

Fighting Antisemitism and Keeping Guns out of the Hands of Terrorists and Criminals Amendment Bill 2026

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The Hon. Mr Martin Hunt
Chair
Justice, Integrity and Community Safety Committee
Queensland Parliament

Dear Mr Hunt

Submission to Inquiry into the Fighting Antisemitism and Keeping Guns Out of the Hands of Terrorists and Criminals Amendment Bill 2026

Thank you for the opportunity to make a submission to this important inquiry.

We write as internationally recognised experts in the harms and regulation of hate speech. [Professor Gelber](#) has 30 years' experience as a political science researcher, having received over \$1.4 million in funding including from the Australian Research Council. [Professor McNamara](#) has 30 years' experience as a socio-legal researcher, having received over \$1 million in funding including from the Australian Research Council. Individually and in collaboration we have published widely on the topic of hate speech laws, and have given evidence to numerous parliamentary and law reform inquiries.

In principle, we support the enactment of carefully drafted hate speech laws that balance the right not to be subjected to hatred that reaches the threshold of actionable harm with other rights, particularly to the right to freedom of expression. We draw on decades of research and recognised expertise in making this submission.

In this submission, we do not attempt to address all aspects of the Bill. We will focus on the proposed provisions in relation to prohibited symbols and expressions, prescribed organisations, and the public display of prohibited symbols.

Timeframe for consultation

In 2023 the Queensland parliament enacted the *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023* (Qld) to, among other things, strengthen protections against serious vilification in the criminal law. These amendments occurred after community consultation with a wide range of community groups and stakeholders. The Legislative Assembly referred an inquiry into serious vilification and hate crimes to the (then) Legal Affairs and Safety Committee on 21 April 2021. Submissions closed on 22 October 2021 with 82 submissions being received, and public hearings were held in September and October 2021 with 85 witnesses appearing. The report of the inquiry was tabled on 31 January 2022: [Report No. 22, 57th Parliament - Inquiry into serious vilification and hate crimes](#). This process took 9 months.

It is a matter of concern in principle that, in contrast, the current inquiry was referred to the Justice, Integrity and Community Safety Committee on 10 February 2026, that submissions close on 17 February 2026, and that the report of the inquiry is due to be tabled on 27 February 2026.

Current laws prohibiting hate speech and hate crimes

It is now well established, and incontrovertible, that certain types of expressive conduct – known popularly as ‘hate speech’ – can harm community cohesion and safety to a degree that warrants legal prohibition.¹ Speech that is genuinely harmful in these ways is to be distinguished from speech that is offensive or that hurts people’s feelings. Speech that is genuinely harmful to community cohesion and safety enacts a type of discriminatory harm through words. It is discriminatory in the sense that those who are susceptible to harms of this nature are those who are subjected to systemic marginalisation and discrimination in the context within which the speech occurs. In Queensland, relevant attributes are recognised in s7 of the *Anti-Discrimination Act 1991* (Qld).

Genuinely harmful speech can harm in two ways. The first is that it harms causally. This means that the hate speech can lead people to enact subsequent harms to members of target groups, harms that are causally linked to the hate speech and arise as a consequence of it. Such harms may be acts of discrimination, hostility or violence towards a relevant group. The second way in which this speech harms targets is by constituting harm in and of itself. This means that the hate speech harms in the very act of performing it. No second, discrete or consequential act is required for this to occur. Constitutive harms include ranking targets as inferior, justifying discrimination against them, and denying them human dignity. The harms of hate speech have negative consequences for wellbeing, inclusion and social cohesion, and they are well-evidenced.²

The existence of these harms, and a desire to prevent and reduce them, have prompted legislatures, to enact laws to sanction those who engage in public speech of this sort. In Queensland such laws already exist in s124A of the *Anti-Discrimination Act 1991* (Qld) and in ss52A, 52B, 52C and 52D of the *Criminal Code 1899* (Qld).

