

**Submission  
No 27**

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

**Organisation:** NSW Bar Association

**Date Received:** 12 January 2026



*Our ref: DIV26/5*

12 January 2026

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

*By email: [lawsafety@parliament.nsw.gov.au](mailto:lawsafety@parliament.nsw.gov.au)*

Dear Chair,

*Inquiry into measures to prohibit slogans that incite hatred*

1. The NSW Bar **Association** thanks the Legislative Assembly **Committee** on Law and Safety for the invitation to provide a submission in respect of its **Inquiry** into measures to prohibit slogans that incite hatred.

**Introduction**

2. The Association acknowledges the despicable act of terrorism at Bondi Beach on 14 December 2025, which led to the establishment of this Inquiry.<sup>1</sup> In President's Messages to members of the Association on [15 December](#) and [19 December](#) 2025, I offered my deepest condolences to those impacted by this tragedy and offered the Association's full support to Jewish members of the Bar and the wider Jewish community.
3. The Association is committed to working collaboratively with the NSW Government and the NSW Parliament to assist it in developing appropriate legislative and other responses that meet the needs of the community, particularly our Jewish community, following this tragedy.
4. According to the NSW Government's media release of 20 December 2025, the Committee has been requested:  
  
"...to conduct a quick investigation into other hateful statements and recommend which statements can be specifically included in the state's tough hate speech laws to be introduced when parliament returns in the new year."<sup>2</sup>
5. The Inquiry's terms of reference require the Committee to:

"...inquire into and report on the use of slogans that are directed at certain communities to intimidate those communities and instil fear of violence. The Committee should consider:

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<sup>1</sup> NSW Government, 'NSW Government to crack down further on hateful symbols and slogans' (Media Release, 20 December 2025).

<sup>2</sup> Ibid.

- a) The threat that the use of phrases like “globalise the intifada” poses to community cohesion and safety and the importance of maintaining social harmony and cohesion;
- b) How best to prevent the use of phrases that are so inherently hateful by their nature that they lead to incitement of hatred and threaten community safety;
- c) The need to protect communities from hatred, intimidation and violence;
- d) Australian and international examples of best practice to combat the use of such slogans, including measures and approaches taken in the United Kingdom;
- e) The Australian Constitution and the implied freedom of political communication;
- f) Existing offences and other measures in New South Wales and Commonwealth legislation, including offences and measures that have been announced; and
- g) Any other related matters.”

6. As the media release of 20 December 2025 indicates, the Inquiry builds on recent legislative reforms introduced by the NSW Government.<sup>3</sup> In particular:

- a) The Terrorism and Other Legislation Amendment Bill 2025, which was urgently introduced to the NSW Parliament on 22 December 2025. It was passed with amendments and assented to on 24 December 2025. Amongst a range of reforms, this Bill introduced a new section 93ZB to the *Crimes Act 1900* (NSW), which makes it an offence to knowingly display, by public act and without reasonable excuse, a prohibited terrorist organisation symbol, as defined under the Schedule to the *Criminal Code Act 1995* (Cth) at section 80.2E(3).

Section 93ZB is largely modelled on section 93ZA of the *Crimes Act 1900* (NSW), which makes it an offence for a person to knowingly display, by public act and without reasonable excuse, a Nazi symbol.

- b) The Crimes Amendment (Inciting Racial Hatred) Bill 2025, which was passed by the NSW Parliament on 21 February 2025 and assented to on 2 March 2025. This introduced a new section 93ZAA to the *Crimes Act 1900* (NSW), which makes it an offence to, by public act, intentionally incite hatred towards another person or a group of persons on the ground of race.

7. The Association also notes that various other reviews, inquiries and law reform processes are of relevance to the terms of reference of this Inquiry, many of which have been directed (partially or wholly) to addressing the scourge of antisemitism and violence towards the Jewish community. This includes:

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<sup>3</sup> Ibid.

