



Hara ngākau kino

Hate crime

Consultation Paper summary

About this document

This is a summary of the Consultation Paper for Te Aka Matua o te Ture | Law Commission's review of hate crime law. It provides information about the law on hate crime and asks questions about things we will consider in our review.

Making a submission

We want to hear your views. Your feedback will help us make recommendations to the Government about the law on hate crime. You can tell us what you think by sending us a submission. You don't need to answer all the questions in this summary. Submissions close at 5pm on 13 March 2025.

You can make a submission by:

- Filling out a submission form on our website:
<https://www.lawcom.govt.nz/our-work/hate-crime> and
<https://tinyurl.com/37zh3m9f>;
- emailing us at hate.crime@lawcom.govt.nz; or
- writing to us at: Hate crime, Law Commission, PO Box 2590, Wellington 6140.

If these options are not accessible to you or you would like help with making a submission, please get in touch with us by either:

- emailing us at hate.crime@lawcom.govt.nz;
- calling us at 0800 832 526; or
- using the New Zealand Relay Service if you are deaf, hard of hearing, deafblind, speech impaired or if you find it hard to talk. The Relay Service website is here: <https://www.nzrelay.co.nz/index>.

Some people may find it emotional or distressing to make a submission. If you want to make a submission, you may want to arrange to have a support person ready to help. If you are upset or distressed, you can also call or text 1737. This is a free helpline service that is available 24 hours a day. You will get to talk or text with a trained counsellor. The service is provided by Whakarongorau Aotearoa | New Zealand Telehealth Services.

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We may also:

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Our review (Chapter 1)

1. The Law Commission is reviewing the law on hate crime in Aotearoa New Zealand. ‘Hate crime’ means behaviour that:
 - is already a criminal offence under New Zealand law; and
 - is carried out because of hate or hostility towards a group of people who have a common characteristic (for example, race, colour, nationality, religion, sex, gender identity, sexual orientation, age or disability).
2. Under the current law, an offender’s hate motivation is taken into account when they are sentenced. The Royal Commission of Inquiry into the terrorist attack on

Christchurch masjidain (Muslim places of worship) on 15 March 2019 recommended creating new hate crime offences. This review is considering whether there are problems with the current law and, if so, how to make the law better. This could include creating new hate crime offences, as recommended by the Royal Commission. The review isn't considering hate speech.

3. The purpose of the Consultation Paper and this summary document is to hear from the public. The submissions we receive will help us develop proposals for reform. Later in this review we plan to speak to experts about the workability of any proposed changes to the law. We plan to report to the Minister of Justice in mid-2026.

Hate crime and its impacts (Chapter 2)

4. Hate crime focuses on the identity of the victim. Some people say this focus on identity causes additional mental harm — both to the victim and to other members of the affected community who may also feel threatened or targeted. Some argue hate crime also causes harm to wider society by making people feel less connected to each other.

5. We don't know a lot about hate crime in Aotearoa New Zealand. Since 2019, Ngā Pirihimana o Aotearoa | New Zealand Police has collected data on reported offences that the victim or another person believes were hate-motivated. In 2023, there were 5,019 reported hate crimes (0.9 per cent of all reported offences). Common offences were harassment, public order offences (such as disorderly behaviour), acts intended to cause injury, and property damage. The characteristics most often targeted were race or ethnicity, followed by sexual orientation, religion and gender identity. Since 2021, 14–18 per cent of reported hate offences were both investigated to the point there was enough evidence to charge a person with an offence and Police decided to take action. Of these, about half were prosecuted.

Question 1: Is there anything you would like to tell us about what hate crime is occurring in Aotearoa New Zealand and its impacts?

Key reform considerations (Chapter 3)

6. We have identified some key considerations that will help us think about whether law reform is needed. These considerations will also help us assess options for reform.

The need to treat hate crime more seriously than other crimes

7. Hate crime laws treat hate crime more seriously than other offending. The reasons for this are relevant to whether law reform is needed. It may be our law doesn't treat hate crime seriously enough.
8. Four reasons are commonly given for why hate crime should be treated more seriously than other offending:
 - hate crime causes additional types of harm compared to other crimes;
 - hate crime offenders are more blameworthy than other offenders;
 - the law should send the message that hate crime is a serious wrong; and
 - punishing hate crime more harshly will mean fewer people commit hate crime (although there is evidence harsher punishment doesn't stop people offending).

