Combatting Antisemitism, Hate and Extremism Bill 2026

Submission to the Parliamentary Joint Committee on Intelligence and Security

15 January 2026

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Australian Human Rights Commission

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Our vision is an Australian society where human rights are respected, promoted and protected and where every person is equal in dignity and rights.

The Commission's key functions include:

- **Access to justice:** We help people to resolve complaints of discrimination and human rights breaches through our investigation and conciliation services.
- **Fairer laws, policies and practices:** We review existing and proposed laws, policies and practices and provide expert advice on how they can better protect people's human rights. We help organisations to protect human rights in their work. We publish reports on human rights problems and how to fix them.
- **Education and understanding:** We promote understanding, acceptance and public discussion of human rights. We deliver workplace and community human rights education and training.
- **Compliance:** We are the regulator for positive duty laws requiring employers and others to address sexual harassment, sex discrimination and other unlawful conduct.

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Summary

1. The Jewish community has a human right to be safe.[1] They have the right to practice their religion, to express their identity and to live their lives in Australia without fear. Rising antisemitism in Australia over the past two years has corroded these rights. The Bondi terror attack shattered them.
2. The *Combatting Antisemitism, Hate and Extremism Bill 2026* (Cth) (Bill) introduces significant changes to address antisemitism, hate and extremism. The Commission supports action to achieve these aims. In particular, the Commission supports action to criminalise the incitement of racial hatred and to prohibit organisations that promote and incite racial hatred. Action on these issues is required by international human rights treaties that Australia has agreed to comply with.
3. It is critical that reforms must be proportionate and consistent with human rights obligations. Reforms must not overreach or should avoid unintended harmful consequences.
4. This submission outlines a number of areas where amendments to the Bill should be considered to better achieve its aims and to avoid unjustified restrictions on other rights including freedom of expression and freedom of religion. The submission complements the evidence given by the Commission to the Committee on 14 January 2026.
5. Specifically, we have concerns about the current drafting of the religious teaching or discussion defence to the racial vilification offence. We suggest different reform options.
6. We also recommend that the vilification offence should be expanded to cover not only race-related crimes but also hate crimes against people on the grounds of religion, sex, sexual orientation, gender identity, intersex status and disability. We should protect all communities that face hate crimes. It is only by addressing all forms of hate that we can achieve social cohesion.
7. We suggest changes to improve the prohibited hate group framework in Part 5.3B including requiring procedural fairness in decisions by the relevant Minister and better targeting offences.
8. While robust laws and processes are essential to prevent granting visas to, or cancelling the visas of, people who promote or incite hatred, we are concerned that the proposed amendments introducing new grounds for visa refusal and cancellation may be unnecessary, overly broad and risk unintended harmful consequences. We suggest improvements to these provisions.
9. We note the extremely limited timeframes for review and feedback on this Bill. Allowing less than 5 days for this inquiry to review and report on this significant

draft legislation is insufficient. It creates risks that the legislation, if passed, will not be as effective as it should be or will have unintended harmful consequences.

10. Finally, law reform is only part of the necessary response to racism, hate crimes and extremism. The Commission's National Anti-Racism Framework, which we released in November 2024, makes 63 whole of government and whole of society recommendations to address racism. Many of these recommendations align with the reports of the Special Envoys into Antisemitism and Islamophobia. This Framework was based on extensive community consultation and has strong endorsement from civil society. The Australian Government has not yet accepted any of these recommendations.

Recommendations

11. The Commission makes the following recommendations.

Recommendations

1. The Australian Government should allow further time for consultation on the Bill.
2. The Australian Government should consider whether the new aggravated offence for religious leaders is necessary in light of the existing principles dealing with aggravating factors in sentencing.
3. If the aggravated offence for religious leaders is retained, the Australian Government should amend s 16A of the *Crimes Act 1914* (Cth) to include a carve-out to avoid compounding punishment for the same factor twice.
4. The Australian Government should amend proposed s 80.2BF to provide equivalent protection from vilification to groups targeted because of their religion, sex, sexual orientation, gender identity, intersex status and disability.
5. The Australian Government should amend the Bill to require a review of the entire legislation (not merely the racial vilification offence).
6. The Australian Government should raise the threshold for advice from the Director-General in s 114A.5(b)(ii) and remove the words 'or assisted the engagement in' from ss 114A.4(1)(a)(i) and (2)(b).
7. The Australian Government should amend s 114A.4(5) to require procedural fairness unless it cannot be provided for urgent reasons related to an imminent risk of harm.
8. The Australian Government should amend ss 114B.4, 114B.5 and 114B.6 to apply where training, funding or support is intended to facilitate, or is likely to materially assist, conduct within the definition of hate crime.

9. The Australian Government should amend s 114A.9 to require the Parliamentary Joint Committee on Intelligence and Security to regularly review listings.
10. The Australian Government should amend s 114A.8 to require the AFP Minister to table reasons when de listing an organisation.
11. The Australian Government, before proceeding with any proposed expansion of character grounds in the *Migration Act 1958* (Cth), should explain why existing powers are insufficient.
12. The Australian Government should clearly define key terms such as 'risk of harm'. To reduce the risk of unintended consequences and capturing of legitimate freedom of expression, the Government should consider removing 'endorsement' of a public statement from the proposed new character grounds.
13. The Australian Government should remove from the Bill the proposed amendments that change the threshold from 'would' to 'might' in sections 5C(i)(d), 500A(1)(c) and 501(6)(d) of the *Migration Act 1958* (Cth).

