



Bills Digest | 4 October 2024

Criminal Code Amendment (Hate Crimes) Bill 2024

Jonathan Mills

Bills Digest No. 21, 2024–25

Key points

- The purpose of the [Criminal Code Amendment \(Hate Crimes\) Bill 2024](#) (the Bill) is to amend the [Criminal Code Act 1995](#) (the Criminal Code) to extend the existing offences for urging force or violence and for displaying hate symbols, and to introduce new offences for threatening force or violence against targeted groups and their members.
- The Government has stated that this is a response to an increasing prevalence of hate speech calling for force or violence.
- The fault element for aspects of the existing offences of urging force or violence is proposed to be reduced from intent to recklessness.
- The groups against whom it would be an offence to threaten force or violence would be distinguished by race, religion, sex, sexual orientation, gender identity, intersex status, disability, nationality, national or ethnic origin or political opinion.
- Similarly, the lists of groups against whom it is currently an offence to urge force or violence, and those protected by the prohibited hate symbols offences would be expanded.
- The Bill also proposes to remove an existing good faith defence from the existing urging force or violence offences and for the proposed threatening force or violence offences.
- The Bill has been referred to the [Senate Legal and Constitutional Affairs Legislation Committee](#), with a report due by 12 December 2024.
- The Senate Scrutiny of Bills Committee [[Digest 12 of 2024](#)] raised concerns with the Bill, relating to the appropriateness of removing the existing good faith defences for certain offences.

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Date of introduction: 12 September 2024

House introduced in: House of Representatives

Portfolio: Attorney-General

Commencement: Commences on the day after Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the [Bill's home page](#), or through the [Australian Parliament website](#).

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the [Federal Register of Legislation website](#).

All hyperlinks in this Bills Digest are correct as at October 2024.

Purpose of the Bill

The purpose of the [Criminal Code Amendment \(Hate Crimes\) Bill 2024](#) (the Bill) is to amend the [Criminal Code Act 1995](#) (the Criminal Code) to extend existing offences for urging force or violence and for displaying hate symbols, and to introduce new offences for threatening force or violence against targeted groups and their members.

Structure of the Bill

The amendments to the Criminal Code proposed in the Bill are contained in a single Schedule.

Background

Governments in Australia have for some time been contending with the difficult issues of balancing the freedom to express cultural and religious opinions with the often-competing freedom from discrimination and protections from hateful or threatening speech.

The [Attorney-General's Department documents](#) the history of inquiries and proposals to introduce protections against religious discrimination between 2017 and 2021 under the previous government. That process ended with the unsuccessful [Religious Discrimination Bill 2022](#), which failed to gain support and lapsed at the end of the 46th Parliament.

The Labor Government, at the last election, [promised](#) to introduce legal protections for religious beliefs while also protecting teachers and students from discrimination. The Australian Law Reform Commission's (ALRC) [Report 142](#) into Religious Educational Institutions and Anti-Discrimination Laws was [tabled](#) in March 2024, and the Prime Minister was [reported](#) as saying that the Government would not proceed with religious discrimination reform without bipartisan support.

At the same time as these issues of religious discrimination and freedom have been debated, world events have led to an increase in religious or culturally motivated threats of violence and other instances of hate speech. This has led governments to address certain speech and conduct through criminal laws, including introducing or strengthening offences relating to hate speech, urging violence and the making of threats. In 2023 the Government introduced the [Counter-Terrorism Legislation Amendment \(Prohibited Hate Symbols and Other Measures\) Bill 2023](#), which [passed](#) after some amendments. That legislation included amendments to the Criminal Code to introduce offences related to displaying or trading in hate symbols such as Nazi symbols. As discussed in the [Bills Digest](#) for that Bill, this followed similar moves in the states and territories. It also introduced offences related to the use of a carriage service for violent extremist material and broadened the scope of the offence of advocating terrorism.

The Attorney-General, Mark Dreyfus, stated in his [Second Reading Speech](#) for the present Bill that the Government is committed to a tolerant society and the new and expanded offences introduced in the Bill are a response 'to the increasing prevalence of hate speech and hateful conduct in our society', particularly in light of recent global events.

Freedom for Faith, a Christian legal think tank, released a [statement](#) on 23 September 2024 in which it noted that the present Bill related to both criminal law issues and those of religious freedom:

The Bill is the result of an extended confidential consultation process between the Government and a limited number of faith leaders. It is a great improvement on previous broad-reaching proposals which would have had a serious impact on religious freedom.

The Bill has been referred to the [Senate Legal and Constitutional Affairs Legislation Committee](#), with a report due on 12 December 2024. The Attorney-General [noted](#) that the Government supported a referral to the committee as an opportunity to engage with the broader public and its views on the issues.

Policy position of non-government parties/independents

At the time of writing no statements have been made by non-government parties or independents.

Key issues and provisions

Schedule 1 of the Bill contains proposed amendments to Division 80 of the Criminal Code.

Item 1 would rename Division 80, adding the words ‘or threatening’ [violence] to the title to refer to the proposed offences of threatening force or violence against targeted groups or members (**item 19**).

