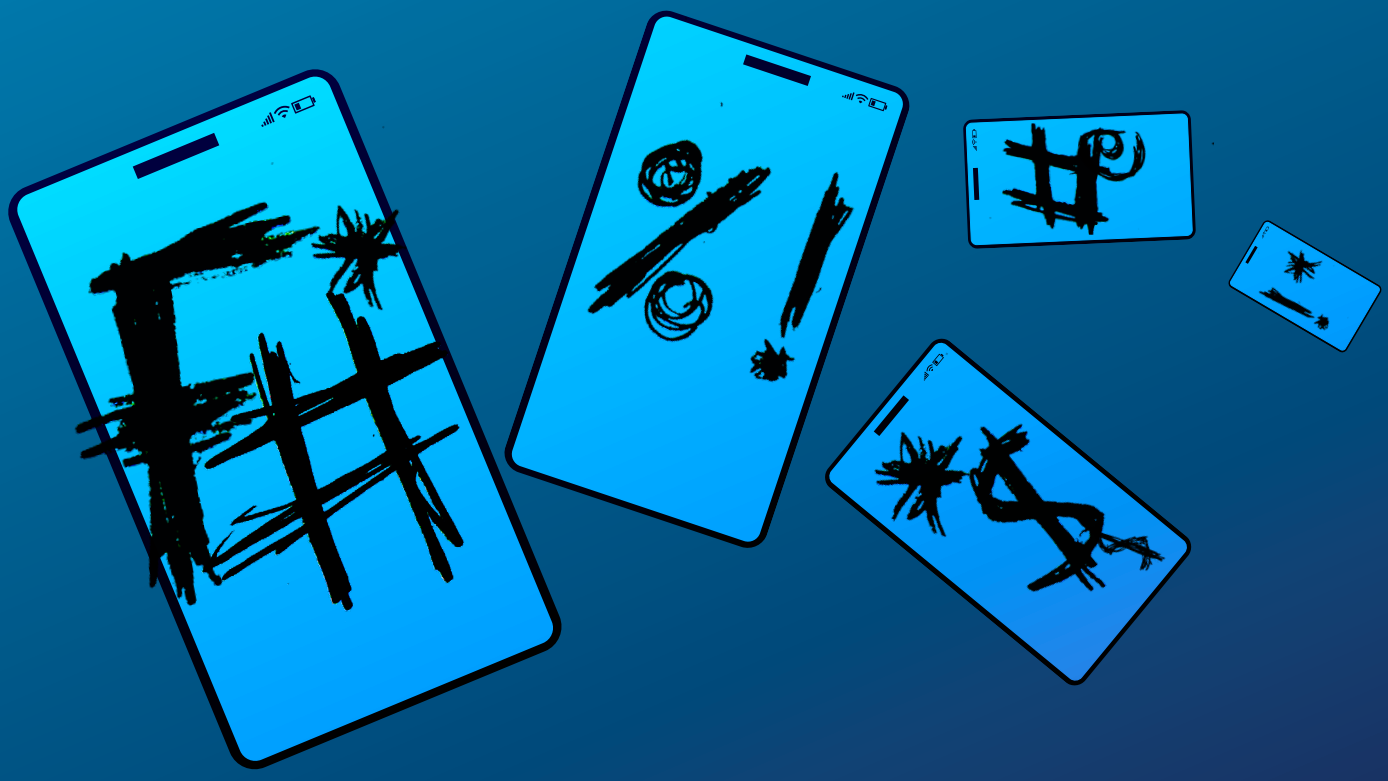
liber-net

Regulating Hate: Speech Law and Dissent in Australia



November 2026
Version 1.0

liber-net.org

Table of Contents

Introduction 3

Jurisdictional Comparison 13

- Federal 13
- New South Wales 24
- Victoria 32
- Queensland 39
- South Australia 46
- Western Australia 48
- Tasmania 53
- Northern Territory 58
- Australian Capital Territory 60

Conclusion and Recommendations 66

Appendix 70

This work is licensed under Creative Commons Attribution-ShareAlike (CC BY-SA) 4.0.

Introduction

Australia has no single legal definition of 'hate speech,' with the closest approximation being the concept of 'vilification.' Historically, most regulation of these concepts has operated through civil anti-discrimination systems. This civil model has functioned more as an educative and symbolic tool than a mass enforcement regime, handling a low volume of complaints with few even reaching a tribunal or court. However, in recent years, criminal offences for speech have expanded rapidly, encompassing symbol and slogan bans, lower fault thresholds, and an expanded array of protected attributes. As regards hate speech, the primary concern faced by Australians is not mass prosecution but instead activist litigation, procedural punishment, and extralegal institutional consequences. Critically, the online dimension remains legally unstable, with state tribunals, Commonwealth law, the eSafety Commissioner's powers, and platform liability overlapping significantly. Australia is not yet comparable to the 'arrests for tweets' model seen in the United Kingdom (UK), but recent reforms increase the risks of a punitive speech-control model emerging.

Australia has passed a swathe of hate speech laws in the last several years, in large part to combat antisemitism, but also in response to demands from a multitude of identity groups. It was the first Western country to openly compel companies to circumvent encryption, partly over concerns that 'hate groups' were using encrypted chats. Some limits on speech are uncontroversial: planning or conspiring to commit a crime and inciting violence, for example, are not permissible speech. Yet given Australia's role at the vanguard of online content controls through its recent age-gating legislation and the eSafety Commissioner, these new restrictions heighten concerns that permissible expression is narrowing and that the nation's incremental encroachment on free speech will serve as a template and bolster efforts to enact similar measures abroad. This report places Australia's rapid expansion of hate speech legislation in that broader context, with particular emphasis on the digital and online components.

This report is part of a larger project mapping the state of censorship and free speech in Australia; it focuses solely on hate speech. Free speech and expression are central to liberal democracy, but Australia protects them more narrowly and less robustly than many comparable Western democracies. Australia has no federal bill or charter of rights, but the Constitution has been interpreted as containing an implied freedom of political communication, recognised by the High Court of Australia. However, this is not a personal right to free speech. Rather, limits on legislative and executive power protect the political communication necessary for Australia's system of representative and responsible government.

In *Nationwide News Pty Ltd v Wills* (1992), the High Court struck down a federal offence of bringing the Industrial Relations Commission into disrepute, and in *Australian Capital Television Pty Ltd v Commonwealth* (1992), it invalidated a ban on political advertising on radio and television during election campaigns. These were the first decisions to recognise freedom of political communication.[1] In *Lange v Australian Broadcasting Corporation* (1997), a unanimous Court anchored the freedom in the text and structure of the Constitution, chiefly ss 7 and 24, which require senators and members of the House of Representatives to be 'directly chosen by the people,' s 64, which provides for responsible ministerial government, and s 128, which requires constitutional amendments to be put to the people at a referendum.[2] Voters cannot make a genuine choice unless they can communicate freely about political matters, so a law that burdens that communication must be justified. Since *McCloy v New South Wales* (2015), the Court has often asked whether such a law is 'suitable,' 'necessary' and 'adequate in its balance,' although in 2025 a majority said that 'express or ritual invocation' of this test 'is by no means necessary in every case.'[3] The derivation has never been free of criticism. Nicholas Aroney, while sympathetic to the results the Court reached, argued that its reasoning could not be sustained.[4]

That the freedom limits power rather than conferring a personal right is evident in *Levy v Victoria* (1997), in which Justice McHugh commented that the implied freedom of political communication within the context of the Constitution:

> *is not … a freedom to communicate. It is a freedom from laws that effectively prevent the members of the Australian community from communicating with each other about political and government matters relevant to the system of representative and responsible government provided for by the Constitution.*

In *Levy*, a protester was charged with entering a duck-hunting area in breach of safety regulations excluding anyone without a game licence. Several Justices accepted that this protest was political communication, even though it was mostly non-verbal. Even so, the Court unanimously upheld the regulations.[5]

---

1 *Nationwide News Pty Ltd v Wills (1992) 177 CLR 1; Australian Capital Television Pty Ltd v Commonwealth (1992) 177 CLR 106.*

2 *Lange v Australian Broadcasting Corporation (1997) 189 CLR 520, 557–62, 567.*

3 *McCloy v New South Wales (2015) 257 CLR 178, [2] (French CJ, Kiefel, Bell and Keane JJ); Babet v Commonwealth [2025] HCA 21, [49] (Gageler CJ and Jagot J), [72] (Gordon J), [242] (Beech-Jones J).*

4 Nicholas Aroney, *Freedom of Speech in the Constitution (Policy Monograph No 40, Centre for Independent Studies, 1998).*

5 *Levy v Victoria (1997) 189 CLR 579.*

Later challenges have had mixed results. The freedom has defeated laws on political donations and electoral spending, most recently Victoria's donation caps in April 2026, as well as Tasmania's anti-protest law in *Brown v Tasmania* (2017).[6] It has offered much less protection to offensive or unpopular speech. In *Coleman v Power* (2004), a 4:3 majority set aside a conviction for using 'insulting words' in public, with three Justices reading the offence down to words intended or reasonably likely to provoke violence. But in *Monis v The Queen* (2013), an evenly divided Court left standing the federal offence of using a postal service in an 'offensive' way, and in 2025 the Court unanimously upheld the Minister's power to refuse a visa to anyone who might 'incite discord' in the Australian community, a power used to keep out the American commentator Candace Owens.[7] Vilification laws have so far withstood challenges. In 2012, the New South Wales Court of Appeal upheld the State's homosexual vilification provision, and in July 2026 the Full Federal Court rejected Senator Hanson's argument that s 18C impermissibly burdens freedom.[8] Three further challenges are now before the High Court: Senator Hanson's application for special leave to appeal, a challenge to Queensland's slogan ban, and a challenge to the federal 'prohibited hate group' offences (discussed below).[9]

Outside of this, specific statutory protections exist in some contexts (for example, protections for journalists' sources, whistleblowers, or political communication in electoral law), but these are fragmented and do not amount to a general right to free speech.

Section 116 of the Constitution, which prevents the Commonwealth from making any law 'for prohibiting the free exercise of any religion,' may offer some further protection where speech is also religious practice. Professor Gabriël Moens has argued that it can operate as a free speech clause, since a restriction on religious expression can equally be framed as a restriction on free speech, and vice versa.[10] Its reach is narrow, however. Section 116 binds only the Commonwealth, not the states, which have enacted most vilification laws, and in *Kruger v Commonwealth* (1997) members of the High Court read it as reaching only laws whose purpose, not merely whose effect, is to prohibit the free exercise of

---

6 *Unions NSW v New South Wales (2013) 252 CLR 530; Brown v Tasmania (2017) 261 CLR 328; Unions NSW v New South Wales (2019) 264 CLR 595; Hopper v Victoria [2026] HCA 11.*

7 *Coleman v Power (2004) 220 CLR 1; Monis v The Queen (2013) 249 CLR 92; Farmer v Minister for Home Affairs [2025] HCA 38.*

8 *Sunol v Collier [No 2] (2012) 289 ALR 128; Hanson v Faruqi [2026] FCAFC 96.*

9 *White Australia Party Inc v Commonwealth (High Court of Australia, pending).*

10 Gabriel Moens, 'The Action-Belief Dichotomy and Freedom of Religion' (1989) 12(1) *Sydney Law Review 195, 215–16.*

religion.[11]

Australia's lack of robust speech protections is an obvious weak point, as the criteria for unlawful speech have expanded from conduct that causes demonstrable harm (such as incitement to violence, defamation, or fraud) to far more nebulous rationales. Because constitutional speech protection is relatively weak, legislative expansion that may encroach on free expression matters more.

Historically, most Australian hate speech regulation has operated through civil anti-discrimination and anti-vilification laws. These laws rely on complaints, often involve conciliation processes, and can include remedial outcomes such as apologies, undertakings, small compensatory payments, and other orders. They are imperfect and sometimes vulnerable to activist litigation, but for the most part they are relatively low-stakes to the accused compared with the prospect of criminal prosecution.

However, the legal landscape is swiftly changing. In the past several years, federal, state, and territory governments have introduced or expanded criminal offences, hate-symbol prohibitions, hate crime aggravating factors, and, in one case so far, restrictions on specific political slogans. Several of these laws lower the threshold from intentional incitement to recklessness, and extend protection to a wider range of attributes; nearly all apply to online expression.

The rapid expansion of legislation puts in place a set of tools that increases the risk of Australia heading down the UK's path. For now the risk is subtler: a growing patchwork of civil, criminal, administrative, professional, and platform-based controls that can chill lawful political and cultural debate. The central issue is therefore not whether Australia should address hateful conduct, but whether its expanding legal framework preserves a principled distinction between genuine threats or incitement on the one hand and controversial, offensive, or politically unpopular speech on the other.

We argue that civil laws worked relatively well despite some egregious cases of activist lawfare, operating as a relatively low-volume, conciliatory, and educational mechanism. A 2016 analysis of Australia's anti-vilification laws (Gelber and McNamara) found that in the decade to 2010, for example, only 165 to 342 anti-vilification complaints were lodged annually across all Australian jurisdictions, and fewer than 2 per cent of matters were resolved through formal tribunal or

11 *Kruger v Commonwealth (1997) 190 CLR 1, 40 (Brennan CJ), 86 (Toohey J).*

court adjudication.[12,13] Under the civil framework, the stakes are low across the board, except for the opportunity for a small number of activists to wage lawfare through the tribunal system. The Commonwealth and several states, including New South Wales, Victoria and Queensland, are now enacting laws to further restrict speech, particularly under criminal codes. While these laws are mostly untested, they have thus far been used to shut down public debate on political topics such as gender, race, and sexuality, as well as the Israel/Palestine conflict, as we detail in this report.

Furthermore, Australia has no single definition of hate speech. Indeed, 'hate speech' is a political or media term more than a single legal category. 'Vilification,' instead, is the core domestic concept. In most jurisdictions, it covers public conduct that incites hatred towards, serious contempt for, or severe ridicule of a person or group on the ground of a protected attribute. Section 18C of the federal *Racial Discrimination Act 1975* (Cth) (RDA) is worded differently; it applies to conduct reasonably likely to 'offend, insult, humiliate or intimidate.' The courts have read that phrase as requiring substantive public harm, so merely offensive speech generally falls below the civil vilification threshold. In criminal law, the threshold is higher, and is sometimes (but not always) linked to threats of physical violence.

Under federal criminal law in Australia, which excludes state and territory criminal legislation, a significant shift away from intent to mere 'recklessness' for some offences under the *Criminal Code Act 1995* (Cth) increases the risk to contested speech. Laws have moved beyond penalising direct, intentional threats or incitement; while not a Commonwealth offence, some jurisdictions now allow Australians to be prosecuted for provoking hatred, serious contempt, or severe ridicule, intentional or otherwise. Similarly, a shift has been seen from regulating conduct to increased regulation of symbols and even specific slogans: public display of Nazi symbols, terrorist symbols, and Hamas or Islamic State flags, and, in Queensland, public invocations of 'from the river to the sea' and 'globalise the intifada.'

---

12 Katharine Gelber and Luke McNamara, 'The Impact of Section 18C and Other Civil Anti-Vilification Laws in Australia' in *Perspectives on the Racial Discrimination Act: Papers from the 40 Years of the Racial Discrimination Act Conference (Australian Human Rights Commission, 2015) 158–9, 162–5 ('Impact of Section 18C'); drawing on Katharine Gelber and Luke McNamara, 'The Effects of Civil Hate Speech Laws: Lessons from Australia' (2015) 49(3) Law & Society Review 631.*

13 It is difficult to estimate the number of anti-vilification complaints across all Australian jurisdictions because there is no central reporting database, and most states and territories do not separate out reporting on general discrimination-related complaints from vilification-related complaints specifically. Gelber and McNamara, 'Impact of Section 18C' (n 12) provides the only known accounting of vilification-related complaints across multiple jurisdictions over a substantial, decade-long time-horizon.

Many of these laws regulate what is known as 'symbolic speech': conduct that conveys a message with few or no words, such as a gesture, a flag, an armband, a slogan on a T-shirt or a work of art.[14] The United States (US) Supreme Court has long protected such conduct, from black armbands worn by students protesting the Vietnam War to the burning of the American flag.[15] Australian law also recognises that symbols communicate. In *Levy*, Justice McHugh observed that '[s]igns, symbols, gestures and images are perceived by all and used by many to communicate information, ideas and opinions.'[16] Yet symbolic speech is precisely what the new laws target. The Commonwealth, every state and the Australian Capital Territory now ban the public display of Nazi symbols, several jurisdictions also ban gestures such as the Nazi salute, and Queensland has made it an offence to display or recite two political slogans. Brisbane artist James Hillier was warned by police over artworks on his website and is now one of seven plaintiffs challenging Queensland's slogan ban in the High Court.[17] Because a symbol's meaning depends on its context and its audience, such bans are especially likely to catch legitimate political expression. A New South Wales parliamentary committee declined to recommend banning 'from the river to the sea' as its meaning is contested.

The formal law is only part of the picture. Professional regulators and accreditation bodies, sanctions by political parties, institutional codes and gatekeeping, platform enforcement, employment decisions, and ultimately culture also regulate speech. Doctors and other professionals in regulated industries, for example, have faced investigations or even lost their right to practice over public statements and social media posts. Academics too may suffer serious professional consequences for lawful but controversial speech. These mechanisms do not produce criminal records, but they can still deter expression by threatening careers, reputations and livelihoods. In Australia, these cultural vectors still represent the biggest threat to speech, but they are quickly being codified into law. This seems to be a unifying issue, as swathes of different (and often otherwise politically opposed) communities have demanded more aggressive policing of speech.

---

14 See Augusto Zimmermann and Gabriël A Moens, *The Legal Right to Disobey Law: A Natural Law Approach to Free Speech and Civil Disobedience (Sidestream Press, 2nd ed, 2026) 138; see generally Gabriël A Moens and Augusto Zimmermann, 'The Legal Right to Disobey Unjust Law', Spectator Australia (online, 26 July 2026)* <https://www.spectator.com.au/2026/07/the-legal-right-to-disobey-unjust-law/>.

15 *Tinker v Des Moines Independent Community School District, 393 US 503 (1969); Texas v Johnson, 491 US 397 (1989).*

16 *Levy (n 5) (McHugh J).*

17 Lottie Twyford, 'Pro-Palestinian Protesters Mount High Court Challenge to Queensland Hate Speech Laws', *ABC News (online, 27 July 2026)* <https://www.abc.net.au/news/2026-07-27/qld-palestine-israel-hate-speech-laws-high-court-challenge/106964098>.

Legal, institutional and cultural developments in dealing with hateful speech have been driven in part by lobbying from bodies representing ethnic, religious, and minority groups, and these groups are also frequent users of civil anti-vilification laws. In this regard, Jewish, Muslim and LGBTIQ+ groups stand out.

Organisations representing the LGBTIQ+ community have played a key role in shaping Australia's approach to hate speech. Advocacy groups such as ACON (AIDS Council of New South Wales) frequently pressure and make submissions to government inquiries, advocating for the expansion of vilification laws to apply to more intersectional identities. However, ACON has arguably had greater influence in shaping institutional policy that feeds media coverage. Through Pride in Diversity and its related programs, which have close to 650 members, including nine of Australia's 10 largest employers, ACON helps shape institutional speech and conduct norms, which impact hiring and HR processes, corporate language, and potentially the selection of stories and the way they are covered by major media company members, including (until recently) Australia's national broadcaster, the Australian Broadcasting Corporation (ABC).[18] While ACON is one of the more effective operators in this sphere, an endless procession of organisations representing minority groups constantly lobbies to shape what can and cannot be said, both in policy and law, about people with a proliferation of intersectional identities.

Two events in recent years have increased interest in ethnic- and religious-based protections. The first was Hamas' October 7 attack on Israel and the subsequent war on Gaza. The second was the December 2025 Bondi massacre, an Islamic terrorist attack at a Hanukkah celebration in Sydney which killed 15 people and injured 42 others.

