

**Summary Offences (Demonstrations Near
Residential Premises) Amendment Bill**

**Submissions on behalf of
The Law Association of New Zealand
by the Public Law Committee**

INTRODUCTION

The Law Association of New Zealand (TLANZ) is an independent membership organisation for the New Zealand legal profession with more than 8,000 members. TLANZ maintains expert law committees that support legal review and policy advocacy on important issues. We appreciate the opportunity to submit our comments on the Summary Offences (Demonstrations Near Residential Premises) Amendment Bill (the Bill).

The Public and Administrative Law Committee represents practitioners and public law specialists committed to the maintenance of constitutional rights, the rule of law, and a balanced relationship between the State and the citizen.

While the Committee acknowledges that the Bill is motivated by legitimate concerns for privacy, security, and the quiet enjoyment of one's home, we submit that the proposed amendment is neither necessary nor proportionate and would impose unjustifiable limitations on the freedoms of expression, peaceful assembly, and movement protected under the New Zealand Bill of Rights Act 1990 (NZBORA).

In our respectful view, the Bill risks chilling legitimate protest activity, undermines long-standing democratic traditions, and duplicates protections already available under existing law. For these reasons, the Committee does not support the Bill in its present form.

EXECUTIVE SUMMARY

The Public and Administrative Law Committee does not support the Summary Offences (Demonstrations Near Residential Premises) Amendment Bill in its present form and has grave concerns about its constitutional and human-rights implications. While the objective of protecting privacy and the quiet enjoyment of the home is understandable, the Bill unjustifiably limits freedom of expression (s 14), peaceful assembly (s 16), and freedom of movement (s 18) under the New Zealand Bill of Rights Act 1990 (NZBORA).

Existing law already regulates harassment, intimidation, obstruction, and noise. The Supreme Court's decision in *Brooker v Police* [2007] NZSC 30 provides a carefully balanced interpretation of "disorderly behaviour" that reconciles expressive freedom with public order. The Bill introduces a new offence without evidential justification, employs vague and subjective terms such as "unreasonable disruption", and risks arbitrary enforcement.

By criminalising a wide range of expressive conduct – including peaceful or spontaneous protests – the Bill is disproportionate, overbroad, and likely to chill democratic participation. If Parliament remains concerned about targeted harassment at residences, proportionate, non-criminal measures such as civil injunctions, trespass notices, or enhanced police guidance should be preferred.

SUBMISSIONS

1. Overview of the Bill

1.1. The Bill seeks to insert a new section 5B into the Summary Offences Act 1981, creating an offence of engaging in a targeted and disruptive demonstration near residential premises.

1.2. The offence applies where a person:

- engages in a demonstration near any residential premises;
- the demonstration is directed at a regular occupant of those premises; and
- the person knows, or ought to know, that the demonstration is causing an unreasonable disruption to the use or enjoyment of those premises.

1.3. *Summary Offences Demonstrations*

1.3.1. A conviction carries a penalty of up to three months' imprisonment or a \$2,000 fine.

1.3.2. The Bill is presented as a measure to restore a “balance” between the right to privacy and the right to protest, invoking Article 17 of the International Covenant on Civil and Political Rights (ICCPR), which protects against arbitrary interference with privacy and the home.

1.3.3. While that objective is understood, the Committee is concerned that the Bill:

- unjustifiably limits fundamental freedoms protected by NZBORA.
- duplicates existing offences covering disorderly or offensive behaviour; and
- is framed in vague and overbroad terms that invite arbitrary enforcement.

2. Existing Legal Protections Are Adequate

2.1. New Zealand law already protects individuals from harassment, intimidation, excessive noise, and disorderly conduct through provisions in the Summary Offences Act 1981 (ss 3–5A), the Harassment Act 1997, and local noise control regulations.

2.2. In *Brooker v Police* [2007] NZSC 30, the Supreme Court held that disorderly behaviour requires disruption to public order beyond what reasonable citizens should be expected to tolerate. The Court emphasised that private annoyance alone does not justify criminal sanction, and that peaceful protest – even when directed at individuals – remains a legitimate exercise of freedom of expression.

2.3. The *Brooker* decision already delineates the limits of acceptable protest at private residences, and its reasoning ensures an appropriate balance between privacy interests and expressive rights. The Court recognised that lawful protest may inconvenience or irritate, but such discomfort is a necessary incident of a free and democratic society.

2.4. The Bill offers no evidence that the existing law is inadequate or that additional criminalisation is required. Its creation of a new, overlapping offence risks inconsistency, duplication, and uncertainty in enforcement.

3. Incompatibility with the New Zealand Bill of Rights Act 1990

3.1. The Bill directly engages multiple rights protected under NZBORA, including:

- section 14 – freedom of expression.
- section 16 – freedom of peaceful assembly; and
- section 18 – freedom of movement.

3.2. Under section 5, any limitation on these rights must be demonstrably justified in a free and democratic society. Applying the proportionality framework articulated in *Hansen v R* [2007] NZSC 7, we note:

a) *Importance of objective:*

Protecting residential privacy is an important but not overriding objective. It cannot justify suppression of political or social expression, which lies at the heart of democratic life.

b) *Rational connection:*

There is little empirical evidence that targeted residential protests have created such widespread harm that criminalisation is warranted. Existing laws already address the alleged mischief.

c) *Minimal impairment:*

The Bill is not a minimal impairment. It introduces imprisonment as a sanction and relies on broad, subjective standards such as “unreasonable disruption”. Less intrusive

mechanisms – civil injunctions, trespass notices, or targeted restraining orders – could achieve the same purpose.

d) *Proportionality in the strict sense:*

The social cost of deterring legitimate protest outweighs the marginal privacy benefit gained. Peaceful protest, even when uncomfortable, is an indispensable safeguard against power.