Other provisions are available to combat hate speech and hate crimes. In 2025 the Commonwealth updated offences originally introduced in 2007, to criminally prohibit advocating force or violence against groups or against members of groups,³ with a recklessness standard. At the same time, the grounds on which the offence could be prosecuted were expanded from the existing grounds of race, religion, nationality, national or ethnic origin or political opinion, to add sex, sexual orientation, gender identity, intersex status and disability. This is in addition to other provisions prohibiting threatening force or violence against groups or members of groups,⁴ advocating or threatening damage to or destruction of property or a vehicle,⁵ advocating force or violence through causing damage to property,⁶ advocating terrorism,⁷ advocating genocide,⁸ and publicly displaying or trading

¹ Katharine Gelber, ‘Differentiating Hate Speech: A Systemic Discrimination Approach’, *Critical Review of International Social and Political Philosophy* 24(4) (2021): 393-414.

² See, for example, Katharine Gelber & Luke McNamara, ‘Evidencing the Harms of Hate Speech’, *Social Identities* 22(3) (2016): 324-341; Jannike Vedeler, Terje Olsen, and John Eriksen, ‘Hate Speech Harms: A Social Justice Discussion of Disabled Norwegians’ Experiences’, *Disability and Society* 34, no. 3 (2019): 376; Laura Leets, ‘Experiencing Hate Speech: Perceptions and Responses to Anti-Semitism and Antigay Speech’, *Journal of Social Issues* 58, no. 2 (2022): 354; Laura Beth Nielsen, ‘Subtle, Pervasive, Harmful: Racist and Sexist Remarks in Public as Hate Speech’, *Journal of Social Issues* 58, no. 2 (2002): 270.

³ *Criminal Code* (Cth), ss 80.2A, 80.2B.

⁴ *Criminal Code* (Cth), ss 80.2BA, 80.2BB.

⁵ *Criminal Code* (Cth), ss 80.2BC, 80.2BD.

⁶ *Criminal Code* (Cth), s 80.2BE.

⁷ *Criminal Code* (Cth), s 80.2C.

⁸ *Criminal Code* (Cth), s 80.2D.

in prohibited terrorist organisation or Nazi symbols or giving a Nazi salute.⁹ Most recently these laws were updated and expanded to, among other things, create grounds and mechanisms for designating an organisation a prohibited hate group, to prohibit membership, direction or other relevant activity for or within a prohibited hate group, and to add aggravated offences and sentencing factors for crimes motivated by hostility on the ground of race.¹⁰ Updated lists of prohibited hate and terrorist organisations (<https://www.nationalsecurity.gov.au/what-australia-is-doing/terrorist-organisations/listed-terrorist-organisations>) and prohibited hate and terrorist symbols ([Lists of certain prohibited hate symbols](#)) are publicly available.

Other jurisdictions have also undertaken law reform in the last three years to prohibit Nazi symbols and gestures and to update anti-vilification laws, including Victoria¹¹ and New South Wales.¹² This is a large amount of lawmaking to combat the scourges of hate speech and hate crimes.

In this context, it is vital to take care when devising further criminal prohibitions to achieve the right balance between the regulation of genuinely harmful speech on the one hand, and the protection of speech which ought to remain free of state regulation on the other.

Proposed changes to s52C and the new s52DA: Prohibited expressions

One of the measures historically used to achieve this balance has always been to allow *context* to be taken into account in determining whether or not a discrete instance of expressive conduct has crossed a line, and to legislate for a set of principles to guide this assessment. It is notable that Australian laws concerned with racist hate speech take a principled and general approach. They do not seek to presumptively characterise any particular expressions as intrinsically constituting racist hate speech. That is, they preserve the presumption of innocence of any accused person and remain sensitive to the need to evaluate utterances in the *context* in which they are used. Importantly, they all require the prosecution to prove against the accused person a *fault element* related to the causing of racist harm. In most cases, and consistent with Australia's criminal law traditions, this is a *subjective* fault element (variously expressed as intent, awareness of a substantial risk or belief in a probability), though Western Australia's list of racist hate speech includes both more serious offences that turn on a subjective fault standard (intent) and lesser offences that turn on an objective standard (likelihood).¹³ We note the absence of a specific fault element in the proposed s52DA, and the low objective standard of a person feeling 'menaced, harassed or offended', including the use of the word 'or'. Legislation that seeks to prohibit a specific phrase (or phrases), without reference to context or speaker intention, is a significant departure in Australian law from prior approaches. The 'reasonable excuse' provisions in proposed s52DA (where the accused person carries an evidential burden) do not appear to extend to a good faith protestor who asserts that, in using a particular phrase, it was not their intention to make a member of the public feel menaced, harassed or offended.

