Exposure Draft – Combating Antisemitism, Hate and Extremism Bill 2026

Submission to the Parliamentary Joint Committee on Intelligence and Security

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Protecting and promoting justice, freedom and the rights of the individual.

Contents

Who we are

The **Australian Lawyers Alliance (ALA)** is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice and equality before the law for all individuals.

Our members and staff advocate for reforms to legislation, regulations and statutory schemes to achieve fair outcomes for those who have been injured, abused or discriminated against, as well as for those seeking to appeal administrative decisions.

The ALA is represented in every state and territory in Australia. We estimate that our 1,500 members represent up to 200,000 people each year across Australia.

Our head office is located on the land of the Gadigal people of the Eora Nation. As a national organisation, the ALA acknowledges the Traditional Owners and Custodians of the lands on which our members and staff work as the First Peoples of this country.

More information about the ALA is available on our website.[1]

[1] www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input to the Parliamentary Joint Committee on Intelligence and Security (the **Committee**) on the exposure draft for the *Combatting Antisemitism, Hate and Extremism Bill 2026* (the **Bill**).

2. Further, the ALA supports effective measures to combat antisemitism, hate-motivated violence and extremist intimidation, and is keen to work constructively with government to ensure reforms are workable, proportionate and consistent with the rule of law.

3. Public debate and political communication are fundamental pillars of Australia's system of representative and responsible government. Often regarded as the most critical '*bulwark*' of liberty,[2] freedom of expression allows for the cultivation of diverse opinions, the open exchange of ideas, and the development of a well-informed society.

4. Whilst the Australian Constitution does not explicitly protect freedom of expression, the High Court of Australia has routinely held that an implied freedom of political communication exists as an indispensable part of the system of representative and responsible government created by the Constitution, operative as a constraint on unchecked legislative and executive action.[3]

5. Against that backdrop, reforms that regulate speech and association must be drafted with particular clarity and care, supported by adequate consultation, and accompanied by robust safeguards to as to avoid overreach and chilling effects on lawful public discourse.

6. The ALA recognises that freedom of expression is not completely unfettered, and that strong, enforceable laws are often necessary to protect communities from violence and intimidation.

7. However, laws enacted quickly without adequate consultation, clear and deliberate drafting and enforceable safeguards, risk undermining public confidence. This in turn creates enforcement inconsistencies leading to unintended consequences.

[2] Garton Ash Timothy. 2016. *Free Speech: Ten Principles for a Connected World*. New Haven, CT: Yale University Press.

[3] Nationwide News Pty Ltd v Wills (1992) 177 CLR 1; Australian Capital Television Pty Ltd v the Commonwealth (1992) 177 CLR 106; Unions NSW v New South Wales [2013] HCA 58

8. The ALA's central concern is that the Bill introduces broad new powers and offences using uncertain and vague thresholds, whilst also explicitly excluding ordinary and well-established procedural fairness requirements for key executive decisions.

9. The Bill's design framework materially increases the risk of arbitrary application, restraint on lawful public expression, and further down steam harms (for example in migration and other administrative contexts) particularly where the Bill operates retrospectively or quasi-retrospectively.

10. Accordingly, while the ALA supports the Bill's overarching objectives towards community safety, we strongly submit that the Bill should not proceed without targeted amendments and a meaningful and fully sufficient consultation period with appropriate stakeholder groups.

Key Issues

Problematic Drafting of Provisions

11. The ALA unequivocally condemns antisemitism, racial hatred, violence and extremist intimidation. However, notwithstanding the understandable desire for swift action in the aftermath of the Bondi Beach attack, the Bill's proposed criminal offences must be drafted with precision and restraint. As currently framed, proposed provision *s80.2BF* risks operating well beyond its stated purpose, whilst simultaneously failing to reliably capture the very conduct it is presented as targeting.

12. As a starting point, it is unclear why a new Commonwealth criminal offence of this breadth is required to supplement the existing civil prohibition in s18C of *the Racial Discrimination Act 1975 (Cth)* (which already substantially addresses public acts that are reasonably likely to offend, insult, humiliate or intimidate on the relevant racial grounds). The move from a civil standard to a serious criminal penalty (up to five years imprisonment) demands a correspondingly tighter threshold and clearer limiting principles than those presently provided.

13. The most significant drafting choice is the inclusion of '*promoting*' alongside inciting hatred**.** The explanatory materials indicate 'promote' is intended to capture conduct that encourages, advocates or endorses hatred even without urging others to act, including the 'normalising' or 'legitimising' of hateful attitudes in public discourse. The concept is inherently broad, evaluative, and vulnerable to subjective application.

