

Parliamentary Joint Committee on Intelligence and Security

Attorney-General's Department

Answers to written questions on notice

13 January 2026

Written QoNs from Senator Duniam

Question 1

Please provide a list of which Commonwealth agencies saw the Bill as released prior to its release in total.

The response to question 1 is as follows:

In developing the Bill, the Attorney-General's Department and Department of Home Affairs consulted closely with the Australian Federal Police, Australian Security Intelligence Organisation, Office of the Commonwealth Director of Public Prosecutions, Department of Infrastructure, Transport, Regional Development, Sport, Communications and the Arts, the Department of the Prime Minister and Cabinet and the Treasury. This consultation occurred iteratively with feedback shaping the final Bill approved on 12 January.

Question 2

Please provide a list of which other bodies saw the Bill as released prior to its release in total.

Question 3

Please provide a list of individuals who saw the Bill as released prior to its release in total.

The response to questions 2 and 3 is as follows:

See response to questions IQ25-000001 to IQ25-000015 provided to the Committee by the department on 14 January 2025.

Question 4

Why increase the penalty for threatening damage to real property in s 80.2D, but not for advocating such damage (under s 80.2C)?

Question 5

Under this bill, if an individual threatens to burn someone's car on the basis that they are Jewish, they are subject to the new maximum penalty of 10 years, but if they just counsel,

urge or promote others to do it - it's still only the five year maximum. Is that right?

The response to questions 4 and 5 is as follows:

The Bill increases the maximum penalty for the offences relating to both threatening property damage and advocating property damage. The maximum penalties for the following offences relating to property damage would be increased from 5 years to 7 years, and from 7 years to 10 years where the conduct also threatens the peace, order and good government of the Commonwealth:

- threatening damage to or destruction of real property or motor vehicle in section 80.2BD of the Criminal Code (see Schedule 1, Part 1, Items 5 and 6)
- advocating damage to real property or motor vehicle in section 80.2BC of the Criminal Code (see Schedule 1, Part 6, Items 29 and 30), and
- advocating force or violence through causing damage to property in section 80.2BE of the Criminal Code (see Schedule 1, Part 6, item 31).

Question 6

What type of conduct is captured by the offence of advocating property damage or violence to a child?

The response to questions 6 and 7 is as follows:

To meet the aggravated offence in the proposed new section 80.2DB a person must have:

- committed an offence against one of sections 80.2A, 80.2BA, 80.2BC or 80.2BE
- at the time of the conduct, been over the age of 18 years, and
- been reckless as to whether, at the time of the conduct, the person they were advocating to use violence, was less than 18 years old.

Question 7

Would this capture conduct promoting violent uprising to children by encouraging them to chant "intifada"?

The response to question 7 is as follows:

It would not be appropriate to comment on particular fact scenarios, as the full context must be considered including the intention of the person engaging in the conduct. It would be a matter for the court to determine whether the relevant conduct would constitute an offence in line with the facts of the case.

Question 8

The Bill uses no single definition of "hate speech". Why not, and how do you ensure consistent charging decisions under the new "incite/promote hatred" offence?

The response to question 8 is as follows:

The Bill does not use the term "hate speech".

As set out in the draft Explanatory Memorandum for the Bill, the term ‘hatred’ in the Bill would take its ordinary meaning, which would include a feeling of hostility, strong aversion toward a person, or serious contempt. This is distinct from lesser forms of animosity, such as irritation or prejudice.

Decisions to investigate or charge a Commonwealth criminal offence is a matter for the law enforcement and the Commonwealth Director of Public Prosecutions.

Question 9

Why are the grounds for the new offence limited to race/colour/national or ethnic origin - given other parts reference religion/nationality?

The response to question 9 is as follows:

The new offence in Part 5 of the Bill is focused on combating hatred, and ideas of superiority, based on race, colour, national or ethnic origin. This is in direct response to the urgent need to address antisemitism. These attributes covered by the new offence are also consistent with the scope of attributes protected by section 18C of the *Racial Discrimination Act 1975*.

Question 10

The Bill reframes the reasonable person test to a community-member perspective. What legal advice confirms this improves clarity rather than increasing uncertainty and litigation?

The response to question 10 is as follows:

It would not be appropriate to disclose legal advice.

