



Ministry of Justice

Proposals against incitement of hatred and discrimination

Submission from Transparency International NZ, 5 August 2021

Transparency International New Zealand (TINZ) is the recognised New Zealand chapter of [Transparency International](#), the global civil society organisation against corruption. TINZ is a not-for-profit incorporated society with charitable status. TINZ is non-political and non-partisan. TINZ consulted with its members on this topic.

General

TINZ is generally supportive of the proposals for change.

A stable and thriving economy and society rely on integrity systems that facilitate checks and balances on power, transparency of decision-making and information, the ability to speak up about wrongdoing, and to see this investigated; and the ability for people to explore issues, participate in public debate and policy formation.

Our interest in this topic focuses on the balance between the free exchange of ideas and the responsibility that comes with that due to the impact that the voicing and influence of ideas can have on others. It is clear that there are communities and individuals who are more likely to be the targets of victimisation and discrimination. Our law needs to offer them protection. At the same time it should not generate either the perception or the actuality of unreasonable control over opinion, political positions and the exploration of ideas. There is a genuine risk that increasing legal control will further strengthen the belief of those who hold and promote hateful views. It is a difficult balance.

We appreciate the need to keep the law current. However we strongly encourage more public discussion around what is intolerable speech, as our community becomes increasingly diverse - culturally, socially and politically. There is a need for more careful consideration and research into how to counter polarisation of political thought (across the political spectrum) that might engender hatred. We also urge structured monitoring of the impact of this legislation over time.

Proposal One

Change the language in the incitement provisions in the Human Rights Act 1993 so that they protect more groups that are targeted by hateful speech.

TINZ Comment:

We agree with members who responded to our consultation, that if the bar for hate speech is as high as it should be, then there should be no concerns with including all grounds for non-discrimination as protected from the worst forms of hate speech.

We also agree with the points made by Internet NZ in relation to this section:

- that it is important to understand how the broader list of grounds will operate in practice
- that we need to understand the potential for unintended consequences, i.e people should still be able to explore issues and disagree with others: two important elements of a healthy democracy; and
- the views of those who are most often the targets of online incitement and bad faith complaints should be sought.

Proposal Two

Replace the existing criminal provision in the Human Rights Act 1993 with a new criminal offence in the Crimes Act 1961 that is clearer and more effective.

TINZ Comment:

- We support the wording that sets a clearer threshold.
- We agree that there must be an intention to cause others to develop and strengthen hatred towards a group. The bar should be set higher than insulting, or an offensive view.
- We agree that the means of delivery should be enabled to be broad.
- We are concerned that the term 'hatred' is too vague and therefore open to interpretation.
- We think that any legal remedy will need to be balanced by regulatory and social work.
- We should be mindful of the risk that has been highlighted in Europe, of the dangers of both criminalising extreme radical political behaviour, and of being lenient towards it.¹

Proposal Three:

Increase the punishment for the criminal offence to better reflect its seriousness.

TINZ Comment:

- We accept the reasoning for a greater penalty for incitement of hatred on a broader scale.
- One of our members is concerned about the proposed diverging proportionality of penalties between direct hate speech with individual victims and encouraging the commission of those offences across a wider group.
- Another of those who responded to our member consultation has asked that death wishes (which are deeply unpleasant, and have the social cohesion concerns the government is worried about, but which cannot be prosecuted as death threats) should be encompassed in the law.
- *There could be* more sentencing discretion between discrimination, incitement and actions.

¹ Explaining right-wing terrorism and violence in Western Europe: Grievances, opportunities, and polarization
Jacob Ravndal
<https://www.duo.uio.no/bitstream/handle/10852/59875/Article%2bIII%2bEJPR.pdf?sequence=1&isAllowed=y>

Proposal Four:

Change the language of the civil incitement provision to match the changes being made to the criminal provision

TINZ Comment:

- We support this. Any changes made to the criminal provision (eg around the groups protected or the standard of hatred) should be mirrored in the civil provision.

Proposal Five:

Change the civil provision so that it makes “incitement to discriminate” against the law.

TINZ Comments:

- We agree with this proposal. It brings New Zealand into line with its commitments under the International Covenant on Civil and Political Rights.
- For clarity, the law should only prohibit incitement to unlawful discrimination, not incitement to discrimination generally. Discrimination that is lawful should be able to be promoted.
- We agree with Internet NZ that the provisions should be limited to protected areas. This would enable social campaigns, for example, against poor business practices.

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.

TINZ Comment:

- We agree with this proposal.
- The Government will need to be clear which, if any, exceptions it intends to add across section 22-60 of the Human Rights Act.

Other Comments

Digital technology can be a tool for good and for harm. That is why TINZ has provided research and comment on the need for greater understanding of online electoral campaigning, and why it has extended its scope into algorithmic transparency. We have also run public sessions on polarisation of thought and on hate speech/free speech.

At the moment private social media companies have an arbiter role in relation to online promulgation of thought. We agree with the Special Rapporteur to the UNHRC, on the promotion and protection of the right to freedom of opinion and expression (2018)² that companies must open themselves up to public accountability, and that rights-respecting press councils worldwide should provide a model for imposing minimum levels of consistency, transparency and accountability to commercial content moderation.

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² <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/ContentRegulation.aspx>