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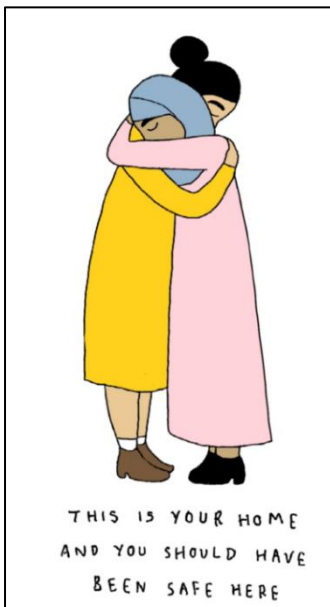
**SUBMISSION TO THE MINISTRY OF JUSTICE  
ON PROPOSALS AGAINST INCITEMENT OF HATRED AND DISCRIMINATION**

***Social aggression has found unparalleled room for expansion through computers and mobile devices... [We] can be caught up in networks of verbal violence through the internet and various forms of communication.***

Pope Francis: Fratelli Tutti (paragraphs 44 and 46)

***Press freedom is not a licence to incite intolerance or to promote hatred or derision based on religion, race or gender.***

New Zealand Catholic Bishops Conference: Complaint to the Broadcasting Standards Authority on the South Park "Bloody Mary" episode, 2009



**Remembering those who have died or who live in fear because of hatred**

*We acknowledge the government's consultation on the incitement of hatred and discrimination follows the 15 March 2019 Christchurch mosque attacks.*

*We remember our brothers and sisters who died in the attacks while peacefully at worship, and we express our solidarity with the vulnerable New Zealanders who were the primary targets of the 15 March 2019 attacks. We acknowledge that many continue to live in fear.*

*Ruby Jones' iconic image and phrase "This is your home and you should have been safe here" summed up for us and for many New Zealanders the intense regret and sorrow that this country was not a safe place for Christchurch Muslim communities in 2019. We welcome this review of our legislative frameworks to ensure that the safety that should have been offered then is provided to all vulnerable New Zealanders in the future.*

**SUMMARY OF MAIN POINTS**

- We welcome the recommendations made by the *Royal Commission of Inquiry into the Terrorist attack on Christchurch Mosques on 15 March 2019* to review our current laws.
- In principle we support Proposals 1-4 and offer our detailed comments on these proposals.
- The existing threshold for hateful communications is high and should remain so.
- We support the extension of coverage against hateful communications to include religion and more of the groups protected from discrimination by Section 21 of the Human Rights Act.
- It is essential that our laws are updated explicitly to include all means of digital and online communications.
- We would like to see a longer conversation about Proposal 5, separated from the urgency required to make New Zealand a safer place under Proposals 1-4, to ensure there is consistency and that there are not unforeseen outcomes. We can understand fears present in religious communities that if such provisions are pushed through hastily some groups could be restricted more than they are protected.

## INTRODUCTION

1. Catholic teaching recognises the right of people to be free from discrimination and racial hatred; the right to religious freedom; and the right to freedom of expression. Each of these rights comes with responsibilities – for example, the right to freedom of expression also comes with the responsibility to use that freedom appropriately with respect for the rights and freedoms of others.
2. The Wellington Archdiocese Ecology, Justice and Peace Commission recognises that New Zealand already has some restrictions on freedom of speech in the Human Rights Act, which is in accord with our commitments and responsibilities especially under the *International Convention for the Elimination of All Forms of Racial Discrimination* and the *International Covenant on Civil and Political Rights*.
3. We welcome the recommendations made by the *Royal Commission of Inquiry into the Terrorist attack on Christchurch Mosques on 15 March 2019* to review our current laws, and note that this comes in an international context of growing racism and religious intolerance.
4. Pope Francis in his 2020 encyclical *Fratelli Tutti* raises concerns about the deterioration of communication about and between peoples, especially in digital and online communications. He calls us to overcome networks of verbal violence with a commitment to dialogue, listening, encounter and respectful discussion and debate.
5. We acknowledge that Catholic and Christian groups at times can be among those who are intemperate and intolerant in communications with and about other groups in society.
6. Catholic and Christian groups can also be targets of hostility and hatred, both locally and internationally. However, the Wellington Ecology, Justice and Peace Commission acknowledges that in Aotearoa New Zealand, Christians and Catholics are usually not the most vulnerable in relation to extremist hate speech. This issue needs to be seen first and foremost from the perspective of its impact on the most vulnerable, which right now we see as being the members of the Muslim community who tell us they are still receiving hatred and threats, even after all they have already suffered.

