



SUBMISSION

Human Rights (Incitement on Ground of Religious Belief) Amendment Bill

Committee Secretariat
Justice Committee
Parliament Buildings
Wellington

We oppose the bill.

In a free and open society, distasteful opinions are met with open inquiry, civil dialogue and debate. But this bill will change that, with potentially devastating consequences.

WHO DECIDES WHAT'S "HATEFUL"?

One of the most disturbing realities of criminalising "hateful" speech is that there is simply no universally agreed upon definition of what constitutes "hate" in speech. For a law to be just, those who are controlled by it must be able to clearly see what it permits and what it forbids – and hate speech laws have proven throughout history to be unable to do this. Without a clear definition, how will you know when or if you have broken the law?

"There is no jurisdiction in the world where a statute has been enacted that offers a clear definition of what hate speech is. Consequently, it is left to the police and the courts to determine. This raises the problem of citizens not knowing precisely where the boundary of criminality of speech begins."

Historian and Professor (AUT), Dr Paul Moon¹

What constitutes "abusive" and "insulting"? Who gets to decide? Who will be the moral arbiters who determine when and if someone is guilty of "hateful" speech?

CULTURAL FRAGILITY

Another problem is the growing fragility of a society increasingly subject to emotionally-based reasoning. Those who are easily "triggered" by offence tend to automatically presume hateful motives

¹ Dr Paul Moon. Law News, Issue 22, 9 July 2021, Pg 4

where none exist. Criticism and ridicule end up being construed as harmful and thus the desire to treat them as criminal acts.

Traditional beliefs about human sexuality and identity, which have been held by the majority of humankind across diverse cultures for thousands of years, are only recently construed as “hateful” by the LGBT community.

Ironically, this bill purports to protect religious groups. But some passages from the Bible are indeed insulting. After all, who wants to be told they are a sinner? Yet the claim that “We are all sinners in need of forgiveness” is central to the Christian faith and has never been motivated by “hate”, quite the contrary.

Under these types of proposed laws, people’s presumed reactions to your speech will become crucial to determining criminal intent. You may not actually intend harm, but if your speech is considered as showing “hatred” towards a particular group of people, you can be charged with inciting hatred and face a prosecution.

For example, a *Speak Up For Women* billboard was removed in Wellington. In a statement, billboard company Go Media said it was removed as soon as the company started fielding calls from offended New Zealanders.²

Speak up for Women sought to hold public meetings to highlight threats to protected female-only spaces by biological men identifying as women. Although not a religious group, many religious groups would share their understanding of biological reality.

They have been subject to an intense smear campaign, uncharitably labelled a “hate group”, and harassed by public officials, councillors and mayors seeking to cancel their events. Even though this current bill wouldn’t extend to this particular group (but perhaps one day the law will be expanded to include them), there is little doubt hate speech laws would be used to full effect to shut down this group.

In 2019 Finnish MP and former Minister of the Interior, Päivi Räsänen was prosecuted with three criminal charges of a hate crime, facing two years of imprisonment for each, for publicly voicing her opinion on marriage and human sexuality and for questioning the leadership of her church for sponsoring an LGBT Pride event.³

NOT AN ABSOLUTE RIGHT

Free speech is not an absolute right, and the right to offend and be offended is not an end in itself, but simply the best means we have of wrestling with competing truth claims in the midst of conflicting viewpoints. We as a community must not be afraid to call such behaviour out as intentionally offensive and unwarranted. Exercising free speech responsibly and thoughtfully is the best antidote to hate speech.

SPEECH IS ALREADY LIMITED

There are many things we are not free to speak about. Commonly accepted boundaries and laws set limits on free expression when that expression conflicts with the rights and protections of others.

² <https://www.nzherald.co.nz/nz/speak-up-for-women-controversy-billboard-removed-mayor-apologises/CGUGDIAATDU3CCE56TUMCMJOQM/>

³ <https://evangelicalfocus.com/europe/11305/christian-politician-paivi-rasanen-formally-charged-for-hate-crime-against-homosexuals>

Examples includes laws on: libel, slander, obscenity, pornography, sedition, incitement, classified information, copyright violation, trade secrets, food-labelling, nondisclosure agreements, the right to privacy, dignity, public security, perjury and more.

These restrictions on freedom of speech are widely accepted as part of a civil society.

