

Committee Secretary

Parliamentary Joint Committee on Intelligence and Security

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JOINT SUBMISSION FROM LGBTIQ+ COMMUNITY ORGANISATIONS TO THE REVIEW OF THE EXPOSURE DRAFT LEGISLATION: COMBATTING ANTISEMITISM, HATE AND EXTREMISM BILL 2026

Thank you for the opportunity to contribute to the review into the draft Combatting Antisemitism, Hate and Extremism Bill 2026 (**Bill**). This joint submission has been prepared on behalf of 31 LGBTIQ+ community organisations across Australia. We express our disappointment about the lack of consultation on the exposure draft with our communities, and the very short timeframe for making this submission.

We are deeply concerned and disappointed that the Bill fails to protect LGBTIQ+ people in key aspects, including the new offence of promoting or inciting hatred and the aggravated sentencing factors, which apply exclusively to race, leaving our community without the same legal safeguards against hatred and violence.

This submission is focused on the amendments under schedule 1 of the Bill, regarding the reforms to the *Criminal Code Act 1995* (Cth) sch, the *Criminal Code* (*Criminal Code*).

We are experiencing escalating hate as LGBTIQ+ communities

LGBTIQ+ communities are experiencing an escalation in hate including threats, intimidation and vilification both online and offline.

We acknowledge that this Bill has been introduced in the aftermath of the horrific Bondi attack. We strongly support robust legal protections for Jewish communities and oppose racism and notions of racial superiority in all forms. We also recognise the potential of these laws to address anti-immigrant sentiment and hostility towards First Nations people.

However, hate-based conduct causes serious harm to all groups it targets, and the law should provide equivalent protection across all at-risk communities. We recognise the social context in which these laws have been drafted and stress that, whether the focus is on religious extremism or neo-Nazi ideologies, LGBTIQ+ people have long been targets of both and remain at serious risk of harm.

In the last 2 years we have experienced Neo-Nazis marching in the streets targeting our communities holding a banner saying ‘destroy paedo freaks’, cancelled LGBTIQ+ community events due to threats, extreme violence perpetrated against gay men through dating apps, and targeted, ongoing abuse, doxxing and threats against high profile gay and trans people online and offline.

Ongoing exposure to hate and vilification is closely linked to poorer mental health outcomes and heightened risks to safety and wellbeing for LGBTIQ+ communities.

In this climate, stronger action is needed to address hate speech at an early stage, rather than waiting until it escalates into physical violence.

We need the time to get this right

The development of criminal hate speech and vilification laws requires particular care and attention, given their serious consequences and the need to balance protection from harm with fundamental rights, including safeguarding legitimate forms of speech.

In this context, the consultation process for the Bill has been completely inadequate. LGBTIQ+ communities, along with other affected groups including people with a disability, were not consulted on the exposure draft and have been given an extremely limited timeframe - just two days - to respond to the Bill.

This is despite the fact that our communities are expressly recognised in the *Criminal Code* as being at heightened risk of hate-motivated conduct. Excluding clearly affected communities from meaningful consultation risks undermining both the quality of and public trust in the resulting legislation.

We need a more holistic approach

Criminal laws play a role in capturing and responding to the most serious forms of hate-motivated conduct where it warrants a criminal justice response. Reform in this area is therefore necessary to ensure that the most serious manifestations of hate are clearly prohibited and dealt with appropriately.

However, criminal law should form only one part of a comprehensive response to hate. We are concerned that the layering of additional, inconsistent state and federal criminal provisions, without a broader and integrated national strategy to address hate in all its forms, risks limiting the effectiveness of the overall response.

Barriers to reporting and enforcement haven't been addressed

Many LGBTIQ+ people, along with other marginalised groups, including people from minority religions such as Muslims, and people with disability, face substantial barriers to reporting hate-motivated conduct. These barriers include mistrust of authorities, fear of further harm, and concerns about adverse consequences arising from engagement with the criminal justice system. Community members have reported being met at local police stations by police officers who lacked even basic understanding of hate crimes, including how such conduct manifests and how it should be dealt with. An approach that relies heavily on criminal enforcement risks failing to provide accessible or effective protection for those communities most affected by hate.

