

## **Privacy Commissioner's submission to the Justice Committee on the Crimes (Countering Foreign Interference) Amendment Bill [93 – 1]**

### **Introduction**

1. I am pleased to provide a submission on the Crimes (Countering Foreign Interference) Amendment Bill (the Bill). The Bill makes changes to the Crimes Act 1961 and other minor amendments designed to strengthen New Zealand's ability to respond to acts of foreign interference.
2. The Privacy Act 2020 is New Zealand's main privacy statute. One of the Privacy Commissioner's functions under the Privacy Act is to examine proposed legislation that may affect the privacy of individuals. Central to my examination of any proposed legislation is the principle that policy and legislation should be consistent with privacy rights unless there is a good reason (and evidence) to override these rights. Privacy is not an absolute right and limits on individual privacy are necessarily justified in certain circumstances.
3. My comments on the Bill relate to the new sections 78AAA and 78AAB and the amendments to the warrantless search powers under the Search and Surveillance Act 2012.
4. I recommend the proposed foreign interference offence in new section 78AAB of the Crimes Act is revised in order to define the specific conduct to be covered by the offence as tightly as possible.

### **Proposed new offences and warrantless search power**

5. Clause 10 of the Bill introduces sections 78AAA and 78AAB, creating new offences relating to foreign interference. Section 78AAA creates a new offence to engage in conduct for a foreign power with the intention or being reckless as to whether a protected New Zealand interest is compromised. Section 78AAB provides that anyone who commits an imprisonable offence is also liable under that section if the person intends to or is reckless as to whether committing an offence would provide a relevant benefit to a foreign power.
6. The Bill expands existing warrantless search and surveillance powers. Clause 16 amends section 25 of the Search and Surveillance Act allowing Police to conduct warrantless searches for the two proposed foreign interference offences.
7. I acknowledge that foreign interference from any source is a national security risk with wide reaching implications and accept that there is good cause for taking action to address these harms. However, I am concerned about the privacy implications of the broadly framed powers and the changes to section 25 of the Search and Surveillance Act.

8. Search and surveillance powers are inherently privacy invasive. While they are a necessary mechanism to enable Police to investigate and respond to criminal activity, it is appropriate that there are proportionate limits on these powers to reflect expectations of privacy affirmed under the Privacy Act.
9. The proposed offences are rather broad in scope. In particular, the elements of the offence relating to engaging in 'improper conduct' and compromising a 'protected New Zealand interest' cover a very wide range of potential activities. Section 78AAB, which would make it a further offence to commit any imprisonable offence to benefit a foreign power, is also very broad in scope. I recognise that these proposals are modelled on foreign interference provisions in comparable jurisdictions.
10. I am concerned about the potential for over-surveillance and searches by the New Zealand Police due to the wide breadth of conduct that could potentially fall within the scope of the new foreign interference offences. Section 78AAB is of particular concern because it will allow Police to use warrantless search and surveillance powers for activities that constitute a lower level of offending that are not usually subject to such powers.<sup>1</sup>
11. These expanded powers may disproportionately affect minority ethnic, religious and political groups in New Zealand. There is a risk the new offences could lead to these groups becoming subject to inappropriate surveillance and profiling, despite being designed in part to protect them.
12. The Legislative Design and Advisory Committee advise that warrantless search powers should only be created where there is a compelling reason to do so, for example, in cases of urgency.<sup>2</sup> The New Zealand Bill of Rights vet assesses the amendments to section 25 of the Search and Surveillance Act, allowing warrantless searches for the new offences under sections 78AAA and 78AAB. The Attorney General concludes that due to covert nature of the offences, the risk to national security and the potential of loss of evidence, there is a great deal of urgency, justifying the warrantless search power.<sup>3</sup> Noting my concerns surrounding surveillance and the wide breadth of conduct that may fall within the scope of the offences, I suggest the Committee consider whether this section is appropriately targeted.
13. I note that clause 13 amends section 78B of the Crimes Act requiring the Attorney General to consent to any proceedings for the new offences. While this requirement introduces a safeguard and additional oversight for prosecutions under the new offence, it does not deal with the potential for individuals to be inappropriately subject to surveillance.

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<sup>1</sup> Regulatory Impact Statement at 149.

<sup>2</sup> <https://www.ldac.org.nz/guidelines/legislation-guidelines-2021-edition/new-powers-and-entities-2/chapter-21>

<sup>3</sup> <https://www.justice.govt.nz/assets/Documents/Publications/20241115-Crimes-Countering-Foreign-Interference-Amendment-Bill.pdf> at [11-17]

## Conclusion

14. I am concerned whether the proposed offence provisions in the Bill are appropriately targeted to address harm and avoid unreasonable limitations of privacy.
15. I **recommend** that the proposed foreign interference offence in new section 78AAB is revised in order to define the specific conduct to be covered by the offence as tightly as possible. Clarity over the specific conduct intended to be covered by the offence may mitigate some of these concerns.
16. I trust my comments are of use to the Committee. I do not seek to be heard on my submission but am happy to appear before the Committee if that would be of assistance.



Michael Webster  
**Privacy Commissioner**

16 January 2025