

**Submission
No 6**

MEASURES TO PROHIBIT SLOGANS THAT INCITE HATRED

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SUBMISSION

Inquiry into Measures to Prohibit Slogans that Incite Hatred and Threaten Community Safety Submitted to the NSW Parliamentary Committee on Law and Safety

Submitted by

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January 2026

Submission to the NSW Parliamentary Committee on Law and Safety

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Submitted by:

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submission)



Date: January 2026

Executive Summary

This submission addresses slogans that intimidate communities and threaten public safety. It argues that Australia's current approach treats incitement too narrowly and too late, focusing mainly on overt threats or violence while leaving a prevention gap where foreseeable harm escalates unchecked.

The problem is not "free speech vs safety." It is threshold design.

Australia has accepted binding international obligations under ICCPR Article 20(2) to prohibit advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence. Yet domestically, incitement law remains largely calibrated to imminence and completed harm rather than foreseeable escalation.

Slogans such as "globalise the intifada" illustrate this gap. They are not isolated utterances, but permission-giving signals within broader ideological ecosystems that normalise coercion and dehumanisation. A framework that treats such speech as protected "debate" until violence occurs fails both community safety and human rights.

The Committee should recommend a narrow, rights-compatible reform: a prevention-focused incitement framework that targets advocacy directed at people (not criticism of ideas), grounded in context, intent or recklessness, and likelihood, with robust safeguards for political communication. It should be paired with court-supervised civil injunctions for imminent risk.

1. The Problem the Inquiry Must Address

The public debate is often misframed as whether particular slogans should be “banned.” That is incomplete. The upstream question is whether the legal framework permits lawful, proportionate early intervention when escalation is visible and foreseeable, but not yet imminent.

In many domains of Australian regulation, foreseeable harm justifies early action (child protection, aviation safety, workplace safety). Yet in the domain of ideological escalation and incitement, the state often defaults to monitoring and waiting until thresholds are crossed, then intervenes late with blunt measures, producing backlash, distrust, and further paralysis.

This inquiry is an opportunity to correct that design problem in one concrete domain: slogans used to intimidate communities and instil fear of violence.

2. Slogans as Part of Ideological Ecosystems

Slogans do not operate in isolation. They function within ideological ecosystems, environments of language, symbols, narratives, repetition, and social cues that shape what behaviour becomes normalised or morally justified.

Most people inside an ideological ecosystem will never commit violence. But ecosystems matter because they:

- shift moral boundaries;
- normalise dehumanisation;
- lower thresholds for escalation; and
- make violent outcomes more foreseeable over time.

Slogans that glorify violence, legitimise coercion, or deny the legitimacy of a people’s presence can operate as ambient intimidation. Their harm lies not only in literal meaning but in function, repetition, audience, and context.

This is why international law treats incitement as a process, not a single utterance.

3. International Law: Australia’s Preventive Obligation

3.1 ICCPR Article 20(2)

Article 20(2) of the ICCPR requires States to prohibit:

“Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”

This obligation is preventive. It is designed to operate before violence occurs.

3.2 The Rabat Plan of Action

The UN’s Rabat Plan of Action provides six factors for distinguishing protected speech from unlawful incitement:

1. Context
2. Speaker influence
3. Intent (or recklessness)
4. Content and form
5. Extent of dissemination
6. Likelihood of harm

Rabat protects robust debate while permitting proportionate intervention where escalation is foreseeable. It is the best practical tool for separating lawful political communication from unlawful incitement.

Australia has accepted this framework internationally, but it remains under-operationalised domestically.

4. The Domestic Gap: Reaction Over Prevention

Australian law routinely authorises early intervention based on foreseeable harm in other domains, including:

- child protection
- aviation safety
- workplace health and safety
- terrorism financing

Yet in ideological incitement, the framework often insists on imminence or completed harm. The predictable pathology is:

- long periods of monitoring and warning;
- legal paralysis due to high thresholds;
- sudden, blunt intervention after harm occurs; and
- social backlash that hardens thresholds further.

This cycle undermines both safety and civil liberties.

It also explains why slogans matter: they frequently occupy the gap between “offence” and “explicit threat,” yet still contribute to intimidation and escalation.