When is it appropriate to create new offences?

9. This review is looking at whether to create new hate crime offences. Government guidance states that criminal offences should only be created if there are good reasons. Behaviour that is already an offence

should only be further criminalised if it would serve an additional purpose not achieved by the current law.

Criminal conviction can have a serious impact on the individual and significant costs for the state.

Ngā tikanga

10. The Law Commission must have regard to te ao Māori (the Māori world) when making its recommendations.

This includes tikanga, a system of values and principles that govern relationships in te ao Māori. Thinking about tikanga is an established part of good law-making in Aotearoa New Zealand.

11. Our research suggests tikanga did not have an equivalent concept of hate crime. However, we have considered the similarities between hate crime and the tikanga concepts of hara, kanga and kōruhu.

- Hara has been described as an action that violates justice or law.
- Kanga and kōruhu are both serious hara. Kanga has been described as verbal abuse, including placing a curse on someone. Kōruhu has been described as causing injury or harm without feeling remorse or without a good reason.

12. These concepts suggest that hate crime would be considered a serious wrong under tikanga.

Te Tiriti o Waitangi | Treaty of Waitangi

13. The Treaty of Waitangi is a foundation of government in Aotearoa New Zealand and should be considered when thinking about changing the law. A challenge for us is how to give effect to the Crown's Treaty obligations within the scope of this review, which is only looking at hate crime law. We welcome your views on this.
14. For example, one of the Crown's obligations is to protect the exercise of tino rangatiratanga. This requires the Crown to allow Māori to manage their own affairs in ways that work for them. There may be ways to better involve Māori communities in the response to hate crime. The Crown also has an obligation to address disparities between Māori and other New Zealanders. Māori are overrepresented at all levels of the criminal justice system, including as alleged hate crime offenders. The risk of overcriminalisation may point against introducing specific hate crime offences.

Human rights obligations

15. Law reform should be consistent with Aotearoa New Zealand's human rights obligations.

- 16.** Some people think hate crime laws are needed to meet international human rights obligations. It is likely our law already meets these obligations, since it requires courts to consider hate motivation at sentencing.
- 17.** Others say hate crime laws infringe human rights, including the rights to:
- freedom of thought (because hate crime laws punish the offender's motives and beliefs);
 - freedom of expression and association (because things the offender said or their association with other people may be used to prove hate motivation and increase their sentence); and
 - equality (because hate crime victims and offenders are treated differently to victims and offenders of other crimes).
- 18.** These rights can be limited if there are good reasons. Te Kōti Pīra | Court of Appeal has said the limits placed on the rights to freedom of opinion and expression by Aotearoa New Zealand's hate crime law are justified, given the important objectives of hate crime law.

What characteristics should be protected by hate crime laws?

- 19.** We are thinking about what characteristics should be protected by Aotearoa New Zealand's hate crime laws. This will help us decide whether to make any changes to the law and what any changes should look like.
- 20.** We will need to think about:
- how seriously a group of people is affected by hate crime;
 - what kind of hostility towards the group there is; and
 - whether hate crime law is the best way to deal with the offending.
- 21.** Overseas, there has been argument about whether some characteristics, such as sex, gender and age, should be covered. For example, there are different views on whether hate crime law is the best way to respond to concerns about offending against women and elderly people.
- 22.** Under current law, any “enduring common characteristic” is protected. If we think a new approach, such as specific hate crime offences, should be introduced in Aotearoa New Zealand, we will need to decide what

characteristics should be protected. Hate crime offences only protect specific characteristics.

23. In the rest of this summary, we call the characteristics that are covered by hate crime law ‘protected characteristics’.

Question 2: How can we best uphold the Crown’s obligations under Te Tiriti o Waitangi | Treaty of Waitangi in this review?

Question 3: What characteristics should be protected by hate crime laws? Why?

Question 4: What do you think about the key reform considerations we have identified for this review?

How is hate crime dealt with in the criminal justice system now? (Chapter 4)

The current law

24. Under the current law, the court considers hate motivation when sentencing an offender. The Sentencing Act says that a sentencing court must consider hate motivation if:

... the offender committed the offence partly or wholly because of hostility towards a group of persons who have an enduring common characteristic such as race, colour, nationality, religion, gender identity, sexual orientation, age, or disability; and

(i) the hostility is because of the common characteristic; and

(ii) the offender believed that the victim has that characteristic: ...