1 Inadequate consultation

The Bill introduces significant reforms to hate speech, visa cancellations and gun laws with limited opportunity for stakeholder engagement. Public hearings and submissions were compressed into less than five business days, leaving little time for experts and affected communities to assess complex changes. This rushed process undermines democratic scrutiny and risks poorly calibrated laws that fail to balance safety with human rights.

12. The Australian Government is introducing amendments which represent some of the biggest changes to hate speech laws in decades. These changes are of great significance to all Australians – especially the Jewish community. It is good that the Government has released an exposure draft of the Bill and that it is being reviewed by this Committee. However, the time for review is inadequate and limits meaningful consultation, allowing less than three days to consider the Bill before written submissions were due.

13. Consultation and scrutiny of legislation is essential to a democratic legislative process. It is vital that the Australian Government and the Australian Parliament allow sufficient time for consultation with affected communities and experts and take their feedback into account in any amendments.

14. While there is a need to move swiftly following the Bondi terror attack, these changes should have been introduced via a better process.

Recommendation 1: The Australian Government should allow further time for consultation on the Bill.

2 Hate speech offences

The Bill introduces a new criminal offence under s 80.2BF for promoting or inciting racial hatred, aimed at addressing serious antisemitic and other racial hate speech and closing gaps in Australia's compliance with international human rights obligations. While the offence sets a higher threshold than civil provisions, concerns remain about vague language and the inclusion of a specific religious text defence that may be more appropriately addressed through existing good faith defences. These issues highlight the need for careful drafting to ensure compatibility with freedom of expression and religion. To promote social cohesion and equality, the criminal offence should apply to hate speech on the grounds of religion, sex, gender identity, sexual orientation, intersex status and disability.

Promoting or inciting racial hatred

15. The creation of a new offence under s 80.2BF addresses a long-standing gap in Australia's compliance with international human rights law. It does this by creating a criminal offence for the promotion or incitement of racial hatred or superiority on the basis of race, colour or national or ethnic origin.[2]

16. States party to the *International Convention on the Elimination of Racial Discrimination* (ICERD) have an obligation to create criminal offences prohibiting:

    - the dissemination of ideas based on racial superiority or hatred
    - incitement to racial discrimination
    - acts of violence or incitement to acts of violence against people based on their race, colour or ethnic origin, and
    - providing assistance to racist activities including financing them.[3]

17. When Australia ratified ICERD in September 1975, it made a declaration in the following terms:

> Australia is not at present in a position specifically to treat as offences all the matters covered by article 4 (a) of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing criminal law dealing with such matters as the maintenance of public order, public mischief, assault, riot, criminal libel, conspiracy and attempts. It is the intention of the Australian Government, at the first suitable moment, to seek from Parliament legislation specifically implementing the terms of article 4 (a).

18. Similarly, States that are parties to the *International Covenant on Civil and Political Rights* (ICCPR) have an obligation under art 20(2) to prohibit by law advocacy of

national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.[4] Australia has made a similar reservation to this article.

19. The Commission welcomes action by the Australian Government to take steps to ensure full compliance with art 4(a) of ICERD and art 20(2) of the ICCPR. Passing laws to address these obligations should mean that the reservations can be removed.

20. It is critical that the laws are appropriately targeted and avoid unintended harmful consequences, overreach and unnecessary restrictions on other rights including freedom of expression. Freedom of expression is not an absolute right,[5] and its exercise carries special duties and responsibilities. It may be subject to certain restrictions as provided for by law and as are necessary for respecting the rights of others and protection of national security and public order (amongst others).[6] Any such restrictions must also meet strict tests of necessity and proportionality. This requires that any proposed restriction pursues a legitimate aim, is proportionate to that aim, and is no more restrictive than is required for the achievement of that aim.[7]

Intention to engage in the relevant conduct

21. The racial vilification offence only applies to circumstances where the incitement or dissemination of ideas is done intentionally. This is appropriate. The United Nation's Rabat Plan of Action on hate speech recommended against lowering the threshold of laws prohibiting advocacy of national, racial or religious hatred to 'recklessness' or 'negligence'. The operation of the intent standard can be reviewed when the offence is reviewed as is proposed to be required under the Bill.

Impact on target group

22. Section 80.2BF of the Bill provides that the conduct inciting hatred or disseminating ideas of superiority must cause a reasonable person who is the target, or a member of the target group, to be intimidated, to fear harassment or violence, or to fear for their safety.[8] If passed, it would significantly expand federal hate speech laws. For example, the most recent reforms introduced under the *Criminal Code Amendment (Hate Crimes) Act 2025* (Cth) criminalise threats of force or violence against protected groups.

23. Given s 80.2BF is a criminal offence, it appropriately sets a higher bar than comparable civil hate speech laws such as s 18C of the *Racial Discrimination Act 1975* (Cth) (RDA). The term 'hatred' – if used as an operative threshold for the offence – should be framed with definitional precision and calibrated against established standards to avoid uncertainty in scope and application.
The Bathurst Review considered options to strengthen hate speech laws in NSW and identified concerns that introducing offences that include concepts like

'hatred' which may introduce imprecision and subjectivity into the criminal law.[9] The Commission encourages the Committee to draw on this analysis.

