HATE CRIME
Guidelines

NSW Police Force

Engagement & Hate Crime Unit
Counter Terrorism & Special Tactics Command

HATE CRIME GUIDELINES

This document provides officers an understanding of hate crime legislation, policy and procedures.

For further assistance please contact the Engagement & Hate Crime Unit (EHCU) via email: #EHCU.

ESSENTIAL SUMMARY

The NSW Police Force (NSWPF) is committed to the prevention, disruption and reduction of hate crimes and the support of victims and communities.

The NSWPF approaches all situations with an open mind and acknowledges that any type of incident could have hate as a motivating factor. The NSWPF promotes a culture of inclusivity for all communities, a respect for diverse beliefs and cultures and empathy towards victims of hate crime. Through community liaison, the NSWPF encourages more victims to feel comfortable coming forward and reporting any hate crime or hate incident.

The EHCU continues to drive the NSWPF response to hate crime in line with parliamentary recommendations and world's best practice.

These guidelines explain:

- Relevant legislation where hate crime may be an aggravating factor
- An overview of public hate speech legislation, Crimes Act 1900 (NSW) s 93Z, which requires approval from the Director of Public Prosecution (DPP)
- The role of the EHCU
- How to identify hate crime
- How to report hate crime
- How to support victims of hate crime.

DOCUMENT CONTROL SHEET

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1.0	12 April 2022	Caroline Booth, Intelligence Coordinator, Engagement & Hate Crime Unit	First Version

Contents

1. Purpose & Scope

The purpose of this document is to provide officers an understanding of hate crime, how to identify and record hate crime and hate incidents and how to support victims of hate crime.

This document does not provide investigative procedures for hate crime.

1.1. CONTEXT

NSW is one of the most diverse states in the world. This includes diversity of culture, language, religion, sexuality, gender and ability. The NSWPF plays a key role in promoting harmony and inclusivity for all people thereby upholding the **'Stronger Communities'** strategy of the NSW Government. Therefore, when people experience hate crimes and hate incidents it is vital the NSWPF responds swiftly and appropriately.

Strike Force Parrabell (SF Parrabell) is part of the NSWPF's more recent history, demonstrating how police have responded to community concerns and criticisms of the NSWPF's historical response to gay hate crimes. SF Parrabell reviewed 88 deaths between 1976 to 2000 to determine if they were hate crimes. Of the cases reviewed, 31% were confirmed or suspected of being hate crimes.

The **NSWPF Strike Force Parrabell report** (2018) made a number of recommendations relating to bias crimes (now referred to as hate crimes). A comprehensive update on these recommendations is given to the Parliament of NSW Standing Committee on Social Issues, who regularly monitor and review the outcomes.

2. Definitions

Term	Definition & Example
Aggravating Factor	An element of an offence that exacerbates the wrongdoing of the perpetrator or increases the severity of the crime.
Associated Factor	A flag in COPS for Events and Information Reports which provides detail on the type of interaction police encountered (e.g. Fraud Related, Hate Crime Related or Gang Related). Multiple Associated Factors can be used for a single interaction (e.g. an event could be flagged both Personal Violence Related and Hate Crime Related).
Bias	A tendency or preference for or against a person or group, especially in a way considered to be unfair (e.g. stereotyping people).
Hate	A deep and extreme emotional dislike.
Hate Crime	A crime motivated by hate, prejudice or bias towards people because of their identity or perceived difference (e.g. an assault on an LGBTIQA+ person or swastika graffiti on a synagogue).
Hate Crime Indicator	Visual, verbal or other indicators that suggest the offender was motivated by hate and provides a reasonable understanding of their intent (e.g. the use of use of homophobic language or targeting a victim at a religious place of worship).

