



# **Briefing for the Incoming Government**

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# Summary of Recommendations

## Academic Freedom:

1. Support further monitoring of, and research on, the current state of academic freedom in New Zealand. This may involve supporting the Free Speech Union's annual survey on academic freedom or commissioning independent research.
2. Explore options for enforcing universities' academic freedom obligations, and incentives for them to better protect academic freedom in line with Parliament's intent in the Education and Training Act.
3. Note that the FSU is exploring policy and legislative options to enhance academic freedom including: requirements on universities to promote and protect academic freedom, enshrining institutional neutrality and universities as the guardians of free inquiry, establishing free speech champions, and considering enforcement, incentive and complaint mechanisms.

## Mis- and Disinformation:

4. Agree that government should avoid using the labels mis- or disinformation to describe information, beliefs or opinions. Instead, government should ensure that its communications expand free speech, rational evidence-based debate and tolerance for dissenting views, rather than contributing to their stigmatisation, delegitimisation or suppression.
5. Review all government funding streams for projects concerned with mis- and disinformation, including the Christchurch Call, to ensure they are consistent with promoting a culture of tolerance, free expression and open intellectual debate. If they are found not to be so, they should be discontinued.
6. Agree that it is not the role of government to determine what constitutes mis- or disinformation, nor to overtly or covertly suppress views that are counter to its preferred narrative. Government should terminate funding to groups – such as the Disinformation Project – that use the terms mis- and disinformation to stigmatise, delegitimise or suppress views with which they disagree. Instead, any government funding aimed at building resilience to mis- and disinformation should be directed to groups that promote free speech, rigorous intellectual debate and tolerance for differing viewpoints.

## Online Speech:

7. Stop all work on the Department of Internal Affairs' online content regulation proposals.
8. Continue to invest in civil society organisations that promote healthy online speech (such as Netsafe).

## Hate Speech:

9. Acknowledge that hate speech laws are unworkable due to the inherent subjectivity of the concept of "hate speech", stifle dissent and public debate, and are often turned against the very groups they are intended to protect.

**10. Direct the Law Commission to cease work on hate speech laws. (Note, we acknowledge that in the final stages of drafting this advice, the Coalition Government committed in its coalition agreement to stopping further work on hate speech laws.)**

**Free Speech in Public Places: *The Protection of the Freedom of Expression Bill* (Heckler's veto):**

**11. Adopt the *Protection of the Freedom of Expression Bill* as a Government Bill and progress it through the legislative process as a priority, in order to give greater protection to freedom of expression in public places.**

## The New Zealand Free Speech Union – About Us

The New Zealand Free Speech Union is a registered trade union with a mission to fight for, protect, and expand New Zealanders' rights to freedom of speech, conscience, and intellectual inquiry. We envision a flourishing New Zealand civil society that values and protects vigorous debate, dissenting ideas, and freedom of speech as cultural cornerstones.

The Free Speech Union (FSU) is the successor organisation to the Free Speech Coalition. The latter was founded in 2018 in response to the decision of then-Auckland Mayor Phil Goff to prohibit the use of public venues by two provocative foreign speakers. This predecessor organisation was volunteer-run. It worked primarily on legal actions on behalf of citizens denied access to public venues. It had some major successes, such as *Whitmore v Palmerston North City Council*.<sup>1</sup> In May 2021, the Coalition unionised, and in July 2021 it employed staff to coordinate a campaign against proposals for new 'hate speech' laws.

Since then we have grown rapidly from having only 4,000 subscribers and a single employee to a supporter base of 100,000 Kiwis and an annual budget of \$1 million through a grassroots movement of small dollar donors. We now employ the equivalent of five full-time roles (across eight staff). We are nonpartisan and take no position on any political or cultural issues, aside from the right to speak without fear of undue consequence.

Freedom of speech comprises three elements: **(1)** the right to speak freely; **(2)** the right to hear others speak freely; and **(3)** the right to be free from compelled speech. Free speech is the cultural foundation on which liberal democracy rests, and it is the cornerstone of our system of civil liberties and human rights. It is a direct protection for all people from government and those in authority.

Our job is:

- To defend, promote, and extend the rights of New Zealanders to freely seek, receive and impart information.
- To raise understanding among New Zealanders of the essential character of freedom of speech as:
  - a fundamental human right;
  - necessary to the preservation and exercise of other rights and freedoms;
  - the cornerstone of liberal democracy;
  - a protection against the abuse of power by both state and non-state actors;
  - essential to the vigorous development and testing of ideas in intellectual and academic institutions and culture.

We were formed as a response to the rise of cancel culture, antagonism to dissenting views, and the erosion of civil discourse and tolerance. We have unionised to fight increasingly frequent instances of individuals and communities being prevented from freely expressing their views, and of suffering illegitimate consequences when they do.

The Free Speech Union prioritises four key workstreams:

**Cases:** As a registered union, we regularly represent members in employment disputes and provide advocacy for supporters in many different contexts.

**Campaigns:** As a political action group, we regularly mobilise our base of 100,000 Kiwis to coordinate engagement, participation, and protest. For example, we worked extensively on the two largest

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<sup>1</sup> [Whitmore v Palmerston North City Council \[2021\] NZHC 1551](#)

public policy consultations ever run by ministries - the consultation on proposed 'hate speech' laws run by the Ministry of Justice, and the proposals for 'Safer Online Content' regulation run by the Department of Internal Affairs - this resulted in the largest number of submissions ever received during consultation processes like this.

**Content:** In order to foster a culture that values free speech, we regularly speak with media, release op-eds and podcasts, host events, and organise speaking tours by overseas speakers. During 2023 our guests included Professor Nadine Strossen and Lord Jonathan Sumption.

