

Attachment B

Comparison of civil and criminal vilification provisions in Australian jurisdictions

Jurisdiction	Civil provisions	Criminal provisions
Cth	<p><i>Racial Discrimination Act 1975</i></p> <p>Section 18C – Offensive behaviour because of race, colour or national or ethnic origin</p> <p>(1) It is unlawful for a person to do an act, otherwise than in private, if:</p> <p>(a) the act is reasonably likely, in all the circumstances, to <u>offend, insult, humiliate or intimidate</u> another person or a group of people; and</p> <p>(b) the act is done because of the <u>race</u>, colour or national or <u>ethnic origin</u> of the other person or of some or all of the people in the group.¹</p> <p>Remedy:</p> <p>If a person believes they have been unlawfully discriminated against, the appropriate avenue for complaint is through the Australian Human Rights Commission.</p>	<p><i>Criminal Code Act 1995</i></p> <p>Section 80.2A – Urging violence against groups</p> <p>...</p> <p>(2) A person (the first person) commits an offence if:</p> <p>(a) the first person <u>intentionally urges another person, or a group, to use force or violence</u> against a group (the targeted group); and</p> <p>(b) the first person does so <u>intending that force or violence will occur</u>; and</p> <p>(c) the targeted group is distinguished by <u>race</u>, religion, nationality, national or ethnic origin or political opinion.</p> <p>Penalty: Imprisonment for 5 years</p> <p>80.2A(1) provides that violence that would also threaten the peace, order and good government of the Commonwealth has a penalty of 7 years imprisonment.</p> <p>Section 80.2B – Urging violence against members of groups</p> <p>...</p> <p>(2) A person (the first person) commits an offence if:</p> <p>(a) the first person <u>intentionally urges another person, or a group, to use force or violence</u> against a person (the targeted person); and</p> <p>(b) the first person does so <u>intending that force or violence will occur</u>; and</p> <p>(c) the first person does so because of his or her belief that the targeted person is a member of a group (the targeted group); and</p> <p>(d) the targeted group is distinguished by race, religion, nationality, national or ethnic origin or political opinion.</p> <p>Penalty: Imprisonment for 5 years.</p> <p>80.2B(1) provides that violence that would also threaten the peace, order and good government of the Commonwealth has a penalty of 7 years imprisonment.</p> <p>80.3 – Defence for acts done in good faith</p> <p>(1) Subdivisions B and C, and sections 83.1 and 83.4, do not apply to a person who:</p> <p>...</p> <p>(c) urges in good faith another person <u>to attempt to lawfully procure a change</u> to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country; or</p> <p>(d) points out in good faith any matters that are producing, or have a tendency to produce, feelings of ill-will or hostility between different groups, <u>in order to bring about the removal of those matters</u>; or</p> <p>(e) does anything in good faith in connection with an industrial dispute or an industrial matter; or</p> <p>(f) publishes in good faith a report or commentary about a matter of <u>public interest</u>.</p>

Jurisdiction	Civil provisions	Criminal provisions
ACT	<p><i>Discrimination Act 1991</i> Section 67A – Unlawful vilification</p> <p>(1) It is unlawful for a person to <u>incite hatred toward, revulsion of, serious contempt for, or severe ridicule</u> of a person or group of people on the ground of any of the following, other than in private: ... (e) race</p> <p>Remedy: If a person believes they have been unlawfully discriminated against, the appropriate avenue for complaint is under the <i>Human Rights Commission Act 2005</i>.</p>	<p><i>Criminal Code 2002</i> Section 750 – Serious vilification</p> <p>(1) A person commits an offence if— (a) the person <u>intentionally</u> carries out an act; and (b) the act is a <u>threatening act</u>; and (c) the person is <u>reckless</u> about whether the act <u>incites hatred toward, revulsion of, serious contempt for, or severe ridicule</u> of a person or group of people on the ground of any of the following: ... (v) race ... and (d) the act is done other than in private; and (e) the person is reckless about whether the act is done other than in private. Maximum penalty: 50 penalty units.</p>
NSW	<p><i>Anti-Discrimination Act 1977</i> Section 20C – Racial vilification unlawful</p> <p>(1) It is unlawful for a person, by a public act, to <u>incite hatred towards, serious contempt for, or severe ridicule</u> of, a person or group of persons on the ground of the <u>race</u> of the person or members of the group. (2) Nothing in this section renders unlawful: (a) a fair report of a public act referred to in subsection (1), or (b) a communication or the distribution or dissemination of any matter on an occasion that would be subject to a defence of absolute privilege (whether under the <i>Defamation Act 2005</i> or otherwise) in proceedings for defamation, or (c) a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.</p> <p>Remedy: If a person believes they have been unlawfully discriminated against, the appropriate avenue for complaint is through the President of the Anti-Discrimination Board.</p>	<p><i>Crimes Act 1900</i> Section 93Z – Offence of publicly threatening or inciting violence on grounds of <u>race</u>, religion, sexual orientation, gender identity or intersex or HIV/AIDS status</p> <p>(1) A person who, by a public act, <u>intentionally or recklessly threatens or incites violence</u> towards another person or a group of persons on any of the following grounds is guilty of an offence: ... (a) the race of the other person or one or more members of the group ... Maximum penalty: (a) in the case of an individual—100 penalty units or imprisonment for 3 years (or both), or (b) in the case of a corporation—500 penalty units.</p>
NT	<p>The Northern Territory recently consulted on introducing anti-vilification laws prohibiting offensive conduct on the basis of <u>race</u>, religious belief, disability, sexual orientation, gender identity and intersex status as part of</p>	N/A