## CATHOLIC SOCIAL TEACHING

7. The basis of our reflection on this issue is Catholic social teaching, in particular Pope Francis' 2020 encyclical [\*Fratelli Tutti\*](#) (*Brothers and sisters all*). This letter speaks directly into the worldwide context of growing racism, the resumption of ancient conflicts, and the rise of a “myopic, extremist, resentful and aggressive nationalism” (paragraph 11). Pope Francis describes a readiness to discard others which “finds expression in vicious attitudes that we thought long past, such as racism, which retreats underground only to keep re-emerging” (paragraph 20). His hope in his encyclical is that in the face of “present day attempts to eliminate or ignore others we may prove capable of responding with a new vision of fraternity and social friendship” (paragraph 6).
8. Communication is a focus of the encyclical. Pope Francis warns against allowing legitimate differences of opinion or viewpoint to degenerate into “a permanent state of disagreement and confrontation” (paragraph 15); he asks us to renounce constant confrontation (paragraph 78); he describes how new forms of online bonding encourage “remarkable hostility, insults, abuse, defamation and verbal violence destructive of others” (paragraph 44); and warns that even in Catholic media limits can be overstepped, and defamation and slander can become commonplace (paragraph 46). He warns about the ways in which many social media platforms work, bringing together only people who think alike

and becoming closed circuits that “facilitate the spread of fake news and false information, fomenting prejudice and hate” (paragraph 45).

9. In contrast, Pope Francis encourages us to seek truth in dialogue, “in relaxed conversation or passionate debate” (paragraph 50), through “approaching, speaking, listening, looking at, coming to know and understand one another, and to find common ground” (paragraph 198). Pope Francis invites us to overcome isolated virtual circles with personal encounters which give priority to listening (paragraph 48), to respecting other people’s point of view and to recognising there are “legitimate convictions and concerns” that groups different to ourselves can contribute to public debate (paragraph 203). He encourages us to build new forms of social encounter that work to overcome our divisions without losing our identity as individuals (paragraph 230).
10. In *Fratelli Tutti*, Pope Francis speaks directly into the attitudes and experiences that are the backdrop to the Ministry of Justice proposals against incitement of hatred and discrimination. He acknowledges the rise of racism in both attitude and action and asks us all to examine and change the way we communicate with one another.

#### **PROPOSAL ONE: CHANGE THE LANGUAGE IN THE INCITEMENT PROVISIONS SO THAT THEY PROTECT MORE GROUPS THAT ARE TARGETED BY HATEFUL SPEECH**

11. We support the extension of the coverage of the incitement provisions in Sections 61 and 131 of the Human Rights Act to include more of the groups protected from discrimination by Section 21 of the same act.
12. We thank the Royal Commission of Inquiry for pointing out that Muslims, Christians and other multi-ethnic religious groups are not covered by existing incitement provisions. We do not believe it was intended that, for example, a Muslim or Christian is protected against discrimination when applying for a home or a job, but not against language which stirs up violence on the same grounds. We strongly support the extension of incitement provisions to cover religious and ethical belief, which also includes the lack of a religious belief.
13. We also support in principle the extension of incitement provisions to protect from incitement to hatred against people currently protected against discrimination on the grounds of sex, gender, disability, age, employment status, family status and sexual orientation.
14. We have reservations about whether it is helpful to extend this protection also to political opinion. This would need monitoring, and may need to be reviewed, but in general we think it appropriate to allow some more latitude. Debate about the limits of protection for political opinion could unhelpfully derail the more urgent need to extend protection for religious belief. We must prioritise ensuring whānau, surviving victims and targets of the 15 March 2019 attacks are protected from the hateful communications they already receive.