October 7 has given rise to social and ethnic tensions rarely seen in Australia, with a marked increase in both antisemitism and anti-Muslim sentiment, including fire bombings of synagogues and Jewish businesses as well as widespread vandalism expressing both anti-Israel and antisemitic sentiment. Some of these incidents were carried out by criminal networks and, allegedly, Iran, but a significant component was also organic. Both sides have also engaged in tit-for-tat speech-cancellation tactics in the cultural domain.

---

18 Documents released under Freedom of Information in early 2026 of communications between the ABC and ACON revealed that ACON relationship managers had offered ABC journalists editorial tips to help the broadcaster, which paid membership fees to ACON, to climb the rankings in its Australian Workplace Equality Index, leading to a perception of bias. This was compounded by the admission of former Chair Ita Buttrose that 'serious editorial lapses' had occurred in a series on transgender women in sport. ACON denied having any influence over ABC's editorial decisions; however, the ABC severed ties with the organisation soon after the scandal broke.

On the legal front, October 7 and its ongoing social impact have been the impetus for a number of new federal and state laws specifically seeking to address antisemitism. These efforts were radically scaled up in the wake of the Bondi massacre, which, it has been argued, was the logical culmination of smaller acts of antisemitism, which swept up legal protest and uncomfortable slogans. The justification for clamping down on hitherto legal expression is that it is not enough to target the most extreme instances of antisemitism; instead, a 'broken windows' logic needs to be applied, suppressing smaller expressions before they can escalate to serious acts of violence. In this sense, the identitarian logic of hate speech legislation predominantly pushed by progressives over the past few decades is now being taken up by right-wing Jewish institutions.

Throughout this report, we detail many of those new laws that extend previous speech-control efforts into a dangerous new domain, limiting criticism of other states and criminalising specific slogans. Of particular concern is the adoption by the federal, New South Wales and Victorian governments, and by other institutions, of the International Holocaust Remembrance Alliance (IHRA) definition of antisemitism, which can conflate criticism of Israel with antisemitism. This interpretation was recently rejected by the Supreme Court of New South Wales, which concluded that the 'disparagement of Israel is not antisemitic in the accepted sense of the term' and that '[t]he IHRA formulation does not reflect the established usage and understanding of the term "antisemitic" in Australia.'[19] In *New South Wales v Farhat* (2026), however, the Supreme Court of New South Wales rejected this interpretation. The Court found that 'disparagement of Israel is not antisemitic in the accepted sense of the term' and that '[t]he IHRA formulation does not reflect the established usage and understanding of the term "antisemitic" in Australia.'

Running in parallel with advocacy from Jewish groups are Muslim groups such as the Australian Muslim Advocacy Network (AMAN) and the Islamophobia Register Australia (a counterpart to the antisemitism database of the Executive Council of Australian Jewry (ECAJ)), and others, which also frequently make submissions to government inquiries arguing for expanding hate speech policy and law. AMAN, for example, advocates cracking down on 'online dehumanisation' with greater powers for Australia's online safety regulator, and made submissions in support of the New South Wales Government's extension of anti-vilification protections to religious groups in 2023. Adding religious protections to anti-vilification provisions is a key issue for Muslim advocacy groups – in some jurisdictions

19 *New South Wales v Farhat [2026] NSWSC 985, [89], [108] (Fagan J). The Court dismissed the State's application for an extended supervision order under the Terrorism (High Risk Offenders) Act 2017 (NSW) against Farhat, who had been jailed over a graffiti and arson attack in Woollahra in November 2024. NSW Attorney-General Michael Daley told a Budget Estimates hearing on 31 August 2026 that the Government would not appeal.*

(federal, South Australia, and Western Australia) anti-vilification laws still apply only to race and ethnicity. AMAN and Islamic Councils in various states have been particularly effective in leveraging anti-vilification laws to establish landmark case law.[20] Ethnic and religious group demands to expand specific protections are frequently mirrored by other identity groupings.

Finally, a word on the political rationale underpinning the shift in Australian law and institutions towards increasing regulation of offensive, divisive, and harmful speech. With each new media statement or explanatory memorandum for new hate speech laws, politicians appeal again and again to 'social cohesion.' Indeed, with institutional trust at an all-time low, increased polarisation and the rise of populism,[21] and recent spates of religiously motivated violence, it is understandable that politicians see social division as a problem to tackle. Whereas the classical Western liberal democratic model *favours* free speech as a means to a flourishing pluralistic society and resolving differences, Australian politicians have increasingly made the argument that restricting speech is necessary to tamp down frictions that can arise from such plurality.

This position was summed up best by New South Wales Premier Chris Minns, who said in March 2025: 'We don't have the same freedom of speech laws that they have in the United States. And the reason for that is that we want to hold together our multicultural community and have people live in peace free from the kind of vilification and hatred that we do see around the world.'

As Minns noted correctly, Australia is one of the world's most diverse democracies: 32 per cent of its residents were born overseas, and almost half have at least one parent born overseas.[22] Yet this policy of multiculturalism was not always framed as an excuse to limit speech. Rather, the Hawke Government's *Na-*

---

20 For example, a Queensland ruling that social media platform X is subject to local anti-vilification law; a ruling against a former senator found to have unlawfully equated Islam with 'barbarism and savagery' (also Queensland); and a Victorian case against Christian preachers for their alleged vilification of Islam, which resulted in a settlement (*Australian Muslim Advocacy Network Ltd v Twitter Australia Holdings Pty Ltd [2024] QCAT 201; Australian Muslim Advocacy Network Ltd v Anning [2021] QCAT 452; and Islamic Council of Victoria v Catch the Fire Ministries Inc [2004] VCAT 2510, respectively).*

21 While populism has been making political waves in Western democracies for the best part of a decade, Australia's leading right-wing populist party One Nation only made meaningful strides this year, overtaking the current government in several polls, with some of this popularity converting to seven seats (four Lower House, three Upper House) in the South Australian state election in March, and one Lower House seat in the federal Farrer by-election in May.

22 Australian Bureau of Statistics, 'Australia's Population by Country of Birth' (Web Page, 29 April 2026) <https://www.abs.gov.au/statistics/people/population/australias-population-country-birth/jun-2025>; Australian Bureau of Statistics, '2021 Census: Nearly Half of Australians Have a Parent Born Overseas' (Media Release, 28 June 2022) <https://www.abs.gov.au/media-centre/media-releases/2021-census-nearly-half-australians-have-parent-born-overseas>.

tional Agenda for a Multicultural Australia (1989) set 'limits' to multiculturalism, requiring all Australians 'to accept the basic structures and principles of Australian society,' among them 'freedom of speech and religion,' and added that 'the right to express one's own culture and beliefs involves reciprocal responsibility to accept the right of others to express their views and values.'[23] The Turnbull Government's 2017 multicultural statement still declares: 'We support freedom of thought, speech, religion, enterprise and association.'[24] In practice, however, multiculturalism is now invoked mainly as a reason to restrict speech. Minns said his state's new racial hatred laws were 'very important to maintaining social cohesion,' the Victorian Government says vilification 'undermines Victoria's social cohesion as a multicultural and inclusive society,' and Victoria named its 2025 reforms the *Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025* (Vic).[25] As one critic observed, this reasoning rests on the assumption that 'a "multicultural" society is one that is fundamentally more fragile than its alternative.'[26] The older settlement – a diverse society held together by shared rules, including free speech – has given way to one in which diversity is itself treated as a reason to narrow what can be said.

This report argues that political and legal attempts to silence dissent beyond immediate threats of violence and targeted harassment will achieve the opposite of their intent, increasing frustrations and causing further social fragmentation. The reactionary and hurried way these laws have been enacted over the past several years, particularly amid perceived influence from various special interest groups, can only compound these effects.

---

23 Office of Multicultural Affairs, *National Agenda for a Multicultural Australia: Sharing Our Future (Australian Government Publishing Service, 1989)* <https://www.multiculturalaustralia.edu.au/doc/multoff_1.pdf>.

24 Australian Government, *Multicultural Australia: United, Strong, Successful (March 2017) 9* <https://www.homeaffairs.gov.au/mca/Statements/english-multicultural-statement.pdf>.

25 NSW Government, 'Crimes Amendment (Inciting Racial Hatred) Bill 2025' (Media Release, 13 March 2025) <https://www.nsw.gov.au/ministerial-releases/crimes-amendment-inciting-racial-hatred-bill-2025>; Victorian Government, 'New Protections against Vilification' (Web Page) <https://www.vic.gov.au/new-protections-against-vilification>.

26 Benjamin Crocker, 'On Free Speech: Minns' Anti-Americanism Will Hurt New South Wales', *Spectator Australia (online, 14 July 2025)* <https://www.spectator.com.au/?p=10881272>.

Jurisdictional Comparison

Federal

At the federal level, Australian hate speech law has evolved from a civil framework addressing racial vilification into a broader and increasingly restrictive system that combines complaint-based remedies with criminal offences. Since s 18C was introduced into the RDA in 1995, courts have treated publicly accessible websites and social media as conduct occurring 'otherwise than in private,' enabling them to order the removal of material, corrective notices, and other remedies in civil proceedings.

Federal hate speech regulation therefore remains a hybrid system. Civil vilification law under s 18C continues to govern conduct reasonably likely to offend, insult, humiliate or intimidate on racial grounds, which the courts have read as requiring a substantive public harm, not mere offence. In contrast, criminal law has long dealt with more serious conduct such as threats, incitement to violence, and terrorism advocacy. What has changed in recent years is the expansion of criminal enforcement: amendments to the *Criminal Code Act 1995* have lowered the fault threshold for the offences of urging force or violence from intention to 'recklessness,' broadened the range of protected groups for some offences, increased penalties, and extended criminal regulation to prohibited symbols.

Recent Federal Court decisions have illustrated how civil vilification law can be applied to digital speech, with at least one case resulting in orders requiring offending material to be removed across multiple online platforms. These cases, including *Faruqi v Hanson* and *Wertheim v Haddad*,[27] remain part of the civil regime under s 18C; there is not yet a developed body of Commonwealth criminal hate speech case law.[28]

In its earliest iteration, the RDA was a legislative tool to rectify institutional discrimination based on race, for example, by disallowing discrimination in hiring or

27 *Faruqi v Hanson [2024] FCA 1264; Wertheim v Haddad [2025] FCA 720.*

28 An early federal prosecution over hateful speech arose from the Cronulla riots, a series of race riots in December 2005. A Sydney man was charged with using a phone service to menace, harass or cause offence, and with one count of publishing to incite or urge the commission of a crime, after police alleged he had repeatedly forwarded text messages calling for people to gather at Sydney beaches in the week following the initial riots. That charge — 'publishing to incite or urge the commission of a crime' — was brought under the *Telecommunications Act, not the Criminal Code hate speech provisions, and no subsequent conviction was reported.*

housing leasing. Under legislation introduced by the Keating Labor Government, the *Racial Hatred Act 1995* (Cth) amended the RDA by introducing s 18C, which opened the way for 'hate speech' complaints, and s 18D, which sets out exemptions for conduct done 'reasonably and in good faith.' The Bill passed with additional support from the Australian Democrats and the two Western Australian Greens senators (the Liberal and National parties opposed the Bill).

As such, 'hate speech' has been federally regulated under s 18C of the RDA. Section 18C makes unlawful conduct that is 'reasonably likely… to offend, insult, humiliate or intimidate' based on race, colour or national or ethnic origin. While there is no published data on the annual number of vilification-related complaints brought to the Australian Human Rights Commission (AHRC), estimates suggest that complaints number up to several hundred per year,[29] with most of these being resolved in private conciliation, terminated, or ultimately withdrawn.[30] A minority of cases proceed to the Federal Court, which may order remedies such as an apology, removal of material, or payment to the plaintiff.

Complaints under s 18C are brought to the AHRC, which facilitates conciliation if it determines that the complaint falls within its jurisdiction. A complaint can be lodged by the person aggrieved, or on behalf of people aggrieved by another person or a trade union. If conciliation fails, the matter can go to the Federal Court, including, since December 2022, as a representative application made with the affected people's written consent. If both parties cannot come to agreeable terms in the conciliation process (such as a public apology, a payment, removal of material from the Internet, or a policy change), then the complaint is terminated, with the complainant then allowed to file an application in the Federal Court for the matter to proceed as ordinary civil litigation.

Section 18C has been the subject of ongoing debate for interfering with freedom of speech and political communication, the *Faruqi v Hanson* (2024) decision being the most recent example of s 18C's over-management. In 2013, conservative Liberal Party leader Tony Abbott made watering down s 18C an election issue, proposing to remove the words 'offend,' 'insult' and 'humiliate' and add a provision against racial vilification. However, after winning the election, Prime Minister Abbott abandoned the endeavour, reportedly due to political pressure. Polling at the time indicated that 88 per cent of Australians did not support the

---

29 523 RDA complaints were logged in 2020–21. In years prior: 403 (in 2019–20), 332 (2018–19), 290 (2017–18), and 409 (in 2016–17). See Australian Human Rights Commission, *2020–21 Complaint Statistics (2021) table 10* <https://humanrights.gov.au/__data/assets/file/0030/55668/Ahrc_ar_2020-2021_complaint_stats.pdf>.

30 In 2020–21, of 441 finalised complaints to the AHRC under the RDA (all discrimination, not just vilification): 28 were terminated without inquiry; 105 were terminated after inquiry; 105 were discontinued; 25 were withdrawn; 163 were conciliated; and 15 proceeded to administrative closure. See ibid table 27.

proposed changes.

In 2016, the centre-right Turnbull Government again considered amending s 18C after two high-profile complaints against university students and a cartoonist were seen as overblown and punitive, prompting renewed public criticism of the law. Turnbull advocated replacing the words 'offend, insult, humiliate' with 'harass,' while leaving 'intimidate' unchanged. A Parliamentary inquiry into 'Freedom of Speech in Australia' was established, but the Senate defeated revisionary amendments after the Opposition, the Greens, and several crossbench senators voted against them.

Complementary to s 18C is s 18B, under which an act done for two or more reasons is taken to be done because of race, colour or national or ethnic origin if that is one of the reasons, whether or not it is the dominant or a substantial reason. This can lead to thorny implications: Muslims, for example, are generally considered not to be protected from vilification under the RDA, because religion is not a protected attribute and courts have not found Muslims to share a common ethnic origin, while Jews are protected as they have been found to constitute a group with a common ethnic origin. Section 18D creates exemptions where conduct is done 'reasonably and in good faith' for specified purposes such as artistic, academic or scientific work, public interest discussion, and fair comment.

In September 2025, the Special Envoy to Combat Islamophobia, Aftab Malik,[31] recommended in his inaugural report that the government clarify that the ethno-religious category within the definition of race in the RDA 'includes Muslims, the same way it includes Jews and Sikhs.'[32] The government subsequently announced that it would dedicate nearly $42 million to action 35 of Malik's 54 recommendations; however, amending or clarifying the RDA was not included in its action plan.

Jones v Töben (2000) stands as the landmark case for civil enforcement of internet-based vilification in Australia, as it was the first application of s 18C of the

---

31 The Albanese Labor Government appointed Special Envoys to Combat Antisemitism and Islamophobia in July and September 2024, respectively, as social tensions came to a boiling point over the Israel/Palestine conflict: Anthony Albanese and Andrew Giles, 'Special Envoy to Combat Antisemitism' (Media Release, 9 July 2024) <https://www.pm.gov.au/media/special-envoy-combat-antisemitism>; Anthony Albanese and Tony Burke, 'Special Envoy to Combat Islamophobia' (Media Release, 30 September 2024) <https://www.pm.gov.au/media/special-envoy-combat-islamophobia>.

32 Special Envoy to Combat Islamophobia, *A National Response to Islamophobia: A Strategic Framework for Inclusion, Safety and Prosperity* (Report, September 2025) rec 18 <https://www.oseci.gov.au/resources/recommendations-prime-minister>.

RDA to the Internet.[33] The case arose from a complaint lodged with the AHRC in 1996 by Jeremy Jones, then president of the ECAJ, against recalcitrant Holocaust denier Frederick Töben. Töben was found to have unlawfully published content on the website of his organisation, the Adelaide Institute, that was 'reasonably likely, in all of the circumstances, to offend, insult, humiliate and intimidate Jewish Australians or a group of Jewish Australians.' This included assertions that: it was unlikely that there were homicidal gas chambers in Auschwitz; that Jewish people who are offended by Holocaust denial were of limited intelligence; and that some Jewish people had exaggerated the Holocaust for financial gain.

In 2002, the Federal Court ordered Töben to remove the unlawful material from his website and refrain from publishing similar material. After an unsuccessful appeal, Töben continued to publish similar material on his website, leading to a contempt of court action brought by Jones and resulting in three months' imprisonment for Töben in 2009.[34] Further contempt and enforcement proceedings between Töben and Jones carried into 2011 and 2012, with Töben's non-compliance and the protracted nature of proceedings highlighting the limits of civil enforcement.

Cases that reach this level of judgment may reflect not only the seriousness of the conduct but also the complainant's access to legal, financial, and organisational support. Jones's role in this litigation in particular (as a highly experienced advocate backed by a well-resourced representative organisation able to fund multiple complex cases over long periods of time) illustrates such an importance of institutional capacity in shaping Australia's vilification case law.

In the recent and highly publicised incident *Faruqi v Hanson*, Pakistani-Australian Greens Senator Mehreen Faruqi successfully brought a s 18C complaint against populist-right One Nation leader Senator Pauline Hanson for her response to a post made by Senator Faruqi about the passing of Queen Elizabeth. In September 2022, Senator Faruqi posted to Twitter (now X): 'Condolences to those who knew the Queen. I cannot mourn the leader of a racist empire built on stolen lives, land and wealth of colonised people. We are reminded of the urgency of Treaty with First Nations, justice & reparations for British colonies & becoming a republic.' Senator Hanson responded, also on Twitter: 'Your attitude appals and disgusts me. When you immigrated to Australia you took every advantage of this country. You took citizenship, bought multiple homes, and a job in a parliament. It's clear you're not happy, so pack your bags and piss off back to Pakistan. – PH.'

---

33 *Jones v Toben [2000] HREOCA 39.*

34 *Jones v Toben [2002] FCA 1150; Toben v Jones (2003) 129 FCR 515; Jones v Toben [2009] FCA 354; Jones v Toben [No 2] [2009] FCA 477; Toben v Jones [2009] FCAFC 104.*

Senator Faruqi argued that Senator Hanson's post contravened s 18C by targeting her as a migrant, person of colour, and Muslim. Senator Hanson argued that her comments fell within the realm of 'public interest,' but the Federal Court found that her remarks amounted to a 'racist attack' that was not protected by free speech claims. The judge highlighted Senator Hanson's political leadership position and large following on X (over 238,400 followers at the time of publication) as an aggravating factor because her messaging was amplified to a larger audience, likely condoning or promoting similar messages. No damages were awarded: Senator Hanson was ordered to remove the offending post and pay Senator Faruqi's legal costs.

Senator Hanson lost on appeal in the Federal Court in July 2026, and is now taking the matter to the High Court, prompting renewed public discussion about whether s 18C infringes on Australians' constitutional implied freedom of political communication. The prevailing opposing views are articulated by constitutional lawyer Anne Twomey and Federal Court Justice Ian Jackman. Twomey has questioned the constitutional validity of s 18C, suggesting that it outlaws more low-level conduct than is required by the treaty on which it relies, the International Convention on the Elimination of All Forms of Racial Discrimination. On the other hand, Justice Jackman has argued that the High Court should reconsider its 'dogmatism' on freedom of speech, as '[i]t would not have occurred to Australians in the 1990s that other Australians would abuse their freedom of political communication to publicly intimidate and vilify Jews.'

Heightening tensions over the Israel/Palestine conflict have resulted in further cases being brought under s 18C. In *Wertheim v Haddad* (2025), Islamic preacher Wissam Haddad was ordered by the Federal Court to take down a series of lectures titled 'The Jews of Al Medina' which he delivered at the Al Madina Dawah Centre in Sydney's Bankstown and then posted to social media sites (including Instagram, Facebook and Rumble) in November 2023. In the lectures, Haddad referred to Jewish people as 'vile,' 'treacherous,' 'cowards,' and 'descendants of apes and pigs' who attack women and children by bombing safe zones, humanitarian aid, and refugee corridors.

