

6th August 2021

Incitement of Hatred and Discrimination in Aotearoa New Zealand

New Zealand College of Midwives

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The New Zealand College of Midwives is the professional organisation for midwifery. Our members are employed and self-employed and collectively represent over 90% of the practising midwives in this country. There are approximately 3,000 midwives who hold an Annual Practising Certificate (APC). These midwives provide maternity care to, on average, 60,000 women and babies each year. New Zealand has a unique and efficient maternity service model which centres care around the needs of the woman and her baby.

Midwives undertake a four-year equivalent undergraduate degree to become registered followed by a first year of practice program that includes full mentoring by senior midwives. The undergraduate curriculum meets all international regulatory and education standards. Midwives are authorised prescribers in relation to their Scope of Practice as determined by the Midwifery Council.

Midwives provide an accessible and primary health care service for women in the community within a continuity of carer model as Lead Maternity Carers. Midwives can also choose to work within secondary and tertiary maternity facilities, providing essential care to women with complex maternity needs.

The College offers information, education and advice to women, midwives, district health boards, health and social service agencies and the Ministry of Health regarding midwifery and maternity issues. Midwives interface with a multitude of other health professionals and agencies to support women to achieve the optimum outcome for their pregnancies, health and wellbeing.

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New Zealand Government - Justice
humanrights@justice.govt.nz

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Tēnā koutou

The New Zealand College of Midwives (the College) welcomes the opportunity to provide feedback on the Incitement of Hatred and Discrimination in Aotearoa New Zealand. We support freedom of expression while being mindful of the harm and damage that language which spreads intolerance and hatred can inflict on communities. Victimisation, racism, discrimination, and speech which dehumanises any person or any groups of people should not be tolerated in Aotearoa.

Feedback on the proposal questions is below –

Proposal One: Change the language in the incitement provisions so that they protect more groups that are targeted by hateful speech

Feedback on Proposal One –

Do you agree that broadening the incitement provisions in this way will better protect these groups?

Why or why not? - In your opinion, which groups should be protected by this change? - Do you think that there are any groups that experience hateful speech that would not be protected by this change?

The College does not have the legal expertise to comment on how law changes will better protect groups from discrimination in practice, but we consider that investigation into how other countries have been affected by changes to similar laws is essential. Expressions of solidarity with marginalised groups and zero tolerance for violence and hate speech are both important. Whether these proposals for a law change will achieve these aims is a very different question. The positive and negative, and unintentional consequences, of such significant changes need consideration.

Principal 10 of the Harmful Digital Communications Act of 2015 states that a digital communication should not denigrate an individual by reason of his or her colour, race, ethnic or national origins, religion,

gender, sexual orientation, or disability. This Act covers any harmful digital communications like text, emails or social media content / posts which includes racist, sexist, religious intolerance, sexual orientation and disability. The College would be interested to know how this Act has performed in terms of the protection of individuals as described above.

The Human Rights Act aims to protect human rights by prohibiting discrimination on the grounds of sex and sexual orientation. There is a current climate of hate speech directed against women, as well as that directed at people who identify as lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+ / Takatāpui) and any changes to the HRA should ensure that they do not diminish any rights and that women remain entitled to protection from harm. To this end, we suggest that explicitly defining women as a protected group be included in 21(1) (a), along with the proposals to extend protection, not only to the umbrella category of gender identity, but also the specific identities of trans, gender diverse and intersex people.

The College has some concerns about academic freedom and the ability to challenge or debate what could be construed as unpopular opinions and we hope these freedoms do not get caught up within any law changes. A diversity of voices, views and debates can and should be protected while also protecting and preventing discrimination, hate and harm. It is important to recognise that sex and gender-based violence and discrimination is still disproportionately suffered by women and of note are the threats of violence against women who have attempted to discuss gender critical theories. These discussions should not be viewed as vehicles to destroy the rights of trans-people. There are differences between views and beliefs and the type of expression used to express these beliefs. Respectful debate must still be protected and should not be viewed as harassment, intimidation, abuse or discrimination.

Proposal Two: Replace the existing criminal provision with a new criminal offence in the Crimes Act that is clearer and more effective.

Feedback on Proposal Two –

Do you agree that changing the wording of the criminal provision in this way will make it clearer and simpler to understand? Why or why not? – Do you think that this proposal would capture the types of behaviours that should be unlawful under the new offence?

We agree that freedom of expression should be protected to the extent that it is safe, while recognising the gravity and harm of hate speech in the Crimes Act. Midwives provide care for families of many ethnic groups and cultures and have seen first-hand the damage that racism, hate speech and acts of hate cause for those in their care. Midwives were providing care to Muslim families throughout the weeks and months surrounding the Christchurch mosque attacks, and strongly support the rights of all cultural and religious groups to live their lives as who they are without fear.

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.

Feedback on Proposal Six –

Do you consider that this terminology is appropriate? - Do you think that this proposal sufficiently covers the groups that should be protected from discrimination under the Human Rights Act? - Do you consider that this proposal appropriately protects culturally specific gender identities, including takatāpui?

The Human Rights Act (HRA) is clear in terms of protection against racial disharmony, sexual harassment and disability rights. Prohibited discrimination includes sexual orientation which for the purpose of the HRA includes heterosexual, homosexual, lesbian, or bisexual orientation. Transgender rights have been evolving and rightly deserve to be protected. The College supports increasing the language in the incitement provisions to reflect protection for trans, gender diverse and intersex people. We also suggest the addition of explicit reference to takatāpui.

Thank you for the opportunity to provide feedback.

Ngā mihi

New Zealand College of Midwives

Te Kāreti O Nga Kaiwhakawhanau Ki Aotearoa