

Search and Surveillance Act Review, 2022



New Zealand Council Of
Christian Social Services

Contact Name:	Nikki Hurst Rachel Mackay
Organisation Name:	New Zealand Council of Christian Social Services (NZCCSS)
Ko wai au Who we are:	<p>The New Zealand Council of Christian Social Services (NZCCSS) welcomes the opportunity to provide feedback on the review of the Search and Surveillance Act.</p> <p>NZCCSS has six foundation members; the Anglican Care Network, Baptist Churches of New Zealand, Catholic Social Services, Presbyterian Support and the Methodist and Salvation Army Churches.</p> <p>Through this membership, NZCCSS represents over 250 organisations providing a range of social support services across Aotearoa. We believe in working to achieve a just and compassionate society for all, through our commitment to our faith and Te Tiriti o Waitangi. Further details on NZCCSS can be found on our website www.nzccss.org.nz.</p>

Tirohanga Whānui | Overview

We support this effort to give fruition to the recommendations of the 2016/2017 statutory review of the Search and Surveillance Act, and the recommendations from the Royal Commission of Inquiry into the Christchurch terrorist attacks. We are pleased to see this work moving forward, and tautoko the consultation on ensuring the appropriateness and cultural safety of this review. We hold specific concern around the way that this may affect racial and ethnic biases already present in policing and surveillance, and the specific omission of a Treaty clause. We also strongly encourage the application of a rights-based foundation to ensure that this legislation does not have unintended consequences for the rights of New Zealanders.

Our main points are:

Item One – Ensure that Te Tiriti is honoured throughout, even in the absence of a specific Treaty clause

Despite the decision to omit a Treaty clause, we would prefer specific wording surrounding the honouring and implementation of Articles 1 and 3 of Te Tiriti in this legislation.

Item Two – Bring specificity to the concept of ‘vulnerability’, ensuring a lens that encompasses mental health, race, gender, and sexuality

Note is made to specify minimisation of powers that “impact on children and vulnerable members of the community,” but these vulnerable groups require nuance and specificity to ensure they are considered in a consistent manner.

Item Three – Ensure the bolstering, not erosion, of the Bill of Rights through these changes

There was significant concern expressed at the 2010 review on how this Act can be used to erode the rights of those under surveillance; we echo concerns and support a framework that has its foundation in the rights of the individual and community.

Taunakitanga | Recommendations

We raise the following points and recommendations for consideration:

Item One – Ensure that Te Tiriti is honoured throughout, even in the absence of a specific Treaty clause

There has been a decision to omit a specific Treaty clause from this review due to the concerns around clarity of officer powers. While we disagree that this would be the case if Treaty lens education was incorporated into initial and ongoing training, we understand the rationale. We would argue that there should, as in all legislation, be specific consideration and wording included in relation to related Treaty articles in this legislation. Specifically, a direct commitment to honouring Articles One and Three, in respect to the principles of good governorship, active participation and protection under the law. We know from years of data analysis of our judicial and criminal system that Māori are overrepresented and under supported, we need to see commitment from the highest levels of this system to ensuring a dedication to equitable, Treaty-honouring outcomes for all. While there is a commitment to exercising powers as they relate to Te Ao Māori, this does not embody the responsibility of the Crown and Crown entities to Te Tiriti and tāngata whenua.

Recommendation 1: We suggest including specific wording around the directive to act in a Treaty-honouring manner with respect to the powers of this Act.

Item Two – Bring specificity to the concept of ‘vulnerability’, ensuring a lens that encompasses mental health, race, gender and sexuality

We tautoko the specific inclusion of principles to ensure that powers not be exercised where there is disproportionate harm. We warmly welcome the specific inclusion of consideration for children in this list but encourage more specificity around what is encompassed by the term ‘vulnerable’ within this context. There needs to be a defined understanding of who is classified as vulnerable in these circumstances so that the consideration can be applied consistently. Our recommendations on ‘vulnerable’ groups in this lens would be women and gender minorities, members of the LGBTQIA+ community, Māori and Pacific peoples, refugees, individuals for whom their first language is not English, individuals with learning disabilities, and those with mental health concerns. Every one of these groups can be disproportionately affected by the exercising of these powers above and beyond what may be expected by less vulnerable populations, however many of these may not be considered unless there is specificity introduced into the wording of this legislation.

Recommendation 2: We suggest specificity in relation to groups that would be considered ‘vulnerable’ under this legislation, to ensure consistent application of consideration.

Item Three – Ensure the bolstering, not erosion, of the Bill of Rights through these changes

In previous updates and amendments to this legislation, there was consistent concern across sectors that the expansion of powers was not appropriately tempered by a protection of rights and civil liberties. We wish to echo these concerns now. As with any expanse of power to surveil members of the population, there will always be a concern that individuals and communities will lose their rights or have them significantly curtailed in the pursuit of law and order. We know historically that these individuals and communities most likely to be affected are those who already feel the weight of the justice system most heavily. We strongly suggest introducing specific wording and the application of a rights-based lens that ensures that this legislation does not impede upon the Bill of Rights, nor the civil liberties of the general population in pursuit of small improvements to law and order in specific areas. Legislation such as this should be grounded in and supported by the rights of the individual and of communities. Without this foundation, the removal or reduction of such rights cannot be observed, measured, or justified.

Recommendation 3: We suggest a rights-based approach and foundation for this legislation to ensure that the expansion of powers does not reduce or remove the rights of individuals or communities.