



SUBMISSION OF THE FREE SPEECH UNION ON THE SUMMARY OFFENCES (DEMONSTRATIONS NEAR RESIDENTIAL PREMISES) AMENDMENT BILL

INTRODUCTION

1. The Free Speech Union (“FSU”) is a registered trade union with a mission to fight for, protect, and expand New Zealanders’ rights to freedom of speech, conscience, and intellectual inquiry. We envision a flourishing New Zealand civil society that values and protects vigorous debate and the expression of dissenting ideas.
2. This submission addresses the Summary Offences (Demonstrations Near Residential Premises) Amendment Bill (“the Bill”).
3. We accept that protests which cross the line from expression into coercion, by preventing residents from the lawful and peaceful use of their homes through sustained noise, obstruction, or intimidation, can legitimately be restricted. The distinction lies between non-threatening, non-coercive expression, including the vigorous or heartfelt communication of disapproval, and conduct that seeks to compel or punish by denying others quiet possession of their home. The law should target the latter without suppressing the former.

SUMMARY OF SUBMISSION

4. Our submission can be summarised as follows:
 - a. The FSU supports reasonable restrictions on demonstrations that cross the line from expression into coercion, for example, through sustained noise, intimidation, or obstruction that denies residents peaceful use of their homes.
 - b. The Bill, however, is drafted in vague and overbroad terms. Undefined and subjective language such as “near,” “unreasonable disruption,” and “directed at” creates uncertainty for protestors, police, and the courts, inviting selective enforcement and chilling legitimate expression.
 - c. The offence’s low mental threshold (“*knows, or ought to know*”) and lack of safeguards risk criminalising peaceful, symbolic protest, contrary to the principles of minimal impairment and foreseeability under the New Zealand Bill of Rights Act 1990.
 - d. Existing laws already address genuinely coercive conduct, including harassment, trespass, intimidation, and excessive noise, and the Government has not demonstrated a legislative gap that justifies creating a new offence.
 - e. The proposed law risks reversing the balance recognised by the courts, which protect the right to protest in public spaces even where expression causes discomfort or inconvenience.
 - f. A clearer and narrower approach would target only conduct intended to harass, threaten, or significantly disrupt residents’ lawful use of their homes, while protecting peaceful and non-coercive expression.

5. We make the following recommendations:

- a. Define key terms clearly and narrowly, including “*near*,” “*residential premises*,” “*demonstration*,” and “*unreasonable disruption*”, so the offence is confined to genuinely coercive conduct and provides clear guidance to police and protestors.
- b. Limit liability to intentional or reckless coercive behaviour, not to protestors who merely “ought to know” their actions may cause inconvenience or disagreement.
- c. Retain freedom for peaceful and symbolic protest, ensuring that expressive but non-threatening activities such as brief vigils or displays of dissent remain protected.
- d. Demonstrate necessity before enacting any new offence, showing that existing laws on harassment, trespass, disorderly behaviour, and noise are inadequate to address truly harmful conduct.
- e. Ensure any new provision is residual and proportionate, applying only where existing offences do not, and consistent with section 14 of the New Zealand Bill of Rights Act.
- f. Clarify the Bill’s limits of application, explicitly excluding demonstrations that merely pass by without stopping, in line with the Minister’s assurance during the first reading.

SUBMISSION

Vague and overly broad offence

6. The offence created by new section 5B is framed in terms that are imprecise and overly broad. The central locational trigger “*near any residential premises*” is undefined, leaving uncertainty about the extent of the restricted area. That uncertainty is magnified by the definition of ‘residential premises’, which extends beyond the dwelling itself to “*any land, improvements, or appurtenances... belonging to the dwelling or usually enjoyed with it.*” While it may be legitimate to restrict protests immediately outside someone’s home, the Bill goes further by leaving ‘near’ undefined and extending ‘residential premises’ to surrounding land and shared spaces, creating uncertain and potentially expansive protest-free zones. This blurs the line between peaceful protest and behaviour that intrudes on people’s privacy at home.
7. The definition of “*demonstration*” compounds the scope of the offence. It is framed broadly to include “*a public expression of support or opposition by a person or group of persons to further a cause or campaign.*” While liability only arises if the demonstration also causes a “*disruption*,” the Bill defines disruption in wide and subjective terms, including interference with the “*use or enjoyment*” of premises. Even a lone individual holding a placard or maintaining a silent vigil could be said to affect a resident’s ‘enjoyment’ of their home. The Bill’s failure to distinguish between coercive disruption and mere expression is its core flaw. Peaceful but passionate protest, even when inconvenient, is not coercive. Only conduct intended to deny residents lawful use or access to their homes, through noise, obstruction, or intimidation should fall within scope.

