



Victorian
Aboriginal
Legal Service

15 January 2025

Parliamentary Joint Committee on Intelligence and Security
Department of the House of Representatives
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Dear Committee

Re: Exposure Draft of the Combatting Antisemitism, Hate and Extremism Bill 2026 (Bill)

VALS is deeply concerned with the resurgence of neo-Nazis and the continued activities of white supremacist, genocidal settler-nationalist groups and other extremist actors that threaten the safety of people. Aboriginal communities have been targets of racial violence, genocide and extremism since colonisation. Laws and other measures aimed at combatting racism, hate and extremism are necessary and long overdue. However, any laws to address extremist groups must be addressed in a targeted, evidence-based way that promotes social cohesion and following a lengthy consultation process. In the absence of a robust and inclusive consultation process, many of the measures contained in this wide-ranging and complex Bill are likely to sow, rather than prevent, division and hate within our society.

VALS is deeply concerned with the Exposure Draft of the *Combatting Antisemitism, Hate and Extremism Bill 2026*, and the short consultation time provided to affected communities, including Aboriginal communities. While the Bill includes reasonable measures such as gun law reform, it is riddled with other measures that will have an oppressive impact on civil and political rights in Australia and risk discriminatory outcomes on innocent people, including Aboriginal people.

VALS has knowledge and experience in tailoring anti-vilification legislation to better protect civil and political rights and support social cohesion. VALS was heavily involved in the development of anti-vilification legislation in Victoria between 2023 and 2024, following recommendations from the [Inquiry into anti-vilification protections](#) in 2021. VALS was successful in having our proposed amendments to the *Equal Opportunity Act 2010* (Vic) and *Crimes Act 1958* (Vic) included in the [Justice Legislation Amendment \(Anti-vilification and Social Cohesion\) Bill 2024](#) through this process.

Drawing on this knowledge and experience, our recommendations on amendments to Parts 4, 5 and 7 of the *Combatting Antisemitism, Hate and Extremism Bill 2026*, and supporting reasons are outlined in the **Attachment** to this letter. Please feel welcome to contact VALS for further advice and consultation on the development of the Bill.

Nerita Waight

Yours sincerely,
Nerita Waight
Chief Executive Officer, VALS



Attachment – Recommendations on the Bill

Legislative Recommendations

1. Except for Schedule 4 of the Bill, the Government should delay the Bill and engage in an extensive and meaningful consultation before proceeding with the proposed reforms, including with a broad range of First Nations, disability, LGBTIQ+, legal, faith-based and multicultural groups.
2. In the purposes of the Bill, include a purpose *“to provide protections from vilification for people experiencing systemic injustice and structural oppression, including Aboriginal and Torres Strait Islander people.”*
3. Part 4 should be removed from the Bill, to enable further consultation and consideration of potential impacts on civil and political rights.
4. Part 5 must not be passed in its current form. Any new incitement offences must undergo rigorous community consultation and limitations on speech must be proportionate and necessary in pursuit of a legitimate objective.
5. If Part 5 is passed against our advice, amend the scope of the offence by:
 - a. Removing strict liability on proposed sub-s 80.2BF(1)(c); and
 - b. Amending sub-section 80.2BF(1)(c) to limit the application of the offence to circumstance where harm is actually caused.
6. If Part 5 is passed against our advice, amend the Bill to require consideration of context and power imbalance. For example, include a requirement that prosecuting authorities to consider context and power imbalance by including a note in section 80.2BF which reads *“In determining whether a person has contravened section 80.2BF, consideration should be given to the context (social, historical and political) and power imbalances (relative status and position) of the parties.”*
7. If Part 5 is passed against our advice, proposed section 80.2BF should include ‘public interest’ exemptions such as those in section 18D of the *Racial Discrimination Act 1975* (Cth) in addition to maintaining the application of the good faith defence in s 80.3 of the Criminal Code to proposed section 80.2BF.
8. Part 7 must not be passed in its current form.
9. If Part 7 is passed against our advice, any mandatory minimum sentence must be removed.
10. If Part 7 is passed against our advice, the burden of proof to exclude the availability of a public interest defence must lie with the prosecution
11. If Part 7 is passed against our advice, it must be put through a rigorous community consultation process.

Non-legislative Recommendations

12. Urgent investment in early intervention and non-carceral responses
13. Address the roots causes of white supremacy and settler-nationalist extremism:
 - a. Cultural change to address the drivers of hateful conduct and hate speech
 - b. Systems change including appropriate and ongoing research, training and community education
 - c. Funding of increased legal services (and collaborative service design), including in relation to strategic litigation, to build case law supporting anti-vilification reforms.



Legislative Recommendations

General

- 1. Except for Schedule 4 of the Bill, the Government should delay the Bill and engage in an extensive and meaningful consultation before proceeding with the proposed reforms, including with a broad range of First Nations, disability, LGBTIQ+, legal, faith-based and multicultural groups.**

We recommend that the National Gun Buyback and gun law amendments in Schedule 4 of the Bill proceed, while other elements of the Bill are removed and subject to further community consultation. The resurgence of neo-Nazis and the continued activities of extremists, white supremacist and genocidal settler-nationalist groups is not properly addressed by this legislation and risks discriminatory outcomes on Aboriginal people.

Criminal allegations of hate crimes and extremism are serious and stigmatising. Criminal laws can become a channel for discrimination by enabling increased police harassment, wrongful criminalisation and rights violations for Aboriginal people and other racialised and marginalised minorities. VALS holds real concerns that, in practice, these extremely broad measures could be used to stifle and criminalise political expression amongst marginalised groups, including Aboriginal people. These laws must go through a rigorous consultation process and be vetted for unintended consequences and to minimise the risks of misidentification and the misuse of police powers against innocent people.

By choosing to rush through this Bill without adequate consideration of issues of intersectionality and the multiple forms of hate and extremism that operate within our society, the government has not built the public support and understanding necessary for these proposed measures. Apart from Schedule 4, VALS considers that the contents of the Bill should not proceed to Parliament. Instead, the government should commence a formal consultation process, so that it has the time to hear from the broad range of First Nations, disability, LGBTIQ+, legal, faith-based and multicultural groups who are subjected to hate and violence within the Australian community to ensure that anti-vilification protections are provided to all marginalised people.