In the case brought by ECAJ office-holders Peter Wertheim and Robert Goot, the judge found these and other statements to be 'fundamentally racist and antisemitic and devastatingly offensive and insulting,' determining they were not protected by defences of public interest, freedom of speech, or free exercise of religion. The injunction required Haddad to pay the applicants' costs, publish notices on his social media accounts explaining the findings of the case, and take reasonable steps to ensure that any copies of his lectures posted to other accounts are taken down.

In an as-yet unresolved case, journalist and former public broadcaster Mary Kostakidis is being sued under s 18C by the Zionist Federation of Australia (ZFA) for two posts she made to X in January 2024: one sharing a speech made by Hezbollah leader Hassan Nasrallah and another providing commentary on it. In the speech, Nasrallah used the phrase 'from the river to the sea the land of Palestine is for the Palestinian people – and the Palestinian people only,' which ZFA chief executive Alon Cassuto interpreted as 'calls by a terrorist for Jews to be ethnically cleansed.' The ZFA's case cites 61 additional posts and reposts by Kostakidis between October 2023 and March 2025 as contextual evidence of alleged racial animus.

Australia's civil anti-vilification framework has increasingly been supplemented by a criminal framework aimed at curtailing adjacent forms of hateful conduct. The Australian Government frames Division 80 of the *Criminal Code Act 1995* as a tool to 'protect all Australians from threats of violence' and to enforce its philosophical stance that 'there is no place in Australia for hatred or extremism of any kind,' and additional criminal legislation has added heft. For one, the *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Act 2023* (Cth), introduced by the Albanese Labor Government and passed with bipartisan support, with prominent advocacy by the ECAJ, prohibits the public display of Nazi symbols or salutes, and terrorist organisations' symbols. Typical exceptions for material produced for academic, artistic, educational, or journalistic purposes apply.

Earlier iterations of the *Criminal Code* outlawed urging force or inciting violence against specific groups and members of those groups, including those distinguished by race, religion, or national origin, in provisions that began as sedition offences in 2005 rather than as hate speech laws. The high threshold of 'intention' needed to satisfy a conviction under the *Criminal Code* meant that it was very difficult to prosecute offences; this, however, has changed as this report will outline below.

Using the justification of an increase in violent antisemitic attacks in the community, the broader concept of 'hate crimes' – though, as previously described, this term was never used as a general or specific legal category – was added to the *Criminal Code* on behalf of the Albanese Government in February 2025 with the assent of the *Criminal Code Amendment (Hate Crimes) Act 2025* (Cth).

The Act strengthened existing offences for urging force or violence, created new offences for threatening force or violence against targeted groups and members of groups, including close associates of the group, and expanded the list of groups protected by the public display of prohibited hate symbols offences. The urging violence offences were extended to groups distinguished by sex, sexual

orientation, gender identity, intersex status or disability; they already covered race, religion, nationality, national or ethnic origin and political opinion.[35] Significantly, people can now be criminally prosecuted for statements urging force or violence, even if they never intended to cause harm or harm never eventuates. This is because the legal threshold for guilt has been lowered to *recklessness* as to whether force or violence occurs. Previously, it was required to prove the *intention* to produce force or violence. Prosecutions still require the Attorney-General's written consent (s 80.5).[36]

A further round of amendments brought under the *Combatting Antisemitism, Hate and Extremism (Criminal and Migration Laws) Act 2026* (Cth) was an explicit response to the December 2025 Bondi terror attack, and aligned with the recommendation of the Special Envoy to Combat Antisemitism, Jillian Segal AO, to 'strengthen serious vilification offences.'[37] Attorney-General Michelle Rowland said these were to be 'the toughest hate laws Australia has ever seen' and indeed, a draft form of the laws proposed to criminalise 'publicly promoting or inciting hatred' on the ground of race, colour or ethnic origin, with a penalty of five years' imprisonment. However, this provision proved to be highly controversial because it would criminalise speech absent demonstrable harm if a 'reasonable person' of a target race or ethnicity would be 'intimidated' or 'fear harassment' – a subjective test based on a hypothetical situation. Opposed by the Greens and the conservative Coalition for opposite reasons (the Greens wanted it to apply to more attributes, not just race, and the Coalition found it too restrictive on speech), this provision did not make it into the final version of the Act.

A new legal regime established under Division 114A (which forms part of the new Part 5.3B inserted by the 2026 Act) enables the Minister responsible for the Australian Federal Police to proscribe, and effectively ban the activities of, alleged extremist hate groups that engage in, prepare, plan, assist, or advocate hate crimes. The Minister can only consider such proscription after the Director-General of Security has recommended it in writing, must be satisfied on reasonable grounds that the group has done so and that listing it is 'reasonably necessary to protect the Australian community' against harm, and must get the Attorney-General's written agreement. Even so, this considerably lowers the threshold for banning a group: no member of an organisation needs to be convicted of committing a 'hate crime' for it to be deemed a 'hate group,' and the

---

35 Jonathan Mills, *Criminal Code Amendment (Hate Crimes) Bill 2024 (Bills Digest No 21 of 2024–25, Parliamentary Library, Parliament of Australia)* <https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd2425/25bd021>.

36 *Criminal Code (Cth) s 80.5.*

37 Special Envoy to Combat Antisemitism, *Special Envoy's Plan to Combat Antisemitism (July 2025) pt 3.2* <https://www.aseca.gov.au/sites/default/files/2025-07/2025-aseca-plan.pdf>.

Minister is not required to observe procedural fairness (s 114A.4(5)).[38]

Under the preexisting framework in Division 102 of the *Criminal Code*, a group must be shown to be directly engaged in, preparing, planning, or fostering terrorism. Moreover, the definition of what constitutes a 'hate crime' under s 114A.3 is broad, and conduct that occurred before the amendments commenced can be considered in deciding whether a group has engaged in relevant conduct. Taken together, these amendments could limit otherwise valid protest or other forms of political expression, including the suppression of political opponents or parties if they are deemed to be 'hate groups.'

Federal criminal law has recently been used to prosecute extremist content online, with the three cases below involving conduct advocating terrorism or sharing violent extremist material, rather than opinion alone. In 2023, a Tamworth man used multiple online platforms to advocate mass killings of people of colour, Jews and Muslims and the assassination of Australian political leaders; he pleaded guilty to advocating terrorism under s 80.2C and was ultimately sentenced on appeal to two years and four months' imprisonment. In 2025, a Queensland Islamic State supporter was convicted of six counts of advocating terrorism after posting social media videos urging people to provide weapons and support to Islamic State fighters, and was sentenced to four years' imprisonment. In March 2025, another Islamic State supporter in Western Australia became the first person convicted under s 474.45B for sharing Islamic State-produced beheading videos and recordings as well as encouraging violence, and was sentenced to three years' imprisonment.

Some recent charges, though, do not involve explicit incitement of violence. In June 2026, an Adelaide man was charged under s 80.2H after allegedly displaying a Nazi symbol on his social-media profile. He was also charged under s 474.17 over antisemitic threats and other social-media posts. Although the case remains unresolved, the Commonwealth is invoking the 2023 prohibited-symbol law against a digital display. In March 2026, a Queensland man was charged over antisemitic comments allegedly posted on Telegram; the specific comments were not made public, but the man was charged under s 474.17, which covers use of a carriage service in a way that reasonable persons would regard as 'menacing, harassing or offensive.' He was decidedly *not* charged under s 474.15, the distinct offence of using a carriage service to threaten death or serious harm.

These cases suggest that federal law was sufficient to remedy extreme instances of hateful conduct. However, recent amendments to the criminal law intro-

38 *Criminal Code (Cth) ss 114A.4–114A.6, inserted by Combatting Antisemitism, Hate and Extremism (Criminal and Migration Laws) Act 2026 (Cth).*

duce ambiguity and afford the government of the day the power to designate unfavourable expression as 'harmful' to suppress valid political communication and activities, posing a threat to Australia's democratic functioning.

The eSafety Commissioner, Australia's online safety regulator, is another piece of this puzzle. The *Online Safety Act 2021* (Cth) gives the Commissioner no power aimed at hate speech, and by eSafety's own account the Act 'does not define online hate or vilification, or provide eSafety with powers specifically focussed on these terms.' Further, eSafety 'cannot take formal action against content targeting a group or organisation.'[39] Its Adult Cyber Abuse Scheme targets only material that is likely intended to cause 'serious harm,' which excludes 'mere ordinary emotional reactions such as those of only distress, grief, fear or anger,' and that an ordinary reasonable person in the target's position would regard as 'menacing, harassing or offensive.'[40] Its Online Content Scheme allows removal of material that 'promotes, incites or instructs in matters of crime or violence,' but gives eSafety no power to investigate 'racist and discriminatory content.'[41] In 2024, its Basic Online Safety Expectations for platforms were amended to include 'having processes for detecting and addressing hate speech which breaches a service's terms of use.' (A proposed definition of hate speech was removed 'due to concerns about imposition on free speech' and left only as guidance. In practice, each platform is left to decide its own terms for what counts as hate.)[42]

The complaint structure does not appear to be aggressively utilised for hate speech. Of 13,585 valid complaints between January 2022, when the scheme started, and December 2025, only 640 met the threshold. A separate freedom of information release showed complaints classified as 'hate speech' made up between 0.9 and 3 per cent of adult cyber-abuse complaints each year. The Com-

---

39 eSafety Commissioner, Submission to Department of Justice and Community Safety (Vic), *Strengthening Victoria's Laws against Hate Speech and Hate Conduct (October 2023) 1, 3* <https://esafety.gov.au/sites/default/files/2024-01/20240123%20-%20eSafety%20Submission%20-%20Victorian%20anti-vilification.pdf>; eSafety Commissioner, Submission to Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of Australia, *Inquiry into Racism, Hate and Violence Directed at Aboriginal and Torres Strait Islander Peoples (May 2026) 13* <https://www.esafety.gov.au/sites/default/files/2026-07/eSafety-submission-Inquiry-into-racism-hate-violence-directed-at-Aboriginal-Torres-Strait-Islander-peoples-May2026.pdf>.

40 *Online Safety Act 2021 (Cth) ss 5, 7(1), 88.*

41 eSafety Commissioner, *Online Content Scheme: Regulatory Guidance (January 2025) 4, 9* <https://esafety.gov.au/sites/default/files/2025-01/Online-Content-Scheme-January2025_0.pdf>.

42 *Online Safety (Basic Online Safety Expectations) Determination 2022 (Cth) s 6(3)(i), inserted by the Online Safety (Basic Online Safety Expectations) Amendment Determination 2024 (Cth); Explanatory Statement, Online Safety (Basic Online Safety Expectations) Amendment Determination 2024 (Cth).*

missioner issued 22 removal notices under the scheme in that period. Instead, most of its influence has instead come through 'informal requests' to platforms. During this timespan, eSafety has asked platforms to consider removing content under their own terms of service a total of 5,013 times.[43]

Two cases in particular have illustrated the extent and limits of these powers. In March 2024, eSafety ordered X to remove a post by Canadian activist Chris Elston ('Billboard Chris') in which he 'misgendered' Teddy Cook, an Australian transgender-identified person and advocate. In July 2025, the Administrative Review Tribunal reversed eSafety's decision, warning that the scheme risked becoming 'a broadly available censorship tool based on emotional responses to posted material.'[44] In June 2024, eSafety sent X a 'complaint alert' about a post by a woman named Celine Baumgarten even though it had assessed the post as falling below its own cyber abuse threshold; just over an hour later, X made the post inaccessible in Australia. The Tribunal treated the removal as made without the statutory preconditions, and in February 2026 the Full Federal Court dismissed eSafety's appeal. The Court noted that the Commissioner 'could not point to any express power or function' for such alerts beyond its very general functions.[45] The Commissioner's attempted global reach has also been checked: in 2024, the Federal Court refused to extend an eSafety order requiring X to hide footage of a knife attack at a church in Wakeley, Sydney, worldwide. (eSafety had cited the 'comity of nations' as part of the justification for a global takedown.) After the Court's refusal, eSafety discontinued the case.[46]

Yet pressure for eSafety to take a direct role in managing hate speech is growing. The statutory review of the *Online Safety Act* tabled in February 2025 recommended lowering the cyber abuse threshold and defining 'online hate material,' though the Government's April 2026 response did not include those recommendations. In it, it warned that widening the scheme in such a way 'would be operationally burdensome and counterproductive.'[47] In late October 2026, the

---

43 eSafety Commissioner, *FOI 26016 (Disclosure Log 183, March 2026)* <https://www.esafety.gov.au/sites/default/files/2026-03/LOG_183_Document_Set.pdf>; eSafety Commissioner, *FOI 25278 (Disclosure Log 164, January 2026)* <https://www.esafety.gov.au/sites/default/files/2026-01/LOG_164_Document_Set.pdf>.

44 *X Corp v eSafety Commissioner; Elston v eSafety Commissioner [2025] ARTA 852, [21].*

45 *Baumgarten and eSafety Commissioner [2025] ARTA 59; Baumgarten and eSafety Commissioner (Guidance and Appeals Panel) [2025] ARTA 153; eSafety Commissioner v Baumgarten [2026] FCAFC 12, [193].*

46 *eSafety Commissioner v X Corp [2024] FCA 499, [49].*

47 Delia Rickard, *Report of the Statutory Review of the Online Safety Act 2021 (tabled 4 February 2025) recs 18, 21* <https://infrastructure.gov.au/sites/default/files/documents/report-of-the-statutory-review-of-the-online-safety-act-2021-february-2025.docx>; Australian Government, *Government Response to the Independent Review of the Online Safety Act 2021 (14 April 2026)* <https://www.infrastructure.gov.au/sites/default/files/documents/govt-response-to-the-independent-review-online-safety-act-2021.docx>.

Commissioner called for legislation 'tailored to increasingly violent and threatening online hate' and for a private right of action for people harmed online.[48] Meanwhile, the Online Safety Amendment (Digital Duty of Care) Bill 2026 (Cth), which passed the House of Representatives on 28 October 2026 and is before a Senate committee due to report by 20 November, would impose a statutory duty of care on platforms backed by substantial penalties. Neither its exposure draft nor the Bill as introduced, however, lists hate or vilification among the harms platforms must address.[49]

eSafety's role in managing hate speech is as such less a matter of formal law than of administrative pressure. Its formal powers here are narrow and rarely used, and the Tribunal and the Federal Court have checked its attempts to stretch them.

48 Caitlyn Rintoul, 'eSafety Commissioner Says Australia Needs Private Right of Action for Those Harmed Online', *The Nightly (online, 27 October 2026)* <https://thenightly.com.au/opinion/political/esafety-commissioner-says-australia-needs-private-right-of-action-for-those-harmed-online-c-23080831>.

49 Online Safety Amendment (Digital Duty of Care) Bill 2026 (Cth); liber-net, Submission to Senate Environment and Communications Legislation Committee, Parliament of Australia, *Online Safety Amendment (Digital Duty of Care) Bill 2026 (29 October 2026)*.

New South Wales

Similar to developments at the federal level, the regulation of hateful speech in New South Wales (NSW) has expanded from centring largely on civil anti-vilification law to increasingly incorporating criminal offences. This began with the *Anti-Discrimination Act 1977* (NSW) (ADA), under which civil vilification protections were progressively extended to additional groups. The ADA also applied an objective test of whether conduct could incite hatred, serious contempt, or severe ridicule.

Criminal regulation developed alongside and later beyond this civil regime, including serious vilification offences, hate-motivated sentencing provisions, and more recent offences concerning incitement, symbols and related conduct. The digital realm became central to this development upon the 2005 recognition of Internet publication as a 'public act,' enabling online posts, blogs, and social media commentary to attract civil liability. In 2018, the ADA's serious vilification offences (the first dating from 1989) were moved into the *Crimes Act 1900* (NSW) as a single offence (s 93Z), while subsequent reforms expanded the meaning of hate-related offences to include intentional incitement, aggravated sentencing, prohibited symbols and conduct targeting places of worship. More recent legislation also reflects the growing significance of Internet communications, addressing the online dissemination of criminal acts and the public display of hateful material on social media.

Under the state's ADA, '[i]t is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons' on the ground of race, being transgender, homosexuality, being infected with HIV/AIDS, or religious belief, affiliation or activity. It is not necessary for a contravention that the intention to incite be proven, nor that a person actually be incited. Rather, the matter is determined by an objective test of whether the behaviour is capable of inciting reasonable members of the 'audience' of the public to hate, have serious contempt for, or severely ridicule the targeted group.

The Act established the Anti-Discrimination Board of NSW (now known as Anti-Discrimination NSW); complaints are made to its President, who investigates them and tries to conciliate. Unresolved complaints are referred to the NSW Civil and Administrative Tribunal (NCAT) for determination. Remedies can include compensation up to $100,000, mandated apologies, and orders to change conduct or policies. Under the Act, only a person who has or claims to have the attribute in question can lodge a vilification complaint, either personally or through a representative body acting for named people who consent. In practice, complaints are brought by or for the people targeted, not by the state.

NSW's ADA has undergone more than 90 amendments since its establishment in 1977, adding vilification provisions piecemeal over several decades. Racial vilification, for example, was made explicitly unlawful in 1989. 'Race' is defined broadly as including 'colour, nationality, descent and ethnic, ethno-religious or national origin' and has been interpreted as including Jews and excluding Muslims. (Jews are also covered by the federal RDA; whether Muslims are covered has never been authoritatively decided.) Discrimination and vilification on the ground of transgender status were made unlawful in 1996. Religious belief, affiliation and activity only became protected from vilification (though still not from discrimination) in November 2023, following an election commitment by current Premier Chris Minns. This was relatively late compared to other jurisdictions with broader anti-vilification frameworks; by the time NSW adopted its law, Victoria, Queensland, Tasmania, and the Australian Capital Territory had already had religious vilification laws for some time.

A landmark case for how digital expression is treated under the ADA is *Collier v Sunol* (2005), the first time the NSW tribunal held that publishing on the Internet was a 'public act' under the ADA (following a 2002 Federal Court ruling under federal law), which paved the way for further internet-based vilification complaints to be brought. Henry Collier, a retired University of Wollongong lecturer and long-time member of Mardi Gras and the NSW Gay and Lesbian Rights Lobby, brought the complaint to the NSW Anti-Discrimination Board against taxi-driver and Christian blogger John Sunol after discovering a series of anti-gay messages posted by the latter on the gay student website, 'Allsorts,' and several other sites, in October 2004. In the statements, Sunol said that the Gay Lobby and feminist leftist social changes were 'anti-God and out to destroy todays [sic] society,' that '[f]aggots are all wicked evil people,' and that 'God will burn Sydney to the Ground because of the evilness of these fags.'

After attempts at conciliation failed, the Board referred the case to the NSW Administrative Decisions Tribunal. The Tribunal upheld the complaint for five of the eight online statements,[50] finding them to amount to unlawful homosexual vilification. Sunol was ordered to pay Collier's costs and, initially, to remove from all websites controlled by him any material concerning homosexual men, lesbians, homosexuality or the gay lobby and to refrain from publishing material on any of these topics on any other website. On appeal in 2006, the Tribunal's

50 The Tribunal found that seven of the eight statements in Collier's complaint had the element of incitement to hatred or serious contempt, but upheld the complaint for only five. The one statement found to lack that element was one in which Sunol called homosexuality a 'behavioural disorder' brought on by social conditioning and peer pressure. Two others, calling Mardi Gras 'one big blight upon the city' and 'full of Child pedeophiles [sic] and corrupt people', were dismissed because they were directed at the event and its organisers rather than at gay people as such. *Collier v Sunol [2005] NSWADT 261, [62], [67]; Sunol v Collier (EOD) [2006] NSWADTAP 51.*

Appeal Panel upheld the finding of vilification but set aside that blanket order. It replaced it with orders to remove the unlawful statements and any material to the same or similar effect, and not to publish such material again, and ordered Sunol to post an apology on every website he controlled as well as on two others.

