 7—Provisions that apply when classified security information used in decisions

44A Application and interpretation

- (1) This subpart applies in relation to the relevant decisions.
- (2) In this subpart,—
- affected party**, in relation to a relevant decision, means a network operator, a member of the class of network operators, or a telecommunications service provider (as the case may be) to which the decision applies
- decision maker**, in relation to a relevant decision, means the person or persons who makes the decision
- relevant decision** means any of the following decisions:
- (a) a decision of the Minister to make a direction under section 19:
- (b) a decision of a designated officer or the Minister under section 29 or 34 to grant, vary, or revoke an exemption:
- (c) a decision of the Minister to make a direction under section 38:
- (d) a decision of a review panel as to recommendations under section 39.

44B Written notice and summary of classified security information

- (1) If a decision maker relies on classified security information in making a relevant decision, the written notice of the decision must state that—
- (a) the decision maker relied on that kind of information; and
- (b) the affected party may request a summary (a **CSI summary**) of the classified security information; and
- (c) the affected party may be able to make a complaint to the Inspector-General of Intelligence and Security under section 171 of the Intelligence and Security Act 2017 in relation to any advice given to the decision maker by an intelligence and security agency.
- (2) The purpose of the CSI summary is to enable the affected party to have a sufficient understanding of—
- (a) the classified security information the decision maker relied on in making the decision (without that information being disclosed to the affected party); and
- (b) the reasons for the decision based on that information.
- (3) If the affected party requests a CSI summary,—
- (a) the decision maker and the head of the surveillance agency that holds the classified security information must agree on the contents of a summary; and

	(b) the decision maker must provide the agreed summary to the affected party within a reasonable time.	
	(4) However, the decision maker may refuse to provide a CSI summary if the decision maker and the head of the surveillance agency are satisfied that a summary cannot be provided that is sufficient to meet its purpose without disclosing classified security information.	5
100	Section 56 amended (Review by Commissioner of Intelligence Warrants) In section 56(2) and (4)(b), after “classified”, insert “security”.	
101	Section 57 amended (Minister may make direction) In section 57(5), after “classified”, insert “security”.	10
102	New section 57A inserted (Provisions that apply when classified security information used or provided for decisions) After section 57, insert:	
57A	Provisions that apply when classified security information used or provided for decisions Subpart 7 of Part 2 applies, with all necessary modifications, in relation to decisions to make a direction under section 57 in the same way as it applies in relation to relevant decisions (within the meaning of that subpart).	15
103	Subpart 8 of Part 4 replaced Replace subpart 8 of Part 4 with:	20
	Subpart 8—Classified security information in proceedings	
101	Proceedings involving classified security information	
(1)	This section applies to any civil proceedings (including public law and judicial review proceedings) in a court relating to the administration or enforcement of this Act.	25
(2)	If the Crown proposes to present classified security information in proceedings, the Attorney-General must—	
(a)	make an application to an authorised court under section 32 of the 2021 Act for a security information order to protect the confidentiality of the information to be given as evidence in the proceedings; and	30
(b)	submit to the court the certification described in section 3A(1)(b) .	
(3)	If the classified security information is also national security information, the Crown may submit with the application and certification referred to in sub-section (2) an NSI certificate under section 41 of the 2021 Act and seek a security information order as set out in section 36(3) of that Act (under which the types of orders available to the court are limited).	35

- (4) In this section,—
2021 Act means **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021**
authorised court, national security information, NSI certificate, and security information order have the meanings given to them by **section 4** of the **2021 Act**. 5
- 104 Section 123 amended (Consequential amendments)**
 In section 123, replace “the Schedule” with “**Schedule 1**”.
- 105 New Schedule 1AA inserted**
 Insert the **Schedule 1AA** set out in **Schedule 7** of this Act as the first schedule to appear after the last section of the principal Act. 10
- 106 Schedule amended**
 In the Schedule heading, replace “**Schedule**” with “**Schedule 1**”.
- Amendments to Terrorism Suppression Act 2002*
- 107 Principal Act** 15
Sections 108 to 129 amend the Terrorism Suppression Act 2002.
- 108 Section 4 amended (Interpretation)**
 In section 4(1), definition of **classified security information**, replace “section 32(1)” with “**section 4A**”.
- 109 New section 4A inserted (Classified security information defined)** 20
 After section 4, insert:
- 4A Classified security information defined**
- (1) In this Act, **classified security information** means information—
- (a) that is held by a specified agency; and
- (b) that the head of the specified agency certifies in writing (in the prescribed form (if any)) cannot be disclosed (except as authorised by or under an Act or other rule of law) because, in the opinion of the head of the specified agency,— 25
- (i) the information is information of a kind specified in **subsection (2)**; and 30
- (ii) disclosure of the information would be disclosure of a kind specified in **subsection (3)**.
- (2) Information falls within **subsection (1)(b)(i)** if it—
- (a) might lead to the identification of, or provide details of,—