Question 11

The laws will capture social media posts. Will any Australian who posts on social media inciting hatred will be covered?

Question 12

Does this include posts on Facebook posts, Instagram and/or X (formerly known as Twitter)?

Question 13

What about posts set to "private"? Can they be captured?

Question 17

What about private WhatsApp group posts?

Question 18

Can a person who posts a message into a small WhatsApp group saying they hate a particular person, race or religion be subject to prosecution under these laws?

The response to questions 11,12, 13, 17 and 18 is as follows:

The proposed offence in section 80.2BF requires the relevant conduct to be engaged in a public place.

New subsection 80.2BF(7) provides guidance on what it means to engage in conduct in a public place, including expressly clarifying that it includes communicating through social media and other electronic means.

Whether a social media post was in a public place will depend on the facts, including the degree to which a section of the public can see the post.

Question 14

Does the post need to be made on Australian soil? What if that Australian is overseas?

The response to question 14 is as follows:

The Bill would amend section 80.4 of the Criminal Code to apply category B geographical jurisdiction to the proposed offence in section 80.2BF. Category B geographical jurisdiction, as outlined in section 15.2 of the Criminal Code, enables an offence to operate:

- when the conduct constituting the alleged offence occurs wholly or partly either in Australia, or wholly or partly on board an Australian aircraft or ship
- when the conduct constituting the alleged offence occurs wholly outside Australia and a result of that conduct occurs either wholly or partly in Australia, or wholly or partly on board an Australian aircraft or ship
- when the conduct constituting the alleged offence occurs wholly outside Australia and at the time of the alleged offence, the defendant is an Australian citizen, an Australian resident or a body corporate incorporated under Australian law
- the alleged offence is an ancillary offence, and the conduct constituting the alleged offence occurs wholly outside Australia, and the conduct constituting the primary offence to which the ancillary offence relates, or as a result of that conduct, occurs, or is intended by the person to occur, wholly or partly in Australia or wholly or partly on board an Australian aircraft or ship.

Question 15

If a person deletes a post within a certain timeframe, can they still be charged?

The response to question 15 is as follows:

There is no requirement in section 80.2BF for the relevant conduct to be sustained. The question is whether the conduct was engaged in in a manner that meets the requirements in the offence. Evidence about the circumstances of a person's conduct may be relevant to establishing their intent. This is a question of fact.

Question 16

What if a person retweets a post or likes a post which is deemed as "hate speech"? Is that an offence?

The response to question 16 is as follows:

Please see responses to Questions 11, 12, 13, 17 and 18 in relation to the application of the offence to online conduct.

The relevant question is not the specific means by which someone engages in conduct but the intent and effect of that conduct. Specifically, whether the person retweeting or liking a post intended that conduct to promote or incite hatred, or disseminate ideas of superiority or hatred, of a group distinguished by race, colour, national or ethnic origin, in circumstances where a reasonable member of the targeted group would be intimidated, fear harassment or violence, or fear for their safety.

Question 19

If someone says they hate a particular group, a particular nationality or a particular religion. Is that enough for them to be charged under this legislation? For example - if someone says "I hate Christians" on social media, is that enough for them to be charged under this legislation, given this phrase may make a reasonable person feel they may be harassed as a Christian?

The response to question 19 is as follows:

It would not be appropriate to comment on particular fact scenarios, as the full context must be considered including the intention of the person engaging in the conduct as well as the impact the conduct would have on a reasonable member of the targeted group. The new offence in section 80.2BF is limited to conduct that intentionally promotes or incites hatred, or disseminates ideas of superiority or hatred, of a group distinguished by *race, colour, national or ethnic origin*.

Question 20

Does a post mocking Christians, which a reasonable person would believe would lead to harassment, be considered an offence under this legislation?

The response to question 20 is as follows:

The new offence in section 80.2BF is limited to conduct that intentionally promotes or incites hatred, or disseminates ideas of superiority or hatred, of a group distinguished by race, colour, national or ethnic origin.

Question 21

If someone says that a particular religion is "evil", is that a potential offence under this legislation?

Question 22

If someone says that a particular religion is "evil" and their followers are "stupid", is that a potential offence?

The response to question 20 and 21 is as follows:

It would not be appropriate to comment on particular fact scenarios, as the full context must be considered including the intention of the person engaging in the conduct as well as the impact the conduct would have on a reasonable member of the targeted group.

