# Review of criminal law protections against the incitement of hatred in New South Wales

## Introduction

The review into criminal law protections against the incitement of hatred in New South Wales is an important opportunity to consider the adequacy of existing protections, and how further measures might enhance the protection of vulnerable communities and strengthen social cohesion in New South Wales. This aspect of the New South Wales legislative framework is finely balanced. The criminal law must provide an effective safeguard against vilification, yet also protect freedom of expression and robust, respectful debate, which is fundamental to the health of our Australian democracy.

Australian democracy, and our national identity, are founded on values of freedom, tolerance, mutual respect and common decency, where all are welcomed and treated equally before the law. Regrettably, that equality is diminished where the law does not adequately safeguard a vulnerable group from targeted, hostile conduct.

At the same time, our democracy flourishes amidst robust debate and healthy, respectful disagreement. Freedom of expression is a central tenet of our liberal democracy, and it is vital that the protection of vulnerable groups does not unduly restrict that freedom. Criminal law protections must *promote*, not censure, civil discourse and debate. The protections must ensure that all Australians are free to express their views respectfully, yet also protect against the incitement and promotion of hatred, which denigrates, marginalises and ostracises a particular group based on their identity, and undermines our democratic values of mutual respect and common decency.

Criminal law protections against the incitement and promotion of hatred are one of several important measures to safeguard societal harmony, and ultimately societal safety. The Envoy supports the serious vilification offence passed by the New South Wales Parliament, subject to the below comments as to how the offence, and other aspects of the criminal law, might better protect against the incitement and promotion of hatred in New South Wales.

## Focus question 1: *The extent and impact of hatred in NSW*

The Envoy supports the introduction of criminal law protections for the benefit of all vulnerable groups, including those defined by reference to race, religion and nationality. In view of the Envoy's specific mandate to advise Government on antisemitism, this section addresses the extent and impact of antisemitism – that is, hatred against Jewish Australians – in Australia, and in particular, in New South Wales.

### *1.1 Sydney Opera House: A critical turning point in the rise of antisemitism*

A critical turning point in the escalation of antisemitism in New South Wales, and indeed Australia, followed the terrorist attacks in Israel on 7 October 2023.[1] Those terrorist attacks involved the murder of the largest number of Jewish people since the Holocaust.[2] Following the terrorist attacks, there has been a significant escalation in antisemitism in Australia, including in New South Wales.[3] This has often involved violent, intimidatory and hate-filled conduct directed toward Jewish Australians.[4]

This surge in antisemitism began immediately following the terrorist attacks. In Sydney, reports of the terrorist attacks were met with celebration, and hateful, intimidatory conduct. By way of example, on 8 October, at a rally

[1] For an overview of the terrorist attack, see the All Party UK-Israel Parliamentary Group, '*7 October Parliamentary Commission Report*', Chaired by Lord Roberts of Belgravia, March 2025.
[2] See, eg, All Party UK-Israel Parliamentary Group, '*7 October Parliamentary Commission Report*', Chaired by Lord Roberts of Belgravia, March 2025, p 8. There were 1,182 fatalities, over 4,000 wounded and 251 hostages (210 alive and 41 deceased): p 12.
[3] See, Julie Nathan, Executive Council of Australian Jewry, '*Report on Antisemitism in Australia 2024*' (**ECAJ, 2024 Antisemitism Report**).
[4] See, eg, ECAJ, 2024 Antisemitism Report, pp 3, 7ff.

in Lakemba, an individual proclaimed to a crowd *"I'm smiling and I'm happy… I'm elated, it's a day of courage, it's a day of pride, it's a day of victory. This is the day we've been waiting for."*[5]

On 9 October, the Sydney Opera House was illuminated in white and blue in solidarity with victims of the terrorist attack, as were various famous landmarks across the world.[6] This was met with a protest involving the display of banners such as "*Israel is a terrorist state*", chants to "*F*** the Jews*", "*F**k the Zionist pigs*" "*F*** Israel"*, "*Where's the Jews*", and the burning of an Israeli flag.[7] New South Wales Police warned the Sydney Jewish community to stay away from Town Hall and the Opera House precinct for their own safety,[8] and as a result, they were unable to attend the site to express solidarity with victims of the terrorist attack.

Further, New South Wales police have since confirmed that they were not empowered to take action with respect to certain hate-filled chants.[9] This inaction was seen to permit, and effectively give licence to, antisemitic conduct in New South Wales.

In the period following October 8 and 9, 2023, antisemitism has surged across Australia. In the two months after 7 October 2023, there was a 738 per cent rise in antisemitic incidents (excluding online antisemitism).[10] In the year following October 2023, there was a 316 per cent rise compared to the year prior.[11] In 2024, 27 per cent of "*hate incidents*" reported to NSW Police were antisemitic.[12] This has risen to 33 per cent in the first half of 2025.[13]

Further, in late 2024 and early 2025, there were a series of high profile antisemitic incidents in New South Wales and Victoria, including the destruction of Adass synagogue by fire, the destruction of a child-care centre by fire and, it appeared, an attempted destruction of Newtown synagogue by fire.[14]

Antisemitic incidents have continued throughout 2025. For instance, in Victoria, in April 2025, two neo-Nazis dressed as rabbis, and a further man, distributed flyers outside a pre-polling centre in Kew in Melbourne, and in letterboxes in suburbs with high numbers of Jewish residents.[15] The material purported to show how the Liberals the Liberal Party plan to appease Jewish Australians by "*giving the Jews everything they want*", including placing "*Israel First*", "*Abolish Free Speech*", "*Jail antisemites*" and "*Give Jews Free Money*".[16]

Further, in early July 2025, an individual poured flammable liquid on the front door of the East Melbourne Hebrew Congregation, and set it alight.[17] There were about 20 people inside the synagogue, taking part in a Shabbat (Sabbath) service.[18] On the same evening, about 20 protesters entered the Jewish-owned Miznon restaurant and shouted chants at customers and staff.[19] Several hours later three cars were set alight in Greensborough,[20] and a business, owned by a grandson of Holocaust survivors, was graffitied with swastikas and the phrase "*Gas the Jews*".[21] These are but some examples of the widespread antisemitic incidents which continue to occur across Australia.[22]

### *1.2 The impact of antisemitism on social safety and well-being*

The recent surge in antisemitic incidents, and the high profile incidents in late 2024 and 2025, exemplify that the promotion of hatred against Jewish Australians, if permitted, can escalate to violence and undermine the safety

[5] ABC, '*Pro-Palestinian rally at Lakemba in Sydney criticised for 'celebration' of attacks on Israel*', 9 October 2023.
[6] This included the Palace of Westminster and 10 Downing St in London, the White House in Washington DC and New York's Empire State Building, the Brandenburg Gate in Berlin and the Eiffel Tower in France. See, eg, The Jewish Chronicle, '*Landmarks across the world light up in support of Israel*', 10 October 2023.
[7] See, The Australian, '*Cops' audio expert: no 'gas Jews' chant at Sydney Opera House*', 2 February 2024; ABC, '*AUDIO: No antisemitic phrase chanted in Sydney Opera House protest*'; ABC '*Video analysis finds no evidence of 'gas the Jews' being chanted at Sydney Opera House protest, despite witness statements*', 2 February 2024.
[8] The Australian, '*NSW Police say 'no' to Jewish community: yes to Palestinian rally*', 9 October 2023.
[9] See, eg, Transcript of Proceedings before Portfolio Committee No 5 – Justice and Communities, '*Antisemitism in New South Wales*', 4 July 2025, uncorrected, pp 44-45. See also, ABC, '*Video analysis finds no evidence of 'gas the Jews' being chanted at Sydney Opera House protest, despite witness statements*', 2 February 2024; The Australian, '*Police urged to prosecute pro-Palestine Opera House protesters*', 10 November 2023.
[10] That is, in the period October – November 2023, as compared to the same period the year prior. See, Julie Nathan, Executive Council of Australian Jewry, '*Preliminary statistics concerning surge in antisemitic incidents following Hamas atrocities in Israel on 7 October 2023*', p 2.
[11] That is, in the period 30 September 2023 to 30 September 2024. See, ECAJ, 2024 Antisemitism Report, p 1.
[12] Transcript of Proceedings before Portfolio Committee No 5 – Justice and Communities, '*Antisemitism in New South Wales*', 4 July 2025, uncorrected, p 41.
[13] Transcript of Proceedings before Portfolio Committee No 5 – Justice and Communities, '*Antisemitism in New South Wales*', 4 July 2025, uncorrected, p 41.
[14] See, eg, SMH, '*Eleven arrests, over a dozen attacks: Sydney's wave of antisemitic horror'* (22 January 2025, updated 29 January 2025).
[15] The Australian, '*Election 2025: Antisemitic flyers distributed in Jewish areas condemned as 'Nazi filth*', 30 April 2025.
[16] The Australian, '*Election 2025: Antisemitic flyers distributed in Jewish areas condemned as 'Nazi filth*', 30 April 2025.
[17] ABC, '*Police charge man over Melbourne synagogue fire amid condemnation of antisemitism*', 6 July 2025.
[18] ABC, '*Police charge man over Melbourne synagogue fire amid condemnation of antisemitism*', 6 July 2025.
[19] ABC, '*Police charge man over Melbourne synagogue fire amid condemnation of antisemitism*', 6 July 2025.
[20] ABC, '*Police charge man over Melbourne synagogue fire amid condemnation of antisemitism*', 6 July 2025.
[21] The Australian, '*Melbourne business Gottlieb's latest target of anti-Semitic attack*', 17 February 2025.
[22] For an overview of antisemitic incidents in Australia, see the Annual Reports published by the Executive Council of Australian Jewry (available at <https://www.ecaj.org.au/antisemitism-report/>). See also, ECAJ, '*2024 Antisemitism Report*'.

