ECAJ EXECUTIVE COUNCIL OF AUSTRALIAN JEWRY

הועד הפועל של יהודי אוסטרליה

The Elected Peak Representative Body of the Australian Jewish Community

Address all correspondence to: PO Box 1114, Edgecliff, NSW 2027
Fax (+61 2) 9361 5888 | www.ecaj.org.au | info@ecaj.org.au

15 January 2026

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
Canberra ACT 2600
by email: pjcis@aph.gov.au

Dear Committee Secretary

Review of the Exposure Draft Legislation: *Combatting Antisemitism, Hate and Extremism Bill 2026* (Cth) (Bill)

Thank you for the opportunity to make a submission to your Committee's inquiry into the *Combatting Antisemitism, Hate and Extremism Bill 2026* (hereafter, the **Bill**). The Executive Council of Australian Jewry (the **ECAJ**) is the peak, elected, representative body of the Australian Jewish community. It was established for that purpose in 1944 by Australian Jewish organisations and their elected leaders. The ECAJ's constituent organisations are the roof bodies of the Jewish community in each State and Territory.[1] Other major national Jewish organisations are affiliated to the ECAJ. Directly or indirectly some 200 Jewish organisations come under the umbrella of the ECAJ.[2]

The ECAJ has long been advocating for stronger laws to hold perpetrators of hate speech accountable. In 2013, the ECAJ was instrumental in persuading Prime Minister Julia Gillard, on behalf of the Australian Government, to sign the London Declaration on Combating Antisemitism, which, among other things, committed Australia to legislating against hate crimes and incitement to racial hatred.[3] While there have been changes to the *Criminal Code 1995* over the years in that direction, experience has shown that iterations of laws seeking to proscribe hate speech have proven ineffective, insofar as there remains an environment of relative impunity with respect to the promotion, advocacy or glorification of racial and religious hatred and violence directed at Jewish people. In October 2024, the ECAJ made a submission[4] to the Senate Legal and Constitutional Affairs Legislation Committee's

[1] Namely, the NSW Jewish Board of Deputies, the Jewish Community Council of Victoria Inc, the Jewish Community Council of Western Australia Inc, the Queensland Jewish Board of Deputies, the Jewish Community Council of South Australia, the Hobart Hebrew Congregation, the ACT Jewish Community Inc and the NT Jewish Community Association.
[2] https://www.ecaj.org.au/about/
[3] 'Australian PM signs London Declaration', *The Executive Council of Australian Jewry,* 26 April 2013: https://www.ecaj.org.au/australian-pm-signs-london-declaration/
[4] ECAJ calls for new Federal offence of serious vilification - ECAJ

Inquiry into the *Criminal Code Amendment (Hate Crimes) Bill 2024*. Many of the concerns that the ECAJ highlighted in that submission persist with respect to the proposed section 80.2BF offence of 'Publicly promoting or inciting racial hatred' contained in Part 5 of the Bill.

While the Bill is aimed at creating a safer, more unified Australia through more robust anti-hate legislation, and takes significant steps toward that end, it suffers some considerable shortcomings which will limit its effectiveness.

Schedule 1 to the Bill includes seven parts:
Part 1—Aggravated offences for preachers and leaders
Part 2—Increased penalty for using a postal or similar service to menace, harass or cause offence
Part 3—Aggravated sentencing factor
Part 4—Prohibited hate groups
Part 5—Racial vilification offence
Part 6—Aggravated grooming offences
Part 7—Hate symbols

The ECAJ sets out below comments concerning Schedule 1 to the Bill, noting the substantial quantity of material to be considered within an extraordinarily short timeframe. Schedule 1 to the Bill comprises 43 pages, and the Explanatory Memorandum to Schedule 1 comprises 172 pages. The Bill was first published on **13 January 2026**, and submissions to the Committee are due by **4pm, Thursday, 15 January 2026**.

The Office of the Special Envoy to Combat Antisemitism (**ASECA Office**) has had substantial input into this submission and the below comments and recommendations are made jointly by the ECAJ and the ASECA Office. We also invite the Committee to consider past submissions from the ASECA Office and the ECAJ with respect to hate speech, proscribed hate organisations, and hate symbols. A brief outline of the most relevant ECAJ submissions from the previous two years is provided here:

• Submission[5] banning the public display of Nazi symbols and gesture – 20 April 2023
• Submission[6] to the Parliamentary Joint Committee on Intelligence and Security concerning its review of the Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023 – 21 July 2023

[5] https://www.ecaj.org.au/ecaj-submission-banning-the-public-display-of-nazi-symbols-and-gesture/

• Submission[7] to the Online Safety Act – 21 June 2024
• Submission[8] to the Senate Inquiry into Antisemitism at Australian Universities – 26 August 2024
• Submission[9] to the Senate Legal and Constitutional Affairs Legislation Committee's Inquiry into the *Criminal Code Amendment (Hate Crimes) Bill 2024* – 29 October 2024
• Submission[10] to the Parliamentary Joint Committee on Human Rights Inquiry into Antisemitism at Australian Universities December 2024
• Submission[11] to the Department of Education's National Anti-Bullying Review – 20 June 2025
• Submission[12] to the Review of criminal law protections against the incitement of hatred following the introduction of the *Crimes Amendment (Inciting Racial Hatred) Act 2025* (Inciting Racial Hatred Act) (the Sackar Review).
• Submission[13] to NSW Law Reform Commission Anti-Discrimination Act Review – 22 August 2025
• Submission[14] to the Independent National Security Legislation Monitor about the definition of 'terrorist act' under section 100.1 of the Criminal Code Act 1995 (Cth) (Criminal Code) – 30 October 2025

Please note that the ECAJ also made a submission to parliament in February 2021 highlighting, among other issues, the role and influence of radical and extremist groups, whose conduct to date has fallen short of the legislative threshold for proscription, in fostering social division in Australia and as a conduit to persons on a pathway to extremism.

Overall comments

The need for the Bill has been highlighted not only by the 14 December Bondi antisemitic terrorist attack, but also the climate of hatred that preceded it.

[6] https://www.ecaj.org.au/ecaj-submission-to-parliamentary-joint-committee-on-intelligence-and-security-review-of-the-counter-terrorism-legislation-amendment-prohibited-hate-symbols-and-other-measures-bill-2023/
[7] ECAJ submission to Online Safety Act review 2024 - ECAJ – this submission covered the prevalence of online antisemitic hate speech
[8] ECAJ calls on Senate to support judicial inquiry - ECAJ
[9] ECAJ calls for new Federal offence of serious vilification - ECAJ
[10] https://www.ecaj.org.au/ecaj-calls-on-parliament-for-action-on-campus-antisemitism/
[11] https://www.ecaj.org.au/document/national-anti-bullying-review-submission/. Please note that this submission explored issues of unchecked antisemitism in the education system and the failure of legislation or policy to adequately address this. In the final report there was no express mention of the issue of antisemitic bullying despite its prevalence.
[12] This is not yet publicly available.
[13] Letter to Anti-Discrimination Act 1977 (NSW) review - ECAJ
[14] https://www.ecaj.org.au/redefining-terrorism/

For more than 15 years, spurious civil liberties arguments have been used to justify burdening hate speech laws with unnecessary additional elements that for all practical purposes have been impossible to prove. The result has been that people engaged in notorious examples of hate speech have not been held to account. With some of the existing offences, there have been no prosecutions at all, let alone convictions. It is plain that the current hate speech laws are not fit for purpose, which is why the present Bill has now been put forward, and social cohesion has been damaged as a consequence.

Overall, the Bill is a significant step in the right direction, but it still suffers some significant shortcomings which will limit its effectiveness.

The following is a summary of recommendations made by the ECAJ and ASECA Office.

Recommendations

Part 1—Aggravated offences for preachers and leaders

1. The definitions of "*religious official*" and "*spiritual leader*", which enliven the aggravated offence, should be framed by reference to the individual's conduct, rather than their position. The conduct might include "*offering religious instruction or guidance*", or "*promoting views purportedly based on religious principles*", which advocate or threaten force or violence.
2. For consistency, all of the Division 80 offences of advocating/threatening force/violence should have a single fault element of recklessness, and the offences should specifically include conduct which implicitly advocates/threatens force/violence. This is fundamental to ensure that the offences encompass extremist preachers and leaders who advocate violence through implied terms, such that the aggravated penalties are put to use.
   Note: the ECAJ made this recommendation in its submission to the Senate Legal and Constitutional Affairs Legislation Committee on 29 October 2024 (**ECAJ 2024 Submission**).
3. Mandatory minimum penalties should be introduced for all offences in Division 80, Subdivision C and CA of the Code, including the new offence of '*publicly promoting or inciting racial hatred*'. The existing mandatory minimum penalty for the display of prohibited and Nazi symbols and performing a Nazi salute (currently 12 months' imprisonment),[15] should be increased to 2 years' imprisonment.

[15] *Criminal Code* (Cth), ss 80.2H(1) ; 80.2HA(1).

Part 2—Increased penalty for using a postal or similar service to menace, harass or cause offence

4. Mandatory minimum penalties should also be introduced for the '*carriage service*' and '*postal service*' offences, in particular:
    a. the use of a carriage service to make a threat;[16] and
    b. the use of a carriage service to menace, harass or cause offence;[17]

where the recipient of the communication is a member of a targeted group (including businesses or institutions, such as museums, community centres, Kosher eating establishments and places of worship).

Part 3—Aggravated sentencing factor

5. The aggravating factor should include other attributes as protected attributes.
6. The aggravating factor should also encompass:
    a. Persons involved (directly or indirectly) in the commission of the offence with knowledge of another person's motivation or demonstration of hatred, prejudice, ill will; and
    b. Persons who target or select an individual or group on the basis of a protected attribute, where the person is motivated by other matters.

