

# DRAFT FOR CONSULTATION

## **Harmful Digital Communications (Political Commentary) Amendment Bill**

Member's Bill

### **Explanatory note**

#### **General policy statement**

This Bill makes some changes to the Harmful Digital Communications Act 2015 (the **Act**) to ensure that it is not misused to stifle political commentary.

The Bill will ensure that interim orders are made only if they are necessary to prevent or reduce ongoing harm to the applicant. Where notice has not yet been given to the defendant, an interim order must only be made in extraordinary circumstances and where ongoing or imminent harm to the applicant is severe. This will prevent the making of orders in the case of capricious applications.

To ensure consistency with the Harassment Act 1997, the Bill will provide that it is not an offence to post digital communications that are in the public interest or made for a lawful purpose. When determining whether to make an order and whether a post would cause harm, the court must also consider whether the communication is political commentary and, as such, should be given a higher level of protection.

In addition, the Bill emphasises the importance of giving a defendant the right to be heard by requiring that final orders cannot be made on a without notice basis.

The need for these amendments was highlighted in a recent case where the applicant used the Act to stifle political commentary and interim orders were made without the defendant's knowledge. The Court made observations on the misuse of the Act when the interim orders were discharged and no final orders made.

#### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. It provides for the Bill to come into force on the day after Royal assent.

## Part 1

### Amendments to Harmful Digital Communications Act 2015

*Clause 3* specifies that Part 1 amends the Harmful Digital Communications Act 2015.

*Clause 4* amends section 4, which sets out the meanings of terms used in the Act, to add a definition for political commentary. The definition includes digital communications that critique political figures, events, or policies, or that are intended to influence opinion on how New Zealand or any other State is governed.

*Clause 5* amends section 15, which provides for applications for court orders under the Act. Currently, the court may consider any application on a without notice basis. The effect of the amendment is that interim orders may be made before the defendant has received notice, but final orders cannot be made without notice to the defendant.

*Clause 6* amends section 18, which enables the court to make interim orders pending the determination of an application. The amendments provide that a court may only make an interim order if doing so is necessary to prevent or reduce ongoing harm to the applicant. *New subclause (1A)* provides that, if notice has not yet been served on the defendant, an interim order may be made only in extraordinary circumstances and where the order is necessary to prevent or reduce severe ongoing or imminent harm to the applicant.

*Clause 7* amends section 19, which specifies the kinds of final orders that the court may make when it determines an application. The effect of the amendments is that the court, in deciding whether or not to make an order, must consider whether a communication is political commentary and, as such, should be given a higher level of protection. The court must not make an order if it considers the communication was made in the public interest or for a lawful purpose.

*Clause 8* amends section 22, which sets out the offence of causing harm by posting a digital communication. *New subclause (2)(fa)* requires the court, when determining whether a post would cause harm, to take into account whether the communication is political commentary and, as such, should be given a higher level of protection. *New subclause (2A)* provides that no offence is committed if the communication was made in the public interest or for a lawful purpose.

## Part 2

### Consequential amendments to Harmful Digital Communications Rules 2016

*Clause 9* specifies that Part 2 amends the Harmful Digital Communications Rules 2016 (the **Rules**).

*Clauses 10 to 15* provide for amendments to the Rules in consequence of the amendment made to section 15 of the Act (*see clause 5*).

*Hon Melissa Lee*

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Harmful Digital Communications (Political Commentary) Amendment Act **2025**.

**2 Commencement**

This Act comes into force on the day after Royal assent.

**Part 1**

**Amendments to Harmful Digital Communications Act 2015**

**3 Principal Act**

This Part amends the Harmful Digital Communications Act 2015.

**4 Section 4 amended (Interpretation)**

In section 4, insert in its appropriate alphabetical order:

**political commentary** means any digital communication that—

- (a) expresses an opinion, analysis, or critique on political events, figures, or policies; or
- (b) is intended to influence opinion on how New Zealand or any other State or Power is governed, including the policies or values that local or national governing bodies should adopt

**5 Section 15 amended (Applications)**

In section 15(2), replace “made on a without notice basis” with “for orders under section 18 before notice of the application is served on the defendant (but *see* **section 18(1A)**)”.

**6 Section 18 amended (Interim orders)**

- (1) In section 18(1), replace “desirable to do so” with “necessary to do so to prevent or reduce ongoing harm to the applicant”.

