

Regulatory Impact Statement: Addressing protests outside private residences

Decision sought	<i>This Regulatory Impact Statement (RIS) accompanies the ‘Addressing protests outside private residences’ Cabinet paper, which seeks decisions on a new offence for disruptive and targeted protests outside an individuals’ private residences.</i>
Agency responsible	<i>Ministry of Justice (the Ministry)</i>
Proposing Ministers	<i>Hon Paul Goldsmith, Minister for Justice</i>
Date finalised	<i>14 May 2025</i>

The Minister of Justice is proposing to introduce an offence in the Summary Offences Act 1981 for participating in a disruptive protest outside an individual’s private residence. This change is intended to provide better protection for people’s rights to privacy and quiet enjoyment in their own homes.

Summary: Problem definition and options

What is the policy problem?

There is scope to clarify and strengthen recognition of the right to privacy in the context of protest activity that is targeted at a person’s home.

The right to protest is affirmed under the New Zealand Bill of Rights Act 1990 (NZBORA) through the freedoms of expression, peaceful assembly, movement, and association. At the same time, people generally have an expectation of privacy in their homes, as protected under article 17 of the International Covenant on Civil and Political Rights (ICCPR).

Tension arises when protests occur outside a person’s private residence, interrupting quiet enjoyment of one’s home. Many of New Zealand’s public order offences do not expressly recognise the right to privacy. In the absence of clearer statutory direction for offences such as ‘offensive behaviour,’ the courts have declined to balance the right to privacy against NZBORA rights where protest activity targeted at disrupting people’s quiet enjoyment in their homes has occurred.

Protests that occur outside private residences appear to have been a longstanding but minor part of protesting in New Zealand. In 2024, Police observed a marked increase in protests outside the homes of Members of Parliament (MPs), though reported numbers remain low and data is only available back to 2022. Anecdotally, other public figures like local councillors, judges, police officers, journalists, and health professionals have also been targeted.

There have been calls to improve the safety and security of MPs and other public figures in their homes, including by the Speaker of the House.¹ In February 2025, the Independent Police Conduct Authority (IPCA) released a report on *The Policing of Public Protests in New Zealand*, which recommended an overhaul of the regulatory framework for protests, including a new ‘residential picketing’ offence.

In the absence of the law being changed to state the relevance of privacy and quiet enjoyment of one’s home, Police and other responders are not clearly empowered to intervene in protests that are causing significant disruption or distress to residents, including the targeted individual’s family and neighbours. This may impact on public confidence in law and order, as well as some people’s willingness to hold, stand for or be appointed to high profile roles.

What is the policy objective?

The primary objective of this proposal is to ensure that the law appropriately balances people’s right to privacy (including quiet enjoyment of their homes) and the public’s right to protest.

What policy options have been considered, including any alternatives to regulation?

We considered five options for addressing protests outside private residences:

- Option 1: Status quo
- Option 2(a): Offence for continuing to participate in a disruptive residential protest following a warning, with a single maximum penalty.
- Option 2(b): Offence for continuing to participate in a disruptive residential protest following a warning, with escalating penalties for repeat offending.
- Option 3(a): Offence for participating in a disruptive residential protest with a single maximum penalty.
- Option 3(b): Offence for participating in a disruptive residential protest with escalating penalties.

Further options were ruled out by commissioning, including amending the existing public order offences, considering residential protests in the context of responding to the IPCA’s report on public protest, and non-regulatory options.

What consultation has been undertaken?

We prepared this advice under short timeframes, so no public consultation has been undertaken. New Zealand Police (Police) and Crown Law were consulted, with input sought from the Department of Corrections (Corrections) on operational implications.

Police noted some practical challenges with the warning aspect of options 2(a) and (b) and underscored the need for statutory guidance on what may constitute a disruptive residential protest. **S9(2)(h)**

¹ Claire Trevett, “Speaker Gerry Brownlee wants to boost security for MPs” *The New Zealand Herald* (online ed., 18 June 2024).

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

The Cabinet paper proposes option 3(a): an offence for participating in a disruptive residential protest which the participant knows, or ought to know, will cause disruption.

The Ministry's preferred option 2(a), which would result in criminal liability only if protestors refuse to cease participating in a disruptive protest following a Police warning. The Ministry considers this would provide a more proportionate limit on NZBORA rights.

These options share many elements. Both address protests that are targeted at a person at their usual residential address and causing unreasonable disruption. The options also propose the same, single maximum penalty. In each case, the option would be implemented by an amendment to the Summary Offences Act 1981.

The available evidence suggests that the costs and benefits of the Minister's and the Ministry's preferred options are broadly the same and, in each case, the benefits arising from increased protection of privacy and quiet enjoyment of homes are likely to marginally outweigh any costs.

Summary: Minister's preferred option in the Cabinet paper

Costs (Core information)

If an offence is introduced for participating in a disruptive residential protest with a single maximum penalty, the volume of charges and prosecutions is expected to be very low. The key costs would be:

- Police processes (responding to reports, undertaking investigations, laying charges, prosecution) and updates to training, processes, and guidance for the new offence;
- Court proceedings and any impact on court timeliness;
- imprisonment, when this is the outcome of sentencing;
- any appeals.

Although the offence is targeted to apply in particular situations only, it may be perceived by some as the Government undermining fundamental rights and could have a chilling effect on lawful protest.

Benefits (Core information)

There are no known monetised benefits associated with the proposal.

Police would be empowered to respond to disruptive residential protests, which may be perceived as the Government affirming people's right to privacy and quiet enjoyment of their homes.

The proposal would provide greater certainty around the parameters of lawful protest for those organising and participating in protests, as well as targets of protests. This could reduce the number of unreasonably disruptive residential protests.

Balance of benefits and costs (Core information)

Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?

The size of the costs and benefits of all options presented in the RIS is difficult to assess, given the lack of complete data on the broader prevalence of protests targeted at private residences. The available evidence about protests targeting MPs' homes suggests that overall costs and benefits of this option could be low, though the benefits arising from increased protection of privacy and quiet enjoyment of homes are likely to marginally outweigh any costs. For the small number of cases where the offence is used, it would be significantly beneficial.