25. Hate motivation is an ‘aggravating factor’. This means it can lead to a harsher sentence, but it doesn’t increase the maximum penalty for the offence. It can apply to any offence.

26. The hate crime aggravating factor is one of many factors the courts take into account when sentencing an offender. Other aggravating factors include actual or threatened violence or use of a weapon, particular cruelty when carrying out the offence and the vulnerability of the victim (for example, because of their age or health).

Recognising, recording and investigating hate crime

27. As noted above, Police now records reported hate crimes. It has also created guidance and training for police officers on how to recognise, record and investigate hate crime. Once a reported hate crime has been investigated, Police decides how to respond. Sometimes there won't be enough evidence to prosecute the offence. Sometimes alternatives, such as a warning, may more appropriate.

Prosecuting hate crime

28. The decision to prosecute a person for an offence is made by a prosecutor. Most hate crimes are prosecuted by Police prosecutors. More serious hate crimes are prosecuted by Crown solicitors. An offence is only prosecuted if there is enough evidence and the public interest requires prosecution. Aggravating factors (such as an offender's hate motivation) may be taken into account when deciding whether the public interest requires prosecution.

29. Prosecutors rely on police officers to provide evidence of hate motivation. Hate motivation may not be raised at sentencing if there isn't enough evidence.

Sentencing hate crime offenders

- 30.** If a defendant is convicted, the court must take hate motivation into account as an aggravating factor when they are sentenced. Sometimes the court will decide an offence was hate-motivated by looking at evidence from the trial or facts agreed on by the prosecutor and defendant. If the defendant and prosecutor don't agree on what happened, the prosecutor may need to bring further evidence.
- 31.** The courts have interpreted the hate crime aggravating factor broadly. It will usually apply if the offender showed hostility towards the victim based on a common characteristic. For example, the courts have applied the hate crime aggravating factor where the offender made racist or homophobic comments to the victim during the offending.
- 32.** In the court decisions we found, race, colour or nationality were the most common grounds for applying the aggravating factor. The decisions cover a wide range of offences, including murder, assault, intimidation, possession and use of explosives, robbery and burglary, distributing objectionable publications, sexual violation and terrorist acts.

Rehabilitation of hate crime offenders

- 33.** Ara Poutama Aotearoa | Department of Corrections provides rehabilitative programmes for offenders. These programmes try to change the attitudes and behaviours that led to offending. They are usually only available to offenders assessed as having a medium or high risk of reoffending. Offenders may also see a psychologist individually if their needs can't be met through group programmes.
- 34.** There are no specific rehabilitative programmes for hate crime offenders. Corrections told us there are unlikely to be enough offenders serving a sentence for hate crime who could be grouped together safely. It also told us existing programmes and individual treatment can work for hate crime offenders.
- 35.** If Corrections knows a person's offending was hate-motivated, this may increase their chance of being eligible for a programme or individual treatment. However, Corrections isn't always told whether an offender has committed a hate crime. For offenders with a medium or high risk of reoffending, Corrections reads the courts' sentencing notes, which may refer to hate motivation.

Are there problems with the current law? (Chapter 5)

Showing that hate crime is serious

36. Some people think the law should send a message that hate crime is a serious wrong. Under the current law this may happen by:

- the judge saying an offence is a hate crime in a court hearing or in a written sentencing decision;
- the media reporting about a hate crime; or
- the offender receiving a harsher sentence.

37. However, some people might think the current law doesn't do enough to let the public know about hate crime and its seriousness. This is because:

- hate motivation isn't part of the offence a person is charged with;
- sentencing decisions don't have to say whether hate motivation was considered or how much it changed the sentence;
- the courts don't have to impose harsher sentences for hate crimes; and
- the maximum penalty for an offence is the same whether or not it is a hate crime.

Encouraging reporting of hate crime

38. The Royal Commission found that hate crime is often not reported to Police.

39. There are many reasons someone might not report a hate crime. For example, they may:

- not think a hate crime is serious enough to report to Police;
- not know who the offender was; or
- have negative experiences with or views of Police that discourage them from reporting.