- (i) the source of the information; or
- (ii) the nature, content, or scope of the information; or
- (iii) the nature or type of the assistance or operational methods available to the agency; or
- (b) is about particular operations that have been undertaken, or are being or are proposed to be undertaken, in relation to any of the functions of the specified agency; or 5
- (c) has been provided to the specified agency by the Government of another country or by an agency of such a Government or by an international organisation, and is information that cannot be disclosed by the specified agency because the Government, agency, or organisation that provided the information will not consent to the disclosure. 10
- (3) Disclosure of information falls within **subsection (1)(b)(ii)** if the disclosure would be likely—
- (a) to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or 15
- (b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the Government of another country or any agency of such a Government, or by any international organisation; or 20
- (c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences and the right to a fair trial; or
- (d) to endanger the safety of any person.
- 110 Section 21 amended (Further provisions relating to interim designation)**
In section 21(e) and (f), replace “section 34” with “**section 29C**”. 25
- 111 Section 23 amended (Further provisions relating to final designation)**
In section 23(h), replace “section 34” with “**section 29C**”.
- 112 Section 26 amended (Content of notice to designated entity)**
- (1) In section 26(c), replace “section 35” with “**section 29B**”.
- (2) After section 26(d), insert: 30
- (da) must, if the Prime Minister relied on classified security information in making the designation, state that—
- (i) the Prime Minister relied on that kind of information; and
- (ii) the entity may request a summary of the classified security information under **section 31**: 35
- 113 Section 27 amended (Content of notice to public and others)**
In section 27(2)(c), replace “section 35” with “**section 29B**”.

114 Section 29A amended (Changes of description of designated entities)

In section 29A(4), replace “section 35(1)” with “**section 29B(1)**”.

115 New cross-heading above section 29B (as renumbered and repositioned by section 123 of this Act) inserted

Immediately after section 29A, insert:

5

Expiry, renewal, and revocation of designations

116 New section 29D inserted (Notification of decisions about expiry or revocation of designations)

After **section 29C** (as renumbered and repositioned by **section 122** of this Act), insert:

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29D Notification of decisions about expiry or revocation of designations

(1) If a designation under this Act expires or is revoked under **section 29B** or **29C**, the Prime Minister must—

(a) ensure that notice of the expiry or revocation is published in the *Gazette* as soon as practicable; and

15

(b) take all reasonable steps to ensure that notice of the expiry or revocation is given, in the manner and form required by section 21(d) or 23(f), to every person and body—

(i) to whom notice of the designation was given under section 21(d) or 23(f); and

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(ii) who is not already aware of the expiry or revocation.

(2) If the Prime Minister declines an application for revocation of a designation, the Prime Minister must take all reasonable steps to ensure that notice of the decision is given to the applicant (in the prescribed manner and form (if any)) with all reasonable speed.

25

(3) If the applicant is the designated entity, or a representative of the designated entity, and the Prime Minister relied on classified security information in declining the application, the notice must state that—

(a) the Prime Minister relied on that kind of information; and

(b) the entity may request that a summary of the classified security information be provided to them under **section 31**.

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117 Cross-heading above section 30 replaced

Replace the cross-heading above section 30 with:

Material on which designations, renewals, or revocations may be based

118 Section 30 amended (Information available to Prime Minister)

In section 30, replace “or section 22 or section 34” with “, 22, **29B, or 29C**”.

119 New sections 31 and 31A and cross-heading inserted

After section 30, insert:

<i>Additional requirements where classified security information used in certain decisions</i>	5
31 Provision of summary of classified security information	
(1) This section applies if a designated terrorist entity requests a summary (as referred to in section 26(da) or 29D(3)(b)) of the classified security information that the Prime Minister relied on in deciding—	10
(a) to make a designation under section 20 or 22; or	
(b) to decline an application for revocation of a designation under section 29C .	
(2) The purpose of the summary is to enable the designated terrorist entity to have a sufficient understanding of the classified security information the Prime Minister relied on in making the decision (without that information being disclosed to the entity).	15
(3) If the designated terrorist entity requests a summary,—	
(a) the Prime Minister and the head of the specified agency that holds the classified security information must agree on the contents of the summary; and	20
(b) the Prime Minister must provide the agreed summary to the entity with all reasonable speed.	
(4) However, the Prime Minister may refuse to provide a summary if the Prime Minister and the head of the specified agency are not satisfied that a summary can be provided that is sufficient to meet its purpose without disclosing classified security information.	25
31A Notification to Inspector-General of Intelligence and Security of provision of classified security information	
(1) The Director-General of an intelligence and security agency must notify the Inspector-General of Intelligence and Security if the agency provides classified security information to the Prime Minister or department to assist the Prime Minister to decide whether to—	30
(a) make a designation under section 20 or 22 in relation to an entity; or	
(b) decline an application for revocation of a designation under section 29C .	35