As the Minister's preferred option does not require a warning to be issued, it may be more workable for responding to some disruptive residential protests, which would benefit those who are targeted by such protests. However, it places a more direct limit on NZBORA rights and freedoms, which may be perceived as undermining fundamental rights.

Implementation

The proposal will be progressed through an amendment to the Summary Offences Act 1981.

Police will be required to make changes to operational policies and guidelines and provide communications and training on the new offence to staff.

The Ministry of Justice administers the Summary Offences Act 1981 and collects data on charges, convictions and sentencing outcomes for all offences. The Ministry will use this data to monitor the charge and prosecution rates of the new residential protest offence.

Limitations and Constraints on Analysis

The analysis in this regulatory impact statement has been constrained by –

- Time constraints and narrow scope: We prepared this advice under short timeframes and some options, including non-regulatory options, were ruled out during commissioning. In late March, the Minister of Justice commissioned work on a new offence to respond to protest outside private residences for introduction by the end of June.
- Lack of consultation: A longer timeframe would have allowed officials to consult with legal experts, civil society, interest groups and the public, as well as Māori as Treaty partners. This could have provided more fully informed advice on the nature and scale of the problem, the impacts of these proposals, and any operational challenges that may arise.
- Data limitations: There is very limited data on the number of disruptive residential protests per year and how this may have changed over time. Police have recorded protest activity outside the residences of MPs since 2022, though this only captures reported protests. Separate records are not kept for other groups, professions, etc., that may be the target of protests outside their residence.

Summary: Agency's preferred option in the Cabinet paper

Costs and benefits (Core information)

We expect that introducing an offence for continuing to participate in a disruptive residential protest after a warning from a police officer would not have significantly different key costs and benefits to those outlined above for the Minister's preferred option.

Balance of benefits and costs (Core information)

Does the RIS indicate that the benefits of the Agency's preferred option are likely to outweigh the costs?

As with the Minister's preferred option, the size of the costs and benefits of all options presented in the RIS is difficult to assess, given the lack of data on the prevalence of protests targeted at private residences.

The available evidence about protests targeting MPs' homes suggests that overall costs and benefits of this option could be low, though the benefits arising from increased protection of privacy and quiet enjoyment of homes are likely to marginally outweigh any costs. For the small number of cases where the offence is used, it would be significantly beneficial.

The Ministry's preferred option is likely to be a more proportionate limit on NZBORA rights and freedoms, but it may not provide Police with sufficient powers to respond to disruptive residential protests in certain circumstances.

Implementation

Implementation for this proposal would be broadly the same as the Minister's preferred option. Police training and guidelines would need to address the warning element of the offence, and the Ministry could monitor the use of warnings in addition to the use and attrition rates of the new offence.

Limitations and Constraints on Analysis

The analysis for this option was also constrained by short timeframes, a narrow scope, lack of consultation, and data limitations, as set out above.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature:

Kathy Brightwell

Civil and Constitutional, General Manager

14 May 2025

Quality Assurance Statement

Reviewing Agency: Ministry of Justice

QA rating: Partially meets

Panel Comment:

The Ministry of Justice's Regulatory Impact Assessment quality assurance panel has reviewed the Regulatory Impact Statement (RIS) ***Addressing protests outside private residences***. The panel considers that the information and analysis summarised in the RIS **partially meets** the Quality Assurance criteria.

The RIS is clear, concise and complete, with a strong analytical framework and conclusions supported by the analysis. Limitations and constraints are clearly articulated, including narrow scope (with non-regulatory options ruled out during commissioning) and no public consultation.

While the impact analysis is generally convincing, the panel considers that consultation should have occurred given the significant rights issues engaged by the proposal. As a result, there is limited information about the size and scale of the problem and the range of groups or people impacted. Lack of consultation may also have impacted the range of options identified to address the problem and officials' understanding of the impacts of those options. Although the RIS identifies some proxies for consultation that highlight the range of interests and perspectives, and the tension between freedom of expression and privacy interests, these are not a complete mitigation. Addressing this would require consultation on the proposal.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Lawful protests are fundamental to democratic societies

1. Lawful protests involve people exercising their fundamental rights and are essential to a functioning and healthy democracy. They are a key means by which citizens are able to express themselves and engage in political activity, and can act as ‘a safety valve that relieves the pressures inherent in any democracy.’²
2. The New Zealand Bill of Rights Act 1990 (NZBORA) affirms several rights and freedoms that relate to protesting: freedom of expression (section 14), freedom of peaceful assembly (section 16), freedom of association (section 17), and freedom of movement (section 18). These rights can be subject to reasonable limitations, but only to the extent that the limitations are justifiable in a free and democratic society.³
3. New Zealand is also obligated to uphold these rights as a State party to the International Covenant on Civil and Political Rights (ICCPR).⁴

Protests can impact on the rights and interests of others in public and private spaces

4. Although protest activity often does not affect others’ rights or safety, in some cases, behaviours accompanying protest activity raise questions about how different rights or values, such as privacy, should be taken into account.
5. Protests can be – and are sometimes intended to be – disruptive, including to the ability of others to freely use public spaces. The courts have observed that protests will often involve conveying messages to people that they may not want to hear.⁵
6. Both domestic and international law recognise that lawful protest can include behaviour that is disruptive or a nuisance.⁶ Protests will also sometimes deliberately test the boundaries of lawful conduct, such as through civil disobedience.
7. In these ways, protest often involves an inherent tension between the ability of one group of people to express themselves freely and the rights of others to go about their business. This tension can be especially obvious when protest activity is targeted at private residences. People generally have an expectation of privacy in their homes. The courts have emphasised the importance of the ‘right or interest to be let alone in one’s home’ as a ‘vital aspect of privacy’.⁷

² *Police v Chiles* [2019] NZDC 3860 at [22].

³ NZBORA, s 5.

⁴ The ICCPR includes article 19 (the right to freedom of expression), article 21 (the right of peaceful assembly), and article 22 (the right to freedom of association). The grounds for limitations on rights and freedoms are provided under each article.

⁵ *Brooker v Police* [2007] NZSC 30 at [62].

⁶ For example, on peaceful assembly, the United Nations has clarified that peaceful refers to non-violent, so an assembly that is controversial or causes disruption (including to vehicular movement or daily activities) may still be considered a peaceful assembly. (United Nations Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21), para. 7: CCPR/C/GC/37)

⁷ *Brooker v Police*, above n 2, at [256-257].

