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

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QLD Parliament Justice, Integrity and Community Safety Committee

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

Dear Committee Secretary,

The Free Speech Union of Australia is a non-partisan organization whose focus is on the protection of Free Speech in Australia. We are concerned to ensure that future responses are not focused on increasing censorship, and seek to highlight the way in which efforts to limit information and expression to date in Australia and worldwide have been counterproductive. We only focus on those aspects of the Bill which concern Freedom of Expression.

This submission is in two parts. We first provide the background on the problem of Hate Speech laws specifically and the further risks that arise when these are deployed to ostensibly combat Anti-Semitism. We then address the specific proposals in the Bill and the issues that arise with the wording in the Bill.

A. Why Hate Speech Laws are Problematic

The asserted premise of the proposed Bill is that it protects minorities. Yet 'hate speech' laws are notorious in being used for targeting minorities, even when ostensibly passed to support them.[1]

As well as being misused by authoritarian regimes, they have also been misused in liberal democracies. For example, Canadian Customs treated a book by the African American scholar, bell hooks, as being hate speech and banned it from the country.[2]

[1] See pp1-2 of the Explanatory Notes.

[2] Archie Loss, 'The Censor Swings: Joyce's Work and the New Censorship.' *James Joyce Quarterly* 33.3 (1996): 369, p373. Closer to home, the eSafety Commissioner has sought to abuse such policies using their 'informal notice' scheme, which we successfully challenged in the case of B*aumgarten and eSafety Commissioner (Guidance and Appeals Panel)* [2025] ARTA 59. We understand the Commissioner uses the informal notice scheme to target speech that she disagrees with, whilst also attempting to fob off genuine complainants to her office by purporting not to make decisions on them: *Kirkham and eSafety Commissioner (Practice and procedure)* [2025] ARTA 1231. The *Baumgarten* and *Kirkham* decisions are presently being considered by the Full Bench of the Federal Court in their

Hate speech policies of social media providers are regularly used to censor minorities, with this having been of particular concern with Facebook.[3] Even the European Commission against Racism and Intolerance has been concerned that European "hate speech" laws can be enforced 'to silence minorities and to suppress criticism, political opposition and religious beliefs.'[4]

Perhaps the most vulnerable group in respect of these laws are people with disabilities. In recent weeks, Minister Tony Burke has reportedly stripped someone with a mental impairment of their Permanent Residence, merely because of some social media posts and having bought a plastic sword which he did not notice had a swastika on it.[5] Laws that are being used to target some of the most vulnerable in our society by the State are a curious approach towards protecting minorities.

The recent Victorian provisions barring Nazi salutes have been capitalised on by the National Socialist Network in Australia, who have used the publicity for being prosecuted under it to grow their own organisation and cause.[6] This Bill presents the same risk.

In respect of Jews specifically, the evidence from abroad all points one way: hate speech laws do not work. Ironically, the Western countries with the strongest hate speech laws are those which are viewed to be less hospitable by the Jewish community, with Eastern Bloc countries and the United States being seen as safer and less antisemitic, compared to Western European countries.[7] The reason for the distinction has been those governments being genuinely supportive of Jewish inclusion, whilst the United Kingdom's Jewish community was undermined by widespread antisemitism within the Labour Party (as found by the UK's Equality and Human Rights Commission).[8] This seemingly mirrors the present situation in

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deliberations on the Commissioner's appeal in *Baumgarten* (this decision will be handed down on the 18th of February 2026, so the Committee may consider it).

[3] Nadine Strossen: *Hate, Why We Should Resist It With Free Speech, Not Censorship*; pg 93; Oxford University Press, Incorporated 2018.

[4] Strossen p 76.

[5] 'Unmasked: The British NEO-NAZI dad being kicked out of Australia after living here for almost two decades - as cops find his vile stash of swastika weapons', *Daily Mail*, 24 December 2025.

