

Hon Kiri Allan
Minister of Justice

Proactive release – Work to address incitement of hatred, hate crime and discrimination

Date of issue: 22 March 2023

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1.	Next steps to address incitement of hatred, hate crime, and discrimination <i>Cabinet Paper</i> Ministry of Justice 14 November 2022	Some information has been withheld in accordance with the following section of the OIA: 9(2)(h) to protect the confidentiality of legal professional privilege 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers and officials
2.	Next steps to address incitement of hatred, hate crime, and discrimination <i>Cabinet Minute [CAB-22-MIN-0506]</i> Cabinet Office 14 November 2022	Released in full.
3.	Next Steps to Address Incitement of Hatred, Hate Crime and Discrimination <i>Cabinet Minute [SWC-22-MIN-0216]</i> Cabinet Office 16 November 2022	Released in full.
4.	Human Rights (Incitement on Ground of Religious Belief) Amendment Bill: Approval for Introduction <i>Cabinet Paper, Legislation Bill</i> Ministry of Justice 24 November 2022	Some information has been withheld in accordance with the following section of the OIA: 9(2)(h) of the OIA to protect the confidentiality of legal professional privilege 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers and officials
5.	Human Rights (Incitement on Ground of Religious Belief) Amendment Bill: Approval for Introduction <i>Cabinet Minute [LEG-22-MIN-0218]</i> Cabinet Office 24 November 2022	Some information has been withheld in accordance with the following section of the OIA: 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers and officials.
6.	Refresh of the Government's Priorities <i>Cabinet Minute [CAB-23-MIN-0019]</i> Cabinet Office 8 February 2023	Some information has been withheld as it is out of scope.

In Confidence

Office of the Minister of Justice

Cabinet

Next steps to address incitement of hatred, hate crime, and discrimination

Proposal

- 1 This paper seeks agreement to amend the Human Rights Act 1993 (HRA) to protect faith-based groups under the existing incitement provisions. In addition, a reference to the Law Commission would be made for a first principles review of incitement of hatred, hate crime, and protection in the HRA for transgender people, non-binary people, and people with diverse sex characteristics.

Relation to Government priorities

- 2 Labour's 2020 Election Manifesto committed to extending legal protections under the HRA for groups that experience hate speech including for reasons of religion, gender, disability, or sexual orientation. Extending the criminal protection against inciting speech to religious belief was one of the recommendations of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019 (the Royal Commission).
- 3 The Manifesto also committed to better protecting Rainbow communities¹ from discrimination and prejudice, including adding gender identity as a prohibited ground of discrimination in the HRA.

Executive Summary

- 4 Cabinet has previously agreed to accept the Royal Commission's recommendations relating to hate crime and the incitement of hatred. Proposals were developed and consulted on in 2021 to extend the protections in the incitement provisions in the HRA to more groups. Subsequently, Cabinet agreed in August to make immediate changes to the HRA to add the grounds of religious belief (recommended by the Royal Commission), sex, gender, sexual orientation and disability to the civil and criminal provisions that prohibit hate-inciting speech.
- 5 I propose making a more limited amendment to the HRA to add only religious belief in the incitement provisions. This would align with the Royal Commission's recommendation to include coverage for religious belief in the criminal provision, and also with our international obligations, and is strongly supported by the evidence of harm being experienced by faith-based groups.
- 6 It has become clear that the inclusion of additional grounds in the incitement provisions, beyond religious belief, is more complex and needs further

¹ I acknowledge that some people may prefer the terms LGBTTQIA+ or SOGIESC.

consideration. This includes Bill of Rights concerns about including sex and gender in the incitement provisions, and the importance of ensuring the application of the law is sufficiently clear. Cabinet's earlier agreement for the addition of sex, gender, sexual orientation and disability would therefore be rescinded.

- 7 Because of the significant differences of views on our incitement laws seen in the consultation in 2021, a reference would be made to the Law Commission. This reference would be for a first principles review of hate-motivated offending and behaviour (i.e, our incitement laws and the approach to hate crime).
- 8 The Law Commission's independent and thorough review would include consideration of specific characteristics and groups that should be protected from incitement, as well as other remaining aspects of the 2021 proposals and the Royal Commission's recommendations. Topics would include the thresholds of what speech should be prohibited, and whether we need specific hate offences.
- 9 The Law Commission would also be asked to consider and consult on how best to ensure there is clear protection under the HRA against discrimination on the ground of gender, and against diverse sex characteristics. The lack of this clear protection in our discrimination laws for transgender people, non-binary people and those with diverse sex characteristics, such as intersex people, remains to be addressed. Consultation and evidence shows our Rainbow communities regularly experience discrimination and hatred.
- 10 The timing of these decisions has now become critical to the amendments being referred to select committee this year and passed next year. A Human Rights Amendment Bill is intended to be considered by the Cabinet Legislation Committee on 24 November 2022 and introduced immediately after Cabinet.

