



Submission: Counter Terrorism Bill

About the New Zealand Council for Civil Liberties

1. The New Zealand Council for Civil Liberties is a voluntary, not-for-profit organization which advocates to promote human rights and maintain civil liberties.
2. We wish to make an oral submission before the Committee.

Introduction

3. Nothing in this bill would have helped to deter the Christchurch massacre.
4. The Council is immensely disappointed that this bill does not enact the recommendations of the *Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019*.¹ The Council believes that rather than giving our Police and spies additional powers, we should be correcting the shortcomings identified by the Royal Commission.
5. The Council rejects the misconception that freedom can be traded for safety. The general policy statement of the bill's Explanatory Note claims the bill will "better prevent terrorism activities" and "keep the public of New Zealand safe". The Universal Declaration of Human Rights (UDHR), to which New Zealand is a signatory, begins:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world

The Council agrees that human rights are *the* foundation of peace, and therefore of safety. The Council believes that this bill will make us less free and ultimately less safe.

¹ The Council notes that we have reservations about the Royal Commission's recommendations. <https://christchurchattack.royalcommission.nz/the-report/>



6. The Council agrees with the 1991 Law Commission Report on Emergencies² which said ‘The danger is that States will over-react’ and *“it is possible to imagine governmental officials doing more to destroy democracy in the name of counter-terrorism than is presently likely to be achieved by terrorists themselves.”*

Terrorism Suppression Act 2002

7. The Council opposed the Terrorism Suppression Act 2002 (TSA), calling it an “assault on democracy”. We note that this act was passed quickly in a time of moral panic. We note that the Royal Commission doubts this act is “fit for purpose.”³ We remain strongly opposed, and recommend it be repealed.
8. Conspiring to commit an offence has always been an offence in Aotearoa. Indeed that is the name of section 310 of the Crimes Act 1961 (CA). We draw this Committee’s attention to section 310’s explicit inclusion of all foreign jurisdictions. Similarly, CA section 311 outlaws *every one who incites, counsels, or attempts to procure any person to commit any offence*⁴. Therefore, the Council believes the TSA duplicates pre-existing legislation.

Right to Protest

9. The right to protest is protected by sections 13,14, and 16 of the New Zealand Bill of Rights Act 1993 (NZBORA).
10. Section 5.5 of the TSA reads:

To avoid doubt, the fact that a person engages in any protest, advocacy, or dissent, or engages in any strike, lockout, or other industrial action, is not, by itself, a sufficient basis for inferring that the person—

(a) is carrying out an act for a purpose, or with an intention, specified in subsection (2); or

(b) intends to cause an outcome specified in subsection (3).

² NZLC R22 Wellington 1991

³ Part 10, Chapter 2, Section 46

<https://christchurchattack.royalcommission.nz/the-report/findings-and-recommendations/chapter-2-recommendations-to-improve-new-zealands-counter-terrorism-effort/>

⁴ <https://www.legislation.govt.nz/act/public/1961/0043/latest/DLM330795.html>



Section 5.5 does not guarantee the right to protest. On the contrary, under section 5 any protest at which a single person sustains a “serious bodily injury”⁵ is a terrorist act and the organisers a terrorist organisation. The 1981 Springbok protests would be terrorist acts under the TSA. This is entirely unacceptable.

11. In order to safeguard the right to protest the Council recommends that:
 - a. Section 5(2)(b) be removed, so that inducing terror is the sole criteria; and
 - b. Section 5(5) be rewritten to affirm the right to protest, with wording like:
This act acknowledges everyone’s right to protest, advocate, dissent, or engage in any strike, lockout, or other industrial action. Those actions are not terrorist acts.

Manifestation of religion and belief

12. NZBORA section 15 protects against religious persecution
13. The Council notes that all of the groups listed in the act have the same religion. The Council further notes none of terrorist acts against Aotearoa to date have been committed by people of that religion. The Council therefore finds the TSA to be a tool of religious persecution.

Racism

14. Section 21(1)(f) of the Human Rights Act (1993) prohibits discrimination on the basis of race. It is also prohibited by Article 2 of the International Covenant on Civil and Political Rights (ICCPR), which New Zealand has ratified.
15. The Council notes that all of the groups listed in the act have the same dominant ethnicity. The Council further notes all terrorist acts against Aotearoa to date have been committed by people of a different ethnicity. The Council therefore finds the TSA to be racist.

Freedom of Association

16. UDHR article 20(1) states: “Everyone has the right to freedom of peaceful assembly and association.” Freedom of Association is enacted by NZBORA

⁵ TSA 5(3)(a)



section 17 which states: “Everyone has the right to freedom of association.”