[6] *Summary Offences Act 1966* (Vic) s.41K. For a recent real-world example, see e.g. Tara Cosoleto, 'Neo-Nazi found guilty on appeal of performing salute'. *Nine News,* 19 December 2025. For international examples, see also Jacob Mchangama, 'The problem with hate speech laws.' *The Review of Faith & International Affairs* 13.1 (2015), 75, p81.

[7] See e.g. Robert Kuttner, 'Are Jews Safe in America', *American Prospect,*12 March 2024; Nissan Shtrauchler, 'What is the Safest European Country for Jews?' *Israel Hayom*, 16 December 2024; Evelyn Gordon 'Jews Feel Safer in Europe's Conservative East Than Its Liberal West'. *Commentary*, 26 November 2018.

[8] Equality and Human Rights Commission (UK), An Investigation into Antisemitism in the Labour Party: Report, October 2020.

Australia, where the (Commonwealth) government of the day is not supportive of the Jewish community.[9]

Whilst they might be superficially attractive, the simple truth is that hate speech laws do not work, and in many cases make the community less cohesive, or safe. We therefore **recommend** rejecting all such provisions by removing Clauses 4, 6 and 7 from the Bill.

B. How the Bill is Fundamentally Anti-Semitic

We are concerned that the Bill's purported aim to protect Jews will in fact do the opposite, by fuelling anti-semitism.[10] This is a concern that has been also raised by Jewish organisations across the political spectrum in relation to similar laws.

Hate Speech laws were originally conceived by the Soviet Union under Josef Stalin, who had no such qualms.[11] As Noam Chomsky once commented: 'it is a poor service to the memory of the victims of the Holocaust to adopt a central doctrine of their murderers'.[12] The same point applies with even greater force in the present case, because Bill is a purported response to the Bondi terrorist attack against the Jewish community.

There has been a deliberate choice not to protect Jews using existing laws. For example, vandalism can be dealt with under s.195 of the *Crimes Act 1900* (NSW) but apparently was not enforced in relation to Avner's Bakery (which closed due to systematic antisemitism, persistent antisemitic vandalism, with the Bondi terror attack aftermath being the final straw).[13] Similarly, hate preachers trying to promote terrorism (including violence against Jews living in Australia) can already be dealt with under the existing control order regime.[14] There is no need for new laws or speech restrictions, but rather for the Police to do their job and enforce existing laws.

Issuing new censorship laws on the ostensible basis of protecting Jews will make this worse. It does no more than fuel the 'old trope that the Jews are responsible for whatever', which Alan Garber, the (Jewish) President of Harvard University, recently said is the main issue with antisemitism.[15] Just as one cannot fight fascism with fascism, one cannot successfully fight antisemitism by using another form of discrimination directed towards the Jewish community.

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[9] For recent Australian commentary by a former senior member of the Australian Labor Party, see Henry Pinskier, 'I'm a Jewish life member of the ALP. For so many years, the party was like an extended family. In the end, I'm ashamed.', *Herald Sun*, 30 December 2025.
[10] See e.g. Explanatory Notes, p1 and even the name of the Bill.
[11] Jacob Mchangama, 'The sordid origin of hate-speech laws.' *Policy Review* 170 (2011): 45.
[12] Noam Chomsky, 'His Right to Say It', *The Nation,* February 28, 1981.
[13] Nick Visser, ''Our world has changed': Sydney Jewish bakery closes after Bondi beach terror attack', *The Guardian,* 17 December 2025.
[14] *Criminal Code Act 1995* (Cth) div 104.
[15] 'Live at Vilna Shul: Harvard, Leadership, and Free Speech', *Shalom Hartman Institute*, 30 December 2025.

C. Prohibited Expressions

Using the specific mechanism of hate symbols already in place in Queensland is deeply problematic with regards to attempts to police speech or written expression.

