

**IN THE MATTER** Of an inquiry into possible hate speech  
legislation

**Submission by Ian Bassett to the Government Administration Committee**

**Dated 17 March 2005**

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**May it please the Government Administration Committee**

1. This submission is made in response to the public invitation to do so by the Government Administration Committee regarding the possibility of hate speech legislation in New Zealand.

**Issue**

2. The central issue is whether hate speech legislation is necessary or desirable. The thrust of this submission is that such legislation is not necessary or desirable.
3. New Zealand law already provides minority groups with various effective legal protections in this regard. Therefore the broader issue includes consideration of whether minority groups are in such dire need of additional legal protection that further limits to freedom of speech are justified.
4. Any such “justification” needs to be balanced against the major disadvantage with hate speech legislation, which is that it will erode the right to freedom of speech and the freedom to practise religion provided by the New Zealand Bill of Rights Act 1990.

**Present law**

5. New Zealand’s present law already places limits on freedom of speech. In particular the Crimes Act 1961 (refer sections 66 and 311(2)) makes it an offence to incite, counsel or procure (whether by words or otherwise) any person to commit any criminal offence, whether that be a threat of violence or any form of criminal nuisance or public disorder.

6. Furthermore section 61 of Human Rights Act 1993 makes it unlawful to make threats that are abusive or insulting and likely to excite hostility against or bring into contempt any group of persons on the grounds of their colour, race or ethnic or national origins. Section 131 of the Human Rights Act 1993 makes it a criminal offence to do any such act with intent to excite hostility or ill-will against any such group.

### **Race**

7. It is submitted therefore that in New Zealand racial communities already have adequate legislative protection as provided by the Crimes Act 1961 and the Human Rights Act 1993 referred to above.

### **Religion**

8. Although people cannot choose their racial origins, people do choose their beliefs. There are parts of the world where that is not possible, though New Zealand is not one of them.
9. Freedom of speech, including the ability to debate religious beliefs, is an important right which underpins New Zealand society. Beliefs should be able to be debated vigorously. Members of religious groups, irrespective of their beliefs, are of course already protected by the Crimes Act referred to above.
10. Difficulties with any proposed hate speech legislation in this area would include:
  - (a) How to define “hatred”, “vilification” or even “religion”. For example would a broad definition of “religion” in hate speech legislation prohibit legitimate criticism of a cult which preys on the young and or naïve?

- (b) Hate speech legislation could itself be discriminatory where sensitivities and perception as to what is offensive varies between religions.
  - (c) Hate speech legislation would become a tool for intolerance against and between religious groups, leaving as the most vulnerable those creeds which choose not to use the legislation.
11. In England a House of Lords *Select Committee on Religious Offences* report of 10 April 2003 expressly declined to recommend a law prohibiting incitement to religious hatred (Refer [www.publications.parliament.uk](http://www.publications.parliament.uk)), even though it appears that such a law is reportedly about to be passed into law possibly this month in England.

#### **What about other minority groups?**

12. The desire of any minority group not to be criticised, even in a hostile manner must always be balanced against the right to freedom of religious expression and the freedom to teach and otherwise practise religion, including if the teaching of one religion differs from those of another. Statements by religious groups about moral issues surrounding homosexuality are an example of the exercise of the right to freedom of speech and possibly freedom of religion to the extent that it constitutes a matter of doctrine.
13. Section 15 of the New Zealand Bill of Rights Act 1990 provides that every person has the right to manifest their religion or belief in worship, observance, practice or teaching, either in public or private. This right includes public expression of moral views and the right to teach those views. Furthermore section 14 of the New Zealand Bill of Rights Act 1990 provides that everyone has the right to freedom of expression, including the freedom to seek, receive and impart information and opinions of any kind.

14. These rights of expression regarding religion are themselves presently balanced by the limits imposed by the Crimes Act referred to above. It is submitted that a blanket prohibition on expressing/ teaching of religious views simply because they might be perceived to be hateful would be an unjustified erosion of the right to religious freedom in New Zealand.

### **Summary- re race, religion and other minorities**

15. In summary it is submitted that further limits to freedom of expression and freedom of speech by hate speech legislation are simply not necessary, nor justifiable on present societal conditions in New Zealand.
16. New Zealand already has legislation, which sets clear and enforceable limits on speech, that strikes a fair balance between freedom of speech and the protection of racial, religious and other identifiable minority groups.
17. On the above basis, it follows therefore that censorship of material or prohibition of hate speech or hateful expressions that are perceived to vilify certain groups would not be a justified limitation on the rights and freedoms affirmed by the New Zealand Bill of Rights Act 1990.

