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S21.16

## **Submission to the Ministry of Justice on Proposals against incitement of hatred and discrimination**

### **Introduction**

1. The National Council of Women of New Zealand, Te Kaunihera Wahine o Aotearoa (NCWNZ) is an umbrella group representing over 200 organisations affiliated at either national level or to one of our 14 branches. In addition, about 450 people are individual members. Collectively our reach is over 450,000 with many of our membership organisations representing all genders. NCWNZ's vision is a gender equal New Zealand and research shows we will be better off socially and economically if we are gender equal. Through research, discussion and action, NCWNZ in partnership with others, seeks to realise its vision of gender equality because it is a basic human right.
2. This submission has been prepared by NCWNZ after consultation with the membership of NCWNZ.

### **Summary**

3. NCWNZ agrees that it is timely and important that the Human Rights Act 1993 and the Crimes Act 1961 are updated to protect groups that are most likely to be subjected to hate speech, along the lines that are proposed in this consultation document.
4. We agree that the right to free speech is a basic principle of a democratic society and is protected under the New Zealand Bill of Rights Act 1990. It is not an absolute right, however, and it needs to be balanced against the right of an individual to safety and non-discrimination and the responsibility of government to protect all communities within Aotearoa New Zealand from discrimination and abuse.
5. Hate speech can cause significant harm to society if it is allowed to proliferate and become normalised. If unchecked, hate speech can easily turn into hateful actions which undermine social cohesion, polarise, and divide communities and pose a risk to human

rights and democracy. For this reason, NCWNZ believes that there needs to be legal redress against extreme forms of hate speech and that groups that are most likely to be targeted by hate speech should be given protection under the law.

6. NCWNZ agrees that religious minorities and rainbow groups are especially likely to be targets of hate speech and need special protection. However, we wish to point out that women and girls are also routinely subjected to hate speech, hostility, contempt and abuse in our society, and this is having a significant and cumulative negative effect on their well-being and rights in Aotearoa New Zealand. A recent sexual harassment survey of 725 girls from Christchurch Girls High School<sup>1</sup> found that more than 50% of girls had been sexually harassed in the past year, many on social media. A quarter of the girls said it happened to them on a routine basis.
7. We are concerned that the internet has become a new platform for the expression of hatred and abuse against women and girls. Indeed, hate speech has become so normalised on the internet that it is a daily backdrop to many teenage girls and young women's lives.
8. A network of online blogs, chat forums and other social media groups such as 'Men Going their Own Way' and 'Involuntary celibates' openly promote the hatred of women on their sites and encourage their followers to hate and abuse women. The author Laura Bates details how this network operates in her recently released book 'Men Who Hate Women'<sup>2</sup>. She discovered that membership of online misogynistic groups such as 'Proud Boys' frequently overlaps with white supremacist and other extremist and terrorist groups.
9. NCWNZ therefore believes it is important that women and girls are included in the list of groups that are likely to be targeted by hate speech and need to be protected from discrimination and incitement to hostility/hatred.

## Specific Proposals

### Proposal One

10. NCWNZ supports the proposal to broaden the number of groups that are included in the incitement provisions— including those groups that are listed under Section 21 of the Human Rights Act 1993 as being protected from discrimination. Given the level of abuse and hatred women and girls are routinely subjected to in our society, we recommend that groups that are identified on the basis of their sex, sexual orientation, gender identity or disability should be added to the list of groups needing protection from hate speech. We don't support including political opinion in the incitement provisions, however, as we do not want to limit political debate. Some of our members are concerned that 'sexual orientation' may be difficult to define.

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<sup>1</sup> Sunday Star Times, June 29, 2021

<sup>2</sup> Bates L. 2020. Men Who Hate Women. Simon and Schuster

11. Other groups that are protected under international law through UN Conventions should be included, such as children.
12. Groups or categories of people that are targeted by hateful speech may change over time, so we suggest there needs to be a regulatory mechanism that would enable groups that are not presently identified but become the targets of hostile, abusive or threatening behaviour, can be added in future.
13. Broadening the incitement provisions will not by itself guarantee better protection for groups that are the targets of hate speech, but it would signal that abuse, violent threats, abusive or demeaning statements are not acceptable in our society; are grounds for complaint and in their most serious forms, would be the basis for criminal prosecution.

