



New Zealand Jewish Council

Rūnanga Hūrai o Aotearoa | המועצה היהודית בניו זילנד

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Submission on the Law Commission's Hate Crime Consultation Paper

The New Zealand Jewish Council (the **Jewish Council**) appreciates the opportunity to make a submission on the Law Commission's Hate Crime Consultation Paper.

Context

The Jewish Council aims to represent the majority of the wider Jewish community, across the motu and across various congregations and other alignments. One of our objectives is maintaining the safety and security of Jews in New Zealand (and by extension of Israelis, of whom almost all in New Zealand are Jews).

While historically the Jewish community worldwide has been disproportionately affected by hate and hate-motivated crime, many Jewish people in New Zealand may have felt relatively insulated from that pattern. However, in recent times, and particularly since the Hamas attacks of October 7th 2023 and the subsequent war in Gaza, we have seen a sharp rise in antisemitism and anti-Israelism. Although New Zealand has not seen the level of violence experienced in Australia, there have been several incidents of vandalism and almost daily reports within our community of antisemitic attacks, speech or discrimination. Accordingly the current reality makes the Law Commission's consultation particularly relevant to the Jewish community in New Zealand.

The Consultation Proposal

Summary of the Jewish Council's position

We support the objective of the hate crime proposal to ensure recognition and appropriate consequences for crimes motivated by hate. However, the Council is not currently convinced that the proposal to create hate crimes (being an existing offence with the added element of hate motivation for a specified group) as set out in the Consultation paper is the best way of achieving this.

Our reasons are based on the threshold for successful prosecution, subjectivity in enforcement, potential victimisation of included groups and limited usefulness in addressing the real problems facing the Jewish community (and likely other threatened/minority groups). We expand on this below.

Some of the reasons for this are those referred to in the Consultation Paper – including that proving hate motivation creates significant burden of proof issues, which may limit the usefulness of this avenue. This could actually result in hate crime (in the layperson’s sense) being under-acknowledged as a serious issue in NZ. In the Christchurch mosque terrorist attack that was a catalyst for this Review, motivation was made obvious by the terrorist’s manifesto. However this is unlikely to be typical, and so proving hate, especially hate directed at a specific protected group, usually requires either that the crime itself makes that motivation clear or that there is separate supporting material. This is subjective, inherently difficult to establish, and also resource-intensive.

We are also concerned that decisions on whether or not to prosecute crimes as hate crimes may become politicised; that Jewish people are not seen as a disadvantaged minority and in some minds therefore cannot be the subject of a hate crime. Furthermore, attempts to use “hate crimes” legislation could be seen as encouraging groups to self-define as “victims” (which we stress is itself a hostile allegation, but one we have already seen used against the Jewish community both in New Zealand and more widely).

The need to define a specific group as the “target” may also be difficult – while we assume “being Jewish” would be a characteristic, we have commonly seen incidents against Jews minimised or dismissed as “anti-Zionism.” While this is not the place for a lengthy explanation of the relationship between the two, our position is that being anti-Zionist may not be inherently antisemitic, but the two often go hand-in-hand, and anti-Zionism is often motivated and compounded by antisemitism. However, proving that an anti-Zionist motivation amounts to a hate crime against Jews to the required threshold is likely to be difficult. We therefore see a loophole whereby antisemitic actions are effectively carved out of “hate crimes” if they are dressed up as “anti Zionism”, or as political statements about Israel.

We also consider that the particular proposal to create “hate crimes” out of existing crimes does not address the main concern of the Jewish community in making us feel safe and secure in NZ. To the extent that the underlying action is already a crime, there are already avenues for prosecution, but these are not always utilised. Raising the bar by adding “hate motivation” as an element is unlikely to reduce the incidence of such crime but is likely to make it harder to prosecute.

Better avenues for improving safety and security of threatened groups

This proposal is being considered against the existing situation whereby “hate motivation” may be an aggravating factor in sentencing. The proposal does not address “hate crimes” as a category without requiring an existing underlying crime, or other wider methods of enhancing the safety and security of minority groups.

Expanded use of sentencing aggravation

Statistics demonstrate that the Jewish community disproportionately suffers from bias-motivated crimes. This reality should be recognised and addressed through all available avenues. One of those avenues is the existing avenue of using hate motivation as part of sentencing aggravation. The Consultation Paper identifies this avenue, but we are unclear how well it is currently utilised or whether there are specific sentencing guidelines as to when this is appropriate. We would like to see sentencing guidelines that require judges to consider if hate

motivation is an aggravating factor; and then provide guidelines as to appropriate sentences in such cases. We would also like to ensure that affected groups (not just affected individuals that are the subject of an offence) have the right to make impact statements in relevant cases in support of taking hate into account in sentencing. This would help ensure that courts understand the broader communal harm caused by antisemitic incidents, as well as the specific harm to any individual offended against.

While we have a good working relationship with police, some incidents in recent years have revealed gaps in understanding of antisemitism in contemporary and international contexts. We would therefore recommend training for police and others in the judicial system to recognise and address antisemitic incidents and other forms of bias, enabling better enforcement of existing laws.

Security

Physical security is an ongoing and very material issue for the Jewish community. Along with possibly the Muslim community, we are one of the few groups that has to have physical security in order to congregate, whether for prayer, school, conferences or almost any other community event. Government support with aspects of our security needs is an ongoing and existential issue for our community.

Data and understanding

Lastly, we ask for better support for collection of data about crimes and other acts of hate against Jewish people and other threatened groups. It is difficult to address the problem without understanding its scale and scope. While we understand that the police do collect data on reported antisemitic crimes or incidents that may amount to crime, we believe the level of hate that is directed at the Jewish community and Jewish individuals - both in real life and online – is not well understood by the wider community. Better understanding, reporting and monitoring of hate – or bias- motivated incidents could help inform preventative activity.

We believe these approaches would better protect the Jewish community (and other targeted communities) without the drawbacks of creating an additional category of “hate crime” within the existing criminal law framework. These recommended approaches address disproportionate victimisation in a more effective and less problematic way than the proposed “hate crime” law. While the intention behind hate crime legislation is understandable (and likely to be supported by many people within targeted communities) , creating a specific category for hate crimes may create more problems than it solves. By strengthening existing legal frameworks, improving data collection, and investing in prevention and community-building, we can more effectively address bias-motivated behaviour without the drawbacks associated with separate hate crime categorization. We would welcome further consideration of whether existing avenues (such as sentence aggravation) can be better utilised and/or bolstered to send stronger signals to offenders and to society at large that hate crime is unacceptable in Aotearoa New Zealand.

We appreciate that some of the suggestions above are outside the scope of the Law Commission’s review. However, we urge the Commission to consider exploring the wider avenues available discussed above, to better protect disproportionately- targeted communities including the Jewish community.