

Review of the Search and Surveillance Act 2012
Ministry of Justice - Te Tāhū o te Ture
30th June 2022

Executive Summary

1. The Salvation Army supports the recommendations made by the Law Commission for the Search and Surveillance Act. We do however recommend that under the law commission's recommendations for Policy Statements that these policy statements include reference to the articles of Te Tiriti o Waitangi in the exercising of its powers under the Act. This clause would help provide some checks on the disproportionate impacts on Māori from the operation of the Act in its current form.
2. Increasing the powers and reach of the Act will disproportionately affect whanau we work with and there is a large risk of over-reach and intrusion in the lives of already vulnerable people and their whanau and communities. We do not support extending these powers and urge greater transparency and accountability to the affected communities in the way powers under the Act are applied.
3. The Act in its current form does not include enough safeguards and transparency around its application. We recommend amendments to strengthen these safeguards through a review of the reporting requirements for enforcement agencies under the Act. We also acknowledge that it is vital in this current review to balance the powers and reach of the Search and Surveillance Act with both current law and future law.

Background of The Salvation Army

1. The mission of The Salvation Army Te Ope Whakaora is to care for people, transform lives, and reform society by God's power. The Salvation Army is a Christian church and social services organisation that has worked in New Zealand for over one hundred and thirty years. It provides a wide range of practical social, community, and faith-based services, particularly for those who are suffering, facing injustice, or who have been forgotten and marginalised by mainstream society.
2. The Salvation Army's combined services provide support to around 140,000 people annually. These services included providing around 88,000 food parcels to more than 33,000 families, providing some 4,600 people with short-or long-term housing, and over 4,000 families and individuals supported with social work or counselling. The Salvation Army also provides almost 20,000 addiction services and counselling sessions through Bridge (Alcohol and other drugs) and Oasis (gambling). Bridge and Oasis support over 2,000 Tangata Whaiora and their whanau annually across the country.
3. This submission has been prepared by the Social Policy and Parliamentary Unit (SPPU) of The Salvation Army. The SPPU works towards the eradication of poverty by advocating for policies and

practices that strengthen the social framework of New Zealand. This submission has been approved by Commissioner Mark Campbell, Territorial Commander of The Salvation Army's Aotearoa New Zealand Fiji Tonga, and Samoa Territory.

Search and Surveillance Act Review Feedback:

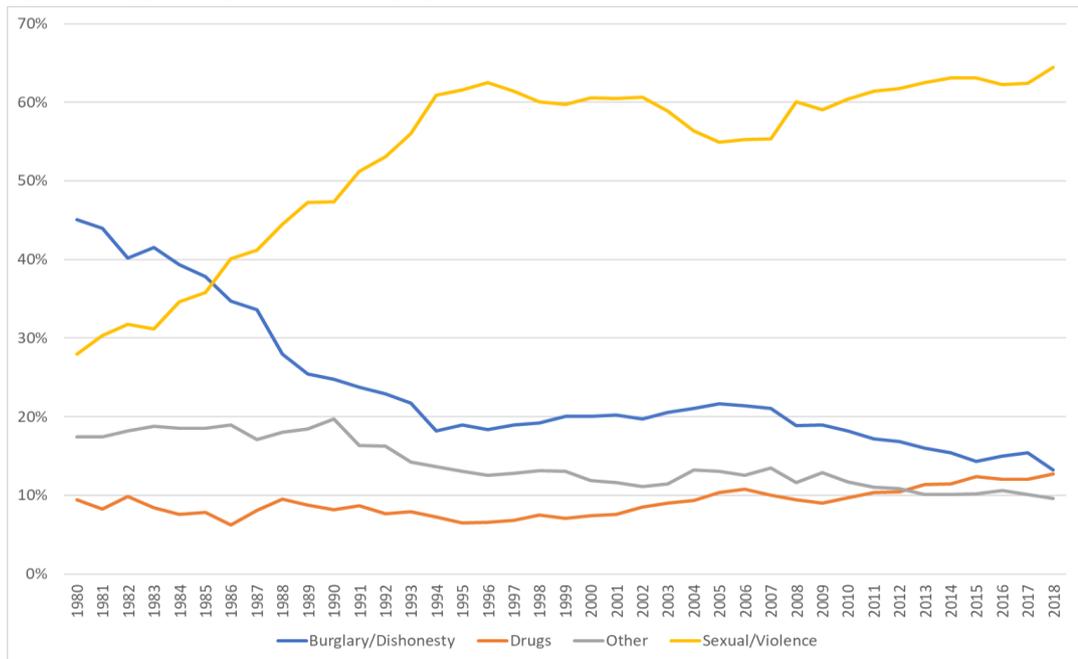
4. The Salvation Army welcomes the review of the Search and Surveillance Act 2012. We acknowledge that the review is driven by the Royal Commission of Inquiry into the terrorist attack on the Christchurch masjidain and the recommendations made by the Law Commission and the Ministry of Justice to improve the Act in the 2016/17 review¹. Our primary focus in this submission is to support the recommendations made in the Law Commission's review of the Search and Surveillance Act 2012.
5. Supporting people in the justice system has been a primary Kaupapa of The Salvation Army. The Salvation Army has Corps Officers who work as chaplains in the prisons and courts. In addition, The Salvation Army social services support the reintegration of people leaving prisons through reintegration support services, bail houses, and temporary supportive accommodation.
6. The Salvation Army Bridge treatment support services help people through alcohol and other drugs (AOD) addictions. Many of the Tangata whai-ora we support through our Bridge services are court-ordered to seek and receive treatment. Although our services are at the latter end of a person's journey in the justice system, we acknowledge that the powers that the Search and Surveillance Act enables particularly for Police directly or indirectly impact the people the Salvation Army support.
7. Search and surveillance powers conferred by the Act enable police investigations to keep communities safer and the Act also governs that these powers align with the New Zealand Bill of Rights Act (NZBORA) 1990². Our submission will not delve into the finer details of the Act or the processes that result from the Act, but we acknowledge that there are tensions in state intrusion for the enforcement of the law but also people's right to privacy.
 - a. The Salvation Army acknowledges that the powers conferred under this Act often initiate the enforcement of the law that would downstream result in some of our clients coming into our services. Almost 13% of clients who access our Bridge services are referred through justice agencies such as police, courts, corrections, or lawyers. Many of these Tangata whai ora will be supported in their journey to and maintaining sobriety as a result.
 - b. One of the key issues that underpin many of the social issues we see with our whanau, is the proliferation and abuse of illicit drugs in our community. The Salvation Army services commence from Kaitaia to Invercargill and there is a consensus across our services that illicit drugs particularly methamphetamine is a primary issue.

