

Submission to Royal Commission on Antisemitism and Social Cohesion

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About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are experiencing marginalisation or disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

We actively collaborate and partner in our work and focus on finding practical solutions. We work across five focus areas:

Disability rights: challenging discrimination and making the NDIS fairer to ensure people with disability can participate equally in economic, social, cultural and political life.

Justice for First Nations people: challenging the systems that are causing ongoing harm to First Nations people, including through reforming the child protection system, tackling discriminatory policing and supporting truth-telling.

Homelessness: reducing homelessness and defending the rights of people experiencing homelessness through the Homeless Persons' Legal Service and StreetCare's lived experience advocacy.

Civil rights: defending the rights of people in prisons and detention, including asylum seekers, modernising legal protection against discrimination, raising the age of criminal responsibility to 14, advancing LGBTIQ+ equality and advocating for open and accountable government.

Energy and water justice: working for affordable and sustainable energy and water and promoting a just transition to a zero-carbon energy system.

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Recommendations

Recommendation 1 – National Anti-Racism Framework

That the Commission recommends: The Commonwealth Government should fully implement the National Anti-Racism Framework, with particular attention to recommendations 10, 11 and 12.

Recommendation 2 – Religious belief discrimination protections

That the Commission recommends: The Commonwealth Government, and the Governments of NSW and South Australia, should introduce discrimination protections covering religious belief. These laws should be conventional in design, covering religious belief in a similar manner to existing laws and without permitting increased discrimination against other groups, modelled on the provisions in the Discrimination Act 1991 (ACT).

Recommendation 3 – Section 18C of the Racial Discrimination Act 1975 (Cth)

That the Commission finds that section 18C of the Racial Discrimination Act 1975 (Cth) remains an important and necessary measure to respond to public acts of racism, including antisemitism.

Recommendation 4 – Expansion of Commonwealth civil vilification laws

That the Commission recommends: The Commonwealth Government should introduce civil vilification laws, based on section 18C of the Racial Discrimination Act 1975 (Cth), to cover religious belief, sex, sexual orientation, gender identity, sex characteristics and disability.

Recommendation 5 – Expansion of protected attributes for inciting hatred offences

That the Commission recommends that where inciting hatred offences exist or are introduced, such offences should cover all major attributes, including race, religious belief, sex, sexual orientation, gender identity, sex characteristics and disability.

Recommendation 6 – Religious text ‘carve-out’ to inciting hatred offences

That the Commission recommends that where inciting hatred offences exist or are introduced, they should not include a ‘carve-out’ for quoting from or referencing religious texts.

1. Introduction

The Justice and Equity Centre welcomes the opportunity to make this submission to the Royal Commission into Antisemitism and Social Cohesion.

We offer our condolences to the families and loved ones of the victims of the horrific antisemitic attack at Bondi on 14 December 2025, our sympathy to the 40 other people injured in the attack, and our support to the broader Jewish community who were the targets of this incident.

We also acknowledge the rise in reports of antisemitism both before and after this attack, with the Royal Commission providing the chance to address this growing intolerance and prejudice, as well as threats to social cohesion in Australia more broadly.

This short submission draws on our expertise in law reform relating to discrimination, vilification and other forms of hate speech, both in NSW and federally, relevant to section a.ii. of the Letters Patent: ‘tackling antisemitism by... identifying opportunities to enhance the responses of governments to antisemitism including, but not limited to, best practice approaches to de-radicalisation and strengthening social cohesion.’

We address two specific topics:

- The National Anti-Racism Framework, and
- The role of anti-discrimination, civil vilification and criminal hate speech laws.

2. The National Anti-Racism Framework

The Australian Human Rights Commission released the *National Anti-Racism Framework: A roadmap to eliminating racism in Australia* in November 2024. This was a ground-breaking, comprehensive response to growing racism and similar forms of prejudice, which, as the Race Discrimination Commissioner noted in his introduction, includes ‘increased antisemitism’.¹

The Justice and Equity Centre endorses the National Anti-Racism Framework as a holistic package of reforms to respond to racism and similar forms of prejudice, including antisemitism. We encourage the Royal Commission to recommend its full implementation by the Commonwealth Government.

