SUBMISSION OF THE FREE SPEECH UNION ON PHASE 2 OF THE ROYAL COMMISSION OF INQUIRY INTO THE GOVERNMENT'S COVID-19 RESPONSE

Overview

INTRODUCTION

1. The Free Speech Union ("the 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 and the expression of dissenting ideas.

2. The purpose of this submission is to ensure that the Royal Commission of Inquiry recognises the significant chilling effect that aspects of the Government's Covid-19 response had on open debate, professional dissent, and academic freedom in New Zealand. Public health emergencies are precisely when open discourse is most crucial, not only to uphold individual rights, but also to ensure transparency, accountability, and effective decision-making. Suppressing legitimate questions and professional judgments ultimately undermines public trust and weakens democratic institutions.

3. The New Zealand Bill of Rights Act guarantees the right to freedom of expression for all people, including the right to seek, receive, and share information and opinions in any form. This is not just a privilege; it is essential to our liberal society. Free speech is a fundamental civic right, from which other rights, such as informed consent and academic freedom, are derived.

4. The following submission contains four key sections:
    a. **Overview:** Outlining broad concerns about the government's Covid-19 response, that are relevant across professions.

    b. **Submission from the Free Speech Union's Healthcare Professional Membership Council:** Outlining key concerns about the government's Covid-19 response as they relate to the healthcare profession.

    c. **Submission from the Free Speech Union's Inter-University Council on Academic Freedom:** Outlining key concerns about the government's Covid-19 response as they

relate to university staff and students.

d. **Submission from the Free Speech Union's Teachers' Professional Membership Council:** Outlining key concerns about the government's Covid-19 response as they relate to the healthcare profession.

SUMMARY OF BROAD CONCERNS

5. Our broad concerns can be summarised as follows:

    a. **Suppression of Dissent**: Public health messaging and official narratives left little room for legitimate questioning or scientific debate. Critics were frequently labelled as "misinformers" or "extremists", curbing public discourse and marginalising alternative perspectives.

    b. **Mandates and Speech**: Vaccine mandates disproportionately impacted freedom of expression by linking professional participation to compliance. Professionals feared disciplinary action simply for engaging in open discussion about medical risks and ethical concerns.

    c. **One-Way Communication**: The "team of five million" narrative, while initially unifying, discouraged pluralism by framing dissent as betrayal. This approach alienated professionals and citizens who sought to raise valid questions or propose alternative strategies.

    d. **Behavioural Messaging vs. Informed Dialogue**: Public health communications increasingly relied on behavioural nudges and fear-based messaging rather than transparent, evidence-based dialogue. This shift eroded the foundations of informed consent and public trust, with long-term consequences for institutional legitimacy.

SUMMARY OF PROFESSION-SPECIFIC CONCERNS

6. Our concerns relating to profession-specific contexts are outlined in the sections that follow. These include:

7. Our key concerns relating to **healthcare**:
    a. Regulatory overreach undermined the system it regulates
    b. Punishment of professionals
    c. Worker distress from inability to discuss professional concerns with patients

d. Enduring damage to key pillars of healthcare

8. Our key concerns relating to **academics**:
    a. Contravening of academic freedom
    b. Punishment of professionals
    c. Long-term effects

9. Our key concerns relating to **teachers**:
    a. Suppression of alternative perspectives
    b. Behavioural prompting to share public health messaging

10. In preparing this submission, we have sought input on aspects of the Covid-19 response relating to speech rights from healthcare professionals, academics, and teachers, through surveys of our professional memberships, interviews, and informal conversations. Their comments have informed, and can be found throughout, this submission.

SUBMISSION

Suppression of Dissent

11. During the Covid-19 pandemic, the public health response in New Zealand increasingly treated dissent as a threat to public safety. **Official messaging often equated questioning government policies with the deliberate spread of misinformation or extremism.** This narrative created a climate in which critical perspectives were sidelined and legitimate debate stifled, not only in the public sphere but within professional circles as well.