Jurisdiction	Civil provisions	Criminal provisions
	<p>the Modernisation of the Anti-Discrimination Act project.²</p> <p><i>Anti-Discrimination Act 1992 (NT)</i>³</p> <p>Part 4—Prohibition of discrimination on ground of race</p> <p>Division 1—Discrimination to which Part 4 applies</p> <p>51—Criteria for establishing discrimination on ground of race</p> <p>Division 2 – Discrimination against workers</p> <p>Division 3 – Discrimination by other bodies</p> <p>Division 4 – Discrimination in education</p> <p>Division 5 – Discrimination in relation to land, goods, services and accommodation</p> <p>Division 6 – Discrimination in relation to superannuation</p> <p>Remedy:</p> <p>If a person believes they have been unlawfully discriminated against, the appropriate avenue for complaint is through the Anti-Discrimination Commissioner.</p>	
Qld	<p><i>Anti-Discrimination Act 1991</i></p> <p>Section 124A – Vilification on the grounds of <u>race</u>, religion, sexuality or gender identity unlawful</p> <p>(1) A person must not, by a public act, <u>incite hatred towards, serious contempt for, or severe ridicule</u> of, a person or group of persons on the ground of the <u>race</u>, religion, sexuality or gender identity of the person or members of the group.</p> <p>(2) Subsection (1) does not make unlawful—</p> <p>(a) the publication of a fair report of a public act mentioned in subsection (1); or</p> <p>(b) the publication of material in circumstances in which the publication would be subject to a defence of absolute privilege in proceedings for defamation; or</p> <p>(c) a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including public discussion or debate about, and expositions of, any act or matter.</p> <p>Remedy:</p> <p>If a person believes they have been unlawfully discriminated against, the appropriate avenue for complaint is through the Anti-Discrimination Commissioner.</p>	<p><i>Anti-Discrimination Act 1991</i></p> <p>Section 131A – Serious racial and religious vilification</p> <p>(1) A person must not, by a public act, <u>knowingly or recklessly incite hatred towards, serious contempt for, or severe ridicule</u> of, a person or group of persons on the ground of the <u>race</u>, religion, sexuality or gender identity of the person or members of the group in a way that includes—</p> <p>(a) <u>threatening physical harm</u> towards, or towards any property of, the person or group of persons; or</p> <p>(b) <u>inciting others to threaten physical harm</u> towards, or towards any property of, the person or group of persons.</p> <p>Maximum penalty—</p> <p>(a) for an individual—70 penalty units or 6 months imprisonment; or (b) for a corporation—350 penalty units.</p>

² <https://justice.nt.gov.au/attorney-general-and-justice/law-reform-reviews/published-reports-outcomes-and-historical-consultations/historical/2018/discussion-paper-modernisation-of-the-anti-discrimination-act>

³ <https://www.legislation.sa.gov.au/LZ/C/A/EQUAL%20OPPORTUNITY%20ACT%201984/CURRENT/1984.95.AUTH.PDF>