- (2) The Director-General must make the notification as soon as practicable after providing the classified security information to assist the Prime Minister.
- (3) In this section, **department** has the meaning given to it in section 5 of the Public Service Act 2020.
- 120 Section 32 repealed (Classified security information defined)** 5
Repeal section 32.
- 121 Cross-heading above section 33 replaced**
Replace the cross-heading above section 33 with:
- Proceedings arising out of designations, renewals, and revocations*
- 122 Section 34 renumbered as section 29C and repositioned (Revocation of designations)** 10
Renumber section 34 as **section 29C** and reposition it after **section 29B** (as renumbered and repositioned by **section 123** of this Act).
- 123 Section 35 renumbered as section 29B and repositioned (Designations under section 22 to expire after 3 years unless renewed by Prime Minister)** 15
- (1) Renumber section 35 as **section 29B** and reposition it after the new cross-heading inserted after section 29A by **section 115** of this Act.
- (2) In section 35(1)(a), replace “section 34” with “**section 29C**”.
- 124 Section 38 replaced (Procedure in proceedings involving classified security information)** 20
Replace section 38 with:
- 38 Proceedings involving classified security information**
- (1) This section applies to any civil proceedings (including public law and judicial review proceedings) in a court relating to the administration or enforcement of this Act. 25
- (2) If the Crown proposes to present classified security information in proceedings, the Attorney-General must—
- (a) make an application to an authorised court under **section 32** of the **2021** Act for a security information order to protect the confidentiality of the information to be given as evidence in the proceedings; and 30
- (b) submit to the court the certification described in **section 4A(1)(b)**.
- (3) If the classified security information is also national security information, the Crown may submit with the application and certification referred to in **subsection (2)**, an NSI certificate under **section 41** of the **2021** Act and seek a security information order as set out in **section 36(3)** of that Act (under which the types of orders available to the court are limited). 35

- (4) In this section,—
2021 Act means **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021**
authorised court, national security information, NSI certificate, and security information order have the meanings given to them in **section 4** of the **2021 Act**. 5
- 125 Section 40 repealed (Ancillary general practices and procedures to protect classified security information)**
 Repeal section 40.
- 126 Section 42 amended (Notification of revocation, expiry, or invalidity of designations)** 10
- (1) In the heading to section 42, delete “**revocation, expiry, or**”.
- (2) In section 42(1), replace “expires or is revoked or is found to be or to have been invalid, under section 34 or section 35 or” with “is found to have been invalid”. 15
- (3) In section 42(1)(a) and (b), delete “ revocation or expiry or”.
- 127 Section 58 amended (Appeal against decision on application under section 55)**
 In section 58(2), replace “sections 38 and 40” with “**section 38**”.
- 128 Section 59 amended (Discharge of order under section 55 on appeal)** 20
- (1) In section 59(2), replace “section 34” with “**section 29C**”.
- (2) In section 59(2), replace “section 35(2)” with “**section 29B(2)**”.
- 129 Schedule 1AA amended**
 In Schedule 1AA,—
- (a) insert the Part set out in **Schedule 8** of this Act as the last Part; and 25
- (b) make all necessary consequential amendments.
- Subpart 3—Amendments to other related Acts
- Amendment to Crown Proceedings Act 1950*
- 130 Principal Act**
Section 131 amends the Crown Proceedings Act 1950. 30
- 131 Section 27 replaced (Discovery)**
 Replace section 27 with:

27	Interrogatories and discovery	
(1)	In any proceedings (other than criminal proceedings) to which the Crown is a party or third party, the court may require the Crown to answer interrogatories, or to make discovery of documents and produce documents, as if the Crown were a private person of full age and capacity.	5
(2)	Subsection (1) is subject to any rules of court.	
(3)	Any order of the court under subsection (1) requiring the Crown to answer interrogatories must specify the officer of the Crown who is to answer the interrogatories.	
(4)	Nothing in this section affects—	10
(a)	the application to the Crown of the Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021 ; or	
(b)	any other rule of law that authorises or requires the Crown to withhold any document or to refuse to answer any question on the ground that disclosing the document or answering the question would be injurious to the public interest.	15

