



9 December 2024

Jonathan Ayling
Free Speech Union (NZ) INC
PO BOX 10512
The Terrace
WELLINGTON 6143
By email: Jonathan@fsu.nz

Dear Jonathan

Threatened Proceedings by FSU in respect of Hutt News Insert

- 1 The purpose of this letter is to respond to draft proceedings provided by you so that you can consider whether, in fact, litigation before the Court is an appropriate use of your time and resources, as well as the time and resources of Hutt City Council (“**HCC**”) and the Court.
- 2 From HCC’s perspective, the key elements are as follows:
 - (a) HCC operates 8 neighbourhood hubs which provide library services and has a number of other publicly accessible buildings (such as the Administration Building at Laings Road, Lower Hutt).
 - (b) At all the community hubs and a number of publicly accessible buildings, HCC has permitted publishers to make publications available, to be taken and read by members of the public. HCC is under no obligation to allow such publications to be dispensed in this way.
 - (c) The libraries within the community hubs display a number of news publications which are either supplied for free to, or subscribed to by, the community hubs. The HCC is under no legal requirement to subscribe for, or to display, publications supplied by publishers, nor to retain them as part of the library’s collection.
 - (d) In the case of Hutt News, copies are available at HCC community hubs and libraries as a public service but they do not form part of the collection. In addition, some copies of Hutt News are held for a slightly longer period of time, but since they do not form part of the collection, and they are not catalogued, they are then disposed of.



- (e) Hutt News is a free newspaper published by Stuff which is widely distributed within the Hutt Valley. Members of the public can obtain copies through distribution to their home (if they do not erect a “no junk mail” sign), or from other dispensing stands throughout the Hutt Valley.
- (f) HCC is aware that from time to time publications like Hutt News will include inserts (and sometimes covers). These inserts or covers are understood not to represent the editorial views of the publisher. Rather, they are included within the publication for distribution through the publication’s usual distribution channels and are paid for by whoever has asked the publisher to carry the insert.
- (g) On or about 1 February 2024, Hutt News carried an insert entitled *Treaty of Waitangi – An Explanation* by Sir Apirana Ngata. This insert was the subject of complaint from members of the public, who objected to HCC facilities being used to distribute it.
- (h) A HCC officer, having the complaints directed to them, made a decision that the insert should be removed from those copies of Hutt News which were still available through the community hubs and publicly accessible buildings. The rationale for that decision on 1 February was recorded in an email sent to you sometime later which advised that the insert was considered by the HCC officer to be not in line with HCC values and so should be removed.
- (i) As a result of the direction, inserts were removed from those copies of Hutt News which were located in HCC premises and also removed from copies of Hutt News which were in the community hubs on library display.
- (j) The decision was not one made by the Mayor, councillors or chief executive of HCC.
- (k) It is not known how many individual inserts were removed.
- (l) HCC received a number of complaints from members of the public about removal of the inserts, particularly after the incident was highlighted through the media, including through the work of the FSU.
- (m) HCC received a number of LGOIMA requests from you and members of the public in respect of the incident.

- (n) In addition, the chief executive wrote to you by email dated 5 March 2024, acknowledging the concerns that had been raised by the FSU. In particular she stated: "I am clear that the provision of equitable access to information is vital and that our role is to be gateways rather than gatekeepers of knowledge".
 - (o) HCC notes that although the insert was removed from copies of Hutt News as described above, the insert is accessible through HCC library services. In particular, the content of the Sir Apirana Ngata publication is available free online through the HCC library collection. If people require a physical copy, that is available through HCC's SMART libraries services.
 - (p) The issues raised by you and the nature of the incident does not warrant proceedings:
 - (i) As noted above, the content of the insert is available to those members of the public who wish to access it through HCC library services;
 - (ii) There is no obligation on HCC (or any other Council) to permit their facilities to be used for the distribution of material which the person who has produced that material would like disseminated to members of the public through its facilities;
 - (iii) Removal of the insert did not result in censorship of the editorial content of Hutt News;
 - (iv) Removal was not made at the direction of the chief executive;
 - (v) It is not immediately apparent what concrete "harm" has been caused to members of the public as a result of the incident.
- 3 Not every action taken by a public authority with which an organisation like yours disagrees is sufficiently important to warrant court proceedings, with the costs and distraction involved to all parties, never mind the use of judicial resources to adjudicate.
- 4 Standing back, in HCC's view this is one of those cases where even though the incident has raised concerns for your organisation, the incident is one which, objectively considered, does not require or deserve judicial determination.

- 5 In that regard I note that the relief sought includes (1) declarations of breach of freedom of expression; (2) orders that the insert be held and freely available to the public at each of HCC's libraries (see eg para 18A and 26.4C); and (3) a declaration that the chief executive acted unlawfully through what the statement of claim refers to as a "confirmation decision" (second cause of action).
- 6 As to (1), there is no obligation on HCC to disseminate an insert within Hutt News or any other publication; nor has there been censorship. But in any event, to the extent there has been any interference with freedom of expression, the effects are minor. Moreover, it is plain that the public controversy over the incident has had a good airing: shouldn't members of the public be left to form their own views, without the Court being dragged into adjudicating on the matter many months afterwards? Has free speech not been practically vindicated already?
- 7 As to (2), it will be apparent from the information referred to in paragraph 3 above that the insert is available in hard copy and online through HCC libraries.
- 8 As to (3), the chief executive did not direct removal of the insert as is alleged. Her so-called "confirmation decision" simply relayed that a direction had been made and the reason why that direction had been made. There is simply no basis for the second cause of action aimed at the chief executive herself. Furthermore, in relation to that cause of action, it is not clear what is being sought to be achieved by identifying the chief executive as a separate defendant and alleging tortious abuse of office against her.
- 9 On that basis, and in light of the facts recorded above, HCC invites FSU to not institute proceedings. If, however, FSU does decide to bring proceedings, HCC reserves all its rights and in particular reserves the right to produce this letter to the Court in support of any application as to how the matter should be disposed of, including as to costs.

Yours faithfully



Bradley Cato
Chief Legal Officer