Government Communications Security Bureau and Related Legislation Amendment Bill

Government Bill

As reported from the Intelligence and Security Committee

Commentary

Recommendation

The Intelligence and Security Committee has examined the Government Communications Security Bureau and Related Legislation Amendment Bill and recommends that it be passed, by majority, with the amendments shown.

Introduction

This is an omnibus bill that proposes amendments to the Government Communications Security Bureau Act 2003, the Inspector-General of Intelligence and Security Act 1996, and the Intelligence and Security Committee Act 1996.

The bill is focused and narrow in its scope and deals with matters of immediate concern. The purposes of the bill are to

- provide for a clearly formulated and consistent statutory framework governing the activities of the Government Communications Security Bureau

- update that framework to respond to the changing security environment (particularly in relation to cybersecurity and information security), and to changes in the public law environment since the GCSB Act was passed in 2003
- enhance the external oversight mechanisms that apply to the intelligence agencies by strengthening the Office of the Inspector-General of Intelligence and Security and by improving the operation of the Intelligence and Security Committee.

Our commentary outlines the amendments we propose. It also includes comment on a number of the issues we considered.

Part 1 – Amendments to Government Communications Security Bureau Act 2003

Interpretations

Definition of "information infrastructure"

Clause 5 of the bill proposes repealing the definition of "computer system" in section 4 of the GCSB Act and replacing it with a new definition of "information infrastructure". We support this amendment.

We note the concern of submitters at the broad and expansive nature of the proposed definition especially that it would allow the Bureau to intercept a wider range of communication systems and the communications carried on, stored in, or relating to them.

However, the current definition of "computer system" is outmoded, and a broader and more expansive definition is necessary for the Bureau to carry out effectively its primary function of collecting information through the interception of communications. The proposed term is consistent with the purpose of the GCSB Act to allow for the interception of communications. It would also allow, in the medium term, some flexibility of the GCSB Act to capture developments in communication media.

Definition of "private communication"

The definition of "private communication" is already contained in section 4 of the GCSB Act. While the bill, as introduced, does not propose any amendment to this definition, it does propose using this

definition in new section 14 (inserted by clause 5) instead of the undefined phrase "communication of a person". While we recognise that the use of this definition in this context is not straightforward, and its difficulties have been judicially noted, we support its use.

We considered carefully the concerns of submitters that the definition of "private communication" is technologically outmoded and could pose legal interpretation difficulties. The definition has however acquired a degree of orthodoxy, and we consider it more preferable than using the more problematic and imprecise phrase "communication of a person", which we are told has no developed jurisprudence or supporting case law. Its use would also maintain consistency between the Crimes Act 1961, the Search and Surveillance Act 2012, and the GCSB Act.

We note the definitions of the term "private communication" were discussed in the Law Commission's 2010 report *Invasion of Privacy: Penalties and Remedies* in the context of recommending surveillance devices legislation that would address criminal and civil liability in relation to unlawful surveillance. The Law Commission recommends the definition of "private communication" for the purpose of interception offences should be amended to replace the current criterion with a single "reasonable expectation of privacy" test.

We are advised that the Government is still considering the wider implications of the Law Commission's recommendations contained in its 2010 report. It would therefore be premature to anticipate those changes in the wider context.

Objectives and functions of the Bureau

"**Economic wellbeing**" **and** "**international relations**"

The bill seeks to replace section 7 of the GCSB Act (inserted by clause 6) with a set of revised objectives for the Bureau that specifically refer to it contributing to the "economic well-being of New Zealand" and the "international relations and well-being of New Zealand". We support these objectives and do not propose any amendment to them.

We did consider the concerns raised by submitters about the reference to the Bureau performing its functions to contribute to "economic well-being" and "international relations". Submitters believe that "economic well-being" and "international relations" were the re-

sponsibility of New Zealand's diplomats and the Bureau had no role to play in such matters—the objective of the Bureau should therefore be confined to national security.

We are not persuaded by this argument. These are not new concepts. Section 7 of the GCSB Act refers currently to the "international relations of the Government of New Zealand" and to "New Zealand's international well-being or economic well-being". Submitters' belief that the revision of the Bureau's objectives would make it responsible for – as opposed to contributing to – national security, economic well-being, and international relations, is incorrect. The intelligence gathered by the Bureau is used to inform decision-makers who are responsible for those matters.

Information assurance and cybersecurity

We recommend amendments to new sections 8A(c) and 8B(1)(c) (inserted by clause 6) to provide consistency between the language used in these provisions. We consider the lack of uniformity between these provisions is not ideal given they each intend to allow the same type of activity, albeit for two separate functions, i.e. the communication of intelligence gathered.

Section 8A outlines the Bureau's information assurance and cybersecurity function – permitting the Bureau to give advice and assistance to public sector agencies in New Zealand – whilst also clarifying that advice and assistance may be given to public authorities overseas and expanding the function to explicitly include assistance to the private sector on the authorisation of the Minister. Section 8B outlines the Bureau's foreign intelligence function – permitting the Bureau to perform a number of detailed tasks in pursuit of intelligence collection and dissemination.

We are advised that if the issue of consistency between section 8A(c) and section 8B(1)(c) is not addressed, a court could determine that the bill intended to allow two quite different activities under each one (i.e. "reporting" versus "analysing" and "communicating"). As introduced, a court might not only reasonably conclude that the bill intended the term "intelligence" to have a narrow meaning, confined to raw material gathered. On the contrary, we understand that the bill has been prepared on the premise that the term can be applied across

all stages of the information-gathering process, from raw collect, to end product report.

Co-operation with other entities to facilitate their functions

New section 8C (inserted by clause 6) outlines the GCSB's co-operation function. We recommend amendment of new section 8C(1)(d) to make clear the limits and oversight applying to the Bureau when it exercises its co-operation functions with other entities.

We considered the many submissions that oppose this function. Submitters described this function (along with new section 8A) as allowing the Bureau to spy on New Zealanders and would transform the Bureau into a domestic surveillance agency. We believe the amendment we propose would make clear what has been a vexed issue, and the source of some confusion in the current GCSB Act.

We recommend inserting new section 8C(3) to require any advice or assistance provided under section 8C(1) to another entity to be subject to the jurisdiction of any other body or authority to the same extent as the other entity's actions are subject to the other body's or authority's jurisdiction (e.g. the Independent Police Conduct Authority in relation to co-operation with the New Zealand Police). We also recommend inserting new section 8C(3)(b) to make clear that it is intended that the Inspector-General of Intelligence and Security would continue to have an oversight role in respect of activities undertaken by the Bureau under new section 8C.

Principles underpinning performance of Bureau's functions

We recommend inserting new section 8CA to provide for a set of principles that would underpin the performance of the Bureau's functions. These would require the Bureau to act

- in accordance with New Zealand law and all human rights standards recognised by New Zealand law, except where modified by an enactment in relation to matters of national security
- independently, impartially, with integrity and professionalism
- in a manner that facilitates democratic oversight of its operational functions.

The set of principles extend to obligating the Director of the Bureau to ensure

- the activities of the Bureau are limited to only those that are relevant to its functions
- the Bureau is not influenced by matters not relevant to its functions
- the Bureau does not act to further or harm the interests of any political party in New Zealand.

The principles also specify that the Director would be required to consult regularly with the Leader of the Opposition to keep him or her informed about matters relating to the Bureau's functions.

Intercepting communications and accessing information infrastructures

Authorisation

New section 15A (inserted by clause 14) outlines the scope of the interception warrants and access authorisations that may be sought by the Director of the Bureau. As well as carrying over current types of warrants and authorisations permitted by section 17 and 19 of the GCSB Act, section 15A would allow warrants to be issued in relation to classes of persons, places, and information infrastructures.

Many submitters oppose new section 15A, particularly the phrase in new section 15A(1)(a) "not otherwise lawfully obtainable". Opposition appears to be based on a misapprehension as to the existing legislation. The use of this phrase in section 15A is however a straight carryover of an existing permission framework. We therefore support its retention as it requires the Bureau to consider what other lawful means might be available to it in order to gain access to certain communications before seeking a warrant or authorisation to intercept such communications.

Submitters also oppose new section 15A(5) which seeks to make clear that section 15A would apply despite anything in any other Act. Submitters are concerned that this would give primacy over the New Zealand Bill of Rights Act 1990. We are advised this is not correct. We are advised that new section 15A(5) is proposed for the avoidance of doubt, given that the bill would empower the Bureau to act in ways that otherwise are, or might be, contrary to various Acts. In

view of the rights and freedoms at stake, the inclusion of such a provision in the bill is prudent.

These matters aside, we propose amendments to address some gaps in proposed section 15A relating to the information that any warrant or access authorisation must contain (new section 15D), requirements regarding the specification of persons assisting the interception warrant or access authorisation holder (new section 15E), and privileged communications (new section 15C).

Information warrants or authorisations must contain

We propose inserting new section 15D to make clear the information any warrant or access authorisation must contain. We consider that every interception warrant and access authorisation must specify:

- the date of issue and the period of the warrant or access authorisation, not exceeding 12 months
- the person(s), or class of persons authorised to make the interception or obtain access
- the person(s), or class of persons that the warrant or access authorisation applies to
- the place(s), or classes of places that the warrant or access authorisation applies to
- the information infrastructure(s), or classes of information infrastructures that the warrant or access authorisation applies to
- the function(s) of the Bureau that the warrant or access authorisation relate to
- any conditions under which interception may be made or access may be obtained.