There are additional enforcement challenges in relation to federal offences. Community experience and stakeholder feedback indicate that federal hate-related laws are particularly difficult to operationalise in practice, including due to reluctance at the state level to pursue matters that require coordination with federal law enforcement agencies. At present, the system lacks accessible direct reporting pathways with specialist units at either the state or federal level, further compounding barriers to enforcement and accountability.

Still no civil protections

Importantly, at the federal level, there are currently no civil vilification or hate speech protections for LGBTIQ+ people, minority religious communities or people with disability. The absence of civil options limits access to lower-threshold, preventative and educative responses that are often more appropriate and effective than criminal sanctions. Many times, people experiencing hate just want the conduct to stop, rather than severe punishment for the perpetrator.

A balanced framework should therefore include both criminal and civil mechanisms, alongside non-legal measures, to prevent harm and promote social cohesion.

The Bill contains confusing inconsistencies that send the wrong message

The Bill contains internal inconsistencies in the scope of protected attributes that risk sending a confusing message about the law's intent and will likely create problems in enforcement.

While LGBTIQ+ people are included in the scope of certain new aggravated offences (e.g. 80.2DA, 80.2DB, 474.45BH), we are excluded from the new aggravated sentencing provision (Part 2) and the serious vilification offence (Part 5).

Similarly, in relation to the new prohibited hate groups provisions, the Bill defines a ‘hate crime’ based on existing broad provisions that include LGBTIQ+ communities, but then narrows the scope to targeting of groups based on race.

These inconsistencies give rise to significant concerns:

- **Legal uncertainty and enforcement challenges:** The fragmented approach is likely to create uncertainty in interpretation and application, further complicating policing and enforcement.
- **Unequal protections:** The variation in coverage risks creating a two-tiered system, which could be interpreted as suggesting that some forms of hate are more serious—or conversely, more socially acceptable—than others.
- **Failure to recognise intersectionality:** The Bill does not account for the fact that individuals may experience hate on multiple, intersecting grounds. For example, a Jewish gay person may be targeted by Neo-Nazis because of race, sexuality or a combination of both.

Aggravated offence for preachers and leaders (Part 1)

We welcome the new aggravated offences under s 80.2DA for religious, spiritual or other leaders who advocate for or threaten the use of force or violence against groups, members of groups, their close associates, or their property, contrary to the existing ss 80.2A to 80.2BE. This offence will provide coverage to LGBTQ+ communities who are at risk of hate being fuelled against them by religious leaders, in the form of sermons directed against our communities, or advocating for the destruction of LGBTQ+ spaces.

Increased penalties (Parts 1, 2, 6)

We acknowledge the increase of penalties for offences under ss 80.2A to 80.2BE, all of which cover LGBTIQ+ communities protected groups, noting the increase in penalties for base level offences from 5 years to 7 years; and for their aggravated counterparts (involving the use of force or violence that would threaten the peace, order and good government of the Commonwealth) from 7 years to 10 years. A significant increase in penalties sends a message to the community that the government does not tolerate advocating or threatening to use violence against people based on who they are, across a range of protected attributes.

However, we do not think that increased penalties is a silver bullet, since in circumstances that sentences are already severe, there is little evidence that making them harsher creates a meaningful deterrent.¹

We support aligning the penalty for using a postal service to menace or harass with the existing 5 year penalty for using a carriage service, increasing it from 2 years. Penalties should reflect the harm caused to the victim, not the method by which that harm is delivered.

Aggravated sentencing factors (Part 3)

We express our deep disappointment that the draft excludes LGBTIQ+ people and other at-risk communities from the scope of the proposed aggravated sentencing factors. This should not have been controversial, as these sentencing factors apply only to cases where an underlying offence is already proven in court, and therefore involves little to no restriction on free expression.

