

SUBMISSION TO THE COUNTER-TERRORISM LEGISLATION BILL

PERSONAL DETAILS:

- My name is Richard Simpson.
- I provide professional project management and emergency management contracting services as a Sole Trader (<https://simpsonconsulting.online/>) to the public, private and not-for-profit sector.
- My submission is as an individual and is not related to any current contracting activities.
- I have worked in the emergency management sector from 2009 to date. Prior to this I worked with various humanitarian aid agencies in New Zealand and overseas.
- I have post-graduate qualifications and professional certification in emergency management, as well as experience in providing tertiary-level training in emergency management. I have acted as a member of various regional and national emergency management committees and work groups primarily between 2009 and 2017.
- I do not wish to appear before the committee to speak to my submission.

GENERAL POSITION:

I broadly support the Bill. I have the following recommendations:

Counter-Terrorism Legislation Bill	Terrorism Suppression Act 2002	Recommendation
Recommendation 1 – re: Motivation of terrorist act to influence population		
6(2)	5(2)(a)	replace “to induce terror in a civilian population” with “to use coercion, harassment or intimidation to influence a population’s freedom of choice or behaviour” , rather than the proposed amendment in the Bill “to induce fear in a population”.
Recommendation 2 – re: Definition of critical infrastructure		
5(3)	4(1)	further expand the new definition of “critical infrastructure” to reflect the scale of the infrastructure.
-	5(3)(d)	remove “if likely to endanger human life”.
Recommendation 3 – re: Biological risks		
	5(3)(e)	Replace “introduction or release of a disease-bearing organism...” with “introduction or release of a invasive or infectious organism or vector...”
Recommendation 4 – re: Disclosure and protections of persons suspecting terrorism		
-	-	New clauses should be created to outline disclosure expectations of and protections for persons who may have been coerced into providing material support for terrorists, or for persons to report new suspicions that the material support they had already provided might be used in relation to terrorist acts.



DETAIL

RECOMMENDATION 1 – RE: MOTIVATION OF TERRORIST ACT TO INFLUENCE POPULATION

Counter-Terrorism Legislation Bill	Terrorism Suppression Act 2002	Recommendation
6(2)	5(2)(a)	replace “to induce terror in a civilian population” with “to use coercion, harassment or intimidation to influence a population’s freedom of choice or behaviour” , rather than the proposed amendment in the Bill “to induce fear in a population”.

- The proposed change in the Bill “fear in a population” is nonspecific, and insufficient to describe the motivation and effects of terrorist acts on a population.
- The word “fear” encompasses a range of psychological and physiological reactions, from general anxiety to debilitating trauma. “Fear” in a population is difficult to quantify, especially as individuals react to external stressors in different ways.
- The intention to elicit “fear” (“terror”) in a population is one means to an end for terrorist individuals and entities, but it is only a byproduct. The actual purpose is to then use this emotional reaction to advance the purposes outlined in clause 5(2) and to achieve the outcomes in 5(3).
- Section 5(2)(a) should focus on the main purpose of the terrorist(s) communication with one or more populations (by way of statements and/or acts), which is to influence the mental state of a population in order to curtail or coerce the population’s freedom of choice or behaviour.
- For example, although the actions of the Christchurch shooter were intended to cause fear within the New Zealand Islamic population, they were also intended to provoke different mental and emotional reactions *not* related to a “fear” response. According to news coverage of the attack and subsequent trial – the attack was also intended to (for example):
 - o rally positive (i.e. enthusiastic) support from extreme right-wing populations (groups/individuals), and thereby inspire copycat attacks, to
 - o objectify Muslim populations and to change the narrative perception among Western populations of European descent about the nature and intentions of local Muslim populations, diversity policy and multiculturalism, and to
 - o normalise the public perception about both incidental and direct violence against Muslim populations in Western countries.
- Political, religious or ideological separatism is contingent on the – often enthusiastic – support of some populations and radicalized individuals. Both sides of the equation should be classified as a “terrorist act”, i.e.
 - o a) the intention to elicit fear and similar emotions to victimize a target population, **and/or**
 - o b) the intention to elicit or inspire hatred, bias, violence (which may be directed at a target population or toward property & infrastructure) and similar emotions in the ‘supportive’ segment of the population – with the intent to use that population as a tool/means to commit terrorist acts.
- Therefore, this recommendation is in line with Section 16 of the UN Security Council Resolution (refer new Schedule 4D in the Bill) to develop “... *strategies to counter the violent extremist narrative that can incite terrorist acts...*” and section 19 about “... *countering terrorist narratives...*”



