THE LAW SOCIETY
OF NEW SOUTH WALES

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Dr James Popple
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By email: thomas.andrews@lawcouncil.au

Dear Dr Popple,

COMBATTING ANTISEMITISM, HATE AND EXTREMISM BILL 2026

Thank you for the opportunity to contribute to the Law Council's submission to the Parliamentary Joint Committee on Intelligence and Security (**Committee**)'s inquiry into the Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth) (**Bill**). Members of our Public Law, Human Rights, and Criminal Law and Children's Legal Issues Committees contributed to this submission.

The Law Society recognises that this Bill comes in the aftermath of the terror attack at Bondi Beach, and aims to combat antisemitism, extremism and hate-based conduct in Australia. The Law Society shares the shock and distress of the community and condemns antisemitic and hate-fuelled actions of any kind. We recognise the need for a multifaceted response across all levels of government to address the real fears within the Jewish and broader community, while also fostering social cohesion and unity in the wake of this devastating event.

The Law Society emphasises that the Bill proposes complex and significant law reform, which would have benefitted from detailed consideration over a more substantial consultation period. Given the limited timeframe for response, it has not been possible for the Law Society to review the Bill in detail, nor provide considered views on the wide range of matters covered. Therefore, our submission offers only preliminary views.

At the outset, we highlight that the Bill proposes significant amendments across criminal law, the use of intelligence, migration law, and firearms control. Collectively, these reforms engage Australia's international human rights obligations, long-standing common law rights, and, potentially, constitutional constraints, including the implied freedom of political communication. We note that many of the proposed reforms intersect with matters which will be considered in the Royal Commission on Antisemitism and Social Cohesion (**Royal Commission**). We also note overlap with other Commonwealth processes and measures, including the launch of the first phase of the National Hate Crimes and Incidents Database on 23 December 2025.

We further note that the NSW Government has recently introduced a suite of legislative reforms, including in relation to the incitement of hatred, firearm reforms, public assembly and related measures. There are also several reviews underway in NSW considering matters relating to anti-discrimination and civil vilification provisions,[1] combatting right-wing extremism and prohibiting slogans that incite hatred.[2]

To ensure consistent law reform and prevent overlapping legislation, we suggest that any reforms be carefully considered by the Committee, and, if enacted, continuously monitored in light of the proceedings of the Royal Commission and other relevant processes and legislative measures that are being undertaken at both the federal level and in NSW, to ensure they remain appropriate and proportionate.

We emphasise that the Bill's compressed timeline and limited consultation period increases the risk of drafting errors, inconsistencies and unintended consequences. Given the volume and complexity of the proposed reforms, we strongly suggest the Australian Government would benefit from engaging in in-depth stakeholder consultation to ensure the proposed reforms are evidence-based, effective and will operate as intended. This should continue to occur, even after any reforms are enacted, in case there is a need for urgent amendment.

Amendments to Commonwealth Criminal Law

The Bill makes several amendments to Commonwealth criminal law, including introducing a new racial vilification offence and an aggravated offence for religious officials or other leaders who advocate or threaten violence against groups. The Law Society considers speech and conduct grounded in hatred toward any group unacceptable. However, we query the necessity of new hate-based offences when there are a range of existing offences criminalising hate-based conduct at both the state and federal level. In our view, the introduction of further offences may further complicate an already complex legislative landscape, while not necessarily increasing community safety, nor promoting social cohesion.

Additionally, the language and protections contained in any amendments to the Commonwealth criminal law should align with international human rights law and principles. We suggest any amendments be guided by the Rabat Plan of Action,[3] which makes a "clear distinction" between expression that constitutes a criminal offence, expression that is not criminally punishable, but may justify a civil suit or administrative sanctions, and expression that does not give rise to criminal, civil or administrative sanctions "but still raises concerns in terms of tolerance, civility, and respect for the rights of others".[4] The Rabat Plan of Action also

[1] These include the new section 93ZAA of the *Crimes Act 1900* (NSW); review criminal law hate-speech protections for vulnerable communities, and reforms to civil vilification provisions is currently the subject of inquiry by the NSW Law Reform Commission as part of its review of the *Anti-Discrimination Act 1977* (NSW).
[2] NSW Parliament, 'Measures to combat right-wing extremism in New South Wales': 'Measures to prohibit slogans that incite hatred'.
[3] The Office of the High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred (The Rabat Plan of Action)* (2013) 4 [12]: https://www.ohchr.org/sites/default/files/Rabat_draft_outcome.pdf. The Rabat Plan of Action brings together conclusions and recommendations from experts from the Office of the United Nations High Commissioner for Human Rights on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, whilst ensuring full respect for freedom of expression.
[4] Ibid, Paragraph 12.

suggests that "criminal sanctions related to unlawful forms of expression should be seen as last resort measures to be applied only in strictly justifiable situations".[5]

We encourage the Australian Government to actively consider other approaches, alongside appropriate criminal law reform and enforcement action, to address hate-based conduct and extremism in the community. We suggest that community education and engagement may assist in promoting social cohesion and community safety in the long-term. We suggest the Australian Government prioritise investment in evidence-based, proactive programs aimed at preventing extremism and radicalisation, alongside measures which foster social inclusion and community cohesion.

Lastly, the Law Society opposes, as a matter of principle, the retrospective application of criminal laws.

