

Hara ngākau kino | Review of hate crime law

Report summary

How the law in Aotearoa New Zealand should respond to hate crime

WHAT WE FOUND

Under the current law, if an offender committed a crime because of hostility towards a group of people, that is taken into account by the courts when they are sentenced. This review considered whether the current law responds adequately to hate crime or whether changes should be made such as creating new hate crime offences.

We found that there are some problems with how the current law is working.

- Judges are not required to communicate clearly to the public (such as through their sentencing decisions) that an offence was a hate crime and that this makes it more serious.
- When a court finds that an offence was motivated by hostility towards a group of people, that finding is not recorded in a systematic and accessible way.
- There is no clear process to ensure the courts are aware that an offence may have been motivated by hostility towards a group of people and take that into account in their decisions.

Rather than create new hate crime offences, we think the better approach is to improve the current law to address these problems.

In our report, we make recommendations to help ensure that an offender's hostile motivation is consistently identified and considered by the courts, clearly addressed in sentencing decisions and systematically recorded.

We do not recommend creating new hate crime offences. We do not think this would resolve the problems we have identified, and we think it would, in fact, have significant disadvantages.

WHY THIS REVIEW HAPPENED

In March 2024, the Government asked Te Aka Matua o te Ture | Law Commission to review how the law in Aotearoa New Zealand responds to hate crime — crime that is motivated by hostility towards a group of people because of who they are (for example, their race, religion, gender identity, sexual orientation or disability). The Government asked us to look at whether the law should be changed to create new hate-motivated offences.

This request followed the 2019 terrorist attack on Christchurch masjidain (Muslim places of worship). The attack had a profound and lasting impact on the Muslim community, which was directly targeted, while also deeply affecting the wider nation. This attack highlighted concerns about whether the justice system adequately recognises and responds to hate crime. A Royal Commission of Inquiry into the attack said that the law needs to recognise the seriousness of hate crime more clearly and deter such offending in the future. It recommended that new hate crime offences be created.

WHAT IS HATE CRIME?

We use the term ‘hate crime’ to refer to an act that is already a crime and that is motivated wholly or partly by hostility towards a group of people with a shared characteristic. These characteristics can include race, religion, sexual orientation, gender identity, age or disability. These are called ‘protected characteristics’.

Some examples could be:

- an assault targeting someone because of their religion;
- threats or harassment aimed at someone because of their sexual orientation; and
- graffiti vandalism directed at a community because of their ethnicity.

‘Hate’ and ‘hostility’

Although ‘hate crime’ is a commonly used term, and appears in the reference we received from the Government and the title of our review, it is not used in New Zealand law. Instead, the law refers to offending that is committed because of ‘hostility towards’ a group of people. For this reason, in our report we use the term ‘hostility’ when referring to the offender’s motivation. We use the term ‘hate crime’ in a general sense to describe the type of offending we are concerned with in this review.

WHAT THE LAW CURRENTLY DOES

In Aotearoa New Zealand, we use the ‘sentence aggravation model’ of hate crime law.

This means that the court considers hostile motivation as an aggravating factor when sentencing someone who has been convicted of a crime. This can lead to a more serious sentence. For example, it might mean the offender has to spend longer in prison. The aggravating factor can apply to any offence.

Aotearoa New Zealand does not have specific hate crime offences. The fact that a crime was motivated by hostility does not change the offence a person is charged with. For example, an

assault motivated by racism is charged as an assault. Hostile motivation is considered at sentencing, after the offender has been convicted.

WHAT THIS REVIEW IS ABOUT

The key question for this review was whether the law in Aotearoa New Zealand should contain specific hate crime offences (either as well as or instead of a sentence aggravation model).

Our review did not consider whether to make any acts illegal that are not already offences. It was limited to considering how the criminal law should treat acts that are already illegal when they are also motivated by hostility. Crimes such as assault, intimidation and graffiti vandalism are already offences.

Our review did not consider hate speech laws. By hate speech, we mean speech or expression that shows hate or hostility towards a group of people. During consultation, a number of groups said that hate speech is of greater concern to many communities than hate crime. This is because it is more commonly experienced and because of the hurt and fear it can cause. Other submitters told us hate speech laws would unreasonably limit rights to freedom of expression. We acknowledge these submitters. However, looking at or making recommendations about hate speech laws was outside the scope of our review.