- (2) After section 18(1), insert:

(1A) However, if notice has not yet been served on the defendant, an interim order under this section may be made only if the court considers—

- (a) extraordinary circumstances exist in respect of the digital communication; and

- (b) the order is necessary to prevent or reduce severe ongoing or imminent harm to the applicant.

**7 Section 19 amended (Orders that may be made by court)**

- (1) In section 19(5)(c), after “communication”, insert “including whether the communication is political commentary and, as such, should be given a higher level of protection”.
- (2) After section 19(5)(k), insert:
- (5A) The court must not make an order if it considers the communication was made in the public interest or for a lawful purpose.

**8 Section 22 amended (Causing harm by posting digital communication)**

- (1) After section 22(2)(f), insert:
- (fa) whether the communication is political commentary and, as such, should be given a higher level of protection:
- (2) After section 22(2), insert:
- (2A) A person described in subsection (1) does not commit an offence if the digital communication was made in the public interest or for a lawful purpose.

**Part 2**

**Consequential amendments to Harmful Digital Communications  
Rules 2016**

**9 Principal Rules**

This Part amends the Harmful Digital Communications Rules 2016 (LI 2016/227).

**10 Rule 4 amended (Outline)**

Revoke rule 4(1)(b)(iv).

**11 Rule 5 amended (Interpretation)**

In rule 5(1), revoke the definition of **without notice**.

**12 Rule 11 amended (Making an application)**

- (1) Revoke rule 11(2)(c).
- (2) Revoke rule 11(3)(b).

**13 Rules 16 to 20 and crossheading replaced**

Replace rules 16 to 18 and the crossheading above rule 16 with:

*Procedure after application is filed***16 Applications must be referred to Judge**

- (1) As soon as practicable after a person files an application, the Registrar must refer the application to a Judge for consideration of any matters arising in relation to the application under sections 13 to 20 of the Act.
- (2) After considering the application, the Judge may—
  - (a) make an interim order under section 18 of the Act (which applies until the court hears and decides the person’s application for orders); or
  - (b) dismiss the application.

**17 Procedure after application considered**

- (1) If a Judge makes an interim order under section 18 of the Act, the Registrar must—
  - (a) issue the order; and
  - (b) give a copy of the order to the applicant, together with a record of the Judge’s directions (if any) concerning the proceeding; and
  - (c) arrange for the documents listed in **subclause (2)(c)** to be served on the defendant.
- (2) After a Judge has considered an application, the Registrar must take the following steps, unless the Judge has given some different direction:
  - (a) fix a date and time when the court will hear the application, which must be as soon as practicable; and
  - (b) prepare a notice of proceeding notifying the defendant of—
    - (i) the application; and
    - (ii) the order that the applicant is asking for; and
    - (iii) the date and time when, and the place where, the court will hear the application; and
    - (iv) the steps that the defendant may take to oppose the application; and
    - (v) the consequences for the defendant if they do not take any steps in the proceeding; and
  - (c) issue the following documents for service on the defendant:
    - (i) the notice of proceeding; and
    - (ii) the application; and
    - (iii) the supporting affidavit; and
    - (iv) the interim order (if any); and
    - (v) a record of the Judge’s directions (if any) concerning the proceeding; and

- (vi) a notice to the defendant informing them of the following:
  - (A) that if the defendant wants to say anything to the court about whether it should make a final order under section 19 of the Act, the defendant may file a notice in court stating that they want to be heard by the court; and
  - (B) the date by which the defendant must file that notice.
- (3) The Registrar must—
  - (a) inform the applicant of the date and time fixed for the court to hear the application; and
  - (b) arrange for the documents referred to in **subclause (2)(c)** to be served on the defendant.
- (4) The documents issued for service must be served in accordance with rules 34 to 42.

#### **18 Notice of opposition to application**

- (1) A defendant who intends to oppose an application may file a notice of opposition in the court.
- (2) The notice of opposition must—
  - (a) state that the defendant intends to oppose the application; and
  - (b) set out enough information to indicate the grounds on which the defendant opposes the application; and
  - (c) set out enough information to inform the court of the facts that the defendant relies on in support of their opposition to the application.

#### **14 Revoke rules 21 to 24 and crossheading**

Revoke rules 21 to 24 and the crossheading above rule 21.

#### **15 Rule 26 amended (Applying for variation or discharge of order)**

- (1) Replace rule 26(2) with—
- (2) The application must set out—
  - (a) which of the orders referred to in section 20(2) of the Act the applicant wants the court to make; and
  - (b) the grounds on which the applicant is applying for the order.
- (2) Revoke rule 26(3)(b).