

Independent Review of Intelligence and Security

Call for submissions

The review

Hon Sir Michael Cullen and Dame Patsy Reddy seek submissions to inform their independent review of intelligence and security under the Intelligence and Security Committee Act 1996. The review will consider two broad questions:

- whether the legislative frameworks of the intelligence and security agencies – the Government Communications Security Bureau (GCSB) and New Zealand Security Intelligence Service (NZSIS) – are well placed to protect New Zealand’s current and future national security, while protecting individual rights;
- whether the current oversight arrangements provide sufficient safeguards at an operational, judicial and political level to ensure the GCSB and NZSIS act lawfully and maintain public confidence.

The full terms of reference can be found in the Appendix to this document.

How to have your say

Submissions will be open until 5pm on Friday 14 August 2015. You can make a submission online at <https://consultations.justice.govt.nz/independent/iris>, or by completing the “Submission” section of this document. Written submissions can be emailed to IRISsupport@justice.govt.nz or posted to IRIS Support Team, Ministry of Justice, Level 3 – Justice Centre, 19 Aitken Street, Wellington, DX SX10088.

What will happen to your submission?

Your submission will help the independent reviewers to decide what issues the review should focus on within the broad terms of reference. Your submission is sought for the purposes of this independent review only. It will not be shared with government agencies other than the Ministry of Justice (which is providing administrative support for the review) or released publicly.

The independent reviewers or their support team at the Ministry of Justice may wish to discuss your submission with you. At the beginning of the submission form you will be asked to indicate whether you are willing to be contacted for this purpose.

What happens next?

Once the independent reviewers have completed the review, they will provide their report to the Intelligence and Security Committee of Parliament by 29 February 2016.

The Committee will consider the report and table it in Parliament. The Government will then consider its response to the report, which may include introducing legislation.

Structure of this document

Section 1 of this document (*Information for submitters*) provides some brief background information for submitters on each of the topics that the terms of reference require the independent reviewers to consider. It also suggests additional resources for you to refer to if you would like further information.

Section 2 (*Your submission*) is the submission form you can complete to have your say on the review.

Appendix 1 sets out the full terms of reference for the review.

Who are the independent reviewers?



Hon Sir Michael John Cullen KNZM (MA, PhD)

Sir Michael is a former New Zealand Deputy Prime Minister. While in government he held several ministerial portfolios including Minister of Finance, Attorney-General, Minister in charge of Treaty of Waitangi Negotiations and Deputy Prime Minister. He is also a former member of the Intelligence and Security Committee.

Since retiring from Parliament in 2009, Sir Michael has served as Deputy Chair and Chair of the New Zealand Post Board. He was appointed to the Constitutional Advisory Panel in 2011. He is also currently the chief negotiator for Ngati Tuwharetoa and advisor for a number of other Iwi.

Dame Patricia (Patsy) Lee Reddy DNZM (LLM)

Dame Patsy has over 20 years of corporate governance experience as a non-executive director of a diverse range of companies, including Telecom New Zealand, Air New Zealand, Sky City Entertainment Group, New Zealand Post and Southern Petroleum.

She is currently Chair of the New Zealand Film Commission and Education Payroll Ltd, Deputy Chair of the New Zealand Transport Agency, and a Director of Payments NZ Ltd and Active Equity Holdings Ltd. She is a Chief Crown Negotiator for Treaty Settlements and a lead reviewer for Performance Improvement Framework reviews of government agencies. She also has significant governance experience in the arts and not-for-profit sectors.



Dame Patsy has previously been a member of the New Zealand Markets Disciplinary Tribunal and a partner in law firm Minter Ellison Rudd Watts. She has also lectured in the Faculty of Law at Victoria University of Wellington.

