

# Proposals against incitement of hatred and discrimination: summary document

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Te Tāhū o Te Ture – the Ministry of Justice (the Ministry) is seeking your feedback on six proposals to change the law relating to incitement of hatred and discrimination.

The Human Rights Act 1993 prohibits speech that incites (provokes) racial disharmony. It also prohibits discrimination against a person because of a feature of their identity.

Following a review by the Ministry and the recommendations of the Royal Commission of Inquiry into the terrorist attack at Christchurch masjidain on 15 March 2019, the Government is proposing changes to strengthen and clarify these protections.

The Government is also proposing two wider law changes to discrimination provisions.

Aotearoa New Zealand is a diverse nation. The Government wants to strengthen social cohesion and make Aotearoa New Zealand safe for everyone. Improving the protections against speech that incites hatred, and the protections against discrimination, will support this.

Freedom of expression is an important value in Aotearoa New Zealand. It's part of the New Zealand Bill of Rights Act 1990, alongside freedom from discrimination. The proposed law changes aim to better protect these rights, including ensuring that people who experience hate speech can freely express themselves. The Bill of Rights Act allows for justifiable limits on rights, balanced against others' rights and interests.

The Government has agreed in principle to six proposals. This means the Government thinks the changes are a good idea but wants to know whether they meet society's expectations before making a final decision about whether, and how, to change the law. These proposals may change depending on the feedback received.

The proposals are listed below. In summary, they aim to:

- increase the groups of people that are protected by the incitement provisions
- make clearer what behaviour the law won't allow and increase the consequences for breaking the law
- improve the protections for groups against wider discrimination.

You can find more detailed background about the current law, the proposals for change and the reasons for them in the full discussion document: *Proposals against the incitement of hatred and discrimination* are available at [www.justice.govt.nz/proposals-against-incitement-of-hatred-and-discrimination](http://www.justice.govt.nz/proposals-against-incitement-of-hatred-and-discrimination).

## We want to hear from you

The Government wants your feedback (submission) to help decide whether to make the proposed changes, or to change some parts of them, or to take a different course of action.

Submissions are open from 25 June to 6 August 2021. You can send your submission through the Citizen Space website <https://consultations.justice.govt.nz>, by email [humanrights@justice.govt.nz](mailto:humanrights@justice.govt.nz), or by post to Human Rights, Ministry of Justice, SX10088, Wellington.

For more information about the submissions process, including information about confidentiality and personal information, please see the discussion document on our website: [www.justice.govt.nz/proposals-against-incitement-of-hatred-and-discrimination](http://www.justice.govt.nz/proposals-against-incitement-of-hatred-and-discrimination)

Please see page 6 of the discussion Document for details regarding confidentiality and personal information. You should read this before submitting your feedback.

## Six proposals

<p><b><i>Proposal one: Change the language in the incitement provisions in the Human Rights Act 1993 so that they protect more groups that are targeted by hateful speech.</i></b></p>	<p>Current incitement provisions only apply to speech that targets a group because of their colour, race, or ethnic or national origins. Other groups are also targeted by hateful speech, including groups based on their religion, gender, sexuality and disability. This proposal would change the law to also apply if hatred was incited against a group of people due to a wider range of characteristics. This could include some of, or all, the other prohibited grounds of discrimination in section 21 of the Human Rights Act (this section is set out in Appendix One of the Discussion Document). We are seeking views on which groups should be protected by this change. More information is available in the Discussion Document on page 17.</p>
<p><b><i>Proposal Two: Replace the existing criminal provision in the Human Rights Act 1993 with a new criminal offence in the Crimes Act 1961 that is clearer and more effective.</i></b></p>	<p>This would mean that a person who intentionally incites, stirs up, maintains or normalises hatred against a protected group would break the law if they did so by being threatening, abusive or insulting, including by inciting violence. This would apply regardless of how they made the threat or abuse, including verbally, in writing, or online. For more information on which groups should be protected, see Proposal One. More information is available in the Discussion Document on page 18.</p>