Part 4—Prohibited hate groups

7. The definition of *'organisation'* within section 114A.2 should include, as an alternative, an "*unincorporated group*", to better encompass informal structures that are used to mobilise individuals who associate with an extremist organisation.
8. The framework should provide for an organisation to be listed as a prohibited hate group where the objects or demonstrated methods of an organisation expressly or by necessary implication entail the promotion of hatred on the basis of a protected attribute.
9. The scope of relevant conduct should include conduct promoting, advocating or glorifying violence *outside* of Australia.
10. The definition of '*hate crime*' should extend to 'minor' damage where the underlying offence is motivated by, or involves a demonstration of, hatred or hostility against a targeted group.
11. The standard of proof with respect to the definition of a '*hate crime*' should be specified within section 114A.4.

[16] *Criminal Code* (Cth), s 474.15.
[17] *Criminal Code* (Cth), s 474.17.

12. The definition of a '*member*' should be expanded, and specifically include, at an absolute minimum, a "*participant in the activities of, or a person who provides assistance to*" a prohibited organisation.
13. The framework should prohibit a broader range of activities, including by the following amendments:
    a. The term '*directs*' should be broadened to include "*leading or instructing*"" or "*acts in a leadership or advisory capacity within the organisation*", to better encompass the type of senior roles that individuals carry out within prohibited hate groups, which are often decentralised.

    b. The term '*recruit*' is defined as "*includes induce, incite and encourage*".[18] This definition does not reflect the agile, highly siloed and decentralised manner in which groups of this kind operate. At an absolute minimum, the definition should encompass activities such as "*soliciting, promoting participation in, or association with*," such groups.

Part 5—Racial vilification offence

14. The serious vilification offence should extend protection for other inherent attributes such as sex, sexual orientation, gender identity, sex characteristics, illness, disability, or personal association with a person who is identified by reference to any of the above attributes.
15. The offence should include alternative fault elements of intention or recklessness.
16. The requirement to prove that the conduct would, in all the circumstances, cause a reasonable member of the targeted group to be intimidated, to fear harassment or violence, or to fear for their safety, should be removed.
17. The defence for religious teaching or discussion should be removed. At an absolute minimum, the words "*or otherwise referencing*" should be removed.
18. The good faith defence ought not to apply to the offence of intentional promotion of hatred or the offence of "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". Proof of any such intention is completely incompatible with "good faith".
19. The offence should be supplemented with guidance concerning the *kinds* of conduct captured by the offence provision, overseen by the Attorney General and published by the Australian Federal Police.

[18] Section 114A.2(1).

Part 7—Hate symbols

20. The definition of '*prohibited organisation symbol*' should be broadened to include symbols or gestures that are so closely associated with a prohibited hate group, or terrorist organisation, that they are customarily used to identify the group or any part of the group or its ideology.

Enforcement

The ECAJ seeks assurance that the Australian Federal Police (**AFP**), Office of the Commonwealth Director of Public Prosecutions (**CDPP**) and all other relevant law enforcement agencies will monitor and track the commission of criminal offences covered by the legislation, and keep a record of whether or not charges are brought in relation to acts that are investigated. This ought to include:

- Incidents reported to police as 'hate crimes', or otherwise identified by law enforcement officers in the context of investigative activity (Stage 1);
- Alleged offences prosecuted by police (Stage 2);
- Alleged offences referred to a prosecutorial agency which are finalised out of court (Stage 3); and
- Alleged offences referred to a prosecutorial agency which are finalised by court outcome (Stage 4).
- Details of the outcome including sentence, if any (Stage 5).

We note that a corresponding recommendation was made by the ASECA Office in its position paper provided to the Federal Hate Crimes Database team which is (now) situated within the Department of Home Affairs.

Further, we note that the ASECA Office has provided to the Attorney-General's Department an outline of further priority measures for criminal law reform, which included a recommendation that the Federal Government establish a specialist working group to review and report to Government on the enforcement of these and other provisions, with respect to criminal offences involving antisemitism.

Executive Summary of reasons for recommendations

The following is a summary of the reasons behind our recommendations, with reference to the following areas of the Bill.

Aggravated offences for preachers and leaders (Part 1)

Organisations that promote hatred, and the individuals within their infrastructure, often work through concealed, durable, long-term investment in soft power and under-the-radar radical influence.[19] Placing undue emphasis on individuals who are "*religious officials*" and/or "*spiritual leaders*" may result in the aggravated offence not being enlivened even though the individual concerned is still exercising influence and engaging in acts that constitute the offence.

The amendments in the Bill are aimed *inter alia* at strengthening the urging violence offences in these sections so as to capture conduct where a person who urges force or violence is reckless as to whether the violence will occur. In order to ensure the offence achieves its objective, we propose that the fault element of recklessness also apply to the primary element, a '*person advocates the use of force or violence against a group*', and that the offences specifically include conduct which implicitly advocates/threatens force/violence.

To date, sentencing for crimes committed under Division 80, Subdivision C of the Code, have not reflected the broader community's or the judiciary's view as to the seriousness of these crimes, and we therefore believe that mandatory minimum penalties are necessary to ensure just outcomes.

Increased penalty for using a postal or similar service to menace, harass or cause offence (Part 2)

As discussed in further detail below, while we welcome an increased penalty for this offence, we are concerned that outcomes under the existing s474.17 offence foreshadow the likelihood that conduct of this nature will not be punished adequately unless mandatory minimum penalties are introduced.

Aggravated sentencing factor (Part 3)
Hate crimes aimed at individuals or groups on the basis of a protected attribute reveal an anti-social propensity to cause social division and breach the peace, and these hate crimes therefore have significance at the societal level that goes beyond the harm inflicted on the victim.

Whilst the aggravating factor is framed in terms of "belief" relating to a protected attribute, we would like to see a clarifying provision that specifies that this includes a mistaken belief (e.g. see s114A.3(3)). We see this as important to ensure that there is no possibility that a

[19] For example, Lorenzo Vidino, *The New Muslim Brotherhood in the West* (New York: Columbia University Press, 2010), 1–25

Address all correspondence to: PO Box 1114, Edgecliff, NSW 2027
Fax (+61 2) 9361 5888 | www.ecaj.org.au | info@ecaj.org.au

proven offender escapes liability under Part 3 because of a mistaken belief at the relevant time.

The aggravating factor should include individuals or groups who choose to be involved in the commission of an offence knowing that it is motivated by/involves a demonstration of hatred (e.g. graffiti attacks in a targeted neighbourhood), or who target individuals or groups on the basis of a protected attribute (e.g. Dural caravan), but in each case are motivated by other matters.

Prohibited hate groups (Part 4)
We also commend the Government for taking action to constrain hate groups, which seek to exploit the freedoms of our democratic society in order to undo them. However, the legislation still has some way to go in recognising how such groups currently operate – using informal structures and intermediaries, and exploiting charitable, professional, digital, financial and community infrastructures and loopholes, to spread hate and sow the seeds of violence. Where such conduct is carried out by those in positions of influence, it must be viewed especially seriously.

The new racial vilification offence (Part 5)
A most important and welcome reform is the new racial vilification offence. A prosecutor will now only need to prove that an accused person has knowingly promoted racial hatred, rather than be required to prove incitement of an audience. Many previous hate speech cases failed to result in prosecutions because of the impossibility of proving incitement beyond reasonable doubt. However, there are four serious shortcomings in the way that the new serious vilification offence has been drafted.

First, the offence is limited to the promotion of hatred of others on the basis of their race. Promoting hatred on the basis of other inherent attributes such as gender identity, sexual orientation, age or disability will not be proscribed. The principle of equal justice requires that people who are targeted for hatred on the basis of these other attributes are equally entitled to protection.

Secondly, the proposed offence does not cover instances where a person recklessly promotes racial hatred. Past experience has shown that requiring proof of intention beyond reasonable doubt is likely to be setting the bar too high.

Thirdly, the proposed offence would exempt quoting or referencing religious texts for the purposes of religious teaching or discussion. The entire concept of a religious exemption for

racial hatred is a relic of outdated thinking. None of the world's recognised religions knowingly and deliberately promotes hatred of entire communities because of their race, and to the extent that any religion were to do so, it would be thoroughly shameful. In *Wertheim v Haddad*, a case brought under section 18C of the *Racial Discrimination Act* (Cth), Stewart J rejected a submission that antisemitic statements, including "*disparaging generalisations about Jews*" such as "*Jews are descendants of apes and pigs*" were made as part of a genuine religious teaching or discussion, in circumstances where the lecture referenced religious texts.[20] A religious exemption in the proposed offence would enable offenders to put forward the same argument that Haddad made. Invoking religion as an excuse to dehumanise and mistreat others simply on the basis of who they are, must surely be a thing of the past. Religions are at their best when they promote love, understanding and mutual respect, consistent with their teachings about the sanctity of human life and the inviolability of human dignity.

Fourthly, the serious vilification offence will only be established if a prosecutor can prove that the conduct would intimidate a reasonable member of the targeted group, or put them in fear for their safety. This requirement goes beyond what is stipulated in Article 4 of the International Convention for the Elimination of All Forms of Racial Discrimination, on which the offence is based. Guilt or innocence should be decided solely on the basis of the conduct of the offender; the impact on the victim should be relevant only in determining the sentence.

Hate symbols (Part 7)

The ECAJ seeks for this provision to cover symbols or gestures that are so closely connected with a prohibited hate group that they are customarily used to identify the group or any part of the group or its ideology. This would include, for example, the portraits of identifiable leaders of these groups, the hand gestures associated with support for these organisations, and symbology. We note that in Germany, symbols associated heavily with Hamas such as the inverted red triangle have been banned since 2024, and all phrases related to the Nazi regime are prohibited. Just this week Jonathan Hall, KC, the Independent Reviewer of Terrorism Legislation in the United Kingdom, has called for a "*rethink*" in view of the display of Hamas imagery and violent chants during protests.[21] This is a national security issue, and ought to be addressed comprehensively at a national level.

