



Law Council
OF AUSTRALIA

Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth)

Parliamentary Joint Committee on Intelligence and Security

15 January 2026

Telephone +61 2 6246 3788
Email mail@lawcouncil.au
PO Box 5350, Braddon ACT 2612
Level 1, MODE3, 24 Lonsdale Street,
Braddon ACT 2612
Law Council of Australia Limited ABN 85 005 260 622
www.lawcouncil.au

Contents

Acknowledgements	1
Introduction	2
Schedule 1: Amendments of legislation relating to the criminal law	4
Part 1: Aggravated offences for preachers and leaders	4
Part 3: Aggravated sentencing factor	5
Part 4: Prohibited hate groups	6
Division 114A: Prescription framework and criteria for listing	7
Rule of law concerns with listing criteria	8
Procedural fairness	10
Proposed procedural safeguards	10
Concerns with proposed procedural safeguards	11
Listing in perpetuity	12
Division 114B: Offences	12
Human rights	12
Part 5: Racial vilification offence	13
Offence-specific defence	14
Review	15
Human rights	15
Part 6: Aggravated grooming offences	15
Part 7: Hate symbols	16
Division 1: Reversal of burden of proof for defences	16
Division 2: Lowering the fault element for prohibited terrorist symbols	17
Division 3: Expanding the definition of prohibited organisation symbols	17
Human rights	18
Reliance on regulatory powers	18
Schedule 2: Migration amendments	20
Character grounds	20
About the Law Council of Australia	22

Acknowledgements

The Law Council of Australia thanks:

- the Australian Capital Territory Bar Association;
- the Law Society of New South Wales;
- the New South Wales Bar Association;
- the Queensland Law Society;
- the Law Institute of Victoria;
- the National Criminal Law Committee;
- the Migration Law Committee of its Federal Dispute Resolution Section; and
- the National Human Rights Committee

for their contribution to the preparation of this submission.

Introduction

1. The Law Council of Australia is grateful for the opportunity to respond to the Parliamentary Joint Committee on Intelligence and Security's (the **Committee**) Review of the Exposure Draft Legislation: Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth) (the **draft Bill**).
2. This draft Bill comes in the aftermath of the horrific terror attack at Bondi Beach on 14 December 2025, and aims to combat antisemitism, extremism and hate-based conduct in Australia. The Law Council shares the shock and distress of the community after the attack, and condemns acts of antisemitism, extremism and violence. We recognise the need for a multifaceted response across all levels of government to address fear and trauma within the Jewish and broader community, to foster social cohesion and unity in the wake of this devastating event, and to keep all members of our community safe and free from hate and harm.
3. Against this context, the Law Council supports the policy objective of this draft Bill, being to combat antisemitism, hate and violent extremism.
4. This draft Bill proposes complex and significant law reform across criminal law, the use of intelligence, migration law and firearms control. The draft Bill would have benefitted from detailed consideration over a more substantial period. We note that compressed timelines and limited consultation periods increase the risk of drafting errors, inconsistencies and unintended consequences. That is why we published our *Best Practice Legislative Development Checklist* in 2025,¹ setting out standards for legislative development projects so that Australian society is regulated sensibly and fairly. All legislative reforms benefit from in-depth stakeholder consultation, with adequate time for consideration of proposals by the Parliament and the Australian community, to ensure they are evidence-based, effective, legally and constitutionally sound, and will operate as intended.
5. Given the limited timeframe for response, it has not been possible for the Law Council and its constituent bodies to review the draft Bill in detail, nor to provide considered views on the wide range of matters covered. In this submission, we provide some preliminary observations on a number of criminal law, human rights and migration-related measures of the draft Bill. We reserve our position on these, and on all other measures.
6. That limited timeframe has precluded detailed consideration of available legislative options. We look forward to ongoing engagement on these issues to assist the Government to develop practical options for meaningful, effective and enduring reform.
7. We note that many of the proposed reforms intersect with matters that will be considered by the Royal Commission on Antisemitism and Social Cohesion, and overlap with other Commonwealth processes and measures, including the launch of the first phase of the National Hate Crimes and Incidents Database on 23 December 2025.

¹ Law Council of Australia, [Best Practice Legislative Development Checklist](#) (June 2025).

8. It is also important to consider the proposed offences in these reforms in the context of the range of existing offences criminalising hate-based conduct across jurisdictions, so that they are best able to increase community safety and promote social cohesion rather than further complicate an already complex legislative landscape. At the Commonwealth level, that includes the offences that were introduced by the *Criminal Code Amendment (Hate Crimes) Act 2025* (Cth), and we have not yet been able to assess the impact of those reforms. The NSW Government has also recently introduced a suite of legislative reforms, including in relation to the incitement of hatred, firearm reforms, public assembly and related measures.²
9. To ensure consistent and effective law reform, we suggest that these proposed reforms be carefully considered by the Committee and, if enacted, monitored carefully in light of the proceedings of the Royal Commission and other relevant processes and measures at the federal, state and territory level, to ensure they remain appropriate and proportionate. We recommend the inclusion of a clause requiring independent post-implementation review of the draft Bill's measures following an appropriate period.³
10. Finally, the Law Council's position is that, while robust and fair legal responses, including criminal justice responses, are an important component to address conduct targeted by this draft Bill, they may not be (and are often not) the most effective tool to prevent such conduct in the first place. We encourage the Australian Government to actively consider other approaches alongside appropriate criminal law reform and enforcement action—including community education, supports, counter-radicalisation programs, improved reporting and pathways and data, and coordinated responses across jurisdictions—to prevent hate-based conduct and extremism and promote social cohesion and community safety in the long term. We suggest that the Australian Government prioritise investment in evidence-based, proactive programs towards those aims.

² Department of Communities and Justice (NSW), "[Tighter gun laws, reforms to bolster community safety pass NSW Parliament](#)" (Media Release, 24 December 2025).

³ We note that proposed s 80.2BF(5) of the *Criminal Code* provides for review of that offence after two years: see Exposure Draft Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth) sch 1, item 22 (**draft Bill**).

