

**Submission  
No 22**

## **MEASURES TO PROHIBIT SLOGANS THAT INCITE HATRED**

**Organisation:** Australian Federation of Islamic Councils

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# A Submission in Response to the NSW Parliamentary Inquiry into Proposed Measures Relating to Chants and Political Expression



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## Executive Summary

The Australian Federation of Islamic Councils (AFIC) is the national peak body representing the Muslim community across Australia. AFIC engages regularly with governments and public institutions on matters relating to community wellbeing, social cohesion, and civic participation, particularly in periods of heightened political and social tension.

This submission responds to the New South Wales Parliamentary Inquiry into proposed measures relating to chants and political expression. AFIC does not make this submission to defend or endorse particular chants, slogans, or protest activity, nor to advance a partisan or activist position on the political issues that have prompted the Inquiry. Rather, AFIC's concern is with the nature of the regulatory approach under consideration and its broader implications for democratic participation, institutional legitimacy, and social cohesion.

The submission proceeds from the premise that protecting community safety is a legitimate and essential responsibility of government. Conduct involving violence, intimidation, or credible threats toward individuals or communities must be addressed decisively and without qualification. At the same time, AFIC emphasises the importance of maintaining a clear distinction between harmful conduct and political expression that is confronting, disturbing, or deeply contested. In democratic societies, protest and political expression are inherently disruptive and emotionally charged, particularly in relation to international conflicts and humanitarian crises. Discomfort or offence alone does not constitute harm and cannot provide a stable or principled basis for regulatory intervention.

AFIC's analysis highlights the risks that arise when political disagreement or emotional impact is misclassified as a public safety issue. Such misclassification lowers intervention thresholds, expands regulatory discretion, and draws enforcement bodies into the role of adjudicating political meaning. Over time, this undermines enforcement coherence, weakens institutional legitimacy, and erodes trust between communities and the state. It may also prove counterproductive to safety objectives by discouraging lawful participation and escalating rather than containing social tension.

The submission further observes that existing legal and regulatory frameworks already provide mechanisms to address conduct that poses a genuine risk to community safety, including threats, intimidation, incitement to violence, and serious public disorder. AFIC does not approach this Inquiry as a legal body, nor does it offer detailed or exhaustive legal analysis. However, from an institutional and governance perspective, AFIC is not aware of clear evidence demonstrating a gap in existing law that would justify the creation of new offences or the expansion of regulatory powers into political expression. The absence of enforcement action in relation to particular expressions does not, of itself, establish legal inadequacy.

AFIC therefore urges caution in considering measures that target political expression or language itself, particularly phrase-based or expression-specific regulation. Such approaches risk increasing uncertainty, selective enforcement, and cumulative overreach, while offering limited benefit in addressing genuine harm.

In place of legislative expansion, AFIC identifies a range of constructive alternatives, including clearer enforcement guidance, conduct-based risk assessment, consistent public communication about legal thresholds, appropriate oversight of existing powers, and investment in engagement and de-escalation. These measures strengthen institutional capacity and public confidence without lowering thresholds for lawful participation.

Accordingly, AFIC's key recommendations are that the Inquiry:

- Anchor any policy response in clear evidence of necessity, rather than perception or political pressure
- Maintain conduct-based thresholds for regulatory intervention
- Avoid expression or phrase-based regulatory measures
- Strengthen guidance, consistency, and oversight within existing frameworks
- Preserve institutional role clarity and regulatory neutrality
- Treat social cohesion and institutional trust as core policy outcomes

AFIC encourages the Inquiry to approach its task with restraint, proportionality, and a clear focus on harm rather than controversy. Responses that reinforce existing institutional strengths, rather than expand regulatory reach into political expression, are more likely to support community safety, democratic legitimacy, and long-term social cohesion.

AFIC offers this submission to support the Inquiry's consideration of responses that are proportionate, principled, and consistent with effective governance, democratic participation, and long-term social cohesion.

# 1. Community Safety, Harm, and the Proper Focus of Regulatory Response

AFIC recognises that the protection of community safety is a legitimate and essential responsibility of government. Conduct that involves violence, intimidation, or credible threats toward individuals or communities must be addressed decisively and without qualification. This principle applies equally to all communities and forms a foundational expectation of public order in a democratic society.

At the same time, careful attention must be given to how harm and threat are identified and assessed. In periods of heightened political tension, particularly those linked to international conflict, public expression can generate strong emotional responses, including fear, distress, or anxiety. These experiences are real and should not be dismissed. However, democratic systems cannot rely on subjective experience alone as the basis for regulatory intervention, particularly where political expression is concerned.

A distinction must be maintained between conduct that creates a genuine risk of harm and expression that is confronting, disturbing, or deeply contested. Political protest, by its nature, is often disruptive and emotionally charged. It may challenge deeply held beliefs, implicate moral responsibility, or provoke strong reactions among those who disagree with its message. These features, while uncomfortable, do not in themselves constitute intimidation or threat.

Where regulatory responses fail to maintain this distinction, there is a risk that political disagreement or offence is reframed as harm. Such a shift has significant consequences. It alters the basis on which public expression is assessed, lowers the threshold for intervention, and places the boundaries of lawful participation at the mercy of reaction rather than principle. Over time, this can weaken both community safety and democratic legitimacy by obscuring the difference between conduct that warrants sanction and expression that forms part of lawful civic contestation.

From AFIC's perspective, the task for this Inquiry is therefore not simply to acknowledge that fear or anxiety exists, but to determine whether the conduct giving rise to those responses meets an objective standard of harm that justifies legal or regulatory restriction. That determination must be grounded in evidence, context, and a clear understanding of the role that political expression plays within a pluralistic society.