5. Accuracy, Impartiality, and Slogans in Public Space

Public institutions, including media and government, shape ideological ecosystems. Inaccurate, loaded, or untested framing can:

- legitimise coercive narratives;
- normalise dehumanisation; and
- contribute to ambient intimidation.

Precision matters in law, enforcement, and public communication. Precision protects minorities and preserves free expression.

6. Free Speech and the Implied Freedom of Political Communication

The implied freedom of political communication is not absolute. It protects what is necessary for representative government, not intimidation that silences participation. Speech that acts upon a community through fear undermines the conditions that make political communication possible. A narrowly tailored incitement framework grounded in intent or recklessness, likelihood, and context can be compatible with constitutional constraints because it is:

- narrow (targets incitement, not mere offence);
- evidence-based (Rabat factors); and
- reviewable (court supervision, high thresholds).

Commonwealth correspondence itself acknowledges proportional limits for legitimate aims such as community protection and that treaty rights may be permissibly limited for public order and security.

Recent reliance on *Lees v NSW* as a reason to resist incitement reform overstates what the decision actually held. *Lees* did not foreclose regulation of extremist or hateful advocacy. It invalidated a particular protest control regime because of its breadth, lack of tailoring, and weak proportional connection between means and purpose. Properly drafted incitement provisions, targeting advocacy directed at people and assessed by context, intent or recklessness, and likelihood of harm, sit in a different constitutional category from protest control. *Lees* reinforces the need for precision and proportionality; it does not create constitutional fatalism.¹

This position is consistent with the Attorney-General’s Department’s own articulation of the implied freedom and the permissibility of proportionate limits for community protection (see Annex B).

7. A Proportionate, Rights-Compatible Reform Model

The Committee should recommend reforms along the following lines.

7.1 Core offence (illustrative model)

A NSW offence targeting:

- Conduct: advocacy directed at a protected group (or their institutions), in circumstances amounting to incitement;
- Fault: intent to incite, or recklessness as to inciting, discrimination, hostility, or violence;
- Likelihood: a real-world likelihood of such harm in context;
- Assessment: explicit consideration of the Rabat factors.

This approach avoids vague bans and focuses on function, risk, and foreseeability.

7.2 Safeguards

To protect legitimate political communication and avoid chilling effects:

- explicit protection for criticism of ideas, religions, governments, and ideologies;
- public interest or political communication defences;
- DPP consent for prosecutions;
- clear evidentiary standards;
- sunset clause plus independent review.

7.3 Civil prevention tools

Pair criminal law with narrowly framed, court-supervised civil powers for imminent risk:

- short-term interim injunctions (24 to 48 hours) where harm is imminent;
- rapid judicial oversight;
- threshold tied to Rabat factors.

This avoids the “do nothing vs prosecute” binary and enables proportionate prevention.

7.4 Implementation and enforcement

Even well-designed laws fail without consistent implementation. NSW should:

- train police and prosecutors on Rabat factors and the people/ideas distinction;
- publish annual data (charges, outcomes, discontinued matters);
- issue a concise “slogans and intimidation” operational guidance note with protected vs prohibited examples.

8. Why Delay Increases Overreach

When law does not permit early, proportionate intervention, it forces:

- late intervention;
- emergency measures;
- broader restrictions; and
- loss of public trust.

Early, lawful action is less intrusive, more accountable, and more consistent with human rights than waiting until tragedy forces blunt response.

9. Conclusion

This inquiry should not be about banning words. It should be about whether NSW law is designed to prevent foreseeable harm while preserving free expression.

Slogans that intimidate communities are symptoms of a deeper design problem. Addressing that problem requires precision, not culture-war framing; law, not outrage; and prevention, not memorialisation.

Australia's human rights framework does not require waiting for the dead. It requires designing lawful tools to act before harm becomes inevitable.

Recommendation Summary

The Committee should recommend that NSW:

1. Align incitement thresholds with ICCPR Article 20(2);
2. Treat incitement as a process assessed by context and foreseeability (Rabat factors);
3. Extend coverage to incitement to discrimination and hostility, not only violence;
4. Preserve robust safeguards for political communication; and
5. Adopt early, court-supervised civil tools to prevent imminent harm.