Hate groups

The Bill introduces provisions related to "hate groups" and provides broad powers to the Australian Federal Police (**AFP**) Minister to designate "prohibited hate groups", including that the power may be exercised without any prior hate crime conviction, and without any requirement to afford procedural fairness.[6] In our preliminary view, it appears that the consequences of being designated a "hate group" in the Bill are quite similar to, and attract similar consequences to, designated terrorist organisations. For example, at Division 114B, the Bill introduces a number of offences similar to those in Part 5.3, Division 101 of the *Criminal Code Act 1995* (Cth). We suggest that the potential overlap between "hate groups", as defined in the Bill, and terrorist organisations, and the consequences that come with receiving either designation, be carefully considered.

Further, we express our concern that there may be consequent expansion of powers and legislation relating to post-sentence, preventative or control orders for persons potentially affiliated or in contact with a group designated a "prohibited hate group". These powers have been used in relation to terrorist offences and, for example, in NSW, are capable of applying to people who have not been convicted of a terrorism offence *Terrorism (High Risk Offenders) Act 2017* (NSW).[7] We suggest great caution be exercised if adopting this approach, particularly given the broad definition of "hate" in the Bill.

Oversight and Review Mechanisms

We strongly support the inclusion of a periodic review mechanism for all provisions of the Bill, to ensure that it is operating effectively and as intended, and that the policy objectives remain valid. In these circumstances, given the limited consultation period and the evolving legal landscape following the Bondi terror attack, review of the operation of the legislation will be particularly important.

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[5] Ibid, Paragraph 34.
[6] See s 114A.4(5), Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth) ('*Bill*').
[7] For example, s 10(1)(c) renders an eligible offender under the *Terrorism (High Risk Offenders) Act 2017* (NSW) as a "convicted NSW terrorism ***activity*** offender" if they are serving a sentence of imprisonment for a NSW indictable offence and is making or has previously made any *statement* advocating support for a terrorist act or violent extremism or has previously had any personal or business association or other affiliation with any person, group of persons or organisations that is or was advocating support for any terrorist act or violent extremism. See, for example, State of New South Wales v Mustapha (Preliminary) [2025] NSWSC 926.

In addition, we support appropriate administrative review pathways, in addition to judicial review mechanisms, to ensure that persons and groups affected by the proposed provisions of the Bill are afforded natural justice. Such review mechanisms are particularly important in the context of the Bill's exclusion of procedural fairness for certain executive decisions, including in relation to the designation of prohibited hate groups and related measures.

Amendments to the *Migration Act 1958* (Cth)

In our view, certain proposed amendments to the *Migration Act 1958* (Cth) (**Migration Act**) are drafted broadly and may risk capturing persons or activities that are not intended to fall within the objectives of the Bill.

For example, we note that Schedule 2 - Migration amendments, Part 1, [1] seeks to include a definition of "association" which significantly departs from the previously used definition under case law.[8]

Further, we note that the Bill substitutes "would" with "might" in sections 5C(1)(d), 500A(1)(c) and 501(6)(d) of the Migration Act, lowering the threshold of risk referred to in these sections, and potentially capturing a broad range of people beyond the intended scope of the Bill. Given the potential consequences of these provisions, for example, s 501(6)(d) provides a ground for failing the character test, which can result in visa refusal or cancellation, we suggest that these amendments risk capturing persons who may not pose an appreciable risk of harm to the community and may go beyond the policy objectives of the Bill.

Reliance on Regulatory Powers

We note that the Bill relies significantly on matters to be prescribed by regulation for the detailed operation of several key provisions, including in relation to the designation of prohibited hate groups. While delegated legislation can provide flexibility, this approach risks important policy considerations not being subject to the same level of parliamentary deliberation and scrutiny as provisions enacted in primary legislation. This is particularly evident in the proposed framework for designations of hate groups. Core elements of such frameworks, and other similarly significant provisions, would be more appropriately set out in primary legislation, with regulations limited to matters of implementation an administration. In any case, as flagged above, the formal designation of "hate groups" should be subject to appropriate consultation and parliamentary scrutiny.

The Law Society remains available to assist the Law Council, as well as the Committee, and Commonwealth and NSW Governments, on these issues, including in relation to legislative processes and reforms, and matters where cross-jurisdictional issues arise, or parallel inquiries are underway.

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[8] We note that the Bill seeks to insert the following definition for "association" under s 5(1) of the Migration Act: "A person has an association, for the purposes of subsections 5C(1A), 500A(1A) and 501(6A), with an organisation if the person meets or communicates with the organisation…Note: The association may consist of a single meeting or communication." In *Minister for Immigration & Citizenship v Haneef* [2007] FCAFC 203, at 103, the Full Court of the Federal Court held that the meaning of "association" under s 501(6)(b) of the Migration Act is "an association involving some sympathy with, or support for, or involvement in, the criminal conduct of the person, group or organisation. The association must be such as to have some bearing upon the person's character'. The proposed definition of 'association' under the Bill significantly departs from the previously used definition.

If you have any queries about the items above, or would like further information, please contact Pranamie Mandalawatta, Head of Social Justice and Public Law Reform, on 02 9926 0193 or Pranamie.Mandalawatta@lawsociety.com.au.

Yours sincerely,

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President