



## FEEDBACK ON THE DRAFT REPORT TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

### Introduction

The Free Speech Union thanks the Ministry of Justice for the invitation to provide feedback on the Draft Report to the United Nations Human Rights Committee on the International Covenant on Civil and Political Rights.

This feedback identifies significant Article 19 (freedom of expression) issues that are absent from or inadequately addressed in the Draft Report. We intend to submit a shadow report directly to the UN Human Rights Committee addressing the matters raised in this submission in more detail.

Any queries from the Ministry regarding this submission should be directed to Jillaine Heather, Chief Executive, Free Speech Union, at [jillaine@fsu.nz](mailto:jillaine@fsu.nz)

### 1. Does the report cover what you see as the most important issues and developments to do with civil and political rights in New Zealand since 2015? Is there anything important missing?

The Draft Report fails to mention seven significant issues relating to Article 19 (freedom of expression) of the ICCPR, namely:

- a. **Covid-19 response** – the Draft Report contains no reference to COVID-19, lockdowns, vaccine mandates, emergency powers, or the Royal Commission of Inquiry. The Royal Commission’s Phase 2 Report included several findings relevant to freedom of expression, including:
  - The Government’s ‘single source of truth’ approach suppressed legitimate professional dissent.
  - The Government’s payment of \$55 million to a Public Interest Journalism Fund on the condition that reporting aligned with the Government’s narratives undermined independent media.
  - The Ministry of Health did not pass on expert advice that concluded two-dose vaccine mandate for 12–17-year-olds was not justified due to myocarditis risks to responsible Ministers.
  - The Medical Council prohibited practitioners from contradicting, or being perceived to contradict, public health messaging. Since the pandemic, the Medical Council has been involved in punishing doctors who challenged the effectiveness of the Covid-19 vaccine and criticising the government’s response.



- b. **Professional regulatory overreach** – Disciplinary bodies have extended ‘fitness to practise’ powers over practitioners’ off-duty expression and personal beliefs, forcing adoption of specific ideological positions unrelated to professional competence. The following are two examples among many:
- The Nursing Council has increased its regulation of nurses’ private views and social media activity. It has released a new proposed Code of Conduct for consultation which imposes a vague “*high standard*” of personal behaviour prohibiting the expression of statements or views they consider to be, “*offensive*”, “*inflammatory*” or “*ill-informed*.”
  - The Medical Council has released new proposed statements for consultation relating to cultural competency and cultural safety. These proposed statements require doctors to adopt specific ideological frameworks and engage in political activism as conditions of professional practice which go beyond what is authorised by the Health Practitioners Competence Assurance Act 2003, Treaty obligations, or health equity goals. The proposed statements are inconsistent with sections 13 and 14 of the New Zealand Bill of Rights Act 1990.
- c. **Broadcasting Standards Authority** – In 2025, the Broadcasting Standards Authority unilaterally expanded its jurisdiction to online streaming, imposing subjective ‘taste and decency’ standards on internet-based content beyond its statutory mandate.
- d. **Human Rights Review Tribunal** – the Draft Report contains no reference to the Human Rights Review Tribunal’s routine, unchecked orders restricting reporting on proceedings and key evidence to Media Council members only, a narrow pool requiring adherence to particular editorial and ideological standards. Non-Media Council journalists, including international journalists, are excluded entirely. Parties and organisations involved in proceedings are themselves prevented from reporting on key evidence heard in their own cases (see *Lesbian Action for Visibility Aotearoa v Wellington Pride Incorporated*).
- e. **Name suppression** – Prior to October 2025, permanent name suppression was being granted to convicted sexual offenders, with the reasons for suppression also being suppressed. While Parliament unanimously passed the Victims of Sexual Violence Bill requiring victim consent before permanent suppression can be granted, the Draft Report fails to acknowledge the significant Article 19 concerns that arose over the preceding decade or address the ongoing concern that where victims are unreachable or unidentifiable, as is common in child sexual exploitation material offences where victims cannot be identified, the law permits courts to grant permanent name suppression without victim agreement.



- f. **Family Court secrecy** – New Zealand's Family Court operates under an extreme level of secrecy by global standards. This prevents public scrutiny of what is described by University of Auckland Associate Professor Carrie Leonetti as "junk" evidence, with court psychologists citing online content, unpublished handouts, and conference presentations rather than peer-reviewed science. Confidential judicial bench books are used that may contain outdated or discredited theories about family violence, with no mechanism for experts, legislators, or the public to scrutinise their contents.
- g. **The Harmful Digital Communications Act 2015** – The Draft Report makes no reference to the documented misuse of the Harmful Digital Communications Act ("HDCA") by public officials, government agencies (including the Police and the Ministry of Foreign Affairs and Trade) and alleged proxies of foreign powers to silence critics and journalists. While Parliament's intention was for the HDCA to address cyberbullying and revenge porn, its application has extended into areas that may infringe upon freedom of expression.

## 2. Do you have feedback on specific areas of the report? If so, please give the relevant section heading and the feedback.

