NEW ZEALAND COUNCIL FOR CIVIL LIBERTIES
PO Box 217, Carterton
www.nzccl.org.nz

Submission:
COVID-19 Public Health Response Act 2020

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. We made an oral submission to the Finance and Expenditure Committee on 3 June 2020, and are willing to appear again if the Committee would find that helpful.

Introduction

3. The NZCCL was one of a few groups and people given the opportunity to provide submissions on the Bill on the night of 11 May 2020, before its introduction into Parliament on 12 May 2020. Our submission is **appended**.

4. The rush to introduce and enact this legislation was unacceptable, even under the pressures of the time. Earlier drafts could have been shared for comment amongst a wider range of people. It should not happen again, not least because acting like this is likely to undermine public trust in government at a time when the government most needs the public to trust it if people are to follow public health advice.

5. We welcome this post-legislative scrutiny, but note that pushing the legislation through as fast as the Government did highlights a lack of resilience in, and commitment to, our country's democratic procedures. It exemplifies the culture in successive governments that appears to prefer post-event accountability, even though this leads to blame avoidance and risk aversion, rather than more participative and inclusive pre-legislative openness.

6. The Council has invested time and effort in scrutiny of the Bill, the Act and the section 11 order because, in the absence of a vaccine for Covid-19, there is a strong likelihood of the measures contained in this legislation remaining in force for a considerable time to come. We consider that without amendment to constrain the powers in the Act lasting damage could be done to the rights and freedoms of people living in New Zealand.

Wider points

7. The Council welcomes the move from epidemic response powers residing in the control of unelected officials to elected politicians. In a democracy, it is important that someone who is accountable to voters exercises the powers contained in the Act. The remaining, more limited, ability of the Director-General to exercise section 11 order making powers must only be exercised in truly exceptional circumstances.

8. We welcome too, the fact that the Act has a specific purpose of managing the current emergency, and is limited to that.

9. We also welcome the nod in the direction of Parliamentary oversight, although it is only that, given the way party whipping applies. It is unlikely that there will be circumstances in which a Government would permit a personal vote on a section 11 order or renewal of this Act and its powers.

10. We welcome the Government listening to us and other submitters, and reducing the lifespan of the Act.

11. We find there are a number of shortcomings in the definition of what section 11 orders may do, in particular how wide-ranging they can be. While we recognise the need for flexibility for providing orders suited to Alert Levels 1 - 4, we consider there is too much flexibility and this creates the potential for misuse and over-reach.

12. While we recognise that the Act attempts to allow for oversight, we find that there is room for much improvement in terms of both the creation and monitoring of the orders, as well as the exercise of powers under the Act. It is

our belief that the granting of exceptional powers must be counter-balanced with increased transparency for the use of those powers.

13. Finally, in the use of the Act to date, we are concerned that the speed of the process has led to the current section 11 order that is – in parts - confusing and not properly implemented, thus reducing public trust in the orders and the process. We note that contact tracing and registers have been a particular source of confusion.

Specific concerns

14. We have a number of specific concerns and recommendations for improvements.

Attorney-General Bill of Rights reports for section 11 orders

15. We wish to see the order making process provide for better consideration of the Bill of Rights, as this will aid MPs and the public when they consider section 11 orders the Government wishes to make.

16. In section 8 (Prerequisites for all section 11 orders), we **recommend** that after paragraph (c) there should be added a new paragraph (d) requiring that the Attorney General must lay before the House of Representatives a report on each section 11 order, identifying any provisions which, prima facie, are inconsistent with the provisions of the New Zealand Bill of Rights Act 1990, and on whether any inconsistencies are proportional and demonstrably justified in a free and democratic society. Such reports need to be laid before the House within the 10 sitting days specified in section 16(2)(a) of the 2020 Act.

17. We recognise this is stronger than section 7(b) of the NZ Bill of Rights Act, but so too are the powers sought by the Government in this Bill. Exceptional powers require greater transparency and accountability.

