

**Submission
No 20**

MEASURES TO PROHIBIT SLOGANS THAT INCITE HATRED

Organisation: Muslim Votes Matter

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Submission to the NSW Parliamentary Inquiry into Proposed Measures Relating to Slogans and Political Expression

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Muslim **Votes** Matter

Muslim Votes Matter (MVM) is a non-partisan, national, grassroots initiative established to strengthen political participation, representation, and advocacy within Australia's Muslim communities. MVM operates at the intersection of community mobilisation, political strategy, and advocacy. It engages with diverse Muslim communities across ethnic, sectarian, generational, and linguistic lines, and works collaboratively with other civil society and grassroots organisations. It also supports emerging Muslim leaders and advocates to engage with the political process, build civic literacy, and challenge the marginalisation of their communities.

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Executive Summary

This submission responds to the New South Wales Parliamentary Inquiry into proposed measures to prohibit or regulate certain chants and slogans alleged to incite hatred, intimidation, or violence. It is made in recognition of the legitimate responsibility of government to protect communities from genuine harm, while also preserving the foundations of democratic participation and political expression.

The submission does not dispute that conduct which incites violence, intimidates individuals, or targets communities for hatred should be addressed firmly and effectively. Rather, it questions whether the approach under consideration, particularly the criminalisation of specific phrases, is a necessary, proportionate, or effective means of achieving that objective in the New South Wales context.

The central contention of this submission is that New South Wales already possesses a comprehensive legal framework capable of responding to the harms identified in the Inquiry's Terms of Reference. Existing civil and criminal provisions address racial vilification, intimidation, public disorder, and incitement to violence through harm-based thresholds that focus on conduct, intent, and effect. No evidentiary gap has been demonstrated that would justify departing from this established approach.

A key concern examined in this submission is the regulation of political expression by reference to specific words or phrases rather than by reference to behaviour and harm. Political slogans and chants are symbolic and context dependent. Their meaning varies across audiences, settings, and circumstances. Treating contested political language as inherently harmful risks shifting regulation away from objective assessment and toward interpretation, expanding discretion while undermining legal certainty and consistency.

The submission also examines claims of threat and community safety. While individuals may genuinely experience distress or anxiety in response to political protest, democratic legal systems rely on objective standards to distinguish between lawful expression and conduct that warrants legal intervention. Conflating offence or disagreement with threat risks misidentifying harm and misdirecting legislative response.

Comparative and international experience reinforces these concerns. Across international human rights bodies, European jurisprudence, and domestic oversight mechanisms, there is a consistent emphasis on restraint, contextual assessment, and high thresholds for restricting political expression. Where states have adopted symbolic or phrase-based regulation, oversight bodies have identified risks of overreach, chilling effects, and erosion of public trust, without corresponding gains in safety.

In the New South Wales context, these risks are heightened by the absence of a comprehensive human rights framework expressly protecting freedom of expression, and by the central role of protest and political participation in democratic life. Measures perceived as selective or symbolic may undermine social cohesion and community trust, particularly among communities already subject to heightened scrutiny.

For these reasons, the submission concludes that further criminalisation of political expression, including phrase-based offences, is not justified. The more principled and effective course is the consistent application of existing laws, supported by non-legislative measures where appropriate, and grounded in evidence of harm rather than contested interpretation.

The submission therefore recommends that:

- Existing NSW and Commonwealth laws be recognised as sufficient to address hatred, intimidation, and violence.
- Any assessment of threat or community safety be grounded in objective evidence of harm, not inferred from political disagreement or offence.
- Phrase-based or symbolic criminalisation of political expression be rejected as unnecessary and disproportionate.
- Priority be given to consistent, even-handed application of existing legal frameworks.
- Social cohesion and community trust be treated as central considerations in legislative decision-making.

This submission is offered to assist the Committee in fulfilling its mandate with care, precision, and respect for democratic principles, recognising that the protection of communities and the protection of political expression are not competing objectives, but interconnected responsibilities.

1. Introduction and Scope of Submission

This submission is made in response to the Inquiry into proposed measures to prohibit or regulate certain chants and slogans alleged to incite hatred, intimidation, or violence. It is offered as a contribution to the Committee's consideration of how best to protect communities in New South Wales while preserving the principles that underpin democratic participation and political expression.

The submission proceeds on the basis that the protection of communities from genuine harm is a legitimate and necessary objective of government. Conduct that incites violence, intimidates individuals, or targets communities for hatred should be addressed firmly and effectively. The central question for this Inquiry, however, is not whether such harm should be prevented, but whether the approach under consideration is necessary, proportionate, and effective in light of existing legal frameworks and the evidence available.

In particular, this submission is concerned with proposals that seek to regulate political expression by reference to specific words or phrases, rather than by reference to conduct, intent, and demonstrable harm. Political slogans and chants are not self-executing acts of violence or intimidation. Their meaning and impact depend on context, audience, and purpose. Treating contested political language as inherently harmful risks shifting the focus of regulation away from behaviour and toward interpretation, with significant implications for legal certainty, consistency, and democratic participation.

This submission does not argue for the absence of regulation. On the contrary, it demonstrates that New South Wales already possesses a comprehensive suite of civil and criminal laws capable of addressing racial vilification, intimidation, public disorder, and incitement to violence. The analysis that follows examines whether any regulatory gap has been identified that would justify further criminalisation, and whether proposed measures would enhance or undermine community safety, social cohesion, and trust in public institutions.

The structure of the submission reflects this approach. It first considers how harm and community safety should be understood in a democratic context, before examining the adequacy of existing NSW and Commonwealth laws. It then assesses the necessity and proportionality of further restriction on political expression, drawing on comparative and international experience, and concludes by applying that analysis directly to the Inquiry's Terms of Reference.

2. Framing the Issue: Interpretation, Expression, and Harm

The Inquiry is situated within an environment of contested meaning. The slogans and chants that have prompted legislative attention are not neutral or technical forms of communication; they are political expressions that carry different meanings for different audiences, shaped by history, identity, and context. Any assessment of their significance therefore depends not only on the words used, but on how meaning is attributed to them.

Political slogans function symbolically. They are designed to condense complex political positions into brief, emotive language, often for use in protest or collective action. As a result, they are frequently ambiguous, provocative, and open to multiple interpretations. This is not an incidental feature of such expression, but a defining one. Meaning is contested precisely because political conflict is contested.

In this context, there is a risk that regulatory responses may proceed from an assumed or dominant interpretation of a phrase, rather than from evidence of how it is used, understood, and experienced across different settings. When meaning is fixed in advance, without regard to context, intent, or effect, the focus of regulation shifts from harm to symbolism. This shift has significant implications for both legal certainty and democratic participation.

It is also important to distinguish between expression that is directed at a state, an ideology, or a set of political actions, and expression that targets identifiable individuals or groups within New South Wales. Protest language aimed at the conduct of a foreign government, or at political support for that government, may be confronting or deeply uncomfortable for some, but that alone does not establish intimidation or threat in a legal sense. Existing legal frameworks already draw this distinction by requiring a connection between expression and conduct that causes, or is intended to cause, harm.

The Inquiry must therefore take care not to collapse disagreement, offence, or distress into the concept of threat. While subjective experiences of fear or anxiety should not be dismissed, they cannot, on their own, provide a sufficient basis for criminal regulation. Democratic systems rely on objective standards to distinguish between lawful political expression and conduct that warrants legal intervention. Without such standards, the scope of permissible speech risks being defined by reaction rather than by principle.

This framing is essential to the analysis that follows. Before considering whether additional legal powers are required, it is necessary to clarify what problem is being addressed and how harm is identified. Section 3 therefore turns to the concept of community safety, examining how it should be understood and assessed in a democratic society, and how existing legal frameworks already respond to genuine threats.

3: Community Safety, Threat, and Shared Objectives

3.1 Acknowledging Reported Fear Without Reframing Political Accountability as Harm

Public debate around international conflict, protest, and political mobilisation has, in recent years, been accompanied by heightened anxiety within parts of the community. Some individuals have reported feelings of fear or distress in response to public demonstrations and strongly expressed political views relating to overseas events. These reactions form part of the social context in which this inquiry is taking place.

Political protest in Australia has long included mass mobilisation, confrontational messaging, and language designed to provoke moral urgency. From opposition to the Vietnam War, to protests against the Iraq War, to large-scale climate change marches, Australians have repeatedly taken to the streets to contest state action and global injustice. These movements were often disruptive, polarising, and deeply unsettling to parts of the community. Yet they have consistently been recognised as legitimate expressions of political participation, regulated through harm-based legal frameworks rather than through the criminalisation of slogans or symbols. This historical continuity underscores that the challenge before the Inquiry is not how to eliminate discomfort arising from protest, but how to preserve democratic space while addressing genuine threats of harm.

At the same time, it is essential to distinguish between political protest and accountability, on the one hand, and intimidation or targeting of individuals, on the other. Public demonstrations opposing the actions of a foreign state, including allegations of war crimes or genocide, are directed at state conduct and political power. Where such protest also challenges those who publicly support, defend, or legitimise those actions, it remains within the realm of political expression and accountability. Supporting a state's policies is itself a political position, and political positions are legitimately subject to criticism, condemnation, and protest.

This does not mean that all expression is without limits. Existing legal frameworks already draw a clear line between political criticism, including sharp and confronting rhetoric, and conduct that targets identifiable individuals with threats, coercion, or intimidation. That distinction is grounded not in whether expression causes offence or discomfort, but in whether it involves a credible connection to harm. Political speech does not lose its character as political expression simply because it implicates people who have chosen to align themselves with a state or ideology.

Conflating protest against a state's actions, or against those who publicly support those actions, with hostility toward individuals as individuals risks collapsing political accountability into personal harm. Such a collapse would improperly shield political alignment from scrutiny, while simultaneously lowering the threshold at which protest itself is treated as dangerous. In democratic societies, individuals and groups who advocate for, defend, or normalise state violence cannot claim exemption from political challenge on the basis that such challenge causes discomfort or distress.

This submission therefore maintains a clear distinction.

Protecting people from intimidation, threats, and violence is a legitimate and necessary objective. Preserving the right to protest state conduct, and to hold its supporters politically accountable through speech and assembly, is equally fundamental. Any policy response that fails to hold both principles together risks undermining democratic participation while doing little to enhance genuine community safety.

3.2 Why the Form of Response Matters for Safety and Trust

How governments respond to political protest and contested expression has a direct bearing on community safety and public trust. Measures that misidentify the source of harm, or that treat political accountability as a threat in itself, risk undermining the very objectives they are intended to advance. This is particularly the case in highly polarised contexts, where communities are already experiencing distress linked to international violence, displacement, and loss.

