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

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18 February 2026

Committee Secretary
Justice, Integrity and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By email: JICSC@parliament.qld.gov.au

Dear Committee Secretary,

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

The Association makes this submission following consideration of the *Fighting Antisemitism and Keeping Guns out of the Hands of Terrorists and Criminals Amendment Bill* 2026 (**the Bill**).

Racism of all kinds is anathema to the Rule of Law; but freedom of political communication is one of its closest allies, as are freedom from unlawful search and freedom of thought. This proposed legislation seeks to protect the community from the former and its consequences, but at the cost of intrusion on the latter. It is deserving of significant and rigorous scrutiny from interested and affected members of the community.

Time available for consultation

The Bill if passed will amend substantively eight Acts or Regulations, with consequential amendments to many others. It will enact provisions that affect the implied freedom of political communication, the expansion of police powers to search individuals and vehicles without warrants, and the creation of offences for acts which are yet to be realised.

The Bill was available for review by the Association at the same time as it was made public on 10 February 2026. The consultation period is 8 days (including 2 weekend days), with public hearings commencing on 18 February 2026.

The Association has met the stringent timeframe for the provision of submissions, but the accelerated process will have otherwise deprived the Bill of the benefit of scrutiny appropriate to its importance and complexity.

This constrained period is regrettable.

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1. Amendments to Criminal Code – Proposed Section 52DA

Summary of Points

The Association raises the following concerns with the Bill:

(a) the proposed offence of recital, distribution or display of prohibited expressions is open to constitutional challenge as it seeks directly to burden political communication by allowing the proscribing by regulation of particular expressions, the meaning of which may be contestable;

(b) the arrogation of the power to ban phrases to the responsible Minister involves problems of both policy (lack of debate) and practicality (lower likelihood that people will be aware what they are not allowed to say);

(c) the proposed offence is arguably unnecessary given existing offences and legislative prohibitions at both State and Commonwealth levels;

(d) although the proposed offence is tempered by a proviso that a person will not be liable if they have a reasonable excuse, the evidentiary burden will be placed on the person to demonstrate that they did have a reasonable excuse rather than requiring the prosecution to demonstrate the absence of a reasonable excuse;

(e) the circumstances which will engage the reasonable excuse proviso are not given sufficient definition to allow citizens to know at the time that they utter prohibited expressions whether or not they have a reasonable excuse (involving considerations, *inter alia*, of what constitutes the *"public interest"*).

Vulnerability to Constitutional Challenge

Section 52DA creates a new prohibition against the public recitation, publication, display or distribution of prohibited expressions.

The question will arise (ultimately) whether the law is invalid for burdening impermissibly the implied freedom of communication on government or political matters. This implied freedom operates as a limitation on legislative power – *"essential to the maintenance of the system of representative and responsible government for which the Constitution provides"*.[1] However, the freedom is not absolute:[2]

> The implied freedom does not protect all forms of political communication at all times and in all circumstances. And the freedom is not freedom from all regulation or restraint. Because the freedom exists only as an incident of the system of representative and responsible government provided for by the *Constitution*, the freedom limits legislative and executive power only to the extent necessary for the effective operation of that system.

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[1] *Brown v State of Tasmania* (2017) 261 CLR 328 at [88] per Kiefel CJ, Bell and Keane JJ.
[2] *Brown v State of Tasmania* (2017) 261 CLR 328 at [313] per Gordon J.

Three questions will arise on consideration of whether the implied freedom of political communication is impermissibly burdened:[3]

(1) does the impugned law effectively burden the freedom in its terms?

(2) if 'yes' to question 1, is the purpose of the law legitimate, in the sense that it is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government?

(3) if 'yes' to question 2, is the law reasonably appropriate and adapted to advance that legitimate object in a manner that is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government?

The Association is of the view that the first and second questions would likely be answered *"yes"* and *"yes"*, respectively: it does burden the freedom, but its purpose is relevantly legitimate.

It is the third of these questions which the Association anticipates will most likely attract the attention of those responsible for determining the law's validity. The Court would consider whether the law is suitable, necessary and adequate in its balance[4] and, assuming suitability and necessity are confirmed, it will be more difficult to justify as a law which is a direct prohibition or restriction on political communication rather than one which indirectly effects such communications while being directed towards some other subject.