Schedule 1: Amendments of legislation relating to the criminal law

Part 1: Aggravated offences for preachers and leaders

11. Part 1 of Schedule 1 to the draft Bill proposes to introduce a new aggravated offence into the Commonwealth **Criminal Code** (Schedule to the *Criminal Code Act 1995* (Cth)) as proposed section 80.2DA, entitled “Aggravated offences for religious officials or other spiritual leaders etc”. The proposed aggravated offence would increase the available penalty in circumstances where a person is accused of the underlying conduct of an offence,⁴ and:
 - (b) *the conduct engaged in by the person in the person’s capacity as:*
 - (i) *a religious official; or*
 - (ii) *a spiritual leader or other leader (however described) of a group, who provides religious instruction or pastoral care (whether religious or secular).*⁵
12. The key terms within proposed subparagraphs 80.2DA(1)(b)(ii) and 80.2DA(2)(b)(ii) would benefit from further clarification. The breadth of effect of this provision is likely much wider than the title of the offence and drafting of the provision clearly communicates. In effect, the proposed provision extends an aggravating factor broadly across the community—both in spiritual and secular settings—to persons who occupy a position of significant trust and authority, and perform an activity that falls within the ordinary meaning of “pastoral care”.
13. Considering the breadth of the intended scope of the application of this provision, we suggest that the elements of this particular aggravated offence (and its title) be revised to more accurately convey their operation to the public for clarity, and to more effectively support the deterrent objectives of the legislation.⁶
14. As one example, we suggest that “religious official” might be better explained by replacing or defining those words with the description in the Explanatory Memorandum: “a person authorised to lead or perform religious duties”. Such an amendment would make clearer on the face of the legislation that this provision is not intended to cover all persons who work for or serve in a religious organisation or faith community in the absence of spiritual leadership or pastoral care.
15. From an international human rights law perspective, clarification of the application of Part 1 would also support an assessment of its compatibility with articles 18 (freedom of thought, conscience or religion) and 19 (freedom of expression) under the International Covenant on Civil and Political Rights (**ICCPR**).⁷ Those rights may be limited as necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, but such limitations should be the least

⁴ These are the existing offences in Part 5.1 of the Criminal Code consisting of: sections 80.2A(1) and (2), 80.2BA(1) and (2), 80.2BB(1) and (2), 80.2BC(1) and (2), 80.2BD(1) and (2), or 80.2BE(1) and (2).

⁵ Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth) Item 7 proposed *Criminal Code* s 80.2DA(1)(b)(ii) and (2)(b)(ii).

⁶ Law Council of Australia, [Policy Statement – Rule of Law Principles](#) (March 2011), [1].

⁷ *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (**ICCPR**).

restrictive necessary to achieve such purposes. The Office of the High Commissioner for Human Rights' *Rabat Plan of Action* also suggests that "criminal sanctions related to unlawful forms of expression should be seen as last resort measures to be applied only in strictly justifiable situations".⁸ The Law Council has not, in the time available, formed a view on the actual compatibility of these measures with Australia's international obligations.

Part 3: Aggravated sentencing factor

16. Division 2 of Part IB of the *Crimes Act 1914* (Cth) establishes the general sentencing principles that determine both what courts consider and how courts decide on a sentence for an offender following conviction for a federal offence. The overarching principle is that "a court must impose a sentence or make an order that is of a severity appropriate in all the circumstances of the offence".⁹
17. Section 16A(1) provides that the court can take any other relevant matters into account when determining an appropriate sentence. Section 16A(2) requires a sentencing court to consider a list of enumerated matters in determining what is appropriate in the circumstances. The draft Bill proposes to introduce new paragraph 16A(2)(mb) to add an aggravating sentencing factor where an offence was wholly or partly motivated by hatred of a person or group on the basis of "race, or national or ethnic origin".¹⁰
18. The Law Council observes that sentencing courts, in responding to Commonwealth criminal offences, are already required to take into account "the nature and circumstances of the offence".¹¹ This includes consideration of the variety of motivations that an offender may have for committing an offence, including any motivation grounded in prejudice.
19. The Explanatory Memorandum addresses the introduction of this requirement to section 16A of the *Crimes Act*:

*Hate motivated conduct can cause profound harms, beyond those generally experienced by the offending conduct itself. It is an attack on the dignity of targeted groups, and members of targeted groups, which affects the physical and psychological wellbeing of not only those who were targeted but of their whole community. Furthermore, it can lay a foundation for intolerance that undermines equality, respect and understanding in the community. In turn this can cause fear, anxiety and division, and have a detrimental impact on social cohesion of the Australian community.*¹²

⁸ The Office of the High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred (The Rabat Plan of Action)* (2013) [34]. See further discussion in Law Council, [Criminal Code Amendment \(Hate Crimes\) Bill 2024](#) (Submission to Senate Legal and Constitutional Affairs Legislation Committee, 29 November 2024), [16].

⁹ *Crimes Act 1914* (Cth) s 16A(1).

¹⁰ See draft Bill, sch 1, items 10–11.

¹¹ *Crimes Act 1914* (Cth) s 16A(2)(a).

¹² Explanatory Memorandum, Exposure Draft Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth), [59] (**Explanatory Memorandum**).

20. The Law Council notes that this reasoning, as a matter of sentencing practice and with the object of countering intolerance and demonstrating a commitment to social cohesion in mind, extends more widely to other protected attributes beyond persons or groups distinguished by race, or national or ethnic origin. It may be discordant, however, where certain protected attributes are expressly identified as proposed in the draft Bill but not others (for example, religion or faith). There are good reasons for the Committee to consider recommending to extend the framework to additional protected attributes, consistent with the reasoning in the Explanatory Memorandum.
21. The proposed narrowly framed amendment risks adding complexity in circumstances where one particular protected attribute is engaged, while other possible motivations based in prejudice remain discretionary considerations under section 16A(2) broadly. This complexity risks introducing possible avenues of appeal over the characterisation of motivations, and risks unintended consequences in terms of how sentencing considerations regarding motivations based in prejudice are framed.
22. The Law Council notes that this sentencing consideration appropriately only applies to general Commonwealth offences. It is appropriate that an additional sentencing aggravation is not applied to the small number of offences that carry an elevated maximum penalty because a prejudice motivation constitutes an element of those offences, such as a number of offences contained in Part 5.1 of the Criminal Code.¹³

Part 4: Prohibited hate groups

23. Schedule 1 Part 4 of the draft Bill proposes a framework for proscribing “prohibited hate groups” (**PHG**) under the Criminal Code. The Law Council acknowledges the harms that the draft Bill seeks to address and supports effective measures to prevent and respond to hate motivated violence. There are two main aspects of the PHG framework:
 - the criteria and procedure for proscribing a PHG in Division 114A; and
 - the criminal offences described in Division 114B in consequence of a group’s designation as a PHG.