We believe greater specificity of the information any warrant or access authorisation must contain would help compliance outcomes, enhance accountabilities and transparency generally, and assist in the ongoing management of the new register of warrants and authorisations, required by new section 19 (inserted by clause 18).

Authorisation of persons to assist warrant or authorisation holder

Section 18 (inserted by clause 17) provides for certain matters about the content of warrants, namely the specification of persons or classes

of person who may assist in executing a warrant. We recommend deleting clause 17 and inserting new section 15E (clause 14) to set out in more detail the requirements regarding the specification of persons assisting the interception warrant or access authorisation holder.

Ministerial versus judicial authorisation of warrants

Section 15B (inserted by clause 14) provides for a joint authorisation system for the application of, and issuing of, an interception warrant or access authorisation where warrants are sought about New Zealanders. Applications would be required to be made jointly to the Minister and the Commissioner of Security Warrants who would jointly issue the warrant or authorisation.

We considered whether this proposed framework would be strengthened by the use of judicial warrants. We were not however persuaded to change the system proposed by the bill for authorising warrants or access authorisations. We believe the system proposed to be sound and provides a strong focus on the relevant legal requirements.

The Commissioner of Security Warrants was introduced in 1999 as a co-approver of the New Zealand Security Intelligence Services' domestic warrants alongside the Minister for the New Zealand Security Intelligence Service. The Commissioner's role is to advise the Minister on NZSIS applications for warrants concerning New Zealanders, and to jointly issue the warrants. Section 15B (clause 14) proposes to extend the involvement of the Commissioner to include interception warrants or access authorisations if the authority is required by the Bureau for the purposes of intercepting the communications of New Zealand citizens or permanent residents. This extension mirrors the framework in the New Zealand Security Intelligence Act 1969.

Privileged communications

As an added safeguard for New Zealanders, and to avoid any debate, in those cases where the Commissioner of Security Warrants is involved, we recommend inserting new section 15C (clause 14) to prevent the Minister and the Commissioner of Security Warrants from issuing an interception warrant or access authorisation if the communications of New Zealand citizens or permanent residents to be intercepted or accessed are privileged.

New section 15C(2) (clause 14) describes a privileged communication as one that is, or would be, privileged in proceedings in a court of law under sections 54, 56, 58 or 59 of the Evidence Act 2006.

This provision is modelled on section 4A(3) of the New Zealand Security Intelligence Service Act 1969.

Register of interception warrants and access authorisations

New section 19 (inserted by clause 18) proposes the Director keep a register of interception warrants and access authorisations that have been issued. We recommend amendment of new section 19 to refer to the need to capture the same information on the register as specified in new sections 15D, 15E(1) and 15E(3).

Urgent issue of warrants or authorisations

New section 19A (inserted by clause 18) provides for the urgent issue of warrants or authorisations by the Attorney-General, the Minister of Defence, or the Minister of Foreign Affairs, if the Minister is unavailable and it is necessary to issue them before the Minister is available.

We recommend inserting new section 19A(4) (clause 18) to require that the Minister is informed as soon as is reasonably practicable after an urgent warrant or authorisation had been issued. We consider this amendment would further enhance the accountabilities under the GCSB Act.

Use of incidentally obtained intelligence

Section 25 (inserted by clause 24) would replace section 25 (Prevention or detection of serious crime) of the GCSB Act. It specifies when and to whom "incidentally obtained intelligence" about New Zealand citizens or permanent residents would be retained and communicated.

We recommend inserting new section 25(2)(ab) (clause 24) to allow the communication of incidentally obtained intelligence for the purpose of preventing or avoiding the loss of human life on the high seas. We consider that new section 25 should account for situations where the threat to life may not be associated with a serious crime. Such situations may be relevant in cases of search and rescue or nat-

ural disaster. While it is difficult to provide specific examples, we consider that saving the life of a person was sufficient justification for communicating relevant intelligence.

We recommend an amendment to new section 25(2)(c) (clause 24) to replace the term "national security" with the more relevant term "security or defence". We agree with the concerns raised by some submitters about the new ground of threats or potential threats to the national security. The term "national security" is used in new section 7 (inserted by clause 6). It is a carryover from the GCSB Act.

National security is a term that has a broad meaning and can encompass a wide range of interests. Its use in section 7 is appropriate as the Bureau contributes to those broad interests. However, in section 25, which sets out what the Bureau can do with incidentally obtained intelligence, a more specific formulation should be used.

We also recommend that new section 25(3)(d) (clause 24) be amended to remove references to "any other person" and replace it with "any other public authority in New Zealand and any other country". We agree with submitters that section 25(3)(d) in referring to "any other person that the Director thinks fit" is too wide. We are advised that the intention was to allow the intelligence to be communicated to authorities who could take steps to respond to the identified purposes. In addition to the listed bodies (New Zealand Police, New Zealand Defence Force and the New Zealand Security Intelligence Service) they could include other law enforcement agencies, search and rescue authorities, and the overseas equivalents where the threat was in another country. We therefore propose this amendment to limit the class of persons to whom the intelligence can be given, to public authorities in New Zealand or overseas.

Personal information

Clause 25 would insert new sections 25A and 25B into the GCSB Act to provide for the protection and disclosure of personal information. New section 25A would require the Director of the Bureau, in consultation with the Inspector-General of Intelligence and Security and the Privacy Commissioner, to formulate a policy on the protection and disclosure of personal information that complies with the principles proposed in new section 25B. New section 25B sets out the principles about collecting, using, storing, and retaining personal

information. New section 25A(2A) would require the Director to advise the Privacy Commissioner of the results of the audits conducted under the policy.

We recommend inserting new section 25A(2A) and 25A(2B) to make it clear that the Privacy Commissioner may provide a report to the Inspector-General if the results of the audits conducted under the policy disclose issues to be addressed.

We also recommend an amendment to new section 25A(3) to require the Director of the Bureau to review the Bureau's privacy policy at intervals of not more than 3 years.

Part 2 – Amendments to Inspector-General of Intelligence and Security Act 1996

Functions of Inspector-General

We recommend an amendment to section 11(1)(c) (inserted by clause 31(1)) to remove the requirement for the concurrence of the Minister to be obtained before the Inspector-General can investigate whether the actions of security agencies may have adversely affected a New Zealand person. We believe this amendment would strengthen the oversight regime of New Zealand's intelligence and security agencies.

Who can make a complaint

The Inspector-General of Intelligence and Security Act provides in section 11(1)(b) that it is the function of the Inspector-General "to inquire into any complaint by a New Zealand person, or a person who is an employee or former employee of an intelligence and security agency".

We recommend an amendment to section 11(1)(b) to insert section 11(1)(ba) (new clause 31(1AA)) that would allow the Inspector-General to inquire into any complaint made by the Speaker of the House of Representatives on behalf of 1 or more members of Parliament.

The Privileges Committee in its interim report to the House on a *Question of privilege concerning the agreements for policing, execution of search warrants, and collection and retention of informa-*

tion by the NZSIS made the following recommendations to the Intelligence and Security Committee:

> That we consider whether there is a need to clarify the oversight of the intelligence agencies to ensure the Inspector-General of Security and Intelligence can receive complaints about, and inquire into, the actions of those agencies that affect a class of person.
>
> That we consider the appropriateness of requiring the agreement of the responsible Minister before the Inspector-General can undertake an inquiry under the new section 11(1)(c) of the Inspector-General of Security and Intelligence Act 1996 that is proposed in the Government Communications Security Bureau and Related Legislation Amendment Bill.

The Privileges Committee's recommendation regarding who can complain to the Inspector-General arises from the committee's view that the activities of the NZSIS under the agreement being examined should come clearly within the oversight of the Inspector-General. The committee is concerned that "it does not appear possible under the current wording of section 11 of the IGIS Act for the Speaker to complain to the Inspector-General on behalf of the members of Parliament or about the actions or policies of the NZSIS more generally". The Privileges Committee did not want to see an amendment specifically for the benefit of the House of Representatives and felt any amendment should apply more generally to all bodies of persons.

However, we recommend that this matter is addressed specifically for the Speaker in terms of members of Parliament.

Establishment of an advisory panel

We recommend amending the bill (inserting new sections 15A, 15B, 15C, and 15D (new clause 33A)) to establish an advisory panel to provide advice to the Inspector-General. The bill aims to build on and further strengthen the oversight arrangements of New Zealand's security and intelligence agencies. We believe the establishment of an advisory panel to provide advice to the Inspector-General would contribute significantly to strengthening the oversight arrangements. The amendments we propose also provide for the advisory panel to

report to the Prime Minister on any matter relating to intelligence and security, if the panel considers it necessary to do so.

We recommend in new section 15C that the panel consist of 2 members and the Inspector-General. Members would be appointed by the Governor-General on the recommendation of the Prime Minister after consulting the Intelligence and Security Committee.

Reports in relation to inquiries

Section 25 (inserted by clause 34) would require the Minister to respond as soon as practicable after receiving a report from the Inspector-General. We considered why the Minister is not required to provide to the Intelligence and Security Committee a copy of his or her response to an Inspector-General's inquiry report.

Whilst this is desirable, we are advised that it raises questions about operational security, the classification of such information, and the timing of the provision of the response. On balance, we believe that the Minister should have discretion as to when he or she would provide a copy of his or her response to an inquiry by the Inspector-General to the Intelligence and Security Committee.

An associated matter is who determines the classification of a report. We consider it should be the Inspector-General and propose an amendment to insert new section 8(a) and (b) (clause 34) to make clear that for the purpose of section 25 of the IGIS Act the Inspector-General would be responsible for determining the security classification of a report prepared under section 25.