¹ See Sentencing Advisory Council (Vic), ‘Does Imprisonment Deter? A Review of the Evidence’ (Sentencing Matters, April 2011) 14.

State and territory laws, including those in Tasmania, Queensland, New South Wales and South Australia, already recognise LGBTQ+ attributes in sentencing considerations.² The Bill therefore represents a missed opportunity to create national consistency and to ensure that offences motivated by homophobia, transphobia, anti-intersex hatred, Islamophobia, or ableism are treated with the same seriousness as offences motivated by racial hatred.

We note that the drafting mirrors the new Tasmanian laws, which reflect the approach we would strongly support: acknowledging that motivation can be assumed by a demonstration or expression of hostility, malice or ill-will with respect to the protected attribute.

Adopting a consistent formulation at the federal level would strengthen protections and ensure parity across jurisdictions, were it applied to all relevant attributes.

Prohibited hate groups (Part 4)

We note that hatred expressed towards LGBTQ+ people is not specifically considered when designating a hate group, but the new laws might incidentally provide some cover for our communities, since many hate groups that target people based on race also do so on the grounds of sexuality, gender identity and sex characteristics.

Racial vilification offence (Part 5)

The Bill introduces a new serious vilification offence under a new s 80.2BF, confined to the grounds of race, colour, ethnic or national origin, and bears significant similarities to s 93ZAA of *Crimes Act 1900* (NSW).

The need to expand protected attributes

The protection of only race and related characteristics under this offence, sends a concerning message that other forms of hatred are of lesser weight or importance, and creates the perception of two-tiers of justice for communities that are vulnerable to hatred but cannot rely on s 80.2BF. This divisive approach may be in itself damaging to social cohesion.

Given our hope that this provision will be expanded to include additional attributes, and our desire to ensure the law effectively protects people on the basis of race (particularly because of the experiences of antisemitism and other forms of racism experienced by members of our communities), we offer the following suggestions for improvement.

Acknowledging courses of conduct

We understand from the explanatory memorandum that there has been an attempt to capture the cumulative nature of hate speech, including by using the term ‘in all of the circumstances’ in s 80.2BF(1)(c).³ We are not convinced that this is clear enough wording for what is intended, and suggest an alternative formulation that confirms that conduct can be constituted by a single occasion or by a number of occasions over a period of time. The recently passed Victorian law confirms that conduct can be constituted by a single occasion or by a number of occasions over a period of time. This approach is also reflected in the Scottish hate crime legislation, which clarifies that hate conduct can consist of a single act, or a course of conduct.⁴

² *Sentencing Act 1997* (Tas) ss 11B and 11BA, *Criminal Code Act 1899* (Qld) s 52B, *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)(h), *Sentencing Act 2017* (SA) s 11(1a).

³ Explanatory Memorandum, 254.

⁴ The recently passed Victorian law, *Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025*, uses this wording in section 195N. This approach is also reflected in the Scottish hate crime legislation, which clarifies that hate conduct can consist of a single act, or a course of conduct – see *Hate Crime and Public Order (Scotland) Act 2021* s 4.

Religious text defence

Section 80.2BF(4) sets out a defence to this offence where the person is quoting from or otherwise referencing a religious text in the context of religious teaching or discussion.

While we appreciate the intention behind this defence may be to protect freedom of religion and recognise that some historical religious texts may contain outdated language including that which would otherwise be discriminatory under modern Australian laws, we are concerned about the potential for misinterpretation or an overly broad interpretation.

The exemption applies not only to direct quotations from religious texts, but also to conduct that ‘otherwise references’ a religious text. The issue lies in there being various meanings of the verb to ‘reference’; one of which is to mention or allude to something, and another being to cite a passage. We understand from the explanatory memorandum that in fact the second meaning is what is intended. This is not clear enough from the wording of the draft Bill and we suggest that defining the term ‘reference’ in line with how it is described in the explanatory memorandum would reduce this ambiguity.

Any vague language significantly weakens the protection the law is intended to provide against serious vilification because it may enable liberties to be taken by religious leaders to exploit parts of a religious text to incite hatred or assert superiority over another group.

