Prime Minister. I am Kevin Broughan, a professor in mathematics at the University of Waikato, making a presentation on my own behalf. Thank you for giving me the opportunity to do so.

Rights

Crown Law, in the report of Mr Keith, argued that the Bill is consistent with the NZBORA. I agree with the Law Society – it is not consistent.

In NZBORA Part 1 Section 5 ..the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. We have yet to see this justification – it is required by law to be fully set out.

Again in Section 21: Everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, or correspondence or otherwise: there are wide new powers in the Bill for arbitrary search followed by retention of personal information.

In 8D(1) we see GCSB will be able to undertake any activities the Director deems "desirable" rather than "reasonable", so it would be impossible for a citizen to obtain legal redress. All the Director would need to do to defend his actions would be to state he considered them "desirable", and being a description of his state of mind, his defence would always succeed. The word "desirable" must be removed in a rewrite of the Bill.

Crown law referred to a personal information policy, which is yet to be written. I see no reason why that policy should not be part of the Bill, since it could ameliorate the concerns of many opposed to the changes. Similarly, much is made of improvements in supervision of GCSB activities. However the SIC is not given any teeth: for example the ability to cross examine the GCSB director and call for detailed reports. It must be given those powers at least.

Privacy

Neither Crown law or the Intelligence co-ordination group of the department of the PM, referred to privacy, so one assumes they considered it irrelevant. I disagree.

Under the Privacy Act 1993 Principle 2 clause (1): where an agency collects personal information the agency shall collect the information directly from the individual concerned.

And under Principle 3 clause (1) …such an agency shall take all reasonable steps to ensure the individual concerned is aware of (a) the fact that the information is being collected, and (b) the purpose for which the information is being collected. Also the intended recipients of the information, etc

The Bill must be made consistent with these principles. Privacy protection for citizens must be built into the GCSB Act.

Misleading

The bill represents a very large extension of GCSB powers. To paraphrase the submission of the Law Society: without clear justification and appropriate public debate, and without compelling grounds for urgency, the bill changes the GCSB from being a foreign intelligence agency to being a mixed foreign and domestic agency. The GCSB would be able to spy on NZ citizens and residents and provide what is found to an unspecified list of NZ and foreign individuals, groups and agencies.

The Director of the GCSB gets vastly increased powers: 8A(b) "to do everything that is necessary or desirable to protect the security and integrity of the communications and information infrastructure".

Yet in the Bill's first reading 8th May 2013 Hon Judith Collins is reported in Hansard as stating "the changes proposed to the act do not Represent an extension of powers". So by "powers" the Law Society and Minister must be discussing something quite different: the former, those in the bill, the later the powers being used illegally in practice. This "flexibility" in the use of language also appears somewhat I would say in the bill.

Inadequate wording

For example use of the word "infrastructure" in the Bill is symptomatic of a general problem.

Consider by analogy transport infrastructure. It does not include the cars and trucks, but "information infrastructure" can be anything: heat and x-rays come under electromagnetic emissions. It explicitly in the bill includes

In 5 (3) "any communications carried on, contained in, or relating to those emissions etc". Its not just infrastructure but also the content which it carries. And it only "includes" all that.

For the rest it could be anything. So information infrastructure is a bad term to redefine. If you want to define it badly you should give a complete definition, not one so open ended it could mean anything or maybe everything. And the term is used throughout the Bill. So this needs to be rethought and totally rewritten.

Similarly "incidentally obtained intelligence" means 4(3) (a) foreign intelligence but then (b) intelligence that is not intelligence of the kind referred to in paragraph (a)!!!! i.e. Any type of intelligence at all qualifies as "incidentally obtained intelligence". This is no definition, it all needs to be rewritten. In the words then of Hon Judith Collins "the responsible thing to do is to move to clarify the current GCSB Act.". These two definitions exhibit some of the most obscure and abstruse so-called clarity I have ever seen in any bill.

Once we get proper justification for changes followed by wide discussion and cross party support for revised content, the bill I submit must be completely redrafted.

Relationship to the SIS

The case is made that in a small jurisdiction we cannot afford overlap or duplication. See the Regulatory impact statement of March 2013. It follows that we do not need a second internal spy agency. So many things are happening in the world at large with potential impact on NZ, so many countries, so many groups, so many languages, so many rampaging multinationals, so many threats especially to our export activities. If the GCSB focused on foreign intelligence and cyber-security by foreigners, using all of the resources we could afford, it still would never provide complete protection, or all of the foreign intelligence we need to live and relate to other states successfully in this modern world.

For example, 10 years ago the DEA in the USA employed over 5000 mathematicians working on encryption/decryption. Today the military plus security budget of the US is over one trillion dollars. It seems more achievable for the GCSB to work on information sourced in NZ, but in doing that they will easily miss important intelligence from abroad. And in any case, we already have a domestic intelligence agency, the SIS, and we need the GCSB to keep abreast of what is happening in the wider world, doing well what they were intended to do.

