



Submission by the  
Human Rights Lawyers Association Aotearoa  
New Zealand

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**Countering Terrorist Fighters Bill  
to the  
Foreign Affairs, Defence and Trade Select  
Committee**

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## 1. About the Aotearoa Human Rights Lawyers Association

- 1.1 This submission is by the Human Rights Lawyers Association of Aotearoa New Zealand (the “HRLA”), a non-partisan and non-governmental organisation.
- 1.2 The HRLA was established in June 2012 to promote human rights through education and advocacy. It is made up of a network of legal practitioners with an interest in human rights and is governed by an advisory council of eminent lawyers and academics with human rights expertise.
- 1.3 The HRLA routinely engages in educational projects (including, but not limited to, Continued Legal Education courses), provides amicus briefs, assists in legal analysis and the drafting of reports on human rights issues by other organisations, and undertakes shadow reporting for international organisations.
- 1.4 The HRLA believes that the vast majority of New Zealand citizens pride themselves on being part of a fair, humane and just society, and on taking part in international efforts to ensure those same values worldwide.
- 1.5 At present, New Zealand is a party to seven United Nations international human rights instruments and has implemented various domestic laws to give the obligations assumed at international law both legal expression and protection.
- 1.6 The ratification of the International Covenant on Political and Civil Rights (the “ICCPR”) together with its Optional Protocols and the passing of the New Zealand Bill of Rights Act 1990 (the “NZBORA”) signify New Zealand’s commitment to high-standard and internationally-agreed human rights for all citizens.
- 1.7 In the face of changing political and legal landscapes in New Zealand and abroad, the HRLA believes it is crucial that the obligations New Zealand has assumed at international law are honoured and fulfilled. Statutes and regulations must strive for consistency with the NZBORA and the ICCPR, and domestic law must not depart from the obligations assumed unless it is the clear and express view of its citizens.
- 1.8 The HRLA’s knowledge and experience has been drawn upon in the preparation of this submission.

1.9 We do not wish to appear before the Foreign Affairs, Defence and Trade Select Committee (the “Committee”) to speak to our submission.

## 2. Submission

2.1 The HRLA opposes the Countering Terrorist Fighters Bill (“the Bill”) in its current form because:

- (a) The process being followed to enact the Bill is procedurally unfair; and
- (b) The Bill’s implications *prima facie* breach human rights affirmed under the NZBORA, and international obligations assumed under the ICCPR.

## 2.2 Process

2.2.1 The HRLA expresses disappointment and concern at the extremely short window for the Bill to be considered, discussed and submitted on by the public and interested parties.

2.2.2 The Bill was made public on 25 November 2014 when it was introduced to Parliament under urgency. The public were not privy to its details prior to this date. Submissions opened on 26 November 2014 and will close on 27 November 2014. Less than 48 hours, therefore, have been made available for what is a substantial and important piece of legislation, with significant human rights implications for New Zealand citizens.

2.2.3 Because of the short window for consultation and submission, the HRLA has been unable to canvas its membership body fully for input on the Bill. As such, the HRLA’s submission is not as representative and comprehensive in its assessment as it could and properly should be. This is egregious given that the HRLA represents the very people who interpret and apply the law on a daily basis.

2.2.4 The HRLA believes that the short window for consultation and submission will similarly disadvantage a number of interested groups. The Committee is, therefore, unlikely to get the full picture as to the implications and public concerns which surround the Bill.

## **2.3 Purpose**

- 2.3.1 The HRLA questions the need for the Bill when present law appears to adequately address its concerns.
- 2.3.2 The Terrorism Suppression Act 2002 provides a wide definition of “terrorist act” and makes it an offence to commit such an act or to participate in such a group.<sup>1</sup> The Passports Act 1992 allows for cancellation and refusal of passports in appropriate circumstances.<sup>2</sup>
- 2.3.3 While the Prime Minister has alluded to top-line advice and reviews, there has been no concrete information disclosed to the public as to the need for the changes sought.
- 2.3.4 If the Government seeks to go beyond present law, a more transparent case must be advanced for why it is inadequate. The onus and burden lies on the Government to prove the need for the Bill to New Zealand citizens. Only when this responsibility is appropriately discharged can citizens make informed assessments as to whether it is in their best interests.

