



## Open letter to all Members of Parliament

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Dear Member of Parliament,

NZRise is the industry group for the New Zealand owned digital technology sector. I am writing to you on behalf of NZRise to urge you to **vote against the Telecommunications (Interception Capability and Security) Bill**.

The Bill is currently drafted so broadly that it creates huge uncertainty and therefore business and investment risk for anyone in the New Zealand ICT industry or considering entering it.

The Minister maintains that the information and communications technology industry do not understand the Bill, and that our criticisms of it are inaccurate. I invite you to consider what it says about the Bill when a sophisticated sector such as our own apparently cannot understand the bill, despite obtaining specific legal advice on it from two different lawyers. Our concerns have not been mitigated by the Minister's SOP number 366.

### **Definition of *network operator***

The Bill places onerous obligations upon **network operators**. That term is defined through a tangled web of definitions drawn from the Telecommunications Act and then amended.

Its definition's second limb specifies that a network operator is *a person who supplies (whether by wholesale or retail) another person with the capability to provide a telecommunications service* [TICS Bill, clause 3(1)]. If we add in all the other complex cross definitions encapsulated in that definition, we arrive at an expanded definition of network operator as a person who:

- supplies (whether by wholesale or retail) another person with the capability to provide
- goods, services, equipment, and facilities that enable or facilitate [*expanded definition of "telecommunications service" from the Telecommunications Act*];
- the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not [*expanded definition of "telecommunication" from the Telecommunications Act*]

So the current definition captures **facilitating** the transmission of any message from one device to another,

whether for the information of any person using the device or not. Given the increasing reliance of individuals and businesses on software and infrastructure as a service, this level of uncertainty will have a deleterious effect upon New Zealand's digital businesses who provide Internet enabled technologies and services.

### **Chilling and unworkable compliance obligations**

Clause 46 of the Bill defines **area of specified security interest**. The definition includes parts of a network that contain information about a “significant number of customers,” and discusses “large volumes” of data. These terms are not defined, and subclause (2) does not anticipate greater clarity being provided by regulation. In practice, it is hard to imagine any New Zealand business being able to argue that any computer that they own and has business email on it escapes this definition, let alone any organisation providing any digital services to customers. Any such business would also be likely to fall within the absurdly broad definition of a **network operator**, unless they were exempted.

Clause 47 of the Bill would require the business to obtain agreement from the GCSB on any decision or purchase that was covered by the **area of specified security interest** definition (cl. 47, amended immaterially by SOP #366). In practice, a small number of businesses will self-identify as network operators, and those will only notify a small subset of the decisions covered by the Bill. The rest will be in possible non-compliance, and as a result be easily pressured by security agencies.

We invite you to consider the practical realities of the situation – if contacted by the GCSB, a typical small New Zealand business is likely to be deferential and intimidated. The broad powers and expansive wording of the Bill will completely undercut New Zealanders’ right to privacy and to protection against unreasonable and disproportionate search.

### **Overall impact**

The obligations of network operators in the Bill are very onerous. Many non-traditional telco businesses will technically and financially be unable to comply with those obligations so will be faced either with being in breach or curtailing their activities. That is unacceptable to us as we are sure it is to you.

Rather than enact legislation that casts a cloud over our sector's future, vote against this bill and remove the potential ambiguity and uncertainty that will have a negative impact on our sector's profitability and ability to innovate.

**Member, we urge you to vote against the Bill.**

Yours faithfully,

Don Christie

Co-Chair

NZRise (<http://nzrose.org.nz>)

*(NZRise is the industry group for the New Zealand owned digital technology sector)*