

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

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**Submission By:** David Lewis

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## QUEENSLAND PARLIAMENTARY COMMITTEE

### FIGHTING ANTISEMITISM AND KEEPING GUNS OUT OF THE HANDS OF TERRORISTS AND CRIMINALS AMENDMENT BILL 2026

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FORMER COUNCILLOR FRASER COAST REGIONAL COUNCIL

Thank you for the opportunity to make a submission to your inquiry.

My submission is limited to the proposed new section 52DA, that is concerning **prohibited expressions**.

#### Introduction: restrictions on free speech

Free speech, especially political speech, is protected by a number of relevant legal instruments and decisions.

The *Universal Declaration of Human Rights* Article 19 provides: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference ...”

The *International Covenant on Civil and Political Rights* provides similarly, see Article 19 of that document.

The High Court of Australia has upheld an implied constitutional right to freedom of political expression through various decisions now going back over 30 years. No doubt the Committee will be familiar with the thrust of these cases.

It should therefore be in only the rarest of cases that any justification can be found to criminalise an expression that does not of itself amount to a threat or a vilification. An argument for a political position, even one put forcefully does not and should not ordinarily attract the attention of the Criminal Code. As I hope my submission will make clear, those grounds are not made out here.

#### A “prohibited expression”

The particular expressions are to be provided for by regulation. However government publicity has identified two expressions, namely “From the river to the sea” and “Globalise the Intifada”.

These expressions have no fixed meaning, although pro-Israel activists (eg Josh Frydenberg) have been calling for their criminalisation for some time. Frydenberg also wants to prohibit any call for the elimination (disestablishment?) of Israel.

“From the river to the sea” is often accompanied by a second line, “Palestine shall be free” and on the face of it is primarily a call for a free and independent state for the Palestinians. That of itself should not be an issue, as we are familiar with many groups calling for independence or the like throughout history and now, including of course the Zionists.

The problem arises because pro-Israel activists take this to mean establishment of Palestine by the elimination of Israel. It does not mean that necessarily, and could of course mean by the creation of a separate state. The two state solution is a most respectable position held by many governments, including our own. In other words, it might just mean Israel should move over and make room.

As far as I am aware, it was never suggested in the lead-up to the creation of Israel in 1948 that calling for the establishment of a Jewish state should be a criminal offence, notwithstanding that that inevitably meant Palestinians would be forced to “move over and make room” whether they liked it or not.

On first principles, it is difficult to make an argument that one such call should be criminal but the other perfectly fine.

I do not argue for the disestablishment of Israel. However with the benefit of hindsight, one could argue that its establishment was not a good idea. If that leads to a canvassing of the alternative responses, why should some be criminalised?

A further complication is that Israel considers that its ceasing to be a Jewish state is the equivalent of its disestablishment. Under the *Basic Law: The Knesset* section 7a, a candidate can be barred from running for the Knesset if their actions or goals explicitly or implicitly include “negation of the State of Israel as a Jewish and democratic state.” The Central Elections Committee has relied on this to bar Palestinian candidates on the basis that their advocacy for full equality violates section 7a, as it denies Israel’s existence as a Jewish state.

Again, we need to remember that Israel occupies and continues to settle the occupied territories in violation of international law. It would be curious if it was a criminal offence to call for compliance with the law.

Similarly “Globalise the Intifada” has meanings that are perfectly consistent with peaceful processes for resolving the conflicts. It is only when that expression is taken to mean armed struggle that offence is taken.

In fact if one goes back to first principles, even that is arguably not a candidate for criminality. It has never, as far as I am aware, been an offence to argue in favour of armed struggle, especially as in many cases this would be legal under international law. Our own Prime Minister John Howard, along with US President Bush and UK Prime Minister Blair called for an invasion of Iraq. While there was plenty of argument about the wisdom and morality, it was never suggested that these leaders should be charged with criminal offences for their advocacy, nor that we should amend the law so they could be.

And of course, Israel, and its Australian supporters, are defending Israel’s armed struggle every day of the week. No doubt this offends Palestinian Australians, but should those expressions of opinion become an offence?

