

Office of the Prime Minister

Prime Minister

Minister for National Security and Intelligence

Minister for Child Poverty Reduction

Minister Responsible for Ministerial Services

Associate Minister for Arts, Culture and Heritage



21 SEP 2022

Scott

fyi-request-20123-806d7466@requests.fyi.org.nz

Ref: PMO 2022-223

Tēnā koe Scott

Official Information Act request for Commissioners of Intelligence Warrants briefings

Thank you for your Official Information Act 1982 (the Act) request, received on 4 August 2022. You requested:

“ONE: I would like to request a copy of the 10 February 2022 briefing “Letter from Robert Dobson, Commissioner of Intelligence Warrants”

TWO: I would like to request copies of the briefings received by the Prime Minister on the topic of the recent re-appointment of Sir Bruce Robertson as Chief Commissioner of Intelligence Warrants

THREE: I would like to request copies of the briefings received by the Prime Minister on the topic of appointing Robert Dobson and Karen Clark as Commissioners of Intelligence Warrants”

The time frame for responding to your request was extended under section 15A of the Act by 20 working days because it necessitated further consultations to be undertaken before a decision could be made on the request. Following this extension, we are now in a position to respond.

Information being released

Please find enclosed the following documents:

Item	Date	Title	Decision
1	9 March 2020	Briefing: Reappointment of the Commissioners of Intelligence Warrants	Release in part, information withheld under s9(2)(a)
2	15 May 2020	Briefing: Cabinet Paper: Reappointment of the Commissioners of Intelligence Warrants	Release in part, information withheld under s9(2)(a) and s9(2)(g)(i)
3	5 August 2021	Briefing: Appointment of a Third Commissioner of Intelligence Warrants	Release in part, information withheld under s9(2)(a) and s9(2)(g)(i)
4	31 August 2021	Briefing: Cabinet Paper: Appointment of a Third	Release in part, information withheld under s9(2)(a)

		Commissioner of Intelligence Warrants	
5	10 February 2022	Briefing: Letter from Robert Dobson, Commissioner of Intelligence Warrants	Release in part, information withheld under s9(2)(a) and s9(2)(g)(i)
6	18 March 2022	Briefing: Proposed Appointment of Hon Karen Clark QC as Commissioner of Intelligence Warrants	Release in part, information withheld under s9(2)(a), s9(2)(f)(iv) and s9(2)(g)(i)
7	8 April 2022	Aide-Memoire: Appointment of Commissioner of Intelligence Warrants – Appointments and Honours Committee 13 April 2022	Release in part, information withheld under s9(2)(a) and s9(2)(g)(i)
8	3 June 2020	Cabinet Paper: Reappointment of the Commissioners of Intelligence Warrants and of the Chief Commissioner	Release in part, information withheld under s9(2)(a) and s9(2)(g)(i)
9	29 September 2021	Cabinet Paper: Commissioner of Intelligence Warrants: Appointment	Release in part, information withheld under s9(2)(a)

We have decided to release the relevant parts of the documents listed above, subject to information being withheld under one or more of the following sections of the Act, as applicable:

- section 9(2)(a), to protect the privacy of individuals;
- section 9(2)(f)(iv), to maintain the confidentiality of advice tendered by or to Ministers and officials; and
- section 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinion.

In making our decision, we have considered the public interest considerations in section 9(1) of the Act.

You have the right to ask the Ombudsman to investigate and review our decision under section 28(3) of the Act.

Ngā mihi nui,

Raj Nahna
Chief of Staff



Briefing

REAPPOINTMENT OF THE COMMISSIONERS OF INTELLIGENCE WARRANTS

To Rt Hon Jacinda Ardern, Prime Minister			
Date	9/03/2020	Priority	Routine
Deadline	23/03/2020	Briefing Number	1920NSP/053

Purpose

This briefing seeks your agreement to the reappointment of the current Commissioners of Intelligence Warrants (Chief Commissioner the Honourable Sir J. Bruce Robertson and Commissioner the Honourable J Warwick Gendall) when their term expires on 31 March 2020. The briefing outlines a proposed process for this reappointment, and provides you with a draft letter for the required consultation with the Leader of the Opposition, and other supporting documents.

Recommendations

1. **Note** the terms for the current Commissioners of Intelligence Warrants, the Hon. Sir J Bruce Robertson KNZM and the Hon. Warwick Gendall QC, expire on 31 March 2020
2. **Note** the Commissioners of Intelligence Warrants are appointed by the Governor General on the recommendation of the Prime Minister
3. **Agree** to recommend the reappointment of the Hon. Sir J. Bruce Robertson KNZM as Chief Commissioner of Intelligence Warrants for a term of three years commencing on 1 April 2020 YES / NO
4. **Agree** to recommend the reappointment of the Hon. Warwick Gendall QC as a Commissioner of Intelligence Warrants for a term of three years commencing on 1 April 2020 YES / NO
5. **Note** your obligation under the Security and Intelligence Act 2017 to consult the Leader of the Opposition on these reappointments
6. **Sign** and forward the attached letter to Hon Simon Bridges YES / NO
7. **Forward** this briefing to:
 - 7.1. Hon David Parker, Attorney-General YES / NO


~~IN CONFIDENCE~~

7.2. Hon Andrew Little, Minister Responsible for the GCSB and for the NZSIS YES / NO

7.3. Hon Tracey Martin, Minister of Internal Affairs YES / NO

8. **Note** that we will provide supporting documents, including an Appointment and Honours Cabinet Committee paper and draft letters (with attached warrants) to send the Governor General, should you choose to proceed with these reappointments and the Leader of the Opposition agrees.

9. **Note** that the Intelligence and Security Act 2017 requires the current Commissioners of Intelligence to continue in their roles until they are reappointed or successors are appointed.


Tony Lynch
Deputy Chief Executive
National Security Group

9.3.20
...../...../.....

Rt Hon Jacinda Ardern
Prime Minister

...../...../.....

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Contact for telephone discussion if required:

Name	Position	Telephone	1st contact
s9(2)(a)	Manager, Security and Intelligence Policy	s9(2)(a)	✓
s9(2)(a)	Policy Advisor, Security and Intelligence Policy	s9(2)(a) s9(2)(a)	

Minister's office comments:

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to

Released under the Official Information Act 1982

REAPPOINTMENT OF THE COMMISSIONERS OF INTELLIGENCE WARRANTS

The current term for the Commissioners of Intelligence Warrants will end on 31 March 2020

1. The Intelligence and Security Act 2017 (the Act) requires the appointment of up to three Commissioners of Intelligence Warrants, one of whom must also be appointed as the Chief Commissioner of Intelligence Warrants.
2. The current Chief Commissioner is the Hon. Sir Bruce Robertson KNZM, who is supported by Commissioner the Hon. Warwick Gendall CNZM, QC. They were appointed in 2017 and their term ends on 31 March 2020.
3. The Commissioners have responsibilities under three Acts:
 - Intelligence and Security Act 2017: Issuing Type 1 intelligence warrants jointly with the authorising Minister (the Minister Responsible for the GCSD and NZSIS).
 - Telecommunications (Interception Capability and Security) Act 2013: Reviewing significant network security risks that exist or may arise and are being considered for referral to the Minister Responsible for the GCSB.
 - Passports Act 1992: Reviewing Ministerial decisions related to the refusal to issue, cancellation, or retention of New Zealand travel documents on grounds of national or international security.
4. A summary of the functions of the Commissioners and the additional functions of the Chief Commissioner are set out in **Attachment A**.

We recommend you consider the reappointment of the current Chief Commissioner and Commissioner

5. To be appointed to the role, Commissioners must have held office as a High Court Judge. Also, because applications for Type 1 intelligence warrants may need to be dealt with urgently and require the review of documentation held in the headquarters of the intelligence agencies, we have previously advised that the Commissioners be based in Wellington and be available at short notice.
6. We have spoken with the Commissioners, and both have expressed an interest in being reappointed. Curriculum Vitae for Chief Commissioner Robertson and Commissioner Gendall are attached at **Attachment B** and **C** respectively.
7. The Commissioners are appointed by the Governor-General on your recommendation. We suggest you recommend that the Governor-General reappoint both Commissioners, given the following:
 - there have been no issues raised with their performance over the current term;
 - the selection criteria significantly limits the range of available candidates; and

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- making significant new appointments in an election year can complicate the appointment process.
8. If you were to reappoint Chief Commissioner Robertson and Commissioner Gendall, their term would begin on 1 April 2020, and continue until 31 March 2023. Some consideration will be given to staging the end of their appointments to support succession and handover planning.
 9. We have inquired into whether the Commissioners have any conflicts of interest and none have been identified.

The Commissioners' remuneration is outlined in the Intelligence and Security Act

10. The Act provides for the Commissioners to be remunerated at the rate applicable to a High Court Judge, as determined by the Remuneration Authority. The Commissioners' funding is by means of a Permanent Legislative Authority administered by DPMC.

Consultation with the Leader of the Opposition is statutorily required

11. If you support the proposed reappointments of the Commissioners, the next stage is for you to consult the Leader of the Opposition on the proposed reappointment (as required by the Act). A draft letter is provided at **Attachment D** for your consideration and signature.
12. We also recommend that you forward this briefing to your Ministerial colleagues with an interest in this appointment. This may include:
 - the Attorney-General, who has an interest in these appointments, given their significant judicial responsibility;
 - the Minister Responsible for the GCSB and for the NZSIS, who interacts with the Commissioners regarding their responsibilities outlined in the Intelligence and Security Act; and
 - the Minister of Internal Affairs, who interacts with the Commissioners regarding their responsibilities outlined in the Passports Act.

Next steps

13. If, after consultation with the Leader of the Opposition, you agree with the reappointment, we will draft:
 - a paper for the Appointments and Honours Cabinet Committee;
 - letters, curriculum vitae, role descriptions and warrant forms for you to sign and forward to the Governor General;
 - a press release announcing the reappointment of the Commissioners; and
 - letters to the Commissioners informing them of their reappointment.
14. If the reappointment process cannot be completed by 31 March 2020, the Act's requirement for the Commissioners to continue to hold office until the process is complete will provide continuity for the system.

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Attachments:		
Attachment A:	Unclassified	Functions of the Commissioners of Intelligence Warrants and the Chief Commissioner of Intelligence Warrants
Attachment B:	In Confidence	Letter to the Leader of the Opposition
Attachment C:	In Confidence	Curriculum Vitae, Chief Commissioner Robertson
Attachment D:	In Confidence	Curriculum Vitae, Commissioner Gendall

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ATTACHMENT A

Functions of the Commissioners of Intelligence Warrants and the Chief Commissioner of Intelligence Warrants

Under the Intelligence and Security Act 2017 the functions of the Commissioners of Intelligence Warrants are to:

- advise the authorising Minister on applications for Type 1 intelligence warrants;
- consider and deliberate on applications for Type 1 intelligence warrants jointly with the authorising Minister;
- issue Type 1 intelligence warrants jointly with the authorising Minister;
- consider jointly with the authorising Minister applications from the intelligence and security agencies for permission to access restricted information;
- consider jointly with the responsible Minister applications from the intelligence and security agencies for approval to obtain business records of telecommunications network operators or financial service providers;
- conduct reviews under the Telecommunications (Interception Capability and Security) Act 2013 relating to significant network security risks;
- conduct reviews of decisions under the Passports Act in relation to travel documents; and
- carry out other functions as required by the Intelligence and Security Act or any other enactment.

The additional functions of the Chief Commissioner of Intelligence Warrants are to:

- be the central point of contact for all communications with the Commissioners;
- receive applications for Type 1 intelligence warrants and to allocate those applications amongst the Commissioners;
- receive notice of the urgent issue of a Type 1 intelligence warrant and to consider whether to revoke that warrant;
- receive notice of the very urgent authorisation of activity for which a Type 1 intelligence warrant is required and to consider whether to revoke that authorisation;
- receive applications from intelligence and security agencies for approval to access business records of telecommunications network operators or financial service providers and to allocate those applications amongst the Commissioners; and
- perform other functions as required by the Intelligence and Security Act or any other enactment.

