



## *Ministerial Policy Statement*

# Acquiring, using and maintaining an assumed identity under subpart 1 of Part 3 of the Intelligence and Security Act 2017

### **Summary**

It is lawful for authorised persons from the Government Communications Security Bureau (GCSB) and the New Zealand Security Intelligence Service (NZSIS) to acquire, use and maintain an assumed identity. This ministerial policy statement (MPS) provides guidance on the conduct of this activity. In making decisions related to acquiring, using and maintaining an assumed identity, GCSB and NZSIS must have regard to the following principles: necessity, proportionality, appropriateness, good faith, legality and oversight. Any agency, including a private sector agency, that receives a request for assistance to acquire, use and maintain an assumed identity also must have regard to this MPS in considering that request, to the extent this MPS is known to that agency. This MPS also specifies certain matters to be included in internal policies and procedures.

### **Definitions**

**The Act** means the Intelligence and Security Act 2017.

**Actions in relation to assumed identities** means any acquisition, use, or maintenance of an assumed identity, any request for assistance in relation to an identity, and the creation of any false documents to support an assumed identity

**Agency** includes a Minister, a statutory officer, a government agency and a private sector organisation.

**Assumed identity**, in relation to an authorised person, means an identity that person assumes under the Intelligence and Security Act 2017 that:

- a) is not the person's real identity; or
- b) involves a false or misleading representation about one or more aspects of the person's real identity.

**Authorised person** means an employee of a security and intelligence agency who is authorised to acquire, use or maintain an assumed identity.

**Employee** means a person who is, or will be, an employee of an intelligence and security agency and who is approved by the Director-General of an intelligence and security agency to carry out activities for that agency.

**False document** includes a false document within the meaning of section 255 of the Crimes Act 1961.

**GCSB** means the Government Communications Security Bureau.

**NZSIS** means the New Zealand Security Intelligence Service.

## Purpose

1. This MPS is issued by the Minister Responsible for the GCSB and the Minister in Charge of the NZSIS pursuant to section 206(b) of the Act.
2. The purpose of this MPS is to provide guidance to GCSB and NZSIS on the acquisition, use and maintenance of assumed identities under subpart 1 of Part 3 of the Act. The MPS comprises the Minister's expectations for how GCSB and NZSIS should properly perform their functions and establishes a framework for good decision-making and best practice conduct.
3. MPSs are also relevant to the oversight of the agencies by the Inspector-General of Intelligence and Security in the exercise of her propriety jurisdiction (the Act requires the Inspector-General of Intelligence and Security to take account of any relevant MPS and the extent to which an agency has had regard to it when conducting any inquiry or review).
4. Every employee of GCSB or NZSIS making decisions or taking any action related to acquiring, using and maintaining an assumed identity must have regard to this MPS. Employees should be able to explain how they had regard to the MPS. This might amount to an explanation of their consideration of any relevant internal policy or procedures that reflect the MPS. The Directors-General are responsible for ensuring that the MPS is reflected in their agency's internal policies and procedures. If any action or decision is taken that is inconsistent with the MPS, employees must be able to explain why the action was taken and how they had regard to the MPS.
5. Any agency considering whether to grant a request by a Director-General of GCSB or NZSIS for assistance to acquire, use and maintain an assumed identity must have regard to this MPS to the extent it is known to that agency (see section 26(3)(b) of the Act). This MPS is not intended to provide specific guidance to assisting agencies to support their decision-making.

## Scope

6. Subpart 1 of Part 3 of the Act sets out the processes through which an employee of GCSB or NZSIS may be authorised to acquire, use and maintain an assumed identity for the purposes of covert activities and protection of an employee's identity. This MPS applies to the acquisition, use, and maintenance of assumed identities, any requests for assistance in relation to those identities, and the creation of false documents to support those identities (collectively, 'actions in relation to assumed identities'). GCSB and NZSIS will have different

needs related to assumed identities but both agencies will be governed by the MPS and will share policy and procedures where possible.