Maintaining analytical clarity at this stage is essential. It ensures that genuine threats are addressed effectively, while avoiding responses that inadvertently constrain lawful political participation or undermine public confidence in the neutrality and fairness of regulatory institutions. The distinction outlined here is developed further in later sections of this submission

## 2. Political Expression, Protest, and Democratic Contestation

The Inquiry's focus on chants and slogans necessarily raises broader questions about how political expression and protest are understood and governed within a democratic society. Before considering regulatory approaches, it is essential to situate protest activity within its proper civic and institutional context. Without such grounding, there is a risk that political expression is assessed primarily through a public order or security lens, rather than as a core component of democratic participation.

Democratic systems do not treat protest as an exceptional or marginal activity. Rather, protest functions as a recognised mode of political engagement through which individuals and communities articulate opposition, express moral judgment, and demand accountability from those exercising power. This is particularly so in relation to matters of international conflict and humanitarian concern, where domestic protest has long served as a means of engaging with global events that carry local ethical, political, and social significance.

This section therefore examines political protest and protest language as democratic practices, rather than as anomalies requiring special regulation. It explains why chants and slogans cannot be evaluated in isolation from their democratic function, and why regulatory approaches that conflate political contestation with threat risk misidentifying both the nature of protest and the appropriate role of public authority.

### 2.1 Political Protest as a Core Democratic Practice

Political protest is a foundational feature of democratic life. Alongside electoral participation, parliamentary representation, and institutional advocacy, protest provides a mechanism through which citizens and communities can contest power, express dissent, and bring urgent moral or political claims into the public sphere. Far from operating at the margins of democracy, protest is one of the ways in which democratic systems remain responsive to social conflict and political disagreement.

International human rights frameworks recognise this role explicitly. The right to peaceful assembly and the right to freedom of expression are understood not merely as individual liberties, but as collective democratic guarantees. As the United Nations Human Rights Committee has emphasised, peaceful assemblies and public expression are “a legitimate use of public space” and a means through which people “collectively express, promote, pursue and defend common interests”<sup>1</sup> (United Nations Human Rights Committee, *General Comment No. 37 (2020) on Article 21: Right of Peaceful Assembly*, paras 6–7). These rights are afforded a high level of protection precisely because they enable political participation beyond formal institutional channels, particularly in relation to political discourse and public

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<sup>1</sup> <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful>

affairs<sup>2</sup> (United Nations Human Rights Committee, *General Comment No. 34 (2011) on Article 19: Freedom of Expression*, paras 11–13)

Protest is also structurally disruptive. It is designed to interrupt ordinary routines, draw attention to contested issues, and generate public pressure. Democratic systems anticipate and accommodate this disruption, recognising that political change and accountability often emerge from sustained public challenge rather than from consensus alone. Attempts to assess protest primarily by reference to its level of comfort, civility, or emotional impact misunderstand its democratic function.

Chants and slogans form part of this protest practice. They operate as tools of collective expression, enabling large groups to articulate shared positions in a condensed and mobilising form. Their purpose is not to provide precise policy argument, but to signal opposition, urgency, and moral stance. As such, they are often emotive, provocative, and resistant to neat interpretation. This is not a failure of expression, but an intrinsic feature of protest language.

Australian democratic practice reflects this reality. Public protest in response to overseas wars, occupations, and state violence has been a recurring feature of civic life, from opposition to the Vietnam War to demonstrations against apartheid, the Iraq War, and other international conflicts. These movements routinely employed slogans and chants that were deeply contentious at the time yet are now widely recognised as legitimate expressions of political dissent. The fact that such protest generated discomfort or polarisation did not, of itself, place it outside the bounds of democratic participation.

Understanding protest as a core democratic practice is therefore essential to the Inquiry's task. When protest activity is approached primarily as a public safety issue, rather than as a form of political contestation, there is a risk that disagreement itself is reframed as disorder. This reframing shifts the role of the state from managing harm to managing dissent, with significant implications for democratic legitimacy and public confidence in regulatory institutions.

For these reasons, AFIC submits that chants, slogans, and protest activity must be evaluated first and foremost through their democratic function. Only once that function is properly understood can meaningful distinctions be drawn between lawful political expression and conduct that genuinely warrants regulatory or legal intervention.

## 2.2 The Symbolic and Contextual Nature of Protest Language

Chants and slogans operate as a distinct form of political expression. They are not policy propositions, legal claims, or statements of intent in the ordinary sense. Rather, they function symbolically, condensing complex political, moral, and historical positions into brief, collective expressions capable of being voiced and shared in public space. This symbolic character is central to how protest language works and is critical to how it should be understood for regulatory purposes.

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<sup>2</sup> <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no34-article-19-freedom-opinion-and>

Political theory and human rights jurisprudence have long recognised that symbolic expression carries meaning that cannot be reduced to literal interpretation. Protest language derives its force not from precision, but from its capacity to signal opposition, solidarity, urgency, or resistance in a form that is immediately recognisable to participants. Meaning is therefore contingent on context, including the circumstances in which the expression occurs, the audience to whom it is directed, the broader political environment, and the conduct accompanying it. Detached from that context, slogans are inherently indeterminate

This contextual dependence is not an incidental feature of protest language, it is what distinguishes it from ordinary speech. Chants and slogans are designed to be polyvalent. They can carry layered meanings for different audiences simultaneously, mobilising supporters while provoking debate, criticism, or opposition from others. Democratic systems tolerate this ambiguity precisely because political meaning is contested and plural, not fixed by authoritative interpretation (see Hannah Arendt, *The Human Condition* (1958), Chapter V; and Council of Europe, Department for the Execution of Judgments, *Thematic factsheet: Freedom of expression*)<sup>3</sup>.