Our amendment recommends that the Inspector-General, in determining a security classification of a report, must consult with the head of the intelligence and security agency that is the subject of the report and retain the same security classification in respect of any material provided to the Inspector-General that is quoted verbatim in the report.

Inspector-General's annual report

Clause 36 proposes amendments to section 27 (Reports by Inspector-General) to provide for the Inspector-General's annual report. The amendments, as introduced, would require the Inspector-General to certify whether each intelligence and security agency's compliance systems (see clause 31(1)(d)) are sound and as soon as practicable

after his or her annual report is presented to Parliament, to make a copy of the report (as presented to Parliament) publicly available on an Internet site maintained by the Inspector-General.

We consider that the proposed amendment requiring the Inspector-General to make a public statement regarding the adequacy of each intelligence and security agency's compliance systems is the role of an auditor.

We therefore propose an amendment to section 27 (inserted by clause 36) to require that the Inspector-General certifies instead the extent to which each intelligence and security agency's compliance systems are sound.

Part 3 – Amendments to Intelligence and Security Committee Act 1996

Functions of Committee – Inspector-General's annual report

We recommend amending the functions of the Intelligence and Security Committee (inserting new section 6(1)(f)) (clause 38) to provide for the Committee to consider and discuss with the Inspector-General of Intelligence and Security his or her annual report that the Inspector-General is required to present to the House.

Chairperson and Leader of the Opposition

The bill proposes inserting new section 7A (clause 39) into the Intelligence and Security Committee Act. Section 7A contains further provisions relating to the chairperson of the Intelligence and Security Committee. The new section provides:

- that the Prime Minister is not to chair a meeting of the Intelligence and Security Committee while it is discussing, in the course of a financial review of an intelligence and security agency, any matter relating to the performance of the intelligence and security agency if the Prime Minister is the responsible Minister of the agency. In that case, one of the members of the Committee appointed under section 7(1)(c) must act as chairperson
- that the chairperson may appoint either the Deputy Prime Minister or the Attorney-General (if not already a member of the

Committee) to act as chairperson in the absence of the chairperson.

Existing section 13(6) of the Intelligence and Security Committee Act prohibits members of the Intelligence and Security Committee from being represented by anyone else. We are advised that this provision is at odds with new section 7A (clause 39) and needs amending to enable the new provision to provide some flexibility in respect of the chair of the Committee.

In the light of this, we recommend that existing section 13(6) of the Intelligence and Security Act is expressed to be subject to new section 7A(3) of the Intelligence and Security Act.

We also recommend that new section 7A(4) be inserted to provide for the Leader of the Opposition to appoint the person who acts as his or her deputy in the House to act in place of them at a meeting of the Committee.

Labour Party minority view

Labour believes New Zealand's intelligence services are necessary for the security and prosperity of our people. It is vital that our agencies are set-up and structured to ensure they can deal with potential threats. It is equally important that we have strong oversight in place so that New Zealanders can be confident their rights and freedoms are adequately protected and that powers of surveillance are not more intrusive than necessary or liable to be abused.

Labour does not believe the current bill has met this important balance. It has been rushed and poorly informed. There is no evidence this legislation will restore public confidence in our intelligence network. We therefore oppose this bill.

Labour wants the best possible security arrangements with the best possible guarantees to New Zealanders that the powers given to these agencies are not misused and that surveillance is targeted appropriately.

We would consider supporting legislation if the Government was able to persuade us that there was a case for urgent change based on an imminent threat to New Zealand. Such legislation would be considered temporary and would need to include a sunset clause allowing for a full inquiry to be carried out as soon as possible. The findings

of that inquiry would be the basis for the drafting of new and comprehensive legislation governing our intelligence agencies.

But the case for urgent legislation has not been made. The Government has failed to provide sufficient evidence that there is a need to rush through changes. It has failed to show that we will be exposed to greater threat of terrorism or cyber-attack without this legislation. Furthermore, no evidence has been produced to show whether changes will add to or reduce costs to the taxpayer.

We are concerned that the bill is not well-informed. We were disappointed that the Prime Minister denied a request from Labour for the Intelligence and Security Committee to hear evidence from other security agencies, including the SIS, police, defence forces – or any other government agency that could potentially call on GCSB support.

The process has also been unnecessarily rushed. It was introduced under urgency and the committee hearings were shortened, despite the complexity of the issues being examined. The final changes to the bill were only delivered to Labour on Friday afternoon for deliberation on the following Monday. That length of time is ludicrously short if government is serious about achieving wider consensus on such a significant piece of legislation.

This matter has been the subject of public debate for more than a year now. Questions were first asked about the possibility of the GCSB potentially illegally spying on New Zealanders back in May 2012 although the concerns were not revealed publicly by the Prime Minister until September that year when the Kim Dotcom case hit the headlines.

Labour cannot understand why the Government did not move swiftly at that time if it felt that urgent changes were needed. If it had commissioned a full review across the intelligence network at that time, we could have been in a position now to pass comprehensive and well-informed legislation.

The terms of reference for the *Review of Compliance,* carried out by Rebecca Kitteridge in March 2013, gave a limited mandate and as a result were too narrowly focused on the GCSB and did not examine whether there are deeper problems across our entire intelligence community and with the interaction between the agencies.

There are still serious questions about the current oversight arrangements, including the fact that too much power and responsibility rests in the Prime Minister's hands. He has final say over the appointment of the head of the GCSB, chairs the Intelligence and Security Committee, sets the agenda and has the casting vote. The Inspector-General and the Commissioner of Warrants are appointed by the Governor-General on the recommendation of the Prime Minister and with respect to the Commissioner of Warrants, after consultation with the Leader of the Opposition.

In other jurisdictions, there is a greater level of oversight including the intelligence and security committee being chaired by the Leader of the Opposition.

Labour supports strengthening the oversight the agencies receive, including the establishment of a panel and a review of any warrants within three weeks of being issued as laid out by New Zealand First.

The concerns about illegal spying on New Zealanders and the uncertainty around the legislation governing our intelligence agencies, combined with serious questions about the misuse of power by intelligence-gathering entities overseas, have dramatically eroded public confidence.

New Zealanders have legitimate questions about whether the balance between their privacy and their security is being met.

This bill is a missed opportunity for meaningful change and to restore people's confidence in our security agencies. The role of our intelligence community has not been reviewed since 1976. In that time, the world, the threats we face, technology available and the information we share, as a nation and as individuals, has changed dramatically.

That is why Labour has argued ever since the concerns first became public that there is a need for a full independent inquiry. It should be carried out along the lines of a similar inquiry in Australia, where terms of reference were agreed across Parliament as a whole.

A number of respected individuals and agencies, including the Human Rights Commission, the Law Society and the Privacy Commission, have all raised serious concerns about this bill. They suggest any broadening of the powers of security agencies must be clearly justified and recommend the Government take the time to hold an inquiry and get this legislation right.

We urge the Government to pay attention to their submissions.

Insufficient consideration of relevant matters

This bill must be examined in conjunction with the associated legislation. It is closely linked with the Telecommunications (Interception Capability and Security) Bill and a bill has been drafted to amend the SIS legislation, which has now been delayed. The changes made should be considered together, allowing them to be put in context and to ensure functions and capabilities are not being unnecessarily replicated. And that no loop-holes are created.

The Privacy Commissioner and the Human Rights Commission whose roles centre on the balancing and protection of New Zealanders' rights and freedoms emphasised the need for a wider inquiry before proceeding.

The Privacy Commissioner believes this needs to be considered further and in more detail as this is a complex, dynamic environment:

> In particular, it is not yet clear what type and level of oversight is most appropriate. The effects on individuals are potentially very significant, and it is important to get the legislation right.

The Human Rights Commission took the rare step of issuing a report directly to the Prime Minister, a statutory power used only three times before. Their report states clearly the problems with this bill:

> The relatively innocuous description in the explanatory note does not reflect the full extent of what the GCSB bill will allow – namely, permit foreign intelligence agencies to access data about private citizens in New Zealand.

And

> People in New Zealand are entitled to know if mass surveillance of data, such as metadata, relating to them, is being collected through surveillance by New Zealand's intelligence services or its international partner agencies and for what purpose.

Labour believes there is a strong case to hold an inquiry into our surveillance agencies before this legislation progresses further.

Our issues with this bill as proposed include the following:

Expansion of powers

This is not, as has been stated, simply a "clarification" of the law. With this bill, the Government is trying to rush through legislation

to make potentially unlawful practices by the GCSB legal going into the future.

Legally enabling the GCSB to do something they are not legally permitted to do now, such as intercepting private communications of New Zealanders, is an expansion of their powers. Aside from the power to spy on New Zealanders, the bill expands the powers of the GCSB in addressing cybercrime, particularly in relation to information infrastructures. This raises significant concerns about the privacy of New Zealanders' communications and it is inaccurate to claim it is simply "clarification".

Insufficient safeguards

The safeguards in this bill are insufficient to ensure New Zealanders' civil, political and privacy rights are adequately protected as these new measures are introduced.

It is unclear what activities the GCSB will be able to undertake and the information they can gather. Power continues to be concentrated in the hands of the Prime Minister as Minister responsible for the GCSB.

GCSB's functions

Section 8 of the bill does set out the functions of the GCSB but it has stripped out the limitations in place in the current Act. The New Zealand Law Society submitted that more detail is needed about the range of activities the GCSB would be undertaking, as without an answer to this basic question further substantial issues cannot be determined.

