

Proactive Release

The following Cabinet paper and related Cabinet minutes have been prepared for proactive release by the Department of the Prime Minister and Cabinet on behalf of Hon Kris Faafoi, Minister of Broadcasting, Communications and Digital Media, and the Ministry of Justice, on behalf of Hon Andrew Little, Minister of Justice:

**Budapest Convention on Cybercrime:
Approval to Initiate the First Stage Towards Accession**

The following documents have been included in this release:

Title of paper: Approval to initiate the first stage towards accession to the Budapest Convention on Cybercrime (SWC-20-SUB-0053 refers)

***Title of minute: Budapest Convention on Cybercrime:
Approval to Initiate the First Stage Towards Accession (SWC-20-MIN-0053 refers)***

***Title of minute: Budapest Convention on Cybercrime:
Approval to Initiate the First Stage Towards Accession (CAB-20-MIN-0252 refers)***

A draft consultation document was attached to this Cabinet paper as an Annex when considered by Cabinet and has not been included in this publication. The costs of acceding to the Budapest Convention outlined in the Cabinet paper reflect estimates made at the time of Cabinet consideration. Amended estimates are published in the final version of the consultation document, which is published on the Ministry of Justice's website.

Some parts of these documents would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant section of the Act that would apply has been identified. Where information would be withheld in accordance with section 9 of the Act, no public interest has been identified that would outweigh the reasons for withholding it.

Key to redactions (sections of the Act that would apply):

- 6(a), to avoid prejudicing the international relations of the New Zealand Government,
- 6(b), to protect the entrusting of information to the Government of New Zealand on a basis of confidence by the Government of any other country or any agency of such a Government, or by any international organisation,
- 9(2)(b)(ii), to protect the commercial position of the person who supplied the information, or who is the subject of the information,
- 9(2)(f)(iv), to maintain the confidentiality of advice tendered by or to Ministers and officials,
- 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinion, and
- 9(2)(h), to maintain legal professional privilege.

Office of the Minister of Justice
Office of the Minister of Broadcasting, Communications and Digital Media

Chair, Cabinet Social Wellbeing Committee

Approval to initiate the first stage towards accession to the Budapest Convention on Cybercrime

Proposal

- 1 This paper seeks agreement in principle for New Zealand's accession to the Council of Europe Convention on Cybercrime (the Budapest Convention), and seeks approval to consult publicly to inform a further Cabinet decision.
- 2 If the Committee agrees, we would invite the Minister of Foreign Affairs to send a letter to the Council of Europe Secretariat expressing interest in accession to the Convention. This is the first step of the accession process and would allow New Zealand to attend Convention meetings as an observer.
- 3 Following the public consultation process, a second Cabinet paper will be submitted in late 2020. This paper will include the full policy decisions on acceding to the Budapest Convention for Cabinet's consideration.

Executive Summary

- 4 As the internet has become a normalised part of everyday life, it has also become a tool for criminal activity. Offenders are increasingly using online means to avoid detection and to effect criminal activity. Much evidence of serious crime is held electronically by large internet service providers whose platforms are used by criminals.
- 5 Cybercrime is increasing in New Zealand every year and causes substantial financial and social harms. The borderless nature of cybercrime means it is difficult to detect and prosecute perpetrators without collaboration with other countries.
- 6 The Budapest Convention (the Convention) is an international treaty seeking specifically to address internet and computer crime. It came into force in 2004 and currently has 65 members, predominantly from Europe, but also from Asia, North and South America, Australia and the Pacific.
- 7 The Convention deals with crimes committed via the internet and other computer networks, particularly infringements of copyright, computer-related fraud, child pornography and violations of network security. It also facilitates investigations of serious crimes, including terrorism, homicides, serious assaults, sexual assaults, frauds, and child exploitation, where evidence is stored electronically.
- 8 The Convention addresses these issues by aligning nations' laws, facilitating information-sharing on current threats and best practice, increasing international cooperation, and fostering international dialogue.
- 9 New Zealand's laws currently align with most of the legislative and regulatory requirements of the Convention. If New Zealand were to accede, some minor changes

would be required to the Search and Surveillance Act 2012, the Mutual Assistance in Criminal Matters Act 1992 and the Crimes Act 1961, as well as promulgation of an Order in Council under the Customs and Excise Act 2018 or the Imports and Exports (Restrictions) Act 1988. These changes have the combined effect of improving New Zealand's ability to deliver reciprocity in mutual legal assistance to our partner countries.

