

15 January 2026

Parliamentary Joint Committee on Intelligence and Security
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Dear Committee

Submission re Inquiry into the Combatting Antisemitism, Hate and Extremism Bill 2026

The Justice and Equity Centre extends its deepest sympathies and condolences to all those affected by the horrific attack at Bondi in December, including the families of those who lost their lives, and to Jewish Australians as a community who were the targets of this abhorrent antisemitic act of terrorism.

It is appropriate in these circumstances for governments to review their approaches to crimes of hatred, including hate speech, and we welcome the opportunity to provide this submission on the Combatting Antisemitism, Hate and Extremism Bill 2026.

We are concerned, however, at the haste with which the Bill has been introduced and the lack of consultation in its development. This is particularly so in the context of a Bill that has a range of potentially significant impacts upon basic rights and freedoms – including rights to freedom of expression, association and religion – and creates a large number of new criminal offences.

While we recognise that limitations on these rights may be justified in particular circumstances, including where necessary to protect people from harm, those limitations should be narrowly confined and carefully drafted. The limited time to consider and scrutinise these changes creates a significant risk of unintended consequences and we urge that further time is taken before progressing these legislative changes.

Summary

In the time available we limit our submission to Schedules 1 and 2 of the Bill.

- Prohibitions against hate speech and other crimes of hatred should not be limited to race, colour or national or ethnic origin. They should include other forms of hatred that are recognised to cause serious harm, namely hatred based on religion, sex, sexual orientation, gender identity, sex characteristics and disability.

- Where an act is intended to promote or incite hatred, the fact of quoting or referencing a religious text should not constitute a defence to an offence of vilification.
- In amending penalty provisions for existing offences, Parliament should use the opportunity to remove mandatory sentencing provisions which are unnecessary and, by their very nature, unjust.
- Procedural fairness should apply to decisions to prohibit a hate group given the significant impact of such a decision.

All forms of serious hatred against protected groups should be covered

The Justice and Equity Centre has a long history of contributing to law reform and policy debates about how best to address discrimination against, and vilification of, people and groups in the community that are marginalised and experience disadvantage.

In recent years, this has included making submissions in response to a range of inquiries and legislative measures at both Commonwealth and NSW levels that have sought to regulate hate speech, especially in the context of hatred against racial and religious minorities. This included making a submission to and providing evidence before the inquiry into the Criminal Code Amendment (Hate Crimes) Bill 2024.¹

Our consistent position is to support carefully and narrowly targeted prohibitions on public acts of serious hatred, not only on the grounds of race, colour or national or ethnic origin, but also hatred based on religion, sex, sexual orientation, gender identity, sex characteristics and disability.

While the antisemitic attack at Bondi understandably focuses attention on race-based hatred and extremism, we do not believe the introduction of new criminal offences, and granting of new ministerial powers, that only address hatred on the basis of race, colour or national or ethnic origin – while excluding other forms of hatred based on religion, sex, sexual orientation, gender identity, sex characteristics and disability – is the right approach to improving social cohesion.

The public interest in legislating to prevent the harm that is caused by hate speech and other extremist acts requires protections that cover not just racial and ethno-religious groups (including Jewish people), but also other religious minorities, women, LGBTIQ+ people and people with disability. These communities are well-recognised to have experienced, and continue to experience, serious harm as a result of hate speech and should be appropriately protected from it.

¹ Justice and Equity Centre, *Submission to Inquiry into the Criminal Code Amendment (Hate Crimes) Bill 2024*, 7 November 2024, available at: <https://jec.org.au/publication/submission-to-inquiry-into-criminal-code-amendment-hate-crimes-bill-2024/>

We therefore urge the Committee to recommend that the Bill be redrafted so that all provisions which currently only cover race be expanded to include the attributes of religion, sex, sexual orientation, gender identity, sex characteristics and disability.

Schedule 1 – Amendments to legislation relating to criminal law

Aggravated offence for preachers and leaders (Part 1)

We support the inclusion of an aggravated offence for religious officials or other spiritual leaders as set out in proposed section 80.2DA, to recognise the seriousness of such conduct, its potential consequences and the abuse of power inherent in such conduct.