International human rights standards reflect this understanding. The Rabat Plan of Action<sup>4</sup>, developed under the auspices of the United Nations to guide the assessment of expression alleged to constitute incitement, expressly cautions against decontextualised evaluation of language. It identifies context, intent, content and form, extent of dissemination, and likelihood of harm as essential factors in determining whether expression crosses the threshold into prohibited conduct. The Plan rejects approaches that treat words or phrases as inherently dangerous, emphasising instead that meaning and risk must be assessed holistically.

European human rights jurisprudence adopts a similar approach. The European Court of Human Rights has repeatedly affirmed that freedom of expression protects not only ideas that are favourably received, but also those that “offend, shock or disturb.” This protection is especially strong in relation to political expression, where the Court has consistently insisted on close contextual analysis rather than abstract judgments about language. In cases such as *Handyside v United Kingdom* (1976) 1 EHRR 737<sup>5</sup> and *Perinçek v Switzerland* (2015) ECHR 27510/08<sup>6</sup> the Court emphasised that meaning cannot be divorced from social and political context, and that symbolic or provocative expression does not, without more, justify restriction.

The implications for regulatory approaches to protest language are significant. Treating slogans as though they were literal, self-contained statements risks mischaracterising their function and overstating their capacity to cause harm in the absence of accompanying conduct. It also transfers interpretive authority to the state, requiring enforcement bodies to fix meaning in advance and to privilege particular political readings over others. This is a task for which regulatory frameworks are poorly suited, particularly in pluralistic societies

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<sup>3</sup> <https://rm.coe.int/thematic-factsheet-freedom-expression-eng/1680a235d0>

<sup>4</sup> <https://www.ohchr.org/en/documents/outcome-documents/rabat-plan-action>

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

<sup>6</sup> <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-158235%22%7D>

marked by deep political disagreement (see OHCHR, *A/74/486: Report on online hate speech* (2019)<sup>7</sup>).

Moreover, attempts to regulate protest through the identification of prohibited phrases are unlikely to be effective in practice. Protest movements adapt their language rapidly. When particular words are restricted, alternative symbols, metaphors, or formulations emerge to convey the same underlying political message. Meaning migrates even as language changes. As a result, phrase-based regulation tends to displace expression rather than reduce it, while expanding discretion and uncertainty in enforcement (see Venice Commission and OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly* (3rd ed)<sup>8</sup>).

For these reasons, AFIC submits that chants and slogans cannot be assessed in isolation from their symbolic role and contextual meaning. Regulatory approaches that abstract language from context risk collapsing political contestation into perceived threat, and in doing so, undermine the harm-based principles that ordinarily govern the regulation of expression. Proper assessment requires attention not to words alone, but to the broader communicative act of which they form a part.

## 2.3 Political Accountability vs Personal Targeting

Political protest frequently targets states, institutions, policies, and collective actors. It also often includes critique of individuals who occupy public roles or advocate for specific policy positions. Distinguishing between legitimate political accountability and prohibited personal targeting is essential to any regulatory framework that seeks to protect community safety without suppressing democratic contestation.

Political accountability is an ordinary feature of democratic life. Individuals who occupy public office, influence public discourse, or advocate for the actions of states or institutions are inherently participants in the political sphere. Criticism directed at such actors is an extension of that sphere, not a departure from it. As the UN Human Rights Committee has recognised in its interpretation of Article 19 of the International Covenant on Civil and Political Rights (previously cited), political speech concerning public affairs and public figures is afforded the highest level of protection under international human rights law, precisely because it contributes to public debate in a democratic society.

By contrast, personal targeting that involves credible threats of violence, intimidation, stalking, harassment, or other forms of conduct that place an individual at risk of harm is already regulated under existing legal frameworks. In Australia, criminal law and civil protections address these forms of conduct irrespective of the political views of the targeted individual. The distinction here is not about who is targeted, but *how* they are targeted: conduct that crosses into credible threat, coercion, or intimidation is materially different from political critique or dissent. (See *Australian Law Reform Commission, Traditional Rights and Freedoms—Encroachments by Commonwealth Laws, ALRC Report 129, Ch 7 on harassment and threat offences*)<sup>9</sup>.

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<sup>7</sup> <https://www.ohchr.org/en/documents/thematic-reports/a74486-report-online-hate-speech>

<sup>8</sup> <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282019%29017rev-e>

<sup>9</sup> <https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-report-129/>

This analytical distinction does not provide impunity for abusive conduct in protest, but it does clarify the regulatory boundary. Critique of public actors or advocates for policy choices, even when expressed in strong or provocative terms, remains political speech unless it is accompanied by credible threats of harm or conduct that reasonably places an individual at risk. Conversely, conduct that involves credible threats, such as targeted doxing, explicit threats of violence, or sustained intimidation with a real likelihood of harm, falls outside protected political speech and squarely within the remit of existing law.

Understanding this distinction is critical to the Inquiry's task. If political critique of public actors is treated as equivalent to personal targeting, regulatory thresholds for intervention become incoherent. They erode the space for democratic accountability precisely at the point where civic engagement is most needed. Conversely, if personal targeting is assessed without regard to context and intent, the regulatory response may be misdirected or overly broad.

In practice, maintaining this distinction requires regulators to focus on conduct and risk, not on the identities of the actors involved. It requires assessment of whether the behaviour in question would reasonably be perceived as a credible threat of harm by an objective observer. This focus on objective risk, rather than subjective discomfort or disagreement, aligns regulatory frameworks with both democratic values and public safety imperatives.

For these reasons, AFIC submits that political protest and accountability must be clearly distinguished from personal targeting in any regulatory or legal response. Protecting individuals from credible threats of harm is necessary and appropriate. But conflating political critique with personal intimidation undermines the fundamental role of protest in democratic society and risks chilling lawful political participation.

