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18 May 2012

Review of Telecommunications (Interception Capability) Act (TICA)

Purpose

[Out of scope]

Action Sought

	Action Sought	Deadline
Minister for Communications and Information Technology	Note the contents of the report.	23 May 2012

Ministry Contacts

Name	Position and Unit	Telephone		1 ST Contact
		Work	After Hours	
Kirstie Hewlett	Director, Energy and Communications Branch	[Withheld under s9(2)(a)]		✓
		[Withheld under s9(2)(a)]		
		[Withheld under s9(2)(a)]		

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5 August 2013

Minister for Communications and Information
Technology

**Review of Telecommunications Interception Capability Act
(TICA)**

[Paragraphs 1-34 out of scope]

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[Paragraphs 1-34 out of scope]

Issues raised during the review

Background

35. The current TICA, and the telecommunications interception scheme more broadly, reflected the time in which it was created and assumed the following:

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- d. encryption by network operators only;
- e. telecommunications services provided almost exclusively by network operators; and

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[Out of scope]

36. All of these assumptions have been displaced or impacted by recent changes in the telecommunications industry. These changes include:

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- c. entrance of new kinds of telecommunications services (for example Voice over Internet Protocol (VoIP) and chat services) which run “over-the-top” of network operators’ infrastructure and are offered by separate companies;
- d. increasingly common encryption of telecommunications services at a number of layers at once (e.g. both at the level of the individual email, and at the network level);

[Paragraphs 36(e)-44 out of scope]

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[Paragraphs 36(e)-44 out of scope]

Application providers displacing network operators

45. Increasingly, a number of internet based services (known as “application services”, for example, VoIP services), which allow people to communicate with each other, are being offered by companies other than traditional telecommunications providers, and ‘over-the-top’ of those telecommunications providers’ networks. Some of these services – for example, VoIP, and IP video conferencing, web-based email – are displacing the telecommunications services which are provided by network operators.
46. These services were once a core component of the services of fully integrated telecommunication companies, however technology has evolved to allow companies to provide these services to end users without themselves owning or controlling a public telecommunications network.
47. These “application services” will become an increasingly integral part of the way people communicate, and are likely to carry a larger proportion of communications in future, as services migrate to the ‘cloud’.
48. Currently, specialist application providers do not have interception obligations, because they operate over-the-top of another providers’ network and do not fall into the definition of a network operator. They are only subject to the duty to assist interception agencies.

[Withheld under s6(c)]

Encryption at more than one level

49. The TICA requires that a “network operator” decrypt telecommunications they are intercepting, to the extent that they provided the encryption themselves. However, it is increasingly common for a telecommunication to be encrypted at more than one level (for example, at the network, retail, and application levels). Therefore, even when the intercepting party decrypts in compliance with current TICA, the communication may still be encrypted or otherwise modified at other levels, in a way which makes it unintelligible without further processing.

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[Withheld under s6(a) and s6(c)]

[Paragraphs 54-86 out of scope]

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Overview of draft proposals for change

[Out of scope]

- 1) Tailoring obligations to services and layers

[Out of scope]

- 4) Ensuring interception capability not eroded by new technologies
 - Requiring interception capability from certain application providers
 - Expressly requiring assistance with decryption

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[Out of scope]

Kirstie Hewlett
Director
Energy and Communications Branch
[Withheld under s9(2)(a)]

Hon Amy Adams
**Minister for Communications and
Information Technology**

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