

14 January 2026

Our ref: [BC:CrLC]

Dr James Popple  
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Law Council of Australia  
Level 1, MODE 3  
24 Lonsdale Street  
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By email: [REDACTED]

Dear Dr Popple

**LCA Memorandum: Combatting Antisemitism, Hate and Extremism Bill 2026**

Thank you for the opportunity to provide feedback on the Combatting Antisemitism, Hate and Extremism Bill 2026 (**the Bill**). The Queensland Law Society (**QLS**) appreciates being consulted on these significant reforms.

The QLS Criminal Law Committee has reviewed the aspects of the Bill relating to proposed criminal law amendments and provide their comments in the **enclosed** schedule for your consideration.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [policy@qls.com.au](mailto:policy@qls.com.au) or by phone on [REDACTED] [REDACTED]

Yours faithfully



Peter Jolly  
**President**

**SCHEDULE 1: AMENDMENTS TO LEGISLATION REGARDING CRIMINAL LAW**

CLAUSE	AMENDMENT	COMMENT
1 – 7	Aggravated offences for preaches and leaders	<p>The amendments relate the offences already contained in sections s. 80.2BA(1) &amp; (2), s.80.2BB(1) &amp; 2, s. 80.2BD(1)&amp;(2). They increase the maximum penalty for each of the offences by 3 years and create aggravated versions of each offence which increases the penalty by a further 2 years. It is noted that there is no specific justification contained in the Explanatory Memorandum as to the appropriateness of the increased penalties. For example, comparison to offences already criminalising similar conduct and or data as to the prevalence of these offences within the community arguing that general deterrence through an increased maximum penalty is warranted.</p> <p>The most concerning aspect with respect to amendments is the lack of specificity regarding the definition of 'religious official' or 'spiritual leader or other leader (however describe) of a group, who provides religious instruction or pastoral care (whether religious or secular)' these terms are not specifically defined and the Explanatory Memorandum provides that the ordinary and natural meaning of those terms is intended to apply. The 3 potential circumstances that aggravated the penalty are incredibly broad are arguably subjective. This means that the Bill exposes persons to aggravated penalty provision in circumstances where there is no clear distinction as to when a person is acting in the capacity of a 'religious official' or 'spiritual leader or other leader (however describe) of a group, who provides religious instruction or pastoral care (whether religious or secular)'.</p> <p>This lack of clarity aggravates the penalty for the simpliciter offences which already carry a significant degree of complexity when determining guilty. It must be acknowledged that s.4G of the <i>Crimes Act 1901</i> mandates that any offence punishable by imprisonment for a period exceeding 12 months proceeds on indictment and whilst offences can be dealt with summarily where the maximum penalty does not exceed 10 years and both the prosecution and defence agree, the offences amended by this Bill, given their subjective nature, are more than likely going to be considered by a jury rather than a Magistrate.</p> <p>For example, the simpliciter offences contain fault elements requiring a consideration of whether a defendant was reckless (a person is reckless with respect to a circumstance if the person is aware of a substantial risk that the circumstance exists or will exist and, having regard to the circumstances known to the person, it is</p>

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		unjustifiable to take the risk - which is a question of fact for a jury) or apply strict liability (to which a defence of mistake of fact would apply which is another question of fact for a jury). Only once the fault elements of the underlying offence are satisfied then can a jury determine whether a defendant was acting in the capacity of a 'religious official' or 'spiritual leader or other leader (however describe) of a group, who provides religious instruction or pastoral care (whether religious or secular)'. Lack of evidence to justify the increase in maximum penalty.
8 & 9	Increased penalty for using a postal or similar service to menace, harass or cause offence	
10 & 11	Aggravated sentencing factor	These provisions amend the sentencing factors contained within s. 16A of the <i>Crimes Act 1914</i> .  It is noted that the proposed s. 16A(2)(mb)(ii) does not make reference to a specific religion or faith. This is raised as the Bill is designed to combat antisemitism within the Australian community. Uniquely, Jewish persons are classed as an ethnoreligious group which means that a person can be Jewish based on either ancestry or faith.  Therefore, this creates an argument that the aggravated sentencing factor would not apply in circumstances where the target person or target group consist of persons who identify as Jewish based solely on faith rather than ancestry (i.e. race, national or ethnic origin).
12 & 13	Prohibited hate groups	Proposed section 114A.3(2) creates a retrospective application capturing conduct that would constitute a 'hate crime' prior to the commencement of the proposed legislation. Retrospective application of laws which give rise to criminal liability should only be considered in rare circumstances and with strong justification. The Explanatory Memorandum fails to justify the requirement for retrospective application.  s. 114.A(4) removes the requirement for procedural fairness when the AFP Minister is deciding whether to specify an organisation as a prohibited hate group. Given the number new offences which apply to members of prohibited hate groups established by the Bill and the significant penalties associated with those new offences and the retrospective application of acts constituting hate crimes, the exclusion of procedural fairness has not been appropriately justified in the Explanatory Memorandum.  There are a number of proposed provisions such as s.114B.2(2) and 114B.5(3) with reverse the legal burden of proof. The justification for this is based on cost effectiveness and difficulty for the prosecution to prove

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		<p>certain matters beyond a reasonable doubt. However, as the <i>Guide to Framing Commonwealth Offences</i> notes,</p> <p><i>"[t]he fact that it is difficult for the prosecution to prove a particular matter has not traditionally been considered in itself to be a sound justification for placing the burden of proof on a defendant. If an element of the offence is difficult for the prosecution to prove, imposing a burden of proof on the defendant in respect of that element may place the defendant in a position in which he or she would also find it difficult to produce the information needed to avoid conviction. This would generally be unjust."</i></p> <p>It is noted that proposed s. 114B.5 exposes legal practitioners to criminal liability and then reverses the legal burden which results in an abrogation of legal professional privilege to avoid prosecution.</p>
20 – 24	Racial vilification offence	The defence provided for in proposed s. 80.2BF(4) does not sufficiently define 'religious text'. The Explanatory Memorandum also fails to provide a necessary level of clarity which raises questions and to when the defence may or may not apply.
25 – 35	Aggravating grooming offences	The comments provided in relation to clauses 1 – 6 are also applicable in relation to these proposed provisions.
36 – 68	Hate symbols	<p>There is a proposed change to the reasonable person test which makes it a reasonable targeted person test. This is so that the perspective of the particular targeted group can be considered.</p> <p>Because the vilification language (offend, insult, humiliate or intimidate) can be quite contentious, the importance of a more objective test and clear contextual constraints becomes more important in terms of the prosecution of such offences.</p> <p>To address this issue:-</p> <p>(a) the current test could be maintained; or</p>

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		(b) the current test could be amended to included to include the phrase “in all the circumstances” and if the drafters then wanted to specify what relevant circumstances could be included that would allow them to capture the racially supremacist/hatred ideas while also preserving a more objective test – for example 80.2H (clause 61) could be: ...this subsection applies if, in all the circumstances, a reasonable person would consider...
209	Offences relating to the use of a carriage service for firearms and explosives	Nil.