18. In section 9(1)(c), it is unclear what the function of consulting the Minister of Justice is. If it is to seek advice on NZ Bill of Rights issues, it should explicitly say so. If this is not what is meant, then we **recommend** that after paragraph (c) a further paragraph should be inserted requiring the Minister to

consult, and receive written advice from, the Attorney General on the NZ Bill of Rights Act issues the order may give rise to.

Keeping orders 'under review'

19. Section 14(5) of the Act says that the Minister and Director-General must keep section 11 orders 'under review', but does not specify what this entails.

20. We are not satisfied by this vague requirement. There is no obligation on either the Minister or Director-General to publish the inputs to, or results of, those reviews, let alone report them to the House, and this simply incentivises people to make Official Information Act (OIA) requests, which could be avoided by mandating proactive publication. We **recommend** adding a new sub-section after this provision requiring the Minister and Director-General to publish a report every month on the operation of any section 11 orders they have made. This should also specify that the detailed requirements for such reports must be laid out in regulations made under section 33 of the Act. Holding exceptional powers requires higher levels of transparency and accountability than a vague obligation to keep matters 'under review'.

21. The effect of this recommendation would be a better informed legislature and public, and a reduction in the number of OIA requests the Minister and Director-General have to respond to.

Section 11 – Orders that can be made under the Act

22. There are three points we would like to make to the Committee about what section 11 can do.

23. First, both section 11(1)(a) and 11(1)(b) use the phrase 'without limitation' before listing the issues a section 11 order could require or prohibit. The effect of this is that the orders are not restricted to the matters listed in sub-paragraphs (i)-(ix) and (i)-(v) – anything could be added to the orders if they meet the broad purposes specified in 11(1)(a) and 11(1)(b).

24. There is no need to give such an unlimited definition to what may be required of people under section 11 orders. The Government has shown itself willing and able to legislate at speed if it feels necessary to do so, and so any further

additions to the provisions in section 11(1)(a)(i)-(ix) and 11(1)(b)(i)-(v) should be a matter of legislation. We **recommend** that the phrase 'without limitation' be removed from any re-enactment of this legislation.

25. Not to do so permits dangerous additions without public debate, such as mandating people to submit to the state tracking their location, or to carry a card transmitting and receiving data from others, or to carry some form of officially designated identity document. If the Government wants to mandate identity cards or tracking the movements of the public, it must be prepared to have the public debate first, and enable MPs to debate the legislation.

26. Second, we want to see better recognition and protection of important rights such as freedom of expression and the right to protest, especially as these orders can last for up to two years.

27. We note that sub-paragraphs 1(a)(i) - (v) and (vii) could all be used to prohibit people gathering to listen to speeches, march, or protest for or against a matter of public concern. The Acting Attorney-General's report on the Bill's consistency with the NZ Bill of Rights Act states (para. 48) that the legislation *"provides for unprecedented limits on freedom of association and movement."* We understand the health concerns motivating these provisions, but note also the section 3 provision for this legislation to last for two years (if not repealed earlier), and the absence of any limit in section 14 on the duration for a section 11 order made by the Minister.

28. Given the offence provisions in this Act, these orders are likely to represent a serious departure from the freedom of peaceful assembly and freedom of association in sections 16 and 17 of the NZ Bill of Rights Act. We **strongly recommend** amendments which would restrict section 11 orders under this Act from having this effect when the purpose of any assembly or association is to protest a matter of public interest – while physically distanced from other people as envisaged in section 11(1)(a)(iii).

29. The practical implementation of this in relation to section 11 orders could be specified in regulations made under a broadened section 33. For example, it could specify that those organising a protest could be under a duty to remind

those present to maintain physical distancing, and wear face coverings. It could also be made clear in guidance, but the problem with doing so is that unless the Act specifies authorities must have regard to the guidance before issuing any infringement notice or charging someone with an offence, it will not carry much weight.