Our comments address these two aspects of the framework separately, recognising that the proscription of a group forms an element of the offences under Division 114B.

24. The Law Council has a longstanding concern about proscription frameworks under the Criminal Code, particularly with the framework for proscribing terrorist organisations under Division 102 of Part 5.3.¹⁴ We note that serious examples of the underlying conduct are often already criminalised when performed by individuals (such as the conduct already addressed by the offences found in Part 5.1 of the Criminal Code).¹⁵

¹³ Draft Bill, sch 1, item 11, proposed *Crimes Act 1914* (Cth) s 16A(2AAB).

¹⁴ See Law Council of Australia, [Anti-Terrorism Reform Project](#) (Report, 2013) 64–74.

¹⁵ Criminal Code, Chapter 5, Part 5.1 (Treason and related offences). See in particular Division 80, which criminalises treason, urging or threatening violence, offences against groups or members of groups, advocating terrorism or genocide, and prohibited symbols and Nazi salute[s].

25. The Law Council remains concerned about the extension of criminal liability on the basis of association, particularly as related criminal offences are enlivened by proscription on the basis of lower thresholds of proof of criminal conduct than would otherwise attach to an individual.¹⁶
26. In order to strengthen the legitimacy of any proposed framework for listing PHGs, it is important safeguards are offer meaningful improvements to the function and proportionality of any listing framework. Additionally, we note that meaningful checks and balances may improve the operational effectiveness of the PHG framework by ensuring its measures are appropriately targeted and capable of sustaining higher levels of community support.
27. The proposed framework for proscription also raises concerns about the retrospective application of criminal laws, as elaborated on below.

Division 114A: Prescription framework and criteria for listing

28. The Law Council is concerned that the PHG framework operates through a series of broad discretions exercised by members of the executive to outlaw associations without judicial oversight and in the absence of procedural fairness requirements. As a consequence, associations (including sub-groups of larger organisations)¹⁷ are outlawed and individuals are subsequently exposed to criminal liability under Division 114B. Consideration should be given to developing an appropriate mechanism for the judicial confirmation of listing proposals, including expedited procedures where immediate risk to life can be demonstrated and is subsequently confirmed to have been appropriate.
29. As a framework governed by regulation, PHG status is declared in a legislative instrument by the Governor-General on the basis of a recommendation from the Minister for the Australian Federal Police (**AFP Minister**).¹⁸ Under proposed subsection 114A.4(1), the AFP Minister must be satisfied “on reasonable grounds” that:
 - (a) *the organisation:*
 - (i) *has engaged in, prepared or planned to engage in, or assist the engagement in, conduct constituting a hate crime; or*
 - (ii) *has advocated (whether or not in Australia) engaging in conduct constituting a hate crime, other than an offence against section 80.2A, 80.2B, 80.2BC or 80.2BE (advocacy offences); and*
 - (b) *specifying that the organisation as a prohibited hate group is reasonably necessary to prevent harm of any one or more of the kinds referred to in paragraph 114A.(1)(a).*
30. The harms referred to in paragraph 114A.1 include “social, economic, psychological and physical harm”. Although this provision is intended to operate as an additional safeguard, some constituent bodies have expressed preliminary concerns that the inclusion of such a broad range of possible harms—including social and economic harm—risks chilling lawful protest movements.

¹⁶ See Law Council of Australia, [Anti-Terrorism Reform Project](#) (Report, 2013), 64-65.

¹⁷ See draft Bill, sch 1, item 13, definition of “organisation” in proposed Criminal Code s 114A.2.

¹⁸ Ibid, proposed Criminal Code s 114A.4(1).

31. The Law Council notes that this procedure is augmented by two additional safeguard mechanisms in proposed Division 114A, as discussed below from paragraph [38].

Rule of law concerns with listing criteria

32. The rule of law requires that the law must be both readily known and available, and certain and clear.¹⁹

33. A range of concerns arise from the expanded definition of a hate crime, and how it functions in the context of the AFP Minister's assessment. For the purposes of Part 5.3B of the Criminal Code, a "hate crime" is defined in section 114A.3.²⁰ This term extends beyond "conduct that would constitute" a specified criminal offence under the Criminal Code, to the following:

(2) A ***hate crime*** is also conduct that:

- (a) was engaged in at a time before a provision referred to in subsection (1) commenced; and
- (b) would constitute an offence against the provision had the provision been in force at the time.

(3) A ***hate crime*** is also conduct, or the threat of conduct (whether engaged in or threatened before or after this section commences):

- (a) that involves or would involve, any one or more of the following:
 - (i) causing serious harm to a person (the ***targeted person***);
 - (ii) causing serious damage to property (the ***targeted property***);
 - (iii) causing a person's (the ***targeted person***) death;
 - (iv) endangering a person's (the ***targeted person***) life, other than the life of the person taking the action;
 - (v) creating a serious risk to the health or safety of a section 9 of the public (the ***targeted persons***); and
- (b) that the person engaged in because of the person's belief that:
 - (i) the ***targeted person*** or persons are distinguished by race or national or ethnic origin; or
 - (ii) the ***targeted property*** is associated with a person or persons distinguished by race or national or ethnic origin.

34. We are concerned that the conduct in question can be assessed prior to the commencement of these provisions for the purposes of proscription, which triggers the operation of criminal offences. The matters for consideration in making a listing decision indirectly—but nevertheless materially—involve retrospective application of laws to assess conduct that was engaged in under a previous legal framework. The Explanatory Memorandum notes that:²¹

This does not indicate a retrospective application of the criminal law. The definition of a hate crime is used for the purposes of establishing a threshold against which the AFP Minister must be satisfied before an organisation can be listed.

¹⁹ Law Council of Australia, [Policy Statement – Rule of Law Principles](#) (March 2011), 2.

²⁰ See draft Bill, sch 1, item 13, proposed Criminal Code s 114A(1).