40. We are interested in why people don't report hate crime to Police and whether this has improved since the Royal Commission published its report. After the Royal Commission's inquiry, Police introduced training and guidance that tells police officers to treat reports of hate crime seriously.

Ensuring hate motivation is addressed in relevant cases

41. We are interested in whether hate motivation is being consistently investigated by Police and raised by prosecutors at sentencing. The recent changes to Police

guidance and training could help improve its response to hate crime, but it may be too early to know.

42. We are also interested in whether hate motivation should be considered at other stages of court proceedings, such as when a court decides whether to grant a defendant bail or in later sentencing decisions relating to the same offender.

Collecting information about hate crime cases

43. Under the current law, hate motivation isn't part of offences. This may make it difficult to collect accurate information about reported hate crime and case outcomes.

44. Police has made practical changes to improve its recording of reported hate crime and has begun releasing information to the public. The number of reported hate crimes recorded each year has been increasing steadily.

45. There is still a gap in information about what happens to hate crime prosecutions (for example, whether the offender is convicted and what sentence they receive) and whether hate motivation is taken into account at sentencing.

Applying the aggravating factor

- 46.** We have identified three possible concerns about the wording of the hate crime aggravating factor and its application by the courts.
- 47.** First, the aggravating factor applies if the offender was *wholly or partly* motivated by hostility. The hostility doesn't need to be the main cause of the offending. This means the aggravating factor could apply where hate was only a minor reason for the offending. However, we found no examples of this occurring.
- 48.** Second, the aggravating factor applies to offending against any group of people who have an “enduring common characteristic”. It isn't always clear what this means. For example, sex appears to be an “enduring common characteristic”, but the aggravating factor is rarely applied to hostility towards women. Uncertainty about which characteristics the aggravating factor should apply to could also lead to decisions the public would not expect. For example, in New South Wales a similar aggravating factor has been used to protect people believed to be child sex offenders.
- 49.** Third, the aggravating factor only applies if the offender believed the victim had a protected characteristic. For

example, it would not apply if an offender wrote hateful graffiti on public-facing property without knowing or caring who the owner was.

Assessing the rehabilitative needs of offenders

- 50.** Because hate motivation isn't recorded on a person's conviction, the Royal Commission thought the need for rehabilitative support could be missed. Corrections thought this was unlikely to be a big issue. Rehabilitative support is mainly provided to medium and high-risk offenders, and Corrections should know if these offenders were hate-motivated since it reads their sentencing notes and other court information.
- 51.** However, the need for rehabilitative support could be missed for some hate crime offenders who are assessed as low risk. There may also be cases where an offender's hate motivation isn't clear from the court's sentencing notes. This could make it more difficult for Corrections to tell that a medium or high-risk offender was hate-motivated (although this may still become clear during assessment and treatment).

Question 5: Do you think there are problems with how Aotearoa New Zealand's current hate crime law is working? If so, what are those problems?

Overview of reform options (Chapter 6)

52. There are three main legal models used to address hate crime overseas:

- the sentence aggravation model (currently used in Aotearoa New Zealand);
- specific hate crime offences (recommended by the Royal Commission); and
- the Scottish hybrid model, which combines aspects of the sentence aggravation model and specific hate crime offences.

53. If we decide there are problems with the current law, these could be addressed by:

- improving how the sentence aggravation model works, by making changes to the law or operational practice; or
- adopting a different legal model.

54. New offences should only be created if there are good reasons and if they would achieve something the current law can't. This means it might be preferable to address any problems with the current law by improving the sentence aggravation model. If there are problems that can't be solved this way, a different legal model could be considered. We seek feedback on both these options later in this summary.

Three legal models for addressing hate crime

55. The first legal model is called the sentence aggravation model. It is currently used to address hate crime in Aotearoa New Zealand. Under this model, an offender's hate motivation is taken into account as an aggravating factor when they are sentenced. Hate motivation isn't part of the offence and isn't recorded on the offender's conviction. The maximum penalty for the offence doesn't change. The sentence aggravation model can apply to all offences and any enduring common characteristic.

56. The sentence aggravation model is currently used in New Zealand, Australia (New South Wales, Victoria, South Australia, Tasmania and Northern Territory), England and Wales (alongside specific offences), Canada and Northern Ireland.

