2025-2026

The Parliament of the Commonwealth of Australia

HOUSE OF REPRESENTATIVES

A Bill for an Act

Covenant Rights Protection Bill 2026

No. , 2026

A Bill for an Act to give domestic legal effect to human rights Australia has accepted by ratifying international covenants, to prevent the removal of those rights by ordinary statute, regulation or executive listing, to confine the prohibition of organisations to orders of a Chapter III court, to amend the Criminal Code Act 1995, and for related purposes

Preamble

The Parliament of Australia enacts this Act recognising that:

(a) Australia has freely accepted binding obligations under international law by ratifying the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the Convention on the Rights of the Child and its Optional Protocols, the Convention on the Rights of Persons with Disabilities and its Optional Protocol, and related instruments; and

(b) ratification is a legal undertaking, not a diplomatic courtesy, and a State that accepts those obligations while constructing domestic machinery that lists away, redefines away, or punishes as association the same rights is in breach of the instruments it signed; and

(c) Australia remains the only comparable liberal democracy without a national statutory charter that can stop an ordinary Act or regulation from extinguishing those rights in practice; and

(d) the implied constitutional freedom of political communication is a limitation on legislative power derived from representative government, not a personal bill of rights, and it is narrower than the rights Australia has already promised to protect under the Covenants; and

(e) Part 5.3B of the Criminal Code, inserted by the Combatting Antisemitism, Hate and Extremism (Criminal and Migration Laws) Act 2026, permits an organisation to be specified as a prohibited hate group by regulation on a ministerial state of satisfaction, with criminal consequences for membership and support, and that architecture is capable of being turned on any unpopular minority; and

(f) a government argument that a smaller group is easier to justify banning because silencing it will not much disturb the national conversation is incompatible with Articles 19, 22 and 25 of the International Covenant on Civil and Political Rights and with equal protection under Article 26; and

(g) rights that exist only when they are fashionable are permissions, not rights, and this Parliament intends that rights already accepted SHALL NOT BE REMOVED.

The Parliament of Australia therefore enacts:

Part 1 — Preliminary

1 Short title

This Act is the Covenant Rights Protection Act 2026.

2 Commencement

(1) Sections 1 to 3 and this section commence on the day this Act receives the Royal Assent.

(2) The remaining provisions commence on the day after this Act receives the Royal Assent.

> ***Note:*** *Immediate commencement is deliberate. Rights that have already been accepted cannot wait on a 12-month delayed start while listings continue.*

3 Objects

The objects of this Act are:

(a) to give domestic legal effect, so far as the Constitution permits, to the human rights Australia has accepted by ratifying the instruments in Schedule 1; and

(b) to establish a rule of non-removal, so that a later Act, regulation, listing or executive decision cannot extinguish or make practically unusable a Covenant right except by a named override that satisfies section 15; and

(c) to require that any limitation of a Covenant right meet the test in the relevant Covenant — prescribed by law, in pursuit of a legitimate aim recognised by the Covenant, necessary and proportionate in a democratic society, and the least restrictive means reasonably available; and

(d) to confine the prohibition of an organisation, with criminal consequences for membership or support, to an order of a court exercising federal judicial power after a contested hearing; and

(e) to provide standing and an effective remedy to every person whose Covenant right is engaged; and

(f) to declare that the size, popularity or moral standing of a group is not a criterion that makes a burden on political communication, association or expression easier to justify.

4 Definitions

In this Act:

Covenant right means a right, freedom or obligation recognised or declared in an instrument listed in Schedule 1, as that instrument applies to Australia, including as interpreted by the relevant treaty body, to the extent that interpretation is not inconsistent with the Constitution.

listed organisation means an organisation in respect of which a prohibition order under Part 4 is in force.

override Act means an Act that satisfies every requirement of section 15.

person includes an individual and, for the purposes of association, expression in a collective form, and political participation, includes a voluntary association, incorporated association, political party, union, publisher and religious body.

public authority means:

(a) a Commonwealth Minister, Department, agency, officer or employee; and

(b) a person or body exercising a function of a public nature under a Commonwealth law; and

(c) a person or body acting as an agent of the Commonwealth;

and includes the Australian Federal Police and an intelligence agency of the Commonwealth.

regulation includes a legislative instrument within the meaning of the Legislation Act 2003.

5 Binding the Crown

This Act binds the Crown in each of its capacities.

6 Application

(1) This Act applies to every person in Australia and to every Australian citizen and permanent resident outside Australia in respect of a Commonwealth law that purports to apply to that person by reason of citizenship or residence.

(2) If a Commonwealth law criminalises conduct outside Australia, this Act applies to that law. Australia cannot export a narrower set of rights than it accepted in the Covenants.