- a) The NSW Law Reform Commission’s review report on “Serious racial and religious vilification” dated September 2024.<sup>4</sup>
- b) The NSW Law Reform Commission’s ongoing review of the *Anti-Discrimination Act 1977* (NSW).
- c) The NSW Legislative Council’s Portfolio Committee No. 5 - Justice and Communities’ current inquiry into “Antisemitism in New South Wales”.
- d) The review by the Honourable John Sackar AM KC into criminal law protections against the incitement of hatred. Mr Sackar was due to provide his report to the NSW Attorney General by 5 November 2025.
- e) The Royal Commission on Antisemitism and Social Cohesion, announced by the Prime Minister on 8 January 2026.
- f) The *Crimes Amendment (Places of Worship) Act 2025* (NSW), which is discussed further below.
- g) The *Law Enforcement (Powers and Responsibilities) Amendment (Places of Worship) Act 2025*, which was designed to address the decision of the Supreme Court of NSW in *Lees v State of New South Wales* [2025] NSWSC 1209 that expanded move on powers granted to police under the *Crimes Amendment (Places of Worship) Act 2025* (NSW) (see above and below), impermissibly burden the implied freedom of political communication and, therefore, are invalid.<sup>5</sup>
- h) The *Crimes Legislation Amendment (Racial and Religious Hatred) Act 2025* (NSW), which provided for an aggravated offence of displaying a Nazi symbol<sup>6</sup>; clarified the scope of the aggravating factor on sentence in relation to conduct motivated by hate or prejudice<sup>7</sup>; and provided for an aggravated graffiti offence to apply in relation to graffiti on places of worship.<sup>8</sup>
- i) The *Criminal Code Amendment (Hate Crimes) Act 2025* (Cth), which expanded the scope of offences for urging violence against groups or members of groups and for publicly displaying prohibited symbols<sup>9</sup>; and provided for new offences in relation to threats of force or violence against groups or members of groups or property.<sup>10</sup> The amending act also provided for mandatory minimum penalties for a range of offences.<sup>11</sup>

8. The Association has provided written submissions and public comments in relation to many of these reviews, inquiries and law reform processes.<sup>12</sup>

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<sup>4</sup> NSW Law Reform Commission, *Serious racial and religious vilification* (Report 151, September 2024).

<sup>5</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 18 November 2025, 50–52 (The Hon Michael Daley MP, Attorney General).

<sup>6</sup> *Crimes Act 1900* (NSW) s 93ZA.

<sup>7</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)(h).

<sup>8</sup> *Graffiti Control Act 2008* (NSW) s 4(6).

<sup>9</sup> *Criminal Code Act 1995* (Cth) ss 80.2A, 80.2B, 80.2H, 80.2HA, 80.2K.

<sup>10</sup> *Criminal Code Act 1995* (Cth) ss 80.2BA, 80.2BB, 80.2BC, 80.2BD, 80.2BE.

<sup>11</sup> *Crimes Act 1914* (Cth) s 16AAA.

<sup>12</sup> See, eg, NSW Bar Association, [Submission No 47](#) to Independent Review, *Review of criminal law protections against the incitement of hatred* (15 August 2025); NSW Bar Association, ‘Statement on law reform to address antisemitism’ ([Media Release](#), 19 February 2025); NSW Bar Association, [Submission No 39](#) to NSW Law Reform Commission, *Serious racial and religious vilification* (10 May 2024); NSW Bar Association, [Preliminary Submission No 86](#) to NSW Law Reform Commission, *Review of the Anti-Discrimination Act 1977 (NSW)* (18 October 2023).

## Existing provisions that may be used to address slogans that incite hatred

9. In examining what, if any, reform might be required to address slogans that incite hatred, the Committee should consider the range of existing police powers, criminal offences and civil prohibitions, which may, depending upon the circumstances, apply to the kinds of conduct contemplated by the Inquiry's terms of reference. This includes, but is not limited to:

- a) *Crimes Act 1900* (NSW)
  - i) Sending documents containing threats (s 31);
  - ii) Common assault prosecuted by indictment (s 61);
  - iii) Riot (s 93B);
  - iv) Affray (s 93C);
  - v) Publicly threatening or inciting violence on grounds of race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status (s 93Z);
  - vi) Displaying Nazi symbols (s 93ZA);
  - vii) Displaying prohibited terrorist organisation symbols (s 93ZB);
  - viii) Publicly inciting hatred on ground of race (s 93ZAA);
  - ix) Threatening to destroy or damage property (s 199);
  - x) Intimidation or annoyance by violence or otherwise (s 545B).
- b) *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW)
  - i) Powers to give directions (Part 14; s 200(5)).
- c) *Crimes (Domestic and Personal Violence) Act 2007* (NSW)
  - i) Stalking or intimidation with intent to cause fear of physical or mental harm (s 13);
- d) *Summary Offences Act 1988* (NSW)
  - i) Offensive conduct (s 4);
  - ii) Offensive language (s 4A).
- e) *Criminal Code Act 1995* (Cth)
  - i) Advocating force or violence against groups (80.2A) or members of groups or close associate (s 80.2B);
  - ii) Threatening force or violence against groups (s 80.2BA) or members of groups or close associates (s 80.2BB);
  - iii) Advocating (s 80.2BC) or threatening (s 80.2BD) damage to or destruction of real property or motor vehicle;
  - iv) Advocating force or violence through causing damage to property (s 80.2BE);
  - v) Advocating terrorism (80.2C);
  - vi) Advocating genocide (80.2D);
  - vii) Public display of prohibited Nazi symbols or giving Nazi salute (s 80.2H);
  - viii) Public display of prohibited terrorist organisation symbols (s 80.2HA);
  - ix) Directions to cease display of prohibited symbols in public (s 80.2K);
  - x) Using a carriage service to make a threat (s 474.15);
  - xi) Using a carriage service to menace, harass or cause offence (s 474.17).

