

Video Camera Surveillance (Temporary Measures) Bill

Government Bill

Explanatory note

General policy statement

In *Hamed & Ors v R* [2011] NZSC 101, 2 September 2011, the Supreme Court heard an appeal from the Court of Appeal brought by the persons accused of organised criminal conduct and firearms offences following a Police inquiry (known as Operation 8) into apparent quasi-military training in the Ureweras. Central to the appeal in the Court of Appeal and the Supreme Court was the question of the authority of the Police to deploy motion-activated video surveillance cameras in connection with the execution of search warrants.

The Crown Law Office has advised that the decision of the Supreme Court in *Hamed & Ors v R* (the ***Hamed decision***) has the following serious implications for government agencies:

- (a) the use of covert video camera surveillance as part of the exercise of a search warrant (allowing entry onto private property) is unlawful:
- (b) all covert video camera surveillance, including use of “over the fence” covert video camera surveillance (ie, non-trespassory surveillance, for example, by filming private activity from public land or from private property with the consent of the owner), is also likely to be held to be unlawful:

- (c) if video camera surveillance is unlawful, it is likely to be found to be unreasonable and in breach of section 21 of the New Zealand Bill of Rights Act 1990. Any evidence obtained is at high risk of being held to be inadmissible:
- (d) this will jeopardise both current prosecutions in cases already before the courts and ongoing investigations by the Police and other law enforcement agencies.

Having considered the issues raised during the initial consultations (and recognising that these are legal issues open to reasonable differences of opinion), the Bill is considered necessary to achieve the following:

- (a) ensure that covert video camera surveillance in the context of a search does not of itself render that search unlawful:
- (b) ensure that the Police and other agencies can continue to use covert video camera surveillance in the exercise of a warranted search or where the surveillance is conducted in circumstances that do not amount to a trespass:
- (c) ensure that persons accused of a crime continue to be able to challenge the admissibility of evidence other than solely on the grounds that the evidence was obtained using covert video camera surveillance:
- (d) preserve the benefit of the Supreme Court's decision for the parties in that particular case.

The proposed law will apply to current prosecutions before the courts, convictions entered as the result of past prosecutions, and existing investigations involving the gathering of evidence for potential future prosecutions.

The Act will apply for 1 year from the day after the date of assent, which will give Parliament time to consider the issues raised in the *Hamed* decision in the context of the Search and Surveillance Bill.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause, and provides that the Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

Clause 3 sets out the purposes of the Act. These are, in brief, to give immediate effect to the Supreme Court decision in *Hamed & Ors v R* [2011] NZSC 101, 2 September 2011 (the **decision**) in regard to that proceeding. The Act also provides for a temporary period of 1 year during which Parliament may address the matters raised in the decision in relation to the relevant law. Further, the Act clarifies that some activities that occurred before the decision, and those that occur during the temporary suspension period, may be regarded as lawful.

Clause 4 is the interpretation clause.

Part 2

Temporary continuation, and savings

Declaration of continued lawfulness

Clause 5 applies to the use of covert video camera surveillance in searches (as defined in *clause 4*) during the period before the Act comes into force and for 1 year after it comes into force. During that period, the use of covert video camera surveillance in those searches does not of itself render the search unlawful. Further, evidence is not necessarily improperly obtained (in terms of section 30 of the Evidence Act 2006) just because it was obtained by means of covert video surveillance. However, this clause is overridden by *clause 6*.

Savings

Clause 6 preserves the position of persons involved in the case that is at the heart of the decision, so that the decision is, for them, of immediate effect.

Hon Christopher Finlayson

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Video Camera Surveillance (Temporary Measures) Act **2011**.

2 Commencement

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

Part 1**Preliminary provisions**

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3 Purposes of this Act

The purposes of this Act are—

- (a) to maintain for the benefit of the parties in the proceedings entitled *R v Hamed & Others* the decision of the Supreme Court in *Hamed & Others v R* [2011] NZSC 101, 2 September 2011; and 10
- (b) to provide a temporary period that will enable Parliament to address in a comprehensive way the matters raised in the decision regarding the lawful and appropriate use of video camera surveillance as part of law enforcement; and 15
- (c) to uphold, during the temporary period referred to in **paragraph (b)**, the lawful status of certain uses of video camera surveillance in accordance with the law as it had been articulated and applied prior to the decision. 20

4 Interpretation

In this Act, unless the context otherwise requires,—

covert video camera surveillance means the use of a video camera for surveillance, from a fixed or mobile position, that is intended to be hidden from the view of persons other than those deploying the camera 25

decision means the decision of the Supreme Court in *Hamed & Others v R* [2011] NZSC 101, 2 September 2011

search— 30

- (a) means an act done by a person or body referred to in section 3(b) of the New Zealand Bill of Rights Act 1990—
 - (i) that is, or is in connection with, a search in respect of which a search warrant has been issued; 35
 - or

- (ii) that is a search where surveillance is conducted from outside the boundaries of the land or place under observation; and
 - (b) includes the acquisition of information about any person, place, or thing 5
- specified person** means any person charged with offences against the Crimes Act 1961 or the Arms Act 1983 following a police investigation into events in the Urewera ranges in 2006 and 2007 that is known as Operation 8
- use**, in relation to video camera surveillance, includes (without limitation) the positioning, installation, maintenance, and removal of the camera. 10

Part 2

Temporary continuation, and savings

- Declaration of continued lawfulness* 15
- 5 Temporary continuation of lawfulness of certain uses of video camera surveillance**
- (1) This section applies to the use of covert video camera surveillance as part of, or in connection with, a search, if that use—
 - (a) occurred prior to the coming into force of this Act; or 20
 - (b) occurs before the close of the day that is 1 year after the date on which this Act comes into force.
 - (2) The use of covert video camera surveillance as part of, or in connection with, a search does not of itself render the search unlawful. 25
 - (3) Without limiting **subsection (2)**, evidence obtained by means of covert video camera surveillance as part of, or in connection with, a search is not to be treated as improperly obtained for the purposes of section 30 of the Evidence Act 2006 by reason only of its having been obtained by that means. 30
 - (4) This section is subject to **section 6**.

Savings

- 6 Savings**
Nothing in this Act affects the decision as it relates to any specified person.
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