(3) This Act applies to a Commonwealth law whether enacted before or after the commencement of this Act.

7 Relationship with the Constitution

(1) This Act does not purport to exclude or limit the implied freedom of political communication, Chapter III of the Constitution, or any other constitutional limitation on power.

(2) Where both this Act and a constitutional limitation apply, the provision that gives the greater protection to the person prevails.

(3) If a provision of this Act would, apart from this subsection, exceed the legislative power of the Commonwealth, the provision has effect to the extent that it does not exceed that power.

Part 2 — Covenant rights and the rule of non-removal

8 Scheduled instruments have force in Australian law

(1) The instruments listed in Schedule 1 have the force of law in Australia, to the extent of the legislative power of the Commonwealth (including the external affairs power in section 51(xxix) of the Constitution).

(2) Subsection (1) does not confer on a corporation a Covenant right that, under the relevant instrument, belongs only to individuals, except so far as the right of individuals to associate through that corporation would otherwise be defeated.

(3) A reservation maintained by Australia does not authorise the removal of any remaining Covenant right, and does not prevent a court from giving a provision of an instrument an interpretation consistent with the object and purpose of the instrument.

9 Particular rights that are not removed

(1) Without limiting section 8, the following rights are declared not to have been removed and not to be removable except by an override Act:

(a) freedom of opinion and expression (ICCPR Article 19), including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers;

(b) the right of peaceful assembly (ICCPR Article 21);

(c) freedom of association, including the right to form and join political parties and trade unions (ICCPR Article 22);

(d) the right to take part in the conduct of public affairs, to vote and to be elected (ICCPR Article 25);

(e) equality before the law and equal protection of the law without discrimination (ICCPR Article 26; ICERD; CEDAW; CRPD);

(f) the right to a fair and public hearing by a competent, independent and impartial tribunal, and the minimum guarantees in criminal proceedings (ICCPR Article 14);

(g) the right to an effective remedy (ICCPR Article 2);

(h) the prohibition of torture and cruel, inhuman or degrading treatment, which is non-derogable (CAT; ICCPR Article 7);

(i) liberty and security of person, and humane treatment in detention (ICCPR Articles 9 and 10; OPCAT);

(j) the rights of the child (CRC) and of persons with disability (CRPD).

(2) Offence, insult, social discomfort, reputational injury to a government programme, or the holding of an unpopular political opinion is not, without more, a lawful ground for limiting a right in subsection (1).

(3) A salute, flag, historical argument, religious doctrine, demand for a change of government, or association with a speaker of those things is not, without more, a crime.

10 Non-removal and non-regression

(1) A public authority must not make, administer or enforce a law, regulation, listing, direction or automated decision that removes, nullifies, or makes practically unusable a Covenant right.

(2) A measure that does any of the following is presumed to be a prohibited regression:

(a) criminalises mere membership of, or association with, an organisation that has not been the subject of a prohibition order under Part 4;

(b) specifies an organisation as prohibited, extremist, terrorist or a hate group by regulation or ministerial satisfaction rather than by court order;

(c) defines harm or hate to include offence to a reasonable member of a group, without a requirement of incitement to imminent violence or a true threat;

(d) removes the duty to give reasons, or relies on a state of satisfaction insulated from merits or judicial review;

(e) applies a speech or association offence to conduct outside Australia solely because of citizenship, without satisfying the Covenant limitation test;

(f) treats the small size or unpopularity of a group as a reason that a burden on communication or association is easier to justify.

(3) The presumption in subsection (2) is rebutted only if the public authority proves that the measure is prescribed by law, pursues a legitimate aim recognised by the relevant Covenant, is necessary and proportionate in a democratic society, and is the least restrictive means reasonably available.

11 Size and popularity are not criteria

(1) In determining whether a law or decision is compatible with a Covenant right or with the implied freedom of political communication, it is irrelevant that:

(a) the affected group is small;

(b) the affected group is despised, electorally hopeless, or morally contemptible;

(c) silencing the group would not much disturb the national conversation.

(2) The test is the conduct of the person or organisation, the necessity of the measure, and its proportionality — applied on evidence, not on head-count.

Note: *Subsection (1) is directed at any submission, in any court or tribunal, that a burden on a smaller political organisation is easier to justify because fewer people will miss it.*

12 Permitted limitations

(1) A Covenant right may be limited only if the limitation:

(a) is prescribed by a law that is accessible, precise and publicly available; and

(b) pursues a legitimate aim expressly recognised by the relevant article of the relevant Covenant; and

(c) is necessary in a democratic society; and

(d) is proportionate, including that it is suitable, the least restrictive means reasonably available, and not such that the essence of the right is impaired; and

(e) does not discriminate on a ground prohibited by ICCPR Article 26, ICERD, CEDAW or CRPD, unless the distinction itself satisfies paragraphs (a) to (d).

