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

31/1/2023

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1 Introduction

- 1.1 The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Human Rights (Incitement on Ground of Religious Belief) Amendment Bill (the **Bill**).
- 1.2 The Law Society supports the extension of protections under ss 61 and 131 of the Human Rights Act 1993 (the **Act**) to include religious beliefs, and suggests that the committee consider whether the current penalties under s 131 are sufficient.
- 1.3 This submission has been prepared with input from the Law Society's Human Rights & Privacy Committee.¹
- 1.4 The Law Society does not wish to be heard.

2 The categories in s 61 and 131 should be extended

- 2.1 While the planned reform of the Act had initially focussed on extending the protections under ss 61 and 131 to include religious belief, sex,² disability, sexual orientation and gender, for well-publicised reasons the Bill as drafted only extends coverage to include religious beliefs. The Law Commission will be carrying out a review that will consider whether additional groups should also be protected under the incitement provisions. The Law Society has some concerns about the likely timeframe for further reform in this area, given this phase of the Law Commission's review does not yet have a start date due to competing resourcing priorities.³
- 2.2 The Law Society supports the extension proposed by the Bill. It also supports the referral to the Law Commission of the question of further extension of the Act to include sex, disability, sexual orientation, and gender identity and expression. The Society recognises that many of the arguments in support of including religious belief in ss 61 and 131 would support the inclusion also of further grounds drawn from s 21 of the Act (such as sex, sexual orientation, disability and gender).
- 2.3 It is hoped that the Law Commission's review will provide additional evidence and analysis to inform further law reform in this area.

3 Fine in section 131 is now out of step

- 3.1 The Committee may wish to consider whether the maximum fine for a breach of s 131 (\$7,000) requires revision. It appears the maximum fine has not been adjusted since the Act was enacted.
- 3.2 The fine is out of step with those that apply to other, similar offences:

¹ More information regarding this committee is available on the Law Society's website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/>.

² Including variations of sex characteristics and intersex status.

³ <https://www.lawcom.govt.nz/our-projects/legal-responses-hate>

- (a) A person who makes, supplies or distributes an objectionable publication may receive a fine not exceeding \$10,000, even if the person did not know the publication was objectionable.⁴
- (b) A person who makes, supplies or distributes an objectionable publication, with knowledge or reasonable belief that it is objectionable may receive a term of imprisonment not exceeding 14 years. No fine is applicable to individuals, but body corporates may receive a fine not exceeding \$200,000.⁵
- (c) A person who supplies or distributes a restricted publication other than in accordance with its classification, with knowledge or reasonable belief that it is restricted, may receive a fine not exceeding \$10,000.⁶
- (d) A person who causes harm by posting a digital communication may receive a fine not exceeding \$50,000.⁷

3.3 An increase in the maximum fine under s 131 would be consistent with the purpose of the Bill and Act, especially given s 131 reflects a serious offence. Unlike the civil provision in s 61, s 131 requires *intent* to excite hostility or ill-will or bring people into contempt or ridicule.

4 Part 3 should now be described as Part 4

4.1 Due to a recent amendment,⁸ a Part 3 already exists in Sch 1AA to the Act. In the contents and Schedule to the Bill, “Part 3” should now read “Part 4”.



David Campbell
Vice-President

⁴ Films, Videos, and Publications Classification Act 1993, s 123.

⁵ Section 124.

⁶ Section 126.

⁷ Harmful Digital Communications Act 2015, s 22.

⁸ Pursuant to the Remuneration Authority Legislation Act 2022, s 19.