ATTACHMENT B

Curriculum Vitae, Chief Commissioner Robertson

THE HONOURABLE SIR JAMES BRUCE ROBERTSON, KNZM

CURRICULUM VITAE

Full name: James Bruce ROBERTSON

Date of birth: s9(2)(a)

QUALIFICATIONS:

1962-1967: University of Otago, Dunedin: BA 1964; LLB 1967; Hon LLD 1990

1972-1973: University of Virginia, United States, LLM 1973

EMPLOYMENT:

1987-2010: Appointed Judge of the High Court of New Zealand (1987); Appointed President of the Law Commission (2001); Appointed a permanent member of the Court of Appeal (2005)

1970-1987: Partner, Ross, Dowling, Marquet & Griffin, Barristers and Solicitors

ROLES SINCE RETIRING FROM THE COURT OF APPEAL IN 2010:

2017: Appointed as the Chief Commissioner of Intelligence Warrants

2013: Appointed as the Commissioner of Security Warrants, reappointed August 2016

2012: Appointed by the Commonwealth to a Commission of Inquiry which investigated the February 2012 change of government in the Maldives;

2011: Member of an international Tribunal in PNG which investigated breaches of the Leadership Code by Sir Michael Somare;

Chair of the Sports Tribunal of New Zealand (previously Deputy Chair)

Chair of the Disciplinary Committee under the Financial Advisers Act 2008

Chair of the Rugby World Cup Authority in 2011

Presiding Judge of the Vanuatu Court of Appeal (Member since 1996);

President of the Pitcairn Islands Court of Appeal (2012 – 2019);

Judge of the Qatar International Court,

Chairman of Presbyterian Support Central;

Foundation Chairman of the Online Media Standards Authority

Visitor of the University of the South Pacific

HISTORY:

1969-1985: Part-time lecturer, Faculty of Law, University of Otago

1971-1987: Member of the Crown Prosecution Panel, Dunedin

1972-1973: Harkness Fellow of the Commonwealth Fund of New York

1978-1985: Member of the New Zealand Law Society Legal Education Committee

1981-1988: Member of the Council for Legal Education

1980-2011: Member of the NZ Government Public and Administrative Law Reform Committee (1980-85) and subsequently the Legislation Advisory Committee (1985-2011)

1983-1987: Chairman, New Zealand Sub-Committee on Searches and Search Warrants

1969-1988: Member of Council, University of Otago (1969-85); Pro Chancellor, University of Otago (1982-88)

1978-1984: Otago District Law Society Council; President (1982)

1981-1982: New Zealand Law Society; Council; Executive (1982)

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OTHER ACTIVITIES:

- 1965: Volunteer Service Abroad Teacher, Western Samoa
1967-1969: President, Otago University Students' Association (1967-68); Vice President
NZ Universities Students Association (1968-69)
1969-1972: Member, National Development Council
1976-1985: Chairman of Council of Knox College and Salmond Hall
1980-1986: Otago Area Co-ordinator and Member of National Council of Duke of
Edinburgh Awards Scheme
1985: Chairman, Appeal Committee to raise \$1M for Redevelopment of Old Peoples
Home in Dunedin

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ATTACHMENT C

Curriculum Vitae, Commissioner Gendall

THE HONOURABLE JUSTICE JOHN WARWICK GENDALL CNZM, QC

CURRICULUM VITAE

Full name: John Warwick Gendall
Date of birth: s9(2)(a)

QUALIFICATIONS:

1960: Hutt Valley High School Head Prefect
1961: Shaw High School, Cleveland
1962-1967: Victoria University of Wellington; LLB (1966), LLM (Hons - 1967)
1966: Admitted as Barrister and Solicitor
1967-1968: Osgoode Hall Law School, Toronto, Canada (Teaching Fellow)
1996: Queen's Counsel

EMPLOYMENT:

1968-1986: Partner, Buddle Findlay, Barristers and Solicitors
1986-1996: Barrister Sole
1996-2013: High Court Judge

ROLES SINCE RETIRING FROM THE HIGH COURT IN 2013:

2012-2018: Chair, New Zealand Parole Board (two appointments to three year terms)
2013-2019: Chair, Drug Free Sport New Zealand (two appointments to three year terms)
2017-2020: Commissioner of Intelligence Warrants

HISTORY:

1973-1983: Council Member, Wellington District Law Society
1980-1981: NZ Law Society Legislation Committee
1980-1984: NZ Law Society Family Law Committee
1981-1985: Chairman, Handicapped Children's Appeal Board
1982-1983: President, Wellington District Law Society
1982-1985: Chairman, Wellington District Legal Aid Committee
1982-1983, 1985: Executive Member, NZ Law Society
1984-1986: Justice Department National Advisory Committee for Prevention of Child Abuse
1985: Vice President, NZ Law Society
1985-1995: Trustee, Todd Foundation (NZ Law Society Appointee)
1990: Justice Department Working Paper on Matrimonial Property
2012: Awarded CNZM (Companion of the New Zealand Order of Merit)
Other positions held:
Crown Prosecutor's Panel, Wellington (Solicitor-General appointee)
Prosecutor, Serious Fraud Office Panel (Solicitor-General appointee)
Chairman, NZ Accountants Society Appeal Board
Chairman, Motor Vehicle Dealers Disciplinary Board
Chairman, Pharmaceutical Society Disciplinary Committee
Member, Council of Pharmaceutical Society (Ministerial Appointee)
Member, Legal Aid Review Authority (Ministerial Appointee)
Legal Assessor, Medical Practitioners Disciplinary Committee
Legal Assessor, Nursing Council of NZ
Member, Wellington District Law Practitioners Disciplinary Tribunal
Panel Chairman, NZ Judicial Control Authority for Racing

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Appeal Judge, NZ Racing Conference
Appeal Judge, Judicial Control Authority for Racing
Member, Courts Consultative Sub Committee on TV and Radio Broadcasting
in Courts
Chairman, Appeal Tribunal Medical Technologists Registration Board
(Ministerial Appointee)

OTHER ACTIVITIES:

1972-1975. President, AFS International Scholarships (NZ) – 1972-1975
1976: Pacific Representative, AFS (USA) Trustees International Committee
1978-1992: Council Member, NZ Football Association
1984-1992: Executive Member, Oceania Football Confederation
1986-1992: Chairman of NZ Football Association
1986, 1988, 1990,
1987-1992, 1992: NZ Delegate to FIFA Congress
Life Membership: NZ Football Association (former President)
Life Membership: Wellington Racing Club (former Vice President)
Membership: Australian and NZ Sports Law Association

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ATTACHMENT D

Draft Letter to the Leader of the Opposition

XX March 2020

Hon Mr Simon Bridges
Leader of the Opposition
Parliament Buildings
WELLINGTON

Dear Hon Mr Bridges

Proposed Reappointment of the Commissioners of Intelligence Warrants and the Chief Commissioner of Intelligence Warrants

The Intelligence and Security Act 2017 requires the appointment of up to three Commissioners of Intelligence Warrants and one of them also to be appointed as the Chief Commissioner of Intelligence Warrants. The Act requires the appointees to have held office as Judges of the High Court. The need for the intelligence and security agencies to be able to seek Type 1 intelligence warrants urgently, and for the Commissioners to view and assess relevant documentation held by the intelligence and security agencies, makes it highly desirable that the Commissioners should be based in Wellington.

In 2016, the Attorney-General advised that two commissioners would be sufficient at this time. The two current Commissioners, the Hon. Sir Bruce Robertson KNZM, and the Hon. Warwick Gendall QC were subsequently appointed. Their duties commenced on 1 April 2017 for a prescribed 3 year term. Their current term will cease on 31 March 2020.

I propose to nominate the Hon. Sir Bruce Robertson, and the Hon. Warwick Gendall for reappointment to another term as Commissioners of Intelligence Warrants from 1 April 2020. I also propose to nominate the Hon. Sir Bruce Robertson for reappointment as the Chief Commissioner of Intelligence Warrants, taking account of the fact that he has served the previous three years in this capacity.

I seek your views on these proposed reappointments. A summary of the duties of the Commissioners and CVs for the two proposed appointees are attached.

Yours sincerely

Rt. Hon. Jacinda Ardern
Prime Minister

Briefing

CABINET PAPER: REAPPOINTMENT OF THE COMMISSIONERS OF INTELLIGENCE WARRANTS


To Rt Hon Jacinda Ardern, Prime Minister			
Date	15/05/2020	Priority	Routine
Deadline	22/05/2020	Briefing Number	1920NSP/068

Purpose

This briefing attaches a noting paper for the Appointments and Honours Cabinet Committee (APH) regarding the reappointment of the current Commissioners of Intelligence Warrants.

Recommendations

1. **Note** that you have previously agreed to the reappointment of the current Commissioners of Intelligence Warrants, the Hon. Sir J Bruce Robertson KNZM and the Hon. Warwick Gendall QC, whose terms expired on 31 March 2020.
2. **Note** that the Leader of the Opposition has also indicated his support to the reappointments.
3. **Agree** to table the attached Cabinet Paper in the Appointments and Honours Committee (APH) YES / NO


Tony Lynch
Deputy Chief Executive
National Security Group
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Rt Hon Jacinda Ardern
Prime Minister
16/5/20

Contact for telephone discussion if required:

Name	Position	Telephone		1st contact
s9(2)(a)	Manager, Security and Intelligence Policy	s9(2)(a)	s9(2)(a)	✓
s9(2)(a)	Principal Policy Advisor, Security and Intelligence Policy	s9(2)(a)	s9(2)(a)	

Minister's office comments:

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to

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REAPPOINTMENT OF THE COMMISSIONERS OF INTELLIGENCE WARRANTS

Next steps in the re-appointment process

1. Following your approval on 9 March for the re-appointment of current Chief Commissioner of Intelligence Warrants Sir Bruce Robertson and Commissioner Warwick Gendall, and the subsequent agreement of the Leader of the Opposition, we have prepared a noting paper for the Appointments and Honours Cabinet Committee (APH), including curriculum vitae and role descriptions.
2. Due to Covid-19 the reappointment process was unable to be completed by 31 March 2020, the official end date of both Commissioners' terms. However, the Intelligence and Security Act 2017 allows for the Commissioners to continue to hold office until the process is complete.
3. We will liaise with your office regarding the timing of submitting the paper for APH.
4. Supporting documents for you to send to the Governor-General and the respective Commissioners will be sent to your office following approval of the re-appointments by the APH.

Appointment of a third Commissioner

5. During the Level 4 Covid-19 lockdown, the NZSIS and GCSB identified a risk in having only two Commissioners of Intelligence Warrants during a pandemic or other national emergency, s9(2)(g)(i) and are based in Wellington. If they became incapacitated for any reason, agencies would lose the ability to apply for intelligence warrants in a timely fashion. This could have potentially serious consequences for New Zealand's national security.
6. Accordingly, as referenced within the attached Cabinet Paper, we are currently preparing some advice on the appointment of a third, Auckland-based Commissioner. We are aiming to provide this advice to you before the end of May.

Attachments:		
Attachment A:	In Confidence	Appointments and Honours Cabinet Committee Paper



Briefing

APPOINTMENT OF A THIRD COMMISSIONER OF INTELLIGENCE WARRANTS

To Rt Hon Jacinda Ardern, Prime Minister			
Date	5/08/2021	Priority	Routine
Deadline	17/08/2021	Briefing Number	2122NSP/006

Purpose

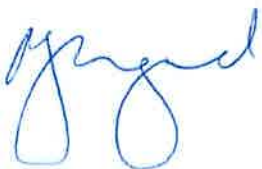
This briefing seeks your agreement to appoint a third Commissioner of Intelligence Warrants. The briefing outlines the rationale and process for this appointment. It attaches a draft letter to the Leader of the Opposition, to consult her on the appointment, as you are required to do under the Intelligence and Security Act 2017.

Recommendations


- Note** that the COVID-19 restrictions in New Zealand and Australia have highlighted the need for a third Commissioner of Intelligence Warrants;
- Note** that the Commissioners of Intelligence Warrants are appointed by the Governor-General on the recommendation of the Prime Minister;
- Note** that the Intelligence and Security Act 2017 specifies that Commissioners of Intelligence Warrants need to have previously been a High Court Judge;
- Agree** to recommend the appointment of a third Commissioner of Intelligence Warrants for a term of three years; YES / NO
- Agree** to recommend Hon Robert Dobson QC for the third Commissioner of Intelligence Warrants role; YES / NO
- Note** that under the Intelligence and Security Act 2017 you are required to consult the Leader of the Opposition on this appointment;
- Sign** and forward the attached letter to Hon Judith Collins, Leader of the Opposition; YES / NO

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8. **Forward** this briefing to: YES / NO
- 8.1. Hon David Parker, Attorney-General
 - 8.2. Hon Andrew Little, Minister Responsible for the GCSB and the NZSIS
 - 8.3. Hon Jan Tinetti, Minister of Internal Affairs
9. **Note** that we will provide you with an Appointment and Honours Cabinet Committee paper and draft letter (with attached warrants) to send to the Governor-General, should you choose to proceed with this appointment following consultation with the Leader of the Opposition.


