

Office of the Minister for National Security and Intelligence
Cabinet External Relations and Security Committee

Government response to the Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain: Addressing the issues raised with the Intelligence and Security Act 2017

- 1 This paper seeks agreement to bring forward the periodic review of the Intelligence and Security Act 2017 (the Act), to respond to the recommendations and issues related to the Act raised by the Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain (the Royal Commission Report).

Relation to government priorities

- 2 The importance of responding appropriately to the Royal Commission was outlined in the Speech from the Throne, which emphasised the need to 'create a New Zealand where all people feel safe, have equal access to opportunities and do not experience discrimination'. The programme of work to be developed in response to the Royal Commission is one of the most important opportunities to deliver on this objective.

Executive Summary

- 3 The Royal Commission Report included four specific recommendations and raised a number of issues related to the Intelligence and Security Act 2017 (the Act). The report also recommended these issues should be addressed in the statutory review of the Act (scheduled to begin after September 2022)
- 4 Given these recommendations, I see value in bringing forward the statutory review in order to respond in a timely manner to the Royal Commission Report.
- 5 Considering the issues raised by the Royal Commission within a more comprehensive review of the Act has a number of advantages:
 - 5.1 It provides an opportunity to consider the legislation in its entirety, including the complete roles and functions of the intelligence and security agencies;
 - 5.2 An independent statutory review would provide an opportunity to open a public discussion on these matters, ensuring greater transparency

and clarity in relation to the purpose of the intelligence and security agencies and what they do;

- 5.3 It will allow us to consider the contemporary threats to our national security and enable the intelligence and security agencies to carry out their roles as effectively as possible;
- 5.4 It avoids taking a piecemeal approach to legislative change through reforming the Act twice; and
- 5.5 It demonstrates legislative stewardship, in that we are aware of issues with the Act and we should not delay in responding to them.

6 I therefore propose to bring forward the statutory review of the Act to start as soon as practical after 1 July 2021.

Background

7 In November 2020, the Government received the Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain (the Royal Commission Report).

8 Cabinet agreed with the Royal Commission Report's findings, agreed in-principle with the report's 44 recommendations, and agreed funding for initiatives which could be implemented rapidly in response to the report [CAB-20-MIN-0513 Minute and CAB-20-MIN-0516 Minute refer].

Four of the recommendations in the Royal Commission Report directly relate to the Intelligence and Security Act 2017

9 The Royal Commission reviewed the way the Act operates in respect of the counter-terrorism effort. The purpose was to identify the legal boundaries within which the intelligence and security agencies operate and assess whether they remain fit for purpose.

10 The recommendations directly related to the Act are:

- 10.1 **Recommendation 6:** Strengthen the role of the Parliamentary Intelligence and Security Committee (ISC) so that it can provide better and informed cross-parliamentary oversight of the national security system (including the counter-terrorism effort) and priority setting, and members can access sensitive information as necessary for such oversight.

Recommendation 10: Amend the Act with respect to direct access agreements, to require the new national intelligence and security agency, and in the interim the Department of the Prime Minister and

Cabinet, to regularly report to the responsible minister for the counter-terrorism effort on their establishment and implementation.

Recommendation 17: Require in legislation:

- the Minister for National Security and Intelligence to publish during every parliamentary cycle the National Security and Intelligence Priorities and refer them to the ISC for consideration;
- the responsible minister to publish an annual threatscape report; and
- the ISC to receive and consider submissions on the National Security and Intelligence Priorities and the annual threatscape report.

Recommendation 18: Review all legislation related to the counter-terrorism effort (including the Terrorism Suppression Act 2002 and the Intelligence and Security Act 2017) to ensure it is current and enables public sector agencies to operate effectively, prioritising consideration of the creation of precursor terrorism offences in the Terrorism Suppression Act, the urgent review of the effect of section 19 of the Intelligence and Security Act on target discovery and acceding to and implementing the Budapest Convention.

