



19 December 2022

William H. Oosterman
fyi-request-21160-31863d2d@requests.fyi.org.nz

Our ref: OIA 101025

Tēnā koe William

Official Information Act request: Incitement of hatred consultation

Thank you for your email of 19 November 2022, requesting, under the Official Information Act 1982 (the Act), information regarding consultation on the incitement of hatred proposals. I have outlined your specific requests and my response to each below:

1. *What was the OIA request referred to here:*
https://www.parliament.nz/en/pb/order-paper-questions/written-questions/document/WQ_38897_2022/38897-2022-hon-paul-goldsmith-to-the-minister-of-justice

The Ministry received several requests under the Act for the summary of public submissions and without additional information, I cannot confirm which specific request the Member of Parliament was referring to.

2. *Accepting the accuracy of the above link, why was a summary of the submissions refused at that time?*

In response to the requests that sought the summary of submissions, the information was withheld under section 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers and officials.

However, as decisions have recently been made by Cabinet, the summary of submissions has now been published on the Ministry website. It can be found here:
justice.govt.nz/assets/Documents/Publications/Proposals-against-incitement-of-hatred-and-discrimination-Summary-of-submissions.pdf.

3. *Can we have the advice prepared for the Minister, referred to here:*
https://www.parliament.nz/en/pb/order-paper-questions/written-questions/document/WQ_11305_2022/11305-2022-hon-paul-goldsmith-to-the-minister-of-justice

The advice referenced here is in the summary of submissions document linked above.

4. Assuming the documents referred to below are not the advice in the previous question, can we have them?
https://www.parliament.nz/en/pb/order-paper-questions/written-questions/document/WQ_17782_2022/17782-2022-david-seymour-to-the-minister-of-justice.
5. If we can not have the documents or advice referred to in the previous two questions, why not given a decision has apparently already been made and therefore the explanation given in the link in question (4) is no longer relevant?

I have enclosed a copy of both documents with this letter. Some information has been withheld under section 9(2)(a) of the Act to protect the privacy of natural persons. I am satisfied there are no public interest considerations that render it desirable to make available the information withheld under section 9 of the Act.

Please note that the second document '*Note: Progressing the incitement work as part of a wider human rights review*' is not a formal briefing, but rather an email responding to follow up questions from the Minister's office on the first document. I also note that no wider review of the Human Rights Act is currently planned, which reflected advice provided to the previous Minister of Justice at the time.

6. Can we have a summary of the submissions now?

I refer you to my answer to question 2.

If you are not satisfied with my response, you have the right to complain to the Ombudsman under section 28(3) of the Act. The Ombudsman may be contacted by email at info@ombudsman.parliament.nz or by calling 0800 802602.

Nāku noa, nā



Kathy Brightwell
General Manager, Civil & Constitutional Policy

Encl: *Aide memoire: Progressing proposals to amend the incitement laws in the Human Rights Act 1993*

Note: Progressing the incitement work as part of a wider human rights review

Purpose

1. This note briefs you on progressing changes to the incitement laws as part of a wider review of the Human Rights Act 1993 (HRA).

Key messages

- In 2021 the Government publicly consulted on its in-principle proposals to amend the laws protecting against the incitement of hatred and discrimination ('hate speech laws').
- Some of the feedback received highlighted that the incitement laws are only one of several areas in the HRA requiring a review.
- For example, we heard that there were wider human rights issues, especially around racism and discrimination, that changes to the incitement laws would not address.
- Therefore, progressing changes to the incitement laws would fit well into a wider review of the HRA.
- We recommend significant engagement so that the focus of the review, and any options considered, could be informed by people's experiences. This would mean that any legislative changes would not be until the next Parliamentary term.

The Government consulted on its in-principle proposals to amend the incitement laws

2. In March 2019, the then Minister of Justice announced that the HRA would be reviewed, with an expedited review of the legal protections against inciting speech.
3. In November 2020, you agreed that officials scope a targeted review of the HRA, including the statutory functions, powers and operation of the Human Rights Commission (the Commission). You also agreed to progress the incitement, gender identity and conversion practices work.
4. In 2021 the Government publicly consulted on its in-principle proposals, agreed in December 2020, to amend the incitement laws and the prohibited grounds of discrimination (gender/sex). The proposals were based on the *Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019* (the Royal Commission) report and our policy work.

