

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

Submission No: 299

Submission By: North Australian Festival of Arts

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Dear Committee members,

I write as Director of the North Australian Festival of Arts (NAFA), a major regional cultural organisation operating in North Queensland. This submission addresses the organisational, governance and First Nations implications of the proposed hate speech provisions.

NAFA supports the objective of preventing hate and protecting communities from intimidation and harm. However, the drafting approach—relying on a “legitimate purpose” defence for artistic or cultural expression rather than providing an explicit statutory exemption—creates material risk for organisations presenting cultural activity.

1. Defence versus Exemption – Operational Consequences

A defence operates only after investigation or charge has commenced. It does not prevent:

- Police investigation
- Laying of charges
- Legal costs
- Reputational damage
- Operational disruption

For organisations presenting public cultural activity, this distinction is significant. Exposure to investigation before a defence is established introduces criminal uncertainty into programming decisions.

2. Organisational and Board Risk

Cultural organisations are governed by volunteer boards with fiduciary duties. If programming decisions carry plausible criminal exposure based on alleged intention to cause offence, boards will be required to treat programming as a potential criminal-risk activity.

This creates:

- Increased legal review of programming and commissions
- Higher compliance and advisory costs
- Insurance uncertainty or exclusions
- Potential increases in Director & Officer premiums
- Reluctance of individuals to serve on boards where personal exposure is perceived

In practical terms, where criminal uncertainty exists, the rational response of directors is risk minimisation. The likely outcome is more conservative programming and reduced willingness to present work engaging with contested social or political issues.

The risk is not theoretical. Volunteer board members are unlikely to accept personal exposure to criminal investigation arising from lawful cultural presentation. The long-term consequence may be board attrition or difficulty recruiting suitably qualified directors.

3. Operational Impact

Festivals and cultural organisations regularly present work addressing:

- War and international conflict
- Sovereignty and land rights
- Religion, social and political movements
- Historical injustice

Such work may be confronting or strongly expressed. That alone does not constitute hate conduct. However, if an allegation of intent to cause offence can trigger investigation, operational costs and risk settings will increase immediately.

This creates structural pressure toward self-censorship driven by risk management rather than artistic judgment.

4. First Nations Implications

I have been advised by First Nations organisation Pryce Centre for Culture and Arts, that the implications for Aboriginal and Torres Strait Islander Communities are particularly concerning in North Queensland. The implications of not having representation of First Nations voices in the submission is huge and could produce unintended negative consequences for the wider community.

Traditional Owner groups they work with practice Ceremony, maintain their Cultures through storytelling, dance, arts and Cultural education frequently including truth-telling about colonisation, social impact, dispossession and sovereignty. Cultural Authority to them includes the right to speak directly and openly about historical and ongoing injustice.

While some audience members may disagree with or feel uncomfortable about such commentary, that disagreement should not expose Elders, Cultural leaders or Community organisations to investigation before a defence is applied and the context is understood.

Uncertainty in drafting may discourage public cultural expression and truth-telling, bringing uncertainty to the future of participation and performance by First Nations individuals and groups, and impacting Australia's identity and unique Cultural heritage.

I also note that due to the very tight timing and inadequate consultation period, we have not been able to work with First Nations Communities to hear their direct perspectives

and gather their input appropriately.

5. Comparative Legislative Clarity

Section 18D of the *Racial Discrimination Act 1975 (Cth)* provides explicit protection for artistic works, academic discussion and genuine public interest commentary undertaken reasonably and in good faith. That statutory clarity reduces uncertainty while preserving enforcement against unlawful conduct.

The Queensland Bill would benefit from equivalent clarity.

6. Recommendation

To ensure the legislation achieves its purpose without unintended organisational or cultural impact, I respectfully recommend inclusion of an explicit statutory exemption—at the definitional stage of the offence—for:

- Cultural Ceremony and Protocol
- Traditional storytelling and dance
- Artistic works and performance
- Academic and educational activity
- Genuine political and historical commentary undertaken in good faith

Clear drafting will strengthen the legislation and provide certainty for organisations, boards and First Nations communities.

Thank you for considering this submission.

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North Australian Festival of Arts

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The North Australian Festival of Arts acknowledges the Wulgurukaba of Gurambilbarra and Yunbenun, Bindal, Gugu Badhun, and Nywaigi as the Traditional Owners of the land where our festival takes place. We honour their cultures, ancestors, and Elders – past, present, and future generations. We recognise that First Nations people from this land and throughout Australia were the original dancers, poets, singers, musicians, and artists.



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