and integrity of Australian society. The risk that a rise in hatred against minority groups will precipitate violence against those groups (or others) was referred to by the Director General of ASIO in his 2025 Annual Threat Assessment, where he stated:

> "*The war in the Middle East has not yet directly inspired terrorism in Australia, but it is prompting protest, exacerbating division, undermining social cohesion and elevating intolerance. This, in turn, is making acts of politically motivated violence more likely.*
>
> *…*
>
> *Anti-Semitism festered in Australia before the tragic events in the Middle East, but the drawn-out conflict gave it oxygen – and gave some anti-Semites an excuse. Jewish Australians were also increasingly conflated with the state of Israel, leading to an increase in anti-Semitic incidents. The normalisation of violent protest and intimidating behaviour lowered the threshold for provocative and potentially violent acts…*"[23]

Antisemitism is now ASIO's highest priority "*in terms of threats to life*", and in February 2025, the Director General forecast a rise in politically motivated violence and communal violence.[24]

The close correlation between a rise in hatred and a rise in violence was also referred to by Justice Lonergan of the Supreme Court of New South Wales, in determining an application for bail brought by an individual accused of involvement in spray painting certain hateful slogans onto cars and property in November 2024.[25] Her honour observed:

> "…*Racially-motivated attacks on property make the community unsafe. Hate slogans directed to a group of people dehumanises that target group and labels them worthy of hate. Targeted attacks of this kind against any person or group of people promotes fear and loathing, states of mind that destabilise, damage and render unsafe our community as a whole*".[26]

A similar observation was made by the Law Reform Commission of Western Australia in 1989, when it recommended the introduction of several offences to address a campaign of racist posters and graffiti (including of an antisemitic nature) in Perth.[27] In its final report, the Commission observed:

> "*evidence has increasingly emerged of a direct association between the racist poster phenomenon and actual or threatened incidents of violence or public disorder.*"[28]

In this respect, the recent surge in antisemitism in New South Wales highlights that criminal law protections against the incitement or promotion of hatred against vulnerable groups does not merely concern social cohesion, but ultimately social safety and well-being.

### *1.3 The impact of antisemitism in the absence of criminal law protections*

In the absence of adequate criminal law protections, members of the Jewish community have, at their own cost, been left to take civil action in respect of hateful conduct. For instance, in November 2023, an individual made various public statements, which included age-old antisemitic myths that Jews are conspiratorial, wicked, treacherous and vile; Jews are murderous; and Jews are descendants of apes and pigs.[29] New South Wales Police have since confirmed that they received legal advice that the conduct did not satisfy the threshold for prosecution under existing offences, but would have strong prospects of conviction *if* section 93ZAA offence had been in place at the relevant time.[30]

In the absence of a criminal prosecution, civil proceedings were brought by two members of the Jewish community. In July 2025, the Federal Court of Australia concluded that several of the impugned statements contravened the Commonwealth *Racial Discrimination Act*.[31] The Court ordered their removal from social media

---

[23] Director-General of Security, Mike Burgess AM, '*Director-General's Annual Threat Assessment 2025*', 19 February 2025.
[24] Director-General of Security, Mike Burgess AM, '*ASIO Annual Threat Assessment 2025*' (19 February 2025). See also, Australian Financial Review, '*Why antisemitism has become spy chief's No. 1 worry*' (25 February 2025).
[25] *R v Stojanovski* [2025] NSWSC 149 at [1] (Lonergan J).
[26] *R v Stojanovski* [2025] NSWSC 149 at [19] (Lonergan J).
[27] Law Reform Commission of Western Australia, '*Project No 86 – Incitement to Racial Hatred*', Final Report, October 1989 (**Project 86 – Incitement to Racial Hatred – Final Report**), p 15 [5.1]. For an overview of the amendments made in the Legislative Council and the offence provisions enacted in 1990, see, Law Reform Commission, 30th Anniversary Report – Incitement to Racial Hatred and *Criminal Code Amendment (Racist Harassment and Incitement to Racial Hatred) Act 1990* (WA). The offences were amended in 2004, and now appear in *Criminal Code 1913* (WA), Chapter XI — Racist harassment and incitement to racial hatred.
[28] Project 86 – Incitement to Racial Hatred – Final Report, p 9 [4.1].
[29] See further, at *Wertheim v Haddad* [2025] FCA 720 at [158].
[30] Transcript of Proceedings before Portfolio Committee No 5 – Justice and Communities, '*Antisemitism in New South Wales*', 4 July 2025, uncorrected, p 43.
[31] *Racial Discrimination Act 1975* (Cth), s 18C; *Wertheim v Haddad* [2025] FCA 720 at [1]-[2].

platforms, and ordered the respondents not to engage in that conduct in future.[32] The Court described the statements as:

> "…*fundamentally racist and antisemitic and devastatingly offensive and insulting. They make perverse generalisations against Jewish people as a group. Jewish people in Australia in November 2023 and thereafter would experience them to be harassing and intimidating. That is all the more so because they were made at the time of heightened vulnerability and fragility experienced by Jews in Australia, but they would also have been harassing and intimidating had they been made prior to 7 October 2023. That is because of their profound offensiveness and the long history of persecution of Jews associated with the use of such rhetoric. Those effects on Jews in Australia would be profound and serious.*"[33]

Whilst the result made plain that these antisemitic tropes and stereotypes are unlawful under a civil prohibition, it is regrettable that criminal law protections were not in place to safeguard the Jewish community from this form of conduct, and that the burden of obtaining a legal sanction against the conduct in question was carried by private individuals rather than law enforcement authorities.

**Focus question 2: *The criminal law does not adequately protect against the incitement of hatred***

At present in New South Wales, there is no criminal proscription of the incitement of hatred.[34] There are offences with respect to conduct that involves the use of a carriage service (internet or phone) to menace, harass or cause offence (a Commonwealth offence),[35] and conduct which involves the display of a Nazi symbol.[36]

By contrast, in Western Australia it is an offence to create, promote or increase racial animosity towards a racial group, or a member of that group, where "*animosity towards*" is defined as "*hatred of or serious contempt for*".[37] In Victoria, from September 2025, it will be an offence to engage in conduct that is likely to incite hatred, serious contempt, revulsion or severe ridicule on the ground of a protected attribute.[38]

The absence (and therefore inadequacy) of criminal law protections against the incitement of hatred is regrettable. This will be improved by commencement of section 93ZAA of the *Crimes Act 1900* (NSW) (**Act**). The terms of this offence, and other aspects of the criminal law, might be adjusted to further and better protect vulnerable communities against the incitement (and promotion) of hatred.

### *2.1 Potential improvements to section 93ZAA of the Act*

Upon commencement of section 93ZAA of the Act, it will be an offence to, by public act, intentionally incite hatred toward another person or group on the ground of race, where the act would cause a reasonable person who was targeted by the conduct (or who was a member of a group targeted by the conduct) to fear harassment, intimidation or violence, or fear for their safety.[39] The offence provision does not apply to an act that consists only of directly quoting from or otherwise referencing a religious text for the purpose of religious teaching or discussion.[40] The offence provision will be reviewed within 12 months of commencement, to determine whether its policy objectives remain valid and its terms appropriate.[41]

The terms and likely operation of section 93ZAA of the Act are relevant to the question of whether the criminal law adequately protects against the incitement of hatred in New South Wales.

Further, it is particularly important that the offence be introduced with a public education campaign and mandatory training of law enforcement officers, legal professionals and the judiciary concerning the operation of the offence provision. These measures will promote a consistent understanding and application of the provision. A recent model is the New South Wales Implementation and Evaluation Taskforce, which coordinated introduction of the coercive control offence, including with respect to training and education of law enforcement,

---

[32] See, *Wertheim v Haddad* [2025] FCA 720 at [1] (Declarations and Orders), [158], [250], [269], [277].
[33] *Wertheim v Haddad* [2025] FCA 720 at [197].
[34] Civil prohibitions against the incitement of hatred appear in the *Anti-Discrimination Act 1977* (NSW), s 20C (Racial vilification), s 38S (Transgender vilification), s 49ZE (Religious vilification), and s 49ZT (Homosexual vilification).
[35] *Criminal Code* (Cth), s 474.17.
[36] *Crimes Act 1900* (NSW), s 93ZA.
[37] *Criminal Code* (WA), s 77. The offence is punishable by 14 years' imprisonment.
[38] *Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025* (VIC), (**Anti-vilification and Social Cohesion Act (VIC)**) Part 2, Section 4, new Division 2D of Part I *Crimes Act 1958* (VIC) (***Crimes Act 1958* (VIC), New Division 2D**), s 195N. The offence will commence by 20 September 2025: see, Anti-vilification and Social Cohesion) Act 2025 (VIC), Part 1, s 2(3).
[39] *Crimes Amendment (Inciting Racial Hatred) Bill 2025* (NSW), Schedule 1 (***(Inciting Racial Hatred) Bill 2025* (NSW)**), proposed s 93ZAA.
[40] *Inciting Racial Hatred) Bill 2025* (NSW), s 93ZAA(2).
[41] *Inciting Racial Hatred) Bill 2025* (NSW), s 93ZAB.

the legal profession and judiciary; relevant updates to government operational systems and community awareness campaigns.[42]

### *2.1.1 The element of intention*

Section 93ZAA of the Act requires proof that an accused *intentionally* incites hatred toward another person or group on the ground of race.

