HATE SPEECH FACT SHEET

This Fact Sheet has been written for Family First by Rodney Lake

> *"Free speech is my right to say what you don't want to hear"*
>
> GEORGE ORWELL

In a free and open society, distasteful opinions are met with open inquiry, civil dialogue and debate. If I don't like what you say, even if I find it offensive, I meet your ideas with my own in an attempt to discover something approaching the truth. But this is all about to change, with potentially devastating consequences.

WHO DECIDES WHAT'S "HATEFUL"?

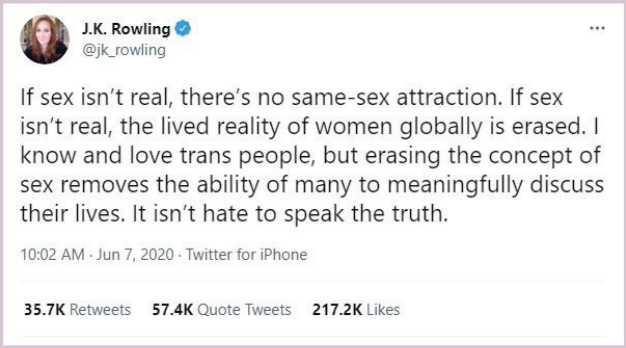
One of the most disturbing realities of criminalising "hateful" speech is that there is simply no universally agreed upon definition of what constitutes "hate" in speech. For a law to be just, those who are controlled by it must be able to clearly see what it permits and what it forbids – and hate speech 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, Dr Paul Moon[1]**

Imagine road laws with strict penalties for speeding, but with no speed limits in those laws, or no speed limits posted on our roads; just a vague sense that the courts get to decide on a case-by-case basis if you were speeding or not. You could never know if you were breaking the law and would live in constant fear of punishment. This would be bad law.

So the first and most important question in the debate on hate speech is: **What constitutes "hate"? Who gets to decide? Who will be the moral arbiters who determine when and if someone is guilty of "hateful" speech?**

Harry Potter author **J.K. Rowling** *faced hefty backlash and calls to ban her books after she posted a series of tweets about transgenderism and biological sex.[2]*



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 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.

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 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 criminal conviction.

YOUR RIGHT TO SPEAK
= YOUR RIGHT TO HEAR
= YOUR RIGHT TO THINK

The right to freedom-of-speech may seem minor to most kiwis who typically don't have public platforms under threat. But this issue runs much deeper than just your right to speak, **as it also includes your right to HEAR, and your right to THINK.**

You have a right to hear both sides of any debate[3] – even viewpoints which are wrong or offensive to you. Laws which prevent others from speaking freely result in you no longer hearing opinions you might want to hear and evaluate for yourself. You have a right to offend, but also a right to be offended, meaning **you have a right to hear ideas and perspectives which you disagree with.**

In addition, if I say you're free to sit anywhere in the room, but I will punish you if you don't sit on the chair I've chosen for you, then you are not truly free. Likewise, freedom of conscience means you can believe what you want, but hate speech laws will forbid you from expressing viewpoints which deviate from a vocal minority. So are you really free to think what you want?

Freedom of conscience – the freedom to think – is not truly free if you are not free to act on your beliefs and speak your mind.

A ***Speak Up For Women*** *billboard (see below) was removed recently 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.*[4]

Speak up for Women sought to hold public meetings to highlight threats to protected female-only spaces by biological men identifying as women. 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. There is little doubt, if hate speech laws existed today, they would have been 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.*[5]

NOT AN ABSOLUTE RIGHT

Unfortunately, however, some will abuse their right of free speech with 'shock tactics' intentionally designed to inflict deep hurt and offence to gain attention for their cause. We must not be afraid to call such behaviour out as intentionally offensive and unwarranted.

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. **Exercising free speech responsibly and thoughtfully is the best antidote to hate speech.** But we still have a moral obligation to others to speak respectfully and kindly, even in disagreement.

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.

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

These restrictions on your freedom of speech are widely accepted as part of a civil society. Likewise, **threatening and abusive speech** is also already banned because the consequences of harm can be directly linked to the speech in question.

