

Government Response to the Law Commission report: *Reforming the Law of Contempt of Court: A Modern Statute*

Presented to the House of Representatives

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Introduction

The Government has considered the Law Commission's report, *Reforming the Law of Contempt of Court: A Modern Statute* (the report), presented to the House of Representatives on 21 June 2017, and responds to the report according to Cabinet Office circular CO (09) 1.

Background

The Minister of Justice referred a first principles review of the law of contempt to the Law Commission in 2013. The Terms of Reference required the Law Commission to take into account:

- the rights and freedoms recognised in the New Zealand Bill of Rights Act 1990 (NZBORA);
- the development of the Internet and new media;
- the need for the law to be as understandable and accessible to the public as possible; and
- whether the common law should be further amended or replaced by statutory provisions.

The Law Commission published an Issues Paper and consulted with stakeholders in 2014. The reference was put on hold at the end of 2014 due to other Government priorities. Work recommenced in February 2016 and the report presented on 21 June 2017.

The Law Commission's recommendations

The report makes 68 recommendations covering five types of contempt. The law is currently found in a mix of case law and statutes. The Law Commission recommends replacing most of the common law with a contempt statute, refining and clarifying it in the process.

For publication contempt, the Commission recommends replacing the common law with a clearer statutory provision. The provision would prevent publication of information that interferes with fair trial rights, and would be supported with suppression orders and take-down orders for online material.

For contempt involving disruptive behaviour in the courtroom, the Commission's recommendations centre on adding procedural protections for people cited for contempt.

For non-compliance with court orders, the Law Commission recommends new enforcement provisions that replace the common law.

The Commission also recommends offences that draw on and clarify both the common law and existing statutory provisions for:

- jurors who research information on matters relating to the trial and anyone disclosing jury deliberations (the report recommends the law change is supported with a number of operational changes to improve jurors' awareness and understanding of the law); and
- making abusive allegations or false accusations against judges and courts, supported by take-down orders.

The Commission also recommends a rationalisation of penalties to set clear tariffs for the statutory offences.

Government response

The Government thanks the Commission and acknowledges its work and thorough engagement with a range of interested parties on this fundamental aspect of the law.

The law of contempt is designed to protect the administration of justice and maintain public confidence in the justice system. It underpins the functioning of the justice system and helps to ensure the courts operate fairly, effectively and efficiently.

The Government agrees with the Law Commission's assessment that the law of contempt requires modernisation and clarification.

The Government will give further consideration to the report's recommendations and consider the impact of the proposals.

The proposals would affect a number of other laws and a range of people and organisations involved in the court system, including judges, lawyers, media, defendants, victims, witnesses and court visitors. Consideration will be given to how these recommendations would work in practice.

Next steps

The Government has directed the Ministry of Justice to consider the Law Commission's recommendations in detail. Once this consideration is completed, the Government will form a final view on the Law Commission's recommendations.

The timing of the report back will need to be balanced alongside other competing Government priorities.