

# **Submission Opposing the Combatting Antisemitism, Hate and Extremism Bill 2026**

## **Executive Summary**

This submission opposes the Combatting Antisemitism, Hate and Extremism Bill 2026 (Exposure Draft) on the grounds that, while the objective of combating antisemitism and genuine hate-motivated violence is legitimate and important, the Bill goes far beyond what is necessary or proportionate in a democratic society.

The Bill introduces sweeping and structural changes to Australia's criminal law, migration system, surveillance framework and firearms regulation. In doing so, it significantly weakens long-standing protections for freedom of speech, freedom of association, freedom of religion, procedural fairness and the presumption of innocence.

Rather than narrowly targeting violent antisemitism or criminal extremism, the Bill creates a broad ideological control framework that relies heavily on executive discretion, lowered fault elements and reversed burdens of proof. This framework is capable of being expanded well beyond its stated purpose and poses serious long-term risks to civil liberties and democratic governance in Australia.

Accordingly, this submission urges Parliament to reject the Bill in its current form.

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## **1. Legitimate Aim, Disproportionate Response**

Antisemitism, racism and hate-motivated violence are real and serious problems that warrant firm legal responses. Australia already has extensive criminal laws addressing violence, threats, harassment, incitement and terrorism.

However, effective law-making requires proportionality. Laws designed to address specific harms must be tightly drafted, evidence-based and constrained by robust safeguards. This Bill does not meet that standard. Instead, it uses antisemitism as a gateway to introduce a far-reaching expansion of state power that extends well beyond violent or criminal conduct.

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## **2. Creation of “Prohibited Hate Groups” – A Fundamental Shift**

The Bill creates a new legal category of “prohibited hate groups”, modelled loosely on terrorist organisation listings but with far broader and less precise definitions.

An organisation may be declared a prohibited hate group even if:

- No member has been convicted of any offence
- The conduct relied upon occurred before the law existed
- The alleged conduct involved expression, praise or advocacy rather than violence

Critically, the Bill explicitly removes any requirement for procedural fairness when such a decision is made. Organisations may be listed without notice, without a hearing and without an opportunity to respond.

This represents a fundamental shift away from rule-of-law principles and places extraordinary power in the hands of the executive branch.

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### **3. Criminalisation of Association and Belief**

Once an organisation is listed, the Bill criminalises:

- Membership (including informal membership)
- Taking steps to become a member
- Recruiting, training or participating in activities
- Providing funds or resources
- Directing activities or providing support

Many of these offences carry penalties of up to 15 years' imprisonment.

Importantly, several offences apply even where the accused is merely reckless as to whether the organisation is prohibited. Others reverse the burden of proof, requiring the accused to prove they took reasonable steps to disengage or that their conduct fell within narrow exceptions.

This amounts to guilt by association and undermines the presumption of innocence.

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### **4. Broad and Ambiguous Definitions of “Hate Crime” and “Advocacy”**

The Bill defines “hate crime” and “advocacy” in an exceptionally broad manner. Conduct may qualify even where:

- No actual harm occurred
- The target group was incorrectly perceived
- The conduct consisted of praise or discussion
- The risk of influence is speculative or indirect

Key concepts such as “unacceptable risk” are left undefined, creating uncertainty and inviting inconsistent or politicised enforcement.

Such ambiguity is incompatible with criminal law, where citizens must be able to clearly understand what conduct is prohibited.

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## 5. Expansion of Speech-Based Offences

The Bill significantly expands criminal liability for speech and expression, including:

- New racial vilification offences with lowered fault elements
- Expanded definitions of “public place” that include online and private spaces
- Increased penalties for communications that “menace, harass or cause offence”
- Expanded bans on symbols, gestures and displays, supported by seizure powers

While a limited defence exists for quoting religious texts, it is narrow, places the evidential burden on the accused and does not protect broader religious, political or academic discussion.

The cumulative effect is a chilling impact on legitimate speech, protest, debate and inquiry.

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## 6. Targeting of Religious and Spiritual Leaders

The Bill introduces aggravated offences that apply solely because a person is a religious official, spiritual leader or provider of pastoral care (including secular pastoral care).

This is deeply concerning. Criminal liability should attach to conduct, not to a person’s role or status. These provisions risk:

- Chilling sermons, counselling and pastoral conversations
- Selective or discriminatory enforcement
- Undermining freedom of religion and belief

No compelling justification is provided for imposing harsher penalties based on religious or spiritual leadership alone.

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## 7. Erosion of Procedural Fairness and Judicial Oversight

Throughout the Bill, long-standing safeguards are weakened or removed:

- Procedural fairness is explicitly excluded from key decisions
- Ministerial satisfaction replaces judicial determination

- Surveillance and interception powers are expanded
- Background checking and data-sharing are widened, including spent convictions

While limited parliamentary review mechanisms exist, they are retrospective and do not prevent immediate and serious consequences flowing from executive decisions.

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## 8. Bundling Unrelated Measures and Mission Creep

The inclusion of a national gun buy-back scheme and extensive firearms import controls within the same Bill illustrates a broader problem: policy bundling.

