

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

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Submission By: 
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Submission to the Justice, Integrity and Community Safety Committee

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

I write as a Queensland resident to express my opposition to the Bill in its current form. I unequivocally condemn antisemitism and all forms of racism, including Islamophobia, anti-Indigenous racism and anti-Palestinian racism. Laws directed at preventing incitement to violence, intimidation and serious community harm are legitimate and necessary. However, this Bill raises serious constitutional concerns and risks impermissibly burdening the implied freedom of political communication.

1. The Implied Freedom of Political Communication

The High Court has repeatedly affirmed that State legislation is subject to the implied freedom of political communication, including in *Lange v Australian Broadcasting Corporation*¹, *McCloy v New South Wales*², *Clubb v Edwards*³ and *Farmer v Minister for Home Affairs*⁴. The established test asks whether a law burdens political communication, whether it serves a legitimate purpose compatible with representative and responsible government, and whether it is reasonably appropriate and adapted to achieving that purpose. A law that fails either the legitimacy or proportionality limbs will be invalid. Political speech concerning international conflicts, foreign governments and human rights issues plainly falls within protected political communication, as such discourse may influence electoral choices and public policy positions within Australia.

2. Content-Based Restrictions Are Constitutionally Risky

The Bill appears to enable the prohibition or designation of particular expressions or slogans. High Court authority makes clear that laws directed at the content of political communication, especially those targeting specific political viewpoints, attract heightened constitutional scrutiny compared with content-neutral regulations governing time, place or manner. A content-based prohibition risks distorting the marketplace of ideas, favouring one political perspective over another, and suppressing viewpoints that are controversial but lawful. If the legislation is characterised as targeting particular political slogans rather than preventing concrete harm, there is a real risk that its purpose could be construed as suppressing political communication, which would undermine its constitutional validity.

¹ *Lange v ABC*: the High Court rethinks the "constitutionalisation" of defamation law: <https://www5.austlii.edu.au/au/journals/MurUEJL/1998/3.html>

² *McCloy v New South Wales*: <https://www.hcourt.gov.au/cases-and-judgments/judgments/judgments-1998-current/mccloy-v-new-south-wales>

³ *Clubb v. Edwards & Anor*: <https://www.hcourt.gov.au/cases-and-judgments/cases/decided/case-m462018>

⁴ *Farmer v Minister for Home Affairs*: <https://www.hcourt.gov.au/cases-and-judgments/judgments/judgments-1998-current/farmer-v-minister-home-affairs>

3. Legitimate Purpose Must Go Beyond Offence or Social Disagreement

High Court jurisprudence indicates that preventing offence, hurt feelings or social disagreement is not, of itself, a sufficient constitutional justification for burdening political communication. Only objectives directed toward preventing violence, intimidation, serious community strife or material harm are likely to satisfy the legitimacy requirement. If the practical operation of the Bill is to prohibit slogans or expressions without requiring proof of intent to incite violence or serious harm, the connection between the restriction and a constitutionally legitimate purpose becomes attenuated. Legislation must be directed to tangible harm, not merely controversial expression.

4. Proportionality and Less Burdensome Alternatives

Under structured proportionality analysis, even a law pursuing a legitimate purpose may fail if there are obvious and compelling less burdensome alternatives. Queensland already possesses criminal offences relating to incitement to violence, anti-discrimination and vilification provisions, and public order offences capable of addressing genuine threats and intimidation. A court assessing necessity would reasonably ask why existing law is insufficient, why a content-based restriction is required, and why strengthened enforcement of current harm-based provisions would not achieve the same objective. Without a clear evidentiary foundation demonstrating insufficiency in the current framework, the Bill may struggle to satisfy the necessity limb of proportionality.

5. Executive Power to Prescribe Expressions

The apparent conferral of power on the Executive to designate prohibited expressions raises rule-of-law concerns. Criminal liability should be clear, precise and foreseeable. Citizens must be able to determine in advance what conduct is unlawful. Open-ended designation powers risk arbitrary, inconsistent or politicised enforcement and expand the burden on political communication beyond what Parliament has specifically debated and enacted. Such mechanisms heighten constitutional vulnerability because they shift substantive limits on speech into executive discretion.

6. Mixed Purpose and Constitutional Uncertainty

If the Bill has mixed purposes, such as combating antisemitism on the one hand and restricting particular political expression on the other, constitutional uncertainty arises. High Court jurisprudence is not entirely settled as to how laws with mixed legitimate and potentially illegitimate purposes should be treated. Some judicial reasoning suggests that the presence of an impermissible purpose may be sufficient to invalidate a law, even if it also advances legitimate objectives. Given this doctrinal uncertainty, legislative caution is warranted to avoid avoidable constitutional risk.

7. Risk of Chilling Effect

Broadly framed prohibitions can create a significant chilling effect even if prosecutions are rare or ultimately unsuccessful. Protesters may self-censor, academics may avoid controversial discussion, and political advocacy may be muted. The implied freedom protects not only measured and popular speech but also speech that is controversial, emotionally charged or confronting. Overbroad drafting risks discouraging lawful democratic participation and diminishing the robustness of public debate.

8. Consultation and Democratic Legitimacy

Legislation affecting criminal liability and political communication warrants careful and transparent consultation. A rushed or reactive process increases the risk of unintended constitutional invalidity, overreach and community division. A constitutionally safer course is to adopt content-neutral laws closely tied to preventing serious harm rather than banning particular political expressions. Measured, evidence-based reform strengthens democratic legitimacy and reduces legal uncertainty.

Conclusion

I strongly oppose the Bill in its current form. While combating antisemitism and protecting community safety are legitimate and important objectives, this Bill risks impermissibly burdening the implied freedom of political communication, relies on content-based restrictions that attract heightened constitutional scrutiny, grants broad executive power over political expression, and may not be reasonably necessary given existing legislative frameworks.

I urge the Committee to remove any mechanism enabling designation of political slogans, ensure that any offence requires clear intent to incite violence or serious harm, prefer content-neutral and harm-based drafting, and extend consultation while obtaining independent constitutional advice.

Queensland can and should combat racism without undermining constitutional principles, political participation and legal certainty. I urge the Committee to recommend that the Bill be substantially amended or withdrawn for reconsideration.