When protest against state conduct is reframed as a source of danger rather than as a form of political participation, the effect is not neutral. It signals to some communities that their experiences, grievances, and moral claims are suspect, while others are insulated from political challenge. This asymmetry can deepen alienation, reinforce perceptions of double standards, and erode confidence that public institutions are acting impartially or on the basis of evidence rather than political pressure.

There is also a practical dimension. Overbroad or symbolic legal responses can drive political expression underground rather than addressing it, making it harder for authorities to distinguish between lawful protest and genuinely threatening conduct. Where lines are blurred between dissent and danger, communities may become less willing to engage with institutions, report genuine threats, or cooperate with authorities. In this sense, poorly targeted interventions can paradoxically weaken safety rather than enhance it.

Conversely, responses that are clearly grounded in objective assessments of conduct, intent, and harm are more likely to command legitimacy. When communities can see that the law intervenes only where there is a credible risk of intimidation or violence, and not where there is merely confrontation or moral challenge, trust in those frameworks is strengthened. This clarity protects both public safety and democratic participation.

For these reasons, the form of response matters as much as the desire to respond. Protecting communities from hatred and violence requires precision, restraint, and consistency. Approaches that collapse political protest into threat, or that treat discomfort as equivalent to harm, risk undermining social cohesion while failing to address the underlying causes of fear and division. It is against this backdrop that the submission turns to the existing legal frameworks and the standards that govern any proposal to restrict political expression.

4. Existing Legal Frameworks Are Already Sufficient

A central premise of this inquiry is that the use of particular slogans presents a threat to community safety and cohesion that existing laws are unable to adequately address. This submission proceeds from a different starting point. It contends that both New South Wales and Commonwealth law already provide a wide and overlapping set of mechanisms to respond to genuine harm, including incitement to violence, threats and intimidation, harassment, serious vilification, and risks to public order.

Before considering whether new legislative prohibitions are warranted, it is therefore necessary to examine the legal landscape as it currently stands. That examination shows that Australian law does not treat public speech as beyond regulation, but nor does it criminalise political expression simply because it is provocative, contested, or uncomfortable. Instead, existing frameworks draw deliberate distinctions between political speech and conduct that creates a real risk of harm. These distinctions are reflected in the thresholds built into current offences, which are designed to enable intervention where violence, intimidation, or serious vilification is present, while preserving space for lawful political expression.

This section sets out that landscape in two stages. First, it outlines the scope of existing New South Wales and Commonwealth laws that already regulate harmful public conduct, including speech, where statutory thresholds are met. It then turns to the significance of those thresholds, and what the absence of prosecutions under existing offences implies for claims that new slogan-specific laws are necessary.

Taken together, these considerations shift the focus of the inquiry away from whether additional powers would be convenient, and toward whether there is credible evidence of a legal gap at all. As the following subsections demonstrate, the question facing policymakers is not whether the law lacks reach, but whether there is a principled basis for lowering the bar at which political expression is brought within the scope of criminal or quasi-criminal sanction.

4.1 Overview of Existing NSW and Commonwealth Laws

Before examining the operation of specific offences in detail, it is important to note that New South Wales and Commonwealth law already provide a range of mechanisms to address harmful expression and conduct. These include:

- Civil vilification provisions under anti-discrimination law;
- Criminal offences relating to serious racial hatred;
- Offences addressing intimidation, threats, and public disorder; and
- Commonwealth offences concerning the urging of violence.

Together, these frameworks establish a comprehensive legal architecture for responding to hatred, intimidation, and incitement, without the need to create new or phrase-specific offences. These legal frameworks apply irrespective of the identity of the targeted group and are designed to provide equal protection across all communities, reflecting a consistent, harm-based approach rather than community-specific or phrase-specific regulation.

4.1.1 New South Wales laws addressing incitement, vilification, and public harm

New South Wales law already regulates public conduct, including speech, where that conduct crosses into incitement, intimidation, or serious harm. This occurs through a layered framework of civil and criminal provisions that are deliberately calibrated to distinguish between political expression and conduct that poses a genuine risk to individuals or communities.

At the civil level, Division 3A of the Anti-Discrimination Act 1977 (NSW)¹ makes it unlawful to engage in a public act that incites hatred, serious contempt, or severe ridicule against a person or group on specified grounds, including race and ethnicity. A “public act” is defined broadly under Section 20B to include any form of communication to the public, including spoken words, signs, symbols, or other visible

¹ <https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-1977-048>

representations. This means that slogans, chants, and other forms of public expression are already captured by the Act where they meet the statutory threshold of inciting hatred against an identifiable protected group.

Importantly, the NSW framework does not treat all offensive or controversial speech as unlawful. The civil vilification provisions require a causal connection between the public act and the incitement of hatred, contempt, or severe ridicule, reflecting a deliberate legislative choice to regulate harm rather than mere disagreement or offence.

In addition to civil remedies, New South Wales has, in recent years, introduced criminal offences specifically targeting incitement to violence or hatred on racial grounds. These offences sit within the *Crimes Act 1900 (NSW)*, including section 93Z (publicly threatening or inciting violence on specified grounds) and related provisions.²

These criminal offences represent a significant escalation beyond civil vilification. They were introduced precisely to address serious racial hatred and incitement where there is a real risk of violence or harm. Notably, since their introduction, there have been only a small number of reported prosecutions under these provisions so far as can be ascertained from available court decisions and Office of the Director of Public Prosecutions (ODPP) reporting. This is a relevant factual consideration when assessing claims that existing law is inadequate to respond to harmful slogans or public expression.

Beyond vilification and incitement, New South Wales criminal law also addresses intimidation and threats through offences under the *Crimes (Domestic and Personal Violence) Act 2007 (NSW)*³. For example, section 13 criminalises stalking or intimidation of another person with the intention of causing the other person to fear physical or mental harm. Where public expression is accompanied by targeting, threats, or behaviour that creates a reasonable fear of harm, these offences already provide a clear basis for intervention.

New South Wales also maintains public order offences under the *Summary Offences Act 1988 (NSW)*⁴. Sections 4 and 4A deal with offensive conduct and offensive language in or near public places, allowing police to respond where conduct creates a risk to public order. While such provisions must be applied carefully to avoid overreach into legitimate protest activity, their existence further demonstrates that the State already possesses mechanisms to manage public behaviour that crosses established legal boundaries.

² <https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-1900-040#sec.93Z>

³ <https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-2007-080#sec.13>

⁴ <https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-1988-025>

Taken together, these civil and criminal frameworks demonstrate that New South Wales law already regulates public speech where it causes harm, incites hatred against protected groups, threatens violence, or undermines public order. They also demonstrate that the State has, in recent years, expanded rather than contracted its capacity to respond to serious racial hatred through the creation of criminal offences.

This raises a critical question for the inquiry: if such a comprehensive framework already exists, including recently enacted criminal provisions designed to address precisely these kinds of harms, what conduct is said to fall outside its reach? That question becomes more pointed when Commonwealth law is also taken into account, as outlined in the following subsection.

4.1.2 Commonwealth laws addressing urging, threats, and advocacy of violence

At the Commonwealth level, racial vilification is addressed primarily through civil remedies under the Racial Discrimination Act 1975 (Cth), while criminal liability is reserved for conduct involving the urging or promotion of violence. This reflects a deliberate legislative choice to protect political expression while intervening decisively where real-world harm is at stake.

In addition to the extensive legal framework operating at the state level, Commonwealth criminal law also already contains offences that directly address the urging, encouragement, or promotion of violence through public expression. These provisions apply nationally and reinforce the conclusion that Australian law already possesses mechanisms to respond to speech that crosses into serious harm.

Under Chapter 5 of the Criminal Code Act 1995 (Cth),⁵ it is an offence to urge violence against groups, members of groups, or places, where such urging occurs through public conduct. In particular, section 80.2A makes it an offence to urge violence against a group distinguished by race, religion, nationality, national or ethnic origin, or political opinion. Related provisions extend this offence to urging violence against individuals as members of such groups (section 80.2B) and against places associated with those groups (section 80.2C).

These offences are expressly concerned with public conduct that encourages or promotes violence, including through speech. They are not confined to operational acts but extend to expressive conduct where the requisite intent or recklessness is established. As such, they already capture the core harm that is often invoked in public

⁵ <https://www.legislation.gov.au/C2004A04868/latest/text>

debate about extremist or dangerous slogans, namely the urging of violence against identifiable groups or individuals.

The existence of these Commonwealth offences is particularly significant in the context of this inquiry. Where a slogan or chant is alleged to urge violence, promote violent action, or encourage harm against a protected group, these provisions provide a clear legal pathway for investigation and prosecution. They operate alongside, and independently of, state-based offences, ensuring that serious conduct does not fall through jurisdictional gaps.

Taken together with the New South Wales framework outlined above, Commonwealth law reinforces the conclusion that Australian legal systems already distinguish sharply between political expression and expression that crosses into the encouragement of violence. Where that line is crossed, criminal liability already attaches. Where it is not, the expression is treated, in law, as political speech rather than criminal conduct.

This layered legal landscape is central to the assessment the Committee is being asked to undertake. If both state and federal law already prohibit the urging of violence through public expression, the critical issue for this inquiry is not whether additional powers could be created, but whether there is credible evidence that existing offences are inadequate or incapable of addressing the harms said to arise. That question is taken up in the following section, which examines the significance of existing legal thresholds and what their operation reveals about the character of the speech now under scrutiny.

4.2 The Issue Is Not Legal Gaps, but Legal Thresholds

4.2.1 What existing thresholds already require

The existence of extensive state and Commonwealth offences regulating incitement, threats, and the urging of violence does not, in itself, resolve the central question before the Committee. The more important issue is how those offences are structured, and what they are designed to require before criminal or quasi-criminal liability attaches.

Across both New South Wales and Commonwealth law, offences dealing with harmful public expression are built around deliberate legal thresholds. These thresholds typically require one or more of the following elements: an identifiable target group, a clear connection between the expression and harm, a mental element such as intention or recklessness, and a real risk of violence, intimidation, or serious public disorder. These elements are not accidental. They reflect a conscious legislative choice to ensure that the law intervenes where harm is genuine and foreseeable, while avoiding the criminalisation of political expression merely because it is provocative, unpopular, or deeply contested.

For example, under Division 3A of the Anti-Discrimination Act 1977 (NSW), sections 20B and 20C, a public act must do more than offend or unsettle. It must *incite* hatred, serious contempt, or severe ridicule against a protected group, establishing a causal link between the expression and the harm complained of. Similarly, the criminal racial hatred provisions in the *Crimes Act 1900 (NSW)*, including section 93Z, require proof that a public act intentionally or recklessly incited violence against a person or group on the ground of race.