Measures with no direct connection to antisemitism or hate crime are combined into a single legislative package, limiting meaningful scrutiny and debate.

More broadly, the legal architecture created by this Bill is content-neutral and easily expandable. Once established, it can be repurposed by future governments to target other ideologies, movements or forms of dissent.

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## 9. Constitutional Implications

### 9.1 Implied Freedom of Political Communication

The High Court of Australia has repeatedly affirmed that the Constitution implies a freedom of political communication necessary for the maintenance of Australia's system of representative and responsible government. While this freedom is not absolute, any legislative burden upon it must be reasonably appropriate and adapted to serve a legitimate purpose in a manner compatible with the constitutionally prescribed system of government.

This Bill burdens political communication in several significant ways. The expanded offences relating to racial vilification, advocacy, symbol display and organisational association directly affect political speech, protest, ideological debate and public discourse. The breadth of key definitions, combined with lowered fault elements and speculative risk-based thresholds, creates a substantial chilling effect on lawful political communication.

While combating hate-motivated violence is a legitimate objective, the measures adopted in this Bill are not proportionate. Existing criminal laws already address threats, violence, intimidation and incitement. By extending criminal liability to expression that does not cause tangible harm, and by criminalising association and advocacy in expansive terms, the Bill impermissibly burdens the implied freedom of political communication.

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### 9.2 Separation of Powers

The Australian constitutional system is founded upon a strict separation between legislative, executive and judicial power. This Bill departs from that structure by vesting determinative powers in the executive branch that carry serious criminal consequences, without adequate judicial involvement.

The power to declare an organisation a prohibited hate group rests primarily with the AFP Minister, informed by ASIO advice, and expressly excludes procedural fairness. This executive determination then serves as the foundation for serious criminal offences carrying penalties of up to 15 years' imprisonment.

Such an arrangement risks collapsing the distinction between executive assessment and judicial adjudication. Individuals may suffer severe criminal liability based on executive satisfaction rather than judicial findings of fact established through due process. This undermines the constitutional role of courts as the ultimate arbiters of criminal guilt.

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### **9.3 Rule of Law and Legal Certainty**

The rule of law requires that laws be clear, predictable and applied equally, and that coercive power be exercised according to established procedures. This Bill departs from those principles in several respects.

Key concepts such as “unacceptable risk”, “advocacy”, “support”, and “membership” are defined broadly or left undefined, granting wide discretion to enforcement agencies and decision-makers. Citizens cannot reasonably predict what conduct may expose them to criminal liability.

Further, the Bill reverses burdens of proof, applies strict or absolute liability in multiple contexts, and explicitly removes procedural fairness requirements. These features weaken the presumption of innocence and erode confidence in equal justice under law.

Retrospective characterisation of conduct as a “hate crime” for the purposes of organisational listing further undermines legal certainty and offends basic rule-of-law norms.

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## **10. Bundling, Mission Creep and Constitutional Risk**

The inclusion of unrelated measures, such as a national firearms buy-back and expanded import controls, within the same legislative framework exemplifies a lack of proportionality and coherence. More significantly, the structural architecture created by this Bill establishes a template for future expansion into other areas of political or ideological regulation.

Once normalised, executive powers to regulate belief, expression and association can be incrementally extended, posing cumulative constitutional risk even if initially exercised with restraint.

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## 11. Firearms Measures and Constitutional Concerns

The Bill incorporates a national firearms buy-back scheme and expanded firearms import and prohibition measures that are only tenuously connected to the stated objective of combating antisemitism and hate-motivated extremism.

From a constitutional perspective, the inclusion of these measures raises serious concerns regarding proportionality, purpose and legislative coherence. While the Commonwealth may rely on heads of power such as external affairs, corporations or customs, the bundling of firearms regulation into a hate and extremism framework risks obscuring the true legislative purpose and undermines transparent parliamentary scrutiny.

Further, compulsory acquisition of property through buy-back schemes engages section 51(xxi) of the Constitution, which requires that any acquisition be on just terms. The Bill provides insufficient clarity regarding valuation, compensation mechanisms and review rights, creating uncertainty as to whether the constitutional guarantee of just terms is adequately protected.

The use of hate and extremism justifications to support broad firearms measures also heightens the risk of precedent-setting executive overreach, whereby unrelated policy objectives are advanced through national security or public safety framing.

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## 12. Conclusion

This Bill marks a profound departure from Australia's constitutional traditions. It burdens the implied freedom of political communication, concentrates power in the executive at the expense of judicial oversight, and weakens foundational rule-of-law principles.

Combating antisemitism and hate-motivated violence is an important and legitimate objective. However, constitutional fidelity requires that such objectives be pursued through narrowly tailored, proportionate laws that preserve democratic freedoms.

For these reasons, this submission urges Parliament to reject the Combating Antisemitism, Hate and Extremism Bill 2026 in its current form and to develop alternative measures that address genuine criminal conduct while remaining consistent with Australia's constitutional framework.