The Royal Commission also identified a number of further issues with the Act

- 11 In addition to the four recommendations, the Royal Commission identified further issues with the Act as it affects the counter-terrorism effort.
- 12 The Royal Commission advised these issues warrant attention in the next review of the Act (a statutory review of the Act is required to begin after September 2022). Thematically, the issues raised encompass:
 - 12.1 Uncertainties in the Act related to target discovery;¹
 - 12.2 Difficulties with the authorisation framework; and
 - 12.3 Uncertainties in the data provisions.

¹Target discovery is a proactive, exploratory effort to generate and investigate leads to help identify terrorism threats. It seeks to identify previously unknown terrorism threats motivated by a well-understood, known ideology (“unknown knowns”), and identify previously unknown terrorism threats motivated by an unknown ideology (“unknown unknowns”). A contrast to target discovery is the “classical model” of investigation which begins with lead information which can come from a range of domestic or international sources. The classical model is designed to investigate known terrorism threats.

I propose to consider the Royal Commission's recommendations in a comprehensive way, within the context of the entire Act

- 13 The Act covers roles and functions that are broader than intelligence collection, for example protective security, information assurance and cybersecurity activities, cooperation with other public authorities to facilitate their functions, and cooperation with other entities to respond to imminent threat.
- 14 The various parts of the Act work together in support of the above. The Royal Commission Report is focused on counter-terrorism and identifying terrorist threats. Considering legislative change from a solely counter-terrorism lens may have unintended consequences and risks prejudicing the integrity of the Act. Reviewing the Act in its entirety will ensure the issues raised by the Royal Commission are carefully considered, while maintaining the integrity of the Act.

To address the issues raised in the Royal Commission Report I propose bringing forward the statutory review of the Act

- 15 Section 235 of the Act sets out a statutory requirement to review the intelligence and security agencies and the Act as soon as practicable five years after the Act commenced, which is September 2022. I propose to bring this review forward to start as soon as practicable after 1 July 2021 in order to respond promptly to the issues raised by the Royal Commission.
- 16 The review can address known issues and uncertainties with the Act and strengthen the ability of the intelligence and security agencies to act on contemporary threats to our national security. There will also be benefit in ensuring the Act enables the intelligence and security agencies to carry out their roles as effectively as possible.
- 17 The advantages of bringing the review of the Act forward are:
- 17.1 It demonstrates the responsiveness of the Government to the issues raised by the Royal Commission;
- 17.2 The issues raised by the Royal Commission can be considered within the broader functions of the Act (including protective security, information assurance and cybersecurity activities and cooperation with public authorities and other entities), and within the wider range of national security threats (including espionage, foreign interference and cyber-attacks – in addition to counter terrorism);
- 17.3 It avoids taking a piecemeal approach to legislative change through reforming the Act twice;

- 17.4 It will support trust and confidence in the legislative process through an independent review;
- 17.5 The coherence of the overall legislative framework will remain intact; and
- 17.6 It demonstrates legislative stewardship, in that we are aware of issues with the Act and we should not delay in responding to them.

I have also directed officials to work on improvements to issues that the Royal Commission identified with the Act that can be done within current legislative settings

- 18 There are matters that the Royal Commission identified with the Act that can be improved within current legislative settings. For example:
 - 18.1 The Royal Commission Report made several comments and recommendations related to the Intelligence and Security Committee (ISC). The Royal Commission suggested that the ISC's role should be strengthened to give national security issues more visibility and public attention, and the ISC should have more oversight of the system. My view is that much can be done within existing settings to respond to the Royal Commission's recommendations and objectives related to the ISC. As Chair of the ISC, I will be working with the Committee over the coming months to consider how we can respond to the Royal Commission's recommendations and objectives;
 - 18.2 Improvements to Direct Access Agreements. The Royal Commission Report recommended amending the Act to require the new national intelligence and security agency to report to the responsible minister on their establishment and implementation. GCSB and NZSIS are working with DPMC to consider whether there are any underlying issues with the implementation of Direct Access Agreements that can be improved within current settings, which will also help to identify further issues for potential legislative change.