In short, the subject matter will likely invite challenge, some part of which will revolve around the substance of sec. 52DA and the definition of *"prohibited expression"* and some part may be directed towards the methodology employed by the legislature to define particular expressions as being *"prohibited expressions"* (namely, the regulation-power of the Minister).

The Association also notes the uncertainty posed by the extension of the prohibition to expressions that *"so nearly resemble"* a prohibited expression. Unlike symbols, there is greater scope for similar words, sentiments or concepts to be communicated in circumstances where it is unclear whether they, too, are prohibited. This introduces vagaries inapt to the criminal law and may be relevant to a challenge as to whether the law is *"suitable"* to meet its stated objects.

In the Statement of Compatibility, the Minister says:

> Freedom of expression is a foundational right which is the cornerstone of a healthy democracy and any limitations to the right (and the others noted above) must be done thoughtfully and for an important reason. ***The types of expressions which are targeted by the prohibited expressions offence, however, are those which contribute to the proliferation of extreme prejudice in public discourse and debate***. Such expressions, by their nature, undermine our democracy, restrict the full participation of targeted groups in that public discourse, and destroy social cohesion. (Emphasis added.)

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[3] *McCloy v State of New South Wales* (2015) 257 CLR 178 at [2], as modified by *Brown v State of Tasmania* (2017) 261 CLR 328 at [102] to [104].
[4] *McCloy v State of New South Wales* (2015) 257 CLR 178 at [2], *Babet v The Commonwealth* [2025] HCA 21 at [48], and *Ravbar v The Commonwealth* [2025] HCA 25 at [29].

This is, in the Association's respectful opinion, a correct exposition of the approach. However, the proposed offence provision itself is less demanding (the public recitation etc. of a prohibited expression *"in a way that might reasonably be expected to cause a member of the public to **feel menaced, harassed or offended**"*). The threshold for offence is low, and is not in keeping with the statements contained in the extrinsic materials.

The requirement in sec. 52C(3A) that the Minister may recommend to the Governor-in-Council the making of a regulation under subsection (1A)(a) *"only if the Minister is satisfied the expression is **regularly used to incite discrimination, hostility or violence towards a relevant group**"* goes some way towards ameliorating this concern, but the lack of visibility in the satisfaction of this test requires separate consideration. That said, the difference in the tests for liability and proscription may well introduce further uncertainty into the legislation.

Regulation-making Power

The Association observes that the mode of determining which expressions are to be prohibited (by regulation, following a determination by the Minister) provides limited safeguards against encroachments on freedom of political communication. The Minister need only be *"satisfied"* that the expression is *"widely known"* as representative of an ideology of *"extreme prejudice against"* a group or is *"regularly used"* to incite *"discrimination"*, after consulting stakeholders. There is no mechanism for any external check on the content that is proscribed in this way. There will be no debates in Parliament, no opportunity for stakeholders to be consulted or any form of public or judicial consideration.

The Association observes that media comment concerning the Bill indicates that the legislation (and, presumably, subsequent regulations) will be directed towards prohibiting expressions such as *"globalise the Intifada"* and *"from the river to the sea, Palestine will be free"*. The Association prefers to refrain from commenting on whether proscribing those expressions would be an appropriate exercise of the Minister's regulation-making power. According to the Bill that would have to be an evidence-based decision. Of course, the more contestable the meaning of the expressions to be proscribed, the more vulnerable their proscription will be to challenge on the basis of the implied freedom of political communication.

Existing Offences

The Association notes that there is significant overlap between what is intended to be achieved by the proposed provision and existing legislation, both State and Federal: see the prohibition of racial or religious vilification (s 52A of the *Criminal Code 1899 (Qld)*); the prohibition of discrimination and vilification (under the *Anti-Discrimination Act 1991 (Qld)* and racial discrimination under the *Racial Discrimination Act 1957* (Cth)); prohibition on making threats (s 359 of the *Criminal Code 1889* (Qld)) and the prohibition of advocating terrorism or genocide under the *Criminal Code Act 1995 (Cth)*.

The Association notes that these extant provisions already protect against discrimination and acts that might threaten or incite threats of violence and, thereby, already provide protection of the human rights of the groups intended to be protected by this Bill. This may go to the issue as to the *"necessity"* of the proposed offence.

Reasonable Excuse Defence – Evidential Burden

The Association is further concerned that the reversal of onus in the exceptions represents a departure from established norms relevant to criminal responsibility and the presumption of innocence,[5] ordinarily reserved for conduct that has no apparent social utility. For the reasons already discussed, this is not such an offence.