- 10 We believe it is in New Zealand's best interests to participate in the only current international treaty to tackle cybercrime, to further international cooperation on online crime. Accession will signal that:
- a) New Zealand is serious about cooperating with other countries in combating crime committed, in part or whole, online;
 - b) New Zealand will reciprocate information sharing and cooperation through a single standardised framework for international cooperation on crime investigations when required.
- 11 It will also contribute to building trust and efficiency amongst the 65 members of the Convention by building on existing and developing new relationships.
- 12 The process towards accession requires the Minister of Foreign Affairs to write to the Council of Europe requesting an invitation to join the Convention. Sending this letter will create an expectation that New Zealand will accede, but is not a legally binding action. Once the invitation is received, New Zealand will have five years to ensure all legislative and regulatory requirements are implemented to achieve full accession.
- 13 We have considered whether this decision should be delayed in the context of the ongoing response to COVID-19. Our view is that there remains a strong case for progressing accession at this time. The rapid exploitation of this global crisis by both sophisticated and unsophisticated cybercriminals and the cross-jurisdictional nature of these crimes reinforces the need for strong international collaboration on cybercrime. We recommend New Zealand request an invitation by early June, so officials can attend negotiations under the Convention 6(b) relating to access to evidence in the cloud and streamlining mutual legal assistance processes. 6(b)
- 14 We also recommend the attached paper is released for public consultation later this year, as circumstances allow in the context of the COVID-19 alert levels. This will inform a second paper in late 2020, accompanied by a National Interest Analysis, seeking Cabinet's full policy decisions on accession. A positive Cabinet decision in late 2020 would trigger the Parliamentary Treaty Examination process, and the passage of legislative and regulatory changes required to accede.

Background

- 15 The Convention is the first, and currently only, international treaty seeking specifically to address internet and computer crime. The Council of Europe notes the Convention is regarded as the most complete international standard to date, since it provides a comprehensive and coherent framework on cybercrime and electronic evidence.¹
- 16 The Convention aims to prevent, deter and detect crimes committed via the internet and other computer networks, particularly infringements of copyright, computer-related fraud, child pornography and violations of network security, by enabling member countries to work together to combat cybercrime.
- 17 It does so by aligning nations' laws, facilitating information-sharing on current threats and best practice, increasing international cooperation, and fostering international dialogue.
- 18 The Convention also includes provisions explicitly requiring that enforcement powers and procedures established under the Convention are to be conducted with respect for fundamental human rights and freedoms, such as freedom of expression and protection of privacy and personal data.²
- 19 The Convention came into force in 2004. There are currently 65 members, predominantly from Europe, but also from Asia, North and South America, and the Pacific (including Australia and Tonga). Samoa is in the process of accession. New Zealand is the only Five Eyes partner not to have acceded to the Convention.
- 20 The Convention is a cybercrime convention in name, but its benefits extend wider. It fosters better international co-operation to combat all offending. It addresses:
- a) pure cybercrime: a criminal act committed through the use of information and communication technologies or the internet, where the computer or network is the target of the offence. This is regardless of what the criminal goal is – whether political or financial gain, espionage or any other objective. An example of pure cybercrime is deploying malicious software;
 - b) cyber-enabled crime: any criminal act that could be committed without technology or the internet, but is assisted, facilitated or escalated in scale by the use of technology. This includes a range of serious and organised crime, such as cyber-enabled fraud, the distribution of child exploitation material, and terrorism;
 - c) criminal evidence stored electronically, for example, private social media communications relating to a crime and stored in the cloud by companies such as Facebook.³

Criminals are increasingly using the online environment

- 21 The Ministry of Justice's Crime and Victim Safety Survey published information in 2019 on cybercrime and financial crime. The results show that almost 400,000 people (about 7.5 percent of adults) experienced one or more incidents of fraud or cybercrime over the

¹ Council of Europe, Acceding to the Budapest Convention on Cybercrime: Benefits, 28 August 2019.

² Article 15 – Conditions and Safeguards.

