

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

**Submission No:** 378

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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**

**Date: 16 February 2026**

### **EXECUTIVE SUMMARY**

This submission raises serious concerns about the proposed amendments to Queensland's Criminal Code regarding the prohibition of symbols and political expressions. While acknowledging the legitimate aim of preventing harm to vulnerable communities, the Bill contains fundamental flaws that undermine the rule of law and constitutional protections for free speech.

Key concerns include:

- Lack of legal certainty in identifying prohibited symbols
- Automatic banning mechanisms that bypass necessary scrutiny
- Duplication of existing Commonwealth laws
- Potential constitutional invalidity
- Insufficient scrutiny due to rushed legislative process

### **BACKGROUND**

The Bill proposes to expand Queensland's existing prohibited symbols regime and introduce new provisions banning political expressions. The legislation has been referred to this Committee with submissions due 17 February 2026 and a report required by 27 February 2026. This rushed timeframe is inadequate for proper scrutiny of legislation that criminalises speech and carries penalties of up to two years imprisonment.

### **SUBSTANTIVE CONCERNS**

#### **1. PROHIBITED SYMBOLS: LACK OF LEGAL CERTAINTY**

##### *1.1 Current Framework*

The existing section 52C of the Criminal Code appropriately requires that prohibited symbols be:

- Prescribed by regulation
- Depicted graphically in that regulation
- Clearly identifiable to any person wishing to comply with the law

This framework provides legal certainty, a fundamental requirement of the rule of law.

### *1.2 Proposed Changes*

The Bill proposes to automatically ban "symbols and images used by a prescribed organisation or a member of a prescribed organisation to identify the organisation or any part of it."

### *1.3 Problem: Unknowable Prohibitions*

This creates a situation where:

- No regulation identifies what these symbols are
- Symbols may change over time
- Ordinary citizens cannot know with certainty which symbols are prohibited
- The law becomes unknowable and unenforceable with any consistency

The rule of law requires that citizens be able to know what the law prohibits. Moving from a system where banned symbols are specified and depicted in regulations to one where citizens cannot know what is banned represents a fundamental breach of this principle.

### *1.4 Inadequate Specificity*

The Bill does not require that symbols be used "solely or predominantly" to identify the prescribed organisation. A symbol may:

- Have multiple meanings across different contexts
- Be used by different groups for different purposes
- Have general meanings unconnected to any terrorist organisation

Example: If a prescribed organisation adopted a watermelon symbol, would all depictions of watermelons become criminal? While prosecutorial discretion might prevent absurd outcomes, legislation should not create such absurdities in the first place.

### *1.5 Risk of Manipulation*

The automatic banning mechanism is open to exploitation:

- A prescribed organisation could co-opt symbols precious to its enemies
- Organisations could target corporate logos or cultural symbols
- No intermediate assessment of appropriateness occurs before banning

There should be a requirement for formal identification of banned symbols through regulation, allowing assessment of whether a symbol has been inappropriately co-opted.

## **2. DUPLICATION OF COMMONWEALTH LAW**

The symbols of prescribed organisations are already banned under Commonwealth law pursuant to the Federal Criminal Code's provisions on terrorist organisations. The Commonwealth ban:

- Already applies throughout Queensland
- Makes Queensland's proposed provisions redundant
- Creates confusion through different criteria and defences

When a person displays a symbol in Queensland, they may face different consequences depending on which law they are prosecuted under. This duplication serves no purpose except to add legal confusion.

## **3. RECOMMENDED SOLUTION FOR SYMBOLS**

Queensland should preserve its existing regulatory framework by:

- Requiring all prohibited symbols to be formally identified in regulations
- Including graphic depictions of each banned symbol
- Allowing ministerial discretion to determine which symbols of prescribed organisations are appropriately banned
- Preventing automatic banning of symbols that may have been co-opted or have alternative meanings
- Providing citizens with legal certainty

This approach would address legitimate concerns about terrorist symbols while maintaining rule of law principles.

## **4. PROHIBITED POLITICAL EXPRESSIONS**

### *4.1 Free Speech Concerns*

The proposed section 52DA criminalises the public recitation, distribution, publication or display of "prohibited expressions" that might reasonably be expected to cause a member of the public to feel menaced, harassed, or offended.

