NEWSLETTER

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Countering foreign interference

As part of the Government's commitment to support government agencies to combat foreign interference in New Zealand, the Crimes (Countering Foreign Interference) Amendment Bill (Bill) was introduced and passed its first reading in November 2024.

The Bill defines foreign interference as "an act by a foreign state, often through a proxy, that is intended to disrupt or subvert New Zealand's national interests by covert, deceptive, corruptive, or coercive means". This can take the form of a foreign state covertly influencing or manipulating electoral processes or government decision making, or suppressing the views of individuals or a community that the foreign state perceives as undermining its authority.

The Bill's Regulatory Impact Statement reveals that our intelligence and security agencies have advised that a small number of states engage in foreign interference in New Zealand, targeting our political, academic, media, and business sectors. An example is given of a foreign-state representative in 2022 who secretly worked with New Zealand based individuals to persuade a person with political influence to change their stance on a subject sensitive to the foreign state. The agencies also reported that our refugee, migrant, ethnic and religious communities are frequently targeted to stifle or control the views they express in relation to a foreign state.

To strengthen our criminal-justice response to foreign interference, the Bill would amend the Crimes Act 1961, introducing new offences that specifically target foreign state interference; these include:

- a foreign interference offence to criminalise covert, deceptive, corruptive, or coercive conduct undertaken for, or on behalf of, a foreign power to intentionally harm or being reckless as to whether

the conduct is likely to harm, core New Zealand interests, such as security or defence, elections, officials' decision-making, and the exercise of human rights;
- a new offence that would apply an uplift in penalty to an existing imprisonable offence (for example, intimidation, blackmail, and corruption) to recognise the additional harm involved to benefit a foreign power; and
- new offences that address gaps in existing law related to criminal liability for offences of espionage, treason, and inciting to mutiny, to ensure that individuals (within and outside NZ) who owe allegiance to the Sovereign in right of New Zealand can be held liable as a party if they assist others with respect to these offences.

For the purposes of the Crimes Act, the Bill sets out the definition of "owes allegiance" to make it clear who can be held liable.

Penalties would range from up to 14 years in prison for intentional conduct, and up to 10 years for reckless behaviour. The offences would not apply to individuals who had no reasonable way of knowing they were being used to undertake foreign interference.

The Bill would also add local government and Offices of Parliament to the list of public bodies covered by the current wrongful communication of information offences.

The Justice Select Committee report is due 19 May 2025.

Legislation introduced to make stalking a criminal offence

In response to advocacy groups calling on successive governments to recognise stalking as a crime, in December 2024 the Government introduced the Crimes Legislation (Stalking and Harassment) Amendment Bill (Bill), which would make stalking and harassment a new criminal offence. Research conducted here and overseas underlines the emotional, psychological, social and economic impact that stalking exacts, and that it is a significant predictor of serious assault, including homicide.

The Bill asserts that current legislation addresses harassment but does not adequately address stalking or provide adequate protection for victims. To address this the Bill would repeal the offence for criminal harassment in the Crimes Act and replace it with a new stalking and harassment offence.

Stalking and harassment would be defined as a pattern of behaviour by a person (perpetrator) that includes at least three specified acts to another person (victim) in a 12-month period, with the perpetrator knowing that it was likely to cause fear or distress to the victim. A perpetrator's actions may include the same or different types of specified acts, which include:

- watching, following, loitering near, or obstructing a person;
- recording or tracking;
- contacting or communicating;
- damaging, devaluing, moving, entering, or interfering with taonga or property (including pets);
- damaging or undermining a person's reputation, opportunities, or relationships; and
- acting in any way that would cause fear or distress to a reasonable person.

Also covered is that the specified acts may be done directly or indirectly to any third-party individual because of their family relationship with the person being stalked; for example, where children or friends are targeted to cause fear or distress to the victim. The Bill provides that a specified act may be carried out by or through any means including: tracking devices, digital applications spyware, drones or the use of artificial intelligence.

The penalty for an offence of stalking and harassment would carry a maximum of five years imprisonment. By comparison a conviction for criminal harassment under current legislation carries a maximum sentence of up to two years.

To support the new offence, the Bill would include the following amendments to the Sentencing Act 2002:

- Allow for restraining orders under the Harassment Act and orders under the Harmful Digital Communications Act to be made at sentencing of stalking and harassment. Currently victims have to go through additional court processes to obtain these orders.
- Add two new aggravating factors that the court must consider at sentencing, one where an offence was committed while the offender was under a restraining order, and another that takes into account the cumulative harm of an offender's behaviour over a prolonged period.

The Bill would also amend the Arms Act to disqualify a person convicted of stalking in the previous 10 years from holding a firearms licence, and amend the Family Violence Act to expand the definition of psychological abuse to include stalking.

At its first reading the Bill had cross party support. The Justice Select Committee report is due 10 June.

Broadcast advertising and trading days restrictions

The longstanding prohibition on advertising on Sunday and Anzac Day mornings between 6am and 12pm for broadcast television, and on Christmas Day, Good Friday and Easter Sunday for both television and radio broadcasting, has come up on the Government's agenda for repeal, with the Broadcasting (Repeal Of Advertising Restrictions) Amendment Bill (Bill) introduced in December 2024.

The purpose of the Bill in repealing the advertising restrictions under section 81 of the Broadcasting Act 1989, is to level the playing field for New Zealand media companies which compete with media platforms such as On-demand and live-streamed content that currently are not subject to the same restrictions. Media companies consider that the restrictions have seen them forego an estimated $6 million in advertising revenue each year.

New Zealand on Air data revealed that in 2024 YouTube was viewed daily by 44% of the population. This underlines the increasing shift away from mainstream media. One of the arguments is that this trend has reduced the reach and impact of the advertising restrictions, and as such, are no longer as effective in achieving their original purpose.

