

## **Department of Justice, Hate Speech Public Consultation Submission of Independent News and Media**

Independent News and Media (INM) agrees that there is a need for strong legislation to prohibit incitement to hatred and to have modern, fit for purpose legislation to deal with hate speech. This, of course, is particularly relevant to online content and the dissemination of material via social media platforms.

Such legislation must invariably impose limitations on the right to freedom of expression. As a responsible publisher and a member of the wider Mediahuis group we acknowledge that the right to freedom of expression is not absolute and that having regard to other competing rights such limitations are sometimes necessary.

However, any amendment to the legislation must continue to allow and protect free speech to the fullest extent possible. We note Issue 4 of the Consultation Document:

### **Issue 4: Proving intent or likelihood**

A critical element of all of the offences in the 1989 Act is the requirement to prove that the action was intended or likely to stir up hatred. In some cases prosecutions may not succeed as this intent or likelihood cannot be proven, regardless of the actual effect of the action. The Department is considering whether the need to prove intent or likelihood within the Act should be changed, for example to include circumstances where the person was reckless as to whether their action would stir up hatred.

### **Questions**

4. In your view, does the requirement that an offence must be intended or likely to stir up hatred make the legislation less effective? **NO**

5. If so, what changes would you suggest to this element of the 1989 Act (without broadening the scope of the Act beyond incitement)? **N/A**

INM would caution against any change to the existing legislative provisions. Any change that introduces a test of recklessness or worse still negligence or any lesser standard of *mens rea* could lead to those who express strong opinions with the intention of stirring public debate rather than hatred finding themselves exposed to potential criminal sanction. Intent to incite hatred must remain a key test of the offence.

We note that there is currently an Online Safety Act in the pipeline that proposes the introduction of an Online Safety Commissioner. There would appear to be extensive overlap between this initiative and the manner in which modern digital communications allow for the dissemination of hate speech. In our submission, the Online Safety Act may be a better and more targeted way of dealing with the proliferation of hate speech than an expansion of the existing Prohibition on the Incitement to Hatred legislation. At the very least, the Online Safety Act and a review of

hate speech legislation must proceed in tandem so that they properly compliment each other and target deliberate dissemination of hate speech and other harmful content without inadvertently criminalising genuine public debate.

In summary, INM fully supports efforts to target deliberate hate speech but it is paramount that good intentions do not give rise to unintended consequences. In particular, we would be strongly opposed to any collateral 'chilling effect' on genuine public debate. Any legislative provision that potentially opens the door to criminalising the work of *bona fides* news reporters and commentators would be a truly alarming development that would not only endanger the civil liberties of individual journalists but would also undermine wider debate of the issues that affect our society at large.