



**Submission
of the
New Zealand Union of Students'
Associations, Te Mana Ākonga, Taura
Pasifika and the National Disabled
Students Association.
on
Proposals against incitement of hatred and
discrimination.**

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To	Ministry of Justice
From	New Zealand Union of Students' Associations (NZUSA), Te Mana Ākonga, Taura Pasifika (TBC), National Disabled Students Association
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Subject	Proposals against incitement of hatred and discrimination

1. Introduction

- 1.1. The New Zealand Union of Students' Associations ("NZUSA"), Te Mana Ākonga ("TMĀ"), Taura Pasifika and the National Disabled Students Association ("NDSA") would like to thank the Ministry of Justice for the opportunity to make a written submission on the legislative proposals against incitement of hatred and discrimination.

2. About our Associations

- 2.1. NZUSA: The New Zealand Union of Students' Associations (NZUSA) is the national voice of students in tertiary education. We are proudly owned by students' associations and councils from universities, institutes of technology and polytechnics around the country. We work alongside our partner organisations Te Mana Ākonga (National Māori Tertiary Students' Association), Taura Pasifika (National Pasifika Tertiary Students' Association) and the National Disabled Students' Association to fight for a barrier-free education for all.
- 2.2. Te Mana Ākonga: Born out of student protest movements during the 1970s, Te Mana Ākonga joins a long line of individuals and rōpū who wanted to change the status of ākonga Māori. Te Mana Ākonga is the National Māori Tertiary Students' Association and provides a voice for ākonga Māori on issues that impact them within the tertiary-education environment. We focus on assisting rōpū in advocacy, enhancing support services for ākonga Māori on campus, and keeping rōpū informed of issues that impact on them at a central government level. Our whakapapa drives us in the mahi that we do, which is ensuring a

voice for ākonga Māori in tertiary education is heard and integrated into a predominantly Pākehā system.

- 2.3. Tauira Pasifika: Since the 1960s waves of Pacific families have migrated to Aotearoa in search of educational opportunity for their children. Over the last 40 years, Samoan, Tongan, Cook Island and Fijian student communities have championed fono to celebrate our culture and achievements in tertiary education. Tauira Pasifika has embraced some of the approaches that acknowledge Pacific in tertiary education and used these wins to build confidence across Pacific student communities. In 2020, we celebrated the milestone of having five Pacific presidents leading student bodies at all five major tertiary providers in Auckland. This and other stories of Pacific resilience and success are testament that we belong in tertiary education and bring a much-needed dynamic to decision-making to benefit all those who follow us.
- 2.4. NDSA: The National Disabled Students' Association (NDSA) is the newly founded national voice for disabled students at the tertiary level in Aotearoa. We follow a broad concept of disability including physical disability, learning disabilities, neurodiversity, chronic illness, mental health conditions, those within the Deaf community, etc. We strongly believe that disabled people are not disabled by their impairments, but by the barriers that society place on us. It has long been understood that tertiary education can be an extremely disabling environment, and NDSA seeks to ensure that our voices are heard when addressing these issues.

3. Preamble

- 3.1. NZUSA, TMĀ, Tauira Pasifika and NDSA strongly welcome the governments' proposals against incitement of hatred and discrimination. As a collective voice for the 400,000 students, ākonga and tauira across Aotearoa New Zealand, we feel that these changes will create radical change and work to protect all communities. However, it is quintessential that legislative changes are clear and concise, and that they do not risk further miss-interpretation as current law has done. To ensure our communities are protected under these proposed new laws, they must be able to be understood without doubt.

4. Proposals

4.1. *Proposal One: Change the language in the incitement provisions so that they protect more groups that are targeted by hateful speech.*

4.1.1. As they currently stand, incitement provisions do not reflect the diversity of our nation. Aotearoa New Zealand is becoming increasingly more diverse with people and communities emigrating. As a collective, we believe it is crucial to ensure that all communities are protected thus, we recommend broader specificity in terms of what groups are protected. Furthermore, it is important that those protected under these provisions are specified clearly - avoiding running the risk of further misinterpretation.

4.1.2. In addition, we believe it is crucial that tangata whenua, and our Pasifika whānau, are also specified within such legislation - to ensure further protection against hate speech and racism and uphold the mana and centrality of these communities in Aotearoa.

4.1.3. We also strongly endorse the inclusion of the disabled community in this legislation. Disabled people are often excluded from protection as an oppressed, minority group. We would like to see this legislation explicitly protect disabled New Zealanders against hate speech and ableism.

