



The Federation of
Islamic Associations
of New Zealand (Inc.)

اتحاد الجمعيات الإسلامية النيوزيلندية

SINCE 1979

PRELIMINARY SUBMISSION ON THE PROPOSED HATE SPEECH LEGISLATION

You Are Us
We stand
along

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WE ARE
ONE



The terror tragedy of 15 March 2019 has been a seminal lesson on the impact of unabated hate. We all recognise that legislation is no panacea against those who are determined to subject others to misery through hate. However as a society we have a responsibility to ensure the wellbeing and safety of all people. The proposed legislation is a step towards ensuring such safety. This is a preliminary submission by FIANZ on the proposed legislation

Ibrar Sheikh
President



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1.00 CONTEXTUAL AND QUALIFIED AFFIRMATION

Insofar as the proposed legislation is an affirmation of the recommendations of the Royal Commission of Inquiry (RCOI), FIANZ attests to the **need value and use value** of the proposed changes. The RCOI in their findings highlighted the **need** for specificity of terminology to reduce the scope for dissonance in the application of the law. The updating of the legislation to include faith communities (and others) underscores the **use value** of the legislative safety net.

Simply put, the rationale for our affirmation has been based on the Royal Commission findings that; “New Zealand needs fit for purpose laws and policies.”¹

Whilst it is admirable for politicians to engage in robust debate on the proposed changes, FIANZ hopes that is constructive and value-based. Anything less would not only demean the vulnerable communities who sought the changes but also deflect the need and use values as clearly identified by the RCOI. It is a pivotal point to note that all the 44 Recommendations are interlinked and together form a future-proofed bulwark and scaffolding framework aimed at the safety and wellbeing of Aotearoa New Zealand.

The FIANZ affirmation is qualified in that:

i) We consider that insufficient time has been allocated to consult with our community. We consider this quite disheartening and insensitive given the following:

Evidence

- Muslim organisations have been raising the problem of hate speech consistently since 2015 with various Government agencies, as noted by the Royal Commission. Having waited over 6 years for some action, and yet the Ministry did not have the courtesy of allocating an extra 10 working days extension.
- It is even more culturally insensitive that the allocated days given by the MOJ included our very important Eid festival.
- It is quite obvious that the MOJ had not given due consideration to the Ministerial Cabinet paper which clearly states “ the Muslim community in New Zealand has been affected by speech that incites hatred.”²
- The Royal Commission had developed an excellent Guide for Engaging with Muslim Communities and had urges Public Sector agencies to consider this when engaging with Muslim communities in the future. It is quite obvious that senior MOJ officials have ignored this.

¹ <https://christchurchattack.royalcommission.nz/the-report/executive-summary-2/summary-of-recommendations/>

² <https://www.justice.govt.nz/assets/Documents/Publications/Proactive-release-Incitement-of-Hatred-and-discrimination.pdf>



- ii) We find that the MOJ seems to be overlooking faith-based communities. Whilst we are sure that this is unintentional, it is nevertheless important to outline our concern.

Evidence

Proposed changes to the incitement provisions in the Human Rights Act 1993 Cabinet paper Office of the Minister of Justice ³ - 2 December 2020		
Executive Summary noted that religious groups or rainbow communities are also targets of hate speech. However in the subsequent body of the cabinet paper there were specific clauses relating to gender, rainbow, disability and Māori, and no mention of faith-based communities		
Considers	Quote from Cabinet Paper	
Clause 65. Gender Implications	The proposals in this paper seek to better protect women and rainbow communities from hate speech.	✓
Clause 66. Disability Perspective	Engagement and other evidence show that disabled people face discrimination and inciting speech that impacts their human rights.	✓
Clause 67 Māori	The proposals aim to better protect Māori from hateful speech and discrimination	✓
No Clause on faith based communities (Muslims, Jews, Hindus, Christians, Sikhs, Jain and others)	ABSOLUTELY IGNORED This indicates a serious omission. It was our faith-based Muslim community who bore the brunt of the hate-inspired terrorism. We would have at least expected a statement that faith-based communities like Muslims, Jews and other also need protection from hateful speech and discrimination.	✗
Such an omission may seem trivial, but when put alongside the lack of consultation, the refusal to extend the submission period and the non-responsiveness of senior officials, all point to a trend which does not inspire much confidence and trust. We consider this unfortunate.		

- iii) We have given some preliminary responses to the six proposals and shall await the final wording of the proposed legislation to provide our definitive responses. At the time of writing this report we have received minimal responses. This highlights the importance of our plea for more time to garner substantive responses to this pivotal issue of hate speech. FIANZ does not subscribe to a 'tick-the-box' consultation and genuinely believes that engagement needs patience and a participatory approach. It seems both of these have been missing in the MOJ approach.

³ <https://www.justice.govt.nz/assets/Documents/Publications/Proactive-release-incitement-provisions.pdf>

