

Submission to the Justice Committee on the

## Counter-Terrorism Legislation Bill

Submitted by the New Zealand Council of Trade Unions Te Kauae Kaimahi, P.O Box 6645, Wellington  
25<sup>th</sup> June 2021.

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This submission is made on behalf of the 28 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 300,000 members, the CTU is one of the largest democratic organisations in New Zealand.

The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga), the Māori arm of Te Kauae Kaimahi (CTU), which represents approximately 60,000 Māori workers.

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## Summary of recommendations

1. That the proposed expansion of the definitions of ‘terrorist acts’ are not justifiable and should not be implemented
2. That the introduction of the creation of a new offence in providing ‘material support’ as well as the mental element of ‘recklessness’ for the offences defined at section 8 may adversely impact the ability of New Zealand unions to support legitimate workers movements overseas and should not be implemented.
3. That of ‘search and surveillance’ powers undermine civil liberties, are not justifiable and should not be implemented.

# 1. Introduction

- 1.1. This submission is made on behalf of the 28 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With 300,000 members, the CTU is one of the largest democratic organisations in New Zealand.
- 1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 1.3. The CTU welcomes the opportunity to submit before the Select Committee on the **Counter-Terrorism Legislation Bill** ('the Bill') in relation to the particular issues for unions.

# 2. Background

- 2.1. Unions have a special interest in condemning terrorist violence. Like all political violence, working people and their communities are most likely to suffer the consequences of terrorism.
- 2.2. The Union movement resolutely condemns all violence against civilian populations.
- 2.3. Unions in Aotearoa/New Zealand have also been the specific target of terrorist violence. The 1984 Trades Hall bombing that cost the life of Ernie Abbott [building caretaker] is still remembered by many in the union movement. The union movement has been vocal in calling for justice in relation to that terrorist act, which till today remains unsolved.
- 2.4. The New Zealand Council of Trade Unions and its affiliates stands in solidarity with the victims of the Christchurch Mosque attacks and recognise the need to address the radicalisation of the far-right in this country.

- 2.5. When the current 'Terrorism Suppression Act 2002' was discussed before the Select Committee, the Council of Trade Unions staunchly opposed the proposed legislation. Specifically, the Council of Trade Unions took the view that the erosion of fundamental Human Rights and Civil Liberties was not a legitimate or effective way to address the threat of terrorist violence.
- 2.6. At the time, The Council argued that the best safeguard against terrorism is the 'strength' and 'vigour' of a democratic and equal society<sup>1</sup>.
- 2.7. Considering the failure of the current anti-terrorism regime to prevent the recent terrorist violence in Christchurch, the Council of Trade Unions reiterates this view.
- 2.8. It is the submission of the Council of Trade Unions that merely deepening and expanding the old approach to counter-terrorism will not be able to protect working people and their communities from this type of violence.

### 3. Issues with the current Bill

- 3.1. The Bill expands certain existing definitions and offences to make it easier to attract liability under the current regime. However, the rationale for doing so as a means of curbing any real terrorist threat is not apparent.
- 3.2. The emphasis on monitoring 'international terrorism' does not relate to actual trends of radicalisation in Aotearoa and, may have the inadvertent impact of curtailing the ability of the union movement to engage in legitimate solidarity work and international aid.
- 3.3. The international work that unions engage in is aimed at uplifting working people everywhere and strengthening grassroots democracy. Such work does not promote any kind of violence and instead contributes to making the global community more resilient to the real threats of radicalisation and political violence against civilians.

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<sup>1</sup> Oral Submission of New Zealand Council of Trade Unions before the Justice Select Committee-2001

- 3.4. The purpose of any counter-terrorism legislation cannot be to have a chilling effect on this kind of work, and the definitions used in counter-terrorism must be specific enough to ensure that union solidarity work continues.