²¹ Explanatory Memorandum, [94].

35. While this analysis is sound if assessing the threshold against which the AFP Minister makes a decision, the consequence of proscription—after satisfying that threshold on the basis of previously legal conduct— subsequently forms an element of the proposed criminal offences in Division 114B. As such, there is a risk that the previously legal conduct of a group can inform the subsequent satisfaction of an element of a criminal offence for the purposes of prosecuting an individual.
36. This definition and the AFP Minister’s test both involve a broad executive discretion to interpret conduct and the threat of conduct to the inappropriately low threshold of “reasonable grounds”. The Law Council is concerned that conduct satisfying the broad definition of “hate crime” applies to a wide range of conduct at a very early stage of preparation and consequently before serious harm has necessarily happened, such as where an organisation is alleged to be preparing and planning to engage in a hate crime; assisting the conduct of a hate crime; or advocating for a hate crime. Serious indictable offences that follow in Division 114B and limitations on assembly should be as closely related to occasioned harm as possible. We have indicated in previous submissions that preparing and preparation, for example, includes conduct at a very early stage that falls short of that required for traditional inchoate offences such as attempt or conspiracy.²²
37. In this context, the statutory definition of “advocates” for the purposes of Part 5.3B of the Criminal Code is broader than its ordinary meaning. While paragraph (a) of the definition at section 114A.2(2) broadly conforms with the ordinary meaning of the word, subsections (b) and (c) extend this meaning further:
- (b) *the organisation provides instruction on how to engage in conduct constituting a hate crime; or*
 - (c) *the organisation praises the engagement in:*
 - (i) *conduct constituting a hate crime; or*
 - (ii) *conduct that would constitute a hate crime if engaged in Australia;*

in circumstances where there is an unacceptable risk that such praise might have the effect of leading a person (regardless of the person’s age or any mental impairment that the person might suffer) to engage in conduct constitute a hate crime’.
38. The final sub-paragraph extends the definition of “advocates” in ways that are difficult to predict. This ambiguity and lack of clarity around what conduct might enliven these considerations to the satisfaction of the AFP Minister renders this limb unacceptably vague. This is especially so in light of the interaction between the advocacy and conduct that constitutes a hate crime under section 114A.3(2)–(3) for the purposes of the AFP Minister’s test.

²² See, eg, Law Council of Australia, [Review of Australia’s Espionage, Foreign Interference, Sabotage and Theft of Trade Secrets Offences](#) (Submission to Independent National Security Legislation Monitor, 4 July 2025), [26]–[32].

Procedural fairness

39. The Law Council suggests that the Committee might re-consider the exclusion of procedural fairness by the Minister for the AFP. Additionally, procedural fairness can be meaningfully bolstered by consideration of intermediate mechanisms prior to listing, such as formal warnings prior to proscription.
40. The Law Council has concerns about the proposed criteria for proscribing PHGs without judicial oversight. The Law Council has previously advocated that prohibited group frameworks should require judicial approval for a listing to proceed.²³
41. The Law Council is also concerned that proposed subsection 11A.4(5) specifically provides that the AFP Minister is “not required to observe any requirements of procedural fairness” in forming a view of the matters enumerated in subsection (1).²⁴ We note that the rule of law requires that “decision making should comply with the principles of natural justice and be subject to meaningful judicial review”.²⁵ Noting the number of new offences which apply to members of prohibited hate groups proposed by the draft Bill, the significant penalties associated with those new offences and the retrospective application of those provisions, the exclusion of procedural fairness has not been appropriately justified in the Explanatory Memorandum.
42. This is especially concerning given the reliance on the discretion of the executive and security intelligence as a safeguard mechanism. The Law Council observes that intelligence can be less clear and certain than evidence leading to a conviction for a criminal offence. Consequently, in situations where decision makers are dealing with imperfect information, addressing broad and speculative criteria, the extension of procedural fairness represents an important rule of law principle to avoid the possibility of arbitrary or inconsistent application of downstream criminal offences.

Proposed procedural safeguards

43. There are two procedural safeguards in the PHG framework that distinguish the proposed proscription framework from, for example, the existing terrorist organisation framework under Part 5.3 of the Criminal Code. The Law Council welcomes the acknowledgment implicit in such safeguards that the terrorist organisation listing framework is too permissive in the context of assessing groups for proscription for hate crimes.
44. The first safeguard is that, before the AFP Minister can make such a recommendation to the Governor-General, they are required to have first received written advice from Director-General of Security (**Director-General**) recommending that the AFP Minister should “consider whether an organisation should be specified as a prohibited hate group”.²⁶

²³ Law Council of Australia, [Anti-Terrorism Reform Project](#) (Report, 2013), 4.2.2.

²⁴ See draft Bill, sch 1, item 13, proposed Criminal Code s 114A.4(5).

²⁵ Law Council of Australia, [Policy Statement – Rule of Law Principles](#) (March 2011), principle 6(d).

²⁶ See draft Bill, sch 1, item 13, proposed Criminal Code s 114A.5

45. The provision of that advice may be provided only if the Director-General is satisfied that either:
- (a) *both of the following apply:*
 - (i) *the organisation has engaged in activities;*
 - (ii) *the Director-General is satisfied that the activities, or the continued engagement in the activities, would or are likely to increase the risk of politically motivated violence, or the promotion of communal violence;*
 - (b) *the organisation has:*
 - (i) *advocated for or engaged in politically motivated violence, or engaged in the promotion of communal violence; or*
 - (ii) *engaged in activities that indicate a risk that the organisation may advocate for or engage in politically motivated violence, or engage in the promotion of communal violence in the future.*²⁷
46. We note that the Director-General is “not required to observe any requirements of procedural fairness in providing advice under this section”.²⁸
47. The second safeguard is a requirement that the Attorney-General must concur with the AFP Minister’s assessment.²⁹ In addition, the AFP Minister is required to “arrange for the Leader of the Opposition to be briefed in relation to the proposed regulation”.³⁰
48. Additionally, this Committee is provided with a discretion to review legislative instruments at any time, including those that proscribe hate groups.³¹

Concerns with proposed procedural safeguards

49. The Law Council would strongly prefer that there be judicial oversight of proscription frameworks, in light of the serious criminal consequences for individuals that flow from listing. We are concerned that, although these safeguards require agreement between Cabinet ministers and a statutory officeholder within the executive, this may not adequately provide meaningful scrutiny of listing decisions.
50. We have also received feedback that there may be additional utility in requiring consultation and agreement with the Minister for Foreign Affairs, particularly if the proposed proscription stems from geopolitical tensions.
51. There is a risk of normative decision-making aligning with the views of the government of the day regarding who is listed and not listed, as there is no opportunity for mandatory oversight of decision making. While the independence of the Director-General of Security represents an additional threshold for listing, the absence of mandatory oversight of the listing process by parliament remains a concern.