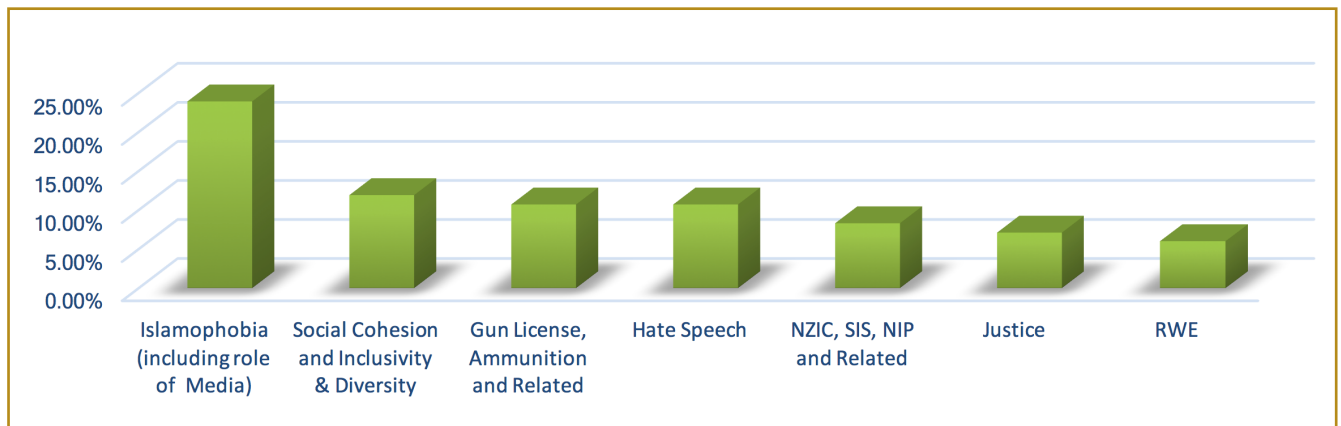


2.00 CRITICAL ISSUES

2.1 HATE SPEECH A KEY CONCERN FOR MUSLIMS

In the series of nationwide hui held by FIANZ in 2019, Muslims considered ‘hate speech’ the fourth most important issue of concern, after Islamophobia, Social Cohesion and Gun Licensing.^{3.1} It reflects the almost daily personal level occurrences whether it be in bus stations or supermarkets, or via public media or social media. Of concern has also been the vitriolic hyperbole utilised even by politicians in Parliament. All of which have been well documented in the FIANZ Royal Commission Submissions.

TOP SEVEN AREAS OF CONCERN FOR MUSLIMS - HUI ACROSS THE COUNTRY 2019^{3.2}



Whilst the FIANZ hui took place in 2019, the more recent hui organised by the DPMC in 2020 also noted the need for hate speech reform. The report stated, “many spoke of the importance of the reform of hate speech legislation, as they felt that it is critical for increasing a sense of safety.”^{3.3}

2.2 NEED FOR FIT FOR PURPOSE LEGISLATION

The time for change has been long overdue. Since 1971, Muslims have been aggrieved by their non-inclusion in the Race Relation Act. Muslims are not a race entity. In Aotearoa New Zealand there are no less than 58 different ethnicities within the Muslim community. Nor are they covered by Section 131(1) of the Human Rights Act, which covers colour, race, or ethnic or national origins⁴. What is even more confusing is that under the Sentencing Act 2002, Section 9(1)(h) characteristics include race, colour, religion, gender identity, sexual orientation, age or disability.⁵ The RCOI listened to the Muslim community who pointed out that legislatively, inciting racial disharmony covered people “on the basis of their colour, race, or ethnic or national origins of that group of persons”⁶ and the crucial element of religion or faith was not included. The proposed changes updates existing legislation.

^{3.1} <https://fianz.com/wp-content/uploads/2020/12/FIANZ-RC-FORMAL-SUBMISSION-24-February-2020-FINAL-VERSION-Autosaved.pdf>
^{3.2} <https://fianz.com/wp-content/uploads/2020/12/FIANZ-RC-FORMAL-SUBMISSION-24-February-2020-FINAL-VERSION-Autosaved.pdf>
^{3.3} https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwju8aeX8ovyAhUCheYKHxgqDnsQFjADegQIBhAD&url=https%3A%2F%2Fdpmc.govt.nz%2Fsites%2Fdefault%2Ffiles%2F2021-03%2FReport%2520on%2520community%2520hui%2520held%2520in%2520response%2520to%2520the%2520Royal%2520Commission%2520of%2520Inquiry%2520into%2520the%2520Terrorist%2520Attack%2520on%2520Christchurch%2520Mosques.docx&usq=AOvVaw3Z08QIEJoNj5_8Tg-VLbCL
⁴ <https://christchurchattack.royalcommission.nz/the-report/part-9-social-cohesion-and-embracing-diversity/hate-crime-and-hate-speech/>
⁵ <https://christchurchattack.royalcommission.nz/the-report/part-9-social-cohesion-and-embracing-diversity/hate-crime-and-hate-speech/>
⁶ <https://christchurchattack.royalcommission.nz/the-report/part-9-social-cohesion-and-embracing-diversity/hate-crime-and-hate-speech/>



WHY THE NEED TO UPDATE AND MAKE THE EXISTING LEGISLATIONS FIT FOR PURPOSE?

SECTION 131(1) Human Rights Act

(1) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$7,000 who, with intent to excite hostility or ill-will against, or bring into contempt or ridicule, any group of persons in New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons,—

No mention
of religion

SECTION 9(1)(h) Sentencing Act 2002

... an enduring ... characteristic such as race, colour, nationality, religion, gender identity, sexual orientation, age, or disability

Specifically
mentions
religion

2.3 NZ's LATE RESPONSE TO HATE SPEECH LEGISLATION

The global reach of public and social media makes hate speech anywhere as much a local issue in Dunedin and Christchurch as it is in Melbourne, a fact noted in the RCOI relating to the social media of the terrorist. New Zealand is far too late in keeping up with legislative changes.

In 2015, the UN warned of “grave concern at the outpouring of intolerance and hate speech in public discourse and in the media”¹⁰ and “urgently called on those in positions of authority and political leadership to act responsibly and with respect for both international and national laws”.¹¹ The UN categorically warned NZ and other nations, “there have been numerous acts of intimidation and violence against Muslims ... including discriminatory, xenophobic and racist statements”.¹²

In NZ the national Muslim community advocates, FIANZ and IWCNZ, were repeatedly stating the same to many Government agencies. The voices of concern against hate speech were not only ignored but spurned with malicious hyperbole, even by politicians. The Government of the day was more focused

¹⁰ <https://news.un.org/en/story/2015/12/518232-amid-escalating-hate-speech-against-muslims-un-rights-officials-denounce>

¹¹ <https://news.un.org/en/story/2015/12/518232-amid-escalating-hate-speech-against-muslims-un-rights-officials-denounce>

¹² <https://news.un.org/en/story/2015/12/518232-amid-escalating-hate-speech-against-muslims-un-rights-officials-denounce>

¹³ <https://www.stuff.co.nz/national/politics/opinion/64139274/judith-collins-targeting-radicals-not-muslims>



on securitising Islam with the passing of the Terrorist Fighters Legislation Bill which was aimed at Muslims going directly from NZ to fight for the terrorist ISIL organisation.¹³ The security and safety of Muslims in NZ was not a concern despite a growing international trend of Right Wing Extremism. The Royal Commission highlighted this trend and some two years after the tragic terrorism of 15 March, 2019 the current Government is heeding the recommendation now. Despite being late, it is nevertheless an important scaffolding for the welfare, wellbeing and safety of all New Zealanders against the effects of hate speech.