Background

- 11 In May 2021, Cabinet agreed to publicly consult on its 2020 in-principle decisions responding to issues related to incitement and discrimination, including to accept the Royal Commission's Recommendation 40, which proposed changes to the criminal incitement provision in the HRA (CAB-20-MIN-0507, CAB-21-MIN-0163 refer).
- 12 In August 2022, Cabinet agreed to extend the coverage of the incitement provisions in the HRA to include religious belief, sex, gender, sexual orientation and disability (CAB-22-MIN-0319). Cabinet invited me to issue drafting instructions in advance of any final policy decisions (CAB-22-MIN-0319). A Human Rights Amendment Bill has now been prepared.
- 13 Cabinet also agreed in principle to clarify the prohibited grounds of discrimination in section 21 of the HRA to strengthen protections for Rainbow communities. Cabinet invited me to report back to Cabinet Social Wellbeing Committee (SWC) on the section 21 change and a proposed approach to the relevant exceptions in the Act (CAB-22-MIN-0319).

- 14 On 31 October 2022, Cabinet deferred consideration of a paper outlining the section 21 changes and a proposed approach to related amendments. Cabinet invited me to submit a revised paper to Cabinet (CAB-22-MIN-0474).

Latest decisions by the Cabinet Social Wellbeing Committee

- 15 On 9 November 2022, SWC considered a paper on options for next steps. SWC agreed to recommend that Cabinet rescind the decision to extend the coverage of the civil and criminal incitement provisions of the HRA (sections 61 and 131) to include sex, gender, sexual orientation and disability. SWC's recommendation was that the incitement provisions only include religious belief.
- 16 SWC agreed that a reference be made to the Law Commission for a first principles review that would broadly cover incitement of hatred and hate crime, as well as the recommendations by the Royal Commission on these topics. SWC also agreed that the Law Commission should review protection in the Act for transgender people, non-binary people, and people with diverse sex characteristics, including the inclusions of gender and variations of sex characteristics in the prohibited grounds of discrimination (SWC-22-MIN-0201).

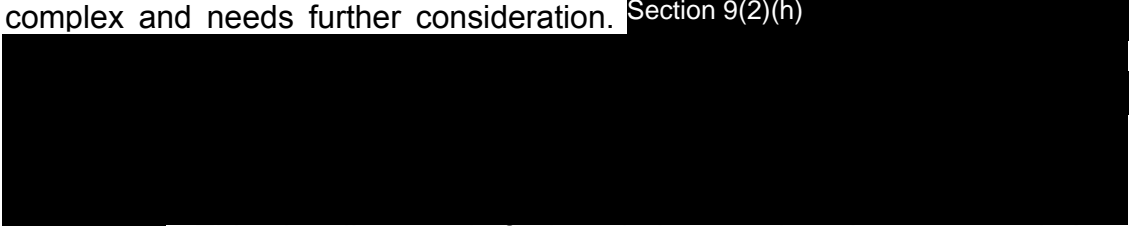

Human Rights Act

- 17 The HRA prohibits inciting racial disharmony. There is a civil provision for publishing materials that are likely to incite racial disharmony (where there is no need to prove intent) and there is also a criminal offence in the HRA. Currently these provisions only refer to colour, race, and ethnic and national origins.
- 18 The HRA is our main anti-discrimination law. Its purpose is to help ensure that all people in New Zealand are treated fairly and their human rights are protected and upheld. Section 21 of the HRA is a core part of the Act, setting out the prohibited grounds of discrimination,² describing different personal characteristics. The HRA makes it illegal for private organisations or individuals to discriminate based on those grounds in certain areas of life, such as education or employment.
- 19 Section 21 expressly lists sex as a prohibited ground of discrimination. The Government position, based on Crown Law Office advice to the Attorney-General in 2006, is that the ground of sex also includes gender-related concepts as well as people with variations of sex characteristics (diverse biological characteristics, which can include intersex people) but this is not explicit.

Extending the coverage of the incitement provisions in the HRA

- 20 Cabinet agreed to extending the criminal and civil incitement provisions to add the grounds of religious belief, as well as sex, gender, sexual orientation and disability.

² The grounds are: sex; marital status; religious belief; ethical belief; colour; race; ethnic or national origins; disability; age; political opinion; employment status; family status; and sexual orientation.