Purpose of the Bill

- 2. In the purposes of the Bill, include a purpose “to provide protections from vilification for people experiencing systemic injustice and structural oppression, including Aboriginal and Torres Strait Islander people.”**

Aboriginal people are one of the main groups targeted by intense vilification, an ongoing impact of colonisation which is persistent and widespread. We are concerned that the Bill may be weaponised against over-policed and minority groups experiencing systemic injustice, especially Aboriginal people, who the Bill should be designed to protect.

We consider that inclusion of the purpose in this recommendation will help to interpret application of the Act in a way that protects Aboriginal people because, as you are aware,



when interpreting legislation, judges and magistrates will give the purposes weight in determining parliamentary intent and the objectives of a Bill.

Part 4 - Prohibited Hate Groups

3. Part 4 should be removed from the Bill, to enable further consultation and consideration of potential impacts on civil and political rights.

The new framework in Part 4 for “prohibited hate groups” would grant the Home Affairs Minister power to designate organisations as “hate groups”, which would make it illegal to be a member of or associated with that organisation.

Racial violence and extremist conduct exists in Australia and needs to be addressed with urgency. Aboriginal people and communities have been routinely subject to the violent and hateful actions of white supremacists and genocidal settler-nationalists since colonisation. The violent attacks by neo-Nazis on Camp Sovereignty, interruption of a Welcome to Country at an ANZAC Day ceremony and the cowardly display of racist and hateful conduct at Northland Shopping Centre are some particularly egregious examples from the last 12 months alone. Many of the actions of these groups can and do fall within the meaning of terrorism and vilification but are rarely treated by government agencies, including police, as terrorism and vilification.¹ This treatment stands in sharp contrast to the over-policing of anti-genocide protests.² Many Aboriginal people and communities stand in solidarity with Palestine and other nation-States experiencing genocide and are impacted by this racially discriminatory policing.

However, we are concerned by the broad casting of a “prohibited hate group” to include instances where the group has engaged in, prepared, planned or assisted in a hate crime relating to race, national or ethnic origin, or has advocated hate crimes relating to race, national or ethnic origin. These are definitionally broad categories, without the requirement to prove intent, and have the potential to be harmfully and discriminatorily enforced when accompanied by expanded and unchecked enforcement powers.

The consideration of who is and is not deemed a “prohibited hate group” is inherently political. VALS is concerned that these proposed powers will be used in a discriminatory way, to capture activist groups engaging in legitimate protest, criticism and boycotting, often against the actions of the state and federal government. We are concerned that these laws will disproportionately impact Aboriginal groups, whose robust activism calls out the colonial legacy of settler violence, as well as being bound in intersectional and solidarity movements with Palestine and other nation-States experiencing genocide.

We are further concerned by the requirement that the AFP Minister would have to be satisfied that specifying the organisation as a prohibited hate group is reasonably

¹ We note that the government does not list the white supremacist extremist groups responsible for the attacks discussed as terrorist organisation. See <https://www.nationalsecurity.gov.au/what-australia-is-doing/terrorist-organisations/listed-terrorist-organisations>. Terrorist organisations are prescribed by the Australian Federal Police Minister under section 102.1(2) of the Criminal Code.

² MALS, [Legal Observer Team Report: The Policing of the DLF Protests](#) (January 2025), and VALS, [VALS supports the right to protest and condemns Victoria Police's response to anti-war protests](#) (Media Release) (23 September 2024).



necessary to prevent social, economic, psychological and physical harm to the Australian community by these organisations.

This definition which purports to prevent harm to the “Australian community” is too broad and lacks an appropriate threshold relating to “harm” to be reasonably and proportionately enforceable. We hold strong concerns that it will be co-opted for political purposes by various interest groups and weaponised against certain groups whose views they disagree with, under the guise of “harm to the community”.

Expansive and discretionary terrorism offences and powers can be strategically manipulated and weaponised against innocent people that governments seek to silence, surveil and persecute. The government runs a real risk that groups seeking to advance social justice and protest against structural oppression and forms of state violence could be targeted through this proposed legislation.

Colonial governments have done this to Aboriginal people before. An example of the misuse of special powers against Aboriginal people is when the Commonwealth Australian Security Intelligence Organisation (ASIO) listed non-violent Aboriginal activists in the Black Power movement as ‘persons of interest’ with ‘extremist tendencies’ and links to the Communist Party in the 1960-80s.³ The group was not engaged in violent criminal activity and was instead engaged in: setting up the Aboriginal legal and medical services, the National Black Theatre in Redfern and a breakfast program for children; supporting people to make complaints against police harassment; and protesting land theft and apartheid.⁴ Former ASIO officers confirmed that these allegations were not supported by adequate evidence and were used to justify surveillance of Professor Gary Foley, even though his activism is non-violent and based on social cohesion as opposed to hate.⁵ The rights of innocent Aboriginal people were undermined, and the state agencies’ use of terrorism powers did nothing to address the causes of terrorism or extremism in society.

The politically selective labelling of terrorism is real and demonstrated in the Victoria Police’s use of terrorist powers against anti-war activists engaged in lawful protest,⁶ while white supremacist groups and individual actors remain under-policed and unlisted as terrorist organisations.⁷

VALS opposes in all forms the proposed reforms to Part 4 of the Bill. The government ought to exercise caution and engage in consultation before proceeding with these reforms, particularly while other laws and protections exist to address such harmful behaviour such as Victoria’s recently passed anti-vilification legislation. We also note the current review into the definition of a ‘terrorist act’ in section 100.1 of the *Criminal Code*

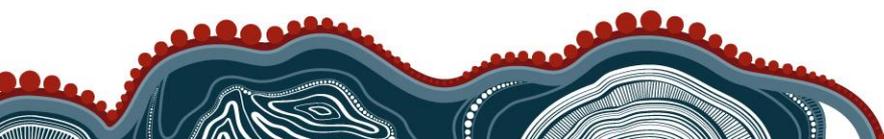
³ See testimony of Professor Gary Foley and former ASIO employees in: Gai Steel and Haydyn Keen, ‘[Aboriginal Activist Reads His Intelligence File: Australia’s Black Panthers](#)’ (Documentary) (2014). See also interview with Gary Foley: Sian Vate, [Black Power in White Australia](#), *Jacobin* (Interview) (January 2020).