8. The offence also requires that a demonstration be “*directed at any regular occupant*,” yet the Bill gives no guidance on what that means. Without clear limits, this wording risks capturing peaceful, symbolic protests as well as genuinely intimidatory ones. A quiet daylight protest across the street from an elected official’s home could still be deemed “*directed at*” the occupant. The problem is compounded by the clause extending liability to disruption affecting “*any other residential premises*,” which could make whole streets or neighbourhoods effectively off-limits to protest. Such breadth goes well beyond what is necessary to protect residential privacy and blurs the vital line between expression and coercion.
9. The Attorney-General’s advice acknowledges these same concerns, noting that vague terms such as ‘unreasonable disruption’ and ‘regular occupant’ will require a “*highly fact-sensitive inquiry*” by the courts. This confirms that the Bill’s core elements are so open-textured that their boundaries will depend on judicial interpretation rather than clear statutory limits. Yet it is not judges who will first apply these standards, but police officers deciding whether to arrest. If the law is uncertain even for courts, it is unlikely to give clear guidance to police officers or protestors about what conduct crosses the line from expression into coercion.

Recommendations:

- Define the offence by reference to coercive or intimidatory conduct, distinguishing between peaceful protest, even when fervent or inconvenient, and behaviour intended to deny residents the lawful use or enjoyment of their homes, such as sustained noise, obstruction, or harassment.
- Define key terms clearly to give practical guidance to police, protestors, and residents, so the law can be applied predictably and not left to case-by-case interpretation by the courts.
- Clarify the meaning of “*near*” and “*residential premises*” to ensure the restriction protects privacy at home without unintentionally capturing public or shared spaces in the surrounding area.
- Clarify “*demonstration*” to exclude very small, peaceful, or symbolic acts, such as a lone person with a placard or a silent vigil, that fall within the core of protected political expression.
- Tighten “*disruption*” so that liability arises only where there is a substantial and objectively verifiable interference with a resident’s privacy or ability to use their home, not merely a subjective sense of discomfort or annoyance.
- Clarify “*directed at*” to ensure the offence targets only conduct clearly intended to harass or intimidate an occupant, and not general or symbolic protest activity.
- Delete reference to disruption affecting “*any other residential premises*”. It expands the offence beyond its stated purpose of protecting privacy in the home and risks criminalising protest based on incidental effects on neighbours. The offence should apply only to disruption at the targeted address.

Low threshold of liability and absence of safeguards

10. Freedom of expression necessarily allows for some disruption. Protest is often designed to attract attention and cause inconvenience. The legitimate boundary is reached only when expression becomes

coercive, where its effect, and often its intent, is to deprive the target of lawful access to or quiet use of their home. The Bill's vague and subjective language risks treating ordinary expression as coercive, rather than drawing a clear and principled line between the two.

11. The mental element of the offence compounds this problem. Liability arises where a person "*knows, or ought to know*" that their conduct is causing an unreasonable disruption. While this standard is familiar in New Zealand law, it is generally reserved for contexts involving serious harm, such as threats to personal safety. Applying it to expressive conduct, which may be lawful and peaceful but contentious, risks criminalising protest itself. The Harassment Act 1997, for example, applies the same standard only where behaviour causes a person to fear for their safety and allows a defence of lawful purpose. The Bill contains no such safeguard.
12. The Regulatory Impact Statement also records that Ministry of Justice officials preferred a more proportionate model, where liability would arise only if conduct continued after a clear police warning. The Government chose the stricter version now before the Committee, omitting any warning requirement. This means a person may face arrest without being told their conduct has crossed the line into disruption. That approach is inconsistent with the principle of minimal impairment under the New Zealand Bill of Rights Act, which requires that restrictions on fundamental rights go no further than necessary.