The specific phrases that the Queensland parliament is proposing to ban are highly contested. In a given situation, phrases such as the two that the parliament proposes to prohibit can be used in ways

⁹ *Criminal Code* (Cth), ss 80.2H, 80.2HA, 80.2J, 80.2JA

¹⁰ *Combatting Antisemitism, Hate and Extremism (Criminal and Migration Laws) Act 2026* (Cth).

¹¹ *Crimes Act 1958* (Vic), ss 195N, 195O.

¹² *Crimes Act 1900* (NSW), s 93ZAA.

¹³ Compare s 77 and s 78 of the *Criminal Code* (WA).

that incite discrimination, hostility or violence towards Jews. But in other instances, these slogans will be directed at governments rather than the Jewish community, or designed to express support for the rights of the Palestinian people and to persuade the governments of Australia and Israel to change policies and actions.

In a recent judgement in Canada¹⁴ concerning a student's use of the 'river' phrase in a university context, the court considered a careful analysis of the phrase, undertaken by historians, anthropologists and law professors¹⁵, which concluded that its meaning is 'indeterminate at best'. In judgment, Koehnen J found that the 'automatic conclusion that [such] phrases are antisemitic is not justified' ([106]). The criminal law is not an appropriate avenue in which to settle these differences.

Further, the proposed basis on which two specific phrases are to be recommended under regulation is either that the Minister is satisfied the expression is widely known by the public as being representative of an ideology of extreme prejudice, or that the Minister is satisfied that the expression is widely known by members of a relevant group as being representative of an ideology of extreme prejudice, or that the Minister is satisfied the expression is regularly used to incite discrimination, hostility or violence towards a relevant group. It is not clear what the standard is to satisfy the Minister of these elements. Nor is it clear which, or how many, or what proportion of, members of a relevant group would need to see the phrase as representative of such an ideology for the Minister to be satisfied.

Implied freedom of political communication

An important consideration in the framing of hate speech laws is that the implied freedom of political communication constrains the law-making power of governments in Australia. Recently, in *Farmer v Minister for Home Affairs*, the High Court of Australia summarised the law as follows:

The implied freedom of political communication under the Constitution denies legislative and executive power to restrict freedom of communication on governmental or political matters unless the restriction is imposed to fulfil a constitutionally legitimate purpose and the restriction is reasonably appropriate and adapted to advance that purpose by constitutionally legitimate means. To be constitutionally permissible, both the purpose and the means of achieving it must be compatible with the system of representative and responsible government for which the Constitution provides.¹⁶

While the High Court has not yet been called on to determine the constitutionality of any of Australia's many hate speech laws in light of the implied freedom of political communication, other courts have done so, and found them to be constitutionally valid.¹⁷

If the Queensland Parliament enacts a new criminal offence directed at specific protest slogans, close scrutiny of the law's constitutional validity will follow, in accordance with the High Court's three-part test.

¹⁴ *University of Toronto (Governing Council) v Doe et al* (2024) ONSC 3755.

¹⁵ Elhalaby, E; A Emon, A Paz, K Roach & J Rogin, *From the River to the Sea: Palestine Will be Free: A Primer on History, Context and Legalities in Canada* (University of Toronto, Hearing Palestine Initiative, 2023).

¹⁶ *Farmer v Minister for Home Affairs* [2025] HCA 38, [1] (Gageler CJ, Gordon and Beech-Jones JJ).

¹⁷ See, for example, *Wertheim v Haddad* [2025] FCA 720; *Faruqi v Hanson* [2024] FCA 1264.

There is little doubt that the criminalisation of particular protest slogans or chants would constitute a *restriction* on communication on governmental or political matters. Indeed, such a restriction would be *designed* to achieve this effect (rather than being merely incidental). Telling protestors what they *cannot say* limits political communication.

In our view it is also very likely that the asserted legislative purpose – to combat and deter racism including antisemitism and to promote community safety – would be regarded as a *legitimate government purpose*.