³ The Budapest Convention does not address issues around lawful access to encrypted information, for example, where communications are stored in an encrypted form and the provider does not hold the key.

last 12 months. More than 200,000 adults were victims of one or more fraud incidents and more than 100,000 were victims of one or more cybercrime incidents. This compares to 355,000 households (20 percent of households) that experienced one or more property crime incidents over the last 12 months. The report noted that fraud/deception and cybercrime are the offences least commonly reported to the Police (7 percent).

- 22 The online environment is attractive to offenders – it offers mass reach in respect of victims, with offending being conducted effortlessly across borders:
- a) Cybercrime can include fraud, phishing scams, harassment, identity theft and the illicit gaining of personal information for malicious purposes. This can result in financial losses⁴, physical and mental harm, and reputational damage. It can be frightening for those who are victims and can prevent them from participating online affecting their productivity, connectedness and quality of life.
 - b) Offenders engage with each other using online technology that gives them anonymity, and enables trading in illicit markets including in financial tools, scamming tools, weapons, child exploitation and terrorism.
 - c) Evidence of very serious crimes, including homicides, serious assaults, sexual assaults, frauds, and child exploitation is often found through online exchanges between victims and offenders.
- 23 Cybercrime is difficult to detect due to the high rate of offending, easy anonymity, ability to avoid leaving traces of evidence of crimes, and the speed at which crimes can be committed and at which offenders can change tactics. Comparatively, the agency response takes a long time, has less resource and evidence of crime is dispersed across many jurisdictions.
- 24 New Zealand agencies rely on international co-operation to prevent, mitigate, investigate and prosecute crimes committed wholly or in part online. This is simpler when all countries have consistent laws regarding how crimes committed online are defined and how agencies are able to access and use recorded evidence of crime.
- 25 Current information exchange and co-operation between different countries, for example through mutual legal assistance processes, is frequently slow and cumbersome, even where strong co-operative relationships exist. Obtaining information through mutual assistance routinely takes six to eighteen months. Improving cooperation between nations is key to improving our collective response to cybercrime.
- 26 The Convention sets out a consistent international framework for defining computer crimes, for enabling lawful access to evidence and for placing expectations on relevant agencies to assist each other. The Convention sets out basic policies. It is up to each country to determine for themselves how to implement them to enable an effective response in the context of their own constitutional arrangements, privacy settings, and security policies.

⁴ In 2019, 4741 cyber security incidents were reported to CERT NZ resulting in over \$16.7 million in losses. The National Cyber Security Centre has calculated the value of harm directly prevented in 2018-19 was in excess of \$27.7 million.

New Zealand would benefit from acceding to the Convention:

- 27 At a strategic level, accession to the Convention supports New Zealand's broader objectives for a free, open and secure internet. Accession is a key area of focus in the New Zealand's Cyber Security Strategy 2019 [CAB-18-MIN-0127].
- 28 New Zealand's accession to the Convention is also a key deliverable of the countering violent extremism work programme that was developed in response to the terror attack in Christchurch in 2019.
- 29 Officials consider it would be in New Zealand's best interest to participate in the only international treaty to tackle cybercrime. The Convention provides a standardised legal framework for addressing cybercrime domestically and in cooperation with other countries as required. Parties to the Convention engage with each other in 'trusted and efficient cooperation.'⁵
- 30 New Zealand's accession to the Convention would send a strong signal that we are committed to international like-minded efforts to combat cybercrime, while at the same time protecting fundamental human rights and freedoms, such as freedom of expression and protection of privacy and personal data.
- 31 6(a)
[Redacted text block]
- 32 Accession to the Convention would strengthen the existing relationships we have with current member countries by signalling our commitment to multilateral efforts to combat cybercrime. In addition, there would be opportunities to foster relationships with member countries that we do not have existing relationships with. 6(a)
[Redacted text block]
- 33 The Council of Europe advises that private sector entities⁸ are more likely to cooperate with criminal justice authorities of parties to the Convention, as it confirms parties have robust domestic legal frameworks on cybercrime and electronic evidence in place, including the necessary human rights safeguards.

New Zealand's legal framework for meeting the terms of the policies in the Convention is relatively sound but there are some minor amendments needed prior to accession

- 34 The legislative amendments required for New Zealand to accede to the Convention will complement existing mutual assistance laws, boosting capacity for international

⁵ Council of Europe, *Acceding to the Budapest Convention on Cybercrime: Benefits*, 15 March 2017.