Increased penalties and mandatory sentences (Parts, 1, 2, 6)

We note the proposed increases to maximum penalties for a range of existing offences, as provided in Parts 1, 2 and 6 of Schedule 1. These increased maximum penalties are intended to reflect the seriousness of the conduct which is captured by them.

We urge Parliament to take this opportunity to remove the mandatory minimum sentences of 12 months imprisonment that were previously introduced into sub-sections 80.2BE(1) and 80.2BE(2) of the *Criminal Code*. Mandatory sentences are ‘the antithesis of just sentencing’.² They are also ineffective. As the Australian Law Reform Commission has observed, ‘there is no evidence that mandatory sentencing acts as a deterrent and reduces crime’.³

To the extent that mandatory minimum sentences seek to convey the seriousness of the offences to which they apply, that purpose can now be achieved through the increase to maximum penalties.

Aggravated sentencing factor (Part 3)

We note the proposed introduction of a new aggravated sentencing factor via proposed new sub-section 16A(2)(mb) of the *Crimes Act 1914* (Cth). We defer to others with greater expertise in criminal law as to the drafting and workability of this provision. Should the Committee be inclined to support the provision, we suggest it should not be limited to hatred based solely on race or national or ethnic origin.

If the fact that conduct was motivated wholly or in part by hatred against others warrants higher punishment, we see no reason to distinguish between race and other attributes including religion, sex, sexual orientation, gender identity, sex characteristics and disability, in terms of the targets of that hatred. Any new aggravated sentencing factor should encompass this broader range of characteristics.

² *Trenerry v Bradley* (1997) 6 NTLR 175, 187 (Mildren J).

³ Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples Final Report*, (Report 133), December 2017, available at: <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/8-mandatory-sentencing/impact-of-mandatory-sentencing/> at par 8.13

Prohibited hate groups (Part 4)

We have two main concerns about the proposed new framework for organisations which engage in or advocate hate crimes, as set out in Part 4.

First, the explicit exclusion of ‘any requirements of procedural fairness’ in the decision-making by the AFP Minister and advice given by the Director-General of Security (proposed sub-sections 114A.4(5) and 114A.5(5) respectively).

This is of particular concern given the seriousness of the consequences that flow from the prohibition of a hate group: including the range of proposed new offences applying to directing their activities, being a member of, recruiting for, training with, arranging funding for or otherwise providing support to a prohibited group.

Procedural fairness is essential to ensure these highly consequential decisions are made on a sound basis and able to be meaningfully challenged and reviewed.

Second, the framework for what constitutes a hate group applies only to hatred on the basis of race or national or ethnic origin, excluding other forms of hatred that cause harm and undermine social cohesion, such as misogyny, homophobia, transphobia and ableism.

The inconsistency of this approach is demonstrated by the Bill’s definition of hate crime in proposed section 114A.3(1), which includes a range of offences under Subdivision C of Division 80 of the Criminal Code – offences that explicitly include attributes such as sex, sexual orientation, gender identity, intersex status and disability, alongside race or national or ethnic origin – but applies only the extent that the targeted group is ‘distinguished by race or national or ethnic origin’.

The same criminal conduct, directed against vulnerable groups, is considered a hate crime when it targets some of those groups but not a hate crime if it targets others. This distinction denies protection to groups that have experienced, and continue to experience, hatred, serious and harmful discrimination and harassment, and undermines the integrity of the framework.

As with other Parts of the Bill, we call for the definitions of hate crimes, and hate groups, to be expanded to include acts of hatred against people of minority faiths, women, LGBTIQ+ people and people with disability.

Racial vilification offence (Part 5)

We also have two main concerns in relation to the new offence of publicly promoting or inciting racial hatred in proposed section 80.2BF. We have consistently expressed these same views over the past 12 months in relation to the inciting racial hatred prohibition in section

93ZAA of the *Crimes Act 1900* (NSW), upon which this proposed Commonwealth provision is largely based.⁴

First, the provision should be expanded to cover the wider range of communities that are all-too-frequently exposed to serious public acts of hatred. This includes people of minority faiths and especially the Muslim community, women, LGBTIQ+ Australians and people with disability.

