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

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

I have several concerns with the Government's proposed "prohibited expressions" provisions under the *Fighting Antisemitism and Keeping Guns out of the Hands of Terrorists and Criminals Amendment Bill 2026* (the Bill). First, if passed in their current form – i.e., allowing the relevant Minister to use a regulation to declare an expression to be prohibited – the Parliament could be seen as abdicating its own prerogative and responsibility for such matters. Given the very serious nature of this issue, it should not be delegated to a member of the Executive to make the call. It is not likely that there would be too many instances of the need for expressions to be proscribed otherwise the Bill's explanatory documents should have indicated so. Accordingly, it would not be too problematic for the Parliament itself to enact proscribed expressions rather than allowing for them to be prescribed by regulation. In any event, the important process of proscribing an expression should be open and transparent and be subject to greater public scrutiny than what occurs with normal regulation-making.

Second, the matters proposed for the relevant Minister to consider in deciding whether to proscribe an expression – i.e., a regulation may be made only if the Minister is satisfied the expression is regularly used to incite discrimination, hostility or violence towards a relevant group – would not prevent subjectivity from creeping into the process of determining whether an expression is deserving of proscription. Furthermore, the comment in the Bill's Statement of compatibility, that the "prohibited expressions" provision would only allow for the proscription of expressions which "*represent extreme prejudice*" (p. 3), again reveal the inherent subjectivity of the proposal's claimed "safeguards". For example, how and on what basis would "extreme" prejudice be determined?

Third, under the proposal the offence of displaying or reciting a prohibited expression would only occur if doing so is "reasonably expected" to cause a member of the public to "feel" menaced, harassed or offended. So, under the proposal the actual offence would arise on the basis of perceptions and feelings rather than a rational determinant. However, rather than what is proposed, a decision to prosecute should be dependent on more objective criteria. The proposal strongly needs to be reconsidered on this point.

Fourth, reversing the normal onus of proof so that a person charged with using a "prohibited expression" has to prove they had a "reasonable excuse" in using the expression is a slippery slope and is not sufficiently justified. Under the proposal, even an educator who uses or refers to a prohibited expression purely as part of a genuine teaching program would still have to prove they did so for a reasonable (educational) purpose.[1] Why would the educator need to do so, potentially even in court, in the first place? As it currently stands the proposal

[1] As the Bill's Statement of compatibility notes, "*There is a minor limitation on the right to be presumed innocent as the prohibited expressions offence imposes an evidential burden on a person to establish the reasonable excuse defence*." (p. 2 underline added)

could have far reaching, unintended consequences.[2] Not only is such a provision contrary to the principles of law as generally practised in Queensland, there is no guarantee it would necessarily aid to "fight antisemitism" as the Government has stated. In fact, it may more likely act to dissuade educators and other professionals from their genuine professional pursuits. Furthermore, while the proposed provisions under clause 7 of the Bill give two examples of a reasonable excuse for a person engaged in conduct alleged to constitute an offence for the purpose in the public interest – i.e., publication of a fair and accurate report of an event or matter of public interest; and a genuine political or other genuine public dispute or issue carried on in the public interest – examples in legislation, in and of themselves, generally are not binding (nor exhaustive) although they can assist with statutory interpretation.[3] I note the explanatory notes to the Bill state, "*The non-exhaustive list of reasonable excuses is provided, replicating those in section 52D(2) of the Criminal Code*" (p. 3). However, to remove any doubt and ensure clarity, the intent of the proposed examples – and any others that might be considered necessary – should be rewritten as substantive text in the Bill.

Fifth, the proposed "prohibited expressions" provisions may be too loose to withstand a potential High Court challenge under the Commonwealth Constitution's implied right of political communication. The Bill's Explanatory Notes recognise that the proposals "*inhibit forms of communication … including freedom of political communication*" and that this would be "*dealt with in the* [Bill's] *statement of compatibility with human rights*" (p. 10). However, from my reading of the Statement of compatibility, it does not appear to address the potential for a constitutional challenge nor does it inspire confidence that the Government would be able to defend the proposed provision in the event of any such potential action.

The Government needs to fully consider all the issues of concern such as those raised above pertaining to the Bill's current "prohibited expressions" proposal and then revisit the proposal to ensure it is more thoughtfully and appropriately framed.

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[2] A similar experience has occurred in NSW (https://www.brisbanetimes.com.au/national/history-teachers-are-terrified-by-new-hate-speech-laws-with-good-reason-20260210-p5o0z2.html)

[3] Pearce & Geddes (*Statutory Interpretation in Australia*, 2014, Eighth Edition), have noted that in Queensland and the Northern Territory, "*… examples have status as an aid to interpretation but should they conflict with a substantive provision of the legislation the example gives way*" (p. 206).