

**Hon Kris Faafoi**  
Minister of Justice

## **Proactive release – Proposed changes to the incitement provisions in the Human Rights Act 1993**

Date of issue: 13 April 2021

The following documents have been proactively released by the Ministry of Justice.

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	<b>Proposed changes to the incitement provisions in the Human Rights Act 1993</b> Cabinet paper <i>Office of the Minister of Justice</i> 2 December 2020	Some information has been withheld in accordance with section 9(2)(f)(iv) of the OIA to protect the privacy of natural persons. No public interest has been identified that would outweigh the reasons for withholding it.
2	<b>Proposed changes to the incitement provisions in the Human Rights Act 1993</b> Minute <i>Cabinet Office</i> 2 December 2020	Released in full.

Restricted

Office of the Minister of Justice

Chair, Cabinet Business Committee

## **PROPOSED CHANGES TO THE INCITEMENT PROVISIONS IN THE HUMAN RIGHTS ACT 1993**

### **Proposal**

1. This paper seeks Cabinet's agreement to strengthen the protections against hate speech in the Human Rights Act 1993 (the Act).

### **Executive Summary**

2. In March 2019, the then Minister of Justice announced that the Act would be reviewed and directed officials to undertake an expedited review of the provisions that protect against hate speech in the Act, also known as the incitement provisions.
3. Hate speech causes significant harm. It seeks to divide communities and hinders social inclusion. Engagement with groups as part of this review reinforced that exposure to demeaning and derogatory comments has a cumulative negative effect. At the extreme end, there is evidence of the spread of hate speech and inciting speech (alongside other circumstances) being a precursor to violence.
4. The incitement provisions prohibit speech that is likely to incite others to feel hostility or contempt towards a group based on their colour, race, or ethnic or national origins. The provisions were passed to fulfil New Zealand's international obligations.
5. The incitement provisions in the Act consist of a civil provision where complaints are handled by the Human Rights Commission (the HRC) in the first instance and a criminal provision with a penalty of up to three months imprisonment or a fine of up to \$7000.
6. The incitement provisions are not operating effectively and are rarely used, which does not reflect the actual incidence of inciting speech. The Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019 (the Royal Commission) considered the incitement provisions and recommended that the criminal provision be amended to focus on provoking hatred against a protected group. I propose accepting this recommendation, and including provoking hatred in the civil provision.
7. The review has also found that the scope of the provisions is too narrow – they do not protect groups such as religious groups or rainbow communities that are also targets of hate speech; the penalty and location of the criminal offence does not reflect the seriousness of the behaviour; the complaints process can be difficult to understand and access; and trans, gender diverse, and intersex people are not explicitly protected by the Act.

8. To address these issues and those identified by the Royal Commission, I seek agreement in principle to the following changes:
- 8.1. **Proposal 1:** redefine the criminal offence to provide a clearer standard of behaviour, which would be the concept of inciting hatred towards certain groups.
  - 8.2. **Proposal 2:** Shift the criminal offence for incitement to the Crimes Act 1961 to reflect the seriousness of the behaviour.
  - 8.3. **Proposal 3:** Increase the penalty for the criminal offence to align with crimes of a similar seriousness.
  - 8.4. **Proposal 4:** Extend the incitement provisions to protect all groups listed under the prohibited grounds of discrimination in the Act. These grounds include sex, religious belief, age, sexual orientation, and disability.
  - 8.5. **Proposal 5:** Extend the civil provisions in line with international obligations by including prohibition of incitement to discrimination against a group.
  - 8.6. **Proposal 6:** Amend the prohibited grounds of discrimination in the Act to include a separate ground of “gender, including gender identity and gender expression”, and to amend the ground of sex to explicitly include sex characteristics or intersex status.
9. If Cabinet agrees in-principle to my proposals, I will initiate a consultation process with community groups to test that the proposals meet society’s expectations for the protections against inciting hatred against others. I would report back to Cabinet with the outcome of this consultation and seek approval for next steps on progressing an amendment bill. s9(2)(f)(iv)

## Background

- 10. Following the terror attacks of 15 March 2019, the then Minister of Justice decided to progress work to review protections against hate speech in the Act. On 24 June 2019, Cabinet noted that the Ministry of Justice and the HRC were progressing work on approaches to hate speech and discrimination (CAB-19-MIN-0307.01 refers).
- 11. The Royal Commission was announced shortly after the attacks. Its terms of reference broadly included any other matters relevant to the purpose of the inquiry, which included issues of social cohesion such as hate speech.
- 12. The United Nations (UN) Committee responsible for the Convention on the Elimination of Racial Discrimination also raised concerns about the application of the incitement provisions and the lack of prosecutions in its 2017 Concluding Observations to New Zealand.
- 13. The review of the hate speech provisions has been informed by targeted engagement with members of population groups that are affected by hate speech, including Māori, minority ethnic groups, refugees and migrants, faith-based groups, rainbow communities, disabled people and women.

