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Legislative statement

**Budapest Convention and Related Matters  
Legislation Amendment Bill**

Second Reading

July 2025

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Presented to the House of Representatives  
under Standing Orders 272

Hon Paul Goldsmith  
Justice  
Minister in charge of the Bill

## Overview of Bill

### *What does the Bill do?*

- 1 The Budapest Convention and Related Matters Legislation Amendment Bill ensures that New Zealand's legislation fully aligns with the requirements of the Council of Europe Convention on Cybercrime (also known as the Budapest Convention).
- 2 The Budapest Convention improves international cooperation against cybercrime by providing a consistent framework for defining computer crimes, enabling lawful access to evidence, and outlining expectations on how relevant international agencies assist each other.
- 3 The Bill:
  - 3.1 creates preservation directions, which enable the preservation of documents that may be evidence of offending;
  - 3.2 creates new offences to prevent the disclosure of information relating to preservation directions and surveillance device warrants;
  - 3.3 enables the use of surveillance device warrants and production orders in response to a mutual legal assistance request;
  - 3.4 requires that those with an interest in any evidentiary material collected as part of a mutual legal assistance request are notified before the material leaves New Zealand; and
  - 3.5 amends computer-related offences in the Crimes Act to ensure they align with the Budapest Convention.
- 4 The Bill amends the Search and Surveillance Act 2012, the Mutual Assistance in Criminal Matters Act 1992, the Telecommunications (Intercept Capability and Security) Act 2013, and the Crimes Act 1961.

### *Why is the Bill needed?*

- 5 The Bill implements amendments which ensures alignment of New Zealand's laws with the requirements of the Budapest Convention.

## Main policy proposals

### *Preservation directions*

- 6 The Bill creates preservation directions within the Search and Surveillance Act. Preservation directions require someone in control of a document to preserve that document, while a production order is sought.
- 7 Domestically, any enforcement officer who can apply for a search warrant to obtain documents can apply for a preservation direction. New Zealand Police can also apply for preservation directions on behalf of a foreign country if that country has indicated they intend to submit a mutual legal assistance request for the material.

- 8 If the relevant document is a record of a telecommunication, a preservation direction may also require the person who controls the document to provide any 'pathway information' they hold. Pathway information is information, such as the telecommunication's origin, direction, or destination, that enables law enforcement to identify other parties (other service providers) who may hold relevant records.
- 9 Preservation directions will not result in the contents of the document being released to law enforcement. This will continue to require a production order.
- 10 These provisions ensure compliance with Articles 16, 17, 29 and 30 of the Budapest Convention.

#### *Disclosure offences*

- 11 The Bill creates new offences in the Search and Surveillance Act that prohibit disclosure of information relating to preservation directions and surveillance device warrants. This is to prevent prejudice to ongoing investigations.
- 12 In respect of preservation directions, the Bill makes it an offence for anyone subject to a direction to either disclose that the preservation direction has been made, or to disclose any information contained in the relevant documents that would otherwise have been deleted. In respect of surveillance device warrants, the Bill makes it an offence for anyone called upon to assist an enforcement officer in the execution of a surveillance device warrant to disclose that the warrant exists. Disclosure of information collected through a surveillance device warrant is already an offence.
- 13 To limit the impact on freedom of expression, the Bill contains provisions that allow for the lifting of these offences once the risk of prejudice to the investigation no longer exists.
- 14 These offences ensure compliance with Articles 16 and 21 of the Budapest Convention.

#### *New powers to support mutual legal assistance*

- 15 The Bill amends the Mutual Assistance in Criminal Matters Act 1992 (MACMA) to enable New Zealand Police to apply for production orders and surveillance device warrants if requested by a foreign country as part of a mutual legal assistance request. Only a High Court Judge may issue production orders or surveillance device warrants under MACMA. The judge must be satisfied that the same requirements as for domestic orders or warrants are met – for example, that there are reasonable grounds to believe that evidentiary material will be obtained. The Bill also enables the Attorney-General to request foreign countries to exercise similar powers on behalf of New Zealand.
- 16 These provisions ensure that the powers available under MACMA mirror domestic search and surveillance powers, and ensure compliance with Articles 23, 25, 31 and 34 of the Budapest Convention.

#### *Notification requirements for mutual legal assistance*

- 17 The Bill also amends MACMA to set out requirements for notifying affected parties before evidential material can be sent to a foreign country in response to a mutual legal assistance request. The Bill provides that a High Court Judge may dispense with the

notification requirement if satisfied that notification would prejudice the safety of any person or would prejudice an ongoing investigation.

- 18 These provisions respond to the Supreme Court's decision in *Dotcom v Attorney General* that notification was required in order to give the affected parties the opportunity to challenge any unreasonable search before the material leaves New Zealand's jurisdiction. Setting out the requirements within the Bill will give greater clarity to law enforcement about who must be notified and when.
- 19 While the Budapest Convention does not explicitly require these provisions, Article 15 does require that implementation of the Convention is done in a way that provides adequate protection for human rights.

#### *Crimes Act Amendments*

- 20 The Bill repeals s251 of the Crimes Act (making, selling, or distributing or possessing software for committing crime) and replaces it with two new offences:
- 20.1 designing, writing, or adapting software for committing certain crimes
  - 20.2 dealing in or possessing software or other information for committing crime.
- 21 It also amends s228B of the Crimes Act to include 'procuring' goods designed, manufactured, or adapted with intent to facilitate commission of crimes involving dishonesty. Currently, the offence only covers possessing, selling, or disposing of such goods.
- 22 These provisions ensure compliance with article 6 of the Budapest Convention.

### **Key recommendations of the Justice Committee**

- 23 The Justice Committee (the Committee) made two recommendations to amend clause 37, which sets out the matters the judge must consider before dispensing with the requirement to notify before evidential material can be sent out of the country. First, the Committee recommended that the judge must also be required to consider the public interest in avoiding prejudice to proceedings and not just investigations. Second, the Committee recommended the judge be required to consider the public interest in ensuring the seized thing is not sent out of New Zealand before the notifiable person concerned has an opportunity to commence proceedings challenging the legality of the decision to send evidence overseas.
- 24 The Committee also recommended amending clause 48, which amends section 10 of the Telecommunications (Interception Capability and Security) Act 2013, to not require an internet service provider to be able to obtain traffic data that is information identifying "the nature of the telecommunication" if the telecommunication is not the internet service provider's own product.
- 25 Lastly, the Committee recommended amending Schedule 1 to include additional transitional and savings provisions for the Search and Surveillance Act 2012, the Mutual Assistance in Criminal Matters Act 1992, and the Telecommunications (Interception Capability and Security) Act 2013.