The ISC's addition of principles underpinning the Bureau's performance to make this consistent with those for the New Zealand Security Intelligence Service is a good improvement, as is the requirement to consult the Leader of the Opposition.

Surveillance of New Zealanders

The current law states that the GCSB may not intercept New Zealanders' communications.

This bill restricts that to not intercepting New Zealanders' "private communications". While that term is defined in the GCSB Act, the definition remains problematic. The Law Society submitted this could mean those communications which could be intercepted would be those which a person ought reasonably expect to be intercepted.

The range of information which may be intercepted may be very broad.

The Legislative Advisory Council questioned whether the definition was adequate

> given its centrality to the privacy protection mechanism in section 14. The key question is whether the definition provides the expected degree of privacy protection.

They and Internet NZ criticised the circular nature of the definition. If it is not clarified it will be left to the courts to define and to determine what Parliament intended.

We believe what constitutes a "private communication" should be clarified now to ensure that New Zealanders' privacy is protected in a manner as could reasonably be expected.

Metadata

There is no restriction or other safeguard in the bill relating to the collection of metadata. Currently the GCSB does not consider metadata to be a "communication", therefore a warrant is not required for its collection. Internet NZ argued that the collection of metadata is highly valuable in intelligence circles as it can reveal more than an actual communication. Labour believes safeguards should be put in place to protect New Zealanders' privacy when metadata is collected and it should be examined whether a warrant should also be required for collection of this data.

Co-operation too broadly framed

Section 8C of the bill which states who the GCSB is able to co-operate with is too broadly framed. It allows the GCSB to assist any department or part thereof simply through the issuing of an Order in Council. There is no need for further justification or public reporting of such co-operation. It is not clear why it is necessary for this to be available to every department.

The LAC recommended that criteria be developed to limit the type of agencies that can be assisted and the circumstances in which assistance may be requested by those agencies. Despite the improvements made to section 8C by the ISC we believe greater justification is required for including such a broad range of departments.

Overseas information sharing

The GCSB shares its information with overseas intelligence agencies, whereas the SIS does not. Therefore safeguards must be put in

place to ensure that New Zealanders' information, including metadata, is not shared with these agencies other than in tightly restricted specified circumstances.

Role of the ISC

The operations of the ISC should also be examined. It meets infrequently, is not properly briefed (as seen with this legislation), and reports to the House are not adequate. An inquiry could include examining whether we should look at a model such as the Regulations Review Committee and have an Opposition member chairing the committee.

There are matters in this bill that Labour does support – such as the expansion of the Inspector-Generals' office to have a deputy and widening the pool of people the Inspector-General can be drawn from. We believe it should be a requirement to have the Opposition's concurrence for the appointment, as is done for the Governor-General because of the importance of the position.

Conclusion

Labour maintains that the case for urgent change has not been made. The progress of this bill should be paused until a full independent inquiry into our intelligence agencies is held.

We must ensure our national security is protected while also recognising the importance of the basic freedoms and rights of New Zealanders. We are not persuaded that this bill is the best, or only, way to do so. There are too many unanswered questions for us to support this bill in its current form.

Finding the appropriate balance between national security and individual rights and freedoms is critical. The committee and Parliament have a responsibility to New Zealanders to get it right.

Green Party minority view

Introduction

The Green Party opposes this bill because it is an unjustified and fundamental extension of the ability of the state to intrude into the private lives of ordinary New Zealanders. The Greens jealously guard the democratic rights and freedoms fought for and won by those who

came before us, and it is anathema to those rights and freedoms to support this bill.

An extension of state powers

This bill proposes an unjustified extension of the powers of the Government Communications Security Bureau. This bill blurs the separate roles of the GCSB with domestic spy agencies. There are domestic agencies that can spy on New Zealanders and there is no justification for turning the GCSB's powers onto the residents and citizens of New Zealand.

As the Law Society submission noted:

> The Bill changes the Government Communications Security Bureau (GCSB) from being a foreign intelligence agency to a mixed foreign and domestic intelligence agency. The Bill empowers the GCSB to spy on New Zealand citizens and residents, and to provide intelligence product to other government agencies in respect of those persons, in a way not previously contemplated and that is inconsistent with the rights of freedom of expression and freedom from unreasonable search and seizure under the New Zealand Bill of Rights Act 1990 (NZBORA) and with privacy interest recognized by New Zealand law.

The Government has failed to provide a justification for this fundamental attack on our democratic rights and freedoms.

Surveillance state

These issues have received considerable international attention in recent weeks with the revelations of mass surveillance activities by the GCSB's Five Eyes' partner in the United States, the NSA. Total state surveillance of a kind only previously imagined has now been revealed as the reality in the United States.

We believe this bill facilitates the legal establishment of a surveillance state in New Zealand. As Internet New Zealand noted in their submission, a "broad reading renders the sum effect of the bill, as currently drafted, as providing access to anyone's communications whether live or stored, including internet communications." And the recent history of the GCSB in relation to the illegal spying on Kim Dotcom, and potentially many others, demonstrates that the GCSB

is not averse to taking a broad reading of their surveillance powers in relation to New Zealand citizens and residents.

The Human Rights Commission also is of the view that the "legislation is overly broad and enables mass surveillance".

A mass surveillance state we believe would have a very corrosive effect on the kind of free and democratic New Zealand that generations have fought for. As the Tech Liberty submission stated:

> The creation of a mass surveillance state with government agencies that collect data about us and analyse it is a major step in changing the nature of our society. People act differently when they are being watched and there is a chilling effect on freedom of expression. The government has failed to show that these losses are proportional to any perceived benefit we will get from giving up our privacy in this way.

This bill undermines New Zealanders right to privacy and fundamental human rights. This bill could have a chilling effect on freedom of expression if people feel they live in a state of constant surveillance.

Oversight

Those who support the bill point to the relatively small improvements contained in the bill in relation to oversight by the Inspector General of Intelligence and Security. However, if the bill makes large scale surveillance lawful, as many have persuasively argued, then the oversight bodies may find themselves having to sign off such activities. As Internet New Zealand stated in their submission:

> the Inspector General may have no choice but to give his or her sign-off to such extreme incursions on human rights, in breach of NZBORA, whatever reservations he or she may have.

Moreover, proper oversight would involve establishing the Intelligence and Security Committee as a regular select committee of Parliament with real powers to inquire into the activities of the spy agencies. A properly established ISC would not have the responsible Minister as the Chair of the Committee. Likewise the Inspector General of Intelligence and Security would be established as an Officer of Parliament, like the Ombudsman. This bill does none of those things.

Cyber security

We believe that there are legitimate concerns around cybersecurity. However, it does not follow that we should locate our national cybersecurity function within the GCSB. There will inevitably be a blurring of roles between the GCSB's cybersecurity function and its foreign and (now) domestic intelligence functions.

Economic impact

As some submitters pointed out, this bill will have a negative effect on New Zealand's growing ICT sector. If we want to become an ICT hub we need laws that protect data privacy except for legitimate lawful purposes. This bill significantly erodes New Zealand's claims to be a jurisdiction where data is protected.

Inquiry

The Green Party believes that there needs to be a wide ranging independent inquiry into New Zealand's intelligence services before this bill proceeds. If the public is to have any confidence in our security and intelligence agencies a thorough and independent review is the first and most vital step.

We agree with the Human Rights Commission call for such an inquiry which

> would ensure that there is full and coherent consideration of the role and functions of New Zealand's intelligence services, including their governance and oversight mechanisms. Such an inquiry could usefully give full and measured consideration to the tensions between human rights … and the balance to be struck between them and legitimate national security concerns.

The rational order of proceedings is to hold the inquiry before passing the legislation. Law changes should be the last step in the process following inquiry and analysis, not the first.

Appendix

Committee process

The Government Communications Security Bureau and Related Legislation Amendment Bill was referred to the Intelligence and Security Committee on 8 May 2013. The closing date for submissions was 21 June 2013. We received and considered 123 submissions from interested groups and individuals. We heard 28 submissions. The hearings were open to the public. We also received a late report from the Human Rights Commission.

We received advice from the Department of the Prime Minister and Cabinet and the Government Communications Security Bureau.

Committee membership

Rt Hon John Key (Chairperson)

Hon John Banks

Dr Russel Norman

Hon Tony Ryall

David Shearer

Key to symbols used in reprinted bill

As reported from a select committee

<u>text inserted unanimously</u>

~~text deleted unanimously~~

Rt Hon John Key

Government Communications Security Bureau and Related Legislation Amendment Bill

Government Bill

Contents

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Government Communications Security Bureau and Related Legislation Amendment Act **2013**.

2 Commencement

This Act comes into force on the day that is 1 month after the date on which it receives the Royal assent.

Part 1
Amendments to Government Communications Security Bureau Act 2003

3 Principal Act

This **Part** amends the Government Communications Security Bureau Act 2003 (the **principal Act**).

4 Section 3 amended (Purpose)

Replace section 3(c) to (e) with:

"(c) specify the circumstances in which the Bureau requires an interception warrant or access authorisation to intercept communications:

"(d) specify the conditions that are necessary for the issue of an interception warrant or access authorisation and the matters that may be authorised by a warrant or an authorisation:

"(e) specify the circumstances in which the Bureau may use interception devices to intercept communications without a warrant or an authorisation."

5 Section 4 amended (Interpretation)

(1) This section amends section 4.

(2) Repeal the definitions of **computer access authorisation** or **authorisation**, **computer system**, **foreign communications**, **foreign intelligence**, and **network**.