## 4. Expanded definition of ‘terrorist act’.

- 4.1. **Section 5 (2)** of the current Terrorism Suppression Act 2002 [the Act] outlines the ‘purpose’ for which an act must be carried out if it is to be considered a ‘terrorist act’. These purposes are defined at **section 5(2)(a)** as ‘*to induce terror in a civilian population*’ or **(b)** ‘*to unduly compel or to force a government or an international organisation to do or abstain from doing any act.*’<sup>2</sup>
- 4.2. Clause 6 of the Bill amends both these purposes. At section 5(2)(a), the bill replaces the words ‘*to induce terror in a civilian population*’ with ‘*to induce fear in a population*’. Reducing the threshold from ‘terror’ to ‘fear’ as well as removing specific reference to civilians is concerning, as it may allow any group of individuals, regardless of whether they are militarised or protected by an imbalance of power, to label the political activity of an opposing group as ‘terrorist’ for merely inducing any degree of ‘fear’.
- 4.3. The expanded definition is out of touch with the nuances of international politics. It risks legitimate armed struggles for self-determination or self-defence as being labelled terrorist by oppressive governments.

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<sup>2</sup> **Terrorism Suppression Act 2002- section 5 (2):**

An act falls within this subsection if it is intended to cause, in any 1 or more countries, 1 or more of the outcomes specified in subsection (3), and is carried out for the purpose of advancing an ideological, political, or religious cause, and with the following intention:

- (a) to induce terror in a civilian population; or
- (b) to unduly compel or to force a government or an international organisation to do or abstain from doing any act.

- 4.4. Any genuine counter-terrorism law must consider the need to protect civilians and vulnerable groups from terrorist violence, which includes violence from states under the cloak of political legitimacy.
- 4.5. New Zealanders in previous generations have supported struggles for self determination in the past. The struggle in South Africa against the apartheid regime is a notable example. At the time, the South African state strongly framed those opposing it as ‘terrorists’. Today however, the anti-apartheid struggle is widely viewed as having been morally and politically justified and, the support given by many New Zealanders for that struggle is often considered a point of national pride.
- 4.6. A thoughtful response to the issue of terrorist violence would be centred on protecting unarmed civilian communities and, would not lend oppressive states and institutions the tools to label legitimate opposition as ‘terrorist’.
- 4.7. Accordingly, we submit against amending the definition of ‘terrorist act’ and urge parliament to re-focus on protecting civilian communities from political violence.

## 5. Material support and recklessness

- 5.1. **Section 8** of the Act currently prohibits the wilful financing of terrorism.<sup>3</sup>

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<sup>3</sup> **Section 8- Financing Terrorism:**

(1) A person commits an offence who, directly or indirectly, wilfully and without lawful justification or reasonable excuse, provides or collects funds intending that they be used, or knowing that they are to be used, in full or in part, in order to carry out 1 or more acts of a kind that, if they were carried out, would be 1 or more terrorist acts.

(2) *[Repealed]*

(2A) A person commits an offence who, directly or indirectly, wilfully and without lawful justification or reasonable excuse, provides or collects funds intending that they benefit, or knowing that they will benefit, an entity that the person knows is an entity that carries out, or participates in the carrying out of, 1 or more terrorist acts.

(3) In a prosecution for financing of terrorism, it is not necessary for the prosecutor to prove that the funds collected or provided were actually used, in full or in part, to carry out a terrorist act.

(4) A person who commits financing of terrorism is liable on conviction to imprisonment for a term not exceeding 14 years.

- 5.2. **Clause 10** would amend that section to include the ‘provision of material support for terrorism’ as an additional offence<sup>4</sup>.
- 5.3. The new concept of ‘material support’ as encompassing something other than the provision or raising of funds is not clearly defined.<sup>5</sup> The new definition characterises activities and services that ‘impart skills’ or ‘advice’ as counting as ‘material support’ that may ‘assist, contribute or make easier’ the commission of ‘terrorist acts.’ Yet much international aid and development work involves the broad diffusion of skills, knowledge, and technology in a society. Trying to trace criminal liability by tracing such things as skills, knowledge and advice is specious, there is no way to establish a credible causal link.

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**<sup>4</sup> Counter- Terrorism Legislation Bill 2021- Clause 10 (1):**

(1) In the heading to section 8, after “Financing of”, insert “, or provision of material support for,”.