14. The work has focused on provisions of the Act that address hate speech, and the related gaps identified. s9(2)(f)(iv)

15. Cabinet agreement to the proposed amendments was to be sought in early 2020. However, this was not progressed at that time due to the need to prioritise the government response to COVID-19.

### **How the incitement provisions work now**

*Hate speech is broad and the incitement provisions focus narrowly on inciting speech*

16. There is no universally accepted legal definition of hate speech. The term does not appear in any New Zealand legislation. It is generally understood to include any kind of communication in speech, writing, or behaviour that attacks or denigrates a person or group because of who they are, for example based on their religion, ethnicity, nationality, race, colour, sex, or gender identity.
17. These provisions in the Act focus on inciting speech, generally understood to be abusive, threatening or insulting speech (including writing or drawing) that incites hostility or ill will towards a group based on a common characteristic, such as ethnicity, religion or sexuality. A key element of inciting speech is that it seeks to influence others' behaviour; an attempt to convince others that a class of people is inherently inferior.
18. The incitement provisions (sections 61 and 131) in the Act prohibit speech that is likely to incite others to feel hostility or contempt towards a group based on their colour, race, or ethnic or national origins. The provisions were passed to fulfil New Zealand's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination 1965 (CERD) and the International Covenant on Civil and Political Rights 1966 (ICCPR).

*Section 61 of the Act is a civil provision and complaints are made to the HRC*

19. Under section 61 of the Act, it is unlawful to publish or distribute threatening, abusive, or insulting words likely to incite hostility or bring into contempt any group on the ground of colour, race, or ethnic or national origins.
20. Anyone can make a complaint under section 61 to the HRC, regardless of whether the speech in question was directed at them or if they are part of the targeted group. The HRC's role is to facilitate resolution of the complaint. This can be through providing information, expert problem-solving support, and mediation. Either party can refuse to participate in mediation.
21. If mediation is refused or fails, the complainant can lodge an application with the Human Rights Review Tribunal (the Tribunal). If the Tribunal finds that a breach has occurred, it can grant any remedy it sees fit, such as a declaration that the defendant has committed a breach, an order restraining the defendant from continuing or repeating the breach, and / or damages of up to \$350,000.



### *Section 131 of the Act is a criminal offence*

22. Under section 131 of the Act, it is a criminal offence to publish or use words that are threatening, abusive, or insulting and which are likely to incite hostility or ill will against, or bring into contempt or ridicule, any groups on the ground of colour, race, or ethnic or national origins. Section 131 requires that there be an intention to incite hostility, ill will, contempt, or ridicule. This offence is punishable by up to three months imprisonment or a fine of up to \$7,000.
23. Criminal offences under section 131 are generally prosecuted by the Police, although members of the public can also instigate private prosecutions. Section 132 of the Act requires all prosecutions under this section to be approved by the Attorney-General.

### *Hate speech causes significant harm*

24. Hate speech is harmful to both members of the communities that are targeted and society as a whole. Hate speech seeks to divide communities. Engagement with groups as part of this review reinforced that exposure to demeaning and derogatory comments had a cumulative negative effect. Hate speech hinders social inclusion as it can cause members of targeted groups to feel threatened and unwelcome. The hostility that accompanies hate speech, sometimes with an implicit threat of violence, can lead people to withdraw from public spaces and, in practice, limits their right to freedom of expression. Hate speech runs counter to core New Zealand values such as equality and egalitarianism. At the extreme end, there is evidence of hate speech and inciting speech (alongside other circumstances) being a precursor to violence.

### *The right to freedom of expression is protected, but is not an absolute right*

25. The right to freedom of expression is protected under the New Zealand Bill of Rights Act 1990 (Bill of Rights Act). However, freedom of expression is not an absolute right. Like all rights and freedoms in the Bill of Rights Act, freedom of expression is subject to reasonable limits in law that can be demonstrably justified in a free and democratic society.
26. New Zealand has many laws that impose limits on the right to freedom of expression. There are criminal offences for matters such as threatening to kill or hurt someone, and civil proceedings for matters such as breach of copyright and fair trading.
27. The incitement provisions in the Act prohibit speech that is either intended or likely to encourage others to develop hostility or ill will towards an ethnic group. That represents the extreme end of hate speech and has a high threshold. The incitement provisions are a justifiable limit on the right to freedom of expression because of the serious harm it can have on both the target of the speech and wider society. The expression of ideas and opinions that are unlikely to promote hostility among other people would not fall under the incitement provisions in the Act.