Separate from this case, Sunol features in one of the most protracted vilification law disputes in Australian history. Between 2012 and 2018, gay rights activist Garry Burns initiated over ten proceedings against Sunol for comments about Burns and gay people generally posted to his blogs.[51] Sunol was repeatedly found to have engaged in unlawful vilification and was ordered to pay thousands of dollars in damages to Burns, issue apologies, remove the material and refrain from posting similar comments in the future. In 2018, NCAT referred Sunol to the NSW Supreme Court for contempt over unpaid damages and continued publication in breach of its orders.

For his part, Burns is a serial litigant under anti-vilification provisions, illustrating how these laws can be used for political purposes and, sometimes, to harass. He has lodged multiple complaints against the same people. For example, 36 vilification or victimisation complaints from 2014 against Bernard Gaynor (by Gaynor's count), a former Katter's Australian Party Senate candidate in Queensland and practising Catholic, which alleged that Gaynor's public comments, and comments posted by others on his Facebook page, vilified Burns and other homosexuals. Gaynor told a 2020 NSW parliamentary inquiry that defending the complaints had cost him about $400,000 and that he and his wife had to sell their home to cover his legal costs.[52] In 2020, Burns claimed to have 'won around 62 of 65 proceedings.'

Kirralie Smith, spokeswoman for the sex-based rights advocacy group Binary Australia, was found by the NSW Local Court to have unlawfully vilified two transgender-identified people under the ADA. The cases involved Stephanie Blanch and Riley Dennis, whom Smith discussed in posts on Facebook, Twitter (now X) and Binary's website in early 2023 over their participation in women's league sports. In the posts, Smith referred to Blanch and Dennis as men, including calling Blanch 'a bloke in a frock.' Because Smith mounted a constitutional defence, claiming implied freedom of political communication, NCAT did not

---

51 The earlier proceedings are listed in *Burns v Sunol [2018] NSWCATAD 109, the decision referring Sunol to the Supreme Court for contempt*.

52 Burns's first complaint against Gaynor was dismissed by NCAT in 2015 because there was no 'public act' in NSW, and his remaining complaints similarly failed because Gaynor lives in Queensland. The NSW Court of Appeal in 2017 and, later, the High Court in 2018 both found that NCAT does not have jurisdiction to determine a claim of vilification if the parties are residents of different states: *Burns v Corbett (2017) 96 NSWLR 247; Burns v Corbett (2018) 265 CLR 304. Burns was saddled with the legal costs of over $80,000, for which he set up a GoFundMe page asking community members and allies to donate.*

have jurisdiction to hear the case, so the NSW Local Court instead heard the case, finding that Smith's defence did not hold up. Smith was ordered to pay $55,000 to Blanch and $40,000 to Dennis as compensation for emotional harm. The court also required her to publish a pinned public apology on all social media accounts naming both complainants and to delete existing content. Smith did not comply with the orders and instead announced her intention to appeal. Smith appealed and obtained a stay of the orders on 31 December 2025, but the NSW Supreme Court dismissed her appeal on 24 July 2026, leaving the $95,000 in damages in place.[53]

NSW also has an expanding universe of criminal law provisions to prosecute hate speech. Section 21A(2)(h) of the *Crimes (Sentencing Procedure) Act 1999* (NSW), introduced by the Carr Labor Government in 2002, lists 'hatred' as an aggravating factor to consider when imposing a sentence. This provision does not criminalise hate speech but instead creates a legal pathway to count hatred or prejudice toward any group that the offender believed the victim belonged to as an aggravating factor. This aggravating factor must be proven 'beyond a reasonable doubt,' which is the highest legal burden to satisfy – as opposed to 'on the balance of probabilities.'

Section 93Z was added to the *Crimes Act* in 2018 by the Berejiklian Liberal-National Coalition Government, passing with Labor and minor-party support and replacing four separate serious vilification offences that had previously appeared in the ADA with a single indictable offence.[54] Division 8, s 93Z of the *Crimes Act 1900* provides for an 'Offence of publicly threatening or inciting violence on grounds of race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status.' 'Incite' is not defined in s 93Z. Still, courts have held that the test of incitement focuses on whether an ordinary member of the target audience of the alleged offender's act would be incited. The maximum penalty was originally three years' imprisonment and/or an $11,000 fine; in June 2026 it was raised to five years and/or $22,000. In 2023, the NSW Government announced a review of the nearly 50-year-old ADA by the NSW Law Reform Commission, which was still under way in October 2026.

Notably, there had been no successful prosecutions under the old serious vilification offences at the time s 93Z was introduced (three charges were filed, but all were withdrawn), and by mid-2024 only one conviction under s 93Z had survived appeal. Two 2020 convictions were annulled because police had commenced the prosecutions without the consent of the Director of Public Prose-

53 *Smith v Blanch; Smith v Dennis [2026] NSWSC 879.*

54 *Crimes Amendment (Publicly Threatening and Inciting Violence) Act 2018 (NSW) sch 1, sch 2 [1]–[4].*

cutions (DPP), which the section then required; of two later convictions, one was quashed on appeal in February 2024 and the other upheld. A December 2023 amendment removed the DPP-approval requirement, allowing NSW Police to commence prosecutions directly. The change was legislated to lapse after two years, but a 2025 statutory review recommended making it permanent.

In February 2025, the NSW Parliament passed the government's package of 'anti-hate' legislation to 'ensure the community is protected from racial hatred, offensive Nazi symbols, and desecration and harassment at places of worship.' The headline change was a new criminal offence under s 93ZAA of the *Crimes Act*: intentionally inciting hatred, by a public act, against a person or group on the ground of race, where it would cause a reasonable person in the targeted group to fear harassment, intimidation or violence, or fear for their safety. Introduced through the *Crimes Amendment (Inciting Racial Hatred) Act 2025* (NSW), the offence carries a maximum penalty of up to two years' imprisonment and/or an $11,000 fine for individuals, or up to $55,000 for corporations. The offence commenced on 15 August 2025 and will lapse in August 2028 unless extended by Parliament.

One of the first people to be prosecuted under this new offence was Brandan Koschel, for antisemitic statements made on stage at the March for Australia rally in Sydney in January 2026. Koschel stated that 'Jews are the greatest enemy to this nation' and 'an enemy to Western civilisation.' He pleaded guilty and was sentenced to 12 months' imprisonment, with a nine-month non-parole period.

A NSW Government-commissioned review of NSW hate speech laws under s 93Z of the *Crimes Act*, conducted by the Law Reform Commission and led by former NSW Supreme Court Chief Justice Tom Bathurst throughout 2024, recommended against changes to the statute, and against new vilification offences such as incitement to hatred, despite very few convictions under the existing provisions.[55,56] The report concluded that laws play only a limited role in promoting social cohesion, that non-legal measures may be more effective, and

---

55 The Commission acknowledged low prosecution numbers, but recommended against further changes to the provision, suggesting that the low prosecution rate may have less to do with the elements of the offence and more to do with the fact that police prefer to lay general offence charges, which are easier to prove and carry higher maximum penalties.

56 Data from the Bureau of Crime Statistics and Research (BOCSAR) shows that, as at July 2024, 7 people had charges under s 93Z finalised since this section was added to the *Crimes Act in 2018. Of these people, 2 were found guilty of an offence under s 93Z, and 5 had the charge(s) under s 93Z withdrawn. Both convictions were appealed, with one being quashed and one upheld on appeal.*
*NSW Law Re***form Commission**, *Serious Racial and Religious Vilification* **(Report No 151, September 2024) [1.9], citing BOCSAR, CourtSection93ZCharges_202407 (ref ac24-24016). The Commission separately records two 2020 convictions that were annulled because police had commenced the prosecutions without the DPP's consent ([1.10]).**

that the potential unintended consequences of criminalising a wider range of speech and conduct – such as overcomplicating the law, creating uncertainty, and disproportionate impacts on groups overrepresented in the criminal justice system, such as Aboriginal people – were not worth risking.

However, the government did not follow the report and went ahead with its hate speech legislation, citing a wave of antisemitic incidents, most prominently a caravan loaded with explosives and a list of Jewish targets found at Dural, in Sydney's northwest. Authorities revealed this to have been a hoax in March 2025, after the laws had passed; Premier Chris Minns argued that the laws were required regardless.

In May 2025, the government engaged former NSW Supreme Court Justice John Sackar AM KC to conduct an independent review of criminal law hate speech protections to consider whether they should be extended to religion, sexuality, gender identity, disability and other attributes. After withholding the finished review for nine months (it was tabled only after an upper-house order for papers), the government announced in August 2026 that it would reject Sackar's recommendation to extend criminal provisions to other attributes. The review noted that some groups felt excluded because the offence covered only race, and warned that a 'hierarchical, two-tier model of protection' was harmful to social cohesion.

The *Crimes and Summary Offences Amendment Act 2026* (NSW), which passed in June 2026 as a direct response to a neo-Nazi rally outside the NSW Parliament in November 2025, makes it an offence to knowingly engage in public conduct that indicates support for Nazi ideology by invoking imagery or characteristics associated with Nazism, such as Nazi chants or slogans, where the conduct would make a reasonable person fear harassment, intimidation or violence. The maximum penalty is a year in prison and/or an $11,000 fine, doubling near Jewish community sites.

After the Bondi massacre in December 2025, the NSW Government introduced another tranche of anti-hate legislation, passing the *Terrorism and Other Legislation Amendment Act 2025* (NSW) to tighten firearms restrictions, strengthen terrorism-related powers, restrict protests, and, most relevant to this report, to ban more 'hateful' symbols. For example, posting an Islamic State or Hamas flag to a public social media page (or any other public display) without a reasonable excuse now carries a maximum penalty of two years' imprisonment or a $22,000 fine and up to $110,000 for organisations.

The government also announced its intention to ban the phrase 'globalise the intifada' along with 'other hateful statements used to vilify and intimidate our community.' In January 2026, a Legislative Assembly committee recommended

that the government consider banning the phrase and 'any substantially similar wording' with a causal link to harm to reduce the risk of a constitutional challenge, but recommended against banning 'from the river to the sea' because its meaning is contested.[57] No ban has been legislated at the time of publication.

The *Crimes Legislation Amendment (Hate Crimes) Act 2026* (NSW), which passed in June 2026, amends the *Crimes Act 1900*, the *Crimes (Sentencing Procedure) Act 1999* and the *Criminal Procedure Act 1986* (NSW). Among the changes, it increases maximum penalties for publicly threatening or inciting violence to five years' imprisonment and a fine of $22,000 for individuals or $110,000 for a corporation. It makes it easier to establish that an offence was motivated by hatred (an offender who demonstrated or expressed hatred at the time of, or immediately before or after, the offence is taken to have been so motivated); creates a new aggravated offence, with up to seven years' imprisonment, where a threat or incitement results in violence; and extends the existing 'performance crime' offences, which target offenders who post material of their own crimes online, from car theft and break-ins to serious assaults and robberies.

The Crimes Amendment (Prohibited Organisation Symbols) Bill 2026 (NSW), which passed the Legislative Assembly in September 2026 but had not passed the Legislative Council at the time of publication, is a further amendment. Based on its First Print, it will (1) broaden the term from 'prohibited terrorist organisation' to just 'prohibited organisation' (widening the scope beyond terrorist groups specifically), and (2) add a new, separate offence for refusing a police request to remove a symbol where the officer reasonably suspects an offence is being committed, carrying its own lesser penalty of 20 penalty units or 3 months' imprisonment.

With the increase in visibility of transgender-identified people and trans rights in Australian culture, new cases have been brought under both civil and criminal law. (Transgender-identified people have been protected by the ADA's vilification provisions since 1996, and by s 93Z, as 'gender identity,' since 2018.) NSW vilification laws have also been updated to include such people as a protected group under s 93Z, resulting in new cases being brought under both civil and criminal law. The first person convicted of hate speech against trans-identified people in NSW, in November 2025, was Thomas Fordham, who pleaded guilty under s 93Z after he posted a series of comments about trans-identified people on YouTube

57 Legislative Assembly Committee on Law and Safety, Parliament of New South Wales, *Measures to Prohibit Slogans That Incite Hatred (Report, January 2026)* <https://www.parliament.nsw.gov.au/tp/files/192826/Report%20-%20Measures%20to%20prohibit%20slogans%20that%20incite%20hatred%20-%20January%202026.pdf>; Alexander Lewis, 'Labor-Controlled Committee Backs NSW Government Plan to Ban "Globalise the Intifada" Chant', *ABC News (online, 30 January 2026)* <https://www.abc.net.au/news/2026-01-30/nsw-inquiry-slogan-inciting-hatred-ban-globalise-the-intifada/106284716>.

accounts, including one comment stating: 'We should have a geneside [sic] and kill al [sic] trans people.' Fordham has been described as having significant mental health impairments, including an intellectual development disorder, depression, post-traumatic stress disorder and ADHD. Magistrate Christopher Halburd sentenced Fordham to a 12-month community correction order, stating that if it weren't for his mental health issues, Fordham would be 'going straight to jail.'[58] Similarly, John Sunol claims to have an acquired brain injury as a result of a car crash in 1978, which caused ongoing damage to his frontal lobe, interfering with impulse control and his ability to navigate social norms.[59] Criminal sentencing already takes such impairments into account, as Fordham's community-based sentence shows, but the civil complaints process has no equivalent: a 2020 bill that would have allowed complaints to be dismissed where a respondent's cognitive impairment contributed to the conduct lapsed in 2023. The application of these laws to people with cognitive or mental impairments raises the question of whether such a filter ought to apply.

---

58 Dean Arcuri, 'NSW Man Convicted of Transgender Hate Speech', *QNews (online, 24 November 2025)* <https://qnews.com.au/nsw-man-convicted-of-transgender-hate-speech/>.

59 In his April 2020 submission to the NSW Legislative Council inquiry into the Anti-Discrimination Amendment (Complaint Handling) Bill 2020 (NSW), a bill introduced by Mark Latham (since lapsed) that would, among other things, have allowed complaints to be dismissed early where a respondent's cognitive impairment contributed to the conduct, Sunol described his acquired brain injury and said he believed he had been used as a 'useful idiot' to build up a body of case law from complaints against him (John Sunol, Submission No 187 to Legislative Council Portfolio Committee No 5 – Legal Affairs, Parliament of New South Wales, *Inquiry into the Anti-Discrimination Amendment (Complaint Handling) Bill 2020 (April 2020)* <https://www.parliament.nsw.gov.au/lcdocs/submissions/67805/0187%20Mr%20John%20Sunol%20-%20highlighted.pdf>). NCAT recorded $49,500 in damages owed to Burns as unpaid as at October 2016 (*Burns v Sunol (n 51) [7]), and in 2018 Sunol told an ACT tribunal that he was an undischarged bankrupt (Bottrill v Sunol [2018] ACAT 21). Sunol's YouTube channel, which has not been active in the past eight years, had only 133 subscribers and his video views averaged in the low double digits. His audience, in other words, was vanishingly small.*

Victoria

Victoria's primary law governing hateful speech was the *Racial and Religious Tolerance Act 2001* (Vic) (RRTA), which made it unlawful to engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of a person or group on the ground of their race or religious belief or activity. The RRTA was recently repealed and replaced with new anti-vilification provisions as part of reforms that include broader protections against 'hate speech' and a lower threshold for unlawful conduct.

Victoria has a reputation for being Australia's most progressive state, with strong representation and government advocacy for minority groups. However, very few vilification cases have been successfully litigated under the RRTA, which is one reason the Victorian Government recently updated its anti-vilification laws, making them some of the most restrictive in the country.

Controversy surrounded the passing of the new laws due to their potential for subjective and unfair application and their broad scope, with the new criminal offences possibly covering even private conversations. Under the new civil anti-vilification provisions (now in the *Equal Opportunity Act 2010* (Vic) (EOA)), one of the two tests for unlawful vilification (s 102D) asks whether a 'reasonable person with the protected attribute' would be reasonably likely to consider the conduct hateful, seriously contemptuous, reviling or severely ridiculing; the other (s 102E) asks whether the conduct is likely to incite hatred, serious contempt, revulsion or severe ridicule. This differs from the 'reasonable person' test recommended by the 2021 parliamentary inquiry into anti-vilification protections (though it resembles the way courts read s 18C of the federal RDA, through the eyes of a reasonable member of the targeted group), and raises questions about whether an affected person with a protected attribute can be reasonable in such a situation, and how their assessment would differ from that of any other reasonable person. People may now risk being sued, for example, for making statements that seem fair and reasonable to most Australians but that a reasonable member of a small, targeted group would consider severely ridiculing or seriously contemptuous, unless one of the good-faith exceptions in s 102G applies.

The *Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025* moved criminal provisions into the *Crimes Act 1958* (Vic) in 2025 and moved civil provisions into the EOA in 2026. However, claims about conduct that occurred before 15 April 2026 can still be brought, for racial or religious vilification only, under the old RRTA provisions. We examine such cases here.

Islamic Council of Victoria v Catch the Fire Ministries Inc (2004) was the first

major test of the RRTA and remains a landmark religious vilification case. In September 2001, Catch the Fire Ministries published articles on its website and later hosted a seminar in which Pastors Daniel Scot and Danny Nalliah made remarks critical of Islam. For example, in an article titled '2002 – Will Australia be a Christian Country?' Muslims were described as 'the enemy' with expansionist aims using violence, prolific childbearing, and infiltration of government and institutions. The article noted that Muslims obtain visas from countries where Christians are being raped, tortured and killed, then asked readers: 'What stops the Muslims from doing the same in Australia?'

The Islamic Council of Victoria complained to the Equal Opportunity Commission of Victoria, which referred the matter to the Victorian Civil and Administrative Tribunal (VCAT). In December 2004, VCAT ruled that the pastors had breached s 8 of the RRTA by unlawfully vilifying Muslims when taking their statements together in totality. In June 2005, the tribunal ordered the pastors to publish a corrective statement, including in newspaper advertisements worth $68,690, and not to repeat the statements. They refused and appealed. In December 2006, the Victorian Court of Appeal set aside VCAT's decision and sent the case back to the tribunal.[60] In 2007, the five-year battle between the two organisations ended with successful mediation.

The case of *Sisalem v The Herald & Weekly Times Ltd* (2016) demonstrates that speech must be more than merely offensive to people from a protected group to be unlawful under the RRTA (although the revised civil vilification laws in the EOA lower this threshold considerably).[61] Aladdin Sisalem, a Victorian Muslim, complained that an article in the *Herald Sun* titled 'ISLAM MUST CHANGE' constituted religious vilification under s 8 of the RRTA. The article, published in November 2015, two weeks after the Islamic State-linked Paris terrorist attacks, quoted several federal Members of Parliament expressing views about links between Islamic teaching and terrorism. It also included then-Prime Minister Malcolm Turnbull's contrasting view that Islamic State terrorists 'defame and blaspheme Islam.' Mr Sisalem claimed that he suffered humiliation, embarrassment, fear, isolation, loss of self-esteem, stress, anxiety, and depression. In her decision, VCAT Member Julie Grainger, quoting the Court of Appeal in *Catch the Fire*, noted that s 8 of the RRTA is not a prohibition against 'saying things about the religious beliefs of persons which are offensive to those persons, or even against saying things about the religious beliefs of one group of persons which would cause another group of persons to despise those beliefs.' For the article to be in breach of s 8, Sisalem would have had to show that the article incited people to

60 *Catch the Fire Ministries Inc v Islamic Council of Victoria Inc (2006) 15 VR 207.*

61 *Sisalem v The Herald & Weekly Times Ltd [2016] VCAT 1197.*

hatred against, serious contempt for, or revulsion or severe ridicule of Muslims. The tribunal found that Sisalem had not met these conditions, and the complaint was dismissed. Notably, if Sisalem had brought this complaint under the new vilification provisions in the EOA effective April 2026, he may have succeeded, as he would only have had to prove that a reasonable Muslim person would consider the article hateful or seriously contemptuous of Muslims for it to be unlawful.

