

**Submission
No 9**

MEASURES TO PROHIBIT SLOGANS THAT INCITE HATRED

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Partially
Confidential

Submission to Parliament of New South Wales Legislative Assembly Committee on Law and Safety.

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I am originally from Northern Ireland [REDACTED]

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[REDACTED] I thus possess significant (in modern parlance) ‘lived experience’ of social cohesion breakdown, sectarian mistrust, intolerance, prejudice and religious/political supremacism. Having relocated to Scotland and obtained my law degree and doctorate from the University of Aberdeen, I can report that a small and localised residual sectarian intolerance and supremacist problem exists there. Effective laws are now in place that keep the problem small and localised, with education supplementing law to reduce the problem further. I was an academic contributor to Scotland’s Independent Review of Hate Crime Legislation undertaken in 2017/18 by Lord Bracadale,¹ and to the acclaimed Comparative Analysis of Hate Crime Legislation Report² that informed it. I commend both to the Committee with the view that Scotland’s *Hate Crime and Public Order (Scotland) Act 2021* that was enacted as a direct consequence of the Inquiry represents a high standard model for other jurisdictions to follow.³ Since arriving in Australia and receiving citizenship, I have published articles relating to hate crime and freedom of speech,⁴ and also worked with Australia’s Independent National Security Law Monitor (INSLM) on, *inter alia*, the current definition of terrorist act.⁵ There is a clear and present nexus between terrorism and hate crime.

My responses to your questions are my personal views informed by scholarship and life experience. They do not reflect a view taken by my employer.

By way of a preliminary aside, I should caution that Scotland’s Parliament had previously sought to address sectarian/religious hatred based on chanting at football matches through a hastily drafted and under-consulted *Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012*. This was despite the presence of a suite of public order legislation already on the statute books. This ‘symbolic’ statute (aiming to “stamp out prejudice”) only succeeded in uniting Scottish soccer fans in their loathing of it, and such was

¹ <https://www.gov.scot/binaries/content/documents/govscot/publications/progress-report/2018/05/independent-review-hate-crime-legislation-scotland-final-report/documents/00535892-pdf/00535892-pdf/govscot%3Adocument/00535892.pdf>

² https://consult.gov.scot/hate-crime/independent-review-of-hate-crime-legislation/supporting_documents/495517_APPENDIX%20%20ACADEMIC%20REPORT.pdf

³ <https://www.legislation.gov.uk/asp/2021/14/contents>

⁴ See, eg, <https://lawsocietywa.asn.au/wp-content/uploads/2024/04/A-Democracys-Dilemma-Reconciling-the-Right-to-Free-Expression-with-Protection-from-Hate-Speech.pdf>

⁵ See https://www.inslm.gov.au/system/files/2025-10/dr_phil_glover_and_paulina_patterson_dtreview.pdf

the level of disquiet voiced from the legal and academic community about its impact on young males in particular, it became the first legislation of the Scottish Parliament to be repealed.⁶ The message is clear. Legislate in a considered, consultative and proportionate manner.

Please find enclosed my submission in response to your timely and relevant inquiry **‘Measures to prohibit slogans that incite hatred’**.

A preliminary response is that slogans do not ‘*incite*’ hatred. If they incite anything, it is ‘support for violence’. It should be a criminal offence, by an act conducted in public, to show support for, glorify or otherwise celebrate violent acts conducted either as terrorist offences or hate-crimes against groups or members of said group with protected characteristics.⁷

a) The threat that the use of phrases like "globalise the intifada" poses to community cohesion and safety and the importance of maintaining social harmony and cohesion;

This response assumes the Committee are fully conversant with the scope and extent of hate/intolerance/prejudice/supremacist-founded offences both in the *Crimes Act 1900* (NSW) (ss 93Z, 93ZAA, 93ZA, 93ZB, s 214B) and in Div 80 of the *Criminal Code* (Cth), and the extrinsic materials that assist in demonstrating the respective legislatures’ intent.⁸

Phrases such as “globalise the intifada” and “death, death to the IDF” are chants that demonstrate “support, celebration, or glorification” of *violence*. They are not chants of support for *terrorism* (thus falling outside the scope of the ‘advocacy’ offences in Div 80 *Criminal Code* (Cth), and outside the state-level offences in the *Crimes Act 1900* (NSW). They are also not chants expressing hatred of any protected group and thus fall outside the scope of hate crime legislation. They *celebrate or advocate violence, including lethal violence*. I address this further in (f) below. An argument that chants of this nature constitute protected freedom of expression under the *ICCPR*, Article 19(2) (to which Australia is a signatory) is immediately rebuttable by the Art 19(3) qualification to that right:

The exercise of the rights ... carries with it special duties *and responsibilities*. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) *For respect of the rights or reputations of others*; (b) *For the protection of national security or of public order...or of public health or morals*.⁹

Whilst there exists scant evidence that such chants have *directly* threatened social cohesion, the role played by public broadcast media and internet platforms in disseminating coverage of them has heightened public awareness that views on political, religious and international matters in Australia are anything but uniform. As in the UK, enhanced (and on occasion less than objective) broadcast and internet media coverage (including ‘analysis’) has demonstrated that a “small but noisy” activist cohort command disproportionate attention. Whilst activism and protest are part of a healthy democracy, protest and public anger at particular events,

⁶ <https://www.lawscot.org.uk/news-and-events/legal-news/final-whistle-blows-on-football-behaviour-act/>

⁷ See *Crimes Act 1900* (NSW) s 93Z for the protected characteristics.

⁸ Principally the relevant explanatory Memoranda and 2nd Reading speeches.

⁹ Emphasis added. See <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

however passionately held, should not be permitted to coalesce into tacit or overt support for, or glorification of, violence. The gap in Australia's legislation as to glorification/celebration/support for violence has enabled and emboldened this cohort. Social cohesion is thus *indirectly threatened* but, as in the UK, the social cohesion threat is real.

Recommendation 1- proscribe public acts that celebrate, support or otherwise glorify/condone violence against any persons, groups of persons identifiable by any one or more of the already protected characteristics.¹⁰

(b) How best to prevent the use of phrases that are so inherently hateful by their nature that they lead to incitement of hatred and threaten community safety; [See Recommendation 1 *ante*].

On a cautionary (and legal) note. These phrases are not “inherently hateful”. They are inherently hateful (and cause alarm) to a sizeable majority of Australians, but they are not expressions of hatred to the class of person expressing them, who by virtue of Art 19(1) ICCPR have the right to hold these opinions. Such persons (whether permanently resident in Australia or here temporarily) may have (on the basis of their “lived experience”) a passionate belief in the need for an *intifada*, and likewise their supporters. They will conceptualise this as legitimate political expression (much as supporters of Ireland's paramilitaries held genuine beliefs and supported the use of violence by those groups, whether to “liberate Northern Ireland” from British rule or to “defend Ulster”). Common to both sides was “support for/glorification of lethal violence”.

That stated, the Article 19(3) qualification on grounds of national security and public order can and should be invoked via national security/public order legislation because the small minority's belief (however legitimately held) in the need to globalise the *intifada* or bring about “death to the IDF” threatens social cohesion for the vast majority of Australian residents who either do not believe in these causes or otherwise do not support/condone non-democratic or violent uprisings against governments. Whether or not the expression cited actually *incites hatred* is not proven, but there is a *nexus to terrorism* in that (a) it glorifies the use of lethal violence by non-State actors and calls for others to join in (this indirectly inciting lethal violence or at its lowest supporting it). The broadcast of such chants has also instilled fear in sections of the community that otherwise may not have been as aware of the level of vitriol held against them as they are now. Despite Margaret Thatcher's disastrous broadcasting ban on Sinn Fein during her Prime Ministership, the policy underpinning it (“depriving supporters of terrorism and the oxygen of publicity”) had merit. The legislature should reflect (as should the broadcast media) on how broadcast of the glorification of violence actually amplifies the incendiary message.

c) The need to protect communities from hatred, intimidation and violence. This is obvious. Sadly, legislation can only proscribe expressions of hatred or demonstrations of hatred (see Scotland's solution),¹¹ but authorities can only act *ex post facto*. Communities need

¹⁰ This draft is but a suggestion.

¹¹ In the *Hate Crime and Public Order (Scotland) Act 2021* prejudice is proved either by motive (difficult threshold) or “demonstration of malice” (much easier).

reassurance that legislative responses are not merely symbolic but *actually work*. Australia's extensive suite of terror/hate-crime provisions are currently unconvincing, and the problem appears to centre on the high threshold set for proof of *mens rea*. This is demonstrated by the recent INSLM review of "terrorist act"¹² and the problems of proving motive, as well as the inexplicable failure to bring successful prosecutions for events like the post-October 7, 2023, Sydney Opera House assembly.

d) Australian and international examples of best practice to combat the use of such slogans, including measures and approaches taken in the United Kingdom.