### **Findings and recommendation by the Royal Commission on inciting speech**

28. The Royal Commission considered hate crime and hate speech as a part of its inquiry. For hate speech, it focused on what behaviour should be criminalised. The

Royal Commission found that the wording of section 131 did not provide a clear standard or understanding of the type of behaviour that should be criminalised.

29. The Royal Commission recommended focusing the provision on the concept of stirring up or provoking hatred of a particular group. It considered this more straightforward than the existing wording, as the concepts of ill-will, contempt or ridicule were too uncertain. In its view a plain and strong term such as hatred would help provide a better indication of the extreme dislike or disgust required for criminal sanction.

### **Proposals for changes to address the issues identified**

30. I have identified five issues with the incitement provisions and six proposals that would require changes to the law.

#### **Issue 1: The wording of the incitement provisions is too imprecise**

31. I agree with the Royal Commission that the wording of section 131 does not convey clearly the necessary behaviour that should meet the threshold for a prosecution. I propose that the grounds in the criminal provision be reframed as recommended by the Commission.

*Proposal 1: Amend the wording of the criminal and civil provisions to cover the incitement of hatred*

32. I propose that the criminal provision is simplified, so it covers the incitement of disharmony, based on an intent to stir up, maintain or normalise hatred, through threatening, abusive or insulting communications. This should include calls for violence against groups. Section 61 should also include the concept of hatred, so that civil liability is similarly imposed for communication that is the most serious and damaging.
33. As identified by the Royal Commission, this should cover any means through which the incitement is conveyed, including electronic communication.

#### **Issue 2: The criminal provision does not reflect the seriousness of the offence**

34. There could be a perception that the current criminal offence is not serious. The penalties are low compared to similar offences, such as the Films, Videos, and Publications Classification Act 1993 and the Harmful Digital Communications Act 2015. The penalty for harmful digital communication, which is directed at an individual rather than a population group, is up to two years imprisonment or a fine of up to \$50,000. The penalty for making or distributing an objectionable publication is up to 14 years imprisonment. The current penalties could be taken to indicate that the intentional incitement of hatred towards a group is considered a minor offence.

*Proposal 2: Move the criminal incitement provision to the Crimes Act*

35. I propose repealing section 131 of the Act and inserting a new offence into the Crimes Act 1961. I consider that this change would clearly signal that the intentional incitement of hatred towards a group is a serious criminal offence. The Royal



Commission also recommended this approach, noting the Crimes Act lists offences most commonly considered as serious crimes by New Zealanders.

*Proposal 3: Increase the penalty for the criminal offence to be more in line with similar crimes*

36. I propose that the penalties for the criminal offence be increased to up to three years imprisonment and a fine of up to \$50,000.
37. I believe that stronger penalties are needed to reflect the seriousness of the offence. In determining appropriate levels, I considered where hate speech sits within the spectrum of related offences. As inciting speech is intended to spread and increase hostility towards population groups, it is appropriate that the penalties be higher than for expressions of hate directed at individuals. As inciting speech is not a crime of direct physical violence, I consider that the penalty should sit below that for causing injury or grievous bodily harm, which has a sentence of 3 to 14 years imprisonment.
38. The Royal Commission suggested a term of imprisonment of up to three years. It noted that if the penalty is two years' imprisonment or more, then those charged would be entitled to choose trial by jury. A clearer standard of behaviour, as proposed above, would be easier to apply if such a jury trial eventuated.

**Issue 3: The scope of the incitement provisions is too narrow**

39. The incitement provisions do not protect many groups that are the targets of hate speech, such as religious groups or rainbow communities. It is clear from targeted engagements, complaints to the HRC and Police, and review of media reports and literature that other groups do experience hate speech.