In an early case testing the jurisdiction of a state-based Tribunal over Internet conduct by residents of a different Australian state, *Ordo Templi Orientis v Legg* (2007) held that, in some circumstances, speech regulations from one jurisdiction can be enforced against someone in another.[62] In 2007, VCAT found in favour of an occult group called the Ordo Templi Orientis (OTO), which had been vilified on the basis of religion by a couple based in New South Wales (NSW) who made allegations on their website (gaiaguys.net) that the group was a protected paedophile group that organised the ritual sexual abuse of children. The OTO complained that the vilification had a 'grapevine effect' in that it was being replicated on other sites on the Internet. The respondents, Vivienne Legg and Dyson Devine, failed to attend a Tribunal hearing in August 2007 and did not remove the offending material from their website as ordered, reportedly questioning VCAT's jurisdiction over NSW residents. The couple did not comply with the tribunal's orders and were later sentenced to nine months' imprisonment for failing to do so. They were forcibly apprehended by Victoria Police at their NSW home and escorted to prison, where they served two months of their sentence before formally apologising and undertaking not to vilify the OTO any further, securing their release.[63]

Laws superseding the RRTA took effect in 2025 and 2026. The *Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025* moved the RRTA's civil provisions into a new Part 6A of the EOA and lowered the incitement threshold: since 15 April 2026 it has been unlawful to engage in public conduct, online or offline, that is 'likely to incite' hatred against, serious contempt for, revulsion towards or severe ridicule of a person or group because of a protected attribute (s 102E). A second, harm-based ground (s 102D) is described earlier.

---

62 *Ordo Templi Orientis v Legg [2007] VCAT 1484.*

63 In 2017, OTO member and ACT resident David Bottrill complained to the ACT Human Rights Commission about posts on a blog controlled by NSW resident John Sunol, and the complaint was referred to the ACT Civil and Administrative Tribunal (ACAT). ACAT ruled in 2017 that it had jurisdiction, because s 75(iv) of the Constitution, which (as the High Court confirmed in *Burns v Corbett (n 52) in 2018) stops state tribunals deciding disputes between residents of different states, does not apply to the territories (Bottrill v Sunol [2017] ACAT 81). In 2018, ACAT found Sunol liable for unlawful vilification on the ground of religious conviction and ordered him to remove the material and not to publish it again, but awarded no damages (Bottrill v Sunol (n 59)). It is unclear whether the orders were enforced.*

Section 102E(3) of the EOA provides that 'the person's motive in engaging in any conduct is irrelevant,' and the protected attribute need only be a substantial reason for the conduct, not the only one. A person can therefore be found to have unlawfully vilified someone even if that was not their intent or main reason; it is only necessary to prove that public conduct was reasonably likely to have the effect of vilification. Section 102G exempts conduct engaged in reasonably and in good faith in an artistic work; in a statement, publication, discussion or debate for a genuine academic, artistic, religious or scientific purpose or in the public interest; or in making or publishing a fair and accurate report, meaning that a person can be found guilty of vilification even if that is not the intent or the dominant ground motivating their conduct. It is only necessary to prove that the conduct was reasonably likely to have the effect of vilification. Good faith exemptions apply under s 102G to private conduct and to conduct that falls within journalism, public interest and debate, or genuine academic, artistic, religious, or scientific pursuits.

New criminal provisions were also added to the *Crimes Act 1958*. As passed in April 2025, the laws included a controversial clause negotiated by the Greens (*Crimes Act* s 195Q(2)) that required the Director of Public Prosecutions, in deciding whether to prosecute, to take into account 'all the circumstances (including the social, cultural and historical circumstances)' of the alleged conduct. Supporters said the so-called 'Sam Kerr clause' would stop the laws being weaponised against the groups they are meant to protect. Critics, however, warned it could create a two-tier justice system in which the legal response to speech depends on the speaker's identity. In March 2026, Parliament passed the *Crimes Amendment Act 2026* (Vic), which removed the clause and the requirement for the consent of the Director of Public Prosecutions to prosecute adults.[64]

Like the RRTA offences they replaced, the new criminal offences apply to private as well as public conduct (for example, a private Facebook group), whereas most other states' criminal vilification offences require a public act. Both stages of the reforms are now in force (the criminal offences since September 2025 and the civil provisions since April 2026), but the laws are yet to be fully tested in the courts.

---

64 The nickname refers to Sam Kerr, then captain of Australia's women's soccer team and a Chelsea FC striker, who was found not guilty of racially aggravated harassment by a London court after calling a Metropolitan police officer 'fucking stupid and white' in January 2023. The charges came after officers doubted her claims of being held hostage in a taxi, and some commentators questioned whether a person of colour should have been charged with racial harassment at all (Kerr's ethnicity is Indian and Anglo-Australian). The implication is that a person of colour who uses 'white' as a slur against a perceived aggressor should not be prosecuted because of historical power imbalances; it is hard to see the same consideration protecting a white speaker who used a racial slur.

The first criminal convictions for vilification under the RRTA came in 2017 and led to *Cottrell v Ross* (2019).[65] While most of the RRTA dealt with civil law, it also made serious vilification a crime, in two forms: intentionally engaging in conduct the offender knew was likely to incite hatred and to threaten, or incite others to threaten, physical harm (ss 24(1) and 25(1)); or knowingly engaging in conduct with the intention of inciting serious contempt for, or revulsion or severe ridicule of, a person or group because of their race or religion (ss 24(2) and 25(2)). Blair Cottrell, along with fellow United Patriots Front (UPF) members Christopher Shortis and Neil Erikson, made and shared a video of a mock beheading of a dummy while chanting 'Allahu Akbar' and spilling fake blood outside the City of Greater Bendigo offices in October 2015, in protest against plans to build a mosque nearby. The Magistrate said that the video – which was posted to the UPF's Facebook page – was designed to incite contempt and ridicule of Muslims, and to encourage other 'like-minded people' to attend a rally opposing the mosque. The trio were found guilty under s 25(2) of the RRTA of inciting serious contempt for, or revulsion or severe ridicule of, Muslims and were each fined $2,000. Cottrell appealed, but in December 2019 the County Court upheld his conviction.

As of 20 September 2025, the RRTA's criminal offences were replaced by offences in the *Crimes Act 1958*: two new serious vilification offences (ss 195N and 195O), one for incitement and one for threats. The maximum penalty was raised from six months' imprisonment to three years for incitement and five years for threats. While the RRTA prohibited only racial and religious vilification, these offences apply to an expanded list of protected characteristics: disability, gender identity, race, religious belief or activity, sex, sex characteristics and sexual orientation, or personal association with someone who has one of these protected characteristics.

Of the two criminal offences, the threat offence is most similar to 'incitement to violence,' with a high threshold for guilt, so it is unlikely to infringe on valid free expression. The incitement offence, however, is broad enough to criminalise jokes or private conversations, with a maximum penalty of three years' imprisonment. Under s 195N, it is an offence to engage in conduct that is 'likely to incite hatred against, serious contempt for, revulsion towards or severe ridicule of' another person or group on the ground of a protected attribute, where the person intends the conduct to incite those feelings or believes it will probably do so. The prosecution does not have to prove that anyone was actually incited, and the offence applies whether the vilification happens in public or private, including in closed groups or private forums, as well as covering any conduct

65 *Cottrell v Ross [2019] VCC 2142.*

targeting a person in Victoria, even if the alleged offender is based in another state or country.

Victoria's EOA has been amended by inserting Part 6A to include civil anti-vilification protections from the RRTA, which has been repealed. Effective from 15 April 2026, this consolidates anti-vilification laws together with discrimination, sexual harassment and victimisation laws in a single equality-focused framework. Section 1 of the EOA now states that one of its purposes is 'to protect and promote the right to equality by prohibiting certain conduct involving the vilification of persons with a protected attribute.' Part 6A itself opens (s 102A) with the statement that 'vilification harms social cohesion through its inherent divisiveness and perpetuates the unequal distribution of power.'

As with the new criminal anti-vilification laws, the new civil laws apply to an expanded list of protected attributes, including disability, gender identity, race, religious belief or activity, sex, sex characteristics, sexual orientation, and personal association with a person identified by reference to any of these attributes.

As noted above, the harm-based test in s 102D is subjective in that it is applied from the target group's standpoint: it asks whether a 'reasonable person with the protected attribute' would be reasonably likely to consider the conduct hateful, seriously contemptuous, reviling or severely ridiculing. This contrasts with the traditional test, which asks whether a 'reasonable person' alone would consider the conduct hateful. Exemptions outlined in s 102G include conduct for art, public debate for religious or scientific endeavours, and journalism.

Section 5 of Victoria's *Sentencing Act 1991* (Vic) requires a court, when sentencing, to consider whether the offence was 'motivated (wholly or partly) by hatred for or prejudice against a group of people with common characteristics' with which the victim was, or was believed by the offender to be, associated (s 5(2)(daaa)). The intentional public display of Nazi symbols and the performance of Nazi gestures such as the Nazi salute are banned under s 41K of the *Summary Offences Act 1966* (Vic) (a 2022 amendment banned the Hakenkreuz, or swastika; a 2023 amendment extended the ban to all Nazi symbols and gestures). The maximum penalty is 12 months' imprisonment, a fine of 120 penalty units ($25,092 in 2026–27), or both.

Some of these amendments and new vilification laws seem to cut against s 15 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic), which provides both that every person has the right to hold an opinion without interference, and that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Victoria. This right may be subject to lawful restrictions 'reasonably necessary' to respect the rights and reputation of other

persons, or for the protection of national security, public order, public health or public morality (s 15(3)). More generally, under s 7(2), any limit on a Charter right must be reasonable and demonstrably justified in a free and democratic society. Only Victoria, Queensland and the Australian Capital Territory have some form of Human Rights Act or Charter. The remaining four states, one territory, and the Commonwealth have no Human Rights Act.

Queensland

Queensland's hate speech framework relies primarily on civil anti-vilification law. Here, complaints are generally dealt with through conciliation and, where necessary, remedial orders. In recent years, however, the criminal law has been strengthened. The existing serious vilification offence was moved into the *Criminal Code Act 1899* (Qld) with a higher penalty, and new provisions now address offences motivated by hate as well as the public display or distribution of prohibited symbols and expressions. Separately, applying its civil regime to digital communications has shown a potentially broad reach, encompassing social media users, website operators and, in some circumstances, even overseas platforms whose services and content affect people in Queensland.

The *Anti-Discrimination Act 1991* (Qld) (ADA) is the primary means for people in Queensland to seek redress for alleged vilification. Section 124A makes the public incitement of 'hatred towards, serious contempt for, or severe ridicule of' a person or group on the grounds of race, religion, sexuality, sex characteristics or gender identity unlawful. Exemptions apply to fair reports, to material protected by absolute privilege, and to public acts done reasonably and in good faith for academic, artistic, scientific or research purposes or other purposes in the public interest, including public discussion or debate. The definition of 'public act' also excludes distributing or disseminating material by a person who does not know, and could not reasonably be expected to know, its content. However, while this 'innocent disseminator' exclusion applies to mere distribution (for example, a newsagent selling a newspaper), *Menzies v Owen* (2014) shows its limits: a councillor who said he did not know a letter had been posted on websites he controlled was still held liable for its publication (see below).[66]

Under the ADA, complaints are made to the Queensland Human Rights Commission (QHRC), which tries to resolve them through conciliation. If conciliation fails, the complainant can ask for the complaint to be referred to the Queensland Civil and Administrative Tribunal (QCAT). QCAT may order remedial measures, such as an apology, a payment, or a change of policy. A broader civil scheme, legislated by the previous Labor Government in 2024 with a new harm-based test and more protected attributes, has not commenced: the Crisafulli Liberal National Party Government deferred it indefinitely in 2025.

In a decision that has potential implications for social media platforms operating around the world, QCAT ruled in *Australian Muslim Advocacy Network Ltd v Twitter Australia Holdings Pty Ltd* (2024) that X Corp, the US-based owner of

66 *Menzies v Owen [2014] QCAT 661.*

X, was subject to the Tribunal's jurisdiction and must answer a vilification complaint under Queensland law. X Corp argued that QCAT did not have jurisdiction over it because it had no presence or place of business in Queensland and the impugned conduct (in this case, posting of alleged anti-Muslim hate speech) occurred outside of Queensland; indeed, all material is uploaded to its website in the US. However, QCAT Senior Member Ann Fitzpatrick rejected these arguments, holding that X Corp carries on business in Queensland (through its contracts with Queensland users and its advertising revenue there) and that the conduct occurred in Queensland as it is where the material was downloaded and read. The Tribunal made no finding on whether the material was vilifying; that is left for a final hearing. AMAN, which brought the complaint against X Corp, reportedly welcomed the decision as 'precedent-setting.' X Corp's appeal to QCAT's Appeal Tribunal was dismissed in February 2026, and X Corp and Twitter Australia have since appealed to the Queensland Court of Appeal (filed March 2026; undecided as at October 2026). More than four years after AMAN lodged its complaint, the complaint itself has not been heard.

In 2021, former federal senator for Queensland Fraser Anning was found by QCAT to have unlawfully vilified Muslim people in online posts, in default orders made after he failed to take part in the proceedings. It is one of very few cases in which a politician has been found to have breached vilification law over statements made while in office (see also *Menzies v Owen* below). In *Australian Muslim Advocacy Network Ltd v Anning* (2021), Anning was ordered to remove 141 pieces of content from the Internet (mainly Twitter and Facebook), much of which he had posted while he was a senator from November 2017 to June 2019. The content reportedly included memes, calls to ban Islam in Australia, criticism of an AFL training camp for young Muslims, and a press release issued the day of the Christchurch mosque shooting in March 2019, in which he blamed Muslim immigration for the deaths of 51 people and the injuries of 89 others.[67] Notably, this case was also brought by AMAN along with the Islamic Council of Queensland. These Muslim advocacy groups have made effective use of anti-vilification laws to push back on alleged anti-Muslim speech.

In a cross-jurisdictional case with implications for online political discourse, Victoria-based former Australian Breastfeeding Association (ABA) counsellor Jasmine Sussex is defending a vilification complaint brought under s 124A of the ADA by Queensland resident and transgender-identifying Jennifer Buckley in relation to social media posts in which Sussex claimed that 'men can't breast-

67 The precise wording and details of content posted by Anning cannot be located in published court documents, so this report relies on media reporting of the matter, which offers only characterisations of Anning's statements. Anning was formally censured by the Senate on 3 April 2019 for his comments on the Christchurch massacre.

feed' and raised concerns about the safety of synthetically-induced lactation. The case was referred to QCAT after conciliation failed: Sussex had already deleted several of the posts but rejected Buckley's demands to apologise and pay $15,000 in damages. While the case is yet to be heard in QCAT, the complaint has been brought over the past five years through the ABA's conciliation process (during which time Sussex was expelled from the organisation),[68] the QHRC, and the eSafety Commissioner, to whom Buckley reported Sussex's posts.[69] As this case illustrates, even at this unresolved stage, the stakes for plainly stating one's professional opinion on a politically sensitive topic on social media can be high.

Another case underscoring that culture war issues provide rich ground for vilification complaints is *Valkyrie v Shelton* (2023).[70] Queer performers Johnny Valkyrie and Dwayne Hill brought a complaint under s 124A against Christian conservative political figure Lyle Shelton for a post published on his blog in January 2020 criticising 'drag queen story time,' a children's event sponsored by Brisbane City Council and held at the Brisbane library. Valkyrie and Hill claimed that the post, referencing Valkyrie and Hill by their performance monikers and titled 'Why "Queeny" and "Diamond Good-Rim" are dangerous role models for children' (the post also said '[d]rag queens are not for kids'), vilified them on the basis of their work as drag performers and their transgender and homosexual status. In the post, Shelton referred to Queeny as 'a woman who goes by the name of Johnny Valkyrie' who was crowdfunding to 'help pay for her breasts to be surgically sliced off so she can present as a man,' and asked: 'Have we learned nothing from creeps like Harvey Weinstein, Jeffrey Epstein and Prince Andrew?' QCAT dismissed both complaints in August 2023, finding among other things that drag queens are too diverse a group for criticism of drag queens to amount to vilification on the ground of sexuality or gender identity. Valkyrie and Hill's subsequent appeal succeeded: in February 2026, QCAT's Appeal Tribunal found that the 2023 decision had applied the wrong legal test. Shelton sought judicial review of that ruling in the Supreme Court, but in June 2026 Justice Smith dismissed his application because the Appeal Tribunal had not yet made a final decision. As at October 2026, no final decision had been published.

Menzies v Owen (2014) provides a clearer-cut case of internet-based vilification. The case is notable for the distinction that control of a platform is enough to

68 The ABA said in a statement to *The Australian* that Sussex's expulsion was not related to Buckley's complaint.

69 'Jasmine Sussex Wins Appeal in Trans Lactation Vilification Case', *The Australian (online, 10 September 2026); on the 2023 notices from X, see* Anna Slatz, 'Two Australian Women Told They Broke the Law after Criticizing Trans-Identified Male Breastfeeding Child', *Reduxx (online, 19 May 2023)* <https://reduxx.info/two-australian-women-told-they-broke-the-law-after-criticizing-trans-identified-male-breastfeeding-child/>.

70 *Valkyrie v Shelton [2023] QCAT 302.*

make one liable for material published on it, even if one claims not to know of the publication. Ron Owen, a Cooloola Shire local councillor in regional Queensland, was found to have unlawfully vilified homosexuals on websites controlled by him, as well as in a council report and a community newsletter. Published on the websites under the heading 'No Human Rights for Non-Humans,' a letter written by Owen stated that 'any person who commits acts that no ignorant animal would commit declares war on his community, and therefore may be destroyed by any or all of that community.' His report to the council claimed that '[s]odomite's [sic] cannot reproduce; their only means of recruitment to their way of life is by preying on the children of normal human beings.' Owen claimed that he did not know the letter had been posted to his websites and that he had asked for its removal once he found out. Nevertheless, the Tribunal still found him liable because he had control over how the websites were managed and allowed that management structure to result in publication. Owen was ordered to make a 'genuine' private apology and retraction to the complainants, who had by that point abandoned their claims for compensation.

Against this background, the strengthening of Queensland's criminal law against vilification on the grounds of race, religion, sexuality, sex characteristics and gender identity is perhaps not surprising. Serious vilification had been a criminal offence under s 131A of the ADA since 2001, with a maximum penalty of six months' imprisonment. Since April 2024 it has been set out in s 52A of the *Criminal Code Act 1899*, which makes it an offence to publicly 'knowingly or recklessly incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons' on the ground of the race, religion, sexuality, sex characteristics or gender identity of the person or members of the group in a way that includes (a) threatening physical harm towards, or towards any property of, the person or group of persons; or (b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons. The maximum penalty for this offence is three years' imprisonment. Section 52B makes it a circumstance of aggravation for eight listed offences, including common assault, assault occasioning bodily harm and wilful damage, that the offender was 'wholly or partly motivated to commit the offence by hatred or serious contempt' for a person or group because of race, religion, sexuality, sex characteristics or gender identity. This raises the maximum penalty for those offences.

The *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023* (Qld), introduced by the Palaszczuk Labor Government and also supported by the Liberal National Party and the Queensland Greens, moved serious vilification offences from the ADA into the *Criminal Code*. It raised the maximum penalty for serious vilification from six months to three years' imprisonment, and made hate motivation a circumstance of aggravation that raises the maximum penalty for eight offences (for example, from three to

four years for common assault). This amendment also introduced a prohibition on public display of 'hate symbols,' which the Queensland Government said was 'intended to capture a broad range of circumstances, including the public display of tattoos and the public distribution or publication of prohibited symbols online' to 'protect the community from the distress and insecurity associated with the display of hate symbols.' The amendment resulted from four recommendations of the Legal Affairs and Safety Committee's Inquiry into serious vilification and hate crimes.