12. Public discourse was increasingly shaped by a binary framing, compliance versus disinformation, with little room for nuanced or evolving scientific perspectives. As one health professional explained:

> *"One thing that has upset me the most was that you were not allowed to question the official narrative. If you did you were labelled a conspiracy theorist or a purveyor of misinformation or disinformation. I was worried about my...registration."*

13. This suppression of dissent undermined trust in public institutions and policy, particularly as policies changed or exemptions were inconsistently applied. A post-pandemic survey found that around two-thirds of New Zealanders are extremely or very likely to follow public health

advice if a new pandemic emerged, citing a perception that disagreement was discouraged or punished.[1] This erosion of critical engagement is deeply concerning for a democratic society.

14. While it is appropriate for public authorities to counter demonstrably false claims, the broad-brush suppression of professional disagreement, especially in areas where science was still developing, signals a departure from democratic norms. It also risks fostering long-term public scepticism and disengagement, especially if citizens feel their concerns are dismissed without genuine engagement.

Mandates and Speech

15. While formal disciplinary measures targeted professionals, the Government's vaccine mandate policy created a broader environment of compelled silence, affecting both those in regulated professions and everyday New Zealanders. By making employment, education, and participation in public life conditional on vaccination, the mandates placed pressure not just on bodily autonomy, but on what could be safely said or questioned in public spaces, workplaces, and even within families.

16. For professionals, the chilling effect was acute. Many doctors and nurses reported feeling unable to offer full and balanced information during consultations, fearing they could be reported or sanctioned for questioning the mandate. The ethical obligation to support informed consent was placed in direct tension with professional survival.

17. As one practitioner described:

> *"People were terrified for their lives and children... We didn't know what to do... They kept shifting things."*

18. But the mandates also had a profound effect on the general public. Individuals who expressed concern about vaccine safety or mandates, even when based on personal experience, were labelled "anti-vax," ostracised on social media, or accused of spreading misinformation. Many learned to remain silent to avoid damaging their relationships, careers, or reputations. The pressure to conform was social as much as professional. This was further enhanced with the introduction of vaccine passports, which acted as a social marker for those who had, and hadn't, conformed.

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[1] Verian, (2024). *Covid-19's role in shaping reactions to public health advice and for New Zealanders' preferences for handling a new pandemic*. Verian. https://www.health.govt.nz/system/files/2024-08/covid-19s-role%20in-shaping-reactions-to-public-health-advice-and-New-Zealanders-preferences-for-handling-a-new-pandemic.pdf.

19. The combined result was a culture of quiet compliance: professionals censored themselves at work, citizens at home and online. While legal justifications for the mandates rested on public health imperatives, little attention was paid to the indirect suppression of expression they produced. The mandates functioned not only as public health tools, but as unspoken speech codes, narrowing the boundaries of acceptable discussion and punishing those who fell outside them.

20. Although the mandates may have been deemed a "demonstrably justified" limit under section 5 of the New Zealand Bill of Rights Act, the blanket nature of their enforcement, and their chilling effect on open dialogue, demands critical scrutiny. Democracies thrive on pluralism and principled disagreement. When speech must yield to policy, not because it is harmful, but because it is unwelcome, public trust and cohesion suffer.

One-way Communication

21. The Government's pandemic communications strategy, particularly the "team of five million" messaging, aimed to foster solidarity and collective action. While effective in achieving compliance, it also fostered a culture of rhetorical conformity, where disagreement, hesitation, or scepticism were treated not merely as alternative viewpoints, but as betrayals of the collective mission.

22. This framing, of unity through obedience — positioned the Government as the sole legitimate voice on matters of science and public health. It left little room for pluralism or good-faith debate, even as the science evolved and policies shifted. Those who raised concerns about mandates, side effects, or civil liberties were quickly labelled as spreading "misinformation," irrespective of their intent or credentials.

23. Post-pandemic, research has suggested that: *"Calling on New Zealanders as a team was part of the government's strategic narrative that intended to generate support for and compliance with the pandemic policies."*[2] This provides a striking indicator of how language can simultaneously unite and silence. This sense of marginalisation was not limited to fringe voices. It extended to clinicians, educators, and ordinary citizens whose sincere questions were met with suspicion or silence.

[2] Salman, S. (2023). Playing in the team of five million: Conformity and nonconformity to the New Zealand Covid-19 pandemic response. *Critical Criminology 31,* 343-361.

24. This rhetorical dynamic weakened democratic accountability. When governments speak with one voice and cast all dissent as dangerous, the feedback loop essential to good policymaking is lost. Mistakes go unacknowledged. Perspectives are flattened. Communities feel unheard.