**<sup>5</sup> Clause 5 – Section 4 amended (interpretation)**

material support—

(a) means support that—

- (i) does, or may, assist in, contribute to, or make easier, the carrying out of 1 or more terrorist acts; and therefore
- (ii) does, or may do, more than only satisfy essential human needs of those to whom, or for whose benefit, it is provided—

(A) in good faith for genuine humanitarian reasons; and  
(B) impartially or neutrally as between people who have those needs; and

(b) includes, without limiting the generality of paragraph (a), support that complies with that paragraph and that is all or any of the following:

- (i) advice given in making available financial or related services, or financial or related services:
- (ii) other advice, or other services, derived from acquired skills or knowledge (for example, agency, brokerage, translation, driving or pilotage, or training to impart skills):
- (iii) equipment, information, technology, or other property or resources (for example, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, or personnel (the assistance or efforts of 1 or more individuals who may be or include oneself)):
- (iv) accommodation, lodging, stockpiling, or storage:
- (v) transportation.

5.4. The broadness of the definition of material support may also affect protest movements. Oftentimes, legitimate protests have a physical or material element. Again, some of the peaceful methods used by anti-apartheid protestors against the 1981 Springbok tour come to mind, where actions of civil disobedience and public protest occurred with the 'material' aim of physically preventing the tour from going ahead.

5.5. **Clause 10** also introduces a new mental element of 'recklessness' with respect to the provision or collection of funds or, the provision of 'material support'<sup>6</sup>.

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<sup>6</sup> *Wilful provision or collection of funds for use to carry out terrorist acts*

(1) A person commits an offence if the person provides or collects funds—

- (a) directly or indirectly; and
- (b) wilfully; and
- (c) without lawful justification or reasonable excuse; and
- (d) intending that the funds be used, or knowing that, or being **reckless** about whether, they will be used, in full or in part, in order to carry out 1 or more acts of a kind that, if they were carried out, would be 1 or more terrorist acts.

*Wilful provision of material support for use to carry out terrorist acts*

(1A) A person commits an offence if the person provides material support—

- (a) directly or indirectly; and
- (b) wilfully; and
- (c) without lawful justification or reasonable excuse; and
- (d) intending that the support be used, or knowing that, or being **reckless** about whether, it is to be used, in full or in part, in order to carry out 1 or more acts of a kind that, if they were carried out, would be 1 or more terrorist acts.

*Wilful provision or collection of funds for use by entity known to carry out or participate in carrying out of terrorist acts*

(2A) A person commits an offence if the person provides or collects funds—

- (a) directly or indirectly; and
- (b) wilfully; and
- (c) without lawful justification or reasonable excuse; and
- (d) intending that the funds be used, or knowing that, or being **reckless** about whether, they will be used, by an entity that the person knows is an entity that carries out, or participates in the carrying out of, 1 or more terrorist acts.

*Wilful provision of material support for use by entity known to carry out or participate in carrying out of terrorist acts*

(2B) A person commits an offence if the person provides material support—

- (a) directly or indirectly; and
- (b) wilfully; and
- (c) without lawful justification or reasonable excuse; and



Previously the mental elements needed for an offence under this provision were 'intention' and 'knowledge'.

- 5.6. The introduction of this new mental element may have an adverse effect on the ability of unions to provide support to other unions overseas.
- 5.7. Unions have a long history of providing moral and material support to unions and workers movements overseas. Often, the organisations and unions that receive support from New Zealand unions exist in complex social and political contexts. While unions can and do make choices to support movements that are legitimate and promoting of peace and justice, they cannot be responsible for all the decisions made once funds have gone abroad. This is simply a reflection of the real-world complexity of many overseas contexts and, cannot be classed as recklessness.
- 5.8. The matter may be complicated again by the practise of governments that are hostile to legitimate workers organisations and their aims in labelling the recipients of such aid as 'terrorists'. In the Philippines, legitimate trade unions and workers' rights activists have been subjected to a practise known as 'red tagging', whereby the state wrongfully characterises them as terrorist organisations to justify extra-judicial searches, seizure, and arrest.<sup>7</sup>
- 5.9. 'Red tagging' and the wrongful stigmatisation of unions as terrorist organisations is an example of a 'real world' practise that has been condemned by the Council of Trade Unions. Such situations also illustrate the need for a reasoned and informed approach to understanding the political situations overseas.
- 5.10. Adding a weaker mental element of 'recklessness' to a very serious offence under the Act may have the unintended effect of chilling union support for workers rights

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(d) intending that the material support be used, or knowing that, or being **reckless** about whether, it will be used, by an entity that the person knows is an entity that carries out, or participates in the carrying out of, 1 or more terrorist acts.

