

Hara Ngākau Kino | Hate crime review Terms of Reference

Project Overview

Te Aka Matua o te Ture | Law Commission will review the law in Aotearoa New Zealand relating to hate crime, with a focus on whether the law should be changed to create new hate-motivated offences. For the purpose of this review, “hate crime” means conduct that is already a criminal offence under New Zealand law and, additionally, is carried out because of hatred or hostility toward a group of people who share a common characteristic (such as race, colour, nationality, religion, gender or sex, gender identity, sexual orientation, age or disability).

Currently, the law in Aotearoa New Zealand responds to hate crimes at sentencing. If a person commits a crime because of hostility toward a group of people who share an “enduring common characteristic”, the court must consider this as an aggravating factor at sentencing (see section 9(1)(h) of the Sentencing Act 2002).

The Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019 recommended the creation of new hate-motivated offences. In particular, recommendation 39 proposed that new hate-motivated offences be created in:

- (a)** the Summary Offences Act 1981 (corresponding with the existing offences of offensive behaviour or language, assault, wilful damage and intimidation); and
- (b)** the Crimes Act 1961 (corresponding with the existing offences of assaults, arson and intentional damage).

Scope of the review

The Law Commission's review will include, but not be limited to, consideration of:

- (a)** Whether the current law in Aotearoa New Zealand adequately responds to hate crime (in particular section 9(1)(h) of the Sentencing Act 2002, which requires hostile motivation to be taken into account when sentencing an offender).
- (b)** Whether any concerns about the operation of the current law should be addressed through legislative (or operational) measures, for example, the creation of hate-motivated offences.
- (c)** If hate-motivated offences should be created:
 - (i)** which existing offences they should correspond to;

- (ii)** which common characteristics they should cover;
- (iii)** how the hatred or hostility element of the offences should be established;
- (iv)** what maximum penalties are appropriate; and
- (v)** whether any amendments to the Sentencing Act are desirable to take account of the new offences and to ensure hate crime offenders are sentenced appropriately.

In making recommendations for reform the Law Commission will take into account te ao Māori and give consideration to the multicultural character of New Zealand society.

The review will not consider criminalising conduct that does not currently amount to an offence under New Zealand law. For the avoidance of doubt, the review will not consider recommendations 40 and 41 of the Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019, which concern:

- (a)** the law relating to hate speech, including sections 61 and 131 of the Human Rights Act 1993; and
- (b)** the definition of when a publication is “objectionable” in section 3 of the Films, Videos, and Publications Classification Act 1993.

Timing and process

The Law Commission intends to publicly consult in early 2025.

The Law Commission intends to report to the Minister responsible for the Law Commission with its recommendations by mid-2026.

About the Law Commission

The Law Commission is an independent Crown agency that provides law reform advice to the Government. The Government does not direct how we carry out our work or the recommendations we make.

We undertake research and engagement, and then make recommendations to Government to improve the law. These recommendations are published in a report to the Minister of Justice. The Minister must present our report to Parliament.

The Government decides whether and how it will change the law. You can find out more about what we do on the Law Commission website:

<https://www.lawcom.govt.nz/our-work/hate-crime/>

or <https://tinyurl.com/2w2a6s77>

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