2025-2026

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HUMAN RIGHTS BILL 2026

PROPOSED AMENDMENTS

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Circulated as a model memorandum to accompany proposed complementary amendments to the Bill introduced by Mr Wilkie on 25 May 2026.

This document is not an official government explanatory memorandum.

Outline

These amendments are offered in support of the Human Rights Bill 2026. The Member for Clark has put before the House the national instrument Australia has lacked: a catalogue of rights drawn from the covenants this country has ratified, an interpretive rule, and a rule that an inconsistent law has no force or effect to the extent of the inconsistency. That is the foundation. The amendments take that foundation as given.

They propose three complementary measures, each of which sits within the Bill's existing objects.

First, they add a duty on Commonwealth public authorities to act compatibly with the rights the Bill already names, and a court path for declaration, injunction and, where just, compensation. The Bill as introduced channels complaints through the Australian Human Rights Commission. That path is valuable and is left in place. An additional judicial remedy would give fuller effect to the right to an effective remedy in Article 2 of the ICCPR, without imposing duties on private persons.

Second, they specify the form of the override already contemplated by clause 11, so that when Parliament chooses to limit a right it does so by naming the right, naming the Covenant article, stating the aim in the language of the Covenant, and sunsetting the override after public reports. The two-year lapse in the Bill is retained.

Third, they bring the Bill into line with developments after it was introduced. The Combatting Antisemitism, Hate and Extremism (Criminal and Migration Laws) Act 2026 inserted Part 5.3B into the Criminal Code. Questions about that Part are before the High Court in M50/2026. The amendments would have the Federal Court, rather than a regulation, determine whether an organisation may be prohibited with criminal consequences for membership or support, and only where the Court finds a purpose of politically motivated violence against persons. That is a way of giving practical effect to clauses 30, 31 and 32 in the setting the Parliament now faces. Ordinary offences of violence, threat and incitement to imminent violence are untouched.

The amendments also state, for the avoidance of doubt, that the size or popularity of a group is not a reason a limitation is easier to justify. That proposition is consistent with equal protection and with the implied freedom of political communication.

What is carried forward and what is added

Carried forward without change of purpose: the rights catalogue in Part 4 (clauses 22 to 34 and following), the Commission's inquiry and conciliation functions in Part 3, clause 11(1) inconsistency, and clause 12(1)–(2) interpretation.

Added or refined: the long title and preamble, so they speak to later 2026 developments; commencement; objects and definitions; a constitutional savings clause; a more precise override in clause 11; a greater-protection and size-irrelevance rule in clause 12; a public-authority duty and court remedy alongside the Commission path; standing for associations to assert members' expression and association rights; further guidance in the limitation clause and

in clauses 30, 31 and 32; new Part 4A (Federal Court prohibition orders); a Commission production power; Schedule 1A (the ratified instruments); and a Criminal Code schedule.

Financial impact

Modest additional work for the Federal Court, the Australian Human Rights Commission and the Office of Parliamentary Counsel. Substituted Part 5.3B offences would be narrower than the current scheme. No reliable dollar figure can be given.

Regulation impact

The amendments reduce the Executive's power to prohibit political association by regulation and increase the procedural burden on the Commonwealth when it seeks a prohibition order. That is the intended impact.

Statement of compatibility with human rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

These amendments are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011. They are intended to give fuller effect to the same instruments the Bill already draws upon.

The amendments promote ICCPR Articles 19, 21, 22, 25, 14 and 2, and the equivalent rights already written into clauses 30, 31, 32 and 20 of the Bill. They limit those rights only by a Federal Court order made after a contested hearing, on proof of a purpose of politically motivated violence, a real and present risk, and the failure of less restrictive means, for no more than 12 months. Ordinary offences of violence, threat and incitement to imminent violence are saved.

Closed material in proposed section 46C limits the right to an open hearing. The limitation is the least restrictive means consistent with genuine intelligence: the substance of the case must still be given, a special advocate is mandatory, and reasons must be published.

The proposed public-authority duty and court remedy promote Article 2 of the ICCPR (effective remedy), alongside the Commission complaints path already in the Bill.

Notes on items

Items 1 and 2 — Long title and preamble

1. The long title is widened so that a court construing the Act under section 15AA of the Acts Interpretation Act 1901 can see that non-removal and judicial listing are objects, not afterthoughts. The new preamble paragraphs record the ratified covenants, the existence of Part 5.3B, and the rejection of size as a criterion. They are an aid to interpretation under section 15AB. They make no finding about any party to M50/2026.