25. Worse still, the message of inclusion, "*we're all in this together",* became conditional: contingent on compliance, silence, and agreement. Those who diverged from the narrative were not merely disagreed with but excluded from the collective identity itself.

26. The result was a form of social coercion that went beyond policy, it entered the realm of cultural speech norms, where saying the wrong thing, or simply asking the wrong question, could carry personal and professional consequences.

Behavioural Messaging vs. Informed Dialogue

27. Effective public health communication must be consistent not only with scientific accuracy and public safety, but also with the right to freedom of expression, a cornerstone of democratic society. During the Covid-19 response, however, the Government's messaging strategy increasingly favoured behavioural control over open public discourse. The result was not only a narrowing of individual autonomy, but a significant curtailment of expressive freedom for both professionals and the public.

28. Messaging was centralised around a *"one source of truth"* approach, discouraging the expression of alternative views and marginalising those who sought to raise legitimate questions. The use of simplified slogans, emotive nudging, and fear appeals replaced reasoned, dialogic engagement. These communication tactics curtailed the **space for dissent**, including from doctors, scientists, and academics whose professional expression became subject to regulatory scrutiny.

29. Doctors were discouraged, and in some cases effectively prohibited, from discussing vaccine risks, alternative treatments, or uncertainties. As one professional put it:

> *"The MCNZ banned informed consent in respect to the Pfizer vaccine. Only the good things about it... were allowed to be discussed. No negative comments were to be made about the vaccine."*

30. This not only undermined the medical ethics of informed consent, but also constituted a de facto restriction on professional speech, one grounded not in evidence of harm, but in alignment with a predetermined narrative. Another doctor recalled:

"They never said that what I had spoken about was false. So effectively they're saying that it was their right to regulate speech that hadn't been proven false yet."

31. The Ministry of Health's own post-pandemic evaluations acknowledge the damage: public trust was strained by perceptions of "top-down" control, and a lack of transparency or responsiveness to critique. In this context, free speech is not a luxury, it is a precondition for legitimacy, especially when policies carry high stakes and evolving evidence.[3]

32. Moving forward, public health communication strategies must be designed to support, rather than suppress, public discourse. Transparency, plurality, and open criticism are not risks to be managed, they are **t**ools for democratic resilience and better outcomes. Without freedom of expression, even the most well-intended policies risk alienation, division, and resistance.

[3] New Zealand Royal Commission. (2024). *Lessons from Covid-19 to prepare Aotearoa New Zealand for a future pandemic.* New Zealand Royal Commission.

SUBMISSION OF THE FREE SPEECH UNION ON PHASE 2 OF THE ROYAL COMMISSION OF INQUIRY INTO THE GOVERNMENT'S COVID-19 RESPONSE

HEALTHCARE PROFESSIONAL MEMBERSHIP COUNCIL

INTRODUCTION

1. As part of its mission to restore free speech within vital professions and institutions, the Free Speech Union has established a Professional Membership specifically for healthcare professionals. The Professional Membership Council for Healthcare (PMCH) is comprised of registered healthcare practitioners from various healthcare fields seeking to uphold free speech rights and crucial derivative rights such as informed consent. We contend that these are vital to their roles as practitioners, and to healthcare more broadly.

2. The New Zealand Code of Health and Disability Services Consumers' Rights 1996 stipulates three rights that together constitute informed consent: The right to effective communication, the right to be fully informed, and the right to consent freely given by a competent person. Each of these components can be seen as free speech rights applied to the healthcare setting, and are indicative of the essential role of free and open discourse within healthcare.

SUMMARY OF KEY CONCERNS

3. Our key concerns can be summarised as follows:
   a. **Regulatory overreach undermined the system it regulates:** Medical regulators instructing practitioners on what they could and could not communicate to their patients and undermined practitioner autonomy, informed consent, and the quality of practitioner-patient relationships.

   b. **Punishment of professionals:** Health professionals who expressed alternative views faced institutional, professional, and personal costs for doing so, oftentimes publicly.

c. **Worker distress from inability to discuss observed effects:** Some healthcare workers report distress from being required to administer a treatment that they felt unable to discuss the risk factors of or express hesitancy about to patients.
d. **Enduring damage to key pillars of healthcare:** Especially the patient-practitioner relationship, upon which healthcare is built.