Appendix A – Mapping to the Committee's Terms of Reference

(a) Threat of phrases like “globalise the intifada” to cohesion and safety

These slogans function as permission-giving cues within ideological ecosystems, increasing intimidation and foreseeable escalation (Sections 2 to 3).

(b) How best to prevent inherently hateful phrases that threaten safety

Avoid broad bans. Use Rabat-based thresholds: intent or recklessness plus likelihood plus context (Sections 3, 7).

(c) Need to protect communities from hatred, intimidation and violence

Protection requires early, lawful, proportionate intervention, otherwise the system defaults to late overreach (Sections 4, 8).

(d) Australian and international best practice (UK etc.)

Best practice is not “ban slogans” but define incitement precisely, enforce proportionately, and protect debate explicitly. Rabat provides the usable test (Sections 3, 7).

(e) Constitution and implied freedom

Implied freedom allows proportionate limits for legitimate aims such as community protection; treaty rights also permit lawful limits for public order and security.

(f) Existing offences and other measures in NSW and Commonwealth legislation

Commonwealth emphasis on civil “offend, insult, humiliate or intimidate” mechanisms and criminal focus on violence or threats highlights a gap where intimidation and hostility can escalate.

(g) Any other related matters

Training, consistency, and transparency are essential to avoid both overreach and impotence (Section 7.4).

EXECUTIVE BRIEFING

Inquiry into Measures to Prohibit Slogans that Incite Hatred and Threaten Community Safety

Submitted by

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Independent writer on law, human rights, and democratic governance

NSW Parliamentary Committee on Law and Safety

January 2026

Executive Brief

Submission to the NSW Parliamentary Committee on Law and Safety

Inquiry into Measures to Prohibit Slogans that Incite Hatred and Threaten Community Safety

Submitted by: Dr Matthew Jennings

Date: January 2026

Purpose

This submission addresses how slogans that intimidate communities and instil fear of violence should be treated under NSW law. It argues that the core issue is not free speech versus safety, but **threshold design**: when and how the law permits **early, lawful, and proportionate intervention** before foreseeable harm escalates into violence.

The problem

Australia's current approach treats incitement **too narrowly and too late**. Legal thresholds are largely calibrated to overt threats or completed violence, leaving a **prevention gap** where intimidation and coercive advocacy escalate unchecked. This produces a predictable cycle: prolonged monitoring, legal paralysis, late blunt intervention, and social backlash that further hardens thresholds.

Slogans such as "globalise the intifada" illustrate this gap. They are not isolated utterances but **permission-giving signals** within broader ideological ecosystems that normalise coercion and dehumanisation. Treating such speech as protected "debate" until violence occurs fails both community safety and human rights.

International law framework

Australia has accepted binding obligations under **ICCPR Article 20(2)** to prohibit advocacy of national, racial, or religious hatred that constitutes incitement to **discrimination, hostility, or violence**. This obligation is preventive and designed to operate **before** violence occurs.

The **Rabat Plan of Action** provides the practical, speech-protective test for implementation, focusing on:

- context,
- speaker influence,
- intent or recklessness,
- content and form,
- extent of dissemination, and
- likelihood of harm.

Australia has accepted this framework internationally but has not fully operationalised it domestically.

Constitutional fit

The implied freedom of political communication is **not absolute**. It protects representative government, not intimidation that silences participation. Proportionate limits pursuing legitimate ends such as community protection are constitutionally permissible.

Recent reliance on *Lees v NSW* to resist reform overstates what the case decided. *Lees* invalidated a particular protest control regime due to imprecision. It did **not** foreclose carefully tailored incitement reform. Properly drafted incitement provisions, targeting advocacy directed at people and assessed by context, intent or recklessness, and likelihood of harm, sit in a different constitutional category and remain open to Parliament.

What the Committee should recommend

A **narrow, rights-compatible reform model** that:

1. Aligns NSW incitement thresholds with **ICCPR Article 20(2)**.
2. Treats incitement as a **process**, assessed by context and foreseeability using Rabat factors.
3. Extends coverage to incitement to **discrimination and hostility**, not only violence.
4. Preserves robust safeguards for political communication and criticism of ideas.
5. Pairs criminal law with **court-supervised civil injunctions** for imminent risk (short-term, evidence-based, reviewable).