Amendments to Employment Relations Act 2000

132	Principal Act	
	Sections 133 to 136 amend the Employment Relations Act 2000.	
133	Section 133 amended (Jurisdiction concerning penalties)	20
	In section 133(2)(a), replace “and 178 (which allow” with “, 178, and 178AA (which provide”.	
134	Section 178 amended (Removal to court)	
	In the heading to section 178, after “ court ”, insert “ generally ”.	
135	New section 178AA inserted (Removal to court of proceeding involving national security information)	25
	After section 178, insert:	
178AA	Removal to court of proceeding involving national security information	
	If the Attorney-General gives written notice to the Authority that the Crown intends to make an SI application (under section 32 of Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021) in connection with proceedings before the Authority, section 44 of that Act applies as if a reference in that section to the District Court were a reference to the Authority and a reference to the High Court were a reference to the Employment Court.	30
		35

136 Section 187 amended (Jurisdiction of court)

In section 187(1)(e), after “section 178”, insert “or **178AA**”.

Amendments to Evidence Act 2006

137 Principal Act

Sections 138 to 143 amend the Evidence Act 2006.

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138 New section 3A inserted (Transitional, savings, and related provisions)

After section 3, insert:

3A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

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139 Section 70 amended (Discretion as to matters of State)

After section 70(3), insert:

- (4) This section does not apply if an application may be made under **section 32** of **Parts 1 to 3 of the Security Information in Proceedings Legislation Act 2021** in relation to the communication or information concerned (*see also section 33* of that Act).

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140 Section 102 amended (Application)

After section 102(b), insert:

- (ba) **sections 109A and 109B** (which relate to intelligence officers and intelligence sources):

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141 New sections 109A and 109B and cross-heading inserted

After section 109, insert:

Giving of evidence by intelligence officers and intelligence sources

109A Certificates relating to intelligence officers and intelligence sources

- (1) This section and **section 109B** apply—
- (a) to a civil proceeding; or
- (b) to a criminal proceeding for a category 3 or 4 offence.
- (2) If a party to the proceeding intends to call an intelligence officer or an intelligence source as a witness, a Director-General of an intelligence and security agency may file in the court in which the proceeding is to be held a certificate, signed by the Director-General, stating that,—
- (a) during the period specified in the certificate, the witness was—

25

30

- (i) an intelligence officer of the intelligence and security agency or of a foreign intelligence agency; or
- (ii) an intelligence source of the intelligence and security agency; and
- (b) the identity of the witness must not be disclosed because that disclosure would adversely affect the ability of the intelligence and security agency or (if applicable) the foreign intelligence agency to carry out its activities while maintaining the secrecy of its activities; and 5
- (c) the witness has not been convicted of any offence or (as the case may require) the witness has not been convicted of any offence other than the offence, or offences, described in the certificate. 10
- (3) The Director-General must file the certificate,—
- (a) in the case of a civil proceeding, in accordance with rules of court; or
- (b) in the case of a criminal proceeding, as soon as is reasonably practicable after a defendant has pleaded not guilty.
- (4) If the Director-General knows that the credibility of the witness in giving evidence in any other proceeding has been the subject of adverse comment by the Judge in that proceeding, the Director-General must also include in the certificate a statement of the relevant particulars. 15
- (5) For the purposes of **subsections (2)(c) and (4)**,—
- (a) it is sufficient that the certificate includes— 20
- (i) a statement of the nature of any offence or comment referred to in the certificate; and
- (ii) the year in which the offence was committed or the comment was made; and
- (b) it is not necessary to include the venue or precise date of the proceeding or any other particulars that might enable the true name or address of the witness to be discovered. 25
- (6) In this section and in **section 109B**,—
- Director-General of an intelligence and security agency** has the same meaning as in section 4 of the Intelligence and Security Act 2017 30
- foreign intelligence agency** means an agency that has responsibility for intelligence gathering for a country with which New Zealand has an intelligence sharing arrangement
- intelligence and security agency** has the same meaning as in section 4 of the Intelligence and Security Act 2017 35
- intelligence officer** means—
- (a) an employee of an intelligence and security agency; or
- (b) an individual employed or engaged in a foreign intelligence agency

intelligence source means any individual who has provided intelligence to an intelligence and security agency on a confidential basis.

- (7) This section also applies, with any necessary modification, in any case where a person is being, or is to be, proceeded against under—
- (a) the Criminal Proceeds (Recovery) Act 2009; or
 - (b) sections 142A to 142Q of the Sentencing Act 2002.