SUBMISSION

Regulatory overreach undermined the system it regulates

4. The issuance of instructions through a 'Guidance Statement' or similar communications by regulatory bodies across healthcare professions intervened in healthcare practice in a way that was seemingly unprecedented. While intended to safeguard public confidence in health advice, this position effectively shut down space for ethical, evidence-based discussions about vaccine risks, limitations, or individual patient circumstances. The impact was a chilling effect on speech: many professionals self-censored out of fear of losing their registration, facing employment consequences, or being socially ostracised.

5. Relevant examples from such 'Guidance Statements' include (but are not limited to):
    a. Dental Council and Medical Council:
        i. *As regulators we respect an individual's right to have their own opinions, but it is our view that there is no place for anti-vaccination messages in professional health practice, nor any promotion of anti-vaccination claims including on social media and advertising by health practitioners.*

    b. Nursing Council:
        i. *As a regulator we respect an individual's right to have their own opinions, but it is the Council's view that there is no place for anti-vaccination messages in professional health practice, nor any promotion of anti- vaccination claims including on social media and advertising by health practitioners.*

    c. Midwifery Council:
        i. *While the Council supports midwives to enable informed decision making and respects the individual's right to have their own opinion, it is the Council's view that there is no place for anti-vaccination claims on social medial media or advertising by midwives.*

6. These instructions were concerning for a number of reasons:

a. By acted as a mediator in what practitioners could and couldn't say to their patients, regulatory bodies undermined the professional expertise of the individuals they regulate. Further, this mediation process contravened practitioners speech rights, by compelling their speech, as well as denying their ability to express certain professional opinions.

b. Guidance statements issued by regulatory bodies encouraged practitioners to discuss evidence-based information about vaccination *benefits*, but *not about risks*. By instructing practitioners to emphasise benefits and downplay risks involved, regulatory bodies were intervening with, and undermining, informed consent, a right and principle which lies at the heart of healthcare practice.

c. For doctors, the contents of guidance statements seemed to be inconsistent with the Medical Council's own requirements to informed consent, creating confusion for healthcare providers. For example, Medical Council's own guidelines on Informed Consent state that "The doctor undertaking the treatment is responsible for the overall informed consent process." Doctors could therefore be held personally liable for any adverse consequences to patients, to whom they had not given "the information they need to help them make a fully-informed decision."[2] This meant they were professionally bound to discuss the risks that the Guidance Statement had encouraged them not to talk about.

d. As a result of these issues, many patients grew distrustful that they were getting comprehensive information from their healthcare provider, to enable them to give fully informed consent. Similarly, some were unsure whether their healthcare practitioner *really believed* the advice they were giving, or whether they were giving it because they were compelled to do so. This has had significant ripple-effects and has proven corrosive to practitioner-patient relationships.

7. As healthcare practitioners have articulated:

> *The Medical Council of New Zealand banned informed consent in respect to the Pfizer vaccine. Only the good things about it... were allowed to be discussed. No negative comments were allowed to be made about the vaccine.*

It was very clear from the combined Medical/Dental Council letter that we had to toe the party line.

Medical Council has made it very clear that there's no place for a 'personal opinion' in consultation.

When you're basically, as a Medical Council, directly interfering with the physician-patient consultation, which is what they were doing, you have stepped out of what we believe and typically expect a Medical Council to do, which is to discipline physicians for inappropriate behaviour... This was very different, it was regulating the content of speech. And there is no circumstance under which regulating the content of speech should be within the purview of a medical regulatory authority, if it is in the spirit of scientific debate.

8. These cases reveal a profound shift in how professional speech was regulated. Rather than safeguarding open, evidence-informed dialogue, disciplinary bodies appeared to prioritise conformity and messaging control.

9. The application of this into Psychology is uniquely concerning, because of the specific vulnerabilities possessed by clients in those settings. A communication from the New Zealand Collage of Clinical Psychologists in November 2021 instructed members that:

   The role for psychologists is to assist people who might be anxious or phobic about the vaccination so that they can have the vaccination.