24. This concern about imprecise and subjective language is not limited to the use of 'hatred'. Similar issues arise with other proposed thresholds. For example, while fear of violence and for safety are more easily identifiable – whether a reasonable person of the target group would, in all the circumstances, feel intimidated or fear harassment is more uncertain. The Committee on the Elimination of Racial Discrimination has previously warned that any law restricting freedom of speech must not be 'broad or vague'.[10]

25. The risk is that the offence may capture controversial but lawful speech, robust political debate, or cultural commentary, rather than only genuinely harmful conduct.

26. Racial, national or ethnic origin groups are not homogeneous and what some parts of those communities may identify as intimidating or harassing conduct – may not be to others.

27. The adoption of a 'reasonable person of the target group' is similar to the 'reasonable person' test adopted with respect to s 18C of the RDA.

28. Proponents of a targeted group standard for criminal provisions would state that it is important because it recognises that racial, national or ethnic origin groups have distinct histories, cultural contexts and lived experiences that shape how conduct is perceived. This approach ensures that the law is sensitive to the realities of those most affected by vilification, rather than imposing a generic benchmark that may overlook the harm caused in context.

29. On the other hand, some would argue that adopting a broader 'reasonable member of the Australian community' standard would better promote freedom of expression and legal certainty. A community-wide benchmark reduces the risk of speech being curtailed based on highly contextual sensitivities and reflects a more uniform standard of tolerance in a pluralistic society.

30. The Commission encourages the Committee to ensure thresholds are tightly drafted, proportionate, operationally workable and compatible with the existing international human rights framework – including freedom of expression.

Religious teaching or discussion defence

31. People have the right to freedom of religion. This right is protected by art 18 of the ICCPR. The right is not absolute. It may be subject to important limitations as prescribed by law and which are:

> … necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.[11]

32. Legislative attempts to protect religious freedom must not create loopholes for hate speech. At the same time, it is important to ensure that the right to freedom of religion is appropriately protected, and that the reading of religious texts is not criminalised.

33. The new racial vilification offence provides in s 80.2BF(4) that it does not apply to conduct that consists only of directly quoting from, or otherwise referencing, a religious text for the purpose of religious teaching or discussion.[12]

34. There is a significant degree of imprecision about what may qualify as a 'religious text'. Not all religions have an anchoring religious text comparable to the Bible, Koran or Torah and in all religions, there is potentially a wide range of material that may constitution a 'religious text'. The Explanatory Memorandum says that the religious text includes 'scripture and translations of texts, which various religions consider to be of central importance to their religious practice'.[13]

35. There is a risk that the specific defence could be exploited to shield harmful conduct under the guise of scripture. There is no requirement in s 80.2BF(4) that the conduct be done in 'good faith'.

36. In considering the necessity of the religious teaching or discussion defence,[14] it is important to note that the *Criminal Code Act 1995* (Cth) (Criminal Code) already contains a broad good faith defence in s 80.3. This defence applies to acts done in good faith, including:
    - advocacy about the actions of government
    - advocacy about the administration of justice
    - advocacy about changes to laws, policies or practices
    - advocacy to remove barriers that create ill will or hostility between groups; and
    - publications about matters of public interest.[15]

37. In assessing whether something is being done in good faith for one of these purposes, the Court may have regard to whether the acts were done 'for any genuine academic, artistic or scientific purpose, or any other genuine purpose in the public interest'.[16] This test is similar to language in s 18D of the RDA that provides exemptions to civil prohibitions on racial vilification.

38. In the context of a case under the RDA, the Federal Court accepted that delivering sermons and religious teachings can be a genuine purpose in the public interest. This issue was tested in *Wertheim and Goot v Haddad and Al Madina Dawah Centre* [2025] FCA 720, where sermons claimed as religious teaching failed to satisfy the exemption in s 18D of the RDA because they were neither reasonable nor in good faith and lacked scriptural support.[17]

39. This defence needs to be carefully considered and calibrated to address racial hatred while avoiding unjustified limits on freedom of religion. We have

concerns about the proposed defence in the Bill being retained in its current form. There are different options for amendment:

- remove the specific defence in s 80.2BF(4) noting that s 80.3 already provides a broad good faith defence
- remove the specific defence but amend s 80.3 to make it clear that good faith religious instruction and discussion is permitted, or
- retain the specific defence but narrow it. This might be done by requiring that directly quoting or directly referencing scripture is genuinely for religious instruction and not reasonably likely, in all the circumstances, to incite racial hatred.

Aggravated offences for religious officials and leaders

40. The Bill proposes a new aggravated offence where particular offences of advocating or threatening violence against groups or members of groups are done by a person in their capacity as a religious official or a spiritual leader.

41. The new aggravated offence under s 80.2DA carries a higher maximum penalty compared to the existing penalties for the 'underlying offences' (some of which are also increased by this Bill). The penalties for the aggravated offence would be 10 years' imprisonment, or 12 years for offences where the conduct would threaten the peace, order and good government of the Commonwealth. The Bill proposes to increase the maximum penalty for some of the underlying offences from 5 years to 7 years, or from 7 years to 10 years for offences where the conduct would threaten the peace, order and good government of the Commonwealth.[18] The policy intent in relation to the higher penalties for the aggravated offence is clear: individuals who hold these kinds of positions of trust and authority should not exploit that influence to incite hatred or violence, as such conduct magnifies harm.

42. However, the interaction between this new offence and existing sentencing provisions requires careful attention. Under s 16A(2)(ma) of the *Crimes Act 1914* (Cth) (Crimes Act), a court may already treat the defendant's standing in the community as an aggravating factor if that standing was used to aid in the commission of the offence.