**Coaching:** We seek to imbue young people with an understanding of the value of open dialogue, tolerance, and intellectual diversity. We do this by facilitating critical thinking exercises and debates in high schools; engaging with university students through lectures, competitions, and social events; and hosting an internship programme to develop the leadership skills of up-and-coming free speech champions.

## The Current State of Free Speech in New Zealand

In the two years since the successful campaign against the original hate speech proposals, we have witnessed growing antagonism to free speech. Government is no longer the sole – or even the major – threat to free speech. The struggle for free speech now takes place in a much wider social and cultural context.

The Union recently conducted polling with Curia Market Research which showed that 75% of Kiwis believe free speech is a ‘defining cultural value’, and that over half (51%) believe that it is under threat. Only 27% said that it was not. We hear frequent reports from ordinary people about growing challenges to speaking freely. A culture of caution appears to be emerging, whereby individuals self-censor for fear of consequences, especially repercussions for their employment. We frequently receive emails like this:

*Simply put...Thank you. I see these issues everyday in [my organisation].... in fact I feel my employment is at risk by simply contacting you. But again, thank you.*

Examples of threats to and violations of free speech rights include:

1. Access to public venues being denied for speaking events at which controversial ideas, or ideas that some deem unacceptable, are likely to be expressed. Sometimes threats of disruption by protestors lead to cancellation on the grounds of security concerns. Those who have been denied venues or had events cancelled include:
  - Gender critical groups, such as the organisation *Speak Up for Women*, which was denied a venue by Palmerston North City Council. UK speaker Posie Parker faced intimidation and violence from protestors at an event in Auckland’s Albert Park leading to the event being abandoned;
  - Groups opposed to co-governance. For example, *Stop Co-Governance* was denied permission to hold meetings at premises run by local authorities;
  - Local community action groups.
2. Employees face mounting constraints on their free expression, particularly in relation to social media use. Often these constraints apply to speech outside the work context, with no direct relevance to their employment. Sometimes speech is censored or criticised on the grounds that it is not aligned with an organisation’s ‘values’ – which are often political in nature – or with its Code of Conduct.
  - We have recently represented a number of medical practitioners for comments made on social media that are of questionable relevance to their work.
  - There are increasing requirements and pressure in many workplaces to use language that conforms with particular ideologies or belief systems. For example, some employers require their employees to use preferred gender pronouns in their workplaces. This is an example of compelled speech, which is perhaps the most egregious violation of speech rights, because it forces people to falsify their own views or beliefs.
  - Some employees have been required to express commitment to certain beliefs or ways of thinking. For example, under recent draft eligibility criteria for school principals, requirements go beyond skills, knowledge and expertise and

potentially ask for commitments to gender ideology or a particular view of the impact of colonisation on education.<sup>2</sup>

3. Threats by activists against private businesses or professional bodies. These may be in relation to employees or members whose speech they deem unacceptable or hateful, or to the provision of services to individuals or groups whose ideas they disagree with.
  - *Countering Hate Speech Aotearoa* demanded that ticketing company Eventbrite refuse to sell tickets for the Genspect conference. There were associated complaints to various medical professional bodies about their members who planned to attend the conference.
  - Ironically, the Free Speech Union itself has recently had a venue cancel a booking. *Anti-Fascist Waiheke* raised concerns with a café we had made a booking with, and the café was intimidated into cancelling the booking, despite the proprietor expressing support for our work.
4. There is a growing body of work indicating a culture of fear in universities. We publish an annual report on the state of free speech in universities, which has consistently identified threats to academic freedom. In 2023, only 43% of respondents said that they feel free to state controversial or unpopular opinions. Many respondents explicitly expressed fear for their jobs or promotion prospects if they were to express the “wrong views”.<sup>3</sup>
5. The terms misinformation, disinformation and malinformation are being weaponised for political purposes. This often results in legitimate opinions on contested issues being silenced, and an ‘approved view’ imposed.
6. A raft of new or proposed legislation and policy threatens to place unjustified constraints on free speech. These include:
  - Expansion of hate speech laws;
  - Tighter regulation of online content;
  - ‘Safe areas’ legislation which prohibits certain forms of protest in certain areas;
  - Conversion practice legislation, which risks criminalising consensual counselling practices between adults in relation to sexual orientation or gender identity;
  - Expansion of terrorism legislation to cover simply accessing prohibited content;
  - Prohibition on the display of gang patches in public spaces.
7. Media bias, and an erosion of media diversity.
8. Erosion of institutional impartiality, especially in the public sector. More and more publicly funded organisations have adopted positions that are both political and contested. This impacts speech rights by putting pressure on employees with contrary beliefs to avoid expressing them. We hear regularly from New Zealanders who feel pressure to conform to organisational positions for fear of sanction. This seems to be especially prevalent in the health and education sectors.

We could list more examples. New Zealand is not alone in facing growing threats to freedom of expression. Across the world, governments are introducing draconian regulation of online speech and new hate speech laws. Academic freedom is eroding and debate, discussion and dissent are being

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<sup>2</sup> [Letter to Ministry of Education: Concerns regarding Aotearoa New Zealand Principal Eligibility Criteria | Free Speech Union](#)

<sup>3</sup> [Free Speech Union: Academic Freedom Report 2023 | Free Speech Union](#)

shut down under the guise of fighting “mis- or disinformation”. Self-censorship is on the rise with people fearing threats to their employment or social censure for saying the ‘wrong’ things.

Authorities in India and Turkey have seized the power to remove political content from social media. The legislature in Germany and the Supreme Court in Brazil have criminalised political speech. Measures such as Ireland’s ‘Hate Speech’ Bill, Scotland’s Hate Crime Act, the UK’s Online Safety Bill, and Australia’s ‘Misinformation’ Bill all severely restrict expression.<sup>4</sup>

Many organisations and individuals around the world are joining the New Zealand Free Speech Union in the fight to protect and promote free speech. This gives us cause for hope – but there is much to be done. In the following section we outline what the incoming Government must prioritise, to rebuild a culture of open debate and safeguard New Zealand’s democracy.