Given the fundamental importance of freedom of expression, the fault element of intention would seem to be an appropriate threshold for the offence. However, the statutory review might give particular consideration as to how the fault element of intention has operated within the first 12 months, and whether the offence provision might be more effective if it contained alternative fault elements of intention and recklessness. By way of comparison, the corresponding Victorian offence provision contains alternative fault elements.[43] It captures conduct that is likely to incite hatred, where the person intends that the conduct will, or believes that the conduct will probably, incite hatred, serious contempt, revulsion or severe ridicule of the person or group on the ground of a protected attribute.[44] Alternative fault elements would also correspond with the terms of section 93Z of the Act.[45]

The importance of reviewing the operation of the fault element is also reflected in the history of section 93Z of the Act (the offence of inciting violence). The NSW Government introduced section 93Z into the Act in 2018.[46] At that time, there had been no prosecutions under the predecessor offence (section 20D of the *Anti-Discrimination Act 1977* (NSW)).[47] In recognition of "*procedural impediments*" which had hindered the practical application and overall effectiveness of the predecessor offence, the Government made various changes to its operation, including broadening the offence provision to include alternative fault elements of intention and recklessness.[48]

The impediments to the predecessor offence, including the difficulty of proving intention, were discussed by Mr Nicholas Cowdery AM QC, then Director of the Office of Public Prosecutions (**ODPP**), in 2009.[49] With respect to the element of intention (at that time, within a draft Bill for insertion into the *Crimes Act 1900* (NSW)), Mr Cowdery expressed the view:

> "…*"intention" is required to be proved in order to establish the offence. Although this may be inferred from the nature of the act and/or other circumstances, it does create a hurdle for the prosecution and introduces a new potential defence. Experience with anti-discrimination law indicates that the need to prove discriminatory intention can substantially impede effective operation of discrimination law.*"[50]

It follows that whilst the fault element of intention would seem to be an appropriate threshold for section 93ZAA of the Act, the statutory review should carefully consider whether it has hindered the effectiveness of the offence provision, and whether that hindrance would be resolved by alternative elements of intention and recklessness, as has been adopted in Victoria.[51]

### *2.1.2 The term "public act"*

The definition of a "*public act*" might be amended to ensure that conduct which incites hatred amongst a limited number of persons is not artificially excluded from the scope of the provision. This might include conduct occurring in the context of meetings open only to a particular section of the community.[52] Conduct which incites hatred in this context can undermine social harmony, albeit that it is not directed toward the public at large. It is a very different setting to a private or domestic setting, and this difference might be reflected in the definition.

---

[42] See, *Crimes Act 1900* (NSW), s 54(3). See also, NSW Department of Communities and Justice, '*Coercive control Reference Groups*'. See also, NSW Department of Communities and Justice, '*Crimes Legislation Amendment (Coercive Control) Act 2022 – Statutory Report – 1 June 2023*', pp 6, 7-10, 15-21.
[43] *Crimes Act 1958* (VIC), New Division 2D, s 195N(1)(c).
[44] *Crimes Act 1958* (VIC), New Division 2D, s 195N(1)(c).
[45] *Crimes Act 1900* (NSW), s 93Z(1).
[46] *Crimes Amendment (Publicly Threatening and Inciting Violence) Bill 2018* (NSW).
[47] Second Reading Speech to the *Crimes Amendment (Publicly Threatening and Inciting Violence) Bill 2018* (NSW), in New South Wales, Legislative Assembly, Parliamentary Debates, 5 June 2018 (The Hon Mark Speakman MP), p 42.
[48] Second Reading Speech to the *Crimes Amendment (Publicly Threatening and Inciting Violence) Bill 2018* (NSW), in New South Wales, Legislative Assembly, Parliamentary Debates, 5 June 2018 (The Hon Mark Speakman MP), pp 42-44.
[49] Nicholas Cowdery, '*Review of Law of Vilification: Criminal Aspects, Roundtable on Hate Crime and Vilification Law: Developments and Directions*', Law School, University of Sydney, August 2009.
[50] Nicholas Cowdery, '*Review of Law of Vilification: Criminal Aspects, Roundtable on Hate Crime and Vilification Law: Developments and Directions*', Law School, University of Sydney, August 2009, p 5 citing *Waters v Public Transport Commission* (1991) 171 CLR 349 and the difference in view on this question between Mason CJ, Deane and Gaudron JJ (at 171 CLR 359 and 382) on the one hand, and McHugh J (at 171 CLR 401) on the other.
[51] See, *Crimes Act 1958* (VIC), New Division 2D, s 195N(1)(c), s 195O(1)(c).
[52] See, eg, See, *Wertheim v Haddad* [2025] FCA 720 at [41], [163]. In that case, the respondents maintained until after the close of evidence that speeches were not delivered "*other than in private*", because they were delivered in a private setting to regular congregants of the Al Madina Dawah Centre, where non-Muslims would require specific permission to participate: Respondent's Opening Submissions at pp 1-2 [4]-[5].

At present, the term "*public act*" adopts the same meaning as in section 93Z of the Act, which provides the following non-exhaustive list of examples:

> "*(a) any form of communication (including speaking, writing, displaying notices, graffiti, 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.*
> *For the avoidance of doubt, an act may be a public act even if it occurs on private land.*"

This definition might be supplemented by the words "*For the purpose of this section, a* ***public place*** *includes any physical place or cyberspace to which the public have access as of right or by invitation, whether express or implied, and whether or not a charge is made for admission.*"[53]

*2.1.3 The term "incite"*

The term "*incite*" might be amended to "*promote*", defined to include "*publicising, advocating or glorifying, or eliciting or stirring up (whether effectively or ineffectively) a feeling or feelings in another person, or in or among other persons*",[54] to ensure that the offence provision captures an appropriate scope of conduct.

The term "*incite*" is not defined however is well known in the context of anti-vilification provisions and the broader criminal law.[55] By definition, it captures conduct which "*urges, spurs on, stirs up, animates, stimulates, rouses, or requests*" another person to do an act,[56] or relevantly, harbour the emotion of hatred.[57] Mere insults, invective or abuse will not fall within the scope of a prohibition of inciting hatred, or similar emotions.[58]

Importantly, the term "*incite*" does not capture conduct which *promotes* hatred toward a particular group (or member of that group), but does not go so far as to urge, or stir up others to harbour those same emotions.[59] An individual might promote hatred against a particular group (or members of that group) by publicising, advocating or glorifying hateful conduct, whilst not intending to *urge*, or *stir up others* to harbour the same emotion. Nevertheless, conduct which promotes hatred creates an environment in which further hateful or violent acts toward that group are inspired, even justified. This undermines social harmony and the safety of society, and so inflicts a harm upon the wider community, not merely the targeted individual or group. For this and the following reasons, conduct which promotes hatred should be captured by criminal law protections, including section 93ZAA of the Act.


Further to the distinction of conduct which *incites* and *promotes* hatred, conduct which *promotes* hatred is quite distinct from that which merely *expresses* hatred.[60] For example, in *Margan v Manias*,[61] Mr Manias followed Mr Margan up Oxford Street and made statements "*I am going to eradicate all gays from Oxford Street*", "*Do not worry, I am doing good work*" and "*There are wicked things taking place on Oxford Street*".[62] The Tribunal found the statements were "*not merely insults*", but had the capacity to incite hatred against Mr Margan and homosexual men generally.[63] Whilst the case concerned the civil prohibition of homosexual vilification,[64] it is also illustrative of the kind of conduct which incites and promotes hatred in a manner which disrupts social cohesion and so inflicts harm upon the wider community.

---

[53] This proposed amendment reflects community views set out in the NSW Jewish Board of Deputies submission of 28 June 2024 to the NSW Law Reform Inquiry '*Serious racial and religious vilification*'.
[54] This proposed amendment reflects community views set out in the Executive Council of Australian Jewry Response to Questions on Notice, of 12 December 2024, submitted to the Senate Legal and Constitutional Affairs Committee Inquiry into the *Criminal Code Amendment (Hate Crimes) Bill 2024* (Cth).
[55] See, Second Reading Speech to the *Crimes Amendment (Publicly Threatening and Inciting Violence) Bill 2018* (NSW), in New South Wales, Legislative Assembly, Parliamentary Debates, 5 June 2018 (The Hon Mark Speakman MP), p 43.
[56] See, *Cottrell v Ross* [2019] VCC 2142 at [57] citing *Catch the Fire Ministries Inc & Ors v Islamic Council of Victoria Inc* (2006) 15 VR 207 [14]-[19], [132], [154]-[159]. See also, *Jones v Trad* (2013) 86 NSWLR 241; [2013] NSWCA 389 per Ward JA (Emmett and Gleeson JJA agreeing) at [49] citing *Sunol v Collier (No. 2)* (2012) 260 FLR 414; [2012] NSWCA 44 at [26] per Bathurst CJ (Allsop P and Basten JA agreeing) referring to *Young v Cassells* (1914) 33 NZLR 852 at 854 per Stout CJ, which was cited with approval in *R v Eade* (2002) 131 A Crim R 390; [2002] NSWCCA 257 at [59] per Smart AJ.
[57] See, Second Reading of *Inciting Racial Hatred Bill 2025* (NSW), p 14, where the Hon Michael Daley, Attorney General, MP, said:
"*In this sphere, hatred is not simply the hatred of a person because of a particular characteristic, such as race, but must be a public act that could encourage or spur others to harbour such emotions.*"
[58] See, eg, *Sunol v Collier (No 2)* [2012] NSWCA 44 at [79] per Basten JA.
[59] *Jones v Trad* [2013] NSWCA 389 at [49] citing *Sunol v Collier (No 2)* [2012] NSWCA 44 at [28].
[60] Compare, *Sunol v Collier (No 2)* [2012] NSWCA 44 at [28], where Bathurst CJ draws distinction between conduct which *incites* and *expresses* hatred.
[61] *Margan v Manias* [2015] NSWCA 388.
[62] *Margan v Manias* [2015] NSWCA 388 at [4].
[63] *Margan v Manias* [2013] NSWADT 177 at [49], see also [47]-[54]. The Tribunal observed that the first and third of these comments, considered in isolation, would satisfy these criteria (at [50]). The finding was not challenged on appeal, see *Margan v Manias* [2015] NSWCA 388.
[64] *Anti-Discrimination Act 1977* (NSW), s 49ZT(1).