The section provides simply that a prohibited expression be "any expression prescribed by regulation for this subsection… or that so nearly resembles an expression mentioned in paragraph (a) that it is likely to be confused with or mistaken for that expression".[16]

If such an expression is published or displayed in public (a strict question of fact, following the definition provided in the Code), the only threshold that must be met is whether the expression is displayed "in a way that might reasonably be expected to cause a member of the public to feel menaced, harassed or offended".[17] This test is both directed at far too broad an audience, and with far too low a bar.

The Abstract Nature of the Test

The objective test of "might reasonably be expected to cause a member of the public to feel…" is incredibly broad, going far beyond the stated justifications of the Bill in improving social cohesion, or even specifically combatting anti-semitism. Members of the public will have a wide range of tolerance for public protest, or for conflict or controversy in general, with many occupying a low tolerance portion of the average band.

Many members of the public might feel harassed simply in navigating or being disrupted by a public protest crossing their path, or believe that such protests should not be held in public places with the potential for disruption such as streets. The very nature of protest and dissenting thought is that it is not harmonious - that there is a certain level of discomfort inherent in permitting advocacy for and against controversial points of view.

Unlike other restrictions or prohibitions on so-called hate speech, that require a Court to consider whether a reasonable member of the targeted group would feel a particular way, this restriction generalises the "reasonable person test" to its outermost limit.

The Threshold of 'Impact' is Too Low.

In *Monis v the Queen* the High Court emphasised that threshold words listed together in respect of criminal thresholds must be read together and accorded a level of seriousness commensurate with criminal liability.[18]

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[16] *Fighting Antisemitism and Keeping Guns out of the Hands of Terrorists and Criminals Amendment Bill 2026* (Qld) Cl 4(6).
[17] Ibid Cl 7(1).
[18] *Monis v the Queen,* [2013] HCA 4, 161.

Despite this, the resulting threshold is more likely to be akin to the civil prohibitions of s18C of the *Racial Discrimination Act*[19] than in Victoria's anti-vilification framework - which requires conduct likely to incite "hatred against, serious contempt for, revulsion towards or severe ridicule of" a protected group before giving rise to criminal liability.[20] This standard is simply inappropriate to attract criminal liability.

In circumstances where a finding of guilt for public recital, distribution, publication or display of a prohibited expression may be up to 2 years imprisonment, this threshold is manifestly disproportionate. If these provisions are to pass at all (which we oppose), a far more stricter standard should be used.

The Inadequacy or Illusory Nature of Defences
Conduct that would ordinarily be prohibited may be lawful if a person engaging in the conduct does so with "reasonable excuse".

While "reasonable excuse" may encompass a broader range of excuses than those specified in the amended Section 52DA(2) of the Qld Criminal Code, the grounds on which an excuse may be reasonable are concerningly narrow.

A person has a "reasonable excuse" if:

(a) either of the following apply—

(i) the person engaged in the conduct that is alleged to constitute the offence for a genuine artistic, religious, educational, historical, legal or law enforcement purpose;

(ii) the person engaged in the conduct that is alleged to constitute the offence for a purpose that is in the public interest; and

Examples for subparagraph (ii)—
• publication of a fair and accurate report of an event or matter of public interest

• a genuine political or other genuine public dispute or issue carried on in the public interest

(b) the person's conduct was, in the circumstances, reasonable for that purpose.

This defence creates multiple hurdles that are likely to be considered by a Court even where they look at possible reasonable excuses beyond those enumerated.

The requirement that a particular purpose be "genuine" invites the Court (and requires the Defendant) to engage in a fraught expeditionary exercise about the

[19] *Racial Discrimination Act 1975* (Cth) s18C.
[20] *Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025* (Vic) Pt 2(4).

good faith nature of a particular artistic performance, religious, educational, historical or legal purpose. For instance, performance such as comedy or satire may intentionally be delivered or engaged in so as to cultivate a sense of ambiguity about whether or not the person is in fact serious or good faith, such that it could be difficult for a Defendant to meet their evidentiary burden.