10. This messaging encouraged psychologists to utilise their position of authority in the practitioner-patient relationship to influence patients' decision-making about the Covid-19 vaccination. This amounted to compelling practitioners' speech, and in a way that is particularly troubling. On the other hand, if practitioners did not support vaccination, they were told that:

    Psychologists who hold a personal view opposing the Covid vaccination must be careful to ensure they do not discourage their clients from receiving vaccination.

Punishment of Professionals

11. During the Covid-19 response, numerous health practitioners who raised concerns about prevailing public health policies faced disciplinary action. These actions, often framed as necessary to uphold professional standards, had the cumulative effect of discouraging open debate, suppressing ethical dissent, and undermining professional expertise. In many cases,

the views expressed were rooted in professional judgment, supported by peer-reviewed literature, or framed by ethical obligations to patient autonomy, yet they were treated as breaches of professional responsibility.

12. Health professionals faced institutional retaliation for expressing alternative views. Some examples include:
    a. One doctor received disciplinary sanctions after producing videos deemed "inappropriate, misleading, or potentially harmful." His views, though supported by medical literature, were labelled as undermining the public health effort.[4]

    b. In another case, a general practitioner sent an unsolicited message to hundreds of patients advising against vaccination, citing concerns about safety, lack of informed consent, and mandates conflicting with medical ethics. He too faced professional consequences, including criticism for issuing exemption certificates on non-medical grounds.[5]

    c. Nurses and pharmacists were also sanctioned for expressing dissent, often through social media. In one case, a nurse was disciplined for sharing vaccine injury stories and questioning the rollout, conduct deemed to have directly undermined the public health response.[6]

    d. In another, a pharmacist was found to have abused his professional standing by promoting distrust and minimising Covid-19 risks, with his speech judged as exploitative and emotive.[7]

13. The common thread in these cases was the presumption that questioning the government's narrative, even from within one's field of expertise, constituted misconduct.

14. One mechanism utilised to silence doctors was the 'Voluntary Undertaking', which a number of doctors were compelled to sign by their regulatory bodies, under threat of losing their practicing licence. These Voluntary Undertakings were a direct afront to practitioners' professional and personal speech rights, enforcing compliance with top-down messaging from the Ministry of Health, and preventing practitioners from expressing any information that may

[4] Dr Bailey, 1382/Med22/574P.
[5] Dr. A., 21HDC01972; 21HDC01770; 21HDC01965; 21HDC01971; 21HDC01978; 21HDC01981; 21HDC02003; 21HDC01995; 21HDC01997; 21HDC01999.
[6] Ms Green, 1372/Nur23/587P.
[7] Mr Chafin, 1401/Phar23/586P.

be seen as discouraging vaccination. For example, medical practitioners were required to agree by signature that:

> *I will not comment, or share material, information, or advice created by myself or others publicly or in the media, discouraging vaccination or immunisation against COVID-19.*

15. Practitioners who complied were indirectly prevented from talking about risks involved in the Covid-19 vaccination. Those who didn't faced oftentimes serious professional consequences, including being suspended from practicing. For some practitioners, Medical Council notified all other medical regulatory bodies throughout the Commonwealth, and for some, globally, that the individual had been suspended for malpractice. As one healthcare practitioner noted:

> *This is what happens when the Medical Council launches a disciplinary proceeding against you.*

16. Ultimately, questioning or challenging the dominant narrative became a form of professional misconduct, for which charges of malpractice and bringing the profession into disrepute could result. This occurred across healthcare professions: Individuals who expressed 'anti-vaccination claims' risked professional rebuke, being brought before the Health Practitioners Disciplinary Tribunal, and in some cases, losing their professional registration.

17. Through these actions by regulatory bodies, good conduct was reframed as compliance with regulatory authority. This is fundamentally authoritarian.

18. The overly punitive approach adopted by regulatory bodies served to create a climate of fear that extended throughout healthcare professions. The ferocity with which some individuals were 'made an example of' had a chilling effect on healthcare workers throughout the system. For example, some regulatory bodies invested financial resources in pursuing court cases against healthcare practitioners who were no longer practicing and requested to be deregistered in order to be able to express their views freely.

19. These sanctions sent a clear message: professional dissent, even when ethically grounded and evidence-based, would not be tolerated. The cost was not only individual, in terms of careers ended or reputations harmed, but institutional. The suppression of professional judgment weakened trust, distorted informed consent, and undermined the very professions entrusted with public care.