Question 23

Can a post mocking a religious group or their followers be considered hate speech?

Question 24

Would calling a religion or its followers a "cult" be considered hate speech under this legislation?

Question 25

The Prime Minister called members of a particular religious group a "cult" after the election. Would this be considered hate speech, considering many members of that group would likely fear this term would lead to harassment or intimidation?

The response to the questions 23-25 is as follows:

The new offence in section 80.2BF is limited to conduct that intentionally promotes or incites hatred, or disseminates ideas of superiority or hatred, of a group distinguished by race, colour, national or ethnic origin. It would not be appropriate to comment on particular fact scenarios, as the full context must be considered including the intention of the person engaging in the conduct as well as the impact the conduct would have on a reasonable member of the targeted group.

Question 26

Threshold questions – scope and intent:

Please confirm that the intended substantive expansion in this Bill is confined to race, religion and nationality (and national/ethnic origin) and the Bill is not intended to expand Commonwealth hate/extremism law into sex, sexual orientation, gender identity or intersex status?

The response to question 26 is as follows:

The Bill includes a new criminal offence for inciting or promoting, or disseminating ideas of superiority over or hatred of, groups distinguished by race, colour or national or ethnic origin.

The Bill also introduces aggravated offences which apply where existing Commonwealth offences are committed in certain specific circumstances. These new offences provide that higher penalties would be available for those offences, but do not criminalise any additional conduct.

The Bill also includes new offences in relation to certain interactions with prohibited hate groups. Prohibited hate groups are organisations the Minister is satisfied, amongst other things, have engaged in, advocated or otherwise supported, a hate crime. A hate crime in this context is defined in section 114A.3 as limited to:

- certain offences against subdivision C of Division 80 of the Criminal Code relating to advocating or threatening violence where the targeted group is distinguished by race of national or ethnic origin.
- publicly displaying prohibited hate symbols, and
- conduct or threat of conduct where the conduct involves serious harm or property damage where that conduct is engaged in because of the targeted persons race or national or ethnic origin.

Question 27

Where the text still refers to sex/sexual orientation/gender identity/intersex status, can you confirm that wording is pre-existing Commonwealth law and is not being broadened by this Bill? Please point to the exact items/clauses that do (and do not) change those concepts.

The response to question 27 is as follows:

The terms sex, sexual orientation, gender identity, and intersex status are not used in the Bill, nor are the legal meanings of these terms altered by the Bill.

Question 28

Prohibited symbols – reverse onus, recklessness, and legitimate purpose:

How will ‘legitimate purpose’ be interpreted for journalism, education, historical reporting, satire, artistic works, and religious practice? Will you publish prosecutorial guidance?

The response to question 28 is as follows:

The current criminal offences relating to the public display of prohibited hate symbols require the prosecution to prove that the display of the symbol was not engaged in:

- for a religious, academic, educational, artistic, literary or scientific purpose and not contrary to the public interest, or
- for the purposes of making a news report, or a current affairs report, that is in the public interest, and is made by a person working in a professional journalistic capacity.

The Bill would remove these as an element of the offence, and place the evidential burden of proof on the defendant to raise any of these matters as a defence. The Explanatory Memorandum provides further details in relation to these circumstances on pages 155 and 156.

Parliamentary Joint Committee on Intelligence and Security

Attorney-General's Department

Answers to written questions on notice

13 January 2026

Written QoNs from Senator McDonald

Subjectivity and the "Serious Harm" Threshold

Context: Part 4 allows the Minister to list "Prohibited Hate Groups" based on conduct causing "serious harm". In Australian criminal law, harm is traditionally interpreted as physical. There is a high risk this Bill extends this to psychological or "perceived" harm, which is far more subjective.

Question 1: Can the Government confirm whether "serious harm" in Part 4 is strictly limited to physical violence or the threat of violence? If not, how will the Government prevent "psychological or emotional harm" from being used to silence groups expressing traditional moral or religious views?