²⁷ Ibid, proposed Criminal Code s 114A.5.

²⁸ Ibid, proposed Criminal Code s 114A.5(5).

²⁹ Ibid, proposed Criminal Code s 114A.6(1).

³⁰ Ibid, proposed Criminal Code s 114A.6(2).

³¹ Ibid, proposed Criminal Code s 114A.9.

Listing in perpetuity

52. Consideration should be given to mandatory reviews of listings at nominated time frames. We have received feedback that such review may be beneficial to determine whether those organisations continue to meet the listing criteria, with reports of that review published for transparency, noting there is otherwise no oversight to compel the Minister to delist an organisation (even where it may be clear that organisation no longer meets the criteria).

Division 114B: Offences

53. The Law Council notes that proposed offences that arise in consequence of proscription involve fault elements of recklessness for knowledge of the proscribed status of a particular hate group. As these offences carry significant penalties, we are concerned that sets the bar to a low standard for offences that involve persons who are non-members or otherwise involved in the internal operations of the group.
54. In particular, we express concern about offences concerning training or “providing support” to a prohibited hate group. In addition to our above-described concern about the appropriateness of recklessness as a fault element for third parties, we are also concerned that the conduct elements extend to training provided to or received from an organisation that may have no direct nexus with hate crimes. This section risks criminalising marketing, legal advice, and other forms of training that might ordinarily be contracted by an organisation.³² Additionally, we note that calibrating a fault element to recklessness risks disproportionately imposing obligations on third parties who deal with organisations that might enliven the protected attribute of race, national or ethnic origin.
55. We are also concerned that a number of offences within proposed Division 144B reverse the onus of proof. The justification for this is based on cost effectiveness and difficulty for the prosecution to prove certain matters beyond a reasonable doubt.
56. The Law Council is concerned that Division 114B exposes legal representatives to criminal liability. There is currently a limited exception to the offence at proposed section 114B.5. However this is unduly restrictive insofar as it applies only to the receipt or provision of funds for the purposes of legal representation or advice. A broader exception provision for legal representation and advice should be provided for offences in proposed Division 114B without the risk of criminal liability attaching to that service.

Human rights

57. The objects clause of Part 4 of Schedule 1 states that the Part gives effect to articles 20 and 26 of the ICCPR, as well as article 4 of the Convention on the Elimination of All Forms of Racial Discrimination, which (broadly speaking) require

³² As discussed below, we are concerned in particular about the subsidiary offences in proposed sections 114B.5 and 114B.6 of the Criminal Code: see draft Bill, sch 1, item 13. The critique of “material support” in the case of *Minister for Immigration and Citizenship v Haneef* [2007] FCAFC 203 may be relevant in this regard – see further Law Council of Australia, [Mohamed Haneef Case](#) (Policy Agenda statement, 2016).

States parties to prohibit certain forms of hate speech.³³ The Law Council supports implementation of these obligations given the profound harm caused by this conduct and its potential to lead to acts of violent extremism.

58. The full scope of conduct captured by the offences in proposed Division 114B should be carefully considered to ensure that these offences are consistent with those obligations and proportional to the draft Bill's objectives. The PHG-listing powers would also engage, at a minimum, rights to freedom of expression and freedom of association.³⁴ Permissible limits on freedom of expression are discussed at paragraph [13] of this submission. Article 22 protects the right to freedom of association (ie to join together in groups to pursue common aims) and prescribes permissible limits on that right (ie those that are "prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others"). Privacy and citizenship rights may also be relevant to consequential amendments to the *Australian Citizenship Act 2007* (Cth), the *Surveillance Devices Act 2004* (Cth) and the *Telecommunications (Interception and Access) Act 1979* (Cth).
59. The retrospectivity concerns outlined above should also be considered in light of the prohibition on retrospective criminalisation (or increase in criminal punishment) in article 15 of the ICCPR.
60. Given the potentially severe consequences of association with a PHG, there should be rigorous safeguards around the listing process, and the offences in Division 114B should be carefully circumscribed so as not to criminalise acts that do not contribute directly to the hateful activities sought to be prohibited. Proposed sections 114B.5(2) and 114B.6(2) in particular warrant careful scrutiny in this regard.

Oversight and Review

61. Consideration might be given to the appropriate oversight body responsible for decision making under Division 114A. Where decisions of the AFP Minister engage intelligence functions, there may be advantages to specifying that the oversight of the Inspector-General of Intelligence and Security applies.
62. We suggest that the Committee consider recommending an independent review of the operation of this framework after two years.³⁵ The necessity and operation of offences should be re-considered in light of the outcome of any criminal proceedings or relevant findings of the Royal Commission.

Part 5: Racial vilification offence

63. The Law Council has received preliminary feedback indicating a range of views on the draft Bill's racial vilification offence. Some feedback has indicated a need to consult further with the community and stakeholders to better understand the potential scope and consequences of adding these offences to the statute book,

³³ *Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969).

³⁴ ICCPR, art 22.

³⁵ Draft Bill, sch 1, item 22, proposed Criminal Code s 80.2BF(5).

including human rights considerations. The NSW Bar Association has indicated in preliminary comments that they oppose the introduction of section 80.2BF as it is currently drafted.