20. This was seen and noted by their colleagues:

[I] saw what happened to those doctors and nurses who did speak out. [I] learned to comment in the 3rd person or ask strategic questions to avoid attracting attention.

Those nurses who have spoken out even from personal <Facebook> accounts have been 'reported' to Nursing Council and disciplined. All in all this was effective as it stopped nurses from commenting and added to the nudge factor – do as you are told – no jab no job.

With a few exceptions that were very supportive, it was clear that the more I said, the greater the risk of getting sanctioned... It became very clear that open disagreement to the narrative could result in disciplinary action

Worker distress from inability to discuss observed effects

21. Some healthcare workers have shared the internal conflict and anxiety that was generated by being professionally required to administer the vaccine, yet feeling unable to discuss the treatment openly and honestly with the patients receiving it. As one healthcare professional described:

    I... had 3 young adults coming in for their 2nd dose after having cardiac issues after their first. They said that they were told by their doctors that they would have worse cardiac symptoms if they actually got Covid. That did not sit well with me and I wrote in the notes section in the Covid Immunisation Register what they told me. What do you do? They will lose their job if they don't get immunised. Their doctors have said that the vaccine is safe and effective….they are there to get the second dose. I felt so unsafe…. For myself and for them. All I could do was advise them to seek medical assistance if they had chest pain or felt unwell... You feel so pressured and so alone. You want to talk to other colleagues but you are too scared to be branded and reported to the ... Council.

Enduring damage to key pillars of healthcare

22. The government's Covid-19 response has had a lasting effect on the healthcare system. Perhaps most significant is the division and distrust that it has generated throughout the system, for practitioners and patients alike.

23. For many practitioners and members of the public alike, trust in the health system, and in the professions bound by silence, was fractured:

"I will never in my life trust the MCNZ [Medical Council of New Zealand] or any of its affiliated... or any doctor that did not stand up for informed consent."

24. Healthcare practitioners have described the division that is now rampant throughout the profession:

    "It's fragmented us – it's broken up what was free speech in the best of medicine... all of a sudden it put this wedge – it got under people's skin."

    "These Covid mandates and guidelines have divided the medical profession. Even... functional medicine groups, <that> had conferences on all the vaccine-injured children and teens from the previous vaccines prior to mRNA-Cov have become fragmented and in different camps."

25. Overall, the actions of regulatory bodies undermined practitioners' competence, and for some, compelled them to provide medical advice which they may or may not have agreed with. This has had a lasting effect on the extent to which the public trust their healthcare providers to provide them with the full scope of informed consent. This has had a profoundly deleterious effect on the healthcare system.

26. One healthcare worker summed up the lasting effect:

    "Covid-19 discussion is now relegated to 'we didn't know any better,' which is patently untrue... I am still averse to discuss with anyone I don't trust."

27. For many healthcare practitioners, what is required to restore trust in the profession is an honest recognition of the areas where the government's response, and the way it was handled by regulatory bodies, went wrong:

    "It takes a revolution... not a revolution literally...but it takes a revolution in thinking....it takes a degree of humility to recognise that we really did mess up here, we did make mistakes, we didn't do things that we should've done. We suppressed free speech when we should've allowed alternative viewpoints. We suppressed useful medications and just gobbled nutritional and lifestyle measures that could've been encouraged."

28. An important learning for any future pandemic scenarios must be to support and encourage healthcare practitioners to bring their professional expertise to bear on medical and social challenges. Professionals have much to contribute, if given the opportunity. As one psychologist noted:

    Psychologists should be permitted to have freedom of expression to talk about what they know from their scope of practice to influence decision making during a future

pandemic. We may not be able to comment on medical safety or efficacy but we can speak on the harms of mandates and lockdowns. We also know about behavioural nudges and if these are being used to control the public.

29. Enabling professionals to exercise their speech rights will ensure robust debates occur, and this will ultimately serve to enhance collective decision-making, uphold ethics, and maintain informed consent and trust within practitioner-patient relationships.