While the Premier's press release explicitly identified two political slogans to be banned, the Bill cleverly avoids naming them, presumably to reduce constitutional vulnerability.

#### *4.2 Subjective Test*

The minister may recommend banning an expression if satisfied that it is "widely known by members of the relevant group" that the phrase represents an ideology of extreme prejudice against them.

This is a subjective test based on perception rather than objective meaning. The question is not what the speaker meant or what a reasonable observer would understand, but what a particular group perceives the phrase to mean.

#### *4.3 Constitutional Considerations*

The High Court has established that the Australian Constitution contains an implied freedom of political communication. Laws restricting this freedom must:

- Serve a legitimate purpose
- Be proportionate to that purpose
- Not unduly burden political communication

The Bill attempts to satisfy these requirements by:

- Requiring the expression to be "regularly used to incite discrimination, hostility or violence" (harm-based test)
- Providing reasonable excuses for genuine artistic, educational, religious, or public interest purposes
- Framing the law generally rather than targeting specific content

However, the High Court has indicated that "a compelling reason will be needed to justify laws directed at banning political content." The Bill's structure - splitting between general statutory provisions and specific regulatory bans - appears designed to minimize constitutional vulnerability by confining challenges to the statute level rather than the regulations.

#### *4.4 Chilling Effect*

Even before enactment, such proposed laws cause self-censorship. Citizens become uncertain about what they may lawfully say, even in contexts that would clearly fall within reasonable excuses. The threat of two years imprisonment has a profound chilling effect on political discourse.

### **5. PROCESS CONCERNS**

#### *5.1 Inadequate Scrutiny Period*

The timeline provided - submissions due 17 February, report due 27 February - is manifestly inadequate for legislation that:

- Criminalises speech
- Carries significant penalties
- Raises complex constitutional questions
- Affects fundamental rights

### *5.2 Absence of Upper House Review*

Queensland's unicameral parliament means there is no upper house to provide additional scrutiny. This makes thorough committee examination even more critical, yet the rushed timeline prevents this.

### *5.3 Politicised Title*

The Bill's title treats legislation as political propaganda rather than law, serving to obscure problematic provisions beneath emotive messaging.

## **6. ALTERNATIVE APPROACHES**

If the Queensland Government is concerned about symbols and expressions used by terrorist organisations, it should:

### *6.1 For Symbols:*

- Rely on existing Commonwealth prohibitions
- If Queensland-specific provisions are desired, maintain the current regulatory approach requiring formal identification and depiction of each banned symbol
- Exercise ministerial discretion to determine which symbols warrant banning
- Ensure legal certainty for citizens

### *6.2 For Expressions:*

- Consider whether criminal prohibitions are necessary or whether civil remedies for incitement, vilification, or harassment are more appropriate
- If criminal prohibitions are pursued, ensure they are objectively defined, narrowly targeted at actual incitement to violence or discrimination, subject to robust defences, and constitutionally sound

## **CONCLUSION**

This submission does not address the gun control measures in the Bill. However, regarding the prohibition of symbols and political expressions:

1. The proposed automatic banning of symbols used by prescribed organisations is fundamentally flawed and should be rejected in favour of maintaining the current regulatory framework.
2. The prohibition of political expressions raises serious constitutional questions and creates an unacceptable chilling effect on political discourse.
3. The rushed legislative process is inadequate for proper scrutiny of provisions affecting fundamental rights.
4. Much of what the Bill seeks to achieve is already covered by Commonwealth law.

The Committee is urged to:

- Recommend substantial amendments to preserve legal certainty for prohibited symbols
- Carefully scrutinise the constitutional validity of banning political expressions
- Request an extended timeframe for proper consideration of these significant provisions
- Consider whether Queensland-specific provisions are necessary given existing Commonwealth laws

While the protection of vulnerable communities from hate and intimidation is a legitimate governmental objective, this must be achieved through laws that respect the rule of law, provide legal certainty, and comply with constitutional requirements. The current Bill fails on these fundamental criteria.

Respectfully submitted,

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