The second limb whereby otherwise prohibited conduct can be deemed to have a reasonable excuse invokes public interest. The nature of public protest and the context in which slogans such as the (presumably first set to be prescribed) "globalise the intifada" will arise is inherently divisive, and the subject of vigorous public debate. The requirement that some harmonious or consensual public interest be established and found is utterly inappropriate, where protest on the basis of the public interest in the issues being protested may be relied upon in defence.

The final requirement for either a "genuine" listed purpose or a purpose that is in the public interest is a test of proportionality; that is whether the person's conduct was reasonable for that purpose. Again, while not in itself objectionable, in the circumstances of passionate and often divisive public debate this is a requirement liable to significantly reduce the availability of the defence.

The Lack of Constitutionality

An arrangement where a Minister can unilaterally decide what words or phrases are prohibited is unlikely to be constitutional. We have seen only recently in relation to regulations issued under the *Online Safety Act 2021* (Cth)[21] the way in which delegated legislation is employed in ways that are within the scope of regulations but far beyond the initial aim the regulator was empowered to achieve.

Such legislation is also unworkable. The reality is that people and groups will simply continue to generate new slogans designed to achieve the same rhetorical purpose, while avoiding the wording that is prohibited. In China, a 2021 article estimated that the list of blocked words and phrases aimed at preventing social unrest sat at 63,000 terms[22].

Because the legislation is unworkable and arbitrary, it is highly unlikely to satisfy the relevant test of being "reasonably appropriate and adapted" as required under the implied freedom of political communication.[23] This is reinforced by the stated goal of protecting minority communities (given hate speech laws ultimately penalise them) within the broader Australian community, as noted above.

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[21] In that example, social media platforms such as Youtube that were originally not thought to be incorporated within the age verification regulations became included when that had not been the understanding of legislators at the time the Bill enabling the regulations was passed.

[22] Zachary Weinberg, Diogo Barradas, and Nicolas Christin: *Chinese Wall or Swiss Cheese? Keyword filtering in the Great Firewall of China*, 2021. In Proceedings of the Web Conference 2021 (WWW '21). Association for Computing Machinery, New York, NY, USA, 472–483.

[23] *McCloy v New South Wales* [2015] HCA 34 at [2].

D. Prohibited Organisations

This is a narrower version of the 'hate groups' provision provided in the recent *Combatting Antisemitism, Hate and Extremism (Criminal and Migration Laws) Act 2026* (Cth), passed by the Commonwealth Parliament.[24] Positively, this is limited only to 'state sponsors of terrorism or terrorist organisations', rather than an expansive range of groups.[25] This is consistent with the UK *Terrorism Act 2000* and the regime therein.

The aspect of concern is that this power might be used to regulate organisations for political reasons, namely an organisation which is not actually a terrorist group. We note that the UK *Terrorism Act 2000* provides for an independent review on the merits as to whether an organisation is a terrorist organisation, followed by further appeal on an error of law.[26] We therefore **recommend** a similar system of specialist expert merits review be established for those aggrieved by Ministerial decisions. Such an arrangement would enhance public confidence in the provisions and thereby make them more effective in combating terrorism.

Given our proposal to remove the 'hate speech' provisions above, a provision similar to Section 11 of the UK Terrorism Act 2000 should instead be enacted.

Conclusion

We are concerned by attempts to pass hate speech laws. In summary, for the reasons above, we **recommend** that:

- Clauses 4, 6 and 7 be removed from the Bill.
- Clause 5 be modified to provide expert merits review in respect of a decision to prescribe a terrorist organisation and similar provisions mirroring the consequences for participating in one as under the *Terrorism Act 2000* (UK) be enacted.

Yours sincerely,

Dr R Kirkham

Free Speech Union of Australia

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[24] See Part 4 therein.
[25] Proposed Section 52CA of Qld Criminal Code.
[26] *Terrorism Act 2000* (UK) ss.5-6.