¹ NZLC R141 (2017) Law Commission and Ministry of Justice - <https://www.lawcom.govt.nz/our-projects/search-surveillance-Act-2012>

² <https://www.legislation.govt.nz/act/public/1990/0109/latest/DLM224792.html>

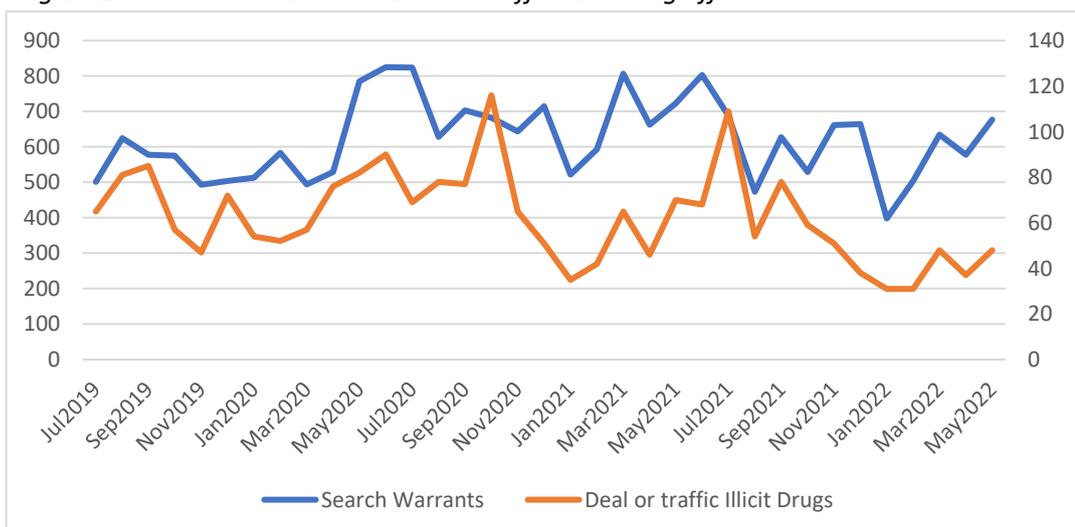
- c. According to Corrections, 84% of the growth in the sentenced prison population is due to changes in 3 offence types - sexual violation, serious violence, and dealing class A drugs (Methamphetamine) as shown in Figure 1 below³.

Figure 1: Offences for sentenced population (1980-2018)



- d. We highlight the use of police powers governed by the Act in the dealing and trafficking of illicit drug offences. We highlight again the provisions of these powers for law enforcement to address the issue of drugs in our communities. Figure 2 below shows the correlation between the number of search warrants carried out by police and the number of offences related to deal and traffic illicit drugs⁴.

Figure 2: Search Warrants and Deal or traffic illicit drug offences



- e. However, every New Zealander has fundamental rights and freedoms under NZBORA. People’s privacy and property should be protected and without safeguards for these

³ Ara Poutama Aotearoa: Current research priorities - Research & Analysis Team, Ara Poutama Aotearoa

⁴ <https://www.police.govt.nz/about-us/statistics-and-publications/data-and-statistics/demand-and-Activity>

enforcement powers under the Search and Surveillance Act, these powers can overreach, invade and infringe on people's privacy and rights.