Term	Definition & Example
Hate Incident	An incident, that is not a crime, but is motivated by hate, prejudice or bias towards people because of their identity or perceived difference (e.g. racist verbal abuse in the street or privately messaging hurtful comments online because of a person's disability, sexual orientation or religious beliefs).
Hate Motivated Communication	A communication or publication that is designed to harass, offend, menace, threaten, intimidate, incite violence or stir up hatred towards people because of their identity or perceived difference.
Hate Speech	Any kind of communication, verbal or written, that attacks, threatens, intimidates, incites violence or stirs up hatred towards people because of their identify or perceived difference. Hate speech can be a hate crime or a hate incident depending on where it occurs, who is targeted and the language used.
Motivating Factor	A reason or reasons for acting or behaving in a particular way.
Prejudice	An opinion or attitude that is not justified by facts (e.g. being racist, homophobic or sexist)
Qualifying Factor	An additional flag within the Associated Factor which provides further details about an incident (e.g. Hate Crime Related – Sex or Gender). Multiple Qualifying Factors can be used within an Associated Factor e.g. Race and Homelessness).

2.1. HATE CATEGORIES

Category	COPS Descriptor
Age Discrimination	Any hate, prejudice or bias based on age.
Ethnic/National Origin	A group of people who share common cultural characteristics such as languages, customs, history, or traditions (e.g. Chinese or Aboriginal and Torres Strait Islanders); or a minority group or nationality group that is part of a larger community (e.g. Tongan/Samoan/Maori or South Sudanese/North Sudanese).
HIV/AIDS Status	Any hate, prejudice or bias based on HIV or AIDS status.
Homelessness	Any hate, prejudice or bias based homelessness.

Category	COPS Descriptor
LGBTIQA+	Any sexual orientation or gender identity, such as lesbian, gay, bi-sexual, transsexual, intersex, queer, transgender, non-binary and gender diverse people. **Sexual orientation** refers to who a person is sexually and/or romantically attracted to. Lesbian, gay and bi-sexual are examples of how people might self-identify their sexuality or sexual orientation. **Gender identity** refers to a person's internal and/or external experience of gender which may be the same or different from their sex at birth. Someone who is transgender or 'gender diverse' is anyone who feels their assigned gender does not completely or adequately reflect their internal gender (how they feel). Transgender people may or may not take steps to live as a different gender. A transgender person may express any sexuality.
Mental or Physical Disability	Any disability, including physical disability, learning disability or mental health.
Political	Any political leaning, such as hatred based on affiliation to a political party or political beliefs.
Race	A group of people who share common physical characteristics such as skin colour, facial features, hair type (e.g. African or Caucasian). The NSWPF describes racial appearance using these categories: • Caucasian • Asian • Middle Eastern/Mediterranean • African • Aboriginal/Torres Strait Islander • South American • Indian Sub-Continental • Pacific Islander/Maori
Religion or Faith	Any religion or faith, including those who have no faith (e.g. Catholicism, Judaism, Protestants, Islam or Atheists).
Sex or Gender	**Sex** is biologically defined (male, female or intersex which refers to people born with genetic, hormonal or physical sex characteristics that are not typically 'male' or 'female'). **Gender** is a how a person feels. Gender identity can change over time and includes (amongst other terms) non-binary, male, female, transgender and gender fluid. The combination of sex and gender can mean a person may identify as male, female, both or neither.

3. Legislation

For details on all offences please select the legislation links below, or refer to the **NSWPF intranet in the Law Resources section**.

3.1. HATE AS A MOTIVATING FACTOR

For many hate crimes, prejudice, bias or hate is the motivating factor to another criminal offence, such as assault, robbery or malicious damage.

Crimes (Sentencing Procedure) Act 1999 (NSW) - Section 21A(2)(h) outlines the aggravating factors to be taken into account in determining the appropriate sentence for an offence. The aggravating factors specific to hate crime include:

"the offence was motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged (such as people of a particular religion, racial or ethnic origin, language, sexual orientation or age, or having a particular disability)."

3.1.1. TELECOMMUNICATIONS OR POSTAL OFFENCES

Consider the offences below when hate speech is committed on social media platforms and when these communications are not made publicly (**Refer to Section 3.2**), for example a racially offensive private message
on Instagram.

Criminal Code Act 1995 (Commonwealth)

- Section 471.12 – Using a postal or similar service to menace, harass or cause offence
- Section 474.15 – Using a carriage service to make a threat
- Section 474.17 – Using a carriage service to menace, harass or cause offence.

The 'cause offence' provisions in these laws require a very high threshold to be reached for a communication to be deemed offensive in the eyes of the law. Vulgar abuse or offensive language is not enough. It must cause offence of a kind that would cause true outrage and serious offence.[1] Most hate motivated communications would likely meet the required threshold for 'offensive'.