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<sup>4</sup> See for example, [The Westminster Declaration](#) (of which the Free Speech Union is a signatory).

## What to Do: Key Focus Areas

While the mission to protect and promote free speech has a political dimension, it also has much wider social and cultural aspects. This is not simply about what governments can do. The Free Speech Union protects the rights of individuals who are penalised for their speech, and works across multiple fronts to rebuild a culture that values and protects free speech. Our work includes tackling the erosion of free speech rights in many of our major institutions. We have a full work programme and collaborate with others in New Zealand and internationally who share our concerns and commitment.

While the cultural fight cannot be won by government action alone, there are things the government can and must do to protect and promote speech rights of New Zealanders.

At a minimum, any government should prioritise free speech considerations in any policy or legislative proposals, ensuring there are no unintended consequences for speech rights. While it might be assumed this would happen as a matter of course, in recent years legislation has paid lip service to the importance of free speech, while treating free speech rights as simply one of many criteria to be weighed up and, often, traded away in favour of other concerns. Ideally the government should adopt a positive duty to protect free speech as a fundamental human right, and as the foundation of the democratic order.

There are a number of specific areas in which the Government could act either to promote new initiatives that would better protect speech rights, or to remove barriers to the exercising of speech rights. Five key issues that we wish to discuss with the incoming Government are academic freedom, mis- and disinformation, online speech, hate speech, and free speech in public places.

## **Focus Area 1: Academic Freedom**

### **Relevant Portfolios: Tertiary Education, Education, Public Services**

Internationally and in New Zealand, academia has become a key battleground between free speech advocates and their enemies. Once “guardians of free inquiry”,<sup>5</sup> many academic institutions are now places in which thought, inquiry and speech are suppressed or severely limited. Academic freedom, which is enshrined in legislation, protects the freedom to do research, to challenge existing ideas and propose new ones, to test received wisdom, and to state controversial or unpopular opinions.<sup>6</sup> The advancement of human knowledge and, ultimately, human progress is intimately linked with academic freedom.

The Free Speech Union has twice surveyed academics about their perceptions of academic freedom. Although the sample sizes were small and not representative due to difficulties in accessing potential respondents, the surveys nonetheless raise questions about the state of academic freedom in New Zealand universities. Of the academics who responded to our 2023 survey:

- Only 52% felt free to raise differing perspectives with colleagues.
- Only 43% felt free to state controversial or difficult opinions.
- Over one-third said they did not feel comfortable discussing religion.
- Half were not comfortable discussing sex or gender.
- Over half were not comfortable discussing race.
- Only 41% were comfortable discussing issues related to the Treaty of Waitangi and colonisation.

Many respondents made comments indicating a disturbing climate of fear in academia, with many academics being unwilling to state unpopular opinions for fear of threats to their employment or to promotion prospects. Some spoke of their institutions failing to adequately protect their academic freedom, a “culture of managerialism”, a trend toward universities taking positions on social or political issues rather than maintaining institutional impartiality, and dissent being silenced by students, academics and administrators. Many of these trends are reflected in wider society.

Our survey is consistent with other research on academic freedom in New Zealand universities, such as a survey of students conducted by Heterodox New Zealand.<sup>7</sup> It is also consistent with research in other jurisdictions pointing to similar threats to academic freedom,<sup>8</sup> including scientific censorship.<sup>9</sup>

The undermining of academic freedom has not happened overnight and there will be no quick fixes. A cultural shift, including the academic community itself reinvigorating the concept, will be critical. But government, which provides a majority of universities’ funding, also has a role. The Free Speech Union is collaborating with others to develop options for policy and legislative measures to strengthen academic freedom in New Zealand.

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<sup>5</sup> [Free Speech and its Enemies by Lord Jonathan Sumption – Free Speech Union](#)

<sup>6</sup> [Education and Training Act 2020 – s267\(4\)](#)

<sup>7</sup> [Perceived Freedom of Expression at New Zealand Universities](#)

<sup>8</sup> [FACULTY SURVEY: Support for free speech varies by academic discipline | The Foundation for Individual Rights and Expression.](#)

<sup>9</sup> [Prosocial motives underlie scientific censorship by scientists: A perspective and research agenda | PNAS](#)

Several countries have enacted legislative measures to better protect academic freedom. The UK has appointed an “academic freedom tsar”.<sup>10</sup> Quebec has passed legislation that, among other things, requires universities to have policies, representative committees and internal ombudsmen dedicated to academic freedom.<sup>11</sup> Likewise, Australia, in response to an independent review of academic freedom, introduced legislation in 2020 to better support and protect academic freedom.<sup>12</sup>

In New Zealand, the provisions in the Education and Training Act are already clear and Parliament’s intention is made unusually explicit: “*It is the intention of Parliament in enacting the provisions of this Act relating to universities and wānanga that academic freedom and the autonomy of those institutions are preserved and enhanced*” (s267(1)). The problem, then, is arguably more one of compliance and ensuring that this intention is given full effect, rather than of the underpinning legislation, in which the concept is already established and enshrined.

In considering options for New Zealand, we are mindful that more bureaucracy and regulation is unlikely to be effective on its own – and carries its own risks. While some such measures may be necessary, we are mindful of the importance of institutional autonomy, which is also enshrined in legislation. This autonomy must be balanced with any measures imposed on universities to ensure that they protect and promote academic freedom.