30. Third, we are concerned about enforced medical testing and procedures.

31. Section 11 sub-paragraph (1)(a)(viii) specifies that a section 11 order can require people to *'report for medical examination or testing in any specified way or in any specified circumstances.'* The Acting Attorney-General's report on this matter is consistent with the concerns we expressed in our submission on the draft Bill: the provision comes dangerously close to, if not actually overstepping, the protections in section 11 of the NZ Bill of Rights Act.

32. Paragraph 29 of the Acting Attorney-General's report states:

> *"We consider that the right to refuse medical treatment is engaged by certain forms of medical examination, and particularly by a test for COVID-19. A COVID-19 test requires the collection of a bodily sample from an individual for the purpose of diagnosis and assessment. It can include the use of a moderately invasive procedure – a nasopharyngeal swab to collect nasal secretions from the back of the nose and throat."*

33. While we certainly would want to encourage people to be tested or examined if medically necessary, people should retain their right to refuse, while understanding what the implications may be. This is most likely to involve a compulsory period of quarantine for example. We **recommend** that the Act should have had a provision added to it specifying that the offence provision in section 26 cannot apply to non-compliance with a request to report for medical examination or testing, and that instead the person may be quarantined for a specified period under sections 70(1)(f) or 97(2) of the Health Act 1956. The provisions of section 12(1)(c) and 12(1)(d) do not provide sufficient comfort on this matter, and it should be addressed in an amendment to this Act, rather than leaving matters to the discretion of officials or Ministers drafting or reviewing any draft section 11 orders.

Prisons excluded from section 11 orders

34. In relation to section 12 of the Act, we are concerned that section 11 orders are expressly prohibited - by s. 12(2)(c)(ii) - from applying to a prison. Effectively, if there were an outbreak of Covid-19 at a prison, a section 11 order under the Act could not be used to require the Department of Corrections to close a prison, or to keep it open only if specified measures are complied with. Why is it that? Prisons are used to punish people through depriving them of their liberty, and not for denying people measures to protect their health. The Acting Attorney-General's report on the Bill is silent on this matter, and we **recommend** the Committee seek clear answers from the Government on this issue.

Duration of section 11 orders

35. Our understanding of the interaction of sections 3 and 14 is that a section 11 order made by the Minister could last for up to two years, if the Act keeps being extended.

36. We don't think it is acceptable that a section 11 order made by the Minister may have a duration of the two full years that this Act could permit. We **recommend** that after subsection 14(3) a new subsection (4) should be inserted, stating:

> *A section 11 order made by the Minister expires 3 months after the date on which it comes into force, unless it is sooner revoked or extended.*

37. The experience with Covid-19 to date is that the situation has changed rapidly and so has the required response. The scientific understanding of the virus and its effects is still rapidly evolving. Given the truly extraordinary powers sought by the Government in this Act – while at the same time trying to move away from being in a formal state of emergency – the duration of section 11 orders should be tightly constrained. The fact that section 15 permits their extension means that they can be rolled over if the circumstances require it, but Parliament should be given not less than quarterly opportunities to review the necessity for these orders. We note that Epidemic Notices last 3 months, so this period is already well understood within government. This would require a

consequential amendment to section 15(1) to add after 'extend', *'by up to three months'*.

Powers of entry, and reporting on use of them

38. The powers of entry provisions in section 20 of the Act have worried quite a few people. We are concerned that they may go beyond what is reasonably necessary, especially at the lower alert levels, and draw the Committee's attention to paragraphs 59-60 of the Acting Attorney-General's report on the Bill. For example, the purpose of sub-section 20(3) is to give a person a direction under section 21, and it is not clear why entry must be made to do this.

39. The breadth of sections 20(1) and 20(3), to enter land, buildings, craft, vehicles, places, or a house without a warrant is wide open to abuse and discriminatory application. We are not comforted by the 'reasonable grounds' requirement. We note the very significant number of reports by members of the public to the Police about people allegedly not complying with previous alert level requirements, and believe it is quite likely that we will see this provision being used in response to malicious false allegations from people involved in neighbour disputes, or acting on their prejudices and misguided assumptions. We **suggest** consideration be given to an offence of maliciously alleging infringement of a section 11 order.