Tony Lynch
**Deputy Chief Executive
National Security Group**

4 08 21
.....


Rt Hon Jacinda Ardern
Prime Minister

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Contact for telephone discussion if required:

Name	Position	Telephone		1st contact
Tony Lynch	Deputy Chief Executive, National Security Group	s9(2)(a)	s9(2)(a)	
s9(2)(a)	Principal Policy Advisor, Security and Intelligence Policy	s9(2)(a)	s9(2)(a)	✓

Minister's office comments:

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to

Released under the Official Information Act 1982

APPOINTMENT OF A THIRD COMMISSIONER OF INTELLIGENCE WARRANTS

The COVID-19 pandemic highlighted the risk of having only two Commissioners

1. The Intelligence and Security Act 2017 (the Act) allows for the appointment of up to three Commissioners of Intelligence Warrants (Commissioners). To date only two Commissioners have been appointed at the same time. The current Commissioners, both reappointed to their roles on 1 April 2020, are: Chief Commissioner the Hon Sir Bruce Robertson KNZM, and Commissioner the Hon Warwick Gendall CNZM, QC. Both are Wellington-based.
2. During the nationwide Level 4 restrictions in 2020, the NZSIS and GCSB (the agencies) identified a risk of having only two Commissioners. s9(2)(g)(i)
[REDACTED]
This could have potentially dangerous consequences for New Zealand's national security if an intelligence warrant was required in relation to an imminent threat.
3. To mitigate this risk, DPMC, working with Crown Law, began a process to identify potential candidates for a third Commissioner. s9(2)(g)(i)
[REDACTED]
4. s9(2)(a), s9(2)(g)(i)
[REDACTED]
Sir Bruce and the agencies are now of the view that a third Commissioner is required to ensure the continuity of agency activities in unforeseen events.
5. A summary of the functions of the Commissioners and the additional functions of the Chief Commissioner are set out in **Attachment A**.

We recommend you agree to the appointment of a third Commissioner

6. DPMC, GCSB and NZSIS agree that, in order to mitigate the risk of both Commissioners being unavailable to sign off on intelligence warrants, a third appointment should be made. s9(2)(a), s9(2)(g)(i)
[REDACTED]

There is a limited pool of candidates

7. Commissioners are appointed by the Governor-General on your recommendation. To be appointed to the role, Commissioners must have held office as a High Court Judge. This means there is a limited pool of potential candidates, s9(2)(g)(i)
[REDACTED]
8. Crown Law drew up a list of retired judges in both Auckland and Wellington as potential candidates and, with DPMC, developed a short list. The shortlisted candidates are:

- s9(2)(a)
[REDACTED]

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- s9(2)(a) [REDACTED]
 - Hon Robert Dobson QC (aged 71): Retired July 2021, based in Wellington;
 - Hon Karen Clark QC s9(2)(a) [REDACTED] based in Wellington; and
 - s9(2)(a) [REDACTED]
9. Tony Lynch, Deputy Chief Executive, National Security Group and Sir Bruce Robertson, Chief Commissioner of Intelligence Warrants, spoke with each of the candidates to seek their interest in the position:

s9(2)(a)

[REDACTED]

10. These candidates may be considered in the future, on the retirement of either of the incumbent Commissioners.
11. Hon Dobson was interested in the role and is available.

We recommend Hon Robert Dobson QC is appointed to the role

12. Hon Robert Dobson QC is the preferred candidate. He is based in Wellington and is assessed by Tony Lynch and Sir Bruce Robertson to have the skills, experience and ability needed to undertake the role.
13. Crown Law has consulted the Chief Justice to ensure there are no impediments to Hon Dobson undertaking this role. The Curriculum Vitae for Hon Dobson is provided at **Attachment B**.
14. Subject to your views, any discussions with the Attorney General, and the outcome of your consultation with Leader of the Opposition, we suggest you recommend that the Governor-General appoints Hon Robert Dobson QC to the role of Commissioner of Intelligence Warrants.
15. We have inquired into whether Hon Dobson has any conflicts of interest and none have been identified.

The Commissioners' remuneration is outlined in the Intelligence and Security Act 2017

16. The Act provides for Commissioners to be remunerated at the rate applicable to an Acting High Court Judge, as determined by the Remuneration Authority.¹ The Commissioners' funding is by means of a Permanent Legislative Authority administered by DPMC.

¹ Schedule 3, Part 1, clause 3.

You are required to consult with the Leader of the Opposition

17. If you support the proposed appointment of Hon Dobson as the third Commissioner, the next stage is for you to consult the Leader of the Opposition on the proposed appointment (as required by the Act)². A draft letter is provided at **Attachment C** for your consideration and signature.
18. We also recommend that you forward this briefing to your Ministerial colleagues with an interest in this appointment. This includes:
 - the Attorney-General, who has an interest in these appointments given their significant judicial responsibility;
 - the Minister Responsible for the GCSB and the NZSIS, who interacts with the Commissioners regarding their responsibilities outlined in the Act; and
 - the Minister of Internal Affairs, who interacts with the Commissioners regarding their responsibilities outlined in the Passports Act 1992.

Next steps

19. If, after consultation with the Leader of the Opposition, you agree with the appointment of Hon Robert Dobson as the third Commissioner, we will draft:
 - a paper for the Appointments and Honours Cabinet Committee;
 - a letter, curriculum vitae, role description and warrant form for you to sign, which will then be forwarded to the Governor-General;
 - a press release announcing the appointment of the Commissioner; and
 - a letter to the Commissioner informing him of his appointment.

Attachments:		
Attachment A:	Unclassified	Functions of the Commissioners of Intelligence Warrants and the Chief Commissioner of Intelligence Warrants
Attachment B:	In Confidence	Curriculum Vitae, Hon Robert Dobson
Attachment C:	In Confidence	Letter to the Leader of the Opposition

² Section 112(3)(a).

ATTACHMENT A

Functions of the Commissioners of Intelligence Warrants and the Chief Commissioner of Intelligence Warrants

Under the Intelligence and Security Act 2017 the functions of the Commissioners of Intelligence Warrants are to:

- advise the authorising Minister (the Minister Responsible for the GCSB and the NZSIS) on applications for Type 1 intelligence warrants;
- consider and deliberate on applications for Type 1 intelligence warrants jointly with the authorising Minister;
- issue Type 1 intelligence warrants jointly with the authorising Minister;
- consider jointly with the authorising Minister applications from the intelligence and security agencies for permission to access restricted information;
- consider jointly with the responsible Minister applications from the intelligence and security agencies for approval to obtain business records of telecommunications network operators or financial service providers;
- conduct reviews under the Telecommunications (Interception Capability and Security) Act 2013 relating to significant network security risks;
- conduct reviews of decisions under the Passports Act 1992 in relation to travel documents; and
- carry out other functions as required by the Intelligence and Security Act or any other enactment.

The additional functions of the Chief Commissioner of Intelligence Warrants are to:

- be the central point of contact for all communications with the Commissioners;
- receive applications for Type 1 intelligence warrants and to allocate those applications amongst the Commissioners;
- receive notice of the urgent issue of a Type 1 intelligence warrant and to consider whether to revoke that warrant;
- receive notice of the very urgent authorisation of activity for which a Type 1 intelligence warrant is required and to consider whether to revoke that authorisation;
- receive applications from intelligence and security agencies for approval to access business records of telecommunications network operators or financial service providers and to allocate those applications amongst the Commissioners; and
- perform other functions as required by the Intelligence and Security Act or any other enactment.

ATTACHMENT B

Curriculum Vitae: The Honourable Robert Dobson QC

Full name: Robert Andrew Dobson

Date of Birth: 5 July 1950

Qualifications

- **Bachelor of Laws (LLB)** – Victoria University of Wellington, 1971
- **Admitted to the Bar** – 1972
- **Appointed Queen’s Counsel** – 1998

Profile

A staple part of my work at the Court for 13 years was deciding a wide range of commercial disputes, as well as tax, regulatory cases and judicial review. I was a member of the Commercial Panel of the High Court from its inception in 2017 until my retirement and that work involved somewhat more management of complex commercial cases as well as the substantive hearings and judgments in such cases.

In 1990, I completed mediation and negotiation workshops at Harvard Law School under the direction of Professor Frank Sanders. I conducted numerous mediations whilst at the Bar.

I am an Associate Member of Stout Street Chambers.

Career Summary

- **2007-2020 — Judge of the High Court of New Zealand**
 - 2017-2020 — Member of the Commercial Panel from its inception
 - 2016-2020 — Member (2016-2018) and Chair (2018-2020) of the Rules Committee
 - 2013-2020 — Member (2013-2015) and Chair (2015-2020) of Judiciary's Legislation and Law Reform Committee
- **1990-2007 — In practice as a barrister sole, undertaking a range of commercial, securities, tax and competition litigation**
 - 2003-2004 — Chair, New Zealand Bar Association
 - 1998 — Took silk
 - 1990 — Mediation and negotiation workshops, Harvard Law School with Professor Frank Sanders
- **1976 - 1990 — Partner in Rudd Watts & Stone (subsequently Minter Ellison) and a constituent firm**

IN CONFIDENCE

ATTACHMENT C

Draft Letter to the Leader of the Opposition

XX August 2021

Hon Ms Judith Collins
Leader of the Opposition
Parliament Buildings
WELLINGTON

Dear Hon Ms Collins

Proposed Appointment of a Third Commissioner of Intelligence Warrants

The Intelligence and Security Act 2017 allows for the appointment of up to three Commissioners of Intelligence Warrants, however to date there have only ever been two appointed at any one time. The current Commissioners, including the Chief Commissioner, were reappointed into their roles in 2020.

In 2016, the Attorney-General advised that two commissioners would be sufficient to meet the requirements of the intelligence and security agencies. However, during last year's Covid-19 lockdown, a potential vulnerability was identified with only having two Commissioners, s9(2)(g)(i)

Should both Commissioners become incapacitated for any reason, our intelligence and security agencies may not be able to seek Intelligence Warrants to investigate imminent national security threats.

As the lockdown did not last for an extended period, this issue was not pursued. s9(2)(a), s9(2)(g)(i)

I therefore propose that a third Commissioner be appointed.

I propose to nominate Hon Robert Dobson QC for appointment as a Commissioner of Intelligence Warrants for a term of three years.

I seek your views on this proposed appointment. A summary of the duties of the Commissioners and the CV of the proposed appointee are attached.

Yours sincerely


Rt. Hon. Jacinda Ardern
Prime Minister

IN CONFIDENCE



Briefing

CABINET PAPER: APPOINTMENT OF A THIRD COMMISSIONER OF INTELLIGENCE WARRANTS

To Rt Hon Jacinda Ardern, Prime Minister			
Date	31/08/2021	Priority	Routine
Deadline	2/09/2021	Briefing Number	2122NSP/022

Purpose

This briefing attaches a paper for the Cabinet Appointment and Honours Committee (APH) to appoint a third Commissioner of Intelligence Warrants (Hon Robert Dobson QC). It also attaches:

- A draft letter and warrants to be sent to the Governor-General; and,
- A draft letter to Hon Robert Dobson QC, informing him of his appointment.

Recommendations

1. **Note** that you previously agreed to the appointment of Hon Robert Dobson QC as a third Commissioner of Intelligence Warrants;
2. **Note** that the Leader of the Opposition has indicated her support to the appointment;
3. **Agree** to lodge the attached paper for the Cabinet Appointments and Honours Committee (Attachment A); **YES / NO**
4. **Sign** the attached letter and warrant to Her Excellency the Rt Hon Dame Patsy Reddy once Cabinet has agreed (Attachment B); **YES / NO**

CABINET PAPER: APPOINTMENT OF THIRD COMMISSIONER OF INTELLIGENCE WARRANTS

2122NSP/

5. Sign the attached letter to Hon Robert Dobson QC, informing him of his appointment (Attachment C). YES / NO

<p>Tony Lynch Deputy Chief Executive National Security Group</p>	<p>Rt Hon Jacinda Ardern Prime Minister</p>
<p>...../...../2021</p>	<p>...../...../2021</p>

Released under the Official Information Act 1982

Contact for telephone discussion if required:

Name	Position	Telephone		1st contact
Tony Lynch	Deputy Chief Executive, National Security Group	s9(2)(a)	s9(2)(a)	
s9(2)(a)	Principal Policy Advisor, Security and Intelligence Policy	s9(2)(a)	s9(2)(a)	✓

Minister's office comments:

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to

Released under the Official Information Act 1982

CABINET PAPER: APPOINTMENT OF A THIRD COMMISSIONER OF INTELLIGENCE WARRANTS

You previously agreed to the appointment of Hon Robert Dobson QC as Commissioner of Intelligence Warrants

1. The COVID-19 pandemic has highlighted the risk of only having two Commissioners of Intelligence Warrants (Commissioners). On 9 August 2021 you agreed to proceed with the appointment of a further Commissioner (2122NSP/006 refers).
2. As required under the Intelligence and Security Act 2017, you consulted with the Leader of the Opposition, who has agreed to the appointment of Hon Robert Dobson QC as the third Commissioner.
3. The Attorney-General, the Minister Responsible for the GCSB and NZSIS, and the Minister of Internal Affairs were informed of your intention to appoint Hon Dobson as the third Commissioner.