## 2.4 Discomfort, Offence, and the Misclassification of Harm

Political expression frequently causes discomfort, offence, or distress. This is not a defect of democratic discourse, but a structural feature of pluralistic societies in which deeply held values, identities, and moral claims coexist and compete. Regulatory approaches that fail to distinguish between emotional impact and objective harm risk misclassifying political disagreement as a public safety issue.

International human rights law draws a clear line between expression that is offensive or disturbing and expression that constitutes a genuine threat to the rights of others. In its interpretation of Article 19 of the International Covenant on Civil and Political Rights, the United Nations Human Rights Committee has emphasised that freedom of expression protects not only ideas that are favourably received, but also those that may be deeply offensive, shocking, or disturbing, particularly where such expression concerns matters of public or political interest.

European human rights jurisprudence adopts the same principle. The European Court of Human Rights has consistently held that freedom of expression applies to information and ideas that "offend, shock or disturb," recognising that such expression is an inevitable consequence of democratic pluralism. In *Handyside v United Kingdom*, the Court made clear that tolerance of offensive or disturbing expression is a condition of democratic society, not an exception to it. This approach has been reaffirmed in subsequent cases involving political

speech, where the Court has stressed that restrictions must be justified by a pressing social need and assessed with particular care.

Conflating offence or distress with harm has significant regulatory consequences. If emotional impact alone is treated as sufficient to justify intervention, the threshold for restricting political expression becomes unstable and subjective. Different audiences may experience the same expression in markedly different ways, particularly in contexts of polarisation or conflict. A regulatory framework that responds to the most adverse reaction, rather than to objective indicators of harm, risks privileging reaction over principle.

This misclassification is especially problematic in relation to protest. Protest activity is often intended to disrupt settled narratives, provoke moral reflection, and challenge prevailing positions. The fact that such expression may cause discomfort, anger, or distress does not transform it into intimidation or threat. Treating it as such risks expanding public safety frameworks beyond their proper function and repositioning the state as an arbiter of acceptable political sentiment rather than a regulator of harm.

Australian law and policy have generally recognised this distinction. Protections for political communication and public debate reflect an understanding that robust, even abrasive, expression is a necessary feature of democratic accountability. Where expression crosses into harassment, intimidation, or credible threat, existing legal mechanisms are available to respond. Where it does not, restraint is an essential safeguard against overreach.

For these reasons, AFIC submits that regulatory responses must be anchored in an objective assessment of harm, not in the presence of offence or emotional distress alone. Maintaining this distinction protects individuals from genuine threat while preserving the space necessary for lawful political dissent. It also reinforces public confidence that regulatory power is exercised consistently, proportionately, and in accordance with democratic norms.

## 2.4 Regulatory Consequences of Misclassifying Political Disagreement as Harm

When regulatory frameworks fail to maintain a clear distinction between political disagreement and conduct that poses a genuine risk of harm, the consequences are not merely conceptual. They are practical, institutional, and systemic. Treating offence, distress, or political antagonism as proxies for harm alters how regulatory power is exercised and undermines the coherence of enforcement regimes.

A primary consequence is threshold distortion. Public safety and criminal law frameworks are designed to operate on the basis of objective indicators such as conduct, intent, likelihood of harm, and risk. When subjective responses to political expression are allowed to substitute for these indicators, the threshold for intervention becomes unstable. Regulatory action is no longer anchored to demonstrable risk but to fluctuating perceptions, which may vary widely across communities, contexts, and political moments. This makes it difficult for regulators to articulate, apply, and defend consistent standards.

Threshold distortion in turn produces enforcement incoherence. Agencies tasked with maintaining public order are placed in the position of adjudicating political meaning rather than assessing conduct. This requires them to determine which interpretations of contested language should prevail, a task for which regulatory bodies are institutionally ill-suited.

Oversight bodies have repeatedly warned that such discretion increases the risk of inconsistent application and exposes enforcement decisions to claims of selectivity or bias (see Australian Law Reform Commission, *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws*, ALRC Report 129, discussion of discretionary enforcement and uncertainty).<sup>10</sup>

Misclassification of harm also has consequences for regulatory legitimacy. Public confidence in enforcement depends on the perception that power is exercised according to clear, predictable, and neutral criteria. Where intervention appears to turn on the political content of expression, rather than on conduct or risk, trust in institutions is weakened. This dynamic has been observed in multiple jurisdictions where protest policing or public order regulation has expanded beyond its traditional remit, leading to increased contestation of enforcement decisions and reduced voluntary compliance (see UK Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, *Getting the balance right? An inspection of how effectively the police deal with protests*, 2021).<sup>11</sup>

There are also practical governance limits to language-based regulation. Political expression is adaptive. When particular words or phrases are targeted, alternative forms of expression quickly emerge to convey the same underlying message. Regulatory focus on language rather than conduct therefore tends to displace expression rather than mitigate risk, while expanding the scope of enforcement discretion. This creates a cycle in which regulatory intervention becomes increasingly detached from its stated public safety rationale.

Finally, reframing political disagreement as a safety problem risks mission creep. Public safety frameworks begin to absorb responsibilities that properly belong to the political domain, such as managing disagreement, moderating debate, or arbitrating contested narratives. Over time, this reorientation shifts the role of the state from managing harm to managing dissent, with significant implications for democratic accountability and institutional trust.

For these reasons, AFIC submits that maintaining a clear, objective, and conduct-based understanding of harm is not only a matter of rights, but of effective governance. Regulatory responses that collapse offence into harm undermine the coherence, legitimacy, and effectiveness of enforcement regimes, while doing little to enhance genuine community safety.