In March 2026, Queensland became the first jurisdiction in Australia to criminalise the public utterance or display of particular pro-Palestinian slogans 'from the river to the sea' and 'globalise the intifada' where this is done 'in a way that might reasonably be expected to cause a member of the public to feel menaced, harassed or offended,' with the *Fighting Antisemitism and Keeping Guns out of the Hands of Terrorists and Criminals Amendment Act 2026* (Qld) coming into effect. The maximum penalty is two years' imprisonment, per s 52DA of the current consolidated *Criminal Code Act 1899*. The legislation was principally an initiative of Premier David Crisafulli's Liberal National Party Government, with support from Jewish representative bodies including the Queensland Jewish Board of Deputies and the ECAJ; it was not bipartisan at the final vote.

We know of no modern Australian precedent for Parliament to name particular words or phrases and make their public utterance, in specified circumstances, a criminal offence. The new law has been quickly put to use: police arrested 20 people at a single Brisbane rally in April 2026, and more than 20 people had been charged under the laws by late July. The Human Rights Law Centre said the laws would 'suppress peaceful political communication,' and the Jewish Council of Australia urged the parliamentary committee to drop the phrase ban, arguing that pro-Palestinian slogans are 'political communication, not hate speech.' In July 2026, seven plaintiffs led by Justice for Palestine Magan-djin spokeswoman Remah Naji filed a High Court challenge, arguing that the laws infringe the implied freedom of political communication under the Australian Constitution.

While, as far as we could find, no one had been charged with breaching these laws for online speech at the time of publication, Brisbane-based artist James Hillier was warned by Queensland Police in March 2026 that several artworks displayed on his website allegedly violated the laws. The *Guardian* reported that Hillier was 'shocked to learn he could face jail time for some of his designs,' prompting him to take three artworks off his website (although at least one remains visible on his public Instagram account). One artwork depicted the first woman arrested under the law, with the slogan 'from the river to the sea' displayed on her T-shirt. Another artwork depicted Australian singer John Farnham with watermelon imagery beside the words 'River to the Sea,' which is a phrase

that appears in Farnham's 1988 hit song 'Two Strong Hearts.'[71]

Sections 52C and 52D of the *Criminal Code Act 1899*, inserted by the *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023*, further provide for the designation and prohibition of hate symbols. A symbol may be prescribed only if the Minister is satisfied it is widely known as being 'solely or substantially representative of an ideology of extreme prejudice' against a group defined by race, religion, sexuality, sex characteristics or gender identity. Since March 2026, symbols used to identify a prescribed terrorist organisation or state sponsor of terrorism are also prohibited. Publicly displaying, distributing or publishing a prohibited symbol in a way that might reasonably be expected to cause a member of the public to feel menaced, harassed or offended is an offence. A person has a reasonable excuse if they acted for a genuine artistic, religious, educational, historical, legal or law-enforcement purpose, for a purpose in the public interest, or in opposition to the ideology the symbol represents, and their conduct was reasonable for that purpose. It is irrelevant whether a member of the public actually sees the prohibited symbol, and the maximum penalty, originally six months' imprisonment, was raised to two years in March 2026.

The *Criminal Code* does not list prohibited symbols; they are prescribed by regulation, made by the Governor in Council on the Minister's recommendation 'if the Minister is satisfied the expression is regularly used to incite discrimination, hostility or violence towards a relevant group,' after the Minister has consulted the Crime and Corruption Commission chair, the Human Rights Commissioner and the Police Commissioner. The *Criminal Code (Prohibited Symbols) Regulation 2024* (Qld) initially banned only the Nazi Hakenkreuz; since February 2026 it has listed 14 Nazi-related and terrorist-organisation images. This leaves room for broad, after-the-fact interpretation, appearing to catch any symbol that closely resembles a listed one and, since March 2026, any symbol used to identify a prescribed terrorist organisation, without that symbol having to be listed. If examples were provided, then it could be argued that anything outside of the listed symbols would not constitute a hate symbol. Crafting legislation to be ambiguous allows for broad, post-hoc interpretation, leaving it to a court to determine whether alleged hate symbols satisfy the legislative objectives.

Section 21 of Queensland's *Human Rights Act 2019* (Qld) protects 'freedom of expression'; however, under s 13, a human right may be subject under law to 'reasonable limits that can be demonstrably justified in a free and democratic

71 The watermelon, whose colours match the red, green, white and black of the Palestinian flag, became a symbol of Palestinian solidarity where display of the flag was suppressed (or perceived to be suppressed), and is now widely used at protests and online.

society based on human dignity, equality and freedom.' The Act does not prohibit hate speech, but it requires Queensland laws, including these offences, to be interpreted as far as possible in a way that is compatible with human rights (s 48).

South Australia

South Australia (SA) has comparatively narrow vilification laws. It is one of only two states or territories, alongside Western Australia, whose vilification protections are entirely limited to race: no other attribute is independently protected against vilification under state law. Moreover, unlike most other jurisdictions, the state provides no commission-based complaint and conciliation pathway, leaving enforcement to criminal prosecution or private litigation under relatively demanding thresholds. The only commission route is federal: a complaint to the AHRC under s 18C of the RDA. The result is a limited vilification framework that remains cautious in its regulation of hateful expression, including hateful online content. Nevertheless, because the relevant offences and civil causes of action apply to 'public acts,' they retain potential application to websites, social media posts and other forms of digital publication, even though the absence of successful prosecutions or recorded civil claims indicates that their practical reach has so far been limited.

Section 73 of the *Civil Liability Act 1936* (SA) (CLA) creates a civil wrong (tort) of 'racial victimisation,' meaning a public act 'inciting hatred, serious contempt or severe ridicule of a person or group of persons on the ground of their race.' A person who suffers detriment from such an act must sue in court, and total damages for the same act or series of acts are capped at $40,000, regardless of how many people sue. Significantly, whereas in other jurisdictions an 'objective' test is typically applied regardless of whether or not any harm has arisen from the vilifying speech at issue, the CLA requires that the plaintiff suffer actual detriment. For example, under s 18C of the federal RDA, the alleged vilifying speech must be 'reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people.' In contrast, per s 73 of the CLA, the act must actually cause the plaintiff 'detriment,' which the Act defines as 'injury, damage or loss' or 'distress in the nature of intimidation, harassment or humiliation.' The tort does not cover a fair report of another person's act, material protected by absolute privilege (as in defamation law), or a reasonable act done in good faith for academic, artistic, scientific or research purposes or other purposes in the public interest, including reasonable public discussion and debate. We found no reported case under s 73.

Under s 4 of the *Racial Vilification Act 1996* (SA), public acts which 'incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of their race' by threatening physical harm to the person or group or their property, or by inciting others to make such threats, are a criminal offence. Maximum penalties are three years' imprisonment and/or a $5,000 fine for individuals, or a $25,000 fine for a company. The necessity of linking hateful,

contemptuous or ridiculing speech to an overt threat of harm (or incitement to such a threat) renders the threshold for guilt high in comparison to civil vilification provisions in other Australian jurisdictions. Moreover, the Director of Public Prosecutions must provide written consent to initiate prosecutions. To date, there have been no reported convictions under the Act, which was passed in 1996 and came into force in July 1998.[72]

Like the other states, however, SA now bans Nazi symbols. Since 5 August 2024, it has been an offence to perform a Nazi salute or to publish a Nazi symbol, including in a publicly viewable post on a website or social media platform, with a maximum penalty of a $20,000 fine or 12 months' imprisonment (*Summary Offences Act 1953* (SA) ss 32A–32B). There is a defence for acts done for a legitimate public purpose, such as genuine academic, artistic, religious, scientific, cultural or educational purposes, accurate reporting, or opposing fascism and Nazism, unless a reasonable person would see the act as promoting or condoning Nazism. Regulations made in January 2026 extended the ban to two symbols commonly used by the National Socialist Network and the European Australian Movement.

72 *ABC News reported in 2019 that no one had been convicted under South Australia's Racial Vilification Act since it was passed in 1996; we found no reported conviction since then. See Hagar Cohen and Scott Mitchell, 'Hate Crime Laws Rarely Used by Australian Authorities, Police Figures Reveal', ABC News (online, 3 May 2019)* <https://www.abc.net.au/news/2019-05-03/hate-crimes-rarely-prosecuted-in-australia/11055938>.

Western Australia

Western Australia (WA) is unique in that it is the only state or territory in Australia whose own vilification laws are purely criminal, with no state civil pathway for complaints. (South Australia, by closest comparison, has no civil commission complaints model, but does offer a civil tort option.) People in WA can still complain about racial vilification to the AHRC under s 18C of the federal RDA. The Equal Opportunity Bill 2026 (WA), introduced in October 2026, would however create a civil complaints regime (see below).

Moreover, like South Australia, WA's *Criminal Code* only prohibits racial vilification; there are no state-level anti-vilification protections for religion, sexual orientation, gender identity or any other attribute. WA is also unusual in making it an offence to possess threatening or abusive racist material with a view to publishing, distributing or displaying it (see below). Online posts, blogs and videos may satisfy the requirement that conduct occur 'otherwise than in private.'

At the same time, the high criminal threshold, the requirement for prosecutorial consent for the more serious incitement offences and the absence of a civil complaint pathway have produced very few successful cases, leaving limited remedies for harmful expression that falls below the level required for prosecution. WA therefore combines unusually strong criminal powers over certain forms of racial expression with comparatively limited coverage, enforcement and human-rights safeguards.

WA has no express guarantee of freedom of expression in a dedicated Human Rights Act or similar legislation. A 2007 statewide inquiry led by Fred Chaney AO, a former federal Liberal minister and former Deputy President of the National Native Title Tribunal, showed clear majority support for a Human Rights Act. Still, no subsequent government has moved to enact one.

The WA Government has signalled support for incorporating civil anti-vilification protections into the *Equal Opportunity Act 1984* (WA), which currently prohibits racial harassment, but not vilification.[73] A review of the Act, commissioned by the government and conducted by the Law Reform Commission of Western Australia, recommended in a report tabled in August 2022 adding anti-vilification provisions protecting a broader range of attributes to bring WA law in line with most other Australian jurisdictions. Attorney-General John Quigley said the

73 While the *Equal Opportunity Act 1984 (WA) makes racial harassment unlawful in specific contexts (education, employment, and accommodation), this differs from vilification in that the person must be disadvantaged, or have reasonable grounds to believe they will be disadvantaged, by objecting to the harassment.*

government had 'broadly accepted' the Commission's 163 recommendations, and listed anti-vilification laws among the reforms expected in a new bill. In October 2025, his successor, Tony Buti, said drafting the new Act was 'continuing as a matter of priority.'[74] On 21 October 2026, Buti introduced the Equal Opportunity Bill 2026, which would replace the 1984 Act and, for the first time, allow a person to complain to the Equal Opportunity Commissioner about vilification. Vilification would cover public conduct that 'expresses and incites hatred, serious contempt, severe ridicule, threats or serious abuse' against a person, or that threatens or seriously abuses a person or group, because of race, religious conviction, sex, sexual orientation, gender identity, innate variation in sex characteristics or disability. Conduct done 'reasonably and in good faith' in art, academic or scientific discussion, genuine public interest debate, fair reporting or fair comment would be exempt, but the burden of proof would lie on the person relying on the exception. Complaints not resolved by conciliation could be referred to the State Administrative Tribunal, which could order compensation. The Bill had not passed either House at the time of publication.[75]

Because criminal prosecutions for vilification in WA face a high threshold, and prosecutions for the more serious incitement offences require the consent of the Director of Public Prosecutions, the state's comparatively tough laws have resulted in few successful prosecutions with limited means of remediation for hate speech falling just below the criminal threshold.

The *Criminal Code Amendment (Racial Vilification) Act 2004* (WA) replaced the *Criminal Code*'s original 1990 offences of racist harassment and incitement to racial hatred with new ss 77–80H.[76] Under the Act, it is an offence to engage in public conduct intended, or likely, to incite 'racial animosity' or 'racist harassment.' It is also an offence to possess threatening or abusive written or pictorial material for publication, distribution or display, intending it to create, promote or increase animosity towards, or harassment of, a racial group (or to racially harass), or where its publication or display would be likely to have that effect (ss

---

74 WA Government, 'AG Announces Overhaul to Equal Opportunity Act' (Announcement, 16 August 2022) <https://www.wa.gov.au/government/announcements/ag-announces-overhaul-equal-opportunity-act>; Rationalist Society of Australia, 'Redrafting of WA Equal Opportunity Laws "Continuing as Matter of Priority", Says Attorney-General' (Web Page, 24 October 2025) <https://rationalist.com.au/redrafting-of-wa-equal-opportunity-laws-continuing-as-matter-of-priority-says-attorney-general/>.

75 WA Government, 'New Laws to Protect More Western Australians from Discrimination' (Media Statement, 20 October 2026) <https://www.wa.gov.au/government/media-statements/Cook%20Labor%20Government/New-laws-to-protect-more-Western-Australians-from-discrimination-20261020>; WA Government, 'Equal Opportunity Bill 2026: Civil Vilification' (Fact Sheet, October 2026) <https://www.wa.gov.au/system/files/2026-10/eobill_civilvilification_f.pdf>.

76 The original offences were inserted by the *Criminal Code Amendment (Racist Harassment and Incitement to Racial Hatred) Act 1990 (WA)*. *Section 6 of the 2004 Act repealed ss 77–80 and inserted ss 77–80H in their place.*

79, 80, 80C and 80D).

The sections divide into two tiers: incitement of racial animosity or racist harassment (the more serious tier, ss 77–80, with maximum penalties of five to 14 years' imprisonment) and racial harassment (the lower tier, ss 80A–80D, with maximums of three to five years). Within each tier, offences are further split by whether the conduct was *intentional* or merely *likely* to have the prohibited effect. Defences apply only to the likelihood offences (ss 78, 80, 80B, 80D), but not the intent offences. Under s 80G, a defence is available where the conduct was done reasonably and in good faith in an artistic work, for a genuine academic, artistic, religious or scientific purpose or any other purpose in the public interest, or in a fair and accurate report or analysis of a matter of public interest.

In December 2025, Martin Thomas Glynn was charged with conduct intended to racially harass (s 80A), carrying or possessing a prohibited weapon and failing to store a firearm properly; two further firearm charges were added in February 2026.[77] Glynn was arrested after police received a tip regarding his alleged support for terrorism, following an Instagram post written hours after the Bondi Beach terrorist attack in which he wrote: 'I just want to say that I, Martin Glynn, 100 per cent support the New South Wales shooters.' In May 2026, Glynn pleaded guilty to all five charges. He pleaded guilty in June 2026, though no sentence has been reported.

WA has had criminal offences of racist harassment and incitement to racial hatred since 1990 (rewritten and broadened in 2004), yet before 2026 only two successful prosecutions had been reported. The first involves possession of racist material arising from numerous acts of graffiti on a synagogue and a Chinese restaurant. Damon Paul Blaxall, one of the men prosecuted over the Australian Nationalist Movement's July 2004 graffiti campaign, was convicted and sentenced to four months' imprisonment for possession of racist material in 2005, plus another eight months for criminal damage. Slogans included 'Hitler was right' and 'Asians out.'[78]

The other case, *O'Connell v Western Australia* (2012), concerned material Brendan O'Connell published online. On appeal, he did not dispute that posting online was conduct 'otherwise than in private' (under s 80E(2), any communication

---

77 Nicolas Perpitch and Bridget McArthur, 'Bomb-Making List, Firearms, Extremist Flags Seized from Perth Man Accused of Backing Bondi Attackers', *ABC News (online, 24 December 2025)* <https://www.abc.net.au/news/2025-12-24/bondi-attack-supporter-charged-in-perth-raid/106177710>; David Weber, 'Perth Man Accused of Backing Bondi Attackers Facing More Firearms Charges', *ABC News (online, 3 February 2026)* <https://www.abc.net.au/news/2026-02-03/perth-man-accused-of-backing-bondi-attackers-faces-more-charges/106299954>.

78 Katharine Gelber, 'The False Analogy between Vilification and Sedition' (2009) 33(1) *Melbourne University Law Review 270, n 130.*

with the public counts as public), and the Court of Appeal held that the counts had been properly tried together as a series of similar offences.[79]

O'Connell was sentenced to three years' jail after being found guilty of six counts of vilification (under ss 77 and 80B) relating to antisemitic conduct. Five counts, under s 77, related to a series of statements concerning Jewish people posted to O'Connell's blog and YouTube page between May and November 2009, which the prosecution successfully argued were 'conduct intended to create, promote or increase hatred of, or serious contempt towards, Jews as a racial group'; the sixth, under s 80B, related to an in-person altercation. Statements posted by O'Connell included threats that the Jewish people's 'days are numbered,' references to putting Jews who do not change their ways 'in camps,' and writing 'I am vehemently ANTI-XEWISH [sic]' and 'I am most definitely anti-israel [sic] (may it be wiped from the face of the earth).'

O'Connell appealed, but the conviction was upheld. Conservative columnist Paul Murray reportedly opined in *The West Australian* in 2011 that a person convicted of glassing someone in a pub could expect to receive an 18-month sentence, whereas O'Connell received twice as long, three years, for what Murray called 'essentially political [speech].' On the left, *Green Left* journalist Alex Bainbridge expressed concern that O'Connell's jailing would make him a martyr for the far-right and might set a precedent for targeting racial minorities and the left. No further successful prosecution was reported until Martin Glynn's guilty plea in 2026 (see below). An earlier, unsuccessful case, *Police v A Child* (2006),[80] was brought in the Kalgoorlie Children's Court against a 16-year-old Aboriginal girl who allegedly attacked a woman in the street and called her a 'white slut.' The magistrate dismissed the racial vilification charge, finding that the law was meant to deal with severe abuse rather than petty name-calling, and Attorney-General Jim McGinty endorsed the ruling.

In the wake of the December 2025 terror attack in Bondi, the Public Order Legislation Amendment Bill 2026 (WA) was introduced in February 2026 by the Cook Labor Government in a bid to protect 'social cohesion.' The Bill was referred to the Legislative Council's Standing Committee on Legislation, whose scrutiny was due to run until mid-June 2026. If passed, it will create new offences for displaying the symbols of any organisation outlawed under Commonwealth law, including terrorist organisations, and will extend WA's existing ban on Nazi sym-

---

79 *O'Connell v Western Australia [2012] WASCA 96.*

80 *Police v A Child (Children's Court of Western Australia, 2006). Although reasons for decision were delivered, the judgment is unreported and no publicly accessible copy is available. See 'WA Court Dismisses Charges over Racial Insult', AM (ABC Radio, 15 September 2006)* <https://www.abc.net.au/listen/programs/am/wa-court-dismisses-charges-over-racial-insult/1264924>.

bols and salutes, which does not apply to under-18s, to minors.[81] Specifically, the amendments add organisational symbols and terms that are prohibited in public places, though exceptions allow officers to use these symbols while undercover in groups to infiltrate them. The amendments also give police the power to refuse a protest permit where the protest is likely to promote hate based on factors such as religion, race, disability, gender, sexuality or ethnicity; require organisers to give more information in permit applications; make it an offence to knowingly give false or misleading information in an application; and ban face coverings worn in public to intimidate. The Bill, which has been supported with strong Jewish community advocacy, had not yet passed at the time of publication of this report.

The WA Greens have expressed concern that the Bill could affect protest and political expression rights, and the John Curtin Law Clinic has suggested the Bill risks overreach and the loss of 'hard-won protest rights,' including the right to peaceful assembly.

81 *Criminal Code Amendment (Prohibition on Display of Nazi Symbols or Gesture) Act 2024 (WA), assented 17 September 2024, inserting ss 80K–80ZF into the Criminal Code (WA); s 80O(3) excludes people under 18.*

Tasmania

With its small population of around 580,000 people, Tasmania has not generated much in the way of anti-vilification case law relating to digital expression, and most complaints are either dropped or resolved in conciliation, without progressing to the Tribunal.[82] However, complaints that do not advance to the Tribunal can still have a significant impact when picked up by national and international media.