Why this matters

Early, lawful action is **less intrusive and more accountable** than waiting until tragedy forces blunt response. Precision in law protects minorities, preserves free expression, and strengthens social cohesion. NSW has an opportunity to lead with a prevention-focused framework that interrupts foreseeable harm without banning words or chilling legitimate debate.

ANNEX A

Lees v New South Wales

**Selected extracts and legal analysis concerning protest regulation, precision,
and proportionality**

Included as supporting material referenced in the Submission
to the NSW Parliamentary Committee on Law and Safety
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Annex A

Lees v NSW Does Not End the Incitement Debate: Why the implied freedom demands precision, not paralysis

By Dr. Matthew Jennings

1. What *Lees v NSW* actually decided

Lees v NSW has recently been cited as authority that further reform of Australia's incitement laws is constitutionally impossible. That reading overstates the decision.

The High Court did not hold that Parliament is barred from regulating extremist or hateful speech. It invalidated a specific protest control regime because of its breadth, lack of tailoring, and weak proportional connection between means and purpose.

The defect was not the pursuit of public order.

The defect was imprecision.

That distinction is decisive.

2. The implied freedom is structural, not absolute

The implied freedom of political communication is not a personal right to speak without consequence. It is a structural limitation designed to protect the system of representative government.

Consistently with long-standing authority, laws that burden political communication may still be valid if they:

- pursue a legitimate end compatible with representative government; and
- are reasonably appropriate and adapted (i.e. proportionate).

Public safety and the prevention of violence are plainly legitimate ends. *Lees* does not dispute this.

What *Lees* reinforces is that blunt, pre-emptive, or indiscriminate measures will fail, whereas carefully targeted regulation may not.

3. Incitement law is not protest control

A central error in the "constitutional fatalism" reading of *Lees* is the conflation of protest regulation with incitement law.

They are categorically different.

- Protest control laws regulate assemblies, movement, and expression as such.
- Incitement laws regulate advocacy directed at people that foreseeably leads to discrimination, hostility, or violence.

Properly drafted incitement provisions do not prohibit opinions, beliefs, or participation in political debate. They target conduct, advocacy, assessed by context, intent (or recklessness), audience, and likelihood of harm.

This distinction is orthodox in both constitutional and international law.

4. International law confirms the line *Lees* leaves open

The distinction drawn above is reflected in Article 20(2) of the International Covenant on Civil and Political Rights, which requires States to prohibit:

“Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”

The accompanying Rabat Plan of Action sets out six factors, context, speaker, intent, content and form, extent, and likelihood, to separate protected expression from unlawful incitement.

Nothing in *Lees v NSW* suggests Parliament is constitutionally barred from aligning domestic law with these standards. On the contrary, *Lees* underscores the need for precision and proportionality, exactly what a Rabat-based framework provides.

5. What *Lees* does, and does not, require

Lees tells legislators what not to do:

- do not legislate broadly;
- do not regulate opinion or participation as such;
- do not sever the connection between means and purpose.

It does not absolve Parliament of responsibility to act where harm is foreseeable.

To read *Lees* as foreclosing reform is to confuse:

- the right to engage in confrontational or unpopular debate; with
- the public advocacy of ideologies that normalise coercion or violence and make harm foreseeable over time.

The law has always drawn that line. The live question is whether our current framework draws it early enough.

6. Conclusion

If Australia responds to ideological escalation by retreating behind constitutional fatalism, it will have misunderstood both *Lees v NSW* and the role of law itself.

The implied freedom sets boundaries, not blindfolds.

The real challenge is not whether incitement law reform is constitutionally possible, but whether Parliament is willing to draft it with the care, proportionality, and clarity that the Constitution, and *Lees*, require.

ANNEX B

Correspondence from the Attorney-General

Letters dated

2 October 2025 and 3 December 2025

Included as supporting material referenced in the Submission
to the NSW Parliamentary Committee on Law and Safety
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