4.1.4. As a collective, we believe that changing the language in both civil and criminal provisions allows for more just outcomes for those afflicted by attacks of hatred. It is paramount to social justice that the people, as well as the courts, are provided with clear directives on what groups are protected, and what actions can be taken. People who either witness or are subject to discrimination and hatred must be empowered to hold agitators to account.

4.2. *Proposal Two: Replace the existing criminal provision with a new criminal offence in the Crimes Act that is clearer and more effective.*

4.2.1. As suggested in the discussion document, police and other enforcements are unaware of how to interpret broad and complex terms such as "hostility, ill-will, contempt and ridicule". This has

resulted in a lack of confidence in their ability to hold individuals to account. We agree that replacing the criminal provision with a new criminal offence in the Crimes Act allows for a more effective process in dealing with hate speech. Furthermore, change would empower the Police force to deal with instances concerning incitement of hate and discrimination.

- 4.2.2. However, we do stress that *if* the existing criminal provision was replaced with a new criminal offence in the Crimes Act, replacing existing wording with definitions such as “hatred” are also broad enough to result in misinterpretation. If new legislative provisions are added to the Crimes Act, it is crucial that there are explicit examples of what “hatred” is.

We say this because of our concerns centred on academic freedom, and freedom of expression. While we understand that there is a difference between inciting hatred and discussing a position on a topic, new provisions must be very clear in defining examples of acts of hatred, and that there is a clear indication of what an act of hatred is. Moreover, digital media presents a challenge in constant public comments from individuals and communities making it quintessential that hatred be clearly defined. Clarity and specificity will also reassure members of the general public who hold concerns around freedom of expression.

- 4.2.3. Clarity is also important to ensure that all communities are able to understand the legislation and what it prohibits. This is particularly important for neurodiverse people and those within the learning disability community. We would discourage the use of metaphorical euphemisms such as “stir up”, as this may result in further confusion and uncertainty.

- 4.3. *Proposal Three: 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.*

- 4.3.1. The implications of hatred and intent to cause ill-will boast small punishments that do not reflect the level of harm such behaviours have on an individual or community. NZUSA, TMĀ, TP and NDSA

agree that an increase in punishment is necessary. While we agree that three years, and a maximum fine of \$50,000, is a significant increase to existing consequences, we feel there should be more clarification as to what behaviour substitutes which level of punishment.

4.3.2. Moreover, we feel it necessary to ensure that the likes of the Human Rights Commission and Police are adequately resourced to administer what would be a significant increase in civil and legal complaints and actions if proposal one, and proposal four, is passed.

4.4. *Proposal Four: Change the language of the civil incitement provision to better match the changes being made to the criminal provision.*

4.4.1. To reiterate what we stated in 4.1.3, changing language in both civil and criminal provisions allows for more just outcomes for those targeted. If police are empowered to enforce new criminal provisions, it fairly follows that every-day citizens can seek help and speak up against hatred as well. We must again signify the utmost importance of ensuring that hatred is defined clearly and that there be a difference between what hatred *is* and *is not*. Consistent with this is the importance of resourcing the appropriate authorities who will be charged with managing civil complaints and disclosures.

4.4.2. As a collective, we also feel that protections must be in place for those who make a complaint or disclosure. Protections not only for the individual laying a complaint, or individuals, but also to ensure that the power imbalance often felt by marginalised communities is eradicated, and that their voice is equal to that of the governments.

4.5. *Proposal Five: Change the civil provision so that it makes "incitement to discrimination" against the law.*

4.5.1. Currently under the International Covenant on Civil and Political Rights (ICCPR), "any advocacy of national, racial or religious hatred that constitutes "incitement to discrimination", hostility or violence shall be prohibited by law'. To be consistent with the

signing of the international treaty, New Zealand must include “incitement to hatred” in our laws, which we currently do not.

4.5.2. Furthermore, New Zealand signed the United Nations Declaration of the Rights of Indigenous People (UNDRIP). Aotearoa owes it to tangata whenua to ensure that our place in signing the ICCPR, as well as the UNPSIP, is upheld in law.

4.5.3. New Zealand also has obligations under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) to protect disabled people from exploitation and violence in all its forms.

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

4.6.1. NZUSA, TMĀ, TP, and NDSA strongly support the inclusion of trans, gender diverse, and intersex people as communities targeted by discrimination. Current provisions are not clear in protecting trans, gender diverse and intersex people from discrimination. This proposal would make changes to the prohibited ground of discrimination in the Human Rights Act to clarify the protections for these people.