The original intent of the advertising restrictions when enacted in 1989 was "to maintain a place for diversity of less commercial programming (i.e., public and special interest content)". However, a search on forums, as to public perception of the intent of the restrictions, would suggest that traditionally these days were kept free of advertising to keep the focus on the day being commemorated and a time for family gatherings, where viewing TV without the intrusion of consumerism was valued.

The Bill passed its first reading with the vote being treated as a conscience vote, and with interest expressed at the reading of hearing the publics' view on this subject, public submissions at Select Committee may play a key part as to where this lands. The Select Committee's report is due on 18 June 2025.

On a similar note, the Repeal of Good Friday and Easter Sunday as Restricted Trading Days (Shop Trading and Sale of Alcohol) Amendment Bill (Amendment Bill), had its first reading on the last day of Parliament 2024.

The Amendment Bill was treated as a conscience vote and was voted down by 74 to 49. From the first reading, the sentiment voiced against this legislation was largely based on protecting the rights of workers to enjoy time off and to promote family togetherness.

Gene technology laws to be modernised

The Hazardous Substances and New Organisms Act 1996 (HSNO Act) strictly regulates and limits how genetically modified organisms (GMOs) and gene technologies can be used in New Zealand. The precautionary approach it takes is considered by industry players to be outdated; given the advances in this field since it was enacted. Further, the regulatory burden it places on the development and use of gene technologies and GMOs is hindering our taking advantage of benefits to the environmental and the primary and health sectors. Advances Australia, Canada, England and European nations have been benefiting from.

With this background, the Gene Technology Bill (Bill) was introduced in December 2024 to modernise our gene technology laws. This legislation, which draws on Australia's Gene Technology Act 2000, would replace parts of the HSNO Act with a new regime to regulate GMOs. At its core, a Gene Technology Regulator (the Regulator) would be established within the Environmental Protection Authority to be the independent decision-maker. A Technical Advisory Committee and a Maori Advisory Committee would be established to provide the Regulator expert advice.

The Regulators responsibilities would include the assessment and management of risks of regulated organisms, providing information to the public, guidance to regulated parties and technical advice to Ministers.

An authorisation framework would be created to provide for the proportionate management of risk. A gene technology/activity would be categorised by whether it is conducted in containment, is for clinical trial or medical application, or is intended to be released into the environment. For each activity category, authorisation pathways and requirements would be calibrated to the level of risk. This risk tier framework includes:

- Exempt activities – those that are minimal risk products of gene editing, for example, products that cannot be distinguished from those produced by conventional processes.
- Non-notifiable activities – very low risk activities not requiring active monitoring by or notification to the Regulator before commencing, for example, those already regulated by Medsafe.
- Notifiable activities – those that are low risk and only require the Regulator to be notified that the activity is being carried out, for example, laboratory research with animals.
- Licensed activities – medium, high or uncertain risk activities that require a case-by-case assessment by the Regulator before being authorised.

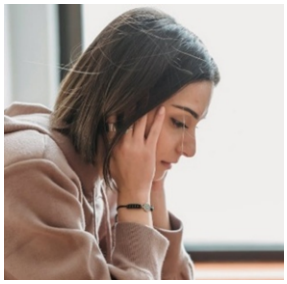
In specific circumstances, the Bill also provides for two additional types of authorisation:

- Mandatory medical activity authorisations – for human medicine that is or contains gene technology for which two or more recognised overseas authorities, under equivalent circumstances, have approved.
- Emergency authorisations – would enable the relevant Minister to grant an authorisation to respond to an actual or imminent threat to the health and safety of people or the environment, for example, to use genetically modified medicine to respond to a disease outbreak.

The Health Select Committee's report on this well contested subject is due 17 June 2025.

Snippets

Proposed changes to name suppression



Legislation aimed at reducing the additional harm that victims of sexual violence experience in court proceedings was progressed in late 2024 with the introduction of the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill (Bill).

One of the areas being addressed are our name suppression laws, as set out in the Criminal Procedure Act 2011. It is considered that the test for granting permanent name suppression to a person convicted of a sexual crime, and the process to appeal that permanent name suppression, risks causing additional harm to the victim.

Currently, before the court can grant permanent name suppression to a person convicted of a sexual crime, it only needs to 'take into account' the victim's views. A victim can apply to have a name suppression lifted, however, this raises the issue of retraumatising the victim in the process. The Bill would address this by requiring that the court must have a victim's agreement to grant permanent name suppression, unless the victim is unable or unwilling to make that decision.

It is held that these changes would empower victims and enable them to speak out about their experience to help and warn others, and that it would hold people to account and prevent further offending.

The Bill passed its first reading, with the Justice Select Committee's report due 14 March 2025.

Paying for flu vaccinations

Flu vaccinations are exempt from fringe benefit tax (FBT) if they are provided to employees either through a clinic set up on work premises, or where a voucher is given to the employee to use at their doctor or another clinic. This is because the vaccination falls under a specific exemption targeting a health and safety risk in the workplace.

However, there has been an inconsistency in the legislation. If an employee pays for a vaccination themselves and is then reimbursed by their employer, the reimbursement is actually taxable and subject to PAYE; due to health-related expenditure being considered to be private in nature. This is a product of the standalone nature of the FBT rules and the employee reimbursement provisions. Something which is often misunderstood by employers.

A proposed new section of the Income Tax Act aims to resolve this issue, to ensure employers are not worse off if they follow the reimbursement path, by prescribing that an amount paid by an employer to or on behalf of an employee for a flu vaccination will be exempt income of the employee.

The legislation states that the amendment would be effective for the 2025 – 26 and later income years.

If you have any questions about the newsletter items, please contact us, we are here to help.