



Submission: Arms (Firearms Prohibition Orders) Amendment Bill (No 2)

About the New Zealand Council for Civil Liberties

1. The New Zealand Council for Civil Liberties is a watchdog for rights and freedoms in New Zealand. The Council is a voluntary not-for-profit organization whose objects include promoting human rights and maintaining civil liberties.

Introduction

2. The Council believes that there are no reasonable grounds for the limitations on Freedom of Association which are the core of this bill.
3. The Council has no position on the desirability of firearms controls.
4. While we all benefit from having Human Rights and acknowledging the rights of each other, Human Rights are primarily a safeguard for the most vulnerable among us. That we as individuals may have a dislike for the members of gangs, abstract people who we have never met, is a cue for us to treat their rights with great respect.
5. The Council urges the Select Committee to reject this bill.

Freedom of Association

6. Article 20(1) of the Universal Declaration of Human Rights (UDHR), to which New Zealand is a signatory, states: "Everyone has the right to freedom of peaceful assembly and association."
7. Freedom of Association is enacted in New Zealand by section 17 of the New Zealand Bill of Rights Act (1990) (NZBORA) which reads as follows: "Everyone has the right to freedom of association."
8. Section 59A(1)(b) of this bill proposes to restrict the liberties of New Zealanders based on their membership in organisations, which contravenes our rights to Freedom of Association.



Right to a Fair Trial

9. Articles 7,8, and 10 of UDHR provide for the right to a fair trial. Section 27 of NZBORA enacts this as the Right to Justice.
10. The *Privacy (Information Sharing Agreement between New Zealand Gang Intelligence Centre Agencies) Order (2018)* (hereafter ISANZGICA) created the “New Zealand National Gang List“. As being a gang is not an offence, an association which is added to this list has no opportunity to defend itself. Furthermore, the list itself is secret, so associations do not even know they have been accused.
11. There are no laws in New Zealand under which membership in an association is an offence. Being a member of a gang is legal in New Zealand, as it should be.
12. As being a member of a gang is not an offence, anyone who is alleged to be a member of an alleged gang has no opportunity to defend themselves.
13. Therefore, this bill proposes to restrict the liberties of New Zealanders without providing for our rights to a fair trial.
14. Finally, people identified under sections 8(3) or 9(3) of ISANZGICA have no opportunity to challenge the accuracy of their inclusion on those lists. That order therefore restricts our liberties without providing for our rights to a fair trial. Nor, indeed, is there any mechanism for us to learn if we are on these lists.

Racial Discrimination

15. Section 21(1)(f) of the Human Rights Act (1993) prohibits discrimination on the basis of race.
16. The people who belong to associations which the New Zealand Gang Intelligence Centre has chosen to label as gangs are over 75% Māori¹. Therefore, discrimination on the basis of alleged membership in an alleged gang should be understood to be unlawful discrimination on the basis of race.

¹<https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/research/research-on-gangs-and-their-cost/index.html>



17. The Safe and Effective Justice Advisory Group's 2019 report *Turuki! Turuki! Moving Together*² calls for transformative change away from incarceration, not for creating new offences targeting Māori.

Attorney-General's Section 7 Report

18. The Council notes that the Attorney-General agrees that this bill unreasonably infringes on sections 17 (freedom of association) and 25 (presumption of innocence) of NZBORA.

Similar Legislation

19. The Council notes that similar restrictions of the liberties based on alleged association are contained in [Section 24A\(1\)\(k\) of the Arms Act \(1983\)](#) and [Section 8\(2\) of the Contempt of Court Act \(2019\)](#). The Attorney's General's objections to this bill and the Council's objections to this bill also apply to those acts.
20. Given that Section 24A(1)(k) of the Arms Act (1983) already provides for the discrimination on the basis of association that this bill intends to promote, the Council questions if this bill results in any practical difference in law, other than the reversal of the presumption of innocence noted by the Attorney-General.

Due Process

21. If we assume that the objectives of this bill are sound after removal of section 59A(1)(b), then we are left with the problem of unequal application of the law. The commissioner's discretion will result in unequal liberties for objectively equivalent individuals. The Council believes these limitations would better apply to everyone who meets the description in 59A(1)(c). Removing 59A(1)(a) increases fairness.

Recommendations

22. The New Zealand Council of Civil Liberties recommends that section 59A(1)(b) be struck from the bill as it contravenes our rights to free association and to a fair trial.
23. The Council further recommends that 59A(1)(a) be struck from the bill, and therefore the entire bill be revised to make 59A(1)(c) part of the firearms license process instead of

² <https://safeandeffectivejustice.govt.nz/about-this-work/te-uepu-report/>

NEW ZEALAND COUNCIL FOR CIVIL LIBERTIES



there being firearms prohibition orders, so that the rule of law is applied evenly.

24. The Council further recommends that ISANZGICA be amended so that any association accused of being a gang has the opportunity to defend itself in open court before being added to the "New Zealand National Gang List", so that the association has its right to a fair trial.
25. The Council further recommends that ISANZGICA be amended so that every person listed under sections 8(3) or 9(3) has the opportunity to challenge their inclusion in open court, so that they have their right to a fair trial.
26. The Council further recommends that the "New Zealand National Gang List" be published, and kept up to date, so that people can know which associations they should be cautious of joining for fear of state sanctioned discrimination.
27. Finally, the Council recommends that the Select Committee amend the Arms Act (1983) and the Contempt Of Court Act (2019) to remove the sections which limit freedom of association.