43. In practice, this means that even without the new aggravated offence, courts could impose a higher penalty within the existing maximum where a religious leader misuses their position. The first question is therefore whether a new aggravated offence is necessary in order for this misuse of authority to be appropriately addressed. One advantage of the current legislative regime is that it applies equally to all people in positions of authority, without creating separate rules for religious leaders.

44. Given the existence of s 16A(2)(ma), it may not be necessary create the new aggravated offence for religious leaders. If the new aggravated offence is retained, it introduces a risk of duplicative consideration of the same factor – once as an inherent element of the offence and again as an aggravating factor at sentencing under s 16A(2)(ma) of the Crimes Act.

45. To avoid this, the Bill should include an express provision excluding the application of s 16A(2)(ma) of the Crimes Act to the new aggravated offence. This approach is consistent with the carve-outs proposed for the new s 16A(2)(mb) of the Crimes Act,[19] and reflects established legislative practice to prevent double counting. This safeguard would ensure proportionality and fairness in sentencing while preserving the deterrent effect of the higher maximum penalty.

Recommendation 2: The Australian Government should consider whether the new aggravated offence for religious leaders is necessary in light of the existing principles dealing with aggravating factors in sentencing.

Recommendation 3: If the aggravated offence for religious leaders is retained, the Australian Government should amend s 16A of the *Crimes Act 1914* (Cth) to include a carve-out to avoid compounding punishment for the same factor twice.

Application to different groups

46. The Bill adopts a fragmented approach to hate speech protections that undermines principles of equality. It creates two new offences with markedly different scopes of protection.

47. Under proposed s 80.2BF, which criminalises incitement to racial hatred, protection is limited to people targeted because of their race, colour, or national or ethnic origin. By contrast, the new aggravated offence for religious officials and spiritual leaders in s 80.2DA extends far more broadly, covering targets based on race, religion, sex, sexual orientation, gender identity, intersex status, disability, nationality, and even political opinion.

48. This inconsistency is difficult to justify. Hate speech and hate-motivated conduct cause harm regardless of the attribute targeted. Limiting the incitement offence to race alone sends a message that some forms of vilification are less serious than others, despite their comparable impact on dignity, safety and social cohesion. It also risks creating gaps in protection for communities who experience hate speech on grounds other than race (such as religion or gender).

49. These provisions should be harmonised so that the scope of protection under s 80.2BF aligns with s 80.2DA and other existing provisions of Ch 5, Div 80, Subdivision C of the Criminal Code. A consistent approach would ensure that all Australians enjoy equal protection from hate speech and that the law reflects

the indivisibility of human rights. Fragmentation not only undermines fairness but also weakens the effectiveness of the reforms by leaving some communities exposed to harm that Parliament clearly intends to prevent.

Recommendation 4: The Australian Government should amend proposed s 80.2BF to provide equivalent protection from vilification to groups targeted because of their religion, sex, sexual orientation, gender identity, intersex status and disability.

Review of the Bill

50. As noted above, s 80.2BF(5) of the Bill provides for a review of the racial vilification offence 2 years after commencement.[20] Given the significance of the reforms in this Bill, we think the review should cover the Bill generally, not only the racial vilification offence.

Recommendation 5: The Australian Government should amend the Bill to require a review of the entire legislation (not merely the racial vilification offence).

3 Prohibited hate groups

The Bill creates a new framework allowing the Australian Federal Police (AFP) Minister to recommend that an organisation be specified as a prohibited hate group, triggering criminal penalties for membership, support and related conduct. Action to ban organisations which promote and incite racial hatred and extremism is welcome. Action must be carefully targeted to avoid unjustifiable limits on freedom of association. The scheme in the Bill as presently drafted raises concerns about breadth, lack of procedural fairness and the risk of criminalising mere association rather than harmful acts.

51. Article 4(b) of ICERD requires States party to declare illegal and prohibit organisations that promote and incite racial discrimination and to create an offence of participating in those organisations. The Commission welcomes action to implement this obligation.

52. The proposed framework in Part 5.3B of the Criminal Code seeks to achieve this by allowing the AFP Minister to recommend to the Governor-General, on advice from the Director-General of Security, that an organisation be listed as a prohibited hate group. Listing as a prohibited hate group then triggers serious criminal offences for directing its activities, membership, recruitment, training, funding and support. While the objective is legitimate, the breadth of the scheme and the absence of safeguards raise concerns that some groups risk being inappropriately listed, interfering with the right to freedom of association,[21] and that some people may be inappropriately at risk of prosecution for contravening related offences.

53. The right to freedom of association guarantees that individuals may freely form and join groups for lawful purposes. This right can be limited to protect national security or public safety. Any restriction must be prescribed by law and necessary in a democratic society.[22] The proposed regime in Part 5.3B risks breaching these standards.

54. By criminalising a wide range of conduct (such as receiving training or providing support) once an organisation is listed, and by allowing listings without procedural fairness or clear evidential thresholds, the scheme may punish mere association rather than harmful conduct. Combined with the breadth of the listing criteria and the absence of safeguards, these amendments could create a chilling effect on legitimate community and religious engagement, undermining the principle that restrictions on fundamental rights must be appropriately tailored.

Listing threshold

55. The threshold for listing should be strengthened noting the serious criminal consequences that flow from an organisation being listed.