- 57.** The second legal model involves creating specific hate crime offences. Hate motivation is part of the offence a person is charged with and must be proven at trial beyond reasonable doubt (unless the defendant pleads guilty). If the defendant is convicted, it should be clear from the court's sentencing notes and any media reporting that the offending was a hate crime, because hate motivation is part of the offence. The hate motivation is also recorded in the offender's criminal records. The maximum penalty is higher for hate crime offences. Hate crime offences only cover specified offences and characteristics.
- 58.** Specific hate crime offences are used in Australia (Western Australia and Queensland) and England and Wales (alongside sentence aggravation).
- 59.** The third legal model is the Scottish hybrid model. Under this model, any offence can be identified as 'hate-aggravated'. The prosecutor must state the offence was hate-aggravated when the defendant is charged and the aggravation must be proven at trial (unless the defendant pleads guilty). The hate motivation is taken into account when an offender is sentenced, but the maximum penalty for the offence doesn't change. Convictions show the offence was a hate crime. Like the

specific offence model, the Scottish hybrid model only applies to specified protected characteristics.

60. The Scottish hybrid model is currently used in Scotland.

Improving the current legal model (Chapter 7)

Advantages of keeping the sentence aggravation model

61. The sentence aggravation model has several advantages over other legal models. For example:

- it applies to all offences and enduring common characteristics;
- the seriousness of the hate motivation is assessed on a case-by-case basis;
- it is more efficient in terms of court time and costs, since hate motivation doesn't need to be proven at trial and is often not disputed; and
- keeping the current legal model would avoid the costs and uncertainty of significant law reform.

Ways to improve the sentence aggravation model

62. There may be ways to improve how the current law works without changing the legal model. We want to know what you think about this. We explore some options below.

Showing that hate crime is serious

63. If the current law doesn't do enough to show hate crime is serious, some ways to address this could include:

- requiring sentencing judges to state that an offence was a hate crime in a court hearing open to the public and media;
- requiring sentencing judges to explain how the offender's hate motivation affected their sentence;
- reviewing the maximum penalties for existing offences to make sure they are high enough to include the offender's hate motivation.

Encouraging reporting of hate crime

64. If there are barriers to reporting hate crime, changing the legal model may not be the best way to address this. Other options could include:

- a public awareness campaign;
- introducing alternative ways of reporting, such as community-based services that can report hate crime on behalf of victims and others.

Prosecuting hate crime

65. If hate motivation isn't being consistently raised by prosecutors at sentencing, some options to address this might be:

- Providing advice to Crown solicitors on prosecuting hate crime, similar to the guidance already provided to Police prosecutors.
- Flagging hate crime cases in the court system. Prosecutors could be asked to state if a charge against a defendant is an alleged hate crime. A flag could prompt judges to consider hate motivation at sentencing and other relevant times (such as when deciding whether to grant the defendant bail).

Improving information about the outcome of hate crime prosecutions

66. If hate crime cases were flagged in the court system (as discussed above), the courts may be able to share information about those cases with Police. This could help Police track how often prosecutors are raising hate

motivation at sentencing and the outcome of hate crime prosecutions.

Applying the hate crime aggravating factor

67. If there are concerns about the application of the hate crime aggravating factor, it may be possible to fix them by changing the wording of the factor. For example:

- If there is concern that the aggravating factor may apply in when hate is only a minor reason for the offending, it could be changed so that hate must be an important part of the offender’s motivation.
- If there is concern about which characteristics are protected by the aggravating factor, the factor could be changed so it only applies to listed characteristics, instead of any “enduring common characteristic”. Another option is to change the list of examples of protected characteristics.
- If there is a problem with the aggravating factor only applying where the offender believed the victim had the protected characteristic, this requirement could be removed.

Rehabilitation of hate crime offenders

68. If there is a problem identifying the rehabilitative needs of offenders, any hate crime flag introduced in the court system could be shared with Corrections. Corrections would then be notified of convictions for hate crimes.

Question 6: If there are problems with how Aotearoa New Zealand's hate crime law is working, can they be addressed while keeping the current legal model (sentence aggravation)? If so, how?