3.1.2. CONDUCT OR LANGUAGE OFFENCES

The following sections of the Summary Offences Act 1988 can be considered for offensive conduct or language.

Summary Offences Act 1988 (NSW)

- Section 4 - Offensive conduct
- Section 4A - Offensive language
- Personal Violence Offences

Crimes (Domestic & Personal Violence) Act 2007 (NSW)

- Section 13 - Stalking or intimidation with intent to cause fear of physical or mental harm

The intimidation offence may be particularly relevant if hate speech, or conduct motivated by hate, escalates into the actual physical or mental intimidation of a person.

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1. *High Court decision in Monis v The Queen [2013] HCA 4*

3.1.3. OTHER OFFENCES FOR CONSIDERATION

Crimes Act 1900 (NSW)

- Section 31 - Documents containing threats (including a 'document' as defined in Interpretation Act 1987 (NSW) S.21 Meanings of commonly used words and expressions)

Crimes Prevention Act 1916 (NSW)

- Section 2 - Inciting to crimes
- Section 3 - Printing or publishing writing inciting to crimes

Summary Offence Act 1988 (NSW)

- Section 8 - Damaging or desecrating protected places

3.2. PUBLIC HATE SPEECH

NSW has specific legislation dealing with public hate speech.

Crimes Act 1900 (NSW)

- Section 93Z - 'Offence of publicly threatening or inciting violence on the grounds of race, religion, sexual orientation, gender identity, or intersex or HIV/AIDS status'.

Police must consider the motivation of the offender. Police must prove that the victim was primarily targeted because they belonged to one of the stated categories and not for some other reason. For example, after a road rage incident, the offender stands on the road and issues a threat of violence towards the victim using derogatory remarks about the other driver's ethnicity. Consider whether the primary reason for the threat of violence was the road incident or the ethnicity of the other driver.

Prosecutions MUST NOT be commenced without the approval of the Director of Public Prosecutions (DPP) (**Refer to Section 93Z advice**).

4. Policy

The NSWPF is committed to the prevention, disruption and reduction of hate crimes.

Our commitment is to ensure the NSWPF:

- Strongly promotes and supports the prevention, disruption and reduction of hate crimes in NSW
- Approaches all situations with an open mind regarding motive and considers if hate is a motivating factor in any crime or incident
- Proactively supports victims and communities of hate crime
- Promotes a culture of respect and inclusivity for all communities and beliefs
- Has best practice investigative standards for hate crimes
- Has a dedicated specialised unit which focuses on:
  - » Monitoring all hate crimes occurring in NSW
  - » Educating and training officers and investigators around hate crimes and incidents
  - » Promoting hate crime awareness within NSW communities to encourage and support reporting
  - » Offering specialised advice on hate crime and hate speech
  - » Analysing hate crime trends, hate groups and behaviours, both escalating and emerging
  - » Maintaining contemporary knowledge of research into hate crimes and incidents

» Actively engaging with communities, organisations and other jurisdictions to share learning and knowledge, as well as build trust and understanding
» Maintaining the integrity of the Hate Incident Review Committee (HIRC) and swiftly acting on decisions.

4.1. HATE CRIMES & HATE INCIDENTS

HATE CRIME DEFINITION

A crime motivated by hate, prejudice or bias towards people because of their identity or perceived difference.

For example, Race, Religion or Faith, Ethnic/National Origin, Sex or Gender, LGBTIQA+, Mental or Physical Disability, Political, Homelessness, Age (Discrimination) or HIV/AIDS Status.

IT IS HATE CRIME Call the police on Triple Zero (**000**) or the Police Assistance Line **131 444**

THREATS

DAMAGING PROPERTY

HARASSMENT

#!@%

@*!#

VIOLENCE

A criminal offence, that is motivated by prejudice, bias or hate is a hate crime. Hate can be a motivating factor behind any crime, such as assault, robbery or malicious damage. An offender is motivated to commit a hate crime because of 'who' the victim is, or 'what' the victim appears to be. There can also be a ripple effect of fear within the community who share the same characteristics as the victim.