(2) A right that the relevant instrument treats as non-derogable (including the prohibition of torture) must not be limited.

(3) The burden of demonstrating that subsection (1) is satisfied lies on the public authority that seeks to rely on the limitation.

Part 3 — Interpretation, inconsistency and named override

13 Interpretive rule

(1) A Commonwealth Act, regulation or instrument must be interpreted, so far as it is possible to do so consistently with its purpose, in a way that is compatible with Covenant rights.

(2) If more than one interpretation is open, the interpretation that gives the greater protection to the Covenant right must be preferred.

(3) This section applies to a law whether enacted before or after this Act.

14 Inconsistency — no force or effect against the right-holder

(1) A Commonwealth law or regulation that cannot be interpreted under section 13 so as to be compatible with a Covenant right is, to the extent of the inconsistency, of no force or effect against a person asserting that right.

(2) Subsection (1) does not apply to a provision of an override Act that expressly identifies the Covenant right and the domestic provision in the manner required by section 15.

(3) A court of competent jurisdiction may declare the extent of the inconsistency. A declaration under this subsection is binding on the parties and is to be laid before each House of the Parliament within 15 sitting days.

(4) This section is enacted in reliance on section 51(xxix) of the Constitution and on every other supporting head of power.

> ***Note:*** *Section 14 is the non-removal rule in operative form. A later ordinary Act that does not satisfy section 15 cannot, by side-wind, restore force to an incompatible provision as against the right-holder.*

15 Named override

(1) Parliament may limit a Covenant right otherwise than in accordance with section 12 only by an override Act that:

(a) states in its short title that it is an override Act for the purposes of this section; and

(b) names the specific article of the specific Covenant and the specific domestic provision being overridden; and

(c) states the legitimate aim in the language of the Covenant, not in a slogan; and

(d) contains an independent statement of why less restrictive means were considered and rejected; and

(e) sunsets no later than 2 years after commencement unless re-enacted after:

(i) a public report of the Parliamentary Joint Committee on Human Rights; and

(ii) a public report of the Australian Human Rights Commission; and

(f) is not included in an omnibus Act dealing also with unrelated matters.

(2) An Act that does not satisfy subsection (1) is not an override Act and does not displace sections 13 or 14.

(3) An override Act must be interpreted strictly and confined to its express terms.

(4) This section does not prevent a later Parliament from repealing this Act by an Act that refers to this Act by name. A repeal by implication is not effective.

16 No implied repeal

A later Commonwealth Act is not to be taken to repeal, amend or displace this Act, or sections 13 or 14, by implication, general words, or necessary intendment. Express reference to this Act by name is required.

Part 4 — Prohibition of organisations only by a Chapter III court

17 Exclusive judicial power

(1) An organisation must not be specified, listed, declared or designated, under any Commonwealth law, as a prohibited hate group, terrorist organisation, extremist organisation, or any equivalent, with the effect of criminalising membership, recruitment, funding, support or association, except by a prohibition order of the Federal Court of Australia under this Part.

(2) A regulation, ministerial instrument, or state of satisfaction that purports to have that effect is void.

(3) This section applies despite any other Commonwealth law, including Part 5.3B of the Criminal Code as in force immediately before commencement of this Act.

18 Who may apply

(1) Only the Director of Public Prosecutions, or the Attorney-General acting personally, may apply to the Federal Court for a prohibition order.

(2) The application must be served on the organisation and, so far as reasonably practicable, on each office-holder whose identity is known.

(3) The Australian Human Rights Commission may intervene as of right.

19 Hearing

(1) The Court must not make a prohibition order unless it has held a contested hearing.

(2) The organisation and any member who applies to be heard:

(a) must be given the substance of the adverse case in sufficient detail to permit a real defence; and

(b) may call and cross-examine witnesses, subject to the Evidence Act 1995; and

(c) must be given usable reasons.

(3) Classified material may be withheld from the organisation only if the Court is satisfied that disclosure would create a real risk of serious harm to national security, and only to the minimum extent necessary.

(4) If material is withheld under subsection (3), the Court must appoint a special advocate to represent the interests of the organisation in respect of that material. A special advocate is not a substitute for the substance of the case required by paragraph (2)(a).

(5) The Court must give reasons that can be published. A secret schedule is permitted only for the minimum facts whose publication would create the risk in subsection (3).