64. The Law Institute of Victoria (**LIV**) notes that the *Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025* (Vic), which introduced vilification offences, was introduced after several years of consultation with a broad range of stakeholders and representatives from minority groups. The LIV considers that, on face value, the Victorian offence has a higher threshold than the proposed Commonwealth offence. Consequently, the LIV is concerned that the draft Bill would create inconsistency between Commonwealth and state legislation, particularly where the threshold and extent of protection differs. Considering that consultation periods for the Victorian offence extended over four years, and the interaction of the draft Bill with fundamental human rights obligations, these further support more extensive and robust consultation on such measures in the draft Bill as noted in the Introduction to this submission.
65. The Law Council has received feedback that the subjective application of criminal responsibility, focusing on the intentional acts of the accused, particularly for serious indictable offences concerning speech acts or public expression, continues to represent an important standard under the Criminal Code.
66. Conversely, we have also received feedback that racial vilification may arise even where speakers deny subjective intent, and that modern hate speech may operate through deliberate ambiguity, indifference and amplification as well as through explicit incitement. It has been suggested therefore, that carefully calibrated objective and recklessness-based standards—supported by clear contextual and proportionality safeguards—may strengthen the effectiveness of the offence while preserving fundamental criminal law principles.
67. The Law Council has also received some preliminary feedback on possible issues flowing from the “reasonable member of the target community” test proposed in subsection 80.2BF(1)(c). In particular, there are concerns that this construction adds additional complexity beyond the well-understood “reasonable person test” in terms of leading evidence and assessing to a standard of reasonableness of the views of members of the target group.

Offence-specific defence

68. Proposed subsection 80.2BF(4) of the Criminal Code would provide that subsection 80.2BF(1) (which creates an offence of publicly promoting or inciting racial hatred) does not apply to conduct that “consists only of directly quoting from, or otherwise referencing, a religious text for the purpose of religious teaching or discussion”.
69. At the outset of any discussion of this provision, we note that for the purposes of conviction, this subsection is directly relevant where the elements of the offence have been proved by the prosecution beyond reasonable doubt. In other words, it is enlivened where the accused has been found to have satisfied the conduct elements found in section 80.2BF(1)(b) with intention and in circumstances that satisfy paragraph (c).

70. The Law Council notes that relying on the ordinary meaning of “religious text” may not provide sufficient clarity of the scope of the defence. Likewise, the ambiguity attends to the use of the phrase “otherwise referencing”, which arguably could include paraphrasing. Paraphrasing, as opposed to direct quotation, necessarily involves engaging in some degree of interpretation, consciously or otherwise. We also note that the text of the offence, and of the Explanatory Memorandum, fails to distinguish between the broader meaning of “referencing” and its relationship to citation, noting that both meanings have application in the context. We recommend that issues of definition of “religious text” should be clarified in the draft Bill.

Review

71. We support the requirement that this section be reviewed after two years.³⁶ Furthermore, the necessity and operation of this offence should be considered in light of the outcome of any criminal proceedings or relevant findings of the Royal Commission.

Human rights

72. The proposed offence in section 80.2BF would prohibit vilification on the basis of race, colour or national or ethnic origin. The Law Council observes that other groups (including those protected by the offences in sections 80.2A–80.2BE of the Criminal Code) also suffer from vilification and should be considered for inclusion in this offence.
73. The “religious teaching or discussion” defence in proposed section 80.2BF(4), as discussed above, would require a defendant to prove they were only quoting directly from a religious text for the purpose of religious teaching or discussion. To the extent that the defence might excuse the use of the wording of such texts to promote hatred or incite violence, it will need to be carefully considered from a human rights perspective (even if it does operate to protect the right to freedom of thought, conscience and religion under article 18 of the ICCPR).

Part 6: Aggravated grooming offences

74. Part 6 of Schedule 1 to the draft Bill proposes to introduce aggravated offences in situations where adults intend to influence the actions of children. The aggravated offences are contained within proposed sections 80.2DB and 474.45BA of the Criminal Code.
75. Section 80.2DB proposes an aggravated offence that increases the severity of consequences in situations where a person either commits an underlying offence found in 80.2B(1) or (2), 80.2BC(1) or (2), or 80.2BE(1) or (2), by “advocating for one or more other persons to use force or violence, or cause damage” where “the offender is reckless as to whether, at the time of the conduct, at least one of the other persons is less than 18 years old whether or not the person is actually less than 18 years old”.³⁷

³⁶ Draft Bill, sch 1, item 22, proposed Criminal Code s 80.2BF(5).

³⁷ Ibid, sch 1, item 33, proposed Criminal Code ss 80.2DB(1)(c) and (2)(c).

76. Likewise, the aggravating offence contained in proposed section 474.45BA also includes an element where “the offender is reckless as to whether, at the time of the conduct, at least one of the other persons is less than 18 years old whether or not the person is actually less than 18 years old”).³⁸
77. In this context, a fault element of recklessness might be less preferable than an element that adopts the fault elements of belief or knowledge. The fault element in proposed section 80.2DB and 474.45BA is not consistent with how circumstance elements are framed in other examples of offences describing grooming in the Criminal Code, for example, those in Divisions 471 (postal offences) and 474 (telecommunications offences).³⁹ For those offences, the circumstance element adopts the framing that the “the child is someone who is, or who the sender believes to be, under 18”.
78. As currently drafted, the proposed offence in the draft Bill applies in a wider range of circumstances than existing grooming provisions. In effect, it risks functioning as a broad aggravating factor that can be applied in situations where the offending takes place where the accused may be aware that there is substantial risk that a person is less than 18 years old, but does not know or believe this to be so.

Part 7: Hate symbols

79. The Law Council acknowledges the harms that can result from the use of symbols and imagery. Hate symbols legislation was introduced recently and the effectiveness of this legislation is yet to be determined. The intersection of harms experienced from the use of symbols with freedom of expression and freedom of political communication raises particularly challenging questions.

Division 1: Reversal of burden of proof for defences

80. Items 40 and 46 of Schedule 1 to the draft Bill propose to repeal and replace an element of the offences found at sections 80.2H and 80.2HA of the Criminal Code. The previous drafting required the prosecution to prove that existing subsection 80.2H(9) and 80.2HA(9) did *not* apply. The Law Council criticised the drafting of subsections at the time in terms as not providing sufficient protection of activities undertaken in reasonably and in good faith.⁴⁰ The changes proposed in the draft Bill do not address these earlier recommendations, while shifting an evidential burden to journalists and other activities which, for the purposes of the provision, claim to engage a public interest.
81. Revised subsections 80.2H(9) and 80.2HA(9) shift to the defendant the evidential burden of proving that the conduct was for a legitimate purpose. Section 80.2H refers to the public display of prohibited Nazi symbols or giving the Nazi salute. Section 80.2HA currently refers to the public display of prohibited terrorist organisation symbols and, as discussed below, will be amended by the draft Bill to cover the symbols of a prohibited hate group.