17. The Department of Corrections has that name to emphasize that people can change. Crimes are behaviours, not people. Similarly, groups of people have a range of behaviours and the ability to change. Recent examples of conflicts which were needlessly prolonged when one side labelled the other as “terrorists” include The Troubles of Northern Ireland and South Africa’s Apartheid. Practically, labelling a group as “terrorist” is a diplomatic failure which escalates and prolongs violence.
18. The TSA repeatedly violates freedom of association. For example, TSA section 12 makes it a crime to recruit new members of the association, while section 13 makes it a crime to be a member of the association.
19. CA sections 310 and 311 outlaw similar behaviours as the TSA, but do so without violating freedom of association as they specify acts rather than groups.
20. Given that TSA section 5 defines terrorist acts without infringing on Freedom of Association, the Council believes that the rest of the TSA would be greatly improved by removing all references to groups.

Right to a Fair Trial

21. UDHR articles 7,8, and 10 of UDHR provide for the right to a fair trial. NZBORA section 27 enacts this as the Right to Justice.
22. The Council notes that Aotearoa has not provided the associations being penalised under the TSA with the opportunity to defend themselves in open court, as is their right.
23. The Council notes that the TSA’s openness is an improvement over some subsequent legislation, notably the *Privacy (Information Sharing Agreement between New Zealand Gang Intelligence Centre Agencies) Order (2018)*, which keeps secret the list of groups who are being discriminated against. The Council again asks the Committee to give any association accused of being a gang the opportunity to defend itself in open court before being added to the “New Zealand National Gang List.”



Search and Surveillance Act 2012

24. The Council opposed the Search and Surveillance Act 2012, calling it “a massive assault on civil liberties”. We recommend that it be revised to increase safeguards for human rights.

Terrorism Suppression (Control Orders) Act 2019

25. The Council opposed the Terrorism Suppression (Control Orders) Act 2019 (TSCOA), calling it “unacceptable in a rights-based society”. We note that the act was pushed through with absurd haste, then sat unused. We remain strongly opposed, and recommend it be repealed.

26. The TSCOA violates NZBORA section 9 by punishing innocent people with restrictions which exceed those which can be imposed on prisoners in our jails.

27. The TSCOA violates NZBORA sections 23(2) and 23(3). The Council finds the technicality that people are not “arrested” under TSCOA to be an insult to our democracy.

28. The TSCOA violates NZBORA sections 24(b) and 24(e). The Council finds the technicality that people are not “charged” under TSCOA to be an insult to our democracy.

29. The TSCOA violates NZBORA sections 25(a),(b),(c),(e),(f), and (h). The Council finds the technicality that people are not given any trial under TSCOA to be an unbearable stain on our community.

Counter-Terrorism Legislation Bill (this bill)

30. The Council urges this Committee to reject this amendment Bill.

31. The Council notes that the adjustments to the list of groups ignores the only groups to have attacked Aotearoa.



32. The Council notes that the list of groups after adjustment is just as racist and religiously intolerant as it was before.
33. The Council believes that Parliament is being reckless by creating a criminal offence for people who have done nothing more than be “reckless” with their money. As previously noted, if there was any harm done then CA section 311 would already apply.
34. The Council is gravely concerned by clause 6’s change of the word “Terror” to “Fear”. Psychology acknowledges that fear can be healthy. We should fear the Climate Crisis, for example, that should not make the Climate Change Commission a terrorist organisation.
35. The Council believes that the bill should include provision for compensation to be paid to anyone who:
 - a. is subsequently released without charge;
 - b. has been charged and those charges subsequently withdrawn; or
 - c. has been charged, prosecuted and received a "not guilty" verdict.

International Obligations

36. The Council acknowledges that this bill enacts a number of United Nations Security Council Resolutions. To the extent that these acts may be required to cover our commitments under international agreements, the Council believes that we erred in entering those agreements and should cease to abide by them, rather than surrender our liberties.
37. Parliament must balance conflicting international obligations. The Council strongly urges Parliament to support the foundations of international cooperation, namely the UDHR and ICCPR, instead of hasty resolutions.

Recommendations

38. The New Zealand Council of Civil Liberties recommends the repeal of the Terrorism Suppression Act 2002.

NEW ZEALAND COUNCIL FOR CIVIL LIBERTIES



39. The Council seconds the Royal Commission's recommendation for public consultation before strengthening the oversight and accountability mechanisms of the Search and Surveillance Act 2012.

40. The Council recommends the repeal of the Terrorism Suppression (Control Orders) Act 2019.