*Proposal 4: Extend legal protections in both provisions to all groups listed under the prohibited grounds of discrimination in section 21 of the Act*

40. I propose that the Act be amended so that both provisions apply to all groups covered in the prohibited grounds of discrimination in section 21. These grounds include age, sex, religious belief, sexual orientation, and disability.
41. Extending the application of the incitement provisions to all groups protected by section 21 of the Act would reflect that these groups can be subject to hate speech and reflect New Zealand's commitment to equality and human rights. The inclusion of other groups that experience hate speech would also bring New Zealand in line with UN recommendations and the protections provided in other jurisdictions.
42. The Royal Commission also considered that religious belief should be included in the characteristics protected under the criminal provision.

*Proposal 5: Amend section 61 to include prohibition of incitement to discrimination against a group*

43. I propose that the wording of section 61 be amended to explicitly prohibit the use or distribution of words or materials that are likely to incite discrimination against a group.

44. ICCPR requires the prohibition by law of incitement to discrimination. However, it is not included in the incitement provisions of the Act. Examples of inciting discrimination of a group include encouraging their exclusion or unfavourable treatment in the provision of goods and services, rental housing, or employment. In my view, as it is unlawful to discriminate against population groups, it should also be unlawful to incite others to discriminate against these groups.

**Issue 4: Gender identity, gender expression, sex characteristics, or intersex status are not explicitly included in the Act**

45. It is clear that some language in section 21 of the Act is out of date and does not explicitly protect the rights of trans, gender diverse, and intersex people.
46. Gender identity, gender expression, sex characteristics, or intersex status are not listed in the prohibited grounds of discrimination in section 21 of the Act. However, since 2006 the government position has been that sex discrimination includes gender identity. In practice, the Commission and government departments uphold the position that gender identity is covered under the ground of sex.
47. This position has not been tested by the courts and gender and sex are different concepts. The concept of gender has evolved beyond binary biological determinants and covers a wide range of identities and expression. This creates a degree of uncertainty as to how a court would respond if presented with this question. Even in the absence of this uncertainty, including gender implicitly within the ground of sex does not recognise or respect the experience of takatāpui, trans, and gender diverse people.
48. This issue has also been identified at the UN Human Rights Council following the Universal Periodic Review (UPR) of New Zealand in January 2019 and by the UN Committee on the Elimination of Discrimination against Women in July 2018. The New Zealand Human Rights Commission and groups representing trans and gender diverse communities in New Zealand have also raised concerns.

*Proposal 6: Amend the prohibited grounds of discrimination under section 21 to explicitly protect trans, gender diverse, and intersex New Zealanders*

49. I propose that section 21 of the Act be amended to clarify that trans, gender diverse, and intersex people are protected from discrimination. I consider that this could be achieved through adding a separate ground of “gender, including gender identity and gender expression”, and by amending the ground of sex to include sex characteristics or intersex status. If agreed, officials will carry out targeted engagement with takatāpui Māori, trans, gender diverse and intersex communities as part of the drafting process to ensure the correct terminology is used in the amendment.
50. This change would affirm the government’s current position that trans, gender diverse, and intersex people are protected from discrimination by the Act. It also ensures these groups have the protections against inciting speech that the other proposals in this paper seek to achieve.



## Issue 5: It can be difficult to engage with the complaints process

51. The processes for dealing with hate speech, bullying, and objectionable material are not clearly articulated or easily accessible. The targeted engagement with groups most likely to experience hate speech revealed that many find it difficult to find information on how and where to make a complaint and under which law (under the Act, the Harmful Digital Communications Act, the Crimes Act, or the Films, Videos, Publications Classifications Act). People may not be aware of the difference between the criminal and civil processes, nor of the outcome they can expect from a complaint. Groups spoken with also expressed their desire to address discrimination and hate speech in society more broadly than just through the incitement provisions.

52. s9(2)(f)(iv)

## I propose to consult on these in-principle changes

53. As noted by the Royal Commission, hate speech is anathema to social cohesion. Preventing the incitement of hatred is aimed towards making people feel safe. It is therefore critical to ensure that the proposals will meet the expectations of those who may be subjected to hate speech, and will help provide the protection that they need.
54. If the proposals are agreed in principle, I intend to establish a consultation process with community groups to test these changes. I would report back to Cabinet with the outcome of this consultation, and seek approval for progressing an amendment bill.

s9(2)(f)(iv)

## Risks

55. There is high public and media interest in this work on hate speech. Some people may oppose the inclusion of gender identity and sex characteristics as prohibited grounds of discrimination. It will be important to communicate that this proposed inclusion confirms our existing understanding of the law.