Comparable threshold logic applies at the Commonwealth level. The urging violence offences in Chapter 5 of the Criminal Code Act 1995 (Cth), sections 80.2A–80.2C, require conduct that urges violence against groups, individuals, or places, coupled with the requisite fault element. These provisions are directed at the encouragement of violent outcomes, not the expression of political views or slogans in the abstract.

The presence of these thresholds performs an important democratic function. They operate as guardrails, ensuring that the law targets conduct that creates a genuine risk to safety or public order, while preserving space for political debate, protest, and dissent. This approach is consistent with long-standing principles articulated by international human rights bodies and Australian law reform and human rights institutions, which recognise that political expression often involves strong, symbolic, or confrontational language, and that such expression does not lose protection merely because it is offensive, unsettling, or unpopular.

The United Nations Human Rights Committee has emphasised that political discourse and debate on matters of public interest enjoy a high level of protection under Article 19 of the International Covenant on Civil and Political Rights, including where expression may be “deeply offensive” or “shocking”, and that restrictions are justified only where they are necessary and proportionate to prevent concrete harm.⁶

Similar principles are reflected in Australian policy and law reform analysis. The Australian Law Reform Commission has noted that freedom of political communication in Australia protects robust, critical, and even offensive expression, and that criminal sanctions should be a measure of last resort, reserved for circumstances involving clear and demonstrable harm.⁷

The Australian Human Rights Commission has likewise observed that protest and political expression frequently involve strong or confrontational language, and that democratic societies must tolerate a degree of disruption and offence in order to protect meaningful civic participation.⁸

⁶ <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

⁷ https://www.alrc.gov.au/wp-content/uploads/2019/08/fr_129ch_4_freedom_of_speech.pdf

⁸ <https://humanrights.gov.au/resource-hub/by-resource-type/publications/rights-and-freedoms/guides/protest-rights-australia-explainer>

In this sense, the thresholds embedded in existing offences are not deficiencies to be remedied but features to be preserved. They reflect an understanding that the legitimacy of legal intervention depends not on the suppression of discomfort or controversy, but on demonstrable necessity grounded in evidence of harm. This has direct implications for the inquiry's focus. Where expression does not meet these established thresholds, the appropriate conclusion is not that the law has failed, but that the expression is being treated, in law, as political speech rather than criminal conduct.

This point becomes particularly salient when considering how these laws have operated in practice. The following subsection turns to that question, examining what the absence of prosecutions under existing offences indicates about the nature of the expression now under scrutiny.

4.2.2 Implications of prosecution practice under existing offences

Understanding the function of existing legal thresholds also requires attention to how those laws have operated in practice. In particular, the way recently enacted offences have been used, and the outcomes of matters brought under them, is relevant when assessing claims that current legal frameworks are inadequate.

As outlined above, New South Wales has, in recent years, expanded its criminal law to address serious racial hatred and incitement. The offences inserted into the Crimes Act 1900 (NSW) in 2023, including section 93Z, were specifically designed to criminalise public acts that intentionally or recklessly incite violence against a person or group on the ground of race. These provisions represent a significant escalation beyond civil vilification and were introduced to address the most serious forms of hate-motivated conduct.

Publicly available material confirms that charges have been brought under section 93Z, but that their use has been limited and outcomes mixed. In response to a question on notice to the NSW Parliament, the Attorney General advised in October 2022 that six individuals had been charged under the provision since its introduction, with outcomes including withdrawn charges, annulled convictions, and matters that were ongoing at that time.⁹ More recent reporting by the NSW Law Reform Commission, drawing on BOCSAR data as at July 2024, indicates that seven people had s 93Z charges finalised, resulting in two findings of guilt and five withdrawals, with at least one conviction subsequently quashed on appeal.¹⁰

⁹ <https://www.parliament.nsw.gov.au/la/papers/Pages/qanda-tracking-details.aspx?pk=93289>

¹⁰ https://lawreform.nsw.gov.au/documents/Publications/Reports/Report_151_Serious_racial_and_religious_vilification.pdf

This prosecution history is significant. It demonstrates that the offence has not been dormant, but neither has it been deployed broadly. Importantly, it does not suggest a failure of enforcement. Rather, when considered alongside the structure of the offence, it indicates that the high statutory thresholds are operating as intended, with criminal liability confined to a narrow category of conduct that can be proven to meet the elements of incitement to violence.

The limited number of matters, the high proportion of withdrawals, and the successful appellate challenge to at least one conviction all underscore the difficulty of establishing criminal liability where expression is politically charged, symbolic, or contested in meaning. Far from evidencing a gap in the law, this pattern suggests that courts and prosecutors are exercising caution, consistent with the gravity of criminal sanction and the need to distinguish between political expression and conduct that poses a genuine risk of harm.

The same inference arises when Commonwealth law is considered. As discussed in Section 4.1.2, Commonwealth criminal liability for harmful speech is confined to circumstances involving the urging or promotion of violence. There is no publicly reported evidence of prosecutions under those provisions in connection with the slogans or chants currently under scrutiny. This further supports the conclusion that such expression is being assessed, in law, as political communication rather than criminal conduct.

In this context, calls for new, slogan-specific offences invert the proper analytical sequence. Where expression does not consistently meet existing criminal thresholds, the appropriate conclusion is not that those thresholds are defective, but that Parliament has deliberately drawn the criminal line at a point that protects political expression while reserving sanction for conduct closely connected to violence or serious harm. Lowering that line through the creation of new offences would not respond to a demonstrated incapacity in the law but would instead reclassify contested political expression as criminal by design.

This has important implications for the Inquiry's task. Before recommending any expansion of criminal or quasi-criminal powers, the Committee should require clear evidence that existing offences are incapable of addressing the harms said to arise. The available prosecution data does not establish such incapacity. On the contrary, it suggests that current laws already perform the function Parliament intended: distinguishing, carefully and deliberately, between expression that is confronting or controversial and expression that warrants criminal sanction.

4.2.3 Why lowering thresholds through new offences is dangerous

It may be argued that the absence of prosecutions under existing offences demonstrates that current laws are inadequate or incapable of protecting communities from harm. This submission rejects that premise. Criminal law is structured around thresholds for a reason. Those thresholds are intended to ensure that only conduct involving demonstrable harm, or a real and foreseeable risk of harm, attracts criminal sanction. Where conduct does not meet those thresholds, non-prosecution is not evidence of failure, but an indication that the law is operating as intended.

Treating non-prosecution as proof of inadequacy would invert the logic of criminal safeguards. It would transform carefully calibrated thresholds into perceived deficiencies and invite a continual lowering of the bar for criminalisation whenever expression causes fear, offence, or political controversy. That approach risks eroding the distinction between political expression and criminal conduct and would substantially expand discretionary power in the regulation of speech.

This concern is not merely theoretical. Law reform and human rights bodies have consistently cautioned that criminal sanctions should be a measure of last resort, particularly in relation to political communication. The Australian Law Reform Commission has emphasised that freedom of expression protects robust, critical, and even offensive political speech, and that expanding criminal liability in response to discomfort or controversy risks disproportionate encroachment on democratic participation.¹¹

International human rights guidance reaches a similar conclusion. The United Nations Human Rights Committee has made clear that restrictions on political expression must be strictly necessary and proportionate, and that States should not criminalise expression solely because it is perceived as threatening or deeply offensive, absent a clear and direct connection to harm.¹²

Lowering criminal thresholds through the creation of slogan-specific offences would therefore carry significant risks. It would shift the focus of the law from conduct to language, from harm to interpretation, and from objective standards to subjective assessment. In practice, such shifts tend to expand discretion rather than improve safety and increase the likelihood of uneven or politicised enforcement. Once established, these precedents are difficult to confine to their original context and often outlast the circumstances that gave rise to them.

¹¹ https://www.alrc.gov.au/wp-content/uploads/2019/08/fr_129ch_4_freedom_of_speech.pdf

¹² <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

For these reasons, the appropriate response to the absence of prosecutions under existing laws is not to expand criminalisation, but to recognise that current thresholds already draw a principled and democratically necessary line. The task for policymakers is not to redraw that line lower, but to ensure that it continues to be applied consistently, proportionately, and with due regard to the central role of political expression in a democratic society.

4.3 Implications for the Inquiry's Premise

Taken together, the existing legal framework and the operation of its thresholds have direct implications for the premise on which this inquiry proceeds. The evidence set out in Sections 4.1 and 4.2 demonstrates that New South Wales and Commonwealth law already regulate harmful public expression through a layered system that addresses incitement, threats, intimidation, serious vilification, and the urging of violence. These laws apply to public speech, including slogans and chants, where clearly defined statutory thresholds are met.

The low number of prosecutions under recently enacted criminal racial hatred offences, when viewed in this context, does not indicate a deficiency in legal authority. Rather, it suggests that the expression currently under public scrutiny is not being assessed, in law, as conduct that meets the threshold for criminal liability. This distinction is central. It reflects a deliberate legislative judgment that criminal sanctions should attach only where there is a demonstrable connection between expression and harm, not where expression is merely confronting, symbolic, or politically contentious.

This legal architecture is not accidental. It embodies long-standing principles that balance community safety with democratic participation. At both the state and federal levels, legislatures have drawn clear lines between political expression and criminal conduct, reserving the most coercive legal responses for circumstances involving violence, intimidation, or serious risk to public order. Where those lines are not crossed, the law treats the expression as political speech rather than as a matter for criminal sanction.

Against this background, the inquiry's task is necessarily a narrow one. It is not sufficient to assert that certain slogans are offensive, unsettling, or experienced by some as threatening. Nor is it sufficient to rely on the existence of fear or community tension alone. Before recommending any new criminal or quasi-criminal measures, the Committee must identify a concrete legal gap: conduct that poses a genuine risk to safety or cohesion and that cannot be addressed under existing law.

Sections 4.1 and 4.2 indicate that such a gap has not been demonstrated. Instead, they point to a functioning legal framework in which thresholds are doing the work they were designed to do, distinguishing between expression that is protected, even when controversial, and conduct that warrants legal intervention. Reframing that distinction through slogan-specific offences would not respond to an evidentiary deficiency but would alter the balance struck by Parliament between safety and freedom of political expression.

These conclusions set the foundation for the next section of this submission, which examines the question of necessity and proportionality more directly. If existing laws are already capable of addressing genuine harm, and if their thresholds reflect deliberate democratic safeguards, then the introduction of new restrictions on political expression must be subject to the highest level of justification. It is to that question that the submission now turns.

5. Necessity, Proportionality, and Authority to Restrict Political Expression

Section 4 of this submission addressed the question of legal sufficiency. It demonstrated that existing New South Wales and Commonwealth laws already regulate incitement, threats, and the urging of violence, and that the absence of prosecutions reflects the operation of deliberate legal thresholds rather than a gap in authority. This section proceeds on a different footing. It does not ask whether Parliament has the technical capacity to legislate in this area, but whether it would be legitimate to do so. The focus now turns to the standards that must be met before political expression may be lawfully restricted, and to the principles of necessity, proportionality, and democratic authority that should guide the Committee's deliberations.