14. Further, the Bill's intention requirement is explained as extending to circumstances where a person does not personally want hatred to occur but is aware it will occur '*in the ordinary course of events'*. This expands culpability in a way that is very likely to chill legitimate public discourse in contentious areas of political communication.

15. In noting the breadth of the offence and the uncertainty of its practical boundaries, much political communication could be alleged to 'promote or incite hatred' including discussion (even accurate discussion) of violence, terrorism, war crimes or atrocities associated with specific racial, national or ethnic groups – particularly when examined through online interactions. Professor and Constitutional Law expert Anne Twomey in particular notes that this offence is more constitutionally vulnerable than s18C because it imposes a greater burden on political communication while providing narrower and more uncertain protections through defences.[4]

16. Likewise, the Bill defines '*engages in conduct in a public place'* extremely broadly: it expressly includes communication to the public by any means (including through carriages services, social media and other electronic methods), conduct observable by public, and dissemination of any matter to the public, and controversially provides that conduct may be 'in a public place' even if it occurs on private land. We believe that this is an overreach that erodes fundamental civil rights.

17. Critically, this application operates under strict liability, in that the element that the conduct '*would, in all circumstances'* cause a reasonable target-group member to be intimidated or fear harassment/violence or fear for safety, it is 'immaterial' whether any person actually feels intimidated or fearful, or whether hatred is actually produced. In a criminal context, this substantially increases the risk of over-capture and inconsistent enforcement. Subsequent defences are narrow and structurally ill-suited to protecting ordinary public discussion, and there is no general 'truth' defence, as often seen in instances of Defamation.

18. The drafting also appears misaligned with the Bill's, and by extension the Government's, stated objectives of combatting antisemitism. The key provision is proposed new *s.80.2BF* of the Criminal Code: "*Publicly promoting or inciting racial hatred etc*.", which creates the following offence:

[4] Hate speech legislation: The hurdles for the legislation within the Constitution

"(1) A person commits an offence if:

(a) the person engages in conduct in a public place; and

(b) the person engages in the conduct intending to:

a. (i) promote or incite hatred of another person (the target), or a group of persons (the target group), ***because of the race, colour or national or ethnic origin of the target or target group****; or*

b. (ii) disseminate ideas of superiority over or hatred of another person (the target), or a group of persons (the target group), ***because of the race, colour or national or ethnic origin of the target or target group****; (emphasis added) and*

(c) 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.

Example: Inciting antisemitic hatred against Jews in a public place where a reasonable member of the Jewish community would be intimidated or fear violence.

……

(8) For the *purposes* of this section, the expressions race, colour and national or ethnic origin have the same meanings as in the Racial Discrimination Act 1975."[5]

19. The critical words are '*because of the race, colour or national or ethnic origin of the target or target group*'. Accordingly, '*Inciting antisemitic hatred against Jews*' is the only example of this new offence given in the draft bill. But Jews, like Muslims, Catholics, Protestants, Hindus, Buddhists and the adherents of most, if not all, other world religions, have no single or identifiable '*race, colour or national or ethnic origin*'. They come from many races (assuming for the sake of argument that the word 'race' has any fixed legal meaning, which it does not), have many colours, and have many national and ethnic origins.

[5] NB: there is no definition of any of these "expressions" in the Racial Discrimination Act 1975. The Australian Human Rights Commission describes the uncertain legal content of these key words **here**]

20. Subsequently, the new law will be a dead letter if it is enacted in this form. It will not prevent antisemitic (or anti-Islamic, or other alternatives) behaviour because that behaviour is not addressed to any aspect of race, colour or national or ethnic origin.

21. The Bill's 'prohibited hate group' scheme compounds the same drafting defects by turning serious consequences on nebulous standards such as 'advocates' and 'unacceptable risk'. Such ill-defined concepts inevitability invite inconsistent application. The Bill also adopts uneven approaches to defences and burdens (including reversals for 'public interest' elements in prohibited symbols offences), further undermining confidence that the framework will be applied both predictably and proportionately.

22. Lastly, it is worth mentioning the Bill's carve-outs and burdens are uneven in ways that further undermine confidence that this framework will be applied consistently across the board. For example, *s 80.2BF(4*) exempts conduct consisting only of quoting or referencing a religious text for religious teaching or discussion, while imposing an evidential burden on the defendant. Separately, Schedule amendments expressly reverse the burden of proof for 'public interest' elements in prohibited symbols offences.

Retrospectivity

23. The ALA is especially concerned about the Bill's retrospective and quasi-retrospective features, which go against the settled presumption that legislation, particularly legislation creating serious consequences, should operate prospectively unless the measure is demonstrably justified.