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<sup>10</sup> <https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-report-129/>

<sup>11</sup> [https://hmicfrs.justiceinspectors.gov.uk/publications/getting-the-balance-right-an-inspection-of-how-effectively-the-police-deal-with-protests/?utm\\_source=chatgpt.com](https://hmicfrs.justiceinspectors.gov.uk/publications/getting-the-balance-right-an-inspection-of-how-effectively-the-police-deal-with-protests/?utm_source=chatgpt.com)

## 2.5 Reframing Protest as a Security Problem and Its Effects on State–Community Relations

When political protest is reframed primarily as a security or public order problem, the consequences extend beyond individual enforcement decisions. Such reframing alters the relationship between the state and the communities it governs, reshaping how participation, dissent, and authority are understood in practice. These effects are structural and cumulative, and they bear directly on the effectiveness of any measures intended to enhance community safety.

A security-centred framing changes the meaning of civic participation. Protest activity that is treated as inherently risky or suspect is no longer understood as a legitimate contribution to public discourse, but as a potential precursor to disorder. This shift has implications for how communities perceive their place within the civic sphere. Participation becomes conditional, monitored, and problematised, rather than recognised as a normal feature of democratic life. Over time, this can discourage lawful engagement and push political expression into less visible, less accessible, or more polarised spaces.

This reframing also affects institutional legitimacy. Public confidence in regulatory and enforcement bodies depends on the perception that power is exercised to manage harm, not to manage disagreement. Where protest policing or regulatory intervention appears to be driven by the political content of expression rather than by conduct or risk, trust in institutions is weakened. Oversight bodies examining protest policing have noted that legitimacy and public consent are critical to effective public order management, and that approaches perceived as disproportionate or politicised can undermine cooperation and compliance

Loss of legitimacy has practical consequences for safety outcomes. Communities that perceive protest regulation as unfair or selective are less likely to engage constructively with authorities, share information, or participate in dialogue aimed at de-escalation. This reduces the capacity of institutions to anticipate risk and respond proportionately. In this sense, securitising protest can be counterproductive: measures adopted in the name of safety may, in practice, weaken the relational foundations on which genuine safety depends.

There is also a risk of escalation. When protest is approached through a security lens, enforcement strategies may become more visible, more coercive, and more reactive. This can harden positions on all sides, increase confrontation, and elevate tensions that might otherwise be managed through communication and facilitation. The result is not the containment of risk, but its amplification.

For these reasons, AFIC submits that approaches which frame political protest primarily as a security concern risk undermining both democratic participation and public safety objectives. Effective governance in this area requires responses that preserve the legitimacy of institutions, maintain community trust, and distinguish clearly between dissent and disorder. Without this, regulatory measures may achieve symbolic reassurance while eroding the conditions necessary for long-term social cohesion and safety.

### 3. Adequacy of Existing Legal and Regulatory Frameworks

This section addresses the existing legal and regulatory frameworks relevant to conduct that raises genuine concerns about community safety, intimidation, or violence. AFIC does not approach this Inquiry as a legal body, nor does it seek to provide a detailed or exhaustive legal analysis of statutory provisions, case law, or enforcement practice. That task properly falls within the remit of legal institutions and professional bodies that have made submissions to this Inquiry.

AFIC's purpose in addressing the legal framework is more limited and more practical. It is to establish, at a high level, whether there is an evident gap in existing law that would justify the creation of new offences or expanded regulatory powers directed at political expression. This is necessary to ensure that the Inquiry's consideration of proposed measures is grounded in an accurate understanding of institutional capacity, rather than in assumptions about legal absence or inadequacy.

From AFIC's perspective as a national faith representative body, questions of law cannot be separated from questions of governance, legitimacy, and social cohesion. Measures that expand regulatory reach into political expression have implications that extend beyond legal doctrine, affecting how communities perceive the neutrality and fairness of public institutions. For this reason, AFIC considers it important to address, in principle, whether existing frameworks already provide mechanisms to respond to genuinely harmful conduct, without engaging in technical legal argument.

Accordingly, this section provides a contextual overview of the current legal landscape, focusing on the types of conduct already regulated, the thresholds that distinguish expression from harm, and the institutional risks associated with expanding regulation beyond those thresholds. It does so to inform the Inquiry's broader policy deliberations, not to advance a legal position or to substitute for detailed legal analysis provided elsewhere.

#### 3.1 The Existing Legal Landscape Governing Harmful Conduct

Existing New South Wales and Commonwealth legal frameworks already regulate conduct that poses a genuine risk to community safety. These frameworks are directed at behaviour rather than political viewpoint and are designed to address threats, intimidation, incitement to violence, and serious public disorder. From an institutional perspective, they provide a comprehensive basis for responding to harmful conduct when it arises, without requiring new speech-specific offences.

At a high level, criminal law provisions address conduct involving credible threats of violence, intimidation, harassment, and incitement. Public order offences and related policing powers are similarly framed around behaviour that creates a real risk to safety or public peace. These mechanisms are neutral as to ideology or cause. Their application turns on objective elements such as conduct, intent, context, and likelihood of harm, rather than on the political content of expression.

Civil and regulatory mechanisms also play a role in addressing harmful conduct. These include protective orders, anti-harassment measures, and regulatory oversight processes that can be engaged where behaviour crosses established thresholds. Together, these

mechanisms form an interlocking system aimed at preventing harm, responding to escalation, and enabling proportionate intervention where necessary.

The existence of these frameworks is significant for the Inquiry's task. It indicates that the regulatory system is already structured to deal with conduct that genuinely threatens safety, including conduct that may occur in protest contexts. Where such conduct meets established thresholds, enforcement action is available. Where it does not, restraint reflects deliberate legal design rather than regulatory failure.

