



## NEW ZEALAND

<p><b>Does the country or institution have their own list of designated, banned, or proscribed groups?</b></p>	<p>Yes</p>
<p><b>What type of system does the country or institution use?</b></p>	<p>Designation is the only form used, proscription and banning are not used.</p>
<p><b>What is the definition of “terrorism” the country or institution employs?</b></p>	<p>Terrorism Suppression Act (TSA) Section 5 (2):<sup>59</sup> An act falls within this subsection if it is intended to cause, in any 1 or more countries, 1 or more of the outcomes specified in subsection (3)<sup>60</sup>, and is carried out for 1 or more purposes that are or include advancing an ideological, political, or religious cause, and with the following intention: (a) to intimidate a population; or (b) to coerce or to force a government or an international organisation to do or abstain from doing any act.</p>
<p><b>How does the designation process relate to the relevant authority’s definition of terrorism?</b></p>	<p>An entity may be designated by the Prime Minister if they believe there are reasonable grounds the entity has engaged in a terrorist act, based on the established definition of a terrorist act. When the ‘Terrorist Designations Working Group’ are considering an entity for designation, they should consider whether the threat is consistent with that outlined in section 5 of the TSA and the nature and scale of the entity’s involvement in terrorist acts or supportive activity. Before designating an entity as a terrorist or associated entity, the Prime Minister consults the Attorney-General on whether the legislative requirements in the TSA are satisfied.</p>
<p><b>Does the country follow UN or EU (if relevant) designation lists and sanctions?</b></p>	<p>Yes, the UN lists and sanctions are followed.</p>
<p><b>Does designation have an effect on the online realm? Is content created by terrorist groups illegal?</b></p>	<p>No. Content which is considered “objectionable” according to the Films, Videos, and Publications Classification Act 1993 is illegal to make, copy, import, supply, possess or sell under New Zealand law.<sup>61</sup> A sub-clause (Section 3(3) (d)) in the definition of “objectionable” includes the “extent and degree” to which it is determined that the content “promotes or encourages criminal acts or acts of terrorism,” but this is not dependent on terrorist designation. An independent Crown entity (the Classification Office) and Board of Review have the authority to determine whether content is objectionable.</p>

<sup>59</sup> [Terrorism Suppression Act \(TSA\) Section 5 \(2\)](#), Government of New Zealand, 2002.

<sup>60</sup> Outcomes specified in Section 3 are “(a) the death of, or other serious bodily injury to, 1 or more persons (other than a person carrying out the act): (b) a serious risk to the health or safety of a population: (c) destruction of, or serious damage to, property of great value or importance, or major economic loss, or major environmental damage, if likely to result in 1 or more outcomes specified in paragraphs (a), (b), and (d): (d) serious interference with, or serious disruption to, critical infrastructure, if likely to endanger human life: (e) introduction or release of a disease-bearing organism, if likely to cause major damage to the national economy of a country.” Government of New Zealand, [Terrorism Suppression Act \(TSA\) Section 5 \(2\)](#), 2002.

<sup>61</sup> Films, Videos, and Publications Classification Act, Government of New Zealand Department of Internal Affairs, 1993.





<p><b>Is online content that incites acts of terrorism illegal?</b></p>	<p>Yes, according to the Films, Videos, and Publications Classification Act 1993 section 3, any content which “promotes or encourages criminal acts or acts of terrorism” may be determined objectionable, and therefore illegal to make, copy, import, supply, possess or sell.<sup>62</sup></p>
<p><b>Is online content that supports designated terrorist groups illegal?</b></p>	<p>No, unless it meets the definition of “encouraging acts of terrorism.” This means other official content produced by designated terrorist groups is legal.</p>
<p><b>Is there a sufficient balance between far-right and violent Islamist groups and individuals?</b></p>	<p>No, New Zealand has only designated three far-right entities. These include the Christchurch attack perpetrator, and more recently, in June 2022, The Base and the Proud Boys were also designated.</p>
<p><b>Are there human rights-compliant mechanisms in place for delisting a group?</b></p>	<p>There is a regular 3-year rolling review process to which every listed entity is subject, allowing for removal from the designation list if they no longer pose a threat to New Zealand or meet the established definition of a terrorist group. A designated entity can apply in writing to the Prime Minister for the designation to be revoked on the grounds that the entity does not satisfy the section 22 TSA test or that the entity is no longer involved in any way in acts of the kind that made it eligible for designation. Judicial review proceedings are also possible in respect of a designation under the TSA.</p>
<p><b>What are the weaknesses in the designation process?</b></p>	<ul style="list-style-type: none"> <li>• New Zealand has designated three far-right entities (the Christchurch perpetrator, The Base and the Proud Boys) but no others. This does not accurately reflect the current threat landscape and the threat posed by the violent far-right. Experts have warned this is because the TSA fails to mention the extreme far-right, making designations of those entities difficult.<sup>63</sup></li> <li>• The criteria used to designate terrorist entities specifies consideration of the threat posed to New Zealand and the extent and nature of the entity’s presence in New Zealand.<sup>64</sup> While this criteria does not necessarily have to be met, there is a danger this encourages reactive designation of entities having already committed attacks against New Zealanders (such as the designation of Brenton Tarrant). Additionally, this may limit the territorial scope of designation which may overlook threats from abroad.</li> <li>• Given online regulation currently covers “objectionable” rather than purely terrorist content while overlooking the source, there is a disconnect between designation and the regulation of TVE content online.</li> </ul>

<sup>62</sup> Films, Videos, and Publications Classification Act, Government of New Zealand Department of Internal Affairs, 1993, section 3.