24. The Bill gives retrospective effect in the definition of 'hate crime'. Here, a 'hate crime' will explicitly include conduct that *'may have occurred before the commencement of this section'*, where the conduct would have constituted an offence had the provision been in force at the time (proposed *Criminal Code s 114A.3(2)*).

25. This is then further reinforced through the proscribed listing framework. The Bill provides that references to engaging in conduct constituting a hate crime include conduct occurring before commencement (proposed *Criminal Code s 114A.4(2*)). In practical terms, the proposed listing framework is designed so that previous substantive conduct may be relied upon for significant executive decisions.

26. The ALA submits that this drafting creates a regime in which individuals and organisations may face severe consequences based on historical conduct assessed against new legal and policy thresholds. This is particularly concerning in the context of online communications, where historic posts may be readily retrieved and re-assessed in a changing political and social contexts.

27. The ALA acknowledges that the apparent policy rationale for provision s *114A.3(2*) is to enable decision-makers to take account of relevant conduct that predates commencement when assessing whether an organisation should be listed. However, even if that is the intended operation, the Bill does not include safeguards to ensure the reliance on pre-commencement conduct is constrained, proportionate, and directed to a current risk.

28. If Parliament intends to permit reliance on pre-commencement conduct in a listing or character-consequence framework, the Bill should include explicit safeguards (for example: recency requirements; a demonstrated nexus to current risk; and mandatory consideration of repudiation, changed circumstances, and proportionality). In the absence of such safeguards, the retrospective features are likely to be overbroad and unjust.

Procedural Fairness

29. The ALA is deeply concerned that the Bill expressly removes procedural fairness protections in key steps of the prohibited hate group framework. In particular, the Director-General of Security is not required to observe any requirements of procedural fairness when providing written advice that is necessary precondition to a prohibited hate group regulation (as per the proposed *Criminal Code s114A.5(5)).*

30. This is a significant departure from ordinary safeguards. Where executive action can trigger serious legal and reputational consequences, minimum procedural fairness norms (ie notice of the substance of adverse material, an opportunity to respond) are essential to reducing the likelihood of unjust decision making and maintaining public confidence in the Government.

31. The ALA submits that removing procedural fairness at the advice stage increases the risk of decisions being made on incomplete, inaccurate, or untested information, and heightens the risk of inconsistent or arbitrary application over time. At a bare minimum, the Bill should allow for an opportunity to respond, and provide for meaningful review pathways.

Inadequate Consultation

32. The ALA is concerned that the apparent consultation arrangements undertaken for this Exposure Draft fall well short of best-practice expectations for such high-consequence reforms. The ALA recognises the desire for swift action in the wake of the Bondi events; however, that imperative does not explain why a Bill of this scale and import could not have been afforded even an additional week or two for meaningful stakeholder input.

33. Noting the current inquiry timeline: the Committee was asked to inquire into the Exposure Draft on 12 January 2026, with submissions due by 4:00pm Thursday 15 January 2026. The Attorney-General's Department published the Exposure Draft Bill and Explanatory Memorandum on 13 January 2026. In practical terms, stakeholders have had only a very limited period to obtain instructions, consult membership, and provide a considered, evidence-based response.

34. The compressed timeframe is difficult to reconcile with Australian Government best practice consultation guidance. The Office of Impact Analysis states that, depending on significance, 30–60 days is usually appropriate for effective consultation (with 30 days as the minimum) and that longer consultation periods may be necessary around holiday periods and where organisations require board/management clearance.[6]

35. Further, during the Committee's hearing on 13 January 2026, departmental officials were unable to provide a comprehensive list of stakeholders consulted in developing the Exposure Draft and indicated that some stakeholders said to have been consulted had not been provided a copy of the Exposure Draft Bill itself. The ALA considers this unacceptable. It is difficult to characterise engagement as 'consultation' per se, where consultees have not been provided with the text they are purportedly being consulted on.

36. The risk is compounded by the Bill's omnibus design. The Bill is expressly presented as a 'comprehensive package' spanning criminal law, migration, customs and a national firearms buyback scheme. Bundling these disparate and complex reforms into one accelerated process reduces the ability of Parliament and the public to scrutinise each element on its merits, increasing the likelihood of drafting flaws and unintended consequences.

[6] https://oia.pmc.gov.au/resources/guidance-oia-procedures/best-practice-consultation

Recommendations

37. The ALA reiterates our position as stated in the introduction: that this Bill in its current form should not proceed without targeted amendments and a meaningful and fully sufficient consultation period with the appropriate stakeholder groups.

Conclusion

38. The ALA welcomes the opportunity to provide our views on this important legislation.

39. The ALA is available to provide further assistance to the Committee on the issues raised in this submission.

Ian Murray

President

Australian Lawyers Alliance