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TC Beirne School of Law

Parliamentary Joint Committee on Intelligence and Security  
Parliament House, Canberra

**Submission on the Combatting Antisemitism, Hate and Extremism  
Bill 2026 - Exposure Draft**

I am an Emeritus Professor of Law and have long had a leading role in relation to religious freedom issues in Australia. My book on these issues, *Unshaken Allegiance: Living wisely as Christians with diminishing religious freedoms* (Matthias Media, 2025), has recently been published.

I am writing in general support of this Bill and to comment on two issues.

First, I am opposed to any extension of the Bill to address hatred of people for reasons other than race or ethnicity as has been proposed in the media. This is already covered appropriately in the Criminal Code. This Bill is intended to address the issue of antisemitism in the wake of the terrible events of Bondi. The Bill should not be utilised to address unrelated concerns or to advance other causes when it is being enacted in a rush with only very limited opportunity for public comment and parliamentary scrutiny.

Second, I support the religious freedom exemptions contained in this Bill, which I consider necessary and appropriate. While there has been some criticism of these clauses since the Bill was introduced, there is in reality only one new religious exemption, and it is very narrowly drafted.

I also propose a small redrafting of one clause in s.80.2BF.

**1. The Criminal Code already covers hate speech against a range of protected groups**

The idea that the Bill is only about hate speech on the basis of race, ethnicity or national origin is incorrect. The Criminal Code already prohibits hate speech against a wide variety of people or groups.

The new Bill strengthens these provisions by creating a new offence that applies specifically to religious officials and spiritual leaders who advocate the use of force or violence against such groups or their members (s.80.2.DA). This offence carries a sentence of up to 12 years' imprisonment. Its main effect is to impose a higher maximum sentence on religious officials or preachers who engage in hate speech of the kind that is already prohibited.

To elaborate, a new offence is committed if the preacher advocates or threatens "the use of force or violence against a group" that "is distinguished by race, religion, sex, sexual orientation, gender identity, intersex status, disability, nationality, national or ethnic origin or political opinion" (s.80.2A; s.80.2BA). It also covers urging or threatening violence against a 'targeted

person' who is, or is believed to be, a member of a targeted group (s.80.2B; s.80.2BB) or against the property of a person or group for the same reasons (s.80.2BC). The effect of the proposed new s.80.2DA is to make it an aggravated offence for preachers to advocate or threaten "the use of force or violence" on the basis of any of these protected attributes.

Any legislation that penalises speech in the course of a sermon requires the most careful scrutiny; but there is no bona fide religious justification for advocating or threatening the use of force or violence, and given events since October 7th 2023, and the massacre at Bondi last month, strong action has to be taken to combat virulent antisemitism that might lead to violence, including in sermons by preachers.

There is no exemption for religious teaching in this part of the current Criminal Code, and for that reason, no exemption is applicable to the new aggravated offence in relation to preaching.

## **2. Prohibition of hate groups (Division 114A)**

It is important that the new provisions in Division 114A are confined, as at present, to groups advocating hate on the basis of race, or national or ethnic origin. Any extension beyond the narrow confines of this provision as it stands in the Exposure Draft could lead to a range of problems and undermine social cohesion. This is because the term 'hate group' has been given a very broad interpretation by activists in other countries, and has been weaponised against respectable organisations on the basis only of their opinions on contested issues. We do not want to see this happening in Australia.

## **3. Prohibition of hate speech (s.80.2BF)**

For the same reasons, the new provision on hate speech must be narrowly and carefully drafted and confined to promoting or inciting hatred of another person or a group of persons because of their race, colour or national or ethnic origin. The term 'hate speech' has come to be used in a very broad way to attack ideas that someone hates, however reasonably expressed. It is important therefore that any legislation concerning hate speech is drafted in such a way as to avoid misuse.

The new provision on hate speech is the proposed s.80.2BF. It is reasonably drafted except for a problem with subsection 80.2BF(1)(c). This makes it an element of the offence that

the conduct would, in all the circumstances, 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.

What is the difference, if any, between fearing violence and fearing for one's safety? It would be clearer if the clause said "to be intimidated, to fear harassment, or to fear for their physical safety".

I have added the word 'physical' here to avoid drift in the meaning of the term to encompass an idea such as 'psychological safety' which is a vague and uncertain term.



The proposed new section contains only a very narrow religious exemption: the offence is not applicable to conduct that consists only of directly quoting from, or otherwise referencing, a religious text for the purpose of religious teaching or discussion.

This is reasonable not only on general grounds of not wanting to constrain appropriate religious education, but also because no-one could reasonably be intimidated, fear harassment or violence, or fear for their safety, by reason *only* of quoting a religious text. Even if a religious text, for example, seems to advocate violence against members of a particular religious or ethnic minority, the question arises as to the interpretation of that text in modern circumstances. So it is the preacher's commentary on such a text that could lead someone to fear for their safety. Were it to cause such fear, then it may well be that a prosecution could be brought under the new s.80.2.DA, for which there is no religious exemption.

#### **4. Other religious exemptions**

The other religious exemptions are re-enactments of existing provisions of the Act with minor variations. They are contained in subsection 80.2H(9) and subsection 80.2HA(9). These sections concern the display of Nazi symbols or the symbols of a prohibited terrorist organisation. The exemptions for a religious, academic, educational, artistic, literary or scientific purpose are necessary and ought to be uncontroversial. The new Bill does not change the existing law in this respect.

Yours sincerely

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**Patrick Parkinson AM, MA, LLM, LLD**

Emeritus Professor of Law

The University of Queensland