109B Effect of certificate under section 109A

Effect

- (1) In any proceeding in which a Director-General of an intelligence and security agency has filed a certificate under **section 109A(2)** relating to a party's witness,—
- (a) if the witness states that, during the period specified in the certificate, the witness acted as an intelligence officer or intelligence source as specified in the certificate, it must be presumed, in the absence of proof to the contrary, that the certificate has been given in respect of that witness; and
 - (b) it is sufficient if the witness is referred to in the way specified by the Director-General in the certificate, and, except if leave is given under **subsection (2)**, the witness must not be required to state the true name or address of the witness or to give any particulars likely to lead to the discovery of that name or address; and
 - (c) except if leave is given under **subsection (2)**, no lawyer, officer of the court, or other person involved in the proceeding may state in court the true name or address of the witness or give any particulars likely to lead to the discovery of that name or address.
- Leave to give evidence or ask question about name or address*
- (2) No evidence may be given, and no question may be put to the witness, or to any other witness, that relates directly or indirectly to the true name or address of the witness except by leave of the Judge.
- (3) On an application for that leave, the certificate is, in the absence of evidence to the contrary, sufficient evidence of the particulars stated in it.
- (4) If there is a jury, the Judge must not grant the leave unless the Judge is satisfied that—
- (a) there is some evidence before the Judge that, if believed by the jury, could call into question the credibility of the party's witness; and
 - (b) it is necessary in the interests of justice that other parties be enabled to test properly the credibility of the witness; and
 - (c) it would be impracticable for other parties to test properly the credibility of the witness if those parties were not informed of the true name or address of the witness.

- (5) An application for leave under **subsection (2)**—
- (a) may be made from time to time and at any stage of the proceeding; and
 - (b) must, where practicable, be made and dealt with in chambers; and
 - (c) if the application is made during a trial before a jury, must be dealt with and determined by the Judge in the absence of the jury. 5
- Service of certificate*
- (6) If a Director-General of an intelligence and security agency files a certificate under **section 109A(2)** in respect of any party’s witness, the Director-General must serve a copy of the certificate on the other parties, or on any lawyer acting for another party, at least 14 days before the witness is to give evidence. 10
- 142 Section 120 amended (Persons who may sign statements by assumed name)**
- (1) In the heading to section 120, after “**name**”, insert “**or anonymously**”.
 - (2) After section 120(1), insert:
 - (1A) A deposition or other written statement of evidence given by an intelligence officer or intelligence source (within the meaning of **section 109A**) may be given and signed,—
 - (a) in the case of an intelligence officer who has acquired an assumed name under subpart 1 of Part 3 of the Intelligence and Security Act 2017, in that name; or 15
 - (b) in any other case, using the term “witness” followed by an initial or a mark. 20
- 143 New Schedule 1AA inserted**
- Insert the **Schedule 1AA** set out in **Schedule 9** of this Act as the first schedule to appear after the last section of the principal Act. 25
- Amendments to Health and Safety at Work Act 2015*
- 144 Principal Act**
- Sections 145 and 146** amend the Health and Safety at Work Act 2015.
- 145 Section 162 repealed (Proceedings involving classified security information)** 30
- Repeal section 162.
- 146 Schedule 4 repealed**
- Repeal Schedule 4.

*Amendment to Outer Space and High-altitude Activities Act 2017***147 Principal Act**

Section 148 amends the Outer Space and High-altitude Activities Act 2017.

148 Section 55 amended (Minister must consult security Ministers about national security)

5

Repeal section 55(5).

*Amendment to Terrorism Suppression (Control Orders) Act 2019***149 Principal Act**

Section 150 amends the Terrorism Suppression (Control Orders) Act 2019.

150 Section 36 repealed (Additional requirements for decisions that supporting information is not disclosable)

10

Repeal section 36.

Schedule 1

Transitional, savings, and related provisions

s 5

Part 1

Provisions relating to this Act as enacted

5

1 General practices and procedures relating to classified security information

- (1) Any general practices and procedures that are in force, immediately before the commencement of **section 28**, under any of the following provisions are to continue in force, with any necessary modifications, as if ~~they~~ the general practices and procedures had been agreed under that provision: 10
- (a) section 125 of the Overseas Investment Act 2005:
 - (b) section 29AC of the Passports Act 1992:
 - (c) section 113 of the Telecommunications (Interception Capability and Security) Act 2013: 15
 - (d) section 40 of the Terrorism Suppression Act 2002.
- (2) The general practices and procedures referred to in **subclause (1)** may be revoked or replaced by general practices and procedures agreed to under **section 28**.

