



Submission: APEC 2021

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 that works through education and advocacy to promote a rights-based society and prevent the erosion of civil liberties.
2. The Council was formed in 1952 in response to the Police Offences Amendment Bill which was introduced into parliament after the 1951 waterfront lockout. While our concerns have broadened, supporting the right to protest remains one of our focuses.
3. We wish to appear before the Committee to make an oral submission.

Introduction

1. The Council opposes the Asia-Pacific Economic Cooperation (APEC 2021) Bill, and urges the committee to reject its passage.
2. As the strongest democracy in APEC, New Zealand has a responsibility to lead. Instead, this bill proposes for us to adopt anti-democratic measures which would drag us down to the lowest common denominator. When speaking to this bill, the Attorney-General said that “[International] Institutions are under siege” from authoritarianism. However, rather than stepping to freedom’s defence, this bill adopts tactics from foreign autocracies.



Concerns

Prima Facie

4. The bill proposes limitations on Freedom of Expression (Bill of Rights Act (1990) (NZBORA) section 14) and Freedom of Peaceful Assembly (section 16).
5. Article 21 of the International Covenant on Civil and Political Rights, to which New Zealand is a signatory, states:

“The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”¹

6. Public protest is an important vehicle for the development of our society. Both the principle of rule of law and Parliament itself owe their existence to public protest, as do many other key institutions.
7. New Zealand already has effective, and in the Council’s opinion excessive, controls on public protest. In recent years there have been many protests, at Ihumātao amongst other places, which have been adequately controlled under existing legislation.
8. The bill not only fails to balance limitations on our rights with the need to do so, it fails to show any need for any limitation on our rights. The Council notes that the committee is aware of this failure, as a member of the committee raised it at first reading of the bill.

¹ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>



Inquiry into matters relating to the visit of the President of China to New Zealand in 1999

9. The last time APEC was held in New Zealand, it went so disastrously that a Parliamentary Inquiry was held². When the Justice and Electoral Select Committee received the Inquiry's report on December 12, 2000, it summarized the report by saying "the actions of police [were] 'unjustifiable' in their handling of demonstrations."³

10. McBride⁴ quotes the Inquiry's findings as:

- a. *The police were not always impartial and did not give due weight to the right to protest and have that protest heard.*
- b. *The police infringed fundamental civil rights (e.g. the right to freedom of peaceful assembly contained in the New Zealand Bill of Rights Act 1990.)*
- c. *The police gave inconsistent evidence at the inquiry - a 'too casual' approach to accuracy that on occasions was 'unconvincing and inaccurate'.*
- d. *There was evidence of a police strategy to use arrest to remove protesters from a particular location without proper grounds and also of police threatening protesters with arrest if they did not comply with police directions, even when the protesters were within their rights to refuse.*
- e. *Protecting the right to freedom of expression meant that, on occasions, visiting dignitaries could expect a robust expression of views - 'protection of dignity does not require that a head of state be prevented from seeing messages opposed to [their] political beliefs or from being offended by protests.'*

11. In 1999 private security personnel were used to augment Police numbers. The Inquiry found that these additional personnel were a hindrance rather than an aid to the police due to the difference in their training. The Inquiry also found that the private security "contributed to increased tension in relationships between the

² The inquiry heard 22 hours of oral testimony from 69 submitters in addition to written submissions. It published two separate works, a 74 page findings document and a 408 page transcript of testimony. The Council was amongst the submitters.

Barnett, Tim MP. *Inquiry into matters relating to the visit of the President of China to New Zealand in 1999*. Wellington, New Zealand House of Representatives, 2001

³ The Council notes with disappointment that the Committee's minutes can not be found online. <https://www.scoop.co.nz/stories/PA0012/S00195.htm>

⁴ p.400, McBride, Tim. *New Zealand Civil Rights Handbook: a Guide to Your Civil Rights under New Zealand Law*. Nelson: Craig Potton Publishing, 2010.

The Council notes with considerable disappointment that the copies of the Inquiry's report can not be found online.



Police and protestors.” The Council notes with disappointment that this bill proposes to repeat that mistake.

12. The Inquiry concluded that “the actions taken by the Police against the protestors cannot be described as justified.”
13. The Council does not believe that the current bill has responded to the recommendations of the Inquiry. Rather the bill assumes the opposite of the inquiry’s report: that protest is not a social good and that more Police is a recipe for minimizing bad behaviour on the part of the Police. The Council finds this failure to acknowledge our history to be tragic.
14. The Council recommends that an appropriate response to the Inquiry would be to minimize Police presence at the 2021 APEC conference, and grant them neither additional powers nor additional funds.