Reasonable Excuse Defence – Insufficient Definition of what is in the "public interest"

The offence provision excepts conduct *"in the public interest"*. Whilst the Association accepts that the phrase *"public interest"* is a regularly employed legislative concept, it must be noted that the offence provision is likely to be employed against persons engaged in dynamic exercises of political expression. Requiring them to judge whether their speech can be considered to be within this proposed legislation's conception of the public interest may be unrealistic.

Of course, this difficulty is another indicium of the proposed offence's vulnerability to constitutional challenge on the basis that it is not reasonably adapted to its apparently legitimate object.

2. *Police Powers and Responsibilities Act* 2000 Amendments

The amendments (to sections 30 and 32) extend the powers of police to search individuals and vehicles without warrants, adding to the now lengthy list of circumstances in which that may occur. This expansion of police powers, and the intrusion into personal freedom including freedoms of expression, assembly and protest, is difficult to justify by reference to the overarching policy goal of the legislation. It is difficult to see how proof of the proposed new offences would likely be aided by these further curtailments of civil liberties. Publication, after all, is necessarily overt.

The Association also notes the proposed significant expansion of the laws relating to controlled activities. There is no information contained in the explanatory materials that indicates why the powers and immunities granted for controlled operations are considered necessary for preventative purposes and to target less serious crimes and misdemeanours.

3. New *Criminal Code* section 540A – Preparation or planning to cause death or grievous bodily harm

The Association observes that there is already a provision in federal legislation which deals with acts in preparation for, or planning of, a terrorist act. There is also an offence of carrying out such an act. Both carry maximum penalties of life imprisonment. The kind of violence perpetrated by the individuals involved in the Bondi attack clearly comes within the ambit of those offences.

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[5] General defences have been interpreted by Queensland Courts as requiring a defendant only to point to sufficient evidence in the Crown case to give rise to it, which the prosecution then must disprove beyond reasonable doubt.

The Explanatory Notes at p.12 say of this new offence provision:

> The introduction of a new offence regarding acts in preparation for, or planning, an offence that would be likely to cause the death or grievous bodily harm of another ***is justified due to the nature of the current security climate***. The offence is appropriately limited to the preparation for, or planning, offences of a serious nature, which if committed, would cause significant harm to the community. The maximum penalty of 14 years imprisonment reflects the different circumstances where the offence may apply, from preparing, or planning, to cause the grievous bodily harm of one other person through to preparing, or planning, to commit a mass casualty attack. The maximum penalty is proportionate and relevant to the acts constituting the offence. (Emphasis added.)

It is not clear which specific harm or risk this new offence is designed to address, given the existence of the Commonwealth offence provisions.

Ordinarily, the criminal law does not reach into the realms of acts which are yet to be realised, but the advent of terrorist activity has created the impetus for legislators to do so. Terrorism offences recognise that, while a particular act may never materialise, the risk to the public is so great that the antecedent acts must be prohibited.

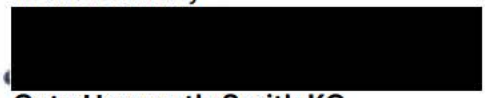
The proposed offence provision introduces the concept of prospective criminality. The kind of conduct which might be covered by such an offence provision is concerning. As presently drafted, it could apply to a person who picks up a weapon with the fleeting intention of harming another, only to put it back down again having come to their senses.

While the general intention of the Bill is understood to be a response to the awful violence inflicted on the Jewish community at Bondi, the Association respectfully cautions against extending the reach of the criminal law without the opportunity for new offence provisions to be carefully considered and the potential for unintended consequences to be fully explored.

Similarly, the Association notes that the amendment to section 540 of the *Criminal Code* (Preparation to commit crimes with dangerous things) now criminalises the possession of a dangerous or offensive weapon either with intent to commit a crime by using the thing, or to enable anyone to commit a crime by using the thing. Again, in circumstances where both prospective and actual violence of the type seen at Bondi is already provided for by Commonwealth offence provisions, the Association is concerned by rushed amendments that seek to expand the operation of the general criminal law of Queensland without adequate consideration of the need for such expansion, or the potential consequences.

The Bar Association is grateful for the opportunity to comment on the Bill and will be available to make further submissions or respond to any questions arising out of this response.

Yours faithfully



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