5. General Comments

5.1. *Strengthening the capacity of the Human Rights Commission to respond to hate speech, racism, and discrimination*

5.1.1. In response to this, as a collective we would like to be engaged in further consultation on strengthening the capacity of the Human Rights Commission to respond to hate speech, racism and discrimination. Furthermore, we would like to provide advice on how best to integrate these conversations into the tertiary sector.

5.1.2. In our submission, we have taken a broad stance on law changes - in that many aspects have not specified students. Students fall under all communities and deserve nothing less than equal treatment. We feel the implementation of these laws, and any

further consultation as a result, requires student voice in its implementation.

5.2. *Police-led work to accurately identify, record, report and respond to hate-related crime*

5.2.1. It is clear that Police and enforcement agencies need to be better informed of what is 'incitement of hate' so that they can adequately deal with changes to provisions. Education is hugely important, such as: adequate induction and intense cultural awareness. Other additional induction material needs to be added to their existing training to ensure law changes are made clear in what they set out to do and how they are enforced.

5.3. *Ministry of Justice work relating to hate crime*

5.3.1. As a collective voice that represents over 400,000 people within New Zealand, we can offer unique insights when it comes to the implementation regulations around hate crimes in the tertiary space. Many students from marginalised communities experience hatred throughout their entire education, and providers - specifically under the new Code of Learner Wellbeing and safety - are required to ensure education spaces are a safe space to learn in and engage with. We welcome the opportunity to work with the Ministry of Justice, as well as their counterparts, on ensuring legislation is effective in the education space.

5.4. *The creation of the Ministry for Ethnic Communities to improve outcome for ethnic communities*

5.4.1. It is important that the newly formed ministry for Ethnic Communities engage with various groups - including students. Students offer unique perspectives, and are very future focused, which is essential for the retention of provision changes in remaining effective for decades to come.

5.5. *Inclusion of disabled voices in decision making*

5.5.1. There is currently a distinct lack of disabled representation in Government, parliament, and nationwide decision making. Any law seeking to protect disabled people from ableism will fall short

without disabled people being involved in its creation and implementation. To supplement this work, NDSA supports recent calls to establish a centralised independent body to advise Government on policy through a disability lens.

5.6. *Developing a National Action Plan Against Racism*

5.6.1. The likes of the Human Rights Commission and Ministry for Ethnic Communities must engage with learners to ensure an effective over-arching action plan. Education is one of the greatest enablers in society, and the development of an action plan must be informed by all communities and of all ages from its inception.

5.6.2. Once this action plan is drafted, NZUSA, TMĀ, TP and NDSA welcome the opportunity to submit also.

5.7. *Work on strengthening resilience to mis-and disinformation*

5.7.1. We see this task as one that ensures language in proposed new legislation continues to remain relevant and is managed in order to ensure accuracy in defining what is and is not hatred. Furthermore, this task is a way of mitigating purporting that could be a consequence if the proposals are made into law.

5.8. *Police Culture and Access to Justice*

5.8.1. This law change seeks to protect groups in society who face high levels of discrimination and oppression- racial minorities, gender and sexual minorities, disabled people, etc. However, it is well known that these are the exact communities who have historically faced extreme hardship at the hands of the police. This hardship has been in the form of racially charged overcriminalization, abuse, homophobia or transphobia, and access to justice issues for disabled people and those with mental illnesses.

5.8.2. It is hard for these groups to have faith in New Zealand Police to safely and adequately enforce these forward-looking provisions. Because of this, we worry that many groups experiencing hate speech will not feel confident to bring it to the police's attention, or simply will not have the resources to do so.

- 5.8.3. To mitigate this, it is absolutely crucial that the New Zealand Police and Ministry of Justice do further work in anti-racism, anti-ableism, and general anti-discrimination. They should also be working alongside and with communities, to build up the trust which has been destroyed over time.
- 5.8.4. For disabled communities, especially neurodiverse people or those with learning disabilities, the justice process needs to become more accessible. Otherwise, these proposed law changes will fail to protect us.

6. Conclusion

- 6.1. NZUSA, TMĀ, TP and NDSA would like to thank the Ministry of Justice for allowing us the opportunity to submit on the six proposals. As a collective voice of the 400,000 students, ākonga and taura across Aotearoa, we are certain such change will radically empower action to be taken against hatred and discrimination. Moreover, it is crucial that such provisions be embedded into education, to enable society to learn and grow.