7. This MPS does not apply to employees of GCSB and NZSIS making false or misleading representations about their employment using their real identity for the purposes of keeping secret the fact they work for GCSB or NZSIS. These acts are addressed by a separate MPS (see MPS on *Making false or misleading representations under section 228 of the Intelligence and Security Act 2017 about being employed with an intelligence and security agency*).
8. GCSB and NZSIS may also establish legal entities, including to support the credibility of an assumed identity (for example, a company that the assumed identity works for). If an assumed identity is used to create a legal entity, whether or not the entity is created in accordance with subpart 2 of Part 3 of the Act, this MPS applies. The creation and maintenance of entities with legal identity, status or capacity conferred under the provisions of subpart 2 of Part 3 is addressed in a separate MPS (see MPS on *Creating and maintaining a legal entity under subpart 2 of Part 3*).
9. Where an assumed identity is used in the conduct of human intelligence activities or the collection of publicly available information this MPS should be read in conjunction with the relevant MPS that applies to those activities (see MPSs on *Collecting information from persons lawfully without an intelligence warrant* and *Obtaining and using publically available information*).

## Context

10. GCSB's and NZSIS's objectives are set out in the Act. Both agencies contribute to:
  - a) The protection of New Zealand's national security;
  - b) The international relations and well-being of New Zealand; and
  - c) The economic well-being of New Zealand.
11. GCSB and NZSIS do this through the performance of their statutory functions, which include:
  - a) Intelligence collection and analysis; and
  - b) The provision of protective security services, advice and assistance.
12. MPSs are an important component of the measures put in place by the Act to ensure the functions of GCSB and NZSIS are performed with propriety and in accordance with New Zealand law and all human rights obligations recognised by New Zealand law.
13. In order to effectively perform their statutory functions, GCSB and NZSIS often need to carry out their activities in secret. Secrecy is often necessary to:
  - avoid parties stopping or interfering with sources of information or other methods of collection used by GCSB and NZSIS;
  - protect the identity of employees, or those who support them, to minimise the danger to the life and safety of persons carrying out activities on behalf of the agencies; and
  - minimise the risks to the reputation of GCSB, NZSIS, and the New Zealand Government associated with those activities.

### *Use of assumed identities*

14. In order to avoid activities being attributed to GCSB or NZSIS, employees may make use of assumed identities. These identities allow a person to purport to have a different identity, either in whole or in part. For example, an employee may purport to be someone with a different name, date of birth, employer, or background to gain the trust of someone who might be unwilling to speak to them if they use their true identity.
15. If the agencies' methods of collection or the identity of employees, or those who support them, become known GCSB and NZSIS may be unable to perform their functions. Assumed identities are an essential tool in providing authorised persons with a greater degree of protection. Assumed identities may be used to facilitate a wide range of GCSB and NZSIS activities, including human intelligence, covert procurement, cybersecurity activities, collection of publicly available information, and protecting the identity of agency employees from unwanted attention.
16. Section 21 of the Act specifies the only purposes for which an employee of GCSB or NZSIS may acquire, use or maintain an assumed identity, namely:
  - a) facilitating the ability of an intelligence and security agency to carry out its activities while maintaining the secrecy of those activities; and
  - b) protecting the identity of the employee.

### *Creation of assumed identities*

17. Assumed identities may need to be very detailed, supported by convincing evidence, and have an established personal history in order to ensure any link between the person using an identity and GCSB or NZSIS is effectively hidden. To help an assumed identity look convincing and withstand any scrutiny, GCSB and NZSIS may need to create or obtain documents in support of that identity. These might include documents for use in proving a name or address, or for use while travelling.
18. Employees of the agencies may make false documents to support the use or maintenance of an assumed identity if the Director-General is satisfied the making and using of a false document is necessary for one of the purposes specified in section 21 and if the document is not one ordinarily given or issued by a Minister, government agency, or statutory officer. For instance, an NZSIS employee may create a false invoice or letter for use as proof of address in relation to an assumed identity.
19. GCSB and NZSIS may not create a false document where the document is a kind ordinarily issued by a Minister, government agency (for example, a passport) or statutory officer (for example, a birth certificate or marriage licence). GCSB and NZSIS are also not able to alter identity information in any register or other publicly available records (such as births, deaths, or marriages information). Instead, if a document or alteration of that nature is required, assistance must be requested in accordance with the scheme in the Act (section 25).
20. This means, for example, that the NZSIS may not create a false New Zealand passport. Instead the Director-General of NZSIS must request assistance from the Department of Internal Affairs, as the passport issuing authority, to issue a passport to support the use of that assumed identity. Likewise, to create new identity information to support an assumed identity the Director-General may make a written request to the Minister of Internal Affairs, who in turn may direct the Registrar-General to provide assistance.