Tasmania's vilification laws are notable for expressly covering sexual orientation, lawful sexual activity (which the Act does not define, but which the Anti-Discrimination Commissioner describes as 'any form of sexual activity that is legal in Tasmania, including legal prostitution'),[83] gender identity, and sex characteristics in the vilification provision itself. This makes the Tasmanian scheme clearer than older or narrower state schemes that rely on categories such as 'homosexual' or 'transgender,' but omit intersex/sex-characteristics coverage, or deal with LGBTIQ+-related hate speech mainly through separate criminal provisions. However, Tasmania is no longer unique in expressly protecting sexual orientation or sexuality, gender identity, and sex characteristics, as the Australian Capital Territory, the Northern Territory, Queensland and Victoria now also include all three attributes in their anti-vilification frameworks.

Although most complaints are resolved privately, withdrawn, or settled through conciliation, complaints such as the one against Senator Claire Chandler over an online opinion piece and an email (discussed below) show that the process itself can carry reputational and political risks even without a Tribunal ruling. Tasmania's Parliament has also refused to add a specific religious exception to these protections. After a 2015 complaint against Hobart's Catholic Archbishop, Julian Porteous, over a bishops' booklet opposing same-sex marriage (withdrawn in May 2016), the Hodgman Liberal Government introduced a bill to exempt public acts done in good faith for 'religious' purposes; it passed the House of Assembly

82 According to its annual report for 2024–25, the Office of the Anti-Discrimination Commissioner received 261 complaints under the Act: 108 proceeded to conciliation, and 69 of the 107 early conciliations held were resolved. Of the 41 investigations finalised, 19 complaints were dismissed, 18 were referred to the Tribunal and two went to post-investigation conciliation; a further 13 were referred to the Tribunal because the investigation was not completed within six months. These outcome figures cover all complaints, not just vilification: the report breaks down allegations by type (92 allegations of incitement to hatred in 2024–25) but not outcomes. See Office of the Anti-Discrimination Commissioner, *Annual Report 2024–25 (2025)* <https://www.antidiscrimination.tas.gov.au/about_us/annual_report>.

83 *Anti-Discrimination Act 1998 (Tas) ss 3, 16(d), 19(c). Section 3 provides only that 'sexual activity includes not engaging in, or refusing to engage in, sexual activity.' Office of the Anti-Discrimination Commissioner, 'Lawful Sexual Activity Discrimination' (Web Page)* <https://antidiscrimination.tas.gov.au/html_version/lawful_sexual_activity_discrimination>.

in October 2016, but the Legislative Council voted it down in August 2017.

The *Anti-Discrimination Act 1998* (Tas) (ADA) provides for an Anti-Discrimination Commissioner, who receives, investigates and conciliates complaints. Unresolved complaints can be referred to a tribunal for hearing; since November 2021, this has been the Tasmanian Civil and Administrative Tribunal, which replaced the Anti-Discrimination Tribunal. Complaints can be made by the person the conduct was aimed at, who can also complain on behalf of a group that faced similar conduct if the Commissioner is satisfied that most of its members would be likely to consent (s 60). The ADA in Tasmania does not use the term 'vilification' as other states might; however, the law covers both discrimination and conduct ordinarily described as vilification.

Vilification is prohibited under the civil ADA, which provides under s 19 that '[a] person, by a public act, must not incite hatred towards, serious contempt for, or severe ridicule of, a person or a group of persons on the ground of' race, disability, sexual orientation or lawful sexual activity, religious belief, affiliation or activity, or gender identity or sex characteristics. Under s 17(1), conduct which 'offends, humiliates, intimidates, insults or ridicules another person' on the basis of certain attributes (including race, gender, gender identity, sexual orientation, sex characteristics, age and disability, but not religion) is also prohibited where a reasonable person would have anticipated that reaction, but only in limited contexts, such as employment, provision of goods and services, and education.

Section 20 prohibits promoting discrimination. A person must not publish or display, or cause or permit to be published or displayed, any sign, notice or advertising matter that promotes, expresses or depicts discrimination or prohibited conduct, unless it is being used to discourage discrimination; this applies to posting online as well.

Though 'hate' can be considered an aggravating factor in sentencing for criminal offences, there are no laws in Tasmania that make vilification a criminal offence of itself. Section 11B of the *Sentencing Act 1997* (Tas) provides that in determining the appropriate sentence for an offender, the court must take into account, as an aggravating circumstance, whether the offender was motivated, in whole or in part, by hatred for or prejudice against a victim (or a person or group the offender believed the victim belonged to or was associated with) because of a 'relevant attribute.' At its inclusion in the Act in 2017, racial hatred was the only recognised motivating factor for hate crimes, and by early 2025 no reported sentencing decision had relied on s 11B. The scope was broadened by the *Sentencing Amendment (Aggravating Factors) Act 2025* (Tas), which took effect in December 2025, on the recommendation of a 2024 report by the Sentencing Advisory Council. Accordingly, an offence can now be aggravated if it was mo-

tivated by hatred or prejudice relating to an attribute such as race, ethnicity or nationality, age, religious belief or affiliation, language, gender or gender identity, sexual orientation, sex characteristics, or disability (including mental impairment). Attorney-General Guy Barnett clarified that the list of attributes captured by this amendment is 'illustrative' and 'non-exhaustive,' allowing for any other attribute or characteristic that the court deems to be taken into account where hatred or prejudice may be considered an aggravating circumstance. There is no distinction between online and offline offences.

Tasmania's strong LGBTIQ+ protections followed the 1997 repeal of its sodomy laws, which had criminalised homosexual sex, with harsh penalties of up to 21 years' imprisonment. Decriminalisation was enacted after the landmark human rights complaint *Toonen v Australia* (1994) brought before the United Nations Human Rights Committee resulted in the Committee finding in 1994 that the Tasmanian laws were in breach of the International Covenant on Civil and Political Rights.[84]

The highest-profile example of a civil complaint under the Act involving digital content (about offensive conduct under s 17, not inciting hatred under s 19) concerned federal Liberal Senator Claire Chandler, who in 2020 faced a complaint to Tasmania's Anti-Discrimination Commissioner (whose office was then called Equal Opportunity Tasmania) over comments in an online opinion piece and in a private email to the complainant. In a piece on 'free speech attacks' for the *Mercury*, published online in July 2020, Senator Chandler wrote: 'You don't have to be a bigot to recognise the differences between the male and female sexes and understand why women's sports, single sex change rooms and toilets are important.' Commissioner Sarah Bolt rejected this part of the complaint due to its lack of substance, and ruled that the complainant, who is not transgender-identified, could not complain on behalf of transgender-identified Tasmanians, but found that the private email had possibly breached the Act as conduct that was offensive, humiliating, intimidating or insulting on the basis of gender or gender identity.

At the Commissioner's direction, the parties can be told to attend a conciliation conference, with a fine for failing to comply (s 75). If a complaint is referred to the Tribunal, a 'directions conference' is held first, at which the Tribunal can re-

84 Human Rights Committee, *Views: Communication No 488/1992, 50th sess, UN Doc CCPR/C/50/D/488/1992 (31 March 1994) ('Toonen v Australia'). Following decriminalisation, social and political attitudes in the state rapidly shifted in favour of LGBTIQ+ rights ahead of national trends, with strong anti-discrimination laws covering sexual orientation passed in 1998 (in force from December 1999), and the first state relationship registration scheme to include same-sex couples introduced in 2003 (the national postal survey on same-sex marriage did not take place until 2017, when 61.6 per cent of respondents supported changing federal law to allow same-sex couples to marry).*

quire any person to 'provide and produce specified information and documents' (s 80). The private email that formed the second part of the complaint has not been published, but Senator Chandler has publicly stated its contents. According to Chandler, she responded to an email from the complainant asking her to clarify if she understood the difference between sex and gender by saying: 'I do understand the difference – that's why I've made the point in my article that women's sports, women's toilets and women's changerooms are designed for people of the female sex and should remain that way.'

The Commissioner directed Senator Chandler to attend a compulsory conciliation conference with the complainant, but the Senator refused to sign a confidentiality agreement, and as such the office cancelled the conference. The complaint was subsequently dropped because the complainant did not have 'the legal, financial or other resources of the Senator' to pursue the matter further. The complaint generated vigorous public debate in Tasmanian media, and around Australia more generally, on transgender rights, sex-based rights, and free speech, and did not deter Senator Chandler, who continues to write, speak and post about sex-based rights.[85]

The Bondi terrorist attack prompted a wave of further hate speech and public order legislation across several Australian states, and Tasmania subsequently released draft legislation prohibiting terrorist and hate group symbols. In June 2026, the Tasmanian Government sought consultation on the Justice Miscellaneous (Prohibited Symbols and Protection of Worship) Bill 2026 (Tas), which is intended 'to crack down on antisemitism, support for terrorist organisations and protect places of worship' in the wake of the December 2025 Bondi massacre. The Bill was introduced into the House of Assembly in September 2026 (Bill 42 of 2026) and had not passed at the time of publication. It would amend the *Criminal Code Act 1924* (Tas) and the *Police Offences Act 1935* (Tas) to prohibit the public display of symbols associated with terrorist organisations and hate groups listed under Commonwealth legislation; enhance protections for people at places of worship and engaging in religious assembly; and criminalise damaging a place of worship.

Displaying a Nazi symbol 'by a public act and without a legitimate public purpose,' and performing a Nazi gesture in or within view of a public place, were already made offences in 2023 by the *Police Offences Amendment (Nazi Symbol and Gesture Prohibition) Act 2023* (Tas), which amended the *Police Offences Act 1935* by inserting two new sections, 6C and 6D. 'Nazi symbol' is defined broadly

85 In February 2022, Senator Chandler introduced the Sex Discrimination and Other Legislation Amendment (Save Women's Sport) Bill 2022 (Cth) in the Senate to support single-sex sport for women and girls; it lapsed at the end of that Parliament.

to cover any symbol associated with the Nazis or Nazi ideology, lookalikes, and images or recordings of a Nazi gesture; 'Nazi gesture' covers the Nazi salute, any gesture prescribed by regulation, and lookalikes. To be found guilty, the person must know, or ought to know, that it is a Nazi symbol or gesture. Exemptions apply for reasonable, good-faith purposes – including the display of a swastika in connection with Buddhism, Hinduism or Jainism, or of a Nazi symbol in opposition to fascism – and pre-existing permanent tattoos/body modifications. The maximum penalty is a fine of 20 penalty units or three months' imprisonment, or 40 penalty units (currently $8,520) or six months' imprisonment for a second or subsequent offence within six months. We found no reported case of anyone being charged over displaying a Nazi symbol or gesture online; however, a Hobart man was charged and, in May 2026, convicted and fined $1,400 for drunkenly performing a Nazi salute in front of police outside a nightclub in February (the single fine also covered three other public-order offences).

The Tasmania Law Reform Institute has recommended a Charter of Human Rights or Human Rights Act for the state, which would uphold the right to freedom of expression. If carried through, this would make Tasmania the fourth jurisdiction in Australia to do so, alongside Victoria, Queensland and the Australian Capital Territory.

Northern Territory

The Northern Territory (NT) was the only jurisdiction in Australia without vilification laws until 2023, although federal law still applied. In 2022, the then-Labor Government passed amendments to the *Anti-Discrimination Act 1992* (NT) (ADA) prohibiting, from 3 July 2023, public conduct that is 'reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate' a person or group because of a protected attribute (wording modelled on s 18C of the federal RDA).

In 2025, the government, now led by the Country Liberal Party (CLP), replaced this test: the Act now prohibits public conduct 'reasonably likely, in all the circumstances, to incite hatred towards, serious contempt for or severe ridicule of' a person or group because of a protected attribute. This raised the legal threshold for vilification, and merely offensive or insulting conduct is no longer unlawful under Territory law (although race-based conduct can still breach s 18C of the federal RDA). This change was billed by Attorney-General Marie-Clare Boothby as a move to restore 'freedom of speech, especially for individuals and religious communities,' but 'without allowing [or] condoning hate speech.' Ironically, a new s 35B introduced by the CLP allows religious education institutions to lawfully refuse to hire, or impose behavioural rules on, staff based on religious beliefs, restoring a version of an exemption Labor repealed in 2022. These workplace conduct rules could limit employees' free expression.

Other than the Commonwealth offences which still apply, the NT has no Territory criminal offences for hate speech, and, overall, fewer restrictions on speech than other jurisdictions in the country. The Territory's civil anti-vilification laws have only been in force since 2023, and we have seen no reported finding of unlawful vilification by the Northern Territory Civil and Administrative Tribunal.

Section 20A of the ADA applies to every attribute listed in s 19, including race, language (including signed language), sex, gender identity, sexual orientation, sex characteristics, age, relationship status, pregnancy, breastfeeding, carer responsibilities, religious belief or activity, political opinion, affiliation or activity, disability, employment in or engagement in sex work, and irrelevant criminal record. The section does not apply to acts done in private. An act is public if it communicates words, sounds, images or writing to the public (which would include online posts the public can see), is done in a public place, or is done within sight or hearing of people in a public place. A public place includes anywhere the public can go as of right or by invitation, whether or not a charge is made for admission. Section 20B exempts anything said or done reasonably and in good faith in an artistic work; for a genuine academic, artistic, scientific or other public-interest purpose; or in a fair and accurate report of, or fair comment expressing a genuine belief on, a matter of public interest.

Under s 6A of the *Sentencing Act 1995* (NT), a court may treat the fact that 'the offence was motivated by hate against a group of people' as an aggravating factor in sentencing. It is a sentencing factor rather than a speech offence, so it creates no new restriction on online expression.

Australian Capital Territory

The Australian Capital Territory (ACT) has developed a comparatively broad anti-vilification framework. Here, civil liability has expanded alongside more targeted criminal restrictions on serious threats and prohibited symbols. Vilification has been illegal under the *Discrimination Act 1991* (ACT) since it took effect in 1992, though at first this applied to race only. Since a 2016 amendment replaced the older provisions with a broader s 67A, publicly accessible social media posts, unsolicited email distributions, and other online communications have been treated as conduct occurring 'other than in private,' without requiring proof that anyone was actually incited or that the publisher intended that result for conduct to be judged as unlawful.

Serious, threatening vilification has been a criminal offence since 1992 (moved into the *Criminal Code 2002* (ACT) in 2016), and since 2023 the public display of the Nazi swastika, in person or online, has also been an offence. A review announced in February 2026 has since led the government to promise tougher laws, including a prison term for serious vilification. ACT case law has also extended the reach of these provisions by holding that material posted outside the Territory may fall within its jurisdiction when accessed by an ACT resident. Further, liability may arise not only from creating content, but also from endorsing, retaining or failing to remove third-party social media comments.

These developments make the ACT a particularly significant territory for digital expression. However, the difficulty of enforcing Tribunal orders against interstate respondents, such as the New South Wales (NSW) blogger John Sunol (see below), shows the limits of territory-based remedies in a borderless online environment.

As in most Australian states and territories, the main legal response to hate speech in the ACT is civil anti-vilification law under the *Discrimination Act 1991*, which makes it unlawful to 'incite hatred toward, revulsion of, serious contempt for, or severe ridicule of' a person or group based on a range of protected attributes. Complaints go first to the ACT Human Rights Commission; if conciliation fails, the complainant can have the complaint referred to the ACT Civil and Administrative Tribunal (ACAT), which can order the respondent not to repeat the conduct, to do a stated reasonable act to redress any loss or damage, or to pay compensation.

The Act was amended in 2016 to replace its older vilification provisions with a broader s 67A: 'It is unlawful for a person to incite hatred toward, revulsion of, serious contempt for, or severe ridicule of a person or group of people' on the ground of a protected attribute, other than in private. The protected attributes

are now disability, gender identity, HIV/AIDS status, race, religious conviction, sex, sex characteristics and sexuality, and association with a person or group identified by one of these (sex and association were added in February 2026). Conduct that could be 'other than in private' includes 'posts on social media that can be viewed by members of the public' and 'email distribution lists that are unsolicited,' among examples offered by the ACT Human Rights Commission. The Act itself lists 'writing a publicly viewable post on social media' as an example. As with many civil vilification provisions, a person need not actually be incited; instead, an objective test determines whether the material or conduct is likely to incite.

Serious vilification is criminalised under the *Criminal Code 2002*. The offence is rarely used: in November 2025, the *Guardian* reported, citing ACT police data, that only two prosecutions had been launched under it since 2020, and we found no published judgment recording a conviction. Equality Australia, which has called for an additional offence, has suggested that 'the requirement to establish intention' and 'high thresholds for proving incitement' 'may contribute to the limited use of these provisions.' In February 2026, the ACT Government announced a review of anti-vilification laws in the ACT, with a view to 'strengthening hate crime and serious vilification laws.' This could include 'increased penalties, or the inclusion of aggravated or additional offences to more clearly capture criminal conduct motivated by hate.' In September 2026, the government announced that the review had made nine recommendations and that a Hate Crime and Vilification Legislation Amendment Bill 2026 (ACT), due to be introduced in December 2026, would simplify the serious vilification offence and add imprisonment to its maximum penalty, extend the Nazi symbol ban to the Nazi salute and the SS 'double-sig' rune, and require courts to consider hate motivation when sentencing.

Section 750, in Part 7A.1 of the *Criminal Code*, prohibits 'serious vilification.' A person commits the offence if they intentionally carry out a 'threatening act'; are reckless about whether the act incites hatred toward, revulsion of, serious contempt for, or severe ridicule of a person or group of people on the ground of a protected attribute; and do the act other than in private, being reckless about whether it is done other than in private. A 'threatening act' is one by which the person intentionally threatens physical harm toward a person or group, or their property, or is reckless about whether the act incites others to threaten that harm. This requirement of a threat is what distinguishes the offence from civil unlawful vilification. While a direct threat must be intentional, the lower threshold of 'recklessness' applies to inciting others to threaten harm, to the incitement of hatred, and to whether the act is done other than in private. The maximum penalty is a fine of $8,000 (50 penalty units); imprisonment does not apply. For a person to be found guilty, all of the following must be established: a person

commits an offence if they intentionally carry out an act; the act is threatening; the person is reckless about whether the act incites hatred toward, revulsion of, serious contempt for, or severe ridicule of, a person or group of people on the ground of a protected attribute; and the person is reckless about whether the act is done other than in private. This criminal offence is differentiated from civil unlawful vilification in that the conduct must involve a threat of physical harm. While the threat part of the offence requires proof of intent, the lower threshold of 'recklessness' applies to the incitement part of the offence and to whether the act is observable by the public. The maximum penalty is a fine of $8,000; imprisonment does not apply.

Protected characteristics include: disability, gender identity, HIV/AIDS status, race, religious conviction, sex, sex characteristics, sexuality, and association (whether as a relative or otherwise) with a person who is, or a group of people who are, identified by one of these attributes.

In 2023, Part 7A.2 was inserted into the *Criminal Code* to prohibit the public display of Nazi symbols. Notably, 'Nazi symbol' is defined narrowly, as the Hakenkreuz (Nazi swastika) or a symbol likely to be mistaken for one, so other Nazi symbols and the Nazi salute are not covered, and no other hate symbols are banned. Attorney-General Shane Rattenbury said that '[t]he offence protects ACT community members including Jewish people, people with a disability and LGBTIQ people from the harm caused by public displays of Nazi symbols,' including the display of Nazi symbols online, such as on social media. A swastika displayed in connection with Buddhism, Hinduism or Jainism is not a Nazi symbol under the Act; displays made reasonably and in good faith for purposes such as opposing fascism are exempt; and there is a defence for a Nazi symbol permanently tattooed on, or affixed to, the person's body. The maximum penalty is a fine of $19,200, 12 months' imprisonment, or both. These penalties are much higher than the maximum $8,000 fine and no prison time for serious vilification (which requires a threat of physical harm) under Part 7A.1.