If inciting hatred against vulnerable groups is criminalised, it should apply to hatred on the basis of all relevant attributes, including religion, sex, sexual orientation, gender identity, sex characteristics and disability.

Second, we do not support the inclusion of the defence in proposed sub-section 80.2BF(4) for 'conduct that consists only of directly quoting from, or otherwise referencing, a religious text for the purpose of religious teaching or discussion.'

While we acknowledge the intention of this exception, to protect religious expression, we do not believe such a defence should apply where a person's conduct has met the high bar of engaging in conduct of *intentionally promoting or inciting hatred* against others where it would, in all the circumstances, *cause a reasonable person who is the target to be intimidated, to fear harassment or violence, or to fear for their safety*.

Such conduct – intentionally promoting or inciting hatred - does not fall within legitimate religious practice and does not warrant protection.

Hate symbols (Part 7)

We note the proposed changes to the regulation of hate symbols proposed in this Part. Consistent with our earlier views in relation to sections 80.2BE(1) and (2), given sub-sections 80.2H(1) and 80.2HA(1) include mandatory minimum sentences of 12 months imprisonment and these sections are substantively amended in this Part, the Bill represents an opportunity to remove these unjust and unnecessary mandatory minimum punishments.

Schedule 2 – Migration amendments

We are concerned by the breadth of the powers granted to the Minister to make adverse decisions regarding a person's migration status and urge the Committee to give these provisions close scrutiny. This includes decisions against a person who has been a member of a prohibited hate group, noting our above concerns about the lack of procedural fairness requirements for the AFP Minister, and the Director-General of Security, in making and advising on this designation.

Provisions that allow adverse decisions to be made on the basis that 'the non-citizen has been or is involved in conduct constituting a hate crime (*whether or not the non-citizen, or another*

⁴ See for example, Justice and Equity Centre, *Submission to the review into hate speech protections for vulnerable communities*, 6 August 2025, available at: <https://jec.org.au/publication/submission-to-the-review-into-hate-speech-protections-for-vulnerable-communities/>

person, has been convicted of an offence constituted by the conduct)⁵ (emphasis added), also set a low bar for a decision that has significant consequences for the person concerned.

At the same time, and similar to our comments elsewhere in this document, we question why provisions such as proposed section 5C(1A)(d)(i) of the *Migration Act 1958* (Cth) would only apply to statements that involve 'the dissemination of ideas based on superiority over or hatred of other persons on the basis of race, colour, or national or ethnic origin', and not in respect of other types of hatred.

Given such statements must be considered so serious that 'in the event the non-citizen were allowed to enter or to remain in Australia, there is a risk of harm to the Australian community or to a segment of that community' before the Minister may exercise this power,⁶ the Committee should consider expanding this provision to cover the dissemination of hatred based of religion, sex, sexual orientation, gender identity, sex characteristics and disability.

The need for civil vilification reforms

Our final comment relates to provisions that are not included in the current Bill, namely the absence of civil vilification reforms.

The criminal law is a blunt, and infrequently-used, tool to change social attitudes, but remains the primary focus of the current Bill. Civil laws addressing discrimination and vilification, such as s 18C of the *Racial Discrimination Act 1975* (Cth), are capable of being applied in more circumstances, particularly given the broader range of conduct that they are able to capture. Civil laws also allow for a wider and more constructive range of remedies, including through conciliation processes which can (in appropriate cases) have an educative and restorative effect.

We therefore reiterate our calls, including through our submission regarding the Criminal Code Amendment (Hate Crimes) Bill 2024, for the Commonwealth to introduce equivalent civil vilification provisions for other attributes, including sexual orientation, gender identity and sex characteristics (to cover LGBTIQ+ Australians), as well as sex, religion and disability (consistent with the recommendations of the Disability Royal Commission).⁷

Thank you for considering this submission. Please contact me at the details provided for clarification or further information.

Yours sincerely

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⁵ Such as proposed subsection 5C(1A)(c) of the *Migration Act 1958* (Cth).

⁶ Proposed subsection 5C(1A)(d)(ii).

⁷ Recommendation 4.29, Disability Royal Commission.