



Submission to the Parliamentary Joint Committee on Intelligence and Security
Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
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Criminal Code Amendment (Combating Antisemitism and Hate Crimes) Bill 2026

This submission is made by the National Association for the Visual Arts (NAVA) in response to the Committee's inquiry into the Criminal Code Amendment (Combating Antisemitism and Hate Crimes) Bill 2026 and related Commonwealth hate-crime offences. It addresses the potential implications of the proposed amendments for freedom of expression, with particular reference to visual arts practice and the use of language, symbolism and imagery in artistic works.

Established in 1983, NAVA is the national peak body for the visual arts, craft and design sector. NAVA is an independent membership organisation representing artists, arts workers, galleries and arts organisations across Australia. NAVA works to improve the conditions of work and practice in the visual arts through advocacy, education and the Code of Practice for the Visual Arts, Craft and Design (the Code). Endorsed by the Federal Government in the National Cultural Policy Revive, the Code includes guidance on freedom of expression within its opening chapter, *Principles, Ethics and Rights*.

NAVA has a long history of advocating for freedom of expression and supporting artists and organisations where artwork has been restricted, challenged or withdrawn from exhibition. NAVA does not advocate for artists to act outside the law. NAVA's position is that artists should be able to exercise freedom of expression within the law, and that new laws should be approached with caution where they affect expression.

NAVA is concerned by the number of instances in which artworks are limited, removed, or not developed or exhibited because artists or institutions anticipate legal risk or dispute, rather than in response to any finding of illegality. The Committee's inquiry considers the introduction of new measures that may create additional grounds on which artwork could be found unlawful. In this context, particular care is required to ensure that new laws do not capture artistic expression that is not intended to incite hatred or violence, but instead engages with political language, symbolism or contested histories as part of lawful artistic practice.

Freedom of expression is a universal human right and is particularly valued by artists. In Australia, however, it is not comprehensively protected in law. This can result in uncertainty where artistic works engage with contested political language or symbolism. In the visual arts, such engagement is not incidental, but a core feature of how artists explore social conflict and address difficult subject matter.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) has consistently emphasised the importance of artistic freedom in open and plural societies. Its

framework for artistic freedom recognises the right of artists to create without censorship or intimidation, to have their work supported and shared, to associate freely, to participate in cultural life, and to enjoy social and economic rights connected to their practice. These principles are directly relevant to this inquiry. Measures that restrict particular words, phrases or slogans risk affecting not only what artists can say, but whether work can be supported, shown and discussed.

Visual art frequently engages with difficult subject matter, including political conflict, racism, violence, ideology and historical trauma. Artists may use charged language, symbols or imagery to critique, examine or expose harm, rather than to promote it. In the visual arts, slogans and phrases may appear within artworks, performances or exhibitions as part of inquiry, critique or historical reference, rather than as literal statements or calls to action. Meaning is often layered and depends on context, form and artistic intent.

For this reason, artistic expression can be caught up in speech-based criminal offences if those offences are drafted too broadly or without regard to context. When liability turns mainly on the presence of particular words or symbols, artworks may be misinterpreted without consideration of the artistic intent or the circumstances in which they are presented.

New or expanded hate-crime offences may create uncertainty for artists whose work engages with controversial or politically sensitive material. Uncertainty about how offences might be applied can discourage artists and institutions from making or showing work, even in the absence of any prosecution.

Some artists are more exposed to this risk than others. First Nations artists frequently engage with themes of colonisation, dispossession, resistance and ongoing structural violence. Artworks often incorporate political language, historical slogans, flags or symbols that are central to First Nations histories and movements for justice. When this kind of expression is treated as risky, First Nations artists may face closer scrutiny or limits on their work, even where it is lawful. This can lead to exhibitions being delayed or withdrawn and fewer commissioning opportunities.

Similar issues arise in other contexts. For example, Australian artist Paul Yore has used homophobic slurs and extremist imagery within his work to expose and critique the harm caused by hate directed at LGBTQIA+ communities. In these cases, meaning depends on how the work is made and presented. Laws that focus on words alone risk catching artistic work that is intended to confront or expose hate, not encourage it.

Criminal law has traditionally recognised the importance of intent, recklessness and context in distinguishing between harmful conduct and lawful expression. NAVA strongly supports maintaining these distinctions in any hate-crime framework.

A range of existing legal instruments already regulate expression, including the Criminal Code Act 1995 (Cth), the National Classification Code, the Classification (Publications, Films and Computer Games) Act 1995 (Cth), and the Racial Discrimination Act 1975 (Cth). The Racial Discrimination Act includes specific protections for artistic work, providing defences for conduct done reasonably and in good faith in the course of the performance, exhibition or distribution of artwork.

As documented by David Throsby in research published by Creative Australia, most artists work in financially precarious conditions. They are rarely in a position to initiate legal action

or defend themselves if their work becomes the subject of complaint or legal challenge. As a consequence, the boundaries of laws affecting artistic expression are seldom tested through the courts. Instead, artists and galleries may choose to limit, withdraw or abandon work, not because it is unlawful, but because the risks associated with dispute are too high.

For artists working with politically sensitive material, these pressures are often greater. Uncertainty about whether a work may be lawful under new or amended provisions can affect decisions about whether work is made, shown or shared at all. Artists may lose exhibition and commissioning opportunities as institutions seek to minimise perceived risk. These conditions can have significant impacts on artists' wellbeing, including stress, anxiety and isolation, particularly for those working independently or without organisational support.

When artworks engage with difficult subject matter or political conflict, the way concerns are addressed matters. Art provides space for complexity, ambiguity and disagreement. In many cases, informed and educative discussion is more likely to broaden understanding than the removal or suppression of work. While such discussion may not resolve disagreement, it allows engagement rather than silence.

NAVA asks the Committee to take care that any amendments to Commonwealth hate-crime offences do not extend beyond their intended purpose. Laws aimed at preventing serious harm should not draw in artistic work that uses language or symbolism to question, critique or reflect on history and contemporary conflict.

The need to protect communities from hate, intimidation and violence is not in dispute. At the same time, laws intended to address harm should be clear about what they prohibit, so that lawful artistic expression is not drawn into their scope. Clear and carefully framed laws help protect both community safety while allowing artists to engage with difficult and contested issues.

Please contact NAVA for any further information we can provide.

Sincerely,

Penelope Benton
Executive Director