In NSW, hate crime is not a separate criminal offence. The crime committed could be, for example, assault or malicious damage. Hate is the motivating factor for the offence, not the actual crime itself.

An incident that is not a crime, but still motivated by prejudice, bias or hate, is a hate incident.

| CRIME | + | PREJUDICE, BIAS OR HATE MOTIVATION | = | HATE CRIME |
| NO CRIME | + | PREJUDICE, BIAS OR HATE MOTIVATION | = | HATE INCIDENT |
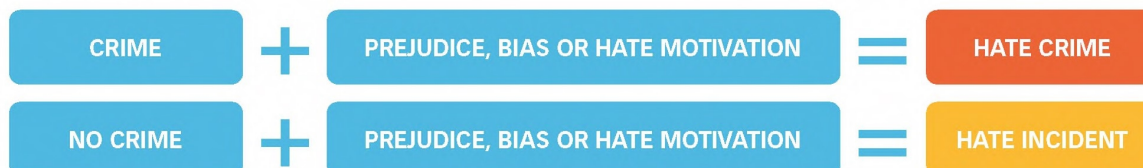
4.1.1. HATE SPEECH AND ONLINE HATE SPEECH

Hate speech can be an indicator of behaviour prior to escalation, potentially to real world violence. It is important that police record incidents of hate speech so that the EHCU can monitor this.

Hate speech can occur online. As hate speech increases online, hate crimes may increase offline.[2]

NSW has legislation than can make public hate speech a criminal offence (**refer to section 3.2 for further details**).

4.2. SCENARIOS AND EXAMPLES

Scenario	Example
Hate Crime – Assault	Two men are holding hands as they walk along a footpath near Taylor Square on Oxford Street. A person spots the couple and approaches shouting "Oi! You poofters holding hands!" One of the couple asks "What did you call us? You can't speak to us like that!" The person approaches the same victim, shouts "Shut up faggot" and punches them.
	This is a hate crime. The homophobic language the person of interest (POI) uses, the couple holding hands leading to the POI to believe they are gay, and the location of the incident are all potential indicators of a hate crime. The offence is Actual Bodily Harm with hate being an aggravating factor during sentencing.
Hate Crime – Online Public Threat	A POI posts a public message on Facebook about having guns and planning to go out and kill Jews during an upcoming religious festival in Sydney.
	This is an example of a hate crime, where the POI is using a public site to threaten and incite violence against a specific group of people. This should be flagged in COPS as 'Hate Crime Related' and 'Firearms Related' with 'Religion or Faith' as a Qualifying Factors.
Hate Crime – Witness to an Assault	A person witnesses someone shouting at a man who is sitting with several bags on a street corner. The POI goes on to call the man a 'beggar' and a 'waste of space' and then spits on him. The witness calls the Police Assistance Line to report the incident.
	This is a hate crime. The language used by the POI and the assault of spitting on the man are both indicators of a hate crime because the man is perceived to be homeless. The report should be taken from the witness and the event flagged as 'Hate Crime Related' with 'Homelessness' as a Qualifying Factor.

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2. M. L. Williams et al., 'Hate in the Machine: Anti-black and Anti-Muslim Social Media Posts as predictors of Offline Racially and Religiously Aggravated Crime', British Journal of Criminology, 60 (2019), 111-112.

Hate Incident – Verbal Abuse	A woman of Middle Eastern appearance wearing a hijab (headscarf) is walking down the street. A male walks past and shouts over his shoulder "You should go back to your own country!" While offended by the remarks, the woman did not fear for her safety.
	This is a hate incident. If reported to the police, this incident should be entered into COPS as an event with 'Hate Crime Related' as an Associated Factor; and both 'Race' and 'Religion or Faith' as Qualifying Factors, as the verbal abuse could be based on her race and/or religion given she was wearing a hijab.
Hate Incident – Potential Risk to Public Safety	Information reported to the police suggests a Caucasian male has a preoccupation with firearms and has expressed a desire to 'take out' Aboriginal people in the local area due to his hatred of what he calls 'non-white Australians'. The male also has a swastika tattoo on his ankle.
	In this instance an Information Report should be created and flagged as 'Hate Crime Related' with the Qualifying Factors of 'Ethnic/National Origin' and 'Race'. While no offence has been committed, due to the POI's possible neo-Nazi ideology and stated hatred towards Aboriginal people, this would be assessed as a hate incident.

