

In Confidence

Interception and Network Security

To Hon Amy Adams	Priority Medium
Date 31 August 2012	Deadline 11 September 2012

Purpose

[Paragraphs 1 to 12 out of scope]

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[Paragraphs 1 to 12 out of scope]

Lawful Interception (Review of the Telecommunications (Interception Capability) Act 2004)

Problem definition

[Out of scope]

The interception capability obligation:

[Out of scope]

- d. places “network operators” at a competitive disadvantage by requiring all of their services to be intercept capable, when identical services may be offered by a company which is not a network operator and therefore does not have an obligation.

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[Out of scope]

- 17 More generally, as the telecommunications industry continues to change, the Act does not have sufficient flexibility to keep pace with new practices/services/players in the industry. For example, it does not sufficiently address the increasing encryption of communications, and does not have the ability to extend to emerging telecommunications services if they become significant in future.

[Out of scope]

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24 Australia,

[Out of scope]

are consulting on the possibility to provide for tiered interception obligations on industry, setting out more detailed requirements as to how to provide interception capability on different services, extending interception to ancillary providers (for example, social networking sites and cloud computing providers), and providing an offence for failing to assist with decryption.

[Paragraphs 25 – 40 out of scope]

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

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- 42 Application providers: The need for application providers to have adequate interception capability, whether they are New Zealand based or not, is an increasingly important issue (especially with moves to cloud computing), **[Withheld under s6(a) and s6(c)]**

Industry is also concerned to see change in this area because the current distribution of obligations is inequitable and leads to market distortions. In any targeted consultation New Zealand network operators are likely to raise the need to shift capability obligations onto application providers (so that local network operators are not required to provide application-level capability).

- 43 We also recognise that there is a need to ensure a mechanism in the TICA to address new providers and services in future (like application providers), as there is a risk that any amendments to the TICA will be inflexible and very quickly out of date.

44

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

- 45 Given the operational need for the surveillance agencies to intercept effectively at the application level and the industry concerns,

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

- 46 We also note that there is an independent proposal to provide a structured process (effectively a deem-in process) in the legislation to extend capability requirements in the future which may be applied in future to application providers and any other new kinds of providers. This proposed process would only apply to services which are already authorised to be intercepted in the warranting legislation of agencies, and only if insufficient investment in capability was adversely affecting national security or law enforcement.

- 47 Under this proposed process, the impact of capability obligations on the business of the provider, and the impact on competition and innovation would also need to be taken into account. This would ensure the legislation is flexible for the future and issues like application providers, as they arise, can be considered through a fair process which does not require legislative amendment, but that these issues do not need to be debated in detail now. This also provides another mechanism to cover application providers if an explicit targeted extension to application providers was not favoured.

- 48 Decryption: there is simply a proposal to amend the Act to make clear that the duty to assist includes help with decryption, but that telecommunications providers need only provide that assistance in a manner of their choosing, and are only required to use means within their control. Clarifying the scope of assistance with decryption in this way will not change current privacy settings. The requirement would only apply to communications already authorised to be intercepted, and after a provider is presented with a warrant or lawful authority.

[Paragraphs 49 – 62 out of scope]

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

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