3.3. The Committee therefore concludes that the Bill fails the section 5 NZBORA test of demonstrable justification.

4. **Vagueness and Risk of Arbitrary Enforcement**

4.1. The proposed offence is drafted in uncertain and subjective language, particularly the phrases “unreasonable disruption” and “use or enjoyment”.

4.2. Section 5B(3) lists several factors (time, duration, noise, actions, and distance) but provides no objective threshold or guidance as to what level of disruption becomes “unreasonable”.

4.3. This vagueness offends the principle of legality and risks arbitrary enforcement, particularly against vulnerable, unpopular, or minority groups whose messages challenge authority or social norms.

4.4. Furthermore, the inclusion of the phrase “ought to have known” dilutes the mental element required for criminal liability, introducing a quasi-strict liability standard inconsistent with basic fairness in the criminal law.

5. **Overbreadth and Chilling Effect**

5.1. The Bill defines “demonstration” as *any public expression of support or opposition to further a cause or campaign*. This definition is extraordinarily wide, capturing everything from organised protests to a single individual with a placard.

5.2. By criminalising demonstrations “directed at” occupants of residential premises, the Bill would encompass symbolic or expressive acts of protest outside the homes of Ministers, judges, or corporate figures – forms of protest historically associated with democratic accountability.

5.3. The availability of imprisonment for such acts is a disproportionate and draconian response. It will chill peaceful protest and erode New Zealand’s reputation as a nation that values open dissent.

5.4. As Labour’s Justice spokesperson Dr Duncan Webb noted during the first reading, “the point of political action is to disrupt ... protest is disruptive, that’s what a protest is.” The Bill confuses inconvenience with harm and risks criminalising the very essence of civic participation.

6. **Conceptual and Drafting Issues**

6.1. The Committee further notes several technical deficiencies:

- The term “regular occupant” excludes temporary residents, visitors, and house-sitters, creating arbitrary and unjustifiable distinctions.
- The phrase “currently used” in the definition of residential premises may exclude occupied holiday homes, undermining the Bill’s own policy intent.
- The use of the conjunction “and” in s 5B(1)(b)(ii) implies that both elements of disruption must occur simultaneously, where in fact either may suffice.

- The word “demonstration” implies an organised gathering and excludes spontaneous or individual protest, contradicting the intended breadth of the offence.

6.2. These inconsistencies illustrate the Bill’s conceptual fragility, and the risks inherent in legislating in response to isolated events rather than systemic need.

7. Alternative Mechanisms

7.1. If the Committee considers that targeted residential protest presents genuine harm, we recommend exploring non-criminal mechanisms, including:

- Injunctions or restraining orders in cases of sustained harassment;
- Enhanced police guidance on the use of existing powers under ss 3–5A of the Summary Offences Act; and
- Local council bylaws addressing noise and obstruction without criminalising expression.

7.2. *If Parliament Chooses to Legislate*

7.2.1. To minimise NZBORA conflict:

- Remove imprisonment, retaining fines only.
- Clarify mens rea – require actual intent or knowledge; delete “ought to have known”.
- Define disruption objectively: “Unreasonable disruption means a material prevention of ordinary entry, exit, or enjoyment of the premises.”
- Insert NZBORA consistency clause: “This section must be interpreted and applied consistently with the New Zealand Bill of Rights Act 1990.”
- Provide statutory defences for peaceful, non-violent, or time-limited protest.
- Clarify occupant coverage to include all lawful occupants, including visitors and temporary residents.
- Prefer civil control orders for repeated misconduct, subject to judicial oversight.

7.2.2. These amendments would align the legislation more closely with NZBORA s 5 and with international best practice.

8. Balancing Privacy and Democratic Accountability

8.1. The Committee acknowledges the importance of the right to privacy and to the peaceful enjoyment of one’s home. However, privacy cannot be invoked to shield public officials from accountability.

8.2. Judges, Ministers, and public servants, by virtue of their offices, inevitably attract public scrutiny. As the Supreme Court observed in *Brooker*, the right to protest against the exercise of public power lies at the heart of freedom of expression.

8.3. The burden of tolerance in a democracy is not always comfortable. The measure of a free society lies in its willingness to allow unpopular, even inconvenient, expression to occur without resorting to criminal sanction.

CONCLUSION AND RECOMMENDATION

For the reasons set out above, the Public Law Committee does not support the Summary Offences (Demonstrations Near Residential Premises) Amendment Bill in its present form.

We submit that:

- the Bill is unnecessary, as existing law already regulates disorderly and intimidating conduct;
- it is vague, overbroad, and prone to arbitrary enforcement;
- it unjustifiably limits freedoms protected under the New Zealand Bill of Rights Act 1990; and
- it risks chilling legitimate political expression, undermining democratic participation and accountability.

We respectfully recommend that the Justice Select Committee decline to recommend the Bill's passage and instead invite the Ministry of Justice to:

- undertake a comprehensive review of existing public-order powers; and
- develop clearer, non-criminal mechanisms for addressing genuine cases of residential harassment.

Thank you for the opportunity to make submissions in respect of the Summary Offences (Demonstrations Near residential Premises) Amendment Bill.

We are available to discuss our submissions, if required. Should clarification be required with regards to any matters raised, please contact Gandhya Senanayake, the TLANZ Committee Executive at gandhya.senanayake@tlanz.nz.

Ngā mihi



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The views represented in this submission are not necessarily representative of the views of all TLANZ members but are those of individual TLANZ members or TLANZ committees who have responded to the consultation.