The term "*incite*" is restricted in operation because it focuses the inquiry on the inciter's intention with respect to the effect of their conduct upon the relevant audience, rather than the conduct itself.[65] This is aptly illustrated by a case brought under Victorian civil vilification provisions, in which an article was published in the Australian Macedonian Weekly in 2009, titled "*Who in this celestial world gave the Greeks the right to take away the Macedonian language?*".[66] The newspaper was published online and produced in paper form; approximately 5,000 copies were distributed and sold by newsagents and other retailers each week.[67]

The article included a number of statements about the Greek people. It suggested "*…these Greek deranged bastardly monsters took the Macedonian language away from our Macedonian children*",[68] and described Greeks as "*a thieving nation*".[69] Despite the use of dehumanising language and the attribution of negative characteristics to an entire community on the basis of ethnicity, the Tribunal member considered the article was not likely to incite "*such raw emotion*" as hatred in the relevant audience because the article was published in Macedonian and "*for the average Macedonian reader, this article is probably just "preaching to the converted"*".[70]

The case demonstrates that the term "*incite*" may not be effective to capture conduct which promotes hatred in a public context, where the conduct is directed toward a particular audience who shares a similar viewpoint. In this respect, the term "*incite*" is problematic, because it fixes the threshold of liability upon the inciter's intended effect on a particular audience, an element which is inherently difficult to prove to the criminal standard.[71] It would be preferable to replace "*incite*" with "*promote*", to redirect the focus of the analysis to the individual's intention with respect to the conduct itself.

Moreover, the term "*incite*" was identified by prosecutorial authorities as a significant impediment to use of section 20D of the *Anti-Discrimination Act* (NSW), the predecessor to section 93Z of the Act. In 2009, Mr Cowdery AM QC, then Director of the ODPP, expressed the following view:

> "*The most common reason why prosecutions have not been commenced has been the inability of the prosecution to adduce evidence to prove to the necessary standard either incitement or incitement by the specific means described in the offence provisions.*"[72]

At that time (and until its repeal in 2018), no prosecution had been commenced pursuant to section 20D.[73] The ODPP expressed the same view during a Legislative Council inquiry in 2013.[74] In its Final Report, the Standing Committee on Law and Justice acknowledged that the difficulties of proving incitement were "*repeatedly cited*" as a reason for the absence of prosecutions under section 20D, however did not recommend legislative change, as at that time there was no consensus as to an appropriate term.[75] The same concerns were acknowledged by the NSW Law Reform Commission in its review of section 93Z of the Act in 2024.[76] However, no submissions were made that the term "*incite*" should be *replaced* (as opposed to supplemented),[77] and the Commission recommended no legislative change.[78]

Finally, it appears the Government intends to proscribe hateful language and conduct which may "*ultimately inspire…a violent act*".[79] That is, in presenting the bill to Parliament, the Attorney General stated:

> "*The Government has been appalled by escalating incidents, including graffiti, property damage and the setting alight of vehicles, that have sought to specifically target the Jewish community and to create division within our multicultural community.*
>
> *…*
>
> *This is a targeted legislative response to this abhorrent conduct. The Government does not think that these antisemitic attacks begin and end with graffiti and setting fire to buildings and cars.* ***They begin with hateful, racist language that may ultimately inspire an individual to commit a violent act.***"
> (emphasis added)

---

[65] See, *Cottrell v Ross* [2019] VCC 2142 at [57]-[59] citing *Catch the Fire Ministries Inc & Ors v Islamic Council of Victoria Inc* (2006) 15 VR 207 [14]-[16]]. See also, *Jones v Trad* [2013] NSWCA 389 at [54] citing *Sunol v Collier (No 2)* [2012] NSWCA 44 at [34].
[66] *Australian Macedonian Advisory Council* [2011] VCAT 1647 at [3].
[67] *Australian Macedonian Advisory Council* [2011] VCAT 1647 at [2].
[68] *Australian Macedonian Advisory Council* [2011] VCAT 1647 at [10].
[69] *Australian Macedonian Advisory Council* [2011] VCAT 1647 at [27].
[70] *Australian Macedonian Advisory Council* [2011] VCAT 1647 at [68].
[71] The difficulty of proving incitement was referenced in the Second Reading Speech to the *Crimes Amendment (Publicly Threatening and Inciting Violence) Bill 2018* (NSW), in New South Wales, Legislative Assembly, Parliamentary Debates, 5 June 2018 (The Hon Mark Speakman MP), p 43.
[72] Nicholas Cowdery, '*Review of Law of Vilification: Criminal Aspects, Roundtable on Hate Crime and Vilification Law: Developments and Directions*', Law School, University of Sydney, August 2009, p 4, quoted in New South Wales Legislative Council, Standing Committee on Law and Justice, '*Racial Vilification Law in New South Wales*', Report 50, December 2013 (**NSW LC Standing Committee Report 2013**), p 17 [2.72].
[73] Nicholas Cowdery, '*Review of Law of Vilification: Criminal Aspects, Roundtable on Hate Crime and Vilification Law: Developments and Directions*', Law School, University of Sydney, August 2009, p 3.
[74] NSW LC Standing Committee Report, '*Racial Vilification Law in New South Wales*', 2013, pp 31 [4.4] and 35 [4.20].
[75] NSW LC Standing Committee Report, '*Racial Vilification Law in New South Wales*', 2013, p 43 [4.69].
[76] NSW Law Reform Commission, '*Serious racial and religious vilification*', Final Report, September 2024, p 61 [5.4].
[77] NSW Law Reform Commission, '*Serious racial and religious vilification*', Final Report, September 2024, p 62 [5.6].
[78] NSW Law Reform Commission, '*Serious racial and religious vilification*', Final Report, September 2024, pp 62-66 [5.8]-[5.66].
[79] Parliament of New South Wales Hansard, Legislative Assembly, Second Reading to the *Crimes Amendment (Inciting Racial Hatred) Bill 2025* (NSW) by the Hon Michael Daley MP, 18 February 2025 (**Second Reading of Inciting Racial Hatred Bill 2025**) , p 14.

The term '*incite*' is not likely to capture the "*hateful, racist language…that may ultimately inspire…a violent act*", which it appears the Government intends to proscribe. It might be replaced with '*promote*', which would better achieve this objective.

*2.1.4 The term "hatred"*

The term "*hatred*" is not defined within section 93ZAA of the Act, and takes on its ordinary meaning, namely "*a feeling of hostility or strong aversion towards a person*".[80] The term might be defined within section 93ZAA of the Act to provide additional clarity concerning the scope and operation of the provision. The definition might expressly include "*detestation, enmity, ill-will, revulsion, serious contempt and/or malevolence*", which reflect the Oxford and Macquarie Dictionary definitions.[81]

The nature of conduct captured by a criminal offence of inciting (or promoting) hatred are illustrated by cases brought under the Canadian offence of '*wilful promotion of hatred*',[82] which provides:

> "*(2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of*
>
> *(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or*
>
> *(b) an offence punishable on summary conviction.*"

Some examples include:

- In *R v Travis Patron*,[83] the individual posted material on his personal website (www.travispatron.ca) and that of the Canadian Nationalist Party, of which he was leader (www.nationalist.ca), which the sentencing judge described as "*derogatory material that targeted Jews*".[84] The websites included a recorded speech titled "*Beware the Parasitic Tribe*", with comments such as "*they infect the body politic like a parasite*" and "*And what we need to do, perhaps more than anything, is remove these people, once-and-for-all, from our country.*"[85]

- In *R v Kroeplin*,[86] two individuals affixed posters outside Burlington Art Gallery and City Hall, which the sentencing judge described as "*depict[ing] Jews and Black people as vermin who ought to be eradicated*".[87] The first poster depicted a Jewish man and Black man with a rat and cockroach and words drawing an analogy between them, including the words "*Let's face it a world without [depiction of a Jewish man and a Black man] would be like a world without [depiction of a rat and a cockroach]*".[88] The second poster depicted a Jewish man being bound and shot in the back of the head,[89] and the third poster depicted the Israeli flag inside a red circle with a red diagonal line across it.[90]

- In *R v Dion*,[91] the individual posted two YouTube videos on the second anniversary of the massacre at the Grand Mosque of Quebec,[92] in which he stated that "*the vast majority of Muslims are nothing but excrement that causes (sic) harm everywhere*" and encouraged Quebecois and Canadians to stand up against them and to get them out of the country, recalling the yellow vest movement in France.[93]

- In *R v Huot*,[94] the individual made several hateful posts against Arabs and Muslims on a Facebook chat following the 2017 attack on a Quebec City Mosque in which several people were killed. In one of the posts, the offender wrote "*YES I am against immigration and YES I hates everything Arab-Tamil-Muslim…Personally, there is nothing that bothers me less than the death of a few Tamil.*"[95]