Further, we are concerned at the lack of guidance and degree of discretion required in reaching a determination as to whether the conduct in question 'would constitute a hate

[20] *Wertheim v Haddad* [2025] FCA 720 at [150]-[151], [158], [222]-[232].
[21] See, Australian Financial Review, '*Bondi terror attack: UK terror watchdog says Jew hatred normalised, free speech rethink needed*', 14 January 2026.

crime' in the absence of a court finding to that effect, and it is far from clear how in practice this determination would be reached.

Enforcement

The ECAJ seeks assurance that the Office of the Commonwealth Director of Public Prosecutions (**CDPP**) and all law enforcement agencies will monitor and track the commission of crimes covered by the legislation and keep a record of whether or not charges are brought in relation to acts that are investigated. This ought to include:

- Incidents reported to police as 'hate crimes', or otherwise identified by law enforcement officers in the context of investigative activity (Stage 1);
- Alleged offences prosecuted by police (Stage 2);
- Alleged offences referred to a prosecutorial agency which are finalised out of court (Stage 3); and
- Alleged offences referred to a prosecutorial agency which are finalised by court outcome (Stage 4).
- Details of the outcome including sentence if any (Stage 5).

We note that a corresponding recommendation was made by ASECA Office in its position paper provided to the Federal Hate Crimes Database team which is (now) situated within the Department of Home Affairs.

Further, we note that the ASECA Office has provided to the Attorney General's Department an outline of further priority measures for criminal law reform, including a specialist group (including a representative of the ASECA Office) to monitor the enforcement of these and other provisions, where they concern antisemitism, and report to Government. We urge the Government to adopt and implement these measures.

Detailed consideration of provisions

Part 1: Aggravated offences for preachers and leaders who advocate or threaten force or violence

Pursuant to Part 1 of the Bill, there will be new aggravated offences for preachers and leaders who advocate or threaten force or violence against groups, or members of groups, etc.[22]

[22] Part 1 (Item 7) of the Bill.

Application of the aggravated offence

The offence applies where the conduct is engaged in by the person in their capacity as a "*religious official*" or "*spiritual leader or other leader (however described) of a group, who provides religious instruction or pastoral care (whether religious or secular)*".[23] The Explanatory Memorandum confirms that the offence is intended to capture circumstances where "*those who occupy a position of significant trust and authority in the community exploit this influence by espousing violent extremist views*".[24]

The offence attracts a penalty of 10 years' imprisonment, or 12 years' imprisonment where the conduct threatens the peace, order and good government of the Commonwealth.

Recommendation 1

The ECAJ recommends that the definitions, which enliven the aggravated offence, be framed by reference to the individual's conduct, rather than the position as a "*religious official*" (etc). The conduct might include offering religious instruction or guidance, or promoting views purportedly based on religious principles, which advocate or threaten force or violence.

A definition framed by reference to the individual's conduct would be more effective, as in practice, individuals who have advocated violence against the Australian Jewish community have at times done so in the context of offering religious instruction, rather than in the context of an official capacity as a "*spiritual leader*". This has been detailed in ECAJ's previous submissions to the Federal Government.[25] For example:

1. On 15 December 2023, a self-described preacher said the following during a sermon that was posted online "*This is the barbarity, this is the inhumane nature of this Israeli-Zionist state … [The Israel-Palestine conflict] has to be a spark for the umma (Muslim community) and a spark to the final solution…*".[26]
2. Further, following the terrorist attack in Bondi in December 2025, the Al Madina Dawah Centre issued a statement stating Wisaam Haddad, a known "*hate preacher*", had no role at the Centre other than "*occasional invitations as a guest speaker*".[27]

[23] Section 80.2DA(1)(b).
[24] Explanatory Memorandum, p 105 [38].
[25] See, eg, ECAJ 2024 Submission, p 8.
[26] See, eg, Daily Mail Online, '*Radical Islamic preacher calls for a 'final solution' carried out by a Muslim army in shocking anti-Israel sermon in Sydney'*, 18 December 2023.
[27] See, eg, News.com.au, '*Jihadi preacher Wissam Haddad breaks silence on Bondi massacre'*, 19 December 2025.

Address all correspondence to: PO Box 1114, Edgecliff, NSW 2027
Fax (+61 2) 9361 5888 | www.ecaj.org.au | info@ecaj.org.au

It appears that the Government intends to capture these individuals within the terminology used in the provision, in that the Explanatory Memorandum elaborates on the intended definitions of the terms "*religious official*" and "*spiritual leader*", and indicates that these terms are not intended to be limited to those with an official title.[28] However, this would be better achieved by a legislative definition framed by reference to the individual's conduct, rather than position.

By way of example of the shortcomings of the proposed approach, which places undue emphasis on traditional hierarchies and leadership models, ISGAP's November 2025 report on "The Muslim Brotherhood's Strategic Entryism into Western Society: A Systematic Analysis" explains the concept of tamkeen ("enablement, empowerment"),[29] which connotes a deliberate process of embedding religious extremism within institutions.[30] This strategy is implemented by individuals engaging in specific influential conduct, and that influence does not necessarily arise by virtue of a title or position of leadership.

In ECAJ's February 2021 submission to this Committee's Inquiry into matters relating to extremist movements and radicalism in Australia, we noted as follows:

> *"Jihadi activity in Australia has thus evolved from an internationally-organised phenomenon, to nationally-organised, to loosely inter-connected networks, to lone actors with only tenuous links, if any, to others (mainly via online platforms), even if they take their ideology and inspiration from overseas networks. This is the opposite direction to that in which right wing extremist groups have evolved. Accordingly, as is the case with white supremacist groups, a focus on leaders and key members of Islamist and jihadi groups will at best provide only a partial picture of those who have the greatest propensity to engage in violence, and may overlook potential offenders, including lone actors, who are on the fringes of these groups or who have only loose connections with them, especially via online platforms."* [31]

Fault element for offences of advocating or threatening force or violence

Part 1 of the Bill does not amend the fault elements for the Division 80 offences of advocating or threatening violence. As such, the offences still require proof that an

[28] Explanatory Memorandum, p 105 [38], [40]-[45].
[29] Institute for the Study of Global Antisemitism and Policy, "The Muslim Brotherhood's Strategic Entryism into Western Society: A Systematic Analysis" (New York: ISGAP, November 2025), 12–34.
[30] Lorenzo Vidino, *The New Muslim Brotherhood in the West* (New York: Columbia University Press, 2010), 1–25.
[31] ECAJ submission to the Inquiry into matters relating to extremist movements and radicalism in Australia, February 2021, available at: https://www.ecaj.org.au/inquiry-into-matters-relating-to-extremist-movements-and-radicalism-in-australia/

individual *intentionally* advocates the use of force or violence against targeted groups or members of groups.

This threshold remains too high and is unlikely to encompass the conduct of preachers and leaders who advocate force or violence against targeted groups *implicitly*. For example, the sermon at (1) above was found not to breach Federal or State laws,[32] presumably because the preacher's exhortation that the conflict in the Middle East "*has to be a spark for the umma (Muslim community) and a spark to the final solution*" was not considered sufficient to establish that the preacher *intentionally* advocated violence against the Australian Jewish community. This was despite the preacher's borrowing of the term 'final solution', which is well-understood and connotes genocide of the Jews.[33] It follows that the fault element within these offences must be reformed to ensure that they encompass hate preachers and leaders who advocate violence *per se*, and that the aggravated penalties are put to use.

Recommendation 2
ECAJ repeats the recommendation in its 2024 submission, that the Division 80 offences of advocating/threatening force/violence should have a single fault element of recklessness, and the offences should specifically include conduct which implicitly advocates/threatens force/violence.

Mandatory minimum penalties for Division 80 offences
Pursuant to Parts 1 and 6 of the Bill, the maximum penalty for the offences of advocating or threatening force or violence against protected groups will increase from 5 years' to 7 years' imprisonment. Where the conduct threatens the peace, order and good government of the Commonwealth, the maximum penalty will increase from 7 years' imprisonment to 10 years' imprisonment.

Further, where the conduct falls within the aggravated offences for preachers and leaders', the maximum penalty will increase to 10 years' imprisonment, or 12 years' imprisonment where the conduct threatens the peace, order and good government of the Commonwealth.

However, mandatory minimum penalties are required to ensure that offenders do not escape with sentences that fail to reflect the seriousness of these serious offences. This has been reflected in outcomes under the comparative state offences.

[32] The Australian, '*Political, Jewish leaders: Radical cleric inaction gives 'green light' to incendiary 'final solution' sermon*', 18 December 2023.
[33] Final solution | Definition, Holocaust, & Third Reich | Britannica

For example, in November 2025, an individual was convicted of the New South Wales offence of inciting violence, following sustained online commentary (over a number of months) calling for a genocide against the LGBTQI+ community, including reprehensible statements such as "*murder all trans*".[34] The sentencing magistrate described the conduct as a "*very serious*" example of the offence, however ultimately sentenced the offender to a community corrections order of 12 months, with supervision and a requirement to complete a mental health plan.[35] The offence is punishable by a maximum of 3 years' imprisonment.[36]

Further, in November 2024, neo-Nazi leader Jacob Hersant was sentenced to only one month imprisonment under Victorian legislation after being convicted of unlawfully performing a Nazi salute in public. The salute was performed outside court after Hersant had been sentenced to a community corrections order for attacking a group of hikers in a national park. The maximum penalty is 12 months imprisonment or a fine of $23,000.[37]

Recommendation 3

The ECAJ recommends the introduction of mandatory minimum penalties for all offences in Division 80, Subdivision C of the Code, including the new offence of '*publicly promoting or inciting racial hatred*'. The existing mandatory minimum penalty for the display of prohibited and Nazi symbols and performing a Nazi salute (currently 12 months' imprisonment),[38] should be increased to 2 years' imprisonment.