We particularly highlight the Framework’s recommendation to amend the *Racial Discrimination Act 1975* (Cth) to introduce a positive duty to eliminate racial discrimination in a broad range of areas of public life;² as well as the accompanying recommendation to ‘provide powers to the

¹ Australian Human Rights Commission, *The National Anti-Racism Framework: A roadmap to eliminatin racism in Australia*, November 2024, p8, available at: https://humanrights.gov.au/data/assets/pdf_file/0019/25381/NARF_Full_Report_FINAL_DIGITAL_ACCESSIBLE.pdf

² Recommendation 10, *ibid.*

Australian Human Rights Commission to assess compliance with the positive duty... and for enforcement.³

The National Anti-Racism Framework also recognises the key role of digital platforms in disseminating racism and similar forms of prejudice, including antisemitism. We specifically endorse its recommendation that:⁴

Australian governments introduce effective legal protections against online hate, with particular attention given to regulation and enforcement against, and liability of, digital platforms. These protections should be informed by consultation with First Nations and other negatively racialised communities.

Recommendation 1 – National Anti-Racism Framework

That the Commission recommends: The Commonwealth Government should fully implement the National Anti-Racism Framework, with particular attention to recommendations 10, 11 and 12.

3. The role of anti-discrimination, civil vilification and criminal hate speech laws

Anti-discrimination, civil vilification and criminal hate speech laws can each play a role in combatting antisemitism specifically, and supporting social cohesion more broadly.

This can be seen, for example, in the role of section 18C of the *Racial Discrimination Act 1975* (Cth) in addressing serious instances of antisemitic vilification (discussed more at 3.2 below).

In order to support social cohesion, these frameworks, and especially anti-discrimination and civil vilification laws, should be:

- Comprehensive, providing coverage across all major protected attributes (such as race, religious belief, sex, sexual orientation, gender identity, sex characteristics and disability), and
- Consistent, both in ensuring equivalent protections between protected attributes, and where possible, through consistency of Commonwealth, state and territory approaches.

Importantly, consistency should not be achieved by reducing protections to the lowest common denominator. Rather each jurisdiction should seek to improve protections to meet best practice against mistreatment.

The design of criminal hate speech laws is more complex, with the need to ensure they are properly targeted and only capture sufficiently serious conduct that warrant criminal sanction, but provisions that meet these standards can also help to combat antisemitism and support social cohesion.

³ Recommendation 11, *ibid.*

⁴ Recommendation 12, *ibid.*

3.1 Anti-discrimination laws

The absence of discrimination laws covering religious belief, at both Commonwealth level, in NSW and – to a lesser extent – South Australia,⁵ remains a conspicuous gap in Australia’s anti-discrimination framework.

This gap does not mean Jewish Australians are unprotected. Both the *Racial Discrimination Act 1975* (Cth) and *Anti-Discrimination Act 1977* (NSW) adopt broad definitions of racial discrimination that include ‘national or ethnic origin’⁶ and ‘ethno-religious.. origin’⁷ respectively. Case law has confirmed Jewish Australians are covered by these provisions.⁸

But the absence of discrimination laws specifically covering religious belief does leave many other religious groups, including Christians, Muslims,⁹ Hindus and Buddhists without adequate protection against mistreatment on this basis.

The introduction of effective prohibitions against discrimination on the basis of religious belief in Commonwealth law, as well as in NSW and South Australia, therefore presents a major opportunity to enhance social cohesion within Australia.

These laws should be conventional in their design – prohibiting discrimination on the basis of religious belief in a similar manner to existing laws, and without permitting increased discrimination against others, including women, LGBTQ+ people, people with disability and people of minority faiths.

The failure of attempts in 2021 to introduce Commonwealth religious discrimination protections that diminished the rights of other groups and included controversial purported ‘religious freedom’ provisions is a salutary lesson.¹⁰ ‘Classical’ and now well-established provisions prohibiting discrimination on the basis of religious belief can be found in a number of state and territory jurisdictions.¹¹

In the ACT, for example, the *Discrimination Act 1991* prohibits discrimination on the basis of ‘religious conviction’,¹² which is broadly defined to include having or not having a religious conviction, belief, opinion or affiliation, as well as engaging or not engaging in religious activity.¹³

⁵ Only discrimination on the basis of ‘religious appearance or dress’ is prohibited under the *Equal Opportunity Act 1984* (SA), see for example s85U.

⁶ S9(1), *Racial Discrimination Act 1975* (Cth).

⁷ S4(1), *Anti-Discrimination Act 1977* (NSW).

⁸ See for example, *Jones v Toben* [2002] FCA 1150, [99].

⁹ Although not in all cases, see discussion of *Faruqi v Hanson* [2024] FCA 1264, at 3.2 below.