21. Requests to assist in acquiring, using or maintaining an assumed identity must set out certain information specified in section 25 of the Act and confirm that the assistance is required for facilitating the ability of the requesting agency to carry out its activities while maintaining the secrecy of those activities, and/or protecting the identity of the employee that will use the assumed identity. It is recognised that GCSB and NZSIS may not always be able to share specific details when making such a request, as they will often relate to secret modes of operation or specific operations. They must provide, however, those details that are necessary in order for the assisting agency to provide the assistance required.
22. An agency that receives a request for assistance may choose to grant the request or to decline it if the agency is not satisfied that the assumed identity will be used appropriately or if the agency thinks it otherwise appropriate to decline the request (section 26(2) of the Act). This is important as agencies who may be asked to assist have statutory responsibilities with respect to the integrity of the schemes they administer. An agency should make further inquiries or decline a request if it has concerns about the proposed use of the assumed identity or the impact on the relevant scheme the agency administers, to the extent that these concerns arise from the information made available to them.

#### *Maintenance of assumed identities*

23. When use of an assumed identity continues over time, maintenance of that identity may be required. This could include the need to create additional false documents or further alteration of identity information on the public record. Any additional supporting material must only be created to support the maintenance of an assumed identity, and is subject to the same processes and restrictions that apply when the original material was created to support an assumed identity.

#### *Protection and cancellation of assumed identities*

24. When an assumed identity is no longer in use, GCSB and NZSIS may need to protect the fact that an identity was an assumed identity. The fact that identity is no longer being used may interfere with sources and methods, endanger persons, and damage the reputation of New Zealand if it is disclosed. To protect such information, GCSB and NZSIS may direct any agency to cancel evidence of an assumed identity, subject to specific record-keeping obligations requiring the retention of certain information (such as records under tax legislation, and the Public Records Act). Assisting agencies are also under obligations to restrict access to information they hold about the assistance they have provided to protect assumed identities.
25. The Act requires the Directors-General to keep a register of all assumed identities; including details about cancellation of assumed identities. This means there will still be records of cancelled assumed identities, which will support oversight by the responsible Minister(s) and the Inspector-General of Intelligence and Security.

#### *Immunities*

26. The Act confers protection from criminal and civil liability for both those individuals authorised to acquire, use and maintain an assumed identity (section 32) and persons who provide assistance in relation to a request associated with the acquisition, use and maintenance of an assumed identity (section 31). These immunities only apply to acts and omissions which have been done in good faith and with reasonable care.

27. The immunities conferred on an authorised person using an assumed identity do not extend to anything in breach of a contractual arrangement (unless a breach is a necessary consequence of using or maintaining an assumed identity) or any acts that require the holding of a qualification when the person does not hold that qualification in their own right. This places restrictions on the way in which an assumed identity relating to a profession that is subject to regulatory oversight can be used. For example, an NZSIS officer using an assumed identity of a pilot, may not fly a plane while using that assumed identity without holding a genuine qualification to do so.

## **Principles**

28. The following **principles** constitute a framework for good decision-making and must be taken into account by GCSB and NZSIS when taking actions in relation to an assumed identity. The use and maintenance of an assumed identity should be subject to ongoing review as to whether that use and maintenance continues to be consistent with these principles.
29. Where an agency is assessing a request to assist with the acquisition, use and maintenance of assumed identity, they are not required to make their own assessments of whether a request meets the below principles. Their obligation extends only as far as being assured, on the information provided, that they have no concerns about the proposed use of the assumed identity.