(3) Insert in their appropriate alphabetical order:

"**access authorisation** means an authorisation issued under **section 15A(1)(b)**

"**incidentally obtained intelligence** means intelligence—

"(a) that is obtained in the course of gathering intelligence about the capabilities, intentions, or activities of foreign organisations or foreign persons; but

"(b) that is not intelligence of the kind referred to in **paragraph (a)**

"**information infrastructure** includes electromagnetic emissions, communications systems and networks, information

technology systems and networks, and any communications carried on, contained in, or relating to those emissions, systems, or networks".

(4) In the definition of **access**, replace "computer system" with "information infrastructure".

(5) In the definition of **communication**, after "sounds,", insert "information,".

(6) In the definition of **foreign organisation**, paragraph (d), replace "exclusively" with "principally".

(7) In the definition of **interception warrant**, replace "section 17" with "**section 15A(1)(a)**".

6 Sections 7 and 8 replaced

Replace sections 7 and 8 with:

"**7 Objective of Bureau**

The objective of the Bureau, in performing its functions, is to contribute to—

"(a) the national security of New Zealand; and

"(b) the international relations and well-being of New Zealand; and

"(c) the economic well-being of New Zealand.

"**8 Functions of Bureau**

"(1) **Sections 8A to 8C** set out the functions of the Bureau.

"(2) The order in which the functions are set out is not to be taken as specifying any order of importance or priority.

"(3) The performance of the Bureau's functions and the relative importance and priority of the functions, if any, are to be determined, from time to time, by the Director, subject to the control of the Minister.

"(4) Without limiting **subsection (3)**, the performance of the Bureau's functions under **section 8A** (information assurance and cybersecurity) and **section 8C** (co-operation with other entities to facilitate their functions) is at the discretion of the Director.

"(5) In addition to the functions set out in **sections 8A to 8C**, the Bureau has the functions (if any) conferred on it by or under any other Act.

"**8A Information assurance and cybersecurity**

This function of the Bureau is—

"(a) to co-operate with, and provide advice and assistance to, any public authority whether in New Zealand or overseas, or to any other entity authorised by the Minister, on any matters relating to the protection, security, and integrity of—

"(i) communications, including those that are processed, stored, or communicated in or through information infrastructures; and

"(ii) information infrastructures of importance to the Government of New Zealand; and

"(b) without limiting **paragraph (a)**, to do everything that is necessary or desirable to protect the security and integrity of the communications and information infrastructures referred to in **paragraph (a)**, including identifying and responding to threats or potential threats to those communications and information infrastructures; and

"(c) to report ~~to the following~~ on anything done under **paragraphs (a) and (b)** and provide any intelligence gathered as a result~~:~~ and any analysis of the intelligence to—

"(i) the Minister; and

"(ii) any person or office holder (whether in New Zealand or overseas) authorised by the Minister to receive the report or intelligence.

"**8B Intelligence gathering and analysis**

"(1) This function of the Bureau is—

"(a) to gather and analyse intelligence (including from information infrastructures) in accordance with the Government's requirements about the capabilities, intentions, and activities of foreign persons and foreign organisations; and

"(b) to gather and analyse intelligence about information infrastructures; and

"(c) to ~~communicate~~ provide any intelligence gathered and any analysis of the intelligence to—

"(i) the Minister; and

"(ii) any person or office holder (whether in New Zealand or overseas) authorised by the Minister to receive the intelligence.

"(2) For the purpose of performing its function under **subsection (1)(a) and (b)**, the Bureau may co-operate with, and provide advice and assistance to, any public authority (whether in New Zealand or overseas) and any other entity authorised by the Minister for the purposes of this subsection.

"**8C Co-operation with other entities to facilitate their functions**

"(1) This function of the Bureau is to co-operate with, and provide advice and assistance to, the following for the purpose of facilitating the performance of their functions:

"(a) the New Zealand Police; and

"(b) the New Zealand Defence Force; and

"(c) the New Zealand Security Intelligence Service; and

"(d) any department (within the meaning of the Public Finance Act 1989) or part of any department or to a department but only in relation to a specified function or service performed or provided by the department specified for the purposes of this section by the Governor-General by Order in Council made on the recommendation of the Minister.

"(2) To avoid doubt, the Bureau may perform its function under **subsection (1)** only—

"(a) to the extent that the advice and assistance ~~is~~ are provided for the purpose of activities that the entities may lawfully undertake; and

"(b) subject to and in accordance with any limitations, restrictions, and protections under which those entities perform their functions and exercise their powers; and

"(c) even though the advice and assistance might involve the exercise of powers by, or the sharing of the capabilities of, the Bureau that the Bureau is not, or could not be, authorised to exercise or share in the performance of its other functions.

"(3) Any advice or assistance provided by the Bureau under **subsection (1)** to another entity is subject to—

"(a) the jurisdiction of any other body or authority to the same extent as the other entity's actions are subject to the other body's or authority's jurisdiction (for example, the Independent Police Conduct Authority in relation to advice and assistance provided to the New Zealand Police); and

"(b) the oversight of the Inspector-General of Intelligence and Security under his or her functions in section 11 of the Inspector-General of Intelligence and Security Act 1996.

"**8CA Principles underpinning performance of Bureau's functions**

"(1) In performing its functions under this Act, the Bureau acts—

"(a) in accordance with New Zealand law and all human rights standards recognised by New Zealand law, except to the extent that they are, in relation to national security, modified by an enactment:

"(b) in the discharge of its operational functions, independently and impartially:

"(c) with integrity and professionalism:

"(d) in a manner that facilitates effective democratic oversight.

"(2) **Subsection (1)** does not impose particular duties on, or give particular powers to, the Bureau, the Director, or any employee of the Bureau.

"(3) The Director must take all reasonable steps to ensure that—

"(a) the activities of the Bureau are limited to those that are relevant to the discharge of its functions:

"(b) the Bureau is kept free from any influence or consideration that is not relevant to its functions:

"(c) the Bureau does not take any action for the purpose of furthering or harming the interests of any political party in New Zealand.

"(4) The Director must consult regularly with the Leader of the Opposition for the purpose of keeping him or her informed about matters relating to the Bureau's functions under **sections 8A to 8C**.

"**8D Director has full powers for purpose of performing Bureau's functions**

"(1) The Director has all the powers that are necessary or desirable for the purpose of performing the functions of the Bureau.

"(2) **Subsection (1)** applies subject to this Act, any other enactment, and the general law."

7 Section 9 replaced (Director of Bureau)

Replace section 9 with:

"**9 Appointment of Director**

"(1) The Director of the Bureau is appointed by the Governor-General, on the recommendation of the Prime Minister, for a term not exceeding 5 years, and may from time to time be reappointed.

"(2) To avoid doubt, the mere fact that a person holds the position of Director does not entitle the person to be reappointed or to expect to be reappointed.

"**9A Appointment process**

The State Services Commissioner—

"(a) is responsible for managing the process for the appointment of the Director; and

"(b) must provide advice on the nominations for Director to the Prime Minister.

"**9B Remuneration and conditions of appointment of Director**

"(1) The Director is paid the remuneration and allowances determined by the Remuneration Authority.

"(2) The other terms and conditions of the Director's appointment are determined from time to time by the State Services Commissioner.

"**9C Removal from office**

"(1) The Governor-General may at any time for just cause, on the recommendation of the Prime Minister, remove the Director from office.

"(2) The removal must be made by written notice to the Director.

"(3) The notice must—

"(a) state the date on which the removal takes effect, which must not be earlier than the date on which the notice is received; and

"(b) state the reasons for the removal.

"(4) The State Services Commissioner is responsible for advising the Prime Minister on any proposal to remove the Director from office.

"(5) In this section, **just cause** includes misconduct, inability to perform the functions of office, and neglect of duty.

"**9D Review of performance of Director**

"(1) The Minister may direct the State Services Commissioner or another person to review, either generally or in respect of any particular matter, the performance of the Director.

"(2) The person conducting a review under **subsection (1)** must report to the Minister on the manner and extent to which the Director is fulfilling all of the requirements imposed on the Director, whether under this Act or otherwise.

"(3) No review under this section may consider any security operations undertaken, or proposed to be undertaken."

8 Section 11 amended (Prohibition on unauthorised disclosure of information)

In section 11(2),—

(a) replace "2 years" with "3 years"; and

(b) replace "$2,000" with "$5,000".

9 Section 12 amended (Annual report)

(1) In section 12(2), replace "without delay" with "as soon as practicable".

(2) In section 12(3)(c), delete "computer".

10 Part 3 heading replaced

Replace the Part 3 heading with:

"Part 3
"Intercepting communications and accessing information infrastructures".

11 Section 13 replaced (Purpose of Part)

Replace section 13 with:

"**13 Purpose of Part**

The purpose of this Part is—

"(a) to authorise the Bureau to intercept communications and access information infrastructures for the purpose of performing its functions under **sections 8A and 8B**; and

"(b) to place restrictions and limitations on—

"(i) the interception of communications and the accessing of information infrastructures; and

"(ii) the retention and use of information derived from the interception of communications and the accessing of information infrastructures."

12 Section 14 replaced (Interceptions not to target domestic communications)

Replace section 14 with:

"**14 Interceptions not to target New Zealand citizens or permanent residents for intelligence-gathering purposes**

"(1) In performing the Bureau's function in **section 8B**, the Director, any employee of the Bureau, and any person acting on behalf of the Bureau must not authorise or do anything for the purpose of intercepting the private communications of a person who is a New Zealand citizen or a permanent resident of New Zealand, unless (and to the extent that) the person comes within the definition of foreign person or foreign organisation in section 4.

