



Free Speech Union Submission on the Inquiry into the 2023 General Election

Introduction

The New Zealand Free Speech Union (FSU) 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. This right is foundational to our democracy and is vital for the public to hold power to account.

The freedom of political speech is particularly important to protect, to allow voters and candidates to freely air and test ideas as they are weighed up and decided on by the electorate.

The Union's remit is limited to issues of speech, however, at times the boundary between free speech and other forms of political speech and constitutional issues can be blurry. For example, we firmly believe in the right to vote and to stand as a candidate but hold no position as to whether such electoral provisions should be entrenched as supreme law.

Nonetheless, we wish to make a submission on the Inquiry into the 2023 General Election where we believe there are issues relating to free speech.

At the core of this submission is the assertion that speech during an election speech must be as free as reasonably possible, allowing for the ballot box to be the ultimate judge of the merits of ideas and political candidates. If elections are to be considered a 'contest of ideas', we seek as fair a competition as possible. The focus of this submission is use of the mis- and disinformation terms, however, we also address the rules around election advertising.

Summary

- a. We oppose the use of the terms mis- and disinformation in election legislation and discourse to stigmatise and delegitimise certain parts of the community and suppress important debate on matters of public policy. A better way to address the problem of mis- and disinformation is 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.
- b. Considering the widespread adoption of advance voting, banning political advertising on election day is an unnecessary limit on political speech and should be repealed.
- c. The period for when election advertising is allowed should be repealed as they are unjustly strict and discriminatory.

Disinformation

1. The terms 'misinformation' and 'disinformation' are abstract and very difficult to objectively define. While there are legitimate concerns for the country when large portions of the population are convinced by falsehoods, these terms are increasingly being used to delegitimise, stigmatise, and suppress certain viewpoints.

2. 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.”*
3. The last 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.”* Under this approach, DPMC funded and helped establish the Disinformation Project, an organisation ostensibly independent of government.
4. 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.
5. In the lead up to the 2023 General Election, the Disinformation Project released a ‘toolkit’ to *“help the general public understand disinformation as a phenomenon and the risks it poses to electoral democracy”*. The toolkit encourages individuals to combat ‘disinformation’ by calling it out when they see it and to rely on *“good information from trustworthy sources”*, presumably, the government.
6. **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.**
7. 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.
8. 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 – working to control the national conversation. Any work undertaken in respect of mis- or disinformation, especially as it relates to electioneering, needs to be undertaken in an apolitical manner and be seen to be apolitical.

Implications of ‘harmful’ speech

9. As Lord Jonathan Sumption said at the Free Speech Union AGM last 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.”

10. Former Judge, Dr. David Harvey has claimed: *“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.”*
11. Rather than preventing harm to individuals and society, government efforts to label certain opinions as mis- and disinformation and then suppress them, causes such harm. Many New Zealanders believed that at least some of the opinions characterised as mis- and disinformation by certain outfits in the lead up to the 2023 General Election were not incorrect at all, but rather, were simply inconvenient truths. 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.
12. A better way to address the problem of mis- and disinformation is 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 Free Speech Union 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 respectful manner, and to be open to learning and to changing their minds in light of sound argument and evidence.
13. 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.

Election day advertising

14. It is nonsensical to think that although someone can be surrounded by political advertising in the three months leading up to the election, they need protection from it on the day they cast their vote. The widespread adoption of advance voting has rendered such rules even further obsolete. It serves only as an unnecessary limit on political speech, particularly when discussing politics online is so prevalent, including on election day.
15. We oppose the view that taking photos of ballots should remain illegal to preserve the secrecy of the ballot. The right to have one’s vote be secret need not be a compelled requirement. Rather, people may wish to use their ballot as a form of political speech to encourage others to vote as they do. This is particularly true in the age of social media where the people sharing their ballot photos may even be used to drive voter turnout.

16. The rules around election advertising are obsolete and oppressive. Bringing election advertising rules in line with the whole voting period makes sense with the increasing popularity of advance voting.

17. Conclusion

We request an opportunity to submit orally to the Justice Committee on this submission.