³⁸ Ibid, proposed Criminal Code ss 80.2DB(1)(c) and (2)(c).

³⁹ See, eg, Criminal Code ss 471.25, 471.25A 474.27, and 474.27AA.

⁴⁰ Law Council of Australia, [Review of the Counter-terrorism Legislation Amendment \(Prohibited Hate Symbols and Other Measures\) Bill 2023](#) (Submission to Parliamentary Joint Committee on Intelligence and Security, August 2023) [86]–[100].

82. The Law Council has previously expressed reservations about the operation of subsection 80.2H(9), and we consider that the operation and design of a defence to hate symbols offences would benefit from additional consultation.

Division 2: Lowering the fault element for prohibited terrorist symbols

83. This division would lower the circumstance elements by omitting the fault element of knowledge from paragraph 80.2HA(2)(b) and 80.2JA(1)(c). Both elements are proposed to read “the thing is a prohibited terrorist organisation symbol”. As per section 5.6(2) of the Criminal Code, where a circumstance element does not describe a fault element, recklessness is taken to apply—that is, “he or she is aware of a substantial risk that the circumstance exists or will exist; and having regard to the circumstances known to him or her, it is unjustifiable to take the risk”.
84. We remain concerned that these offences continue to attract a mandatory minimum period of imprisonment.⁴¹ The Law Council opposes mandatory minimum sentences in all circumstances.⁴² We are disappointed that a mandatory minimum sentence has been maintained despite lowering the threshold of the fault element to the standard of recklessness.

Division 3: Expanding the definition of prohibited organisation symbols

85. Item 52 of the draft Bill expands the definition of prohibited hate symbols to include references to PHGs in addition to terrorist organisations, so as to include “a symbol... [used] to identify the organisation or any part of the organisation”.⁴³
86. This amendment interacts with subsection (b) of the same section, meaning that the definition of a prohibited symbol extends to “something that so nearly resembles a symbol to which paragraph ... (b) applies that it is likely to be confused with or mistaken for that thing”. As we have previously commented, the resemblance provisions risk uncertainty, particularly where symbols may exhibit visual similarity to observers from outside of particular linguistic or cultural communities.⁴⁴ A relevant example is that the ISIS flag includes the Arabic text of the Shahada, which is a profession of faith entailed by the first of the five pillars of Islam, upon a black background.⁴⁵ Importantly, this means the text on the ISIS flag is not a unique symbol. This emphasises the need for further consultation with potentially affected communities.
87. The rule of law requires that the law must be both readily known and available, and certain and clear. Most significantly it is essential that people know in advance whether their conduct might attract criminal sanction.⁴⁶ The combined operation of the broad definition of prohibited symbol and the provisions that prohibited symbol includes a symbol that so nearly resembles a prohibited symbol that it is likely to be confused with, or mistaken for a prohibited symbol mean that there will be a high

⁴¹ *Crimes Act 1914* (Cth) s 16AAA.

⁴² Law Council of Australia, [Mandatory Sentencing Policy](#) (May 2014).

⁴³ Draft Bill, sch 1, item 52, proposed Criminal Code s 80.2E(3)(a).

⁴⁴ See Law Council of Australia, [Review of the Counter-terrorism Legislation Amendment \(Prohibited Hate Symbols and Other Measures\) Bill 2023](#) (Submission to Parliamentary Joint Committee on Intelligence and Security, August 2023) [63]–[72].

⁴⁵ *Ibid* [65].

⁴⁶ Law Council of Australia, [Policy Statement: Rule of Law Principles](#) (March 2011).

degree of discretion when determining the ambit of what is proscribed by these offences.

88. Although the banning of these symbols may be a laudable ambition, a significant degree of legal uncertainty is caused by attempting to capture such a broad range of symbols in this manner. A lack of clarity about what constitutes such a symbol creates a greater risk of a person unwittingly using a prohibited symbol and potentially being captured by the criminal law.

Human rights

89. The rights to freedom of expression and religion (see at paragraph [13] of this submission) should be considered in relation to the ambit of banned symbols to ensure the proportionality of the proposed measures. We note that the proposal to reverse the burden of proof for certain elements of prohibited “hate symbols” offences, as discussed above, risks inconsistency with the presumption of innocence, which is protected both at common law and under article 14(2) of the ICCPR. The Parliamentary Joint Committee on Human Rights has observed relevantly:⁴⁷

Reverse burden offences will be likely to be compatible with the presumption of innocence where they are shown by legislation proponents to be reasonable, necessary and proportionate in pursuit of a legitimate objective. Claims of greater convenience or ease for the prosecution in proving a case will be insufficient, in and of themselves, to justify a limitation on the defendant’s right to be presumed innocent.

90. As noted in the Explanatory Memorandum, the *Guide to Framing Commonwealth Offences* also recommends reverse burdens be kept to a minimum.⁴⁸ In the time available, we have not been able to assess fully the compatibility of each of the reverse burdens in the Bill. We encourage the Committee to give close consideration to this issue.
91. Division 6 of Part 7 of Schedule 1 would enable police to seize offending things displaying prohibited symbols, in addition to directing people to stop displaying them. Proposed section 80.2N(3)(a), which would allow the police to use “such force or assistance as the police officer considers reasonably necessary” should be qualified by some kind of limitation where physical harm may result to support proportionality. We note there is already a qualification in proposed 80.2N(3)(c) relating to potential damage to the offending property itself.

Reliance on regulatory powers

92. Finally, we note that the draft Bill relies on matters to be prescribed by regulation for the detailed operation of several key provisions, including in relation to the designation of prohibited hate groups. While delegated legislation can provide flexibility, this approach risks important policy considerations not being subject to the same level of parliamentary deliberation and scrutiny as provisions enacted in primary legislation. This is particularly evident in the proposed framework for

⁴⁷ Parliamentary Joint Committee on Human Rights, [Guidance Note 2: Offence provisions, civil penalties and human rights](#) (December 2014).