While the Draft Report addresses some freedom of expression issues, the coverage is insufficient and several significant concerns are either absent or inadequately addressed, including:

- a. **Section II(a) – Other key developments to Covenant rights** –
  - **Demonstrations Near Residential Premises:** Paragraph 24 states the Government introduced legislation "to outlaw targeted and disruptive demonstrations near residential premises" and that it "aims to ensure the law appropriately balances a person's right to privacy with NZBORA rights and freedoms". The Draft Report does not mention that the Attorney-General found the Bill inconsistent with the NZBORA and relies on undefined terms requiring a "highly fact-sensitive inquiry". The Draft Report also neglects to mention that Ministry of Justice officials preferred a more proportionate warning-based model that the Government rejected.
- b. **Section III (a) – Constitutional and legal framework (art.2)** –
  - The Draft Report records multiple instances where the Attorney-General found legislation inconsistent with NZBORA and it was enacted regardless, for example, the prohibition of gang insignia (paragraph 21) and demonstrations near residential premises (paragraph 21). The Draft Report does not address why this pattern persists or what safeguards exist to prevent the routine override of rights the NZBORA was enacted to protect.



c. **Section III(b) – Non-discrimination (arts. 2, 19, 20, and 26) –**

- **Hate Speech laws:** Paragraph 60 states the previous Government proposed extending hate speech laws to include other grounds of discrimination but “*public consultation raised many challenging discussions and concerns about limitations to freedom of expression*” and “*the current Government has decided not to amend hate speech laws*”. This is accurate but incomplete. The Draft Report fails to provide any substantive analysis of whether the proposed law reforms meet article 19’s requirements for necessity, proportionality, and precision, or to acknowledge the scale of public opposition that persuaded the Government to set aside the proposals.
- **Hate Crimes:** Paragraphs 61-64 of the Draft Report outlines the *Te Raranga* (The Weave) programme to improve reporting of hate-motivated offence, but no reference is made to the Police’s initial ‘flagging’ of non-criminal hate-motivated incidents where the victim *subjectively* perceived an incident was motivated by hatred based on their actual or perceived race, religion, sexual orientation or other characteristics. This was found to be an overreach, and in response to the Free Speech Union’s concerns and public criticism, the Police retroactively removed the subjective ‘non-criminal hate incidents’ flags, moved to a more objective standard, and revised its training materials. The Draft Report also fails to acknowledge how the rights under article 19 are engaged in the creation of standalone hate crime offences.

- d. **Section III(k) – Freedom of expression (art. 19) –** The section is the thinnest in the entire report relative to the significance of the issues at stake, addressing only official information access while omitting any substantive analysis of expression rights. As detailed in our response to Question 1, significant Article 19 issues have arisen during the reporting period. Further, the intersection of article 19 and hate speech and hate crimes under section b of the Draft Report has not been adequately addressed.

**3. What has the government done well to improve the enjoyment of civil and political rights in New Zealand since 2015?**

The Education and Training Amendment Act 2025, passed in November 2025, establishes new provisions requiring university councils to protect and promote freedom of expression and academic freedom, with universities required to have statements on freedom of expression in place within six months of commencement. Universities must not take positions on issues unrelated to their core role and functions, must make premises available to invited speakers regardless of the ideas being presented, and must establish complaints mechanisms and report annually on how academic freedom has been upheld. The Free Speech Union regards this as a positive development for Article 19 rights in New Zealand.



#### 4. What are the most important areas the New Zealand Government could address to enhance civil and political rights and enable equal enjoyment of human rights?

The New Zealand Government could address the significant Article 19 (freedom of expression) issues identified in our answers to Questions 1 and 2 above as follows:

a. **Covid-19 response** –

- Include an explicit free speech clause in any future pandemic or emergency legislation to prevent state overreach, including explicit prohibitions on governments designating themselves the sole source of authoritative information.
- Amend relevant legislation to prohibit any future government from making public funding to media organisations conditional on alignment with official narratives or government communications strategies.
- Amend relevant legislation to explicitly protect practitioners' rights to express professional opinions that differ from official public health guidance, consistent with Article 19.
- Reject the Royal Commission's recommendation to establish a new agency to monitor trust and social cohesion, which would inevitably drift into defining what speech is acceptable, replicating the very failures the Commission identified.

b. **Professional regulatory overreach** – Enact legislation clearly defining the purpose and limits of professional regulation, ensuring disciplinary powers cannot regulate practitioners' off-duty expression, personal beliefs, or ideological positions unrelated to core professional competence.

c. **Broadcasting Standards Authority** – In the interim, clarify that the Broadcasting Standards Authority's jurisdiction is restricted to traditional broadcast television and radio. In the long term, replace the Broadcasting Standards Act with a self-regulatory model.

d. **The Harmful Digital Communications Act 2015** – Review the HDCA to ensure its implementation is consistent with Parliament's intention and address the weaponisation of the Act against the right to freedom of expression.

e. **Open Justice** – Direct the Law Commission to undertake a comprehensive review of New Zealand's open justice framework, including the Human Rights Review Tribunal's suppression order regime, name suppression for convicted sexual offenders, and Family Court secrecy, to ensure they are consistent with Article 19 and the principle that justice should be administered in public.

Submitted 19 March 2026.