2.4 NEXUS BETWEEN HATE SPEECH AND HATE CRIME

The connection between hate speech and hate crime is the fundamental rationale for the enhanced legislation. Williams et al (2019)¹⁴ in seminal research, which was highlighted by the Royal Commission, underscores on-line hate speech as a pernicious social problem¹⁵. The study concludes that “online hate speech that targets race and religion” has a temporal and spatial association with “offline racially and religiously aggravated crimes.”¹⁶ Other studies have also noted similar findings as Berentson-Shaw & Elliott, 2019¹⁷ and Mills, Freilich, & Chermak, 2017¹⁸. The European Commission against Racism and Intolerance (ECRI), Council of Europe noted that hate speech pose grave dangers for social cohesion in a democracy, undermines human rights and challenges the rule of law if left unaddressed.¹⁹

2.5 VICTIMS OF HATE CRIME: GLOBALLY & LOCALLY MUSLIMS BEAR THE BRUNT

Whilst NZ Police data on hate is at a nascent stage, there is a worldwide trend of Muslims bearing the brunt of hate crime. As the Royal Commission highlighted, Islamophobia has had a significant impact on the Muslim community. As the tragic events of 15 March highlights, hate mongering can have the most tragic of consequences.

¹⁴ <https://www.stuff.co.nz/national/politics/opinion/64139274/judith-collins-targeting-radicals-not-muslims>

¹⁵ <https://academic.oup.com/bjc/article/60/1/93/5537169>

¹⁶ <https://academic.oup.com/bjc/article/60/1/93/5537169>

¹⁷ <https://academic.oup.com/bjc/article/60/1/93/5537169>

¹⁸ <https://apo.org.au/node/275356>

¹⁹ https://www.researchgate.net/publication/287796668_Extreme_Hatred_Revisiting_the_Hate_Crime_and_Terrorism_Relationship_to_Determine_Whether_They_Are_Close_Cousins_or_Distant_Relatives

²⁰ <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/hate-speech-and-violence>

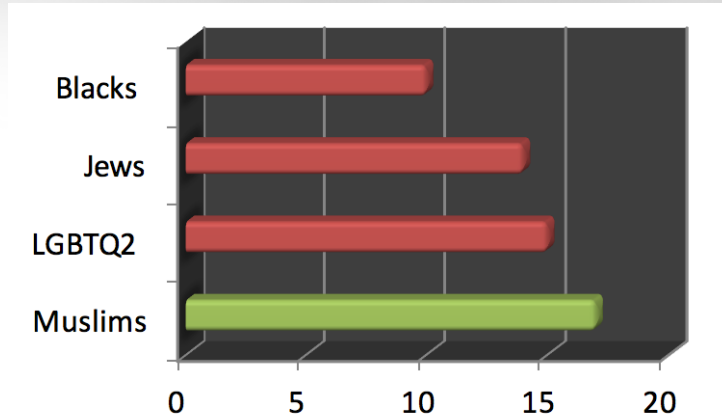
²¹ <https://www.mediatechdemocracy.com/work/legal-aspects-of-hate-speech-in-canada>

²² <https://www.mediatechdemocracy.com/work/legal-aspects-of-hate-speech-in-canada>



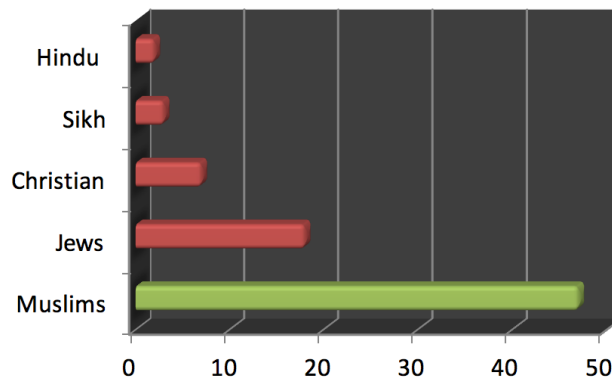
CANADA: Based on Statistics Canada between 2010 to 2017 Muslims bore the greatest most brunt of hate²⁰

HATE CRIME INCIDENTS BY RELIGIOUS BIAS IN CANADA²¹



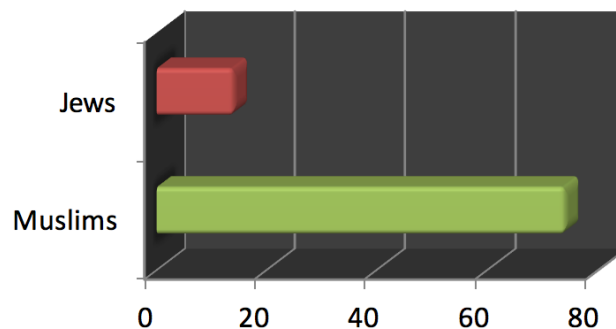
UK: in 2018/2019 , based on data from Home Office on religious hate crimes , Muslims suffered the most followed by Jews.²⁴

HATE CRIME INCIDENTS BY RELIGIOUS BIAS IN THE UK²⁵



NSW, AUSTRALIA: Based on NSW Police Force data from 2013 to 2016, “ the most common victim religion was overwhelmingly Muslim (73%) followed by Jews(14%).²⁶

HATE CRIME INCIDENTS BY RELIGIOUS BIAS IN NSW, AUSTRALIA²⁷



²² <https://www.pri.org/stories/2016-09-12/data-hate-crimes-against-muslims-increased-after-911>

²³ <https://www.pri.org/stories/2016-09-12/data-hate-crimes-against-muslims-increased-after-911>

²⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/839172/hate-crime-1819-hosb2419.pdf