<sup>7</sup> <https://www.union.org.nz/nz-unions-condemn-arrests-in-philippines/>

overseas, especially in places where dialogue is confused by political agendas that are hostile to unionism.

- 5.11. The addition of 'recklessness' is also not necessary as the Court already has the ability to ascribe liability based on 'wilful blindness'<sup>8</sup>. If the legal system already has the tools for holding accountable those who intentionally 'turn a blind eye' to assisting terrorism, it is difficult to see the justification for introducing a speculative element of recklessness to such a serious offence.
- 5.12. Accordingly, the Council of Trade Unions opposes the expansion of the offence at section 8 of the Act to include a vague concept of 'material support' as well as the introduction of a lesser mental element of recklessness to a very serious offence.

## 6. Amendments to the Search and Surveillance Act 2012.

- 6.1. **Subpart 1** of the Bill amends **sections 15,16,17** and **48** of the **Search and Surveillance Act 2012**. These sections already confer upon the state the power to enter, search and conduct surveillance of individuals in relation to a crime that is punishable by more than 14 years imprisonment.
- 6.2. The amendments to the Search and Surveillance Act would mean that these powers also apply to the new offences defined under **section 6 B (1)** of the Terrorism Suppression Act. An offence that is punishable by a maximum term of 7 years imprisonment.
- 6.3. Protection against unrestricted search and seizure is vital to any free and democratic civil society. Unions are aware that the undermining of such fundamental liberties often goes hand in hand with a degeneration of political rights for working people.

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<sup>8</sup> *R v Crooks* [1981] 2 NZLR 53

- 6.4. Unions remember the 'Emergency Regulations' enacted against the rights of working people in this country during the Waterfront Workers Dispute of 1951<sup>9</sup> and are cautious of the risk that civil liberties are jettisoned in pursuit of political agendas.
- 6.5. Civil liberties should be safeguarded by a legal system that is resilient and resistant to the temptation to curtail them in pursuit of a 'greater good'.
- 6.6. The Council of Trade Union notes that even without these proposed amendments, the state had extensive powers regarding warrantless search, seizure, and surveillance and yet these powers failed to prevent the Christchurch massacre.
- 6.7. Accordingly, the justification for further curbing fundamental rights through these amendments is difficult to justify.
- 6.8. We submit that these amendments should not be implemented.

## 7. Conclusion

- 7.1. The Council of Trade Unions and its affiliates recognises the real threat of political violence to working people and their communities, both in Aotearoa/New Zealand and overseas.
- 7.2. The Council of Trade Unions and its affiliates resolutely condemns such violence, whether it come from state or non-state actors.
- 7.3. The expanded definitions and offences discussed in this submission are not justifiable and, would not have prevented the kind of terrorist violence that occurred on 15 March 2019.

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<sup>9</sup> Waterfront Strike Emergency Regulations-1951  
[http://www.nzlii.org/nz/legis/num\\_reg/wser1951422/](http://www.nzlii.org/nz/legis/num_reg/wser1951422/)

- 7.4. Instead, it is likely that aspects of this Bill will hamper the good work that New Zealand unions do to promote peace and democracy through the international union movement.
- 7.5. The current Terrorism Suppression Act 2002 as well as the Search and Surveillance Act 2012 already confer broad powers on the state. Yet despite this, there has been a systemic failure to detect real threats to civilian populations in this country.
- 7.6. Accordingly, the Council of Trade Unions supports the comments of Anjum Rahman, of the New Zealand Muslim Women’s Council, where she says:

*“The proposed legislation broadens the definition of terrorism. Instead of defining it as the inducement of “terror in a civilian population” it is now simply “fear in a population”, a less stringent definition which lowers the mens rea, the intention of committing a crime. Where before the definition of a terrorist act was one done “to unduly compel” a government or organisation to carry out (or abstain from) an action, now it just “to coerce”. This broadens the definition of terrorism, giving wider power to the State. It’s difficult to see the justification for doing so. These new powers would not have helped to prevent the Christchurch mosques attacks. The issue wasn’t that the laws weren’t broad enough to prosecute the terrorist prior to the atrocities he committed.”<sup>10</sup>*

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<sup>10</sup> <https://thespinoff.co.nz/society/04-05-2021/widening-the-definition-of-terrorism-wont-help-the-communities-most-at-risk/>