- 21 There is a strong case for the inclusion of religious belief. The Royal Commission's work considered our incitement laws in the context of the events of the Christchurch terrorist attack, which concerned hate-motivated behaviour and religion. The Royal Commission's Recommendation 40 recommended extending the criminal provision to include religious belief. A few submitters on the 2021 proposal document were concerned that the changes went beyond the Royal Commission's recommendations.
- 22 Evidence shows faith-based groups experience discrimination and harmful speech in a variety of environments. Religion was the most frequent perceived reason for being personally targeted with online harmful speech in a recent Netsafe survey. Police hate crime reports from 1 January 2021 to 21 June 2022 show religion or faith characteristics attributed to 8 per cent of these incidents. Including religious belief would better protect our religious communities, including Muslims, and also improve our consistency with the International Covenant on Civil and Political Rights.
- 23 However, since Cabinet's earlier agreement it has become clear that the inclusion of some of the additional grounds in the incitement provisions is more complex and needs further consideration. Section 9(2)(h)
- 
-  This is discussed further below under the proposed Law Commission reference.
- 24 I propose accepting SWC's recommendation and making a more limited immediate change to the incitement provisions at this time. Only religious belief would be included in the incitement provisions. Cabinet's previous agreement to extending the incitement provisions to the additional protected characteristics of sex, gender, disability and sexual orientation would be rescinded. The change would provide more immediate protection to groups that are particularly targeted by harmful speech, and address part of a key Royal Commission recommendation.

Law Commission would consider broader reform of the incitement laws and hate crime together

- 25 The 2021 consultation process highlighted 'hate speech' and 'hate crime', showed a significant difference of views and generated extensive public debate. Written submissions were largely opposed to the proposed changes, while during face-to-face engagement with affected communities, there was overall support.
- 26 Given the breadth and level of feedback received, referring the incitement provisions to the Law Commission for further consideration is appropriate. The consultation process demonstrated a need for further discussion, for example regarding the behavioural threshold of the provisions and the penalty and location of the offence. The Law Commission could analyse what other groups

or characteristics protected under section 21 should be included in the incitement provisions. This would include sex, gender, disability and sexual orientation.

- 27 The Law Commission's independence provides some assurance that the concerns will be dealt with comprehensively, and supports a respectful exchange of views about the appropriate policy settings in our laws.
- 28 A reference would seek a first principles review of hate-motivated offending and behaviour (i.e, our incitement laws and the approach to hate crime) to the Law Commission. This will include consideration of the other changes for our incitement laws consulted on in 2021, such as the coverage of the provisions, threshold, and wording of the laws.
- 29 The Commission would also consider the recommendations by the Royal Commission. The Royal Commission's Recommendation 39 was for hate-motivated offences to be created. Apart from the incitement offence, there are no stand-alone hate crime offences in our laws. Hate motivation is considered as an aggravating factor at sentencing. Except for the Royal Commission, no fundamental review of hate crime has been recently undertaken.

Protections for Rainbow communities³

- 30 The 2021 discussion document proposed amending the prohibited grounds of discrimination to clarify that they include gender (including gender identity or expression), and sex characteristics. Over 500 written submissions expressly supported this proposal, and there was very strong support from affected Rainbow communities in face-to-face engagement. Members of these communities shared their experiences of discrimination and hatred in employment, education, health care, housing, and policy. New Zealand research also reflects these experiences.⁴
- 31 Cabinet agreed in principle to addressing the lack of clear protection in our discrimination laws for Rainbow communities by amending the prohibited grounds of discrimination in section 21 to include a separate ground of 'gender', including gender identity and expression, and to explicitly include variations of sex characteristics in the current ground of 'sex'.
- 32 Section 9(2)(h) [REDACTED] I therefore propose extending the scope of the reference to the Commission further to also consider protection from discrimination under section 21 for transgender people, non-binary people, and people with diverse sex characteristics.
- 33 The exact scope of the Law Commission's terms of reference on all the matters relating to incitement, hate crime, and gender and sex will be determined once

³ Rainbow communities include transgender people (whose gender is different from the sex they were assigned at birth), people with variations of sex characteristics (including those with intersex status), and non-binary people (with gender identities outside the male/female binary).

⁴ https://countingourselves.nz/wp-content/uploads/2022/09/Counting-Ourselves_Report-Dec-19-Online.pdf

the Commission has conducted its own detailed scoping exercise. This allows the Commission to assess what is manageable and appropriate for its final terms of reference in light of the timeframe required.

Timing of decisions has become critical

- 34 This paper relates to key Government priorities, including our Manifesto commitments and the response to the Royal Commission's recommendations. To ensure that the proposed amendments are made in this Parliamentary term, decisions need to be made now to allow for the legislation to be referred to select committee before the end of the year.

Te Tiriti o Waitangi and engagement with Māori

- 35 For the proposed Law Commission review, Article 3 of te Tiriti o Waitangi requires that Māori have equitable protection under the law. The Law Commission has a statutory mandate to take account of te ao Māori in its work and would consider te Tiriti obligations in its review, including through appropriate engagement.

Financial Implications

- 36 The Human Rights Commission expects a low increase in complaints, which will be funded from recent baseline increases.
- 37 New Zealand Police does not expect significant cost increases through prosecutions due to the small numbers that are expected. However, Police advises that there will be associated costs for managing an overall increase in complaints around hateful behaviour and speech which are hard to quantify at this stage. It is expected that these will be funded from within baselines.
- 38 The Ministry, Crown Law Office and the Department of Corrections do not expect significant financial impacts from the amendments proposed due to the changes' narrow ambit.
- 39 The Law Commission's review would be funded from within baselines.