8. The right to be free from arbitrary or unlawful interference with one's privacy, family and home is protected by article 17 of the ICCPR. Although NZBORA affirms New Zealand's commitment to the ICCPR (and reiterates many of the other rights outlined in the covenant), it does not include a right to privacy.
9. Protests outside private residences appear to have been a longstanding but minor part of protesting in New Zealand. There have been sporadic instances of protests directed at the homes of public figures, such as MPs, representatives of foreign governments, judges, lawyers, researchers, and other professionals.⁸ For example, in the 1970s the Polynesian Panther Party conducted 'counter raids' on politicians' homes to protest the Government's Dawn Raids policy.⁹

Some limits apply to protests in New Zealand

10. The question of whether a particular protest is lawful will depend on the circumstances. In New Zealand, several offences can capture behaviour that may accompany protest activity. These include:
 - a. Public order offences in the Summary Offences Act 1981, including disorderly behaviour (section 3) and offensive behaviour or language (section 4), as well as intimidation (section 21). The maximum penalties for these offenses range from \$500 - \$2,000, with disorderly behaviour and intimidation also carrying a maximum of 3 months imprisonment;
 - b. Obstructing a public way (section 22 of the Summary Offences Act 1981), punishable by a fine of \$1,000. This offence requires obstruction of a public way without reasonable excuse, after having been warned by a constable to desist with such obstruction;
 - c. For protests that impact on private land, the offence of trespass (section 11 of the Trespass Act 1980) is punishable by a maximum of 3 months imprisonment or a \$1,000 fine. This offence covers trespass after being warned to leave by the occupier.
11. At the other end of the spectrum, much more serious offences may come into play depending on the specific facts of the protest. For example:
 - a. Endangering transport (section 270 of the Crimes Act), punishable by a maximum of 14 years imprisonment. This offence is interfering with a transport facility, which can include a road, with intent to cause danger or being reckless as to danger to people or property.
 - b. There are various offences in the Crimes Act 1961 for property damage, such as intentional damage (section 269 of the Crimes Act) which is punishable by a maximum of 7 years imprisonment if there is no risk to life.

⁸ For MPs, see "Don't protest outside my home" *Stuff* (online, 26 May 2014); "PM's Mangere home picketed" *Press* (digitized ed., 3 December 1984); "Pot Party" *Press* (digitized ed., 12 June 1971); For Judges, see: Chris Barton "Family Court is 'no man's land'" *The New Zealand Herald* (online ed., 19 June 2006); For foreign government representatives, see: "Protest at Envoy's Home" *Press* (digitized ed., 18 November 1969).

⁹ Leni Ma'ia'i "Government-sanctioned racism': Pasifika in New Zealand call for apology for Dawn Raid policy | New Zealand" *The Guardian* (online ed., 10 April 2021).

- c. The Harassment Act 1997 establishes the offence of criminal harassment, where a person harasses another with the intention of making them fear for their safety or knowing that it was likely to have that effect. Harassment requires a pattern of behaviour directed against another person, involving doing a specified act to the person on numerous occasions within a set time period.¹⁰ The Crimes Legislation (Stalking and Harassment) Amendment Bill proposes a new offence of stalking and harassment, which would replace the existing offence and would be punishable by a maximum of five years in prison.¹¹
- 12. There are also specific limits on protest activity in the vicinity of some premises where abortion services are provided.¹² Safe areas are considered and approved on a case-by-case basis and must be set out in regulations. It is an offence to engage in prohibited behaviour within a safe area, punishable by a fine not exceeding \$1,000.
- 13. Under the Resource Management Act 1991, local authorities can put in place bylaws to address noise affecting private property from a public place.¹³ Any person who fails to comply with a bylaw is liable to a penalty under s 242(4) of the Local Government Act 2002.
- 14. In all cases, charges must be weighed against the NZBORA rights and freedoms noted above, which have a bearing on how courts interpret offences.¹⁴

IPCA have identified broader issues with the policing of protests

- 15. The IPCA released a thematic review on the policing of public protests in New Zealand on February 2025, which it undertook following a series of complaints about Police handling of public assemblies.¹⁵
- 16. The review identifies various practical difficulties faced by Police in responding to incidents of protest activity in a way that both upholds the right to protest and maintains public order and safety. It concludes that the current legal framework for policing public order is not well-suited to protest situations.
- 17. The IPCA report recommends many changes to the current public order framework, which it presents as a package, including:
 - a. new standalone legislation for the policing of public assemblies
 - b. a nationwide notification regime for protests, with powers for Police to set protest conditions and offences for non-compliance with those conditions
 - c. changes to existing public order offences to avoid overlap with the proposed offences

¹⁰ Harassment Act 1997, s 4.

¹¹ “Crimes Legislation (Stalking and Harassment) Amendment Bill” New Zealand Parliament <<https://bills.parliament.nz/v/6/bdb818e0-3135-4d91-e700-08dd18052784>>.

¹² Contraception, Sterilisation, and Abortion Act 1977, s 13A.

¹³ For example, Clause 6(1) of the Auckland Council Public Safety and Nuisance Bylaw 2013.

¹⁴ Section 6 of NZBORA directs courts to interpret legislation consistently with the Act where it is possible to do so.

¹⁵ Independent Police Conduct Authority *Thematic Review on the policing of public protests in New Zealand* (18 February 2025).

- d. new offences for ‘residential picketing’ and impeding access to critical infrastructure
 - e. improvements to Police policies, processes, and training.
18. Regarding protests outside individuals’ private residences, the IPCA notes that its proposed carveout of protest activity from certain offences would mean that current disorderly offences would no longer apply. It considers this gap should be filled with an offence that prohibits, or limits, protest activity outside private residences and notes that similar laws have been applied to varying degrees in some other jurisdictions.¹⁶ The IPCA did not undertake detailed policy work on this recommendation.

What is the policy problem or opportunity?

19. There is scope to clarify and strengthen recognition of the right to privacy in respect of protest activity targeted at disrupting people's quiet enjoyment in their homes.
20. As noted above, the right to be free from arbitrary or unlawful interference with one’s privacy, family and home is affirmed in article 17 of the ICCPR, to which New Zealand is a signatory.
21. People generally have an expectation of privacy in their homes. However, the relevance of other rights or values, such as privacy, in determining whether protest activity is lawful is not always clear.

