



Why is NZ considering joining the Budapest Convention?

An increasing number of New Zealanders are impacted by cybercrime, which causes financial and emotional trauma to its victims.

Cybercrime is difficult to address, given the borderless, instantaneous and anonymous nature of the internet.

To effectively combat cybercrime and protect New Zealanders, law enforcement agencies must be able to work with their international counterparts.

Joining the Budapest Convention would support law enforcement agencies to combat cybercrime in New Zealand more effectively, and contribute to international efforts to stop cybercriminals.

Cybercrime is increasing every year. The internet is ever more attractive to offenders as more of social and economic life moves online – it offers mass reach to a large pool of victims and offending can be conducted effortlessly across borders. The online environment gives criminals anonymity, and allows them to trade in and contribute to illicit markets, including financial tools, scamming tools, weapons, child sexual exploitation and terrorism.

Cybercrime is difficult to address due to the ability to avoid leaving traces of evidence of crimes, and the speed at which crimes are committed and at which offenders change tactics. Cybercrime is now an industry, with cybercrime groups building scale and capability. COVID-19 has highlighted the need for strong international collaboration on cybercrime: the crisis has been rapidly exploited by cybercriminals across the globe.

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

New Zealand agencies rely on international cooperation when tackling online crime. This is simpler when all countries have consistent laws regarding how to lawfully access online evidence. Increasingly, evidence of all serious crimes, not just cybercrime, is stored electronically. Access to this evidence is key for

solving crimes like child sexual exploitation, money laundering, and terrorism. Like cybercrime, these crimes are increasingly transnational, requiring international collaboration and information sharing to solve.

How would accession help New Zealand address cybercrime?

The Convention addresses cross-border serious crimes and cybercrime by aligning nations' laws, enabling information-sharing on current threats and best practice, increasing international cooperation and fostering international dialogue. Aligned laws would make it easier for us to cooperate on international criminal investigations on cybercrime and wider crimes involving electronic evidence. Accession would support law enforcement to investigate and prevent cybercrime in New Zealand more effectively, and contribute to international efforts to stop cybercriminals. The changes to legislation required to join the Convention would complement and enhance New Zealand's existing cooperation on cybercrime, without fundamentally changing how we work.

Accession to the Budapest Convention would also build and strengthen relationships with member countries by signalling our commitment to international efforts to combat transnational serious crime and cybercrime.

Joining the Convention would allow New Zealand to participate in the development of new legal frameworks for accessing evidence across borders. This includes participation in negotiations of a further protocol to the Budapest Convention, which is aimed at further improving the international cooperation on these issues. It could also include seeking an Executive Agreement with

the United States under the CLOUD Act (Clarifying Lawful Overseas Use of Data Act), if the Government chose to do so. Such agreements provide that communications service providers in one country can comply with court orders to disclose electronic data issued by the other country, with appropriate safeguards. To seek a CLOUD Act agreement, New Zealand must be a Budapest Convention member or have equivalent laws.

ALIGNMENT WITH CYBER SECURITY POLICY OBJECTIVES

New Zealand would benefit from membership of the Budapest Convention in order to deliver its strategic vision “New Zealand is confident and secure in the digital world: Enabling New Zealand to thrive online,” as part of the Cyber Security Strategy 2019. The strategy has five priorities to improve cyber security including to proactively tackle cybercrime. It is also a key part of the *National Plan to Address Cybercrime 2015*.

ALIGNMENT WITH GOVERNMENT PRIORITIES

Accession would align with several of the priorities set by the Government, including support for healthier, safer, and more connected communities, making New Zealand the best place in the world for children, and creating an international reputation we can be proud of. Creating a safer online environment is fundamental to building a modern digital economy. The Budapest Convention is seen, internationally, as a benchmark for laws on cybercrime and access to electronic evidence for law enforcement. Acceding would improve the environment for digital business in New Zealand, by enabling domestic and international investment and development to occur with confidence that our regulatory settings are up to date and consistent with best practice. Accession supports other

government priorities, such as countering violent extremism online and combatting online child sexual exploitation.

ALIGNMENT WITH LAW COMMISSION RECOMMENDATIONS

The Law Commission and the Ministry of Justice undertook extensive public consultation as part of their joint review of the Search and Surveillance Act 2012. The resulting report recommended that the Government consider accession to the Budapest Convention.

The Law Commission also undertook extensive consultation as part of its review of mutual assistance and extradition law, including consideration of including surveillance device warrants in the mutual assistance scheme. In February 2016 the Law Commission issued its report: *Modernising New Zealand’s Extradition and Mutual Assistance Laws*. One of the main principles of the Law Commission report is that powers that are available to domestic authorities should be available in response to requests for assistance in foreign criminal matters. Accession to the Budapest Convention would assist with delivering on this principle.