### **Proposal two**

14. NCWNZ supports the proposal to replace the existing criminal provision with a new criminal offence in the Crimes Act 1961 that it is clearer and simpler to understand than section 131 of the Human Rights Act 1993. However, we are not convinced that replacing the words hostility, ill-will, contempt and ridicule with 'hatred' will ensure greater clarity in the law, as it may be easier to define what is meant by contempt and ridicule rather than what is meant by 'hatred', as hatred refers to the emotion of a person expressing certain views, rather than to the impact of a person's actions or words on the people who are the focus of this emotion.
15. There is no clear definition of the word 'hate' and 'hate speech' in the proposal and we believe these terms need to be defined in a much more precise way. The proposed law should also define clearly what forms of behaviour, words or images would constitute 'incitement to hatred'. Examples of what would constitute hate speech would be useful.
16. The proposal states that there must be an intention to cause others to develop hatred towards a group, but we could not find a definition of the word 'intent' or 'intention' in the proposal and believe these words also need to be clearly defined. The new criminal provisions should apply whether a person makes the threat or abuse verbally, in writing, online, in an email or a digital message.
17. Poor understanding within the population of what discrimination is, alongside social conditioning, creates the conditions to perpetuate systemic discrimination and could provide barriers to implementing this proposal.

### **Proposal three**

18. Given the systemic harm that intentional, ongoing hostility and abuse can cause to victims and to society in general, NCWNZ agrees that the seriousness of the crime should be recognised by moving it into the Crimes Act 1961. The type of offence would depend on its seriousness, the extent to which it threatens groups that are the target of this incitement, and this would also need to be spelled out in the proposed law.

19. In general, however, NCWNZ would support community service as a sentence for offenders, rather than imprisonment, as punitive responses are seldom effective in changing people's attitudes to the original crime. We believe the focus should be on changing attitudes via informed discussion and that education in cultural competency and mandatory education programmes should be part of any consequences imposed on offenders.

#### **Proposal four**

20. NCWNZ agrees that to ensure consistency in the law, the language of the civil incitement provision should be changed so that it matches the changes being made to the criminal provision.

#### **Proposal five**

21. We agree section 61 of the Human Rights Act 1993 should be amended to make it clear that 'incitement to discrimination' is against the law. This would make it clear that incitement to discrimination, overt hostility that is threatening and violence against groups is against the law.

#### **Proposal six**

22. NCWNZ supports amending the Human Rights Act 1993 to clarify that trans, gender diverse and intersex people should be protected from discrimination under the Human Rights Act 1993, as well as from incitement to hostility and hatred. We would support consultation with Maori and Pasifika communities to identify whether takatapui and other culture gender identities such as fa'afafine should be included as categories of people who should be protected from discrimination and incitement to hostility/hatred.

#### **Other comments**

23. One of the responding groups made some unique points:
- a. What happened in Christchurch in 2019 was murder based on hate, not a terrorist attack.
  - b. The Human Rights Act 1993 prohibited ground of 'religious belief' needs to be expanded to include spirituality. Religion is an organisation built upon a group's spiritual belief and embraced by the culture within a particular country. To add this understanding in Aotearoa will include people practicing pre-Christian spirituality such Maori spirituality as well as Wicca, one of the Celtics religions prior to Christianity and many others misunderstood and discriminated against because they are different.

#### **Conclusions**

24. NCWNZ supports the government's proposals to update the Human Rights Act 1993 and the Crimes Act 1961 to provide increased protections to groups that are most likely to be targeted by hate speech.

25. We agree that religious minorities and rainbow groups are especially likely to be targets of hate speech, as discussed in various background documents. However, NCWNZ wishes to point out that women and girls are also targets of hate speech, and this is contributing to a 'rape culture' which is not only demeaning to women and girls but is behind the epidemic of sexual violence and harassment that women and girls experience in Aotearoa New Zealand. Given the systemic, widespread nature of the abuse and hatred targeted at women and girls, we believe that women and girls should be protected against discrimination on the basis of sex and gender identity.



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