EXISTING LAWS ALREADY OUTLAW HATE CRIMES

"Hate crimes" are already illegal! A "hate crime" is an offence motivated by a hostility to the victim because they are a member of a protected group.

The Human Rights Act makes it unlawful to incite hostility or discriminate against a group based on their colour, race, or ethnic or national origins, or to discriminate against people based on their sex, marital status, religious belief, ethical belief, disability, age, political opinion, employment status, family status or sexual orientation under the Act.

Conduct amounting to a hate crime (e.g. assault) has been well defined throughout existing laws to ensure such crimes are punished justly. Laws which already address harmful speech include:[6]

- The Human Rights Act 1993
- The Summary Offences Act 1981
- The Harmful Digital Communications Act 2015
- The Broadcasting Act 1989
- The Harassment Act 1997
- The Films, Videos, and Publications Classification Act 1993
- The Sentencing Act 2002.

For example, the Human Rights Act 1993 prohibits speech that is "likely to excite hostility or ill-will against"[7] a person because of their identity in one of the above racial or ethnic groups. So, for example, if you try to incite a mob to go beat up Asian people, you can be charged with inciting violence under these laws – *even if the mob never commits those acts.*

There isn't the need for further criminal laws to address such acts of hate and incitement to violence because **such laws already exist!**

SO WHY THE PROPOSED LAW CHANGES?

Law changes are proposed to address what is believed to be missing: specifically, the "*incitement of hatred and discrimination"* against 'protected groups' – which will be expanded to include all groups listed in the Human Rights Act *(see above)*. **The effect will be to significantly lower the bar for actions to have criminal intent, from the current *"incitement of hostility or violence"* to a much more worrisome and ill-defined *"incitement of hatred"*.**

The current Ministry of Justice discussion document proposes a person *"would break the law if they did so by being threatening, abusive* ***or insulting****"*[8] So you could potentially commit a criminal offence simply by insulting someone who belongs to one of these 'protected groups'.

'HATE' SPEECH?

If you said "Only women give birth", are you intentionally inciting hatred and discrimination, or simply stating what you believe to be a biological truth?

The proposed law also seeks to expand the above list of protected groups to include gender identity, to "*clarify the protections for trans, gender diverse and intersex people"*. This will include *"gender expression and gender identity"*[9]. This means **any speech deemed offensive to transgender people could be considered a criminal act punishable with fines or imprisonment.**

The **Reverend Dr Bernard Randall** *was appointed Chaplain of Trent College in the UK in 2015 to provide pastoral care, share the Christian faith and lead services in the school's chapel. In a recent sermon, he defended the pupils' right to question the school's introduction of new LGBT policies, and encouraged respect and debate on 'identity ideologies.' Following the sermon, Dr Randall was reported by the school to PREVENT, the anti-terrorism unit which normally identifies those at risk of radicalisation. He was eventually made redundant by the school. His 12-day employment tribunal hearing has been delayed until September 2022.*[10]

Australian tennis great **Margaret Court** *holds the all-time record of 24 grand slam single titles. But as the Pastor of Victory Life Centre in Perth, her comments on the redefinition of marriage, homosexuality and the transgender community have sparked protests and calls to rename Court Arena (named after her) including by fellow tennis greats Martina Navratilova, Billie Jean King, and John McEnroe who labelled Court Australia's "crazy aunt" (apparently this is not hate speech).*[11]

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's 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. Photo credit: Tony Marsh

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"**[12]

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.

ON MULTIPLE FRONTS

The proposed law changes are just one front on which freedom of speech is threatened. **The battle is also being fought on four other fronts where social, rather than criminal, sanctions are being used as weapons of political intimidation.**

FIRST: Workplace Intimidation

The infiltration of social activism, political agendas and "woke politics" into corporate workplaces and policies is very concerning. Employees who hold views not considered politically-correct in the workplace are bullied into silence and self-censorship through intimidation, ridicule and threat of losing positions or employment. Many privately report they stay silent on personal political or religious views for reasons of self-preservation. In the workplace, tolerance has become a one-way street.

SECOND: Corporate Cowardice

Threats of boycotts and brand-reputation-damage for businesses who do not follow the latest woke narrative are increasingly common, resulting in corporate cowardice in an attempt to appease the activist mob. Company directors and government department leaders should stop being intimidated and distracted by woke demands, and focus on business and mission interests ahead of political ones.