5.1 Necessity and Proportionality as Governing Standards

Where a proposal would restrict political expression, the relevant question is not whether such restriction is technically possible, but whether it is justified. Democratic systems impose a high burden before political communication may be curtailed, particularly where the proposed restriction would operate through criminal or quasi-criminal law. That burden is commonly expressed through the principles of necessity and proportionality.

Under international human rights law, restrictions on freedom of expression are permitted only where they pursue a legitimate aim, are necessary to achieve that aim, and are proportionate in their impact. Article 19(3) of the *International Covenant on Civil and Political Rights*¹³ permits limitations on expression only where they are provided by law and are necessary for the protection of the rights or reputations of others, or for public order or safety. These requirements are cumulative. The existence of concern, controversy, or social tension does not, of itself, satisfy the test of necessity.

Authoritative interpretation of these standards makes clear that necessity requires more than speculative or preventative reasoning. The United Nations Human Rights Committee has emphasised that restrictions must respond to a demonstrable and specific need and must be the least intrusive means available to achieve the stated objective.¹⁴ Measures that are broad, symbolic, or directed at expression rather than harm are unlikely to meet this standard.

Proportionality further requires that the impact of a restriction on political expression be carefully weighed against the harm it seeks to prevent. Where less restrictive mechanisms exist, including civil remedies, policing powers, or non-legal responses, the escalation to criminal sanction requires compelling justification. This principle reflects a long-standing understanding that criminal law carries unique coercive force, and that its use in regulating political expression risks chilling participation beyond the conduct directly targeted.

Applied to the present inquiry, these standards impose a clear discipline on the Committee's task. It is not sufficient to assert that certain slogans are experienced as threatening or offensive, or that their use contributes to community tension. The Committee must identify concrete evidence that existing mechanisms are incapable of addressing a specific and serious harm, and that the proposed restriction is both necessary to address that harm and proportionate in its effect on political expression.

Absent such evidence, the introduction of new restrictions would represent a shift in principle rather than a response to demonstrated need. It would move the law away from harm-based intervention toward language-based control and would lower the threshold at which political expression is brought within the scope of criminal or quasi-criminal sanction. The implications of such a shift, including its consistency with existing legal balances and its impact on democratic legitimacy, are considered in the subsections that follow.

¹³ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

¹⁴ <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

These principles of necessity and proportionality are also reflected in Australian constitutional law through the implied freedom of political communication. Under the framework articulated by the High Court, a law burdening political communication must serve a legitimate purpose compatible with representative and responsible government and must be reasonably appropriate and adapted to achieving that purpose. In practice, this requires close scrutiny of whether the law is necessary to address a real harm and whether it goes further than required. Measures that restrict political expression in the absence of demonstrated necessity, or that adopt broad or symbolic prohibitions, risk failing this test by imposing a disproportionate burden on political communication.

5.2 Why Existing Legal Settings Already Satisfy These Standards

The standards of necessity and proportionality outlined above are not external or aspirational benchmarks, they are already embedded in the structure of Australian law governing public expression. Existing legal settings reflect a deliberate choice to intervene where there is demonstrable harm or risk, while exercising restraint where expression remains within the bounds of political communication.

As demonstrated in Section 4, both New South Wales and Commonwealth frameworks regulate harmful conduct through graduated responses. Civil remedies address harmful expression that falls short of violence, while criminal sanctions are reserved for conduct involving incitement, threats, or the urging of violence. This architecture reflects a proportional approach, escalating legal intervention only as the severity and risk of harm increase. It also reflects necessity, in that criminal law is not deployed where less intrusive mechanisms are available and capable of responding.

Importantly, this balance has been recalibrated in recent years rather than left static. New South Wales has expanded its criminal law to address serious racial hatred, and the Commonwealth maintains offences directed at the urging of violence. These developments demonstrate that legislatures have already considered where escalation is warranted and have acted accordingly. The fact that these provisions have not been applied to the expressions now under scrutiny suggests not an absence of authority, but an assessment that existing thresholds have not been crossed.

In this context, proposals to introduce new restrictions on political expression must confront a significant justificatory hurdle. Where the law already reflects necessity and proportionality through its structure and operation, further intervention cannot be defended on the basis of precaution, symbolism, or public discomfort alone. To do so would disrupt the balance Parliament has already struck and would risk substituting harm-based regulation with language-based control.

The question for the Committee, therefore, is not whether it is possible to legislate further, but whether there is a principled basis for doing so. If existing legal settings already satisfy the governing standards of necessity and proportionality, the case for additional restriction must rest on clear evidence that those settings are incapable of addressing a specific and serious harm. Absent such evidence, restraint is not only justified but required.

5.3 Civil and Non-Criminal Responses as the Appropriate Domain

A further implication of the necessity and proportionality framework is that not all social harm, discomfort, or community tension warrants a criminal response. Democratic legal systems deliberately maintain a range of non-criminal mechanisms to address harmful expression precisely because criminal law is a blunt and coercive tool, particularly when applied to political communication.

At the Commonwealth level, this approach is reflected in the *Racial Discrimination Act 1975 (Cth)*¹⁵. Section 18C makes certain public acts unlawful where they are reasonably likely to offend, insult, humiliate, or intimidate a person or group because of race, colour, or national or ethnic origin. Importantly, this provision operates within a civil framework, oriented toward conciliation and resolution rather than punishment.

That civil framework is deliberately balanced by section 18D, which provides broad exemptions for acts done reasonably and in good faith in the course of artistic work, academic or scientific discussion, fair reporting, or public interest debate. The inclusion of section 18D reflects a clear legislative judgment that political discussion and public debate, even when confronting or offensive, should not be unduly chilled by the threat of legal sanction.

Together, these provisions illustrate an important principle: where expression causes harm or offence but does not involve violence or the urging of violence, civil remedies and non-criminal responses are the appropriate regulatory domain. This is not a deficiency in the law, but a deliberate allocation of responsibility, recognising that social cohesion is often better served through dialogue, conciliation, and proportionate response than through criminalisation.

¹⁵ <https://www.legislation.gov.au/C2004A00274/latest/text>

Beyond civil law, governments and institutions already possess a range of non-legislative tools to address community concern, including protest management practices, public safety planning, political leadership, and clear public condemnation of genuinely harmful conduct. These measures can respond to fear and tension without altering the legal boundaries of political expression or creating precedents that may be difficult to contain.

Framing criminal law as the primary or default response to contested political language risks displacing these existing mechanisms and narrowing the space for civic engagement. It also risks conflating community discomfort with criminal harm, and symbolic offence with actionable danger. In doing so, it shifts responsibility away from political leadership and social resolution toward coercive enforcement, with limited evidence that such a shift improves safety or cohesion.

For the purposes of this inquiry, the existence and deliberate design of civil and non-criminal responses is highly relevant. Where these mechanisms are already available, and where criminal thresholds have not been met, escalation to new criminal or quasi-criminal restrictions requires particularly strong justification. Absent such justification, restraint is not inaction, but an affirmation of the regulatory balance Parliament has already chosen. This emphasis on civil remedies, political leadership, and non-criminal responses is also consistent with international approaches that prioritise harm reduction and social cohesion over criminalisation of political expression, even where states diverge on the appropriate limits of speech regulation.

5.4 Authority, Precedent, and Democratic Legitimacy

Beyond questions of legal sufficiency and proportionality lies a broader issue of democratic authority. When Parliament legislates to restrict political expression, particularly by targeting specific language or slogans, it does more than address a discrete problem. It establishes a precedent about how political disagreement is to be governed, and about which forms of expression are treated as legitimate within the public sphere.

Laws directed at political language carry an inherent risk of precedent creep. Once the state assumes authority to prohibit expression because it is perceived as threatening, divisive, or symbolically charged, it becomes difficult to confine that authority to a single context. Political language is dynamic and contested, and meanings shift across time, communities, and circumstances. Measures introduced in response to one moment of political anxiety can be readily repurposed in another, often against different groups or causes.

This risk is compounded by the discretionary nature of enforcement. Restrictions on language, as distinct from conduct, inevitably rely on interpretation. Decisions about meaning, intent, and context are rarely neutral, and are shaped by prevailing political narratives and institutional priorities. Where the boundaries of lawful expression are unclear or elastic, enforcement is more likely to be uneven, selective, or perceived as partisan, regardless of legislative intent.

Australian law reform bodies have cautioned against incremental encroachments on expressive freedom that arise through piecemeal or reactive legislation. The Australian Law Reform Commission has noted that restrictions on expression often accumulate over time, with each individual measure appearing limited in scope, but collectively producing a substantial narrowing of democratic space.¹⁶

International human rights guidance reflects similar concerns. The United Nations Human Rights Committee has emphasised that States should exercise particular caution when regulating political expression, given its central role in democratic participation and the heightened risk of misuse or overreach where restrictions are framed broadly or symbolically.¹⁷

From a legitimacy perspective, these considerations matter as much as formal legality. Public confidence in the law depends not only on its capacity to respond to harm, but on the perception that it is applied consistently, fairly, and without regard to political alignment. Measures that single out particular forms of political expression risk undermining that confidence, particularly among communities who already experience marginalisation or disproportionate scrutiny.

For the Committee, this raises a fundamental question of authority. Even where Parliament has the power to legislate, the exercise of that power must be guided by restraint, evidence, and an awareness of long-term consequences. Legislating against political language, rather than against harm, risks shifting the role of the state from neutral arbiter of public order to active regulator of political meaning. Such a shift carries significant implications for democratic legitimacy and should not be undertaken lightly.

¹⁶ <https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-report-129/4-freedom-of-speech/>

¹⁷ <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

5.5 Implications for the Committee’s Deliberations

Sections 5.1 to 5.4 set out the standards that should guide the Committee’s consideration of any proposal to restrict political expression. Taken together, they point to a clear conclusion: where political language is concerned, the threshold for legislative intervention must be high, and the justification for doing so must be grounded in evidence rather than perception, pressure, or symbolism.

The Committee should approach its task on the basis that political expression, including protest slogans, is a normal and necessary feature of democratic participation. The existence of offence, discomfort, or social tension, while important to acknowledge, is not sufficient to justify criminal or quasi-criminal restriction. Any proposed limitation must be demonstrably necessary to address a specific and serious harm and proportionate in its impact on political communication.