The response to question 1 is as follows:

The term 'serious harm' is defined in the Dictionary of the Criminal Code. Relevant definitions have been extracted below:

- 'Serious harm' means harm (including the cumulative effect of any harm):
 - (a) that endangers, or is likely to endanger, a person's life; or
 - (b) that is or is likely to be significant and longstanding.
- 'Harm', means physical harm or harm to a person's mental health, whether temporary or permanent. However, it 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.
- 'Harm to a person's mental health' includes significant psychological harm, but does not include mere ordinary emotional reactions such as those of only distress, grief, fear or anger.

Question 2: Given that being listed as a "Prohibited Hate Group" carries severe criminal penalties for members and donors, why has the Government chosen the subjective term "serious harm" rather than the established criminal standard of "incitement to violence"?

The response to question 2 is as follows:

The term serious harm is well established in criminal law and used across many offences in the Criminal Code, as well as forming part of the threshold to which the Minister must be satisfied prior to listing a group as a terrorist organisation or a state sponsor of terrorism.

Question 3: What safeguards are in place to ensure that an organisation articulating orthodox religious teachings (for example, on marriage or gender) is not characterised as a "hate group" simply because its teachings are perceived as offensive or "harmful" by a protected group?

The response to question 3 is as follows:

Prohibited hate groups are organisations the AFP Minister is satisfied have engaged in, advocated or otherwise supported, a hate crime. A hate crime in this context is defined in section 114A.3 as limited to:

- certain offences against subdivision C of Division 80 of the Criminal Code relating to advocating or threatening violence where the targeted group is distinguished by race of national or ethnic origin
- publicly displaying prohibited hate symbols, and
- conduct or threat of conduct where the conduct involves serious harm or property damage where that conduct is engaged in because of the targeted persons race or national or ethnic origin.

Before an organisation can be listed, the AFP Minister must be satisfied on reasonable grounds that the group has engaged in or advocated hate crimes and that listing is necessary to prevent harm. A key safeguard is the requirement for written advice from the Director-General of Security, who may only recommend listing if satisfied that the organisation's activities increase the risk of politically motivated violence or the promotion of communal violence, or indicate a future risk of such conduct. This advice is a mandatory prerequisite for the AFP Minister to proceed, ensuring decisions are informed by independent national security expertise. Additional safeguards include consultation with the Attorney-General and briefing the Leader of the Opposition before a regulation is made. Parliamentary oversight is provided through the Joint Committee on Intelligence and Security, which can review any listing regulation and extend disallowance periods to allow Parliament to consider the recommendations of the Committee. The scheme also includes a de-listing mechanism which is triggered when the AFP Minister ceases to be satisfied that listing is necessary.

Protection of Religious Speech and Education

Context: Part 5 introduces a racial vilification offence. The proposed defence for "quoting religious texts" appears to be a "literalist" protection that ignores the way religion is actually taught – through commentary, homilies, and context.

Question 4: The current defence applies to the "act of quoting" religious texts. Does the Government acknowledge that religious practice involves *interpreting* and *explaining* texts? Will the Bill be amended to explicitly protect "responsible teaching, explanation, and contextual discussion" of religious scripture?

The response to question 4 is as follows:

An expansion of the defence in this way is not necessary as the offence would not capture 'responsible' religious teaching. Conduct would only be captured by the offence where the person intended their teaching, explanation and/or contextual discussion of religious scripture to promote or incite hatred, or disseminate ideas of superiority or hatred, of a group distinguished by race, colour, national or ethnic origin, in circumstances where a reasonable member of the targeted group would be intimidated, fear harassment or violence, or fear for their safety.

Question 5: Without protecting the *discussion* of texts, is the Government concerned that this Bill will have a "chilling effect" on religious education, where priests or teachers may fear explaining their faith's tenets due to the risk of being accused of "disseminating ideas of hatred"?

The response to question 5 is as follows:

The defence at 80.2BF(4) protects core religious expression, being the reading or referencing of religious text for the purpose of religious teaching or discussion. Any discussion beyond the quoting or referencing of the religious text would only be an offence under 80.2BF where that discussion it is intended to promote or incite hatred or disseminate ideas of superiority or hatred of a person or a group of persons on the basis of race, colour or national or ethnic origin, and where the conduct would cause a reasonable member of the targeted group to be intimidated, fear harassment or violence, or fear for their safety.

Criminal Thresholds (Intention vs Recklessness)

Context: Part 5 considers a "recklessness" standard for vilification. This means a person could be guilty even if they did not intend to incite hatred, provided they "should have known" a reasonable person in the target group would feel intimidated.