<sup>63</sup> [New Zealand Terror List Needs to be Expanded](#), Katie Scotcher, Radio New-Zealand, 2021.

<sup>64</sup> [Terrorist Designation Process Legal framework](#), New Zealand Police, 2017.





#### What do we recommend?

- We recommend reconsidering the criteria used for designation of terrorist entities to incorporate a broader range of ideologies and threats. This should include greater consideration of the threat of online radicalisation from external terrorist entities, as Australia have done in their designation of UK-based Sonnenkrieg Division.<sup>65</sup>
- We recognise that the recent designations of The Base and the Proud Boys<sup>66</sup> constitute positive progress in this regard, and commend New Zealand for their transparent reasoning for these additions. However, we believe there is no reason not to consider designating other internationally recognised groups such as Atomwaffen Division or National Socialist Order, especially given groups such as the IRA and ETA are on the list.
- We suggest this may also involve updating the definition of terrorism to reflect the threat of the extreme far-right, which is in line with the Royal Commission into the Christchurch Mosque attack's recommendations.<sup>67</sup>
- We also recommend that New Zealand consider other types of terrorist ideologies beyond far-right, far-left, separatist, and Islamist actors, such as 'incel' attackers who have been deemed terrorist in nature by certain governments.
- New Zealand should also recognise that grouping unsavoury material with TVE content under the Films, Videos and Publications Classification Amendment Bill could limit freedom of speech and remit the adjudication of "objectionable content" to the discretion an individual (the Chief Censor or Inspector of Publications).<sup>68</sup> In this regard, transparency and consultation for these decisions is vital.
- Additionally, we propose developing an explicit definition of online terrorist content as part of online regulation legislation, which would mandate consideration of the source of the content to ensure official content from designated terrorist groups can be included. This would tie designation to online regulation and thus provide tech companies with a clear legal and factual basis for removing terrorist content.

<sup>65</sup> [Designation of Sonnenkrieg Division](#), Government of Australia, 2021.

<sup>66</sup> [Designation of Proud Boys](#), New Zealand Police, 2022.

<sup>67</sup> [Recommendations to improve New Zealand's counter terrorism effort](#), Royal Commission of Inquiry into the terrorist attack on Christchurch mosques, 15 March 2019.

<sup>68</sup> Films, Videos, and Publications Classification Act, Government of New Zealand Department of Internal Affairs, 1993.





	<ul style="list-style-type: none"> <li>• We believe that as the founding member of the Christchurch Call to Action,<sup>69</sup> New Zealand is certainly capable of effectively tackling terrorist and violent extremist content online. We commend New Zealand’s Classification Office in leading on banning certain terrorist content by means of thorough and transparent consultation processes, as happened in the case of the Christchurch livestream and manifesto, the Halle attack video,<sup>70</sup> and most recently the ‘Oslo’ manifesto.<sup>71</sup> This criminalises possessing, distributing, viewing, and hosting this material and provides tech companies with the legal basis to remove it. We do however believe these classifications should be criminalised under ‘terrorist content’ rather than ‘objectionable content’, and that the scope of ‘terrorist content’ should consider official material produced by designated terrorist organisations. This is to provide additional clarity for tech companies.<sup>72</sup> This criminalises possessing, distributing, viewing, and hosting this material and provides tech companies with the legal basis to remove it. We do however believe these classifications should be criminalised under ‘terrorist content’ rather than objectionable content’, and that the scope of ‘terrorist content’ should consider official material produced by designated terrorist organisations. This is to provide additional clarity for tech companies.</li> <li>• Alongside online regulation, the establishment of a regulatory body should be considered to provide more clarity for tech companies on the practical steps tech companies can take to identify and remove illegal terrorist content. The regulator would also have punitive measures available to enforce compliance.</li> </ul>
<p><b>Further information and comments</b></p>	<p>New Zealand should be commended for its transparent designation process, managed by the Terrorist Designations Working Group. In particular, we applaud the legal criteria on which designations are based and the direct connection to the terrorism definition laid out in the TSA.</p>

<sup>69</sup> Christchurch Call to Action, Government of New Zealand, 2019.

<sup>70</sup> [Chief Censor bans livestream of antisemitic shooting in Halle](#), Thomas Manch, Stuff, 2019.

<sup>71</sup> [White supremacist manifesto banned](#), New Zealand Classification Office, 2021.

<sup>72</sup> [White supremacist manifesto banned](#), New Zealand Classification Office, 2021.