Issues with the HRA are broader than the incitement laws

5. We heard during this consultation that changes to hate speech laws would not address broader human rights issues relating to racism and discrimination. Other feedback related to:
 - the prohibited grounds of discrimination not capturing appropriately those who need to be protected (for example regarding disability, gender, sexual orientation, religion or political opinion),
 - the adequacy of complaints processes and remedies under the HRA,
 - lack of alignment with other frameworks regulating speech, such as the Harmful Digital Communications Act 2015 or the censorship legislation, and

- concerns that our human rights framework does not reflect te Tiriti o Waitangi.
6. We know that some parts of the HRA need to be updated and strengthened. For example,
- The structure and functions of the Commission remain problems. The 2018 Shaw Report identified issues with the structure of the Commission and international human rights bodies have raised questions about limits on its jurisdiction – particularly in immigration matters – and its level of independence.
 - Not all human rights are equally and fully protected in New Zealand legislation. For example, economic, social and cultural rights (such as the rights to health, housing and education) are not included in the New Zealand Bill of Rights Act 1990 or similar legislation.
 - Some exemptions (which permit discrimination that would otherwise be unlawful) may no longer reflect current social values.

Changes to the incitement laws would fit well into a wider review

7. Based on the consultation feedback we consider that it would be worthwhile including changes to the incitement laws in a wider review of the HRA. Work relating to hate crime, also recommended by the Royal Commission, could also be progressed in the context of this review. This would be likely to have impacts on the potential timing of hate crime work, as indicated in our recent briefing to you, and the nature of any engagement on hate crime.
8. As outlined above, some of the issues identified, but out of scope of the 2021 consultation, are closely linked with the laws against incitement of hatred and discrimination. For example, the remedies and complaints processes under the HRA are relevant to the strength of protections against incitement. Also, the incitement provisions refer to prohibited grounds of discrimination, which would benefit from a review.

We will provide advice on options for scoping, sequencing and engagement approaches

9. We consider a review should start with community engagement to identify what concerns people most about our human rights protections.
10. We will provide advice in March on options for sequencing and scoping a review and initial engagement approaches. Some issues, such as changes to the Commission's structure and functions could be on a faster track, potentially resulting in more targeted engagements in 2022/23.

As a result of starting the review the timing for the incitement work would shift

11. We expect that the initial engagement and scoping work would take up a significant part of 2022. This would be followed by a consideration of policy options, with further public consultation on possible approaches being likely.
12. Because of this, any changes to legislation would not be introduced until the next Parliamentary term, unless they are relatively targeted and discrete changes.

Next steps

13. There have been several requests for updates on the incitement proposals following the completion of the public consultation process. Participants in the consultation would have a particular interest in hearing about next steps.
14. As discussed with you, we will provide initial advice in March on options for scoping, sequencing and engagement for the review. Once you have approved an approach, you may wish to consider a public statement.

From: [Purple, Folder](#)
To: [Kerpen, Ursula](#)
Subject: FW: Note - Progressing the incitement work as part of a wider human rights review
Date: Monday, 2 May 2022 11:01:59 am

From: Dearsley, Justine <Justine.Dearsley@justice.govt.nz>

Sent: Thursday, 3 February 2022 4:51 pm

To: s9(2)(a)

Cc: I Purple, Folder <Folder.Purple@justice.govt.nz>;
 Mercuri, Alida <Alida.Mercuri@justice.govt.nz>; Shergill, Navie <Navie.Shergill@justice.govt.nz>; Johnston, Anna <Anna.Johnston@justice.govt.nz>; Brightwell, Kathy <Kathy.Brightwell@justice.govt.nz>; Kerpen, Ursula <Ursula.Kerpen@justice.govt.nz>; Crooke, David <David.Crooke@justice.govt.nz>; Gray, Hannah <Hannah.Gray@justice.govt.nz>

Subject: RE: Note - Progressing the incitement work as part of a wider human rights review

Kia ora Mike

As requested, here are our responses to your specific queries:

- In para 11 when we say “initial engagement and scoping work”, who are we thinking the initial engagement would be with – and on what?

We understand that there is an expectation within Government that agencies’ policy work applies DPMC’s *Policy Community Engagement Tool* to ensure an adequate and meaningful engagement. This is particularly the case for any work relating to Royal Commission recommendations. We intend to use this tool to plan and design the engagement. This is a significant exercise which will shape our March advice on engagement options.

Who we engage with will depend to some extent on the Minister’s initial decisions on scope. The briefing will include advice on the different engagement requirements for different scope options.

We expect that the initial engagement will be broad and cover many relevant population groups and communities. We don’t envisage a ‘public discussion’, rather we expect the engagement will be direct.

While there will be no proposals or a discussion document, we expect that we would test the topics covered in the Minister’s initial scoping decision. These discussions might bring up additional issues and also indicate prioritisation.

To give you an indication of which groups could have an interest, a possible stakeholder list is below. Discussions with other agencies, academics, the HRC and other relevant Crown entities would be just as important as discussion with the public.