40. The Acting Attorney-General's report on the Bill states (paragraph 61) that the requirement on those using the warrantless entry powers to report on this, and to detail the circumstances of doing so is a '*safeguard'* and a *'check on the use of the power'* – and that *'For these reasons, the entry power in [section 20] is reasonable under s 21 of the Bill of Rights Act.'*

41. The Council considers the Acting Attorney-General's confidence in the reporting requirements in section 20(7) is misplaced. The provisions are too vague, and do not require the capture, recording and reporting of data which will enable people to ascertain patterns of discriminatory action by the Police or enforcement officers. We already have strong concerns about the Police failure to capture and report on data about the use of tasers, dogs, and armed

response teams that enable such analysis, and this Act is an opportunity to begin to rectify that problem.[1] We **strongly recommend** an amendment to section 20(7) to require the collection of data on the assumed age, gender and ethnicity of the people against whom the powers were exercised; and such geographic and other information as may be specified in regulations made under section 33.

42. There is no point in requiring the provision of written reports under sections 20(5) and 20(6) if such data is not published to facilitate scrutiny, analysis and accountability. How is the Independent Policy Conduct Authority (in relation to constables), or the Ombudsman (in relation to enforcement officers appointed by the Director-General) meant to have any data on which to make an assessment of whether to use their powers to initiate an investigation if no data or reports are required to be published? How are civil society organisations such as the NZ Council for Civil Liberties meant to draw concerns to the attention of Members of Parliament or the media if no data or reports are required to be published?

43. As with section 14(5) reviews of the section 11 orders, the failure to include a provision mandating the publication of the information will create work for the agencies in responding to OIA requests. The Police are already attempting to charge a requester more than $800 for statistical data on their use of force that has previously been released free of charge, so the Council is not confident that mere collection of reports will provide any serious safeguard, nor enable transparency and accountability for the exercise of them.[2]

---

[1] *Armed Response Teams trial: 'Bizarre' holes in callout data*, Radio New Zealand, 5 June 2020. https://www.rnz.co.nz/news/national/418308/armed-response-teams-trial-bizarre-holes-in-callout-data

[2] *Police want $800 for previously free use of force data*, Stuff, 11 October 2019. https://www.stuff.co.nz/national/116470002/police-want-800-for-previously-free-use-of-force-data. See also the Police response to a subsequent request for the next year's data: https://fyi.org.nz/request/11337-tactical-options-reporting-data-january-december-2018#incoming-44108

44. With such extraordinary powers, there need to be strong duties of publication of the data gathered in the exercise of them. We **recommend** the addition after section 20(8) of a new subsection (9) as follows:

> *(9) The Commissioner of Police in relation to the reports referred to in subsection (5), and the Director-General in relation to the reports referred to in subsection (6), must publish on a website every month a report on the exercise of the powers described in this section, which includes the verbatim information provided to them as described in subsection (7) as well as numerical data relating to the age, gender and ethnicity of the people against whom the powers were exercised and any other information as may be specified in regulations made under section 33.*

Reporting on Infringement Notices

45. Related to the reporting on use of warrantless entry powers, the Council considers there needs to be a similar requirement to publicly report on the issuing of infringement notices, as this will provide greater transparency for the operation of the Act in practice. We **recommend** adding after subsection 30(4):

> *(5) Where an enforcement officer issues an infringement notice to a person, the enforcement officer must retain a copy of it and report to the Commissioner of Police or Director-General on*
>
> *(a) the age, gender and ethnicity of the people to whom the notice was issued; and*
>
> *(b) such geographic and other information as may be specified in regulations made under section 33.*
>
> *(6) The Commissioner of Police in relation to the reports supplied by a constable, and the Director-General in relation to the reports supplied by any enforcement officer (other than a constable) under subsection (5), must publish on a website every month a statistical report on the data supplied.*

Provision of identifying information to enforcement officers

46. The Council is concerned about the power in section 23 for enforcement officers (both police constables and those appointed by the Director-General under section 18) to demand information from people, and the lack of constraints against misuse of this power and the information gathered.

