

21 September 2021

D J Blair
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Our ref: OIA 90529

Dear D J Blair

Official Information Act request: Rule of law in New Zealand

Thank you for your email of 7 September 2021 requesting, under the Official Information Act 1982 (the Act), information relating to the rule of law, the Counter-Terrorism Legislation Bill (the Bill) and the Bill of Rights Act 1990 (BORA). I have outlined your specific requests and my responses to each, below.

Due to recent arrests of people engaged in peaceful, lawful protest and their bail conditions that remove their right to freedom of speech, freedom of expression and freedom to associate, I would like to ask the questions,

1) *'Is there still rule of law in New Zealand?'*

I have interpreted this question within the context of bail conditions being imposed as you mention in your request. Yes, there is rule of law in New Zealand. Under the Bail Act 2000, the court may only impose bail conditions that it considers reasonably necessary to ensure that the defendant:

- a) appears in court on the date to which the defendant has been remanded
- b) does not interfere with any witness or any evidence against the defendant
- c) does not commit any offence while on bail.

The defendant has the right to appeal if they consider any bail condition imposed on them is unreasonable or does not meet the statutory criteria.

Further, the legal aid system provides grants through government funding to pay for legal help for people who cannot afford a lawyer. Access to legal aid is an important part of New Zealand's justice system. It ensures that people are not denied justice because they cannot pay for legal representation. Decisions on whether to grant legal aid are made in accordance with criteria set out in the Legal Services Act 2011 and its associated regulations.

- 2) *'Is the new anti-Terrorism bill before Parliament, actually designed to bring charges against New Zealanders that use their freedom of speech to criticize government or government policy?'*

The changes to the Bill are not designed to impact on the ability of members of society to take part in political activism or peaceful protest. The definition of 'terrorist act' in the Terrorism Suppression Act 2002 (TSA) specifies that activities such as protest, and advocacy alone do not form a basis to infer that such activities were undertaken with a terrorist intent. The Bill does not change that.

In addition, Crown Law assessed the Bill's compliance with BORA and concluded that the amendments will not give rise to real risk that the activities of protestors will be criminalised under the TSA. Crown Law's advice can be found on the Ministry's website at: www.justice.govt.nz/assets/Documents/Publications/20210503-Counter-Terrorism-Legislation-Bill.pdf.

- 3) *'Are we going to see a permanent curtailment of human rights and some radical form of change to the Bill of Rights, so any person critical of a government agency could be charged with incitement?'*

No, we will not. However, you may be interested to know that there were six proposals in relation to changes to the laws around incitement of hatred and discrimination. You can find further information about this on our website here: www.justice.govt.nz/justice-sector-policy/key-initiatives/proposals-against-incitement/.

If you are not satisfied with my response, you have the right to complain to the Ombudsman under section 28(3) of the Act. The Ombudsman may be contacted by email at: info@ombudsman.parliament.nz.

Yours sincerely



Jenna Bottcher Hansen
Manager, Ministerial Relations and Services