SUBMISSION OF THE FREE SPEECH UNION ON PHASE 2 OF THE ROYAL COMMISSION OF INQUIRY INTO THE GOVERNMENT'S COVID-19 RESPONSE

INTER-UNIVERSITY COUNCIL ON ACADEMIC FREEDOM

INTRODUCTION

1. The Free Speech Union ("the 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 and the expression of dissenting ideas.

2. The Inter-University Council on Academic Freedom (IUCAF) is a sub-committee of the Free Speech Union (FSU). We represent academics from across all eight universities in New Zealand and support the coordination of the work the FSU does to promote and defend academic freedom. It is chaired by Prof. Paul Moon (AUT) and Prof. Elizabeth Rata (University of Auckland).

SUMMARY OF KEY CONCERNS

3. Our key concerns are summarised as follows:
    a. **Contravening of academic freedom:** The unanimous public support for the government's Covid-19 response policies by university leaders amounted to the adoption of an institutional position. This undermined academic freedom and, concomitantly, the university's vital role as critic and conscience of society. University leaders' public statements of support for those policies must be distinguished from their enactment on campuses, which they were required to do.

    b. **Punishment of professionals:** Some academics faced enduring institutional and professional consequences for expressing alternative views.

    c. **Long-term effects:** University leadership's behaviour during the Covid-19 response reinforced a culture of conformity on university campuses, the chilling effect of which endures.

SUBMISSION

Contravening of academic freedom

1. The Education and Training Act 2020 entitles staff and students alike to academic freedom. Section 267(4) states that: *Academic freedom, in relation to an institution, means – the freedom of academic staff and students, within the law, to question and test received wisdom, to put forward new ideas, and to state controversial or unpopular opinions.*

2. To be authentically enacted, academic freedom requires certain antecedents, including (but not limited to):
    a. Institutional neutrality, that is, universities refraining from taking institutional positions on issues of substance.
    b. An absence of 'sacred ideas' that are beyond challenge.
    c. Confidence amongst staff and students that they will not be punished for questioning or challenging ideas.

3. The behaviour of university leaders during the Covid-19 response undermined all of these principles.

4. Following the government's Covid-19 response, universities took institutional positions that were consistent with the government's messaging and actions. These, included public statements supporting vaccine efficacy, mandates, contact tracing, mask-wearing and so on. This was problematic in two ways:
    a. They assumed an *institutional* position, violating the key tenet of institutional neutrality. This risked chilling the willingness of staff and students to exercise academic freedom to disagree. It reduced the quality of debate by discouraging questioning or challenging important scientific and ethical questions, including the legitimacy of aspects of the government's response.

    b. University leaders were required to enact government Covid response policy on their campuses. This must be distinguished from their adoption of institutional positions on the legitimacy of those policies, which was neither required nor justified.

5. An ensuing consequence of this was that universities abandoned one of their key functions in relation to Covid-19: To serve as critic and conscience of society. This role is partly realised *through the questioning and criticism of ideas*. University staff and students are inhibited in this role when they fear that their positions and reputations within the university might be

contingent on conformity to an institutional position.

6. Given its function as social critic and conscience, the university was an essential setting in which the government's Covid-19 response should have been carefully considered, critiqued, and challenged from a range of epistemic and disciplinary perspectives.

7. Instead, by aligning so closely with the government's public health messaging, and assuming this as an institutional position, universities became 'authorities' that reinforced the key tenets of that messaging and insulted them from debate, both in their internal and public-facing communications. In sum: When academic freedom was most needed, it was denied.

Punishment of professionals

8. People who were members of the academic community during the pandemic have shared with us accounts of a stifling, and at times hostile, environment, primarily in meetings, towards those who questioned the university's positions on Covid-19 policy. This led them to believe that the expression of contrary views was unwelcome.

9. In some contexts, expressing an alternative viewpoint was perceived to have ramifications for employment security. In the words of one academic:

> *When the institution is making moves to terminate the employment of those who don't comply, and this is actively promoted and supported by the unions, this creates a very unsafe environment for some staff members to speak openly.*

Long-term effects

10. Universities' actions in relation to the government's Covid-19 response have had lasting effects on their institutions.

11. This period saw the rise of a top-down, conformist approach to science, institutional culture and decision-making that has endured beyond the Covid-19 pandemic. It has chilled debate amongst staff and students, whose views differ from those expressed by university leaders in their institutional roles.