<p><b><i>Proposal Three: Increase the punishment for the criminal offence to better reflect its seriousness.</i></b></p>	<p>The current punishment is up to three months' imprisonment or a fine of up to \$7,000. The proposal is that the punishment be increased to up to three years' imprisonment or a fine of up to \$50,000. More information is available in the Discussion Document on page 19.</p>
<p><b><i>Proposal Four: Change the language of the civil incitement provision to match the changes being made to the criminal provision.</i></b></p>	<p>This would add 'inciting/stirring up, maintaining or normalising hatred' alongside the existing wording in the civil provision (section 61). We also welcome feedback about other ways this provision could be improved. More information is available in the Discussion Document on page 21.</p>
<p><b><i>Proposal Five: Change the civil provision so that it makes 'incitement to discriminate' against the law.</i></b></p>	<p>The law would change so that a person was prohibited from inciting or stirring up other people to discriminate against those groups who will be covered by the incitement of hatred provision (see Proposal One). This would allow complaints to the Human Rights Commission about this type of behaviour. More information is available in the Discussion Document on page 22.</p>
<p><b><i>Proposal Six: Add to the grounds of discrimination in the Human Rights Act to clarify that trans, gender diverse, and intersex people are protected from discrimination.</i></b></p>	<p>It's currently against the law to discriminate against people because of their sex. The Government considers that this includes discrimination based on gender identity or expression, sex characteristics or intersex status. This proposal suggests making the law clearer about this. More information is available in the Discussion Document on page 23.</p>

## What is inciting speech?

'Hate speech' is a broad term that isn't used in Aotearoa New Zealand's law. It's generally defined as speech that attacks an individual or group based on a common characteristic, for example ethnicity, religion, or sexuality.

The six proposals above relate specifically to speech that incites hatred against a group. Speech that incites hatred is abusive or threatening speech that stirs up hostility towards a group of people (rather than being directed at one person) based on a shared characteristic. This is why we talk about 'inciting speech', 'incitement of hatred' and the 'incitement provisions'.

These proposals are not looking at other forms of hate crime. More information about related work that isn't covered by these proposals can be found in the Discussion Document on page 25.

## **Inciting speech causes harm**

Speech that incites hatred causes significant harm. It has a negative effect on the communities that are targeted and can lead to violence. Inciting hatred damages our society by causing ill feeling and holding back social inclusion. It can spread distrust and division between all our communities across Aotearoa New Zealand.

Improving the protections against incitement of hatred will promote safer communities and reinforce our society's view that this type of behaviour is harmful.

Inciting hatred is also prohibited under international human rights treaties, so changing the law will help us meet our international human rights obligations.

## **The current law**

The Human Rights Act 1993 contains a criminal provision and a civil provision. The civil law system covers private disputes between individuals, organisations, and in some cases, local or central government. The criminal law system is aimed at identifying and prohibiting more serious and harmful conduct by punishing people who break the law.

Under the civil provision (section 61), it's against the law to use, publish, broadcast or distribute written matter or use words that are both:

1. threatening, abusive or insulting, and
2. likely to incite hostility or bring into contempt any group based on their colour, race, or ethnic or national origins.

A person may complain to the Human Rights Commission when they think someone has done something unlawful.

The criminal provision (section 131) says that it's a criminal offence to incite racial disharmony by publishing, broadcasting or distributing written matter, or using words that are all of the following:

1. threatening, abusive, or insulting
2. likely to excite hostility or ill-will against, or bring into contempt or ridicule any group on the ground of colour, race, or ethnic or national origins, and
3. intended to excite such hostility, ill-will, contempt or ridicule.

This offence is punishable by up to three months' imprisonment, or a fine of \$7,000.

# Freedom of expression is protected but is subject to reasonable limits

Freedom of expression is a cornerstone of our society, but it doesn't mean people have the right to say anything they want to. Like all rights and freedoms in the Bill of Rights Act, the right to freedom of expression can be limited by law in such a way that can be justified in a free and democratic society.

The current incitement provisions provide for justifiable limits on freedom of expression. They form a balanced approach that considers the seriousness of the hateful speech against the severity of the punishment. The incitement provisions target speech which would have others believe that a society made up of different ethnic groups cannot function effectively. This type of speech seeks to turn people against each other and create separation between communities.

The law makes the incitement of these attitudes illegal because they are incompatible with human rights and Aotearoa New Zealand's democratic values. These attitudes are based on the idea that because of a shared characteristic (such as ethnicity, religion, or sexuality) some groups of people have less value than others. There could be a belief that these groups should not have the same rights, and/or be treated differently and excluded from wider society.