⁴ Professor Gary Foley, [Black Power in Redfern 1968-1972](#) (Article) (October 2001).

⁵ See testimony of Professor Gary Foley and former ASIO employees in: Gai Steel and Haydyn Keen, ‘[Aboriginal Activist Reads His Intelligence File: Australia’s Black Panthers](#)’ (Documentary) (2014).

⁶ For example, police used special powers under terrorist legislation on anti-war protests at the Land Forces International Land Defence Exposition in Melbourne’s CBD, as documented in MALS, [Legal Observer Team Report: The Policing of the DLF Protests](#) (January 2025).

⁷ As evidenced by the lack of formal and timely police and government response to the Neo Nazi action at the Northland Shopping Centre on 31 May-1 June, and the fact that multiple prominent Neo Nazi organisations are not listed as terrorist organisations.



Act 1995 which seeks to review the effectiveness and implications of the definition, whether the legislation contains appropriate safeguards for protecting the rights of individuals and whether it remains necessary and proportionate to the current threat of terrorism⁸. It is appropriate that the government engage with and consolidate existing laws and reforms which are seeking to improve community safety before rushing to pass any legislation.

Finally, we strongly caution the government to not rely solely or predominately on these carceral responses to racialized hate and extremism as criminal laws and police powers do not address the root causes of social issues and instead lead to racial, religious and other discrimination in Australia. The strength of Australia's democracy comes from civic activism, freedom of speech, civil liberty groups and a healthy history of protests and demonstration. This Bill will have the effect of putting these groups, often with significant membership, under unnecessary, unjustified, disproportionate scrutiny. We remain highly concerned that these laws will fuel further stigma, division and racism as opposed to fostering social cohesion at this uniquely delicate time.

Part 5 -Racial Vilification Offence

4. Part 5 must not be passed in its current form. Any new incitement offences must undergo rigorous community consultation and limitations on speech must be proportionate and necessary in pursuit of a legitimate objective.

Aboriginal people are routinely subject to the violent and hateful actions of white supremacists and genocidal settler-nationalist since colonisation. The University of Newcastle Colonial Frontier Massacre Project is a detailed resource about the many frontier massacres that occurred between 1788 and 1930, and has identified 438 massacres of Aboriginal people across Australia to date.⁹ Despite this, we entirely oppose the proposed offence in proposed new s 80.2BF which creates an offence for publicly promoting or inciting racial hatred etc.

While we staunchly oppose antisemitism and racial and religious discrimination of any kind, our view is that the scope is too broad and not fit for the purpose of countering religious extremism in the wake of the Bondi massacre.

As it is currently drafted, we consider that the offence could easily be weaponised against groups engaging in legitimate protest and opposition to people or groups of people who may be of a particular race, colour or national or ethnic origin. For example, we are concerned that an Aboriginal person would be arrested for conduct that legitimately challenges oppressive systems and people in positions of relative power and authority while using language referring to 'white people'.

We are also concerned that the draft provision includes an example to suggest that subsection 80.2BF(1) of the offence would be made out for: "Inciting antisemitic hatred against Jews in a public place where a reasonable member of the Jewish community

⁸ [Defining terrorism: Review of the definition of a 'terrorist act' in section 100.1 of the Criminal Code Act 1995 | INSLM](#)

⁹ University of Newcastle, [Colonial Frontier Massacres in Australia, 1788-1930: Statistics](#) (Website) accessed 15 January 2026.



would be intimidated or fear violence.” We consider that this may criminalise legitimate protesting of genocide by the State of Israel because some (though not all) Jewish people could interpret criticism of the government of Israel as spreading ‘antisemitic hatred’. For example, the International Holocaust Remembrance Alliance includes such criticism as constituting antisemitism.¹⁰

Given many Aboriginal people attend rallies calling out the genocide of Aboriginal and Torres Strait Islander people by European settler-colonisers and colonial governments, as well as Palestinian genocide by the State of Israel, we consider that this provision is a risk to Aboriginal people engaging in legitimate protest opposing genocide. The risk of this applying in such circumstances is unacceptable, particularly where the offence carries an imprisonment term of 5 years and that sentence can apply even where no harm is caused per proposed sub-section 80.2BF(3)(b) and (c).

While the offence will only apply where the ‘intention’ can be proven (per proposed s 80(1)(b)) and defendants would also have the opportunity to make out the defence in section 80.3 of the Criminal Code, these protections for the accused will not protect Aboriginal people at the point of discriminatory policing, arrest or prosecution, or from the harms of custody and criminalisation at the discretion of police who have shown documented brutality towards protestors in recent years.

As a result, we consider that the offence will significantly deter protest and undermine Aboriginal people’s rights to protest and freedom of political communication.¹¹ The right to protest is enshrined under the Australian Constitution’s implied freedom of political communication,¹² and is also recognised under Article 21 of the International Covenant on Civil and Political Rights.

The government must ensure that any restriction to our right to protest and freedom of political communication is limited “...to what is strictly necessary and proportionate in pursuit of a legitimate objective.”¹³ In VALS’ view if these proposed laws are passed, they will be incompatible with Australia’s international human rights obligations and possibly unconstitutional.¹⁴

It is also of great concern ‘hatred’ and ‘ideas of superiority’ are not clearly defined in the Criminal Code. In our view, this creates uncertainty as to the impact of this offence and risk of inconsistency and the misuse of discretion in prosecution. The New South Wales Law Reform Commission recently reported that hatred is too imprecise and an “inappropriate standard for the criminal law” because there are significant “differences

¹⁰ International Holocaust Remembrance Alliance, ‘[Working definition of antisemitism](#)’ (Website, accessed: 14 January 2026).

¹¹ “...the right to protest represents the individual or collective exercise of our universally recognised human rights, including our freedom of expression, peaceful assembly, association, participation in public affairs, freedom of thought, conscience, religion, cultural participation, and rights to life, privacy, liberty, security, and non-discrimination.”: Human Rights Law Centre (HRLC), [Protest in Peril Report](#) (2024), p 4.

