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Hate Speech in NSW

In 1989 the *Anti-Discrimination Act 1977* (NSW) was amended to include a criminal offence of racial vilification. NSW was the first State to introduce such an offence:

20D Offence of serious racial vilification

- (1) A person shall not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group by means which include:
 - (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.
- (2) A person shall not be prosecuted for an offence under this section unless the Attorney General has consented to the prosecution.

It has been a sore point among those interested in the topic that since the legislation was introduced, while the Anti-Discrimination Board has referred about 30 cases to the Director of Public Prosecutions, no charge has ever been laid in reliance on the section, let alone a successful prosecution. A parliamentary inquiry several years ago concluded the provision was unworkable in practice. The government promised to review the issue, but nothing has occurred.

Having first raised it last year, a coalition of community groups representing a wide range of ethnicities and religions under the banner Keep NSW Safe has proposed the Crimes Amendment (Promotion or Advocacy of Violence) Bill 2017 to replace s 20D. The intention is to introduce a Div 8C into Pt 3 of the *Crimes Act 1900* (NSW). The operative section would be:

60F. (1) A person who, otherwise than in private, intentionally or recklessly promotes or advocates the use or

threatened use of physical force or violence against, or who harasses or intimidates, another person or group of people because of, or by reference to, the actual or presumed:

(i) race, colour, descent or national, ethnic or ethno-religious origin; or

(ii) religious belief or affiliation; or

(iii) homosexuality; or

(iv) HIV/AIDS infection; or

(v) transgender identity, or

(vi) official status

of the other person or of some or all of the members of the group, commits an indictable offence.

(2) In subsection (1), harasses includes making threats or engaging in serious and substantial verbal abuse.

The draft then contains a number of definitional and evidentiary sections to explain the various components of proposed s 60F.

There are now laws in Australia which prohibit the promotion of participation in foreign conflicts or terrorist acts, so this is now far from novel legal terrain. An unworkable law risks bringing the law into disrepute. The Keep NSW Safe proposal is an important contribution to the discussion about how an apparently ineffective provision might be improved.

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