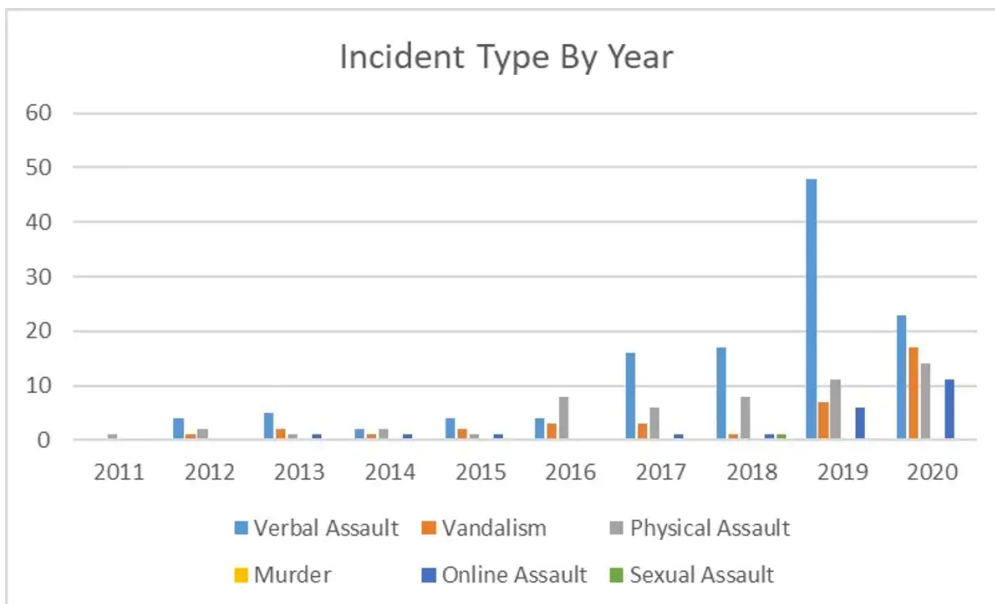
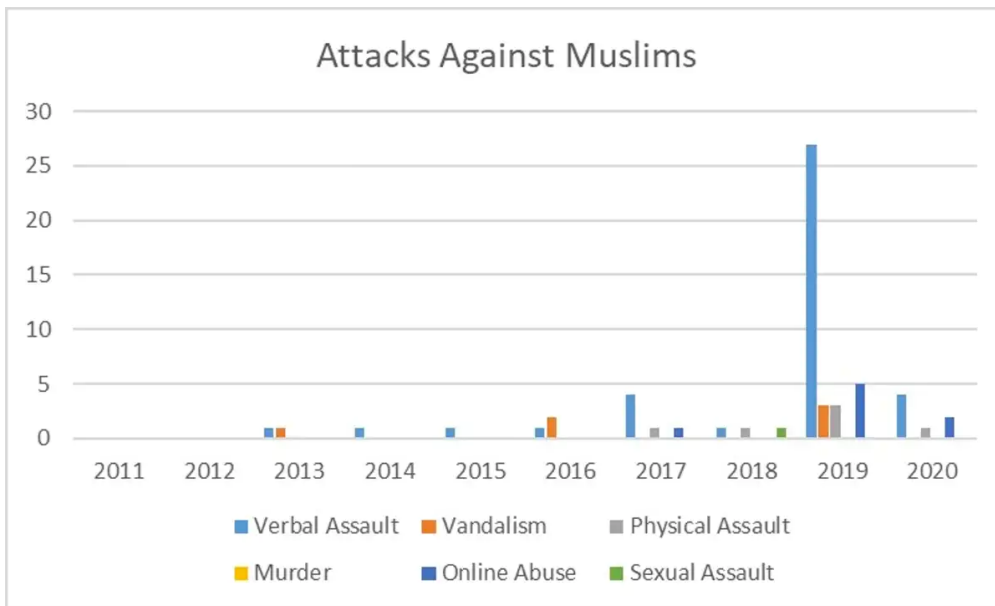
²⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/839172/hate-crime-1819-hosb2419.pdf

²⁶ <https://www.sydney.edu.au/news-opinion/news/2019/04/01/vast-majority-of-nsw-hate-crimes-race-and-religion-related--stud.html>

²⁷ <https://www.sydney.edu.au/news-opinion/news/2019/04/01/vast-majority-of-nsw-hate-crimes-race-and-religion-related--stud.html>



NZ: The Register of hate crimes of NZ Police is at a very nascent stage . Wilson and Shastri (2020) from Auckland University collated media-reported data as a preliminary step towards a ‘more systematic view of identity crime’.²⁸



²⁸ <https://theconversation.com/hate-crimes-against-muslims-spiked-after-the-mosque-attacks-and-ardern-promises-to-make-such-abuse-illegal-147347>



2.6 Future Proofing: the Issue of Political Hate Speech

In recent times there has been a noticeable trend overseas of a nexus between extreme ideologies and elected politicians. We have seen the devastating impact of this in the USA, Germany, France, Netherlands, UK and Australia. Divergent political views make for a healthy social tapestry, but on occasion some of these politicians either unweave the social tapestry stitch by stitch or attempt to set fire to the entire national fabric of social cohesion. Whilst we contend that the latter should be subject to the proposed new legislation, there seems to be a significant loophole in our structure of conventions. This is a loophole which has been exploited by these extreme politicians to maximize their sound-bite media-fueled popularity. It is a popularity based on conspiracy theories devoid of facts and vitriolic finger-pointing against vulnerable communities.

This loop-hole is the Parliamentary privilege. Dating back to Sir Thomas More in 1523, the notion of Parliamentary freedom of speech in debate became a privilege in the NZ Parliament in 1861 with clarification in the Parliamentary Privilege Act 2014 in the context of the Bill of Rights. The rationale of the separation of the judiciary and the legislature is however a loophole which needs to be discussed and debated in light of what has been happening overseas with the rise of RWE and their extreme hatemongering under the cloak of Parliamentary privilege or similar. In New Zealand there have been several examples of such excesses by politicians with respect to Islamophobia and other hatemongering.

Whilst the above loophole is not the focus of the proposed legislative changes, we contend that a key lesson learned from overseas is that elected hatemongers would and could use the platform of Parliamentary privilege for extreme hate speech to garner support for their cause.