¹⁰ The Morrison Government’s Religious Discrimination Bills adopted a radically different approach to classical discrimination provisions, permitting discrimination against other groups in a wide range of circumstances. The Justice and Equity Centre, like many civil society organisations, was compelled to oppose their passage. See Justice and Equity Centre, *Submission on the Religious Discrimination Bills to the Senate Legal and Constitutional Affairs Committee*, 17 December 2021, available at: <https://jec.org.au/publication/submission-on-the-religious-discrimination-bill-to-the-senate-legal-and-constitutional-affairs-committee/>

¹¹ For example, s19(1)(m) of the *Anti-Discrimination Act 1992* (NT) establishing ‘religious belief or activity’ as a protected attribute; s7(i) of the *Anti-Discrimination Act 1991* (Qld) (‘religious belief or religious activity’); s16(o) and 16(p) of the *Anti-Discrimination Act 1998* (Tas) (‘religious belief or affiliation’ and ‘religious activity’); and s6(n) of the *Equal Opportunity Act 2010* (Vic) (‘religious belief or activity’).

¹² S7(1)(t) *Discrimination Act 1991* (ACT).

¹³ Dictionary, *Discrimination Act 1991* (ACT).

It also explicitly covers 'the cultural heritage and distinctive spiritual practices, observances, beliefs and teachings of Aboriginal and Torres Strait Islander people.'¹⁴

This Act provides protections for employees who reasonably engage in religious practice in the workplace,¹⁵ as well as clear and well-defined exceptions for religious organisations,¹⁶ including religious schools,¹⁷ that permit discrimination on the ground of religious conviction, but not in relation to other attributes like sex, relationship status, sexuality or gender identity.

This provides a clear, conventional model for law reform at the Commonwealth level, in NSW and South Australia and we urge the Royal Commission to make this the subject of a recommendation.

Recommendation 2 – Religious belief discrimination protections

That the Commission recommends: The Commonwealth Government, and the Governments of NSW and South Australia, should introduce discrimination protections covering religious belief. These laws should be conventional in design, covering religious belief in a similar manner to existing laws and without permitting increased discrimination against other groups, modelled on the provisions in the Discrimination Act 1991 (ACT).

3.2 Civil vilification laws

Civil vilification laws, like section 18C of the *Racial Discrimination Act 1975* (Cth), also play an important role in promoting social cohesion. As the Commission will be aware, that section prohibits public acts that are 'reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group...' because of their 'race, colour or national or ethnic origin'.

The section provides a clear normative statement that our society rejects public acts of racist speech, a remedy for people subject to racial vilification and a means of accountability for people engaging in acts of racial vilification. It also helps to prevent escalation into racial violence.

As noted by the then-Human Rights and Equal Opportunity Commission in its 1991 report that laid the groundwork for the introduction of section 18C:¹⁸

Incitement to racial hostility is a significant element in creating a climate conducive to racist harassment, intimidation and violence. Legislating against incitement and vilification is an important way of addressing the problem directly and provides a strong statement from national leaders that racist violence and behaviour will not be tolerated in Australian society.

¹⁴ Ibid.

¹⁵ S11 *Discrimination Act 1991* (ACT).

¹⁶ S32 *Discrimination Act 1991* (ACT).

¹⁷ S46 *Discrimination Act 1991* (ACT).

¹⁸ Human Rights and Equal Opportunity Commission, 'Racist Violence: Report of the National Inquiry into Racist Violence in Australia', 1991, p269, available at:

<https://humanrights.gov.au/data/assets/file/0016/50542/NIRV.pdf>

There is a long history of Jewish community members successfully invoking this provision in response to public acts of antisemitism, including through the 2002 Federal Court cases of *Jones v Scully*¹⁹ and *Jones v Toben*.²⁰

Section 18C continues to be employed in similar complaints about antisemitism today, such as in last year's Federal Court decision in *Wertheim v Haddad*.²¹

However, despite its clear utility as a tool for vulnerable groups to take action to address public acts of hate speech against them, the provision has been the subject of sustained political opposition. This has included Commonwealth Government attempts in 2014 and 2017 to completely repeal, or significantly weaken, the protection provided by s 18C.

While these efforts were unsuccessful, we urge the Royal Commission to take this opportunity to reaffirm the importance of s 18C as a necessary measure to respond to public acts of racism, including antisemitism.

Recommendation 3 – Section 18C of the Racial Discrimination Act 1975 (Cth)

That the Commission finds that section 18C of the Racial Discrimination Act 1975 (Cth) remains an important and necessary measure to respond to public acts of racism, including antisemitism.