¹² This implied freedom of communication operates as a limit on the use of legislation to impede freedom of expression. Political communication includes non-verbal communication, assembly and movement for the purpose of political protest. The analysis requires the courts to decide if legislation burdens the freedom implied in the Constitution.

¹³ Any permitted restrictions on ICCPR rights must be: prescribed by law, on permissible grounds in relation to the right concerned, and reasonable, necessary and proportionate means for pursuit of a legitimate objective (see: Australian Human Rights Commission, [Human Rights Brief No 4](#) (Website).

¹⁴ Anne Twomey, ‘One word makes proposed race hate law changes problematic’, *The Age* (Online), 14 January 2026, accessed at: <https://www.theage.com.au/politics/federal/one-word-makes-proposed-race-hate-law-changes-problematic-20260114-p5nu03.html>



of opinion in the community about what hatred means”. The Commission warned that expanding hate speech laws would have unintended consequences, and favoured other strategies, including civil schemes and social cohesion promotion, over tougher laws.¹⁵

Our view is that the proposed scope of the incitement offence is overly broad, unnecessary and disproportionate, and likely to be unjustified in a rights-consistent and evidence-based way. The offence as currently drafted is disproportionate because the scope is too net-widening, and will empower police and prosecuting agencies to use their discretion to arrest people who they have historically targeted, and who may be engaging in legitimate protest and other legitimate forms of political communication.

VALS is also of the view that the broad scope of the offence is unnecessary because of existing law to address terrorism¹⁶ and violent and hateful extremism¹⁷. Section 18C of the *Racial Discrimination Act* (Cth) already makes it unlawful for a person to do an act, otherwise than in private, if the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group. Where these laws are currently insufficient to address extremist threats to vulnerable groups, they should be strengthened to ensure they are fit for purpose following extensive consultation processes.

In VALS’ view, the limitations of criminal offences to address the root causes of hate, social division and violent extremism, make it more appropriate to achieve social cohesion through policy measures in recommendations 12 and 13 **below**.

If the government wishes to engage in the development of anti-vilification offences, legal and policy framework in a genuine and good-faith way, it must consult widely with groups that are subject to hate crimes and ensure that laws address intersectional experiences of vilification.

- 5. If Part 5 is passed against our advice, amend the scope of the offence by:**
- a. Removing strict liability on proposed sub-s 80.2BF(1)(c); and**
 - b. Amending sub-section 80.2BF(1)(c) to limit the application of the offence to circumstance where harm is actually caused.**

The overly broad scope of proposed s 80.2BF creates a risk that the provisions can be weaponised to wrongfully criminalise legitimate protest and sets a very low threshold for the seriousness of conduct that is being used to deter people from exercising their right to protest. This is particularly inappropriate in circumstances where there are no public interest defences to protect legitimate protest.

The strict liability application of sub-section 1(c) may enhance the ability of prosecutors to criminalise and silence protestors engaging in legitimate criticism of groups or people by stating that a reasonable person in that person or group’s position would ‘in all the

¹⁵ New South Wales Law Reform Commission, *Serious racial and religious vilification* (Report) (September 2024).

¹⁶ *Criminal Code Act 1995* (Cth) s 80.2HA. *Racial Discrimination Act* (Cth), s 18C.

¹⁷ *Crimes Act 1958* (Vic), s 195N and s 195O.



circumstances [...] be intimidated, to fear harassment or violence, or to fear for their safety’ regardless of whether the conduct actually resulted in hatred or in any person feeling intimidated, fearing harassment or violence, or fearing for their safety.

The impact of sub-section (3) also means that the offence can be made out regardless of whether the conduct results in any person feeling intimidated, fearing harassment or violence, or fearing for their safety. We consider that it is appropriate to limit the scope of an offence carrying a 5-year term of imprisonment to conduct that actually results in ‘any person feeling intimidated, fearing harassment or violence, or fearing for their safety’. This is appropriate considering that offences of assault and aggravated assault carry terms of between 6 months and 2 years maximum imprisonment.

In order to improve the drafting of the offence and ensure it is fit for purpose and consistent with broader criminal law, the government should consult on the drafting of this and engage in a proper consultation process as outlined in Recommendation 1 above.

6. If Part 5 is passed against our advice, amend the Bill to require prosecuting authorities to consider context and power imbalance by including a note in section 80.2BF which reads “in determining whether a person has contravened section 80.2BF, consideration should be given to the context (social, historical and political) and power imbalances (relative status and position) of the parties.”

VALS is concerned that there are insufficient protections in this Bill for Aboriginal people at the charging stage, because the current drafting of the offence does not explicitly require decision-makers to consider the context and power imbalances of the parties in decisions relating to prosecution for criminal offences relating to racial vilification.

VALS urges the Committee to consider how these laws will be enforced. While the intention of this Bill may be clearly stated, this cannot be separated from the reality of how state and territory police agencies police Aboriginal people and other marginalised communities, both historically and in the present. Numerous inquiries have confirmed what Aboriginal people have always known; police agencies are systemically racist.¹⁸ Systemic racism¹⁹ in policing impacts Aboriginal communities on a daily basis and manifests itself in the way that Aboriginal people are over-policed²⁰, over-represented in

¹⁸ Yoorrook Justice Commission (YJC), *Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems* (2023) (*‘Yoorrook for Justice Report’*); Victorian Government, *Anti-Racism Strategy 2024-2029: Racism in the Justice System* (Online) accessed at < <https://www.vic.gov.au/victorias-anti-racism-strategy-2024-2029/case-change-why-we-need-strategy/racism-community-and-public-places/racism-justice-system>>; Coroner’s Court of the Northern Territory, *Inquest into the death of Kumanjayi Walker [2025] NTLC 8 Findings of Territory Coroner Elisabeth Armitage* <https://agd.nt.gov.au/attorney-general-and-justice/courts/inquests-findings/kumanjayi-walker/files-exhibits-and-media/Inquest-into-the-death-of-Kumanjayi-Walker-2025-NTLC-8.pdf>, 7 July 2025; Commission of Inquiry into Queensland Police Service responses to domestic and family violence, *A Call for Change: Commission of Inquiry into Queensland Police Service responses to domestic and family violence* (2022).

¹⁹ Systemic racism refers to the way that laws, policies and practices across agencies work together to produce a discriminatory outcome for racial or cultural groups.