Jurisdiction	Civil provisions	Criminal provisions
SA	<p><i>Civil Liability Act 1936</i> Section 73 – Racial victimisation</p> <p>(1) In this section—act of racial victimisation means a public act <u>inciting hatred, serious contempt or severe ridicule</u> of a person or group of persons on the ground of their <u>race</u> but does not include— (a) publication of a fair report of the act of another person; or (b) publication of material in circumstances in which the publication would be subject to a defence of absolute privilege in proceedings for defamation; or (c) a reasonable act, done in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest (including reasonable public discussion, debate or expositions); ... (2) An act of racial victimisation that results in detriment is actionable as a tort by the person who suffers the detriment.</p> <p>(3) In an action for damages for racial victimisation, damages may be awarded to compensate any form of detriment.</p> <p>(4) The total amount of the damages that may be awarded for the same act or series of acts cannot exceed \$40 000.</p> <p>(5) In applying the limit fixed by subsection (4), the court must take into account damages awarded by a court in criminal proceedings on convicting the defendant, in respect of the same act or series of acts, of the offence or a series of offences of racial vilification.</p> <p>(6) Before a court awards damages for an act of racial victimisation, the court must— (a) take reasonable steps to ensure that all persons who may have been harmed by the act are given a reasonable opportunity to claim damages in the proceedings; or (b) take other action that appears reasonable and necessary in the circumstances to protect the interests of possible claimants who are not before the court.</p> <p><i>Equal Opportunity Act 1984 (SA)</i> Part 4 – Prohibition of discrimination on ground of race</p>	<p><i>Racial Vilification Act 1996</i> Section 4 – Racial vilification</p> <p>A person must not, by a public act, <u>incite hatred towards, serious contempt for, or severe ridicule of</u>, a person or group of persons on the ground of their <u>race</u> by— (a) <u>threatening physical harm</u> to the person, or members of the group, or to property of the person or members of the group; or (b) <u>inciting others to threaten physical harm</u> to the person, or members of the group, or to property of the person or members of the group.</p> <p>Maximum penalty: If the offender is a body corporate—\$25000. If the offender is a natural person—\$5000, or imprisonment for 3 years, or both.⁴</p>

⁴ Section 4 of the *Racial Vilification Act 1996* and section 73 of the *Civil Liability Act 1936* define “race” to mean the “nationality, country of origin, colour or ethnic origin of the person or of another person with whom the person resides or associates”. It has not yet been considered whether certain ethno-religious groups fall within the protections of these Acts.

Jurisdiction	Civil provisions	Criminal provisions
	<p>Division 1 – Discrimination to which Part 4 applies</p> <p>Division 2 – Discrimination against workers</p> <p>Division 3 – Discrimination by other bodies</p> <p>Division 4 – Discrimination in education</p> <p>Division 5 – Discrimination in relation to land, goods, services and accommodation</p> <p>Division 6 – Discrimination in relation to superannuation</p> <p>Division 7 – General exemptions from Part 4</p> <p>Remedy: If a person believes they have been unlawfully discriminated against, the appropriate avenue for complaint is through the Commissioner for Equal Opportunity.</p>	
Tas	<p><i>Anti-Discrimination Act 1998</i></p> <p>Section 19 – Inciting hatred</p> <p>A person, by a public act, <u>must not incite hatred towards, serious contempt for, or severe ridicule of</u>, a person or a group of persons on the ground of –</p> <p>...</p> <p>(a) the race of the person or any member of the group</p> <p>...</p> <p><i>Anti-Discrimination Act 1998</i></p> <p>Subsection 17(1) – Prohibition of certain conduct and sexual harassment</p> <p>(1) A person must not engage in any conduct which <u>offends, humiliates, intimidates, insults or ridicules</u> another person on the basis of an attribute referred to in section 16(e), (a) [race], (b), (c), (d), (ea), (eb) and (k), (f), (fa), (g), (h), (i) or (j) in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed.</p> <p>Remedy: If a person believes they have been unlawfully discriminated against, the appropriate avenue for complaint is through the Tas Anti-Discrimination Commissioner.</p>	N/A
Vic	<p><i>Racial and Religious Tolerance Act 2001</i></p> <p>Section 7 – Racial vilification unlawful</p> <p>(1) A person must not, on the ground of the <u>race</u> of another person or class of persons, engage in conduct that <u>incites hatred against, serious contempt for, or revulsion or severe ridicule of</u>, that other person or class of persons.</p>	<p><i>Racial and Religious Tolerance Act 2001</i></p> <p>Section 24 – Offence of serious racial vilification</p> <p>(1) A person (the offender) must not, on the ground of the <u>race</u> of another person or class of persons, <u>intentionally engage in</u> conduct that the offender knows is likely—</p> <p>(a) to <u>incite hatred</u> against that other person or class of persons; and</p>