Our assessment is that the third limb of the three-part test – that the law must be reasonably appropriate and adapted to achieve the legitimate purpose – may present an insurmountable hurdle for a law that criminalises the utterance of a specific phrase where that phrase is not unambiguously racist, historically incontrovertible, or otherwise inherently and necessarily designed to promote hatred. A court considering the constitutional validity of such a law will inquire as to whether there is ‘an obvious and compelling alternative that is equally practicable and would impose a lesser burden on the implied freedom of political communication.’¹⁸ It is not hard to conceive of such an alternative; for example, the extant law that requires the court to consider whether, on the occasion that gave rise to the criminal charge, the slogan was used in a way which incited hatred and included threatening physical harm or inciting others to threaten physical harm.¹⁹ Or any of the other currently extant provisions outlined above, including federal offences.

It might be argued that the requirement when prosecuting someone under the newly proposed s52DA that the prohibition on the recital, distribution, publication or display or prohibited expressions requires it to occur in a way that might reasonably be expected to cause a member of the public to feel menaced, harassed or offended would mean that would limit successful prosecution to those who genuinely use them in harmful ways. There are two problems with this argument. The first is that listing the phrases in a Ministerial regulation is likely to produce a chilling effect on speech; a chilling effect occurs when people become averse to using a phrase, whether or not its use would be prosecutable, for fear of falling foul of the law. This could well be regarded as a disproportionate impact on freedom of political communication. The second is that the phrase ‘menaced, harassed or offended’ is broad and to that extent could be considered disproportionate, especially in a criminal offence.

Proscribed organisations; new s52CA

As noted, there already exist in Commonwealth law provisions to prescribe terrorist and hate organisations. A component of the amendments being proposed by the Queensland parliament is to add a new s52CA which allows for the regulation of prescribed organisations which are related to the state sponsorship of terrorism or terrorist organisations. This has flow on effects for an amendment to the prohibition in s52D on the public display of prohibited symbols, by adding a requirement that a person undertaking such a display knew or ought reasonably to have known that it belonged to a prescribed organisation.

¹⁸ *Lees v NSW* [2025] NSWSC 1209, [156] (Mitchelmore J).

¹⁹ *Criminal Code 1899* (Qld), s52A.

In order to provide as much clarity as possible to law enforcement, we recommend that the parliament consider referencing the Commonwealth list of prescribed terrorist and hate organisations, and their symbols, rather than creating its own lists.

Alternative approaches to the criminal law

Laws are an important component of a community's response to the discriminatory harms of hate speech. At the same time, hate speech laws represent only one small part of a comprehensive anti-racism strategy. This is especially so of *criminal* laws, which must be reserved for the most serious forms of hate speech, and must be compatible with the principles that give Australian criminal law its integrity and legitimacy.

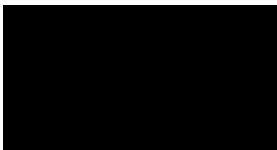
Non-punitive education strategies are essential to effective anti-racism work. This includes education about the nature, history and effects of all forms of racism including antisemitism. It also includes the promotion of standards of ethical civil engagement – including in relation to how people exercise their right to protest. It is important to recognise that these 'best practice' standards and expectations need not be synonymous with the necessarily higher thresholds used to assess liability or responsibility as a matter of law. The standards for ethical democratic practice in a multicultural and diverse society should not be the same as the standards for criminality. It is vital that we engage in enhanced community education and leadership about how particular protest slogans can be perceived by different audiences – and the difference between how a message is *received* and what the speaker *means or intends*.

Blunt criminalisation of specific phrases – the meanings of which are multiple and contested – is a poor vehicle for education of this sort, which requires good faith constructive dialogue. Specifically, imputing to a person who participates in a protest chant, a motivation that they genuinely did not have, is unlikely to be an effective way of educating that person (or others) about the desirability of exercising their right to protest in ways that do not have unnecessarily adverse effects on other people – especially people who are not the target of the protest activity in question.

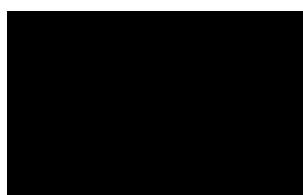
Thank you for considering our submission.

Please contact us if we can be of any further assistance.

Sincerely



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