47. The power in section 23 (to direct someone to provide identifying information) is far too broad, going beyond the powers of the Police in sections 32 and 33 of the Policing Act 2008. Similarly the duty to destroy the information gathered, set out in section 34 of the Policing Act, is not mirrored here. Given the breadth of section 11 orders under this Act, it is effectively license for an enforcement officer to snoop on anyone they feel like. We already know that some Police officers have misused their access to such information for personal gain or other reasons. There is not even any inclusion in section 23 of the Act of a duty to keep the information confidential and only to use it for the purposes for which it was gathered. Yes, someone might be able to make a complaint under the Privacy Act, but it is unlikely that this is sufficient deterrent to prevent misuse of these extraordinary powers. Sections 105A and 105B of the Crimes Act apply to corrupt use of official information to gain an advantage or pecuniary gain, not to misuse of personal information for things like stalking someone.

48. We **recommend** the amendment of section 23 so that it mirrors sections 32 and 33 of the Policing Act. We also **recommend** a specific offence of using the information gathered under section 23 for any other purpose than to exercise the powers in this subpart of the of the Bill.

49. Related to this, we note that the section 11 order made subsequent to the passing of this Act has already been amended in relation to the information gathered to enable contact tracing (cl. 4). Businesses required to operate a register of customers and workers are no longer required to collect address information. We think it is not necessary to collect a person's full name – and indeed, if only a first or last name were collected, the person may be less inclined to provide false information in relation to a phone number or email address.

Evidence of enforcement officer's identity

50. In relation to section 19 (Evidence of Identity), given the requirements of section 129 of the Search and Surveillance Act 2012 (Duty to provide information), we see no reason for the exclusion of police constables from the

obligation to provide evidence of their identity when exercising their powers. Police constables should be required to provide people with their name or unique identifier (see s. 129(a) of the 2012 Act). We **recommend** section 19 be amended to bring it into line with section 129 of the Search and Surveillance Act 2012.

Summary of recommendations and suggestions

51. The table below summarises the recommendations and suggestions made in this submission, in order of the section of the Act.

Section of the Act	Recommendation	See para.
8	After paragraph (c) there should be added a new paragraph (d) requiring that the Attorney General must lay before the House of Representatives a report on each section 11 order, identifying any provisions which, prima facie, are inconsistent with the provisions of the New Zealand Bill of Rights Act 1990, and on whether any inconsistencies are proportional and demonstrably justified in a free and democratic society. Such reports need to be laid before the House within the 10 sitting days specified in section 16(2)(a) of the 2020 Act	16
9(1)	After paragraph (c) a further paragraph should be inserted requiring the Minister to consult, and receive written advice from, the Attorney General on the NZ Bill of Rights Act issues the order may give rise to.	18
11	We recommend that the phrase 'without limitation' be removed from sections 11(1)(a) and 11(1)(b)	24
11	We strongly recommend amendments which would restrict section 11 orders under this Act from [constraining freedom of expression, movement, and association] when the purpose of any assembly or association is to protest a matter of public interest – while physically distanced from other people as envisaged in section 11(1)(a)(iii).	28
11	We recommend that the Act should have had a provision added to it specifying that the offence provision in section 26 cannot apply to non-compliance with a request to report for medical examination or testing, and that instead the person may be quarantined for a specified period under sections 70(1)(f) or 97(2) of the Health Act 1956.	33
12	We recommend the Committee seek clear answers from the Government on why prisons are excluded from the scope of section 11 orders by section 12(2)(c)(ii).	34
14	We recommend that after subsection 14(3) a new subsection (4) should be inserted, that Ministerial section 11 orders expire after three months (and make the consequential change to section 15(1)).	36