### *Demonstrations depend on placards and slogans*

I appreciate that the Bill is not proposing to criminalise the sorts of discussions above. But one of the difficulties is that these nuanced shades of meaning can be teased out in a discussion, or a submission like this, but they do not fit on a placard in a demonstration. Demonstrations need, depend upon, short pithy slogans, to be chorused, or written on banners and placards. Should that be grounds for their criminalisation? Rallies, marches, demonstrations are of the essence of our

political freedoms. They are vital to our democracy. It is quite inappropriate, in my submission, that they should be subject to rules that would emasculate them.

It is not self-evident that mere slogans should somehow be the subject of rules to which more lengthy calls for similar action are not.

*“... that so nearly resembles an expression ...”*

The problems here are almost self-evident. How will the citizen know? There will be so many possible fine distinctions, and court proceedings are very expensive and cumbersome ways to find out.

Others, I’m sure, will have drawn your attention to the many songs that reference rivers and seas.

But more basically, as I understand the complaint, it is that these particular words have a coded meaning that is causing the offence. The literal meanings of the expressions are quite benign. How close does another expression have to be to import the coded meaning?

Surely it can’t be suggested that the community be banned from arguing that Palestinians should be allowed to regain extensive parts of their homeland? That would be to pick a political side in the criminal law, which is beyond the accepted concepts of the rule of law.

Why can’t one argue that “Palestine will be free”? To prohibit that would produce the absurd position where it would be perfectly legal to argue for their continued oppression, but illegal to argue for equal human rights.

Would “Globalise the struggle” be ok? That can apply to all sorts of peaceful action, including boycotts and the like. I would submit there is nothing inappropriate in such a slogan. But it would probably be caught by the provisions as drafted.

I urge a reconsideration of this provision.

*Ministerial conditions*

The minister has to apply certain criteria before declaring a form of words prohibited. The expression must be regularly used “to incite discrimination, hostility or violence towards a relevant group.” While I have no issue with the discrimination or violence criteria, there is a serious problem with hostility. Of course there will be hostility in certain circumstances, because one group is opposing what another group is perpetrating.

Post the horrific Bondi attack, all sorts of allegations were made. Politicians and others blamed Islamic extremism, and Muslim preachers. That was inciting hostility. Frydenberg blamed Prime Minister Albanese personally and very publicly. That was inciting hostility. The Opposition, and many Jewish spokespersons blamed the government. That was inciting hostility.

Such emotions and consequences are inevitable. We should not be selectively criminalising just one set of actions.

The discrimination etc has to be against a “relevant group”. This is defined as a people who identify with each other on the basis of race, religion, sexuality etc. There is no mention of political opinion or persuasion, or even of nationality. The campaign against Israel, and by extension, slogans like the

ones under discussion, are not based on the race or religion of any group. These are based on the conduct of the country. The bulk of Israeli citizens may be Jewish, but that is not the nub of the concern or the complaint. The concern would stand whatever the race or religion of Israel's citizens. Israel cannot claim exemption from criticism based simply on the identity of its people.

Nor for that matter can those in Australia who support Israel. In fact there are very respectable arguments that the Jewish diaspora here are taking a very active role in defending Israel, and seeking to deflect criticism of it. And further that accusations of antisemitism are being used as part of that defensive action. It would be quite inappropriate to lend them the benefit of the criminal; law in what is essentially a struggle for Australian hearts and minds.

"... menaced, harassed or offended"

The new section 52DA will make it an offence to use a prohibited expression in a way that might reasonably cause a member of the public to feel menaced, harassed or offended.

Permit me to give you an example, from personal experience, of how easy it is to offend even a seasoned pro-Israel activist.

In February 2025, I wrote to the Executive Council of Australian Jewry (ECAJ) criticising the call by its Co-CEO Alex Rychin for sanctions against officials of the International Criminal Court, over the arrest warrant for Benjamin Netanyahu. (I pointed out that threatening court officials was generally a criminal offence, but we will leave that aside.)

