

NEW AUSTRALIAN HATE LAWS AND WHAT THEY MEAN FOR RACISM [PART 1]

The Australian Government has made sweeping changes to federal hate laws in response to recent antisemitic incidents. These changes were rushed through Parliament against expert recommendations and without broad community consultation. The NSW State Government has followed suit with its own suite of changes to NSW hate laws.

This is part one of our two-part explainer on these reforms. Part one outlines the scope of these reforms. Part two outlines the implications of these reforms as well as our recommendations.

Federal reforms

The Federal Parliament has enacted the *Criminal Code Amendment (Hate Crimes) Act 2025* (Cth). The amendments, which are already in force, create new offences, expand the scope of existing offences and impose mandatory minimum prison sentences for specific offences.

The scope of these federal legislative amendments is explored further below.

Publicly displaying a Nazi symbol or giving a Nazi salute

It is a criminal offence to publicly display a Nazi symbol or give the Nazi salute.¹

These offences now attract a mandatory minimum sentence of one year imprisonment.

To establish the offence of publicly displaying a Nazi symbol or the offence of giving a Nazi salute, the prosecution must prove beyond reasonable doubt that:²

1. A person caused a thing to be displayed in a public place (including online) or made a gesture in a public place;
2. The thing is a prohibited Nazi symbol or the gesture is a Nazi salute;
3. A reasonable person would consider that the conduct:
 - a. involves the dissemination of ideas based on racial superiority or racial hatred;
 - b. could incite others to offend, insult, humiliate or intimidate a person or group because of their race;
 - c. advocates hatred (regardless of whether the conduct actually results in hatred) of a group or group member distinguished by race, religion or nationality which constitutes incitement of another person (regardless of whether the conduct actually incites another person) to offend, insult, humiliate, intimidate or use force or violence against the targeted group or group member; or
 - d. is likely to offend, insult or intimidate a reasonable person who is a member of a group distinguished by race, colour, sex, language, religion, political or other opinion or national or social origin because of that person's membership of the group; and

¹ *Criminal Code Act 1995* (Cth) s 80.2H.

² *Criminal Code Act 1995* (Cth) s 80.2HA.

4. The display was not for a purpose permitted by law. The permitted purposes include:

- a. The purpose of religion, academia, education, art, literature or science provided it is not contrary to the public interest; or
- b. The purpose of making a news or current affairs report that is in the public interest and is made by a person working in a professional journalistic capacity.

The defences to these offences include engaging in conduct for the genuine purpose of opposing Nazi ideology, fascism or a related ideology or displaying the symbol in connection with law enforcement, court proceedings or the duties and functions of public officials.

Publicly displaying a prohibited terrorist organisation symbol

It is a criminal offence to publicly display a “prohibited terrorist organisation symbol”.³

This offence now attracts a mandatory minimum sentence of one year imprisonment.

The term “prohibited terrorist organisation symbol” means:⁴

- A symbol that a terrorist organisation uses or members of a terrorist organisation use to identify the organisation; and
- Anything that so nearly resembles such symbol that it is likely to be confused with, or mistaken for, that symbol.

The term “terrorist organisation” means an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not listed as such in the relevant regulations).⁵

To establish the offence of publicly displaying a prohibited terrorist organisation symbol, the prosecution must prove beyond reasonable doubt that:⁶

1. A person caused a thing to be displayed in a public place (including online);
2. The person knew that the thing is a prohibited terrorist organisation symbol;
3. A reasonable person would consider that the conduct:
 - a. involves the dissemination of ideas based on racial superiority or racial hatred;
 - b. could incite others to offend, insult, humiliate or intimidate a person or group because of their race;
 - c. advocates hatred (regardless of whether the conduct actually results in hatred) of a group or group member distinguished by race, religion or nationality which

³ *Criminal Code Act 1995* (Cth) s 80.2HA.