Section of the Act	Recommendation	See para.
14	Add a new sub-section after section 14(5) requiring the Minister and Director-General to publish a report every month on the operation of any section 11 orders they have made. This should also specify that the detailed requirements for such reports must be laid out in regulations made under section 33 of the Act.	20
19	We recommend section 19 be amended to bring it into line with section 129 of the Search and Surveillance Act 2012, so that constables also have to provide evidence of their identity when exercising their powers under this Act.	50
20	We suggest consideration be given to an offence of maliciously alleging infringement of a section 11 order.	39
20	We strongly recommend an amendment to section 20(7) to require the collection of data on the assumed age, gender and ethnicity of the people against whom the powers were exercised; and such geographic and other information as may be specified in regulations made under section 33.	41
20	We recommend the addition after section 20(8) of a new subsection (9) requiring monthly publication of reports on the warrantless entry powers (and specify what should be included in these reports)	44
23	We recommend the amendment of section 23 so that it mirrors sections 32 and 33 of the Policing Act.	48
23	We recommend a specific offence of using the information gathered under section 23 for any other purpose than to exercise the powers in this subpart of the of the Bill.	48
30	We recommend addition of a provision requiring publication of reports on the infringement notices issued by enforcement officers.	45

Appendix: NZCCL Comments on Exposure Draft of COVID-19 Public Health Response Bill

COVID-19 Public Health Response Bill

Comments on Exposure Draft

11 May 2020

Instructions for filling out table feedback:

- Please provide comments on provisions in the order they appear in the Bill (first couple of clauses completed for example).
- Please also identify the clause reference by number and title.
- Please include in the yellow box who the comments are made by.

New Zealand Council for Civil Liberties Comments on COVID-19 Public Health Response Bill
Exposure Draft

Clause Reference	Comment
3 – Repeal of this Act	In paragraph (a) substitute '6 months' for '2 years'. There will be a general election later this year, and whatever Government is formed after that should have to commit itself afresh to the serious powers and constraints on liberties contained in this legislation. In addition, this would provide for proper select committee scrutiny of any legislation seeking to renew the provisions of this Bill.
8 – Prerequisites for all section 11 orders	In paragraph (c) insert a requirement for the Prime Minister to make a statement to the House of Representatives, just as an epidemic notice or state of emergency notice must be.
8 – Prerequisites for all section 11 orders	After paragraph (c) add a new paragraph (d) requiring that the Attorney General must lay before the House of Representatives a report on each section 11 order, identifying any provisions which, prima facie, are inconsistent with the provisions of the New Zealand Bill of Rights Act 1990, and on whether any inconsistencies are proportional and demonstrably justified in a free and democratic society. [Note, we recognise this is stronger than s. 7(b) of the NZ Bill of Rights Act, but so too are the powers sought by the Government in this Bill. Exceptional powers require exceptional transparency and accountability.]
9 – Minister may make section 11 orders	After paragraph (c) insert a paragraph requiring the Minister to consult, and receive written advice from, the Attorney General on the NZ Bill of Rights Act issues the order may give rise to.