12. Discourse about ideas has polarised, with some views sanctioned and others deemed to be 'misinformation'. This has had a stifling effect on knowledge creation and refinement.

13. Universities' institutional support for the government's Covid-19 response created a precedent for ideas that are perceived to be beyond challenge. This situation undermines the generation of new knowledge. New learning cannot occur if old learning cannot be dismantled, rearranged,

and sometimes abandoned. That is true both for individuals and for the advancement of knowledge in academic disciplines. To make advances in research, it is essential that truth claims can be rigorously challenged. In this spirit, the university cannot tolerate 'sacred' ideas held to be immune to challenge or questioning. To do so is to disinhibit new learning by preventing certain ideas from being dismantled, rearranged, or abandoned.

14. Each wave of such ideas sees dissenters leaving universities under duress, either because they disagree with an idea itself, or because they disagree with the very notion of ideas that are beyond challenge. This sometimes occurs by academics and students leaving the university in protest, and sometimes by being 'managed out' for not conforming with university's institutional positions.

15. To fulfil their core functions of truth-seeking and acting as critic and conscience of society, universities must be environments in which ideas can be openly and rigorously discussed, tested, and challenged. Both the government's response to Covid-19, and universities' adoption of government positions as institutional positions compromised universities as venues for debate. They encouraged conformity with their messaging and delegitimised alternative perspectives as 'misinformation and 'disinformation'.

16. In times of social crisis and upheaval, it is essential that members of the university community are supported and encouraged to exercise academic freedom. Academic freedom enables refinement of ideas, leading to crisis responses that are robust and informed. Contrary to government messaging at the time, this is not achieved through conformity. Academic freedom must be maintained, and members of the academic community must not be punished for, or discouraged from, exercising it.

SUBMISSION OF THE FREE SPEECH UNION ON PHASE 2 OF THE ROYAL COMMISSION OF INQUIRY INTO THE GOVERNMENT'S COVID-19 RESPONSE

TEACHERS' PROFESSIONAL MEMBERSHIP COUNCIL

INTRODUCTION

1. The Free Speech Union ("the 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 and the expression of dissenting ideas.

2. As part of its mission to restore free speech within vital professions and institutions, the Free Speech Union has established a Professional Membership specifically for teachers. The Professional Membership Council for Teachers (PMCT) is comprised of registered teachers from various education sectors that seek to uphold free speech rights in the context of school-level education. We contend that these are vital to their roles as educators, as well as to the education system more broadly, especially one that is consonant with a liberal democratic society such as New Zealand. The PMCT is chaired by Stephanie Martin.

SUMMARY OF KEY CONCERNS

3. Our key concerns can be summarised as follows:
    a. **Suppression of alternative perspectives:** Teachers were discouraged, and at times reprimanded, for expressing alternative viewpoints on school sites.
    b. **Behavioural prompting to share public health messaging:** Teachers were called upon, as a high-trust profession, to reinforce and perpetuate key public health messages.

SUBMISSION

Suppression of alternative perspectives

4. As in other contexts, the suppression of dissent occurred in school settings. Teachers who sought to express alternative perspectives about the government's Covid-19 response were discouraged, or at times, actively suppressed, by school leadership. As one teacher noted:

> *I was informally reprimanded for distributing a print out of the emergency use authorisation for the Pfizer immunisation from the FDA's website. I was told by my principal that I was to stop distributing the document and that the school was aiming to be 100% vaccinated by 2022.*

Behavioural prompting to share public health messaging

5. Because of their trusted position within communities, teachers were called upon, both formally and informally, to reinforce public health messaging to their communities. This created an environment in which teachers were compelled to speak in particular ways, which simultaneously had a stifling effect on their ability to express their authentic beliefs.

6. For example, one communication from the Ministry of Education dated October 2021 reads:

> *We've had a number of teaching staff and principals asking what they can (and cannot) say to their school community about vaccination.*
>
> *School leaders and teachers have a strong influence on learners and their understanding of the world because of the trusted position they hold.*
>
> *Public health advice cannot be clearer: vaccinations are the most significant tool we have to reduce the risk of serious illness in our communities. If most of us are vaccinated, we can also reduce the risk of outbreaks which can lead to lockdowns and put our health system under pressure.*