Section 1: Information for submitters

Legislative frameworks of the intelligence and security agencies

The key pieces of legislation governing the activities of the GCSB and NZSIS are the Government Communications Security Bureau Act 2003 and New Zealand Security Intelligence Service Act 1969. These Acts set out the functions and powers of the agencies, and checks and balances on how they exercise those functions and powers.¹

The New Zealand Security Intelligence Service Act 1969

The NZSIS Act provides that the functions of the NZSIS are to:

- collect and evaluate intelligence relevant to internal and external threats to security
- advise the Government on matters of security and protective measures
- provide security vetting services
- make recommendations on citizenship and immigration matters relevant to security, and
- cooperate with such other agencies (in New Zealand and abroad) that might assist NZSIS in the performance of its functions.

The Act also sets out the powers available to the NZSIS to fulfil these functions. For example, the NZSIS is able to apply for:

- intelligence warrants, which authorise the interception or seizure of communications and documents, and/or electronic tracking, for the purpose of protecting national security
- visual surveillance warrants, which allow visual surveillance where it is necessary to prevent or investigate a terrorist act.

There are a number of checks and balances contained in the Act to help ensure the NZSIS acts appropriately. For example:

- The NZSIS Act sets out principles underpinning the NZSIS's performance of its functions. These include acting in accordance with New Zealand law and human rights standards, independently and impartially, and with integrity and professionalism.
- The Director of NZSIS must take all reasonable steps to ensure NZSIS only undertakes activities relevant to the performance of its functions, and is kept free from political and other influences not relevant to the performance of its functions.
- The Director is required to report annually on NZSIS's activities to the Minister in Charge of the NZSIS, who tables the report in Parliament. The report must include details of the warrants in place during the reporting year, certified by the Minister, and any urgent warrantless surveillance authorised.

¹ The GCSB also has network security functions under the Telecommunications (Interception Capability and Security) Act 2013. This Act sets out the relationship between the agencies and private sector telecommunications network operators and service providers.

- An intelligence warrant can only be issued where the actions it authorises are necessary for a security purpose and proportionate to the value of the information sought to be obtained.
- The Minister (or Commissioner of Security Warrants for domestic intelligence warrants) can impose conditions on an intelligence warrant in the public interest or to protect third parties.
- Any person seizing or intercepting communications under a warrant must take all reasonable steps to minimise the likelihood of intercepting or seizing communications not relevant to the person who is the subject of the warrant.
- If a communication is intercepted or seized that is not relevant to national security, all copies or records must be destroyed as soon as practicable.

The Government Communications Security Bureau Act 2003

GCSB's objectives are to contribute to NZ's national security, international relations and wellbeing, and economic wellbeing. It has three functions set out in the GCSB Act:

- *Information assurance and cyber security* – Protecting communications and “information infrastructures” (including communications and information technology systems) of importance to the New Zealand government.
- *Intelligence gathering and analysis* – Gathering and analysing intelligence about foreign persons and organisations, and information infrastructures.
- *Co-operation with other entities* – Providing advice and assistance to NZ Police, NZ Defence Force and NZSIS to facilitate the performance of their functions.

When GCSB is acting under its *information assurance and cyber security* function or its *intelligence gathering and analysis* function, it can apply for:

- interception warrants, which permit the use interception devices to intercept communications, and
- access authorisations, which allow access to information infrastructures (including communications and information technology systems).

The GCSB can also access communications without a warrant or authorisation in certain situations where there is no physical connection or installation of an interception device.

When GCSB is performing its function of *co-operation with other entities*, it operates within the limitations, restrictions and protections that apply to the entity it is assisting (for example, Police).

There are a number of checks and balances contained in the Act to help ensure the GCSB acts appropriately. For example:

- When fulfilling its *intelligence gathering and analysis* function, GCSB is prohibited from doing anything for the purpose of intercepting the private communications of New Zealand citizens or permanent residents (unless they are an agent or representative of a foreign person or organisation).
- The Director of GCSB must take all reasonable steps to ensure GCSB only undertakes activities relevant to the performance of its functions, and is kept free from political and other influences not relevant to the performance of its functions.