11 – Orders that can be made under this Act	In paragraph 1(a) delete '(without limitation)'. There is no need to give such an unlimited definition to what may be required of people under section 11 orders. The Government has shown itself willing and able to legislate at speed if it feels necessary to do so, and so any further additions to the provisions in clause 11(1)(a)(i)-(viii) should be a matter of legislation. Not to do so permits dangerous additions without public debate, such as mandating people to install a smartphone app or carry a card transmitting and receiving data from others, or to carry some form of officially designated identity document. If the Government wants to mandate identity cards or similar, it must be prepared to have the public debate first.
11 – Orders that can be made under this Act	We note that sub-paragraphs 1(a)(i), (ii), (ii), (iv), (v) and (vii) could all be used to prohibit people gathering to listen to speeches, march, or protest for or against a matter of public concern. We understand the health concerns motivating these provisions, but note also the proposal for this legislation to last for two years, and the absence of any limit in clause 14 on duration for a section 11 order made by the Minister. Given the offence provisions in this Bill, these orders are likely to represent a serious departure from the freedom of peaceful assembly and freedom of association in sections 16 and 17 of the NZ Bill of Rights Act. We strongly urge the Government to consider drafting provisions which would restrict section 11 orders under this Bill from having this effect when the purpose of any assembly or association is to protest – while physically distanced from other people as envisaged in clause 11(1)(a)(iii) – a matter of public interest.
11 – Orders that can be made under this Act	In relation to sub-paragraph 1(a)(viii) (report for medical examination or testing) this comes dangerously close to, if not actually overstepping, the protections in sections 10 and 11 of the NZ Bill of Rights Act. While we would want to encourage people to be tested or examined if medically necessary, people should retain their right to refuse, while understanding what the implications may be – a period of quarantine for example. The Bill must have a provision added to it specifying that the offence provision in section 25 cannot apply to non-compliance with a request to report for medical examination or testing, and that instead the person may be quarantined for a specified period under sections 70(1)(f) or 97(2) of the Health Act 1956. The provisions of clause 12(1)(c) and 12(1)(d) do not provide sufficient comfort on this matter, and it should be addressed in an amendment to this Bill, rather than leaving matters to the discretion of officials or Ministers drafting or reviewing any draft section 11 orders.
11 – Orders that can be made under this Act	In paragraph 1(b) delete '(without limitation)'. There is no need to give such an unlimited definition to what may be required of places, premises, crafts, vehicles, animals or other things under section 11 orders.
11 – Orders that can be made under this Act	In relation to sub-paragraph 1(b)(iii) see our concerns (above, re: clause 11(1)(a)) about freedom of assembly and association.

14 – Form, publication, and duration of section 11 orders	Insert after paragraph 14(3) a new paragraph (4) stating: 'A section 11 order made by the Minister expires 3 months after the date on which it comes into force, unless it is sooner revoked or extended.' It is completely unacceptable that a section 11 order made by the Minister may have duration for the two full years envisaged as the duration of this law by clause 3(a). The experience with COVID-19 to date is that the situation has changed rapidly and so has the required response. The science is still rapidly evolving. Given the truly extraordinary powers sought by the Government in this Bill – while at the same time trying to move away from being in a state of emergency – the duration of section 11 orders should be tightly constrained. The fact that clause 15 permits their extension means that they can be rolled over if the circumstances require it, but Parliament should be given not less than quarterly opportunities to review the necessity for these orders. We note that Epidemic Notices last 3 months, so this period is already well understood within government.
14 – Form, publication, and duration of section 11 orders	Paragraph 14(5) is too vague. 'Under review' is meaningless unless there is an obligation to publish a report of such reviews. We suggest adding a new paragraph after this provision requiring the Minister and Director-General to publish a report on any section 11 orders they have made every month, specifying too that the detailed requirements for such reports must be laid out in regulations made under clause 32 of the Bill. Holding exceptional powers requires higher levels of transparency and accountability than a vague obligation to keep matters 'under review'.
15 – Amendment or extension of section 11 orders	In clause 15(1) insert 'by up to 3 months on each occasion' after 'made by the Minister'. This amendment parallels the proposal above to add a new paragraph to clause 14 limiting the duration of section 11 orders made by the Minister.
19 – Evidence of identity	Given the requirements of section 129 of the Search and Surveillance Act 2012 (Duty to provide information), we see no reason for the exclusion of Police constables from the obligation to provide evidence of their identity when exercising their powers. Police constables should be required to provide people with their name or unique identifier (see s. 129(a) of the 2012 Act).
20 – Powers of entry	We are deeply concerned by the breadth of clauses 20(1) and 20(3), to enter land, buildings, craft, vehicles, places, a house, or a marae without a warrant. It is wide open to abuse and discriminatory application. Further, given the significant number of calls to the Police about people allegedly not complying with previous Alert Level requirements, it is quite likely that we will see this provision being used in response to false and malicious allegations from people involved in neighbour disputes or acting on their prejudices and misguided assumptions. We suggest consideration be given to an offence of maliciously alleging infringement of a section 11 order.

