



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.