- The Director must report annually on GCSB's activities to the Minister, who tables the report in Parliament. The report must detail the warrants and authorisations granted during the year and how many times GCSB assisted other agencies.
- The Director must keep a register of all warrants and authorisations issued, and make the register available to the Minister and Inspector-General of Intelligence and Security on request.
- The Director is required to formulate a privacy policy in consultation with the Inspector-General of Intelligence and Security and the Privacy Commissioner, in order to apply the principles set out in the GCSB Act to protect personal information.
- Any person intercepting communications or accessing information infrastructures must take all practicable and reasonable steps to minimise the likelihood of intercepting communications not relevant to the person being targeted.
- Any communications obtained by GCSB can only be retained to the extent they are relevant to one of GCSB's objectives or functions, or to preventing or responding to serious crime or threats to life or security.

Further reading

For more information, see:

- NZSIS Act (available at <http://www.legislation.govt.nz/>).
- GCSB Act (available at <http://www.legislation.govt.nz/>).
- Select Committee Report and Regulatory Impact Statement on the GCSB and Related Legislation Amendment Bill 2013 (available at <http://www.legislation.govt.nz/> and <http://www.gcsb.govt.nz/about-us/legislation/>).

Oversight of the intelligence and security agencies

The activities of the GCSB and NZSIS are overseen by three key entities:

1. Intelligence and Security Committee (ISC)

The ISC is a parliamentary committee that examines the policy, administration and expenditure of the GCSB and NZSIS. It also examines the annual report of the Inspector-General of Intelligence and Security (IGIS). The annual financial review conducted by the ISC is held in public.

The ISC also considers Bills or other matters relating to the agencies that are referred to it by Parliament or the Prime Minister because they have implications for New Zealand's national security.

Membership of the ISC includes the Prime Minister, Leader of the Opposition, two Members of Parliament (MP) nominated by the Prime Minister and one MP nominated by the Leader of the Opposition.

2. Inspector-General of Intelligence and Security (IGIS)

The IGIS investigates whether the GCSB and NZSIS act lawfully.

The IGIS can open inquiries at his or her own initiative or if requested by the responsible Minister. The IGIS also investigates complaints about the agencies.

The IGIS must review the agencies' compliance systems, such as issuing warrants and authorisations, at least every 12 months. The IGIS may also conduct unscheduled audits.

The IGIS cannot order the agencies to do something or stop doing something. However, he or she can recommend redress for complaints and report any concerns to the Minister, who is responsible for taking appropriate action. The IGIS cannot review the Minister's decisions.

The IGIS (and a Deputy IGIS) are appointed by the Governor-General for a three year term on the recommendation of the Prime Minister, after consulting the ISC.

The IGIS is supported by an advisory panel which, as well as advising the IGIS, may report to the Prime Minister on intelligence and security matters. The panel consists of two members appointed in the same manner as the IGIS and who hold office for up to five years. One panel member must have at least seven years of legal experience.

3. Commissioner of Security Warrants

The Commissioner considers applications from:

- the GCSB for warrants or authorisations to intercept private communications of New Zealand citizens or permanent residents, and
- the NZSIS for warrants to gather intelligence on or conduct visual surveillance of New Zealand citizens or permanent residents.

Applications are considered (and any warrant issued) jointly by the Minister responsible for the agencies and the Commissioner.

The Commissioner may direct NZSIS not to proceed with (or to discontinue) interceptions or seizures of communications at places not specified in the relevant intelligence warrant or occupied by a person named in the warrant.

The Commissioner is appointed by the Governor-General on the recommendation of the Prime Minister in consultation with the Leader of the Opposition. The Commissioner must be a former High Court judge, and is appointed for a three year term.

Other oversight arrangements

The Privacy Commissioner investigates complaints by members of the public about access to and correction of personal information held by GCSB or NZSIS.

The Human Rights Commission may report to the Prime Minister on any matter affecting human rights. This can include intelligence and security matters.