- f) *Anti-Discrimination Act 1977* (NSW)
  - i) Unlawful racial vilification (s 20C);
  - ii) Unlawful religious vilification (s 49ZE).
- g) *Racial Discrimination Act 1975* (Cth)
  - i) Offensive behaviour because of race, colour or national or ethnic origin (s 18C).

10. In criminal matters, the motivation of an offender may also be taken into account as an aggravating factor in sentencing. If an “offence was partially or wholly motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged (such as people of a particular religion, racial or ethnic origin, language, gender identity, sexual orientation or age, or having particular variations of sex characteristics or a particular disability)”, subsection 21A(2)(h) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) allows this to be taken into account as an aggravating factor in sentencing. In *Holloway v R* [2011] NSWCCA 23, Hall J (with whom James and Price JJ agreed) said at [32]:

“In any multi-cultural society, criminal acts involving racial violence ought to be strongly deterred and this fact taken into account in a case such as the present when sentencing an offender in respect of such conduct: *Crimes (Sentencing Procedure) Act 1999*, s.21A(2)(h).”

### **Broader legal, constitutional and human rights considerations in respect of slogans that incite hatred**

11. The Inquiry’s terms of reference state that the Committee should consider:
- a) Australian and international examples of best practice to combat the use of such slogans, including measures and approaches taken in the United Kingdom; and
  - b) the Australian Constitution and the implied freedom of political communication.
12. Further, given the nature of this Inquiry, it is appropriate that the Committee consider Australia’s international human rights law obligations in developing its recommendations.

#### *International human rights law obligations*

13. Australia has obligations under international law to prohibit racial and religious hatred, discrimination and vilification.
14. Article 18(1) of the International Covenant on Civil and Political Rights (**ICCPR**) prescribes a right to freedom of thought, conscience and religion, including a right to manifest religion or belief in worship, observance, practice and teaching.<sup>13</sup>
15. Article 20(2) of the ICCPR requires each State Party to prohibit by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.<sup>14</sup>

<sup>13</sup> Article 18 is reflected in human rights legislation in other states and territories: see *Human Rights Act 2004* (ACT), s 14; *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 14; *Human Rights Act 2019* (Qld), s 20.

<sup>14</sup> In ratifying the ICCPR, Australia recorded a reservation on Article 20, as follows: “Australia interprets the rights provided for by articles 19 [freedom of expression], 21 [freedom of assembly] and 22 [freedom of association] as consistent with

16. Article 4(a) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) requires States Parties to declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin.<sup>15</sup>
17. With the exception of absolute rights, international law requires the balancing of competing human rights and freedoms. In the context of anti-vilification, the balancing of human rights requires exceptions to the anti-vilification provisions to go only as far as is necessary, taking into account competing rights such as the right to freedom of opinion and freedom of expression contained in Articles 19(1) and 19(2) of the ICCPR. Article 19(3) of the ICCPR notes that the exercise of freedom of expression rights carries special duties and responsibilities. As such, the right to freedom of expression may be subject to certain restrictions, provided by law, and necessary for respect of the rights or reputations of others. Article 20 of the ICCPR contains mandatory limitations on freedom of expression, and requires countries, subject to reservation/declaration, to outlaw vilification of persons on national, racial or religious grounds.<sup>16</sup>
18. That two human rights may conflict – such as the right to freedom of religion and the right to freedom of opinion and expression – is not novel. When considering the tension between conflicting rights, the following principles, summarised by the Ontario Human Rights Commission, may provide a useful conceptual basis to resolve that tension<sup>17</sup>:
  - a) No rights are absolute.
  - b) There is no hierarchy of rights.
  - c) Rights may not extend as far as claimed.
  - d) The full context, facts and constitutional values at stake must be considered.
  - e) Look at the extent of interference (only actual burdens on rights trigger conflicts).
  - f) The core of a right is more protected than its periphery.
  - g) Aim to respect the importance of both sets of rights.
  - h) Statutory defences may restrict rights of one group and give rights to another.