Intersection of the right to privacy with NZBORA rights

22. Some offences that could apply to protest activity expressly incorporate aspects of privacy. Intimidation, for example, makes it an offence to, with intent to frighten or intimidate any other person (or knowing that conduct will have that effect), watch or loiter near a person’s house.¹⁷ However, other offences, particularly those set at a lower level of seriousness, do not expressly incorporate privacy as a relevant consideration.
23. The issue of protest outside a private residence arose in a 2007 Supreme Court case, *Brooker v Police*, in which a person protested outside a police officer’s house and was charged with behaving in an offensive or disorderly manner. The then Chief Justice concluded that the offence for offensive behaviour or language¹⁸ was not designed to protect privacy interests, and that NZBORA rights (like freedom of expression) should only be balanced against non-NZBORA values (like privacy) if the law in question made it clear that the value was relevant.¹⁹ In the absence of clearer statutory direction for offences such as ‘offensive behaviour’ (as in *Brooker*), the courts have declined to balance the right to privacy against NZBORA rights where protest activity targeted at disrupting people's quiet enjoyment in their homes has occurred.
24. In practice, this means Police are likely to be conservative when responding to protest activity outside people’s homes, given the high threshold for prosecution in protest

¹⁶ Independent Police Conduct Authority *Thematic Review on the policing of public protests in New Zealand* (18 February 2025), p 63.

¹⁷ Summary Offences Act 1981, s 21(1)(d). Other offences that incorporate aspects of privacy include peering into someone’s home at night (Summary Offences Act, s 30) or behaving in a threatening way towards someone in a home (Crimes Act 1961, s 308).

¹⁸ Summary Offences Act 1981, s 4(1).

¹⁹ *Brooker v Police* [2007] NZSC 30, [2007] 3 NZLR 91 at [40] per Elias CJ.

situations. This means disruptive protests outside residences may continue, with impacts on people's privacy and quiet enjoyment.

Targeting of MPs at their homes may be an emergent issue

25. A healthy and functioning democracy upholds rights to political participation, which includes the ability to stand as a candidate and the public's access to elected representatives. Criticism and scrutiny of elected officials is expected and will often be expressed through protest action, such as marches, rallies, demonstrations, petitions, and correspondence.
26. Harassment of, and threats against, MPs and other public officials is an escalating issue in New Zealand and abroad. New Zealand surveys of sitting MPs conducted in 2014 and 2022 demonstrate that almost all forms of harassment have increased over that period, including gendered and racial abuse. For example:
 - a. almost all MPs had experienced some form of harassment (87 percent of 102 respondents in 2014; 98 percent of 54 respondents in 2022);
 - b. a much greater proportion of MPs are fearful for their own safety (72 percent, up from 20 percent), as well as that of their staff and family, with two-thirds of MPs having experienced alarming behaviour at their electorate office; and,
 - c. the proportion of MPs who had been targeted at their homes had increased (43 percent, up from 31 percent), as had the proportion who increased security at their home (64 percent, up from 25 percent).²⁰
27. In addition, recent research found New Zealand's women and minority MPs are more likely to be targets of other forms of harassing behaviour, with serious impacts on their sense of personal safety. A 2022 survey of women MPs, for example, showed 46 per cent felt unsafe in their own homes.²¹
28. Reporting of security threats to MPs has increased significantly in the past few years, as have requests for security advice. Parliament Security attributes this in part to a greater volume and intensity of threats, but also to increased visibility of and vigilance around security concerns, particularly following the Parliament Occupation in February 2022 and violence toward politicians overseas.
29. In 2024, Police observed a marked increase in protests outside the homes of MPs, though reported numbers remain low and data is only available back to 2022. There were 25 protest activities reported in 2024 (compared to none so far in 2025, none in 2023, and four in 2022). Most of the reported protests were by small groups, held on public footpaths, and used lawful behaviour like displaying signs. Nonetheless, such protests may be perceived by the MP, their family, or neighbours as a threat to their safety and security and an incursion on their privacy.

²⁰ Susanna Every-Palmer, Justin Barry-Walsh and Michele Pathé, "Harassment, stalking, threats and attacks targeting New Zealand politicians: A mental health issue" (2015) *Australian & New Zealand Journal of Psychiatry*, vol 49, 7; Susanna Every-Palmer, Oliver Hansby, Justin Barry-Walsh, "Stalking, harassment, gendered abuse, and violence towards politicians in the COVID-19 pandemic and recovery era" (2024) *Frontiers in Psychiatry*, vol 15, 7.

²¹ Rhiannon Watson, Lucy Hammons, Oliver Hansby, Justin Barry-Walsh, and Susanna Every-Palmer, "Misogyny, racism, and threats to our families: a qualitative study of harassment of female politicians" (2025) *Kōtuitui: New Zealand Journal of Social Sciences Online*, 1–29

30. An environment of increased threats to elected officials could impact on people's willingness to stand as a candidate or seek re-election. With the higher incidence of harassment of women²² and people in minority groups, this could diminish the representativeness of Parliament.
31. Several pieces of work are underway that may address broader concerns about MPs' safety and security. These include strengthened responses from Police and Parliament Security, the Parliament Bill, and the Crimes Legislation (Stalking and Harassment) Amendment Bill. Current and former MPs from across the political spectrum have questioned whether further changes are needed to increase protections for elected officials.²³

What objectives are sought in relation to the policy problem?

32. The primary objective of the proposal is to ensure that the law appropriately balances people's right to privacy (including quiet enjoyment of their homes) and the public's right to protest.

What consultation has been undertaken?

33. Work on the new offence was commissioned in late March, with the expectation that legislation could be introduced at the end of June. Therefore, we have been unable to engage widely and no public consultation was undertaken.
34. We met with Police and the Crown Law Office to test the workability of these proposals and engaged with Corrections on the operational implications. Parliament Security provided input on threats to MPs.
35. Police have noted some practical challenges that may limit the effectiveness of issuing a warning (option 2(a) and (b)) and suggested that warnings should only be required on a 'where practicable' basis.