4.3. ROLES AND RESPONSIBILITIES

4.3.1. ALL POLICE

While most hate crimes/incidents will not lead to radicalisation or terrorism, there are links between hate speech, hate crimes, radicalisation and terrorism.[3] Officers play a vital role in preventing radicalisation, acts of violence and terrorism in NSW. Every officer monitoring and reporting early acts of hate speech and hate crimes/incidents can assist in the prevention and disruption of these crimes.

4.3.2. INVESTIGATING OFFICER

Every investigating officer must keep an open mind, acknowledging that any incident could have hate as a motivating factor.

4.3.3. THE ENGAGEMENT & HATE CRIME UNIT (EHCU)

The EHCU offers support to police and the community in preventing, disrupting and responding to hate crimes and hate incidents. Through building rapport and trust with investigating officers and communities, the EHCU assists in the swift response to any hate crime/incident.

The EHCU can be consulted on all hate crimes/incidents and offers specialist advice to officers and the community. As subject matter experts, the EHCU monitors escalating behaviours, hate groups and hotspots to aid in the prevention and disruption of further incidents.

The EHCU assesses all incidents flagged in COPS as 'Hate Crime Related'.

4.3.4. LIAISON OFFICERS

There are a range of liaison officers who can assist with building relationships with communities who are more vulnerable to hate crimes. Further details can be found on the intranet.

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3. C. E. Mills et al., 'Extreme Hatred: revisiting the Hate Crime and Terrorism Relationship to Determine Whether they are 'Close Cousins' or 'Distant Relatives'. Crime & Delinquency, 63/10 2017, 11

- **Aboriginal Community Liaison Officers (ACLOs)**
- **Aged Crime Prevention Officers (ACPOs)** - not only work with older people, but also those with disabilities and people experiencing homelessness.
- **Crime Prevention Officers (CPOs)**
- **GLLOs (LGBTIQA+ Liaison Officers)** – perform this role in addition to their substantive position.
- **Multicultural Community Liaison Officers (MCLOs)** – work with all Culturally and Linguistically Diverse (CALD) communities.
- **Youth Engagement – Youth Officers (YO), School Liaison Police (SLP) & Youth Case Managers**
  - » **YO** – specialist police officers trained to deliver crime prevention programs to reduce victimisation and youth crime. They maintain networks with relevant agencies to provide support and referrals.
  - » **SLP** – specialist police officers who work in high schools across NSW, including public, religious, and independent schools.
  - » **Youth Case Managers** – work in Police and Community Youth Clubs (PCYC) across NSW where they implement the eight RISEUP programs in partnership with PCYC.

For PACs/PDs without a specific liaison officer, police should talk to their Crime Coordinator who will be able to assist either in finding a liaison officer at another police station or determine if the matter should be referred to the CPO.

4.4. NSWPF RECORDING AND REPORTING

Accurate reporting and recording of all hate crimes/incidents will give the NSWPF a clearer picture of hate crime hotspots and changing or escalating behaviours. Once an incident has been flagged as 'Hate Crime Related' it will be assessed by the EHCU and given a classification.

The recording of hate crimes/incidents is vital for intelligence gathering. Hate crimes/incidents can indicate behaviours prior to escalation (e.g. verbal abuse before it escalates to violence or stating hateful views online before escalation to radicalisation). Hate crimes/incidents can also assist in highlighting hotspots.

4.5. VICTIMS OF HATE CRIME

Victims of hate crimes and hate incidents are targeted for who they are. These are crimes and incidents that attack the person's identity and therefore can have a greater and longer lasting impact than other crime types. Fear of repeat victimisation is typical, as the victim cannot change their identity.[4]

A UK victimisation survey has shown that victims of hate crime are more than twice as likely to experience fear, loss of confidence or feeling vulnerable, anxiety or panic attacks, depression and difficulty sleeping compared to other victims of crime.[5] The trauma of the incident and how it has impacted the victim and their community must be considered when responding to hate crimes.