⁶ Resolution A/RES/73/187 – "Countering the use of information and communications technologies for criminal purposes." 6(a), 6(b)
[Redacted text block]

⁷ The resolution passed 79 to 60 with 33 abstentions. In July 2019, New Zealand signed the Quintet of Attorneys General statement on international cooperation on cybercrime, expressing support for the Budapest Convention 6(a) [Redacted text block]. (Quintet of Attorneys General, Statement on international cooperation on cybercrime, London, July 30-31, 2019)


⁸ For example companies that hold data such as Internet Service Providers or a social media company.

cooperation to deal with increasingly sophisticated and diverse forms of computer-related criminal activity. The amendments would include the ability to:

- a) require, for example, a social media company to preserve data for investigations using a data preservation order;
- b) obtain a surveillance device warrant in New Zealand to access material relevant to overseas investigations, and vice versa, which is not currently possible under our mutual assistance legislation;
- c) require third parties, such as internet service providers, to keep the existence of a preservation order or surveillance device warrant confidential, if the investigation would be jeopardised by disclosure of the order.

- 35 New Zealand would become a member of the Cybercrime Convention Committee (T-CY), which is a comprehensive intergovernmental body dealing with cybercrime. Parties share information, best practice tips and experience, assess implementation of the Convention, and interpret the Convention through guidance notes.
- 36 The T-CY is currently working on a second Additional Protocol on enhanced international cooperation and access to evidence in the cloud. The Additional Protocol aims to improve the efficiency of mutual assistance processes regarding access to electronic evidence. By expressing interest in accession now, New Zealand will have the opportunity to attend the negotiations on the Additional Protocol this year. New Zealand will also be able to contribute to any future additional Protocols, thus contributing to further evolution of the Convention.

37 6(a), 9(2)(f)(iv)




- 38 The constantly evolving nature of cybercrime makes it difficult to predict what issues or cases will arise in the future. Importantly, accession to the Convention will ensure New Zealand contributes to and benefits from the collective battle against cybercrime, ultimately making New Zealand a safer digital environment for its citizens.

Accession to the strategy aligns with the Government's priority work streams

- 39 The Government has established 12 priority work streams [Cab-18-MIN-0111]. Three of these priorities would be enhanced by New Zealand acceding to the Convention:

- a) Support healthier, safer, and more connected communities:
 - Most New Zealanders depend on the internet for daily life, work or business. In order to keep communities healthier, safer and more connected, we need to detect, prevent, and investigate various forms of cybercrime to keep people safe online. The Convention would assist us by aligning New Zealand's cybercrime laws with international best practice, as

6(a), 9(2)(f)(iv)



well as streamlining the process for easier flow of information on cybercrime between member countries.

b) Make New Zealand the best place in the world for children:

- It is vital we keep New Zealand children safe from exposure to and becoming victims of cybercrime. Children can be particularly vulnerable to the harms of child sexual exploitation material online. The Convention requires members to implement data preservation orders which will further enhance the ability of Customs and other agencies including Department of Internal Affairs and Police to detect, prevent and investigate child sexual exploitation content, making New Zealand a safer place for children. Although New Zealand does not have to be a member of the Convention to pass data preservation laws, accession provides a good opportunity to enable this change along with the other suite of changes that are a requirement of the Convention.

c) Create an international reputation we can be proud of:

- Accession would have significant reputational value for New Zealand and would demonstrate support for the best practice standards established by the Convention, and broader support for a rules-based international order.
- 6(a) [REDACTED] New Zealand's leadership on the Christchurch Call to Action to eliminate terrorist and violent extremist online has heightened the value partners attach to our input in working towards a safer and more secure international cyber framework, including addressing criminal misuse of the internet.¹⁰
- 6(a) [REDACTED]
[REDACTED]
[REDACTED]
Pacific Island Forum countries – including New Zealand – have, through the Boe Declaration Action Plan, committed to taking steps to accede to the Budapest Convention. 6(a) [REDACTED]
[REDACTED]
[REDACTED]

Legislative Implications

Summary of measures required to implement the treaty action

- 40 If New Zealand were to accede to the Convention, implementing legislation would be required to bring New Zealand law in line. New Zealand already largely complies with most of the legislative and regulatory requirements of being a member to the Convention, such as production orders, surveillance device warrants and computer crime offences. There are some minor amendments that would be required for accession.