Part 2: Increased penalties for using a postal or similar service to menace, harass or cause offence

Pursuant to Part 2 of the Bill, the penalty for the offence of '*using a postal or similar service to menace, harass or cause offence*'[39] will increase from 2 years' to 5 years' imprisonment. This will be equivalent to the penalty in the corresponding offence where a '*carriage service*' is used.[40] The maximum penalty within each offence will reduce to 12 months' imprisonment on summary disposition.[41]

Regrettably, organisations and individuals in the Jewish community have received a plethora of menacing, harassing and threatening communications, which have had significant adverse impacts upon them.

[34] *R v Thomas Fordham* (Unreported, Local Court of NSW Proceedings 2025/00160249, 19 November 2025).
[35] *R v Thomas Fordham* (Unreported, Local Court of NSW Proceedings 2025/00160249, 19 November 2025).
[36] *Crimes Act 1900* (NSW), s 93Z.
[37] https://www.canberratimes.com.au/story/9138123/neo-nazi-facing-jail-time-after-losing-salute-appeal/
[38] *Criminal Code* (Cth), ss 80.2H(1); 80.2HA(1).
[39] *Criminal Code* (Cth), s 474.12.
[40] *Criminal Code* (Cth), s 474.17.
[41] *Crimes Act 1914* (Cth), s 4J(3)(a).

The inadequacy of the reform proposed under Part 2 change is reflected in outcomes under the existing offence of '*using a carriage service to menace, harass or cause* offence', which already attracts a maximum penalty of 5 years' imprisonment.[42] For example:

- On 18 October 2023 – less than two weeks after the 7 October massacre in Israel – an individual sent a threatening message to a Jewish school, "*You are the children of Satan… Enjoy your day. I hope it's your last…"Praise Hitler. If only he was here to continue the mass destruction of your bloodline.*"[43] On 5 February 2025, the offender was sentenced in the Local Court of New South Wales. The sentencing magistrate said she was "*absolutely horrified*", and condemned the conduct as "*despicable [*and*] disgusting*" and "*very, very serious*".[44] Her Honour refused to hear a submission on remorse, however in view of the offender's youth (21 years of age) and lack of criminal history, "*reluctantly*" did not record a conviction and imposed a 14-month conditional release order.[45]

- More recently, on 2 May 2025, an individual made several phone calls to a Jewish Australian, stating, amongst other things, "C*ock sucking mother F****. [words in Arabic followed]. You hate Palestinians, huh? F****ing cock sucker. We know who you are*".[46] On 19 December 2025, the offender was sentenced in the Moorabbin Magistrates' Court. The sentencing magistrate emphasised that he could not convey strongly enough that the conduct was "*disgusting… outrageous behaviour*", and noted the community are "*fed up with…hate in the community*".[47] His Honour described the impact upon the victim as "*horrendous*", including causing immediate fear concerning his and his family's safety, which precluded the victim attending work appointments in different locations and caused substantial financial loss. The victim reported not sleeping properly leading to exhaustion, headaches, and an inability to participate in daily life.[48] The offender was sentenced to 1 month imprisonment; and a 12 month community corrections order, including 50 hours community service and a program to address anger management.[49]

These outcomes demonstrate that the judiciary appreciates the seriousness of conduct of this kind, and the impact upon members of the Australian Jewish community. However, the

[42] *Criminal Code* (Cth), s 474.17.
[43] SkyNews, '*Sydney woman found guilty after sending threatening message to Jewish school branding pupils 'the children of Satan'*' (5 February 2025).
[44] SkyNews, '*Sydney woman found guilty after sending threatening message to Jewish school branding pupils 'the children of Satan'*' (5 February 2025).
[45] SkyNews, '*Sydney woman found guilty after sending threatening message to Jewish school branding pupils 'the children of Satan'*' (5 February 2025).
[46] *R v Nour Abdulrahim* (Moorabbin Magistrates' Court proceedings R11838435, Magistrate Foster, 19 December 2025).
[47] *R v Nour Abdulrahim* (Moorabbin Magistrates' Court proceedings R11838435, Magistrate Foster, 19 December 2025).
[48] *R v Nour Abdulrahim* (Moorabbin Magistrates' Court proceedings R11838435, Magistrate Foster, 19 December 2025).
[49] *R v Nour Abdulrahim* (Moorabbin Magistrates' Court proceedings R11838435, Magistrate Foster, 19 December 2025).

legislation does not provide an adequate framework to reflect that denunciation in the sentences imposed.

Recommendation 4

For these reasons, the ECAJ recommends the introduction of mandatory minimum penalties for '*carriage service*' or '*postal service*' offences, in particular the use of a carriage service to make a threat,[50] and the use of a carriage service to menace, harass or cause offence,[51] where the recipient of the communication is a member of a targeted group (including businesses or institutions, such as museums, community centres, Kosher eating establishments and places of worship).

Part 3: Aggravated sentencing factor

Part 3 of the Bill introduces an 'aggravating factor' on sentences for Federal offences. The 'aggravating factor' requires a court to take into account, "*as a reason for aggravating the seriousness of the criminal behaviour*", the fact that the person's conduct was motivated, whether wholly or in part, by hatred of another person or group distinguished by race, or national or ethnic origin.

The person's conduct is taken to be motivated by hatred if, at the time of the conduct, or immediately before or immediately after the conduct, the person demonstrated, or expressed, hostility, malice or ill-will in respect of the race, or national or ethnic origin, of the targeted person or group. This applies even where the person was mistaken as to the relevant attribute. We note that in many antisemitic incidents that are reported to our organisation, the offender will demonstrate or express hatred towards Jews, Israeli nationals, or 'Zionists' (used frequently as a euphemism for Jews) before, during or after the offending conduct. For example, on 3 October 2024, which coincided with the Jewish festival of Rosh Hashanah (New Year), 16 religious Jewish boys, aged 17 and 18, were screamed at while walking to the beach in St Kilda, Melbourne, by a group of about 20 youths who shouted "Hitler should have gassed you all" whilst doing the Nazi salute.[52]

The close correlation between a rise in hatred and a rise in violence was referred to by Justice Lonergan of the Supreme Court of New South Wales, in determining an application for bail brought by an individual accused of involvement in spray painting certain hateful slogans onto cars and property in November 2024.[53] Her honour observed:

[50] *Criminal Code* (Cth), s 474.15.
[51] *Criminal Code* (Cth), s 474.17.
[52] https://www.ecaj.org.au/wordpress/wp-content/uploads/ECAJ-Report-Anti-Jewish-Incidents-Australia-2025.pdf
[53] *R v Stojanovski* [2025] NSWSC 149 at [1] (Lonergan J).

> "...*Racially-motivated attacks on property make the community unsafe. Hate slogans directed to a group of people dehumanises that target group and labels them worthy of hate. Targeted attacks of this kind against any person or group of people promotes fear and loathing, states of mind that destabilise, damage and render unsafe our community as a whole*".[54]

A similar observation was made by the Law Reform Commission of Western Australia in 1989, when it recommended the introduction of several offences to address a campaign of racist posters and graffiti (including of an antisemitic nature) in Perth.[55] In its final report, the Commission observed:

> "*evidence has increasingly emerged of a direct association between the racist poster phenomenon and actual or threatened incidents of violence or public disorder.*"[56]

In this respect, the surge in antisemitic attacks highlights that criminal law protections against the incitement or promotion of hatred against vulnerable groups does not merely concern social cohesion, but ultimately social safety and well-being.

The ECAJ welcomes the introduction of the aggravating factor.

Recommendation 5

The ECAJ recommends that the aggravated sentencing factor include other attributes as protected attributes. Conduct motivated by, or involving a demonstration of hostility, malice or ill-will in respect of all inherent attributes is deserving of recognition as a more serious form of criminal conduct.

Recommendation 6

The ECAJ recommends that the aggravating factor also encompass:

a) Persons involved (directly or indirectly) in the commission of the offence with knowledge of another person's motivation or demonstration of hatred, prejudice, ill will; and

---

[54] *R v Stojanovski* [2025] NSWSC 149 at [19] (Lonergan J).

[55] Law Reform Commission of Western Australia, '*Project No 86 – Incitement to Racial Hatred*', Final Report, October 1989 (**Project 86 – Incitement to Racial Hatred – Final Report**), p 15 [5.1]. For an overview of the amendments made in the Legislative Council and the offence provisions enacted in 1990, see, Law Reform Commission, 30th Anniversary Report – Incitement to Racial Hatred and *Criminal Code Amendment (Racist Harassment and Incitement to Racial Hatred) Act 1990* (WA). The offences were amended in 2004, and now appear in *Criminal Code 1913* (WA), Chapter XI — Racist harassment and incitement to racial hatred.

[56] Project 86 – Incitement to Racial Hatred – Final Report, p 9 [4.1].

b) Persons who target or select an individual or group on the basis of a protected attribute, where the person is motivated by other matters.

(a) Persons involved (directly or indirectly) in the commission of the offence

The first category would encompass a person who assists, or acts in concert with, a person to whom the aggravating factor applies. For example, on 21 November 2024, two individuals, Mr Farhat and Mr Stojanovski, acted together to carry out a high-profile antisemitic attack in Woollahra, which involved the graffiti of antisemitic slurs across vehicles and property, and the damage and destruction of vehicles by fire, causing over $100,000 of damage.[57]

The sentencing magistrate found that Mr Farhat was motivated by racial hatred, and that the corresponding 'aggravating factor' under New South Wales sentencing legislation applied to his conduct.[58] However, the sentencing magistrate "*found it necessary*" to draw a distinction with Mr Stojanovski.[59] Whilst the sentencing magistrate emphasised that it was "*abhorrent*" and "*perverse*" for Mr Stojanovski to continue in the conduct once he understood the nature of the attacks, he was motivated by financial reward rather than racial or religious hatred.[60] It followed that the 'aggravating factor' did not apply to Mr Stojanovski's conduct, even though he had assisted to carry out the antisemitic attack with full knowledge of its abhorrent nature.[61]
The result illustrates that the aggravating factor must be broadened to encompass persons involved (directly or indirectly) in the commission of the offence with knowledge of the relevant motivation or demonstration of hatred.