Next steps in the appointment process

4. To progress the appointment of Hon Robert Dobson QC we have prepared the following attached documents:
 - a) A paper for the Cabinet Appointment and Honours Committee, including Hon Dobson's curriculum vitae and the Commissioner role description;
 - b) A letter and warrant form to forward to the Governor-General for her signature; and
 - c) A letter to Hon Dobson informing him of his appointment.
5. We will work with your office on the timing of submitting the paper to APH and sending the letter and warrant form to the Governor-General and the letter to Hon Dobson.

Attachments:		
Attachment A:	IN CONFIDENCE	Cabinet Appointment and Honours Committee paper: <i>Commissioner of Intelligence Warrants: Appointment</i>
Attachment B:	IN CONFIDENCE	Draft letter and warrant for the Governor-General
Attachment C:	IN CONFIDENCE	Draft letter to Hon Robert Dobson QC

ATTACHMENT A

Cabinet Appointment and Honours Committee paper: *Commissioner of Intelligence Warrants: Appointment*

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ATTACHMENT B

Draft letter and warrant for the Governor-General

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CABINET PAPER: APPOINTMENT OF THIRD COMMISSIONER OF INTELLIGENCE
WARRANTS

2122NSP/

XX October 2021

Her Excellency The Rt Hon Dame Cynthia Kiro, GNZM, QSO
Governor-General of New Zealand
Government House
WELLINGTON

Your Excellency

Appointment of a Commissioner of Intelligence Warrants

It is my pleasure to enclose for your signature, papers to effect the appointment of the Honourable Robert Dobson QC as a third Commissioner of Intelligence Warrants.

The appointment is made under the Intelligence and Security Act 2017 (the Act). Section 112 of the Act provides that the appointment is made by the Governor-General on the advice of the Prime Minister, following consultation with the Leader of the Opposition. Section 113 of the Act provides that the appointee must have held office as a Judge of the High Court of New Zealand. Schedule 3, Part 1, Section 1 of the Act provides that the term of the appointment is three years. Schedule 3, Part 1, Section 5 of the Act requires the Commissioner to give written notice to the Prime Minister of all interests, pecuniary or otherwise, which he has or acquires and which could conflict with the proper performance of his functions under the Act.

I can confirm that I have written to the Hon Judith Collins, and that she is comfortable with Hon Robert Dobson's appointment. Hon Dobson served as a Judge of the High Court of New Zealand from 2007 to 2020. No conflicts of interest have been identified in the course of discussions with Hon Dobson.

A biographical note on Hon Robert Dobson QC is attached for your information, as well as a description of the role.

Yours sincerely

Rt Hon Jacinda Ardern
Prime Minister

Curriculum Vitae

THE HONOURABLE ROBERT DOBSON, QC

Full name: Robert Andrew Dobson
Date of birth: 5 July 1950

QUALIFICATIONS:

1971 Bachelor of Laws, Victoria University of Wellington
1972 Admitted to the Bar
1998 Appointed Queen's Counsel

EMPLOYMENT SUMMARY:

- **2007-2020 — Judge of the High Court of New Zealand**
 - 2017-2020 — Member of the Commercial Panel from its inception
 - 2016-2020 — Member (2016-2018) and Chair (2018-2020) of the Rules Committee
 - 2013-2020 — Member (2013-2015) and Chair (2015-2020) of Judiciary's Legislation and Law Reform Committee

- **1990-2007 — In practice as a barrister sole, undertaking a range of commercial, securities, tax and competition litigation**
 - 2003-2004 — Chair, New Zealand Bar Association
 - 1998 — Took silk
 - 1990 — Mediation and negotiation workshops, Harvard Law School with Professor Frank Sanders

- **1976 - 1990 — Partner in Rudd Watts & Stone (subsequently Minter Ellison) and a constituent firm**

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Functions of the Commissioners of Intelligence Warrants

Under the Intelligence and Security Act 2017 the functions of the Commissioners of Intelligence Warrants are to:

- advise the authorising Minister on applications for Type 1 intelligence warrants;
- consider and deliberate on applications for Type 1 intelligence warrants jointly with the authorising Minister;
- issue Type 1 intelligence warrants jointly with the authorising Minister;
- consider jointly with the authorising Minister applications from the intelligence and security agencies for permission to access restricted information;
- consider jointly with the responsible Minister applications from the intelligence and security agencies for approval to obtain business records of telecommunications network operators or financial service providers;
- conduct reviews under the Telecommunications (Interception Capability and Security) Act 2013 relating to significant network security risks;
- conduct reviews of decisions under the Passports Act in relation to travel documents; and
- carry out other functions as required by the Intelligence and Security Act or any other enactment.

Released under the Official Information Act 1982

Wellington.....2021

Her Excellency the Governor-General is respectfully advised to sign the attached warrant appointing:

The Honourable Robert Dobson QC

of Wellington, as Commissioner of Intelligence Warrants for a term of three years commencing 1 October 2021.

Prime Minister

Appointed:

Governor-General

/ /

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Appointment of a Commissioner of Intelligence Warrants

Governor-General

Pursuant to sections 112 and 113 of the Intelligence and Security Act 2017, I, the Right Honourable Dame Cynthia Kiro, GNZM, QSO, Governor-General, hereby appoint:

The Honourable Robert Dobson

of Wellington, Commissioner of Intelligence Warrants for a term of three years commencing 1 October 2021.

Given under the hand of Her Excellency the Governor-General and issued

this day of 2021.

Prime Minister

Released under the Official Information Act 1982

ATTACHMENT C

Draft letter to Hon Robert Dobson QC

Released under the Official Information Act 1982

XX October 2021

Hon Robert Dobson QC
s9(2)(a)

Dear Hon Dobson

Appointment of Commissioner of Intelligence Warrants

It is my pleasure to advise you that Her Excellency the Governor-General has appointed you as Commissioner of Intelligence Warrants for a three-year term with effect from 1 October 2021. I enclose the signed warrant for your retention.

I would like to thank you for your willingness to take on this important oversight role under the Intelligence and Security Act 2017. Your judicial experience will be valuable in maintaining the credibility of the warranting arrangements under the Act.

Yours sincerely

Rt Hon Jacinda Ardern
Prime Minister

Released under the Official Information Act 1982



Briefing

LETTER FROM ROBERT DOBSON, COMMISSIONER OF INTELLIGENCE WARRANTS

To Prime Minister (Rt Hon Jacinda Ardern)			
Date	10/02/2022	Priority	Routine
Deadline	18/02/2022	Briefing Number	DPMC-2021/22-1377

Purpose

1. This paper attaches a letter from Hon Robert Dobson, Commissioner of Intelligence Warrants (Commissioner), notifying you of his forthcoming role as Acting Judge of the Court of Appeal. The Acting Judge role is for a term of three months, from 14 February to 13 May 2022. A draft letter in response is attached for your signature, if you agree.

Recommendations

1. **Note** the attached letter from Hon Robert Dobson informing you of his forthcoming role as Acting Judge of the Court of Appeal (Attachment A);
2. **Sign** the attached letter responding to Hon Dobson (Attachment B). **YES / NO**

Tony Lynch Deputy Chief Executive National Security Group
10/02/2022

Rt Hon Jacinda Ardern Prime Minister
...../...../2022

Released under the Official Information Act 1982

Contact for telephone discussion if required:

Name	Position	Telephone		1st contact
Tony Lynch	Deputy Chief Executive, National Security Group	s9(2)(a)	s9(2)(a)	
s9(2)(a)	Principal Policy Advisor, Security and Intelligence Policy, National Security Group	s9(2)(a)	s9(2)(a)	✓

Minister's office comments:

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to

Released under the Official Information Act 1982

Commissioners are required to disclose any interests to you

2. Clause 5, Part 1 of Schedule 3 of the Intelligence and Security Act 2017 (the Act) requires a Commissioner to give written notice to the Prime Minister of all interests that the Commissioner has or acquires that could conflict with the proper performance of his or her functions.
3. The Act allows for the appointment of up to three Commissioners. Robert Dobson was appointed as the third Commissioner in November 2021. This was due to the risk of only having two Commissioners if either were to become incapacitated, s9(2)(g)(i) [REDACTED]. These risks were realised during COVID-19 restrictions last year.
4. Prior to being appointed as a Commissioner, Robert Dobson notified us of a planned temporary appointment as Judge of the Court of Appeal. With the reduced availability of the current Commissioners we would like Robert Dobson to continue in the Commissioner role during this period. To date there has not been a time when a Commissioner has also held a role as a sitting Judge. However, legal advice has confirmed there is nothing to preclude a Commissioner holding both roles concurrently.
5. We have also checked with the Chief Commissioner, Sir Bruce Robertson, and the legal teams from the Government Communications Security Bureau and the New Zealand Security Intelligence Service, all of whom believe the work of the Commissioners can be managed over the period of Robert Dobson's appointment to the Court of Appeal. If any unexpected pressures arise during this period, we will work to manage them.

Next steps

6. Attached is a response to Robert Dobson, for your signature, acknowledging his letter.
7. s9(2)(f)(iv) [REDACTED]

Attachments:		
Attachment A:	UNCLASSIFIED	Letter from Robert Dobson.
Attachment B:	UNCLASSIFIED	Response to Robert Dobson

ATTACHMENT A

Letter from Robert Dobson

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ATTACHMENT B

Response to Robert Dobson

Released under the Official Information Act 1982

Robert Dobson QC

s9(2)(a)

Dear Hon Dobson

Commissioner of Intelligence Warrants – disclosure of interest

Thank you for your recent letter notifying me of your forthcoming term as Acting Judge of the Court of Appeal.

I am assured that any conflict that might arise during this term will be managed appropriately.

I wish you all the best for your term as Acting Judge.

Yours sincerely

Jacinda Ardern
Prime Minister

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Briefing

PROPOSED APPOINTMENT OF HON KAREN CLARK QC AS COMMISSIONER OF INTELLIGENCE WARRANTS

To Rt Hon Jacinda Ardern, Prime Minister			
Date	18/03/2022	Priority	Routine
Deadline	22/03/2022	Briefing Number	DPMC-2021/22-1694

Purpose

This briefing seeks your agreement to appoint Hon Karen Clark QC as a Commissioner of Intelligence Warrants. The briefing outlines the rationale and process for this appointment. It attaches a draft letter to the Leader of the Opposition, to consult him on the appointment, in accordance with the Intelligence and Security Act 2017. It also attaches a draft paper for the Cabinet Appointment and Honours Committee, for ministerial consultation once the Leader of the Opposition's views are known.

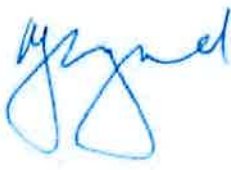
Recommendations

1. Note that Commissioner of Intelligence Warrants Gendall has advised he wishes to resign from this role with effect 1 April 2022, ending his term 12 months early;
2. Note that there is some urgency to replace Commissioner Gendall s9(2)(a) [REDACTED]
3. Note that the Commissioners of Intelligence Warrants are appointed by the Governor-General on the recommendation of the Prime Minister;
4. Note that the Intelligence and Security Act 2017 specifies that Commissioners of Intelligence Warrants need to have previously been a High Court Judge;
5. Note that Hon Karen Clark QC is available to become a Commissioner of Intelligence Warrants and is considered to have the necessary skills and experience for the role;
6. Agree to recommend Hon Karen Clark QC as a Commissioner of Intelligence Warrants;

YES / NO

IN CONFIDENCE

- 7. **Note** that under the Intelligence and Security Act 2017 you are required to consult the Leader of the Opposition on this appointment;
- 8. **Sign** and forward the attached letter to Christopher Luxon, Leader of the Opposition; **YES / NO**
- 9. **Agree**, that if the Leader of the Opposition has no comments, and you choose to proceed with the appointment, to immediately begin ministerial consultation of the attached draft cabinet paper, to lodge for the Cabinet Appointments and Honours Committee meeting on 13 April; **YES / NO**
- 10. **Note** that we will separately provide a draft letter (with attached warrant) to send to the Governor-General, with the final Cabinet package; and
- 11. **Forward** this briefing to:
 - 11.1. Hon David Parker, Attorney-General
 - 11.2. Hon Andrew Little, Minister Responsible for the GCSB and the NZSIS
 - 11.3. Hon Jan Tinetti, Minister of Internal Affairs.