The closest measure currently in place in Australia that has the potential to suppress public acts that celebrate/glorify/demonstrate support for violence against protected groups lies in Div 80 of the *Criminal Code 1995* (Cth). The offences of 'advocating violence' against groups, members of groups or close associates come closest to criminalising the conduct impugned in the terms of reference of your inquiry. However, what remains lawful is the celebration/glorification of, or demonstration of support for, acts of *violence or threats of violence* towards protected groups, wherever in the world they are. The definition in ss 80.2A, 80.2B, 80.2BC, of 'advocacy' ("counsel, promote, encourage or urge") omits glorification, and the even broader iteration in s 80.2C(3) (a)–(c), where (c) includes 'praises the doing of a *terrorist act*', is inexplicably qualified by an insurmountable "hurdle of proof" that such praise "occurs in circumstances where it is a *substantial risk* that such praise *might have the effect of leading another person* to engage in a terrorist act or to commit a terrorism offence". How that would ever be proved beyond reasonable doubt is anyone's guess.

It is my belief that a carefully drafted amendment to s 80.2C (3) (and perhaps all the advocacy offences) that (a) aligns with the definition of "glorification" in s 20(2) of the *Terrorism Act 2006* (UK) ("glorification" includes any form of praise or celebration, and cognate expressions are to be construed accordingly) and (b) removes the "qualification" text from s80.2C(3) (c) altogether would remove the "symbolism" of the Div 80 advocacy of hatred/terror offences and actually render them effective. It is that hurdle of proof that has enabled tacit support for violence against certain societal groups, and emboldened those desiring to publicly advocate and celebrate violence as part of a supremacist/prejudice-founded belief system.

Given that that suggestion requires action at Federal level, I suggest that, after suitable consultation, your legislature consider enacting a provision that proscribes "glorification" or similar. Such provision could authorise the relevant Minister, by way of regulations, to add or remove "glorification slogans" as they see fit, or simply proscribe any public act that glorifies violence against the protected groups.

e) The Australian Constitution and the implied freedom of political communication; [See Recommendation 1]

¹² <https://www.inslm.gov.au/reviews/defining-terrorism-review-definition-terrorist-act-section-1001-criminal-code-act-1995>

As stated previously, “political” expression that directly or indirectly glorifies violence directly engages ICCPR Art 19(3). If Australia’s Parliament and Senate expressed support for violence (however tacit), there would be righteous outrage. The question arises therefore why it remains open to a minority of people in Australia to express themselves in this way with apparent impunity.

f) Existing offences and other measures in New South Wales and Commonwealth legislation, including offences and measures that have been announced. The suite for public order and hate crime provisions is adequate.

There seems to be an element of ‘whack-a-mole’ with the piecemeal responses to recent (post Oct 7, 2023) threats to social cohesion. The responses undoubtedly help with the symptoms of the prejudice illness, but the illness remains. The illness is the belief that violence, including lethal violence, is acceptable or excusable conduct to achieve political or social objectives, and that there exists in Australia an environment where glorification of, and demonstrations of support for, lethal violence repeatedly goes unpunished. What is missing from the statute books in Canberra and Sydney is the proscription of support for, or glorification of, *violence* (including lethal violence) against [insert group or members thereof with protected characteristics].

The irony inherent in the fact that a *direct call for violence* against [insert group or members thereof with protected characteristics] or a *direct threat* to such groups is criminal conduct and a “hate crime”, but *celebrating/glorifying mass killings or destruction of property* of [insert group or members thereof], whether at the pulpit, in front of Sydney Opera House, or elsewhere in public remains lawful, should not be lost on the legislature.

The threat to Australia’s social cohesion is real. Blandishments about Australia’s tolerance and statements such as ‘*all* Australians abhor what happened at Bondi’ misrepresent the actual state of affairs on the ground. There are (thankfully small) pockets of Australian society that (a) nurse hatred for/prejudice towards/contempt for/mistrust of/ and (most worryingly) belief in supremacy over [insert societal group with protected characteristics] and/or (b) glorify and/or support the use of violence against those groups. Where the legislature fails to suppress the mischief posed by expressions of support for, or glorification of, violence against ‘protected’ groups, it (a) fails to protect the groups and (b) provides a direct causal link between its inaction and lethal violence against those groups. The parallels with ethno-religious and racial conflicts in other areas of the world are inescapable.