(b) Persons who target or select an individual or group on the basis of a protected attribute

The second category would encompass a person who deliberately targets a person or group on the basis of a protected attribute, albeit that they are motivated by other matters. For example, on 11 January 2025, two individuals, Mr Sofilas and Mr Moule, carried out an antisemitic attack at Newtown synagogue.[62] Mr Sofilas graffitied ten swastikas to an exterior wall of the synagogue, whilst Mr Moule lit a small fire on an exterior wall.[63] Both individuals

[57] See, *R v Mohommed Farhat* (Unreported, Local Court of New South Wales proceedings 2024/00437311, Magistrate Nash, 18 November 2025). See also, ABC, '*Sydney man avoids jail over $100,000 anti-Israel vandalism spree*', 25 November 2025.
[58] See, *R v Thomas Stojanovski* (Unreported, Local Court of New South Wales proceedings 2024/00442976, Magistrate Nash, 25 November 2025).
[59] See, *R v Thomas Stojanovski* (Unreported, Local Court of New South Wales proceedings 2024/00442976, Magistrate Nash, 25 November 2025).
[60] See, *R v Thomas Stojanovski* (Unreported, Local Court of New South Wales proceedings 2024/00442976, Magistrate Nash, 25 November 2025).
[61] See, *R v Thomas Stojanovski* (Unreported, Local Court of New South Wales proceedings 2024/00442976, Magistrate Nash, 25 November 2025).
[62] The Guardian, '*Newtown synagogue arson accused motivated by money, neot hatred, court told*', 14 July 2025.
[63] The Guardian, '*Newtown synagogue arson accused motivated by money, neot hatred, court told*', 14 July 2025.

knew that they were targeting a synagogue.[64] However, both were said to have acted on instructions, and be motivated by financial reward, rather than racial or religious hatred.[65] The result illustrates that the aggravating factor' must be broadened to encompass persons who target or select an individual or group on the basis of a protected attribute, albeit that they were motivated by other matters.

Part 4: Prohibited hate groups

Part 4 of the Bill creates a new listing framework for prohibited hate groups, namely organisations which engage in or advocate hate crimes on the basis of race, or national or ethnic origin.[66]

The framework is a positive step forward, however in the ECAJ's view, it requires reform to ensure it provides effective protections for the Australian community.[67] Such reform should also involve consultation with organisations possessing expertise in the operations of such groups, for example the Australian Strategic Policy Institute, ISGAP and the Financial Integrity Hub. This is particularly the case given that in some instances groups that may attract a prohibited hate group listing under the new legislative regime in Australia, may be designated as a proscribed terrorist organisation in some other jurisdictions.
We also note that Australia's sanctions regime is often said to be permit-heavy, executive-centric and reactive[68], relying on DFAT licensing and post-hoc enforcement. We are concerned that the new framework for designation of proscribed hate organisations may replicate these issues.

In the very short timeframe afforded to consider the extensive framework, the ECAJ makes the following recommendations.

The definition of 'organisation' (s 114A.2)

The proposed framework defines '*prohibited hate group*' as "*an organisation that is specified by the regulations for the purposes of this definition*".[69] The definition of '*organisation*' mirrors the definition in section 80.1A of the *Code*, namely "*a body corporate or an unincorporated body, whether or not the body:*

[64] The Guardian, '*Newtown synagogue arson accused motivated by money, neot hatred, court told*', 14 July 2025.
[65] The Guardian, '*Newtown synagogue arson accused motivated by money, neot hatred, court told*', 14 July 2025.
[66] Commonwealth Attorney General's Department, '*Factsheet - Combatting Antisemitism, Hate and Extremism Bill 2026*'; Explanatory Memorandum at [131].
[67] Per section 114A.1, the Objects of the Part are to "*protect the Australian community against social, economic, psychological and physical harm by prohibiting organisations that engage in, prepare or plan to engage in, or assist the engagement in, or advocate engaging in, conduct constituting a hate crime*".
[68] Anton Moiseienko, 'One can't be too careful? Australia's cautious sanctions policy', *ANU Law School,* 5 Dec 2022, available at: One can't be too careful? Australia's cautious sanctions policy | ANU Law School
[69] Section 114A.2(1).

(a) is based outside Australia; or
(b) consists of persons who are not Australian citizens; or (c) is part of a larger organisation".[70]

The Explanatory Memorandum states that the definition of organisation "*...is intended to be broad, to capture the various constructions of organisations which may be specified as prohibited hate groups under this framework. This includes where the organisation is not solely Australian based, or where the organisation listed may be a specific part of a larger organisation, as well as other legal and non-legal configurations such as associations.*" (emphasis added)[71]

The ECAJ expresses reservations as to whether the definition would adequately encompass informal, social network structures, for example Signal or Whatsapp groups, or joint use of cryptocurrency wallets or crowdfunding platforms that are used to mobilise people who associate with an extremist organisation.

Recommendation 7
The ECAJ recommends that the term "*unincorporated group*" be included as an alternative to "*unincorporated body*".

The definition of a 'hate crime' and the scope of relevant conduct (s 114A.3, s 114A.4)
The ECAJ is of the view that the threshold for listing of prohibited organisations is too high. The proposed framework provides for an organisation to be listed once the AFP Minister is '*satisfied on reasonable grounds*' that, inter alia, an organisation "*has engaged in, prepared or planned to engage in, or assisted the engagement in, conduct constituting a 'hate crime'".*[72]

Recommendation 8
The ECAJ recommends that the framework provide for an organisation to be listed as a prohibited hate group where the objects or demonstrated methods of an organisation expressly or by necessary implication entail the promotion of hatred on the basis of a protected attribute.

[70] Section 114A.2(1).
[71] Explanatory Memorandum, p, 112-113 [86].
[72] Section 114A.4(1)(a)(i).

Recommendation 9

The ECAJ further recommends that the scope of relevant conduct should include promoting, advocating or glorifying violence *outside* of Australia, including by a leading religious or communal figure whose conduct is relevant to the conduct of the organisation. For example, on 8 October 2023, at a rally in Lakemba, Sheikh Dadoun proclaimed to a crowd *"I'm smiling and I'm happy... I'm elated, it's a day of courage, it's a day of pride, it's a day of victory. This is the day we've been waiting for."*[73] This might be achieved by specifying within the objects clause that "*conduct constituting a hate crime*" includes conduct engaged in within Australia or internationally.[74]

Recommendation 10

The definition of '*hate crime*' includes "*conduct, or threat of conduct... that involves, or would involve... causing serious damage to property*".[75] The ECAJ recommend that this also extend to 'minor' damage where the underlying offence is motivated by, or involves a demonstration of, hatred or hostility against a targeted group. This would capture conduct such as the graffiti and arson attacks in late 2024 and 2025, which inflicted widespread fear across the Jewish community, but on some occasions involved only minor property damage, because the graffiti could be removed or the fire did not take hold (for example, at Newtown synagogue).

The standard of proof with respect to the definition of a 'hate crime' (s 114A.4)

The proposed framework provides for an organisation to be listed once the AFP Minister is '*satisfied on reasonable grounds*' that, inter alia, an organisation "*has engaged in, prepared or planned to engage in, or assisted the engagement in, conduct constituting a 'hate crime'*".[76] In turn, the term *hate crime*' is defined to include conduct that '*would constitute*' certain offences (emphasis added).[77]

Recommendation 11

The ECAJ understands that the standard of proof with respect to whether conduct that '*would constitute*' certain offences is the balance of probabilities. The ECAJ recommends that s 114A.4 specify this as the standard of proof.

[73] ABC, '*Pro-Palestinian rally at Lakemba in Sydney criticised for 'celebration' of attacks on Israel*', 9 October 2023.
[74] Section 114A.1.
[75] Section 114A.3(3)(a)(ii).
[76] Section 114A.4(1)(a)(i).
[77] Section 114A.3.

Address all correspondence to: PO Box 1114, Edgecliff, NSW 2027
Fax (+61 2) 9361 5888 | www.ecaj.org.au | info@ecaj.org.au

Recommendation 12

Further, the objects clause refers to *"prohibiting organisations that engage in, prepare or plan to engage in, or assist the engagement in, or advocate engaging in, conduct constituting a hate crime"*.[78] This language is opaque, and suggests that a conviction may be required for an organisation to be listed under the regime.

The ECAJ recommends that the objects clause cross reference subsections 114A.3 and 114A.4(3),(4), to make clear that a conviction is not required for the AFP Minister to be satisfied an organisation has engaged in a '*hate crime*'.[79]

The definition of a 'member' (s 114B.2)

The framework provides that once an organisation is listed as a '*prohibited hate group*', a person commits an offence if they are intentionally a member of that group.[80] The term '*member*' is defined to include an '*informal member*', a person who has '*taken steps to become a member*' and in the case of a body corporate, a director or officer.[81]

The Explanatory Memorandum states that the definition:

> "*...is broad and is intended to provide specific examples of the types of persons who are taken to be members and active supporters of a given organisation. This includes where a person actively supports the organisation, and is connected to the organisation, but where the organisation does not have a formal membership arrangement. For example, where the person actively participates in the activities of the organisation and espouses support for its goals and objectives.*"[82]
>
> "*...would ensure that individuals who exercise influence or control within these organisations, or who demonstrate a clear commitment to their objectives, are captured by the offences regardless of their official title or designation. This is intended to reflect the reality that terrorist organisations and prohibited hate groups often operate through loosely affiliated networks and informal structures to capture all individuals who contribute to their harmful activities*".[83]

The ECAJ expresses reservations as to use of the term '*member*'. The term '*member*' is antiquated and does not reflect the modern reality of how extremist organisations operate.