#### **PROPOSAL TWO: REPLACE THE EXISTING CRIMINAL PROVISION WITH A NEW CRIMINAL OFFENCE IN THE CRIMES ACT THAT IS CLEARER OR MORE EFFECTIVE**

15. We agree with updating the existing criminal provision.

16. We do not have specialist knowledge about whether this should be in the Crimes Act and are happy for that decision to be informed by people who better understand the legal implications. However, we see benefit in remaining within the Human Rights Act because of the careful and delicate balance of human rights and responsibilities that is required. We do not want to see any single section of the Human Rights Act being elevated above or being taken out of the context of the whole.
17. It is essential that the section be updated explicitly to include all means of digital and online communications.
18. We would prefer to see incitements to hatred described as hateful **communications** rather than speech. The word “speech” appears to imply for many people hateful spoken rhetoric associated with Hitler and Nazi Germany, which is a world away from today’s online communications despite often being inspired by the same racist ideology.
19. We support in principle the wording proposed by the Royal Commission, with two exceptions:
- Inciting racial or religious disharmony**  
Every person commits an offence and is liable on conviction to imprisonment...who:
- a) With intent to stir up, maintain or normalise hatred against any group of persons in New Zealand on the ground on the colour, race, or ethnic or national origins or religion of that group of persons; and
  - b) Says or otherwise publishes or communicates, any words or material that explicitly or implicitly call for violence against or is otherwise, threatening, abusive... to such group of persons.
20. We will address the sentencing recommendations in the next section.
21. We support the proposal to replace “hostility”, “ill-will”, “contempt” and “ridicule” with the word “hatred”. We also believe the word “insulting” does not belong in this wording.
22. Many – but not all - Catholics were genuinely offended and insulted by the South Park *Bloody Mary* episode in 2006 and the *Virgin in a condom* artwork displayed at Te Papa in 1998. However, the position of the Wellington Archdiocese Ecology, Justice and Peace Commission is that such offensive and insulting matters should not reach the threshold of “hatred” required in this legislation. The existing threshold is high and should remain so. So we recommend that words such as “insulting” are not included, to avoid any misunderstanding of this kind.
23. Similarly, some tenets of some religious doctrines will be held by members of other communities to be insulting, but we do not believe the formal teaching of doctrine within faith communities should be captured in this legislation as hateful communications or hate speech. That does not justify religious arguments being used as hateful speech or violence against anyone. However, context does matter, and there is a difference between a student studying their own religious heritage within their own community, and others using that heritage as a weapon against other people, for example, by putting it on a protest banner or spray painting it on a building.
24. We agree that hateful communications aimed at people who already hold extreme views should be included in the definition, and are satisfied in general with the wording proposed of communications which “maintain or normalise” hatred.

25. We also agree that the existing wording “excite” does not draw on the usual meaning of that word, and that “stir up” or “incite” are better alternatives.

**PROPOSAL THREE: INCREASE THE PUNISHMENT FOR THE CRIMINAL OFFENCE TO UP TO THREE YEARS’ IMPRISONMENT OR A FINE OF UP TO \$50,000 TO BETTER REFLECT ITS SERIOUSNESS**

26. We recognise that the Royal Commission recommended increased penalties to better reflect the seriousness of the offending, and to signal that these matters are not trivial.

27. In principle, we believe it is important that sentences for offending at the higher end do reflect that hate speech and hate communications can lead to violence, death and even genocide, both historically and in the present day. However, we are also conscious that tougher sentences could lead people to defend hateful behaviour at the margins more vigorously.

28. What is most important is that law is written in a way that will lead to greater protection of vulnerable citizens and will draw a clear line in the sand about what kinds of communications must not be tolerated in a fair and just democratic society. At present it still does not appear to do that sufficiently, and perhaps the high thresholds outlined in *Wall v. Fairfax* (2018) could be made more explicit. Sentencing for offenders is less significant for us.