Fault elements

Items 3, 6, 11 and 14 would amend the existing offences of urging violence against groups (section 80.2A) and members of groups (section 80.2B) to reduce a fault element for the offences from intent to recklessness.

The context of the current offences is that a person commits an offence if they intentionally urge another person, or a group, to use force or violence against a targeted group or member of the targeted group and does so intending that force or violence will occur.

The amendments would not alter the need for the urging to be intentional, but would replace the need for an intent that force or violence would occur with recklessness as to whether that force or violence will occur.

[Section 5.4 of the Criminal Code](#) provides the relevant definition of recklessness:

A person is reckless with respect to a circumstance if:

- (a) he or she is aware of a substantial risk that the circumstance exists or will exist; and
- (b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

Application to wider target groups

Items 4, 7, 12 and 15 would amend the existing offences of urging violence against groups (section 80.2A) and members of groups (section 80.2B) to extend the protections to groups defined by an expanded list of characteristics.

At present the offences in those sections apply where the targeted group is distinguished by ‘race, religion, nationality, national or ethnic origin or political opinion’. The amendments would add ‘sex, sexual orientation, gender identity, intersex status, disability’ to the list.

Item 20 would similarly extend the application of the prohibited hate symbol offences that [commenced at the beginning of the year](#) (sections 80.2H, 80.2HA and 80.2K) to apply to the expanded list of targeted groups. The relevant offences relate to the public display of Nazi symbols or salutes or of prohibited terrorist organisation symbols, and currently apply to

relevant conduct that is likely to offend, insult, humiliate or intimidate a reasonable person who is a member of a group distinguished by ‘race, colour, sex, language, religion, political or other opinion or national or social origin’. **Item 20** would add ‘sexual orientation, gender identity, intersex status’ to the list of characteristics.

Offences of threatening force or violence

Item 19 would insert two new offence provisions relating to threatening force or violence against targeted groups or members of targeted groups, distinguished by ‘race, religion, sex, sexual orientation, gender identity, intersex status, disability, nationality, national or ethnic origin or political opinion’.

Proposed section 80.2BA provides offences where the person threatens to use force or violence against a targeted group and a reasonable member of the targeted group would fear that the threat will be carried out. The maximum penalty is 7 years imprisonment where the threat, if carried out, would threaten the peace, order and good government of the Commonwealth (**proposed subsection 80.2BA(1)**), or 5 years if that is not the case (**proposed subsection 80.2BA(2)**).

To establish the offence, the prosecution will be required to prove that the defendant *intended* to threaten to use force or violence against a targeted group. (The default fault element of intention applies by application of [subsection 5.6\(1\)](#) of the Criminal Code.) The fault element for the threat being made against a targeted group is recklessness (**proposed subsection 80.2BA(3)**). That is, the defendant must be reckless that the targeted group is distinguished by one of the listed characteristics. As set out above, a person is [reckless](#) as to a circumstance if they are aware of a substantial risk that the circumstance exists, and having regard to the circumstances known to them, it is unjustifiable to take that risk. Strict liability applies in relation to whether the reasonable member of the targeted group would fear that the threat will be carried out (**proposed subsection 80.2BA(4)**).

Proposed section 80.2BB would introduce similar offences where the threat of force or violence is made against a targeted person because the first person believes they are a member of a targeted group. It does not matter whether the targeted person actually is a member of the targeted group.

Exclusion from good faith defence

Item 21 would amend subsection 80.3(1) of the Criminal Code to exclude the existing urging force or violence offences (sections 80.2A and 80.2B) and the proposed threatening force or violence offences (**proposed sections 80.2BA** and **80.2BB**) from the existing good faith defences provided in section 80.3.

At present, section 80.3 provides that the offences in ‘Subdivision C—Urging violence and advocating terrorism or genocide’ do not apply to a person who has done so in certain listed ways or for certain listed aims, where those are considered to be done ‘in good faith’.

The [Explanatory Memorandum](#) (at page 39) notes that the good faith defence had carried over from an earlier sedition offence, and claims that, in a [2006 Report](#) the Australian Law Reform Commission (ALRC):

recommended that section 80.3 of the Criminal Code be amended so that the good faith defences do not apply to the offences of urging violence and that instead, the focus should be on ‘proving that a

person intentionally urges the use of force or violence, with the intention that the force or violence urged will occur’.

The Senate Standing Committee for the Scrutiny of Bills, in its [Digest 12 of 2024](#), requested further information to fully assess the appropriateness of removing existing good faith defences for the existing urging force or violence offences and the proposed threatening force or violence offences (at paragraph 1.40). The Committee noted that the effect may be ‘the overly broad criminalisation of certain speech.’ The Committee also disagreed with the interpretation of the 2006 ALRC recommendation in the Explanatory Memorandum, stating:

Instead of adopting the ALRC recommendations, this bill removes the requirement for intention, together with removing the availability of the defence, without making any other amendments to allow for any consideration of the circumstances in which the conduct occurred. (page 14)

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ISSN 1328-8091