"(2) Any incidentally obtained intelligence obtained by the Bureau in the performance of its function in **section 8B**—

"(a) is not obtained in breach of **section 8B**; but

"(b) must not be retained or disclosed except in accordance with sections 23 and **25**."

13 Section 15 amended (Interceptions for which warrant or authorisation required)

(1) In section 15(1)(a), replace "a network" with "an information infrastructure".

(2) In section 15(2),—

(a) replace "a computer access authorisation" with "an access authorisation"; and

(b) replace "a computer system" with "an information infrastructure".

14 New sections 15A ~~and 15B~~ to 15F and cross-heading inserted

After section 15, insert:

"*Authorisations to intercept communications or access information infrastructures*

"**15A Authorisation to intercept communications or access information infrastructures**

"(1) For the purpose of performing the Bureau's functions under **section 8A or 8B**, the Director may apply in writing to the Minister for the issue of—

"(a) an interception warrant authorising the use of interception devices to intercept communications not otherwise lawfully obtainable by the Bureau of the following kinds:

"(i) communications made or received by 1 or more persons or classes of persons specified in the authorisation or made or received in 1 or more places or classes of places specified in the authorisation:

"(ii) communications that are sent from, or are being sent to, an overseas country:

"(b) an access authorisation authorising the accessing of 1 or more specified information infrastructures or classes of information infrastructures that the Bureau cannot otherwise lawfully access.

"(2) The Minister may grant the proposed interception warrant or access authorisation if satisfied that—

"(a) the proposed interception or access is for the purpose of performing a function of the Bureau under ~~**sections**~~ **section 8A or 8B**; and

"(b) the outcome sought to be achieved under the proposed interception or access justifies the particular interception or access; and

"(c) the outcome is not likely to be achieved by other means; and

"(d) there are satisfactory arrangements in place to ensure that nothing will be done in reliance on the warrant or authorisation beyond what is necessary for the proper performance of a function of the Bureau; and

"(e) there are satisfactory arrangements in place to ensure that the nature and consequences of acts done in reliance on the warrant or authorisation will be reasonable, having regard to the purposes for which they are carried out.

"(3) Before issuing a warrant or an authorisation, the Minister must consult the Minister of Foreign Affairs about the proposed warrant or authorisation.

"(4) The Minister may issue a warrant or an authorisation subject to any conditions that the Minister considers desirable in the public interest.

"(5) This section applies despite anything in any other Act.

"**15B Involvement of Commissioner of Security Warrants**

"(1) An application for, and issue of, an interception warrant or access authorisation under **section 15A** must be made jointly to, and issued jointly by, the Minister and the Commissioner of Security Warrants if anything that may be done under the warrant or authorisation is for the purpose of intercepting the private communications of a New Zealand citizen or permanent resident of New Zealand under—

"(a) **section 8A**; or

"(b) **section 8B**, to the extent that intercepting the person's private communications under that section is not precluded by **section 14**.

"(2) For the purposes of **subsection (1)**, **section 15A** applies—

"(a) as if references to the Minister were references to the Minister and the Commissioner of Security Warrants; and

"(b) with any other necessary modifications.

"(3) In this section, **Commissioner of Security Warrants** means the Commissioner of Security Warrants appointed under section 5A of the New Zealand Security Intelligence Service Act 1969.

"**15C Privileged communications**

"(1) No interception warrant or access authorisation is to be issued under **section 15A**, and no powers are to be exercised under an interception warrant or access authorisation issued under **section 15A**, for the purpose of intercepting the privileged communications of New Zealand citizens or permanent residents of New Zealand.

"(2) In **subsection (1)**, **privileged communications** means communications that are privileged in proceedings in a court of law under section 54, 56, 58, or 59 of the Evidence Act 2006.

"**15D Information that interception warrant or access authorisation must contain**

Every interception warrant and access authorisation must specify the following information:

"(a) the date of issue:

"(b) the person, persons, or classes of persons authorised to make the interception or obtain the access:

"(c) the period for which the warrant or authorisation is issued, being a period not exceeding 12 months:

"(d) the function or functions of the Bureau to which the warrant or authorisation relates:

"(e) any person, persons, or classes of persons whose communications may be intercepted under the warrant or authorisation:

"(f) any place, places, or classes of places that the warrant or authorisation applies to:

"(g) the information infrastructure, information infrastructures, or classes of information infrastructures that the warrant or authorisation applies to:

"(h) any conditions under which interception may be made or access may be obtained.

"**15E Warrant or authorisation may authorise persons to assist person giving effect to warrant or authorisation**

"(1) A warrant or an authorisation may request 1 or more persons or classes of persons to give any assistance that is reasonably necessary to give effect to the warrant or authorisation.

"(2) If a request is made, under **subsection (1)**, to 1 or more persons or classes of persons who are employees (the **employees**), the warrant or authorisation must also request the persons who are the employers of the employees, or any other persons in any way in control of the employees, to make the services of the employees available to the Bureau.

"(3) On an application made in writing by the Director, the Minister may amend a warrant or authorisation—

"(a) by substituting a person, persons, or classes of persons for the person, persons, or classes of persons specified in the warrant or authorisation under **section 15D(e)**:

"(b) by substituting another person, other persons, or other classes of persons for a person, persons, or classes of persons requested under **subsection (1)**:

"(c) by adding any person, persons, or classes of persons to the persons requested under **subsection (1)**.

"**15F Expiry of warrant or authorisation not to prevent further application**

The expiry of an interception warrant or of an authorisation does not prevent a further application for an interception warrant or an authorisation in respect of the same subject matter."

15 Section 16 amended (Certain interceptions permitted without interception warrant or computer access authorisation)

(1) In the heading to section 16, delete "**computer**".

(2) In section 16, before subsection (1), insert:

"(1A) This section—

"(a) applies to the interception of communications for the purpose of the Bureau's functions in **sections 8A and 8B**; but

"(b) does not authorise anything to be done for the purpose of intercepting the private communications of a New Zealand citizen or permanent resident of New Zealand."

(3) In section 16(1), delete "foreign".

(4) Replace section 16(2) with:

"(2) The Director, or an employee of the Bureau, or a person acting on behalf of the Bureau may, without an interception warrant, or, as the case requires, without an access authorisation, intercept communications by using an interception device or by accessing an information infrastructure, but only if—

"(a) the interception does not involve any activity specified in section 15(1); and

"(b) any access to an information infrastructure is limited to access to 1 or more communication links between computers or to remote terminals; and

"(c) the interception is carried out by the Director or with the authority of the Director for the purpose of performing the Bureau's function in **section 8A or 8B**."

16 Section 17 and cross-heading repealed

Repeal section 17 and the cross-heading above section 17.

~~17 Section 18 amended (Persons acting under warrant)~~

~~(1) In the heading to section 18, after "warrant", insert "or access authorisation".~~

~~(2) Replace section 18(1) with:~~

~~"(1) Every interception warrant and access authorisation must specify the person or class of persons who may make the interception or obtain the access authorised by the warrant or the authorisation."~~

~~(3) In section 18(2),—~~

~~(a) after "A warrant", insert "or an authorisation"; and~~

~~(b) after "the warrant", insert "or authorisation".~~

~~(4) In section 18(3), after "warrant", insert "or authorisation".~~

~~(5) In section 18(4),—~~

~~(a) after "a warrant", insert "or an authorisation"; and~~
~~(b) after "the warrant", insert "or the authorisation".~~

17 Section 18 repealed (Persons acting under warrant)
Repeal section 18.

18 Section 19 and cross-heading replaced
Replace section 19 and the cross-heading above section 19 with:

"*Register of interception warrants and access authorisations*

"**19 Register of interception warrants and access authorisations**

"(1) The Director must keep a register of interception warrants and access authorisations issued under this Part.

~~"(2) The following information must be entered in the register in relation to each interception warrant and access authorisation issued under this Part:~~
~~"(a) the date of issue:~~
~~"(b) the period for which the warrant or authorisation is issued:~~
~~"(c) the function or functions of the Bureau to which the warrant or authorisation relates:~~
~~"(d) in the case of a warrant, the interception device or interception devices specified:~~
~~"(e) in the case of an authorisation,—~~
~~"(i) any person specified in the authorisation:~~
~~"(ii) any place specified in the authorisation:~~
~~"(iii) the information infrastructure or information infrastructures specified in the authorisation:~~
~~"(iv) any conditions specified in the authorisation.~~

"(2) The following information must be entered in the register in relation to every interception warrant and access authorisation issued under this Part:
"(a) the information specified in **section 15D**; and
"(b) whether the warrant or authorisation contains a request to give assistance under **section 15E(1)**; and

"(c) any person, persons, or classes of persons substituted or added under **section 15E(3)**.

"(3) The Director must make the register available to the Minister or the Inspector-General of Intelligence and Security as and when requested by the Minister or the Inspector-General.

"*Urgent issue of warrants and authorisations*

"**19A Urgent issue of warrants and authorisations**

"(1) This section applies if—

"(a) the Minister is unavailable to issue an interception warrant or access authorisation; and

"(b) circumstances make it necessary to issue a warrant or an authorisation before the Minister is available to do so.

"(2) Any of the following may issue a warrant or an authorisation:

"(a) the Attorney-General:

"(b) the Minister of Defence:

"(c) the Minister of Foreign Affairs.

"(3) A person issuing a warrant or an authorisation under **subsection (2)** may do so only to the same extent and subject to the same terms and conditions as apply to the issue of a warrant or an authorisation by the Minister.