Question 6: Why is the Government considering a "recklessness" standard for a speech-based criminal offence that carries a five-year prison sentence? Does this not impose an impossible burden on speakers to anticipate the subjective internal reactions of every "reasonable member" of various protected groups?

Question 7: If the goal is to target "hate preachers" who "seek to radicalise" (as per the PM's statement), why is a specific "intent to incite" not a mandatory requirement for these new offences?

The response to questions 5-7 is as follows:

The proposed new offence in section 80.2BF would only apply where the conduct **intentionally** (rather than **recklessly**) promotes or incites hatred or disseminates ideas of superiority or hatred of a person or a group of persons on the basis of race, colour or national or ethnic origin.

Breadth of Aggravated Sentencing Factors

Context: Part 3 applies "aggravated sentencing" to *all* Commonwealth offences if the offender displayed "hostility, malice, or ill will". This is incredibly broad.

Question 8: Part 3 applies to *every* Commonwealth offence. How does the Government justify applying "hate crime" sentencing elevations to non-violent regulatory or administrative offences where "hostility" may be incidental to the conduct?

The response to question 8 is as follows:

For the aggravating sentencing factor to apply, the person's conduct must have been wholly or partly motivated by hatred of another person or persons on the basis of race or national or ethnic origin. Where this is not reasonably applicable, the provision would have no impact.

Question 9: "Hostility, malice, and ill will" are subjective emotions. What evidentiary standard will the court require to prove "ill will" beyond a reasonable doubt, and how will the Government ensure this does not lead to "thought-policing" during the sentencing process?

The response to question 9 is as follows:

New subsection 16A(2)(mb) would apply when the person has already committed a Commonwealth offence. This would require the court to consider a more serious penalty, within the existing maximum penalty, where their offending was motivated by hatred.

The effect of proposed subsection 16A(2AAC) would be that demonstrations or expressions of hostility, malice or ill-will on the grounds of the person or group's race, national or ethnic origin either during, immediately before or immediately after the commission of the offence can be used to establish the aggravating factor without further evidence of the offender's motivation.

The "Literalist" Trap in Section 80.2BF(4)

Context: This section provides a defence for conduct that "consists only of directly quoting from, or otherwise referencing, a religious text". The Explanatory Memorandum (EM) warns that "sharing an interpretation" of a text could fall outside this protection.

Question 11: Minister, Section 80.2BF(4) provides a defence only if the conduct consists "**only** of directly quoting" a religious text. Does the Government acknowledge that religious practice is rarely limited to literal quoting, but relies on explanation and instruction?

Question 12: If a priest reads a scripture passage and then provides a 10-minute homily explaining its application to modern moral life, does he lose the protection of the "religious purpose" defence the moment he stops quoting and starts explaining?

Question 13: Why has the Government chosen the restrictive word "only" in this section, when other parts of the Bill (such as the symbols defence) use a much broader "religious purpose" test without such limitations?

The response to questions 11-13 is as follows:

The defence at 80.2BF(4) protects core religious expression, being the reading or referencing of religious text for the purpose of religious teaching or discussion. Any discussion beyond the quoting or referencing of the religious text would only be an offence under 80.2BF if that discussion is intended to promote or incite hatred or disseminate ideas of superiority or hatred of a person or a group of persons on the basis of race, colour or national or ethnic origin, and where the conduct would cause a reasonable member of the group to be intimidated, fear harassment or violence, or fear for their safety.

Subjectivity and the "Reasonable Targeted Person" Test

Context: The Bill replaces the objective community standard with a test based on the perspective of a "reasonable person" who is a member of the targeted group (Division 4). This creates legal uncertainty for clergy who must now anticipate the internal reactions of specific groups rather than a general community standard.

Question 14: The Bill requires a court to consider the perspective of a "reasonable person who is a member of the targeted group". How can a religious leader provide instruction on traditional doctrines with any legal certainty if the "harassment or intimidation" threshold is now based on the subjective lived experience of a specific group rather than an objective community standard?

The response to question 14 is as follows:

The reasonable person threshold is only relevant when the person engaging in the conduct intends to incite or promote hatred or disseminate ideas of superiority, on the basis of race, colour, national or ethnic origin. This requirement ensures that the offence does not apply to trivial or frivolous conduct.