How will the review be conducted?

- 19 The Act states that the review will be conducted by two independent reviewers appointed by the Prime Minister (in consultation with Cabinet). The Ministry of Justice is responsible for supporting the review, who will work with the Department of the Prime Minister and Cabinet to set up the review, including the work required to appoint reviewers and develop the terms of reference, which must be specified by the Prime Minister.

- 20 The terms of reference will ensure there is community engagement, in order to build trust and confidence in the government and the intelligence and security system.

Timing of the review

- 21 The following table sets out the indicative timing of the review.

9(2)(f)(iv)




Next steps

- 22 If Cabinet agrees to amend the Act to bring forward the review, the next steps are set out below.
- 23 I have delegated responsibility for leading the legislative process to bring forward the review to the Minister Responsible for the Government Communications Security Bureau and the New Zealand Security Intelligence Service.
- 24 The Ministry of Justice will develop the terms of reference for the review. I will specify the terms of reference for the review and set out any matters the reviewers should take into account in determining how to conduct the review. The terms of reference will be consulted with the Intelligence and Security Committee.
- 25 I will consult the Intelligence and Security Committee and the Appointment and Honours Committee on the appointment of the two reviewers.

Financial Implications

- 26 Conducting the review in 2021 will have financial implications for the Ministry of Justice.
- 27 The Ministry of Justice has a statutory role to provide administrative, secretariat and other support necessary for the reviewers to conduct their review effectively and efficiently. As the review was not scheduled to start until the 2022 financial year, the Ministry of Justice has not budgeted for the review, and cannot conduct the review with baseline. The Ministry of Justice has been invited to submit an initiative for Budget 2021 to cover the costs of the review (\$1.06 million over two years).
- 28 Funding for the review, including reviewers' fees and public engagement, is subject to a decision as part of the annual Budget process.


29 9(2)(f)(iv), 9(2)(g)(i)



Legislative Implications

- 30 Legislation is needed to bring forward the date of the statutory review of the Act.

31 9(2)(f)(iv)



- 32 I intend to consult with the Intelligence and Security Committee on the best way to complete the House process in order to progress the Bill in a timely manner.

- 33 The Bill will contain a provision binding the Crown, as the Act being amended binds the Crown.

Impact Analysis

Regulatory Impact Statement.

- 34 The Regulatory Impact Analysis team at the Treasury has determined that the proposal to bring forward the statutory review of the Intelligence and Security Act 2017 is exempt from the requirement to provide a Regulatory Impact Statement on the basis that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Population Implications

- 35 The attack on 15 March 2019 was against all New Zealanders, but most directly and most acutely affected our Muslim community. It is therefore appropriate that the victims, whānau, and wider Muslim communities are top of mind when considering the issues raised in the Royal Commission's report.
- 36 No significant population implications arise from the proposal to bring forward the review of the Act.

Human Rights

- 37 There are no human rights implications arising from the proposals in this paper.

Consultation

- 38 The Government Communications Security Bureau, Inspector-General of Intelligence and Security, Ministry of Justice, Parliamentary Counsel Office, New Zealand Police; New Zealand Security Intelligence Service and the Treasury were consulted on this paper and their views were incorporated.

Communications

- 39 The decision to bring forward the review of the Act will be announced as part of the general communications on the response to the Royal Commission Report.

Proactive Release

- 40 This paper will be proactively released following introduction of the Bill, with any redactions in line with the provisions of the Official Information Act 1982.