Commencement

15. The purpose of this bill is to facilitate a variety of dubious tactics for a single event. This bill ceases to have effect days after the leader’s week events in Auckland, which conclude on November 14, 2021. Yet this bill takes effect on July 1st, more than 4 months before the conference begins. No explanation is provided for this discrepancy.

Superseding the New Zealand Bill of Rights Act (1990)

16. The courts in New Zealand have the power to declare parts of acts to be inconsistent with NZBORA. The courts have recently shown a willingness to use this power.
17. Section 4 of the bill states that “If there is any inconsistency between this Act and any other enactment, this Act prevails”. Section 4 therefore forces this bill to be inconsistent with the NZBORA, and invites the Supreme Court to declare inconsistency where one otherwise might not have occurred.



Closure of privately owned places

18. Section 48 of the bill proposes to give the Commissioner power to close privately owned places, including residences, without the agreement of the owners or residents.
19. Section 48 of the bill contravenes Article 12 of the Universal Declaration of Human Rights (UDHR)⁵, to which New Zealand is a signatory, by interfering with people's privacy, families, and homes.
20. Section 48 of the bill also contravenes Article 17 of UDHR by depriving people of their property.
21. Section 48 of the bill also contravenes Article 25 of UDHR by violating people's right to housing.

Unreasonable search

22. Section 66(3) of the bill proposes to give the power to search premises for no reason other than their location. This is a violation of section 21 of NZBORA, which protects against unreasonable search. This is also in violation of section 6(a) of the Search and Surveillance Act (2012), which states that *reason to suspect* an offence is being or will be committed is the minimum standard for conducting a search.
23. Sections 124-126 of the Search and Surveillance Act (2012) guarantee many safeguards for the search of persons, reflecting generations of lessons. Amongst many examples, they provide for privacy and dignity during strip searches. Sections 71 and 72 of this bill propose a shorter, and in the Council's opinion inferior, set of rules for search of persons. The bill provides no justification for this reduction in rights.

⁵ <https://www.un.org/en/universal-declaration-human-rights/index.html>



Imprisonment

24. Section 98 of the bill proposes that the “offences” defined in the bill should be subject to imprisonment.
25. It is the Council’s considered opinion that our prisons are badly flawed institutions. Not only do they fail to accomplish their stated purpose, there is evidence that they encourage further crime. Moreover, we fail in our responsibility to make prisons safe and humane homes for our peers who we confine in them. For these reasons, the Council believes that prisons should only be available as a sentencing option for the most serious crimes.
26. As the “offences” defined in this bill are not serious crimes, the Council believes that imprisonment is entirely unsuitable as a sentence.

Immunity and Compensation

27. New Zealand has a highly functioning government, judiciary, and society. Mistakes will be made by officials at the APEC conference, and they should be dealt with according to existing practice. In asking for blanket immunity, subparts 6 and 7 of the bill are an unjustifiable criticism of our justice system. Furthermore, by placing officers of the crown above the law, subparts 6 and 7 encourage immoral and illegal behaviour.

Recommendations

28. The New Zealand Council of Civil Liberties recommends that this bill be rejected in its entirety, both because there is no demonstrated need and because the bill runs counter to the Parliamentary Inquiry into the last APEC conference.

If the bill is not rejected

29. The Council recommends that section 1 be amended so that the bill takes effect on November 1, 2021, to align the period of the bill’s negative effects with the period of its, supposed, positive effects.
30. The Council recommends that section 4 be amended with a list of bills which are not being superseded, including:
- a. Treaty of Waitangi Act (1975)

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- b. Bill of Rights Act (1990)
 - c. Human Rights Act (1993)
 - d. Privacy Act (1993)
 - e. Search and Surveillance Act (2012)
31. The Council recommends that section 48 be amended to require the written consent of the owners and residents of any private premise being closed, and suitable compensation including alternate accommodations.
32. The Council recommends that section 66 be struck from the bill as the Search and Surveillance Act (2012) already grants search powers when there is reason to suspect search will be useful in preventing crime, and granting search when there is no suspected utility is not wise.
33. The Council recommends that sections 71 and 72 be struck from the bill so that the well-tested regulations in the Search and Surveillance Act (2012) govern the search of people.
34. The Council recommends that section 98 be amended to remove imprisonment as a sentencing option as more harm would be done to society by imprisoning someone convicted under this bill than by applying a non-custodial remedy.
35. The Council recommends that sections 111 through 115 be struck from the bill in order to preserve the rule of law in New Zealand.