²⁰ Aboriginal people in Victoria are more likely to be apprehended and arrested by police, and they report higher rates of being hassled by police. See H. Blagg, N. Morgan, C. Cunneen, A. Ferrante (2005), Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Criminal Justice System. The recent Inquiry by the Commission for Children and Young People (CCYP) into found that Aboriginal children and young people were substantially over-represented in arrests. See CCYP (2021), *Our Youth Our Way: Inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system*, p. 430. Excessive policing of Aboriginal



police custody²¹ and under-served when they seek assistance from police.²² It is also evident in police use of force and explicit racial abuse against Aboriginal people. Aboriginal people are then forced to experience overlapping forms of racism in legal, court and prison systems before they even make it to court to defend their charges.

Aboriginal people have resisted and protested white supremacy and white institutions since colonisation. From the frontier resistance to early settlers from Britain in Australia,²³ anti-apartheid protests against the 1971 South African Springbok rugby tour of Australia,²⁴ Uncle William Cooper's march to the German consulate in Melbourne to condemn the 'cruel persecution of the Jewish people by the Nazi government in Germany' in 1938.²⁵ Modern examples of resistance and opposition to white supremacists include Invasion Day rallies and political activism for self-determination and anti-racism.

Legislation should critically engage with considerations of power dynamics where vilification is alleged. This would support the purpose and intent of protections to correct historical and current patterns of oppression based on race and other protected attributes, and safeguard against prosecution of already over-criminalised groups. We are concerned that, in instances of alleged vilification, the Bill does not currently require police and prosecutors to consider power dynamics, power imbalance and social, historical and political context, which are critical components of vilification. These should be relevant considerations to commencing proceedings against a person.

Our view is that conduct constituting vilification should be limited to that which is 'pushing down' from a position of greater privilege, power or authority against structurally and historically oppressed groups. This would exclude conduct where a person is 'pushing up' to challenge more powerful, privileged and/or oppressive forces. Further, conduct where a person is 'pushing across' at a member of the same group (lateral violence and internalised discrimination) should also be excluded as it does not reflect oppression coming from a greater position of power or privilege.

This amendment would reflect existing federal case law interpretation from *McLeod v Power* [2003] FMCA 2 in relation to section 18C of the Racial Discrimination Act 1975 (Cth). In that case, Federal Magistrate Brown found at [33] that:

"[T]he context is central in determining the impact of any word. In this case, the relevant scenario was of a person in a position of comparative authority being abused

women was also noted in the Tanya Day Inquest. See Finding into Death with Inquest: Inquest into the Death of Tanya Louise Day, 9 April 2020, COR 2017 6424.

²¹ Data from Victorian police attendance registries in 2006 reveals that Aboriginal people are almost six times more likely to be held in a police station. See Koori Complaints Project 2006- 2008: Final Report, p. 17.

²² Previous research by VALS and the Centre for Innovative Justice in relation to police complaints submitted by VALS' clients indicated themes of "under-policing," including failure to investigate allegations and inadequate police responses to callouts regarding family violence. VALS and the Centre for Innovative Justice (2016), *The Effectiveness of the Victoria Police Complaints System for VALS Clients*. VALS (2017), Submission to the Inquiry into the External Oversight of Police Corruption and Misconduct in Victoria.

²³ See: Yoorrook Justice Commission, [Truth Be Told Report - Official Public Record](#) (2025).

²⁴ Dr Gary Foley, [A Short History of the Australian Indigenous Resistance 1950 – 1990](#) (Online) accessed <<https://kooriweb.org/foley/resources/pdfs/229.pdf>>

²⁵ Victorian Government, [William Cooper: A leader of leaders](#), (Website) accessed at: <<https://www.firstpeoplesrelations.vic.gov.au/william-cooper>>



by the person over whom that authority had been exercised. It was a situation in which there was a power imbalance between the person being abused and his abuser. Ms Power was largely impotent in respect of the decision that had been made to refuse her entry to the prison. She committed the acts complained of whilst she was, in effect, being escorted away from the prison by persons who were exercising their authority over her. In my view, the balance of power clearly favoured Mr McLeod and Mr Farquharson. This is an important matter when applying the objective test that is created by s.18C of the RDA to the facts of the case and is a matter to which I will return when discussing the applicable law.”

7. If Part 5 is passed against our advice, proposed section 80.2BF should include ‘public interest’ exemptions such as those in section 18D of the *Racial Discrimination Act 1975 (Cth)* in addition to maintaining the application of the good faith defence in s 80.3 of the Criminal Code to proposed section 80.2BF.

We have concerns that without public interest exemptions to safeguard rights to public protest and freedom of political communication, the proposed new offence in section 80.2BF could be disproportionately and unfairly used to target minority groups asserting valid political views in the public interest.

In VALS’ view, the good faith defence in s 80.3(1) of the Criminal Code is limited in the protection it provides to the accused because:

- under this defence, the defendant bears an evidential burden in relation to the matter, meaning that they must adduce or point to evidence that suggests a reasonable possibility that the matter exists or does not exist (see: section 13(3) and s 13(6) of the Criminal Code). This requires the defendant to provide evidence or prove their innocence, instead of upholding the principle that a defendant is presumed innocent until proven guilty. ensuring that the prosecution is solely responsible for proving the case. We consider that a burden of proof that lies with the prosecution is more appropriate; and
- in comparison to exemptions, defences are not as protective of groups vulnerable to over-policing and overcriminalisation, because they do not protect such groups from arrest and prosecution in the first place. The threat of arrest and prosecution undermines people exercising their right to protest, and the existence of a defence does not necessarily change this, particularly a reverse onus defence; and
- the defence suggests the Court consider whether an act was done ‘with the intention of causing violence or creating public disorder or a public disturbance’ to decide whether it was done in good faith – and many forms of legitimate protest involve public disorder and nuisance (see s 80.3(2))

In VALS’ view, criminal offences are much more hazardous and difficult to overcome if Aboriginal people are charged for conduct connected to protest related activity without these public interest exemptions to safeguard rights to public protest and freedom of political communication. As we know, the Aboriginal community has a strong history of utilising public protest to pursue social justice goals, with the most notable being Invasion Day and NAIDOC Week and honouring Uncle William Cooper’s legacy of



marching for the rights of Aboriginal peoples as well as Jewish people during the Nazi occupation.

