Royal Commission
Legal Assistance Service

Fact Sheet
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Hate crimes: What you can do about it

This fact sheet provides general guidance about hate crimes and the law New South Wales (NSW). It should not be relied upon as legal advice.

What is a hate crime?

A hate crime is a crime committed against a person or group because of who they are or a group they belong to.

Hate crimes can include violence, threats, harassment, stalking or damage to property. They happen when someone is targeted because of their race, religion, sexuality, sex, disability or another characteristic protected by law.

How is a hate crime different from hate speech?

Hate speech means words, images or acts that show or encourage hate, unfair treatment or violence against people because of who they are. Hate speech is not always a crime, but it may be against the law. For more information, see our Hate Speech Fact Sheet.

How do hate crime laws protect you?

There are federal, state and territory laws against hate crimes in Australia.

Under federal law, it is a crime to encourage or threaten violence against people because of their race, ethnicity, religion, sex, sexual orientation, gender identity, intersex status, disability, national or ethnic origin or political opinion.

The law also protects people who are targeted because of their relationship with someone in one of these groups. This includes family members, carers and support workers.

People who commit these crimes can be fined, sent to prison, or both. The maximum penalty for some offences is 12 years in prison.

These laws also make it a crime to:

- encourage terrorism or genocide
- damage property or places of worship to encourage violence, and
- publicly display, use or trade of certain Nazi symbols. For more information on hate symbols, see our Hate Symbols Fact Sheet.

The Law in New South Wales

NSW law makes some types of hate speech and hate-related behaviour a crime. A person may be breaking the law if they:

- publicly threaten violence against a person or group because of their race, religion, sexual orientation, gender identity, intersex status or HIV/AIDS status;
- encourage other people to use violence against a person or group because of these personal characteristics;
- encourage hatred against a person or group because of their race.

These laws can apply to things people say or do in public. This includes face-to-face conversations, social media posts, online messages, videos, printed material, signs, flags, symbols and gestures. They can also apply to conduct on private property if members of the public can see or hear it.

Publicly threatening or encouraging violence because of a person's race, religion, sexual orientation, gender identity, intersex status or HIV/AIDS status carries a maximum penalty of 5 years imprisonment, increasing to 7 years if the conduct leads to violence. Publicly encouraging racial hatred carries a maximum penalty of 2 years imprisonment.

A person may receive a more serious penalty in the NSW if their crime was motivated by racial hatred or prejudice.

A person may also break NSW law by publicly displaying Nazi symbols or other prohibited hate symbols.

Examples of hate crime

- A person writes racist words on a synagogue, mosque, church, temple or community centre.
- After seeing a couple holding hands, a person shouts homophobic abuse and threatens to hurt them if they come back to the area.
- After finding out where a person works, someone shares their address, phone number and workplace online and encourages others to target them because of who they are.
- A university student is bullied about their disability. The bullying gets worse, and the student receives threats that they will be hurt if they keep going to classes.

Other types of conduct

Can a hate crime be discrimination?

Yes. The same behaviour can be both a hate crime and discrimination.
Discrimination is when someone is treated unfairly because of who they are. It is not usually a crime.

For example:

- Refusing to hire someone because of their race may be discrimination, but it is not usually a hate crime.
- Refusing to serve someone because of their disability may be discrimination. It may also be a hate crime. For example, a shop owner refuses service and then damages the person's wheelchair on purpose because of their disability.

Bullying, harassment, rude or offensive comments, insults and unfair treatment are not always hate crimes, even if they are upsetting or harmful. They may still be against the law and you should seek legal advice. You may be able to make a complaint under anti-discrimination, workplace or other laws.

Defences and when it is not a hate crime

In some cases, a person charged with a hate crime may still have a legal defence. For example, they may have acted in self-defence or been forced to do something.

It is also not a hate crime to use religious symbols for genuine religious purposes. For example, federal law does not stop the public display of:

- the sacred Swastika used in Buddhism, Hinduism and Jainism
- the Shahada used in Islam.

What to do if you see a hate crime

Immediate steps

Call Triple Zero (000) if there is an emergency or someone is in immediate danger. Contact Crime Stoppers NSW if you are not in immediate danger but want to report a crime.

Keep records

If you can, keep:

- photos of injuries, graffiti or property damage
- screenshots, messages, emails, letters or social media posts
- videos, including phone, CCTV or dashcam recordings
- medical records or reports
- receipts or records of loss and damage
- names and contact details of witnesses.

Reporting a hate crime

Think about what you want to happen. For example, you may want:

- the behaviour to stop
- protection from further harm
- someone to investigate what happened
- support or assistance
- in some cases, criminal charges.

Reporting to the Police

If you think you have experienced or seen a hate crime, you can report it to the police.

Police will usually ask about:

- what happened
- when and where
- who was involved
- any damage, injuries or evidence
- whether anything similar has happened before.

The police will decide whether to investigate what happened and whether there is enough evidence to take further action.

Other ways to report what happened

You may also wish to report the incident to a school, university, employer, sporting club, community organisation or online platform, depending on where it happened. These organisations may be able to look into what happened, take steps to address the problem, make people safer, and provide support.

Get legal advice early

Early legal advice can help you understand:

- your options
- any time limits
- available support services
- what you want to happen.

It is important to get legal advice if the behaviour involved violence, threats, property damage or ongoing harassment.

Contact LawAccess NSW on 1300 888 529 for legal information and referrals.

Get support

Experiencing or seeing a hate crime can be upsetting. You do not have to deal with it on your own. You may want help from a support service:

- Lifeline for 24-hour crisis support and suicide prevention on 13 11 44
- Suicide Call Back Service on 1300 659 467
- eSafety counselling and support services if you have experienced online harm
- Kids Helpline counselling, support and resources on issues affecting young people
- 13 YARN offers crisis support for Indigenous people
- Blueknot has support for people affected by complex trauma.
- Law enforcement- Australian Federal Police: Hate crime information, NSW Police Force Hate Crimes
- Online safety- eSafety Commissioner

Disclaimer: This information is intended as a general information guide only. It should not be relied upon as legal advice. We recommend that you speak with a lawyer about your individual situation.
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