In practical terms, this requires the Committee to ask a series of disciplined questions before endorsing any new measure:

- What precise harm is said to arise, and what evidence supports that claim?
- Why are existing legal and non-legal mechanisms incapable of addressing that harm?
- What less restrictive alternatives have been considered and found inadequate?
- How would the proposed restriction operate in practice, and with what safeguards against selective or uneven application?

The analysis in this submission indicates that these questions have not yet been satisfactorily answered. Existing legal settings already reflect a careful balance between safety and expressive freedom, and civil and non-criminal responses provide avenues for addressing harm without altering the boundaries of political expression. Introducing new restrictions in the absence of clear necessity would represent a shift in principle rather than a targeted response to demonstrated need.

The Committee should also consider the broader implications of its recommendations. Measures that regulate political language set precedents that extend beyond their immediate context and may shape future responses to dissent, protest, and minority expression. Maintaining democratic legitimacy requires caution in this space, particularly where proposed laws would expand discretion or blur the line between harm and disagreement.

For these reasons, this submission urges the Committee to approach proposals to restrict political expression with restraint. Where existing frameworks already address genuine harm, and where necessity and proportionality have not been established, the most responsible course is to refrain from recommending further criminal or quasi-criminal intervention.

6. Interpretation, Context, and the Limits of Phrase-Based Regulation

The Terms of Reference place particular emphasis on specific slogans and phrases said to pose a threat or to be inherently hateful. Addressing that focus requires more than assessing legal thresholds or proportionality in the abstract. It requires examination of how political language functions in practice, how meaning is constructed and contested, and why context is central to any assessment of harm. This section therefore turns to the problem of interpretation itself. It explains why political slogans cannot be meaningfully assessed in isolation from context, intent, and usage, and why regulatory approaches that treat words as inherently dangerous sit uneasily with existing legal and democratic frameworks.

6.1 Contested Meaning, Interpretation, and the Limits of Phrase-Based Regulation

Political slogans and protest language do not operate as fixed or self-contained units of meaning. Their significance is shaped by history, context, audience, and usage, and may vary substantially across time and settings. This is not a marginal feature of political communication, but a defining one. Slogans function symbolically, condensing complex political claims, moral judgments, and demands into brief, often provocative forms. As a result, their meaning cannot be reliably assessed in isolation from context or intent.

Legal frameworks have long recognised this reality. Existing approaches to regulating harmful expression do not turn on the mere presence of particular words or phrases, but on a contextual assessment of conduct, intent, and likely effect. Whether expression crosses into intimidation, incitement, or coercion depends on how it is used, toward whom it is directed, and the connection between the expression and a risk of harm. This context-sensitive logic underpins both civil and criminal thresholds and reflects an understanding that language alone is an unstable proxy for danger.

Proposals that seek to criminalise specific phrases depart from this established approach. By treating words as inherently dangerous, such measures bypass the interpretive work that existing law requires and substitute it with categorical judgments about meaning. This shift introduces significant uncertainty. Enforcement necessarily depends on discretionary interpretations of symbolism, political alignment, and implied intent, increasing the risk of inconsistent or selective application. It also weakens legal clarity by obscuring the boundary between confrontational political expression and conduct that genuinely warrants intervention.

There is also a practical limitation inherent in phrase-based regulation. Political protest is adaptive. Where particular slogans are restricted, movements do not abandon their underlying message or grievance; they alter its symbolic expression. Meaning migrates to new phrases, metaphors, imagery, or coded language that conveys the same political claim without replicating the prohibited words. In such circumstances, regulation does not reduce harm or resolve conflict but merely reshapes how dissent is expressed.

This displacement effect is not incidental, it is predictable. Once the law begins to target symbols rather than conduct, it enters an open-ended cycle in which language changes faster than regulation can respond. The result is a form of legal intervention that is largely symbolic in effect, offering little practical gain in safety while expanding the scope of discretionary enforcement. In policy terms, this raises serious questions about effectiveness and necessity. Measures that do not alter behaviour, reduce risk, or address underlying drivers of tension cannot plausibly be justified as proportionate responses to harm.

These limitations underscore why the inquiry's focus on specific phrases cannot be divorced from broader questions of interpretation and context. Regulating political expression by reference to fixed words misunderstands how meaning operates in public protest and sits uneasily with the harm-based logic of existing legal frameworks. Addressing intimidation and violence requires attention to conduct and consequence, not the endless pursuit of symbolic substitutions.

Against this analytical backdrop, the following subsection examines the phrase “globalise the intifada” as a case study. It illustrates how contested political language operates in practice and why context-insensitive regulation is ill-suited to addressing the concerns raised by the inquiry.

6.2 Case Study: “Globalise the Intifada” as Contested Political Language

The phrase “globalise the intifada” has become a focal point of this inquiry, cited as an example of language said to pose a threat or to be inherently hateful. Examining it as a case study illustrates why phrase-based regulation is ill-suited to addressing concerns about harm, intimidation, or community safety.

The term *intifada* is derived from Arabic and has historically been used to denote a form of uprising or resistance. Its usage has varied significantly across time and context. In some historical settings, it has been associated with mass political mobilisation, civil resistance, and protest against occupation. In others, it has been linked, retrospectively or rhetorically, to episodes of violence. These divergent associations mean that the term does not carry a single, stable meaning that can be abstracted from context.

In contemporary protest settings, the phrase “globalise the intifada” is used by different speakers to convey different messages. For some, it functions as a call for global solidarity, sustained protest, or resistance to what they regard as grave injustice, including war crimes or genocide. For others, it is experienced as inflammatory or threatening, particularly when heard through the lens of historical violence or contemporary political alignment. The divergence in interpretation is not incidental; it is central to the controversy.

Crucially, the phrase does not, of itself, specify a target, a method, or a call to violence. Whether its use crosses legal thresholds depends on how it is deployed: the surrounding conduct, the audience, the presence or absence of coercion or threat, and any connection to incitement or intimidation. Existing legal frameworks are designed to assess precisely these factors. They intervene where expression is accompanied by conduct or intent that gives rise to a credible risk of harm, not where meaning is inferred from words alone.

Treating the phrase as inherently hateful or violent collapses this contextual analysis into a categorical judgment. It assumes a single, fixed meaning and bypasses the evaluative steps that ordinarily govern legal intervention. In doing so, it risks criminalising political expression that falls short of intimidation or incitement, while offering little additional protection against conduct that genuinely warrants sanction.

The case study also illustrates the practical limitations of phrase-specific bans. As outlined in Section 6.1, political movements adapt their language in response to restriction. Prohibiting a particular phrase does not extinguish the underlying political claim or grievance; it merely shifts expression to alternative symbols, metaphors, or coded language that convey the same meaning. From a policy perspective, this raises serious doubts about effectiveness. A measure that predictably displaces expression rather than addressing harm cannot be said to materially enhance safety or reduce risk.

Finally, the focus on this phrase highlights a broader concern about interpretive authority. Determining whether a slogan is hateful or threatening requires judgments about political meaning, symbolism, and intent. When such judgments are embedded in criminal or quasi-criminal law, they necessarily expand discretion and invite contestation. This places significant interpretive power in the hands of enforcement authorities and risks uneven application, particularly in politically charged contexts.

As a case study, “globalise the intifada” demonstrates the core difficulty confronting the inquiry. Concerns about intimidation and safety are properly directed at conduct and consequence, not at contested political language abstracted from context. Approaches that seek to regulate meaning through phrase-based prohibition are unlikely to be evidence-based, proportionate, or effective, and risk undermining both democratic participation and public confidence in the law.

It is also relevant to note that much of the public and political discourse surrounding this phrase, including the framing that underpins the inquiry itself, proceeds on the basis of a single asserted interpretation. That interpretation is often treated as self-evident, while alternative explanations offered by those using the phrase are discounted or dismissed without examination. This approach effectively resolves questions of meaning in advance, rather than testing them through evidence, context, or objective assessment. In circumstances where interpretation is central to the question of harm, such an approach risks predetermining the outcome of policy deliberation and undermines confidence that proposed responses are grounded in a fair and balanced evaluation of the facts.

7. Social Cohesion, Community Trust, and Unintended Consequences

Community safety is often framed narrowly in terms of enforcement, deterrence, and legal authority. However, a substantial body of research demonstrates that safety is equally, and in some contexts more strongly, shaped by social cohesion, institutional trust, and perceptions of fairness. Laws that are formally valid but socially delegitimised can undermine compliance, weaken cooperation with authorities, and exacerbate the very risks they seek to address.

For this inquiry, these considerations are directly relevant. Measures proposed in response to political protest and contested expression will operate in a highly charged social environment. Their impact must therefore be assessed not only by reference to legal thresholds, but by their likely effects on trust, legitimacy, and inter-community relations. This section examines those effects.

7.1 Community Safety, Procedural Justice, and Trust

A substantial body of research demonstrates that community safety is shaped not only by the existence of legal powers, but by the degree to which those powers are perceived as legitimate, fair, and consistently applied. This insight is central to the concept of procedural justice, which holds that people's willingness to comply with the law and cooperate with authorities is influenced more by how decisions are made than by the severity of sanctions.

Tom R. Tyler’s foundational research on procedural justice shows that individuals are more likely to accept legal outcomes, even unfavourable ones, when they believe authorities have acted impartially, transparently, and according to consistent principles. Tyler’s work demonstrates that legitimacy, rather than fear of punishment, is the primary driver of voluntary compliance in democratic societies. Where legitimacy is undermined, reliance on enforcement alone becomes less effective and more resource-intensive, particularly in diverse or politically polarised contexts.¹⁸

This finding is especially relevant where proposed legal measures engage political expression, as perceptions of bias or selective application can quickly erode confidence in institutional neutrality.

Australian empirical research supports these conclusions. A 2017 Australian Institute of Criminology study¹⁹ examining perceptions of police among young adults found that procedurally just treatment was strongly associated with higher levels of trust, legitimacy, and willingness to cooperate with authorities. Importantly, the study reinforces the broader procedural justice literature by showing that perceived fairness in process, not agreement with outcomes, is the critical factor shaping attitudes toward law enforcement and legal authority. While the cohort examined is specific, the mechanisms identified are consistent with wider Australian and international findings on the relationship between legitimacy, cooperation, and safety outcomes.

These findings have direct policy implications for this inquiry. Measures that appear to single out particular forms of political expression, or that respond to social or political discomfort rather than objectively assessed harm, risk undermining the legitimacy on which effective community safety depends. Even where such measures expand formal legal authority, they may weaken practical safety outcomes by diminishing trust, discouraging cooperation, and reframing safety as a matter of control rather than shared responsibility.

For these reasons, community safety must be understood as a social and institutional achievement, not merely a function of enforcement power. Legal responses that erode perceived fairness and legitimacy are likely to be counterproductive, regardless of their stated intent.