A public interest exemption is an established and important legal defence that has been adopted in other pieces of legislation, including the *Racial Discrimination Act 1975* (Cth), and has clear legal precedent through the courts. VALS' view is that a similar provision here could adequately safeguard protest rights in combination with other supportive drafting. It is designed to balance the rights to freedom of expression with the need to protect individuals and groups from the harms of vilification.

The public interest exemption works such that conduct that might otherwise constitute vilification is exempt if the person can establish it was engaged in reasonably and in good faith for a genuine public interest purpose.

The Government should have regard to the protections on legitimate speech in s 18D of the *Racial Discrimination Act 1975* (Cth).

18D Exemptions

(1) Section [18C](#) does not render unlawful anything said or done reasonably and in good faith:

- (a) in the performance, exhibition or distribution of an artistic work; or
- (b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or
- (c) in making or publishing:
 - (i) a fair and accurate report of any event or matter of public interest; or
 - (ii) a fair comment on any event or matter of public interest if the comment is an expression of a genuine belief held by the person making the comment.

As outlined by the Australian Human Rights Commission:

The courts have held that the standard to be met for section 18C to be contravened is conduct that has 'profound and serious effects', which are 'not be likened to mere slights'. The test for whether an act breaches section 18C is also an objective one. The provision makes it unlawful to do an act that is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate on the grounds of race and ethnicity. The fact that someone feels they have been racially offended, insulted, intimidated or humiliated is not enough to mean that there has been something unlawful.²⁶

We also bring your attention to similar provisions in the Victorian Equal Opportunity Act 2010 (Vic) also creates clear public interest exceptions in section 102G:

²⁶ Australian Human Rights Commission, [Race hate and the RDA](#) (Website).



102G Exceptions

(1) A person does not contravene section 102D or 102E if the person establishes that the person's conduct was engaged in reasonably and in good faith—

(a) in the performance, exhibition or distribution of an artistic work; or

(b) in the course of any statement, publication, discussion or debate made or held, or any other conduct engaged in, for any genuine academic, artistic, public interest, religious or scientific purpose; or

(c) in making or publishing a fair and accurate report of any event or matter of public interest.

(2) For the purposes of subsection (1)(b), a religious purpose includes, but is not limited to, worship, observance, practice, teaching, preaching and proselytising that is in conformity with the doctrines, beliefs or principles of that religion."

We do not express a recommendation with relation to the proposed religious text defence because we have not had sufficient time to consult with community and consider the impacts of this defence. We note however, that religious texts have historically been used to justify colonial imperialism and the vilification and killing of Aboriginal people and other discrimination of other minority attributes that Aboriginal people may identify with, such as being a member of the LGBTQIA+ community.²⁷ A defence for speech that would otherwise constitute hate speech if not for being from a religious text should be widely consulted and carefully drafted so as not to undermine the rights of other groups. This would be consistent with the goal of promoting social cohesion.

Part 7 -Hate Symbols

8. Part 7 must not be passed in its current form.

In relation to displaying prohibited symbols offences, the Bill proposes to expand the definition of prohibited symbols, expand police powers, lower the fault element to prove the offence, and place a reverse onus on an accused person to make out a public interest defence.

VALS strongly opposes the proposed expansion of offences and police powers relating to prohibited symbols. Bans on symbols are ineffective at achieving their stated purpose of social cohesion. Evidence shows that extremist groups are undeterred by criminalisation of symbols and will often modify or adapt their symbols.²⁸

Criminalisation also risks strengthening hateful groups by platforming and drawing attention to them and providing them a basis upon which to frame themselves as powerful challengers to the State and/or victims of censorship, which may assist with recruitment and fundraising.

²⁷ Amanda Barry, *'Equal to Children of European Origin'*, History Australia (5/2)

²⁸ David Neiwert, *What the Kek: Explaining the Alt-Right "Deity" Behind Their "Meme Magic"* Southern Poverty Law Center (9 May 2017); Global Project Against Hate and Extremism, *The World's Largest Database of Far-Right Extremist Symbols* (September 2023); and Michael Colborne, *How Not to Interpret Far-Right Symbols*, Bellingcat (4 April 2023).



Rather, expansion of offences with carceral penalties attached risks warrantless police harassment, wrongful criminalisation and rights violations for Aboriginal people and other racialised and marginalised minorities.

Expansive and discretionary extremism offences and powers can be strategically manipulated and weaponised against innocent people that governments seek to silence, surveil and persecute. Colonial governments have done this to Aboriginal people before, as noted in the section regarding prohibited hate groups above.

The political nature of who is and is not deemed a terrorist is further demonstrated in the Victoria Police force's use of terrorist powers against anti-war activists engaged in lawful protest.⁶⁸ VALS is deeply concerned that expanding prohibited symbol offences may capture legitimate symbols and flags. Given the tendency of police to over-police anti-genocide protests⁷⁰ and Aboriginal people and communities' solidarity with Palestine and other nation-States experiencing genocide, we are concerned that symbols and flags associated with those groups would be unduly criminalised.

Criminalising the mere display of certain symbols without assessing context is also inappropriate and risks overreach and the criminalisation of innocent people.²⁹ An allegation of hate crime is serious and stigmatising. The misuse of police powers against an innocent person risks breach of rights against arbitrary interference with one's privacy, family, home or correspondence; interference and discrimination against cultural and faith-based rights;³⁰ and the right not to have that one's reputation unlawfully attacked.

9. If Part 7 is passed against our advice, any mandatory minimum sentence must be removed

Under the *Crimes Act 1914*, the mandatory minimum sentence for the prohibited symbols is 12 months' imprisonment. Expanding the offence and thus exposing a greater number of people to a mandatory minimum sentence is highly likely to produce unjust outcomes. VALS is opposed to any mandatory sentencing as it removes judicial discretion to consider the circumstances of the individual and the offence, including the influence of mental health issues, adverse childhood experiences, the effects of trauma and good prospects of rehabilitation, when formulating an appropriate sentence.