Further reading

For more information, see:

- Intelligence and Security Committee Act 1996 (available at <http://www.legislation.govt.nz/>).
- Inspector-General of Intelligence and Security Act 1996 (available at <http://www.legislation.govt.nz/>).
- [NZSIS Act](#) (available at <http://www.legislation.govt.nz/>).
- [GCSB Act](#) (available at <http://www.legislation.govt.nz/>).

Countering Foreign Terrorist Fighters legislation

The United Nations conservatively estimates there are over 15,000 foreign terrorist fighters (FTFs), most travelling to join the Islamic State in Iraq and the Levant. FTFs increase the intensity, duration and intractability of conflicts. On return to their country of origin, there are significant concerns that FTFs may not only plot and carry out attacks, but also engage in radicalisation, recruitment and incitement.

In December 2014 Parliament passed the Countering Terrorist Fighters Legislation Bill to amend the Customs and Excise Act 1996, the New Zealand Security Intelligence Service Act 1969 and the Passports Act 1992. The amendments introduced short-term measures to allow monitoring and investigation of FTFs, and restriction and disruption of their travel. The provisions will automatically expire on 31 March 2017 unless extended by legislation.

The new provisions are, in part, a response to New Zealand's international obligations to comply with United Nations Security Council resolution 2178.

The provisions allow the NZSIS to obtain warrants for visual surveillance, and carry out surveillance without a warrant for 24 hours in situations of emergency or urgency. The NZSIS and the Police can now access and search Customs databases for information to assist with counter-terrorism investigations. The provisions also extend the cancellation period of an individual's travel document on grounds of national security from 12 months to 36 months.

The terms of reference for the Intelligence and Security Agencies Review require the independent reviewers to consider whether the provisions arising from the Countering Foreign Terrorist Fighters legislation, which expire on 31 March 2017, should be extended or modified.

Further reading

For more information, see:

- Countering Terrorist Fighters Legislation Bill (available at <http://www.legislation.govt.nz/>).
- Countering Terrorist Fighters Legislation Bill (*as reported by the Foreign Affairs, Defence and Trade Committee of Parliament, 2 Dec 2014*) (available at <http://www.parliament.nz/>).
- All advice received by the Foreign Affairs, Defence and Trade Committee of Parliament on the Countering Terrorist Fighters Legislation Bill (Dec 2014) (available at <http://www.parliament.nz/>).
- Regulatory impact statement prepared by the Department of the Prime Minister and Cabinet (available at <http://www.dpmc.govt.nz/ris-foreign-terrorist-fighters>).
- United Nations Security Council Resolution 2178 (24 September 2014) (available at <http://www.un.org/en/sc/documents/resolutions/2014.shtml>).

Definition of “private communication” in the GCSB Act 2003

“Private communication” is defined in section 4 of the GCSB Act:

private communication—

(a) means a communication between 2 or more parties made under circumstances that may reasonably be taken to indicate that any party to the communication desires it to be confined to the parties to the communication; but

(b) does not include a communication occurring in circumstances in which any party ought reasonably to expect that the communication may be intercepted by some other person not having the express or implied consent of any party to do so

The term “private communication” is used to describe the type of communications that are protected from intentional interception by the GCSB under section 14 of the Act. Section 14 prohibits GCSB, when performing its *intelligence gathering and analysis* function, from doing anything for the purpose of intercepting the “private communications” of a New Zealand citizen or permanent resident (unless they fall within the definition of “foreign person” or “foreign organisation” in s 4).

If a communication is not “private”, so is not protected by s 14, GCSB may still require a warrant, access authorisation or other legislative authority to intercept it.

A similar definition of “private communication” is used in the Crimes Act 1961 in relation to interception offences, and in other New Zealand statutes. The use of this common definition was a deliberate choice when it was inserted into s 14 the GCSB Act in 2013.

The Law Commission’s Stage 3 report on its review of the law of privacy (*Invasion of Privacy: Penalties and Remedies*) recommended amending the definition in the context of the Crimes Act. The suggested amendment would replace the current two-step criteria with a single “reasonable expectation of privacy” test. The government has not yet considered this particular recommendation by the Law Commission.