---

[78] Section 114A.1(a).
[79] Section 114A.4(3),(4).
[80] Section 114B.2.
[81] Section 114A.2(1).
[82] Explanatory Memorandum, p, 112 [84].
[83] Explanatory Memorandum, p 161 [410].

Further, the definition of '*member*' within the provisions does not sit neatly with the intended scope of individuals described in the Explanatory Memorandum. Please refer to Part 1 Recommendation 1 above for more detail.

Recommendation 12

The ECAJ recommends that this be addressed by an expanded definition of '*member*', which specifically includes, at the very least, a '*participant in the activities of, or a person who provides assistance to*' a prohibited organisation.

The scope of proscribed conduct (Division 114B)

The framework provides that once an organisation is listed as a '*prohibited hate group*', a person commits an offence if they intentionally:

a) direct the activities of the group;[84]
b) are a member of the group;
c) recruit a person to join, or participate in the activities of, the group;[85]
d) provide certain training to the group;[86]
e) get funds to, from or for a prohibited hate group;[87] or
f) provide support to a prohibited hate group.[88]

Recommendation 13

ECAJ recommends that the framework prohibit a broader range of activities, including by the following amendments:

a) The term '*directs*' should be broadened to include "*leading or instructing*'" or "*acts in a leadership or advisory capacity within the organisation*", to better encompass the type of senior roles that individuals carry out within prohibited hate groups, which are often decentralised.

b) The term '*recruit*' is defined as "*includes induce, incite and encourage*".[89] This definition does not reflect the agile, highly siloed and decentralised manner in which groups of this kind operate. At an absolute minimum, the definition should encompass activities such as "*soliciting, promoting participation in, or association with*," such groups.

[84] Section 114B.1
[85] Section 114B.3
[86] Section 114B.4
[87] Section 114B.5
[88] Section 114B.6
[89] Section 114A.2(1).

This will better address identified vulnerabilities include informal remittance systems (hawala), cash movements below reporting thresholds, online crowdfunding platforms, encrypted payment systems enabling micro-donations, cryptocurrency transfers and insufficient regulation of professionals who establish or manage legal entities.

Part 5: Serious vilification offence based on race and/or advocating racial supremacy

The Bill introduces a new offence of promoting or inciting hatred based on race, colour, or national or ethnic origin, where the conduct would, in all the circumstances, cause a reasonable member of the targeted group to be intimidated, to fear harassment or violence, or to fear for their safety.[90] The Bill also introduces an adjacent offence of disseminating ideas of superiority over or hatred of another person or a group because of the race, colour or national or ethnic origin, which is also subject to the requirement to prove intimidation or fear.

The introduction of a national serious vilification offence is a landmark development, and significant step forward for Australia. It brings Australia closer to compliance with Article 4(a) of the International Convention on the Elimination of All Forms of Racism and Discrimination.[91] The ECAJ has for many years advocated the introduction of a national serious vilification offence. However, several aspects require further reform and strengthening, to ensure the offence operates effectively.

Scope

The offence applies only to the promotion of hatred on the ground of race, colour or national or ethnic origin.

Recommendation 14

The ECAJ repeats the recommendation it has made in every proposal for legislative reform in this area, namely, that a serious vilification offence ought to include conduct promoting hatred on the basis of other inherent attributes such as gender identity, sexual orientation, age or disability. The principle of equal justice requires that people who are targeted for hatred on the basis of these other protected attributes are equally entitled to protection.

The term 'promote'

The ECAJ welcomes use of the term '*promote*'. The term appropriately directs the focus of the inquiry to the impugned conduct, rather than its intended effect on a particular audience (which requirement has been a flaw of incitement-based offences).

[90] Combatting Antisemitism, Hate and Extremism Bill 2026, Item 22, proposed s 80.2BF.
[91] International Convention on the Elimination of All Forms of Racial Discrimination | OHCHR

The requirement to prove incitement has hindered the effectiveness of vilification offences for many years.[92] For example, in 2021, following an outbreak of hostilities overseas between Israel and Hamas, Hizb ut-Tahrir Australia held a demonstration at Lakemba which attracted about 200 people. During the demonstration, a prayer leader shouted ""*O Allah, give us control over the necks of Jews!... Destroy, destroy the Jews! Destroy, destroy the Jews!*"[93] The conduct was referred to authorities, however no prosecution eventuated,[94] presumably because intentional incitement could not be proven to the criminal standard.

Fault elements

The offence proscribes only the *intentional* promotion of hatred.

Recommendation 15

The ECAJ recommends that the offence include alternative fault elements of intention or recklessness.

This is particularly important to ensure individuals who promote hatred *implicitly*, and in coded terms – including extremist hate preachers – are not beyond the scope of the offence provision. For example, in 2014 an extremist preacher described Jewish people as "*the hidden evil*" and called for "*a jihad against the Jews*".[95] The conduct was reported to Federal and/or State authorities,[96] however no prosecution eventuated,[97] presumably as the *intention* to incite violence could not be proven beyond reasonable doubt.

The difficulty of proving the element of intention was, after many years, recognised by the New South Wales Government. For forty years, no prosecutions were brought under the New South Wales offence of inciting violence (and its predecessor).[98] Finally, in 2018, the New South Wales Government broadened the offence of inciting violence to include alternative fault elements of intention and recklessness, in recognition that "*procedural impediments*", including the requirement to prove intention, had hindered the practical application and overall effectiveness of the provision.[99]

---

[92] See, ASECA Submission to Sackar review, ECAJ submission to Cth Hate Crimes Bill.
[93] NSW Jewish Board of Deputies Submission to the NSW Law Reform Commission Review, '*Serious racial and religious vilification*', pp 3-4.
[94] NSW Jewish Board of Deputies Submission to the NSW Law Reform Commission Review, '*Serious racial and religious vilification*', pp 3-4.
[95] The Guardian, *'Advocating genocide' to be crime under proposed new national security laws'*, 4 September 2015.
[96] SMH, '*Radical Muslim leader's anti-Semitic rants referred for criminal charges*', 1 April 2015.
[97] The Guardian, '*New South Wales hate speech laws to clamp down on 'violent extremists'*.
See also, ECAJ 2024 Submission, p 4.
[98] Second Reading Speech to the *Crimes Amendment (Publicly Threatening and Inciting Violence) Bill 2018* (NSW), in New South Wales, Legislative Assembly, Parliamentary Debates, 5 June 2018 (The Hon Mark Speakman MP), p 42.
[99] Second Reading Speech to the *Crimes Amendment (Publicly Threatening and Inciting Violence) Bill 2018* (NSW), in New South Wales, Legislative Assembly, Parliamentary Debates, 5 June 2018 (The Hon Mark Speakman MP), pp 42-44. The predecessor offence was section 20D of the *Anti-Discrimination Act 1977* (NSW).

The same issue has plagued Commonwealth provisions. In 2024, the ECAJ recommended to the Commonwealth Government that all Division 80 offences of urging or advocating violence include the fault element of recklessness, to ensure conduct such as the above falls within the scope of the provisions. The ECAJ repeats that recommendation and proposes that the new offence of promoting racial hatred include alternative fault elements of intention or recklessness. We note that Article 4 of the ICERD does not stipulate a fault element that is limited to intention.

Requirement to prove fear etc.

The offence requires proof, to the criminal standard, that the conduct would, in all the circumstances, cause a reasonable member of the targeted group to be intimidated, to fear harassment or violence, or to fear for their safety, where fear includes apprehension. This requirement must be removed.

First, the requirement goes well beyond what is required under Article 4(a) of the ICERD, which requires state signatories (including Australia) to "*declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred*".[100] No additional elements are specified. In this respect, the offence does not constitute a fulfilment of Australia's obligations under the Convention.

Second, the requirement fails to recognise that the promotion of hatred itself inflicts significant harm, on the targeted group and broader society. The inherent harm of the promotion of hatred has been recognised in the international arena for some time. For example, in 1990, over 35 years ago, the Chief Justice of the Supreme Court of Canada, Chief Justice Dickson, described the harm caused by the promotion of hatred to the targeted group and broader society, as follows:

- First, it may be of "*grave psychological and social consequence*" to members of the targeted group, and yield a severely negative impact on their sense of self-worth and acceptance – causing them to take drastic measures, including avoiding contact with the broader community;[101] and
- Second, it can "*create serious discord between various cultural groups"*, threaten society's value for equality, and the connection of target group members to their community.[102]

[100] See, *International Convention on the Elimination of All Forms of Racial Discrimination.*
[101] *R v Keegstra* [1990] 3 SCR 697, 746-747.
[102] *R v Keegstra* [1990] 3 SCR 697, 746-747, 757.

Further, violent acts of racial hatred are more likely to occur in a social climate in which expressions of racism are free to proliferate.[103] Three national inquiries in Australia have concluded that this is the case.[104]

The overly narrow scope of the offence is illustrated by the imputations found to have contravened Part IIA of the Racial Discrimination Act in *Wertheim v Haddad*.[105] The imputations reflected age-old antisemitic tropes which plainly promoted hatred against the Jewish people. However, the narrowly cast Federal offence would, by reason of the requirement to prove fear, appear to capture only two of the twenty-five imputations that were established in that case.