Tony Lynch
Deputy Chief Executive
National Security Group
...18../ 03./ 2022....

Rt Hon Jacinda Ardern
Prime Minister
...../...../.....

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IN-CONFIDENCE

Contact for telephone discussion if required:

Name	Position	Telephone		1st contact
Tony Lynch	Deputy Chief Executive, National Security Group	s9(2)(a)	s9(2)(a)	
s9(2)(a)	Manager, Security and Intelligence Policy	s9(2)(a)	s9(2)(a)	✓

Minister's office comments:

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to

Released under the Official Information Act 1982

PROPOSED APPOINTMENT OF HON KAREN CLARK QC AS COMMISSIONER OF INTELLIGENCE WARRANTS

Resignation of Commissioner Warwick Gendall

1. Commissioner Gendall has advised the Department of the Prime Minister and Cabinet (DPMC) that he wishes to resign from his role as a Commissioner of Intelligence Warrants (Commissioner) with effect from 1 April 2022. His term expires on 31 March 2023. He will provide his resignation in writing to the Governor-General, as is required by the Intelligence and Security Act 2017.

It is a matter of some urgency to replace the Commissioner

2. In August 2021 you agreed to appoint a third Commissioner to mitigate the risk of the two existing Commissioners becoming unavailable to sign off on intelligence warrants, s9(2)(a) s9(2)(a), s9(2)(g)(i) and challenges of the COVID-19 pandemic (2122NSP/006 refers). A third Commissioner, Hon Robert Dobson QC, was accordingly appointed in November 2021.
3. We now face similar availability risks again, and therefore wish to move quickly to appoint a replacement third Commissioner. s9(2)(a), s9(2)(g)(i) Commissioner Dobson has limited capacity until 13 May 2022, due to his temporary appointment as Judge of the Court of Appeal. DPMC agreed in February that Hon Dobson could continue in the Commissioner role during this period but that we would work to manage any unexpected pressures that might arise (DPMC-2021/22-1377 refers).
4. A summary of the functions of the Commissioners and the additional functions of the Chief Commissioner are set out in **Attachment A**.

A candidate to replace Commissioner Gendall is immediately available

5. To be appointed as a Commissioner, successful candidates must have held office as a High Court Judge. This means there is a limited pool of potential candidates. During the previous process to appoint Commissioner Dobson, DPMC and Crown Law developed a short list of five potential candidates. Tony Lynch and Sir Bruce Robertson spoke with all five candidates, to seek their interest in the position.

6. s9(2)(a)

7. Hon Dobson was subsequently appointed, s9(2)(f)(iv) We noted to you that an Auckland-based Commissioner could be considered for any subsequent appointments, to increase the geographic resilience and provide for business continuity planning.

IN-CONFIDENCE

8. s9(2)(a) [REDACTED] DPMC, NZSIS, GCSB and the Chief Commissioner consider that the replacement Commissioner should also be Wellington-based. s9(2)(f)(iv) [REDACTED]
[REDACTED] Hon Clark is Wellington based and currently in private practice.
9. s9(2)(a) [REDACTED]
[REDACTED]
We have informally approached her to test her interest and availability to be appointed now. Hon Clark has confirmed her interest and indicated she could be available from April 2022.
10. Given there is an available candidate, and a need to appoint a new Commissioner relatively quickly to mitigate availability risk, we have not sought advice from Crown Law whether there are any additional High Court Judges that have retired since August 2021.

We recommend Hon Karen Clark QC is appointed to the role

11. The Chief Commissioner and Tony Lynch consider Hon Karen Clark QC to have the skills, experience and ability required for the role. Along with being Wellington based, she would also bring gender diversity to the role, becoming the first female Commissioner of Intelligence Warrants.
12. DPMC has engaged Crown Law to consider whether it is necessary to approach the Chief Justice for comment on the nomination. If Crown Law advises that the Chief Justice should be approached, they will facilitate that.
13. The Curriculum Vitae for Hon Clark is provided at **Attachment B**. We have inquired into whether Hon Clark has any conflicts of interest and none have been identified.
14. Subject to your views, any discussions with the Attorney General, and the outcome of your consultation with Leader of the Opposition, we suggest you recommend that the Governor-General appoints Hon Karen Clark QC to the role of Commissioner of Intelligence Warrants, for a term of three years.

The Commissioners' remuneration is outlined in the Intelligence and Security Act 2017

15. The Act provides for Commissioners to be remunerated at the rate applicable to an Acting High Court Judge, as determined by the Remuneration Authority.¹ The Commissioners' funding is by means of a Permanent Legislative Authority administered by DPMC.

You are required to consult with the Leader of the Opposition

16. If you support the proposed appointment of Hon Clark as a Commissioner of Intelligence Warrants, the next stage is for you to consult the Leader of the Opposition on the proposed appointment (as required by the Act)². A draft letter is provided at **Attachment C** for your consideration and signature.
17. To minimise the risk of having no Commissioners available to sign intelligence warrants after 1 April, we propose moving at pace to confirm the appointment, subject to any comments from

¹ Schedule 3, Part 1, clause 3.

² Section 112(3)(a).

IN-CONFIDENCE

the Leader of the Opposition. To that end, a draft paper for the Cabinet Appointments and Honours Committee (APH) is provided at **Attachment D**. We seek your agreement to begin Ministerial consultation on the draft paper as soon as a response is received from the Leader of the Opposition. We propose that the paper is lodged on 7 April, for consideration at the APH meeting on 13 April (the next meeting is not until 4 May, due to April recess).

18. As has occurred previously, we also recommend that you forward this briefing to your Ministerial colleagues with an interest in this appointment. This includes:
- the Attorney-General, who has an interest in these appointments given their significant judicial responsibility;
 - the Minister Responsible for the GCSB and the NZSIS, who interacts with the Commissioners regarding their responsibilities outlined in the Act; and
 - the Minister of Internal Affairs, who interacts with the Commissioners regarding their responsibilities outlined in the Passports Act 1992.

Next steps

19. If, after consultation with the Leader of the Opposition, you agree with the appointment of Hon Karen Clark QC as a Commissioner of Intelligence Warrants and agree to taking a paper to the 13 April APH meeting, we will also provide:
- a letter, curriculum vitae, role description and warrant form for you to sign, which will then be forwarded to the Governor-General;
 - a letter to the Commissioner informing her of her appointment; and
 - a press release announcing the appointment of Hon Clark as a Commissioner.
20. These will be provided for your consideration ahead of lodgement of the final cabinet paper on 7 April.

Attachments:		
Attachment A:	Unclassified	Functions of the Commissioners of Intelligence Warrants and the Chief Commissioner of Intelligence Warrants
Attachment B:	In Confidence	Curriculum Vitae, Hon Karen Clark QC
Attachment C:	In Confidence	Letter to the Leader of the Opposition
Attachment D:	In Confidence	Draft paper for the Cabinet Appointment and Honours Committee, for ministerial consultation

ATTACHMENT A

Functions of the Commissioners of Intelligence Warrants and the Chief Commissioner of Intelligence Warrants

Under the Intelligence and Security Act 2017 the functions of the Commissioners of Intelligence Warrants are to:

- advise the authorising Minister (the Minister Responsible for the GCSB and the NZSIS) on applications for Type 1 intelligence warrants;
- consider and deliberate on applications for Type 1 intelligence warrants jointly with the authorising Minister;
- issue Type 1 intelligence warrants jointly with the authorising Minister;
- consider jointly with the authorising Minister applications from the intelligence and security agencies for permission to access restricted information;
- consider jointly with the responsible Minister applications from the intelligence and security agencies for approval to obtain business records of telecommunications network operators or financial service providers;
- conduct reviews under the Telecommunications (Interception Capability and Security) Act 2013 relating to significant network security risks;
- conduct reviews of decisions under the Passports Act 1992 in relation to travel documents; and
- carry out other functions as required by the Intelligence and Security Act 2017 or any other enactment.

The additional functions of the Chief Commissioner of Intelligence Warrants are to:

- be the central point of contact for all communications with the Commissioners;
- receive applications for Type 1 intelligence warrants and to allocate those applications amongst the Commissioners;
- receive notice of the urgent issue of a Type 1 intelligence warrant and to consider whether to revoke that warrant;
- receive notice of the very urgent authorisation of activity for which a Type 1 intelligence warrant is required and to consider whether to revoke that authorisation;
- receive applications from intelligence and security agencies for approval to access business records of telecommunications network operators or financial service providers and to allocate those applications amongst the Commissioners; and
- perform other functions as required by the Intelligence and Security Act or any other enactment.

ATTACHMENT B

Curriculum Vitae: The Honourable Karen Clark QC

Career Summary

- 2015 – 2021 High Court Judge
- 2007 – 2015 at the independent bar as Queen's Counsel
- 2002 – 2006 Deputy Solicitor-General (Public Law) Crown Law Office
- 1987 – 2001 Crown Law Office (as Assistant Crown Counsel then Crown Counsel with responsibility for leading the Public Commercial Team)

Practice Areas (prior to appointment to the High Court)

- Civil and commercial litigation
- Judicial review
- Public and constitutional law
- Human Rights/Bill of Rights Act

Areas of particular relevance

- Managed large-scale litigation, significantly, the landmark 198-day trial of proceedings brought by the Statutory Managers of the Equiticorp Group
- Represented the Director of Security in the long-running Ahmed Zaoui litigation
- Inquiries: Royal Commissions, Coronial, Ministerial and Parliamentary inquiries e.g.:
 - Coronial Inquiry into the circumstances of the deaths of those who died in the CTV Building following the Canterbury earthquake
 - Royal Commission of Inquiry into the Pike River Coal Mine Tragedy
 - Finance and Expenditure Committee Inquiry into the Powers and Operations of the Inland Revenue Department
- Recognised as a Special Advocate under the Immigration Act (for the purpose of representing those who were the subject of decisions or proceedings involving classified information)
- Past member of the New Zealand Council of Legal Education and the New Zealand Council of Law Reporting
- Past member of the New Zealand Law Society Legislation Committee
- Solicitor-General's delegate on the Rules Committee, (a statutory body with responsibility for procedural rules in the Supreme Court, Court of Appeal, High Court and District Courts)
- Contributed to the New Zealand Law Society's continuing legal education programme

IN-CONFIDENCE

ATTACHMENT C

Draft Letter to the Leader of the Opposition

XX March 2022

Mr Christopher Luxon
Leader of the Opposition
Parliament Buildings
WELLINGTON

Dear Mr Luxon

Proposed Appointment of Hon Karen Clark QC Commissioner of Intelligence Warrants

Commissioner of Intelligence Warrants Gendall has advised that he wishes to resign from his role as a Commissioner with effect from 1 April 2022. His term was due to expire on 31 March 2023.

In August 2021 I agreed to increase the number of Commissioners of Intelligence Warrants from two to three, after the COVID-19 pandemic highlighted vulnerabilities of having just two. To ensure that there is always a Commissioner available to sign off vital intelligence warrants I therefore intend to replace Commissioner Gendall with a new appointee.

The Intelligence and Security Act 2017 requires that a Commissioner be a former High Court Judge which limits the available pool of candidates.

I propose to nominate Hon Karen Clark QC for appointment as a Commissioner of Intelligence Warrants for a term of three years.

I seek your views on this proposed appointment. A summary of the duties of the Commissioners and the CV of the proposed appointee are attached.

Yours sincerely

Rt Hon. Jacinda Ardern
Prime Minister

IN-CONFIDENCE

ATTACHMENT D

Draft paper for the Cabinet Appointment and Honours Committee, for ministerial consultation

In Confidence

Office of the Prime Minister

Chair, Cabinet Appointments and Honours Committee

COMMISSIONER OF INTELLIGENCE WARRANTS: APPOINTMENT

Proposal

- 1 This paper outlines my intention to recommend the Governor-General appoint the Honourable Karen Clark QC as a Commissioner of Intelligence Warrants for a three-year term from the date of appointment.