A number of concerns with the current definition were raised in submissions on the Government Communications Security Bureau and Related Legislation Amendment Bill 2013. These included:

- Uncertainty over whether the definition covers metadata. Metadata is data about data – for example, the time and date of a phone call or email and the parties to it. It does not include the content of a communication, such as the body of an email.
- Concern that what is considered “private”, and therefore protected from interception, could change over time. Currently, a communication (eg a phone call) might not be considered “private” if there is a reason why someone who is part of that communication should be aware it might be intercepted. If intercepting communications were to become more widespread, or people start to believe that is the case, some communications might no longer be regarded as “private”.

Further reading

For more information, see:

- [GCSB Act](http://www.legislation.govt.nz/) (available at <http://www.legislation.govt.nz/>).
- [Select Committee Report](http://www.legislation.govt.nz/) on the Government Communications Security Bureau and Related Legislation Amendment Bill 2013 (available at <http://www.legislation.govt.nz/>).
- Law Commission Stage 3 report on privacy ([R113 Invasion of Privacy: Penalties and Remedies](http://www.lawcom.govt.nz/), 2010) (available at <http://www.lawcom.govt.nz/>).

Section 2: Your submission

Please complete the form below to make your submission. All of the questions are optional – your response will still be considered if you choose not to answer some questions.

If you run out of room when completing the boxes provided, you can attach additional pages.

You can email your completed submission to IRISsupport@justice.govt.nz or post it to IRIS Support Team, Ministry of Justice, Level 3 – Justice Centre, 19 Aitken Street, Wellington, DX SX10088.

Submissions close at 5pm on Friday 14 August 2015.

Information about your submission

1. What is your name?

2. What organisation do you belong to (if any)?

3. Are you a New Zealand citizen or permanent resident? Yes No

4. What country do you currently live in?

5. Are you willing to be contacted by the independent reviewers or their support team at the Ministry of Justice to discuss your submission if they have questions? Yes No

6. If you are willing to be contacted, please provide your email address, phone number or postal address:

General questions

7. On a scale of 1 (not important) to 5 (critical), how important do you think it is for the government to do the following:

	1	2	3	4	5	Don't know
Prevent terrorist acts from occurring in New Zealand	<input type="checkbox"/>					
Protect New Zealand's economic interests	<input type="checkbox"/>					
Protect the government and organisations from cyber attacks	<input type="checkbox"/>					
Protect New Zealand's international relations	<input type="checkbox"/>					
Protect New Zealand against adverse foreign influences	<input type="checkbox"/>					

8. How much do you know about the purpose of the New Zealand Security Intelligence Service (NZSIS) and Government Communications Security Bureau (GCSB) and what they do?

- | | | | |
|---------------|--------------------------|----------|--------------------------|
| A lot | <input type="checkbox"/> | A little | <input type="checkbox"/> |
| A fair amount | <input type="checkbox"/> | Nothing | <input type="checkbox"/> |

9. In your opinion, do the NZSIS and GCSB act in the best interests of New Zealand and New Zealanders?

- | | | | |
|-----------|--------------------------|------------|--------------------------|
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| Mostly | <input type="checkbox"/> | Don't know | <input type="checkbox"/> |
| Sometimes | <input type="checkbox"/> | | |

10. In which circumstances do you think the GCSB or NZSIS should be able to access information about the following people:

a) *New Zealand citizens or permanent residents*

- | | |
|---|--------------------------|
| In any circumstances | <input type="checkbox"/> |
| Where the information may assist in identifying threats to New Zealand or its interests | <input type="checkbox"/> |
| Where the individual is associated with others who are a threat to New Zealand or its interests | <input type="checkbox"/> |
| Only where the individual personally poses a threat to New Zealand or its interests | <input type="checkbox"/> |
| Never | <input type="checkbox"/> |
| Don't know | <input type="checkbox"/> |