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article 20; accordingly, the Commonwealth and the constituent States, having legislated with respect to the subject matter of the article in matters of practical concern in the interest of public order (ordre public), the right is reserved not to introduce any further legislative provision on these matters.” See Parliament of Australia website here:

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/Freedomofreligion/Interim\\_Report/section?id=committees%2Freportjnt%2F024110%2F25199](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/Freedomofreligion/Interim_Report/section?id=committees%2Freportjnt%2F024110%2F25199)

<sup>15</sup> Australia also made a reservation in relation to Article 4(a) of the ICERD in 1975 stating that it was not then in a position to criminalise all the matters covered under the article. That reservation has not been withdrawn. See Attorney-General’s Department’s webpage available here: <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/right-freedom-opinion-and-expression>

<sup>16</sup> Further information regarding the scope of the requirement to prohibit advocacy of hatred that constitutes incitement to discrimination is on the Attorney-General’s Department’s webpage available here: <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/right-freedom-opinion-and-expression#:~:text=Article%20of%20the%20ICCPR,national%2C%20racial%20or%20religious%20grounds>

<sup>17</sup> Ontario Human Rights Commission, “Policy on competing human rights”, 2012, 18, which cites Reema Khawja, “The shadow of the law: Surveying the case law dealing with competing rights claims”, Ontario Human Rights Commission, 2012.

19. Once any potential proposals for reform have been developed, the Association would welcome the opportunity to assist the Inquiry with such an assessment. This is best undertaken once any draft legislation has been prepared.

#### *Constitutional validity of reforms*

20. It is, of course, essential that any legislative reforms be constitutionally valid. Depending upon the circumstances, certain limitations on legislative power may apply.

21. The High Court of Australia has recognised an implied freedom of political communication in the Australian Constitution.<sup>18</sup> This is not an individual right but a limitation on legislative power.<sup>19</sup> The test for legislative invalidity is as follows:<sup>20</sup>

“1. Does the law effectively burden the implied freedom in its terms, operation or effect?

2. If “yes” to question 1, is the purpose of the law legitimate, in the sense that it is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government?

3. If “yes” to question 2, is the law reasonably appropriate and adapted to advance that legitimate object in a manner that is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government?”

22. NSW reforms restricting political communication risk being declared unconstitutional in whole or in part. After applying the above test in *Kvelde v State of New South Wales* [2023] NSWSC 1560, the Supreme Court of NSW declared parts of subsection 214A(1) of the *Crimes Act 1900* (NSW) to be invalid.

23. In the abstract, it is not possible to determine whether or not a prohibition on certain slogans would impermissibly burden the implied freedom of political communication. This question would need to be carefully considered once any draft legislation has been prepared.

#### *Jurisdictional comparisons*

24. Differences between relevant criminal and civil regimes in Australia, and even more so for international jurisdictions, can create challenges in drawing meaningful comparisons in respect of the matters under consideration in the Inquiry’s terms of reference.

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<sup>18</sup> *Australian Capital Television Pty Ltd & New South Wales v Commonwealth* [1992] HCA 45; *Nationwide News Pty Ltd v Wills* [1992] HCA 46; *Lange v Australian Broadcasting Corporation* [1997] HCA 25; *Unions NSW v New South Wales* [2013] HCA 58; *McCloy v New South Wales* [2015] HCA 34; *Brown v Tasmania* [2017] HCA 43; *Clubb v Edwards*; *Preston v Avery* [2019] HCA 11.

<sup>19</sup> *Clubb v Edwards*; *Preston v Avery* [2019] HCA 11 at [8].

<sup>20</sup> *Ibid*, at [5] citing *McCloy v New South Wales* [2015] HCA 34 at [2] as modified by *Brown v Tasmania* [2017] HCA 43 at [104]. See also: *Brown v Tasmania* [2017] HCA 43 at [155]-[156], [277], [481].