Hate crimes and hate incidents can also have indirect impact on the community. The community that shares the same characteristics as the victim can feel the same fear as the victim and fear of reprisals.[6] It is therefore important to engage with communities as well as victims.

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4. *OSCE Office for Democratic Institutions and Human Rights. Understanding the Needs of Hate Crime Victims, 2020*
5. *Home Office UK, Hate Crime, England and Wales, 2019 to 2020, https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2019-to-2020/hate-crime-england-and-wales-2019-to-2020#hate-crime-from-the-csew, accessed on 20 Sept 2021.*
6. *OSCE Office for Democratic Institutions and Human Rights. Understanding the Needs of Hate Crime Victims, 2020*

4.5.1. BARRIERS TO VICTIMS REPORTING

Hate crimes/incidents are under-reported. Studies indicate less than one in four victims have reported their hate crime to the police and over 75% of victims would not report verbal abuse.[7]

Barriers for victims reporting may include: [8] [9]

- Fear that reporting the incident might make the situation worse
- Humiliation or shame about being a victimised
- Fear they won't be treated seriously
- Unsure if what they experienced amounted to a hate crime
- Fear of a negative reaction from the police
- Cultural or language barriers.
- Fear of coming out to the police as LGBTIQA+

4.5.2. REPORTING SERVICES

There are a wide range of ways that victims can report hate crime, either directly to the police, or through alternative channels. Key methods have been listed below, but there are many other options which can be found online.

STANDARD POLICE REPORTING CHANNELS

- **Triple Zero (000)** to report emergencies.
- **Police Assistance Line (PAL) 131 444** for non-life-threatening matters and crimes that are not a critical emergency.
- **Crime Stoppers 1800 333 000** or **https://www1.police.nsw.gov.au/cs.aspx** if the criminal or suspicious behaviour is not occurring right now.
- **NSW Police Force Community Portal https://portal.police.nsw.gov.au/** offers online reporting, which is easy to use, confidential and secure. It provides a range of services including minor crime reporting such as intentional damage or graffiti.
- **Local police station**, the nearest station can be found using this search function: **https://www.police.nsw.gov.au/about_us/regions_commands_districts/police_station_search**.

ALTERNATIVE REPORTING

Three of the main alternative reporting options are listed below. There are many community specific agencies victims can also report through, such as ACON (for people of diverse sexualities and genders), The Gender Centre (support for transgender/gender diverse people), Community Security Group NSW (for the Jewish community) and United Muslims of Australia (for the Muslim community). Details of these agencies can be found on the internet.

- **Australian Human Rights Commission** – They protect and promote human rights in Australia and internationally. They investigate and resolve complaints of discrimination and breaches of human rights. **https://humanrights.gov.au/complaints#main-content**
- **eSafety Commissioner** – they can help Australians deal with online abuse. Cyberbullying, adult cyber abuse, image-based abuse and illegal and harmful content can be reported here, **https://www.esafety.gov.au/report**.
- **Anti-Discrimination NSW** – they can answer questions and provide general advice to people if they think they have been discriminated against. Details on how a person can lodge a complaint can be found here, **https://antidiscrimination.nsw.gov.au/**.

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7. N. Chakraborti, 'Responding to Hate Crime: Escalating Problems, Continued Failings', Criminology & Criminal Justice, 18/4 (2018)
8. IACP, Investigation of Hate Crimes, March 2021
9. NZ Police, Hate Crimes – Crimes of Prejudice, July 2021

5. Procedures

5.1. PROCEDURE OVERVIEW

Every officer must keep an open mind, acknowledging that any incident could have hate as a motivating factor.

Investigating Officer

- Investigating Officer attends the incident and notes hate crime indicators (**Refer to Hate Crime Indicators**).
- All indicators are recorded, including victim/witness statements where appropriate.
- Victim support offered, (**Refer to Victim Support**).
- If urgent or after-hours assistance is required, the EHCU On Call Officer can be contacted via the State Coordinator on 02 9265 4408 (E/N 54408).