56. Before the AFP Minister can recommend to the Governor General that a group be listed as a prohibited hate group, the Minister must receive certain advice from the Director-General of ASIO.

57. Section 114A.5 outlines the things the Director-General must be satisfied of before providing that advice. At its lowest, this section allows the Director-General to provide the advice if the Director-General is satisfied the organisation has 'engaged in activities that *indicate a risk* that the organisation *may* advocate for politically motivated violence … *in the future*.' This is a very low threshold requiring a mere risk of possibly engaging in the advocacy in the future. There is no requirement that the risk be significant or substantial.

58. The AFP Minister may then recommend that a group be listed as a prohibited hate group if the Minister is satisfied that the organisation has 'engaged in, prepared or planned to engage in, or assisted the engagement in' conduct constituting a hate crime.[23] The inclusion of 'assisted the engagement in' is problematic because it does not require intent or materiality. This could capture incidental conduct far removed from criminal objectives. To ensure proportionality, the criteria should be narrowed so that listing depends on conduct with a clear nexus to hate-motivated harm (e.g. engaging, preparing or planning) rather than peripheral assistance.

Recommendation 6: The Australian Government should raise the threshold for advice from the Director-General in s 114A.5(b)(ii) and remove the words 'or assisted the engagement in' from ss 114A.4(1)(a)(i) and (2)(b).

Procedural fairness

59. The Bill says that the AFP Minister does not have to provide procedural fairness to an organisation in deciding whether to recommend that it be listed as a prohibited hate group.[24] The Bill also says that the Director-General of Security is not required to provide procedural fairness in advising the AFP Minister. Ordinarily, procedural fairness would involve informing the organisation that listing is being considered, with reasons, and providing an opportunity for the organisation to make submissions about whether it should be listed.

60. Procedural fairness is an important aspect of administrative decision making. It provides public confidence that decisions are made properly, based on relevant evidence and in a way that is fair and transparent. The Explanatory Memorandum says that it was decided that procedural fairness not be provided in relation to this regime because this 'would create opportunities for protracted

challenge and delay'.[25] The prospect that a government decision may be the subject of challenge to test whether it was lawful is not a proper basis to depart from the usual obligations of procedural fairness.

61. Given the severe consequences for individuals, including criminal liability with substantial penalties for membership of a prohibited hate group, it is important that decisions about whether a group is listed are properly made and made on the best available evidence. This would ordinarily require a consideration of any reasons given by the group about why it should not be listed.

62. The Bill should be amended to remove the section that provides that the Minister does not need to provide procedural fairness, subject to limited exceptions for urgent national security cases. These measures would enhance transparency and public confidence without undermining operational effectiveness.

Recommendation 7: The Australian Government should amend s 114A.4(5) to require procedural fairness unless it cannot be provided for urgent reasons related to an imminent risk of harm.

Offences

63. The offences that apply on the listing of an organisation as a prohibited hate group also need recalibration. For example, there are provisions that prohibit a person from receiving or participating in training provided by a prohibited hate group, however, there is no requirement that this training be in any way associated with the objects of the group or that it support hate-motivated crimes. It is sufficient for someone to be prosecuted under these provisions where they were reckless as to whether the organisation is listed.[26] A person is reckless with respect to a circumstance if they are aware of a substantial risk that the circumstance exists and, having regard to the circumstances known to them, it is unjustifiable to take the risk.

64. In these provisions, the recklessness element relates only to the *identity* of the organisation and not to whether the conduct of the person would advance or support the conduct engaged in by the organisation. In circumstances where the offence is framed in a way to capture otherwise innocuous conduct by a defendant, this risks criminalising association rather than harmful conduct. Similar observations apply to provisions dealing with collecting funds for an organisation or providing support to it.[27] The offences should be aligned to require that training, funding or support is intended to facilitate, or is likely to materially assist, conduct within the definition of hate crime. Such a change would preserve strong enforcement powers while avoiding overreach.

65. By way of comparison, the Commission notes that in Schedule 2 of the Bill, dealing with factors that could cause a person to fail the 'character test' under

the *Migration Act 1958* (Cth), one of the factors is that a person had an association with a prohibited hate group that involved providing support to the group *in relation to its purposes*.[28] It is important that any criminal provision is appropriately directed to support of that nature.

Recommendation 8: The Australian Government should amend ss 114B.4, 114B.5 and 114B.6 to apply where training, funding or support is intended to facilitate, or is likely to materially assist, conduct within the definition of hate crime.

Oversight

66. Finally, oversight should be strengthened. Although the Parliamentary Joint Committee on Intelligence and Security may review listings,[29] this should be a statutory obligation rather than a discretion, with reviews conducted within a fixed timeframe and repeated periodically. Coupled with a requirement for the AFP Minister to table reasons when delisting, this would reinforce accountability and ensure listings remain evidence based.

Recommendation 9: The Australian Government should amend s 114A.9 to require the Parliamentary Joint Committee on Intelligence and Security to regularly review listings.

Recommendation 10: The Australian Government should amend s 114A.8 to require the AFP Minister to table reasons when de-listing an organisation.

67. These refinements would not dilute the Bill's capacity to disrupt dangerous organisations. Rather, they would ensure that the scheme operates within principled limits, targeting conduct that poses a real and present risk of harm while respecting fundamental rights. In the aftermath of a terror attack, laws must be both strong and fair. Incorporating these changes would help achieve that balance.