S9(2)(h)

38. A longer timeframe would have allowed officials to consult with affected and interested parties, such as the public, civil society, activist groups and advocacy bodies (as the potential regulated parties), criminal and constitutional legal experts, Māori as Treaty partners, and employment associations and unions that represent individuals who are more likely to be the target of protests.

²² Manatū Wāhine Ministry for Women is preparing a long-term insights briefing on the effects of online harm on women and girls' participation in public life, for public consultation in mid-2025.

²³ Peter Dunne, "Harder balance to strike between politicians' safety and access" *Newsroom* (online, 10 April 2025); "Te Pāti Māori call for extra security following 'staged attack' on Debbie Ngarewa-Packer" *Stuff* (online, 16 December 2024); Claire Trevett, "Speaker Gerry Brownlee wants to boost security for MPs" *The New Zealand Herald* (online ed., 18 June 2024); Glenn McConnell, Jo Moir, "Threats against MPs unite parties to solve safety fears" *Newsroom* (online, 4 October 2022); Russell Palmer, "MPs' security in the spotlight after anti-vaccination attacks" *RNZ* (online, 16 November 2021).

39. Consultation could have provided more fully informed advice on:
- a. the nature and scale of the problem, including which groups are more frequent targets of protest outside private residences and what impact this has on individuals, their families, and neighbours;
 - b. the impacts these proposals may have on different groups;
 - c. te ao Māori perspectives on privacy and protest, including as an expression of rights afforded under the Treaty of Waitangi / te Tiriti o Waitangi; and
 - d. operational challenges, including any issues that may arise with compliance and enforcement.

Views of the public and stakeholders

40. We expect there will be a potentially significant degree of public interest in this work, given limitations of rights are often contentious.
41. The balancing of privacy with rights protected under NZBORA is likely to elicit different responses from different people, depending on which values they weigh more highly:
- a. some may consider the proposal necessary to protect people's privacy, safety and security, and ensure people are not discouraged from holding high profile roles;
 - b. others may consider the proposal an affront to fundamental democratic rights and an attempt to render protests ineffective or to silence political dissent.
42. Though we have not been able to consult, we have considered responses to the publication of the IPCA's report. Several stakeholders (including the Free Speech Union and New Zealand Council for Civil Liberties) expressed concern about any attempts to regulate protest activity.²⁴ One commentator expressed particular concern about the recommendation to introduce an offence for protesting outside the residence of a public figure, noting it as a "time-honoured and legitimate" form of protest.²⁵ Another commentator criticised the report for seeking to define "acceptable protest targets" but not providing adequate justification for the new offences.²⁶
43. We also considered submissions from stakeholders during public consultation on the Contraception, Sterilisation and Abortion (Safe Areas) Amendment Bill. Some of the common themes are indicative of the kinds of views that may be expressed on this proposal. For example, some submitters:
- a. thought the Bill had carefully balanced the rights of protestors with the rights of those accessing safe areas (including their right to privacy), with the limit on protest rights being no more than necessary as people could still protest outside the zone.

²⁴ "We reject IPCA call for government to issue protest permits" (20 February 2025) *New Zealand Council for Civil Liberties* <<https://nzcccl.org.nz/>>.

²⁵ Trevor Richards "Why a proposal to change the laws governing protest should worry us all" (27 March 2025) *The Spinoff* <<https://thespinoff.co.nz/>>.

²⁶ Kyle R. Matthews "Guest post 'Thematic Review: The Policing of public protests in New Zealand': A Critical Response" *New Zealand Council for Civil Liberties* <<https://nzcccl.org.nz/>>.

- b. acknowledged the important objective of the Bill but were reluctant for there to be any restriction on protest rights. For example, the Free Speech Coalition were concerned that the Bill may lead to restrictions on other protests that could be perceived as distressing.
- c. considered 'safe areas' would inherently undermine the purpose of the protests, by impairing protestors' ability to be heard by the people they wish to influence. Other submitters referred to case law that determined protesters are not entitled to a captive audience.²⁷
- d. considered there was insufficient evidence of protests or harmful activity outside premises that provide abortion services to justify limits on NZBORA rights.
- e. thought existing offences were sufficient and that the new offence would not be sufficiently distinct to justify it.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

44. The following criteria have been used to assess options to ensure they meet the policy objectives above.

Criteria	Meaning
Protects right to privacy	Whether the option recognises a right to privacy in one's home
Upholds NZBORA rights	Whether any limits on NZBORA rights are reasonably and demonstrably justified. Rights relevant to this criterion include: <ul style="list-style-type: none"> • freedom of expression (s 14) • freedom of peaceful assembly (s 16) • freedom of association (s 17) • freedom of movement (s 18).
Clear and targeted	Whether the law is easily understood and targets behaviours that are specific and well-defined
Workability	Whether the option is straightforward to implement and prosecute
Consistency with regulatory framework	Whether the option is consistent with existing criminal law ²⁸

45. We have weighted 'protects right to privacy' and 'upholds NZBORA rights' higher than the other criteria (double) but equal to each other. There is a tension between these two criteria, but they can be balanced.

²⁷ *Clubb v Edwards; Preston v Avery* [2019] HCA 11 at para 83.

²⁸ The Legislation Design Advisory Committee (LDAC) has issued guidance on creating criminal offences. LDAC, *Legislation Guidelines: 2021 edition*, p 121 – 127.

46. As noted above, section 5 of NZBORA provides that rights can be subject to reasonable limits that are justified in a free and democratic society. The courts have ruled that this test can be met if the limit serves a sufficiently important objective, is rationally connected to that objective, and is proportionate to both the value of the right and the importance of the objective.²⁹ The analysis considers whether the limit on NZBORA rights is proportionate.

What scope will options be considered within?