The areas in which we are developing options cover:

**Better information.** There is limited information about the state of academic freedom in New Zealand, or about the performance of its institutions in promoting and protecting it. The FSU’s surveys and university ranking reports provide some information, but it is difficult for us to access respondents. Our samples, therefore, are limited in terms of representativeness and our reports are less comprehensive than we would like, due to our limited resources. No university has been willing to partner with us in our surveys.

At a minimum, better information about the state of academic freedom in our universities is needed. This should include the perspectives of both academics and students, as well as regular performance monitoring of the institutions. If the surveys were run by state sector organisations such as the Tertiary Education Commission (TEC), the samples would be more representative and the reports more comprehensive. It would also ensure that the same surveys were run in all universities, making the data comparable across institutions. Monitoring and performance reporting should be independent and external.

**Strengthening requirements for universities to promote and protect academic freedom.** We are developing proposals to strengthen the duties of key players to give effect to academic freedom, as legislation requires. This might entail a mix of legislative amendment and ministerial directives to TEC.

**Strengthening requirements for institutional neutrality and the role of universities as the guardians of free inquiry.** The decline of institutional neutrality on social and political issues and the concomitant rise of universities taking substantive positions on political and social issues undermines their core mission to be the home and champions of academic freedom. We are considering options to enshrine principles of institutional neutrality in the

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<sup>10</sup> [University Freedom of Speech Bill becomes law | GOV.UK](#)

<sup>11</sup> [Why won't NZ defend academics' right to freedom of speech? | The New Zealand Initiative](#)

<sup>12</sup> [Higher Education Support Amendment \(Freedom of Speech\) Bill 2020 | Parliament of Australia](#)

Employment and Training Act (ETA) as outlined, for example, in the seminal Kalven report.<sup>13</sup> Other elements of the ETA may be in conflict with the concept of institutional neutrality. For example, section 4(d) aims for an education system that “honours Te Tiriti o Waitangi and supports Māori-Crown relationships”. This may make it difficult for a wide variety of views on the Treaty to be debated by academics.

**Strengthen definitions of academic freedom.** Some universities have recently argued that academic freedom is a prerogative of institutions, not of staff or students. The ETA is very clear that this is incorrect. Academic freedom belongs to the members of the university – to staff and students. Section 267(a) protects the freedom of university community members to question and test received wisdom, put forward new ideas and state controversial or unpopular opinions. Section 267(b) protects their ability to engage in research. Nonetheless, in light of some universities’ apparent ignorance of the meaning of these sections, there may be merit in clarifying their obligations. The definition of academic freedom could also be clarified, to explicitly include receiving or hearing information and ideas, not just imparting them.

**Free speech/academic freedom champions.** Strengthening the duties of senior university leaders such as Vice Chancellors and University Councils is one option. Another is to create specific positions to lead and champion academic freedom, in a similar fashion to the UK and Quebec.

**Enforcement, complaints and incentives.** The current legislation is clear in both its intent and description of academic freedom. Although the provisions for academic freedom could be further strengthened, there remains the problem of ensuring that Parliament’s intent is actually carried out. This raises the question of enforcement mechanisms and appropriate incentives, whether financial or reputational. Robust complaints mechanisms (both internal and external) are another possibility. For example, hearing and investigating complaints could be a role of free speech champions or the Ombudsman.

**Deplatforming of speakers at universities.** There have been instances of speakers considered controversial or unpopular being denied opportunities to speak on university premises, despite having been invited by members of the university to do so. Often, university authorities have cited concerns about their views, or spurious threats to health and safety, to justify banning speakers. The FSU has drafted legislation that would strengthen protection of freedom of expression in universities, which are effectively public venues (see next section).

The Free Speech Union continues work on this issue and is aware of other actors, such as the New Zealand Initiative, who are also concerned by the status quo and are working to produce recommendations. We will be releasing further research and may develop draft legislation on some or all of the issues discussed above. We also intend to co-host a symposium on academic freedom in 2024. In the meantime, there are areas in which the Government could act immediately.

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<sup>13</sup> [Report on the University's Role in Political and Social Action | Office of the Provost, University of Chicago](#)

### **Recommendations:**

- 1. Support further monitoring of, and research on, the current state of academic freedom in New Zealand. This may involve supporting the Free Speech Union's annual survey on academic freedom or commissioning independent research.**
- 2. Explore options for enforcing universities' academic freedom obligations, and incentives for them to better protect academic freedom in line with Parliament's intent in the Education and Training Act.**
- 3. Note that the FSU is exploring policy and legislative options to enhance academic freedom including: requirements on universities to promote and protect academic freedom, enshrining institutional neutrality and universities as the guardians of free inquiry, establishing free speech champions, and considering enforcement, incentive and complaint mechanisms.**

**Note – Recommendation 11 (from Focus area 5, Hecklers veto) is also relevant to this section:**

- Adopt the *Protection of the Freedom of Expression Bill* as a Government Bill and progress it through the legislative process as a priority, in order to give greater protection to freedom of expression in public places.**

## **Focus Area 2: Mis/disinformation**

### **Relevant Portfolios: Prime Minister and Cabinet**

The terms *misinformation* and *disinformation* are abstract and slippery to define. While there are legitimate concerns for the State when large portions of the population are convinced by falsehoods, these terms are increasingly being used to delegitimise, stigmatise, and suppress certain viewpoints.

As noted in the Westminster Declaration, to which the Free Speech Union is a signatory: *“the abuse of these terms [misinformation and disinformation] has resulted in the censorship of ordinary people, journalists, and dissidents in countries all over the world. Such interference with the right to free speech suppresses valid discussion about matters of urgent public interest and undermines the foundational principles of representative democracy.”*<sup>14</sup>

The Ardern-Hipkins Government established a whole-of-society approach to fighting mis- and disinformation, run out of the Department of the Prime Minister and Cabinet (DPMC). The stated aims of this work were to *“build understanding and resilience against the harms of disinformation, that can be led primarily by those outside government.”*<sup>15</sup> Under this approach, DPMC funded and helped establish the *Disinformation Project*, an organisation ostensibly independent of government. However, the Disinformation Project frequently criticises individuals and groups for expressing opinions that differ from those sanctioned by the Government, often labelling those opinions as examples of mis- and disinformation. Its claims to independence are dubious. A more accurate assessment might be that it is a censorious instrument of DPMC with enough of a veneer of independence to establish plausible deniability toward it acting as such.