25. As is outlined in greater detail in recent papers and reports published by the NSW Law Reform Commission,<sup>21</sup> vilification laws across Australia vary significantly in their form, scope and operation.<sup>22</sup> For example, prior to the introduction of the *Crimes Amendment (Inciting Racial Hatred) Act 2025* (NSW) in NSW (discussed in detail below), Victoria and Western Australia were the only Australian jurisdictions with criminal vilification regimes that did not require proof of a threat of violence or physical force.<sup>23</sup> The penalties also vary across jurisdictions. For example, the Australian Capital Territory's offence of criminal vilification does not carry a custodial sentence.<sup>24</sup>
26. Any comparative analysis is further complicated by the interplay between each jurisdiction's civil and criminal vilification regimes. In NSW, there is a range of inconsistencies between the criminal and civil vilification regimes, including different protected attributes and definitions.<sup>25</sup> In the case of Western Australia, for example, there is no civil vilification regime.<sup>26</sup>
27. It is also important to note that NSW, unlike Victoria, the ACT and Queensland, lacks a statutory human rights framework under which statutory provisions are to be interpreted in a way compatible with human rights. In this way, NSW lacks a critical safeguard to protect the community from legislation that may potentially, and unacceptably, violate human rights.
28. These complications are further heightened when making comparisons between NSW law and international jurisdictions, including in relation to the United Kingdom's *Public Order Act 1986*.<sup>27</sup> The Association would caution against any attempt to replicate anti-vilification or hate speech laws from international jurisdictions, without careful regard being had to the different legal and cultural frameworks in which those laws operate.

### **Potential reforms to address slogans that incite hatred**

29. The Association supports appropriate measures, including necessary legislative reforms, aimed at maintaining social harmony and cohesion and protecting the community from hatred, intimidation and violence. In recent years, the Association has supported necessary and proportionate reforms that were particularly targeted at addressing antisemitism and protecting the Jewish community in NSW. This has included:
- a) Providing in-principle support for reforms that would make it an offence to display Nazi symbols.<sup>28</sup>

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<sup>21</sup> NSW Law Reform Commission, *Review of the Anti-Discrimination Act 1977 (NSW): Unlawful Conduct* (Consultation Paper No 24, May 2025); NSW Law Reform Commission, *Serious racial and religious vilification* (Report 151, September 2024).

<sup>22</sup> NSW Law Reform Commission, *Serious racial and religious vilification* (Report 151, September 2024) 48–50.

<sup>23</sup> NSW Law Reform Commission, *Serious racial and religious vilification* (Report 151, September 2024) 48; *Crimes Act 1958* (Vic) s 195N; *Criminal Code* (WA) ss 77, 78, 80A, 80B.

<sup>24</sup> *Criminal Code 2002* (ACT) s 750.

<sup>25</sup> See a further discussion in [Anti-Discrimination Act review: Consultation paper on unlawful conduct](#), pp 167 – 194.

<sup>26</sup> Although a civil vilification regime was recommended by the Law Reform Commission of Western Australia, *Review of the Equal Opportunity Act 1984* (Project 111 Final Report, May 2022) [Recommendations 111–116].

<sup>27</sup> See *Public Order Act 1986* (UK) s 18.

<sup>28</sup> See *Crimes Act 1900* (NSW) s 93ZA.

b) Supporting reforms contained in the Crimes Amendment (Places of Worship) Bill 2025 to increase protections for those attempting to access or leave a place of worship and to authorise police to issue move-on directions in certain circumstances in, or near, places of worship.<sup>29</sup> In the Association’s view, these reforms struck an appropriate balance between the right to freedom of religion and the right to freedom of expression. This was a general human rights policy conclusion, and did not concern the constitutional validity of the reforms.

30. However, at this stage, the Association suggests that the NSW Parliament proceed with some caution when considering further criminalising certain kinds of slogans or speech, including on the basis that it incites hatred towards another person or group of persons.

31. The role of the criminal law in deterring hate-based conduct can be overstated.<sup>30</sup> The criminal law is a blunt tool that cannot possibly address the complex historical, social, cultural, and political factors that may influence hate-based conduct.<sup>31</sup> For this reason, reforms limited to criminalising certain hate-based conduct will often be a less than comprehensive mechanism for engineering meaningful social or community change in this respect. Moreover, cultural and historical context can inform whether a person’s use of a slogan is intended to incite hatred or violence, or whether it is nothing more than the free exercise of political expression, with no underlying intention to do either. It is critically important not to legislate in a way that risks criminalising, by association, the conduct of those who are doing no more than participating in peaceful political movements and assemblies.