## **2.4 Security Intelligence Service Act 1969**

- 2.4.1 The HRLA is concerned about the proposed extension of Security Intelligence Service (the “SIS”) powers to include visual and warrantless surveillance.
- 2.4.2 Visual surveillance, in particular, is highly intrusive and impacts heavily on the right to privacy afforded under domestic law and international convention. Before such powers are enacted, the HRLA believes that the SIS must show the need for them, i.e. that its capability to perform existing duties is impaired by an inability to carry out such surveillance. This has not been done.
- 2.4.3 The HRLA also believes that the conditions proposed for obtaining warrants are too broad and far-reaching.<sup>3</sup> With a wide test and insufficient checks and balances, gross violations of the right to privacy may risk becoming routine.

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<sup>1</sup> Terrorism Suppression Act 2002, ss 5, 6(a) & 13.

<sup>2</sup> Passports Act 1992, Pt 1.

<sup>3</sup> Countering Terrorist Fighters Bill, cl 41B(3).

- 2.4.4 In relation to warrantless visual surveillance, the HRLA is concerned that there is no limitation on the number of 48-hour surveillance warrants that can be carried out in sequence. Such surveillance appears contrary to standards and safeguards set by New Zealand's evidence and criminal procedure laws.
- 2.4.5 In particular, the HRLA is concerned that the Bill does not address the admissibility of evidence collected via visual and warrantless surveillance, or the admissibility of evidence when an earlier warrant was denied or not sought.
- 2.4.6 The legal advice provided by the Ministry of Justice under section 7 of the NZBORA (the "Advice") notes that the Courts have the capacity to exclude evidence obtained as a result of an unreasonable search. The HRLA believes that it is improper to enact legislation with known loopholes, for which the Courts will provide remedial cover.

## **2.5 Passports Act 1992**

- 2.5.1 At present, the Government has the power to cancel or refuse passports. The Bill proposes that this power be extended up to 3 years. It also proposes that cancellations may occur when a person is outside of New Zealand.
- 2.5.2 The HRLA is concerned these proposed changes may effectively render visa or permits on New Zealand citizens' passports invalid, thus making them illegal aliens in foreign states and open to prosecution. Of related concern is the fact that citizens do not have to be told of cancellation for 30 days, thereby limiting their ability to make informed decisions.
- 2.5.3 For these reasons, the HRLA believes that extending the cancellation provision is contrary to section 18 of the NZBORA and Article 13 of the United Nations Declaration of Human Rights. Any limits on these rights must be justified. Such justification has not been forthcoming from the Government.

## **2.6 Practical Considerations**

- 2.6.1 The Advice identifies a number of *prima facie* breaches of human rights but it appears assumed that these are justified. In matters where there might be ambiguity about the issue of justification, the Advice suggests that such issues can be clarified by the Courts.

2.6.2 Given the nature of the classified information that is routinely in issue, the HRLA is concerned as to whether justice can be fully and appropriately accessed by impacted citizens. In past cases, there have instances of extended litigation over the use of classified information. The HRLA believes that the Bill should turn its mind to such practical implications. In this case, it does not appear to have been done.

## **2.7 Sunset Clause**

2.7.1 The HRLA is concerned about the Bill's sunset clause, which sets the legislation in place through to April 2018. The HRLA believes that this is an excessive period for a law that is intended to be a 'stop-gap' solution.

## **3.0 Conclusion**

3.1 In conclusion, the HRLA does not support the Bill on the basis that it unjustifiably encroaches upon important human rights and civil liberties. The extremely short window for the Bill to be considered, discussed and submitted on has led to an inability for New Zealand citizens to adequately engage in the legislative process. This undermines the very heart of New Zealand's democratic process. Given the gravity of the implications of passing the restrictive laws proposed, the HRLA would like to see proper consultation of and engagement with the public and interested parties before the Bill is progressed.