2 Proceedings affected by Act

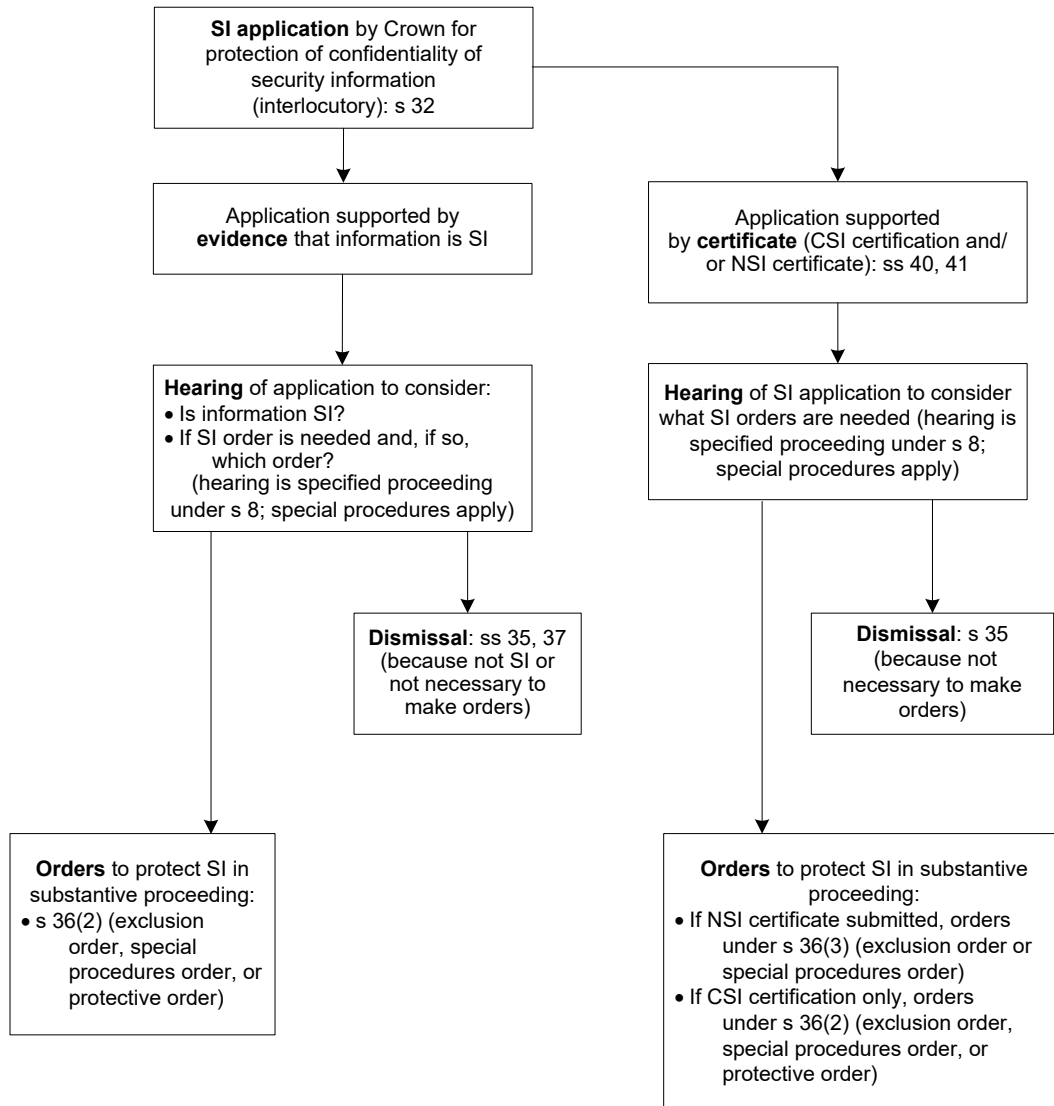
20

- (1) A provision of this Act applies to any proceeding commenced on or after the date of the commencement of that provision (the **commencement date**).
- (2) To avoid doubt, **subclause (1)** applies to proceedings that commence on or after the commencement date, but that relate to circumstances, applications, or decisions that occurred before, on, or after that date. 25
- (3) Proceedings commenced before the commencement date, and not finally determined before that date (including any rehearing, retrial, or appeal), continue as if the provision had not been enacted.