The Explanatory Memorandum acknowledges the limiting effect of this provision, as follows: "*The offences are designed to extend protections to targeted groups from conduct which would significantly impact their ability 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.*"[106] (emphasis added)
Third, there is no corresponding requirement in Western Australian or Victorian serious vilification offences; nor in the Canadian offence '*wilful promotion of hatred*'. In particular, the case law pursuant to the Canadian offence of '*wilful promotion of hatred*' demonstrates that the threshold of '*hatred*' is sufficiently high.[107]

Fourth, the requirement distracts the focus from the impugned conduct to the reaction of the targeted group, which should not be relevant to liability. Further, it creates a 'back door'

---

[103] Mari Matsuda, 1993. "Public Response to Racist Speech: Considering the Victim's Story". In *Words that Wound: Critical Race Theory, Assaultive Speech, and the First Amendment*, M. Matsuda, C. Lawrence, R. Delgado and K. Crenshaw (eds.), pp. 17-52. Colorado: Westview Press, at pp.17 and 22.
[104] The ***National Inquiry into Racist Violence*** conducted by the Human Rights and Equal Opportunity Commission (the predecessor of the present Australian Human Rights commission) in1991, concluded that "the evidence presented to the Inquiry also supports the observation that there is a connection between inflammatory words and violent action": Human Rights and Equal Opportunity Commission, *Report of National Inquiry into Racist Violence in Australia* (1991), p. 144: http://www.humanrights.gov.au/publications/racist-violence-1991 (viewed 17 August 2014). The ***Royal Commission into Aboriginal Deaths in Custody*** (1991) also concluded that there is a clear nexus between racist language and violence and that expressions of racism are both a 'form of violence' and a promoter of subsequent violence against Aboriginal people Like the report of the National Inquiry into Racist Violence, it recommended that the government legislate to provide civil remedies to victims of racial vilification and also provide a conciliation mechanism for complaints, with exemptions for "*publication or performance of works of art and the serious and non-inflammatory discussion of issues of public policy*": Royal Commission into Aboriginal Deaths in Custody, National Report Volume 4 (1991), at 28.3.34 and 28.3.49 http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol4/26.html (viewed 17 August 2014). The Australian Law Reform Commission, in its ***Multiculturalism and the Law*** report (1992) concluded (with one dissenter) that prohibition of "racist abuse" is consistent with existing limits on freedom of expression, and that public expressions of racism are damaging to the whole community, not only minority groups, undermining the tolerance required for Australia to survive as a multicultural society: Australian Law Reform Commission, *Multiculturalism and the Law, Report No 57* (1992), para 7.44: http://www.austlii.edu.au/au/other/alrc/publications/reports/57/ (viewed 17 August 2014).
[105] *Wertheim v Haddad* [2025] FCA 720 at [157].
[106] Explanatory Memorandum, p 137 [252].
[107] The term '*hatred*' has been defined by the Supreme Court of Canada as involving "*emotion of an intense and extreme nature that is clearly associated with vilification and detestation*": *R v Keegstra* [1990] 3 SCR 697, 777.

opportunity for an accused to elevate perspectives which are not representative of the targeted group. This has also occurred in other contexts.

For example, in *R v Sewell*,[108] Mr Sewell was accused of engaging in offensive behaviour by reason of his participation in a white supremacist rally, in which he led a group of roughly 30 men dressed in black with a banner stating "*Australia for the White Man, National Socialist Network*". [109] The accused called evidence from a witness who gave evidence that the rally "*just looked like a bunch of boys in a group, going for a walk*" and that "*nothing stood out as offensive*".[110] The presiding magistrate concluded Mr Sewell had not engaged in offensive behaviour, noting "*Behaviour deemed unacceptably offensive by some, may not trouble others at all*".[111]

Consideration of broader societal context

Notwithstanding the above, the requirement marks a slight improvement on the equivalent provision in the New South Wales offence, in that the Explanatory Memorandum indicates that the phrase "*all the circumstances*" is intended to ensure that the full context of the offending is taken into account, including "*consideration of the cumulative effect of events on the targeted group, including conduct engaged in by persons other than the offender*".[112]This would be better specified in the offence provision itself.

This amendment reflects the concern expressed by the ASECA Office and the ECAJ that the equivalent provision in the New South Wales offence may fail to recognise that the promotion of hatred may *cumulatively* cause fear to a targeted group. For example, when viewed in isolation, an individual act, such as graffiti of "*F*** THE JEWS*" or "*JEW DOGS*" may not be proven (to the criminal standard) to cause intimidation or fear.[113] However, they plainly promote hatred against the Jewish people, and yield a significant impact on the targeted group when viewed in light of the overall significant escalation of anti-Jewish incidents in the two years following the October 7 terrorist attacks.[114]

Recommendation 16

The ECAJ recommends that the entirety of sub-section(1)(c) be removed, namely the requirement to prove that the conduct would, in all the circumstances, cause a reasonable

[108] *R v Sewell* (Unreported, Ballarat Magistrates' Court proceedings, Magistrate Wardell, 28 October 2025).
[109] ABC, '*Magistrate finds Neo-Nazi leader Thomas Sewell not guilty of offensive behaviour over Ballarat rally*', 28 October 2025.
[110] ABC, '*Magistrate finds Neo-Nazi leader Thomas Sewell not guilty of offensive behaviour over Ballarat rally*', 28 October 2025.
[111] ABC, '*Magistrate finds Neo-Nazi leader Thomas Sewell not guilty of offensive behaviour over Ballarat rally*', 28 October 2025.
[112] Explanatory Memorandum, p 138 [254].
[113] Examples of this graffiti appear at ECAJ 2025 Antisemitism Report, pp 26, 28.
[114] See, Julie Nathan, Executive Council of Australian Jewry, '*ECAJ Report on Anti-Jewish Incidents in Australia 2024*' (**ECAJ, 2024 Anti-Jewish Incidents Report**); Julie Nathan, Executive Council of Australian Jewry, '*ECAJ Report on Anti-Jewish Incidents in Australia 2025*' (**ECAJ, 2025 Anti-Jewish Incidents Report**).

member of the targeted group to be intimidated, to fear harassment or violence, or to fear for their safety.

Religious teaching exemption

The offence provision exempts conduct that "*consists only of directly quoting from, or otherwise referencing, a religious text for the purpose of religious teaching or discussion*". For the reasons which follow, this exemption must be removed to ensure that the promotion or incitement of hatred is not excluded from liability merely because it occurs in the context of religious teaching or discussion.

First, there is no rationale for this exemption in the context of a serious vilification offence based on race, nationality and ethnic origin. The protection of religious opinion cannot be extended to "*shield*" communications which otherwise promote hatred.[115] Otherwise, religious teaching may be used as a "*Trojan horse*" to preach hatred.[116] For example, the exemption would permit an individual to recite from a religious text that Jewish people are "*descendants of apes and pigs*".[117]

Second, the exemption is not necessary to protect the expression of religious beliefs which do not expressly vilify. Conduct which *only* quotes the substance of a religious text without additional commentary is not likely to satisfy the threshold of intentionally inciting hatred. That is, if *intention* is proved, then *ipso facto* the "*purpose*" is to incite (or promote) hatred of groups or individuals rather than religious teaching or discussion. Conversely, if the sole purpose is religious teaching or discussion, then an intention to incite (or promote) hatred will be absent.

Third, the significant gap created by the exemption is not resolved by the fact that the defendant bears an evidential burden in relation to the exemption. The evidential burden requires only that the defendant "*adduce or point to evidence that suggests a reasonable possibility that the matter exists or does not exist.*"[118] This is a very low threshold. In the context of the exemption, it might be satisfied simply by a defendant adducing a copy of the relevant religious text (which discloses the relevant passages) and giving evidence that the accused quoted or referenced the passage for the purpose of religious teaching or discussion.

---

[115] *R v Harding* [2001] OJ 4953 at [49] (see [44]-[49]); *R v Harding* [2001] OJ 325 at [42]; *R v Harding* [1998] OJ 2603.
[116] *R v Harding* [1998] OJ 2603 per Linden J.
[117] *Wertheim v Haddad* [2025] FCA 720 at [150].
[118] *Criminal Code* (Cth), s 13.3.

Fourth, the introduction of this exemption is also out of step with international developments. For example, the Canadian Government has announced that it will remove the defence to the Canadian offence of '*wilful promotion of hatred*' of expressing opinions on a religious subject in 'good faith', which has not been successful since its inception.[119]

Fifth, one argument that has been advanced to justify the religious exemption, at least in relation to the proposed "disseminate" offence in s.80.2BF(1)(b)(ii), is that all religions claim to be superior to other religions, and they should be free to say so. The argument is misconceived. A statement asserting that one religion is superior to another cannot in any sense be a statement about "*race, colour or national or ethnic origin*". It is necessarily a statement about religious doctrine. As it is not a statement that is made "*because of the race, colour or national or ethnic origin of the target or target group*", it is not caught within the terms of the offence to begin with, and thus requires no special exception or defence in order to escape criminal liability.

While the ECAJ unequivocally opposes the inclusion of the religious text exemption in the offence, we note that if it remains, at an absolute minimum, the words "*or otherwise referencing*" should be removed because their inclusion could sanction commentary that incites hatred merely by "*referencing*" a religious text, no matter how tenuous the link between the incitement and the text may be.

Further, the exemption should be narrowly construed so that it does not exempt conduct which, in all the circumstances, intentionally promotes hatred. This is somewhat reflected in the Explanatory Memorandum, which states that "*reading a passage from religious scripture…could fall within the defence*"(emphasis added), however the exemption "*cannot be misused to excuse conduct which goes beyond genuine religious teaching or discussion and is instead intentionally used to cause harm.*"

Explanatory Memorandum

The Explanatory Memorandum states the following with respect to the exemption:

> "*The requirement that the conduct consists only of directly quoting from, or otherwise referencing, a religious text would limit the scope of the defence to circumstances where the person's conduct is limited to quoting or referencing (such as paraphrasing) the text itself. It is also required that the conduct occur in the course of, and for the purposes of, religious teaching or discussion. For example, reading a passage from*

[119] See, *Criminal Code* (Ca), s 319(3.1)(c). See also, National Post, '*Hate-speech laws to lose exemption for religious beliefs*', 1 December 2025.