In my letter, I referred to the ECAJ as a "lobby". I received a reply from the other Co-CEO Peter Wertheim, who took offence at my use of the term, his remarks including: "Other similar communities have their representative bodies too, but no one describes them as the Irish lobby, the Greek lobby... To reserve that pejorative expression only for our community is a marker of prejudice."

This was nonsense, I had meant no offence, it was not a pejorative, and as it happens his organisation is often called a lobby in the media. I didn't mention the Irish, the Greek etc because I wasn't talking about them.

Further, I had suggested in my email that perhaps it would assist to take the heat out of antisemitism if organisations such as his showed some empathy for the plight of the Gazans. My email read in part:

*"We all know that there has been a huge rise in anti-Semitic acts since October 2023. That is deplorable. The conduct of the Gaza war is presumably the critical causal factor. The Gazans and Palestinians generally are suffering hugely, and their Australian friends will be feeling that pain. Perhaps they would be less likely to translate that pain into anti-Semitism (if indeed they do) if the Jewish community showed some empathy for their position, and some understanding and acceptance of the need to find a just solution for the Palestinians."*

Again, he took offence. I will quote that part of his reply in full:

*"That prejudice becomes explicit in your suggestion that the Jewish community has somehow brought antisemitism on itself merely because we support our families and the Jewish people in Israel. This is redolent of the traditional racist trope about Jews being the cause of antisemitism. Antisemites are the cause of antisemitism. In*

*Australia, we all have the right to express our political views within the parameters of the law, without being subjected to violence, threats or vilification. To even suggest that the Jewish community should be singled out as an exception to this principle is shameful, and unworthy of someone with your obvious education and training.”*

Of course that response is also nonsense, and it was offensive. There was nothing in my comment that suggested Jews had brought antisemitism on themselves, nor was there any suggestion that Jews had lesser rights than others. It was just a suggestion about how we might turn down the heat, to use a latterly common expression. But he was clearly accusing me of antisemitism.

I set out this exchange to show how dangerous a provision like S 52DA could be if it criminalises words that some may take offence to. It is little comfort to note that the reasonable test applies to this provision. (I am happy to supply copies of the full correspondence if needed.)

I won't go into harassment in detail, except to note that similar considerations apply. And harassment is very much a sliding scale.

### Causing discomfort

I suggest it is useful to consider harassment and offence in the context of making someone feel uncomfortable.

I have been involved in political activity most of my adult life. That includes all sorts of speeches, writing etc. Winning an argument in politics or elsewhere involves putting ones arguments clearly, and sometimes forcefully. It involves exposing the fallacies in the counter arguments.

When the subject involves major human rights issues, especially war and the like, the stakes are higher and the degree of assertiveness can increase significantly.

If I am arguing against a person who is supporting what I believe to be a major gross violation (be it terrorism, genocide or whatever) I want to make that person reconsider their position. I want them to feel uncomfortable. I want to trouble their conscience. I want to make them question their moral position.

In this context, it is important to remember that the “targets” of these exchanges are themselves political activists, in many cases much more involved and skilled than the general community, some professionals. They don't get a free ride. If they want to get into the ring, they can't complain if there are the occasional bruises.

One should strive to be civil, certainly not menace nor intimidate, but if someone feels offended by political comment or demonstrations and the like, then frankly, that's their concern. The value of free speech for us all, the value of political discourse is paramount, and a little discomfort is a price they (I, we) should have to bear. That's where the line should be drawn.

### Lawful excuse

I haven't had time to examine these provisions in detail, but I think they are much better than the drafting in the recently abandoned Commonwealth proposals, which limited some of the defences to professional journalists. In this new world of social media, we are all political commentators, and

the same rules should apply. The defences certainly address some of my initial concerns with the foreshadowed Bill.

I am happy to expand on these points if that would be helpful.

Disclosure

The writer is a Queensland lawyer with over 50 years' experience. He holds a bachelor's degree in political science. His wife's father was Jewish, and accordingly she has Jewish relatives. Apart from that, the writer has no connection to any Jewish or Palestinian community or organisation, and no personal interest in the matters in issue.

With thanks

David Lewis

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