32. A relevant and recent example, which the Association opposed, is the *Crimes Amendment (Inciting Racial Hatred) Act 2025* (NSW). This amending Act inserted a new section 93ZAA into the *Crimes Act 1900* (NSW), which provides for an offence of publicly inciting hatred on the ground of race. A person commits this offence if:

“(a) the person, by a public act, intentionally incites hatred towards another person or a group of persons on the ground of race, and

(b) the public act would cause a reasonable person who was the target of the incitement of hatred, or a reasonable person who was a member of a group of persons that was the target of the incitement of hatred, to—

(i) fear harassment, intimidation or violence, or

(ii) fear for the reasonable person’s safety.”

33. The offence has a maximum penalty, in relation to an individual, of 100 penalty units (\$11,000) or imprisonment for 2 years, or both and in relation to a corporation, 500 penalty units (\$55,000).

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<sup>29</sup> See NSW Bar Association, ‘Statement on law reform to address antisemitism’ ([Media Release](#), 19 February 2025).

<sup>30</sup> NSW Law Reform Commission, *Serious racial and religious vilification* (Report 151, September 2024) [3.54]–[3.77].

<sup>31</sup> NSW Bar Association, [Submission No 39](#) to NSW Law Reform Commission, *Serious racial and religious vilification* (10 May 2024) [50].

34. The NSW Law Reform Commission, chaired by former Chief Justice of NSW, the Hon Tom Bathurst AC KC, recently reviewed the effectiveness of section 93Z of the *Crimes Act 1900* (NSW) in addressing serious racial and religious vilification in NSW. Section 93Z provides that it is an offence for a person who, by a public act, intentionally or recklessly threatens or incites violence towards another person or a group of persons on various grounds, including but not limited to, the person's race or religion.<sup>32</sup>
35. The NSW Law Reform Commission's report, dated September 2024 and tabled in the NSW Parliament in November 2024, stated that "[w]e do not recommend introducing new vilification offences, or expanding s 93Z of the *Crimes Act 1900* (NSW), to criminalise inciting hatred or other vilifying conduct that is not already covered by s 93Z."<sup>33</sup> In reaching this conclusion, the Commission raised concerns that terms such as "hatred" introduce "imprecision and subjectivity into the criminal law".<sup>34</sup> It noted that this imprecision has led to difficulties in applying the concept of "inciting hatred" in a civil context, and these difficulties would only be heightened in criminal contexts, where there is a higher standard of proof.<sup>35</sup> As the criminal law carries serious penalties, it is critical that the law can be understood, complied with and enforced.
36. The Commission also considered an objective harm-based test, which would focus on an act's likely effect on targeted individuals and groups.<sup>36</sup> The Commission did not recommend such a test, which would not be suitable for the criminal law, especially given the absence of a mental element, the uncertainty as to what conduct is being prohibited, and the potential to over-criminalise disadvantaged groups.<sup>37</sup>
37. The Association shares the concerns expressed by the NSW Law Reform Commission. In particular, the Association is concerned that section 93ZAA of the *Crimes Act 1900* (NSW) is an imprecise criminal offence, with a lower threshold than section 93Z and a maximum penalty of imprisonment for two years, and applies in relation to circumstances that are more appropriately dealt with by the civil law.<sup>38</sup>
38. Given these concerns, the Association does not support this offence, nor would it support its expansion to capture a broader range of slogans or speech that may be perceived as inciting hatred.
39. In the Association's view, given the extensive nature of existing criminal law offences, it may be preferable for the Inquiry and the NSW Government to focus on the development and funding of other measures directed at addressing the potential drivers of hate-based conduct. This may include non-legislative measures<sup>39</sup> or civil law reforms.

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<sup>32</sup> *Crimes Act 1900* (NSW) s 93Z(1).

<sup>33</sup> NSW Law Reform Commission, *Serious racial and religious vilification* (Report 151, September 2024) 45.

<sup>34</sup> *Ibid*, [4.30]–[4.40].

<sup>35</sup> *Ibid*, 50–51.

<sup>36</sup> *Ibid*, [4.55]–[4.70].

<sup>37</sup> *Ibid*, [4.60]–[4.70].

