2025-2026

The Parliament of the Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Human Rights Bill 2026

PROPOSED AMENDMENTS

Proposed complementary amendments to strengthen the Bill introduced by Mr Wilkie

Offered in support of the Human Rights Bill 2026, for consideration in committee of the whole

Model sheet • Not moved • September 2026

These amendments are proposed in support of the Human Rights Bill 2026 introduced by the Member for Clark. That Bill is the right vehicle. It would, for the first time, set out a national catalogue of rights drawn from the covenants Australia has ratified, require legislation to be read consistently with those rights, and provide that an inconsistent law has no force or effect to the extent of the inconsistency. These amendments do not replace that design. They build on it.

Since the Bill was introduced, the Parliament has also enacted the Combatting Antisemitism, Hate and Extremism (Criminal and Migration Laws) Act 2026, and the High Court has reserved questions about Part 5.3B of the Criminal Code. The amendments take that later development into the Bill so that the rights already written in Part 4 — especially peaceful assembly, association, expression and taking part in public life — continue to operate in the setting the Parliament now faces. They also add a public-authority duty and an effective remedy, which sit naturally with the Bill's objects and with Article 2 of the International Covenant on Civil and Political Rights.

Amendments to the Human Rights Bill 2026

Item 1 — Long title

Omit the long title, substitute:

"A Bill for an Act relating to the human rights and freedoms of all Australians and all people in Australia, to give domestic effect to covenants Australia has ratified, to prevent those rights being removed 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".

Item 2 — Preamble

After paragraph (e) of the preamble, insert:

(f) Australia has accepted binding obligations under 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 its Optional Protocol, the Convention on the Rights of the Child and its Optional Protocols, and the Convention on the Rights of Persons with Disabilities and its Optional Protocol; and

(g) ratification is a legal undertaking, and a later ordinary statute, regulation or executive listing that extinguishes or makes practically unusable a right so accepted is a removal of that right; and

(h) 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

(i) 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; and

(j) this Act is intended to ensure that human rights that appear to have been taken away are not removed.

Item 3 — Clause 2 (Commencement)

Omit subclause 2(1) (commencement 12 months after Royal Assent), substitute:

(1) Sections 1 and 2 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.

Immediate commencement would allow the protections in the Bill, as strengthened, to operate as soon as the Parliament enacts them.

Item 4 — Clause 3 (Objects)

At the end of clause 3, add:

(h) to establish a rule of non-removal, so that a later Act, regulation, listing or executive decision cannot extinguish or make practically unusable a human right except by a named override that satisfies subsection 11(2A); and

(i) 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

(j) to provide standing and an effective remedy to a person whose human right is engaged by a public authority; and

(k) to declare that the size or popularity of a group is irrelevant to whether a limitation of a human right is justified.

Item 5 — Clause 4 (Definitions)

Insert in the appropriate alphabetical position:

Covenant means an instrument listed in Schedule 1A.

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

override declaration means a declaration that satisfies subsection 11(2A).

prohibition order means an order of the Federal Court of Australia under Part 4A.

public authority means a Commonwealth Minister, Department, agency, officer or employee, the Australian Federal Police, an intelligence agency of the Commonwealth, and a person or body exercising a function of a public nature under a Commonwealth law or acting as an agent of the Commonwealth.

Item 6 — After clause 5

Insert:

5A 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.

5B Application to existing law and to citizens abroad

(1) This Act applies to a law whether enacted before or after commencement.

(2) If a Commonwealth law criminalises conduct outside Australia by reason of citizenship or residence, this Act applies to that law.

Item 7 — Clause 11 (inconsistency — strengthen the override)

After subclause 11(2), insert:

(2A) An override declaration is of no effect unless the Act that contains it:

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

(b) names the specific human right in Part 4, and the specific article of the specific Covenant, being overridden; and

(c) names the specific domestic provision being saved; and

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

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

(f) sunsets no later than 2 years after commencement unless re-enacted after a public report of the Parliamentary Joint Committee on Human Rights and a public report of the Australian Human Rights Commission; and

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

(2B) An Act that does not satisfy subsection (2A) is not an override Act and does not displace subsection 11(1) or section 12.

(2C) A later Act is not to be taken to repeal, amend or displace this Act, subsection 11(1) or section 12 by implication, general words, or necessary intendment. Express reference to this Act by name is required.

Note: Subsection 11(1) of the Bill already provides that an inconsistent law has no force or effect to the extent of the inconsistency. These subclauses specify the form of an override so that the rule the Bill already contains is used with precision.

Item 8 — Clause 12 (interpretation)

At the end of clause 12, add:

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

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

(a) the affected group is small; or

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

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

(5) The test is the conduct of the person or organisation, the necessity of the measure, and its proportionality, applied on evidence.

Item 9 — Clause 13 (replace the bar on liability)

Omit clause 13, substitute:

13 Liability of public authorities — duty and cause of action

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

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

(b) fail to give proper consideration to a relevant human 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 that satisfies subsection 11(2A).

(3) A person whose human right is engaged by a contravention of subsection (1) may apply to the Federal Court of Australia or the Federal Circuit and Family Court of Australia (Division 2) for:

(a) a declaration;

(b) an injunction, including an interim injunction;

(c) an order setting aside a regulation or instrument that is void under section 46A;

(d) compensation for loss or damage, unless the court is satisfied that an award would not be just in the circumstances;

(e) any other order the court considers appropriate.