"(4) A person issuing a warrant or an authorisation under **subsection (2)** must, as soon as practicable after the Minister becomes available, advise the Minister about the issue of the warrant."

19 Section 20 amended (Director's functions in relation to warrants and authorisations not to be delegated)

In section 20, replace "section 17 or section 19" with "**section 15A**".

20 Section 21 replaced (Action taken in accordance with warrant or authorisation justified)

Replace section 21 with:

"**21 Immunity from civil and criminal liability**

"(1) Every person is immune from civil or criminal liability—

"(a) for any act done in good faith in order to obtain a warrant or an authorisation under this Act:

"(b) for anything done in good faith under a warrant or an authorisation under this Act or under section 16, if done in a reasonable manner.

"(2) Every person is immune from civil and criminal liability for any act done in good faith and in a reasonable manner in order to assist a person to do anything authorised by a warrant or an authorisation under this Act or under section 16.

"(3) In any civil proceeding in which a person asserts that he or she has an immunity under this section, the onus is on the person to prove the facts necessary to establish the basis of the claim.

"(4) Section 86 of the State Sector Act 1988 applies to the Director and any employee of the Bureau subject to this section."

~~**21 Section 22 amended (Term of warrant or authorisation)**~~

~~In section 22(1), delete "computer".~~

21 Section 22 repealed (Term of warrant or authorisation)

Repeal section 22.

22 Section 23 amended (Destruction of irrelevant records obtained by interception)

(1) In section 23(1), delete "computer".

(2) In section 23(1), after "except to the extent", insert "permitted by **section 25** or to the extent".

(3) In section 23(1)(a), replace "section 7(1)(a)" with "**section 7**".

(4) In section 23(1)(b), replace "section 8" with "**section 8A or 8B**".

23 Section 24 amended (Duty to minimise impact of interception on third parties)

In section 24, replace "a computer" with "an".

24 Section 25 replaced (Prevention or detection of serious crime)

Replace section 25 with:

"**25 When incidentally obtained intelligence may be retained and communicated to other persons**

"(1) Despite section 23, the Director may—

"(a) retain incidentally obtained intelligence that comes into the possession of the Bureau for 1 or more of the purposes specified in **subsection (2)**; and

"(b) communicate that intelligence to the persons specified in **subsection (3)**.

"(2) The purposes are—

"(a) preventing or detecting serious crime in New Zealand or any other country:

"(ab) preventing or avoiding the loss of human life on the high seas:

"(b) preventing or responding to threats to human life in New Zealand or any other country:

"(c) identifying, preventing, or responding to threats or potential threats to the ~~national~~ ~~security~~ security or defence of New Zealand or any other country.

"(3) The persons are—

"(a) any employee of the New Zealand Police:

"(b) any member of the New Zealand Defence Force:

"(c) the Director of Security under the New Zealand Security Intelligence Service Act 1969:

"(d) any ~~other~~ ~~person~~ public authority (whether in New Zealand or overseas) that the Director thinks fit to receive the information."

25 New sections 25A and 25B and cross-heading inserted

After section 25, insert:

"*Protection and disclosure of personal information*

"**25A Formulation of policy on personal information**

"(1) As soon as is reasonably practicable after the commencement of this section, the Director must, in consultation with the Inspector-General of Intelligence and Security and the Privacy Commissioner, formulate a policy that applies to the Bureau (in a manner compatible with the requirements of national security) the principles set out in **section 25B**.

"(2) The policy must require—

"(a) all employees and persons acting on behalf of the Bureau to comply with the policy; and

"(b) the level of compliance with the policy to be regularly audited~~;~~ ~~and~~.

~~"(c) the Director to advise the Privacy Commissioner of the results of audits conducted under the policy.~~

"(2A) The Director must advise the Privacy Commissioner of the results of audits conducted under the policy.

"(2B) The Privacy Commissioner may provide a report to the Inspector-General of Intelligence and Security if the results of the audits disclose issues that need to be addressed.

"(3) The Director must regularly review the policy at intervals of not more than 3 years and, if he or she considers it appropriate to do so, revise the policy in consultation with the Inspector-General of Intelligence and Security and the Privacy Commissioner.

"**25B Principles to protect personal information**

The principles referred to in **section 25A(1)** are as follows:

"(a) the Bureau must not collect personal information unless—

"(i) the information is collected for a lawful purpose connected with a function of the Bureau; and

"(ii) the collection of the information is reasonably necessary for that purpose, having regard to the nature of intelligence gathering:

"(b) the Bureau must ensure—

"(i) that any personal information it holds is protected by such security safeguards as it is reasonable in the circumstances to take against—

"(A) loss; and

"(B) access, use, modification, or disclosure, except with the authority of the Bureau; and

"(C) other misuse; and

"(ii) that if it is necessary for any personal information that it holds to be given to a person in connection with the provision of a service to the Bureau,

everything reasonably within the power of the Bureau is done to prevent unauthorised use or unauthorised disclosure of the information:

"(c) the Bureau must not use personal information without taking such steps (if any) as are, in the light of the interests and constraints of national security and the nature of intelligence gathering, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date, complete, relevant, and not misleading:

"(d) the Bureau must not keep personal information longer than is required for the purposes for which the information may be lawfully used."

26 Consequential amendments

The Acts listed in the **Schedule** are consequentially amended in the manner indicated in that schedule.

Part 2
Amendments to Inspector-General of Intelligence and Security Act 1996

27 Principal Act

This **Part** amends the Inspector-General of Intelligence and Security Act 1996 (the **principal Act**).

28 Section 2 amended (Interpretation)

In section 2(1), insert in ~~its~~ their appropriate alphabetical order:

"**advisory panel** means the advisory panel established by **section 15A**

"**Deputy Inspector-General** means the Deputy Inspector-General of Intelligence and Security holding office under **section 5**

"**Intelligence and Security Committee** means the Intelligence and Security Committee established by section 5 of the Intelligence and Security Committee Act 1996".

29 Section 5 and cross-heading replaced

Replace section 5 and the cross-heading above section 5 with:

"*Inspector-General and Deputy Inspector-General of Intelligence and Security*

"**5 Inspector-General and Deputy Inspector-General of Intelligence and Security**

"(1) There must be—

"(a) an Inspector-General of Intelligence and Security; and

"(b) a Deputy Inspector-General of Intelligence and Security.

"(2) The Inspector-General and Deputy Inspector-General must be appointed by the Governor-General on the recommendation of the Prime Minister following consultation with the Intelligence and Security Committee ~~established by section 5 of the Intelligence and Security Committee Act 1996~~.

"(3) The Deputy Inspector-General has and may exercise and perform the powers and functions of the Inspector-General (whether under this Act or any other enactment), but subject to—

"(a) the control and direction of the Inspector-General; and

"(b) to avoid doubt, the same duties, obligations, restrictions, and terms under which the Inspector-General exercises and performs his or her powers and functions.

"(4) Sections 7 to 9 and 18 apply to the Deputy Inspector-General as if references in those sections to the Inspector-General were references to the Deputy Inspector-General.

"(5) If there is a vacancy in the office of the Inspector-General, or if the Inspector-General is absent from duty for any reason, the Deputy Inspector-General has and may exercise and perform all the powers, functions, and duties of the Inspector-General for as long as the vacancy or absence continues.

"(6) The fact that the Deputy Inspector-General exercises or performs any power, function, or duty of the Inspector-General is, in the absence of proof to the contrary, conclusive evidence of the Deputy Inspector-General's authority to do so."

30 Section 6 amended (Term of office)

(1) Replace section 6(1) with:

"(1) Every person appointed as the Inspector-General or Deputy Inspector-General—

"(a) is to be appointed for a term not exceeding 3 years; and

"(b) may be reappointed, but in the case of the Inspector-General only once."

(2) In section 6(2) and (3), after "Inspector-General", insert "or Deputy Inspector-General" in each place.

31 Section 11 amended (Functions of Inspector-General)

(1AA) After section 11(1)(b), insert:

"(ba) to inquire into any complaint made by the Speaker of the House of Representatives on behalf of 1 or more members of Parliament:".

(1) Replace section 11(1)(c), (d), and (da) with:

"(c) to inquire at the request of the Minister or the Prime Minister or of the Inspector-General's own motion~~, but subject to the concurrence of the Minister,~~ into any matter where it appears that a New Zealand person has been or may be adversely affected by any act, omission, practice, policy, or procedure of an intelligence and security agency:

"(ca) to inquire at the request of the Minister or the Prime Minister or of the Inspector-General's own motion into the propriety of particular activities of an intelligence and security agency:

"(d) without limiting paragraph (a), to review at intervals of not more than 12 months—

"(i) the effectiveness and appropriateness of the procedures adopted by each intelligence and security agency to ensure compliance with its governing legislation in relation to the issue and execution of warrants and authorisations; and

"(ii) the effectiveness and appropriateness of compliance systems concerning operational activity, including all supporting policies and practices of an intelligence and security agency relating to—

"(A) administration; and
"(B) information management; and
"(C) risk management; and
"(D) legal compliance generally:

"(da) to conduct unscheduled audits of the procedures and compliance systems described in **paragraph (d)**:".

(2) Repeal section 11(2).

(3) In section 11(3), replace "(1)(c)(ii)" with "**(1)(ca)**".

32 Section 12 amended (Consultation)

Replace section 12(2) with:

"(2) The Inspector-General may—
"(a) consult any of the persons specified in **subsection (3)** about any matter relating to the functions of the Inspector-General under section 11; and
"(b) despite section 26(1), disclose to any of the persons consulted any information that the Inspector-General considers necessary for the purpose of the consultation.