---

[80] See, Second Reading of *Inciting Racial Hatred Bill 2025* (NSW), p 14.
[81] See, Second Reading of *Inciting Racial Hatred Bill 2025* (NSW), p 14. This proposed definition reflects the views of the Australian Jewish community set out in the Executive Council of Australian Jewry Response to Questions on Notice, of 12 December 2024, submitted to the Senate Legal and Constitutional Affairs Committee Inquiry into the *Criminal Code Amendment (Hate Crimes) Bill 2024* (Cth).
[82] *Criminal Code* (Canada), s 319(2). Various defences apply, see s 319(3).
[83] *R v Travis Patron* (2022) SKKB 231. A decision of the Court of Kings Bench for Saskatchewan, which is a superior court of criminal jurisdiction.
[84] *R v Travis Patron* (2022) SKKB 231 at [9]-[10].
[85] *R v Travis Patron* (2022) SKKB 231 at [9]-[10].
[86] *R v Kroeplin* 2021 ONCJ 19. A decision of the Ontario Court of Justice.
[87] *R v Kroeplin* 2021 ONCJ 19 at [54], [131].
[88] *R v Kroeplin* 2021 ONCJ 19 at [54].
[89] *R v Kroeplin* 2021 ONCJ 19 at [54].
[90] *R v Kroeplin* 2021 ONCJ 19 at [55].
[91] *R v Dion* 2020 QCCS 3049. A decision of the Superior Court of Quebec.
[92] *R v Dion* 2020 QCCS 3049 at [31].
[93] *R v Dion* 2020 QCCS 3049 at [2].
[94] *R v Huot* 2018 QCCQ 4650. A decision of the Court of Quebec.
[95] *R v Huot* 2018 QCCQ 4650 at [5].

- In *R v MG*,[96] the individual graffitied six places of worship with "*vile hate messages*" in red spray paint.[97] This included Kehillat Beth Israel Synagogue and Torah Institute (two swastikas and the phrases "*Kill all Kikes*" and "*White Power 1488*"),[98] a Rabbi's residence and place of worship (a swastika and the word "*Kike*"),[99] and Machziliel Hadas congregation (swastikas, the phrases "*Kill all Kikes. Save the White Race*", "*88Sieg Heil*" and "*666*").[100] It also included Parkdale United Church, also the home congregation of a prominent African Canadian minister (two swastikas and the phrase "*1488 niggers*"[101]), Ottawa Muslim Association Mosque (two swastikas and the phrases "*fuck Allah*" and "*go home 666*")[102] and Ottawa Jewish Community Campus (the phrases "*white power*" and "*kikes*").[103] The sentencing judge described the offender's conduct as having a "*profound*" impact, which undermined the sense of security of the community as a whole.[104]

*2.1.5 The requirement to prove a reasonable person would fear harassment, intimidation or violence, or fear for their safety (section 93ZAA(1)(b) of the Act)*

The requirement in section 93ZAA(1)(b) of the Act should be removed, to give section 93ZAA of the Act an appropriate scope of operation, for the following reasons.

First, as above, it appears that the Government intends section 93ZAA to proscribe "*hateful, racist language*" and similar conduct, which may "*ultimately inspire…a violent act*".[105] However, subsection (1)(b) confines the scope of the provision to conduct which would cause a reasonable member of the targeted group to "*fear harassment, intimidation or violence"*, or "*fear for the reasonable person's safety*".[106]

It follows that subsection (1)(b) excludes from the offence provision conduct which incites (or promotes) hatred, and does so intentionally, in circumstances where inflicting fear within a reasonable member of the targeted group cannot be proven to the criminal standard. As a result, even if there is a proven detrimental impact on the wider community from the intended act of inciting (or promoting) hatred, the failure to prove that the conduct would inflict fear would mean that no offence has been committed. This would appear to defeat the purpose of the provision.

This is aptly illustrated by the hateful, antisemitic graffiti which occurred in Sydney in January 2025. It appears the Government seeks to proscribe this form of conduct, in that the Attorney General described the bill as a "*targeted legislative response*" to the escalating incidents, including graffiti, which sought to specifically target the Jewish community,[107] and noted the definition of "*public act*" would be amended to "*put beyond any doubt that graffiti is also a public act"*.[108]

However, it is foreseeable that subsection (1)(b) would exclude from liability graffiti involving a derogatory, hateful racial slur such as "*F** THE JEWS*", because it may not be possible for a prosecutor to prove to the criminal standard that each instance of graffiti would cause a reasonable person who was the target of the graffiti, or a reasonable member of the Jewish community, to:

a. fear harassment, that is, "*trouble by repeated attacks, incursions*" or that someone will "*disturb persistently; torment*";[109]
b. fear intimidation, that is,
    i. being "*made timid, inspire with fear*", or that someone will "*force into or deter some action by inducing fear*";[110] or
    ii. the "*causing of a reasonable apprehension of injury to a person or to the person's [family]… or violence or damage to any person or property*";[111]
c. fear violence; or
d. fear for their safety.

---

[96] *R v MG* 2017 ONCJ 565.
[97] *R v MG* 2017 ONCJ 565 at [3].
[98] *R v MG* 2017 ONCJ 565 at [3].
[99] *R v MG* 2017 ONCJ 565 at [4].
[100] *R v MG* 2017 ONCJ 565 at [4].
[101] *R v MG* 2017 ONCJ 565 at [5].
[102] *R v MG* 2017 ONCJ 565 at [5].
[103] *R v MG* 2017 ONCJ 565 at [6].
[104] *R v MG* 2017 ONCJ 565 at [9]-[10].
[105] Second Reading of *Inciting Racial Hatred Bill 2025* (NSW).
[106] *Crimes Amendment (Inciting Racial Hatred Bill 2025* (NSW), Schedule 1, s 93ZAA(1)(b).
[107] Second Reading of *Inciting Racial Hatred Bill 2025* (NSW).
[108] See, Second Reading of *Inciting Racial Hatred Bill 2025* (NSW), p 15.
[109] Macquarie Dictionary, Definition of "harassment".
[110] Macquarie Dictionary, Definition of "intimidation".
[111] The term "iintimidation" may be interpreted consistently with section 545B(2) of the *Crimes Act 1900* (NSW), which defines "intimidation" as "*causing of a reasonable apprehension of injury to a person or to the person's spouse, de facto partner, child or dependent, or of violence or damage to any person or property*".

Whilst each instance of antisemitic graffiti may not attract liability pursuant to subsection (1)(b), they plainly promote hatred of the Australian Jewish community. The intentional promotion of hatred is itself harmful to society and destructive of social cohesion, and ought to attract criminal liability irrespective of whether it raises an immediate fear response. Further, the cumulative effect of these incidents is to instil fear and unease across the Australian Jewish community, and to create an environment in which antisemitic hatred is seen to be tolerated, even permitted, by law.

If, contrary to the above, the Government is minded to retain subsection (1)(b), the statutory review should give specific consideration as to whether the provision has been a hindrance to prosecution of the offence.

*2.1.6 Penalty*

The penalty should be strengthened, noting that if subsection (1)(b) is retained. The offence provision sets a threshold of liability comparable with the New South Wales offences of 'stalking or intimidation'[112] and affray,[113] that is, offences which concern conduct that causes, or is intended to cause, fear of harm. Those offences are punishable by five or ten years' imprisonment, respectively. Further, the comparable serious vilification offence provision in Victoria attracts a penalty of three years' imprisonment.[114]

*2.1.7 The "religious purpose" exemption: section 93ZAA(2) of the Act*

The "*religious purpose*" exemption should be removed to ensure that the *intentional* incitement, or promotion of hatred, is not exempted from liability merely because it occurs in the context of religious teaching or discussion.

Section 93ZAA(2) of the Act exempts from liability "*an act that consists **only** of directly quoting from or otherwise referencing a religious text for the purpose of religious teaching or discussion.*" (emphasis added). It appears the Government intends to exempt from liability only the substance of religious texts, in that the Attorney General observed:

> "*This exemption is intended to protect freedom of religion, and to recognise that some historical religious texts may contain archaic language or historical "calls to arms" that, when part of religious teachings, should not come within the purview of the offence.*"[115]

The exemption should be removed, as conduct which *only* quotes the substance of a religious text without additional commentary is not likely to satisfy the threshold of intentionally inciting hatred. That is, if *intention* is proved, then *ipso facto* the "purpose" is to incite (or promote) hatred of groups or individuals rather than religious teaching or discussion. Conversely, if the sole purpose is religious teaching or discussion, then an intention to incite (or promote) hatred will be absent.

At a minimum, the words "*or otherwise referencing*" should be removed because their inclusion could sanction commentary that incites hatred merely by "*referencing*" a religious text, no matter how tenuous the link between the incitement and the text may be.

If the Government is minded to retain the exemption, it must be construed on its terms, such that it does not exempt conduct which quotes or references a religious text, but is preceded or succeeded by other conduct which in its entirety promotes hatred or violence. For example, in *Wertheim v Haddad*, a case brought under section 18C of the *Racial Discrimination Act* (Cth), Steward J rejected a submission that antisemitic statements, including "*disparaging generalisations about Jews*" such as "*Jews are descendants of apes and pigs*" were made as part of a genuine religious teaching or discussion, in circumstances where the lecture referenced religious texts.[116]

### *2.2 Further aspects in which the criminal law could protect against the incitement of hatred*

In addition to section 93ZAA of the Act, the criminal law in New South Wales might better protect against the incitement of hatred by strengthening the offence of display of Nazi symbol, including these offences within the scope of performance crime offences, providing alternative arrangements for victims and witnesses to give

---

[112] *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 13.
[113] *Crimes Act 1900* (NSW), s 93C, insofar as it requires proof that the conduct "*would cause a person of reasonable firmness present at the scene to fear for his or her personal safety*". The offence has a maximum penalty of 10 years imprisonment.
[114] *Crimes Act 1958* (VIC), New Division 2D, s 195N.
[115] See, Second Reading of Inciting Racial Hatred Act 2025, p 14.
[116] *Wertheim v Haddad* [2025] FCA 720 at [150]-[151], [158], [222]-[232].

evidence in proceedings for these offences, and making procedural amendments to encourage the prosecution of serious offences on indictment.