b) *New Zealand companies and organisations*

- | | |
|---|--------------------------|
| In any circumstances | <input type="checkbox"/> |
| Where the information may assist in identifying threats New Zealand or its interests | <input type="checkbox"/> |
| Where the organisation is associated with groups that threaten New Zealand or its interests | <input type="checkbox"/> |
| Only where the organisation itself poses a threat to New Zealand or its interests | <input type="checkbox"/> |
| Never | <input type="checkbox"/> |
| Don't know | <input type="checkbox"/> |

c) *Foreign people*

- | | |
|---|--------------------------|
| In any circumstances | <input type="checkbox"/> |
| Where the information may assist in identifying threats to New Zealand or its interests | <input type="checkbox"/> |
| Where the individual is associated with others who are a threat to New Zealand or its interests | <input type="checkbox"/> |
| Only where the individual personally poses a threat to New Zealand or its interests | <input type="checkbox"/> |
| Never | <input type="checkbox"/> |
| Don't know | <input type="checkbox"/> |

d) *Foreign companies and organisations*

- | | |
|---|--------------------------|
| In any circumstances | <input type="checkbox"/> |
| Where the information may assist in identifying threats to New Zealand or its interests | <input type="checkbox"/> |
| Where the organisation is associated with groups that threaten New Zealand or its interests | <input type="checkbox"/> |
| Only where the organisation is itself a threat to New Zealand or its interests | <input type="checkbox"/> |
| Never | <input type="checkbox"/> |
| Don't know | <input type="checkbox"/> |

11. How comfortable are you with the GCSB or NZSIS having access to the following types of information, assuming it will assist them to identify threats to New Zealand or its interests?

a) *The time and date of an email, text message or phone call and the parties to it*

- | | | | |
|-------------|--------------------------|-----------------|--------------------------|
| Comfortable | <input type="checkbox"/> | Not comfortable | <input type="checkbox"/> |
| Neutral | <input type="checkbox"/> | Don't know | <input type="checkbox"/> |

b) *The locations or IP addresses where emails, phone calls or text messages are sent/made or received*

- | | | | |
|-------------|--------------------------|-----------------|--------------------------|
| Comfortable | <input type="checkbox"/> | Not comfortable | <input type="checkbox"/> |
| Neutral | <input type="checkbox"/> | Don't know | <input type="checkbox"/> |

c) *The content of emails, text messages or phone calls*

- | | | | |
|-------------|--------------------------|-----------------|--------------------------|
| Comfortable | <input type="checkbox"/> | Not comfortable | <input type="checkbox"/> |
| Neutral | <input type="checkbox"/> | Don't know | <input type="checkbox"/> |

d) *Internet browsing history*

- | | | | |
|-------------|--------------------------|-----------------|--------------------------|
| Comfortable | <input type="checkbox"/> | Not comfortable | <input type="checkbox"/> |
| Neutral | <input type="checkbox"/> | Don't know | <input type="checkbox"/> |

e) *Social media posts*

- | | | | |
|-------------|--------------------------|-----------------|--------------------------|
| Comfortable | <input type="checkbox"/> | Not comfortable | <input type="checkbox"/> |
| Neutral | <input type="checkbox"/> | Don't know | <input type="checkbox"/> |

12. How comfortable are you with private companies such as Facebook and Google collecting your personal data (for example, the websites you visit or products you look at)?

- | | | | |
|-------------|--------------------------|-----------------|--------------------------|
| Comfortable | <input type="checkbox"/> | Not comfortable | <input type="checkbox"/> |
| Neutral | <input type="checkbox"/> | Don't know | <input type="checkbox"/> |

13. Are you more comfortable with your personal data being available to private companies or the GCSB?

- | | |
|---|--------------------------|
| More comfortable with private companies | <input type="checkbox"/> |
| More comfortable with the GCSB | <input type="checkbox"/> |
| Comfortable with both | <input type="checkbox"/> |
| Not comfortable with either | <input type="checkbox"/> |
| Don't know | <input type="checkbox"/> |

Questions about topics in the terms of reference

Legislative frameworks of the intelligence and security agencies

13. Do you think the functions and powers the GCSB and NZSIS have under their governing legislation strike the right balance between allowing the agencies to effectively protect New Zealand's interests and ensuring people's rights are respected?