We do not believe it is the role of government to be the arbiter of what is true and what is mis- or disinformation. Rather, the truth emerges from the contest of ideas that free speech allows and by remaining open to such contestation. This is also the way scientific theory is developed and validated.

Government can legitimately promulgate information and opinion with whatever reason and evidence it can muster to support it, but it goes too far when it delegitimises, stigmatises, censors or oppresses those who say things it disagrees with. Its workstream on mis- and disinformation has been an extraordinary attempt to enforce its own narrative while censoring others in a way that is inimical to liberal democratic principles. The strategy of outsourcing this work to the Disinformation Project to make it appear as if the work is being done at arms-length from government is also very concerning.

The previous Government announced grant funding of \$680,000 to *“support efforts by the community to build resilience against the harms of disinformation in Aotearoa.”*<sup>16</sup> We would be very concerned if this funding were to be provided to any group with a similar modus operandi to the Disinformation Project – that is, groups that attempt to delegitimise, stigmatise or suppress certain viewpoints. The best way to build resilience against the harms caused by mis- and disinformation is to encourage a culture of free speech, rational debate and tolerance for differing views – and that is where any government funding allocated to this purpose should be directed.

It is pernicious that the work on mis- and disinformation is being run out of DPMC. It gives an appearance of the Prime Minister and Cabinet – elected representatives with political interests –

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<sup>14</sup> [The Westminster Declaration](#)

<sup>15</sup> [Strengthening resilience to disinformation | Department of the Prime Minister and Cabinet \(DPMC\)](#)

<sup>16</sup> [Grants | InternetNZ](#)

working to control the national conversation. Any work undertaken by government in respect of mis- or disinformation needs to be undertaken in an apolitical way, and be seen to be apolitical.

Another workstream established by the Ardern Government is the Christchurch Call. Established in 2019 in response to the Christchurch terrorist attack, the Christchurch Call is purportedly a partnership between government and online service providers to eliminate terrorist and violent extremist content online. Former Prime Minister Ardern was appointed “Special Envoy to the Christchurch Call” after resigning her Prime Ministership and continues this work internationally.

Former Judge David Harvey has criticised the Christchurch Call’s work, saying: *“extremist content, abhorrent though it might be, should still be allowed a voice as long as it does not advocate imminent harm to people or property.”*<sup>17</sup>

According to its website, the Christchurch Call *“rests on the conviction that a free, open and secure internet offers extraordinary benefits to society”* and *“respect for freedom of expression is fundamental.”*<sup>18</sup> In practice, however, the Christchurch Call is often used to advocate for restricting free speech on the internet. David Harvey has criticised the ‘mission creep’ of the Christchurch Call, noting that *“the targets of extremism have been expanded to women, LGBTQIA+ communities, youth, and intersectional communities – quite a reach beyond the terrorist lone wolf shooter or bomber and a clear indicator that what the Call is really about is “hate speech’.”*<sup>19</sup>

We do not object to work aiming to prevent terrorist attacks and incitements to imminent violence, but we must ensure that the real aims of such work match its stated aims and that mission creep does not result in legitimate opinion being stigmatised, delegitimised or censored. Some free speech scholars have argued that suppressing speech and opinion can cause, rather than reduce, violence and that free speech reduces the risk of political violence. This is called “Safety Valve Theory”.<sup>20</sup> Because of the important role free speech plays in reducing violence, there is a risk that rather than *preventing* harm, the work of the Christchurch Call may *cause* it.

Another action of the Ardern Government was to provide significant funding to mainstream media organisations in the form of COVID advertising, and through its Public Interest Journalism Fund (PIJF). By purchasing large amounts of COVID advertising, the government created a perception that reporting on COVID matters in mainstream media was largely in line with the Government’s narrative.

PIJF recipients also risked having their editorial independence compromised by being required to report in line with the ‘principles’ of the Treaty of Waitangi. They were required to sign an agreement to cover Māori issues in a certain way, including ‘honouring Te Tiriti as New Zealand’s founding document’. This arguably caused the information provided by mainstream media to be biased towards the messaging preferred by the Ardern Government, including by stigmatising individuals and groups with dissenting viewpoints.

As David Harvey has noted, under the Ardern Government there was a *“trajectory of the erosion of freedom of expression and the growth of ambivalence towards the expression of contrary opinions.”*<sup>21</sup> This began with the Christchurch Call and continued during the COVID pandemic with the

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<sup>17</sup> [Eroding Freedom of Expression | NZCPR](#)

<sup>18</sup> [Christchurch Call story](#)

<sup>19</sup> [Eroding Freedom of Expression | NZCPR](#)

<sup>20</sup> [Arguments for freedom: The many reasons why free speech is essential | The Foundation for Individual Rights and Expression](#)

<sup>21</sup> [Eroding Freedom of Expression | NZCPR](#)

government's proclamation that it was the "sole source of truth". This led to the labelling of those with contrary opinions as "anti-vaxxers" and "conspiracy theorists", many of whom felt they were subsequently denied their right to freedom from unconsented medical intervention with the introduction of vaccine mandates. This spurred the protest at Parliament. Ardern gave a speech to the General Assembly of the United Nations in which she compared mis- and disinformation to weapons of war.<sup>22</sup>

In taking these steps, the Ardern Government characterised disagreement with the State as a threat to social cohesion and acted to suppress dissenting opinion. This approach is antithetical to democratic principles. Differences of opinion in a democratic society are normal and healthy and, indeed, essential to its proper functioning. Threats to social cohesion arose, not from the expression of contrary opinions, but from efforts to suppress them by vilifying sections of the community daring to give them voice. The parliamentary protest was a vivid illustration of this point.