Schedule 2

Overview of SI application process

s 30



Schedule 3
New Schedule 1AA inserted into Criminal Disclosure Act 2008

s 56

Schedule 1AA
Transitional, savings, and related provisions

5

s 4A

Part 1
Provisions relating to Part 4 of Security Information in Proceedings Legislation Act 2021

- | | | |
|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 1 | Interpretation | 10 |
| | In this Part, unless the context otherwise requires,— | |
| | 2021 Act means sections 48 to 56 of Part 4 of the Security Information in Proceedings Legislation Act 2021 | |
| | commencement date means the date on which the 2021 Act comes into force. | |
| 2 | Proceedings affected by amendments | 15 |
| (1) | The amendments made to this Act by the 2021 Act (except for this clause) apply only to proceedings commenced on or after the commencement date. | |
| (2) | To avoid doubt, subclause (1) applies to proceedings that relate to the commission or possible commission of an offence if— | |
| (a) | the commission or possible commission occurred before the commencement date; and | 20 |
| (b) | the proceedings are commenced on or after that date. | |
| (3) | Proceedings commenced before the commencement date, and not finally determined before the commencement date (including any rehearing, retrial, or appeal), continue as if those amendments had not been enacted. | 25 |

Schedule 4
New Part 3 inserted into Schedule 1AA of Criminal Procedure Act
2011

s 76

Part 3	5
Provisions relating to Part 4 of Security Information in Proceedings Legislation Act 2021	
5 Interpretation	
In this Part, unless the context otherwise requires,—	
2021 Act means sections 57 to 76 of Part 4 of the Security Information in Proceedings Legislation Act 2021	10
commencement date means the date on which the 2021 Act comes into force.	
6 Proceedings affected by amendments	
(1) The amendments made to this Act by the 2021 Act (except for this clause) apply only to proceedings commenced on or after the commencement date.	15
(2) Proceedings commenced before the commencement date, and not finally determined before the commencement date (including any rehearing, retrial, or appeal), continue as if those amendments had not been enacted.	

Schedule 5
New Part 7 inserted into Schedule 1AA of Overseas Investment Act
2005

s 81

Part 7	5
Provisions relating to Part 4 of Security Information in Proceedings Legislation Act 2021	
52 Interpretation	
In this Part, unless the context otherwise requires,—	
2021 Act means sections 77 to 81 of Part 4 of the Security Information in Proceedings Legislation Act 2021	10
commencement date means the date on which the 2021 Act comes into force.	
53 Proceedings involving classified security information	
(1) The amendments made to this Act by the 2021 Act (except for this clause) apply to proceedings to which subpart 3 of Part 3 of this Act applies that are commenced on or after the commencement date.	15
(2) To avoid doubt, subclause (1) applies to proceedings to which subpart 3 of Part 3 of this Act applies that commence on or after the commencement date, but that relate to a decision that occurred before, on, or after that date.	
(3) Proceedings to which subpart 3 of Part 3 of this Act applies that are commenced before the commencement date, and not finally determined before the commencement date (including any rehearing, retrial, or appeal), continue as if the amendments made to this Act by the 2021 Act had not been enacted.	20

Schedule 6
New Part 2 inserted into Schedule 1 of Passports Act 1992

s 90

Part 2		
Provisions relating to Part 4 of Security Information in Proceedings Legislation Act 2021		5
2	Interpretation	
	In this Part, unless the context otherwise requires,—	
	2021 Act means sections 82 to 90 of Part 4 of the Security Information in Proceedings Legislation Act 2021	10
	commencement date means the date on which the 2021 Act comes into force	
	section 29AA proceedings means proceedings to which section 29AA applies.	
3	Decision of Minister under section 27GA	
(1)	This clause applies to a decision of the Minister to take an action specified in section 27GA(3)—	15
	(a) that is made before the commencement date; but	
	(b) in relation to which the person affected by the decision had not been notified under section 27GC before that date.	
(2)	The amendments made to this Act by the 2021 Act apply in relation to the decision, except the amendment made by section 85 (which applies only in relation to a decision that is made on or after the commencement date).	20
4	Proceedings involving classified security information	
(1)	The amendments made to this Act by the 2021 Act (except for this clause) apply only to section 29AA proceedings commenced on or after the commencement date.	25
(2)	To avoid doubt, subclause (1) applies to section 29AA proceedings that commence on or after the commencement date, but that relate to a decision of the Minister to take an action specified in section 27GA(3) that was made before, on, or after the commencement date.	
(3)	Section 29AA proceedings commenced before the commencement date, and not finally determined before the commencement date (including any rehearing, retrial, or appeal), continue as if the amendments made to this Act by the 2021 Act had not been enacted.	30

Schedule 7
**New Schedule 1AA inserted into Telecommunications (Interception
 Capability and Security) Act 2013**

s 105

Schedule 1AA
Transitional, savings, and related provisions

5

s 3B

Part 1
**Provisions relating to Part 4 of Security Information in
 Proceedings Legislation Act 2021**