It's important to note that these proposals don't lower the threshold for criminalising speech or prevent public debate on important issues.

The goal of these proposals for law change is to ensure that everyone's rights are protected, and every person can express themselves without fear.

## Problems with the law have been identified

The Ministry carried out a review of the law in 2019 and identified some issues. The Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019 also identified issues and made recommendations for change.

Three key points were identified:

1. The wording of both the criminal provision and civil provisions is unclear. The Royal Commission recommended reframing the wording for the criminal provision.
2. More groups are affected by speech that incites hatred than those currently protected. The provisions only cover race, nationality, ethnicity and colour. These are only four of the thirteen 'prohibited grounds of discrimination' in section 21 of the Human Rights Act.
3. The penalty for the criminal offence is relatively low in comparison with the seriousness of intentionally inciting hatred.

We're seeking your feedback on the six proposals to address these issues with the current law.

# Treaty of Waitangi considerations

Te Tiriti o Waitangi - the Treaty of Waitangi is relevant to the incitement provisions and protections against discrimination in the Human Rights Act and the in-principle proposals. Māori can experience hate speech and are currently covered by the incitement provisions under the grounds of 'race' or 'ethnic origin'. These proposals seek to better protect groups, including Māori, from speech that incites hatred. Protections will be strengthened where Māori would be covered by any of the other prohibited grounds of discrimination, for example, in relation to takatāpui (Māori who identify with diverse genders and sexualities).

## Questions for feedback on the proposals

The Discussion Document contains general questions about all the proposals as well as specific questions for each proposal. These questions are listed below.

Three questions that you could use as prompts for your submission on all the proposals are:

- Do you see any risks or unintended consequences arising from the proposal and, if so, what are they?
- Are there any ways that these proposals could be improved?
- Do these proposals present any further Treaty of Waitangi issues than those mentioned?

Questions about Proposal One:

- Do you agree that broadening the incitement provisions in this way will better protect these groups?
  - Why or why not?
- In your opinion, which groups should be protected by this change?
- Do you think that there are any groups that experience hateful speech that would not be protected by this change?

Questions about Proposal Two:

- Do you agree that changing the wording of the criminal provision in this way will make it clearer and simpler to understand?
  - Why or why not?
- Do you think that this proposal would capture the types of behaviours that should be unlawful under the new offence?

Questions about Proposal Three:

- Do you think that this penalty appropriately reflects the seriousness of the crime?
  - Why or why not?
- If you disagree, what crimes should be used as an appropriate comparison?

Questions about Proposal Four:

- Do you support changing this language in section 61 (the civil provision)?

- Why or why not?
- Do you think that any other parts of the current wording of the civil provision should be changed?

Questions about Proposal Five:

- Do you support including the prohibition of incitement to discriminate in section 61?
  - Why or why not?

Questions about Proposal Six:

- Do you consider that this terminology is appropriate?
- Do you think that this proposal sufficiently covers the groups that should be protected from discrimination under the Human Rights Act?
- Do you consider that this proposal appropriately protects culturally specific gender identities, including takatāpui?

## What you can do if you are experiencing hateful speech or behavior

If you feel your safety is at risk, please contact the Police. If it's an emergency, call 111. If you are not in danger right now, call 105.

For information about how the Human Rights Commission can help, see:

<https://www.hrc.co.nz/enquiries-and-complaints/how-make-complaint/>

For information about racial harassment:

<https://www.hrc.co.nz/enquiries-and-complaints/faqs/racially-offensive-comments/>.

For abuse happening online: <https://www.netsafe.org.nz/>

If you'd like to talk to someone about how you're feeling, please call or text 1737.

## Further information

You can read the full discussion document at:

[www.justice.govt.nz/proposals-against-incitement-of-hatred-and-discrimination](http://www.justice.govt.nz/proposals-against-incitement-of-hatred-and-discrimination)

Further information is also available on Te Tāhū o Te Ture – the Ministry of Justice's website at:

[www.justice.govt.nz/proposals-against-incitement-of-hatred-and-discrimination](http://www.justice.govt.nz/proposals-against-incitement-of-hatred-and-discrimination)



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