

Human Rights (Incitement on Ground of Religious Belief) Amendment Bill

Government Bill

Explanatory note

General policy statement

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

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

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

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

Departmental disclosure statement

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2022&no=209>

Regulatory impact statement

A supplementary analysis report (SAR) has been prepared for this Bill instead of a regulatory impact statement. The Ministry of Justice produced a SAR on 18 November 2022 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this SAR can be found at—

- <https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/>
- <https://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides that the Act comes into force on the day after the date of Royal assent.

Clause 3 provides that the Act amends the Human Rights Act 1993 (the **principal Act**).

Part 1

Amendments to Part 2

Clause 4 makes a minor, technical amendment to section 21A(1)(a). The amendment—

- updates the existing reference to sections 61 to 64 to reflect the repeal of section 64 (in 2004) and the insertion of section 63A (on 18 August 2022);
- makes section 21A(1)(a) more comprehensible, and aligns it with section 21A(1)(b), by removing the text stating what each of the cross-referenced sections relates to.

Clause 5 amends section 61, which makes it unlawful for anyone to publish, distribute, or use threatening, abusive, or insulting written matter or words likely to excite hostility against or bring into contempt any group on 1 or more of the following prohibited grounds of discrimination:

- colour:
- race:
- ethnic or national origins.

Clause 5 adds religious belief to that list. Religious belief is an existing prohibited ground of discrimination under section 21.

Part 2

Amendments to Parts 5 and 6 and Schedule 1AA

Clauses 6 and 7 amend section 130 and the Part 6 heading. The amendments are consequential to the amendments to section 131 in *clause 8*.

Clause 8 amends section 131, which provides that it is an offence to, with the requisite intent, publish or use written matter or words that are threatening, abusive, or insulting and that are likely to excite hostility or ill-will against, or bring into contempt or ridicule, any group on 1 or more of the following prohibited grounds of discrimination:

- colour:
- race:
- ethnic or national origins.

Clause 8 adds religious belief to that list. Religious belief is an existing prohibited ground of discrimination under section 21.

Clause 9 amends Schedule 1AA to insert a transitional provision with the effect that proceedings underway when the Bill commences, including civil proceedings under section 61 and criminal proceedings under section 131, will continue as if the principal Act had not been amended by the Bill.

Hon Kiritapu Allan

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Human Rights (Incitement on Ground of Religious Belief) Amendment Act **2022**.

2 Commencement

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This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Human Rights Act 1993.

Part 1

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Amendments to Part 2**4 Section 21A amended (Application of this Part limited if section 3 of New Zealand Bill of Rights Act 1990 applies)**

Replace section 21A(1)(a) with:

(a) sections 21 to 35, 61 to 63A, and 66; and

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5 Section 61 amended (Racial disharmony)

- (1) Replace the heading to section 61 with “**Disharmony on certain prohibited grounds of discrimination**”.
- (2) In section 61(1), after “ground of the”, insert “religious belief”.

Part 2

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Amendments to Parts 5 and 6 and Schedule 1AA**6 Section 130 amended (Proceedings privileged)**

In section 130(1), replace “inciting racial disharmony” with “inciting disharmony on certain prohibited grounds of discrimination”.

7 Part 6 heading replaced

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Replace the Part 6 heading with:

Part 6**Inciting disharmony on certain prohibited grounds of discrimination****8 Section 131 amended (Inciting racial disharmony)**

- (1) Replace the heading to section 131 with “**Inciting disharmony on certain prohibited grounds of discrimination**”.

- (2) In section 131(1), after “ground of the”, insert “religious belief,” in each place.

9 Schedule 1AA amended

In Schedule 1AA,—

- (a) insert the Part set out in the **Schedule** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

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Schedule
New Part 3 inserted into Schedule 1AA

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Part 3	
Provision relating to Human Rights (Incitement on Ground of Religious Belief) Amendment Act 2022	5
3 Proceedings affected by Amendment Act	
(1) In this Part,—	
Amendment Act means the Human Rights (Incitement on Ground of Religious Belief) Amendment Act 2022	10
commencement date means the day after the date on which the Amendment Act receives the Royal assent	
proceedings includes (without limitation) the following:	
(a) a rehearing:	
(b) a retrial:	15
(c) an appeal:	
(d) a dispute resolution process resulting from a complaint received under section 76(2)(a).	
(2) Amendments made to this Act by the Amendment Act (except for this clause) apply only to proceedings commenced on or after the commencement date.	20
(3) Proceedings commenced before the commencement date, and not finally determined before the commencement date, continue as if those amendments had not been enacted.	