Another form of corporate cowardice is book banning, where book sellers remove titles from their catalogues which are supposedly "harmful". This is entirely hypocritical in the example of Amazon, who have delisted titles which question gender ideology e.g., "When Harry Became Sally" by Ryan T. Anderson, while still selling Hitler's political manifesto, "Mein Kampf", for the purpose of academic analysis.[13]

THIRD: Big-Tech Censorship

This includes intimidation from takedowns, shadow-banning, traffic throttling, demonetisation, and suspension of accounts. The passive acceptance in the general public of these increasingly heavy-handed tactics of big-tech and corporate censorship, supposedly for our own protection, is a very concerning threat to our open and democratic society.

FOURTH: "Cancel Culture"

Public figures and professionals are lynched on social media and de-platformed for questioning popular woke ideology, sending a clear message of intimidation to others to self-censor. Public meetings and platforms should be a place where the free exchange of ideas are debated in a pursuit of truth. But disruptive protests, venue cancelations, and even threats of violent protests are being used as excuses to shut down such events.

These four types of censorship and intimidation have resulted in the silencing of dissenting ideas and open dialogue on continuous issues which deserve to be openly debated.

WHAT IS WOKE?
To be Woke is to have been "woken up" to the important social justice issues of the day and hold a more radical progressive view on issues of race, ethnicity, gender, religion, sexuality and identity. Being Woke means being aware of injustices according to progressive values, and embracing social re-engineering in an attempt to deconstruct traditional values and institutions (such as the nuclear family and the Church) which are falsely seen as a threat to addressing those injustices.

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."*[14]

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.

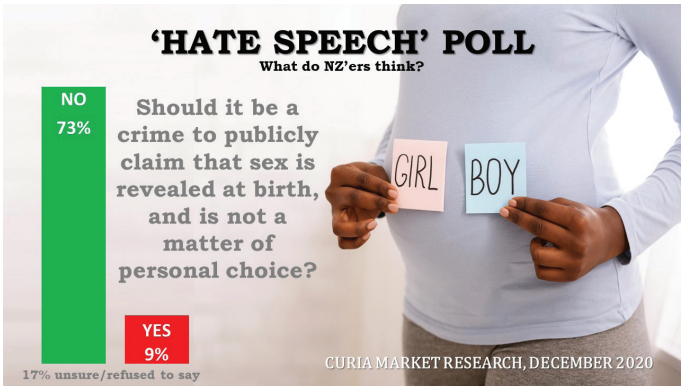
"Underlying prejudices, injustices or resentments are not addressed by arresting people: they are addressed by the issues being aired, argued and dealt with preferably outside the legislative process. For me, the best way to increase society's resistance to insulting or offensive speech is to allow a 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)[15]

ADDITIONAL QUESTIONS

The discussion document the Ministry of Justice released in June 2021 raises significant unanswered questions, beyond the broader principles highlighted above, including:

Why are only some groups protected and not others? The proposed laws want to expand existing "incitement" protections to other presumably vulnerable groups such as gay, lesbian, transgender, non-binary, etc. Yet those groups tend to be those which progressive left-leaning "woke" people want to protect. Why only those groups? Aren't all humans hurt by hate, regardless of their group membership? Will Christians be a protected group?



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 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.*

Why such harsh penalties? Proposed penalties of up to three years imprisonment and fines of up to $50,000 are entirely disproportionate to the presumed harm suffered. Common assault is only punishable by up to one-year imprisonment. Why is the punishment for hate speech crimes three times greater? What does that say to the victims of actual violent crime?

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?

Can the Police and Courts cope? How will our already stretched criminal justice system cope with the flood of bitter complainants and defendants eager to have their rights protected from "hateful" ideas? Is it really the job of the police and courts to mediate disputes involving offended feelings?

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?[16]

What about political viewpoints? The line between political views and moral views is impossible to define. What if political views questioning government policy are deemed offensive and "hateful"? Could I go to prison for merely insulting someone's political beliefs?

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?

