



New South Wales

Crimes Amendment (Publicly Threatening and Inciting Violence) Bill 2018

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Crimes Act 1900* to create an offence of publicly threatening or inciting violence on the grounds of race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Crimes Act 1900 No 40

Schedule 1 inserts proposed section 93Z into the *Crimes Act 1900* to prohibit a person from intentionally or recklessly, by a public act, threatening or inciting violence towards another person or a group of persons on any of the following grounds:

- (a) the race of the other person or one or more of the members of the group,
- (b) that the other person has, or one or more of the members of the group have, a specific religious belief or affiliation,
- (c) the sexual orientation of the other person or one or more of the members of the group,
- (d) the gender identity of the other person or one or more of the members of the group,
- (e) that the other person is, or one or more of the members of the group are, of intersex status,

(f) that the other person has, or one or more of the members of the group have, HIV or AIDS.

Contravention of the prohibition is to be an indictable offence carrying a maximum penalty of:

- (a) in the case of an individual—100 penalty units (\$11,000) or imprisonment for 3 years (or both), or
- (b) in the case of a corporation—500 penalty units (\$55,000).

The amendment makes it clear that, in determining whether an alleged offender has committed the proposed offence, it is irrelevant whether the alleged offender's assumptions or beliefs about an attribute of another person or a member of a group of persons were correct or incorrect at the time that the offence is alleged to have been committed.

The amendment also provides that in determining whether an alleged offender has committed the proposed offence of intentionally or recklessly inciting violence, it is irrelevant whether or not, in response to the alleged offender's public act, any person formed a state of mind or carried out any act of violence.

A prosecution for an offence against the proposed section is not to be commenced without the approval of the Director of Public Prosecutions.

For the purposes of the proposed offence, a *public act* includes:

- (a) any form of communication (including speaking, writing, displaying notices, playing of recorded material, broadcasting and communicating through social media and other electronic methods) to the public, and
- (b) any conduct (including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia) observable by the public, and
- (c) the distribution or dissemination of any matter to the public.

Such an act may be a public act even if it occurs on private land.

Schedule 2 Amendment of Anti-Discrimination Act 1977 No 48

Schedule 2 removes certain offences from the *Anti-Discrimination Act 1977* and makes consequential amendments. The offences removed from that Act are as follows:

- (a) the offence of serious racial vilification (section 20D),
- (b) the offence of serious transgender vilification (section 38T),
- (c) the offence of serious homosexual vilification (section 49ZTA),
- (d) the offence of serious HIV/AIDS vilification (section 49ZXC).

Schedule 3 Amendment of Criminal Procedure Act 1986 No 209

Schedule 3 makes a consequential amendment to the *Criminal Procedure Act 1986* to provide that the proposed new indictable offence of publicly threatening or inciting violence on the grounds of race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status is to be dealt with summarily unless the prosecutor or person charged elects otherwise.



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New South Wales

Crimes Amendment (Publicly Threatening and Inciting Violence) Bill 2018

No. , 2018

A Bill for

An Act to amend the *Crimes Act 1900* to create an offence of threatening or inciting violence on the grounds of race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status; make consequential amendments to the *Anti-Discrimination Act 1977*; and for related purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Publicly Threatening and Inciting Violence) Act 2018*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

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Schedule 1 Amendment of Crimes Act 1900 No 40

Part 3A, Division 8

Insert after Division 7:

Division 8 Public threats or incitement of violence on grounds of race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status

93Z Offence of publicly threatening or inciting violence on grounds of race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status

(1) A person who, by a public act, intentionally or recklessly threatens or incites violence towards another person or a group of persons on any of the following grounds is guilty of an offence:

- (a) the race of the other person or one or more of the members of the group,
- (b) that the other person has, or one or more of the members of the group have, a specific religious belief or affiliation,
- (c) the sexual orientation of the other person or one or more of the members of the group,
- (d) the gender identity of the other person or one or more of the members of the group,
- (e) that the other person is, or one or more of the members of the group are, of intersex status,
- (f) that the other person has, or one or more of the members of the group have, HIV or AIDS.

Maximum penalty:

- (a) in the case of an individual—100 penalty units or imprisonment for 3 years (or both), or
- (b) in the case of a corporation—500 penalty units.

(2) In determining whether an alleged offender has committed an offence against this section, it is irrelevant whether the alleged offender's assumptions or beliefs about an attribute of another person or a member of a group of persons referred to in subsection (1) (a)–(f) were correct or incorrect at the time that the offence is alleged to have been committed.

(3) In determining whether an alleged offender has committed an offence against this section of intentionally or recklessly inciting violence, it is irrelevant whether or not, in response to the alleged offender's public act, any person formed a state of mind or carried out any act of violence.

(4) A prosecution for an offence against this section is not to be commenced without the approval of the Director of Public Prosecutions.

(5) In this section:

gender identity means the gender related identity, appearance or mannerisms or other gender related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth.

intersex status means the status of having physical, hormonal or genetic features that are:

- (a) neither wholly female nor wholly male, or

(b) a combination of female and male, or	1
(c) neither female nor male.	2
public act includes:	3
(a) any form of communication (including speaking, writing, displaying notices, playing of recorded material, broadcasting and communicating through social media and other electronic methods) to the public, and	4 5 6
(b) any conduct (including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia) observable by the public, and	7 8 9
(c) the distribution or dissemination of any matter to the public.	10
For the avoidance of doubt, an act may be a public act even if it occurs on private land.	11 12
race includes colour, nationality, descent and ethnic, ethno-religious or national origin.	13 14
religious belief or affiliation means holding or not holding a religious belief or view.	15 16
sexual orientation means a person's sexual orientation towards:	17
(a) persons of the same sex, or	18
(b) persons of a different sex, or	19
(c) persons of the same sex and persons of a different sex.	20
violence includes violent conduct and violence towards a person or a group of persons includes violence towards property of the person or a member of the group, respectively.	21 22 23

Schedule 2	Amendment of Anti-Discrimination Act 1977	1
	No 48	2
[1]	Section 20D Offence of serious racial vilification	3
	Omit the section.	4
[2]	Section 38T Offence of serious transgender vilification	5
	Omit the section.	6
[3]	Section 49ZTA Offence of serious homosexual vilification	7
	Omit the section.	8
[4]	Section 49ZXC Offence of serious HIV/AIDS vilification	9
	Omit the section.	10
[5]	Section 89B Acceptance or declining of complaints by the President	11
	Omit “(not including section 20D, 38T, 49ZTA or 49ZXC)” from section 89B (2) (c).	12
[6]	Section 90A Investigation of vilification complaints	13
	Omit “, or alleges an offence under section 20D, 38T, 49ZTA or 49ZXC” from section 90A (1).	14 15
[7]	Section 91 Prosecution for serious vilification	16
	Omit the section.	17
[8]	Section 93A Referral of complaints to Tribunal at requirement of complainant	18
	Omit “, 91 (4)” from section 93A (1).	19
[9]	Section 96 Leave of Tribunal required for inquiry into certain matters	20
	Omit “, but not including a complaint to which section 91 (2) applies,” from section 96 (1).	21

Schedule 3	Amendment of Criminal Procedure Act 1986	1
	No 209	2
	Schedule 1 Indictable offences triable summarily	3
	Insert after clause 10C of Part 3 of Table 1:	4
10CA	Publicly threatening or inciting violence on grounds of race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status	5
		6
	An offence under section 93Z of the <i>Crimes Act 1900</i> .	7