Reason for proposal

- 2 Commissioner of Intelligence Warrants Warwick Gendall has advised that he wishes to resign from his role as a Commissioner with effect from 1 April 2022. His term is due to expire on 31 March 2023.
- 3 The Intelligence and Security Act 2017 (the Act) allows for the appointment of up to three Commissioners of Intelligence Warrants (Commissioners). Prior to 2021 only two Commissioners had been appointed at the same time, as the amount of work required had been adequately covered by two Commissioners.
- 4 In August 2021 Cabinet agreed to the appointment of a third Commissioner to mitigate the risk of the two existing Commissioners becoming unavailable to sign off on intelligence warrants, s9(2)(g)(i) and challenges of the COVID-19 pandemic. A third Commissioner, Hon Robert Dobson QC, was accordingly appointed in November 2021.
- 5 We now face similar risks again, s9(2)(a) I therefore wish to move quickly to appoint a replacement Commissioner.

Background

- 6 Section 112 of the Act provides for the appointment of up to three Commissioners, one of whom must also be appointed as the Chief Commissioner.
- 7 The Commissioners are appointed by the Governor-General on the recommendation of the Prime Minister, following consultation with the Leader of the Opposition. Schedule 3 of the Act specifies that the term of appointment is three years; an incumbent may be reappointed for one or more further terms. The Act requires Commissioners to have held office as a Judge of the High Court of New Zealand.

IN CONFIDENCE

- 8 Under Section 114 of the Act the functions of the Commissioners are to:
- advise the authorising Minister (the Minister Responsible for the GCSB and the NZSIS) on applications for Type 1 intelligence warrants;
 - consider and deliberate on applications for Type 1 intelligence warrants jointly with the authorising Minister;
 - issue Type 1 intelligence warrants jointly with the authorising Minister;
 - consider jointly with the authorising Minister applications from the intelligence and security agencies for permission to access restricted information;
 - consider jointly with the responsible Minister applications from the intelligence and security agencies for approval to obtain business records of telecommunications network operators or financial service providers;
 - conduct reviews under the Telecommunications (Interception Capability and Security) Act 2013 relating to significant network security risks;
 - conduct reviews of decisions under the Passports Act 1992 in relation to travel documents; and
 - carry out other functions as required by the Act or any other enactment.
- 9 Applications for Type 1 warrants may need to be dealt with urgently and require the review of highly classified information held in the headquarters of the intelligence agencies. It is preferred that the new Commissioner be based in Wellington.

Process and consultation

- 10 Hon Karen Clark QC was one of five potential candidates spoken with during the process that resulted in the appointment of Hon Robert Dobson QC in late 2021 but was unavailable at the time. Hon Clark has confirmed she is now interested in becoming a Commissioner and is immediately available.
- 11 The appointment process set out in the Act has been followed. The Leader of the Opposition has been consulted and agrees with the appointment of Hon Karen Clark QC as Commissioner.

Candidate

- 12 Hon Karen Clark QC retired as a High Court Judge in July 2021. She is based in Wellington.

Representativeness of appointment

- 13 The Act sets a requirement that the Commissioners must have served as a judge of the High Court of New Zealand. This tends to limit the diversity of the candidates. Hon Karen Clark QC will be the first female Commissioner since the roles were established in 1999.

Remuneration

- 14 The Commissioners are funded through a specific appropriation covering their roles from within Vote Prime Minister and Cabinet under a permanent legislative authority (the Intelligence and Security Act 2017). Secretarial support and other services are provided to the Commissioners by the National Security Group of the Department of the Prime Minister and Cabinet.

IN CONFIDENCE

- 15 Under the Act, rates of remuneration for the Commissioners are set by the Remuneration Authority and those rates must be equal to those applicable to an Acting High Court Judge.

Conflicts of interest

- 16 The Commissioners are required under clause 5 of Schedule 3 of the Act to give written notice to the Prime Minister of all interests, pecuniary or otherwise, which a Commissioner has or acquires and which could conflict with the proper performance by the Commissioner of his or her functions under the Act.
- 17 No conflicts of interest have been identified during discussions with Hon Karen Clark QC.

Publicity

- 18 A press statement will be issued once the appointment has been approved and Hon Karen Clark QC has been notified.

Consultation

- 19 This paper was prepared by the Department of the Prime Minister and Cabinet.

Financial Implications

- 20 There are no financial implications arising from this proposal.

Human Rights

- 21 This proposal has no human rights implications.

Recommendations

- 22 It is recommended the Committee:
1. **note** my intention to recommend the appointment of Hon Karen Clark QC as Commissioner of Intelligence Warrants for a term of three years commencing from the date of the appointment;
 2. **note** that the statutory requirement to consult with the Leader of the Opposition under Section 112 of the Act has been complied with; and
 3. **note** that the Commissioner will be remunerated at a rate equal to that of an Acting High Court Judge, as determined by the Remuneration Authority.

Authorised for lodgement

Rt Hon Jacinda Ardern
Prime Minister

IN CONFIDENCE

Aide-Memoire

APPOINTMENT OF COMMISSIONER OF INTELLIGENCE WARRANTS - APPOINTMENTS AND HONOURS COMMITTEE 13 APRIL 2022

To	Rt Hon Jacinda Ardern, Prime Minister	Report No	DPMC-2021/22-1908
From	Tony Lynch, Deputy Chief Executive, National Security Group	Date	8/04/2022

Purpose

1. The Cabinet Appointments and Honours Committee (APH) is considering the appointment of Hon Karen Clark QC as Commissioner of Intelligence Warrants at their meeting on 13 April 2022. This paper updates you on the final stages of the consultation process to appoint Hon Karen Clark and provides you with talking points for the APH meeting (Attachment A).
2. Also provided are a letter, curriculum vitae, role description and warrant form for you to sign, which will then be forwarded to the Governor-General, and a letter to the Commissioner informing her of her appointment (Attachments B-D).

The consultation process has been completed

3. The Intelligence and Security Act 2017 requires you to consult with the Leader of the Opposition on the appointment of Commissioners of Intelligence Warrants. On 23 March 2022 the Leader of the Opposition advised he supported Hon Karen Clark's appointment.
4. The Crown Law Office consulted the Chief Justice, s9(2)(a), s9(2)(g)(i)

Next Steps

5. DPMC has prepared a draft letter (with attached warrants) to send to the Governor-General, following Cabinet's consideration of the appointment. We have also prepared a draft letter to Hon Karen Clark informing her of her appointment. These documents are attached, for your consideration and signature.
6. DPMC will work with your Office to prepare a press statement to be issued once the appointment has been approved and Hon Karen Clark has been notified.

Recommendation

7. It is recommended that you note the contents of this aide-memoire.

p.p.

**Tony Lynch
Deputy Chief Executive
National Security Group**

NOTED	
Rt Hon Jacinda Ardern Prime Minister	
Date: / /2022	

Attachments:		
Attachment A:	In Confidence	Talking Points for Cabinet Appointments and Honours Committee
Attachment B:	In Confidence	Draft Letter to Governor-General
Attachment C:	In Confidence	Warrant Documents
Attachment D:	In Confidence	Draft Appointment Letter to Hon Karen Clark QC

Attachment A

Talking Points for Cabinet Appointments and Honours Committee

- I intend to recommend the Governor-General appoint the Honourable Karen Clark QC as a Commissioner of Intelligence Warrants for a three-year term from the date of appointment.
- Hon Warwick Gendall QC has resigned from his role as a Commissioner with effect from 1 April 2022.
- In August 2021 Cabinet agreed to the appointment of a third Commissioner to mitigate the risk of the two existing Commissioners becoming unavailable to sign off on intelligence warrants.
- s9(2)(a) [REDACTED]
- I therefore wish to move quickly to appoint a replacement Commissioner.
- Hon Karen Clark QC retired as a High Court Judge in July 2021 and has wide experience that makes her an ideal candidate for this important oversight role under the Intelligence and Security Act 2017.
- The Act sets a requirement that the Commissioners must have served as a judge of the High Court of New Zealand. This tends to limit the diversity of the candidates. Hon Karen Clark will be the first woman to serve as Commissioner since the roles were established in 1999.
- The Leader of the Opposition has been consulted, as required by the Act, and agrees with the appointment of Hon Karen Clark as Commissioner.
- The Chief Justice has also been consulted s9(2)(a), s9(2)(g)(i) [REDACTED]

Attachment B

Request for Appointment Letter to the Governor-General

XX April 2022

Rt Hon Right Honourable Dame Cynthia Kiro, GNZM, QSO,
Governor-General

Your Excellency

Appointment of a Commissioner of Intelligence Warrants

It is my pleasure to enclose for your signature, papers to effect the appointment of the Honourable Karen Clark QC as a Commissioner of Intelligence Warrants

The appointment is made under the Intelligence and Security Act 2017 (the Act). Section 112 of the Act provides that the appointment is made by the Governor-General on the advice of the Prime Minister, following consultation with the Leader of the Opposition. Section 113 of the Act provides that the appointee must have held office as a Judge of the High Court of New Zealand. Schedule 3, Part 1, Section 1 of the Act provides that the term of the appointment is three years. Schedule 3, Part 1, Section 5 of the Act requires the Commissioner to give written notice to the Prime Minister of all interests, pecuniary or otherwise, which she has or acquires and which could conflict with the proper performance of her functions under the Act.

I can confirm that I have written to Christopher Luxon, and that he is comfortable with Hon Karen Clark's appointment. Hon Clark served as a Judge of the High Court of New Zealand from 2015 to 2021. No conflicts of interest have been identified in the course of discussions with Hon Clark.

A biographical note on Hon Karen Clark QC is attached for your information, as well as a description of the role.

Yours sincerely

Rt Hon Jacinda Ardern
Prime Minister

Curriculum Vitae

THE HONOURABLE KAREN CLARK, QC

Career Summary

- 2015 – 2021 High Court Judge
- 2007 – 2015 at the independent bar as Queen's Counsel
- 2002 – 2006 Deputy Solicitor-General (Public Law) Crown Law Office
- 1987 – 2001 Crown Law Office (as Assistant Crown Counsel then Crown Counsel with responsibility for leading the Public Commercial Team)

Practice Areas (prior to appointment to the High Court)

- Civil and commercial litigation
- Judicial review
- Public and constitutional law
- Human Rights/Bill of Rights Act

Areas of particular relevance

- Managed large-scale litigation, significantly, the landmark 198-day trial of proceedings brought by the Statutory Managers of the Equiticorp Group
- Represented the Director of Security in the long-running Ahmed Zaoui litigation
- Inquiries: Royal Commissions, Coronial, Ministerial and Parliamentary inquiries e.g.:
 - Coronial Inquiry into the circumstances of the deaths of those who died in the CTV Building following the Canterbury earthquake
 - Royal Commission of Inquiry into the Pike River Coal Mine Tragedy
 - Finance and Expenditure Committee Inquiry into the Powers and Operations of the Inland Revenue Department
- Recognised as a Special Advocate under the Immigration Act (for the purpose of representing those who were the subject of decisions or proceedings involving classified information)
- Past member of the New Zealand Council of Legal Education and the New Zealand Council of Law Reporting
- Past member of the New Zealand Law Society Legislation Committee
- Solicitor-General's delegate on the Rules Committee, (a statutory body with responsibility for procedural rules in the Supreme Court, Court of Appeal, High Court and District Courts)
- Contributed to the New Zealand Law Society's continuing legal education programme

Functions of the Commissioners of Intelligence Warrants

Under the Intelligence and Security Act 2017 the functions of the Commissioners of Intelligence Warrants are to:

- advise the authorising Minister on applications for Type 1 intelligence warrants;
- consider and deliberate on applications for Type 1 intelligence warrants jointly with the authorising Minister;
- issue Type 1 intelligence warrants jointly with the authorising Minister;
- consider jointly with the authorising Minister applications from the intelligence and security agencies for permission to access restricted information;
- consider jointly with the responsible Minister applications from the intelligence and security agencies for approval to obtain business records of telecommunications network operators or financial service providers;
- conduct reviews under the Telecommunications (Interception Capability and Security) Act 2013 relating to significant network security risks;
- conduct reviews of decisions under the Passports Act in relation to travel documents; and
- carry out other functions as required by the Intelligence and Security Act or any other enactment.