AFIC's point in outlining this landscape is not to minimise concerns about safety or to suggest that existing laws are always applied perfectly. Rather, it is to note that the legal system already contains tools capable of responding to harm, and that proposals to introduce new measures directed at political expression should be assessed against this existing institutional capacity. Any case for expansion must therefore demonstrate not only the presence of harm, but the insufficiency of current mechanisms to address it.

### 3.2 How Existing Frameworks Distinguish Expression from Harm

Existing legal and regulatory frameworks are not indifferent to the distinction between political expression and harmful conduct. On the contrary, they are structured around that distinction. At both state and Commonwealth levels, intervention thresholds are generally tied to demonstrable conduct, intent, and risk, rather than to the mere presence of controversial, offensive, or provocative speech.

In practice, this means that political expression, including expression that is robust, emotive, or unsettling, is not itself the object of regulation. Regulatory attention is triggered only when expression is accompanied by additional elements that elevate it into the realm of harm. These elements include factors such as credible threats, coercive behaviour, sustained intimidation, or conduct that creates a real likelihood of violence or serious public disorder. The legal focus is therefore not on what is said in isolation, but on how speech operates in context and whether it manifests as actionable behaviour.

This conduct-based orientation reflects a deliberate design choice. It recognises that political disagreement, including disagreement expressed forcefully, is an ordinary and unavoidable feature of democratic life. By requiring evidence of intent, likelihood, or impact beyond mere expression, the law seeks to minimise discretionary overreach and to ensure that enforcement action is anchored to objective criteria rather than subjective reactions.

Importantly, these frameworks already incorporate contextual assessment. Decisions about whether conduct crosses legal thresholds routinely take into account surrounding circumstances, patterns of behaviour, and the broader environment in which expression occurs. This contextual approach mirrors the distinctions outlined in Section 3 of this submission, particularly the importance of differentiating between symbolic or political expression and conduct that poses a genuine risk to individuals or public safety.

From a governance perspective, this structure serves an additional function. It provides clarity to both regulators and the public about where the boundaries lie. Individuals and groups engaging in protest can reasonably expect that their expression will not attract intervention unless it escalates into conduct that meets established thresholds. Regulators, in turn, are guided by criteria that can be articulated, reviewed, and defended.

AFIC considers this distinction to be a strength of the current framework. It reduces the likelihood that regulatory power will be exercised on the basis of political disagreement or public pressure alone. It also reinforces the principle that harm must be demonstrated, not assumed, before coercive intervention is justified.

For the purposes of this Inquiry, the existence of these built-in distinctions is significant. It suggests that concerns about harmful conduct associated with protest do not necessarily point to a deficiency in legal thresholds, but may instead reflect challenges of interpretation, application, or public expectation. Proposals to introduce new regulatory measures that weaken or bypass these distinctions risk undermining a carefully calibrated balance that already exists between safety and democratic participation.

### 3.3 The Absence of an Evidentiary Gap

Claims that new offences or expanded regulatory powers are required often rest on an implicit assumption that existing legal frameworks are failing to address harmful conduct in practice. From AFIC's perspective, this assumption has not been substantiated by clear evidence. The material available to date points less to a gap in law than to heightened concern, political pressure, or public anxiety in response to contested and highly visible events.

An evidentiary gap would ordinarily be demonstrated by patterns such as repeated incidents of serious harm that fall outside the scope of existing offences, consistent enforcement failures despite clear applicability of current laws, or judicial findings identifying structural deficiencies in legal thresholds. AFIC is not aware of such evidence being clearly articulated in the context of this Inquiry. The absence of prosecutions or enforcement action in relation to particular forms of protest expression does not, of itself, establish legal inadequacy. It may equally indicate that conduct has not met the required thresholds for intervention.

Legislating in response to perception rather than evidence carries well-recognised risks. When regulatory expansion is driven by the visibility or emotive impact of particular expressions, rather than by demonstrable enforcement failure, there is a danger that new measures will address symbolic concern rather than operational need. Such responses may provide reassurance in the short term, but they do not necessarily improve safety outcomes or regulatory effectiveness.

This distinction matters because the creation of new offences or powers alters the balance of regulatory discretion. Where existing frameworks require evidence of intent, conduct, and likelihood of harm, new measures directed at expression risk lowering those thresholds without a clear justification grounded in necessity. In the absence of evidence that current mechanisms are incapable of responding to harm, expansion becomes difficult to defend on principled or institutional grounds.

AFIC does not suggest that enforcement practice is immune from criticism or improvement. Like all regulatory systems, it depends on clear guidance, consistent application, and public understanding. However, challenges of application or communication are not the same as deficiencies of law. Treating them as such risks conflating operational issues with structural ones and may lead to solutions that create new problems without resolving the original concern.

For these reasons, AFIC submits that the Inquiry should require a clear evidentiary basis for any proposal to expand legal or regulatory powers in this area. Absent such evidence, restraint is not a failure to act, but an appropriate response consistent with sound governance and proportional regulation.

### 3.4 Risks of Expanding Regulation Beyond Conduct-Based Thresholds

Expanding legal or regulatory intervention beyond conduct-based thresholds carries significant institutional and governance risks. Where regulation moves away from demonstrable behaviour and towards the content or interpretation of expression itself, the clarity and predictability that underpin effective enforcement are weakened.

A primary risk is the expansion of discretion. Conduct-based thresholds provide regulators with relatively clear criteria: observable behaviour, evidence of intent, and an assessable likelihood of harm. When intervention is triggered by language or symbolism alone, those criteria become less stable. Regulators are required to interpret meaning, assess competing political narratives, and anticipate potential reactions, rather than evaluate conduct against established standards. This increases the scope for inconsistent application and makes enforcement decisions harder to explain, justify, and review.

