

5 August 2021

Human Rights
Ministry of Justice
SX10088
Wellington

By email to: humanrights@justice.govt.nz

Tēnā koutou katoa

Submission to: Ministry of Justice
Subject: Proposals against incitement of hatred and discrimination
From: Arts Council of New Zealand Toi Aotearoa (Creative New Zealand)

1. Creative New Zealand welcomes the opportunity to comment on *Proposals against incitement of hatred and discrimination*.
2. We'd be happy to discuss this submission with you further. The key contact person for matters relating to this submission is:

Name: Elizabeth Beale
Position: Manager, Policy & Performance
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Key points

3. Creative New Zealand **supports the six proposals** outlined in the consultation document *Proposals against incitement of hatred and discrimination*.
4. Creative New Zealand's legislation, the Arts Council of New Zealand Toi Aotearoa Act 2014, includes as a function of the Arts Council, to:
Uphold and promote the rights of artists and the right of persons to freedom in the practice of the arts. (section 7(1)(d))
5. While we strongly support the principle of 'freedom in the practice of the arts', we recognise, as for the general principle of freedom of expression, that this freedom is not absolute.
6. In any consideration of where a line might be drawn, we would be guided by the relevant provisions of the Human Rights Act in relation to speech that incites hatred.

7. As a result, we **strongly support** proposals aimed at replacing current legislative provisions with clearer language (**Proposal 2**).
8. We also **strongly support** proposals aimed at protecting more groups that are targeted by hateful speech (**Proposal 1**), and proposals aimed at clarifying that trans, gender diverse and intersex people are protected from discrimination (**Proposal 6**).
9. We don't have any specific views on the drafting of the provisions, but support the intent of all six proposals.
10. Creative New Zealand has recently been challenged in relation to an arts project (a visual arts exhibition, *People of Colour* undertaken by Mercy Pictures) that included what some in the community believed to be content that caused harm to certain groups: <https://pantograph-punch.com/posts/a-rose-is-a-flag>
11. Although we hadn't supported the project, we were asked, as a national leadership body, what our views were. In this case we were able to state that while we uphold freedom in the practice of the arts, this freedom is not absolute, and we would be guided by the relevant provisions of the Human Rights Act relating to the incitement of hatred or racial disharmony.
12. Any changes aimed at ensuring these provisions are clear and cover the broadest range of potentially impacted groups would be welcomed. This would provide a stronger basis for balancing the rights of people to freedom in the practice of the arts with protecting groups that may be targeted by hateful speech.
13. The terrorist attack at Christchurch masjidain as well as global movements such as #MeToo and #BlackLivesMatter have served to heighten people's awareness of issues around discrimination and 'hate speech'. It is therefore timely for these provisions in the Human Rights Act to be reviewed, to ensure they are current and provide an appropriate level of protection to potentially targeted groups.
14. On the flip side, the arts have a role to play in contributing to **social inclusion and cohesion** by connecting people and communities. The Critical Research Unit in Applied Theatre at the University of Auckland reported in 2019 that arts participation has helped individuals to find support, develop networks and a sense of belonging, as well as increasing community cooperation.¹
15. The arts also **support a strong democracy**. VicHealth reported in 2020 that the arts can be a powerful tool for community building because of the potential to overcome barriers (eg, language, cultural), and to provide opportunities to talk about, confront, and solve community issues (eg, health, racism, ageism).²
16. Further, the arts contribute to **our diverse identities and shared sense of national identity**. Creative New Zealand research in 2020 found 66 percent of New Zealanders say they learn about different cultures through the arts, and 45 percent of all New Zealanders say they learn about Māori culture through ngā toi Māori (Māori arts). In addition, 54 percent of New Zealanders agree that the arts are an important way of connecting with their culture.³

¹ [Creative Practice for Youth Wellbeing in Aotearoa New Zealand](#) (Critical Research Unit in Applied Theatre, University of Auckland, 2019).

² [The arts and creative industries in health promotion](#) (VicHealth, 2020).

³ [New Zealanders and the Arts—Ko Aotearoa me ōna Toi 2020](#) (Creative New Zealand, 2020).

Background on Creative New Zealand

17. Creative New Zealand is the national arts development agency of Aotearoa, responsible for delivering government support for the arts. We're an autonomous Crown entity continued under the Arts Council of New Zealand Toi Aotearoa Act 2014. Our legislative purpose is to encourage, promote and support the arts in New Zealand for the benefit of all New Zealanders.
18. Creative New Zealand delivers programmes in the following areas:
 - investing in the arts, including providing funding to artists, arts practitioners and arts organisations
 - developing the arts, including through our capability building programme for artists, arts practitioners and arts organisations
 - advocacy for the arts, to promote the value of the arts and empower the arts sector to make the case for the arts
 - leadership in the arts, to ensure the arts sector is well positioned collectively to respond to change.
19. Creative New Zealand receives funding through Vote: Arts, Culture and Heritage and the New Zealand Lottery Grants Board.
20. Thank you again for the opportunity to comment. Please feel free to contact us if you have any questions or if you wish to meet to discuss this submission further.

Ngā mihi nui ki a koutou katoa, nā

David Pannett
Pou Whakahaere Matua, Rautaki me te Tūhono
Senior Manager, Strategy & Engagement