(4) Standing under subsection (3) extends to 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, and to the Australian Human Rights Commission.

(5) Nothing in this section makes a private person liable only for holding, publishing or associating in the exercise of a human right.

Note: The Bill as introduced focuses on the validity and interpretation of laws, and on complaints to the Commission. This substitute adds a complementary path: a duty on Commonwealth public authorities and a court remedy, consistent with Article 2 of the ICCPR, while leaving private persons free of liability for exercising a human right.

Item 10 — Clause 18 (who has human rights)

At the end of clause 18, add:

(2) A voluntary association, incorporated association, political party, trade union, publisher or religious body may assert, on behalf of its members, the rights in sections 29, 30, 31 and 32.

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

Item 11 — Clause 20 (limitations)

After subclause 20(2), insert:

(2A) The burden of demonstrating that a limit is reasonable and demonstrably justified lies on the public authority that seeks to rely on the limit.

(2B) A limit is not reasonable and demonstrably justified merely because:

(a) a reasonable member of a group would be offended, humiliated or intimidated by the expression; or

(b) intelligence assesses that an organisation might in future advocate violence; or

(c) the affected group is small.

(2C) A right that the relevant Covenant treats as non-derogable, including the prohibition of torture and the freedom to hold an opinion, must not be limited.

At the end of clause 20, add:

(5) A measure that does any of the following is presumed not to be a reasonable and demonstrably justified limit unless the public authority rebuts the presumption under subsection (2A):

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

(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 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 review.

Item 12 — Clause 30 (assembly and association)

At the end of clause 30, add:

(3) The right of association includes the right to form and join a political party and to remain a member of a political party that has not been the subject of a prohibition order under Part 4A.

(4) Association with a person who holds an unpopular opinion is not, without more, a crime.

(5) A regulation, ministerial instrument or state of satisfaction that specifies an organisation as a prohibited hate group, terrorist organisation, extremist organisation or any equivalent, with the effect of criminalising membership, recruitment, funding, support or association, is void.

Item 13 — Clause 31 (opinion and expression)

At the end of clause 31, add:

(3) 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 the right in subsection (2).

(4) 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.

Item 14 — Clause 32 (public life)

At the end of clause 32, add:

(3) The right to take part in public life includes the right to seek registration of a political party and to campaign for that party, and that right is not extinguished by a regulation of the kind described in subsection 30(5).

Item 15 — After Part 4

Insert:

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

46A 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 Part 5.3B of the Criminal Code as in force immediately before commencement of this Part.

46B Application

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

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

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

46C 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, must be given:

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

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

(c) usable reasons.

(3) Classified material may be withheld 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. If material is withheld, the Court must appoint a special advocate. A special advocate is not a substitute for paragraph (2)(a).

(4) Reasons must be published. A secret schedule is permitted only for the minimum facts whose publication would create the risk in subsection (3).

46D Grounds — violence, not orthodoxy

(1) The Court may make a prohibition order only if 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 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 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.

46E Duration

(1) A prohibition 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.

(2) A person may apply at any time to vary or revoke the order on the ground that section 46D is no longer met.

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

46F Offences only after an order

(1) A Commonwealth offence 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.

(2) The offence must require knowledge of the order.

(3) Legal advice, journalism, academic research, religious ministry and humanitarian aid are not, of themselves, support for a listed organisation.

46G Public register

The Australian Human Rights Commission must, within 24 hours, enter on a public register every prohibition order, variation, renewal and revocation, every override Act, and every statement of compatibility that engages a right in section 30, 31 or 32.

Item 16 — After Part 3 (Commission production)

At the end of Part 3, add:

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 public interest immunity. Penalty for failure to comply: 60 penalty units.

Item 17 — New Schedule 1A (Covenant instruments)

Insert as Schedule 1A the following instruments, as they apply to Australia from time to time:

ICERD (1975); ICESCR (1975); ICCPR (1980); Second Optional Protocol to the ICCPR (1990); First Optional Protocol to the ICCPR (1991); CEDAW (1983) and Optional Protocol; CAT (1989); OPCAT (2017); CRC (1990) and the Optional Protocols on armed conflict and on sale of children; CRPD (2008) and Optional Protocol; Genocide Convention; Refugee Convention and 1967 Protocol; Geneva Conventions 1949 and Additional Protocols to which Australia is a party; Rome Statute of the International Criminal Court.

Item 18 — New Schedule (Criminal Code)

Add as a Schedule to the Human Rights Bill 2026 the amendments in Schedule B to this sheet.

Schedule B — Amendment of the Criminal Code Act 1995

This Schedule is to form part of the Human Rights Bill 2026.

1 After section 1 of the Criminal Code Act 1995

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

2 Part 5.3B of the Criminal Code

Repeal the Part, substitute:

Part 5.3B — Organisations subject to a prohibition order

114A.1 In this Part: prohibition order means an order in force under Part 4A of the Human Rights 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.

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 merely because they are provided to a member of a listed organisation.

114A.4 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 that commencement. A person is not criminally responsible for an act done in purported compliance with such a regulation after that commencement.

4 Saving

Nothing in this Schedule affects an offence of violence, threat, incitement to imminent violence, property damage or conspiracy.

END OF AMENDMENT SHEET

Model amendments for committee or as a private member's amendment Bill. Not moved. Not legal advice.