47. The scope of the options considered has been limited by direction from the Minister to create a new offence targeting residential protests with escalating penalties for repeat offending.
48. This work is being considered ahead of any broader consideration of the IPCA's report on the policing of public protests. This means that broader options to improve policing of public protest (which could also improve the policing of residential protests) have not been considered.
49. The following options were ruled out by the Minister's commissioning:
- a. amending existing public order offences to ensure the right to privacy is considered;
 - b. non-regulatory options, such as further guidance to Police and training for Police staff.
50. We considered but ruled out the following options:
- a. a complete prohibition on any protests occurring outside residential properties, as this could unintentionally impact broader protest activity occurring near (but not targeted at) residential properties. This would be a significant, and almost certainly unjustified, limit on freedom of expression.
 - b. offences that would specifically target intimidatory or aggressive behaviour outside private homes. Targeting these behaviours would have overlapped with existing offences such as intimidation. This approach could have also potentially applied to a much broader range of scenarios than intended (for example, neighbourly disputes or noise disruption caused by parties).

Approaches taken in other jurisdictions

51. The UK has powers and offences for specific behaviours that might occur in the context of residential protests. For example, s 42A of the Criminal Justice and Police Act 2001 makes it an offence to harass a person at their home for the purpose of persuading them, through harassment, alarm or distress, to do or not do something they are entitled to do. Section 142 of the Trade Union and Labour Relations (Consolidation) Act 1992, which makes it an offence to intimidate or annoy by violence, including outside a house, was the basis for New Zealand's intimidation offence.³⁰
52. In the United States, federal law prohibits picketing or parading in front of a courthouse or a judge's home with the intent of interfering with, obstructing, or impeding the

²⁹ *Hansen v R* [2007] NZSC 7.

³⁰ Summary Offences Act 1981, s 21; Police Offences Amendment Act 1913, s 2.

administration of justice, or with the intent of influencing any judge.³¹ A few states have outright bans on residential picketing (generally defined as a stationary protest outside an individual's home), and others have time, place, and manner restrictions on protests. These bans have been tested in the Supreme Court and were upheld as constitutional where they were sufficiently targeted, content neutral, and did not vest undue discretion in the police.³²

53. In 2021, an Irish member's bill sought to introduce an offence for the targeted picketing of a person's private residence within a 200-metre area, following an increase in such protests during pandemic restrictions. Prior to the 2024 general election, the bill progressed through the Seanad (the upper house). Consideration of the bill by the Dáil Éireann (the lower house) resumed in May 2025.³³

What options are being considered?

54. We considered five options for addressing protests outside private residences:
- a. Option 1: Status quo
 - b. Option 2(a): Offence for continuing to participate in a disruptive residential protest following a warning, with a single maximum penalty.
 - c. Option 2(b): Offence for continuing to participate in a disruptive residential protest following a warning, with escalating penalties for repeat offending.
 - d. Option 3(a): Offence for participating in a disruptive residential protest with a single maximum penalty.
 - e. Option 3(b): Offence for participating in a disruptive residential protest with escalating penalties.

Option 1 – Status Quo

55. Under this option, legislative settings for the regulation of protests would remain unchanged, so Police would continue to have limited ability to intervene in disruptive protests outside a person's home.

Option 2(a) – Offence for continuing to participate in a disruptive residential protest following a warning, with a single maximum penalty

56. This option is modelled on the existing offences for disorderly assemblies and obstructing a public way.³⁴
57. A new provision in the Summary Offences Act 1981 would, in general terms:
- a. allow Police to issue a warning to desist participating in a protest, where that protest:
 - i. is directed at a person in a residential property where they regularly reside, AND

³¹ Title 18, Section 1507 of the U.S. Code refers. It was enacted in 1950.

³² *Cox v. Louisiana* (1965); *Frisby v. Schultz* (1988); *Madsen v. Women's Health Center, Inc.* (1994).

³³ "Protection of Private Residences (Against Targeted Picketing) Bill 2021" (1 May 2025) *Houses of the Oireachtas*. <<https://www.oireachtas.ie/>>.

³⁴ Summary Offences Act 1981, ss 5A and 22.

- ii. causes unreasonable disruption to a resident's quiet enjoyment of their residential property, or their ability to access or leave their property
 - b. make it an offence, without reasonable excuse, to then continue participating in the protest or to participate in another protest to which the warning applied.
58. The maximum penalty for the offence would be a term of imprisonment not exceeding 3 months or a fine of \$2,000, which aligns with the current offences of disorderly assembly or intimidation.
59. A provision that targets residential protest too broadly may unintentionally impact other protest activity occurring near (but not targeted at) residential properties.³⁵ For that reason, this option would:
- a. be specific to protests targeted at a person at their usual residential address (including where protests are directed at a policy or cause supported or promoted by that person)
 - b. exclude protest marches or processions passing by a targeted residential property on a definite route
 - c. require unreasonable disruption to be caused (for example, protests that are excessively loud, aggressive, prolonged, or held at night). The provision would include statutory guidance.
60. The provision would cover protests directed at *any* person, not only MPs or other elected officials. This recognises that a range of people could be targeted by unreasonably disruptive protest activity.
61. The provision would make clear that the person who is the target of protest activity does not need to be physically present at the time of the protest, provided that the protest activity still causes an unreasonable disruption to a resident of the targeted property or a neighbouring property.

Option 2(b) – Offence for continuing to participate in a disruptive residential protest following a warning, with escalating penalties

62. This option would have the same features as option 2(a) but have escalating penalties for repeat offending:
- a. For a first offence, the maximum penalty would be a term of imprisonment not exceeding 3 months or a fine of \$2,000.
 - b. For second and subsequent offences committed within a five-year period, the maximum penalty would be a term of imprisonment not exceeding 6 months or a fine of \$4,000.

³⁵ For example, apartments that are located on main thoroughfares or adjacent to public spaces where protest activity frequently occurs (such as the parliament precinct in Wellington or Aotea Square in Auckland).

Option 3(a) - Offence for participating in a disruptive residential protest with single maximum penalty

63. Rather than requiring a warning to be given before an offence is committed, this option would instead make it an offence to participate in a protest —
- a. that is directed at a person in a residential property where they regularly reside
 - b. and which the participant knows, or ought to know, will cause disruption to:
 - i. a resident's quiet enjoyment of their residential property, or
 - ii. their ability to access or leave their property.
64. The maximum penalty for the offence would be a term of imprisonment not exceeding 3 months or a fine of \$2,000, which aligns with the current offences of disorderly assembly or intimidation.
65. Other than the additional *mens rea* outlined in para 63.b this option would be targeted at the same kinds of protests as option 2(a) (described in para 59).

