



## **The Protection of the Freedom of Expression Bill**

### **Explanatory Note**

#### **General Policy Statement**

People advocating controversial causes are often met with opposition from those who disagree with them.

This opposition has gone beyond heckling at public meetings.

It has become hostile, aggressive and violent. Sometimes the opponents do not bother with explanation or argument. Their whole strategy can be to try to silence the unwelcome views by getting authorities to cancel or to block meetings, because of fear of violence from the anti-free speech people. They want to exploit a climate of fear.

This form of violent opposition restricts or prevents the exercise of a speaker's freedom of expression. It interferes with the law's right to hear others' points of view. It is known as the "heckler's veto" though a better description is probably the more blunt "thugs' veto". It challenges democracy. It challenges the democratic process. It is intolerant, totalitarian bullying.

An example of the "veto" in action was seen from the violence used by protesters to force the cancellation of an event in Auckland's Albert Park where Kelly-Jay Keen-Minshull (Posie Parker) was due to speak. The Police were reluctant to intervene to ensure that the speaker had a chance to speak.

The "hecklers veto" may directly frighten those who hold controversial views.

It also deters those who would make premises available for meetings. Risk averseness on the part of local authorities means they are reluctant to make public halls available to controversial speakers. Local authorities claim health and safety reasons for denying or cancelling bookings.

This Bill is directed towards local authorities and the Police.

It places the freedom of expression as the principal consideration for local authorities to address when providing premises for speakers.

Local authorities will not be able to refuse to make premises available because there may be controversy or disagreement with a speaker's point of view.

Local authorities cannot use intimidation by counter protesters as a reason to refuse to make premises available.

Local authorities will not be able to hide behind the provisions of the Health and Safety at Work Act 2015 as a basis for refusing to make premises available or to cancel bookings.

If a local authority acts other than in accordance with the Bill it may face consequences such as damages and costs.

It reinforces the Police duty to take necessary steps to protect the exercise of freedom of expression, and it protects Police management from Health and Safety liability that should be properly directed at those who threaten or use violence or other unlawful coercion.

This Bill is designed to revive and strengthen our practical respect for freedom of speech.

### **Clause by Clause Analysis**

Clause 1 is the title clause

Clause 2 sets out the principle object of the Bill, emphasizing the importance of the freedom of expression

Clause 3 sets out the circumstances under which a provider may not refuse to make premises available for public speaking events, meetings or other assemblies.

The emphasis is upon physical meetings rather than including "online" meetings.

The provider may not refuse the use of the premises because of

1. The ideas or opinions of an individual
2. The policy or objectives or the ideas or opinions of any of the members of a group or organization
3. The activities of those who might disrupt the exercise of the freedom of expression
4. Any apprehended breach of the provisions of the Health and Safety at Work Act 2015

In addition any terms and condition relating to the provision or use of the premises must not be discriminatory based on 1 - 4 above

Clause 4 contains the relevant definitions and imports the definitions of freedom of expression, association and peaceful assembly found in the New Zealand Bill of Rights Act 1990.

The definition of premises emphasizes the public space requirement.

The definition of provider incorporates the requirements of section 3(b) of the New Zealand Bill of Rights Act in that there must be a public character to the duties of the organization providing the premises

The definition of speaker emphasizes that the person hiring the premises from a provider to exercise freedom of expression rights

Clause 5 (1) imposes a positive duty upon the provider to recognize the paramountcy of the freedom of expression, association and peaceful assembly

Clause 5(2) imposes a positive duty upon the Police to ensure the rights of freedom of expression, association and peaceful assembly are upheld and that those who would unlawfully infringe those rights are prevented from doing so.

Clause 5(3) provides a specific exemption of liability under the Health and Safety at Work Act 2015 for any decisions made pursuant to clauses 5(1) and (2).

Clause 6 makes it clear that if a provider breaches any duties to a person under the Act (for example refuses the use of premises based on the policy of objectives of the group) that person may bring civil proceedings to recover any losses caused by the breach.

Clause 7 makes provision for the types of recompense or damages that a Court may impose in proceedings brought under Clause 6. This includes:

- a) Costs or expenditure incurred by way of planning for the event where a provider has cancelled the event in breach of the provisions of the Bill.
- b) Exemplary damages where the breach has been particularly egregious. This has been included to emphasise the paramountcy of freedom of expression.
- c) For costs on a solicitor/client basis which are the actual costs involved in bringing the proceedings rather than the costs provided in a Court scale.