20 Grounds — violence, not orthodoxy

(1) The Court may make a prohibition order only if it is satisfied, on the balance of probabilities and on admissible evidence, that:

(a) the organisation has as a purpose the engagement in, or the incitement of, politically motivated violence against persons; and

(b) there is a real and present risk that, unless the order is made, that purpose will be carried into effect; and

(c) no less restrictive order (including an order directed at named individuals, a conditions order, or a publication of findings without prohibition) would adequately meet that risk.

(2) The Court must not make a prohibition order on the ground that:

(a) the organisation holds, publishes or advocates an opinion that is racist, antisemitic, theocratic, seditious, insulting or otherwise contemptible; or

(b) a reasonable member of a protected group would be offended, humiliated or intimidated by the organisation's speech, gestures or symbols; or

(c) intelligence assesses that the organisation might in future advocate violence; or

(d) the organisation is small, new, or electorally insignificant.

(3) Past lawful speech is not, without more, evidence of a purpose of violence.

21 Form, duration and renewal

(1) A prohibition order must identify the organisation with precision, including known aliases.

(2) The order expires 12 months after it is made, unless the Court on a fresh application, and on fresh evidence, renews it for a further period of no more than 12 months.

(3) A person may apply at any time to vary or revoke the order on the ground that the conditions in section 20 are no longer met.

(4) Membership of, or support for, an organisation after the expiry or revocation of an order is not an offence by reason only of the former order.

22 Offences only after an order, and only for conduct

(1) A Commonwealth offence that is framed by reference to membership of, recruitment for, funding of, or support for a prohibited organisation applies only to an organisation that is the subject of a current prohibition order under this Part.

(2) The offence must require a mental element of knowledge of the order and of the character of the conduct.

(3) Providing legal advice, journalism, academic research, religious ministry, or humanitarian aid to a member of a listed organisation is not, of itself, support for the organisation.

23 Public register

(1) The Australian Human Rights Commission must maintain a public register of:

(a) every prohibition order, variation, renewal and revocation; and

(b) every override Act; and

(c) every statement of compatibility that engages a Covenant right of expression, assembly, association or political participation.

(2) An entry must be published within 24 hours after the order or Act commences.

(3) Secret reasons are not to be entered. The existence of a secret schedule under subsection 19(5) must be noted.

24 Amendment of the Criminal Code

Schedule 2 amends the Criminal Code Act 1995 and has effect according to its terms.

Part 5 — Duties of public authorities and of the Parliament

25 Duty to act compatibly

(1) It is unlawful for a public authority to:

(a) act in a way that is incompatible with a Covenant right; or

(b) fail to give proper consideration to a relevant Covenant right in making a decision.

(2) Subsection (1) does not apply if the public authority could not reasonably have acted differently because of a provision of an override Act.

26 Statements of compatibility

(1) A statement of compatibility under the Human Rights (Parliamentary Scrutiny) Act 2011 in respect of a Bill that engages a Covenant right must:

(a) identify each Covenant article engaged; and

(b) apply the test in section 12 in terms, not in slogans; and

(c) address section 11 if the Bill is capable of applying differently to groups of different size.

(2) A statement that is silent on a relevant article, or that asserts compatibility without applying section 12, is a formulaic statement.

(3) A formulaic statement is a reviewable error in any proceeding in which the compatibility of the resulting law is in issue, and is a matter the Parliamentary Joint Committee on Human Rights must report.

27 Parliamentary Joint Committee on Human Rights

(1) The Committee must report on the compatibility of a Bill with this Act before the Bill is read a third time in the House in which it originated.

(2) A third reading without that report is a procedural defect which that House may, by motion, cure, but the absence of the report is admissible in any proceeding on the meaning or effect of the resulting Act.

Part 6 — Standing and remedies

28 Standing

The following persons have standing to seek relief under this Part:

(a) a person whose Covenant right is engaged, including a member, donor, employee, publisher, lawyer or would-be associate of an organisation that is or is proposed to be the subject of a prohibition order;

(b) the Australian Human Rights Commission;

(c) a person or body granted leave by the court because the proceeding raises a question of general importance under this Act.

29 Relief

(1) The Federal Court of Australia and the Federal Circuit and Family Court of Australia (Division 2) may grant:

(a) a declaration of inconsistency under section 14;

(b) an injunction, including an interim injunction, restraining a public authority from acting incompatibly with a Covenant right;

(c) an order setting aside a regulation or instrument that is void under subsection 17(2);

(d) compensation for loss or damage caused by a contravention of section 25, unless the court is satisfied that an award would not be just in the circumstances;

(e) any other order the court considers appropriate.

(2) Relief under this section is in addition to any other right the person has.

