

## Submission to the Ministry of Justice consultation document “Proposals against incitement of hatred and discrimination” from the NEW ZEALAND CHRISTIAN NETWORK

The New Zealand Christian Network is a significant inter-church organisation with membership of churches, individuals, and Christian organisations from across many denominations. NZCN’s National Director is also a member of the Executive of the National Church Leaders Aotearoa New Zealand (NCLANZ).

### Where we are coming from:

- As Christians, shaped by Christ and the Bible, we absolutely reject all racism, abusive language, and violence.
- We believe that all people are equal.
- In a free and pluralistic society, everyone should respect the choices of others, and be free to think, believe, and express their beliefs as they choose.
- People should relate to one another with gentleness and respect, even when they strongly disagree, or are offended by the way others think and speak.
- We believe that *as framed in the consultation document*, the proposed law changes pose a significant threat to society’s freedoms of thought, religious belief, and expression, as enshrined in the New Zealand Bill of Rights.
- We believe that freedom to debate important issues must be protected, and that the State should avoid all attempts to control the thoughts and speech of its citizens, except where the beliefs and opinions of people are unquestionably inciting extreme hatefulness and violence.
- We are concerned about the subjective and loaded term “hatred”.
- Above all, we want to see wording in the draft law which will clearly define both what hate speech is and what it isn’t.

### Our key input into this consultation: a proposed wording...

“In the context of this law, inciting hatred means to incite extreme hostility, to deliberately and maliciously vilify with the clear intention of stirring up deep loathing, hostility, contempt, or violence towards a group; it does not mean to express disagreement, criticism or caution in relation to any of the views of a group, or simply to express beliefs and views which members of any group may consider objectionable or even offensive.”

We believe such a clear expression of scope and limitation would vastly improve the proposed law changes, and abate the concerns of many people.

## NZCN comments of each proposal...

### PROPOSAL 1: “Change the language in the incitement provisions so that they protect more groups that are targeted by hate speech”

- *“Increasing the groups who are protected by the incitement provisions”*
  - In principle we do not object to incitement provisions being extended to help protect include groups based on religion, disability, sexuality and gender.
  - However, *because of the way the Proposal Two is worded* we believe serious new risks to freedom of expression could be created through doing that.
  - We could live with this if (a) The threshold of both criminality and civil offence remained extremely high, and (b) The nature and limits of “hate speech” were *clearly defined*.

### PROPOSAL 2: “Replace the existing criminal provision with a new criminal offence in the Crimes Act that is clearer and more effective”.

- *“Making clearer what behaviour the law prohibits and increasing the consequences for breaking the law”*
  - a) A key issue for us is whether the law change would still allow – for all New Zealanders – free and legitimate debate and disagreement, even when various groups may sometimes find those views objectionable or even offensive.
  - b) We **agree** that crimes committed in a public way on-line or in social media should be captured, but *disagree* that private personal communications should be within the scope of the law unless they are demonstrably inciting violence.
  - c) We **agree** with the substitution of “excite” by “incite”.
  - d) We **disagree** that Section 131 of the HRA is “complicated” and “difficult to understand” when it refers to “intentionally inciting racial disharmony”, or that the terms “hostility”, “ill-will”, “contempt” and “ridicule” have “broad meanings”.
  - e) We **disagree** that the substitution of the words “hostility”, “ill-will”, “contempt” and “ridicule” with “hatred” would “create a new criminal

provision which is clearer and easier to understand” than Section 131 in the HRA.

- f) We **strongly disagree** that the proposed wording would be “making clearer what behaviour the law prohibits”. On the contrary, we believe the proposed wording would make the law much *less* clear.
- g) The core problem with the wording proposed in the consultation document is that it removes the workable definitions of incitement that are in the Human Rights Act and instead substitutes the very elastic term “hatred”, without defining what it means. We believe the word “hatred” is too broad, too subjective, and too loaded to be appropriate in legislation – and that, in the absence of clear definition, the proposed use of the word “hatred” is vulnerable to many freedom-stifling misapplications.
- h) We also read that it would also be a crime to “maintain or normalise hatred”. This too (especially “and normalise”) is capable of many subjective interpretations and misapplications, and we believe that phrase should be dropped.
- i) Some questions about specific examples...
  1. Under the proposed law changes, could anyone be prosecuted for denying a core belief or doctrine of any religion, and thus potentially causing offence?
  2. Could it become criminal for anyone to say that they do not believe in gender or sex transitioning for children and adolescents, or the use of puberty blockers?
  3. Could it become criminal or anyone to say that they do not believe it is fair for “trans” people born as males to compete in women’s sport?
  4. Could it become criminal for someone to say that they do not personally believe that same-sex relationships or same-sex marriages are intended by God? (This is not “hatred”, but just a matter of religious belief and expression)?
  5. Could anyone be prosecuted for reading out or referring to – in public, or even in a religious gathering – any passage or verse in the Bible, Qur’an, or any other sacred religious writing that asserts a doctrinal