The SIS act is much tighter than what is proposed here. For example, it has some protections for the public, completely absent in the GCSB bill – "1999 Amendment No 2 – Section 2 subsection (2) Nothing in this act limits the right of persons to engage in lawful advocacy, protest or dissent in respect of any matter.

4AA(1) (a) The activities of the SIS are limited to those that are relevant to the discharge of its functions.

(c) The SIS does not take any action for the purpose of furthering or harming the interests of any political party.

(2) The Minister may not direct the SIS to institute surveillance of any person.

(3) The Director must consult regularly with the Leader of the Opposition.

The case for another internal spy agency with its own legislation has not been made. It needs to be justified. The public need to know why two agencies spying on NZ'ers are needed. What are the types of threat? Is the SIS to be disbanded? You would think the SIS hardly existed. The future of the SIS and its relationship to the GCSB must be considered together in a full open and democratic investigation into our security services, not just an internal secret review run by the Dept of the PM.

Protections for the public

It has become traditional for agencies like the SIS, GCSB, NSA, CIA etc to break the law. They do it because they can. They can because they act under the cloak of secrecy, with in some cases huge funding and power. Along the way they make mistakes, as well as breaking the

law. The public, especially the public spirited who care about society, personal freedoms and the environment, will wish to act sometimes to support and sometimes to lawfully oppose government action. It is very seductive for politicians to want to know what is going on around and within these groups, and to find ways to use that knowledge to stifle lawful dissent. That is one problem with giving the GCSB unbridled power.

Protections for the public must be put in place at a number of levels. The SIC must be given the right to question the Director. It must be given access to hard information about activities. The content of the annual reports on SIC activities to Parliament must be specified in legislation, be full and informative.

Information held by the GCSB must be open to scrutiny by individuals and groups. Mistakes are everywhere, so eradicating them and trying continuously to get nearer the truth must be paramount, right throughout government. It is especially easy to make mistakes, especially where computer communication is involved. Novopay is a case in point. In legal action arising from intelligence gathered by the GCSB, the agency should have to front up to cross examination. It is only intense independent scrutiny which will show them how hard it is to get things right.

In the proposed new section 25, the GCSB can retain so-called incidentally obtained intelligence (remember, any type) for the purpose of, for example, preventing potential threats to the national security of NZ. A complete trawl though the headers and contents of all emails for example, with a bit of data mining, justified by a supposed threat, might throw up all manner of information. Judgements, often times erroneous, would be made about potential dangers, and passed onto "any person the Director thinks fit to receive the information". Individuals and groups would have no redress. They would have no way of knowing that their private communications were being treated this way. Who knows how much unfair discrimination could result. Protections for the public need to be built in and explicit.

Powers to be used when acting for other agencies

I argue that the GCSB should be limited to foreign intelligence gathering and cyber-security.

In the proposed 8C (1)(d) the list SIS, Defence, NZ Police included in the Bill may be readily extended, without reference to Parliament, to any government department. This is unacceptable. The list should be included as a schedule and part of the Bill, to be amended only by act of Parliament. The public need to know what is intended here. For example does the National led government want to include WINZ or the IRD ?

In (2)(d) "protections" refers through its context to the Department – it must be reworded so as to apply also to the public.

Clause (c) again gives the GCSB unbridled power – it may perform its function of assistance exercising powers that it is not authorized to exercise in the performance of its other functions. Does that mean, for example, the power to arrest and imprison, or to impound property if they are "sharing" with the police? This makes the GCSB a "super agency" of

state, with all of its own enhanced powers, but also any of those in a list of agencies which may be extended without reference to parliament.

Beating the system

There is no replacement for good international relations and on-the-ground intelligence. You can't replace our foreign affairs or SIS by internet wizardry using Novopay style flaky software. This is because, of course, high value offenders and powerful indigenous and multinational corporations and states will use encryption to subvert any electronic surveillance. Indeed successful encryption will become ubiquitous as the information age continues to encroach on every aspect of our lives. You can't defeat modern encryption methods, and even if you did, there are a dozen good mathematical new ones waiting to be adopted.

Conclusion

The act is badly written. All open ended definitions of terms must be redone.

The powers of the GCSB and its Director must be constrained.

The relationship to the SIS needs to be made explicit. We cannot afford to have duplicate internal spy agencies. We need one internal and one external, as at present.

The public need explicit protection, not just some "tacked on" provision for rules yet to be written. The SIC needs powers of interrogation and discovery and reports to parliament need to be full and informative.

The proposed changes need to be justified. There is an acute need for broad discussion and cross party support for any expanded powers and new roles. Otherwise this legislation will not survive a change of government

Thank you for listening.