⁴ *Criminal Code Act 1995* (Cth) s 80.2E(3)

⁵ *Criminal Code Act 1995* (Cth) s 102.1

⁶ *Criminal Code Act 1995* (Cth) s 80.2HA.

constitutes incitement of another person (regardless of whether the conduct actually incites another person) to offend, insult, humiliate, intimidate or use force or violence against the targeted group or group member; or

- d. is likely to offend, insult or intimidate a reasonable person who is a member of a group distinguished by race, colour, sex, language, religion, political or other opinion or national or social origin because of that person's membership of the group; and

5. The display was not for a purpose permitted by law. The permitted purposes include:

- a. The purpose of religion, academia, education, art, literature or science provided it is not contrary to the public interest; or
- b. The purpose of making a news or current affairs report that is in the public interest and is made by a person working in a professional journalistic capacity.

The defences to these offences include engaging in conduct for the genuine purpose of opposing the ideology or purposes of a terrorist organisation or displaying the symbol in connection with law enforcement, court proceedings or the duties and functions of public officials.

Other terrorism-related offences now also attract mandatory minimum sentences. A minimum one-year prison sentence if a person associates with a terrorist organisation.⁷ A minimum three-year prison sentence if a person finances terrorism or a terrorist.⁸ A minimum six-year prison sentence if a person:⁹

- Provides or receives training connected with terrorist act;
- Possesses things connected with terrorist acts;
- Knowingly collects or makes a document likely to facilitate a terrorist act;
- Plans or prepares a terrorist act;
- Directs the activities of a terrorist organisation;
- Becomes a member of a terrorist organisation;
- Recruits for a terrorist organisation;
- Trains a terrorist organisation;
- Funds a terrorist organisation; or
- Provides support to a terrorist organisation.

⁷ *Criminal Code Act 1995* (Cth) s 102.8.

⁸ *Criminal Code Act 1995* (Cth) ss 103.1-103.2.

⁹ *Criminal Code Act 1995* (Cth) ss 101.2, 101.4-101.6 and 102.3-102.7.

Advocating force or violence against groups, members of groups or close associates

It is now a criminal offence to “advocate” force or violence against groups. To establish this offence, the prosecution must prove beyond reasonable doubt that:¹⁰

1. The person advocated the use of force or violence against a group;
2. The person was “reckless” as to whether the force or violence would be carried out; and
3. The targeted group was distinguished by race, religion, sex, sexual orientation, gender identity, intersex status, disability, nationality, national or ethnic origin or political opinion (**Protected Attributes**).

It is now also a criminal offence to “advocate” force or violence against members of groups or their close associates. To establish this offence, the prosecution must prove beyond reasonable doubt that:¹¹

1. The person advocated the use of force or violence against another person;
2. The person did so due to a belief (whether correct or not) that the other person was a member of a group, or a close associate of a member of a group;
3. The person was reckless as to whether force or violence would occur; and
4. The targeted person was distinguished by one of the Protected Attributes.

The scope of these criminal offences is significant:

1. The pre-existing offences required a fault element of “intention”, which means that the person specifically intended to do something. The fault element is now “recklessness”. This means that:
 - a. The person was aware there was a substantial risk the force or violence would occur against the group, member or close associate; and
 - b. The person went ahead with the conduct even though it was unjustifiable to take that risk having regard to the circumstances known to the person.
2. The pre-existing offences criminalised “urging” force or violence rather than “advocating” force or violence. The term “advocating” includes counselling, promoting, encouraging and urging. It is broader and more ambiguous than “urging”.
3. The terms “force” and “violence” are not defined in the relevant bill.

Threatening force or violence against groups

It is now a criminal offence to “threaten” force or violence against groups. To establish this offence, the prosecution must prove beyond reasonable doubt that:¹²

¹⁰ *Criminal Code Act 1995* (Cth) s 80.2A.

¹¹ *Criminal Code Act 1995* (Cth) s 80.2B.

¹² *Criminal Code Act 1995* (Cth) s 80.2BA.

1. The person threatened to use force to violence against a group;
2. The person was “reckless” as to whether the force or violence would be carried out;
3. The targeted group was distinguished by one of the Protected Attributes; and
4. A reasonable member of the targeted group would fear or apprehend that the threat would be carried out.

Threatening force or violence against members of groups or close associates

It is now a criminal offence to “threaten” force or violence against members of groups or their close associates. To establish this offence, the prosecution must prove beyond reasonable doubt that:¹³

1. A person threatened to use force or violence against another person;
2. The person did so due to a belief (whether correct or not) or recklessness as to whether the other person was a member of a group, or a close associate of a member of a group;
3. The targeted group was distinguished by one of the Protected Attributes; and
4. A reasonable member of the targeted group would fear or apprehend that the threat would be carried out.