## Petition of Laura O'Connell: Address online hate, harassment, and abuse

56. The Justice Committee considered this petition and recommended that the Government consider including social media in its review of hate speech laws. The Committee and petitioner focused on the regulation of digital media platforms and websites as a solution to help reduce online hate, rather than on the Act. The Committee noted that the regulation of social media fell under the Broadcasting Act.
57. The Government response to this petition is due in February 2021. I am awaiting advice on a proposed response, which will also be relevant to my Broadcasting and Media portfolio. I will seek Cabinet agreement to a proposal in due course.

## Consultation

58. The following agencies were consulted on this paper: Police, Te Puni Kōkiri, Treasury, Ministry of Education, Ministry of Social Development, Oranga Tamariki, Ministry for Women, Ministry for Pacific Peoples, Office of Ethnic Communities (Department of Internal Affairs), Department of Prime Minister and Cabinet, Ministry of Business, Innovation and Employment, Corrections, Human Rights Commission.

## Financial Implications

59. There are no financial implications for this paper as it contains in-principle decisions only.

## Legislative Implications

60. The proposed changes would require amendments to the Act and to the Crimes Act 1961. However, further decisions from Cabinet would be sought on the specific amendments, approval for drafting instructions ss9(2)(f)(iv)

## Impact Analysis

61. Regulatory Impact Analysis requirements do not apply to the proposals because they are in-principle.

## Human Rights

62. The proposals directly concern provisions in the Human Rights Act 1993 and therefore have implications for New Zealand's domestic and international human rights obligations. The proposals seek to better protect the right to be free from discrimination (section 19), and the rights of minorities (section 20) enshrined in the New Zealand Bill of Rights Act 1990. The aim of the proposals is to better protect New Zealanders from inciting speech. Inciting speech is harmful to both the members of the targeted group, and to wider society as it seeks to deny the peaceful coexistence of different groups in society.
63. The proposals would extend the protections of the incitement provisions to more groups that cannot currently rely on them. I note that these proposals give effect to our international human rights obligations and recommendations made by international human rights bodies.
64. The proposals would prohibit speech that may currently be lawful, therefore engaging the right to freedom of expression under section 14 of Bill of Rights Act. The incitement provisions in the Act are targeted only at the most severe end of hate speech and limit freedom of expression no more than is reasonably necessary. The proposals would also support freedom of expression for people subject to hate speech, because as noted, hate speech can drive people out of public spaces.

## Gender Implications

65. The proposals in this paper seek to better protect women and rainbow communities from hateful speech that incites others to feelings such as ill will or contempt.

Currently the incitement provisions cannot be used for speech aimed at these groups.

### Disability Perspective

66. Engagement and other evidence show that disabled people face discrimination and inciting speech that impacts their human rights. These proposals seek to increase the protection of disabled people's human rights and give recourse for speech that incites hostility and ill will. This is in line with outcome 4 of the New Zealand Disability Strategy, 'Rights protection and justice' and outcome 6 'Attitudes'.

### Treaty of Waitangi analysis

67. Māori are already covered by protections in the incitement provisions against incitement based on race or ethnicity. The proposals aim to better protect Māori from hateful speech and discrimination. I am eager to ensure better protection from discrimination based on gender, including Māori gender identities and expressions.
68. There is a risk of further disparities if systemic racism and access to justice issues are not addressed. There is a clear sense that access to timely and culturally responsive enforcement and complaints mechanisms needs improvement.
69. The Treaty of Waitangi and its principles require consultation with Māori as Treaty partners. All policy and legislative development should be consistent with the spirit and principles of the Treaty, both procedurally and substantively. If Cabinet agrees to the recommendations in this paper there will be further engagement with Māori.

### Publicity

70. There is likely to be considerable public and media attention to these proposals. Any plans for communications will be coordinated with the wider Government response.

### Proactive Release

71. I propose that this Cabinet paper be proactively released as part of a suite of related papers, subject to any redactions appropriate under the Official Information Act 1982.

### Recommendations

72. The Minister of Justice recommends that the Committee:
1. **note** that the Ministry of Justice has reviewed the incitement provisions in the Human Rights Act 1993, which include a civil provision (section 61) and a criminal provision (section 131);
  2. **agree** that in-principle amendments are made that:
    - 2.1. replace the existing criminal provision with a new criminal offence for intending to stir up, maintain or normalise hatred, against all groups protected by section 21 of the Human Rights Act, through threatening, abusive or insulting communications, including inciting violence, made by any means



