

Submission on Exposure Draft — Combating Antisemitism, Hate and Extremism Bill 2026

Proposed amendment to s 80.2BF(4) (religious teaching or discussion)

1. Summary

I support the introduction of a racial vilification offence in proposed s 80.2BF. However, proposed subsection (4) risks creating a practical safe harbour for bad-faith actors to launder hatred through protected contexts, particularly via repeated quotation of violent or eliminationist passages to minors, while avoiding explicit exhortation in any one instance.

The defence should be tightened to ensure it protects genuine religious teaching/discussion while not shielding conduct that is, in substance, promotion or incitement of hatred or the dissemination of superiority/hatred ideas contrary to s 80.2BF(1)(b).

2. Problem: subsection (4) is vulnerable to predictable misuse

Proposed s 80.2BF(4) presently provides that subsection (1) does not apply to conduct that consists only of quoting or referencing a religious text for the purpose of religious teaching or discussion.

In practice, this invites a foreseeable pattern:

- repeated selection and emphasis of passages portraying a target group (e.g. Jews) as enemies or legitimate objects of violence;
- delivery to youth under the rubric of religious teaching;
- avoidance of explicit exhortation in any one instance; and
- reliance on the defence because each instance is framed as textual discussion.

This is a standard method of plausible deniability in extremist propagation.

3. Principle: protect genuine teaching, exclude bad-faith promotion/incitement

The Act should protect bona fide academic, historical, theological or liturgical discussion, but should not allow hateful conduct to be shielded merely because it is wrapped in religious text.

4. Proposed amendments (drafting options)

Option A — Good faith and reasonableness test

Replace subsection (4) with:

“(4) Subsection (1) does not apply to conduct consisting of quoting from, or otherwise referencing, a religious text, where the conduct is engaged in reasonably and in good faith for the dominant purpose of genuine religious teaching, religious observance, or academic discussion, and is not engaged in for the purpose of promoting or inciting hatred, or disseminating ideas of superiority over or hatred of, a person or group distinguished by race, colour or national or ethnic origin.”

Option B — Exclusion where intent under (1)(b) exists

Add:

“(4A) Subsection (4) does not apply if the conduct is engaged in with the intention referred to in paragraph (1)(b), or is part of a course of conduct so engaged.”

Option C — Course of conduct clarification

Add:

“(4B) For avoidance of doubt, subsection (4) does not apply where the conduct forms part of a course of conduct involving repeated quotation or reference to a religious text and, having regard to the content, emphasis, selection, presentation and surrounding circumstances, the course of conduct is intended to promote or incite hatred, or to disseminate ideas of superiority over or hatred of, a target or target group.”

5. Youth-specific safeguard

Consider an aggravating or limiting clause where the conduct is directed to persons under 18 in an organised educational setting and forms part of a course of conduct intended to promote hatred.

6. Evidentiary clarity

When assessing subsection (4), courts should be directed to consider selection, repetition, omissions, manner of delivery, audience, and contextual intimidation as indicators of intent.

7. Conclusion

Section 80.2BF is necessary, but subsection (4) should be tightened to prevent misuse as a shield for bad-faith hatred propagation, including youth indoctrination.

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Information Space, Due Process, and Safeguards Against Credential-Gated Speech Controls

1) Credential-gated media exemptions risk narrative control and information distortion

The Draft provides an exemption for news and current affairs reporting that turns on whether the reporting is “in the public interest” and is made by a person working in a “professional journalistic capacity”, with an evidential burden borne by the defendant.

This approach privileges credentialled institutional media over independent and citizen reporting, notwithstanding that independent reporting now constitutes a substantial proportion of contemporaneous, primary-source material in public-order and extremist-content contexts. The effect is to narrow the practical availability of the exemption to established institutions, while leaving non-institutional documentation exposed to liability and enforcement action.

The combined effect of credential-gating, a contestable “public interest” qualifier, and a defendant evidential burden is to encourage self-censorship outside institutional media and to consolidate effective narrative control in entities operating within established editorial and commercial constraints.

2) “Directions” power broadening increases the scope for intervention in expressive conduct

The Draft alters paragraph 80.2K(1)(a) by replacing “other than by” with “including by”. Whatever the policy intent, the amendment expands the ways in which directions may be given and enforced. In public-order contexts, this extends the practical reach of police intervention into expressive conduct.

3) Fault element relaxation for prohibited-symbol display enlarges the net beyond deliberate intimidation

The Draft omits the words “the person knows that” from paragraph 80.2JA(1)(c). Removing knowledge language increases the likelihood that conduct not amounting to deliberate intimidation is captured, including incidental exposure, handling, or documentary use in observational and reporting contexts. This increases compliance burden and discourages lawful documentation and scrutiny.

4) The “reasonable person” test changes broaden the expression-based perimeter of enforcement

The Draft revises the reasonable person test so that the advocacy/incitement analysis expressly includes incitement to “offend, insult, humiliate or intimidate”, as well as to “use force or violence”. The inclusion of “offend/insult/humiliate” extends beyond intimidation and violence and increases the likelihood that enforcement decisions in contested political and protest environments function in practice as content regulation.

Recommendations

A) Replace credential-based journalism exemptions with a function-based public documentation defence

Any exemption for news, current affairs, or public-interest reporting should turn on conduct and purpose, not professional status. The defence should apply where conduct is reasonably undertaken for reporting, documenting, analysing, or informing the public on a matter of public importance, and is not undertaken with intent to promote hatred or incite the relevant harms.

If a “public interest” qualifier is retained, it should be framed in objective terms and should not be coupled with credential-gating. Consider also limiting the evidential burden so that the exemption does not operate only for institutional actors.

B) Restore a meaningful knowledge/intent requirement for “display” offences

Where knowledge language has been removed (including 80.2JA), reintroduce a requirement that the person knew (or was reckless as to whether) the symbol was a prohibited symbol, and intended (or was reckless as to) public display. This targets deliberate intimidation while avoiding capture of incidental conduct and documentary handling.

C) Confine criminal incitement to intimidation and force/violence, or materially tighten the lower-threshold limb

If criminal liability is intended to attach to incitement, the core should remain focused on intimidation and force/violence. If “offend/insult/humiliate” is retained, it should be tightly defined and bounded so it cannot operate as a mechanism for regulating adversarial political speech.

D) Ensure even-handed operation across target groups and avoid structurally asymmetric outcomes

Where the revised test refers to groups distinguished by race, religion or nationality, the defences and enforcement architecture should avoid privileging institutional speakers while leaving independent scrutiny and documentation exposed. Equal application in practice should be an express design objective.

E) Seizure-before-proof requires prompt judicial oversight and expedited return

The Draft expands the prohibited symbol scheme beyond terrorist organisations to include prohibited hate groups, and introduces a public seizure power permitting police to seize a thing displayed in a public place if it “is, depicts or contains” a prohibited symbol.

This creates a material risk of suppression of material in public spaces before any court determination. At minimum, seizure should be coupled with prompt judicial oversight and an expedited return pathway where no charge or proceeding follows, so that seizure does not operate as a substitute penalty or as a practical constraint on contemporaneous documentation and public access to primary-source material.