Jurisdiction	Civil provisions	Criminal provisions
	<p>(2) For the purposes of subsection (1), conduct— (a) may be constituted by a single occasion or by a number of occasions over a period of time; and (b) may occur in or outside Victoria.</p> <p>Remedy: If a person believes they have been unlawfully discriminated against, they may bring a dispute to the Victorian Equal Opportunity and Human Rights Commission for dispute resolution.</p> <p><i>Equal Opportunity Act 2010 (Vic)</i></p> <p>Part 2—What is discrimination?</p> <p>6 Attributes The following are the attributes on the basis of which discrimination is prohibited in the areas of activity set out in Part 4— ... (m) race; ...</p> <p>Part 4—When is discrimination prohibited? Division 1 – Discrimination in employment Division 2 – Discrimination in employment-related areas Division 3 – Discrimination in education Division 4 – Discrimination in the provision of goods and services and disposal of land Division 5 – Discrimination in accommodation Division 6 – Discrimination by club and club members Division 7- Discrimination in sport Division 8 – Discrimination in local government</p> <p>Remedy: If a person believes they have been unlawfully discriminated against, they may bring a dispute to the Victorian Equal Opportunity and Human Rights Commission for dispute resolution.</p>	<p>(b) to <u>threaten, or incite others to threaten, physical harm</u> towards that other person or class of persons or the property of that other person or class of persons. Penalty: In the case of a body corporate, 300 penalty units; In any other case, imprisonment for 6 months or 60 penalty units or both.</p> <p>(2) A person (the offender) must not, on the ground of the race of another person or class of persons, intentionally engage in conduct that the offender knows is likely to incite serious contempt for, or revulsion or severe ridicule of, that other person or class of persons. Penalty: In the case of a body corporate, 300 penalty units; In any other case, imprisonment for 6 months or 60 penalty units or both.</p>

Jurisdiction	Civil provisions	Criminal provisions
WA	<p><i>Equal Opportunity Act 1984 (WA)</i> Part III – Discrimination on the ground of race</p> <p>36. Racial discrimination (1) For the purposes of this Act, a person (in this subsection referred to as the discriminator) discriminates against another person (in this subsection referred to as the aggrieved person) on the ground of race if, on the ground of — (a) the race of the aggrieved person; or (b) a characteristic that appertains generally to persons of the race of the aggrieved person; or (c) a characteristic that is generally imputed to persons of the race of the aggrieved person, the discriminator — (d) treats the aggrieved person less favourably than in the same circumstances, or in circumstances that are not materially different, the discriminator treats or would treat a person of a different race; or (e) segregates the aggrieved person from persons of a different race.</p> <p>(1a) For the purposes of this Act, a person (in this subsection referred to as the discriminator) discriminates against another person (in this subsection referred to as the aggrieved person) on the ground of race if, on the ground of — (a) the race of; or (b) a characteristic that appertains generally to persons of the same race as; or (c) a characteristic that is generally imputed to persons of the same race as, any relative or associate of the aggrieved person, the discriminator — (d) treats the aggrieved person less favourably than in the same circumstances, or in circumstances that are not materially different, the discriminator treats or would treat persons; or (e) segregates the aggrieved person from persons, who are not of that race.</p> <p>(2) For the purposes of this Act, a person (in this subsection referred to as the discriminator) discriminates against another person (in this subsection referred to as the aggrieved person) on the ground of race if the discriminator requires the aggrieved person to comply with a requirement or condition — (a) with which a substantially higher proportion of persons not of the same race as the aggrieved person comply or are able to comply; and</p>	<p><i>Criminal Code Act 1913</i> Section 77 – Conduct intended to incite <u>racial</u> animosity or <u>racist</u> harassment</p> <p>Any person who engages in any conduct, otherwise than in private, by which the person <u>intends to create, promote or increase animosity towards, or harassment of, a racial group</u>, or a person as a member of a racial group, is guilty of a crime and is liable to imprisonment for 14 years.</p> <p>Section 78 – Conduct likely to incite racial animosity or racist harassment</p> <p>Any person who engages in any conduct, otherwise than in private, that is <u>likely to create, promote or increase animosity towards, or harassment of, a racial group</u>, or a person as a member of a racial group, is guilty of a crime and is liable to imprisonment for 5 years.</p>

Jurisdiction	Civil provisions	Criminal provisions
	<p>(b) which is not reasonable having regard to the circumstances of the case; and</p> <p>(c) with which the aggrieved person does not or is not able to comply.</p> <p>Division 2 – Discrimination in work Division 3 – Discrimination in other areas Division 3A – Discrimination involving racial harassment</p> <p>Remedy: If a person believes they have been unlawfully discriminated against, the appropriate avenue for complaint is through the WA Equal Opportunity Commissioner.</p>	