

Summary: GCSB Policy Procedure 1019 – New Zealand Purpose and Nationality

Reference number: A2531946

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Purpose

1. This policy provides guidance to ensure there is a Type 1 intelligence warrant when undertaking activities that have the purpose of collecting information about New Zealanders, or doing any other thing directly in relation to New Zealanders. It also establishes the requirements for nationality assessments.
2. This policy applies to all personnel planning, approving or conducting activities to perform GCSB's intelligence collection and analysis function or protection security services, advice and assistance function, under a Type 1 or Type 2 intelligence warrant. It applies to all otherwise unlawful activities that require an intelligence warrant under Part 4 of the Intelligence and Security Act 2017 (ISA), and to all activities that are authorised under an intelligence warrant. It includes personnel working under a request made under section 51 of the ISA.
3. This policy does not cover activities, including those in relation to New Zealanders that do not require an intelligence warrant. This may include discovery activity that does not require a warrant, open source research, receipt of publicly available information and voluntary disclosure.
4. The policy is in five sections:
 - a. Section One provides guidance on assessing for a New Zealand Purpose.
 - b. Section Two sets out the activities that require a Type 1 intelligence warrant because they have a New Zealand Purpose.
 - c. Section Three sets out the requirements relating to a New Zealand Purpose when working under warrant.
 - d. Section Four sets out requirements related to reporting.
 - e. Section Five defines when a person is considered to be a New Zealander in policy, when property is considered to belong to a New Zealander and how to assess for New Zealand nationality. It specifies the standard required to be established when assessments of New Zealand nationality are undertaken.

Section One – New Zealand Purpose

5. An assessment for a New Zealand Purpose is any review or check to determine whether a Type 1 intelligence warrant is required.
6. Purpose or intent is central to the requirement for a Type 1 warrant (section 53 of the ISA) and so purpose and nationality separately and collectively underpin the determination of the type of warrant required.

7. If, after completing an assessment and discussing it with their manager, personnel are unsure about whether their activity has a New Zealand Purpose, they should seek advice from Compliance, and if necessary from Legal.

Collecting information about a New Zealander

8. When considering whether information will be (or is being) collected about a New Zealander, consideration should be given to whether there is, or likely to be, intent and interest in any information about that New Zealander.

Responsibility for determination of New Zealand Purpose

9. Each team should consider what information they need from others in order to undertake New Zealand Purpose assessments and ensure there are processes in place to obtain this.

Compliance

10. It is a compliance incident if an activity is found to have a New Zealand Purpose and there is no Type 1 intelligence warrant in place, or put in place, that covers the scope and purpose of the activity. If the incident is found to be a breach of the ISA, this will be reported to the Director-General, the relevant Director and may be reported to the Inspector-General of Intelligence and Security (IGIS).

Section Two – activities with a New Zealand Purpose

11. An activity conducted to target a New Zealand person will have a New Zealand purpose.

Section Three – Working under a warrant

12. GCSB personnel must understand the scope of the warrant(s) they are working under and the scope of the activities authorised by the intelligence warrant(s) and they must act in good faith when undertaking these activities.

Section Four – Reporting

13. If information about a threat to life is discovered in the course of working under a Type 2 Intelligence warrant, and that information has a New Zealand Purpose, GCSB can seek an urgent Type 1 intelligence warrant or a very urgent authorisation to retain and use that information. Alternatively, if the GCSB does not wish to retain and use the information for its s 10 or 11 functions, the Director-General may choose to disclose that information to specified people for specified purposes, set out in s 104 of the ISA.

Section Five – Assessment of a New Zealand Nationality

14. This section sets out who is a New Zealander, and how to assess for New Zealand nationality when this cannot be confirmed.
15. A New Zealand person is a person who is a citizen or permanent resident of New Zealand (see Appendix One).

16. Personnel must be able to show they have taken reasonable steps to determine whether a person is a New Zealander. New Zealand nationality is conclusive when a nationality check with Immigration New Zealand or the Department of Internal Affairs confirms a person is a New Zealand Citizen or that they hold a New Zealand Permanent Resident Class visa. Any other status is considered inconclusive and the determination of nationality must be made through the nationality assessment process. A nationality assessment is the process to determine whether there are reasonable grounds to suspect a person is a New Zealander when nationality is not conclusively known.

NZ Entities

17. Only people are New Zealanders. Companies, organisations, vessels, aircrafts, and other vehicles cannot be New Zealand persons. Therefore, if the purpose of an activity does not include collecting information about a New Zealand person, a Type 1 warrant is not required.

Appendix One – New Zealand Citizenship and Nationality

18. A person may be a New Zealand citizen if he or she was:
 - a. Born (on or prior to 1 January 2006) in New Zealand, the Cook Islands, Niue, Tokelau or the Ross Dependency (Antarctica).
 - b. Born in one of those places after 1 Jan 2006, and at the time of the birth one or both of the parents was a New Zealand citizen or entitled to be in New Zealand indefinitely at the time of birth.
 - c. Born overseas to a parent who is/was a New Zealand citizen (descent).
 - d. Granted New Zealand citizenship.
 - e. Legally adopted by a parent who is/was a New Zealand citizen.
 - f. A British subject who was resident in New Zealand during all of 1948 (effectively granted).
 - g. A person is a permanent resident of New Zealand if he or she holds a NZ Permanent Resident Class visa under the Immigration Act 2009.