Rather than *preventing* harm to individuals and society, government efforts to label certain opinions as mis- and disinformation and then suppress them, *caused* such harm. Many New Zealanders believed that at least some of the opinions characterised as mis- and disinformation by the Ardern-Hipkins Government – either directly or through proxies such as the Disinformation Project – were not incorrect at all, but rather, were inconvenient truths. These citizens saw a government that demonised their views – what they believed to be true – because they interfered with policies such as achieving high vaccination uptake and locking down the population. Many, in fact, argued that the government itself spread mis- and disinformation on these matters. We take no position on who was right and who was spreading mis- and disinformation, but we take great issue with the government's use of these terms to stigmatise and delegitimise certain parts of the community and suppress important debate on crucial matters of public policy.

As Lord Jonathan Sumption said at the Free Speech Union AGM earlier this year:

*"Ultimately, we have to accept the implications of human creativity. Some of what people say will be wrong. Some of it will be hurtful. Some of it may even be harmful. But there are greater values at stake. We cannot have truth without accommodating error and tolerating the challenge to received ideas. We cannot live together in society without allowing people to say things that other people regard as foolish, hurtful or untrue. It is the price that we pay for allowing human civilisation to advance and flourish. It is worth fighting for."*<sup>23</sup>

We think the new Coalition Government should review the entire mis- and disinformation workstream, including its participation in the Christchurch Call. It should assess whether continued support for these projects, in whole or in part, is consistent with promoting free speech, fostering intellectual debate, and preventing harm to individuals and society. There are also important questions of political neutrality that arise from the mis- and disinformation work coming out of DPMC. Care must be taken to ensure that DPMC remains politically neutral.

A better way to address the problem of mis- and disinformation would be to equip people – especially young people – with a balance of views and critical thinking skills to assess for themselves the truth, or otherwise, of claims. The FSU aims to do this through our *FSU in Schools* initiative, which provides education focused on free speech, freedom of expression, freedom of conscience, and critical thinking. Through practical exercises fostering respectful, candid discussion, we aspire to teach young New Zealanders to share their views, to listen to those of others, to disagree in a

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<sup>22</sup> [Speech at the General Assembly](#)

<sup>23</sup> [Free Speech and its Enemies by Lord Jonathan Sumption - Free Speech Union](#)

respectful manner, and to be open to learning and to changing their minds in light of sound argument and evidence.

In summary, the best way for the government to build resilience to the harms caused by mis- and disinformation is for it to promote a culture of free speech, rational debate, and tolerance for opposing views. Stigmatising, delegitimising or suppressing dissenting opinion will do nothing to improve the quality of public information. Indeed, it is likely to make things worse.

#### **Recommendations:**

- 4. Agree that government should avoid using the labels mis- or disinformation to describe information, beliefs or opinions. Instead, government should ensure that its communications expand free speech, rational evidence-based debate and tolerance for dissenting views, rather than contributing to their stigmatisation, delegitimation or suppression.**
- 5. Review all government funding streams for projects concerned with mis- and disinformation, including the Christchurch Call, to ensure they are consistent with promoting a culture of tolerance, free expression and open intellectual debate. If they are found not to be so, they should be discontinued.**
- 6. Agree that it is not the role of government to determine what constitutes mis- or disinformation, nor to overtly or covertly suppress views that are counter to its preferred narrative. Government should terminate funding to groups – such as the Disinformation Project – that use the terms mis- and disinformation to stigmatise, delegitimise or suppress views with which they disagree. Instead, any government funding aimed at building resilience to mis- and disinformation should be directed to groups that promote free speech, rigorous intellectual debate and tolerance for differing viewpoints.**

## **Focus Area 3: Online Speech**

### **Relevant Portfolios: Internal Affairs**

The potential for “harm” in the online sphere, and on social media in particular, has become a key focus for governments, civil society, communities, families and individuals. The response has been increasing attempts to regulate the internet and suppress content that is considered “harmful” in some way. Often this content falls into the categories of hate speech or mis- and disinformation, as outlined above. The term “harm” has also increasingly come to include psychological and emotional harm, which is highly subjective. A key problem is that much of this content is perfectly lawful offline, and regulation ends up creating different standards of legal speech online and offline.

As with all new communication technologies, the internet has brought huge benefits as well as significant disruptions. We acknowledge that features of the internet such as speed, scope and spread, bring new layers of complexity and challenge, especially in relation to the potential for negative impacts on children and young people. However, attempts to deal with these concerns by suppressing content through government regulation, or by governments working in concert with tech companies, represent one of the most significant threats to freedom of expression today.

The Westminster Declaration describes the threat to online expression as follows:

*“Across the globe, government actors, social media companies, universities, and NGOs are increasingly working to monitor citizens and rob them of their voices. These large-scale coordinated efforts are sometimes referred to as the ‘Censorship-Industrial Complex.’ ... The Censorship Industrial Complex operates through...subtle methods. These include visibility filtering, labelling, and manipulation of search engine results. Through deplatforming and flagging, social media censors have already silenced lawful opinions on topics of national and geopolitical importance. They have done so with the full support of ‘disinformation experts’ and ‘fact-checkers’ in the mainstream media, who have abandoned the journalistic values of debate and intellectual inquiry. As the Twitter Files revealed, tech companies often perform censorial ‘content moderation’ in coordination with government agencies and civil society.”<sup>24</sup>*

The New Zealand Department of Internal Affairs is engaged in a programme of work on media and online content regulation that is considering ways to regulate online services and media platforms in this country.<sup>25</sup> These proposals are not simply for platform regulation but are clearly aimed at limiting the availability of certain types of content online. In plain terms, they are proposals for internet censorship.