Our review is limited to what the law can do to respond better to hate crime. We know that reducing hate crime and the harms it causes requires action beyond the criminal law, including community engagement, education and support services.

WHAT MAKES HATE CRIME DIFFERENT FROM OTHER CRIMES?

Hate crime causes harm in ways that go beyond the immediate victim. This is because hate crime targets people because of who they are. These are some types of harm caused by hate crime:

- **Harm to the victim.** Victims often experience deeper psychological harm because they are targeted for who they are. This can create long-lasting anxiety and fear.
- **Harm to the community.** Because hate crime targets people based on their identity, it sends a message to entire communities sharing that identity that they are not safe or welcome in Aotearoa New Zealand. Members of these communities can feel threatened, vulnerable, angry and anxious. They may withdraw from public life or feel unsafe expressing their identity, culture or beliefs.
- **Harm to society.** Hate crime can divide communities, undermine social cohesion and weaken trust in public institutions and the justice system.

By targeting victims based on their identity, hate crime offenders undermine important values shared by many New Zealanders such as equality, tolerance and human dignity.

For these reasons, Aotearoa New Zealand, like many other countries, treats hate crime more seriously than similar offending that is not motivated by hostility.

The justice system should hold offenders accountable for offending motivated by hostility, send a clear message to the public that hate crimes are unacceptable, reduce occurrences of hate crimes so far as possible and reassure affected communities that hostility towards them will be treated seriously. We see these as the objectives that should be fulfilled by hate crime law.

WHAT WE KNOW ABOUT HATE CRIME IN AOTEAROA NEW ZEALAND

Data is incomplete, but the information we have shows that hate crime does occur in this country.

Police started systematically recording reported hate crimes in 2019. Records show that:

- reported hate crimes make up about 0.8 per cent of all reported crime; and
- reports of hate crime have increased from about 3,452 incidents in 2021 to 5,918 in 2025. This may reflect improved reporting processes rather than more crime.

The most common types of alleged offending reported are:

- harassment and threatening behaviour;
- public disorder;
- assaults; and
- property damage.

Most reported incidents involved hostility based on race or ethnicity, followed by sexual orientation and religion.

Police records do not give the full picture. Surveys and what we were told during consultation on this review indicate that many hate crime incidents go unreported.

WHAT PROBLEMS DID WE IDENTIFY?

We found that there are some problems with the current law.

- Judges are not required to communicate clearly to the public (such as through their sentencing decisions) that an offence was a hate crime and that this makes it more serious. This means hate crimes may not be consistently denounced.
- When a court finds that an offence was motivated by hostility towards a group of people, that finding is not recorded in a systematic and accessible way. This limits the ability of the courts, New Zealand Police and Department of Corrections to deal appropriately with the offender. It also makes it harder to assess whether the justice system is responding to hate crime as it should.
- There is no clear process to ensure the courts are aware that an offence may have been motivated by hostility towards a group of people and take that into account in their decisions. This may mean that some offenders are not held to account fully or that opportunities to prevent further offending are missed.

We concluded that these are significant problems. However, they do not require a fundamentally different legal model for addressing hate crime. Instead, they can be addressed through targeted reforms to the existing sentence aggravation model.

WHY WE DO NOT RECOMMEND CREATING HATE CRIME OFFENCES

We considered whether Aotearoa New Zealand should create new, separate criminal offences for hostility-motivated versions of existing crimes — for example, hostility-motivated assault.

This approach already exists in some countries and was recommended by the Royal Commission of Inquiry into the Christchurch terrorist attack. One of the arguments for this approach is that it clearly recognises and names in law the particular nature of hate crimes as being different from other offending.

We concluded this would not be the most effective way to address the problems we identified and improve the way hate crimes are addressed in practice.

Creating new offences would have some benefits, including improving recording and denunciation of hate crimes in cases where the offender is charged with and convicted of a hate crime offence.

However, overseas experience and feedback we received suggested new hate crime offences would not be used consistently in practice. Prosecutors would be likely to charge people with existing offences instead in some cases (such as assault rather than hostility-motivated assault) because those offences would be easier to prove and defendants would be more likely to plead guilty to them. Where a person was charged with a hate crime offence, juries may be reluctant to convict, even if the evidence supports it, because of concerns about stigmatising the offender. These issues would limit the ability of hate crime offences to address the problems we identified with the current law.