Examples include,

- Against Pasifika people: As a recent article noted in the context of the apology for the Dawn Raids, “Parliament was the place where several speeches were given at the time to enable some of what has taken place against Pasifika people”.^{27.1}
- Against Māori: "Over the past two weeks, there has been racist propaganda and rhetoric towards tangata whenua,"^{27.2}

^{27.1} <https://www.stuff.co.nz/national/125440106/pasifika-petitioner-moved-to-tears-by-surprise-dawn-raids-apology>

^{27.2} <https://www.rnz.co.nz/news/political/442412/maori-party-co-leader-rawiri-waititi-ejected-from-parliament>



3.00 CONSULTATION : CREDIT & CONSTRAINT

3.1 CREDIT

To its credit, the MOJ tried to make available a lot of information. It was particularly impressive that the information was translated to Te Reo Māori, Arabic, Bahasa (Indonesian), Bahasa (Malaysian), Bengali, Chinese Simplified, Chinese Traditional, Dari, Hindi, Korean, Pashto, Farsi, Samoan, Somalian, Tongan, Turkish and Urdu.

3.2 PAUCITY OF CONSULTATION

Given all the work which has gone towards developing the discussion document, it is quite disheartening that the MOJ has been in such a rush to proceed with the proposed changes. We consider that there has not been the necessary robust and in-depth consultation with the wider community, including the Muslim community. It is most unfortunate that the need to maintaining the legislative timetable was given more priority than the principle need of public consultation. This is quite contrary to the RCOI's stress on community engagement.

Most national community organisations, like FIANZ, rely on volunteers to respond to the ever increasing 'discussion documents' from public sector agencies. They have the daunting task of coping with the timetable set by professional civil-servants. This mismatch is easily mitigated through direct communications with the leadership of the organisations, rather than a driftnet approach to template mass emails.

Moreover, the few public meetings which were organised were scheduled during working hours on working days making it very difficult for people to take time off from work. It is also quite constraining for the consultations to be limited to three major cities with the regional cities and towns being excluded. In this case even large cities like Dunedin and Palmerston North were not considered important. Yet, if the MOJ had bothered to discuss with the DPMC or had even read the DPMC Report on the 33 national consultation hui, this major faux pas could have been avoided. This is precisely the type of inter-Ministry coordination which the RCOI had advised.

Many national organisations did not have the opportunity to seek responses to questions or even interact with the key officials at the few scheduled meetings. For those who attended the sessions it was generally considered a one-sided monologue with insufficient time for any meaningful engagement. We trust these lessons have been learned for the future.

3.3 SUGGESTION FOR MORE CLARITY

We consider that it would have been most useful if examples had been provided of what is considered 'hate speech' and at what threshold would this become criminal. Such examples would have at least given some clarity and useful discussion points. The absence of this make this exercise of consultation quite meaningless and open to confusion. It also raises the vexed issue that the proposed changes are a challenge to 'freedom of expression'.



Clarifying what is hate speech?

- “ Go back to where you came from , you *****” : **Is this hate speech?**
- “ We should ban all ***** people who are lazy and don’t want to work “ : **Is this hate speech?**
- “ ***** are transgressing God’s law and they should be stopped “ : **Is this hate speech?**
- “ ***** wear patches and they are all criminals “ : **Is this hate speech?**
- “***** is a terrorist and a bad mother “ : **Is this hate speech?**
- “What is happening is that family, friends and confidants are choosing to turn the other cheek, are choosing silence, rather than to turn these monsters (terrorists) in. That may be the culture of Damascus, but it is not ours. It may be acceptable in Tripoli, but it most certainly is not acceptable in New Zealand.”: **Is this hate speech ?**

The above are real quotes and would have been a good basis to determine what is hate speech and issues around incitement, extremism and the like.

Prior to submitting this document for public response, we understand there were discussions with some focus groups. Cherry picking who to talk to may provide comfort for civil servants, but does not sit well with civil society. It would have been more useful and transparent to at least indicate who were involved in developing the discussion document.

3.4 THE OUTCOME OF CONSULTATION

There have been no less than 40 plus consultations or hui nationwide by the various Government agencies, often repeating the same issues. There is not only a danger of meaningless consultation but also of giving rise to apathy by civil society. This is even more serious given that whilst reports are often written after the consultations, very few actually result in tangible outcomes. For instance, the former OEC organised 16 community meetings with over 250 Muslims (youth, women, men and elders) participating and a summary report was published. Some 25 action points were discussed with absolutely no follow-up.

With respect to the current MOJ request for submission, there has been no indication of how the submissions will be analysed and how the divergent views will be considered. An indication of the methodology would have been most useful. For civil society to build trust with the civil servants, this is essential. By simply stating, “ We’re seeking your feedback on the six proposals..”²⁹ without offering any guide as to how the responses will be evaluated is shortchanging civil society and devaluing the whole exercise. The Cabinet Office Circular CO(18)4 of 25 June, 2021, states, “the feedback from public submissions and focused engagement with groups would be analysed and inform subsequent policy advise.”³⁰ This too gives no guidance as to how the divergent views of the various communities would be incorporated into the policy. The MOJ needs to be more transparent in these matters in order to have the confidence and trust of civil society.

A common question to such ‘engagement’ and consultation is “ how will my views be used to shape policy”

²⁹ <https://www.justice.govt.nz/assets/Documents/Publications/Incitement-Summary-Documents.pdf>

³⁰ <https://www.justice.govt.nz/assets/Documents/Publications/Proactive-release-Incitement-of-Hatred-and-discrimination.pdf>



4.00 PRELIMINARY FEEDBACK

4.1 TWO STAGE APPROACH

Whilst it is admirable that the MOJ have taken a two-stage approach to the proposed legislation, it should be noted that voluntary community organisations do not have the time or resources to provide un-ending submissions and participate (when invited) in engagements or hui. It was clearly the intention to obtain initial public feedback on the six proposals for policy purposes³¹ and then subject to Cabinet approval draw up the draft legislation. This would have been successful if sufficient time was given and there were enough face-to-face consultations. In the absence of either, FIANZ has no alternative but to give a qualified response.