The *Human Rights Act 2004* (ACT) was the first legislation of its kind in Australia. Section 16 provides that everyone has the right to hold opinions without interference and the right to freedom of expression. As with the comparable Victorian and Queensland Acts, these rights may be subject only to 'reasonable limits set by laws that can be demonstrably justified in a free and democratic society' (s 28), for example to protect the rights of others, including the right not to have one's reputation unlawfully attacked (s 12(b)). The ACT Human Rights Commission notes that '[h]ate speech… may constitute expression, as even "repugnant" expression is still expression.' However, it may be limited where s 28 permits.

With fewer than half a million residents as Australia's second-least populous ju-

risdiction, the ACT has accumulated very little anti-vilification case law. However, a handful of matters have provided significant precedents. *Bottrill v Sunol* (2017) features two recurring figures in this report: David Bottrill, a member of the OTO, which the Tribunal accepted is a religion, and John Sunol, a NSW-based Christian blogger. The case established the foundational jurisdictional principle that the Tribunal can hear complaints brought under the *Discrimination Act* about online content posted from outside the ACT, provided the material vilifies an ACT resident and is read, or is available to be read, in the ACT. Bottrill, who lived in the ACT, complained about a post on a blog site run by Sunol that portrayed the OTO as a satanic paedophile cult; the post had been written by another man, Luke McKee. A tribunal member determined that '[t]he Internet is the equivalent of the loudspeaker,' and that therefore ACAT had geographic jurisdiction to deal with the matter. In the subsequent *Bottrill v Sunol* (2018) decision, Sunol was found to have unlawfully vilified Bottrill by allowing the post to remain available to readers in the ACT, with the Tribunal calling the post 'archetypal hate speech.' The Tribunal ordered Sunol to remove the material from his websites and to refrain from posting similar material in the future.

The *Bottrill v Sunol* case was referenced in *Kerslake v Sunol* (2022) to further establish ACAT's geographic jurisdiction over matters involving conduct on the Internet.[86] The case is notable for its analysis of what 'incitement' requires, with the Tribunal distinguishing between online posts expressing religious belief and posts that constitute vilification. Tim Kerslake, an ACT resident and gay man, brought multiple proceedings heard by ACAT as a single case against self-described 'homophobe' Sunol. The complaints concerned more than 140 Twitter and YouTube posts, of which the Tribunal found 23 to be vilification on the ground of homosexuality. It held that vilification requires more than 'insensitive, disrespectful, insulting, offensive or abusive' words, but that 'the use of political or religious language does not of itself prevent a statement from inciting hatred.' To show where the line is drawn, the Tribunal cited an earlier NSW decision against Sunol, *Burns v Sunol [No 2]* (2012), which had found that phrases such as 'dirty filthy poof,' 'dirty filthy faggots,' 'child molesters and paedophiles,' and describing homosexuality as a 'disease' warranting eradication could incite hatred, while calling homosexual people 'sinful' and 'evil' did not.

In the subsequent *Kerslake v Sunol* (2023), Sunol was ordered to remove the 23 unlawful posts from the Internet, to refrain from continuing to post material of this nature, to post, for six months, a statement that ACAT had found he vilified people on the ground of their homosexuality, and to pay Kerslake $4,000

86 *Kerslake v Sunol [2022] ACAT 40.*

in compensation in each of the two vilification proceedings ($8,000 in total).[87] Whether he complied is unclear: Sunol had stated that he 'never will accept any court orders,' and in 2018 he had told ACAT he was an undischarged bankrupt.

This highlights that while a state or territory Tribunal may have jurisdiction to hear a matter, it may be limited in its ability to enforce orders – a recurring challenge for Australian complainants seeking redress under civil law within their home state or territory for material posted to the Internet by a resident of another state or territory.

State and territory schemes also overlap with federal law, which applies throughout Australia. The eSafety Commissioner can issue notices requiring a platform, or the person who posted, to remove some online material under the *Online Safety Act 2021*, such as serious abuse aimed at a particular Australian adult, and police can charge people over abusive online posts under s 474.17 of the Commonwealth *Criminal Code* (using a carriage service to menace, harass or cause offence).

Some discrimination laws expressly reach conduct outside the jurisdiction: s 102D of Victoria's EOA, for example, applies to vilifying conduct whether it occurs in or outside Victoria. State tribunals, however, face a constitutional limit. In *Burns v Corbett* (2018), which arose from complaints under the NSW *Anti-Discrimination Act 1977* by NSW resident Garry Burns against residents of Victoria and Queensland over public statements allegedly vilifying homosexuality, the High Court held that NSW could not give NCAT, a tribunal rather than a court, power to decide matters between residents of different states. ACAT has held that this limit does not affect it, because the relevant provision of the Constitution (s 75(iv)) does not mention the territories.

Clinch v Rep (2020, [No 2] 2020) is notable because the Tribunal held that a person can be liable for vilifying comments that others post on her social media page once she knows of them and leaves them up, and that 'liking' such comments can itself be unlawful vilification.[88] The posts in question were made in response to an apology posted to the Facebook page of Beth Rep, a Canberra radio newsreader and presenter, to the transgender-identified Bridget Clinch, a former Army captain whose 2010 challenge led the Australian Defence Force to drop its policy of not letting transgender-identified personnel serve while transitioning, for comments made online about Clinch after International Women's Day in March 2018. The incident, which played out across several social media platforms and in Australian media, resulted in Rep being banned on Twitter. The

87 *Kerslake v Sunol [2023] ACAT 18.*

88 *Clinch v Rep [2020] ACAT 13; Clinch v Rep [No 2] [2020] ACAT 68.*

apology, which stated 'I apologise for any hurt I have caused Bridget and for any way I have vilified or victimised her,' was posted to Rep's Facebook page as part of a mediated settlement arising from Clinch's complaint to the ACT Human Rights Commission. However, the apology attracted more than 300 comments, some of which were heated and derogatory toward Clinch's transgender status. Examples of comments liked by Rep include: 'Penis people once again bullying women,' and 'Bridget Clinch is a male bully, and the Greens letting him swing his dick like this?'

In proceedings arising from a new complaint lodged by Clinch against Rep over these comments as well as subsequent social media comments posted by Rep, ACAT held that Rep was responsible for the comments on her Facebook page: 'Once she was aware of the comments and did not remove them, she is responsible for them.' Her 'liking' some of them compounded this, and itself contravened s 67A. (The Tribunal assumed, without deciding, that Clinch had to show Rep was not an 'innocent disseminator,' a defence available in defamation cases.)

Finally, Rep's appeal of the ACAT decision in *Rep v Clinch* (2021) provides further clarification on what constitutes transgender hate speech under ACT law.[89] It also confirmed that a complainant need not live in the ACT: Clinch lived in Queensland, but Rep lived in the ACT and posted from there, and the Appeal Tribunal held that the posts 'were published in the ACT and accessible to residents here.' Upholding the appeal in part, the Appeal Tribunal narrowed the posts found to be unlawful vilification of Clinch to seven of the comments on the apology and two of Rep's own posts, found no victimisation, and cut the compensation to $5,000. It clarified that 'misgendering,' comments on a transgender-identified person's biological sex, and mere insults are not, on their own, necessarily vilification: 'Calling a trans woman a man will not necessarily be vilification, but it may be.' Posts that did constitute unlawful vilification on grounds of transgender status were characterised by 'strong and abusive language' that 'directly attacks' the complainant in such a way that would incite others to revulsion at or severe ridicule of Clinch or transgender-identified people generally.

89 *Rep v Clinch [2021] ACAT 106.*

Conclusion and Recommendations

Australia's approach to hate speech has changed over the past decade. For most of the period since 1989, it relied on civil vilification laws built around complaints, conciliation and modest remedies, which, as we have shown, drew up to several hundred complaints a year, few of which reached a tribunal or court. Since 2022, that model has been overlaid by criminal offences with lower fault thresholds and longer lists of protected attributes. We have also seen bans on symbols and gestures, and, in Queensland, on particular political slogans. Most of these laws are new and largely untested, but together they mark a shift from resolving disputes between private parties to the state itself policing the boundaries of acceptable opinion and debate.

Three trends stand out. First, the line between actually threatening and merely offensive speech is eroding. Criminal law can now prosecute speech for recklessness as opposed to intent, incitement to 'hatred' or 'serious contempt' without any real threat (s 93ZAA in New South Wales and Victoria's s 195N, which also reaches private conversations), and slogans used in a way that might cause a member of the public to merely feel 'offended' (Queensland).

Second, the process can often be punishment in itself. Jasmine Sussex has spent five years answering a complaint against her speech, and another Australian, Lyle Shelton, is still tied up with legal dealings over a 2020 blog post. Even politicians are not immune: senate candidate Bernard Gaynor reportedly faced 36 vilification and victimisation complaints from a single complainant, which Gaynor claimed cost him approximately $400,000 to defend against.

Third, enforcement is erratic. By mid-2024, six years after New South Wales enacted s 93Z, only one conviction had survived appeal. Queensland's slogan ban, on the other hand, produced 20 arrests at a single rally a mere five weeks after the law took effect. Australians cannot tell which of these laws will be enforced, or when.

Free speech in the country has always been a residual liberty rather than a right. That implied freedom protects only political communication and has done little to protect offensive or unpopular speech. Only in Victoria, Queensland, and the Australian Capital Territory is freedom of expression explicitly protected under a Human Rights Act or similar, however even in these jurisdictions, recent hate

speech legislation appears to undermine these protections. In practice, free speech in Australia has depended on legislative restraint and a political culture that tolerated robust argument. The experience of Victorians during Covid is evidence that legal rights can be next to worthless without a culture and leadership that defends them. This report documents the erosion of both of these things.

Several factors may explain this development. The first is weak legal protection: as described above, with no bill of rights and a narrow implied freedom, parliaments face few legal limits when they restrict speech.

The second is the changing role of multiculturalism. Australia's multicultural statements of 1989, 2003 and 2017 all named freedom of speech among the shared principles that hold a diverse society together,[90] yet governments now invoke multiculturalism and 'social cohesion' mainly as reasons to restrict speech, as New South Wales Premier Minns's comparison with the US makes plain.

The third is reactive, crisis-driven lawmaking: many of the new laws were drafted in the weeks and months after October 7 or the Bondi massacre. Rapidly drafting legislation at heightened moments of tension makes it easy for vulnerabilities to sneak in.

The fourth is a sort of ratchet of parity: once one identity group gains a certain protection, others seek the same. To address this, the Sackar review recommended that the two New South Wales incitement offences protect the same groups 'to prevent any perception of a "hierarchical, two-tier model of protection."'

Finally, there are few political brakes. Governments of both major parties have supported these laws: in New South Wales, s 93Z was introduced by a Coalition government with Labor support, the federal hate symbols law passed with bipartisan support, and Queensland's slogan ban was enacted by the Crisafulli Liberal National Party Government. Public opinion, too, offers little resistance. In a 2024 survey for The Future of Free Speech, 53 per cent of Australians said the government should be able to prevent statements offensive to minority groups.[91]

These measures also risk achieving the opposite of their intent, as this report argued at the outset. Laws that treat groups unequally – protecting only some,

---

90 Office of Multicultural Affairs (n 23); Australian Government, *Multicultural Australia: United in Diversity (2003) 6; Australian Government, Multicultural Australia: United, Strong, Successful (n 24) 9.*

91 The Future of Free Speech, *Who in the World Supports Free Speech? (March 2025)* <https://futurefreespeech.org/wp-content/uploads/2025/03/Who-In-The-World-Supports-Free-Speech-The-Future-of-Free-Speech.pdf>.

as the New South Wales race-only offence does, or weighing a speaker's background, as Victoria's since-repealed 'Sam Kerr clause' did – risk confirming the grievances they are meant to mitigate. Prosecutions can turn fringe and often unsavoury individuals into martyrs, giving their views an audience they could not otherwise reach. (When Brendon O'Connell was jailed in Western Australia, for example, a Green Left writer warned that 'the far right will now try to turn him into a martyr.')[92] And laws seen to favour one particular side of the Israel–Palestine debate, or one particular side of the debate about sex and gender, weaken trust in the law itself. Social cohesion, of course, ultimately depends on this trust. The New South Wales Law Reform Commission made a similar point when it warned that 'extending the criminal law can have unintended consequences.'[93]

We recommend that states, territories, and the federal government take the following steps to ensure free speech in Australia:

1. Legislate a right to freedom of expression in the Commonwealth and in every state and territory that lacks one.
2. Confine criminal speech offences to intentional threats and incitement to violence. Restore intention where fault has been lowered to recklessness, and repeal offences that criminalise inciting 'hatred' or 'contempt' without any actual threat.
3. Repeal Queensland's slogan ban and avoid implementing phrase bans elsewhere. Any symbol ban should list the banned symbols exhaustively and require an intention to promote the ideology they represent.
4. Use an objective 'ordinary reasonable person' test in civil vilification law, rather than the standpoint of a 'reasonable person with the protected attribute' (Victoria's s 102D).
5. Build safeguards into the civil schemes: early dismissal of complaints that lack substance, limits on serial complaints, firm time limits, and costs protection for respondents.
6. Protect all groups under one narrow standard, rather than extending broad protections one group at a time.
7. Require procedural fairness and judicial review before any group is proscribed as a 'hate group.'
8. Put new speech offences on sunset clauses with independent review, as New South Wales has done for s 93ZAA, and publish annual data on

92 Alex Bainbridge, 'Jailing Won't Help Stop Racism', *Green Left Weekly (online, 5 February 2011)* <https://www.greenleft.org.au/2011/867/analysis/jailing-wont-help-stop-racism>.

93 NSW Law Reform Commission (n 56) [1.43].

complaints, prosecutions, convictions and eSafety removal requests.

Australia is not yet a country where people are routinely arrested for what they post online, as is currently the case in other Western countries such as the UK. But the tools which could one day enable that are now in place, and whether they are used depends solely on the normative restraints of officials in charge. A free society should not have to solely rely on this.

Appendix

Appendix A: Chronology of Australian Hate Speech and Vilification Laws Relevant to Digital Speech

Legislation, inquiries and reviews are shown to November 2026. Laws shown by year passed; bills by year introduced or released; and inquiries and reviews by year reported, or begun if still under way.

1989	*Anti-Discrimination (Racial Vilification) Amendment Act 1989* [NSW, Legislation]
1991	*Discrimination Act 1991* [ACT, Legislation]
1992	*Equal Opportunity Amendment Act 1992* (racial harassment) [WA, Legislation]
1993	*Anti-Discrimination (Homosexual Vilification) Amendment Act 1993* [NSW, Legislation]
1994	*Anti-Discrimination (Amendment) Act 1994* (HIV/AIDS vilification) [NSW, Legislation]
1995	*Racial Hatred Act 1995* [Cth, Legislation]
1996	*Transgender (Anti-Discrimination and Other Acts Amendment) Act 1996* [NSW, Legislation]
1996	*Racial Vilification Act 1996* [SA, Legislation]
1998	*Anti-Discrimination Act 1998* [Tas, Legislation]
2001	*Racial and Religious Tolerance Act 2001* (repealed 2026) [Vic, Legislation]
2001	*Anti-Discrimination Amendment Act 2001* [Qld, Legislation]
2004	*Criminal Code Amendment (Racial Vilification) Act 2004* [WA, Legislation]
2005	*Anti-Terrorism Act (No 2) 2005* (sedition offences) [Cth, Legislation]
2010	*National Security Legislation Amendment Act 2010* [Cth, Legislation]
2013	*Anti-Discrimination Amendment Act 2013* [Tas, Legislation]
2016	*Discrimination Amendment Act 2016* [ACT, Legislation]

2018 *Crimes Amendment (Publicly Threatening and Inciting Violence) Act 2018* [NSW, Legislation]

2019 *Justice and Related Legislation (Marriage and Gender Amendments) Act 2019* [Tas, Legislation]

2020 *Sexuality and Gender Identity Conversion Practices Act 2020* [ACT, Legislation]

2021 *Online Safety Act 2021* [Cth, Legislation]

2022 Inquiry into serious vilification and hate crimes (Report No. 22), Legal Affairs and Safety Committee [Qld, Inquiry]

2022 Review of the *Equal Opportunity Act 1984* (WA): Final Report (Project 111), Law Reform Commission of Western Australia [WA, Review]

2022 *Crimes Amendment (Prohibition on Display of Nazi Symbols) Act 2022* [NSW, Legislation]

2022 *Anti-Discrimination Amendment Act 2022* [NT, Legislation]

2023 *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Act 2023* [Cth, Legislation]

2023 *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023* [Qld, Legislation]

2023 *Discrimination Amendment Act 2023* [ACT, Legislation]

2023 Review of the *Anti-Discrimination Act 1977* (under way), NSW Law Reform Commission [NSW, Review]

2023 *Anti-Discrimination Amendment (Religious Vilification) Act 2023* [NSW, Legislation]

2023 *Police Offences Amendment (Nazi Symbol and Gesture Prohibition) Act 2023* [Tas, Legislation]

2023 *Crimes Legislation Amendment Act 2023* (Nazi symbols) [ACT, Legislation]

2023 *Crimes Amendment (Prosecution of Certain Offences) Act 2023* [NSW, Legislation]

2024 *Conversion Practices Ban Act 2024* [NSW, Legislation]

2024 *Respect at Work and Other Matters Amendment Act 2024* (new vilification provisions not yet in force) [Qld, Legislation]

2024 *Criminal Code Amendment (Prohibition on Display of Nazi Symbols or Gesture) Act 2024* [WA, Legislation]

2024 *Summary Offences (Nazi Salute and Symbols Prohibition) Amend-*

ment Act 2024 [SA, Legislation]

2024 Serious racial and religious vilification (Report 151), NSW Law Reform Commission [NSW, Review]

2025 *Criminal Code Amendment (Hate Crimes) Act 2025* [Cth, Legislation]

2025 Defining terrorism: review of the 'terrorist act' definition (*Criminal Code* s 100.1), Independent National Security Legislation Monitor [Cth, Review]

2025 *Crimes Amendment (Inciting Racial Hatred) Act 2025* [NSW, Legislation]

2025 Review of criminal law protections against the incitement of hatred (Sackar review) [NSW, Review]

2025 *Crimes Legislation Amendment (Racial and Religious Hatred) Act 2025* [NSW, Legislation]

2025 *Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025* [Vic, Legislation]

2025 *Anti-Discrimination Amendment Act 2025* [NT, Legislation]

2025 *Terrorism and Other Legislation Amendment Act 2025* [NSW, Legislation]

2026 Royal Commission on Antisemitism and Social Cohesion [Cth, Inquiry]

2026 *Combatting Antisemitism, Hate and Extremism (Criminal and Migration Laws) Act 2026* [Cth, Legislation]

2026 *Crimes and Summary Offences Amendment Act 2026* [NSW, Legislation]

2026 Measures to prohibit slogans that incite hatred, Legislative Assembly Committee on Law and Safety [NSW, Inquiry]

2026 *Fighting Antisemitism and Keeping Guns out of the Hands of Terrorists and Criminals Amendment Act 2026* [Qld, Legislation]

2026 Public Order Legislation Amendment Bill 2026 [WA, Bill]

2026 Equal Opportunity Bill 2026 [WA, Bill]

2026 Review of anti-vilification laws in the ACT [ACT, Review]

2026 *Justice and Community Safety Legislation Amendment Act 2026* (new vilification grounds) [ACT, Legislation]

2026 *Crimes Amendment Act 2026* (vilification prosecutions) [Vic, Legis-

lation]

2026 Crimes Amendment (Prohibited Organisation Symbols) Bill 2026 [NSW, Bill]

2026 Justice Miscellaneous (Prohibited Symbols and Protection of Worship) Bill 2026 [Tas, Bill]

2026 *Crimes Legislation Amendment (Hate Crimes) Act 2026* [NSW, Legislation]



About liber-net

liber-net is a digital civil liberties initiative focused on free speech, censorship and privacy. We pay special attention to both Big Tech and government censorship, noting that they often collaborate with civil society actors who advocate for speech controls. liber-net works to restore free speech, privacy, and civil liberties as foundational principles for the networked age. Through investigative journalism, research, media-making, and events, we build dialogue and alliances for change.

liber-net

@liber_net

liber-net

liber-net.org