

# House of Representatives

# Supplementary Order Paper

Wednesday, 16 October 2013

## Telecommunications (Interception Capability and Security) Bill

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### *Proposed amendments*

Clare Curran, in Committee, to move the following amendments:

#### *Clause 2*

After *clause 2(2)* (after line 11 on page 7), insert:

- (3) This Bill may only be submitted for Royal assent if an independent review of New Zealand's security agencies has been conducted and the recommendations incorporated into this Bill prior to the third reading of the Bill.
- (4) This Bill may only be submitted for Royal assent if a select committee has reconsidered it and reported that the Bill is consistent with the New Zealand Bill of Rights Act 1990.

#### *Clause 3*

In *clause 3(1)*, delete the definition of **national security** (lines 15 and 16 on page 10).

In *clause 3(1)*, in *paragraph (b)* of the definition of **network operator** (lines 1 to 3 on page 11), replace “service” with “service; or” and insert:

- (c) for clarification, a network operator does not include those whose purpose is facilitating the transmission of any message from one device to another.

In *clause 3(1)*, in *paragraph (a)* of the definition of **service provider** (lines 2 to 7 on page 13), delete “from within or outside New Zealand, provides or makes available in New Zealand”.

In *clause 3(1)*, replace the definition of **surveillance agency** (lines 12 to 14 on page 13) with:

**surveillance agency** means—

- (a) a law enforcement agency in New Zealand; or
- (b) an intelligence and security agency in New Zealand

*New clause 35A*

After *clause 35* (after line 5 on page 38), insert:

**35A Technical Advisory Board**

- (1) A Technical Advisory Board must be established with the purpose of increasing expertise in relation to network security and consideration of proposed mitigations.
- (2) Any matter to be referred to the Minister requesting they exercise their discretion or recommend prescribing an additional area of specified security interest must first be referred to the Technical Advisory Board for analysis and recommendations.
- (3) The Technical Advisory Board must comprise equal representatives from government and the industry, with an independent chair.
- (4) The Minister may only appoint members of the Technical Advisory Board after consulting with representatives from the telecommunications industry.

*Clause 46*

In *clause 46(4)* (lines 13 to 21 on page 45), insert in its appropriate alphabetical order:

**network operator** means only the class of network operators specifically identified by the Director

*Clause 47*

After *clause 47(2)* (after line 6 on page 46), insert:

- (3) Network operators with obligations under this section are only the class of network operators specifically identified by the Director.

*Clause 48*

Delete *clause 48* (lines 7 to 27 on page 46).

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**Explanatory note**

This Supplementary Order Paper inserts a requirement that the Bill may not be assented to without first holding an independent review of New Zealand's security agencies and incorporating those recommendations into the Bill prior to the third reading.

This Supplementary Order Paper also makes a number of amendments to the definitions in *clause 3*. The definition of **national security** is deleted as it is redundant. The Bill as drafted places onerous obligations upon network operators and may capture many who it may not have intended to capture. The definition of **network operator** is amended so that blogs, sites such as (but not limited to) newspaper websites, and other sites such as TradeMe are not captured by this legislation. The definition of **service provider** is amended to return it to

the wording as it was at the Bill's introduction. The definition of **surveillance agency** is replaced to clarify that this term only applies to New Zealand agencies.

This Supplementary Order Paper inserts a *new clause 35A* that establishes a Technical Advisory Board to which matters must be referred in instances where the Minister will be required to exercise their discretion or prescribe an additional area of specified security interest.

A new definition of **network operator** is inserted in *clause 46(4)*. This limits the network operators to whom these sections apply to a class of network operators positively identified, rather than providing blanket coverage of all network providers from which exemptions may be sought.

*Clause 48* is deleted as it relates to exemptions and is redundant as the presumption with amendments to *clauses 46 and 47* is for specific inclusion rather than blanket coverage.

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