

Submission to Parliamentary Justice Select Committee on the:

Crimes (Countering Foreign Interference) Amendment Bill

Submitted by the New Zealand Council of Trade Unions Te Kauae Kaimahi

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This submission is made on behalf of the 31 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 340,000 union 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.

NZCTU Submission on the Crimes (Countering Foreign Interference) Amendment Bill

Introduction

1. This note sets out the view of the New Zealand Council of Trade Unions/ Te Kauae Kaimahi on the proposed Crimes (Countering Foreign Interference) Amendment Bill.
2. As this bill was introduced in late November, amidst other government sponsored bills and over the summer break, the CTU is unable to prepare a full and proper submission. This submission is very brief and only attends to our core concern.

Submission

3. This Bill aims to strengthen NZ's criminal law to better prevent and respond to foreign interference. This is a laudable aim, provided the Amendment has the effect of suppressing interference by foreign states that undermine our democracy, human rights and legitimate interests.
4. However, we are concerned that the Amendment Bill, as proposed, could impair the operations and legitimate interests of the NZ Trade Union movement. It is also likely to negatively impact the ability of other civil society actors to conduct their affairs without the threat of criminal sanctions.
5. The principle of freedom of association is a fundamental democratic and human right that allows workers to form unions to protect and advance their interests. Freedom of association in New Zealand is a fundamental right protected by the New Zealand Bill of Rights Act 1990.
6. NZ Trade Unions, and the NZCTU, form part of an international trade union movement. This in turn forms part of the internationally recognised tri-partite system that is the International Labour Organisation (ILO).
7. The work of NZ unions includes an international dimension that crosses national borders. Labour exploitation has both domestic and international drivers. Trade unions also have legitimate concerns about environmental

and social justice issues in other jurisdictions. This is particularly important in respect to addressing global supply chains and modern slavery.

8. Trade agreements provide labour chapters intended to support workers' interests and uphold labour rights in both signatories' jurisdictions. For these provisions to be effectively utilised and enforced, NZ unions must be able to engage with overseas unions and Governments. They must also be able to do so without requirement to consult with the New Zealand Government prior.
9. As a real-life example, NZCTU engages with overseas unions and governments party to the NZ EU Free Trade Agreement. If we were concerned that NZ was not upholding its obligations to agreed labour standards under the FTA, we would raise this with those parties. However, there is a risk that this could be conceived as contravening parts (b), (c), (d), or (e) of the proposed new section 78AAA.
10. Other examples could arise in the international trade context. In the ILO, and in our other activities defending human and labour rights internationally. Alternatively, it could involve our work with health and safety, where questions about the use of any potential harmful products produced in New Zealand are raised by our international colleagues.
11. Given the apparently permissive way in which this Bill has been written, our concern is that this Amendment Bill could potentially lead to these types of activity by the NZCTU being regarded as an act of foreign interference. Particularly under the proposed new sections 78AAA and 78AAB under clause 10 of the Bill. This could unfairly damage the NZCTU, and prohibit the proper operation of our Trade Agreements.
12. In 78AAA, "improper conduct" is defined in an open-ended way (the categories of conduct listed are not exhaustively defined, only "including" specified actions) and includes types of conduct that could be misinterpreted.
13. For example, engagements with other governments in the NZ-EU FTA hypothetical case could include sharing of information or documents

under an agreement of confidentiality - which could be misinterpreted as conduct being “covert” or “deceptive”. It is not clear that the exclusion in (a)(ii) of the definition of “improper conduct” applies in this kind of case.

14. Provisions in the EU-NZ FTA include the possibility of trade countermeasures and the threat of the EU using those could be misinterpreted as “coercive” conduct by us. We note that the definition of “protected New Zealand interest” includes “the economic well-being of New Zealand”, which could be interpreted as including the maintenance of the obligation that is in dispute.
15. In 78AAB, providing a “relevant benefit to a foreign power” (which includes any foreign government, public agency or official) is prohibited and subject to imprisonment. This includes “to enhance the political, economic... capability of influence of a foreign power”, and “to enhance the coercive influence of a foreign power” which our activities could be interpreted as providing even though that is not the purpose of our engagement with the “foreign power” which is to protect labour standards.
16. It may be helpful for the Committee to consider whether a clause may need to be inserted into the Bill that provides entities such as the CTU with a “fair dealing” defence. That would give civil society actors the ability to state if challenged that they were working on a legitimate area of interest, and in issues with overseas agencies. Particularly where there is no pecuniary advantage to the actor.

Recommendation

17. We ask that the Select Committee give this issue due consideration and amend the Bill to ensure that the NZ Union movement, and any other carrying out legitimate civil society activities, are not unintentionally criminalised as a result.

Further Contact Details

18. If the Committee wishes to discuss these issues further, please contact Craig Renney, Economist and Director of Policy at craigr@nzctu.org.nz