¹⁸ <https://press.princeton.edu/books/paperback/9780691126739/why-people-obey-the-law>

¹⁹ <https://www.aic.gov.au/publications/tandi/tandi533>

7.2 Selective Regulation, Perceived Bias, and the Erosion of Legitimacy

Even where a law is drafted in facially neutral terms, its social legitimacy can collapse if it is perceived to operate selectively in practice. Selectivity does not require explicit discrimination. It can arise through the political targeting of particular forms of expression, the prioritisation of certain complaints, the focus of enforcement resources, or the repeated public framing of one community's political mobilisation as inherently suspect. In contested political environments, perceived selectivity quickly becomes a proxy for perceived bias.

The procedural justice research referenced in Section 7.1 is directly relevant here. When communities perceive that authorities are acting inconsistently, or that decisions are driven by political pressure rather than stable principles, legitimacy declines and cooperation weakens. Australian Institute of Criminology research supports this relationship between perceived fairness, legitimacy, and cooperation. While its 2017 study examines a specific cohort, it reinforces the broader, well-established point that perceptions of procedural fairness materially shape trust and willingness to cooperate with authorities.

In minority and marginalised communities, these legitimacy dynamics are intensified when the law is experienced as part of a broader pattern of exceptional scrutiny. Australian Human Rights Commission material on counter-terrorism legislation²⁰ highlights that national security laws raise recurring concerns about proportionality and safeguards, and that their operation sits within an environment where communities can experience heightened surveillance and suspicion. The key point for present purposes is not an analogy between counter-terrorism law and the current proposal, but the documented policy lesson: when communities perceive legal frameworks as being used in a way that departs from equal, harm-based application, trust and engagement deteriorate.

International evidence underscores the same mechanism. The UK Equality and Human Rights Commission commissioned major research into the impact of counter-terrorism measures on Muslim communities, finding that communities experiences and perceptions of being treated as collectively suspect contributed to alienation, reduced trust, and an erosion of confidence in public institutions.²¹ The relevance to this inquiry is straightforward. Even if a proposed restriction is framed as protecting community safety, if its practical effect is to stigmatise and constrain political expression

²⁰ <https://humanrights.gov.au/resource-hub/guides-for-impacted-individuals/guides-on-rights-and-freedoms/rights-and-freedoms/human-rights-guide-australias-counter-terrorism-laws>

²¹ <https://www.equalityhumanrights.com/sites/default/files/research-report-72-the-impact-of-counter-terrorism-measures-on-muslim-communities.pdf>

associated with particular communities, it can reproduce the same trust-degrading dynamics: withdrawal, resentment, and declining willingness to cooperate with authorities on genuine threats.

The risk, in other words, is not simply that a selective approach is unfair. It is that it is operationally counterproductive. Where legitimacy is weakened, authorities lose the informational and relational conditions required to distinguish between lawful protest, heated political rhetoric, and genuinely threatening conduct. This is especially important in contexts where existing laws already provide tools to address intimidation and incitement, because the effectiveness of those tools depends in part on community confidence that they will be applied evenly and judiciously.

For these reasons, any proposal that appears to single out particular slogans or political movements, rather than focusing on conduct and harm, should be treated as a high-risk policy intervention. It may expand discretion, but at the cost of legitimacy, and in doing so may reduce rather than enhance real community safety.

7.3 Linguistic Stigmatisation and the Alienation of Communities

As demonstrated by the research discussed in the preceding subsections, regulatory approaches that are perceived as selective or exceptional can undermine trust and legitimacy. A related and compounding risk arises when regulation targets language itself, particularly where that language is closely associated with specific political movements or communities. In such cases, the effects of regulation often extend beyond the immediate expression to the people who use, understand, or identify with its cultural and political context.

The UK and Australian studies referred to earlier show that when political or cultural markers are treated as indicators of suspicion, communities experience a form of collective stigmatisation. This occurs not because individuals have engaged in harmful conduct, but because certain forms of expression are framed as inherently suspect. As those studies demonstrate, this dynamic contributes to alienation, reduced trust in public institutions, and withdrawal from civic and political engagement. These outcomes are not incidental. They flow directly from regulatory approaches that blur the distinction between political dissent and threat.

Crucially, linguistic stigmatisation operates even where laws are formally neutral. When particular words or slogans are publicly singled out as dangerous, the stigma tends to attach to the communities most visibly associated with them. Over time, this can entrench an “us and them” dynamic, reinforcing perceptions that political participation by certain groups is tolerated only within narrow and conditional bounds. The research discussed above shows that such perceptions weaken legitimacy and undermine the cooperative relationships on which effective community safety depends.

In the present context, there is a real risk that treating specific political slogans as inherently dangerous will mark the communities most closely associated with that language as sources of threat, rather than as participants in legitimate political protest. This risk is heightened where those communities are mobilising in response to international violence that has direct familial, cultural, or moral significance. Rather than fostering cohesion, such an approach may deepen grievance and reinforce the belief that political accountability is being constrained selectively.

From a policy perspective, these effects are counterproductive. As the evidence already cited demonstrates, community safety relies on trust, cooperation, and the ability of authorities to distinguish between lawful protest, heated political rhetoric, and genuinely threatening conduct. Approaches that stigmatise language risk collapsing those distinctions, making it more difficult to identify real harm and more likely that communities will disengage from institutions tasked with protecting safety.

For these reasons, regulatory responses that treat words or slogans as inherently dangerous, rather than assessing expression in context and by reference to conduct and intent, carry a significant risk of alienation and diminished social cohesion. That risk must be weighed carefully against any claimed benefits of symbolic or phrase-based regulation.

8. International Experience and the Limits of “Best Practice”

The social and institutional impacts outlined in the previous section are not unique to New South Wales. Comparable debates have arisen in other jurisdictions when governments have sought to regulate political expression in response to public pressure or heightened social anxiety. For this reason, the Terms of Reference invite consideration of international experience and so-called “best practice.” This section examines that material critically. It does not proceed on the assumption that more restrictive approaches necessarily deliver better outcomes. Rather, it assesses what international experience actually demonstrates about the effectiveness, risks, and limitations of regulating political language, particularly where measures move beyond harm-based thresholds and toward symbolic or phrase-based intervention.

8.1 International “Best Practice” and the Need for Careful Interpretation (Finalised with Explanatory Referencing)

References to “international best practice” often carry an implicit assumption that more restrictive or interventionist approaches to political expression are both effective and justified. However, international human rights practice does not support that assumption. Across European and United Nations frameworks, the quality of regulatory

responses is assessed not by their breadth or symbolic force, but by their precision, necessity, and restraint. In this context, “best practice” is not synonymous with maximal regulation, but with disciplined limitation of state power.

This principle is clearly reflected in the Council of Europe’s guidance on Article 10 of the European Convention on Human Rights.²² The Council’s consolidated guide to European Court of Human Rights jurisprudence emphasises that freedom of expression is a foundational condition of democratic society and that restrictions must be narrowly framed and convincingly justified. The guide repeatedly underscores that political expression attracts the highest level of protection and that states are required to demonstrate why less restrictive responses are insufficient before resorting to legal prohibition. In effect, the Council of Europe’s position is that restraint, not expansion, is the hallmark of sound regulatory practice in this area.

European Court of Human Rights case law reinforces this approach. In *Handyside v United Kingdom*²³, the Court articulated the principle that freedom of expression protects not only information and ideas that are favourably received, but also those that “offend, shock or disturb.” This formulation is not rhetorical. It reflects the Court’s consistent view that democratic pluralism requires tolerance of discomfort and confrontation, and that the role of the state is not to insulate individuals or groups from unsettling political expression. Subsequent cases, including *Perinçek v Switzerland*²⁴, have further clarified that restrictions on expression must be assessed in context, with close attention to intent, audience, and contribution to public debate, and that abstract or symbolic bans on expression are particularly difficult to justify under Article 10.

This emphasis on necessity and contextual assessment is mirrored in United Nations guidance. The UN Human Rights Committee’s General Comment No. 34 on Article 19 of the ICCPR²⁵ makes clear that restrictions on expression must be demonstrably necessary for a legitimate aim and proportionate to that aim. The Committee explicitly warns against vague or overly broad prohibitions and stresses that expression should not be restricted merely because it is offensive, provocative, or disturbing. The General Comment draws a clear line between expression that causes discomfort and expression that causes harm, cautioning states against collapsing that distinction.

The Rabat Plan of Action²⁶ provides further clarity on how this distinction should be operationalised. Developed through expert consultation under the auspices of the Office of the High Commissioner for Human Rights, the Plan sets out a structured threshold test for assessing when expression may legitimately be restricted. That test

²² <https://rm.coe.int/guide-on-article-10-freedom-of-expression-eng/native/1680ad61d6>

²³ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%5B%22001-57499%22%5D%7D>

²⁴ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%5B%22001-158235%22%5D%7D>

²⁵ <https://www.ohchr.org/sites/default/files/english/bodies/hrc/docs/gc34.pdf>

²⁶ https://www.ohchr.org/sites/default/files/Rabat_draft_outcome.pdf

requires consideration of six contextual factors, including the speaker’s intent, the content and form of the expression, the social and political context, the audience, and the likelihood of harm. The Rabat Plan expressly cautions against symbolic or phrase-based prohibitions, noting that such measures are vulnerable to misuse and may undermine both freedom of expression and social cohesion. Its central contribution is to reinforce that regulation should be targeted at conduct and demonstrable risk, not at words in isolation.

Taken together, this international material does not support phrase-based criminalisation as a general policy response. Instead, it consistently points toward high thresholds, contextual assessment, and institutional restraint, particularly where regulation risks expanding discretionary power over political language. Properly understood, international “best practice” cautions against symbolic intervention and reinforces the importance of disciplined, harm-based approaches to regulating expression.

8.2 United Kingdom: Oversight Bodies’ Warnings on Overreach and Chilling Effects

In the United Kingdom, significant concern about the regulation of political expression has come not from proponents of expansive legal powers, but from parliamentary committees, equality bodies, and human rights institutions tasked with scrutinising the impact of existing regimes. Their assessments are instructive because they document the risks that arise when broad, discretionary frameworks are used to manage perceived ideological or political risk.

UK parliamentary scrutiny has repeatedly highlighted the chilling effects associated with the Prevent duty regime. The House of Commons Petitions Committee, in its inquiry into freedom of speech in universities, examined evidence from students, academics, and institutions and found that fear and confusion about Prevent obligations contributed to self-censorship and reluctance to host controversial speakers or debates. The Committee did not conclude that Prevent was being systematically misused by prosecutors; rather, it identified that the breadth and opacity of compliance expectations encouraged institutions to err on the side of restriction, even where expression was lawful.²⁷ This finding is directly relevant to the present inquiry because it demonstrates how regulatory pressure alone, without criminal enforcement, can constrain political expression.