Released under the Official Information Act 1982

IN-CONFIDENCE

Attachment C

Warrant Documents – Hon Karen Clark QC

Wellington.....2022

Her Excellency the Governor-General is respectfully advised to sign the attached warrant appointing:

The Honourable Karen Clark

of Wellington, as Commissioner of Intelligence Warrants for a term of three years commencing 1 May 2022.

Prime Minister

Appointed:

Governor-General

Released under the Official Information Act 1982

Appointment of a Commissioner of Intelligence Warrants

Governor-General

Pursuant to sections 112 and 113 of the Intelligence and Security Act 2017, I, the Right Honourable Dame Cindy Kiro, GNZM, QSO, Governor-General, hereby appoint:

The Honourable Karen Clark

of Wellington, Commissioner of Intelligence Warrants for a term of three years commencing 1 May 2022.

Given under the hand of Her Excellency the Governor-General and issued

this day of 2022.

Prime Minister

IN-CONFIDENCE

Attachment D

Appointment Confirmation Letter

XX May 2022

Hon Karen Clark QC
s9(2)(a)

Dear Hon Clark

Appointment of Commissioner of Intelligence Warrants

It is my pleasure to advise you that Her Excellency the Governor-General has appointed you as Commissioner of Intelligence Warrants for a three-year term with effect from 1 May 2022. I enclose the signed warrant for your retention.

I would like to thank you for your willingness to take on this important oversight role under the Intelligence and Security Act 2017. Your judicial experience will be valuable in maintaining the credibility of the warranting arrangements under the Act.

Yours sincerely

Rt Hon Jacinda Ardern
Prime Minister

Office of the Prime Minister

Chair, Appointments and Honours Committee

REAPPOINTMENT OF THE COMMISSIONERS OF INTELLIGENCE WARRANTS AND OF THE CHIEF COMMISSIONER

Proposal

1. This paper outlines my intention to recommend the Governor-General reappoint the Honourable Sir Bruce Robertson KNZM and the Honourable Warwick Gendall CNZM QC as Commissioners of Intelligence Warrants, each for a term of three years commencing retrospectively on 1 April 2020. I also intend to recommend the reappointment of Sir Bruce Robertson as Chief Commissioner of Intelligence Warrants.

Background

2. Section 112 of the Intelligence and Security Act 2017 (the Act) prescribes for the appointment of up to three Commissioners of Intelligence Warrants, one of whom must also be appointed as the Chief Commissioner of Intelligence Warrants.¹
3. The Commissioners are appointed by the Governor General on the recommendation of the Prime Minister, following consultation with the Leader of the Opposition. Section 1 of Schedule 3 of the Act specifies that the term of appointment is three years and an incumbent may from time to time be reappointed. The Act also requires Commissioners to have held office as a Judge of the High Court of New Zealand.
4. Under the Act the functions of the Commissioners of Intelligence Warrants are to:
 - advise the authorising Minister (the Minister Responsible for the GCSB and for the NZSIS) on applications for Type 1 intelligence warrants;
 - consider and deliberate on applications for Type 1 intelligence warrants jointly with the authorising Minister;
 - issue Type 1 intelligence warrants jointly with the authorising Minister;
 - consider jointly with the authorising Minister applications from the intelligence and security agencies for permission to access restricted information;
 - consider jointly with the responsible Minister applications from the intelligence and security agencies for approval to obtain business records of telecommunications network operators or financial service providers;
 - conduct reviews under the Telecommunications (Interception Capability and Security) Act 2013 relating to significant network security risks;
 - conduct reviews of decisions under the Passports Act 1992 in relation to travel documents; and
 - carry out other functions as required by the Intelligence and Security Act or any other enactment.

¹ The amount of work that has been required during the last three years has been adequately covered by two Commissioners working part-time, rather than the three that the Act makes provision for. s9(2)(g)(i) however, and the challenges highlighted during the Covid-19 lockdown (under Levels 3 & 4), this position is currently under review and I am giving consideration to the appointment of a third, Auckland-based Commissioner.

Out of scope

IN-CONFIDENCE

5. Because applications for Type 1 warrants may need to be dealt with urgently and require the review of highly classified information held in the headquarters of the intelligence agencies, it is preferred that at least two Commissioners, including the Chief Commissioner, be based in Wellington.

Comment

6. I intend to recommend the reappointment of the current Commissioners. Because of these legal and practical requirements, the number of eligible candidates is small. Sir Bruce and Mr Gendall are both willing to be considered for re-appointment to these roles after initial 3 year terms as Chief Commissioner and Commissioner respectively. The previous Attorney-General was consulted before their original appointments, and the current Attorney-General was informed of my decision to recommend their reappointment.
7. Sir Bruce and Mr Gendall's current terms expired on 31 March 2020. Due to the requirements of the government's Covid-19 response, the reappointment process has been slightly delayed. However, their roles continue uninterrupted as per Section 1 of Schedule 3 of the Intelligence and Security Act 2017, and if confirmed, their reappointments will be retrospectively effective as of 1 April 2020.

Representativeness of Appointment

8. A requirement for the position of Commissioner is that the position must be filled by a former High Court Judge. As well as meeting this criterion, both Sir Bruce and Mr Gendall have already demonstrated the appropriate skills during their first term to continue to undertake this role.²

Appointment process and consultation

9. The appointment process set out in the Intelligence and Security Act 2017 has been followed. The Leader of the Opposition has been consulted and agrees with the reappointment of both of the Commissioners and of the Chief Commissioner.

Remuneration

10. The Commissioners are funded through a specific appropriation covering their roles from within Vote Prime Minister and Cabinet under permanent legislative authority (the Intelligence and Security Act 2017). Secretarial support and other services are provided to the Commissioners by the National Security Group of DPMC.
11. Under the Intelligence and Security Act 2017, rates of remuneration for the Commissioners are set by the Remuneration Authority and those rates must be equal to those applicable to an Acting High Court Judge. The Chief Commissioner is remunerated on the same basis as a Commissioner.

Conflicts of Interest

12. The Commissioners are required under clause 5 of Schedule 3 of the Intelligence and Security Act to give written notice to the Prime Minister of all interests, pecuniary or

² Sir Bruce was first appointed as a Commissioner of Security Warrants in 2013, before the Intelligence and Security Act 2017 came into force.

~~IN CONFIDENCE~~

otherwise, which a Commissioner has or acquires and which could conflict with the proper performance by the Commissioner of his or her functions under the Act.

13. No conflicts of interest have been identified in the course of discussions with Sir Bruce and Mr Gendall. Commissioner Gendall was previously the Chair of the Parole Board, however he left this position in 2018.

Timing and Publicity

14. I propose to issue a press statement following the formal completion of the appointment processes by the Governor-General.

Consultation

15. This paper was prepared by the Department of the Prime Minister and Cabinet in consultation with the NZSIS and GCSB.

Financial Implications

16. There are no financial implications arising from this proposal.

Human Rights

17. This proposal has no human rights implications.

Recommendations

18. It is recommended that Cabinet members:
- 1 **note** my intention to recommend to the Governor-General the reappointment of the Hon. Justice Sir (James) Bruce Robertson and the Hon. Justice (John) Warwick Gendall as Commissioners of Intelligence Warrants each for a term of three years commencing on 1 April 2020;
 - 2 **note** my intention to recommend the reappointment of the Hon. Sir Bruce Robertson to the additional position of Chief Commissioner of Intelligence Warrants;
 - 3 **note** that the Commissioners will be remunerated at a rate equal to that of an Acting High Court Judge, as determined from time to time by the Remuneration Authority.

Rt Hon Jacinda Ardern
Prime Minister

___/___/___

Out of scope

~~IN CONFIDENCE~~

Attachment A: Candidate CV Form

Sections with * must be completed.

This form should be completed by, or in consultation with, the candidate where possible.

Name* (family name in upper case; include title if appropriate)	Sir James Bruce Robertson
--	---------------------------

The Position

Organisation/Entity*	DPMC
Position * (chair/member etc.)	Chief Commissioner of Intelligence Warrants
Term*	3 years
Payment* (per day /per year)	Under the Intelligence and Security Act 2017, rates of remuneration for the Commissioners are set by the Remuneration Authority and those rates must be equal to those applicable to an Acting High Court Judge. The Chief Commissioner is remunerated on the same basis as a Commissioner.

How the Candidate Meets the Needs of the Position

Skills and attributes the candidate will bring to the position* (e.g. business skills, community involvement, cultural awareness, regional perspective – as relevant to the needs of the position)	A requirement for the position of Commissioner is that the position must be filled by a former High Court Judge. As well as meeting this criterion, Sir Bruce has already demonstrated the appropriate skills for this role during his first term as Commissioner (2013-2016) and more recently as Chief Commissioner (2017-2020) to continue to undertake this role.
Possible conflicts of interest*	Nil
Proposals for conflict management (if applicable)	N/A

IN CONFIDENCE

The Candidate

Name* (family name in upper case; include title if appropriate)	Sir James Bruce Robertson
Address	s9(2)(a)
Ethnicity(s)	Pakeha
Age range*	<30 31-40 41-50 51-60 60+ prefer not to say
Gender*	M F gender diverse prefer not to say
Current or most recent Employment* (specify position and employer, include years)	Chief Commissioner of Intelligence Warrants (NZ Government) 2017 – present (first appointed as Commissioner of Intelligence Warrants in 2013, reappointed in 2016)
Government board appointments held* (current and previous, include years)	<ul style="list-style-type: none">• President of the Pitcairn Islands Court of Appeal (2012 – 2019);• Appointed by the Commonwealth to a Commission of Inquiry which investigated the February 2012 change of government in the Maldives;• Member of an international Tribunal in PNG which investigated breaches of the Leadership Code by Sir Michael Somare (2011);• Chair of the Rugby World Cup Authority in 2011;• Chair of the Sports Tribunal of New Zealand (previously Deputy Chair);• Chair of the Disciplinary Committee under the Financial Advisers Act 2008;• Presiding Judge of the Vanuatu Court of Appeal (Member since 1996);• Judge of the Qatar International Court.
Private and/or voluntary sector board appointments held* (current and previous, include years)	<ul style="list-style-type: none">• Member of the New Zealand Law Society Legal Education Committee (1978-1985);• Member of the Council for Legal Education (1981-1988);• Member of the NZ Government Public and Administrative Law Reform Committee (1980-85) and subsequently the Legislation Advisory Committee (1985-2011);• Chairman New Zealand Sub-Committee on Searches and Search Warrants (1983-1987);• Member of Council, University of Otago (1969-1985);• Pro Chancellor, University of Otago (1982-88);• Otago District Law Society Council (1978-1984), including as President (1982).

Out of scope

IN CONFIDENCE

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<p>Qualifications and experience (include significant work history and community involvement)</p>	<ul style="list-style-type: none">• Judge of the High Court of New Zealand (1987-2010); President of the Law Commission (2001-2010);• Permanent member of the Court of Appeal (2005-2010);• Partner, Ross, Dowling, Marquet & Griffin, Barristers and Solicitors (1970-1987);• Member of the Crown Prosecution Panel, Dunedin (1971-1987)• Part-time lecturer, Faculty of Law, University of Otago (1969-1985).
--	---

Date: 04/05/2020

Ethnicity, age and gender information is collected for statistical collation by the State Services Commission, Ministry for Women, and Office of Ethnic Communities.

Released under the Official Information Act 1982

Out of scope

IN CONFIDENCE

Attachment B: Candidate CV Form

Sections with * must be completed.

This form should be completed by, or in consultation with, the candidate where possible.

Name* (family name in upper case; include title if appropriate)	Warwick Gendall
--	-----------------

The Position

Organisation/Entity*	DPMC
Position * (chair/member etc.)	Commissioner of Intelligence Warrants
Term*	3 years
Payment* (per day /per year)	Under the Intelligence and Security Act 2017, rates of remuneration for the Commissioners are set by the Remuneration Authority and those rates must be equal to those applicable to an Acting High Court Judge. The Chief Commissioner is remunerated on the same basis as a Commissioner.