Recommendations:

- Replace the 'ought to know' test with an intent or recklessness standard, so that only those who deliberately or consciously disregard the risk of causing serious disruption are liable, rather than protestors who could later be said to "*ought to have known*" their conduct was disruptive.
- Clarify that "*unreasonable disruption*" must mean substantial, objective interference, not minor inconvenience, noise, or annoyance that is inherent in peaceful protest.
- Define the offence to target coercive or intimidatory conduct, where expression is used to deny residents the lawful use or access of their homes, rather than the mere communication of disapproval or dissent.
- Consider reintroducing the warning-based safeguard identified in the Regulatory Impact Statement, which officials regarded as a more proportionate and less rights-restrictive model.

Necessity and proportionality

13. Any new criminal offence must be justified by showing that existing law is inadequate to address the harm in question. The Government has not demonstrated that gap. Conduct that truly crosses the line from expression into coercion, such as harassment, trespass, intimidation, or sustained noise, can already be dealt with under the Summary Offences Act, the Harassment Act 1997, the Trespass Act 1980, and local noise control bylaws. The Bill therefore risks duplicating offences that already protect residential privacy and public order.

14. The Regulatory Impact Statement argues that a “*gap*” exists because current offences protect public order rather than individual privacy. That reflects the deliberate balance struck by the courts where personal offence or discomfort does not, by itself, justify criminal sanction. Privacy in one’s home is already protected by laws against harassment, trespass, and sustained noise. The Bill would go further, extending that protection into public spaces at the expense of freedom of expression, effectively reversing the balance the courts have drawn between privacy and protest.
15. The Independent Police Conduct Authority (IPCA) has identified demonstrations outside private homes as an emerging phenomenon and suggested that a tailored offence might be warranted. However, the Regulatory Impact Statement concedes that data on such protests is extremely limited, that no public consultation was undertaken, and that officials favoured a more proportionate warning-based model. These acknowledgements suggest that enforcement challenges have been operational rather than legislative.
16. Where existing tools are available and the evidence base is weak, introducing a new offence that captures peaceful or symbolic protest cannot be said to meet the principle of minimal impairment under section 5 of the New Zealand Bill of Rights Act. A proportionate response would refine and apply existing powers, not create a vague and overlapping new offence that risks criminalising expression rather than coercion.

Recommendations:

- Demonstrate necessity before enacting a new offence, by providing clear evidence that existing laws governing disorderly behaviour, harassment, trespass, and noise are insufficient to address genuinely coercive conduct at residential addresses.
- Avoid duplication by drafting any new provision as residual, applying only where no existing offence covers the conduct, to ensure minimal impairment of expressive rights.
- Maintain the balance struck by the courts in *Brooker* and *Morse* by protecting freedom of expression in public spaces and treating private discomfort or offence as insufficient grounds for criminal liability.
- Reconsider the stricter model adopted in the Bill, and re-evaluate the more proportionate, warning-based approach preferred by officials in the Regulatory Impact Statement.

Clarity and Limits in Application

17. The Minister assured the House that “*a march which passes by ... wouldn’t be covered.*” However, this is not reflected in the Bill. To avoid confusion or selective enforcement, the text should expressly exclude demonstrations that merely pass by without stopping, while ensuring repeated or targeted returns are captured. Clear drafting of this kind would give effect to the Bill’s stated intent without overreach.

Conclusion

18. The FSU supports narrow and proportionate measures to protect privacy in the home where conduct is genuinely coercive, such as sustained noise, obstruction, or intimidation that prevents residents from the lawful use of their property. However, the Bill as drafted fails to draw that essential distinction. By relying on vague, subjective, and overlapping terms, it risks criminalising peaceful expression and eroding long-standing protections for protest in public spaces. We urge the Committee to refine the Bill so that it targets coercive behaviour without suppressing legitimate dissent or chilling democratic participation.