### *2.2.1 Clarify and strengthen offence of display of Nazi symbol*

The New South Wales offence of displaying a Nazi symbol[117] might be amended to specifically include a Nazi salute. This would correspond with offences under Commonwealth legislation, and in other states and territories.[118] It would also clarify the scope of the offence, which was recently the subject of a submission that a Nazi salute was not within its scope.[119] The penalty might also be strengthened to correspond with the equivalent Commonwealth offences,[120] to promote parity in sentencing for comparable conduct.

### *2.2.2 Broaden 'performance crime' offence to include Nazi symbols/salute and offences of inciting violence and inciting hatred*

New South Wales and other states and territories have recently introduced new 'performance crime' or 'post and boast' offences to address the increase of individuals posting footage of particular offences and criminal behaviour online.[121] At present, Western Australia is the only jurisdiction in which 'post and boast' legislation will also apply to dissemination of material depicting conduct which promotes racial animosity (and similar conduct amounting to an offence under Chapter XI of the *Code*), or which involves the display of a Nazi symbol or making a Nazi gesture (including a Nazi salute), in relevant circumstances.[122]

The New South Wales 'performance crime' offence concerns dissemination of material depicting a motor theft offence or a breaking and entering offence.[123] The 'performance crime' offence should be amended to also prohibit the dissemination of material depicting conduct which incites (or promotes) violence, incites (or promotes) hatred and/or displays a Nazi symbol or Nazi salute. This would send a clear message that the incitement, promotion or glorification of hatred, violence and Nazism is not accepted in New South Wales.

### *2.2.3 Provide alternative arrangements for victims and witnesses to give evidence in proceedings concerning offences of inciting violence or hatred, and display of Nazi symbol*

The New South Wales Government might provide alternative arrangements for victims and witnesses to give evidence in the proceedings of alleged offences of inciting violence or hatred, and display of Nazi symbols.

For example, Victoria has recently passed legislation to allow alleged victims of serious vilification offences to give evidence by CCTV, use screens to impede the line of vision with the accused, and have a support person present.[124] In New South Wales, similar measures exist for children and victims of domestic violence offences,[125] and proceedings for domestic violence and certain sexual offences are to be heard in camera during the complainants evidence, unless the court orders otherwise.[126]

Measures of this kind would assist to address a major barrier to the reporting of antisemitic incidents, namely victims and witnesses are fearful of being further traumatised, harassed or stalked as their names become attached to a case.

### *2.2.4 Procedural amendments regarding the offence of inciting violence*

The New South Wales Government might consider removing the requirement that the offence of inciting violence be dealt with summarily unless an election is made.[127] Whilst the discretion to prosecute would remain

---

[117] *Crimes Act 1900* (NSW), s 93ZA.
[118] *Criminal Code 1995* (Cth), s 80.2H; *Summary Offences Act 1966* (VIC), ss 41J, 41K, 41L; *Summary Offences Act 1953* (SA), s 32B and *Criminal Code Act 1913* (WA), s 80P.
[119] For example, in an appeal against conviction for a Nazi salute outside the Sydney Jewish Museum, submissions were made as to whether, as a matter of statutory construction, the gesture is capable of amounting to a Nazi symbol. See, News.com.au, '*Man's Nazi salute conviction overturned after claim he was copying Ricky Gervais*'
[120] *Criminal Code* (Cth), s 80.2H.
[121] See, eg, NSW Ministerial Media Release, '*New bail and performance crime laws passed to prevent youth crime*', 22 March 2024; *Crimes Act 1900* (NSW), s 154K; *Summary Offences Act 2005* (QLD), 26B; *Criminal Code Act 1983* (NT), s 276H.
The legislation is yet to be passed in Victoria, South Australia and Western Australia, see *Crimes Amendment (Performance Crime) Bill 2025* (VIC); *Summary Offences (Prohibition of Publication of Certain Material) Amendment Bill 2025* (SA) and *Criminal Code Amendment (Post and Boast Offence) Bill 2025* (WA).
[122] *Criminal Code Amendment (Post and Boast Offence) Bill 2025* (WA), proposed s 221I. '*Relevant offence*' includes an offence against a provision of Chapter XI and 11A: *Criminal Code Amendment (Post and Boast Offence) Bill 2025* (WA), proposed s 221H.
[123] *Crimes Act 1900* (NSW), s 154K.
[124] *Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2024* (VIC), Part 4, clause 37, amendment of *Criminal Procedure Act*, s359.
[125] *Criminal Procedure Act 1986* (NSW), s 283C (recorded statements of vulnerable persons), s 283D (recorded statements of domestic violence victims), s 289V (alternative arrangements for complainants), s 306ZB (alternative arrangements for vulnerable persons) and 306ZQ (support persons).
[126] *Criminal Procedure Act 1986* (NSW), s 289U. The court may permit media representatives to view the proceedings from a place other than the courtroom by means of closed-circuit television facilities: s 291C(2).
[127] *Criminal Procedure Act 1986* (NSW), s 260(1), Schedule 1, Table 1, Part 3, item 10CA.

with police,[128] removing this requirement might encourage the referral of more complex matters to the Office of the Director of Public Prosecutions for consideration, whilst not prohibiting summary disposal in appropriate matters. A corresponding course should be taken with respect to section 93ZAA of the Act.

**Focus question 3*: Striking an appropriate balance between criminal law protections against the incitement of hatred, the implied freedom of political communication and freedom of religion***

The criminal law ought to strike an appropriate balance between protections against the incitement of hatred, the implied freedom of political communication and freedom of religion. This balance is modelled by the recently enacted Victorian serious vilification offence provisions.

*3.1 Implied freedom of political communication*

In Australia, freedom of expression is rightly regarded as fundamental. In a free society, ideas of any kind–religious, political, ideological or philosophical–are and should be capable of being debated and defended. Robust critiques of ideas of any kind, no matter how passionately adhered to, do not constitute a form of social exclusion of those who adhere to them.

In contrast, the vilification of individuals or groups of people on the basis of their race or other inherent attribute, especially if the vilification is intentional, can have nothing to do with freedom of expression. Such vilification is not about ideas, opinions or beliefs. It is about an immutable part of a person's identity, which is not amenable to change through discussion or debate. It is a denial of the target's humanity. It necessarily sends a message that the people who are targeted, by virtue of who they are, and regardless of how they behave or what they believe, are not members of society in good standing. This cannot but vitiate their sense of belonging and their sense of assurance and security as citizens.

The implied freedom of political communication restricts the powers of the executive and legislature and is not a personal right granted to individuals.[129] Its purpose is to safeguard freedom of communication concerning political or government matters, which enables Australians to exercise a free and informed choice as electors.[130] This is entirely compatible with criminal law protections against the incitement of hatred which safeguard respect and tolerance for all Australians with respect to their inherent attributes and which, as noted, have nothing to do with ideas. Hence, the rationale for the implied freedom to communicate about political matters (which is to inform political change via the democratic process) is not capable of realisation in such cases. In giving effect to this distinction, lessons can be learned from the operation of the serious vilification offences recently enacted by the New South Wales and Victorian governments, and the Victorian offence of serious religious vilification.[131]

*Cottrell v Ross*

*Cottrell v Ross*[132] concerned proceedings pursuant to the Victorian offence of serious religious vilification, which prohibited knowingly engaging in conduct with the intention of inciting serious contempt for, or revulsion or severe ridicule of, that other person or class of persons, on the ground of their religious belief or activity.[133] The case concerned an individual who had participated in an 'Islamic style' mock-beheading of a mannequin outside the Bendigo City Council,[134] and published a video of the mock execution online to promote a protest against the council's proposal to build a mosque.[135]

Chief Judge Kidd considered an argument that the offence provision impermissibly burdened the implied freedom of political communication, because it was akin to the proscription of a "*mere insult*", which was addressed by the High Court in *Coleman v Power*.[136] His Honour considered the offence provision captured only a "*slender field*" of discourse,[137] and that *if* it imposed any burden on the implied freedom of political communication, that burden was "*incidental, insubstantial and not meaningful*".[138] His Honour further observed that the facts of the case were "*illuminating*" – the individual was free to communicate about the local

[128] *Crimes Act 1900* (NSW), s 93Z(4)(b).
[129] *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.
[130] *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 560.
[131] *Racial and Religious Tolerance Act 2001* (VIC), s 25(2).
[132] [2019] VCC 2142.
[133] *Racial and Religious Tolerance Act 2001* (VIC), s 25(2).
[134] *Cottrell v Ross* [2019] VCC 2142 at [3].
[135] *Cottrell v Ross* [2019] VCC 2142 at [4].
[136] *Coleman v Power* (2004) 220 CLR 1. See, *Cottrell v Ross* [2019] VCC 2142 at [125]-[250].
[137] Compare *Cottrell v Ross* [2019] VCC 2142 at [229] per Kidd CJ.
[138] *Cottrell v Ross* [2019] VCC 2142 at [159] per Kidd CJ.

government proposal concerning the Bendigo mosque; the offence provision burdened only the extent to which the conduct seriously vilified others based on their religion.[139]

The terms of the offence provision considered in *Cottrell v Ross* differ slightly from the terms of the offence provisions recently enacted in Victoria and New South Wales. However, the reasoning remains illustrative and helpful to demonstrate how criminal law protections against the incitement of hatred strike an appropriate balance with the implied freedom of political communication.