Other legal models for addressing hate crime (Chapter 8)

69. If we decide there are problems with the sentence aggravation model that can't be easily fixed, we could recommend changing the legal model. We are interested in feedback on two other legal models used to address hate crime overseas (which could be adopted on their own or as well as sentence aggravation):

- specific hate crime offences (recommended by the Royal Commission); and
- the Scottish hybrid model, which combines aspects of sentence aggravation and specific offences.

Specific hate crime offences

What offences should be covered?

- 70.** Hate crime offences are usually based on existing offences (such as assault). These existing offences are called the 'base offence'. The hate crime offence is the same as the base offence except the prosecution must also show the offender was motivated by hate. Hate crime offences have a higher maximum penalty than the base offence.
- 71.** Offences must be reasonably specific, so it is clear to the public what conduct is not allowed. Each offence also needs to have its own maximum penalty. Because of this, hate crime offences only cover a limited number of base offences and protected characteristics.
- 72.** If we recommend introducing specific hate crime offences, we will need to consider what offences they should apply to. Some of the things we may need to think about are:
- how often a base offence is hate-motivated; and
 - whether the maximum penalty for the base offence is already high enough to punish hate crimes.

73. The Royal Commission recommended having hate crime offences for offensive behaviour or language, wilful damage, intimidation, assault, arson and intentional damage. However, this would not cover all hate crimes. For example, in Aotearoa New Zealand, burglary and the use or possession of explosives have been hate crimes.

Question 7: If specific hate crime offences are adopted, what offences should they cover? Why?

Advantages and disadvantages

74. Specific hate crime offences may have some advantages compared to the sentence aggravation model. For example, they may:

- send a stronger message that hate crime is serious;
- improve recording and monitoring of hate crime;
- mean more offences are investigated and prosecuted as hate crimes;
- change people's views by raising awareness of the harm caused by hate crime;
- be fairer to the defendant, since hate motivation would need to be proven at trial beyond reasonable doubt (unless the defendant pleaded guilty).

75. Specific hate crime offences may also have some disadvantages. For example:

- They don't cover all hate crime. Some people might think this is unfair.
- They may make criminal trials longer, more complex and more costly. Defendants may also be less likely to plead guilty. The prosecution would need to prove hate motivation at trial, which may involve more evidence from victims and other witnesses.
- Hate motivation may go unrecognised in some cases. For example, prosecutors may charge a person with the base offence instead of the hate crime offence because the defendant would plead guilty to the base offence.
- Hate motivation would be treated more seriously than other sentence aggravating factors (such as serious cruelty or the vulnerability of the victim).
- Punishing offenders more harshly based on their motivation may infringe the rights to freedom of thought and expression. Investigating suspects' opinions and beliefs could also have a chilling effect on expression.

- Hate crime offences may be disproportionately enforced against minorities and lower socio-economic groups (especially Māori, who are overrepresented in the criminal justice system, including as alleged hate crime offenders).

The Scottish hybrid model

76. The Scottish hybrid model has similar advantages and disadvantages to specific offences. The main differences are that it:

- doesn't increase the maximum penalties for hate crimes (so specific offences may be better at showing that hate crime is serious);
- covers more hate crime, since it applies to any offence;
- is simpler, because it doesn't create lots of separate hate crime offences.

77. A possible criticism of the Scottish hybrid model is that it may not be worth requiring prosecutors to prove hate motivation at trial, since the maximum penalty for a hate-aggravated offence is the same as for the non-aggravated one.

Question 8: Should a different legal model, such as specific hate crime offences or the Scottish hybrid model, be introduced in Aotearoa New Zealand? Why or why not?

Should the sentence aggravation model be kept if a new legal model is adopted?

78. Both the specific offence and Scottish hybrid models could be used with the sentence aggravation model. If a new legal model is adopted, we are interested in whether the existing sentence aggravation model should be kept as well.

79. The benefits of using a new model with the sentence aggravation model are that:

- the benefits of the specific offence or Scottish hybrid model would still apply; and
- sentence aggravation would cover hate crimes not covered by the new model.

80. The main disadvantage of using a new model with the sentence aggravation model is it would make the law more complex. There would need to be rules about when sentence aggravation would apply. For example, would it apply if the prosecution could have charged a

defendant with a specific hate crime offence but chose not to?

Question 9: If specific hate crime offences or the Scottish hybrid model are introduced, should the sentence aggravation model be kept as well?

End of information, Hara ngākau kino | Hate crime Consultation Paper summary

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