Mandatory sentencing schemes:

- are generally considered ineffective at achieving their purported aims of deterrence;³¹
- contradict the principle of proportionality and imprisonment as a last resort; and
- have proven to be an ongoing driver of the over-incarceration of Aboriginal and Torres Strait Islander people;³²

²⁹ NSW Council for Civil Liberties, [Submission No 128 to Parliamentary Joint Committee on Intelligence and Security, Review of the Counter-Terrorism Legislation Amendment \(Prohibited hate symbols and other measures\) Bill 2023](#) (28 July 2023) [2.8]. Law Council of Australia, [Submission No 150 to Parliamentary Joint Committee on Intelligence and Security, Review of the Counter-Terrorism Legislation Amendment \(Prohibited hate symbols and other measures\) Bill 2023](#) (14 August 2023) [15], [16], [18], [19] and [23].

³⁰ Article 18, ICCPR.

³¹ Dr Adrian Hoel and Dr Karen Gelb, Sentencing matters: Mandatory sentencing, Sentencing Advisory Council, Melbourne, 2008, p. 1.

³² Australian Law Reform Commission (ALRC), Report 133, Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander peoples, December 2018, 273



- erode the fundamental principle of an independent judiciary and discretion in sentencing; and
- increase incarceration rates, and are therefore more costly.

Mandatory sentencing schemes have caused, and continue to cause, irreparable harm to Aboriginal and Torres Strait Islander communities. We urge the government to stay well away from imposing a mandatory sentencing scheme for legislative measures that purport to protect social cohesion.

10. If Part 7 is passed against our advice, the burden of proof to exclude the availability of a public interest defence must lie with the prosecution

The Bill reverses the burden of proof for public interest elements of prohibited symbols. Placing the evidential burden on the accused to defend their use of a symbol contradicts fundamental principles of Australia’s legal system. Instead, the prosecution should be required to prove, as an element of the offence, that the alleged display of prohibited symbols was not in the public interest.

Section 25(1) of Victoria’s *Charter of Human Rights and Responsibilities* states that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. The presumption of innocence is also contained in article 14(2) of the International Covenant on Civil and Political Rights (ICCPR), to which Australia is a party.

The Australian government’s own presumption of innocence guidance for creating legislation states that:

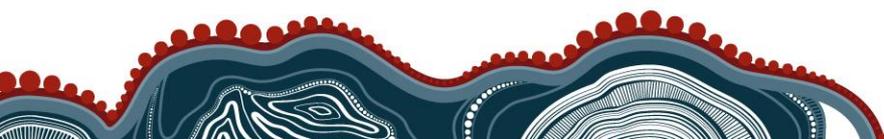
*a [reverse onus] provision may be justified if the nature of the offence makes it very difficult for the prosecution to prove each element, or if it is clearly more practical for the accused to prove a fact than for the prosecution to disprove it.*³³

These elements are clearly not met. The Australian government has not provided any evidence or justification that it is difficult or impractical for the prosecution to prove, as an element of the offence, that the alleged display of prohibited symbols was not in the public interest. This provision sets a dangerous precedent for reverse onus offences that potentially limit freedom of expression.

11. If Part 7 is pursued against our advice, it must be put through a rigorous community consultation process

Criminalising symbols necessitates robust community consultation to avoid misidentification. It is not possible for the government, police or prosecutors to have a comprehensive understanding of the diverse legitimate meanings and uses of various symbols or create effective carve-outs without community consultation.

³³ ‘Presumption of innocence: public sector guidance sheet’. Australian Government Attorney-General’s Department, <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/presumption-innocence>



If the government intends to pass laws to criminalise a symbol or flag, then the proposal should be put forward to a diverse, open, long, accessible and rigorous community consultation and engagement process. The symbols being proposed for criminalisation should be named and transparent at the point of community consultation and when the Bill is introduced to Parliament.

This would provide a level of transparency and community accountability. It is also an opportunity for people to object to and to highlight potential unintended consequences of criminalising symbols that may be part of an innocent, legitimate and non-violent practice.

Religious, cultural and other symbolism can be incorporated into and overlap with terrorist logos and symbols. As a result, the criminalisation of symbols risks conflating certain religions and cultures with terrorism, fuels dangerous and discriminatory stereotyping, and results in the misidentification of people as terrorists.

Non-Legislative Recommendations

Our view is that legislative reform of any anti-extremism and anti-vilification laws must be accompanied by education, training and broad cultural change initiatives to bolster prevention and address the root causes of hate speech and hate conduct.

We appreciate the following will sit outside the legislation; however, we note and reiterate that the implementation of the Bill should be supported by the continued prioritisation and resourcing of anti-vilification reforms that enhance social cohesion. A more thorough consultation process will provide the opportunity to hear from the community on what policy and programmatic measures can strengthen and support the aims of anti-vilification laws.

12. Urgent investment in early intervention and non-carceral responses

Carceral strategies do not address the root causes of extremism, settler-nationalist violence and neo-Nazism. In practice, these strategies instead enable further discrimination against Aboriginal people and other marginalised groups. As such, a legislative response, without appropriate programmatic supports completely fails to create the social change necessary to address white supremacist extremism.

After 250 years of suffering the hatred and violence of white supremacy and settler-nationalist extremism, Aboriginal people deserve evidence-based and lasting responses and solutions to address the root causes of these ideologies. We deserve to be listened to when we say that carceral approaches will not address the root causes. Any laws to address extremist groups must be addressed in a targeted, evidence-based way that promotes social cohesion, which cannot be achieved through rushed and non-consultative legislation.



The most effective approach the government can take to address the root causes of white supremacist, and settler-nationalist violent extremism and terrorism is through non-carceral measures that go to the root-causes of terrorism and extremism, including:

- introducing early intervention, intervention, and diversion strategies at the pre-criminal stage to help prevent or reduce the escalation of violent behaviour, thereby enhancing community safety and supporting individuals at risk of radicalisation. EXIT programs in Sweden and Germany have helped to support hundreds of people to leave right wing extremist groups;³⁴
- limiting the spread, influence, normalisation and attractiveness of violent extremist ideologies and propaganda by actively countering their narratives and holding social media companies responsible where it is promoted and spread in the online domain; and
- tackling individual and community vulnerabilities by building resilience and offering effective support systems and coping mechanisms to people susceptible and vulnerable to radicalisation, to reduce their likelihood of turning to violence in response to perceived grievances, adversity or hardship.³⁵
- efforts to promote social cohesion in civil society, as one of the key factors linked with community resilience against violent extremism.³⁶

The federal government has recently held inquiries on right wing extremism³⁷ and had the benefit of expert advice and submissions in relation to the changing nature of terrorist threats and extremism and best-practice early intervention and prevention approaches to address this.³⁸ The Legal and Constitutional Affairs References Committee of the Senate Inquiry into right wing extremist movements in Australia identified six recommendations in its December 2024 report, including non-carceral early-intervention and prevention recommendations.³⁹ These should be implemented urgently.

