

# Submission

to the

## Foreign Affairs, Defence and Trade Select Committee

on the

## New Zealand Intelligence and Security Bill

7 October 2016

## About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.
2. The following fifteen registered banks in New Zealand are members of NZBA:
  - ANZ Bank New Zealand Limited
  - ASB Bank Limited
  - Bank of China (NZ) Limited
  - Bank of New Zealand
  - Bank of Tokyo-Mitsubishi, UFJ
  - Citibank, N.A.
  - The Co-operative Bank Limited
  - Heartland Bank Limited
  - The Hongkong and Shanghai Banking Corporation Limited
  - JPMorgan Chase Bank, N.A.
  - Kiwibank Limited
  - Rabobank New Zealand Limited
  - SBS Bank
  - TSB Bank Limited
  - Westpac New Zealand Limited.

## Background

3. NZBA welcomes the opportunity to provide feedback to the Foreign Affairs, Defence and Trade Select Committee (**Committee**) on the New Zealand Intelligence and Security Bill (**Bill**), and commends the work that has gone into developing it.
4. NZBA would appreciate the opportunity to make an oral submission to the Committee on this Bill. Please contact Richard Bicknell, Government Relations Director at NZBA on 04 802 3350 regarding times for appearing before the Committee.
5. If the Committee or officials have any questions about this submission, or would like to discuss any aspect of the submission further, please contact Antony Buick-Constable, NZBA Policy Director & Legal Counsel on 04 802 3351.
6. NZBA and its members generally support the Bill, its effective response to the Report of the First Independent Review of Intelligence and Security in New Zealand, and its aim to provide a clearer, single law for New Zealand's intelligence agencies.

## Concerns about clauses 99-101

7. While (as noted above) NZBA supports the Bill, we have some concerns about the practical operation of clauses 99-101, and consider that (in their current form) they

will not work as intended and engender suboptimal outcomes for both intelligence and private sector agencies.

8. Clauses 99-101 of the Bill, in their current form, enable the New Zealand Security Intelligence Service (**NZSIS**) and the Government Communications Security Bureau (**GCSB**) to request information held by other agencies.
9. However, under clauses 99-101, those agencies are not compelled to provide that information. This reflects the current position and practice under the Privacy Act 1993 whereby a government agency may ask a private sector agency for information, with the expectation that the private sector agency will rely on Information Privacy Principle (**IPP**) 11, and for example may disclose information in accordance with IPP 11(e)(i) (to avoid prejudice to the maintenance of the law) or IPP11(f) (to prevent or lessen a serious threat to public health or safety or the life or health of an individual).
10. Clauses 99-101, in their current form, will present agencies (including banks) with the same difficult issue they often experience today, namely reconciling two positions:
  - a. Assistance which may be in the public interest (voluntary disclosure of the information); and
  - b. Their duties of confidence and privacy to their customers (non-disclosure of the information).
11. Our members' experience demonstrates that disclosure of information (in the absence of statutory compulsion), creates both a risk of legal challenge to the right to do so, and a reputational risk to customer trust and confidence.
12. NZBA submits that clauses 99-101 of the Bill should be amended so that:
  - a. a safe harbour provision is included in respect to requests from intelligence agencies, similar to that contained in other legislation with information-gathering provisions (for example, section 159 of the Criminal Proceeds (Recovery) Act 2009 provides that compliance with a production order is not a breach of any obligation of secrecy or non-disclosure nor a breach of the enactment or rule of law which imposes the obligation); and
  - b. the provision of information by an agency following a request from NZSIS or GCSB does not of itself trigger any obligations for an agency under relevant New Zealand laws (including, but not limited to, the requirement to conduct enhanced customer due diligence on the relevant customer under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009).
13. We would be happy to engage further with, or provide assistance to, the Committee and officials to help address this issue.