We further suggest that social cohesion will best be advanced by expanding the coverage of prohibitions on public hate speech. Section 18C is still the only civil vilification law in operation at Commonwealth level. This means there are a wide range of other community groups who are subjected to public acts of hate speech but who do not have the same recourse to equivalent federal protections.²²

As with anti-discrimination laws (discussed at 3.1 above), this includes an absence of Commonwealth vilification laws covering religious belief.

While *Faruqi v Hanson*²³ has established that, in some instances, making anti-Muslim comments will be considered racist vilification for the purposes of section 18C, other public acts of islamophobia may still fall outside its protections. Vilification against Christians, Buddhists, Hindus and atheists are excluded entirely.

The *Sex Discrimination Act 1984* (Cth) also lacks an equivalent provision to section 18C, meaning there is no Commonwealth prohibition against vilification on the basis of sex, sexual orientation, gender identity or intersex status either.

The *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* further recommended the lack of vilification protections in the *Disability Discrimination Act 1992*

¹⁹ *Jones v Scully* [2002] FCA 1080.

²⁰ *Jones v Toben* [2002] FCA 1150.

²¹ *Wertheim v Haddad* [2025] FCA 720.

²² Noting that most states and territories have their own anti-vilification laws, with the *Anti-Discrimination Act 1977* (NSW) prohibiting vilification on the basis of race, religion, homosexuality, transgender status and HIV/AIDS status.

²³ *Faruqi v Hanson* [2024] FCA 1264.

(Cth) be rectified through the introduction of a provision drawing on the language of section 18C.²⁴

The Justice and Equity Centre submits that prohibiting hate speech on the basis of recognised attributes that continue to be the subject of prejudice and discrimination – like religious belief, sex, sexual orientation, gender identity, sex characteristics²⁵ and disability – in addition to race (including antisemitism), will contribute to improved social cohesion. Such an approach is consistent with the universality of human rights and reduces the dangers of resentment and community disharmony that may result from perceived exceptionalism in the recognition of rights.

We therefore urge the Royal Commission to recommend adopting comprehensive and consistent Commonwealth vilification laws to protect racial and religious groups alongside women, LGBTIQ+ communities and people with disability.

Recommendation 4 – Expansion of Commonwealth civil vilification laws

That the Commission recommends: The Commonwealth Government should introduce civil vilification laws, based on section 18C of the Racial Discrimination Act 1975 (Cth), to cover religious belief, sex, sexual orientation, gender identity, sex characteristics and disability.

3.3 Criminal hate speech laws

Criminal hate speech laws, when clearly and narrowly drafted to avoid unduly infringing freedom of expression, can play an effective role in combatting antisemitism and other forms of hatred based on prejudice.

Similar to civil vilification provisions, criminal prohibition of hate speech constitutes a clear normative statement of our society's values, a deterrent to hate speech and a means of accountability for perpetrators.

The Justice and Equity Centre therefore supports the offence of publicly threatening or inciting violence on grounds of race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status, as introduced in s93Z of the *Crimes Act 1900* (NSW) in 2018.²⁶

However, we remain unconvinced of the need for, or appropriateness of, laws criminalising the incitement of hatred more generally. We share many of the concerns expressed by the NSW Law

²⁴ Recommendation 4.29 called for a new section 39A in the *Disability Discrimination Act* providing that 'It is unlawful for a person (the first person) to do an act, otherwise than in private, if: (a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and (b) the act is done because of the disability of the other person or because some or all of the people in the group have or are perceived by the first person to have a disability. *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Final Report*, September 2023.

²⁵ 'Sex characteristics' is the preferred terminology for a protected attribute covering people with innate variations of sex characteristics, replacing the now out-dated 'intersex status'.

²⁶ Added via the *Crimes Amendment (Publicly Threatening and Inciting Violence) Act 2018* (NSW).

Reform Commission, which examined this question in 2024 before recommending against the introduction of a specific ‘inciting hatred’ offence.²⁷

The NSWLRC noted that ‘introducing vilification offences that include hatred, animosity, contempt and/or ridicule would introduce imprecision and subjectivity into the criminal law’,²⁸ before elaborating:²⁹

Criminal offences carry serious penalties, including the possible deprivation of a person’s liberty. It is therefore important that criminal offences are clear and can be consistently understood across the community.