20 – Powers of entry	Clause 20(7) is too vague and does not require the capture, recording and reporting of data which will enable people to ascertain patterns of discriminatory action by the Police or enforcement officers. We already have strong concerns about the Police failure to capture and report on data about the use of tasers, dogs, and armed response teams that enable such analysis, and this Bill is an opportunity to begin to rectify that problem. We strongly urge an amendment to clause 20(7) to delete the full stop at the end of paragraph (b) and add the following: '; and (c) the age, gender and ethnicity of the people against whom the powers were exercised; and (d) such geographic and other information as may be specified in regulations made under **section 32**.'
20 – Powers of entry	There is no point in requiring the provision of written reports under clauses 20(5) and 20(6) if such data is not published to facilitate scrutiny, analysis and accountability. How is the Independent Policy Conduct Authority (in relation to constables), or the Ombudsman (in relation enforcement officers) meant to have any data on which to make an assessment of whether to use their powers to initiate an investigation if no data or reports are required to be published? How are civil society organisations such as the NZ Council for Civil Liberties meant to draw concerns to the attention of Members of Parliament or the media if no data or reports required to be published. Again, with such extraordinary powers, there need to be strong duties of publication of the data gathered in the exercise of them. We urge the addition after clause 20(7) of a new paragraph (8) as follows: '(8) The Commissioner of Police in relation to the reports referred to in **subsection (5)**, and the Director-General in relation to the reports referred to in **subsection (6)**, must publish on a website every month a report on the exercise of the powers described in this section, which includes the verbatim information provided to them as described in **subsection (7)** as well as numerical data relating to the age, gender and ethnicity of the people against whom the powers were exercised.'

23 – Power to direct person to provide identifying information	This power is far too broad, going beyond the powers of the Police in sections 32 and 33 of the Policing Act 2008. Similarly the duty to destroy the information gathered set out in section 34 of the Policing Act is not mirrored here. Given the breadth of section 11 orders under this Bill, it is effectively license for an enforcement officer to snoop on anyone they feel like. We already know that some Police officers misuse their access to such information for personal gain or other reasons. There's not even any inclusion in clause 23 of the Bill of a duty to keep the information confidential and only to use it for the purposes for which it was gathered. Yes, someone might be able to make a complaint under the Privacy Act, but it is unlikely that this is sufficient deterrent to prevent misuse of these extraordinary powers. Sections 105A and 105B of the Crimes Act apply to corrupt use of official information to gain an advantage or pecuniary gain, not to misuse of personal information for things like stalking someone. We recommend the amendment of clause 23 so that it mirrors sections 32 and 33 of the Policing Act. We also recommend a specific offence of using the information gathered under clause 23 for any other purpose than to exercise the powers in this subpart of the of the Bill.
29 – Infringement offences	There is no obligation to collect data or publish statistics on the people served with infringement notices under this clause. This should be rectified to as to enable greater transparency and accountability about this aspect of the Bill's operation. We recommend adding after paragraph (4): '(5) Where an enforcement officer issues an infringement notice to a person, the enforcement officer must retain a copy of it and report to the Commissioner of Police or Director-General on (a) the age, gender and ethnicity of the people to whom the notice was issued; and (b) such geographic and other information as may be specified in regulations made under **section 32**. (6) The Commissioner of Police in relation to the reports supplied by a constable, and the Director-General in relation to the reports supplied by any enforcement officer (other than a constable) under **subsection (5)**, must publish on a website every month a statistical report on the data supplied.'