How the Candidate Meets the Needs of the Position

Skills and attributes the candidate will bring to the position* (e.g. business skills, community involvement, cultural awareness, regional perspective – as relevant to the needs of the position)	A requirement for the position of Commissioner is that the position must be filled by a former High Court Judge. As well as meeting this criterion, Mr Gendall has already demonstrated the appropriate skills for this role during his first term as Commissioner from 2017-2020.
Possible conflicts of interest*	Nil
Proposals for conflict management (if applicable)	N/A

IN CONFIDENCE

The Candidate

Name* (family name in upper case; include title if appropriate)	Warwick Gendall
Address	s9(2)(a)
Ethnicity(s)	NZ European
Age range*	<30 31-40 41-50 51-60 60+ prefer not to say
Gender*	M F gender diverse prefer not to say
Current or most recent Employment* (specify position and employer, include years)	Commissioner of Intelligence Warrants (NZ Government) April 2017 – present
Government board appointments held* (current and previous, include years)	<ul style="list-style-type: none">• Chair, NZ Parole Board 2012 – 2018• Chair, Drug Free Sport NZ 2012 – present• Appeal Judge, Judicial Control Authority for Racing 2019 - present
Private and/or voluntary sector board appointments held* (current and previous, include years)	<ul style="list-style-type: none">• Former Chair & President NZ Football Association• President AFS International Scholarships NZ
Qualifications and experience (include significant work history and community involvement)	<ul style="list-style-type: none">• Queens Counsel 1996• Judge of the High Court 1996 – 2013

Use further pages, if required.

Date: 04/05/2020

Ethnicity, age and gender information is collected for statistical collation by the State Services Commission, Ministry for Women, and Office of Ethnic Communities.

Out of scope

IN CONFIDENCE

Attachment C:

APH Organisation Form

All sections must be completed.

Organisation and Responsible Portfolio

Commissioners of Intelligence Warrants

Department of the Prime Minister & Cabinet (DPMC) as administrator of the Intelligence and Security Act (ISA) 2017

Brief Outline of the Functions and Responsibilities of the Organisation

Section 112 of the Intelligence and Security Act 2017 (the Act) prescribes for the appointment of up to three Commissioners of Intelligence Warrants, one of whom must also be appointed as the Chief Commissioner of Intelligence Warrants.

The Commissioners are appointed by the Governor-General on the recommendation of the Prime Minister, following consultation with the Leader of the Opposition. Section 1 of Schedule 3 of the Act specifies that the term of appointment is three years and an incumbent may from time to time be reappointed. The Act also requires Commissioners to have held office as a Judge of the High Court of New Zealand.

Under the Act the functions of the Commissioners of Intelligence Warrants are to:

- advise the authorising Minister (the Minister Responsible for the GCSB and for the NZSIS) on applications for Type 1 intelligence warrants;
- consider and deliberate on applications for Type 1 intelligence warrants jointly with the authorising Minister;
- issue Type 1 intelligence warrants jointly with the authorising Minister;
- consider jointly with the authorising Minister applications from the intelligence and security agencies for permission to access restricted information;
- consider jointly with the responsible Minister applications from the intelligence and security agencies for approval to obtain business records of telecommunications network operators or financial service providers;
- conduct reviews under the Telecommunications (Interception Capability and Security) Act 2013 relating to significant network security risks;
- conduct reviews of decisions under the Passports Act 1992 in relation to travel documents; and
- carry out other functions as required by the Intelligence and Security Act or any other enactment.

Current Membership

Name	Gender Identity*	Region	Ethnicities (and Iwi if applicable)	Date of original appointment	Expiry date of present term
Sir Bruce Robertson	M	Wellington	NZ European	2013	30 March 2020
Mr Warwick Gendall	M	Wellington	NZ European	2016	30 March 2020

Use further pages, if required, to provide the information requested

Released under the Official Information Act 1987

Out of scope

In Confidence

Office of the Prime Minister

Chair, Cabinet Appointments and Honours Committee

COMMISSIONER OF INTELLIGENCE WARRANTS: APPOINTMENT

Proposal

- 1 This paper outlines my intention to recommend the Governor-General appoint the Honourable Robert Dobson QC as a Commissioner of Intelligence Warrants for a three-year term from the date of appointment.

Reason for proposal

- 2 The Intelligence and Security Act 2017 (the Act) allows for the appointment of up to three Commissioners of Intelligence Warrants (Commissioners). To date, only two Commissioners have been appointed at the same time, as the amount of work required has been adequately covered by two Commissioners. However, given that the current Commissioners are in a vulnerable age bracket, and the challenges highlighted during COVID-19 lockdowns and travel restrictions, I now propose to appoint a third Commissioner.

Background

- 3 Section 112 of the Act provides for the appointment of up to three Commissioners, one of whom must also be appointed as the Chief Commissioner.
- 4 The Commissioners are appointed by the Governor-General on the recommendation of the Prime Minister, following consultation with the Leader of the Opposition. Schedule 3 of the Act specifies that the term of appointment is three years; an incumbent may be reappointed for one or more further terms. The Act requires Commissioners to have held office as a Judge of the High Court of New Zealand.
- 5 Under Section 114 of the Act the functions of the Commissioners are to:
 - advise the authorising Minister (the Minister Responsible for the GCSB and the NZSIS) on applications for Type 1 intelligence warrants;
 - consider and deliberate on applications for Type 1 intelligence warrants jointly with the authorising Minister;
 - issue Type 1 intelligence warrants jointly with the authorising Minister;
 - consider jointly with the authorising Minister applications from the intelligence and security agencies for permission to access restricted information;

- consider jointly with the responsible Minister applications from the intelligence and security agencies for approval to obtain business records of telecommunications network operators or financial service providers;
- conduct reviews under the Telecommunications (Interception Capability and Security) Act 2013 relating to significant network security risks;
- conduct reviews of decisions under the Passports Act 1992 in relation to travel documents; and
- carry out other functions as required by the Act or any other enactment

6 Because applications for Type 1 warrants may need to be dealt with urgently and require the review of highly classified information held in the headquarters of the intelligence agencies, it is preferred that at least two Commissioners, including the Chief Commissioner, be based in Wellington.

Process and consultation

7 In order to identify candidates for the role of Commissioner, the Department of the Prime Minister and Cabinet contacted the Crown Law Office to seek a list of recently retired High Court Judges. All candidates were contacted to ascertain their interest and availability. This process identified Hon Robert Dobson QC as the most suitable candidate.

Candidate

8 Hon Robert Dobson QC retired as a High Court Judge in July 2021. He is based in Wellington. The Crown Law Office consulted the Chief Justice to ensure there are no impediments to Hon Robert Dobson QC taking the role.

Representativeness of appointment

9 The appointment process set out in the Act has been followed. The Leader of the Opposition has been consulted and agrees with the appointment of Hon Robert Dobson QC as Commissioner.

10 The Act sets a requirement that the Commissioners must have served as a judge of the High Court of New Zealand. This tends to limit the diversity of the candidates.

Remuneration

11 The Commissioners are funded through a specific appropriation covering their roles from within Vote Prime Minister and Cabinet under a permanent legislative authority (the Intelligence and Security Act 2017). Secretarial support and other services are provided to the Commissioners by the National Security Group of the Department of the Prime Minister and Cabinet.

12 Under the Act, rates of remuneration for the Commissioners are set by the Remuneration Authority and those rates must be equal to those applicable to an Acting High Court Judge.

Conflicts of interest

- 13 The Commissioners are required under clause 5 of Schedule 3 of the Act to give written notice to the Prime Minister of all interests, pecuniary or otherwise, which a Commissioner has or acquires and which could conflict with the proper performance by the Commissioner of his or her functions under the Act.
- 14 No conflicts of interest have been identified during discussions with Hon Robert Dobson QC.

Publicity

- 15 A press statement will be issued once the appointment has been approved and Hon Robert Dobson QC has been notified.

Consultation

- 16 This paper was prepared by the Department of the Prime Minister and Cabinet.

Financial Implications

- 17 There are no financial implications arising from this proposal. Although this appointment is in addition to the current Commissioners, the work will be balanced amongst the Commissioners resulting in no additional costs.

Human Rights

- 18 This proposal has no human rights implications.

Recommendations

- 19 It is recommended the Committee:
1. **note** my intention to recommend the appointment of Hon Robert Dobson QC as Commissioner of Intelligence Warrants for a term of three years commencing from the date of the appointment;
 2. **note** that the statutory requirement to consult with the Leader of the Opposition under Section 112 of the Act has been complied with;
 3. **note** that the Commissioner will be remunerated at a rate equal to that of an Acting High Court Judge, as determined by the Remuneration Authority.

Authorised for lodgement

Rt Hon Jacinda Ardern
Prime Minister

Attachment A: Candidate CV Form

Sections with * must be completed.

This form should be completed by, or in consultation with, the candidate where possible.

Name* (family name in upper case; include title if appropriate)	Robert Dobson
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The Position

Organisation/Entity*	DPMC
Position * (chair/member etc.)	Commissioner of Intelligence Warrants
Term*	3 years
Payment* (per day /per year)	Under the Intelligence and Security Act 2017, rates of remuneration for the Commissioners are set by the Remuneration Authority and those rates must be equal to those applicable to an Acting High Court Judge. The Chief Commissioner is remunerated on the same basis as a Commissioner

How the Candidate Meets the Needs of the Position

Skills and attributes the candidate will bring to the position* (e.g. business skills, community involvement, cultural awareness, regional perspective – as relevant to the needs of the position)	A requirement for the position of Commissioner is that the position must be filled by a former High Court Judge. Hon Robert Dobson meets this criterion.
Possible conflicts of interest*	Nil
Proposals for conflict management (if applicable)	N/A

Released under the Official Information Act 1982

The Candidate

Name* (family name in upper case; include title if appropriate)	Robert Dobson
Address	s9(2)(a) [REDACTED]
Ethnicity(s)	New Zealand European
Age range*	<30 31-40 41-50 51-60 60+ prefer not to say
Gender*	M F gender diverse prefer not to say
Current or most recent Employment* (specify position and employer, include years)	2007 – 2020 Judge of the High Court of New Zealand <ul style="list-style-type: none"> • 2017-2020 — Member of the Commercial Panel • 2016-2020 — Member (2016-2018) and Chair (2018-2020) of the Rules Committee • 2013-2020 — Member (2013-2015) and Chair (2015-2020) of Judiciary's Legislation and Law Reform Committee
Government board appointments held* (current and previous, include years)	None
Private and/or voluntary sector board appointments held* (current and previous, include years)	<ul style="list-style-type: none"> • 2003-2004 – President, New Zealand Bar Association
Qualifications and experience (include significant work history and community involvement)	<ul style="list-style-type: none"> • Queens Counsel 1998 • Judge of the High Court 2007-2020

Date: 21/09/2021

Ethnicity, age and gender information is collected for statistical collation by the State Services Commission, Ministry for Women, and Office of Ethnic Communities.

Attachment B:

APH Organisation Form

All sections must be completed.

Organisation and Responsible Portfolio

Commissioners of Intelligence Warrants

Department of the Prime Minister & Cabinet (DPMC) as administrator of the Intelligence and Security Act 2017

Brief Outline of the Functions and Responsibilities of the Organisation

Section 112 of the Intelligence and Security Act 2017 (the Act) prescribes for the appointment of up to three Commissioners of Intelligence Warrants, one of whom must also be appointed as the Chief Commissioner of Intelligence Warrants.

The Commissioners are appointed by the Governor-General on the recommendation of the Prime Minister, following consultation with the Leader of the Opposition. Section 1 of Schedule 3 of the Act specifies that the term of appointment is three years and an incumbent may from time to time be reappointed. The Act also requires Commissioners to have held office as a Judge of the High Court of New Zealand.

Under the Act the functions of the Commissioners of Intelligence Warrants are to:

- advise the authorising Minister (the Minister Responsible for the GCSB and for the NZSIS) on applications for Type 1 intelligence warrants;
- consider and deliberate on applications for Type 1 intelligence warrants jointly with the authorising Minister;
- issue Type 1 intelligence warrants jointly with the authorising Minister;
- consider jointly with the authorising Minister applications from the intelligence and security agencies for permission to access restricted information;
- consider jointly with the responsible Minister applications from the intelligence and security agencies for approval to obtain business records of telecommunications network operators or financial service providers;
- conduct reviews under the Telecommunications (Interception Capability and Security) Act 2013 relating to significant network security risks;
- conduct reviews of decisions under the Passports Act 1992 in relation to travel documents; and
- carry out other functions as required by the Intelligence and Security Act or any other enactment.

Current Membership

Name	Gender Identity*	Region	Ethnicities (and Iwi if applicable)	Date of original appointment	Expiry date of present term
Sir Bruce Robertson	M	Wellington	NZ European	2013	30 March 2023
Mr Warwick Gendall	M	Wellington	NZ European	2016	30 March 2023

Released under the Official Information Act 1982