Legislative Implications

- 40 Section (9)(2)(f)(iv) [REDACTED] A Human Rights Amendment Bill has been drafted. I intend to present the Bill, reflecting the decisions on this paper, to the Cabinet Legislation Committee on 24 November, aiming for introduction immediately after Cabinet approval.

Impact Analysis

Regulatory Impact Statement

- 41 A regulatory impact statement (RIS) was prepared to accompany the earlier Cabinet paper on options to progress work to address incitement of hatred, hate crime and discrimination (SWC-22-MIN-0201).
- 42 Cabinet's impact analysis requirements apply to the revised proposals in this paper relating to extending the coverage in the civil and criminal incitement provisions beyond colour, race, and ethnic and national origins to include only religious belief. However, the earlier RIS does not include analysis of the narrower proposal in this current paper, and therefore the paper does not meet impact analysis requirements.
- 43 On behalf of respective Ministers, the Treasury's Regulatory Impact Analysis team and the Ministry of Justice have agreed that a supplementary analysis report will be prepared, which includes analysis of the proposals in this paper, and the supplementary analysis report will be provided when the Human Rights Amendment Bill is taken to the Cabinet Legislation Committee on 24 November 2022.

Climate Implications of Policy Assessment

- 44 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 45 Protections for religious communities are strengthened by including religious belief in the incitement laws. In 2018, about 220,000 people reported Hinduism, Islam or Sikhism as their religion, and overall half of the population 'had' a religion. Faith-based groups have differing experiences of hate speech in New Zealand. The Muslim community in particular has been affected by harmful speech that may reach the thresholds of the incitement provisions. This led to the Royal Commission's recommendations to strengthen the incitement laws. Ethnic origin is already covered, however, for many ethnic communities, the protection of 'religious belief' would be important.

Human Rights

- 46 This proposal engages the right to freedom of expression under section 14 of NZBORA. Freedom of expression is not an absolute right and many laws limit speech. The limit on freedom of expression is justifiable, as the proposed change does not change the threshold of behaviour covered. The application of the existing provisions to religious belief is limited to a characteristic where a need for protection has been demonstrated.
- 47 The Law Commission will consider NZBORA implications when providing its review of the incitement provisions.

Consultation

- 48 The following agencies were consulted on the draft SWC August and October Cabinet papers: New Zealand Police, Department of Internal Affairs, Ministry of

Education, Ministry of Social Development, Te Puni Kōkiri, Te Arawhiti, Ministry for Pacific Peoples, Ministry for Ethnic Communities, Ministry for Business, Innovation and Employment, Oranga Tamariki, Crown Law Office, Department of Corrections, Ministry for Culture and Heritage, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry for Women, Office for Disability Issues within Whaikaha - Ministry of Disabled People, Whaikaha - Ministry of Disabled People, the Treasury, and Parliamentary Counsel Office. The Department of the Prime Minister and Cabinet has been informed.

- 49 Sport New Zealand was also consulted. The Human Rights Commission was consulted on the draft SWC Cabinet papers and is very supportive of the change to the incitement provisions.

Communications, publicity and proactive release

- 50 I intend to make a public announcement once these final decisions have been made, in coordination with the Law Commission. I note it will be important to explain the law changes.
- 51 I propose this paper be proactively released at an appropriate time subject to appropriate redactions. As agreed by Cabinet [CAB-21-MIN-0163 refers] I intend to release reports on the 2021 consultation at an appropriate time as well.

Recommendations

The Minister of Justice recommends that Cabinet:

- 1 **note** on 15 August 2022, Cabinet agreed that the Human Rights Act 1993 be amended to extend the coverage in the civil and criminal incitement provisions (sections 61 and 131) beyond colour, race, and ethnic and national origins to include religious belief, sex, gender, sexual orientation and disability (CAB-22-MIN-0319);
- 2 **note** that on 15 August 2022, Cabinet also agreed in principle to change the prohibited grounds of discrimination in section 21 of the Act to include gender and variations of sex characteristics, subject to a report back to the Cabinet Social Wellbeing Committee on the changes to section 21 and on any consequential amendments to the provisions that provide exceptions to unlawful discrimination in the Act (CAB-22-MIN-0319);
- 3 **note** that on 31 October 2022, Cabinet deferred consideration of a paper outlining the section 21 changes and a proposed approach to the relevant exceptions in the Act, and invited me to submit a revised paper to Cabinet (CAB-22-MIN-0474);
- 4 **note** that the Cabinet Social Wellbeing Committee recommended Cabinet rescind the decision under CAB-22-MIN-0319 to extend the coverage of the civil and criminal incitement provisions (sections 61 and 131) to include sex, gender, sexual orientation and disability; and instead agree to only include religious belief (SWC-22-MIN-0201);