RECOMMENDATION 2 – RE: DEFINITION OF CRITICAL INFRASTRUCTURE

Counter-Terrorism Legislation Bill	Terrorism Suppression Act 2002	Recommendation
5(3)	4(1)	further expand the new definition of “critical infrastructure” to reflect the scale of the infrastructure.

- The new definition in section 4(1) uses the word “critical infrastructure”. Although it describes ‘four essential services’ (assets, facilities, networks, systems), the definition does not explain the use of the term “critical”.
- Some infrastructure – e.g. streetlights, traffic signals, road signs – may be critical/essential to local individuals or small population, but it is arguable whether they should be defined as “critical infrastructure” for a population. This could muddy the waters when litigating whether the scale and ‘criticality’ of the infrastructure in question meant an action had a terrorist or ‘merely’ a criminal intent or effect.
- The New Zealand Lifelines Council (<http://www.nzlifelines.org.nz/>) has the following definition of “critical assets” on page 102 of its National Infrastructure Vulnerability Assessment 2020¹:
 - o *“Critical assets (sites/facilities/routes): Assets that have a high consequence of failure with potentially significant consequences to societal wellbeing. Note: Both infrastructure and community sites/facilities will generally feature in regional lifelines group critical sites/facilities lists². A broad criticality rating of Nationally Significant, Regionally Significant and Locally Significant has been used [also defined in the same document glossary].”*
- By adopting the definition above, the definition of “critical infrastructure” in the revised Act would include;
 - o infrastructure previously defined as Nationally Significant, Regionally Significant or Locally Significant in national or local National Emergency Management Agency (Civil Defence) planning, and/or
 - o significant ‘Pinchpoints’ – i.e. also defined in the above resource as *“utility asset or site where a satisfactory alternative is not available, and which is therefore essential to service delivery. Note: Pinchpoint is equivalent to a ‘single point of failure’ (a term sometimes used in telecommunications) or ‘bottleneck’ (a term often used in road transport)”* and/or
 - o any other infrastructure where it could be shown to have *“a high cost of failure with potentially significant consequences to societal wellbeing.”*

-	5(3)(d)	remove “if likely to endanger human life”.
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- An outcome that poses a serious risk to health and safety of a population is already covered in section 5(3)(b).
- By definition, any critical infrastructure has at least an indirect impact on the safety of human life, therefore the qualifier “if likely to endanger human life” is redundant.
- The inclusion of 3(d) within the amended text of 3(c) of the Bill appears to imply that serious interference/disruption to an infrastructure facility which causes major economic loss or major environmental damage would be sufficient to determine the act was a terrorist one, even if the direct endangerment to human life could not be conclusively proved.

¹ http://www.nzlifelines.org.nz/site/assets/files/1019/nzlc_nva_2020_full_report.pdf

² A list in The Guide to the National CDEM Plan identifies these and other sectors and areas that should be prioritised in response and recovery



RECOMMENDATION 3 – BIOLOGICAL RISKS

Counter-Terrorism Legislation Bill	Terrorism Suppression Act 2002	Recommendation
	5(3)(e)	Replace “introduction or release of a disease-bearing organism...” with “introduction or release of a invasive or infectious organism or vector...”