This expansion of discretion also heightens the risk of selective or perceived selective enforcement. Even where decision-makers act in good faith, expression-based regulation is more vulnerable to claims that political content, public pressure, or prevailing sentiment has influenced outcomes. Over time, this erodes confidence that regulatory power is being exercised neutrally and reinforces perceptions that certain viewpoints or communities are subject to heightened scrutiny.

There are also practical enforcement consequences. Laws that hinge on interpretation of language rather than conduct are more difficult to operationalise. Frontline decision-makers must make rapid judgments in dynamic environments, often without the benefit of legal certainty or clear guidance. This can lead either to over-intervention, as a precautionary response to ambiguity, or to under-intervention, where uncertainty discourages action altogether. Neither outcome supports effective public safety management.

From a governance perspective, expression-focused regulation risks blurring institutional roles. Regulatory bodies are drawn into adjudicating political meaning and social conflict, functions more appropriately addressed through democratic debate and political leadership. This not only places undue burden on enforcement agencies but also exposes them to reputational and legitimacy risks that can impair their broader functions.

Finally, there is a risk of cumulative overreach. Once regulation extends beyond conduct into expression, pressure to further refine, expand, or clarify prohibited language tends to grow. This can result in an incremental broadening of regulatory scope without clear

stopping points, increasing complexity while diminishing coherence. The end result is a framework that is harder to administer, harder for the public to understand, and less effective at targeting genuine harm.

For these reasons, AFIC submits that maintaining conduct-based thresholds is essential to the integrity of the regulatory system. Expansion beyond those thresholds should not occur in the absence of compelling evidence of necessity and clear safeguards against discretion, inconsistency, and politicisation. Without such safeguards, the risks introduced by new measures may outweigh any marginal gains in perceived safety.

### 3.5 Institutional Alternatives to Legislative Expansion

AFIC considers that concerns about safety, escalation, and public confidence can be addressed through a range of institutional responses that do not require the creation of new offences or the expansion of regulatory powers into political expression. These alternatives focus on strengthening clarity, consistency, and governance within existing frameworks, rather than lowering legal thresholds or introducing expression-based regulation.

One alternative is the provision of clearer and more consistent guidance for enforcement agencies. Existing laws already establish thresholds based on conduct, intent, and risk. Where uncertainty exists, it can be addressed through guidance that reinforces these thresholds and supports consistent application across contexts. Clarifying how existing powers are to be exercised reduces discretionary drift and helps ensure that intervention is anchored to objective criteria rather than public pressure or political controversy.

A related approach is the use of conduct-based risk assessment frameworks. Such frameworks prioritise observable behaviour, escalation indicators, and proximity to harm, rather than reliance on particular words, slogans, or symbolic expressions. This aligns enforcement practice with public safety objectives and avoids drawing regulatory bodies into disputes about political meaning or interpretation. It also supports proportionate responses by linking intervention to demonstrable risk.

Clear and responsible public communication by government is also critical. Public anxiety and calls for legal change often arise from misunderstandings about what existing law does or does not permit. Consistent messaging that explains current thresholds, the distinction between lawful expression and unlawful conduct, and the circumstances in which enforcement action may occur can reduce pressure for reactive or symbolic lawmaking. Political leadership in this area plays an important role in maintaining public confidence.

Oversight and review mechanisms provide another constructive alternative. Where concerns exist about how existing powers are being used, they can be examined through established accountability processes rather than addressed through expansion of regulatory reach. Periodic review of enforcement practice, including consistency and impact, allows issues to be identified and addressed without altering legal thresholds or creating new forms of intervention.

Finally, AFIC emphasises the importance of community engagement and de-escalation capacity. Managing protest and public disagreement is not solely a legal or policing challenge, but a broader governance task. Investment in dialogue, facilitation, and de-

escalation supports safety by reducing the likelihood of confrontation and escalation at source. It also reinforces the legitimacy of institutions and strengthens long-term social cohesion.

Taken together, these approaches demonstrate that responding to concern does not require expanding regulation into political expression. Strengthening guidance, governance, communication, and engagement offers a more proportionate and effective response, consistent with both public safety objectives and democratic norms.

### 3.6 Implications for Social Cohesion and Institutional Trust

Legal and regulatory choices do not operate in isolation. They shape how communities understand the role of the state, the neutrality of institutions, and the conditions under which civic participation is recognised or constrained. In this context, decisions about whether and how to expand regulatory powers into political expression carry implications that extend beyond immediate safety concerns.

From AFIC's perspective, social cohesion depends in part on confidence that public institutions apply rules consistently and without regard to political viewpoint, identity, or belief. Where regulatory responses are perceived to target particular forms of political expression or particular communities, even unintentionally, trust is eroded. This erosion is not limited to those directly affected; it can spread more broadly, reinforcing perceptions of uneven treatment and weakening the sense of shared civic belonging.

Institutional trust is especially important in moments of heightened political tension. Communities are more likely to cooperate with authorities, comply with lawful directions, and engage constructively when they believe institutions are acting within clear, principled boundaries. Conversely, when regulatory intervention appears reactive, selective, or driven by political pressure, cooperation diminishes and contestation intensifies. This dynamic undermines the very safety objectives that expanded regulation is often intended to serve.

There is also a longer-term cohesion risk. Regulatory approaches that conflate dissent with disorder may discourage lawful participation and push political expression into less visible or less moderated spaces. Over time, this can deepen polarisation and reduce opportunities for dialogue, increasing rather than reducing social friction.

AFIC submits that restraint, clarity, and proportionality are therefore not signs of regulatory weakness, but of institutional maturity. Maintaining conduct-based thresholds, relying on existing legal mechanisms, and addressing concerns through governance and engagement supports both safety and cohesion. It reinforces the message that disagreement, even when uncomfortable, remains a legitimate part of democratic life, and that harm is addressed through evidence-based, even-handed processes.