4 Visa cancellation or refusal

Robust laws and processes are essential to prevent granting visas to, or cancelling the visas of, people who promote or incite hatred. However, the proposed amendments introducing new and expanded grounds for visa refusal and cancellation may be unnecessary and overly broad, risking overreach and unintended harmful consequences.

New character grounds

68. The Bill proposes to amend the *Migration Act 1958* (Cth) (Migration Act) to introduce additional character grounds upon which the Minister for Home Affairs can cancel visas or refuse to grant visas to people 'spreading hatred and extremism'.[30]

69. The amendments would allow for visa refusals and cancellations based on:
- membership or association, or former membership or association, with a terrorist organisation, state sponsor of terrorism or a prohibited hate group
- involvement in conduct constituting a hate crime (as defined in proposed s 114A.3 of the Criminal Code), whether or not the relevant person was convicted of an offence
- making or endorsing a public statement or encouraging another person to make such a statement that disseminates ideas based on superiority over or hatred of other persons based on race, colour or national or ethnic origin, where this may give rise to a risk of harm to the Australian community or a segment of it.[31]

70. There should be robust laws and processes in place to enable visa refusals and cancellations for non-citizens who incite hatred or promote extremism to protect the Australian community.[32] However, the proposed introduction of these new grounds may be unnecessary, overly broad and risk unintended harmful consequences that significantly impact people's human rights.

71. It is important to recognise that visa cancellations and refusals do not only affect short-term visitors but also apply to long-term permanent residents of Australia who have strong ties to the Australian community, including Australian partners and children, as well as refugees.

72. These measures risk arbitrary interference with family life, including separation from children and other family members, through detention or removal from Australia. People may be sent to a country where they have spent little or no time, do not speak the language and have few or no social or family connections.[33] The Convention on the Rights of the Child requires that in all actions concerning children, the best interests of the child must be a primary consideration.[34] The Minister for Home Affairs should also be expressly required

to consider Australia's broad international protection obligations before exercising these powers.

Necessity

73. The Minister for Home Affairs already has broad discretionary powers under the Migration Act, notably s 501, to refuse or cancel a visa on character grounds.[35] This raises questions about whether the new provisions are necessary to achieving the Bill's objectives, or whether existing powers could be better utilised to address hate speech and extremism.

74. Under the current provisions, the Minister can refuse or cancel a visa where there are 'character concerns', including:
    - a substantial criminal record
    - membership or association with an organisation involved in criminal conduct
    - the person is 'not of good character' based on past and present criminal conduct or past and present general conduct
    - risk the non-citizen would:
        - engage in criminal conduct in Australia
        - vilify a segment of the Australian community
        - incite discord in the Australian community or a segment of it
        - represent a danger to the Australian community or segment of it, whether by becoming involved in disruptive activities, in violence threatening harm to the community, or in any other way.
    - the non-citizen has been assessed by ASIO as a security risk
    - an Interpol notice is in force.[36]

75. Spreading hatred and extremism would already fall within several of these existing provisions. For example, the Minister could determine that a person's general conduct shows they are not of good character, or that they pose a risk of vilifying or inciting discord within the Australian community if they were allowed to enter or remain in Australia.

76. It has been publicly reported that, in 2025, the Minister for Home Affairs used his existing powers to cancel the visas of individuals over hate speech or extremist conduct, including rapper Kanye West for an antisemitic song, far-right Israeli parliamentarian Simcha Rothman for intending to 'spread a message of hate' and a British national charged with displaying Nazi symbols.[37]

77. While the Explanatory Memorandum notes that the amendments add to the existing grounds of vilification, inciting discord or activities that represent a danger to the Australian community, it remains unclear how the new provisions will better protect the Australian community from hate speech and extremism, beyond their explicit textual inclusion in the Migration Act prompting the Minister or his delegate to turn their mind to these grounds.[38]

78. Fuller consultation would provide an opportunity to consider longstanding concerns of the Commission and other stakeholders about the character test and visa cancellation powers, including their impact on the human rights of those affected.[39]

Recommendation 11: The Australian Government, before proceeding with any proposed expansion of character grounds in the *Migration Act 1958* (Cth), should explain why existing powers are insufficient.

Breadth and risk of unintended harmful consequences

79. The Commission is particularly concerned that the proposed new character grounds extend to making or endorsing a public statement involving hate speech, with key terms expressed in vague and imprecise language. This risks overreach and could unreasonably capture trivial or minor conduct that is legitimate freedom of expression.

80. As mentioned previously in this submission, any restriction on freedom of expression must meet the test of legality (meaning it should be prescribed by law, precise and foreseeable, and not grant unfettered discretion to the authorities) and the strict tests of necessity and proportionality under international human rights law.

81. One proposed amendment will allow for visa refusals or cancellations where:
- a non-citizen has made a public statement or endorsed a statement publicly (in Australia or overseas, including online statements) that involves the dissemination of ideas based on superiority over or hatred of other persons based on race, colour, or national or ethnic origin; and
- there is a risk of harm to the Australian community or a segment of it, if the non-citizen were allowed to enter or remain in Australia.[40]

82. Note 1 in the text of the Bill states that 'Antisemitic statements are an example of statements that involve harmful ideas based on superiority over or hatred of other persons on the basis of ethnic origin …'.[41]

83. There should be no acceptance for the dissemination of ideas or statements that promote or incite racial hatred or superiority. However, the phrases 'risk of harm' and 'endorse' in the proposed amendment are broad, open to different interpretations and potentially far-reaching.

