



## Hate Speech Laws

### What makes a good law?

The challenge when making hate laws is balancing freedom from discrimination & violence, and right to speech & expression. It can be difficult to make laws that determine where we draw the line to balance these rights.

### Spectrum of Hate Speech

There is a spectrum of hate speech. The type of law that applies depends upon where the hate speech sits on the spectrum.

Area	Hate Speech Spectrum	Examples of Laws
<b>Criminal</b>	Incitement to violence	<i>Federal Law: Criminal Code Act (Cth) 1995</i> <i>State Law: Crimes Act (NSW) 1900</i>
<b>Civil</b>	Incitement to hatred	<i>Federal Law: Racial Discrimination Act (Cth) 1975</i>
	Incitement to discrimination	
	Provocation	<i>State Law: eg Anti-Discrimination Act (NSW) 1977</i>
	Insult and humiliation	
	Denial of historical atrocities	

Each State has different legislation regarding Hate Speech laws. The Laws in Victorian, Qld, WA and SA contain both criminal and civil offences.

### Why does it matter if it is criminal or civil?

Hate speech is **criminalised** when it poses a threat to public safety and order. As punishments may include imprisonment, proving such an offence requires a high standard of proof, beyond reasonable doubt.

Hate speech can also be treated as a **civil** liability for offences that are considered less severe on the hate speech spectrum. The standard of proof is lower - on the balance of probabilities.



## Things to consider when evaluating the Hate Speech laws.

The Rule of Law Education Centre has developed a Checklist of Effective Laws. This gives a framework to consider whether a law is good/effective. A copy of the Checklist can be found here: [https://www.ruleoflaw.org.au/wp-content/uploads/Law\\_-\\_Characteristics-of-Effective-Laws-Checklist.pdf](https://www.ruleoflaw.org.au/wp-content/uploads/Law_-_Characteristics-of-Effective-Laws-Checklist.pdf) and more details on our website here <https://www.ruleoflaw.org.au/education/civics-citizenship-and-laws/characteristics-of-effective-laws/>

The relevant principles to consider for the Hate Speech Laws are:

- 1. What is the purpose of the law?**
- 2. Are they clear?**

Are the terms and definitions clear enough?  
They need to be precise and not vague so as to avoid arbitrary application.  
Will the community understand what types of speech are covered by the laws?
- 3. Are they accepted?**

Are the boundaries of behaviour consistent with community standards?  
Or do they reflect only one group's perspective?
- 4. Are they fair?**

Do the punishments fit the crime?  
Or do they unjustly impact on other important rights?  
Will everyone be subject to the law and similar penalties applied for similar breaches?
- 5. Are they enforceable?**

Are the laws clear enough so they can be effectively enforced?  
Are the laws broad enough to cover what the laws are intending to protect against?
- 6. Do they protect human rights?**

Do the laws effectively balance the right to safety and security with the right to freedom of speech?
- 7. Will they satisfy their purpose?**

Will they send a clear message about community expectations regarding certain behaviour?

By evaluating laws through these key characteristics, we can form a critical understanding about whether a particular law achieves its purpose and aligns with the rule of law.

Our laws must protect and advance individual Australians. It is critical that Australians feel safe and free to go about their day-to-day lives.

The question that we need to think about is what restrictions are we willing to accept and where do those lines get drawn?

For more details about laws, see our website: <https://www.ruleoflaw.org.au/education/civics-citizenship-and-laws/characteristics-of-effective-laws/>

For commentary on Hate Speech laws, go to our sister organisation The Rule of Law Institute of Australia to search Chris Merritt's articles including:

<https://ruleoflawaustralia.com.au/commentary/why-hate-crimes-bill-falls-short-of-the-target/>