These considerations are central to the Inquiry's task. How the state responds to contested political expression will shape not only immediate outcomes, but longer-term relationships between institutions and the communities they serve. Ensuring that responses strengthen, rather than undermine, trust and cohesion is essential to effective governance in a diverse democratic society.

## 4. Principles for Policy Response

This section sets out a series of guiding principles that AFIC considers relevant to the Inquiry's deliberations. These principles are not intended to prescribe specific legislative or regulatory outcomes. Rather, they are offered to assist the Inquiry in evaluating proposed responses in a way that is proportionate, coherent, and consistent with effective governance in a pluralistic democratic society.

### 4.1 Evidence-Based Policy Making

Policy responses to contested or high-profile issues should be grounded in demonstrable evidence of necessity. Where concerns are raised about safety, intimidation, or escalation, it is important to distinguish between perceived harm and established risk. Measures that expand regulatory reach or alter enforcement thresholds should be justified by clear evidence that existing mechanisms are insufficient to address identified problems.

Responding to visibility, intensity of public debate, or political pressure alone risks producing measures that are symbolic rather than effective. Evidence-based policy making helps ensure that responses are targeted, proportionate, and capable of achieving their stated objectives without unintended consequences.

### 4.2 Conduct-Based Thresholds as a Safeguard

A central safeguard within existing regulatory frameworks is the use of conduct-based thresholds. Intervention is tied to observable behaviour, intent, and likelihood of harm, rather than to expression in isolation. Maintaining this orientation is essential to preserving clarity, predictability, and fairness in enforcement.

Policies that move away from conduct-based thresholds and towards expression-based triggers increase uncertainty and discretion. They also raise the risk that regulatory power will be perceived as responding to political disagreement rather than genuine safety concerns. For these reasons, AFIC considers the preservation of conduct-based thresholds to be a foundational principle for any policy response in this area.

### 4.3 Institutional Clarity and Role Discipline

Effective governance depends on clear institutional roles. Law enforcement and regulatory bodies are tasked with managing risk and enforcing the law, not adjudicating political meaning or resolving contested narratives. Legislatures set legal thresholds and frameworks, while political leadership bears responsibility for public communication and democratic accountability.

Policy responses that blur these roles place undue pressure on enforcement agencies and weaken institutional legitimacy. Maintaining role discipline helps ensure that regulatory power is exercised consistently and that political disagreement is addressed through appropriate democratic channels rather than through coercive mechanisms.

## 4.4 Proportionality and Restraint

Restraint is not an absence of action. It is an active policy choice that reflects proportionality, maturity, and confidence in existing institutions. Before expanding regulatory powers or creating new offences, it is appropriate to consider whether concerns can be addressed through guidance, oversight, communication, or improved application of existing frameworks.

Incremental expansion of regulation, particularly into areas of political expression, carries cumulative risks. Proportionality requires attention not only to the immediate objective of a measure, but to its broader and longer-term effects on enforcement coherence, institutional trust, and civic participation.

## 4.5 Social Cohesion as a Policy Outcome

Public safety and social cohesion are closely connected. Policies that are perceived as even-handed, principled, and grounded in objective criteria are more likely to foster trust and cooperation across diverse communities. Conversely, measures that appear selective, reactive, or politically driven can deepen division and undermine confidence in public institutions.

AFIC encourages the Inquiry to consider social cohesion not as a secondary or abstract concern, but as a practical policy outcome. Responses that preserve space for lawful dissent, maintain clear boundaries between expression and harm, and reinforce institutional legitimacy are more likely to support long-term safety and stability.

## 5. Conclusion and Consolidated Recommendations

AFIC has engaged with this Inquiry as a national faith representative body concerned with the integrity of democratic participation, the legitimacy of public institutions, and the long-term cohesion of Australian society. This submission has sought to assist the Inquiry by distinguishing between political expression and genuine harm, and by examining the institutional consequences of regulatory responses that move beyond conduct-based thresholds.

The analysis in Sections 3 and 4 demonstrates that existing legal and regulatory frameworks already provide mechanisms to respond to conduct that poses a real risk to community safety. Where concerns exist, they relate less to the absence of law than to questions of interpretation, application, and public understanding. Expanding regulatory powers into political expression, particularly through expression- or phrase-based measures, risks undermining enforcement coherence, institutional legitimacy, and trust between communities and the state.

On this basis, AFIC makes the following consolidated recommendations for the Inquiry's consideration:

1. **Anchor policy responses in evidence of necessity**, requiring clear demonstration that existing legal mechanisms are insufficient before considering legislative expansion.
2. **Maintain conduct-based thresholds for intervention**, ensuring that regulatory action remains tied to observable behaviour, intent, and likelihood of harm, rather than expression in isolation.
3. **Avoid expression- or phrase-based regulatory measures**, which increase discretion, uncertainty, and the risk of selective enforcement.
4. **Strengthen guidance and consistency in the application of existing laws**, rather than introducing new offences or powers.
5. **Prioritise institutional clarity and role discipline**, ensuring that enforcement bodies are not tasked with adjudicating political meaning or managing dissent.
6. **Address concerns through oversight, communication, and governance mechanisms**, including clearer public messaging about legal thresholds and appropriate use of existing powers.
7. **Recognise social cohesion and institutional trust as core policy outcomes** and assess proposed measures against their longer-term impact on community confidence and democratic participation.

AFIC encourages the Inquiry to approach its recommendations with restraint, proportionality, and a clear focus on harm rather than controversy. Responses that reinforce existing institutional strengths, rather than expand regulatory reach into political expression, are more likely to enhance safety, preserve democratic legitimacy, and support social cohesion in the long term.