²⁷ <https://committees.parliament.uk/work/3224/freedom-of-speech-in-universities-inquiry/>

These concerns are reinforced by the UK Parliament’s Joint Committee on Human Rights. In its report on freedom of speech, the Committee articulated a clear boundary principle: while the law permits restrictions on speech that incites violence or hatred, it does not prohibit speech merely because it is offensive, upsetting, or uncomfortable.²⁸ The Committee warned that collapsing this distinction risks undermining democratic debate and protected political expression. This analysis directly supports the submission’s argument that discomfort, or anxiety, cannot substitute for harm-based thresholds.

The Equality and Human Rights Commission has similarly documented the indirect effects of Prevent-related compliance pressures. In its guidance for higher education providers and students’ unions, the Commission explains that concerns about compliance, reputational risk, and institutional liability can lead organisations to adopt overly cautious approaches to speech and events, discouraging robust debate even in the absence of any legal prohibition.²⁹ The Commission’s guidance is significant because it recognises chilling effects as a foreseeable consequence of broad regulatory expectations, not as an unintended anomaly.

These domestic concerns have been echoed at the international level. United Nations human rights experts have warned against the use of terrorism-related legal powers in protest contexts in the United Kingdom, emphasising that such use risks blurring the line between dissent and threat and undermining democratic participation.³⁰ While these interventions are not directed at Prevent alone, they reinforce a consistent theme: when regulatory tools designed for extreme harm are extended into political protest or expression, overreach and loss of trust are predictable outcomes.

Taken together, the assessments of UK oversight bodies provide a clear cautionary lesson. Broad, discretionary regulatory regimes, particularly those that rely on institutional vigilance and risk management rather than conduct-based thresholds, can generate chilling effects, self-censorship, and erosion of trust, even where prosecutions are rare or non-existent. For the purposes of this inquiry, the relevance lies not in importing UK law, but in recognising the documented risks of regulating political expression through expansive or symbolic frameworks.

²⁸ <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/589/58903.htm>

²⁹ <https://www.equalityhumanrights.com/sites/default/files/freedom-of-expression-guide-for-higher-education-providers-and-students-unions-england-and-wales.pdf>

³⁰ <https://www.ohchr.org/en/press-releases/2025/07/un-experts-urge-united-kingdom-not-misuse-terrorism-laws-against-protest>

8.3 Europe Beyond the United Kingdom: How High-Threshold Regulation Operates in Practice

While Section 8.1 sets out the normative standards governing freedom of expression under European and international human rights law, it is equally important to consider how those standards are applied in practice. Across Europe, even in jurisdictions with robust hate-speech laws, regulation of expression does not occur through categorical or phrase-based prohibitions. Instead, it operates through case-by-case assessment, anchored in evidence, intent, and demonstrable harm.

As illustrated by the European Court of Human Rights cases referred to earlier, European systems do not treat words or slogans as inherently criminal. Courts examine the specific circumstances of expression, including who spoke, in what setting, to which audience, and with what likely impact. In *Perinçek v Switzerland*, for example, the Court's focus was not on the abstract meaning of words, but on whether the expression, viewed in its full context, amounted to incitement or contributed to harm. Similarly, in *Vejdeland and Others v Sweden*³¹, restrictions were upheld only after close examination of content, dissemination, and impact on an identifiable group. These cases demonstrate that European regulation is fact-driven and contextual, not symbolic.

This operational approach is reinforced by comparative analyses undertaken within the Council of Europe framework. Council of Europe materials examining national implementation of hate-speech laws emphasise that criminal sanctions are typically reserved for conduct that clearly meets statutory thresholds, and that courts play a central role in constraining discretion. Rather than relying on executive or legislative designation of prohibited language, European systems depend on judicial evaluation to ensure proportionality and consistency. This structure acts as a safeguard against politicised or selective application.

Importantly, European experience shows that even where hate-speech offences exist, the absence of phrase-based bans is deliberate, not accidental. Legislatures and courts have recognised that prohibiting words in isolation is both ineffective and incompatible with contextual assessment. Meaning is understood to be contingent, evolving, and audience dependent. As a result, regulation targets acts of incitement or discrimination, not symbolic language detached from conduct.

The practical implication for this inquiry is straightforward. Claims that overseas jurisdictions support or rely upon phrase-based criminalisation are not borne out by European practice. On the contrary, the European model demonstrates that maintaining high thresholds, judicial scrutiny, and contextual evaluation is essential to balancing protection from harm with preservation of political expression. Where

³¹ <https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%22001-109046%22%7D>

regulation departs from these principles, European oversight bodies have consistently identified risks of overreach and erosion of democratic trust.

Viewed in this light, European experience does not offer support for the approach under consideration in New South Wales. Instead, it reinforces the central contention of this submission: that effective regulation of expression depends on precision, restraint, and evidence-based assessment, not on the symbolic prohibition of contested political language.

Taken together, the international and comparative material reviewed in this section points in a consistent direction. Across international human rights bodies, European jurisprudence, and domestic oversight mechanisms, there is a clear reluctance to regulate political expression through symbolic or phrase-based prohibition. Instead, the prevailing approach emphasises restraint, contextual assessment, and high thresholds tied to demonstrable harm. Where states have departed from these principles, whether through broad discretionary regimes or de-contextualised regulatory responses, oversight bodies have repeatedly identified risks of overreach, chilling effects, and erosion of public trust. The comparative lesson is not that speech should be left unregulated, but that effective protection of communities depends on precision and proportionality rather than the criminalisation of contested political language in the abstract.

9. Implications for New South Wales

Having set out the existing legal framework, the applicable constitutional and human rights principles, and relevant comparative experience, this section considers the implications of that analysis for New South Wales and for the matters before this Inquiry. The submission accepts the importance of protecting communities from hatred, intimidation, and violence, and proceeds on the basis that genuine threats to safety must be addressed. The question for the Committee, however, is not whether harm should be prevented, but whether the proposed approach is necessary, proportionate, and effective in light of existing laws and the evidence available. The subsections that follow apply the analysis in this submission directly to the Inquiry's Terms of Reference and identify the considerations that arise for legislative decision-making in New South Wales.

9.1 Existing NSW Frameworks Already Address Genuine Harm

As set out in Sections 4 and 5 of this submission, New South Wales already has a comprehensive suite of civil and criminal mechanisms capable of responding to conduct that genuinely threatens community safety. These frameworks are not symbolic or aspirational. They are operational, enforceable, and designed to address precisely the kinds of harm identified in the Inquiry's Terms of Reference, including hatred, intimidation, and violence.

At the civil level, the Anti-Discrimination Act 1977 (NSW) provides mechanisms to address racial vilification in public acts, allowing complaints to be investigated and resolved without resort to criminal sanction. These provisions reflect a policy choice to prioritise conciliation and proportionate response where harm does not rise to the level of criminality, while still affirming clear social boundaries around discriminatory conduct.

At the criminal level, NSW law already prohibits serious racial hatred, intimidation, and related public order offences under the Crimes Act 1900 (NSW). These offences are framed around conduct and intent, not the mere use of particular words, and they require the prosecution to establish clear statutory thresholds before criminal liability arises. As discussed earlier in this submission, those thresholds are deliberately high, reflecting the gravity of criminal sanction and the need to protect lawful political expression.

Importantly, these legal frameworks apply irrespective of which community is targeted. They are neutral as to identity, belief, or political position, and they provide equal protection to all groups within New South Wales. This universality is central to their legitimacy and to public confidence in their application. The submission does not argue for exemption or special treatment, but for the consistent and principled use of laws that already exist.

Against this backdrop, the critical question for the Inquiry is whether there is evidence of a regulatory gap. To date, no such gap has been demonstrated. As noted in Section 4, there is no publicly available evidence of conduct causing harm that could not, in principle, be addressed under existing NSW or Commonwealth law. The absence of prosecutions under certain provisions does not, of itself, establish inadequacy. It may equally reflect that existing thresholds are operating as intended, distinguishing between lawful political expression and conduct that warrants legal sanction.

In this context, the introduction of new, phrase-based criminal offences would not fill an identified gap. Rather, it would alter the structure of NSW law by shifting emphasis away from conduct and harm toward symbolic prohibition. As the analysis in earlier sections demonstrates, such a shift risks expanding discretion without improving safety, and undermining the coherence of a framework that already provides robust tools to address genuine threats.

9.2 Interpreting “Threat” and “Community Safety” in a Democratic Context

The Inquiry’s Terms of Reference refer repeatedly to the need to address threats to communities and to protect community safety. Those objectives are legitimate and important. However, the meaning of “threat” in a democratic society cannot be assumed, nor can it be equated with political disagreement, offence, or discomfort arising from protest against the actions of a foreign state.

As discussed earlier in this submission, political protest is, by its nature, confrontational. It often involves strong, emotive, or symbolic language directed at states, institutions, or ideologies. That such protest may generate anger, distress, or anxiety among those who disagree with its message does not, without more, transform it into a threat to community safety. Democratic systems have long recognised that public order and social cohesion depend not on the absence of conflict, but on the ability to accommodate dissent without resorting to coercive suppression.

In the present context, many protests and chants under scrutiny are directed at the actions of a foreign government and at political support for those actions. Criticism of a state, or of an ideology associated with that state, is not equivalent to intimidation of identifiable individuals or communities within New South Wales. Where expression crosses the line into targeted harassment, threats, or incitement to violence against persons, existing NSW and Commonwealth laws already provide mechanisms for response, as outlined in Section 9.1. The difficulty arises when that distinction is blurred, and political expression is reframed as a threat by virtue of its content rather than its conduct or intent.

It is also necessary to exercise caution in how claims of fear or anxiety are assessed. While individuals may genuinely experience distress in response to political protest, the law must rely on objective standards rather than subjective reaction alone. If fear is treated as determinative without evidence of intimidation or harm, the result is a framework in which the scope of lawful expression is defined by the most sensitive or aggrieved response. That approach would invert established principles of free political communication and risk privileging power and proximity over rights.

Moreover, focusing regulatory attention on the expression of protest risks obscuring the broader context in which that protest arises. For many participants, the protests in question are a response to mass violence and humanitarian catastrophe overseas, with real and ongoing impacts on families and communities in Australia. Treating the language of protest as the primary source of social harm, while detaching it from that context, risks misidentifying the problem and misdirecting legal intervention.

For the purposes of this Inquiry, the key consideration is whether the conduct said to give rise to fear or threat is capable of being addressed through existing harm-based legal frameworks. Where it is, the introduction of additional criminal offences is unnecessary. Where it is not, the evidentiary basis for that conclusion must be clearly articulated. Absent such evidence, redefining “community safety” to encompass contested political expression risks undermining both democratic participation and the legitimacy of the law itself.