> *religious scripture during a sermon or study group for the purpose of theological discussion could fall within the defence. However, quoting a religious text and then sharing an interpretation of that text to encourage listeners to act with hostility toward a racial group would not. The quoting, or interpretation of the text, needs to be sufficiently connected to the religious text to ensure the defence cannot be misused to excuse conduct which goes beyond genuine religious teaching or discussion and is instead intentionally used to cause harm.*"[120] (emphasis added)

Importantly, the "*harm*" referred to in this passage must be understood as the promotion of hatred *itself*. To that end, the reference to "*sharing an interpretation of that text to encourage listeners to act with hostility toward a racial group*" (emphasis added) is unhelpful, as it distracts the focus from the accused's conduct, and toward the intended effect of that conduct upon their audience. This reflects the limitations of incitement-based vilification offences. This phrase should be removed from the Explanatory Memorandum, or amended to "*sharing an interpretation of that text to encourage listeners to act with hostility* ***that, in all of the circumstances, intentionally promotes hatred*** *toward a racial group*".

Further, insofar as the Explanatory Memorandum refers to "*genuine religious teaching or discussion*", it should be amended to specify that the "*genuineness*" of the teaching or discussion is an objective standard, and the defendant's belief as to the "*genuineness*" of their conduct is irrelevant.

Overall, however, we oppose the inclusion of a religious text exemption in any form. As the judgment of the Federal Court in *Wertheim v Haddad* demonstrates, attempts to cloak the intentional promotion of racial hatred in religious garb are mendacious, and should be rejected.

Recommendation 17

The ECAJ recommends that the entirety of sub-section (4), namely the defence for religious teaching or discussion, be removed. At an absolute minimum, the words "*or otherwise referencing*" should be removed.

Good faith defence

By reason of Item 23 of the Bill,[121] the serious vilification offence is subject to a defence for certain acts done in '*good faith*'.[122] This is an anomaly and must be removed.[123] An individual

[120] Explanatory Memorandum, p 139 [263].
[121] Item 23 inserts the serious vilification offence within Division 80, Subdivision C of the Code (as section 80.2BF).
[122] See, *Criminal Code* (Cth), s 80.3.

cannot – in any circumstances – *intentionally* promote or incite hatred and do so in good faith. Whilst the scope of the good faith defence is quite narrow, it should not apply *at all* to the offence of intentionally promoting hatred.

In early 2025, the Federal Government acknowledged that "*There are no circumstances in which urging force or violence can truly be done 'in good faith'*",[124] and enacted reforms to exclude the operation of the good faith defence from the offences of urging or advocating violence.[125] This adopted a recommendation in ECAJ's 2024 submission, and must be extended to the new offence of intentionally promoting hatred.

Recommendation 18
The ECAJ recommends that the good faith defence not apply with respect to the offence of intentional promotion of racial hatred or the offence of intentionally disseminating ideas of racial superiority or hatred.[126]

Guidance

Recommendation 19
The ECAJ recommends that the offence be supplemented with guidance concerning the *kinds* of conduct captured by the offence provision, overseen by the Attorney General and published by the Australian Federal Police. The guidance should make clear that the offences capture conduct which incites or promotes violence or hatred *implicitly* or in coded form.

The guidance might also include an explanation of the form in which hatred is expressed against different groups. With respect to the Jewish community, this explanation should include the International Holocaust Remembrance Alliance (**IHRA**) Working Definition of Antisemitism, including the illustrative examples,[127] which has been adopted in full by the Australian Government.[128]

---

[123] This may be achieved by amending section 80.3 (Defence for acts done in good faith) to include a reference to section 80.2BF (Publicly promoting or inciting racial hatred etc).
[124] Explanatory Memorandum to *Criminal Code Amendment (Hate Crimes) Bill 2024* (Cth).
[125] See, *Criminal Code Amendment (Hate Crimes) Bill 2025* (Cth).
[126] This may be achieved by amending section 80.3 (Defence for acts done in good faith) to include a reference to section 80.2BF (Publicly promoting or inciting racial hatred etc).
[127] See, IHRA working definition.
[128] See, Australian Government, '*Australian Government response to the Special Envoy's Plan to Combat Antisemitism*', p 5, which states "*The Australian Government's official definition of antisemitism is the International Holocaust Remembrance Alliance's working definition*".

Part 7—Hate symbols

Division 1

Division 1, inter alia, reverses the burden of proof for public interest elements of prohibited symbols offences, which concern whether an individual displayed a prohibited symbol or Nazi symbol, or performed a Nazi salute, for a legitimate purpose, such as an academic, religious and journalistic purpose.

By reason of the amendments, the accused would bear the evidential burden to prove (on the balance of probabilities) the existence of a '*legitimate purpose*'.[129] The onus would then shift back to the prosecution to disprove the defence. A prosecutor is also required to consider the existence of "*any lines of defence which are plainly open to, or have been indicated by*" the accused before proceeding with a prosecution.[130] The amendments are designed to significantly reduce complexity.[131]

The ECAJ supports this amendment as an important step to ensure the offence provision operates effectively and is not hindered by unduly complex requirements.

Division 2

Division 2, inter alia, lowers the fault element with respect to the display of prohibited terrorist organisation symbols from intention to recklessness, such that it is an offence to display a prohibited symbol, where the person "*is aware of a substantial risk that the circumstance exists [the symbol is a prohibited symbol] or will exist, and having regard to the circumstance, it is unjustifiable to take that risk*".[132]

To complement this change, a list of the most commonly used Nazi symbols, prohibited terrorist organisation symbols (including state sponsors of terrorism) and symbols used by prohibited hate groups will be published on the National Security website to support public awareness and law enforcement engagement with community groups.[133]

The ECAJ supports this amendment, noting that to date enforcement of the offence has been frustrated by an individual's incredulous claim that they were not aware that they were displaying a prohibited symbol – for example, a Hamas flag displayed in the context of a political demonstration about the Gaza war.[134]

---

[129] Explanatory Memorandum, p 155 [376].
[130] Explanatory Memorandum, p 154 [369].
[131] Explanatory Memorandum, p 154 [370].
[132] Explanatory Memorandum, p 159 [399].
[133] Explanatory Memorandum, p 159 [400], p 160 [408].
[134] See, eg, The Australian Jewish News, '*Jewish leaders outraged over Hamas flag loophole*', 12 September 2025.

Division 3

Division 3, inter alia, introduces a broader definition of "*prohibited organisation symbol*", which includes the symbols of prohibited terrorist organisations, prohibited hate groups and state sponsors of terrorism.[135]

The relevant definition has been slightly broadened to include symbols which the organisation uses, or members of the organisation use, to identify "*or any part*" of the organisation.[136] The definition is intended to capture symbols that are "*inextricably linked with*" a prohibited hate group.[137]

Recommendation 20

The ECAJ supports these amendments, however also recommends that the provision be broadened to include symbols or gestures that are so closely connected with a prohibited hate group, or terrorist organisation, that they are customarily used to identify the group or any part of the group or its ideology.

This would include, for example, the portraits of identifiable leaders of these groups, the hand gestures associated with support for these organisations, and symbology. We note that in Germany, symbols associated heavily with Hamas such as the inverted red triangle have been banned since 2024, and all phrases related to the Nazi regime are prohibited.

Division 4

Division 4, inter alia, amends the '*reasonable person*' test within the offence of display of a Nazi symbol or Nazi salute, to be a '*a reasonable person who is a member of the targeted group*'. The result is that the relevant circumstances are fulfilled where '*a reasonable person who is a member of a group*' would consider that the display of a prohibited Nazi symbol, or a Nazi salute, involves:

- dissemination of ideas based on racial superiority or hatred; or
- could incite another person or a group of persons to offend, insult, humiliate or intimidate targeted groups or members of the targeted group because of their race.

The ECAJ supports this amendment. As the Explanatory Memorandum states, it means that the focus is "*rightly placed*" on the impact the conduct would have on a reasonable member of the targeted group rather than a general member of the public.

[135] See also, Explanatory Memorandum, p 159 [399].
[136] S 80.2E(3)(a). Explanatory Memorandum, p 161 [413].
[137] Explanatory Memorandum, p 160 [407].

Address all correspondence to: PO Box 1114, Edgecliff, NSW 2027
Fax (+61 2) 9361 5888 | www.ecaj.org.au | info@ecaj.org.au

Conclusion

Whilst all legislation addresses social and economic issues, this Bill has an unusually high level of significance for Australia and for our current times. It is not only Jewish Australians who have observed with bewilderment and concern the impunity with which small numbers of extremists have been able to act and speak in ways which have undermined the peace, harmony and social cohesion that have traditionally been the hallmarks of public life in Australia.

Whilst criminal proscription can provide only one component of the answer to the destructive impacts of extremist hate speech, it is a critical component. The Bill has the potential – if it strikes the right balance across key areas - to set a community standard against criminal hate speech, prohibited hate organisations, and prohibited symbols, as well as better acknowledging the uniquely detrimental impact on societal cohesion that is caused by acts of racial hatred. We believe that this package of reform is essential, but that it must achieve its objectives if it is to command the respect of the vast majority of Australians. To that end, we urge the Committee to take into account our recommendations so that we, as a society, do not need to revisit this legislation in the wake of another cruel and entirely predictable antisemitic terrorist attack.

Please do not hesitate to contact us if you have any questions or wish to discuss any aspect of our response further.

Yours sincerely

Peter Wertheim AM
Co-CEO

Simone Abel
Head of Legal