Option 3(b) - Offence for participating in a disruptive residential protest with escalating penalties

66. This option would have the same features as option 3(a) but have the escalating penalties for repeat offending detailed under option 2(b).

How do the options compare to the status quo?

67. As noted above, this assessment gives double the weight to ‘protects right to privacy’ and ‘upholds NZBORA rights’ than the other criteria.

	Option 1 – Status Quo	Option 2(a) – <i>Offence for continuing to participate in a disruptive residential protest following a warning, with single maximum penalty</i>	Option 2(b) – <i>Offence for continuing to participate in a disruptive residential protest following a warning, with escalating penalties</i>	Option 3(a) – <i>Offence for participating in a disruptive residential protest with single maximum penalty</i>	Option 3(b) – <i>Offence for participating in a disruptive residential protest with escalating penalties</i>
Protects right to privacy	0	++ It clarifies that the right to protest in residential settings must be balanced against people’s right to privacy and quiet enjoyment of their homes.	++ Same as option 2(a)	++ It clarifies that the right to protest in residential settings must be balanced against people’s right to privacy and quiet enjoyment of their homes.	++ Same as option 3(a)
Upholds NZBORA rights	0	- It limits protest-related rights outside private residences (if the protest is disruptive, targeted, and stationary). It indirectly limits protest-related rights, as criminal liability arises only when a person ignores a Police warning to desist. A person is not prohibited from protesting at other locations, or protesting in a way that is not unreasonably disruptive. There is limited data on the nature and scale of the problem to support the introduction of the offence, which may weaken the justification for a limit on rights.	-- Escalating penalties could lead to disproportionately severe punishment and place a greater, and more unreasonable, limit on an individual's rights over time.	-- It limits protest-related rights outside private residences (if the protest is disruptive, targeted, and stationary), so long as the person knows, or ought to know, that unreasonable disruption is likely to be caused. It directly limits protest-related rights by criminalising one form of protest. A person is not prohibited from protesting at other locations, or protesting in a way that is not unreasonably disruptive. There is limited data on the nature and scale of the problem to support the introduction of the offence, which may weaken the justification for a limit on rights.	-- Escalating penalties could lead to disproportionately severe punishment and place a greater, and more unreasonable, limit on an individual's rights over time.
Clear and targeted	0	+ The offence will apply to a limited range of conduct only. Unlike public order offences, it will also be specific to protest only. Existing offences with ‘reasonableness’ tests rely on the discretion of officers, which can lead to inconsistent approaches. The provision will include statutory guidance on what an ‘unreasonable disruption’ may look like.	+ Same as option 2(a)	+ The offence will apply to a limited range of conduct only. Unlike public order offences, it will also be specific to protest only. Existing offences with ‘reasonableness’ tests rely on the discretion of officers, which can lead to inconsistent approaches. The provision will include statutory guidance on what an ‘unreasonable disruption’ may look like.	+ Same as option 3(a)

	Option 1 – Status Quo	Option 2(a) – Offence for continuing to participate in a disruptive residential protest following a warning, with single maximum penalty	Option 2(b) – Offence for continuing to participate in a disruptive residential protest following a warning, with escalating penalties	Option 3(a) – Offence for participating in a disruptive residential protest with single maximum penalty	Option 3(b) – Offence for participating in a disruptive residential protest with escalating penalties
Workable	0	<p>+</p> <p>The new offence will enable Police to intervene in protests outside public residences, which under existing laws has a very high bar.</p> <p>As the offence actively balances privacy alongside NZBORA rights, it may be less likely to be read down by the Courts.</p> <p>Police have indicated that issuing a warning may not be practicable in some situations, such as where protestors have taken measures to not be able to hear warnings (e.g., through earmuffs or loud music).</p> <p>A new offence may not be an effective deterrent for some protestors and would not resolve the issue of some protestors leaving before Police can arrive.</p>	<p>0</p> <p>Because escalating penalties could lead to disproportionately severe punishment, the courts may interpret the threshold for criminal liability under the provision at a higher level to ensure it can be applied consistently with NZBORA. This could constrain the range of circumstances the provision would apply to in a way that does not meet the policy objectives.</p>	<p>++</p> <p>The new offence will enable Police to intervene in protests outside public residences, which under existing laws has a very high bar.</p> <p>As the offence actively balances privacy alongside NZBORA rights, it may be less likely to be read down by the Courts.</p> <p>A new offence may not be an effective deterrent for some protestors.</p> <p>As this option does not require a warning to be given, it may allow Police to intervene in more situations, including where protestors have left the scene. However, any prosecutions would still need sufficient evidence to establish the elements of the offence, which may be challenging.</p>	<p>0</p> <p>Because escalating penalties could lead to disproportionately severe punishment, the courts may interpret the threshold for criminal liability under the provision at a higher level to ensure it can be applied consistently with NZBORA. This could constrain the range of circumstances the provision would apply to in a way that does not meet the policy objectives.</p>
Consistency with regulatory framework	0	<p>0</p> <p>Including a requirement for a warning is consistent with other offences that involve competing rights and interests in public spaces (such as disorderly assembly and obstructing a public way).</p> <p>May capture some conduct that is not traditionally subject to criminal sanction.</p>	<p>--</p> <p>Escalating penalties are not a common feature of New Zealand’s criminal law. The number, seriousness, date, relevance, and nature of any previous convictions is already a relevant aggravating factor at sentencing.</p>	<p>0</p> <p>While offences generally do not directly target protest, a small number (such as the offence for prohibited behaviour in an abortion safe area) do.</p> <p>May capture some conduct that is not traditionally subject to criminal sanction.</p>	<p>--</p> <p>Escalating penalties are not a common feature of New Zealand’s criminal law. The number, seriousness, date, relevance, and nature of any previous convictions is already a relevant aggravating factor at sentencing.</p>
Overall assessment	0	4	-1	3	-1

Key for table:

- ++ much better than the status quo
- + better than the status quo
- 0 about the same as the status quo
- worse than the status quo
- much worse than the status quo