¹⁰ The Call to Action outlines a series of voluntary commitments for governments and online service providers intended to reduce the harm from terrorist and violent extremist content online.

9(2)(f)(iv), 9(2)(g)(i)

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If Cabinet agrees in principle to New Zealand's accession to the Convention, a further paper will be provided by late 2020. This will include a detailed overview of the legislative and regulatory changes required, and on the potential reservation, informed by the consultation process. Officials expect the changes to be made through an omnibus bill.

The process towards accession and proposed timeline

- 44 The process of accession to the Convention is managed by the Committee of Ministers of the Council of Europe. It is customary for states that are not members of the Council of Europe and that wish to join the Convention to request an invitation to accede. The Council of Europe then considers the request. If it is accepted, an invitation will then be issued.
- 45 Accordingly, the first step in the process towards New Zealand's accession to the Convention is the Minister of Foreign Affairs sending a letter to the Council of Europe Secretariat expressing New Zealand's interest in acceding to the Convention.
- 46 While this is not a binding action, in sending this letter, New Zealand would be making a political commitment to accede to the Convention, creating expectations that New Zealand will in fact accede to the Convention within the next five years. Accordingly, Cabinet approval is required.
- 47 The Council would respond with an invitation to accede to the Convention.¹¹ New Zealand would then have 'invited party' status with the Council of Europe. Invited party status lasts for five years (the 'on-ramp') after the Council's invitation to accede. If we have not acceded within those five years, the invitation lapses. New Zealand would need to complete all steps necessary to accede to the Convention (including parliamentary treaty examination and passage of implementing legislation) within this time.
- 48 Invited party status would provide New Zealand with some immediate benefits ahead of accession, including the ability to attend Convention meetings as an observer. This includes an upcoming Plenary on the Second Additional Protocol to the Budapest Convention, 6(b) r, where discussion will be held on the cooperation on lawful access to evidence held in the cloud, the ability for relevant agencies to cooperate directly with service providers in other countries, improved mutual legal assistance for electronic evidence, and safeguards including around data protection. 6(b)
- 49 We recommend the decision to seek an invitation to accede is announced via press statement concurrently with the letter being sent, signalling the planned consultation process. We recommend the attached document be released for public consultation shortly, after the invitation to accede is sent.
- 50 A second Cabinet paper accompanied by a National Interest Analysis would be submitted in late 2020, for a full policy decision on accession. This would be informed by the consultation process, and would include the text of the Convention and detailed information on the legislative changes required. If the recommendation is to proceed, the Cabinet paper would request formal authorisation to accede following completion of Parliamentary Treaty Examination and the passage of legislative and regulatory changes.
- 51 Once presented, the Government must refrain from taking binding treaty action until the relevant select committee has reported or fifteen sitting days have elapsed.¹² Subject to agreement, implementing legislation would then be introduced to Parliament. If the

¹¹ 6(b)

¹² If no recommendation requiring further government action is required, the parliamentary treaty examination process is complete when the select committee presents its report.

legislation is passed, New Zealand can then deposit an Instrument of Accession with the Council of Europe. This would note any reservations or declarations. It would be signed and sealed by the Minister of Foreign Affairs.

- 52 The standard process towards accession would be to seek Cabinet agreement in a single paper. However, in order to balance feedback from a hui in January 2020 where Māori requested further engagement (see paragraph 54-57) with the benefits of attending the Second Additional Protocol negotiations this year (see paragraph 36 and 48), this paper recommends a two-step process. This is due to the need to request an invitation, and allows officials to incorporate further engagement with Māori and other stakeholders, while enabling New Zealand to attend the Second Additional Protocol discussion with an 'invited party' status.

Consultation

- 53 Consultation to date on the Convention is detailed below. We recommend further consultation, based on the document at Annex 1, prior to Cabinet's consideration of the full policy decisions on acceding to the Budapest Convention in late 2020. This timing will require consultation to take place during the pre-election period.