Introducing hate crime offences would also create new problems.

- **Make court cases longer and more complex.** Prosecutors would need to prove hostile motivation beyond reasonable doubt at a trial to secure a conviction. This could require additional evidence to be presented and lead to cases taking longer to go through the courts. Defendants would also be less likely to plead guilty, leading to more contested trials.
- **Lead to hostile motivation not being addressed at all in some cases.** As explained above, prosecutors are unlikely to consistently charge people with new hate crime offences and, where they do, juries may be reluctant to convict. If the offender was charged with or convicted of an existing offence instead, their hostile motivation would not be taken into account at all.
- **Increase the burden on victims.** If a defendant was charged with a hate crime offence, it is more likely the victim would need to give evidence of the alleged hostile motivation at a trial. This might be distressing and retraumatising for the victim.
- **Make the law less flexible and future-proof.** Hate crime offences are often limited to certain types of offending and certain protected characteristics. Other types of hostility-motivated offending falling outside the scope of those offences would be treated differently. Changes to the law may be needed to respond to new kinds of hate crimes.
- **Reduce the coherence of the criminal law.** Hostile motivation would be treated more seriously than other aggravating factors that are only considered at sentencing (for example, if the victim is particularly vulnerable). Other factors may be as significant as hostile motivation or more significant, depending on the case.

We concluded the better approach is to strengthen the existing sentence aggravation model through targeted reforms.

STRENGTHENING THE CURRENT LAW: OUR RECOMMENDATIONS

We think that the current legal model — the sentence aggravation model — is the right approach. However, some changes are needed to ensure hostility-motivated offending is consistently identified, recorded and addressed by the justice system. These changes would also assist Police and Corrections to deal appropriately with hate crime offenders and support government decision making to take action on hate crime.

Create a court flag for hostility-motivated offending

We recommend creating a hate crime flag in the court records system. This would alert judges that an offence may have been motivated by hostility. At sentencing, the judge would decide on the evidence presented whether the offence was in fact motivated by hostility and, if it was, would be required to formally record that.

This formal record would mean that, in any future cases involving the same offender, the courts are aware of their previous hostility-motivated offending. This could affect whether the offender is released on bail or how they are sentenced. We also recommend that the court record be shared with Police and Corrections. This would help those agencies to identify patterns of behaviour and respond appropriately to reduce the risk of further hostility-motivated offending. For example, Police may decide to prosecute the person if they offend again rather than giving them a warning. Corrections may offer the offender appropriate rehabilitative support and take steps to protect any staff members or other prisoners who may be targeted by the offender.

The court flag would improve national data, allowing analysis of the justice system's response to hate crime. This would support government decision making and public confidence in the justice system. We recommend this data be published by the Ministry of Justice, and that Police publish the data it collects on reported hate crimes.

Require judges to clearly address hostility in sentencing decisions

We recommend that judges should be required to state in their sentencing decisions when they find hostility was a motivating factor.

This would help reassure victims and affected communities that the harm they experienced has been recognised. It would also send a message to the public that hate crime is unacceptable and support public confidence in the justice system.

Clarify and strengthen the hostility aggravating factor

We also recommend some changes to the wording of the existing hostility aggravating factor to clarify its effect.

We recommend removing the requirement that an offender must believe that a victim has a protected characteristic. This would ensure the aggravating factor can apply, for example, where the victim is targeted because of their association with, but not their membership of, the targeted group (such as a doctor providing transgender care) or is an innocent bystander. The offending would still need to be motivated by hostility towards a group of people who have an enduring common characteristic.

We also recommend adding 'sex' to the list of protected characteristics in the aggravating factor. This would ensure the law is clear that offending motivated by hostility towards women should be treated as a hate crime.

Support law changes through guidance and training

We recommend guidance and training for police officers and prosecutors to ensure they are informed about any changes to the law as a result of our review.

Consideration should also be given to developing guidance and training for judges on any changes to the law.

WHAT HAPPENS NEXT

We are an independent Crown entity. Our role is to review the law of Aotearoa New Zealand and make recommendations to the Government to improve it. The Law Commission has no power to amend legislation or make policy.

Our recommendations, and the reasons for them, have been set out in detail in a final report to the Government. The Government will consider our advice and decide whether to implement our recommendations.



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