Investigating Officer / Liaison Officer

- Investigating Officer enters details in COPS, flagging the incident 'Hate Crime Related' and any other Qualifying Factors (e.g. Race or LGBTIQA+) (**Refer to Reporting of Hate Crimes/Incidents**).
- Victim support services and an appropriate Liaison Officer are offered if unable to do so at the scene (**Refer to Liaison Officers**).
- For general advice about hate crimes and hate incidents, contact #EHCU or E/N 69280.

EHCU

- The incident is assessed and classified (**Refer to Hate Classifications**) by the EHCU and may be referred to the Hate Incident Review Committee (HIRC).
- Community liaison and engagement is undertaken by the EHCU as appropriate.
- Support provided and advice given to the PAC/PD as required.

HIRC

- HIRC assesses the incident and makes recommendations for next steps.
- EHCU actions these steps, monitors outcomes and contacts the PAC/PD as required.

Investigating Officer

- If the incident is classified as a hate crime, clearly identify in the Facts Sheet the offence was:
  - » Motivated by prejudice, bias or hatred
  - » Why it was a hate crime
  - » Specify any evidence relied upon to prove the motivation.
- This will assist the judicial officer during sentencing upon conviction.
- When submitting your Facts Sheet include a subheading of Aggravating Factors to bring to the Court's attention, such as:
  - » Homophobic slurs (quote the verbatim language used)
  - » Racist gestures made towards the victim

  Refer to Hate Crime Indicators for further examples.
- To determine if a 93Z offence has been committed **refer to Section 93Z advice**.

5.2. HATE CRIME INDICATORS

Indicator	Example(s) and Questions to consider
Gestures	Were any gestures noted? For example, did the person indicate violence by drawing the hand or fingers across the throat? The '23' hand symbol is for the letter 'W' (23rd letter of the alphabet) and is shorthand for White or White Power (23/16).
Nature of language	Did the offender use racial, homophobic, religious or other abusive or hateful language?
Hate group association	Is there any evidence the offender is part of a hate group, such as the National Socialist Network or Proud Boys?
Symbols, tattoos & graffiti	Are there any symbols, tattoos or graffiti? These could be on an offender's clothing, or on nearby walls. The lightning bolt tattoos on the left are the 'SS Bolts' and a common white supremist/ neo-Nazi symbol. They are from the Schutzstaffel (SS) of Nazi Germany. The circle and cross graffiti is a white supremacist version of the Celtic Cross. '1488' is a reference to the 14 words and 8th letter of the alphabet, H. The 14 words are "We must secure the existence of our people and a future for white children" and the 88 is for Heil Hitler.
Location of the incident	Is the location known to be frequented by certain groups or does the location hold significance or importance to certain groups? For example, a significant religious site or memorial or a location known to be frequented by the LGBTIQA+ community.
Victim/ witness perception	Did the victim or witness perceive the incident to be driven by hate or prejudice? What made them feel unsafe?

Escalation of violence	Has the violence increased because of the offender's hatred for a certain group? An example could be violent abusive language used in online messages about women, which could indicate the poster is an incel (involuntary celibate). Incels are a growing group of men who express extreme resentment towards women, in some cases leading to violence and murder.
Timing	Has there been a recent world event (such as the Christchurch Massacre or Black Lives Matter movement) that preceded or could have impacted the incident? Is the time of year significant to a specific group, such as religious festivals, Mardi Gras or run up to an election period?
Unprovoked	Is there no other clear reason for the incident? Did it happen suddenly and without warning?

5.3. COPS REPORTING OF HATE CRIMES/INCIDENTS

1. **Tick 'Hate Crime Related'** in the Associated Factors.

You will move to the next screen.

2. **Tick one or more Qualifying Factors**, which describes the type of hate, prejudice or bias (**Refer to Hate Category definitions for details**).

- Race
- Ethnic/National Origin
- LGBTIQA+
- Political
- Age (Discrimination)

- Religion or Faith
- Sex or Gender
- Mental or Physical Disability
- Homelessness
- HIV/AIDS Status

You will move to the next screen.

3. Complete the narrative including all hate crime indicators.

5.4. HATE CLASSIFICATIONS

Every report to the NSWPF that is flagged as 'Hate Crime Related' is reviewed by the EHCU and classified using one of the following categories:

Hate Crime (HC) – Sufficient evidence exists to prove beyond a reasonable doubt the offender's actions were motivated either wholly or partially by hatred or bias.

