

THE CONVERSATION

Academic rigour, journalistic flair



Getty Images

Why a proposed law to criminalise protests near homes is too vague to do much good

Published: September 26, 2025 11.16am NZST

Kris Gledhill

Professor of Law, Auckland University of Technology

DOI

<https://doi.org/10.64628/AA.uwv3xrvfm>

<https://theconversation.com/why-a-proposed-law-to-criminalise-protests-near-homes-is-too-vague-to-do-much-good-263794>

Should we be allowed to protest near someone's home or private residence? It's inconvenient and perhaps intrusive. But people have a fundamental right to protest. How do we find a balance?

Parliament's Justice Select Committee is currently grappling with this as it hears submissions on the [Summary Offences \(Demonstrations Near Residential Premises\) Amendment Bill](#).

There's little doubt some forms of protest cross a line. Internet trolls have their real world equivalents. And there are many examples of toxic behaviour, particularly affecting people in public life, disproportionately women and those from minority communities.

At the same time, existing laws already make violence, threats and damage to property criminal offences. So too are unlawful assemblies and riots that cause people to be fearful. Parliament is also creating an offence to cover stalking and harassment.

The boundaries of peaceful protest are regulated by long-established summary offences, including disorderly behaviour or assembly, or using offensive, threatening or insulting language. So what will a new law really achieve?

Proving 5 things beyond reasonable doubt

Balancing the right to protest and inconvenience to others, the courts have decided those offences apply only to conduct that goes beyond what we should be expected to tolerate in a democracy.

In 2005, for example, the Supreme Court found in favour of someone who protested outside the home of a police officer who the protester believed had misused a search warrant. The protest was during the daytime and for a limited time, but the officer had been on night duty and was trying to sleep.

The court held that this did not overstep the mark and become disorderly. Importantly, this means that if conduct does overstep that mark – goes on longer, involves more people or more noise – it could be disorderly and therefore criminal.

Let's assume there is a problem, however. Will the proposed new offence created by this bill actually solve it? To justify a fine or short period of imprisonment, if this bill became law, the prosecution would need to prove five things beyond reasonable doubt.

1. There has to be a “demonstration”, which is a “public expression of support or opposition by a person or group of persons to further a cause or campaign”. Does this cover someone who just wants to express a grievance? Or something that is spontaneous?

2. It has to occur “near any residential premises”. The government's talking points refer to protests “outside” someone's house, but the bill is not limited to that. There is no definition offered of “near”.

There is also a very wide definition of “residential premises”, which covers any home “erected, or currently used, mainly as a place of residence”, as well as any “land, improvements, or appurtenances belonging to the dwelling or usually enjoyed with it”.

Of course, lawyers love complicated phrases like this. But it should be simpler for those affected to know what qualifies as a criminal offence.

3. It has to be “directed at any regular occupant of those premises”. Again, what does this mean? It will not cover visitors. And it seems to allow a protester to say they are aiming their protest at an issue rather than a person – in which case, what is the point of this offence?

4. It has to cause an “unreasonable disruption”. This can be to the residential premises targeted or to other premises, including access to them. “Unreasonableness” has to take into account the time of day, duration of the disruption, actions taken, level of noise and nearness to the premises.

But does that mean anything different to the current law – that behaviour beyond what a reasonable person should tolerate in a democratic society can amount to disorderly conduct?

5. The protester has to know the disruption is unreasonable, or the court must find they *ought* to know this. This legal complexity will have to be enforced by police, most of whom do not have a law degree.

Protest and democracy

Let's test some potential scenarios. Say someone is concerned about alcohol sales in an area. Would a protest outside shops where the manager lives upstairs now be criminal, because the address is mainly used as a residence?

Or suppose someone was making military drones in a large commercial barn on a rural estate where they lived. Would a protest at the entrance to the estate be criminal because the barn is an improvement to the land belonging to the dwelling?

How about a protest against a corporate farm allowing its dairy herd to make a local river unswimmable. Would that be illegal if the protest was at the river whose banks border the farm where workers live, and so is near a residence?

Finally, and crucially, the bill contains no proposal to exclude the Bill of Rights Act. So, if it becomes law, the courts will be reluctant to uphold any disproportionate restriction on the freedom to protest.

For a protest to qualify as an offence it would need to be disorderly. Given this is already an offence under existing law, the value of the proposed new offence remains elusive.

More broadly, protest is a significant part of our democratic tradition. Any proposal to restrict it must be scrutinised closely for whether it is genuinely needed, and for potential pitfalls. The bill to add the new offence of protesting near a private residence can be found wanting on both counts.

Public submissions on the bill close on October 6.