The offences are designed to provide protections from conduct which would significantly impact the ability of the targeted group to participate in society. The robust expression of diverse opinions is an important feature of Australian democracy, and the offence seeks to respect the need for vibrant public debate by not criminalising the mere expression of belief or opinion. It would criminalise the most serious kind of hateful communication and conduct – those that impact the targeted groups perception of safety.

Question 14A

Are there any other examples where the objective community standard has been removed and the test is based on the reasonable person who is a member of the target group?

The response to question 14A is as follows:

The offences relating to threatening force or violence against groups, members of groups or close associates, or property, which were passed by Parliament in February 2025, contain a similar element where a reasonable member of the targeted group must fear that the threat will be carried out (paragraphs 80.2BA(1)(c), 80.2BA(2)(c), 80.2BB(1)(d), 80.2BB(2)(d), 80.2BD(1)(d), 80.2BD(2)(d)). Another example of a

similar element can be found in the offences for the public display of prohibited hate symbols which were passed by Parliament in December 2023 (subsection 80.2H(7) and 80.2HA(7)).

Question 14B

How are jurists involved in such a case expected to take on such an understanding of the target group to be able to come to a position beyond a reasonable doubt?

The response to question 14B is as follows:

To establish the matters in subsection 80.2BF(1)(c), the prosecution would need to adduce evidence and satisfy the court beyond a reasonable doubt. The evidence required is necessarily dependent on the circumstances and facts of the case.

Question 14C

Does this shift from an objective community standard to a group-specific standard effectively lower the bar for prosecution, making the law more about the *impact* on a listener than the *intent* of the speaker?

The response to question 14C is as follows:

No. To make out the offence the prosecution would be required to prove, beyond reasonable doubt, both that the conduct:

- was engaged in with the intention of promoting or inciting hatred or disseminating ideas of superiority or hatred of a person or a group of persons on the basis of race, colour or national or ethnic origin, and
- would cause a reasonable member of the targeted group to be intimidated, fear harassment or violence, or fear for their safety.

Question 15: Is the Government concerned that this subjective test will have a "chilling effect" on religious speech, where clergy may self-censor for fear that their traditional teachings – even if delivered without malice – might be perceived as "intimidating" by a reasonable member of a particular group?

The response to question 15 is as follows:

No. The offence would only apply where the conduct is engaged in with the intention to promote or incite hatred or disseminate ideas of superiority or hatred of a person or a group of persons on the basis of race, colour or national or ethnic origin.

The Targeting of Religious Officials

Context: Schedule 1, Part 1 introduces an "aggravated" offence with a 12-year penalty for religious leaders providing pastoral care. This appears to penalise the *status* of the speaker rather than just the act.

Question 16: Can the Department provide a clear, exhaustive definition of "pastoral care" for the purposes of Section 80.2BF(1)(c)? Does this include private confession or one-on-one spiritual counselling?

The response to question 16 is as follows:

The term 'pastoral care' is not used in and is not relevant to section 80.2BF.

The term is used on section 80.2DA which provides an aggravated offence for religious and other leaders who advocate or threaten force or violence directed at a protected group.

For the purpose of section 80.2DA, the term 'pastoral care' would take its ordinary meaning. The Explanatory Memorandum provides some examples of what may be captured by this term on page 106.

The underlying offences to which section 80.2DA applies only apply where a person intentionally advocates or threatens force or violence. They are not limited to conduct engaged in in public, so would apply to conduct in private.

Parliamentary Joint Committee on Intelligence and Security

Attorney-General's Department

Answers to question taken on notice on 14 January 2016

Question

At the in-camera hearing on 14 January 2026, the department took on notice the question asked by Senator Jonathan Duniam that requested the department provide information on the views provided by stakeholders on draft provisions of the Antisemitism, Hate and Extremism Bill 2026 in confidential briefings and consultations.

The response to the question is as follows:

Disclosing the views provided by individual stakeholders in confidential consultations would breach the confidential nature of those discussions, which were conducted on the understanding that the consultations were to inform further development of the bill and were not intended to be disclosed outside government. It could deter stakeholders from being willing to engage frankly and openly with government if the confidentiality of those discussions cannot be protected. This would undermine the process of decision-making and policy development.