THE TRUE GOAL: INTIMIDATION AND SELF-CENSORSHIP

The hidden agenda behind such laws is the development of a culture of fear and self-censorship for the purpose of political intimidation and control. Thoughts and ideas which are undesirable to special-interest groups will be able to be silenced simply by framing them as “hateful”. Such groups will claim to believe in free speech, just as long as it is speech they approve of.

In early 2021 the Scottish Parliament passed controversial laws which criminalise offensive speech, even if spoken in private around the family dinner table.⁴

The result will be a population too afraid to express unpopular opinions, and no longer participating in the vital democratic process of debate and civil discourse necessary for a free and open society.

“The very last thing New Zealand needs is the chilling effect of hate speech police stifling our thoughts and monitoring our every utterance. Yet, if the law changes go ahead, the result will be that fewer Kiwis will openly speak their mind for fear the Police will come knocking on their door. It will indeed be an ominous day for New Zealand if the Police become the enforcement unit of ruling politicians and their activist allies against free citizens expressing contrary opinions...”

Muriel Newman, former MP – “Muzzling free speech”⁵

FREEDOM OF SPEECH IS NECESSARY FOR SOCIAL REFORMS

Freedom of speech has been essential to the success of significant past reforms such as: the abolition of slavery, the right for women to vote, the American civil rights movement, opposition to apartheid in South Africa, and the Waitangi Tribunal.

It’s easy to claim, in hindsight, the outcomes of these significant cultural moments should have been obvious. But we forget these battles were fought by courageous people publicly voicing unpopular opinions against the prevailing attitudes of the time. Hate speech laws would have been a significant threat to the fearless voices of reform in those movements.

“Underlying prejudices, injustices or resentments are not addressed by arresting people: they are addressed by the issues being aired, argued and dealt with preferably outside the legislative process. For me, the best way to increase society’s resistance to insulting or offensive speech is to allow a lot more of it. As with childhood diseases, you can better resist those germs to which you have been exposed.”

UK Comedian Rowan Atkinson (a.k.a. Mr Bean)⁶

The most prominent recent case of cancel culture and the consequence of perceived ‘hate speech’ is Israel Folau who tweeted firstly his personal view opposing the redefinition of marriage, and then in response to a specific question put to him, a paraphrase of a bible passage. The public reaction to his social media posts was entirely disproportionate to his actions and amounted to a public lynching

⁴ <https://www.heraldscotland.com/news/19077579.msps-back-criminalising-hate-speech-dinner-table/>

⁵ <https://www.nzcp.com/muzzling-free-speech/>

⁶ Rowan Atkinson on free speech. Transcript and video at: <https://www.youtube.com/watch?v=BiqDZIAZyU&t=1s>

intended to destroy him and his career. If hate speech laws existed at the time, it can be assumed they would have been applied to his situation without mercy.

Will this bill protect Israel Folau's 'religious views'!?

DRIVING UNSAVOURY IDEAS UNDERGROUND

An unforeseen result of the suppression of free speech is the driving of genuinely hateful, radicalised and dangerous groups (such as neo-Nazi groups) underground into private dark-web echo-chambers.

Dr Paul Moon says, *"The case could be made that restrictions on the open expression of ideas could end up intensifying radicalisation... Anyone who thinks that a change in law will diminish hate clearly has little grasp on history."*⁷

You can't always fix hateful and obnoxious ideas simply by banning them. Rather, when allowed into the sunlight of public discourse, they can be thoroughly and publicly discredited. The result being those who are susceptible to such dangerous ideas can be inoculated against them.

INCLUDING "RELIGIOUS BELIEF"

Adding religion could potentially criminalise any and all criticism of religion or religious beliefs. This places religion above criticism. What really happens when hate speech law is enforced is that the role of the state is charged to decide which religions are valid and which are not. This has nothing to do with protecting any religion; it is the erosion of freedom and democracy. Hate speech law will simply increase the power of the state to decide what we should say or not say about the nature of truth because true religion deals in truth.

But why is only religion above criticism?

During the First Reading of the bill, ACT leader David Seymour said, *"Preventing freedom of expression on religious grounds is a significant restriction. It is important that we are allowed to call out examples of religious persecution without fear of being prosecuted. What is currently happening in Iran is an example of this."*

You could probably add Afghanistan and Myanmar and a number of other countries where there is religious persecution going on with disturbing effect which we should absolutely call out.

Will it be legal to call out a religious cult?