- Yes
- No
- Don't know

Please describe what you see as the strengths and weaknesses with the current system in terms of striking this balance, and how you would suggest any weaknesses could be addressed.

14. Do you think the legislation contains adequate checks and balances on how the agencies exercise their powers and functions?

- Yes
- No
- Don't know

If you answered no, what other checks and balances do you think should be in place?

15. Do you think the legislation has kept up with changes in technology and the nature of national security risks?

- Yes
- No
- Don't know

If you answered no, please explain why and whether there any amendments you would suggest to respond to these changes.

16. Do you have any other comments about the legislative frameworks the GCSB and NZSIS operate within?

Oversight of the intelligence and security agencies

17. Do you think the current oversight arrangements are sufficient to ensure that the GCSB and NZSIS operate within the law and act appropriately?

- Yes
- No
- Don't know

If you answered no, please explain why.

18. Do you think the current oversight arrangements give members of the public confidence that the activities of the GCSB and NZSIS are adequately scrutinised?

- Yes
- No
- Don't know

If you answered no, please explain why.

19. Are there any improvements you think could be made to the oversight arrangements?

Please explain how any suggested improvements would help ensure the agencies act lawfully and/or ensure members of the public can have confidence in them.

Countering Foreign Terrorist Fighters Legislation

20. Do you think some or all of the current provisions should continue in their present form beyond 31 March 2017?

- Yes
- No
- Don't know

If yes, which provisions?

Why do you think the provisions should continue (or not)?

21. Do you think some or all of the current provisions should be continued beyond 31 March 2017 but in a modified form?

- Yes
No
Don't know

If yes, which provisions? What changes would you recommend?

Definition of “private communication” in the GCSB Act 2003

22. What type of information do you think should be covered by the definition of “private communication” (and therefore protected under section 14)? For example, should only the content of communications be protected, or metadata (eg, the date and time of an email) as well?

23. Do you have any other comments about the definition of “private communication” (for example, any problems with the current definition or suggestions for improvement)?

If you have any other comments to make, please do so below.

Conclusion

Thank you for taking the time to share your views. Your submission will be considered by the independent reviewers to help them decide what issues the review should focus on. The independent reviewers will provide their report to the Intelligence and Security Committee of Parliament by 29 February 2016. Following this, the report will be tabled in Parliament and the government will consider its response.

Appendix: Terms of Reference for the review

The purpose of the review, taking into account that subsequent reviews must occur every 5 – 7 years, is to determine:

1. whether the legislative frameworks of the intelligence and security agencies (GCSB and NZSIS) are well placed to protect New Zealand’s current and future national security, while protecting individual rights;
2. whether the current oversight arrangements provide sufficient safeguards at an operational, judicial and political level to ensure the GCSB and NZSIS act lawfully and maintain public confidence.

The review will have particular regard to the following matters:

3. whether the legislative provisions arising from the Countering Foreign Terrorist Fighters legislation, which expire on 31 March 2017, should be extended or modified;
4. whether the definition of “private communication” in the legislation governing the GCSB is satisfactory;
5. any additional matters that arise during the review as agreed by the Acting Attorney General and notified in writing in the NZ Gazette.

When determining how to conduct the review, the reviewers will take into account:

6. the need to ensure that a wide range of members of the public have the opportunity to express their views on issues relating to the review;
7. the need for the law to provide clear and easily understandable parameters of operation;
8. the Law Commission’s work on whether current court processes are sufficient for dealing with classified and security sensitive information;
9. previous relevant reviews and progress towards implementing their recommendations;
10. relevant overseas reviews to identify best practice in areas relevant to this review, including oversight arrangements;
11. that traditionally, signals and human intelligence have been carried out separately and the Government does not intend to consider merging those functions within a single agency.