Māori

- 54 The nature of the Convention touches upon issues of significance for Māori, including criminal law, digital inclusion, human rights (freedom of expression and reasonable search and seizure), and New Zealand's international obligations. There are no direct references to indigenous perspectives in the Convention. The majority of the powers required for New Zealand to accede to the Convention, such as search warrants, however, are already available under New Zealand law. Accordingly the impact on Māori of changes required by accession to the Convention is likely to be very narrow, but this will be confirmed through further engagement as below.
- 55 A preliminary hui was held in January 2020 to ascertain Māori interests in the Convention. It highlighted the need for a better explanation of the implications of accession to the Convention for New Zealand and Māori specifically. Clarification is also required in terms of the context of the Convention against the background of existing legislation such as the Search and Surveillance Act 2012 and the Mutual Assistance in Criminal Matters Act 1992.
- 56 If the Committee agrees, further engagement with Māori will take place to ensure the Convention can be implemented into New Zealand law in a way consistent with the Crown's obligations under the Treaty of Waitangi.
- 57 We believe the targeted and planned future engagement is commensurate with the assessment of Māori interests.

- 58 9(2)(h)
[Redacted text block]

- 59 It is important to acknowledge that iwi efforts are currently focussed on protecting and supporting their communities through the impacts of COVID-19, and that their capacity to concentrate on other issues will be limited. The engagement approach will be determined in consultation with Te Arawhiti.

Private sector

- 60 9(2)(b)(ii) [REDACTED]
[REDACTED]
[REDACTED] Information gathered from consultation will be used to inform policy development, to ensure the data preservation scheme is tightly defined and keeps costs to a minimum. Further consultation with the sector will explore this further, mindful that opportunity for companies to engage will be more restricted as a result of pressures from COVID-19.

Public sector

- 61 This paper was prepared by the Department of the Prime Minister and Cabinet in consultation with the Ministry of Justice and Crown Law. The following departments have been consulted in the drafting of this paper and/or in other preliminary work: Department of Internal Affairs, Government Communications Security Bureau, Ministry of Business, Innovation and Employment, Ministry of Foreign Affairs and Trade, Ministry for Primary Industries, New Zealand Customs Service, New Zealand Police, New Zealand Security Intelligence Service, Office of the Privacy Commissioner, the Serious Fraud Office, State Services Commission, The Treasury, Te Puni Kōkiri, and Te Arawhiti.
- 62 The Privacy Commissioner is supportive of New Zealand seeking accession to the Budapest Convention. The Commissioner recognises that the Convention supports and upholds the right to privacy and the importance of data protection. The Commissioner notes that some aspects of the Convention will have privacy implications, such as the confidentiality provisions (for example, at Article 16 of the Convention) and looks forward to working with officials to ensure that when enacted these are consistent with New Zealand's privacy framework. The Commissioner also notes that the Convention will support existing international information sharing efforts by making these more coordinated.

Financial implications

- 63 There are no costs to the Crown that arise from this paper, which only seeks an in-principle decision to accede to the Convention. If Cabinet ultimately decided to confirm its decision to accede, there would be two types of costs:
- a) Costs incurred by telecommunications and other companies in complying with preservation orders. These costs are estimated at approximately \$1.5 million per annum. However, this figure is sensitive to the design of the scheme, including the scope of preservation orders, and the scale of requests under the Convention. A decision would be required about whether the Crown would contribute to those costs, and if so, the model for cost allocation.
 - b) Operational departmental costs to progress and implement the legislative changes required to accede, and to service New Zealand's participation in the Convention (including travel costs and overheads).

- 64 The consultation process will inform detailed analysis of these costs. Further advice would be provided when officials report back to Cabinet in late 2020, 9(2)(f)(iv)

Impact analysis

- 65 An Extended National Interest Analysis for the Budapest Convention would be included in the second paper to Cabinet in late 2020. This will be informed by the consultation process.

Human Rights implications

- 66 Human rights impacts include the extending of mutual assistance, which means that other countries would be able to access a slightly expanded range of New Zealand data; and changes to the Crimes Act, which mean that a slightly greater range of actions would be made criminal. We believe these legislative changes are justifiable and sufficiently safeguarded.