**PROPOSAL FOUR: CHANGE THE LANGUAGE OF THE CIVIL INCITEMENT PROVISION TO BETTER MATCH THE CHANGES BEING MADE TO THE CRIMINAL PROVISION**

29. We agree that the language of the civil and criminal provisions should match.

**PROPOSAL FIVE: CHANGE THE CIVIL PROVISION SO THAT IT MAKES ‘INCITEMENT TO DISCRIMINATION’ AGAINST THE LAW**

30. We understand the proposal in principle, but believe this proposal opens room for potential inconsistencies, unforeseen outcomes and a great deal of anxiety in the community. We would prefer to see this as a longer-term conversation separated from the urgency that is required to make New Zealand a safer place under Proposals 1-4.

31. There is a legitimate concern among religious groups that passing on the traditional teaching of different faiths, particularly about teachings on sexuality and marriage, could be held to a higher standard of accountability than other protected characteristics. We also need to be able to discuss and debate this teaching within our own congregations.

32. For example, the Catechism of the Catholic church refers to homosexual acts as being “intrinsically disordered”. Cardinal John Dew advocated at the Vatican Synod on the Family in 2014 that the church needs to rethink our language, and he gave this phrase as a specific example that needs to be re-thought and re-presented. It is important that we are able to discuss this within the Catholic community, and that people are able to read and access traditional teachings without fear that it will be regarded as incitement to discrimination. This does not excuse or allow incitement to hatred or violence against members of the LGBTQIA community.

33. We are not seeking greater protection than other faith communities, or to place Catholic and Christian communities above other protected communities. However Christians do deserve the same level of respect and protection as other faith communities.

34. Our experience is that there are some groups and individuals in New Zealand society who see Christian groups as legitimate targets for hostility and ridicule. To give one example, the Broadcasting Standard Authorities 2009 consideration of the Catholic Church's South Park complaint ruled:
- The Authority is of the view that the institution of the Catholic Church, its practices and its icons, are entitled to no greater protection than any other institution in our society, whether it be religious, political or cultural.*
35. Hostility and ridicule towards the Catholic Church as an "institution" does not fall harmlessly on sacred texts and buildings but painfully on communities and people. Our communities include people from many ethnicities and socio-economic backgrounds, including Māori and Pasifika New Zealanders as well as vulnerable newcomers to New Zealand, who all deserve respect and protection from abuse.
36. Christian communities are not uniform, and we have a diversity of sensitivity – some people can be quite relaxed about matters that others find upsetting and hurtful. This can depend on context – for example, a resilient person with lots of family support may have a higher threshold to robust religious debate or satire than an isolated bereaved person who is finding consolation in their grief in religious practices.
37. So while we support in principle that New Zealand's legislation should protect also from incitement to discrimination, we can understand fears present in religious communities that if such provisions are pushed through hastily some groups could be restricted more than they are protected.
38. Proposals 5 and 6 were not specific areas of recommendation by the Royal Commission of Inquiry into the Christchurch attacks, and have not yet received as much research and consideration as Proposals 1-4. We recommend a longer period of consultation, discussion, research and reflection on this question to ensure that any changes proposed are truly even-handed.
39. The judgement in *Wall v. Fairfax* (2018) noted that "the law's limits do not define community standards or civic responsibility". It is important that there is no assumption that something is acceptable just because it is not banned by law. All communities, including our own Catholic community, need to constantly assess the language we use, and to challenge each other when our communications cause unhappiness and exclusion rather than build social cohesion.

**PROPOSAL SIX: ADD TO THE GROUNDS OF DISCRIMINATION IN THE HUMAN RIGHTS ACT TO CLARIFY THAT TRANS, GENDER DIVERSE AND INTERSEX PEOPLE ARE PROTECTED FROM DISCRIMINATION**

40. It is our understanding that the Human Rights Act was intended to cover all members of the LGBTQIA community. The Wellington Archdiocese Ecology, Justice and Peace Commission does not have expertise in the best language to use and is happy for the most affected communities to help clarify and define this section.