84. The Bill does not define 'risk of harm'. The Explanatory Memorandum, in the context of the definition of hate crime, refers to the dictionary of the Criminal Code, where harm is defined as 'physical harm or harm to a person's mental health, whether temporary or permanent' but 'does not include being subjected to any force or impact that is within the limits of what is acceptable as incidental to social interaction or to life in the community'.[42]

85. While some statements will clearly be hate speech, others may not be as clear. For example, there are ongoing debates about what constitutes antisemitism, and whether criticism of governments and their policies, rather than of a people or religion, amount to ideas based on superiority over or hatred of others.

86. These examples highlight the risk that legitimate political expression or advocacy could be misinterpreted as hate speech, underscoring the need for precise legislative language and safeguards to prevent an unjustified chilling effect on the freedom of expression of visa holders and people applying for visas.

87. The Bill makes clear that an 'endorsement' can be online, and the Explanatory Memorandum states that this could include 'reposting or sharing posts online'.[43] However, whether reposting something constitutes endorsement of its contents is currently a live issue in a civil racial vilification case before the courts.[44] Questions also remain about whether 'endorsement' could extend to minimal engagement, such as reacting to a post with an emoji (e.g., a thumbs-up). Again, there is a risk that people engaging in ordinary online activity without intent to promote hatred or extremism could be caught under these provisions.

Recommendation 12: The Australian Government should clearly define key terms such as 'risk of harm'. To reduce the risk of unintended consequences and capturing of legitimate freedom of expression, the Government should consider removing 'endorsement' of a public statement from the proposed new character grounds.

Lowering the threshold for existing grounds

88. In addition to expanding the grounds for visa refusal and cancellation based on spreading hatred and extremism, the proposed amendments also lower the threshold for certain existing grounds from 'would' to 'might'.[45] This change would apply to everyone whose visa may be refused or cancelled under these grounds, not only those spreading hatred and extremism.

89. Section 501 of the Migration Act allows the Minister to refuse or cancel a person's visa if a person fails the 'character test' in cases where the person does not satisfy the Minister that he or she passes the character test or the Minister reasonably suspects they do not pass the character test. For visa cancellations and refusals under s 501(3), the Minister must also be satisfied that cancellation or refusal is in the 'national interest'.

90. A person does not pass the character test if they fall within any of the grounds set out in s 501(6). Section 501(6)(d) provides that the person fails the character test if, 'in the event the person were allowed to enter or to remain in Australia, there is a risk that the person would' engage in a range of negative conduct

specified in the section. The negative conduct ranges from criminal conduct to 'incite discord in the Australian community or in a segment of that community'.

91. As the Commission has highlighted in a previous submission on visa cancellations, the existing provisions already allow a person to be refused a visa, or for their visa to be cancelled, not because of proof of wrongdoing, but rather on suspicion they may commit wrongful acts in the future.[46] The Minister is only required to be satisfied that they pose any *risk*, however slight, that the negative conduct would occur. There is no need for there to be a significant risk following amendments to the test in 2014 and no requirement that the conduct at risk of occurring be serious.[47] Further, s 501 states that the rules of natural justice do not apply in some circumstances to visa cancellation and refusal decisions under the section.

92. If the proposed amendment in this Bill is passed, it would lower this threshold even further. It would provide that a person fails the character test if, in the event the person were allowed to enter or remain in Australia, there is a *risk* that the person *might* engage in the negative conduct.

93. This change broadens the Minister's already extensive discretionary powers, lowering the threshold beyond cases of hate speech and extremism and impacting a much wider group of people. It is not clear on the materials that have been provided with the Exposure Draft why this lowering of the threshold is justified, or what evidence there is to demonstrate any problems with the scope of the current broad cancellation provisions in addressing hate speech and extremism (and other negative conduct).

Recommendation 13: The Australian Government should remove from the Bill the proposed amendments that change the threshold from 'would' to 'might' in sections 5C(i)(d), 500A(1)(c) and 501(6)(d) of the *Migration Act 1958* (Cth).

Endnotes

[1] *International Covenant on Civil and Political* Rights ('ICCPR') art 6; UN Human Rights Committee, *General Comment No. 36, Article 6 (Right to Life)* (UN Doc No. CCPR/C/GC/36, 03 September 2019) 1 [3].

[2] *International Convention on the Elimination of Racial Discrimination* ('ICERD') art 4(a).

[3] ICERD art 4(a).

[4] Human Rights Committee, *General comment No. 11: Article 20* (1983).

[5] The right is enshrined in a range of international and regional human rights instruments, including *Universal Declaration of Human Rights* ('UDHR') art 19 and ICCPR art 19; See also *United Nations Convention on the Rights of Persons with Disabilities* art 21; *United Nations Convention on the Rights of the Child* art 12; *European Convention on Human Rights* art 10; *American Convention on Human Rights* art 13; *African Charter on Human and Peoples' Rights* art 9; *ASEAN Human Rights Declaration* art 23.

[6] ICCPR art 19(3).

[7] Frank La Rue, *Annual Report of the Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion* (UN Doc No. A/HRC/14/23, 20 April 2010) 13-15 [79]-[81]; See also United Nations Human Rights Committee, *General Comment No 34 (Article 19: Freedom of opinion and expression)* (UN Doc No. CCPR/C/GC/34, 12 September 2011) 6 [22].