4.2 WORDING OF PROPOSED LEGISLATION

The most significant limitation of the consultation is that no specific wording of the proposed changes to the Human Rights Act 1993 nor the new criminal offence in the Crimes Act 1961 have been outlined. As the discussion document states, “The exact wording of this provision would be determined **following** consultation”³². Lessons learned from most legislation is that it is the wording which is the key to its efficacy. It would have been useful for the MOJ to consider the RCOI, where not only did they recommend changes, they also gave an indication of the wording of the proposed legislation.

Example of wording proposed by Royal Commission

What a new offence might look like

56 A new provision inserted in the Crimes Act 1961, and worded broadly as follows would cover the points we have made:

Inciting racial or religious disharmony

Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding three years who:

- a) with intent to stir up, maintain or normalise hatred against any group of persons in New Zealand on the ground of the colour, race, or ethnic or national origins or religion of that group of persons; and
- b) says or otherwise publishes or communicates any words or material that explicitly or implicitly calls for violence against or is otherwise, threatening, abusive, or insulting to such group of persons.

Source: Royal Commission of Inquiry

³¹ <https://www.justice.govt.nz/assets/Documents/Publications/Proactive-release-Incitement-of-Hatred-and-discrimination.pdf>

³² <https://www.justice.govt.nz/assets/Documents/Publications/Incitement-Discussion-Document.pdf>

Proposal	Detail of proposal	Current wording of Human Rights Act	Proposed change to Human Rights Act or Crimes Act	FIANZ RESPONSE
<p>PROPOSAL 1</p>	<p>This proposal would change the wording of the criminal (currently section 131 but see Proposal 2 below) and civil (section 61) incitement provisions in the Human Rights Act so that they applied to more groups protected from discrimination by section 21 of the Human Rights Act (see Appendix One for this section). We seek views on the groups that should be protected by this change.</p>	<p>Both section 61 and section 131 of the Human Rights Act apply to communications aimed at a group “on the ground of the colour, race, or ethnic or national origins of that group of persons.”</p>	<p>The wording of both section 61 and the proposed new section 131 (see Proposal 2 below) would be changed so that they apply to communications aimed at certain groups of persons in or coming to Aotearoa New Zealand who are protected from discrimination by section 21 of the Human Rights Act.</p>	<p>Agreed</p>
<p>PROPOSAL 2</p>	<p>This proposal would create a new criminal provision in the Crimes Act that has the same purpose as section 131 of the Human Rights Act but would be clearer and simpler.</p> <p>This proposal would maintain the requirement that there be the mental element of intention. In other words, the person would need to intend to incite hatred. This is appropriate for a criminal provision with the level of penalty that is being proposed. The terms “hostility”, “ill-will”, “contempt” and “ridicule” would be replaced by “hatred”. The Royal Commission noted that this would mean that the new offence would be more narrowly expressed than the current section 131.</p> <p>This proposal would prohibit speech which “maintains or normalises” hatred, in addition, to speech which incites or stirs up hatred.</p>	<p>The section 131 offence currently requires the following elements:</p> <ol style="list-style-type: none"> 1. A person publishes or distributes or broadcasts speech or written matter which is threatening, abusive, or insulting 2. With intent to excite hostility or illwill against, or bring into contempt or ridicule 3. Against any group of persons in New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons, and 4. The words or written matter are likely to excite hostility or ill-will against, or bring into contempt or ridicule, any such group of persons in New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons. 	<p>A new provision would be added to the Crimes Act, which would create a new offence with four key elements. It would be a crime to:</p> <ol style="list-style-type: none"> 1. intentionally incite/stir up, maintain or normalise hatred 2. against any group protected from discrimination by section 21 of the Human Rights Act 3. through threatening, abusive or insulting communications, including inciting violence 4. made by any means. <p>The exact wording of this provision will be determined following consultation. This includes whether to use the term “incite”, “stir up” or some other term with the same meaning.</p>	<p>FIANZ has had insufficient time to seek community views. We are also currently analysing the impact of such in the UK and Canada and obtaining feedback from the Muslim communities there .</p>

Proposal	Detail of proposal	Current wording of Human Rights Act	Proposed change to Human Rights Act or Crimes Act	FIANZ RESPONSE
	<p>The proposal would also include incitement through ‘explicit or implicit calls for violence’. The Royal Commission stated ‘that this would further pre-empt reliance on a defence along the lines that the defendant was only “only” preaching to the converted’.</p> <p>This proposal does not include the requirement that the communication must be “likely to” incite, maintain or normalise hatred. This exists in the both section 61 and 131 currently (and is not proposed to be removed from section 61).</p> <p>The Royal Commission did not think it was a necessary element of a new offence. We are interested in feedback on this.</p> <p>The proposal would cover all methods of communicating speech. The current provision does not clearly cover communication by electronic means (unlike section 61). This new offence would be placed in the Crimes Act 1961.</p> <p>The current requirement in section 132 that the Attorney-General consent to any prosecution for the criminal incitement provision is intended to be retained.</p>			

Proposal	Detail of proposal	Current wording of Human Rights Act	Proposed change to Human Rights Act or Crimes Act	FIANZ RESPONSE
PROPOSAL 3	<p>This proposal would increase the maximum penalty for the new criminal offence to three years' imprisonment, or a fine of up to \$50,000. Comparable offences are provided in the main text of the discussion document.</p>	<p>Section 131 states that a person who commits the criminal offence is" liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$7,000"</p>	<p>The new criminal provision in the Crimes Act would state that a person who commits the offence is liable on conviction to imprisonment for a term not exceeding three years' imprisonment or to a fine not exceeding \$50,000.</p>	<p>FIANZ notes that this is consistent with comparable offences, however we have not had sufficient time to seek community views. Punitive measures needs to be balanced with proactive education/remedial programmes. We believe that along with any legislative changes there must be funded- programmes to support education initiatives to make the public and particularly children aware of hate speech. This is the type of 'all-of-Government' integrated approach that the RCOI had mentioned in their findings.</p>
PROPOSAL 4	<p>This proposal would change the wording of section 61 of the Human Rights Act to include "inciting/stirring up, maintaining or normalising hatred" alongside the existing wording.</p> <p>Unlike the proposal for the criminal provision, the Government has not yet agreed to rewrite the remaining parts of the civil law provision, for example, to make the existing wording clearer.</p> <p>However, we would be interested in feedback about what wording in section 61 could be improved.</p>	<p>Section 61 is focused on speech that is "likely to excite hostility against or bring into contempt any group of persons in or who may be coming to New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons."</p>	<p>Under this proposal "stirring up, maintaining or normalising hatred" would be added to section 61 alongside "excite hostility" and "bring into contempt".</p> <p>Any other changes to the provision have not been agreed and this would be looked at further after consultation. The current provision dates back to 1979 and if changes are agreed the new provision would be revised according to a modern drafting style. Like the criminal provision, it is expected that terms like 'publish',</p>	<p>FIANZ agrees that this is consistent with the RCOI, however we have not had sufficient time to seek community views.</p>