- 5 **note** that the Cabinet Social Wellbeing Committee agreed not to add gender as an additional prohibited ground of discrimination, and not to add variations of sex characteristics to the prohibited ground of sex, under section 21 of the Act (SWC-22-MIN-0201);
- 6 **agree** that the extension of coverage in the civil and criminal incitement provisions (sections 61 and 131) beyond colour, race, and ethnic and national origins should only include religious belief at this time, as previously agreed by Cabinet (CAB-22-MIN-0319);
- 7 **rescind** Cabinet's agreement to extending the coverage of the civil and criminal incitement provisions (sections 61 and 131) to include sex, gender, sexual orientation and disability (CAB-22-MIN-0319);
- 8 **agree** that a reference be made to the Law Commission for a first principles review of:
 - 8.1 legal responses to hate-motivated offending, and to speech that expresses hostility towards, or contempt for, people who share a common characteristic, which includes incitement of hatred and hate crime and the recommendations by the Royal Commission on these topics; and
 - 8.2 protection in the Human Rights Act for transgender people, non-binary people, and people with diverse sex characteristics, including changing the prohibited grounds of discrimination under section 21;
- 9 **note** that the scope of the review in 8.1 would include considering what groups or characteristics in the prohibited grounds of discrimination in section 21 of the Act should be covered by our incitement laws;
- 10 **note** that the Law Commission will also explore whether the Royal Commission's recommendation on the Films, Videos, and Publications Classifications Act 1993 should also fall within the scope of its review;
- 11 **note** that Cabinet invited the Minister of Justice to issue drafting instructions in advance of any final policy decisions, and authorised the Minister to make decisions on any minor drafting matters (CAB-22-MIN-0319), and a Human Rights Amendment Bill has been drafted;
- 12 **note** that the timing of these decisions has now become critical, and a Human Rights Amendment Bill is intended to be considered by the Cabinet Legislation Committee on 24 November 2022;
- 13 **note** that the Minister of Justice will seek to obtain cross-party support for these proposals;
- 14 **note** that the Cabinet Social Wellbeing Committee authorised the Prime Minister and the Minister of Justice to make any final policy decisions or minor amendments to the Bill following receipt of feedback from other parties in Parliament (CAB-22-MIN-0319);

- 15 **note** that public announcements of the amendments and the Law Commission review would be made at the appropriate time, in coordination with the Law Commission.

Authorised for lodgement

Hon Kiri Allan
Minister of Justice



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Next Steps to Address Incitement of Hatred, Hate Crime and Discrimination

Portfolio Justice

On 14 November 2022, following reference from the Cabinet Social Wellbeing Committee (SWC), Cabinet:

- 1 **referred** the submission *Next Steps to Address Incitement of Hatred, Hate Crime and Discrimination* to SWC for consideration at its meeting on 16 November 2022;
- 2 **authorised** SWC to have Power to Act at its meeting on 16 November 2022 to take decisions on the submission.

Rachel Hayward
Secretary of the Cabinet



Cabinet Social Wellbeing Committee

Minute of Decision

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Next Steps to Address Incitement of Hatred, Hate Crime and Discrimination

Portfolio Justice

On 16 November 2022, the Cabinet Social Wellbeing Committee, having been authorised by Cabinet to have Power to Act [CAB-22-MIN-0506]:

- 1 **noted** that in August 2022, Cabinet agreed that the Human Rights Act 1993 (the Act) be amended to extend the coverage in the civil and criminal incitement provisions (sections 61 and 131) beyond colour, race, and ethnic and national origins to include religious belief, sex, gender, sexual orientation and disability [CAB-22-MIN-0319];
- 2 **noted** that Cabinet also agreed in principle to change the prohibited grounds of discrimination in section 21 of the Act to include gender and variations of sex characteristics, subject to a report back to the Cabinet Social Wellbeing Committee on the changes to section 21 and on any consequential amendments to the provisions that provide exceptions to unlawful discrimination in the Act [CAB-22-MIN-0319];
- 3 **noted** that in October 2022, Cabinet deferred consideration of a paper outlining the section 21 changes and a proposed approach to the relevant exceptions in the Act, and invited the Minister of Justice to submit a revised paper to Cabinet [CAB-22-MIN-0474];
- 4 **noted** that on 9 November 2022, the Cabinet Social Wellbeing Committee agreed not to add gender as an additional prohibited ground of discrimination, and not to add variations of sex characteristics to the prohibited ground of sex, under section 21 of the Act [SWC-22-MIN-0201];
- 5 **rescinded** the decision under CAB-22-MIN-0319 to extend the coverage of the civil and criminal incitement provisions (sections 61 and 131) to include sex, gender, sexual orientation and disability; and instead
- 6 **agreed** to extend the coverage in the civil and criminal incitement provisions (sections 61 and 131) beyond colour, race, and ethnic and national origins to only include religious belief;

