

# New Zealand government's proposed "hate speech" law attacks free speech

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Against a backdrop of rising social tensions, widening inequality and emerging resistance by the working class to austerity, New Zealand's Labour Party-Greens government is preparing new "hate speech" laws that will severely limit free speech and muzzle political dissent.

The Justice Ministry last month released a discussion document, "Proposals against incitement and discrimination," for a six-week public "consultation" period before legislation is finalised and taken to parliament. The document, which invites responses to six vaguely worded proposals, reveals no precise text of the foreshadowed law, although planning is doubtless well advanced.

The Socialist Equality Group (NZ) unequivocally condemns the government's attack on freedom of speech and warns that, whatever its declared intentions, the law will inevitably be used against the working class, and target left-wing and socialist organisations and individuals as the emerging rebellion against the assault on living standards and basic rights intensifies.

Labour intends to alter two sections of the Human Rights Act 1993, which currently outlaws communications that are intended "to excite hostility or ill-will against, or bring into contempt or ridicule" any group on grounds of their colour, race, or ethnic or national origins. The proposed changes expand the list of "protected" groups to include those based on gender, religion, sexuality, marital status, age, employment status and political opinion.

The changes will apply to Section 61 of the Act, which contains civil provisions against inciting hostility on the basis of race or ethnicity, and Section 131 which make such activities a criminal offence. Under the reworked Section 61 any person who "encourages others" to treat members of a protected group worse or differently than others would be breaking the law and could trigger a complaint to the Human Rights Commission.

Section 131 will become a new offence within the Crimes Act, where it will have substantially increased penalties. The maximum fine is lifted from \$7,000 to \$50,000, and the maximum term of imprisonment raised from three months to three years.

The new section will specify that anyone who "intentionally incites, stirs up, maintains or normalises hatred" against a protected group breaks the law if they do so by being "threatening, abusive or insulting, including by inciting violence," regardless of whether this is done verbally, in writing or online.

The terms used are vague and open to interpretation. What counts as "normalising hatred" or "abusive language" will be

determined by the state.

Under the Bill of Rights Act 1990, everyone has the right to freedom of expression, including the freedom to "seek, receive, and impart information and opinions of any kind in any form." However, several long-standing legal provisions already restrict what people can say or publish. The Summary Offences Act 1981 makes it illegal to use racist slurs. The Harmful Digital Communications Act 2015 regulates "extreme" tweets or Facebook messages while film classification rules target "harmful" material and content that "breaches society's standards."

The legislation is being promoted by the media and the government on the basis of middle class identity politics: the notion that the fundamental divisions in society are those of race, gender, religion and sexuality, and that a stronger state is required to protect "diverse" groups. A typical op-ed by Donna Miles-Mojab on the *Stuff* website, for example, declared that the new law would "make our great country a more inclusive, safe and tolerant place for all." She dismissed concerns about the impact on free speech, saying "I trust [the courts] to get the balance right."

In fact, the government's discussion document pays scant attention to the basic democratic right of freedom of speech, and has nothing to say about how it should be protected. In two brief paragraphs, the Justice Ministry baldly asserts that legal limits on free speech are "justified in a free and democratic society." The law preventing "incitement" will, it declares, prohibit the expression of "attitudes" that are "incompatible with human rights and Aotearoa New Zealand's democratic values."

The changes will purportedly clamp down on "intolerance, prejudice, and hatred" and defend "our values of inclusiveness and diversity." In fact, New Zealand society is sharply riven on class lines, with deepening inequality, child poverty, an uncontrolled housing crisis and crumbling health system. The contention that the new law will "foster greater social cohesion" and "encourage unity and continue to strengthen our society" is as absurd as it is dangerous.

Justice Minister Kris Faafoi has, unsurprisingly, been evasive about how the law might operate. Asked by *Newshub* reporter Tova O'Brien whether younger people "hating" older "Boomers" for the high cost of housing was "hate speech," Faafoi replied that "potentially" such statements could trigger prosecutions. Prominent rugby player Israel Folau could also, he admitted, face prosecution if he was in NZ for his repeated anti-gay statements.

Fafoi said that ultimately police would decide what prosecutions to take.