*O'Connell v The State of Western Australia*

*O'Connell v The State of Western Australia*[140] concerned proceedings pursuant to sections 77 and 80B of the Western Australian *Criminal Code*. Section 77 proscribes conduct that is done "*otherwise than in private*" which is intended "*to create, promote or increase animosity towards, or harassment of, a racial group, or a person as a member of a racial group*" (where *animosity towards* is defined as "*hatred of or serious contempt for*").[141] It carries a maximum penalty of imprisonment for 14 years. Section 80B proscribes conduct that is done "*otherwise than in private*" which is "*likely to harass a racial group, or a person as a member of a racial group*", and the offence carries a maximum penalty of imprisonment for 3 years.[142]

In that case, an individual repeatedly verbally abused a Jewish student outside a protest at an IGA store in South Perth,[143] and uploaded footage of the incident online with additional commentary and blogs.[144] The statements included "*'You are a racist homicidal maniac,' 'You are a racist Jew,'… it is in your religion and race' and 'You kill little Palestinian children and you support it'*".[145] Amongst other things, the online content described "*'the modus operandi of Jewish cryptocracies… using deception, blasphemy, bribery and homicide*" and claimed that "*'the Jew runs, owns and dominates the internet*".[146]

The individual was convicted of the offences, and sentenced to a total effective sentence of 3 years' imprisonment.[147] In convicting the individual, the jury rejected a defence that the statements were made reasonably and in good faith in the course of a statement, discussion or debate made or held in the public interest.[148]

The Western Australian Court of Appeal agreed, and dismissed an appeal against the conviction and sentence.[149] Mazza JA (with whom Martin CJ and Buss JA agreed) described the statements as "*…well beyond any legitimate political discourse*".[150] His Honour also described the blogs as "*intended to imbue others*" with the individual's deep hatred towards Judaism, Jews and the nation of Israel.[151]

Although the offence provisions in Western Australia differ from section 93ZAA of the Act, the case is significant because the jury's verdict reflects public acceptance that certain hateful conduct extends beyond "*legitimate political discourse*" and amounts to a criminal offence.

*3.2 Freedom of religion*

Criminal law protections ought to be consistent with Australians' free and respectful engagement with religion. The recently enacted Victorian offences strike an appropriate balance in this respect.[152] In particular, the Victorian offence does not include any exemption for reference to religious texts or discussion. It is considered compatible with freedom of religion on the basis that it does not limit the right to hold a religious belief, and targets only the most serious and harmful forms of vilification.[153] Moreover, an ostensible religious rationale for vilification may be proffered unreasonably, capriciously or in bad faith, and may be nothing more than a pretext for giving vent to bare prejudice. The law should not accommodate this. Accordingly, the compatibility of the proposed NSW offence provision with freedom of expression would not be displaced by removal of the exemption for references to religious texts or discussion.

---

[139] *Cottrell v Ross* [2019] VCC 2142 at [158].
[140] [2012] WASCA 96.
[141] *Criminal Code Act 1913* (WA), ss 76, 77.
[142] *Criminal Code Act 1913* (WA), s 80B.
[143] *O'Connell* [2012] WASCA 96 at [13].
[144] *O'Connell* [2012] WASCA 96 at [17]-[19].
[145] *O'Connell* [2012] WASCA 96 at [13].
[146] *O'Connell* [2012] WASCA 96 at [22].
[147] *O'Connell* [2012] WASCA 96 at [5].
[148] *O'Connell* [2012] WASCA 96 at [50], [196].
[149] *O'Connell* [2012] WASCA 96 at [1], [2], [215]-[216].
[150] *O'Connell* [2012] WASCA 96 at [197].
[151] *O'Connell* [2012] WASCA 96 at [201].
[152] *Crimes Act 1958* (VIC), New Division 2D, ss 195N and 195O.
[153] Statement of compatibility of the *Justice Legislation Amendment (Anti-vilification and Social Cohesion) Bill 2024* (VIC), tabled 27 November 2024.

**Focus question 4*: Criminal law protections against the incitement of hatred are important to promote social cohesion***

Criminal law protections play an important, foundational role in delineating between robust discourse that is a necessary feature of our democracy, and conduct that is harmful and must be proscribed. In the absence of criminal law and other protections, there has not been adequate means to address the incitement and promotion of hatred against Jewish Australians and other vulnerable groups. The absence of appropriate redress is one factor that has allowed social cohesion to deteriorate.

The section 93ZAA offence is an important, foundational step to restore the values of a tolerant, respectful society, and to rebuild social cohesion. It will make clear that the incitement or promotion of hatred against vulnerable groups is not tolerated in New South Wales. Further, complementary measures may be taken to restore and rebuild social cohesion, such as educational and other programs which promote dialogue and respectful engagement.

**Focus question 5: *Addressing potential unintended consequences***

*5.1 An overly broad scope of conduct*

A potential unintended consequence, and an important consideration, is the risk of a provision capturing an overly broad scope of conduct and unduly impeding free and respectful debate, or imposing a "*chilling effect*" on public debate. However, the recently enacted New South Wales and Victorian offences capture an appropriate scope of conduct. This is illustrated by a review of offences proven under the comparable Canadian offence of the wilful promotion of hatred (see above at [2.1.4]).

This concern might also be addressed by providing examples within the offence, as a guide of the form of conduct which Parliament intends to proscribe. For instance, with respect to the offence of coercive control, Parliament provided examples of behaviour that is "*economically or financially abusive*" and that "*unreasonably controls or regulates a person's day-to-day activities*".[154] These examples were drafted with reference to existing legislation and stakeholder feedback, and were described by the Attorney General as reflecting the "*particular behaviours*" that the offence seeks to address.[155] Similarly, the statutory definition of "*intimidation*" includes examples of conduct to guide application of the offence provision.[156]

*5.2 An imprecise or subjective threshold*

In its final report concerning serious racial and religious vilification, the NSW Law Reform Commission expressed the view that a vilification offence which includes hatred (or similar threshold) may introduce imprecision and subjectivity into the criminal law, as the term (and other such terms) are difficult to define and can mean different things to different people.[157] However, courts are routinely called upon to interpret and apply words of imprecise and subjective meaning in various areas of the law.

This concern might be addressed by defining the term "*hatred*" (see above), or providing that an objective test will apply. An objective test has been adopted with respect to civil anti-vilification provisions, and allows a court to consider how the conduct would be interpreted, in all the circumstances, by an ordinary reasonable member of the relevant audience.[158]

*5.3 A disproportionate effect on marginalised communities*

A further possible unintended consequence is that section 93ZAA of the Act might have a disproportionate effect on culturally marginalised groups.

In its review of serious racial and religious vilification, the NSW Law Reform Commission observed that changes to section 93Z of the Act could result in a "*disproportionate, negative effect*" on culturally marginalised groups, that is, individuals and communities the offence was designed to protect.[159] This observation particularly centred

[154] *Crimes Act 1900* (NSW), s 54F(2)(c), (i).
[155] Second Reading Speech to the *Crimes Legislation Amendment (Coercive Control) Bill 2022* (NSW), in New South Wales, Legislative Assembly, Parliamentary Debates, 12 October 2022 (The Hon Mark Speakman MP), p 9052.
[156] *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 7(1).
[157] NSW Law Reform Commission, '*Serious racial and religious vilification*', Final Report, September 2024, pp 51-53 [4.30]-[4.40].
[158] See, eg, *Jones v Trad* [2013] NSWCA 389 at [56]ff.
[159] NSW Law Reform Commission, '*Serious racial and religious vilification*', Final Report, September 2024, p 43 [3.70]-[3.71].

on a concern that the offence would be used disproportionately with respect to police's interaction with First Nations peoples and disabled people, who are each disproportionately represented in the criminal justice system.[160]

If the same concern arose with respect to section 93ZAA of the Act, it might be addressed by providing mandatory training of police concerning the rationale, operation and intended application of the offence provision in various contexts.

**Focus question 6: *Other measures related to criminal law reform that may promote social cohesion***

Social cohesion, harmony and safety rest upon mutual acceptance, tolerance and respect. These values are eroded when legal structures fail to address, or inadequately address, conduct that targets or denigrates a particular group within society.

The New South Wales government might consider the following measures to promote greater consideration and recognition of conduct that targets or denigrates a vulnerable group within society, and the resulting harm to social harmony and cohesion.

*6.1 Broaden the aggravating factor on sentence for criminal offences*

At present, in New South Wales it is an aggravating factor on sentence for criminal offences where the offence was partially or wholly motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged, including a particular religion, racial or ethnic origin, and other vulnerable groups.[161] The Government might consider broadening the factor to include circumstances where the offending conduct involves an expression or demonstration of hatred (or similar),[162] or the intentional selection of a victim on the basis of a protected attribute.[163] This would (in part) reflect the position in the United Kingdom,[164] and legislation presently proposed in Tasmania.[165]

Broadening the scope of this provision would allow a sentencing court to consider its application, with appropriate weight, in a broader scope of cases. This might include circumstances where a motive cannot be proven to the requisite standard (for instance, where the offending occurs in the context of a pre-existing conflict),[166] or where the offending conduct involves derogatory slurs against an individual or group on the basis of a protected attribute.[167] Overall, broadening the scope of the provision would allow a sentencing court to denounce hateful conduct where it does not amount to an offence of 'inciting hatred', or a motivation of hatred or prejudice, but nonetheless undermines the fabric of a cohesive and harmonious society.