[8] Proposed s 80.2BF(c) *Criminal Code Act 1995* (Cth) in Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth).

[9] NSW Law Reform Commission, *Serious Racial and Religious Vilification* (Report No. 151, September 2024) 51 [4.30].

[10] Committee on the Elimination of Racial Discrimination, *General Recommendation No 35 on Combating Racist Hate Speech* (UN Doc No. CERD/C/GC/35, 26 September 2013) 6 [20].

[11] ICCPR art 18(3).

[12] Proposed s 80.2BF(4) *Criminal Code Act 1995* (Cth) in Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth).

[13] Explanatory Memorandum, Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth) [262].

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[14] Proposed s 80.2BF(4) *Criminal Code Act 1995* (Cth) in Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth).

[15] Proposed s 80.3(1) *Criminal Code Act 1995* (Cth) in Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth).

[16] *Criminal Code Act 1995* (Cth), s 80.3(3).

[17] See generally *Wertheim and Goot v Haddad and Al Madina Dawah Centre* [2025] FCA 720.

[18] The underlying offence defined as those sections in the *Criminal Code Act 1995* (Cth) ss 80.2A(1), 80.2B(1), 80.2BA(1), 80.2BB(1), 80.2BC(1), 80.2BD(1), 80.2BE(1), 80.2A(2), 80.2B(2), 80.2BA(2), 80.2BB(2), 80.2BC(2), 80.2BD(2) or 80.2BE(2).

[19] Proposed s 16A(2AAB) of the Crimes Act in Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth), Sch 1, Part 3, item 11.

[20] Proposed s 80.2BF(5) *Criminal Code Act 1995* (Cth) in Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth).

[21] ICCPR art 22.

[22] ICCPR art 22(2).

[23] Proposed s 114A.4(1)(a)(i) *Criminal Code Act 1995* (Cth) in Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth).

[24] Proposed s 114A.4(5) *Criminal Code Act 1995* (Cth) in Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth).

[25] Explanatory Memorandum at [112].

[26] Proposed s 114B.4 *Criminal Code Act 1995* (Cth) in Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth).

[27] Proposed ss 114B.5 and 114B.6 *Criminal Code Act 1995* (Cth) in Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth).

[28] Proposed s 5C(1A)(b) of the *Migration Act 1958* (Cth) in Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth).

[29] Proposed s 114A.9(2) *Criminal Code Act 1995* (Cth) in Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth).

[30] Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth), sch 2 pt 1.

[31] Proposed ss 5C(1A), 500A(1A), 501(6A) *Migration Act 1958* (Cth) in Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth).

[32] See Explanatory Memorandum, para 18.

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[33] See Australian Human Rights Commission (AHRC), *Background paper: Human rights issues raised by visa refusal or cancellation under section 501 of the Migration Act*, AHRC, 2013, accessed 14 January 2026, section 4.4; AHRC, Submission to the Senate Legal and Constitutional Affairs Legislation Committee, *Inquiry into the Migration Amendment (Character and General Visa Cancellation) Bill 2014* (28 October 2014), paragraphs 11-14, 19.

[34] Convention on the Rights of the Child, art 3(1).

[35] See *Migration Act 1958* (Cth), ss 500A, 501.

[36] *Migration Act 1958* (Cth), s 5C.

[37] T Crowley, 'Minister reveals Kanye West was denied entry to Australia after releasing antisemitic song', *ABC News*, 2 July 2025, accessed 14 January 2026; J Evans, 'Far-right Israeli politician's visa cancelled ahead of speaking tour', *ABC News*, 18 August 2025, accessed 14 January 2026; T Crowley, 'Home affairs minister cancels visa of British national charged with displaying Nazi symbols', *ABC News*, 24 December 2025, accessed 14 January 2026.

[38] Explanatory Memorandum, *Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth)* [16]-[17], [500], [518], [526].

Commonwealth Ombudsman, The Department of Immigration and Border Protection, the Administration of Section 501 of the Migration Act 1958

[39] See e.g. AHRC, *Background paper: Human rights issues raised by visa refusal or cancellation under section 501 of the Migration Act*; AHRC, *Inquiry into the Migration Amendment (Character and General Visa Cancellation) Bill 2014*; Commonwealth Ombudsman, *The Department of Immigration and Border Protection, the Administration of Section 501 of the Migration Act 1958*, Commonwealth Ombudsman, 2016, accessed 14 January 2026; AHRC, *Visa cancellation on character grounds*, AHRC website, n.d., accessed 14 January 2026; Visa Cancellations Working Group (VCWG), *Resources*, VCWG website, n.d., accessed 14 January 2026.

[40] Proposed ss 5C(1A)(d), 500A(1A)(d), 501(6A)(d) *Migration Act 1958* (Cth) in Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth).

[41] Proposed ss 5C(1A), 500A(1A), 501(6A) *Migration Act 1958* (Cth) in Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth).

[42] Explanatory Memorandum, *Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth)* [97].

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[43] Explanatory Memorandum, *Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth)* [534].

[44] *Cassuto v Kostakidi*s [2025] FCA 1226, para 23.

[45] Combatting Antisemitism, Hate and Extremism Bill 2026, sch 2 pt 1 clauses 3, 6, 9.

[46] AHRC, *Inquiry into the Migration Amendment (Character and General Visa Cancellation) Bill 2014*, para 44.

[47] See AHRC, *Inquiry into the Migration Amendment (Character and General Visa Cancellation) Bill 2014*, section 6.1.