



New South Wales
Council for Civil Liberties

NSWCCL PUBLIC STATEMENT OF SUPPORT

Crimes Amendment (Publicly Threatening and Inciting Violence) Bill 2018

1. The NSWCCL welcomes the long overdue decision of the NSW Government to strengthen the existing law covering the offence of serious racial vilification.
2. We support the proposed provisions of the ***Crimes Amendment (Publicly Threatening and Inciting Violence) Bill 2018***. They are largely consistent with the views NSWCCL put forward in its submission to the Legislative Council Standing Committee on Law and Justice in 2013.
3. The Bill modernises the grounds relevant to this offence so that it is proposed to provide protection against vilification of persons/groups on the grounds of *'race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status'*. S 93Z
4. The new provisions appear likely to address the problems which have blocked any prosecutions ever being initiated under the current Act.

In terms of process, the movement of the offence from the Anti-Discrimination Act to the Crimes Act will transfer the lead investigative role to the NSW Police Force and the DPP will have the statutory power to approve prosecutions which currently sits with the Attorney General.

Ambiguity in the current somewhat convoluted description of the offending conduct has been removed by a new, single test offence: *'A person who, by a public act, intentionally or recklessly threatens or incites violence towards another person or a group of persons'* on the specified grounds *'is guilty of an offence'*. S 93Z(1)

5. The Bill proposes a new test for the commission of the offence- the conduct must be done *'intentionally or recklessly'*. NSWCCL considers this to be fair and appropriate. S 93Z(1)
6. While requiring intention or recklessness, the Bill explicitly excludes the need for resulting harm to have actually occurred: *"it is irrelevant whether or not, in response to the alleged offender's public act, any person formed a state of mind or carried out any act of violence"*. S 93Z(3).

NSWCCL gave careful consideration to this provision. On balance, we agreed that the provision is appropriate given the difficulty of proof of a 'state of mind' and the requirement that the person's conduct must be intentional or reckless.

7. The Bill explicitly states that it is "irrelevant" whether the alleged offender's "assumptions or beliefs" about the person's relevant attributes (race, gender, etc) are correct or not. S 93Z(2)

NSWCCL considers this an appropriate amendment. The current law would seem to curtail, for example, the prosecution of vilification mistakenly directed towards a dark-skinned individual on the grounds that the alleged offender thought that he or she was an Indigenous Australian. Yet the vilification can be just as real for the victim no matter what his or her race, and the assault on the dignity of the community is not any the less real because the offender has made an incorrect assumption about a community member.

8. The Bill increases the maximum penalty for the offence of this seriousness to a more appropriate 100 penalty units or 3 years imprisonment for an individual (currently 50 penalty units and 6 months). S 93Z(1)

9. NSWCCCL recommends the NSW Parliament approves ***The Crimes Amendment (Publicly Threatening and Inciting Violence) Bill 2018***.

Therese Cochrane
Secretary
NSW Council for Civil Liberties

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Contact in relation to this submission

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