In fact, David Seymour highlighted that the Royal Commission of Inquiry themselves admitted the problems with introducing hate speech laws: *"The difference between legally criminalised hate speech and the vigorous exercise of the right to express opinions is not easy to capture in legislative language. As well, the more far reaching a law creating hate speech offences, the greater the potential for inconsistency with the right to freedom of expression"*⁸ (our emphasis added)

National MP Chris Penk said, *"It's inappropriate for this Parliament to be making laws that protect merely the sensibilities of those who have a religious belief or, again, a lack of religious belief. It wasn't that long ago – in fact, it was the previous term of Parliament – in which this institution repealed the crime – yes, the crime – of blasphemous liable."*

⁷ Dr Paul Moon, Law News, Issue 22, 9 July 2021, pg 5

⁸ <https://christchurchattack.royalcommission.nz/the-report/part-9-social-cohesion-and-embracing-diversity/hate-crime-and-hate-speech/>

Just recently, Parliament repealed the anti-blasphemy law with then-Justice Minister Andrew Little saying the law was "*medieval, archaic and unjust*".

He also said; "*This obsolete provision has no place in a modern society which protects freedom of expression. The continued existence of this offence on the statute books was out of place with New Zealand's position as a bastion of human rights, including recognising freedom of expression and religious tolerance for all faiths.*"⁹

Some passages from the Bible for example are seen as insulting. After all, who wants to be told they are a sinner? Yet the claim that "We are all sinners in need of forgiveness" is central to the Christian faith and has never been motivated by "hate", quite the contrary.

Traditional beliefs about human sexuality and identity, which have been held by the majority of humankind across diverse cultures for thousands of years, are only recently construed as "hateful" by the LGBT community.

ADDITIONAL CONCERNS

Why are only some groups protected and not others? The proposed laws want to expand existing "incitement" protections to religious groups. Why only those groups? Aren't all humans hurt by hate, regardless of their group membership? Will Christians be a protected group?

What about conflicting interests? If a mosque insults an LGBT group with its teaching on homosexuality, while the same members of the LGBT group insult Islam with its teaching on organised religion, whose right to be protected from "hate" would prevail? Or could they both be prosecuted?

Is there a difference between public and private speech? Will the expression of opinions in private places be protected under the law? Or can I be punished for expressing offensive views to friends and family around the BBQ or dinner table?¹⁰

What about religious expression? Will reading a Bible verse in church, or a passage from the Koran in a mosque break the law? Could my pastor/minister face imprisonment and fines for merely teaching certain (offensive to some) passages from the Bible? Will my religious expression be protected?

RECOMMENDATION

The Human Rights Act 1993 currently prohibits speech that is "*words likely to excite hostility or ill-will against, or bring into contempt or ridicule... on the ground of the colour, race, or ethnic or national origins*".¹¹

As the Free Speech Union has rightly pointed out, we should simply make "***incitement to violence***" as illegal.

And incitement to violence against any and all groups. Why highlight some groups for special protection?

Let's protect all groups. Let's protect all New Zealanders.

⁹ <https://www.nzherald.co.nz/nz/justice-minister-andrew-little-says-the-passing-of-the-crimes-amendment-bill-gets-rid-of-medieval-laws/XFIC6GHW6XDQHV64VOMWKTYL3Q/>

¹⁰ <https://www.heraldscotland.com/news/19077579.msps-back-criminalising-hate-speech-dinner-table/>

¹¹ Human Rights Act 1993 – Part 6: Inciting Racial Disharmony:
<https://legislation.govt.nz/act/public/1993/0082/latest/DLM305478.html>

CONCLUSION

Hate-speech laws are being proposed under the pretence of 'the public good'. After all, who can disagree with the idea of banning hate? But beneath the shiny veneer of good intentions lies one of the most dangerous law changes our country has faced in recent history.

This bill is just the start of this intention. It is clear that the Government wants to expand this law in the near future.

Belonging to a group should not afford special protections that result in the removal of the rights of others to disagree with them.

Political activists and special interest groups will miss the important distinction between hate-speech, and merely speech they hate, and end up using such laws as tools of political intimidation to punish opponents and shut down debate in the marketplace of ideas.

There is far too much ambiguity in what constitutes "hate". The risk of misapplication and abuse for political ends is far too high.

These type of laws – and this bill in particular - must be rejected for the sake of a fair, open and democratic society.

A handwritten signature in black ink, appearing to read 'Bob McCoskrie', written in a cursive style.

Bob McCoskrie
National Director

31 January 2023