Advocating damage to or destruction of real property or a motor vehicle

It is now a criminal offence to “advocate” damage to, or destruction of, real property or a motor vehicle. To establish this offence, the prosecution must prove beyond reasonable doubt that:¹⁴

1. The person advocated the causing of damage to, or the destruction of, real property or a motor vehicle;
2. The person did so due to a belief (whether correct or not) that:
 - a. The real property was a place of worship of a group;
 - b. The real property was owned or occupied, in whole or in part, by one or more members of a group;
 - c. The motor vehicle was owned or occupied, in whole or in part, by one or more members of a group;
 - d. The real property was owned or occupied, in whole or in part, by a close associate of one or more members of a group; or
 - e. The motor vehicle was owned or occupied, in whole or in part, by a close

¹³ *Criminal Code Act 1995* (Cth) s 80.2BB.

¹⁴ *Criminal Code Act 1995* (Cth) s 80.2BC.

associate of one or more members of a group;

3. The person was reckless as to whether the damage or destruction would occur; and
4. The targeted group was distinguished by one of the Protected Attributes.

Threatening damage to or destruction of real property or a motor vehicle

It is now a criminal offence to “threaten” damage to, or destruction of, real property or a motor vehicle. To establish this offence, the prosecution must prove beyond reasonable doubt that:¹⁵

1. The person threatened to cause damage to, or the destruction of, real property or a motor vehicle;
2. The person did so due to a belief (whether correct or not) that:
 - a. The real property was a place of worship of a group;
 - b. The real property was owned or occupied, in whole or in part, by one or more members of a group;
 - c. The motor vehicle was owned or occupied, in whole or in part, by one or more members of a group;
 - d. The real property was owned or occupied, in whole or in part, by a close associate of one or more members of a group; or
 - e. The motor vehicle was owned or occupied, in whole or in part, by a close associate of one or more members of a group;
3. The targeted group was distinguished by one of the Protected Attributes; and
4. A reasonable member of the targeted group would fear or apprehend that the threat would be carried out.

Advocating force or violence through causing damage to property

It is now a criminal offence to “advocate” force or violence through causing damage to property. To establish this offence, the prosecution must prove beyond reasonable doubt that:¹⁶

1. The person intentionally advocated for another person or group to use force or violence against another group;
2. The person did so by causing damage (including minor damage) to property;
3. The person was reckless as to whether the force or violence would occur; and

¹⁵ *Criminal Code Act 1995* (Cth) s 80.2BD.

¹⁶ *Criminal Code Act 1995* (Cth) s 80.2BE.

4. The targeted group was distinguished by race, religion or ethnic origin.

NSW reforms

The NSW Government has passed the:

- Crimes Amendment (Inciting Racial Hatred) Bill 2025 (NSW);
- Crimes Legislation Amendment (Racial and Religious Hatred) Bill 2025 (NSW); and
- Crimes Amendment (Places of Worship) Bill 2025 (NSW).

The amendments create new offences, expand the scope of existing offences, expand police powers and expand the scope of aggravating factors.

These amendments are expected to come into force imminently.

The Crimes Amendment (Display of Nazi and Terrorist Symbols) Bill 2025 (NSW) has been introduced to NSW Parliament. If passed, this bill will also create new offences.

The scope of these NSW legislative amendments is explored in more detail below.

Intentionally and publicly inciting racial hatred

It will be a criminal offence to intentionally and publicly incite hatred towards another person or group of people on the grounds of race. To establish this offence, the prosecution must prove beyond reasonable doubt that:¹⁷

1. A person has conducted a public act;
2. The act incited hatred;
3. The act was intentional;
4. The act was on the basis of race (whether or not the person's assumptions or beliefs about the particular race were correct); and
5. The act would cause a reasonable person who was the target or a member of the targeted group to fear harassment, intimidation or violence, or fear for their safety (whether or not the targeted person formed the relevant state of mind and whether or not any other person actually carried out an act of hatred).

The term "hatred" is not defined in the relevant bill.

Exceptions to this offence include directly quoting or referencing a religious text for the purpose of religious teaching.