The proposals envision the development of *codes of practice* that would effectively create hate speech laws for the internet and for the press. Despite their significant impact on free expression rights, these codes will be developed without democratic accountability or scrutiny. In determining whether platforms and publishers are meeting the expectations of their codes of practice, the proposed regulator will play the role of a Ministry of Truth, deciding which information is true and which is false. This will inevitably result in widespread censorship of legitimate content. Furthermore, due to the increasing ideological homogeneity of the public service, this censorship will often be politically motivated.

Allowing established players to write regulation for the whole industry invites regulatory capture and the muscling out of competition. The workload for publishers to ensure compliance with these

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<sup>24</sup> [The Westminster Declaration](#)

<sup>25</sup> [Media and online content regulation | Department of Internal Affairs](#)

regulations will be expensive and oppressive. It will create barriers to market entry for small players, reducing the diversity of voices and ideas in our press and on the internet.

Polling conducted by Curia Market Research has shown that only 25% of Kiwis are aware of the DIA's proposals for a new internet and media 'super regulator'.

The Free Speech Union opposes these proposals in the strongest possible terms. They are Orwellian and will stifle public discussion and debate. They will discriminate against many Kiwis on the basis of their political, philosophical and religious views, which are protected by the Human Rights Act. We strongly urge you to completely abandon these proposals.

None of this is to deny that there are legitimate concerns about the potential for harm in the online sphere, particularly to children and young people. However, there are other, more evidence-based ways to address these concerns that do not involve censoring lawful, albeit sometimes unpleasant, speech. This could include educational measures to promote critical thinking, instill digital and scientific literacy, and build resilience.

### **Recommendations:**

- 7. Stop all work on the Department of Internal Affairs' online content regulation proposals.**
- 8. Continue to invest in civil society organisations that promote healthy online speech (such as Netsafe).**

## **Focus Area 4: Hate Speech**

### **Relevant Portfolios: Justice, Internal Affairs, Ethnic Communities**

Accusations of hate speech are increasingly being used to bully individuals and groups into silence, inhibiting or preventing them from contributing to public discussion. The concept of hate speech has been weaponised and is being used to enforce ideological conformity in many sectors of our society. Facing accusations of hate speech can be very costly for individuals, leading to such things as loss of reputation, loss of friends, and loss of employment. Such accusations can also be very costly for businesses and other organisations, sometimes leading to negative publicity and boycotts. Accusing ideological opponents of hate speech is often a deliberate tactic to silence them.

The universities, the media, and the public service combine to form society's sense-making apparatus. If we were to draw an analogy between the human body and the body politic, these institutions would be society's brain. Unfortunately, all of these institutions are shot through with taboos on the expression of certain opinions. They are unable to effectively grapple with sensitive issues such as race, gender, or sexuality, because the threat that accusations of hate speech will be levelled inhibits the free exchange and contest of ideas necessary to fulfil their function. This leaves our society unable, at a collective level, to think and respond rationally when sensitive issues are involved.

We cannot go on like this.

Liberal democracies have traditionally placed legal restrictions on speech in only a few, very limited, respects. The most common restrictions are against incitement of violence and threats to public order. Hate speech laws are additional restrictions, prohibiting speech that demeans or debases a person or group based on characteristics such as gender, religion, sexual orientation, ethnicity or disability. New Zealand's only current "hate speech law" is set out in the Human Rights Act (1993). It is limited to "*matter or words 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*" (s61(1)).

The Ardern Government began a process of expanding New Zealand's hate speech laws in response to the Christchurch terror attack in March 2019. However, the proposals proved complex and drew widespread criticism: there were a large number of submissions against them. They were shelved but new proposals were later introduced to expand coverage of hate speech laws to include religious background. This would have made it difficult to criticise religious beliefs, which would have effectively reintroduced blasphemy laws. These proposals were also shelved.

The previous government referred the matter of hate speech to the Law Commission, which was tasked with reviewing the wider issue of how the law should respond to both "hate-motivated offending (which is sometimes called hate crime) and to speech that expresses hostility towards, or contempt for, people who share a common characteristic (which is sometimes called hate speech)".<sup>26</sup>

Hate speech laws more often than not prevent important discussions and debates from taking place. Moreover, they have proven unworkable wherever they have been introduced, and frequently end up being used against the very minority groups they were intended to protect. They usually fail to serve the purpose for which they were ostensibly designed; rather than eliminating hate, they simply drive it underground. Furthermore, 'hate speech' is notoriously difficult to define because hate is an

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<sup>26</sup> [Legal responses to hate | Law Commission](#)

emotion and hate speech is therefore a highly subjective concept. Professor Nadine Strossen, an international expert on hate speech laws, visited New Zealand earlier this year and made these points repeatedly, including in a meeting with the Law Commission and other government agencies.

Hate speech laws introduced to reduce harm can be self-defeating. What one individual or group considers hateful can be a sincere expression of religious, moral or political views for another. This means that hate speech laws aimed at protecting one group from harm can actually *inflict harm* on others by portraying them as hateful, racist, sexist, homophobic and so on. For example, if the original hate speech proposals had gone through, it is highly likely that some of the language currently being used in the expression of views on the Israel-Gaza conflict would have been proscribed.

The FSU supports the rights of all people to express their views, no matter how hateful, ill-informed or offensive, with the exception of outright incitement to violence. We would therefore oppose any recommendations made by the Law Commission for the extensions of to hate speech laws. If the Law Commission's work is to proceed, then their work on hate speech laws must ensure that:

1. objective tests can be met, for example, imminent incitement to violence; and
2. all members of society are protected, not just specific groups.