### **Legislative threshold test**

18. However if hate speech legislation was introduced and could adequately define for legal purposes the terms “hatred”, “vilification” and “religion”, what would be the new legislative threshold test for prohibition of hate speech?

19. Would the legislative test be set high enough to allow objective, even hostile criticism? It is implausible that such speech should require restriction. If the threshold test was set at a very high level, such that to be unlawful “hate speech” it would need to contain threats of physical violence for example, then the new law would be unnecessary as it would be co-extensive with New Zealand’s present Crimes Act.
20. On the other hand, if the threshold test were set at a low level, then much comment in daily newspapers would be prohibited and freedom of expression would be seriously eroded. If the threshold test were a vague middle ground compromise, then there would likely be many complaints of hate speech laid with no certainty of what the new law was. The effect would be to stifle debate, as media interests would soon realise that the cost of contesting complaints/ prosecution/ litigation proves too great. Such hate speech law would be undesirable as having a “chilling effect” on freedom of expression without achieving any clear objective.
21. A low or middle ground test could also produce division in our society if members of different groups laid vexatious complaints against others. As stated above hate speech legislation would become a tool for intolerance against and between religious groups, leaving as the most vulnerable those creeds which chose not to use the legislation
22. It is therefore submitted that any legislative threshold test for hate speech would need to be set at a very high level and exclude all private action or prosecution. The filter of the approval of the Attorney General should be the minimum requirement for any action/ prosecution. The effectiveness of that filter has been diluted by a readiness in New Zealand to have non-lawyers fulfil that role.

### International covenants

23. The United Nations International Covenant on Civil and Political Rights (“ICCPR”) at article 20 provides:

*“Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”*

24. New Zealand as a signatory to the ICCPR already has laws in place which arguably *exceed* what is required in the ICCPR in relation to incitement to racial hatred- by virtue of s61 and s131 of the Human Rights Act 1993 as above.

25. New Zealand law (namely the Crimes Act as above) also already provides prohibitions as set out in article 20 of the ICCPR in relation to advocacy [inclusive therefore of religious hatred] that constitutes incitement to violence.

26. As stated by the authoritative NZ text *The New Zealand Bill of Rights* (2003 edition Rishworth and ors at page 322 footnote 89), the New Zealand Government earlier recorded its reservation to article 20 of the ICCPR namely:

*“The Government of New Zealand, having legislated in the areas of the advocacy of national and racial hatred and the exciting of hostility or ill will against any group of persons, and having regard to the right to freedom of speech, reserves the right not to introduce any further legislation with regard to article 20.”*

27. It is submitted there is no present need in New Zealand society that justifies a change in position in New Zealand or any further erosion of freedom of speech.

28. Racial equality is so fundamental and readily able to be clearly defined that it is possible to achieve a general agreement about prohibition of speech that incites racial hatred. Issues of religious (and other kinds of) equality are not so easy to define or perceive and accordingly legislative steps in that regard should be approached with great care.
29. It is for that reason that the ICCPR itself at article 18(1) expressly provides (by way of counter-balance to article 20) that:

*“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom... to manifest his religion or belief in worship, observance, practice and teaching.”*

[NB. Article 18 of the ICCPR mirrors Section 15 of the New Zealand Bill of Rights Act 1990 which is referred to above.] Article 18(3) of the ICCPR provides that such right to religious freedom *may only* be subject to limitations prescribed by law that are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.]

30. It is submitted that New Zealand law is already able to provide sufficient protection for public safety, order, health or morals or the fundamental rights and freedoms of all groups of people.
31. Although other countries in the international community have to a greater or lesser extent enacted provisions that give effect to ICCPR article 20, it is submitted that New Zealand should not move to erode freedom of speech further without compelling and evident societal need to provide further protection to groups of people. In New Zealand there is presently no such need.

32. In a very real way, freedom of speech that allows even perceived perverse opinions to be expressed, also allows those views to be debated and over time ultimately discredited. Making expression of such views unlawful simply because they may be perceived to be hateful, may eventually slow down that process.

### **Conclusion**

33. In conclusion it is submitted that hate speech legislation is not necessary and is undesirable.

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