Te Tiriti o Waitangi implications

- 67 The decision to accede to the Convention, and the way this decision is implemented, must uphold the Crown's obligations under Te Tiriti o Waitangi / the Treaty of Waitangi. The Convention touches upon issues of significance for Māori: including criminal law, digital inclusion, human rights (freedom of expression and reasonable search and seizure), and New Zealand's international obligations. We do not believe accession will have major impacts on these, but we will test this during the consultation process.

Gender Implications and Disability Perspective

- 68 There are no gender or disability implications.

Publicity and Proactive Release

- 69 If Cabinet agrees to proceed, we propose to proactively release this Cabinet paper with appropriate redactions on the website of the Department of the Prime Minister and Cabinet, within 30 days of Cabinet approval.
- 70 The paper at Annex 1 would be released for public consultation on the website of the Department of the Prime Minister and Cabinet. Targeted engagement will commence with stakeholders alongside that process.
- 71 We do not anticipate strong public or media interest in accession. If this assessment changes, we would develop a communications plan with officials.

Recommendations

- 72 The Minister of Justice and the Minister of Broadcasting, Communications and Digital Media recommend that the Committee:

1. **note** cybercrime increases every year in New Zealand and causes substantial, financial and social harms. Cybercrime frequently occurs across borders; international co-operation is essential to effectively address cybercrime;

2. **note** that the Council of Europe Convention on Cybercrime (the Budapest Convention) is the first, and currently only, international treaty addressing internet and computer crime;
3. **note** accession to the Budapest Convention would improve New Zealand's ability to proactively address cybercrime;
4. **note** accession would support our broader objectives for a free, open and secure internet through promoting multilateral cooperation;
5. **note** accession would have reputational benefits to New Zealand by sending a strong signal to like-minded nations on our commitment to reciprocate information sharing and resources for the purpose of combating cybercrime;
6. **note** accession to the Convention is an area of focus of New Zealand's Cyber Security Strategy 2019, and of the countering violent extremism work programme established after the Christchurch terror attack;

Legislative Implications

7. 9(2)(f)(iv), 9(2)(g)(i)

8.

Process to accede to the Budapest Convention (next steps)

9. **agree** 'in principle' to accede to the Convention, subject to further consultation, and detailed advice on legislative changes required for and financial implications of accession;
10. **invite** the Minister of Foreign Affairs to write to the Council of Europe by early June expressing interest in accession to the Convention and requesting an invitation to join;
11. **note** that writing to the Council of Europe and requesting the invitation will create an expectation that New Zealand will accede to the Convention;
12. **note** that if New Zealand's request to accede is accepted by the Council of Europe, New Zealand would need to complete all steps necessary to accede (including parliamentary treaty examination and passage of implementing legislation) within five years;
13. **agree** that officials will undertake targeted consultation with Māori, civil society and the telecommunications industry and report back to the Ministers of Justice and Broadcasting, Communications and Digital Media, for further direction in the event significant issues are identified;

Financial Implications

14. **note** that there are no direct financial costs to the Crown or the private sector associated with this proposal, but that there would be cost impacts if Cabinet decided to confirm its decision on accession to the Budapest Convention following consultation;
15. **note** that further advice on costs will be provided as part of the second paper containing full policy decisions in relation to accession, 9(2)(f)(iv)

Publicity & Proactive Release

16. **note** that this Cabinet paper is to be published on the Department of the Prime Minister and Cabinet's website, subject to any necessary deletions justified in accordance with the Official Information Act 1982;
17. **note** that the 'in principle' decision to accede to the Convention and the intention to consult on accession will be announced by press statement concurrently with the letter being sent to the Council of Europe;
18. **note** that a consultation document will be released later this year seeking feedback on accession to the Convention, as circumstances allow in the context of COVID-19 alert levels, along with further materials to support the consultation process as required; and

Next Steps

19. **agree** that a second paper with full policy decisions will be submitted to Cabinet in late 2020. This will be informed by the consultation process.

Authorised for lodgement

Hon Andrew Little

Minister of Justice

Hon Kris Faafoi

Minister of Broadcasting, Communications and Digital Media



Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Budapest Convention on Cybercrime: Approval to Initiate the First Stage Towards Accession

Portfolios **Justice / Broadcasting, Communications and Digital Media**

On 27 May 2020, the Cabinet Social Wellbeing Committee:

- 1 **referred** the paper under SWC-20-SUB-0053 to Cabinet on 2 June 2020;
- 2 **invited** the Minister of Justice and the Minister of Broadcasting, Communications and Digital Media, in consultation with the Minister for Crown Māori Relations: Te Arawhiti, to provide advice on how the proposed timeframes for further consultation with Māori could be reduced.