Intentionally blocking, impeding or hindering a person's access of a place of worship without a reasonable excuse

¹⁷ Crimes Act 1900 (NSW) s 93AA.

It will be a criminal offence to intentionally block, impede or hinder a person's access of a place of worship without a reasonable excuse. To establish this offence, the prosecution must prove beyond reasonable doubt that:¹⁸

1. The person was in or near a place or worship;
2. The person blocked, impeded or hindered another person's access to a place of worship;
3. The conduct was intentional; and
4. The conduct was done without reasonable excuse. The "reasonable excuses" include conduct that:¹⁹
 - a. forms part of industrial action;
 - b. occurs at or outside Parliament House or an office of a member of Parliament; or
 - c. occurs with consent of the Commissioner of Police or the person in charge of the place of worship.

The term "place of worship" is defined in the relevant bill as a structure ordinarily used for worship. It includes a church, mosque, synagogue and temple.

The terms "block", "impede" and "hinder" are not defined in the relevant bill.

Harassing, intimidating or threatening a person accessing or leaving a place of worship

It will be a criminal offence to harass, intimidate or threaten a person accessing or leaving a place of worship. To establish this offence, the prosecution must prove beyond reasonable doubt that:²⁰

1. A person was in or near a place or worship;
2. The person harassed, intimidated or threatened a person; and
3. The targeted person was accessing or leaving a place of worship at the time of the harassment, intimidation or threat.

The terms "harass", "intimidate" and "threaten" are not defined in the relevant bill.

Displaying a terrorist organisation symbol

If the relevant bill is passed, it will be a criminal offence to knowingly display a terrorist organisation symbol. It is already an offence to knowingly display a Nazi symbol.

¹⁸ *Crimes Act 1900* (NSW) s 214B(1)(a).

¹⁹ *Crimes Act 1900* (NSW) s 214B(2).

²⁰ *Crimes Act 1900* (NSW) s 214B(1)(b).

To establish either of these offences, the prosecution must prove beyond reasonable doubt that:²¹

1. A symbol was displayed in a public place;
2. A person knowingly caused the symbol to be displayed;
3. The symbol is:
 - a. A Nazi symbol;
 - b. A terrorist organisation symbol; or
 - c. A symbol that resembles a Nazi symbol or terrorist organisation symbol that a reasonable person is likely to believe is displayed to show support for Nazi ideology or the terrorist organisation, respectively; and
4. The conduct was done without “reasonable excuse”. The “reasonable excuses” include displaying the symbol reasonably and in good faith for:
 - a. an academic, artistic or educational purpose; or
 - b. another purpose in the public interest.

The term “terrorist organisation symbol” is not defined in the relevant bill.

It is an aggravated offence to display a Nazi symbol on or near a synagogue, a Jewish school or the Sydney Jewish Museum.²²

It is an offence to display a Nazi symbol specifically by way of graffiti among other forms of communication and conduct.²³

Expanded police powers

The expanded police powers will grant police power to issue move on directions for protests and demonstrations that occur in or near a place of worship subject to limited exceptions.²⁴

Expanded aggravating circumstances

Aggravating and mitigating circumstances apply when judges determine penalties for crimes. Aggravating circumstances permit harsher penalties.

The aggravating circumstances that apply to sentencing will capture offences that are partially (rather than only wholly) motivated by hate or prejudice.²⁵

The aggravating circumstances that apply to graffiti-related offences will capture graffiti

²¹ *Crimes Act 1900* (NSW) s 93ZA.

²² *Crimes Act 1900* (NSW) s 93ZA(1AA).

²³ *Crimes Act 1900* (NSW) s 93Z.

²⁴ *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 200(5).

²⁵ *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)(h).

offences involving a property that is a place of worship.²⁶

Implications

These federal and NSW reforms have significant implications for the Australian human rights landscape. These reforms have generated widespread concern that, among other things, legitimate political and cultural expression will be criminalised in a society of competing views and marginalised communities will be targeted. The implications of these reforms are explored further in part two of our explainer.

Note: This explainer provides general information only. It is not legal advice. Please seek legal advice if necessary.

²⁶ *Graffiti Control Act 2008 (NSW) s 4(6).*