9.3 Risks of Phrase-Based Regulation in the NSW Context

The proposal to regulate or prohibit specific phrases represents a significant departure from the structure and logic of existing NSW law. As outlined in Section 6, political slogans and chants are inherently contextual. Their meaning is shaped by audience, setting, speaker intent, and broader political circumstances. Attempting to fix meaning in advance, by legislative declaration, risks collapsing that complexity into a single authorised interpretation.

In the NSW context, this approach would introduce substantial legal and practical difficulties. Phrase-based regulation necessarily shifts decision-making away from conduct and harm, and toward interpretation and inference. Enforcement authorities would be required to assess not what was done, or what harm was caused or intended, but what a particular phrase was taken to mean in the abstract. This would expand discretion rather than constrain it, increasing the likelihood of inconsistent or selective application.

Such an approach is also structurally vulnerable to politicisation. Where a phrase is contested, any decision to criminalise its use will privilege one political interpretation over others. This is particularly acute in situations involving protest against the actions of a foreign state, where slogans may be understood by participants as expressions of resistance or solidarity, but interpreted by others as hostile or threatening. The law is poorly suited to resolving such disputes of meaning, especially where there is no clear nexus to violence or intimidation.

There is also a question of effectiveness. As discussed earlier, regulating language in isolation is unlikely to achieve its stated objectives. Political movements adapt quickly to prohibition, substituting new phrases or symbols that convey the same meaning to participants. The result is not improved safety, but an ongoing cycle of regulation and evasion, accompanied by increasing ambiguity and enforcement pressure. In this sense, phrase-based offences risk being both overinclusive in principle and underinclusive in practice.

In New South Wales, these risks are compounded by the absence of a comprehensive human rights framework that expressly protects freedom of expression. Without such guardrails, the introduction of vague or symbolic criminal offences places greater weight on prosecutorial discretion and political judgment. This heightens the risk that regulation will be experienced as arbitrary or targeted, particularly by communities already subject to heightened scrutiny.

Viewed against the existing legal landscape, phrase-based regulation does not offer a clear or proportionate solution to an identified problem. Rather, it would reorient NSW's approach to political expression away from established harm-based principles and toward symbolic prohibition. This risks weakening legal coherence and undermining public confidence in the neutrality of the law.

For the Inquiry, the central issue is not whether certain phrases are confronting or offensive to some audiences, but whether criminalising language in the abstract can be justified as a necessary and effective response to genuine harm. The analysis set out in this submission suggests that it cannot. Existing NSW laws already provide mechanisms to respond where expression crosses into intimidation, threats, or incitement. Introducing phrase-based offences would add complexity and risk without demonstrable benefit.

Accordingly, the Committee should approach any proposal to prohibit specific phrases with caution. Absent clear evidence that such measures are required to address conduct that cannot otherwise be regulated, the risks of inconsistency, politicisation, and chilling effect outweigh any asserted gains in safety.

9.4 Likely Effects on Social Cohesion and Community Trust in New South Wales

As outlined in Section 7, social cohesion and community safety are sustained not only through law enforcement, but through trust, perceived fairness, and confidence that legal standards are applied consistently. In the New South Wales context, these factors are particularly important given the State's cultural diversity, high levels of civic participation, and history of politically engaged communities.

Measures that are perceived as selective or symbolic risk undermining these foundations. Where regulation appears to target the language of particular political movements or communities, rather than conduct that causes demonstrable harm, affected groups may reasonably conclude that the law is being used to manage dissent rather than protect safety. This perception can erode trust in institutions and reduce willingness to engage with authorities, including in circumstances where cooperation is genuinely needed to address harm.

There is also a risk that phrase-based criminalisation will deepen social polarisation rather than reduce it. By elevating contested political language into a matter of criminal law, the State risks amplifying divisions and entrenching grievance. Rather than defusing tension, such measures may harden identities and reinforce narratives of exclusion or marginalisation, particularly among communities that already experience heightened scrutiny in public and political discourse.

In the NSW setting, where many protests and demonstrations are linked to international events with profound emotional resonance for local communities, these dynamics are especially acute. Treating the expression of solidarity or protest as a public order problem, rather than as a form of political participation, risks mischaracterising the source of social strain. It also risks diverting attention from constructive measures that support dialogue, accountability, and peaceful civic engagement.

Crucially, social cohesion depends on the perception that laws are even-handed and principled. Existing NSW frameworks, which focus on conduct, intent, and harm, provide a clearer basis for maintaining that perception than phrase-based offences would. Where expression crosses into intimidation or violence, those frameworks can be applied without signalling that particular political viewpoints or modes of protest are inherently suspect.

For the Inquiry, the implication is that community safety and social cohesion are better served by reinforcing confidence in existing laws and institutions than by introducing new criminal categories that risk being experienced as partial or politically motivated. Measures that undermine trust may ultimately make communities less safe, not more.

9.5 Implications for Legislative Necessity and Proportionality

When assessed against established principles of legislative restraint, the proposed approach raises serious questions of necessity and proportionality. As outlined throughout this submission, restrictions on political expression require clear justification, grounded in evidence that existing legal mechanisms are insufficient to address a demonstrable harm.

In the NSW context, that threshold has not been met. Existing civil and criminal laws already provide avenues to respond to racial vilification, intimidation, threats, and incitement to violence. These frameworks are capable of addressing genuine harm while preserving space for lawful political communication. The mere fact that some expression is confronting or deeply contested does not establish the necessity for further criminalisation.

Proportionality requires that any limitation on expression be carefully calibrated to its objective. Phrase-based offences, by their nature, operate at a high level of abstraction. They are not narrowly tailored to conduct, or harm, but instead rely on pre-emptive judgment about meaning and effect. This makes them poorly suited to meeting proportionality requirements, particularly where less restrictive alternatives are already available and operational.

There is also an issue of legislative authority. In the absence of compelling evidence of necessity, expanding criminal law into the regulation of political language risks exceeding the legitimate scope of state intervention in democratic discourse. As discussed earlier, both domestic constitutional principles and international human rights standards caution against extending criminal sanctions into areas better addressed through existing law, civil mechanisms, or political contestation.

For this Inquiry, the relevant question is not whether Parliament can legislate in this area in the abstract, but whether it should do so in the circumstances presented. Without a clear evidentiary basis demonstrating that current laws are inadequate, and without assurance that proposed measures would be effective and even-handed in application, further restriction on political expression cannot be regarded as necessary or proportionate.

Accordingly, the analysis in this submission indicates that the proposed approach does not satisfy the standards that ordinarily justify legislative intervention in political communication. Reinforcing and applying existing frameworks remains the more principled and defensible course.

9.6 Questions the Committee Should Address Before Endorsing Any Change

In light of the analysis set out in this submission, the following questions arise for the Committee's consideration. They are framed to assist the Inquiry in assessing whether the proposed approach is justified against its own Terms of Reference, and whether legislative intervention is warranted in the NSW context.

1. **What specific harm has been identified that cannot be addressed under existing NSW or Commonwealth law?**

The submission has outlined multiple civil and criminal mechanisms already available to respond to hatred, intimidation, and violence. The Committee should identify, with precision, the conduct said to fall outside those frameworks.

2. **What evidence demonstrates the necessity for new criminal offences?**

Assertions of threat or community impact require an evidentiary basis. The Committee should consider whether the material before it establishes a need for additional offences, or whether existing thresholds are operating as intended.

3. **How would phrase-based regulation be applied consistently and objectively?**

Given the contested and contextual nature of political language, the Committee should examine how enforcement would avoid privileging one interpretation over others, and how discretion would be constrained to prevent selective or politicised application.

4. **How would proposed measures distinguish between political expression and conduct that causes harm?**

The Committee should consider whether the proposed approach preserves the established distinction between lawful political communication and intimidation or incitement, or whether it risks collapsing that boundary.

5. What safeguards would prevent chilling effects on lawful political participation?

Any regulatory change should be assessed for its likely impact on protest, advocacy, and civic engagement, particularly among communities already subject to heightened scrutiny.

6. How would community trust and social cohesion be maintained or strengthened?

The Committee should consider whether the proposed measures would enhance perceptions of fairness and neutrality, or whether they risk undermining confidence in the law and in public institutions.

7. Are less restrictive alternatives available and adequate?

Before endorsing further criminalisation, the Committee should assess whether existing laws, civil mechanisms, and non-legislative responses provide a more proportionate and effective means of addressing genuine harm.

These questions are not intended to pre-empt the Committee's conclusions. Rather, they reflect the analytical steps that ordinarily accompany principled legislative decision-making in areas touching on political expression and community safety. Addressing them directly would assist in ensuring that any response adopted by Parliament is necessary, proportionate, and consistent with democratic norms.

10. Conclusion and Recommendations

This submission has proceeded on the basis that protecting communities from hatred, intimidation, and violence is a legitimate and necessary objective of government. The analysis set out above does not contest that goal. Rather, it questions whether the approach under consideration, particularly the criminalisation of specific phrases, is a necessary, proportionate, or effective means of achieving it in New South Wales.

As demonstrated throughout this submission, NSW already possesses a comprehensive legal framework capable of responding to genuine harm. Existing civil and criminal provisions address racial vilification, intimidation, public disorder, and incitement to violence, while preserving the distinction between unlawful conduct and lawful political expression. No evidentiary gap has been identified that would justify departing from this harm-based approach.

Comparative and international experience further cautions against symbolic or phrase-based regulation. Where states have sought to regulate political expression through abstraction rather than conduct, oversight bodies have consistently identified risks of overreach, chilling effects, and erosion of public trust. These risks are heightened in the NSW context, given the absence of a comprehensive human rights framework and the central role of protest and political participation in democratic life.

Against this backdrop, the submission makes the following recommendations.

Recommendations

1. **That the Committee find that existing NSW and Commonwealth laws are sufficient** to address hatred, intimidation, and violence, and that no new phrase-based criminal offences are necessary.
2. **That any assessment of “threat” or community safety be grounded in objective evidence of harm**, rather than inferred from political disagreement, offence, or contested interpretation of protest language.
3. **That the Committee reject phrase-based or symbolic criminalisation** as inconsistent with harm-based legal principles, proportionality, and comparative best practice.
4. **That priority be given to consistent application of existing laws**, supported by non-legislative measures where appropriate, rather than expanding criminal discretion.
5. **That the protection of social cohesion and community trust be treated as a central consideration**, recognising that laws perceived as selective or politicised may undermine, rather than enhance, public safety.

In making these recommendations, the submission seeks to assist the Committee in balancing the protection of communities with the preservation of democratic principles. A response grounded in evidence, restraint, and existing legal frameworks offers the most principled and effective path forward for New South Wales.