⁴⁸ Explanatory Memorandum, [181].

designations of hate groups (acknowledging however that that instrument would be subject to disallowance).⁴⁹ Core elements of such frameworks, and other similarly significant provisions, would be more appropriately set out in primary legislation, with regulations limited to matters of implementation and administration. In any case, the formal designation of “hate groups” should be subject to appropriate consultation and parliamentary scrutiny.

⁴⁹ Explanatory Memorandum, [219].

Schedule 2: Migration amendments

Character grounds

93. Schedule 2 to the draft Bill contains amendments to the *Migration Act 1958 (Cth)* and *Migration Regulations 1994 (Cth)*. Those amendments would principally insert new character grounds for visa refusal or cancellation that specifically address hate-motivated conduct and conduct or offences relating to the spread of hatred and extremism.
94. Section 501 of the Migration Act is the primary power to refuse or cancel a visa on the basis that the applicant or holder does not pass the “character test” (which is defined in section 501(6)). This provides the Minister for Home Affairs with significant discretion about whether to refuse or cancel a visa.
95. The Explanatory Memorandum states that the purpose of introducing new limbs of the character test is to “strengthen the existing provisions” of the Migration Act and enable a “broader range of circumstances” for the Minister for Home Affairs to “address risks that a non-citizen may pose to the Australian community or a segment of that community”, but they “do not introduce any new powers” under existing section 501 of the Migration Act, nor “expand the current powers” for visa refusal or cancellation.⁵⁰ Those measures would benefit from further clarification of their necessity and operation in relation to current provisions, noting that section 501(6) of the Migration Act includes similar considerations for the character test, including the risk that a person would vilify a segment of the Australian community or incite discord in the Australian community (or in a segment thereof),⁵¹ and that past and present general and criminal conduct can be a reason to fail the test. On this basis, the Law Council’s Migration Law Committee considers these proposed amendments in the draft Bill to be unnecessary in light of the Minister’s existing powers to refuse or cancel a visa, and may exacerbate impacts on unrepresented applicants.
96. Given there is no requirement to provide prior natural justice if a decision is made by the Minister personally, and therefore no access to merits review for such decisions by the Administrative Review Tribunal, consideration should also be given to any flow-on implications for the workload of the Federal Court of Australia for judicial review of such decisions. Any implications of the proposed measures on the workload of the Administrative Review Tribunal should also be considered.
97. Further, Schedule 2 of the draft Bill allows decisions after commencement of the Bill to rely on conduct occurring before commencement and to apply to visas granted before commencement. Given the significant consequences of visa refusal or cancellation to the non-citizen directly affected and their family members, this retrospective operation warrants specific justification.
98. There may be challenges with the application of some amendments in practice, which would benefit from further clarification: for example, what would constitute “endors[ing] a statement publicly” for the purposes of new subsection 5C(1A) in relation to use of social media; being “involved” in conduct constituting a hate crime

⁵⁰ Explanatory Memorandum, [522]-[523].

⁵¹ *Migration Act 1958 (Cth)*, s 501(6)(d)(iii), (iv).

for new subparagraph 501(6A)(c); and “encourag[ing]” others to make a statement publicly for new subparagraph 501(6A)(e)(i). Proposed new paragraph 501(6A)(c) applies that subsection to a person who “has been or is involved in conduct constituting a hate crime” regardless of whether they have been convicted of an offence, which undermines the presumption of innocence, and compounds concerns as to what is meant by involvement in a hate crime, with potentially significant consequences for that individual. Where adverse migration decisions may be made on the basis of alleged conduct rather than proven convictions, the Law Council’s Migration Law Committee recommends minimum statutory safeguards and a clear evidentiary threshold (including sufficient particulars and an opportunity to respond) noting the limited avenues for review of such decisions.

99. Other amendments are drafted broadly and may risk capturing persons or activities that are not intended to fall within the objectives of the draft Bill.
100. As another example, the proposed definition of “association” includes conduct where “the person meets or communicates” with an organisation and notes that this “may consist of a single meeting or communication”. This departs from the definition articulated by the Full Court of the Federal Court of Australia in *Minister for Immigration and Citizenship v Haneef* [2007] FCAFC 203 (at paragraph 103), in which the Court held that the meaning of “association” under section 501(6)(b) of the Migration Act is “an association involving some sympathy with, or support for, or involvement in, the criminal conduct of the person, group or organisation” which “must be such as to have some bearing upon the person’s character”.
101. The draft Bill also substitutes “would” with “might” in sections 5C(1)(d), 500A(1)(c) and 501(6)(d) of the Migration Act, which lowers the threshold of risk in those sections. Noting the significant potential consequences of these provisions (ie visa refusal or cancellation), this may capture a broad range of people beyond the intended scope of the draft Bill, including those who may not pose an appreciable risk of harm to the community, and may go beyond the policy objectives of the draft Bill.
102. To the extent the draft Bill relies on guidelines to confine the breadth of migration-related provisions, key safeguards should be in legislation, rather than left to departmental policy.

About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its constituent bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice, and general improvement of the law.

The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its constituent bodies:

- the Australian Capital Territory Bar Association;
- the Law Society of the Australian Capital Territory;
- the New South Wales Bar Association;
- the Law Society of New South Wales;
- the Northern Territory Bar Association;
- the Law Society Northern Territory;
- the Bar Association of Queensland;
- the Queensland Law Society
- the South Australian Bar Association;
- the Law Society of South Australia;
- the Tasmanian Bar;
- the Law Society of Tasmania;
- the Victorian Bar Incorporated;
- the Law Institute of Victoria;
- the Western Australian Bar Association;
- the Law Society of Western Australia; and
- Law Firms Australia.

Through these bodies, the Law Council represents more than 110,000 Australian lawyers.

The Law Council is governed by a board of 23 Directors: one from each of the constituent bodies, and six Executive members elected by Directors. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President. In 2026, the Law Council Executive comprises:

- Ms Tania Wolff, President
- Ms Elizabeth Shearer, President-elect
- Mr Lachlan Molesworth, Treasurer
- Ms Jennifer Ball, Executive Member
- Mr Justin Stewart-Rattray, Executive Member
- Mr Ante Golem, Executive Member

The Chief Executive Officer of the Law Council is Dr James Popple.

The Law Council's Secretariat is based in Canberra. Its website is www.lawcouncil.au.