belief about Allah, Jesus, or salvation, or against unbelief, or against any behaviour, and which could potentially offend someone?

- j) If the answer to any of those five questions is “yes, or maybe”, then for the sake of everyone’s freedoms the proposed law changes must be worded so as to avoid such outcomes.
- k) If the answer is, “no” (or as it says in the consultation document, “only extreme hate speech is criminalised, and that there must be an intention to cause others to develop and strengthen hatred towards a group”), then we want to see that protection *clearly reflected in the actual wording* of the proposed law changes. In our view, the only way for society to protect itself against unjust outcomes through its proposed “hate speech” law changes is to state as precisely as possible exactly what “hate speech” is, and exactly what it isn’t.
- l) And so **we propose the following wording...**

“In the context of this law, “inciting hatred” means to incite extreme hostility, to deliberately and maliciously vilify with the clear intention of stirring up loathing, hostility, contempt, or violence towards a group; it does not mean to express disagreement, criticism or caution in relation to any of the views of a group, or simply to express beliefs and views which members of any group may consider objectionable or even offensive.”
- m) “The proposal would protect freedom of speech by ensuring that only extreme hate speech is criminalised, and that there must be an intention to cause others to develop and strengthen hatred towards a group”. We **agree in principle** with these, and request that the legislation explicitly include words to those effects.
- n) We **agree** with the requirement that the Attorney-General would still need to consent to any prosecution for criminal incitement (as in Section 132).
- o) We would want to see the same requirement apply to “maintaining or normalising hatred”, if that wording is retained (but, as indicated above, we hope that particular phrase is dropped).
- p) We are concerned about the proposal to cover “all means of communicating speech”. We **agree** that any law changes should apply to all mass means of

communication, including social media; we **strongly disagree** that the law should apply to personal conversations or private communications, unless incitement to violence is involved.

**PROPOSAL 3: “Increase the punishment for the criminal offence to up to three years’ imprisonment or a fine of up to \$50,000 to better reflect its seriousness”.**

For very extreme incitements towards violence and terrorism, this might be appropriate, but for any other type of “hate speech” these penalties would in our view be excessive, and disproportionate to the penalties of crimes which involve actual violence.

**PROPOSAL 4: Change the language of the civil incitement provision to better match the changes being made to the criminal provision.**

*“If Proposal Two is implemented...this proposal would change the wording of the civil incitement provision to include ‘inciting/stirring up, maintaining or normalising hatred’ along the existing wording”.*

- (a) Consistency is in itself a good principle.
- (b) **Our concerns** relate more to the clarity and scope of the wording it will be consistent with (see our extensive comments on Proposal 2).
- (c) If the civil provisions use the same language proposed by the Ministry of Justice, but with a lower threshold and a lesser standard of evidence, then it could be too easy for various groups to object to any expression of viewpoint that does not support their own views or which they find offensive, claiming that the viewpoint being expressed is “hateful” to their group and requiring redress.

**PROPOSAL 5: Change the civil provision [Section 61 of the HRA] so that it makes ‘incitement to discrimination’ against the law.**

No particular comment.

**PROPOSAL 6: Add to the grounds of discrimination in the Human Rights Act to clarify that trans, gender diverse, and intersex people are protected from discrimination.**

Yes, all people should be protected in law against discrimination on the basis of “sex”, but we feel that in this area the law should use as few words as necessary, using general terms which will cover all cases. It seems unnecessary and inappropriate to explicitly include in legislation such detailed (and possibly evolving) sub-categories such as all those mentioned.

SIGNATURE

A handwritten signature in black ink, appearing to read 'Stuart Lange', enclosed in a thin black rectangular border.

Rev Dr Stuart Lange

National Director,

New Zealand Christian Network