Suspected Hate Crime (SHC) – A crime has been committed; however, insufficient evidence exists to prove the offender's actions were motivated either wholly or partially by hatred or bias beyond a reasonable doubt. But there are reasonable grounds to suggest the crime may have been wholly or partially hate or bias motivated.

Hate Incident (HI) – Sufficient evidence exists to show that the incident was hate or bias motivated but is not a criminal offence.

Insufficient Information (II) – At the time of review, there is a lack of information or the information presented is unclear as to whether an offender/s were wholly or partially motivated by hatred or bias. The EHCU will determine if further information could be obtained by further questions being asked by the investigating officer or during the investigation. Incidents may be followed up directly by the EHCU either with the Officer in Charge (OIC) or with the person reporting.

Not a Hate Crime (NHC) – A review of all evidence shows that there is no evidence that the incident was either wholly or partially motivated by hatred or bias.

5.5. SECTION 93Z ADVICE

93Z - THREE QUESTIONS TO CONSIDER BEFORE THE DPP

1 | Is the incident occurring in a public space? | This could include social media, public transport or the internet. Anywhere that is publicly accessible to people.

2 | Is the person/group threatening or inciting (encouraging) violence? | For example, someone shouts at a same sex couple holding hands 'I'm gonna bash you poofters', or graffiti in a car park says 'Kill all Jews'.

3 | Is this threat of violence because of race, religion, LGBTIQA+ status, gender identity or HIV/AIDS status? | If this threat of violence is because of other factors, such as age, disability, or homeless status, it is still a hate crime, it's just not covered under 93Z. See Appendix B for further legislation the person could be charged under.

DPP | If you have answered YES to all three questions you must get approval from the DPP. Submit a full brief of evidence for the 93Z charge to the DPP via the Operational Legal Services Command(OLSC). If you have any questions please contact #EHCU or #OLSCOMMAND.

Please Note: *If the offender has committed a substantive offence (such as assault or intimidation) and you believe the elements of the 93Z offence have arisen out of the same conduct as the substantive offence, then proceed with charging for the substantive offence and email the OLSC: #OLSCOMMAND or #EHCU to obtain further advice regarding 93Z.*

5.6. VICTIM SUPPORT

Given the barriers victims have already overcome to report a hate crime/incident to the police and the vulnerable and traumatised position many victims will be in, it is vital to consider their safety and mental wellbeing when they are reporting. The **Charter of Victims' Rights** (*Victims Rights and Support Act 2013*) details the rights of a victim.

Supporting victims: [10] [11]

- Give them a safe environment when they are reporting
- Encourage them to tell their story in their own words
- Listen to the whole story from an open-mind position without judgement
- Use translators if needed
- Ask if they have family or friends who can support them
- Offer them choices and information, such as details of support services (see below for further details) or contact with an appropriate liaison officer

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10. *IACP, Investigation of Hate Crimes, March 2021*
11. *IACP, Response to Victims of Crime, August 2018*

- Tell them what will happen next, their rights and the criminal process in simple terms
- Use appropriate language and pronouns to show acknowledgment and respect to victims of crime. (**Refer to NSWPF Inclusive Language Guidelines: A Practical Guide**)

STANDARD POLICING SUPPORT SERVICES

For information and support (business hours: 9am to 5pm, Monday to Friday (excluding public holidays)):

- **Victims Access Line (VAL):** 1800 633 063
- **Aboriginal Contact Line:** 1800 019 123
- **Website:** **https://www.victimsservices.justice.nsw.gov.au/**

ALTERNATIVE SUPPORT SERVICES

Below are three of the main services that can offer support for people experiencing emotional distress or crises. There are many other smaller organisations that can be found via the internet.

- **Lifeline** – 13 11 14 or **https://www.lifeline.org.au/**. A national charity providing all Australians access to 24-hour crisis support and suicide prevention services.
- **Beyond Blue** – 1300 22 4636 or **https://www.beyondblue.org.au/**. They provide mental health information and support to help everyone in Australia.
- **Headspace** – Youth mental health for people aged 12 to 25, call 1800 650 890 or **https://headspace.org.au/eheadspace/**.

NSW Police Force