Recommendations

- 41 The Minister for National Security and Intelligence recommends that the Committee:

Background

- 1 **note** that in December 2020, Cabinet agreed with the findings and agreed in-principle with the recommendations of the Royal Commission of Inquiry into the terrorist attack of Christchurch masjidain [CAB-20-MIN-0365];
- 2 **note** that the Royal Commission Report made four recommendations directly related to the Intelligence and Security Act 2017, and raised additional issues to be included in a statutory review of the Intelligence and Security Act 2017;

Proposal

- 3 **Note** that Section 235 of the Intelligence and Security Act 2017 mandates that a statutory review must take place as soon as practicable, five years after the Intelligence and Security Act 2017 commenced (which is September 2022);
- 4 **agree** that in order to promptly address the matters raised in the Royal Commission report, the statutory review is brought forward to start as soon as practicable after 1 July 2021;
- 5 **agree** to amend the Intelligence and Security Act 2017 to give effect to recommendation 4;

Financial implications

- 6 **note** that conducting the review in 2021 will have financial implications for the Ministry of Justice;
- 7 **note** that funding for the review is subject to a decision as part of the annual Budget process;

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

Legislative implications

9 9(2)(f)(iv)

- 10 **note** that the Minister Responsible for the GCSB and NZSIS will lead the legislative process required to bring forward the review on my behalf;
- 11 **note** that I will work with Intelligence and Security Committee on how to progress the Bill; and
- 12 **authorise** the Minister Responsible for the GCSB and NZSIS to issue drafting instructions to the Parliamentary Counsel Office to give effect to the recommendations in this Cabinet paper.

Authorised for lodgement

Rt Hon Jacinda Ardern
Minister for National Security and Intelligence



Cabinet External Relations and Security 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.

Government Response to the Report of the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Masjidain: Addressing the Issues Raised with the Intelligence and Security Act 2017

Portfolio National Security and Intelligence

On 13 April 2021, the Cabinet External Relations and Security Committee, having been authorised by Cabinet to have Power to Act [CAB-21-MIN-0117]:

Background

- 1 **noted** that on 7 December 2020, Cabinet agreed with the findings and agreed in-principle with the recommendations in the Report of the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Masjidain (the Royal Commission Report) [CAB-20-MIN-0365];
- 2 **noted** that the Royal Commission Report made four recommendations directly related to the Intelligence and Security Act 2017 (the Act), and raised additional issues to be included in a statutory review of the Act;

Proposal

- 3 **noted** that section 235 of the Act mandates that a statutory review must take place as soon as practicable, five years after the Act commenced (ie September 2022);
- 4 **agreed** that in order to promptly address the matters raised in the Royal Commission Report, the statutory review be brought forward to start as soon as practicable after 1 July 2021;
- 5 **agreed** to amend the Act to give effect to paragraph 4 above;

Financial implications

- 6 **noted** that conducting the review in 2021 will have financial implications for the Ministry of Justice;
- 7 **noted** that funding for the review is subject to a decision as part of the annual Budget process;
- 8 9(2)(f)(iv), 9(2)(g)(i)

Legislative implications

- 9 9(2)(f)(iv)
- 10 **noted** that the Minister Responsible for the GCSB and NZSIS will lead the legislative process required to bring forward the review;
- 11 **noted** that the Minister for National Security and Intelligence will work with the Intelligence and Security Committee on how to progress the Bill;
- 12 **invited** the Minister Responsible for the GCSB and NZSIS to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs.

Janine Harvey
Committee Secretary

Present:

Hon Grant Robertson
Hon Kelvin Davis
Hon Andrew Little
Hon David Parker
Hon Nanaia Mahuta (Chair)
Hon Poto Williams
Hon Damien O'Connor
Hon Kris Faafoi
Hon Peeni Henare
Hon Dr David Clark

Officials present from:

Office of the Prime Minister
Officials Committee for ERS

Hard-copy distribution:

Minister for National Security and Intelligence



Cabinet

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Report of the Cabinet External Relations and Security Committee: Period Ended 16 April 2021

On 19 April 2021, Cabinet made the following decisions on the work of the Cabinet External Relations and Security Committee for the period ended 16 April 2021.

ERS-21-MIN-0006 **Government Response to the Report of the Royal Commission of Inquiry into the Terrorist Attack on Christchurch Masjidain: Addressing the Issues Raised with the Intelligence and Security Act 2017** CONFIRMED
Portfolio: National Security and Intelligence

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Michael Webster
Secretary of the Cabinet