

Departmental Disclosure Statement

Human Rights (Incitement on Ground of Religious Belief) Amendment Bill
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The departmental disclosure statement for a Bill the government is proposing to amend seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill in amended form.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

18 November 2022

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Part One: General Policy Statement

The Human Rights Act 1993 (the principal Act) aims to provide better protection of human rights in Aotearoa New Zealand in general accordance with United Nations covenants or conventions on human rights.

The Bill aims to improve protections for faith-based groups under the provisions of the principal Act that make speech that is likely to excite hostility unlawful. The harmful effects of this type of hateful speech, on both faith-based groups and society as a whole, are well documented. The Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019 recommended that religious belief be included in the criminal provision in the principal Act.

To achieve its objective, the Bill extends the coverage in the civil and criminal provisions that cover speech that is likely to excite hostility (sections 61 and 131 respectively) beyond colour, race, and ethnic and national origins. The Bill includes religious belief in those provisions, which is one of the prohibited grounds of discrimination listed in section 21 of the principal Act.

The proposed change to sections 61 and 131 would provide better protection for faith-based groups who are experiencing harm from inciting speech. The change would enable remedies to be available to address inciting speech against those groups, either through a complaint to the Human Rights Commission or by prosecution.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
Report of the <i>Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019</i> , 8 December 2020 (accessible at http://christchurchattack.royalcommission.nz/the-report/).	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	YES
Article 20(2) of the International Covenant on Civil and Political Rights requires states to prohibit advocacy of national, racial or religious hatred that incites others to discrimination, hostility or violence. The treaty can be accessed at the following link: http://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights	

2.2.1. If so, was a National Interest Analysis Report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO
Parliamentary examination of the proposed New Zealand action in relation to the treaty has not been undertaken.	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<i>Interim Impact Summary: Public discussion document – Proposed changes to the incitement provisions in the Human Rights Act 1993</i> , Ministry of Justice, 28 April 2021, accompanying the Cabinet paper considered by Cabinet in 2021 [CAB-21-MIN-0163]. Throughout the policy development process Ministry officials conducted regulatory impact work and analysis. Final decisions were informed by the Supplementary Analysis Report referred to in question 2.4 below.	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
The RIS identified above did not meet the threshold for receiving an independent opinion on the quality of the RIS from the RIA Team based in the Treasury. The Ministry of Justice provided an internal quality assurance panel.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	YES
2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p><i>Supplementary Analysis Report: Incitement of Hatred – amending the Human Rights Act 1993 to include ground of religious belief</i>, Ministry of Justice, 18 November 2022, accompanying the Cabinet paper considered by Cabinet Legislation Committee in 2022 [LEG-22-MIN-0218].</p> <p>The SAR is accessible at http://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/ and can also be found and downloaded at http://www.treasury.govt.nz/publications/informationreleases/ris</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be affected by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>Non-compliance with the amendment will affect the potential benefits for the identified population group, faith-based groups, as well as impacting wider society due to the detrimental impacts of incitement on social cohesion.</p> <p>The level of regulator effort by Police (for prosecutions) and the Human Rights Commission (for civil complaints) will also impact on the potential costs and benefits. Regulators are likely to need to provide information on the effect of the change.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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Consistency with Aotearoa New Zealand's international human rights obligations was a part of the Ministry of Justice's analysis of the policy options informing the development of the Bill. Obligations under the International Covenant on Civil and Political Rights are relevant to this Bill.
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Ministry of Justice has worked with Te Puni Kōkiri and Te Arawhiti to ensure Te Tiriti o Waitangi implications were considered in the Bill's development.

The Ministry invited a number of iwi and other Māori groups to engage on the proposals. Māori participated in face-to-face meetings and there were a small number of submissions from Māori representative organisations. The feedback was generally substantive, reflecting the te Tiriti implications.
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Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
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The Bill amends section 61 and section 131 of the Human Rights Act:

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| <ul style="list-style-type: none">• section 61 makes it unlawful to publish or distribute threatening, abusive, or insulting words likely to 'excite hostility against' or 'bring into contempt' any group on the grounds of colour, race, or ethnic or national origins• section 131 makes it a criminal offence to publish matter or use words in a public place that are threatening, abusive, or insulting and which are likely to 'excite hostility or ill will against, or bring into contempt or ridicule', any groups on the ground of colour, race, or ethnic or national origins. |
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The Bill inserts the additional ground of 'religious belief' in both provisions, which will expand the basis on which criminal prosecutions, and complaints to the Human Rights Commission and the Human Rights Review Tribunal, can be pursued.
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3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
The Ministry of Justice has led the policy development of the Bill.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The Royal Commission's inquiry involved consultation, gathering information and evidence including engaging with affected whānau, survivors and witnesses; meeting with Muslim communities; meeting with ethnic and religious communities and interest groups; and receiving submissions. See Chapter 4 of the Report of the <i>Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019</i>, 8 December 2020 (accessible at http://christchurchattack.royalcommission.nz/the-report/).</p> <p>Between 25 June and 6 August 2021, the Ministry of Justice undertook consultation with the public through written submissions on the 2021 discussion document, <i>Proposals against the incitement of hatred and discrimination</i>.</p> <p>In addition, the Ministry met with focus groups and larger hui (in Auckland, Hamilton and Wellington, and online) were held across the consultation period, totalling 30 sessions. Participants were drawn from Māori, Pacific, former refugees and migrants, disability communities, rainbow communities and faith-based communities.</p> <p>Summaries of the submissions and the focused engagement can be accessed at: http://www.justice.govt.nz/justice-sector-policy/key-initiatives/human-rights-act-amendment-to-strengthen-incitement-laws/</p> <p>During the policy development process the Ministry also consulted with the Human Rights Commission.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
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Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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