10

1 Interpretation

In this Part, unless the context otherwise requires,—

2021 Act means **sections 91 to 106 of Part 4 of the Security Information in Proceedings Legislation Act 2021**

commencement date means the date on which the **2021 Act** comes into force

15

relevant decision means one of the following decisions:

- (a) a decision of the Minister to make a direction under section 19:
- (b) a decision of a designated officer or the Minister under section 29 or 34 to grant, vary, or revoke an exemption:
- (c) a decision of the Minister to make a direction under section 38:
- (d) a decision of a review panel as to recommendations under section 39:
- (e) a decision of the Minister to make a direction under section 57

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section 101 proceedings means proceedings to which **section 101** applies.

2 Administrative decisions

The amendments made to this Act by the **2021 Act** apply only in relation to any relevant decision made on or after the commencement date.

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3 Proceedings involving classified security information

(1) The amendments made to this Act by the **2021 Act** (except for this clause) apply only to **section 101** proceedings commenced on or after the commencement date.

30

(2) To avoid doubt, **subclause (1)** applies to **section 101** proceedings that commence on or after the commencement date, but that relate to a relevant decision that was made before, on, or after the commencement date.

- (3) **Section 101** proceedings commenced before the commencement date, and not finally determined before the commencement date (including any rehearing, retrial, or appeal), continue as if the amendments made to this Act by the **2021** Act had not been enacted.

Schedule 8
New Part 2 inserted into Schedule 1AA of Terrorism Suppression
Act 2002

s 129

	Part 2	5
	Provisions relating to Part 4 of Security Information in Proceedings Legislation Act 2021	
3	Interpretation	
	In this Part, unless the context otherwise requires,—	
	2021 Act means sections 107 to 129 of Part 4 of the Security Information in Proceedings Legislation Act 2021	10
	commencement date means the date on which the 2021 Act comes into force	
	relevant action means one of the following decisions of the Prime Minister:	
	(a) a decision of the Prime Minister to make a designation under section 20 or 22:	15
	(b) the expiry of a designation under section 29B (as renumbered and repositioned by section 123 of Part 4 of the Security Information in Proceedings Legislation Act 2021):	
	(c) a decision of the Prime Minister to renew a designation under section 29B (as renumbered and repositioned by section 123 of Part 4 of the Security Information in Proceedings Legislation Act 2021):	20
	(d) a decision of the Prime Minister to revoke a designation or to decline an application to revoke a designation under section 29C (as renumbered and repositioned by section 122 of Part 4 of the Security Information in Proceedings Legislation Act 2021)	25
	section 38 proceedings means proceedings to which section 38 applies.	
4	Administrative decisions	
	The amendments made to this Act by the 2021 Act apply only in relation to any relevant action that occurs on or after the commencement date.	
5	Proceedings involving classified security information	30
(1)	The amendments made to this Act by the 2021 Act (except for this clause) apply to section 38 proceedings commenced on or after the commencement date.	
(2)	To avoid doubt, subclause (1) applies to section 38 proceedings that commence on or after the commencement date, but that relate to a relevant action that occurred before, on, or after the commencement date.	35

- (3) **Section 38** proceedings commenced before the commencement date, and not finally determined before the commencement date (including any rehearing, retrial, or appeal), continue as if the amendments made to this Act by the **2021** Act had not been enacted.

Schedule 9
New Schedule 1AA inserted into Evidence Act 2006

s 143

Schedule 1AA
Transitional, savings, and related provisions

5

s 3A

Part 1
Provisions relating to Part 4 of Security Information in Proceedings Legislation Act 2021

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|----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 1 | Interpretation | 10 |
| | In this Part, unless the context otherwise requires,— | |
| | 2021 Act means sections 137 to 143 of Part 4 of the Security Information in Proceedings Legislation Act 2021 | |
| | commencement date means the date on which the 2021 Act comes into force. | |
| 2 | Proceedings involving classified security information | 15 |
| (1) | The amendments made to this Act by the 2021 Act (except for this clause) apply to proceedings commenced on or after the commencement date. | |
| (2) | To avoid doubt, subclause (1) applies to proceedings that commence on or after the commencement date, but that relate to circumstances, events, or decisions that occurred before, on, or after the commencement date. | 20 |
| (3) | Proceedings commenced before the commencement date, and not finally determined before the commencement date (including any rehearing, retrial, or appeal), continue as if the amendments made to this Act by the 2021 Act had not been enacted. | |

Legislative history

25 November 2021

Introduction (Bill 97–1)

14 December 2021

First reading and referral to Justice Committee