Many of the terms proposed to be included as criminal elements are difficult to define precisely. They can mean different things to different people. For instance, there are differences of opinion in the community about what hatred means. As several submissions observed, this ambiguity makes hatred an inappropriate standard for the criminal law.

Despite these reservations from the NSWLRC, the NSW Government introduced the *Crimes Amendment (Inciting Racial Hatred) Act 2025*, which created a new offence of publicly inciting racial hatred. This offence applies where a person:³⁰

by a public act, intentionally incites hatred towards another person or a group of persons on the ground of race, and the public act would cause a reasonable person who was the target of the incitement of hatred, or a reasonable person who was a member of a group of persons that was the target of the incitement of hatred, to: fear harassment, intimidation or violence; or fear for the reasonable person’s safety.

The maximum penalty for breach is 100 penalty units or imprisonment for 2 years.

The Commonwealth Government proposed a similar offence of publicly inciting racial hatred, using the same wording as the NSW offence, as part of its Exposure Draft Combatting Antisemitism, Hate and Extremism Bill in January 2026 – although this proposed offence was omitted from the legislation ultimately passed by Parliament.

Where governments do decide to introduce laws to criminalise the incitement of hatred, we have two main concerns (which we have expressed through our submissions to both the Sackar review

²⁷ NSW Law Reform Commission, *Serious Racial and Religious Vilification: Report 151*, September 2024, p50, available at: https://lawreform.nsw.gov.au/documents/Publications/Reports/Report_151_Serious_racial_and_religious_vilification.pdf

²⁸ Ibid, p51.

²⁹ Ibid.

³⁰ S93ZAA(1) *Crimes Act 1900* (NSW).

which examined the NSW amendments,³¹ and to the Parliamentary inquiry into the Commonwealth Bill).³²

3.3.1 Ensuring consistent protection

First, laws that criminalise the incitement of hatred should protect all vulnerable communities, rather than just some. Indeed, as noted above, the selective protection of some communities but not others may be counter-productive to achieving the overall objective of improved social cohesion.

For this reason, at both NSW and Commonwealth level, we have called for the expansion of existing inciting hatred offences to cover all major attributes, including race, religious belief, sex, sexual orientation, gender identity, sex characteristics and disability. We submit the Royal Commission should make a recommendation accordingly.

Recommendation 5 – Expansion of protected attributes for inciting hatred offences

That the Commission recommends that where inciting hatred offences exist or are introduced, such offences should cover all major attributes, including race, religious belief, sex, sexual orientation, gender identity, sex characteristics and disability.

3.3.2 Avoiding ‘religious text’ carve outs

Our second concern about inciting hatred offences is that they should not include a ‘carve-out’ for quoting from or referencing religious texts.

Sub-section 93ZAA(2) of the *Crimes Act 1900* (NSW) provides that the inciting racial hatred offence ‘does not apply to an act that consists only of directly quoting from or otherwise referencing a religious text for the purpose of religious teaching or discussion.’

As noted in our submission regarding the Exposure Draft Combatting Antisemitism, Hate and Extremism Bill, which contained a similar exception to its proposed inciting hatred offence:³³

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*.

³¹ Justice and Equity Centre, *Submission to Review into hate speech protections for vulnerable communities*, 6 August 2025, available at: <https://jec.org.au/wp-content/uploads/jec-publications/17488/25.07-JEC-Submission-Hate-Speech-Protections-for-Vulnerable-Communities.pdf>

³² Justice and Equity Centre, *Submission re Inquiry into the Combatting Antisemitism, Hate and Extremism Bill 2026*, 15 January 2026, available at: <https://jec.org.au/wp-content/uploads/jec-publications/18922/26.01.15-JEC-Submission-re-Combatting-Antisemitism-Hate-and-Extremism-Bill-2026.pdf>

³³ *Ibid*, p5.

Such conduct – intentionally promoting or inciting hatred – does not fall within legitimate religious practice and does not warrant protection. [emphasis in original]

The carve-out for directly quoting from or otherwise referencing a religious text is particularly relevant to this Royal Commission because there have been reported instances of religiously-motivated hate speech against Jewish Australians, including by some religious preachers.³⁴

No exception should not be available to potentially permit religiously-motivated antisemitism that would otherwise be prohibited.

Recommendation 6 – Religious text ‘carve-out’ to inciting hatred offences

That the Commission recommends that where inciting hatred offences exist or are introduced, they should not include a ‘carve-out’ for quoting from or referencing religious texts.

³⁴ For example, the circumstances in *Wertheim v Haddad* [2025] FCA 720.