- The current section 5(3)(e) is nonspecific, and insufficient to describe the risk from the release of biological hazards.
- It is unclear whether the definition “disease-bearing organism” covers the disease itself (e.g. a sample of an isolated disease strain) and/or an organism that actively carries (bears) the disease (e.g. an infected animal), and/or an organism that has a potential to carry a disease (e.g. aedes aegypti mosquitos) regardless of whether the imported organism carried a disease at the time.
- The definition should also cover the introduction or release of;
 - o any organic material that in themselves pose a risk to the national economy, such as invasive plants or insects, and
 - o non-living organic matter – such as prions or viruses – which are infectious and “disease-bearing” but which may not meet the strict biological definition of an “organism”.
- Replacing the text with “invasive or infectious organism or vector” simplifies the clause and retains the purpose of the section – i.e. to prosecute the introduction or release of biological matter when there was an intent to harm the population and/or economy.

RECOMMENDATION 4 - RE: DISCLOSURE AND PROTECTIONS OF PERSONS SUSPECTING TERRORISM

Counter-Terrorism Legislation Bill	Terrorism Suppression Act 2002	Recommendation
-	-	New clauses should be created to outline disclosure expectations of and protections for persons who may have been coerced into providing material support for terrorists, or for persons to report new suspicions that the material support they had already provided might be used in relation to terrorist acts.

- The new Bill includes changes targeting those who provide material support for terrorists, which fills a much-needed gap in the current legislation. However, this also introduces new risks for gaining public support and compliance.
- An increasing risk is that of “lone wolf” or self-radicalised terrorists. These individuals do not necessarily show a clear path toward terrorism planning and action.
- Terrorists – in particular “lone wolf” types – may have an official or unofficial background in combat training, weapons training, survivalist skills and extreme left-wing or right-wing ideology. Much of this may have been gained over the course of their life – before, during and after their radicalization leading to their actively planning a terrorist act.



- Therefore, when investigating individuals who give material support to a terrorist, there will always be the question of “was the terrorist radicalized by then”, in order to answer the implicit question behind the prosecution for provision of material support (i.e. 10(4)) – “could/should that person providing support have known?”
- The primary intention of terrorism legislation should be to stop a terrorist attack from occurring. A key part of this is to encourage or compel people to report suspicion – especially those people who are in a position where they may be asked to provide material support. This is not as clear-cut as is implied in the Bill. For example:
 - o People may also be coerced or forced by a terrorist or terrorist entity into providing material support.
 - o People may also provide material support in good faith in the course of professional work – e.g. providing flight instruction or heavy vehicle training, or firearms safety training – but subsequently develop suspicions (immediately or even much later).
- The two types of people above (for example) would therefore be in a position where they may be also (justifiably) under suspicion by authorities of conspiring with a terrorist, and also – under the new Bill – subject to warrantless searches. At that stage there is a risk they are treated as guilty until proven innocent.
- This is likely to lead to anxiety that their own actions – in hindsight and with the support of evidence that authorities may gain from warrantless search and surveillance – may meet the criteria for prosecution based on knowledge or recklessness (i.e. that they should/could have known).
- Therefore, the legislation should support individuals in proactively reporting their suspicions or actions, even if the disclosure may make them personally liable for lesser offences (e.g. the possibility they had cut corners on paperwork or not appropriately vetted an applicant).
- Sections 46 and 47 of the Terrorism Suppression Act 2002 only relates to protection of persons making property or financial or related services. Section 23-26 of the Bill does not change this.
- Therefore, I recommend the Bill include a new section in the Terrorism Suppression Act 2002, similar to the existing sections 46 and 47, with regards to the protection of individuals who may be motivated to proactively report their potential, requested or actual material support (whether it was advised by good faith, suspicion, intention, knowledge or recklessness).
 - o In other words, this includes individuals who may be attempting to ‘deradicalise’ or leave an extremist movement, or those who may wish to cut a deal with authorities in order to reduce a sentence, as well as general members of the public motivated by genuine concern.

