

**Submission
No 18**

MEASURES TO PROHIBIT SLOGANS THAT INCITE HATRED

Organisation: The Law Society of New South Wales

Date Received: 9 January 2026



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: PuLC:RMml090126

9 January 2026

Mr Edmond Atalla MP
Chair of the Legislative Assembly Committee on Law and Safety
Parliament House
6 Macquarie Street
Sydney NSW 2000

Dear Mr Atalla,

MEASURES TO PROHIBIT SLOGANS THAT INCITE HATRED

Thank you for the opportunity to provide a submission to the inquiry of the Legislative Assembly Committee on Law and Safety (**Committee**) into measures to prohibit slogans that incite hatred. The Law Society's Public Law and Human Rights Committees contributed to this submission.

The Law Society recognises that this inquiry comes in the aftermath of the horrific act of terrorism at Bondi Beach. The Law Society shares the shock and distress of the community, and condemns antisemitic and hate-fuelled actions of any kind. As active participants in the justice system, the legal profession will continue to contribute to the maintenance and defence of the rule of law, which will be central to the potential reform processes that result from this horrific event.

We recognise the need for an urgent and multifaceted response across all levels of government to address real fears within the Jewish and broader community. In the context of proper public consultation, complex issues such as those raised in this inquiry typically benefit from detailed consideration over a substantial consultation period. Given the timeframe available, our contribution is intended to provide high-level views to assist the Committee's consideration of the legal issues arising in relation to the terms of reference.

Additionally, we note that this inquiry is occurring in a context where both Commonwealth and NSW Governments are in the process of considering and implementing responses to hate crimes and related matters, as well as broader measures relating to public safety and social cohesion. It is important that these Governments, and other State and Territory Governments, act in a coordinated and consistent manner. For example, we note that the first phase of the National Hate Crimes and Incidents Database was launched on 23 December 2025. Further, in NSW, the Government recently introduced a suite of legislative reforms, including the new section 93ZAA of the *Crimes Act 1900* (NSW), criminalising intentionally inciting hatred by a public act on the grounds of race. The Honourable John Sackar AM KC, former NSW Supreme Court judge, has been directed to review criminal law hate-speech protections for vulnerable communities, to guide improvements to NSW laws and support social cohesion measures. Reform to civil vilification provisions is currently the subject of inquiry by the NSW Law Reform Commission as part of its review of the *Anti-Discrimination Act 1977* (NSW). To ensure consistent law reform and prevent overlapping legislation, we suggest that it may be prudent to monitor and await the outcome of the above processes.

Further, we note that legal protections for vulnerable groups do not operate in isolation, but rather as part of a broader architecture of civil and criminal protections. We suggest that, at the appropriate time, the Parliament and Government should have regard to how civil and criminal provisions are operating in concert to protect communities from hatred, intimidation and violence, and whether, viewed as a whole, they are comprehensive, cohesive and adequately serve their protective purpose.

General principles

The Law Society considers, at a high-level of generality, that any proposed new laws or measures arising from this Inquiry should:

- be robust and evidence-based;
- be reasonably appropriate and adapted to serving the legitimate purpose of protecting the community from harm, and compatible with the maintenance of systems of representative and responsible government;
- not be so broad in effect as to be contrary to the implied freedom of political communication;
- not be drawn in terms that are impractical to enforce;
- respect the principle that everyone is equal before the law and must comply with the law;
- minimise the risk of unintended or unnecessary impacts on activities undertaken for legitimate academic, educational, journalistic or other public purposes. Any legislative reform should contain carefully formulated and drafted exceptions for activities conducted in the public interest, such as the exceptions under section 93ZA(3) of the *Crimes Act 1900* (NSW);
- fully consider the coverage of existing and proposed Commonwealth laws, processes and other measures, in order to avoid unintended inconsistencies. In particular, we note that any inconsistency between Commonwealth and NSW laws may lead to confusion, and potentially render the State laws invalid, in whole or part;
- include periodic review mechanisms, to ensure they operate effectively, and as intended; and
- as noted above, consider the several relevant current and planned inquiries and investigations at both the Commonwealth and NSW levels.

The limited role of the criminal law in promoting social cohesion

The Law Society considers speech and conduct grounded in hatred toward any group unacceptable. In our view, Parliament should not rely on the criminal law as the only or primary tool to promote social cohesion, a multifaceted concept that has been described as “the glue that binds societal members”.¹ We suggest that education should be a key tool in promoting this value, and that hate-based criminal offences should be seen as “last resort measures to be applied only in strictly justifiable situations”.²

¹ United Nations Economic Commission for Europe, ‘Social cohesion concept and measurement’ (Report, December 2023), 4 [19] : https://unece.org/sites/default/files/2023-12/2317603_E_ECE_CES_STAT_2023_8_WEB.pdf.

² Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to



Caution should be taken, particularly if criminal sanctions are contemplated, with regard to any proposed prohibition of specific words or phrases that:

- are a matter of ordinary or common usage;
- have alternative legitimate current or historical meanings;
- are reasonably open to an alternative non-harmful interpretation; or
- are used for the purpose of exercising the Constitutional right to freedom of political communication, including expressions of a particular political point of view.

As a general principle, because of the vital importance of free speech in our democratic liberal society, and the importance of a full understanding of the meaning and context of the use of any “slogan”, we suggest that content neutral laws would be preferable. This could also help to minimise the minor modification of slogans so as to escape any prohibition that is drawn in such precise terms. The principle of legality may result in circumstances where, unless Parliament’s intention is made with clarity and is unambiguous, a prohibition infringing on otherwise lawful speech will be narrowly construed. If the use of specific words or phrases is to be rendered illegal, any prohibition should be limited to circumstances where their use or display would, or might reasonably, cause harm.

The Law Society remains available to assist the Committee, as well as the Commonwealth and NSW Governments, on these issues, including in relation to legislative processes and reforms, and matters where cross-jurisdictional issues arise, or parallel inquiries are underway.

Thank you for the opportunity to comment. [REDACTED]

Yours sincerely,

Ronan MacSweeney

President

Discrimination, Hostility or Violence in Human Rights Committee, Annual Report of the United Nations High Commissioner for Human Rights, UN Doc A/HRC/22/17/Add 4 (11 January 2013) 12 [34]:
https://www.ohchr.org/sites/default/files/Rabat_draft_outcome.pdf.