## *Necessity*

30. Assumed identities must have a clear purpose, and only GCSB and NZSIS employees with a clear need for an assumed identity (in line with the requirements in section 21 of the Act) may be authorised persons. Each authorisation must include the rationale for acquiring, using, and/or maintaining an assumed identity, and each assumed identity should only be maintained and used for as long as is necessary to fulfill its purpose.
31. Some positions, especially in NZSIS, may require an assumed identity as a core part of the role and to enable operationally urgent work to occur. An assumed identity may be developed in advance of it being required (for example, before a new employee starts or in anticipation of a specific covert operation) given the time that may be required to build comprehensive supporting evidence. If the purpose and need for an assumed identity prepared in advance no longer exists, the creation of that assumed identity should be reviewed as to whether it continues to meet the necessity principle.
32. This principle will also guide decision-making on manufacturing of evidence or false documents to support an identity. False documents should only be manufactured to the extent reasonably necessary to support the existence of an assumed identity that has a clear purpose and need.

## *Proportionality*

33. The use of assumed identities (including associated falsified supporting documentation) and the associated risks related to any particular activity using an assumed identity should be proportionate to the benefit achieved. When assessing proportionality the agencies should, at a minimum, consider the scope of the proposed activity, the risk the activity poses to the person using the assumed identity and any agency that provided assistance in support of that assumed identity, and the reputational risks to GCSB/NZSIS and the New Zealand Government more broadly if the activity is compromised in some way. Where an assumed

identity is used in the conduct of human intelligence activities, the proportionality considerations within the MPS on *Collecting information lawfully from persons without an intelligence warrant or authorisation* will also apply.

### *Appropriateness*

34. An employee of GCSB or NZSIS must only be authorised to acquire, maintain or use an assumed identity for the purposes outlined in section 21 of the Act. An assumed identity must not be used by an authorised person for any purpose or activity that is not reasonably related to maintaining the secrecy of the activities of GCSB or NZSIS or to protecting the identity of the employee. An assumed identity must not be used for purely personal gain or any personal purposes. GCSB and NZSIS must have suitable protections in place, including ongoing monitoring and training, to ensure assumed identities are used appropriately.
35. In deciding whether to assist NZSIS or GCSB in acquiring, using or maintaining an assumed identity, an agency should consider whether the assumed identity will be used appropriately, on the basis of information provided to them, and should have regard to the protections that are in place to ensure appropriate use. GCSB and NZSIS must make all endeavours to establish and maintain good relationships with agencies they request assistance from in order to ensure this can be achieved. Where necessary, arrangements should be made for employees in assisting agencies to receive the relevant national security clearance to enable them to receive the required information.
36. Only identities that are not legally prohibited (for example, police officers) may be created as assumed identities. Assumed identities must not be an exact match with people of the same name and birth date born in New Zealand (unless the assumed identity is in part using the employee's true identity), and should be otherwise appropriate.

### *Good faith*

37. GCSB or NZSIS employees must act in good faith at all times when taking any action in relation to assumed identities; including in requesting assistance from other agencies and in making any false or misleading representations in the course of using an assumed identity. This includes providing, subject to security requirements, sufficient information for an agency to decide whether to grant a request for assistance, and confirmation that the assumed identity to be created or maintained meets the specified purpose.
38. Actions in relation to assumed identities will generally be considered to have been made in good faith and with reasonable care if they are consistent with the following, as applicable:
  - Acting in accordance with statutory obligations;
  - Acting in accordance with authorisations;
  - Acting in accordance with this MPS and any internal policies, guidelines and procedures which reflect this MPS;
  - Acting consistently with managerial expectations;
  - Acting as part of a legitimate function of the role the employee is undertaking or the agency they are employed by;
  - Demonstrating sound professional judgement and responsible behavior in undertaking actions in relation to an assumed identity; and

- Acting in accordance with any agreement in place with another agency regarding assistance related to assumed identities.

### *Legality*

39. GCSB and NZSIS must ensure that the acquisition, use and maintenance of assumed identities is carried out in accordance with the law. Where appropriate, legal advice should be sought. Authorised persons using assumed identities remain subject to New Zealand law, including the law of contract and the criminal law. This means that an employee using an assumed identity may only do what would be lawful under their own identity, unless they are acting under an authorisation issued under Part 4 of the Act.