Iwi / Māori (Treaty Partners)
Businesses and business representative groups, specific sector stakeholders
Persons with disabilities
Faith-based communities
Seniors
Youth
Rainbow communities
Government agencies
Ethnic communities

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NFP/NGOs/service clubs/service providers/charitable groups
Pasifika communities
Refugee communities
Unions
Academics
Rural communities
People in and out of work / NEET
Service users
People for whom English is not first language
Homeowners/renters/those experiencing homelessness
People who have had contact with the justice system
People without access to online tools
Local government
Community organisations and representative networks
Women

- Is the March advice going to have more detailed timelines for the various sequencing and engagement choices from paras 9-10?

Yes, there will be more detailed timelines for sequencing and engagement options. We expect, however, that the scoping and prioritisation will be further refined through engagement processes. This may affect timelines. We will keep the Office in the loop about outcomes and possible adjustments of scope, sequencing and timing.

We hope this answers your question. Let us know if you need anything else.

Ngā mihi
Justine

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To: s9(2)(a)

Cc: s9(2)(a)

Purple, Folder <xxxxxx.xxxxxx@xxxxxxx.xxxx.xx>;
Mercuri, Alida <xxxxx.xxxxxxx@xxxxxxx.xxxx.xx>; Shergill, Navie <xxxxx.xxxxxxx@xxxxxxx.xxxx.x>; Johnston,
Anna <xxxx.xxxxxxx@xxxxxxx.xxxx.xx >; Brightwell, Kathy <xxxxx.xxxxxxx@xxxxxxx.xxxx.xx>; Dearsley,
Justine <xxxxxxx.xxxxxxx@xxxxxxx.xxxx.xx>

Subject: RE: Note - Progressing the incitement work as part of a wider human rights review

Kia ora Mike,

Thanks for your email. We are going to get the answers to you this afternoon by COP. Does that work for you timing wise?

Kind regards,

Ursula

From: s9(2)(a)

Sent: Thursday, 3 February 2022 1:49 pm

To: Kerpen, Ursula <xxxxxx.xxxxxx@xxxxxxx.xxxx.xx >

Cc: s9(2)(a)

Purple, Folder <xxxxxx.xxxxxx@xxxxxxx.xxxx.xx>;
Mercuri, Alida <xxxxx.xxxxxxx@xxxxxxx.xxxx.xx>; Shergill, Navie <xxxxx.xxxxxxx@xxxxxxx.xxxx.x>; Johnston,
Anna <xxxx.xxxxxxx@xxxxxxx.xxxx.xx >; Brightwell, Kathy <xxxxx.xxxxxxx@xxxxxxx.xxxx.xx>

Subject: RE: Note - Progressing the incitement work as part of a wider human rights review

Kia ora Ursula

We'll put this in the Minister's weekend bag. I'm just reading through now and wanted to check a couple of points.

- In para 11 when we say "initial engagement and scoping work", who are we thinking the initial engagement would be with – and on what?
- Is the March advice going to have more detailed timelines for the various sequencing and engagement choices from paras 9-10?

Ngā mihi

Mike Gill

Private Secretary – Justice | Office of Hon Kris Faafoi

s9(2)(a)

Parliament Buildings | Wellington 6160 | New Zealand

Authorised by Hon Kris Faafoi MP, Parliament Buildings, Wellington 6011

From: Kerpen, Ursula [mailto:xxxxxx.xxxxxx@xxxxxxx.xxxx.xx]

Sent: Thursday, 3 February 2022 12:55 PM

To: s9(2)(a)

Cc: s9(2)(a)

Purple, Folder <xxxxxx.xxxxxx@xxxxxxx.xxxx.xx>;
Mercuri, Alida <xxxxx.xxxxxxx@xxxxxxx.xxxx.xx>; Shergill, Navie <xxxxx.xxxxxxx@xxxxxxx.xxxx.x>; Johnston,
Anna <xxxx.xxxxxxx@xxxxxxx.xxxx.xx >; Brightwell, Kathy <xxxxx.xxxxxxx@xxxxxxx.xxxx.xx>

Subject: Note - Progressing the incitement work as part of a wider human rights review

Kia ora Mike,

Please find attached the note on progressing changes to the incitement laws as part of a wider review of the human rights system. Please let me know if there is anything else you need.

Kind regards,

Ursula



Ursula Kerpen
Senior Policy Advisor | Civil Law and Human Rights
s9(2)(a)

For Official Correspondence Records	
Document type:	Note
Author:	Ursula Kerpen
Title:	Progressing the incitement work
Business unit:	Policy
Team:	CLHR
Minister:	Justice
Date sent:	3 February 2022

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Thank you.

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