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

68. On balance, our recommendation is option 2(a), as it upholds the rights to privacy while providing a more proportionate limit on NZBORA rights, and its penalty aligns with existing criminal laws and is appropriate for the nature of the offending and potential for harm.
69. Under the status quo, Police have limited ability to intervene in disruptive protests outside a person's home. If an offence is introduced for participating in a disruptive residential protest, Police will be empowered to respond to such protests, which may improve public confidence in law and order. To the extent that this changes protest behaviour, it could reduce the number of disruptive residential protests and increase the privacy, peace, and safety of residents.
70. We have considered whether the use of the criminal law is justified and whether the limits on NZBORA rights are necessary and proportionate, with regard to the limited evidence we have on the frequency and impacts of disruptive residential protests.
71. Under options 2(a) and (b), the requirement for a Police warning is likely to be a more proportionate limit on NZBORA rights and freedoms. Criminal liability would arise only when a person ignores a Police warning to desist, following an assessment by Police of the lawfulness of a protest (including the reasonableness of the disruption). However, the workability of the offence may be constrained in certain circumstances.
72. By not requiring a warning, options 3(a) and 3(b) may allow Police to intervene in more situations, including where protestors have left the scene. To prosecute, Police would still need sufficient evidence to establish culpability. In practice, we understand that Police are likely to issue a warning in the first instance where practicable.
73. The escalating penalties set out under options 2(b) and 3(b) may not deter repeat offending any better than a single, maximum penalty. There is significant evidence indicating a weak link between increasing penalty levels and deterrence.³⁶ In addition, an escalating penalty may lead to disproportionately severe punishment and could place a greater, and more unreasonable, limit on an individual's rights over time.
74. A single maximum penalty, as proposed by options 2(a) and 2(b), would be consistent with New Zealand's general approach to penalties. It would also still allow the number, seriousness, date, relevance, and nature of any previous convictions to be considered as an aggravating factor at sentencing.³⁷

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

75. The Cabinet paper proposes option 3(a): introducing an offence for participating in a residential protest knowing it will disrupt a resident's quiet enjoyment of their property, with a single maximum penalty.

³⁶ A synthesis of 47 studies by Washington State University researchers concluded that severe punishment has a minimal effect on reoffending. Pratt, Cullen, Blevins, Daigle, and Madensen, (2006), *The empirical status of deterrence theory*, in Cullen, Wright, and Blevins, *Taking Stock: The Status of Criminological Theory*. New Brunswick, NJ: Transaction Books.

³⁷ Sentencing Act 2002, s 9(1)(j).

76. This option is targeted in the same way as the Ministry's preferred option 2(a), as set out in para 59. The proposed penalty under each option is also the same.
77. Unlike the Ministry's preferred option, this option does not require Police to first issue a warning to desist participating in a protest. Instead, the offence applies if the participant knows, or ought to know, the protest will cause disruption.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

78. The costs and benefits of the preferred option and the Ministry's preferred option are expected to be broadly the same and are outlined below.

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups: General public (complainants, offenders)	Costs related to criminal court proceedings (for example, time off work) and potential appeals to the High Court. Non-monetised costs that could arise include: the new offence having a chilling effect on lawful protest, and public perception that the Government is undermining people's fundamental rights.	Low	Low
Regulators: New Zealand Police	Costs of responding to reports, laying charges, and undertaking proceedings. Given the overall low incidence of residential protesting, these are not expected to be significant. The costs of investigations and prosecutions will vary depending on the complexity and length of time involved. Costs related to updating training, processes, and guidance.	Low	Low
Ministry of Justice	Cost of court proceedings and impact on court timeliness. In some cases, prosecutions may be in addition to charges for other offences under the current law.	Low	Low
Department of Corrections	Conviction could result in a prison sentence of 3 months or less or community-based sentences. Impact on the prison population is unknown but likely to be very low, as imprisonment is expected to be the	Low	Low

	<p>outcome in a small proportion of cases only. Direct imprisonment costs relate to rations, bedding, clothing, medical and transport.</p> <p>Indirect imprisonment costs include additional resourcing of frontline staff and prisoner network funding to increase capacity.</p>		
Crown Law	If convictions result from the new offence, some appeals are likely.	Low	Low
Total monetised costs		Low	Low
Non-monetised costs		Low	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups: General public (complainants, offenders)	<p>The proposal will clarify the importance of privacy and quiet enjoyment in one's own home, and provide greater certainty around the parameters of lawful protest in residential settings (for those organising and participating in protests, as well as targets of protests).</p> <p>To the extent that this changes protest behaviour, this could reduce the number of unreasonably disruptive protests outside people's homes.</p>	Low-medium	Medium
Regulators: New Zealand Police	<p>The proposal would introduce a clear and targeted offence that gives Police the means to intervene in disruptive residential protests.</p> <p>If the offence deters some people from participating in (or organising) an unreasonably disruptive protest, this would reduce the cost of enforcement.</p>	Low-medium	Medium
Total monetised benefits		None	Low
Non-monetised benefits		Low-medium	Medium

Section 3: Delivering an option

How will the proposal be implemented?

79. The proposal will require legislative amendments to the Summary Offences Act 1981.
80. Implementation of the new offence is to be funded out of agencies' baselines. The Ministry, Police, and Department of Corrections will be required to undertake key implementation activities to bring the offence into force.
81. Ministry of Justice implementation will generally include:
 - a. administering the legislation containing the new offence
 - b. providing communications to the judiciary and legal profession;
 - c. providing communications to its relevant contracted service providers and non-governmental organisations on the creation of the new offence;
 - d. updating IT systems (such as offence codes).
82. New Zealand Police implementation activities will include:
 - a. making necessary changes to operational policies, guidelines, and documentation;
 - b. providing communications and training to staff;
 - c. updating IT systems (such as offence codes); and,
 - d. developing operational guidance on what constitutes 'unreasonable disruption.'
83. The Department of Corrections will be responsible for managing any persons sentenced to imprisonment.

How will the proposal be monitored, evaluated, and reviewed?

84. Based on current regulatory responsibility, the Ministry will have responsibility for monitoring, evaluating and reviewing these options.
85. The Ministry collects data on charges, convictions and sentencing outcomes for all offences. The Ministry will use this data to monitor charge and prosecution rates of the new offence. The Ministry will also record any issues in its systems issues register.
86. Police will use its existing systems to collect information about callouts, charges and prosecutions to monitor use of the new offence.
87. Reported case law will be able to be used to monitor the effectiveness of the new offence and other amendments.