VALS is open to supporting all governments in a collective pursuit of social inclusion, celebrating diversity, demonstrating allyship and intersectionality in its policy efforts to address white supremacist and neo-Nazi extremism, hate and terrorism.

³⁴ Dr Tore Bjorgo, [Exit Neo-Nazism: Reducing Recruitment and Promoting Disengagement from Racist Groups](#), Norwegian Institute of International Affairs (2002); and EXIT Deutschland, [EXIT Germany](#) (Website).

³⁵ This is consistent with what is identified by the Addressing Violent Extremism and Radicalisation to Terrorism (AVERT) Research Network 'as the emerging best practice around effective interventions which identifies addressing psycho-social needs rather than ideological commitment to extremism.' See: See, for example: Submission 23, AVERT (Addressing Violent Extremism and Radicalisation to Terrorism) Research Network, [Submission to the Legal and Constitutional Affairs References Committee of the Senate Inquiry into right wing extremist movements in Australia](#) (April 5, 2024).

³⁶ As discussed in: Submission 23, AVERT (Addressing Violent Extremism and Radicalisation to Terrorism) Research Network, [Submission to the Legal and Constitutional Affairs References Committee of the Senate Inquiry into right wing extremist movements in Australia](#) (2024).

³⁷ Parliamentary Joint Committee on Intelligence and Security Inquiry into extremist movements and radicalism in Australia (Report tabled on 1 April 2022) and the Legal and Constitutional Affairs References Committee of the Senate Inquiry into right wing extremist movements in Australia (Report, December 2024).

³⁸ [Submissions to the Legal and Constitutional Affairs References Committee of the Senate Inquiry into right wing extremist movements in Australia](#) (2024).

³⁹ Commonwealth Senate, [Report of the Legal and Constitutional Affairs References Committee Inquiry into Right Wing Extremist Movements in Australia](#) (December 2024).



13. Address the roots causes of white supremacy and settler-nationalist extremism through:

- a. Cultural change to address the drivers of hateful conduct and hate speech**
- b. Systems change including appropriate and ongoing research, training and community education,**
- c. Funding of increased legal services (and collaborative service design), including in relation to strategic litigation, to build case law supporting anti-vilification reforms**

It is important to remember that extremist, racist and hateful white-supremacist views and narratives have historically been manufactured, promoted and enforced by governments and police as a tool of colonisation. Promulgated by the media, the government has historically spread racist narratives and values with policies rewarding and excusing the killing of Aboriginal people in the Frontier massacres;⁴⁰ assimilation policies removing Aboriginal children from their families and culture;⁴¹ paternalistic protectionist policies;⁴² apartheid policies;⁴³ and the allowance of Aboriginal slave labour.⁴⁴ This has left an intergenerational and cultural legacy in the mainstream dominant Australian psyche that Aboriginal people don't deserve to be treated with dignity and respect. The government should hold the burden of dismantling this damage and fostering social cohesion. This is not achieved with discriminatory criminal laws and police powers that end up targeting rather than protecting Aboriginal people and other marginalised groups.

Unfortunately, however, there are still politicians in power (federally and in Victoria) who make decisions and statements that model and normalise disrespect towards Aboriginal people and devalue Aboriginal lives. For example: the ongoing lack of action to address Aboriginal deaths in custody;⁴⁵ lack of accountability for racist and discriminatory policing practices;⁴⁶ overrepresentation of Aboriginal children being removed from their families and imprisoned;⁴⁷ over-policing and criminalisation of Aboriginal people; and the under-policing of crimes against Aboriginal people and investigations into missing and murdered Aboriginal women;⁴⁸ dog-whistling;⁴⁹ engagement in debates and culture wars about Welcomes to Country and Acknowledgements of Country; politicising Aboriginal policy priorities;⁵⁰ and the protection of settler-nationalist celebrations on January 26 – the day that genocide against Aboriginal communities commenced.

We call on the government to continue progressing its policies in support of Aboriginal self-determination by transferring power and resources to Aboriginal communities.

⁴⁰ Yoorrook for Justice Report, p 49.

⁴¹ Yoorrook for Justice Report, p 59.

⁴² Yoorrook for Justice Report, p 49-59.

⁴³ Ibid.

⁴⁴ Yoorrook for Justice Report, 49.

⁴⁵ Dechlan Brennan, '[Legal groups demand greater transparency as data shows Indigenous deaths in custody on the rise](#)', National Indigenous Times (Online) (30 January 2024).

⁴⁶ VALS, '[Police Impunity must end](#)' (Media Release) (10 October 2022).

⁴⁷ NIT, "Deplorable": [More than 1 in 10 Aboriginal children in Victoria have been removed from their families, new data reveals](#) (2024).

⁴⁸ Senate Inquiry into Missing and murdered First National women and Children, [Final Report](#) published August 2024.

⁴⁹ The Australian Institute, '[Under the Radar: Dog-whistle politics in Australia](#)' (Report) (September 2007).

⁵⁰ See Victorian Aboriginal Community Controlled Health Organisation, '[VACCHO Outraged by Governments Potential Backflip on Raising the Age of Criminal Responsibility](#)', (Media Release) (12 August 2024) and Victorian Aboriginal Legal Service, '[Victorian Government Betrays Aboriginal Children](#)', (Media Release) (20 March 2024).



Racism is engrained in Australian society.⁵¹ This Commonwealth government should also engage with public education campaigns, curriculum reform for children and young people in the public education system, anti-racism and cultural capability training requirements for all public servants, mandatory counselling and education programs for people charged with racist offences, and other social and education programs for children and adults.

⁵¹ Yoorrook Justice Commission, *Yoorrook for Justice Report* (2023).