"(3) The persons are—
"(a) the Controller and Auditor-General:
"(b) an Ombudsman:
"(c) the Privacy Commissioner:
"(d) a Human Rights Commissioner:
"(e) the Independent Police Conduct Authority."

33 Section 15 amended (Jurisdiction of courts and other agencies not affected)

In section 15(3), replace "or of the Privacy Commissioner" with ", the Privacy Commissioner, a Human Rights Commissioner, or the Independent Police Conduct Authority".

33A New sections 15A to 15F and cross-heading inserted

After section 15, insert:

"*Advisory panel*

"**15A Advisory panel established**

This section establishes an advisory panel.

"**15B Function of advisory panel**

"(1) The function of the advisory panel is to provide advice to the Inspector-General.

"(2) The advisory panel may provide advice—

"(a) on request from the Inspector-General; or

"(b) on its own initiative.

"(3) To assist the advisory panel to perform its function,—

"(a) the advisory panel may ask the Inspector-General to provide information; and

"(b) the Inspector-General may provide information to the advisory panel, whether in response to a request under **paragraph (a)** or on his or her own initiative.

"(4) The advisory panel may make a report to the Prime Minister on any matter relating to intelligence and security, if the advisory panel considers that the matter should be drawn to the attention of the Prime Minister.

"**15C Membership of advisory panel**

"(1) The advisory panel consists of—

"(a) 2 members appointed under **subsection (2)**, 1 of whom must also be appointed as the chairperson of the panel; and

"(b) the Inspector-General.

"(2) The members and chairperson appointed under this subsection are appointed by the Governor-General on the recommendation of the Prime Minister after consulting the Intelligence and Security Committee.

"(3) One of the members appointed under **subsection (2)** must be a lawyer within the meaning of the Lawyers and Conveyancers Act 2006 who has held a practising certificate as a barrister or barrister and solicitor for not less than 7 years.

"(4) Both of the members appointed under **subsection (2)** must have an appropriate security clearance.

"(5) A member appointed under **subsection (2)**—

"(a) holds office for a term not exceeding 5 years; and

"(b) may from time to time be reappointed; and

"(c) may at any time resign office by notice in writing to the Prime Minister; and

"(d) may be removed from office by notice in writing from the Prime Minister for misconduct, inability to perform the functions of office, or neglect of duty.

"**15D Remuneration of appointed members of advisory panel**

"(1) A member of the advisory panel appointed under **section 15C(1)(a)** is entitled—

"(a) to receive remuneration not within **paragraph (b)** for services as a member at a rate and of a kind determined by the Minister in accordance with the fees framework; and

"(b) in accordance with the fees framework, to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out his or her office as a member.

"(2) For the purposes of **subsection (1)**, **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.

"**15E Clerical and secretarial services**

The Department of the Prime Minister and Cabinet is responsible for providing to the advisory panel the clerical and secretarial services necessary for the advisory panel to perform its function effectively and efficiently.

"**15F Advisory panel to determine own procedure**

The advisory panel may determine its own procedure."

33B Section 24 amended (Proceedings privileged)

Replace section 24(1) with:

"(1) Subject to subsection (2),—

"(a) no proceedings, civil or criminal, may be brought against the Inspector-General, an appointed member of the advisory panel, or against any employee of the Inspector-General, for anything done or reported or said by the Inspector-General, appointed member, or employee in the course of the exercise or intended

exercise of their functions under this Act, unless it is shown that the Inspector-General, appointed member, or employee acted in bad faith:

"(b) neither the Inspector-General nor an appointed member of the advisory panel nor any employee of the Inspector-General nor any person who has held the appointment of Inspector-General or who has been an appointed member of the advisory panel or who has been an employee of the Inspector-General is to be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions under this Act."

34 Section 25 amended (Reports in relation to inquiries)

After section 25(5), insert:

"(6) As soon as practicable after receiving a report from the Inspector-General, the Minister—

"(a) must provide his or her response to the Inspector-General and the chief executive of the intelligence and security agency concerned; and

"(b) may provide his or her response to the Intelligence and Security Committee ~~established under section 5 of the Intelligence and Security Committee Act 1996~~.

"(7) **Subsection (6)** does not apply to the extent that a report relates to employment matters or security clearance issues.

"(8) For the purposes of this section,—

"(a) the Inspector-General may, after consulting the chief executive of the intelligence and security agency concerned, determine the security classification of a report prepared under this section; and

"(b) any matter quoted or summarised in the report must be given a security classification not less than the security classification of the matter quoted or summarised."

35 New section 25A inserted (Publication of Inspector-General's reports under section 25)

After section 25, insert:

"**25A Publication of Inspector-General's reports under section 25**

"(1) As soon as practicable after forwarding a report as required by section 25(1), the Inspector-General must make a copy of the report publicly available on an Internet site maintained by or on behalf of the Inspector-General.

"(2) However, the Inspector-General must not, in the copy of a report made publicly available under **subsection (1)**, disclose—

"(a) information the public disclosure of which would be likely to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence—

"(i) by the government of any other country or any agency of such a government; or

"(ii) by any international organisation; or

"(b) information the public disclosure of which would be likely to endanger the safety of any person; or

"(c) the identity of any person who is or has been an officer, employee, or agent of an intelligence and security agency other than the chief executive, or any information from which the identity of such a person could reasonably be inferred; or

"(d) information the public disclosure of which would be likely to prejudice—

"(i) the continued discharge of the functions of an intelligence and security agency; or

"(ii) the security or defence of New Zealand or the international relations of the Government of New Zealand; or

"(e) any information about employment matters or security clearance issues."

35A Section 26 amended (Disclosure)

In section 26(1), after "Act, the Inspector-General", insert "and an appointed member of the advisory panel".

36 Section 27 amended (Reports by Inspector-General)

(1) After section 27(2)(b), insert:

"(ba) certify ~~whether~~ the extent to which each intelligence and security agency's compliance systems are sound; and".

(2) In section 27(3), replace "lay a copy of the report before" with "present a copy of the report to".

(3) In section 27(4) and (6), replace "laid before" with "presented to".

(4) After section 27(6), insert:

"(6A) As soon as practicable after a copy of the report is presented to the House of Representatives under subsection (3), the Inspector-General must make a copy of the report (as presented to the House of Representatives) publicly available on an Internet site maintained by or on behalf of the Inspector-General."

36A Section 28 amended (Secrecy)

In section 28(1), after "been, the Inspector-General", insert "or an appointed member of the advisory panel".

Part 3
Amendments to Intelligence and Security Committee Act 1996

37 Principal Act

This **Part** amends the Intelligence and Security Committee Act 1996 (the **principal Act**).

38 Section 6 amended (Functions of Committee)

Replace section 6(1)(e) with:

"(e) subject to section 18,—

"(i) to present an annual report to the House of Representatives on the activities of the Committee; and

"(ii) to make an annual report publicly available on the Internet site of the New Zealand Parliament:

"(f) to consider and discuss with the Inspector-General of Intelligence and Security his or her annual report as presented to the House of Representatives under section

27(3) of the Inspector-General of Intelligence and Security Act 1996."

39 New section 7A inserted (Further provisions relating to chairperson and Leader of the Opposition)

After section 7, insert:

"**7A Further provisions relating to chairperson and Leader of the Opposition**

"(1) **Subsection (2)** applies if—

"(a) the Committee is, in the course of conducting a financial review of an intelligence and security agency, discussing any matter relating to the performance of the intelligence and security agency; and

"(b) the Prime Minister is the responsible Minister under the legislation governing the intelligence security agency.

"(2) If the Prime Minister is chairing the meeting of the Committee at which the matter is discussed,—

"(a) the Prime Minister must not act as chairperson of the Committee; and

"(b) another member of the Committee nominated by the Prime Minister, being one of the 2 members appointed under section 7(1)(c), must act as chairperson.

"(3) The chairperson of the Committee may appoint either of the following (if not already a member of the Committee) to be an alternate chairperson to act as chairperson at the discretion of the chairperson in the absence of the chairperson at a meeting of the Committee:

"(a) the Deputy Prime Minister:

"(b) the Attorney-General.

"(4) The Leader of the Opposition may appoint the person who acts as his or her deputy in the House of Representatives to act in place of the Leader of the Opposition in the absence of the Leader of the Opposition at a meeting of the Committee."

39A Section 13 amended (Meetings of Committee)

After section 13(6), insert:

"(6A) Subsection (6) applies subject to **section 7A**."

40 Section 18 amended (Restrictions on reports to House of Representatives)

In section 18(1), replace "reporting" with "presenting an annual report or other report".

Schedule

s 26

Consequential amendments

Radiocommunications Act 1989 (1989 No 148)

In section 133A(2)(c)(ii), replace "foreign intelligence" with "intelligence about the capabilities, intentions, and activities of foreign persons and foreign organisations".

Repeal section 133A(3)(a).

Search and Surveillance Act 2012 (2012 No 24)

In section 47(1)(c)(ii), replace "17" with "**15A(1)(a)**".

Telecommunications (Interception Capability) Act 2004 (2004 No 19)

In section 3(1), definition of **interception warrant**, paragraph (c), replace "17" with "**15A(1)(a)**".

In section 3(1), definition of **other lawful interception authority**, replace paragraph (a)(ii) with:

"(ii) to access an information infrastructure (within the meaning of the Government Communications Security Bureau Act 2003) that is granted under **section 15A(1)(b)** of that Act; and".

Legislative history

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