#### **Recommendations:**

9. **Acknowledge that hate speech laws are unworkable due to the inherent subjectivity of the concept of "hate speech", stifle dissent and public debate, and are often turned against the very groups they are intended to protect.**
10. **Direct the Law Commission to cease work on hate speech laws. (Note, we acknowledge that in the final stages of drafting this advice, the Coalition Government committed in its coalition agreement to stopping further work on hate speech laws.)**

*NB: We were pleased to note that the new Government's coalition agreements included a commitment to: "Protect freedom of speech by ruling out the introduction of hate speech legislation and stop the Law Commission's work on hate speech legislation."<sup>27</sup> **Despite this, we fully expect that proponents of hate speech laws will continue to advocate for these laws to be expanded. There will also continue to be ongoing attempts to silence individuals and groups who say things that others deem "hateful", through for example, complaints to employers and professional bodies. This will therefore continue to be a priority area of focus for the FSU, and we suggest that it should remain so for the incoming Government as well.***

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<sup>27</sup> Incoming Government's [Coalition Agreement](#) between New Zealand National Party & New Zealand First

## **Focus Area 5: Free Speech in Public Places: The Protection of the Freedom of Expression Bill (Heckler's Veto)**

### **Relevant Portfolios: Justice, Police, Local Government, Tertiary Education, Education**

Instances of public venues being denied to speakers or groups whose views are considered controversial, harmful or offensive are increasingly prevalent in New Zealand. Sometimes this is because venue managers or owners are themselves opposed to those views. Denial of access to venues is frequently justified with claims that the expression of certain views would cause "harm" to others, that the views are incompatible with the provider's values, or because they have been actively lobbied to suppress speakers.

Disturbingly, calls for suppression are sometimes accompanied by threats of disruption, intimidation, or even violence. Security fears can lead to potential speakers having to fulfil onerous security planning requirements to secure a venue. In many cases, these threats and security fears have led to the cancellation of speaking events. In some cases, venue providers genuinely believe health and safety regulations require them to do so. In others, the threat of disruption presents an excuse to cancel an event that the provider did not want to host because of disagreement with views they think would be expressed. Speakers cancelled in recent years due to concern about backlash from those who disagree with them, include:

- Overseas speakers at an Auckland Council venue;
- Speak Up for Women at a Palmerston North City Council venue;
- Don Brash by Massey University;
- Julian Batchelor at a Taupō Council venue.

Recently, intimidation and violence have been used to silence speakers in public places. The most salient instance of this was the Kellie-Jay Keen-Minshull (Posie Parker) event in Albert Park earlier this year. This incident was especially disturbing because the police declined to protect not only the free speech rights of Keen-Minshull and her supporters, but also their physical safety. A police officer was filmed commenting to one of the event organisers: "We're not here to protect you."

Disruption, intimidation and violence, and threats of such actions go well beyond legitimate counter protest. Shouting down speakers and preventing others' right to hear them is commonly known as the "heckler's veto". When threats, intimidation and violence are also involved, a better description might be the "thug's veto". Such intolerant, totalitarian bullying directly challenges the democratic process.

We believe that protection of the rights to freedom of expression, association and assembly must be strengthened. The onus should be on the providers of public venues (as set out in section 3(b) of the Bill of Rights Act) to enable speakers, no matter how controversial, to be heard and to allow others to hear their views if they wish.

These rights also need to be better protected by the New Zealand Police. Police must take active steps to protect freedom of expression from threats of, or actual, disruption, intimidation and violence. This must include more vigorous policing of those who threaten or use violence or other unlawful coercion, rather than of those speaking or engaging in legitimate protest. The recent arrest of lawyer Lucy Rogers for peacefully counter-protesting at a pro-Palestine rally in Auckland provides a powerful example of inappropriate and anti-free speech behaviour from the New Zealand Police. They should have protected Lucy rather than arresting her.

Creating such positive duties needs to be reinforced by addressing potential liability under the Health and Safety Act, which is too often used as an easy excuse to cancel speakers whose views are deemed unpopular or unwelcome. We are pleased to note that the coalition agreement between National and Act includes a commitment to “reform health and safety law and regulations”. We request that the government use this review to address the Heckler’s veto issue, along with other free speech matters, such as free speech restrictions that may arise from employee codes of conduct or requirements to manage psychosocial harm.

The Free Speech Union has worked with retired judge Dr David Harvey to draft legislation that would address these concerns. *The Protection of the Freedom of Expression Bill* aims to “secure the freedom of expression, the freedom of association and the freedom of peaceable assembly... for any speaker and any person who wishes to hear that speaker... by ensuring that the use of any premises of the provider or over which the provider may exercise any control is not unreasonably denied...”

The Bill is directed towards providers who are covered by section 3(b) of the Bill of Rights Act, and to the New Zealand Police. It states that the use of premises cannot be refused because of:

- The ideas or opinions of an individual’
- The policy or objectives or the ideas or opinions of any of the members of a group or organisation;
- The activities of those who might disrupt the exercise of free expression;
- Any apprehended breach of the provisions of the Health and Safety at Work Act 2015.

The Free Speech Union has carried out limited consultation on the draft Bill including with the Law Commission and Ministry of Justice officials. The Bill has received preliminary support from the National, Act and New Zealand First parties.

The Bill is designed to revive and strengthen practical support for freedom of expression. We urge you to take this Bill forward as a Government Bill.

### **Recommendation:**

- 11. Adopt the Protection of the Freedom of Expression Bill as a Government bill and progress it through the legislative process as a priority, in order to give greater protection to freedom of expression in public places.**
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