(3) A limitation period of 6 years applies to a claim for compensation, running from the day the person became aware, or ought to have become aware, of the contravention.

30 Commission intervention and production

(1) The Australian Human Rights Commission may intervene as of right in any proceeding in which a question arises under this Act.

(2) The Commission may, by written notice, require a public authority to produce documents relating to a listing proposal, a prohibition-order application, or a statement of compatibility, other than documents for which a court has upheld a claim of public interest immunity.

(3) A person must not fail to comply with a notice under subsection (2). Penalty: 60 penalty units.

Part 7 — Miscellaneous

31 Review of reservations

(1) The Minister must, within 12 months after commencement, cause a public review of every reservation and interpretive declaration Australia maintains to an instrument in Schedule 1.

(2) The review must recommend whether each reservation should be withdrawn.

(3) The Minister must table the review in each House within 15 sitting days after it is completed.

32 Regulations

The Governor-General may make regulations prescribing matters required or permitted by this Act, or necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations must not specify an organisation as prohibited.

33 Review of this Act

The Minister must cause an independent review of the operation of this Act to be commenced no later than 3 years after commencement, and must table the report within 15 sitting days after receipt.

Schedule 1 — Covenant instruments

The following instruments, as they apply to Australia from time to time, are Covenant instruments for this Act:

1. International Convention on the Elimination of All Forms of Racial Discrimination (Australia bound 30 September 1975).

2. International Covenant on Economic, Social and Cultural Rights (Australia bound 10 December 1975).

3. International Covenant on Civil and Political Rights (Australia bound 13 August 1980).

4. Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty (Australia bound 2 October 1990).

5. Optional Protocol to the ICCPR (individual communications) (Australia bound 25 September 1991).

6. Convention on the Elimination of All Forms of Discrimination against Women (Australia bound 28 July 1983), and its Optional Protocol.

7. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Australia bound 8 August 1989).

8. Optional Protocol to the Convention against Torture (Australia bound 21 December 2017).

9. Convention on the Rights of the Child (Australia bound 17 December 1990), the Optional Protocol on the involvement of children in armed conflict, and the Optional Protocol on the sale of children, child prostitution and child pornography.

10. Convention on the Rights of Persons with Disabilities (Australia bound 17 July 2008) and its Optional Protocol.

11. Convention on the Prevention and Punishment of the Crime of Genocide.

12. Convention Relating to the Status of Refugees and the 1967 Protocol.

13. The Geneva Conventions of 12 August 1949 and the Additional Protocols to which Australia is a party.

14. Rome Statute of the International Criminal Court.

Schedule 2 — Amendment of the Criminal Code Act 1995

1 After section 1 of the Criminal Code Act 1995

Insert a note: “See also the Covenant Rights Protection Act 2026, which confines the prohibition of organisations with criminal consequences for membership or support to an order of the Federal Court under Part 4 of that Act.”

2 Part 5.3B of the Criminal Code

Repeal the Part, substitute:

Part 5.3B — Organisations subject to a prohibition order

114A.1 Definitions

In this Part: prohibition order means an order in force under Part 4 of the Covenant Rights Protection Act 2026. listed organisation means an organisation that is the subject of a prohibition order.

114A.2 Membership of a listed organisation

(1) A person commits an offence if the person is a member of a listed organisation and knows that a prohibition order is in force in respect of the organisation.

Penalty: Imprisonment for 5 years.

(2) Subsection (1) does not apply if the person took all reasonable steps to cease to be a member as soon as practicable after becoming aware of the order.

Note: A defendant bears an evidential burden in relation to subsection (2). See subsection 13.3(3).

114A.3 Providing support to a listed organisation

(1) A person commits an offence if the person intentionally provides material support or resources to a listed organisation, knowing that a prohibition order is in force, and intending that the support or resources assist the organisation to engage in politically motivated violence.

Penalty: Imprisonment for 7 years.

(2) Legal advice, journalism, academic research, religious ministry and humanitarian aid are not material support for the purposes of subsection (1) merely because they are provided to a member of a listed organisation.

114A.4 No executive listing

A regulation must not specify an organisation for the purposes of this Part.

3 Application

A regulation made under Part 5.3B as in force immediately before commencement of this Schedule, including the Criminal Code (Prohibited Hate Group – White Australia) Regulations 2026 and any successor regulation, ceases to have effect on commencement of this Schedule. A person is not criminally responsible for an act done in purported compliance with such a regulation after that commencement.

4 Saving of ordinary criminal law

Nothing in this Schedule affects an offence of violence, threat, incitement to imminent violence, property damage, or conspiracy, whether under this Code or any other law.