

IN CONFIDENCE

OFFICE OF THE MINISTER
FOR COMMUNICATIONS AND INFORMATION TECHNOLOGY

Cabinet

TELECOMMUNICATIONS (INTERCEPTION CAPABILITY AND SECURITY) BILL:
APPROVAL FOR INTRODUCTION

[Paragraphs 1 to 4 out of scope]

Updated Interception Capability Requirements

5. Part 2 of the Bill updates current interception requirements on network operators and telecommunications service providers. The changes are to:

- a. make obligations on industry clear and effective in light of changing industry structures;

[Out of scope]

- c. ensure the scheme is flexible enough to match today's operational needs, and future technology developments.

[Out of scope]

- b. ensure obligations in the Act can remain up to date, by creating a structured process for the future extension of interception capability obligations to telecommunication service providers;

[Out of scope]

[Paragraphs 9 to 16 out of scope]

- a. update existing obligations on the telecommunications industry (to help effect duly authorised interception operations), to make the obligations more proportionate, flexible and certain; and

[Paragraphs 18 to 28 out of scope]

[Paragraphs 18 to 28 out of scope]

Duty to assist

29. The existing TICA currently requires all service providers, as well as all network operators⁶, to assist with an interception operation, when presented with a warrant or other lawful authority to intercept.
30. Subpart 3 amends the duty to put beyond doubt that the duty is relevant to companies whether based in New Zealand or based overseas, and whether or not they have made prior investment in capability. Amendments are also made to expressly list the various elements of assistance which may be required to help

[Out of scope]

⁶ "Service provider" is currently defined as follows, and the definition will not change: "any person who provides a telecommunication service to an end user (whether or not as part of a business undertaking, and regardless of the nature of that business undertaking)". The definition of network operator will not change either: "Network operator" means "a person who owns, controls or operates a public telecommunications network, or a person who supplies (whether by wholesale or retail) another person with the capability to provide a telecommunications service".

fulfil a warrant. These include assistance to remove encryption (if the operator or provider provided that encryption).

31. All these elements mirror requirements in the capability obligation. The difference is the company is required to provide all reasonable assistance, whether or not they have capability or capability obligations.

[Out of scope]

Ability to require service providers to have same obligations as network operators ('Deem-in')

35. Subpart 5 includes new provisions which allow interception capability obligations to be extended, if needed, to 'telecommunication service providers' who, in contrast to 'network operators', do not have any capability obligations today. The category of 'service providers' includes companies who provide software-level telecommunications services (i.e. over the top providers such as webmail, or internet-based VoIP **[Withheld under s6(c)]**, as well as internet cafes.
36. Deemed-in service providers would be subject to all interception-based requirements (including registration, security cleared staff etc.) which apply to network operators.⁶

[Out of scope]

⁶ The deeming-in would not extend network security requirements. These will only apply to network operators.

37. At the application of a surveillance agency, service providers could be deemed-in by confidential ministerial direction (for individually named providers), or by regulation (for categories of provider).
38. The extension of obligations could only be made if the Minister responsible for the Act was satisfied that the direction is necessary for reasons of national security or law enforcement. The Minister would need to have regard to a number of factors, including the cost of compliance, and the effect on competition and innovation. The Minister would be required to take into account the views of affected operators, and those of relevant Ministerial colleagues (the Ministers for the surveillance agencies, and the Minister for Communications and Information Technology⁹).
39. Except where the deem-in occurs by regulation, the affected service provider could also request a review of the Ministerial decision to deem them in. The review panel would be appointed by the Government and would make recommendations to the Minister, which could be adopted at the Minister's discretion.

[Paragraphs 40 – 61 out of scope]

[Withheld under s9(2)(g)(i)]

Interception capability

[Withheld under s9(2)(g)(i)]

[Withheld under s6(a), s6(c) and 9(2)(g)(i)]

[Out of scope]

65. Equally, it is not appropriate to extend capability obligations to application service providers generally, because:
- a. Overseas-based providers generally have different capability obligations to meet requirements in their home jurisdiction. **[Withheld under s6(a) and s6(c)]**
 - b. Meanwhile all service providers (whether at the application level or otherwise) already have a duty to assist, which local providers must comply with, and which international providers can recognise and act upon if it is not inconsistent with their local laws.
66. Instead, the Act is being updated to permit the extension of capability obligations to service providers (including application providers), using a structured process, and where this is shown to be necessary for reasons of national security or law enforcement (see-in' power).

[Out of scope]

[Out of scope]

69. The amendment to make clear that the duty to assist expressly includes assistance to remove encryption (if the network operator or service provider provided that encryption) may also draw some attention. However, this amendment simply clarifies the current scope of the duty to assist. The amendment mirrors the requirement to decrypt which is part of the current obligation to be intercept capable. Further, the amendment does not change any current privacy settings because it only applies to communications which are already authorised to be intercepted. The current statutory requirements to maintain the privacy of, and not interfere with, telecommunications which are not authorised to be intercepted will remain unchanged.

[Paragraphs 70 – 94 out of scope]

[Paragraphs 70 – 94 out of scope]

Hon Amy Adams
Minister for Communications and Information Technology
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RELEASED UNDER THE
OFFICIAL INFORMATION ACT

[Appendix One (pages 19 to 22) out of scope]

RELEASED UNDER THE
OFFICIAL INFORMATION ACT