- 7 **agreed** that a reference be made to the Law Commission for a first principles review of:
- 7.1 legal responses to hate-motivated offending, and to speech that expresses hostility towards, or contempt for, people who share a common characteristic, which includes incitement of hatred and hate crime and the recommendations by the Royal Commission on these topics; and
 - 7.2 protection in the Human Rights Act for transgender people, non-binary people, and people with diverse sex characteristics, including changing the prohibited grounds of discrimination under section 21;
- 8 **noted** that the scope of the review in paragraph 7.1 would include considering what groups or characteristics in the prohibited grounds of discrimination in section 21 of the Act should be covered by our incitement laws;
- 9 **noted** that the Law Commission will also explore whether the Royal Commission's recommendation on the Films, Videos, and Publications Classifications Act 1993 should fall within the scope of its review;
- 10 **noted** that Cabinet invited the Minister of Justice to issue drafting instructions in advance of any final policy decisions, and authorised the Minister to make decisions on any minor drafting matters [CAB-22-MIN-0319];
- 11 **noted** that a Human Rights Amendment Bill has been drafted and is intended to be considered by the Cabinet Legislation Committee on 24 November 2022;
- 12 **noted** that cross-party support for the above proposals will continue to be sought;
- 13 **noted** that the Cabinet Social Wellbeing Committee authorised the Prime Minister and the Minister of Justice to make any final policy decisions or minor amendments to the Bill following receipt of feedback from other parties in Parliament [SWC-22-MIN-0201];
- 14 **noted** that public announcements of the amendments and the Law Commission review will be made at the appropriate time, in coordination with the Law Commission.

Rachel Clarke
Committee Secretary

Present:

Hon Grant Robertson
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Carmel Sepuloni (Chair)
Hon Andrew Little
Hon Jan Tinetti
Hon Kiri Allan
Hon Priyance Radhakrishnan
Hon Meka Whaitiri

Officials present from:

Office of the Prime Minister
Office of the Chair
Officials Committee for SWC

Office of the Minister of Justice
Cabinet Legislation Committee

Human Rights (Incitement on Ground of Religious Belief) Amendment Bill: Approval for Introduction

Proposal

- 1 This paper seeks approval for the introduction of the Human Rights (Incitement on Ground of Religious Belief) Amendment Bill (the Bill).

Policy

- 2 There are two provisions in the Human Rights Act 1993 (HRA) that make speech likely to 'excite hostility' against specified groups unlawful. One is a civil provision (section 61), where complaints are handled by the Human Rights Commission (HRC), and one is a criminal provision (section 131), which requires intentional behaviour.
- 3 The Bill adds the ground of religious belief to these provisions. The policy objective underpinning the Bill is to improve protections for faith-based groups because they are subjected to the most extreme forms of speech [CAB-22-MIN-0319, CAB-22-MIN-0506, SWC-22-MIN-0216 refer]. The harmful effects of speech that incites hatred in others, on both the targeted 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 also recommended that religious belief be included in the criminal provision.
- 4 Consultation and engagement in June to August 2021 on a broader package of proposals relating to incitement generated extensive public debate. I expect the Bill will likely draw continued significant attention and a wide range of views during Parliament's consideration.
- 5 Because the objectives relate to the provisions and operation of the HRA, legislative amendments are needed.

Impact analysis

- 6 A Supplementary Analysis Report (SAR) has been provided to support this decision by the Cabinet Legislation Committee. The SAR focusses on the Cabinet's preferred option to include only religious belief in the incitement provisions.
- 7 The Ministry of Justice Regulatory Impact Analysis Quality Assurance Panel has reviewed the SAR prepared by the Ministry of Justice and associated supporting material. The Panel has concluded that the SAR meets the Quality Assurance criteria. The proposal is a fairly simple change to add in a new

ground to the Human Rights Act's incitement mechanism without disturbing how it works. The RIS does a good job of articulating the problem and overcomes a lack of directly applicable data by using a range of proxies to build a qualitative picture that supports change.

Compliance

- 8 The Bill complies with the following:
- 8.1 the principles of the Treaty of Waitangi;
 - 8.2 the disclosure statement requirements (a draft disclosure statement prepared by the Ministry of Justice is attached);
 - 8.3 the principles and guidelines set out in the Privacy Act 2020;
 - 8.4 relevant international standards and obligations – the change will improve Aotearoa New Zealand's alignment with the International Covenant on Civil and Political Rights that we are party to.
 - 8.5 the [Legislation Guidelines](#) (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

New Zealand Bill of Rights Act 1990

- 9 The amendments concern provisions in the HRA which is itself part of our human rights framework. They seek to better protect freedom from discrimination and rights of minorities enshrined in sections 19 and 20 of the New Zealand Bill of Rights Act 1990 (NZBORA).
- 10 The change does not change the thresholds of behaviour covered. The amendments minimally increase limits on freedom of expression by protecting an additional group from inciting speech. This increased limit on freedom of expression is justifiable. The application of existing provisions to an additional group is limited to faith-based groups, where a need for protection has been demonstrated.
- 11 Section 9(2)(h)