The law has been justified as a response to the March 2019 terror attack in Christchurch, in which 51 people were massacred in two mosques by the fascist Brenton Tarrant. Last year's Royal Commission of Inquiry into the attack recommended stronger penalties for "hate speech" and to include religion as a protected category, in order to foster "social cohesion" and "prevent... the development of harmful radicalising ideologies and downstream violent extremism."

Nobody should believe that the law will be used solely, or even primarily, against the extreme right. After initially denying it, Prime Minister Ardern admitted that "political opinion" could be declared a protected category. Section 21 of the Act currently lists "political opinion" among the prohibited grounds for "discrimination." On this basis, the new law would make it unlawful to "insult" or "incite" hatred towards a group or party because of their political program or views.

This is being put forward in the context of rising, and completely justified, anger among workers towards the government's austerity measures, including a three-year public sector pay freeze. During the June 9 strike by 30,000 nurses and healthcare workers, Health Minister Andrew Little was shouted down and booed off the stage while trying to justify the government's actions to workers outside parliament. It is entirely conceivable that, in the future, such protesters could be accused of "hate speech."

There are already clear indications that the government is preparing to target left-wing opponents. A report commissioned by the Department of Internal Affairs, published last month by the UK-based Institute for Strategic Dialogue, claimed that in addition to 170 far-right social media accounts, there were 25 "left-wing extremist" "accounts or websites" in New Zealand. It declared that the latter unidentified groups or individuals were "more politicised than any other group" and "most likely to be active on standalone forums and to use action-oriented or *aggressive language* [emphasis added]."

The report said these groups were "often influenced by communist and anarchist ideologies, reject the principles of social democracy" and "rely on extra-parliamentary struggle against capitalism and refuse to compromise with political actors who advocate maintaining the status quo." The report must be taken as a serious warning that the government is laying the basis for the criminalisation of "aggressive" anti-capitalist and anti-establishment speech.

The hate speech proposal is only the latest in a series of measures that have exploited the Christchurch attack to boost the powers of the state and intelligence agencies, while advancing demands by governments internationally for censorship of the internet.

Since the attack, the political establishment and media have largely suppressed discussion about the political roots of the atrocity. New Zealand's chief censor promptly banned possession of Tarrant's manifesto, which expressed admiration for US President Donald Trump and contained racist, anti-immigrant and anti-socialist exhortations.

The Royal Commission identified "weaknesses" in the current

Act and called for the criminal provision to outlaw "extreme speech" and to specifically include electronic communications.

The commission's report meanwhile whitewashed the police and intelligence agencies in Australia and New Zealand, which overlooked the danger of fascist violence and ignored specific warnings about Tarrant. The inquiry, moreover, covered up the record of Labour and its then-governing coalition partner, the right-wing populist NZ First, which was responsible for stoking Islamophobia and anti-immigrant sentiment.

Ardern has collaborated internationally with right-wing French President Emmanuel Macron, other world leaders and technology company executives to promote the so-called "Christchurch Call to Action," intended to develop mechanisms to censor online content deemed to be inciting terrorism or "violent extremism." The government has also doubled funding to the Office of the Censor and introduced legislation to expand its power to immediately take down online content, including social media posts.

The "hate speech" law is another step in this ever-expanding process. There is, however, widespread public opposition. A straw poll released by *Newshub* gained 5,345 responses in 24 hours, with an overwhelming 84 percent against the law and just 12 percent in support. Reasons cited include a lack of transparency, excessive overreach and the inherent right to freedom of speech.

The right-wing parties are seeking to exploit the opposition by falsely posturing as defenders of free speech and democratic rights. ACT Party leader David Seymour, for example, said: "Hate speech is subjective and politicised. Fafoi knows Police will end up facing pressure to prosecute people with unpopular views." The previous National-ACT government, while overseeing a major increase in social inequality, vastly expanded the powers of the state surveillance agencies to spy on the population and joined the global witch-hunt against WikiLeaks founder Julian Assange.

The Labour-Green government's widening assault on basic democratic rights is enabled, above all, by the trade unions and pseudo-left groups. None of the unions has uttered a word about the policy. The pseudo-left groups—Socialist Aotearoa, International Socialist Organisation (ISO), and Organise Aotearoa—are equally complicit, all of them assiduous promoters of the very identity politics nostrums being advanced to justify the new law.



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