### *Oversight*

40. GCSB and NZSIS must carry out all activities in a manner that facilitates effective oversight, including through the keeping of appropriate records about the acquisition, use and maintenance of assumed identities.
41. Section 45 of the Act requires the agencies to maintain a detailed register of the assumed identities created and specifies the range of information that must be recorded. All of the information in this register may be accessed at any time by the responsible Minister and the Inspector-General of Intelligence and Security. In addition to these requirements, the agencies should also record the general purpose of acquiring, using and maintaining assumed identities.

## **Matters to be reflected in internal policies and procedures**

42. GCSB and NZSIS must have, and act in compliance with, internal policies and procedures that are consistent with the requirements and principles above, and must have systems in place to support and monitor compliance. Those policies and procedures must also address the following matters:

### **Agreements with assisting agencies**

Where GCSB and NZSIS are likely to regularly request assistance from a specific agency to assist with actions in relation to assumed identities, an agreement should be in place between the Directors-General and the chief executive of the assisting agency. This agreement should include provisions for how requests will be made, processes for providing the relevant assurances to the assisting agency to allow them to judge whether to grant or decline the request, and processes for managing any disputes that may arise if a request is declined.

### **Periods of review**

GCSB and NZSIS must have in place periods of review of the following matters associated with the creation, maintenance and use of assumed identities:

- The list of authorised persons associated with assumed identities; and
- Assessments of the ongoing necessity of maintaining each assumed identity (ie whether there continues to be a clear purpose and need for the assumed identity).

### **Compliance with State Services Code of Conduct**

While GCSB and NZSIS employees may use an assumed identity as if it was their own identity, they are authorised to do so only as a function of their employment in the public sector. The Directors-General of GCSB and NZSIS must issue policies and procedures that reflect their agencies' obligations under the State Sector Act 1988.

### **Health and safety**

The acquisition, use and maintenance of assumed identities must be undertaken consistently with GCSB's and NZSIS's obligations under the Health and Safety at Work Act 2015. Where there may be an increased risk to authorised persons using assumed identities, health and safety policies should include sufficient support mechanisms to those persons in order to meet GCSB's and NZSIS's duty of care obligations to their employees.

### **Information management**

Information related to assumed identities will be among some of the more sensitive information held by GCSB and NZSIS, given the need to protect agency employees' real identities. This information, including registers of assumed identities, must be handled and stored in accordance with clear access controls that correspond to the sensitivity of the information. The MPS [link management of information] will also apply in relation to this information.

### **Training**

All employees must be provided training on all relevant law, policies and procedures in relation to the acquisition, maintenance and use of assumed identities, to the extent it is applicable to their work. This training should be provided before employees carry out work involving assumed identities, and whenever there are changes or updates to the policies and procedures, to ensure that at all times employees are aware of current practices.

## **Authorisation procedures**

43. Approval to acquire, use and maintain assumed identities should be authorised at a level of seniority within GCSB or NZSIS that is commensurate with the level of operational, reputational, legal and health and safety risks involved. Risk assessments should include consideration of the risk to agencies that may assist in the creation and maintenance of the assumed identity and possible impacts on the integrity of statutory and regulatory schemes under which the assistance is being provided. The Directors-General of both agencies should have delegations in place for such authorisations.
44. The Directors-General must establish processes for approving the acquisition, use and maintenance of assumed identities. These processes should require applications for assumed identities to identify the purpose for which they are required.
45. GCSB and NZSIS must have a dedicated team (either individually, or shared between agencies) that is responsible for processes associated with acquiring, using and maintaining assumed identities. Assumed identities should not be created by anyone that is outside this team(s) unless authorised to do so. The dedicated team(s) will be responsible for maintaining relationships with assisting agencies involved in generating assumed identities and supporting evidence. Before being approved, the team(s) should assess any risks that a proposed identity poses to the security of any other assumed identities used by authorised persons or legal entities of either agency.

## Duration of ministerial policy statement

46. This MPS will take effect from 28 September 2017 for a period of three years. The Minister who issued an MPS may, at any time, amend, revoke or replace the MPS.
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Ministerial Policy Statement issued by:

A handwritten signature in black ink, reading "Christopher Finlayson". The signature is written in a cursive, flowing style.

Hon Christopher Finlayson  
Minister responsible for the Government Communications Security Service  
Minister in charge of the New Zealand Security Intelligence Service

September 2017