Consultation

- 12 The following agencies were consulted on an earlier draft of this paper and v5.1 of the Bill, which reflected a wider range of proposals but included this change: New Zealand Police, Department of Internal Affairs, Ministry of Education, Ministry of Social Development, Te Puni Kōkiri, Te Arawhiti, Ministry for Pacific Peoples, Ministry for Ethnic Communities, Ministry for Business, Innovation and Employment, Oranga Tamariki, Crown Law Office, Department of Corrections, Ministry for Culture and Heritage, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry for Women, Office for Disability Issues within Whaikaha - Ministry of Disabled People, Whaikaha - Ministry of Disabled People, Office for Seniors, the Treasury, and

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Parliamentary Counsel Office. The Department of the Prime Minister and Cabinet has been informed.

- 13 The Human Rights Commission was also consulted on v5.1 of the Bill.

Binding on the Crown

- 14 The Bill amends the HRA, which already binds the Crown.

Creating new agencies or amending law relating to existing agencies

- 15 The Human Rights Commission and the Human Rights Review Tribunal would continue to consider complaints under section 61 of the HRA, but including the additional ground of religious belief.

Allocation of decision making powers

- 16 Not applicable.

Associated regulations

- 17 Not applicable.

Other instruments

- 18 Not applicable.

Definition of Minister/department

- 19 Not applicable.

Commencement of legislation

- 20 The Bill will come into force the day after Royal assent.

Parliamentary stages

- 21 I propose that the Bill should be introduced to the House on or after 29 November 2022 and be enacted by June 2023. I propose the Bill be referred to the Justice Committee and that the Bill be reported to the House by Thursday 25 May.


Proactive Release

- 22 I propose this paper be proactively released at an appropriate time subject to appropriate redactions.

Recommendations

- 23 The Minister of Justice recommends that the Cabinet Legislation Committee:

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- 1 Section (9)(2)(f)(iv)

- 2 **note** that the Bill amends the Human Rights Act 1993 provisions that make speech likely to 'excite hostility' against specific groups unlawful (sections 61 and 131), by adding protection for religious belief;
- 3 **approve** the Human Rights (Incitement on Ground of Religious Belief) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 4 **agree** that the Bill be introduced on or after 29 November 2022;
- 5 **agree** that the government propose that the Bill be:
 - 5.1 referred to the Justice Committee for consideration, and that the Bill be reported to the House by Thursday 25 May;
 - 5.2 enacted by June 2023.

Authorised for lodgement

Hon Kiri Allan
Minister of Justice



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Human Rights (Incitement on Ground of Religious Belief) Amendment Bill: Approval for Introduction

Portfolio Justice

On 24 November 2022, the Cabinet Legislation Committee:

- 1 Section (9)(2)(f)(iv) [REDACTED]
- 2 **noted** that the Bill amends the Human Rights Act 1993 provisions that make speech likely to 'excite hostility' against specific groups unlawful (sections 61 and 131), by adding protection for religious belief;
- 3 **approved** the Human Rights (Incitement on Ground of Religious Belief) Amendment Bill [PCO 22598/9.3] for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 4 **agreed** that the Bill be introduced on or after 29 November 2022;
- 5 **agreed** that the government propose that the Bill be:
 - 5.1 referred to the Justice Committee for consideration;
 - 5.2 reported to the House by Thursday 25 May 2023;
 - 5.3 enacted by June 2023.

Rebecca Davies
Committee Secretary

Present:

Hon Chris Hipkins (Chair)
Hon Poto Williams
Hon Dr David Clark
Hon Kieran McAnulty
Dr Duncan Webb, MP

Officials present from:

Office of the Prime Minister
Officials Committee for LEG



Cabinet

Minute of Decision

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Refresh of the Government's Priorities