Read the full poll: https://familyfirst.org.nz/2021/06/28/media-release-views-on-marriage-gender-arent-hate-speech-poll/. Both issues covered in the polls on this page have been included in aspects of 'hate speech' laws or proposals in other countries, including Scotland, Norway, Canada, UK, and Tasmania state.[17]

CONCLUSION

Proposed hate-speech laws are being smuggled in 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.

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.**

Laws already exist banning the incitement of violence. There is far too much ambiguity in what constitutes "hate". And the risk of misapplication and abuse for political ends is far too high. These laws must be rejected for the sake of a fair, open and democratic society.

SPEAK UP

Exercise your freedom of speech and make your voice heard. Make a submission to your MP, the Ministry of Justice or any future Select Committee considering such laws. Visit **HateSpeech.nz** for further instructions and forward this Fact Sheet onto others to help get the word out.

*In 2018, Warkworth baker **Kath** received a request to bake a cake for a same-sex wedding which she politely refused due to her personal beliefs on the definition of marriage. Consequently, she was harassed with days of intense media coverage and vitriolic 'hate speech' accusations and physical threats including her home address on her social media accounts and website.*[18]

> *"The further a society drifts from truth, the more it will hate those who speak it."*
>
> GEORGE ORWELL / SELWYN DUKE

ENDNOTES

1. Dr Paul Moon. Law News, Issue 22, 9 July 2021, Pg 4
2. https://apnews.com/article/entertainment-jk-rowling-us-news-media-7338b2b262090c00f04deafe2e6689c2
3. The right to hear both sides was affirmed by the NZ Court of Appeal in the leading NZ case on freedom of expression under the NZ Bill of Rights, Living Word Distributors Ltd v Human Rights Action Group Ltd [2000] 3 NZLR 570, CA. Repeated attempts were made after this decision to have it reversed by legislation, but it remains a bastion for freedom of expression in New Zealand.
4. https://www.nzherald.co.nz/nz/speak-up-for-women-controversy-billboard-removed-mayor-apologises/CGUGDIAATDU3CCE56TUMCMJOQM/
5. https://evangelicalfocus.com/europe/11305/christian-politician-paivi-rasanen-formally-charged-for-hate-crime-against-homosexuals
6. For a review of applicable laws see the Royal Commission of Inquiry into the Christchurch terrorist attack. Pages 700 onwards: https://christchurchattack.royalcommission.nz/assets/Report-Volumes-and-Parts/Ko-to-tatou-kainga-tenei-Volume-4.pdf
7. Human Rights Act 1993 – Part 6: Inciting Racial Disharmony: https://legislation.govt.nz/act/public/1993/0082/latest/DLM305478.html
8. Page 5 of the Ministry of Justice Proposal against incitement of hatred and discrimination, available at: https://www.justice.govt.nz/assets/Documents/Publications/Incitement-Discussion-Document.pdf
9. Ibid. Page 23
10. https://christianconcern.com/cccases/rev-dr-bernard-randall/
11. https://www.abc.net.au/news/2020-01-27/margaret-court-recognised-at-australian-open-for-grand-slam/11903098
12. https://www.nzcpr.com/muzzling-free-speech/
13. https://www.nytimes.com/2020/03/17/technology/amazon-hitler-mein-kampf.html
14. Dr Paul Moon, Law News, Issue 22, 9 July 2021, pg 5
15. Rowan Atkinson on free speech. Transcript and video at: http://reformsection5.org.uk/2012/10/rowan-atkinsons-speech-at-rs5-parliamentary-reception/
16. https://www.heraldscotland.com/news/19077579.msps-back-criminalising-hate-speech-dinner-table/
17. Scotland https://www.bbc.com/news/uk-scotland-scotland-politics-53580326, Norway https://www.reuters.com/article/norway-lgbt-lawmaking-idUSKBN2852DL, Canada https://www.theguardian.com/world/2016/may/17/canada-new-laws-transgender-discrimination, UK https://www.theguardian.com/society/2020/nov/04/uk-lawyers-uneasy-about-plan-to-prosecute-hate-speech-at-home, Tasmania https://www.theaustralian.com.au/nation/politics/gender-hate-law-sparks-free-speech-fear/news-story/3bf7f88445290713476cd29aaeef41eb
18. See her story here: https://www.youtube.com/watch?v=6XM3ejCUCNs