Proposal	Detail of proposal	Current wording of Human Rights Act	Proposed change to Human Rights Act or Crimes Act	FIANZ RESPONSE
PROPOSAL 5	<p>This proposal would add “incite others to discriminate against” certain groups protected by section 21 of the Human Rights Act to the behaviour of exciting hostility or bringing into contempt in section 61 of the Human Rights Act.</p> <p>This would make it unlawful to incite others to discriminate against members of a group based on grounds such as their sex, gender, religious belief, colour, race, ethnic or national origins, disability, or sexual orientation.</p> <p>We seek views on the groups that should be protected by this change.</p> <p>Section 21 already protects these groups from discrimination. This change would further align the incitement provisions with the protections against discrimination in the Human Rights Act.</p>	<p>As above, section 61 is focused on speech that is “likely to excite hostility against or bring into contempt any group of persons in or who may be coming to New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons.”</p>	<p>Under this proposal, section 61 would also make speech that is likely to cause incitement to discrimination unlawful, alongside:</p> <ol style="list-style-type: none"> 1. the excitement of hostility 2. bringing into contempt, and 3. the stirring up, normalising or maintaining hatred. 	<p>FIANZ considers this an important proposal and we have not had sufficient time to analyse the issues</p>
PROPOSAL 6	<p>This proposal would make changes to the prohibited grounds of discrimination in section 21 of the Human Rights Act to clarify the protections for trans, gender diverse, and intersex people.</p>	<p>Section 21(1)(a) of the Human Rights Act states that “sex, which includes pregnancy and childbirth” is a prohibited ground of discrimination.</p>	<p>Under this proposal, the ground of “sex” would be amended to also include, “sex characteristics and intersex status”. There would also be a new ground of “gender including gender expression and gender identity”.</p>	<p>FIANZ has not had time to consult with our community .</p>



A MATTER OF INTEGRITY

The Muslim community bore the brunt of the hate-inspired 15 March terrorism. We owe it to our community to have a robust and comprehensive consultation so that all those who have been impacted; those who are still suffering from trauma ; those who are still subject to hate speech and hate incidents and the wider community of 60,000 Muslims have adequate time to consider the proposed changes.



5.00 FIANZ – ROYAL COMMISSION RECOMMENDATION RELATED TO HATE (2019)

The following was part the FIANZ ROYAL COMMISSION RECOMMENDATIONS on HATE and it is gratifying to note that the RCOI Recommendations adopted almost all of our suggestions. The MOJ should take into account such background information. Our recommendation was based on the outcome of extensive consultation with the community all across New Zealand.

5.1 Criminalise hate speech.

- a) The Terms of Reference specify that the recommendations sought must be consistent with maintaining New Zealand as a free and democratic society. There is an understandable worry about infringing on free speech and other important rights and freedoms. FIANZ shares that worry especially in relation to religious freedoms.
- b) The New Zealand Bill of Rights Act 1990 states that rights and freedoms may be subject to “such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”.
- c) It is possible to identify and justify the lower limit of permissible speech in a free and democratic society. The line is drawn at speech that is intended to be harmful or to incite harm (physical or psychological), or to propagate hatred.
- d) As the UN Committee on the Elimination of Racial Discrimination’s concluding observations on the combined twenty-first and twenty-second periodic reports of New Zealand notes with concern, the most recent successful prosecution for hate speech was in the 1970s. While the lower limit for permissible speech in a free and democratic society should be set high, the lack of prosecutions suggests that the lower limit is currently too high.



5.1 Criminalise hate speech.

e) The Human Rights Act 1993 s61(1), makes unlawful “speech which is threatening, abusive, or insulting, or to broadcast by means of radio or television or other electronic communication words which are threatening, abusive, or insulting”. However, the Human Rights Act s61(1) relates to racial disharmony, but not religious intolerance and hatred. This must be amended.

f) FIANZ welcomes the governments review into updating the Human Rights Act to provide protections for religion and other diverse groups. FIANZ believes that the Harmful Digital Communications Act also needs to be reviewed to tackle online hate and bullying effectively.

g) There should be a coordinated process established across agencies and crown entities dealing with hate speech so that communities have a singular reporting and complaints process. Currently hate speech is dealt with by various government entities including DIA, Police, Human Rights Commission and Netsafe. There is no coordination of response or a singular triaging process to deal with complaints or getting content removed off online platforms.

h) FIANZ believes that it is critical for the wellbeing of society for different religious teachings to be discussed openly and publicly and for dialogue between different religious, ethnic, and cultural communities to be open and inclusive, rational and civilised.

i) FIANZ believes that positions on moral and social issues and theological matters that are unpopular or contradict majority public opinion or positive law should be protected by freedom of speech and religion.

j) However, there is a clear line between the freedom to openly and publicly discuss, defend, and teach different positions on moral and social issues and theological matters, and professing hatred and inciting violence. While the former are necessary for the maintenance and progress of a free and democratic society, the latter are destructive for a free and democratic society.



5.2 Enact and enforce hate crimes legislation.

The New Zealand Law Commission must review the adequacy of existing legislation and consider the proposal that hate crimes should be established as a separate category of offence rather than an “aggravating factor” in sentencing.