Portfolio

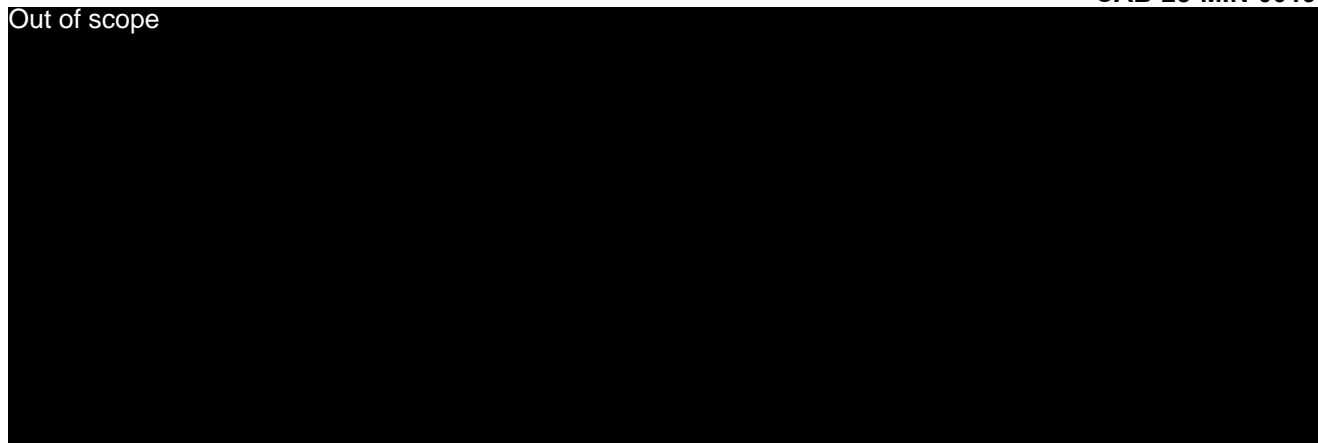
Prime Minister

On 8 February 2023, Cabinet:

Out of scope

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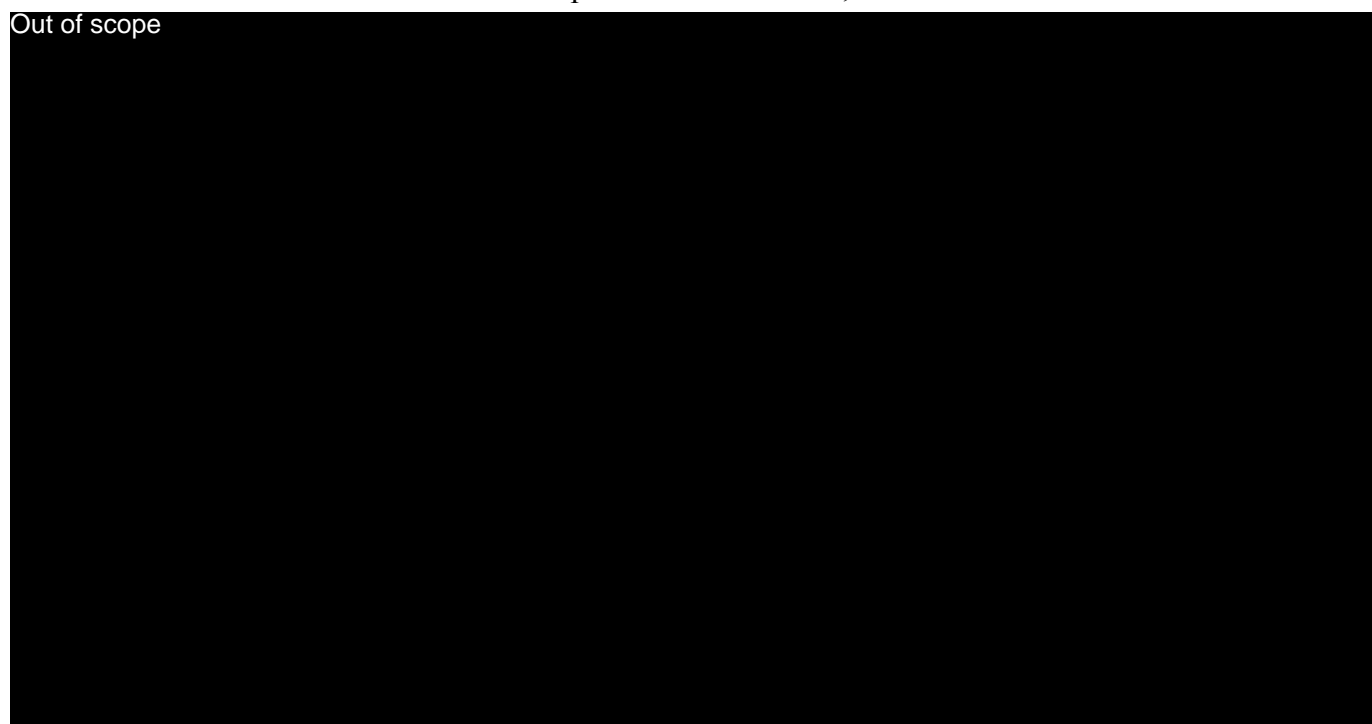
Out of scope



Incitement to hate speech

- 14 **noted** that the Law Commission is considering the legal responses to hate crimes and incitement, and protection in the Human Rights Act 1993 for transgender people, non-binary people, and people with diverse sex characteristics, including changing the prohibited grounds of discrimination under section 21 of the Act;
- 15 **noted** that also referring consideration of religious belief to the Law Commission would enable a more rounded view from the Commission on how to address legislative reform;
- 16 **agreed** to withdraw the Human Rights (Incitement on Ground of Religious Belief) Amendment Bill from the House;
- 17 **agreed** to add the incitement on grounds of religious belief proposal to the existing referral to the Law Commission on hate speech and hate crime;

Out of scope



Rachel Hayward
Secretary of the Cabinet