- 2.2. includes the grounds of stirring up, maintaining or normalising hatred, against all groups protected by section 21 of the Human Rights Act, in the civil provision, alongside the existing grounds
- 2.3. insert the criminal offence for incitement in the Crimes Act 1961, rather than the Human Rights Act, to reflect the seriousness of the behaviour
- 2.4. increase the penalties for the criminal incitement provision to up to three years imprisonment or a fine of up to \$50,000
- 2.5. extend the legal protections of under the civil and criminal provisions to a wider range of groups that are targeted by inciting speech. This can be achieved by extending the protections to all groups listed under the prohibited grounds of discrimination in section 21 of the Act
- 2.6. extend the legal protections against discrimination by amending the civil provision to include prohibition of incitement to discrimination against a group
- 2.7. amend the prohibited grounds of discrimination under section 21 of the Act to include a separate ground of "gender, including gender identity and gender expression"; and amend the ground of sex to explicitly include sex characteristics or intersex status
3. **note** that the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019 made a recommendation about the criminal provision, and that recommendations 2.1, 2.3 and 2.4 reflect its recommendation;
4. **note** that the Minister of Justice will consult community groups on the in-principle proposals, and will report back to Cabinet with the outcome of this consultation, seeking approval of specific amendments for an amendment bill;
5. **note** that the Government response to the Justice Committee recommendations from a petition about hate speech and regulating social media is due in February 2021, and that Cabinet agreement to the proposed response will be sought in due course.

Authorised for lodgement

Hon Kris Faafoi  
**Minister of Justice**



# Cabinet Business Committee

## Minute of Decision

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### Proposed Changes to the Incitement Provisions in the Human Rights Act 1993

Portfolio                      Justice

On 2 December 2020, the Cabinet Business Committee **referred** the submission under CBC-20-SUB-0102 to Cabinet on 7 December 2020 for further consideration, revised as appropriate.

Janine Harvey  
Committee Secretary

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**Present:**

Hon Grant Robertson (Chair)  
Hon Kelvin Davis  
Hon Dr Megan Woods  
Hon Chris Hipkins  
Hon Carmel Sepuloni  
Hon Andrew Little  
Hon David Parker  
Hon Nanaia Mahuta  
Hon Poto Williams  
Hon Damien O'Connor  
Hon Kris Faafoi  
Hon Jan Tinetti

**Officials present from:**

Office of the Prime Minister  
Department of the Prime Minister and Cabinet



# Cabinet

## Minute of Decision

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### Proposed Changes to the Incitement Provisions in the Human Rights Act 1993

Portfolio Justice

On 7 December 2020, following reference from the Cabinet Business Committee, Cabinet:

- 1 **noted** that the Ministry of Justice has reviewed the incitement provisions in the Human Rights Act 1993, which include a civil provision (section 61) and a criminal provision (section 131);
- 2 **agreed in principle** that amendments be made to:
  - 2.1 replace the existing criminal provision with a new criminal offence for intending to stir up, maintain or normalise hatred, against all groups protected by section 21 of the Human Rights Act, through threatening, abusive or insulting communications, including inciting violence, made by any means;
  - 2.2 includes the grounds of stirring up, maintaining or normalising hatred, against all groups protected by section 21 of the Human Rights Act, in the civil provision, alongside the existing grounds;
  - 2.3 insert the criminal offence for incitement in the Crimes Act 1961, rather than the Human Rights Act, to reflect the seriousness of the behaviour;
  - 2.4 increase the penalties for the criminal incitement provision to up to three years imprisonment or a fine of up to \$50,000;
  - 2.5 extend the legal protections of under the civil and criminal provisions to a wider range of groups that are targeted by inciting speech. This can be achieved by extending the protections to all groups listed under the prohibited grounds of discrimination in section 21 of the Act;
  - 2.6 extend the legal protections against discrimination by amending the civil provision to include prohibition of incitement to discrimination against a group;
  - 2.7 amend the prohibited grounds of discrimination under section 21 of the Act to include a separate ground of "gender, including gender identity and gender expression"; and amend the ground of sex to explicitly include sex characteristics or intersex status;



- 3 **noted** that the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019 made a recommendation about the criminal provision, and that paragraphs 2.1, 2.3 and 2.4 reflect its recommendation;
- 4 **noted** that the Minister of Justice will consult community groups on the in-principle proposals, and will report back to Cabinet with the outcome of this consultation, seeking approval of specific amendments for an amendment bill;
- 5 **noted** that the government response to the Justice Committee recommendations from a petition about hate speech and regulating social media is due in February 2021, and that Cabinet agreement to the proposed response will be sought in due course.

Michael Webster  
Secretary of the Cabinet