Vivien Meek
Committee Secretary

Present:

Hon Kelvin Davis
Hon Grant Robertson
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Andrew Little
Hon Carmel Sepuloni (Chair)
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Jenny Salesa
Hon Damien O'Connor
Hon Kris Faafoi
Hon Dr David Clark
Hon Tracey Martin
Hon Willie Jackson
Hon Aupito William Sio
Hon Poto Williams
Hon Julie Anne Genter
Jan Logie, MP

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet



Cabinet

Minute of Decision

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Budapest Convention on Cybercrime: Approval to Initiate the First Stage Towards Accession

Portfolio Justice, Broadcasting, Communications and Digital Media

On 2 June 2020, following reference from the Cabinet Social Wellbeing Committee, Cabinet:

Background

- 1 **noted** that cybercrime:
 - 1.1 increases every year in New Zealand and causes substantial, financial and social harms;
 - 1.2 frequently occurs across borders, and that international co-operation is essential to effectively address cybercrime;
- 2 **noted** that the Council of Europe Convention on Cybercrime (the Budapest Convention) is the first, and currently only, international treaty addressing internet and computer crime;
- 3 **noted** that accession to the Budapest Convention would improve New Zealand's ability to proactively address cybercrime;
- 4 **noted** that accession would support our broader objectives for a free, open and secure internet through promoting multilateral cooperation;
- 5 **noted** that accession would have reputational benefits to New Zealand by sending a strong signal to like-minded nations on our commitment to reciprocate information sharing and resources for the purpose of combating cybercrime;
- 6 **noted** that accession to the Budapest Convention is an area of focus of New Zealand's Cyber Security Strategy 2019, and of the countering violent extremism work programme established after the Christchurch terror attack;

Legislative Implications

- 7 9(2)(f)(iv), 9(2)(g)(i)

8 9(2)(f)(iv), 9(2)(g)(i)

Process to accede to the Budapest Convention (next steps)

- 9 **agreed in principle** to accede to the Convention, subject to further consultation, and detailed advice on legislative changes required for and financial implications of accession;
- 10 **invited** the Minister of Foreign Affairs to write to the Council of Europe in early June 2020 expressing interest in accession to the Convention and requesting an invitation to join;
- 11 **noted** that writing to the Council of Europe and requesting the invitation will create an expectation that New Zealand will accede to the Budapest Convention;
- 12 **noted** that if New Zealand's request to accede is accepted by the Council of Europe, New Zealand would need to complete all steps necessary to accede (including parliamentary treaty examination and passage of implementing legislation) within five years;
- 13 **agreed** that officials undertake targeted consultation with Māori, civil society and the telecommunications industry and report back to the Ministers of Justice and Broadcasting, Communications and Digital Media, for further direction in the event significant issues are identified;

Financial Implications

- 14 **noted** that there are no direct financial costs to the Crown or the private sector associated with the proposal, but that there would be cost impacts if Cabinet decided to confirm its decision on accession to the Budapest Convention following consultation;
- 15 **noted** that further advice on costs will be provided as part of the second paper containing full policy decisions in relation to accession, 9(2)(f)(iv)

Publicity & Proactive Release

- 16 **noted** that the paper attached under CAB-20-SUB-0252 will be published on the Department of the Prime Minister and Cabinet's website, subject to any necessary deletions justified in accordance with the Official Information Act 1982;
- 17 **noted** that the 'in principle' decision to accede to the Budapest Convention and the intention to consult on accession will be announced by press statement concurrently with the letter being sent to the Council of Europe;
- 18 **noted** that a consultation document (Annex 1 of the submission attached to CAB-20-SUB-0252) will be released later in 2020 seeking feedback on accession to the Convention, as circumstances allow in the context of COVID-19 alert levels, along with further materials to support the consultation process as required;

Next Steps

- 19 **agreed** that a second paper with full policy decisions be submitted to Cabinet in late 2020, which will be informed by the consultation process.

Michael Webster
Secretary of the Cabinet