- a) This should include acts of hatred that target people (individuals and groups), property (including places of worship and minority-owned businesses), and religious symbols (including Halal and Kosher).
- b) FIANZ believes that it is important for Halal and Kosher to be legally protected in New Zealand as symbols of religious identity that are often the targets of verbal and physical hate attacks. This may require legislation in addition to hate crimes legislation to protect Halal and Kosher dietary requirements, to ensure food security for New Zealand Muslims and Jews.
- c) Criminalise groups and organisations that promote, incite, or perform acts of racial or religious discrimination, hatred, or violence, and participation in such groups or organisations.

5.3 Register hate crimes and record statistics on the perpetrators and victims of crime to build an accurate record of racial- religious- and gender-based violence, including where these intersect (for example, white male physical assault against black Muslim female).

- a) Police must be trained in accurately and sensitively identifying and reporting crimes which are perceived by the victim, the officer, or any other person to be motivated by a hostility based on a personal characteristic. This must involve human rights, cultural competency, and unconscious bias training.
- b) Statistics should be collected on complaints, prosecutions, convictions, and sentences to provide an accurate picture of the state of hate in New Zealand.



5.4 Formulate and implement a National Hate Crime Action Plan.

- a) Establish a dedicated Hate Crime unit within Police to monitor, analyse, work with other agencies and communities, train police staff and advise on investigations and prosecutions of Hate Crime. This is in line with other best practice models for police groups internationally.
- b) There is currently no designated support services for people affected by hate speech and hate crime. It is left largely to communities themselves to support one another. Victim support is provided as a general reference during court cases, but what is required is additional services for persons affected on a regular basis. This will require specialists who understand the various forms of hate and who have the cultural, religious, linguistic, knowledge and specific skills to address the harm caused to victims. It will also require a multilingual telephone service for persons to contact and linkages to any online reporting process so that persons can be adequately supported. Engage with New Zealand minority communities and look to countries such as the United Kingdom for models and best practices.
- c) Include in this support for the Human Rights Commission, Police, universities, and civil society organisations such as FIANZ and the national bodies of other ethnic and religious minorities, particularly the New Zealand Jewish Council, to build a national project on the model of Tell MAMA and the Community Security Trust.
- d) This project would ensure that racial and religious hate incidents and attacks in Aotearoa are monitored, mapped, measured, recorded, and reported to police when requested, victims are adequately supported, and statistics and analysis are regularly provided to Government, academia, and media.



6.00 UNDERSTANDING THE MUSLIM MINDSET ON FREEDOM OF EXPRESSION

Ethical Limits on the Freedom of Expression – Dr Hisham Kamali

“Islam exhibits a strong commitment to moral virtue, compassion, uprightness of character and justice. Islam’s ethical code is rooted in Abrahamic ethics, which is a shared heritage of all monotheistic religions. The human capacity for wrongdoing is never to be underestimated, yet the Qur’anic outlook of human nature is that the human’s inclination to do good is greater. This essential optimism is sustained by God’s expression of trust (amānah) in humankind and its designation as His vicegerent (khalīfah) on earth to establish justice among people.

Human nature is endowed in ethical insight, as in the Qur’anic verse: “And by the soul that We fashioned, and then inspired into it the awareness of wrongdoing and righteousness. Truly one who purifies it attains success, and one who corrupts it brings failure unto himself.” (al-Shams, 91:8). All humans are equal in the eyes of the Creator and there is no recognition in Islam of the superiority of one over another, except on grounds of moral excellence, or taqwā. (al-Ḥujurāt, 49:13). “Believe and do good deeds,” a sentence which occurs in the Qur’an more than fifty times, points out the necessity of uniting something that people tend to separate. It expresses the difference between religion (“believe”) and morality (“do good”) as well as the imperative that they should go together. Islamic law is essentially a superstructure that concretises the ethical norms of Islam.

In one of the chapters of the Qur’an, entitled the Distinguisher (al-Furqān, sūrah 25) revelation becomes the point of reference for distinguishing right from wrong. The same chapter goes on to cite examples of past biblical prophets and their role as mediators of God’s word to their respective societies.

The Qur’an thus conveys continuity in essential values and nurtures an outlook for their continued refinement through human endeavour. The Islamic conception of ḥudūd (lit. Limits) consists, in its Qur’anic usage, of ethical limits for the most part,

which demarcate the upper limits of acceptable behaviour from that which contravene the Islamic order of values. Ḥudūd (and its singular ḥadd) which occur in fourteen places endorse the Qur’an’s self-identity as a Distinguisher between right and wrong. Two other Qur’anic concepts that impact on almost every aspect of the teachings of Islam are hikmah (wisdom, common sense) and mizān (balance, equilibrium).

Freedom of expression is, broadly speaking, subject to the same limitations, whether moral or legal, that apply to other rights and liberties. The most important of these is avoidance of harm (darar) to others, which means that the exercise of this freedom must neither be hurtful to others nor violate their right of privacy and personal dignity. The principle of maṣlaḥah mursalah (public interest) is relevant here. Freedom of speech does not extend to promotion of chaos in society, incitement of crime and violence.

The Qur’anic phrase ‘al-jahr bi’-sū’ min al-qawl’, perhaps one of the most far-reaching limits on freedom of speech of both legal and ethical import. To quote the verse: God loves not the public utterance of evil/hurtful speech except by one who has been wronged if you disclose good or keep it hidden, or forgive evil, verily God is Forgiving, All-Powerful. (al-Nisā’, 4:148)

The Qur’anic advice is taken further by the Sunnah (practice) of the Prophet (PBUH) to the effect that Muslims should not only avoid broadcasting hatred but contribute positively to the spirit of fraternity and peace in society. Thus the hadith: “A Muslim is one from whose hand and tongue other Muslims are safe.” Although the text here speaks of Muslims, the message is wider. As one observer wrote regarding that the hadith specifies Muslims, “because it is with one’s own community that one has largely to deal. But the aim is to lay down the foundations of human fraternity wherein everyone feels safe.”



“

As a community whose heart is moulded by scripture, we recognise the power and impact that words can have, both for good and for ill. So we must seriously consider how to balance the mitigation of harm and the limiting of freedom with reference to all the sources available to us – including the lived realities of our communities and the continuing abundance to be found in the Holy Quran and the life of the Prophet Muhammad (pbuh)



**The Federation of
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