*6.2 Introduce community impact statements for relevant offences*

The Government might consider providing for consideration of community impact statements on sentence for offences which yield a particular impact upon a person or group on the basis of a protected attribute. This might include offences of inciting violence, inciting hatred, display of a Nazi symbol,[168] and other criminal offences motivated by hatred or prejudice based on a protected attribute,[169] or which otherwise involve hatred or prejudice of that kind.

Offences of this kind inflict a particular harm upon the targeted group, and upon societal harmony and cohesion. A community impact statement would allow a sentencing court to consider the broader implications of the offending conduct upon the targeted group and broader society, whilst keeping in balance the relevance and weight of the community impact to the sentencing exercise. This would also enhance achievement of a purpose of the sentencing regime, namely that a court may impose a sentence on an offender to "*recognise the harm done to the victim of the crime and the **community***" (emphasis added).[170]

---

[160] NSW Law Reform Commission, '*Serious racial and religious vilification*', Final Report, September 2024, p 43 [3.72]-[3.74].
[161] *Crimes (Sentencing Procedure) Act 1999* (NSW), s21As 21A(2)(h).
[162] See, eg, *Sentencing Act 2020* (UK), s 66(4). See also, *Sentencing Amendment (Aggravating Factors) Bill 2025* (TAS).
[163] See, eg, United States Sentencing Commission, '*Guidelines Manual 2024*', s 3A1.1 (November 2024), p 353, at [3A1.1.(a)]. Compare *R v Aslett* [2006] NSWCCA 49 at [124].
[164] *Sentencing Act 2020* (UK), s 66(4).
[165] *Sentencing Amendment (Aggravating Factors) Bill 2025* (TAS).
[166] See, eg, *R v Winefield* [2011] NSWSC 337 at [13], [26], [28].
[167] See, eg, *R v Robinson & others* [2007] NSWDC 344 at [26].
[168] *Crimes Act 1900* (NSW), Part 3A, Divisions 8 and 9.
[169] *Crimes (Sentencing Procedure) Act 1999* (NSW), s 21A(2)(h).
[170] *Crimes (Sentencing Procedure) Act 1999* (NSW), s 3A(g).

*The Canadian model*

The Canadian *Criminal Code* provides a helpful model for the consideration of community impact statements of this kind.[171]

The *Code* provides suitable parameters for the content of community impact statements, which provide a guide to place only relevant material before the court. For instance, a community impact statement may describe the impact of the offence on the community, including the harm or loss suffered, the physical, emotional and economic impacts, and any resulting fears that community members have for their security.[172] However, the statement must not include any statement about the offence or the offender that is not relevant to that harm or loss, or any unproven allegation.[173] It must also not include any opinion or recommendation about the sentence, except with the court's approval.[174]

Further, and importantly, the *Code* provides for community impact statements to be filed by an individual on behalf of a community. This is particularly important, as it allows for an appropriate representative of a particular group (such as a peak representative body) to convey the impact of the offending conduct upon their community in their own terms.

*Case study: R v Gobin*

In Canada, community impact statements have been particularly effective in allowing a court to consider the implications of hateful conduct upon a particular community group. For instance, in *R v Gobin*,[175] the individual spat on two individuals and said words to the effect of "*Hitler should have killed you all*", "*Hitler was right*", "*Hitler should have taken you out*".[176] He also made a Nazi salute and said "*hail Hitler*" (sic).[177] The individual was convicted of two counts of assault and one count of breach of probation.[178]

Justice Townsend accepted that the offence was motivated by hatred or prejudice for Jewish people (which is also an aggravating factor pursuant to the Canadian *Criminal Code*),[179] and acknowledged the "*great*" impact of the conduct upon the Jewish community as a whole, with reference to the community impact statements.[180] The community impact statements described the conduct as "*acts of intimidation and dehumanization (sic) that echo the darkest moments in our collective history*",[181] occurring against the backdrop of an "*epidemic of hate crime targeting Jews*".[182] Townsend J said:

> "*It is clear from the individual and community victim impact statements that when a particular demographic of people are constantly, consistently, and repeatedly targeted by incidents entirely fuelled (sic) by hate, the impact of those crimes grows exponentially.*"

At the same time, Townsend J appropriately held in balance the relevance and weight of the statement to the sentencing exercise, stating:

> "*It must always be remembered though, that while I take the impact of this offence on the community very seriously, Mr. Gobin is to be sentenced on this offence, he is not to be, and will not be, punished for the entirety of hate-motivated attacks on the Jewish community. His actions are but part of the landslide of hate directed toward the Jewish community; he was not the beginning, nor (as referenced in the community victim impact statements) will he be the end. While Mr. Gobin is not at all responsible for the fears of the Jewish community, he is certainly responsible for exacerbating those fears.*"[183]

Overall, the sentencing remarks in *R v Gobin* illustrate how community impact statements may be an effective means to allow a sentencing court in New South Wales to consider, and take account of, the broader impact of offending conduct upon a vulnerable group, whilst holding in balance the relative weight of the community impact within the sentencing exercise as a whole.

---

[171] *Criminal Code* (Canada), s 722(1).
[172] *Criminal Code* (Canada), s 722(1); Form 34.3.
[173] *Criminal Code* (Canada), s 722(1); Form 34.3.
[174] *Criminal Code* (Canada), s 722(1); Form 34.3.
[175] *R v Gobin*, 2025 ONCJ 266.
[176] *R v Gobin*, 2025 ONCJ 266, p 2 [3].
[177] *R v Gobin*, 2025 ONCJ 266, p 2 [3].
[178] *R v Gobin*, 2025 ONCJ 266, p 1 [3].
[179] *R v Gobin*, 2025 ONCJ 266, p 2 [6]. *Criminal Code* (Canada), s 718.2(a)(i).
[180] *R v Gobin*, 2025 ONCJ 266, p 4 [13].
[181] *R v Gobin*, 2025 ONCJ 266, p 4 [12].
[182] *R v Gobin*, 2025 ONCJ 266, p 4 [11].
[183] *R v Gobin*, 2025 ONCJ 266, p 4 [14].

*New South Wales: current legislative framework & prior consideration of victim impact statements*

New South Wales legislation currently provides for victim impact statements to be tendered on sentence for certain offences,[184] either by a victim,[185] or an immediate family member of a victim who has died or lost a foetus as a result of the offence.[186] A sentencing court *must* consider a victim impact statement, and *may* make any comment on the statement that the court considers appropriate.[187] This legislative framework might be broadened to include community impact statements, of the kind provided for under the Canadian *Criminal Code*.

The New South Wales Government has historically considered (although did not adopt) a form of representative statement, which in quite different in form to the Canadian model, but was also described as a "*community impact*" statement.[188] This occurred in the context of a bill proposed following the king-hit death of Thomas Kelly in 2014. The bill sought to require a sentencing court to consider a victim impact statement when passing sentence, in light of prior judicial reasoning concerning victim impact statements in the context of homicide offences.[189] The bill also provided for the Commissioner of Victims Rights to make a statement concerning the impact of an offence on people living or working in the location in which the offence was committed, or upon the community generally, or a particular section of the community.[190] That form of "*community impact statement*" is quite distinct in purpose and form from the kind provided for in Canada, and which might be considered by the New South Wales Government.

South Australian legislation also provides for certain representative statements, namely neighbourhood impact statements and social impact statements, which may be tendered by a prosecutor or the Commissioner for Victims' Rights on sentence.[191] These representative statements are also quite distinct in form and purpose from the community impact statements provided for in Canada, which might be considered by the New South Wales Government.

Overall, the New South Wales Government might consider introducing community impact statements for offences which yield a particular impact upon a person or group on the basis of a protected attribute. The Canadian model illustrates how these statements can provide an effective means for a sentencing court to consider, and take account of, the broader impact of offending conduct upon a particular group, whilst holding in balance their relative weight to the sentencing exercise.

*6.3 Procedural amendments*

Finally, the New South Wales Government might introduce a law part code for offences motivated by hatred or prejudice,[192] to aid research and a clearer understanding of how these offences are dealt with within the criminal justice system. This was also recommended by the NSW Law Reform Commission in its recent review of serious racial and religious vilification offences.[193]

[184] *Crimes (Sentencing Procedure) Act 1999* (NSW), s 27.
[185] A *victim* is defined as a person against whom the offence was committed, or who witnessed the act of actual or threatened violence, the sexual offence, the death or the infliction of the physical bodily harm concerned: *Crimes (Sentencing Procedure) Act 1999* (NSW), s 26 (definition of *victim* and *primary victim*).
[186] *Crimes (Sentencing Procedure) Act 1999* (NSW), s 26 (definition of *family victim*).
[187] *Crimes (Sentencing Procedure) Act 1999* (NSW), s 30E(1).
[188] See, *Crimes (Sentencing Procedure) Amendment (Victim Impact Statements—Mandatory Consideration) Bill 2014* (NSW).
[189] Second Reading Speech to the *Crimes (Sentencing Procedure) Amendment (Victim Impact Statements-Mandatory Consideration) Bill 2014* (NSW) in New South Wales, Legislative Assembly, Parliamentary Debates, 20 March 2014 (The Hon John Robertson).
[190] *Crimes (Sentencing Procedure) Amendment (Victim Impact Statements—Mandatory Consideration) Bill 2014* (NSW).
[191] *Sentencing Act 2017* (SA), s 15(2).
[192] Within the meaning of *Crimes (Sentencing Procedure) Act 1999* (NSW), s21A(2)(h).
[193] NSW Law Reform Commission, '*Serious racial and religious vilification*', Final Report, September 2024, p xi, Recommendation 8.2, p 104 [8.79]-[8.82].