Item 3 — Commencement

2. The Bill as introduced commences 12 months after Royal Assent. That delay is removed. Rights already accepted cannot wait on a machinery period while listings continue.

Items 4 to 6 — Objects, definitions, Constitution, extra-territorial application

3. New objects (h) to (k) state the non-removal rule, the judicial-listing rule, the remedy rule and the size rule in a form section 15AA can use.

4. The new definitions hook Part 4A and the public-authority duty to the rest of the Act. Public authority is confined to the Commonwealth. The amendments do not impose the new duty on State officials acting only under State law, because that would raise a distinct constitutional question the Bill as introduced already courts by applying clause 11 to State law.

5. Proposed section 5A is a reading-down and greater-protection clause. Proposed section 5B applies the Act to existing law and to citizenship-based extra-territorial offences, so Australia cannot export a narrower set of rights than it accepted.

Item 7 — Clause 11 override fence

6. Subclause 11(1) is not touched. What is added is a specification of what counts as an override. The requirements are cumulative and intended to be inconvenient. A later Parliament can still repeal the Human Rights Act by name. It cannot, if these amendments pass, save an incompatible listing scheme by a clause that never names the Covenant article.

Item 8 — Clause 12

7. New subclauses (3) to (5) add a greater-protection tie-break and the size-and-popularity rule. Subclause (4) is drafted so that it applies whenever compatibility or the implied freedom is in issue. It is the statutory answer to a submission that a smaller group is easier to ban because fewer people will miss it.

Item 9 — Clause 13

8. Clause 13 as introduced channels enforcement through the Commission and avoids private liability. The proposed substitute keeps that decision so far as private persons are concerned, and adds a complementary duty on Commonwealth public authorities, modelled on section 38 of the Charter of Human Rights and Responsibilities Act 2006 (Vic), with a court path for declaration, injunction, setting aside of void instruments, and compensation where an award would be just. Standing is drawn so that members, donors, publishers and legal representatives of an organisation facing prohibition can be heard. The Commission path in Part 3 remains.

Item 10 — Clause 18

9. Original clause 18 gives rights only to individuals. That is orthodox under the Covenants. New subsections let an association assert the expression, assembly, association and public-life rights of its members, so that a political party can be heard before it is listed out of existence. The amendment does not turn corporations into rights-holders for their own sake.

Item 11 — Clause 20

10. The Bill's existing limitation clause (reasonable and demonstrably justified in a free and democratic society) is kept. What is added is the burden of proof, a list of grounds that are not enough, a non-derogable-rights lock, and a presumption that listing-by-regulation, status offences, offence-as-harm, and reasonless satisfaction are not justified unless the State proves otherwise.

Items 12 to 14 — Clauses 30, 31 and 32

11. These items write the non-removal rule into the three rights most directly engaged by Part 5.3B. New subsection 30(5) is self-executing: an executive listing instrument is void. New subsections 31(3) and (4) stop definitional word-games around harm, hate and gestures. New subsection 32(3) saves party registration and campaigning.

Item 15 — Part 4A

12. Part 4A is the institutional reform. Proposed section 46A is exclusive and overrides Part 5.3B. Only the DPP or the Attorney-General personally may apply, so listing cannot become an agency-level operational tool. The hearing rule requires the substance of the case, not a gist so thin that no defence is possible. The merits gateway in section 46D is violence against persons, not orthodoxy, offence, speculation or smallness. Orders last 12 months. Support is not a residual category that swallows journalism, legal advice, ministry or aid. The register must be public within 24 hours.

Items 16 and 17 — Commission production and Schedule 1A

13. The production power stops listing files being made unauditable by classification stamps, subject to court-supervised public interest immunity.

14. Schedule 1A lists the instruments Australia has actually ratified. The Migrant Workers Convention and the Convention on Enforced Disappearance are omitted because Australia is not a party. Their absence is not a licence to treat the listed instruments as optional.

Item 18 and Schedule B — Criminal Code

15. Part 5.3B is repealed and replaced with status offences that bite only on a current Federal Court order, with knowledge, a reasonable-steps defence for membership, and an intention to assist politically motivated violence for support. Maxima (5 and 7 years) are lower than some existing association offences by design. Status is not to be punished as if it were a completed act of terrorism.

16. Existing executive listings, including the Criminal Code (Prohibited Hate Group – White Australia) Regulations 2026 and any successor, cease to have effect. Criminal responsibility for acts done after commencement in purported reliance on those regulations is removed. Item 4 saves ordinary criminal law.

END OF SUPPLEMENTARY EXPLANATORY MEMORANDUM

Model document. Not moved. Not legal advice.