8. The State of the Nation 2022 report released by The Salvation Army showed that Māori are significantly overrepresented in imprisonment, and they are imprisoned at a rate six times greater than non-Māori⁵. Māori also represents a significant proportion of whanau that we support in the justice system. The disproportionate representation of Māori in the justice system emphasizes the impact of the Search and Surveillance Act on Māori whanau.
 - a. We acknowledge the Law Commission's comments regarding the inclusion of the Te Tiriti o Waitangi clause in the principles of the Search and Surveillance Act⁶. Whilst we understand the need for flexibility in enacting the powers allowed under the Act, we believe "having regard to te ao Māori" and Te Tiriti o Waitangi are not synonymous.
 - b. We recommend that a Te Tiriti o Waitangi clause be considered under recommendation 6 around the requirement of policy statements. The Law Commission's report regarding the principles of the Act states that "a Treaty clause would generate uncertainty for enforcement officers around the nature and scope of their powers under the Act, and the action they need to take to satisfy their Treaty obligations, particularly concerning consultation." Policy statements are not legislative, but policy statements guide the enforcement of the powers in the Act. Policy statements are also developed by their respective ministries and therefore they can define in consultation the scope of their powers concerning Te Tiriti o Waitangi.
 - c. We also highlight that in recent case law, there's been more focus on the articles of Te Tiriti o Waitangi, not necessarily the principles of Te Tiriti o Waitangi. We believe policy statements by the different ministries would be more impactful by focussing on the articles of Te Tiriti o Waitangi, rather than the court-defined 'principles' from *New Zealand Māori Council v Attorney-General [1987]*.
 - d. The Salvation Army takes a particular focus on the powers of the Act for Police as this is the area in which we work. There need to be provision in the Act acknowledging Te Tiriti o Waitangi and the impact of the Act on Māori. In addition, we allude back to the point made above in 7b – the power allowed for under this Act equips police to address issues such as illicit drugs which we also acknowledge disproportionately impact Māori and Māori communities⁷. A concern we also raise is what the inclusion of Te Tiriti o Waitangi whether in principle or a policy statement means in practice for Police.
 - e. We acknowledge that the provisions of the Search and Surveillance Act go far beyond the Police and illicit drug however we refer back to this particular example as this area is the most relevant to our services and the whānau we serve.
9. We believe that safeguards are needed to ensure that balance is achieved concerning the use of the powers under this Act. The enforcement of powers under this Act needs to be consistent. Agencies need to be transparent in their processes and procedures in utilizing the powers under this Act where feasible, and agencies need to be held accountable when these powers are exercised in a way that breaches NZBORA or disregards the Act's principles.

⁵ <https://www.salvationarmy.org.nz/research-policy/social-policy-parliamentary-unit/state-nation-2022>

⁶ NZLC R141 (2017) Law Commission and Ministry of Justice - <https://www.lawcom.govt.nz/our-projects/search-surveillance-Act-2012>

⁷ <https://www.salvationarmy.org.nz/research-policy/social-policy-parliamentary-unit/state-nation-2022>

- a. The purpose of section 5 of the Search and Surveillance Act is “the monitoring of compliance with the law and the investigation and prosecution of offences in a manner that is consistent with human rights values...” Defining these 'human rights values' is vital. We highlight the recent proposals against incitement of hatred and discrimination or the Hate Speech Laws⁸. One of the proposals in the hate speech discussion proposed to change the wording of the Human Rights Act. These changes would have repercussions on the freedom of views and opinions for our whanau but also wider society. These potential laws would also give extenuating reach to the powers governed by the Search and Surveillance Act. Safeguards for the Search and Surveillance Act developed during this review would need to define what human rights values are to factor in future law changes that would impact the powers of this Act.
 - b. The powers governed by the Act are vast and therefore safeguards for transparency and accountability should be context-specific to each agency’s activity. We acknowledge that the Act in its current form requires annual reporting from enforcement agencies however we recommend that reporting requirements be reviewed, and production orders and search warrants included. We believe reporting requirements create accountability and transparency to ensure that powers under the Act, and the attempts to use these powers under the Act are appropriate under the principles of the Act.
 - c. We also acknowledge the rapidly changing digital landscape and the impact of the Act in this digital space. We acknowledge that safeguards need to be implemented in this area and provisions need to be made to allow for flexibility in the digital landscape which is and continues to rapidly evolve. We also refer to our point made in 9a – the potential for upcoming laws such as the hate speech laws and the impact it would have on surveillance of the digital space. Balancing other laws and the powers and reach of the Search and Surveillance Act is vital.
- 10.** We are grateful to the ministry for the many opportunities provided to engage with the review team regarding this Kaupapa. Working with vulnerable communities there is a disconnect between legislation and the actions on the ground which these legislations govern. Communities are often not able to give feedback on legislation or legislation review but often can give feedback on the actions to which these legislations dictate and guide. Review questions need to consider when seeking feedback from communities.
- 11.** If you have any questions or would like to discuss any areas, we highlighted you can contact – Ana Ika – Social Policy Analyst/Advocate – ana.ika@salvationarmy.org.nz

⁸ <https://consultations.justice.govt.nz/policy/incitement-of-hatred/>