Aggravated grooming offence (Part 6)

Considering the present climate, whereby young people are targets of radicalisation efforts, including through social media, we welcome the aggravated grooming offences relating to ss 80.2A to 80.2BE, under s 80.2DB. This recognises both children’s vulnerability to the lasting harm of such radicalisation, and the broader long-term risks to public safety.

There is a clear link between the radicalisation of children and homophobic and transphobic attacks, which can be motivated by a mix of religious and political beliefs. Across Australia, most violent attacks against gay men through Grindr have been carried out by teenage boys who have been radicalised online into anti-LGBTIQ+ ideologies and instructed in methods of attack.

Hate symbols (Part 7)

The Bill strengthens offences relating to hate symbols, including by making changes to the evidential burden for these crimes for the defences and reducing the fault requirement from knowledge to recklessness.

There are clear benefits in expanding police powers to provide directions to remove hate symbols from not only physical spaces but online spaces as well, and creating new seizure powers for items such as flags may improve immediate police responses.

We support these measures to the extent that they may limit the public display of Nazi symbols, thereby providing tangible protections for LGBTIQ+ communities.

However, we are concerned about the inconsistency created by the introduction of a harm-based ‘reasonable person’ test (subsections 80.2H(3)–(4) and 80.2HA(3)–(4)) that applies only to race. This creates different proof requirements for other protected groups, which is confusing given that Neo-Nazis and religious extremists often target Jewish and LGBTIQ+ communities alike.

What else should be done?

Criminalisation alone is insufficient. We recommend taking the following additional steps:

- Establish a dedicated federal inquiry on criminal or civil responses to address hate speech and hate crimes against LGBTIQ+ people and other at-risk communities, with findings reported within 9 months to inform a broader and more holistic approach to addressing hate in Australia.

- Accelerate implementation of the national hate crime register, and fund third party reporting systems to ensure improved data collection.
- Adopt a victim-centred approach that addresses existing reporting barriers, recognising that criminal law reform is only one part of an effective response, including by:
 - Funding community legal centres that support LGBTIQ+ people to deliver victim-support programs, using a holistic lawyer-social worker model to support informed decision-making.
 - Funding justice system navigators to provide tailored, one-on-one support to victims of hate.
- Address police barriers by establishing effective coordination mechanisms between federal and state and territory police services, including clear referral and reporting pathways to specialist police units.
- Extend federal civil vilification protections to all protected attributes, noting that current protections are limited to race (section 18C). This aligns with recommendations of the Islamophobia Envoy and the Disability Royal Commission.
- Introduce a positive duty on social media platforms to prevent and eliminate vilification.
- Fund and roll out a public education campaign similar to the anti-violence 'Respect' campaign.
- Implement the recommended changes to strengthen the *Online Safety Act 2021* following the statutory review in 2023-2024 to address the growing problem of unchecked online hate speech.

Thank you for the opportunity to make this submission and we welcome any further questions or discussion, which can be directed to Emily Mulligan, Equality Australia Engagement Director on 0411 207 633 or emily.mulligan@equalityaustralia.org.au.

Kind regards,

ACON	Pride Cup	The Twenty-Ten Association (Twenty10)
Aleph Melbourne	Pride in Law	Thorne Harbour Health
All Out	Pride in Swan (WA)	Top End Pride
Equality Australia	Queensland Council for LGBTI Health	Trans Justice Project
GLADD - The Association of LGBTQIA+ Drs and Dentists	Rainbow Families Australia	Transcend Australia
InterAction for Health and Human Rights	Rainbow Futures WA	Transfolk of WA
Justice and Equity Centre	Rainbow Labor NSW	Transgender Victoria (TGV)
LGBTI Legal Service	Rainbow Labor VIC	Western Australia Aids Council
Living Proud	Rainbow Labor WA	Youth Pride Network
Minus18	South Australian Rainbow Advocacy Alliance	
Northern Territory Aids and Hepatitis Council	Sydney Gay and Lesbian Mardi Gras	