<sup>38</sup> See *Anti-Discrimination Act 1977* (NSW) ss 20C, 38S, 49ZE, 49ZT, 49ZXB; NSW Law Reform Commission, *Serious racial and religious vilification* (Report 151, September 2024) [4.49]–[4.54].

<sup>39</sup> See, eg, NSW Government, 'Minns Government announces \$1m to address impacts of Islamophobia' (Media Release, 15 August 2025).

40. The Association is concerned that social cohesion will not be enhanced by further reform of the criminal law. Instead, a co-ordinated strategy is required that considers how all potential measures may be utilised to protect the Jewish community and other potentially at-risk sections of society.
41. As noted above, there are other reviews and inquiries that are currently underway, particularly the Royal Commission on Antisemitism and Social Cohesion, which are well-positioned to develop a co-ordinated strategy and to consider a more comprehensive approach to funding and reform.

**Matters requiring further consideration if the Committee recommends the prohibition of slogans that incite hatred**

42. If the Inquiry is minded to recommend a prohibition on the use of slogans that are directed at certain communities to intimidate those communities and instil fear of violence, the Committee should consider the following matters:
- a) The banning of certain slogans or hateful phrases, which in and of itself may be a laudable ambition, may risk fetishising those very slogans or phrases. In evidence heard during the parliamentary inquiry into the Crimes Amendment (Display of Nazi Symbols) Bill 2021, the then Deputy Commissioner of the NSW Police Force, Investigations and Counterterrorism, David Hudson, argued that “when you force something underground it gains a separate mystique and an attraction to certain individuals”, stating that some radicalised individuals “would certainly be attracted to the prohibition [of, in that case, Nazi symbols]”.<sup>40</sup> The Committee should consult closely with experts, including the NSW Police, to understand whether banning or criminalising certain slogans, speech or symbols may lead to perverse or counterproductive outcomes.
  - b) Relatedly, the Committee should consider what impact, if any, banning certain slogans or phrases might have on police operations. In this respect, Deputy Commissioner Hudson also told the inquiry into the Crimes Amendment (Display of Nazi Symbols) Bill 2021 that, where appropriate, NSW Police may investigate “people who brazenly tout Nazi symbols ... [as] it is certainly an indicator of their intent and their motivations”.<sup>41</sup> The Committee should consult with NSW Police to understand any potential operational impacts associated with banning or regulating certain slogans, phrases or symbols.
  - c) If the use of certain speech or slogans were to be banned or criminalised, there are potential drawbacks in either a narrower approach or a broader approach. A narrower approach – in which certain offensive or hateful words, phrases or slogans were to be explicitly banned – may fail to address the concerns outlined in the Inquiry’s terms of reference. Slogans can change and evolve, including to avoid criminal sanctions. For example, according to recent media reports, white

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<sup>40</sup> Evidence to Legislative Council's Standing Committee on Social Issues, Inquiry into the Crimes Amendment (Display of Nazi Symbols) Bill 2021, Parliament of NSW, Sydney, 3 February 2022, 10 (Deputy Commissioner, Investigations and Counterterrorism, NSW Police Force, David Hudson).

<sup>41</sup> Ibid.

supremacists and neo-Nazis are adopting and appropriating new symbols and languages to avoid prosecution for displaying swastikas and other Nazi symbols.<sup>42</sup>

Alternatively, a broader approach – in which certain conduct is prohibited because it breaches a general principle – is likely to be too wide-ranging in its application and may not be fit-for-purpose. Such an offence may require a lower threshold for determining what constitutes “incitement”, compared with section 93ZAA of the *Crimes Act 1900* (NSW) (discussed above), which, in the Association’s view, is already unsuitable for the criminal law.

If the NSW Government intends to criminalise or ban certain slogans – whether that be a broader approach, a narrower approach or otherwise – further consultation is required with legal stakeholders, particularly in respect of any draft legislation.

- d) If the use of certain speech or slogans were to be criminalised, the prosecution should bear the onus of proving that a defendant understood the status and meaning of that slogan. Under sections 93ZA and 93ZB of the *Crimes Act 1900* (NSW), a person will not be guilty of displaying a Nazi symbol, or a prohibited terrorist organisation symbol, unless it was done “knowingly”. If any new offence does not include express *mens rea* elements, then it may inappropriately and unfairly capture too broad a range of conduct which does not warrant criminal sanction.
- e) Relatedly, sections 93ZA and 93ZB of the *Crimes Act 1900* (NSW) include a non-exhaustive list of “reasonable excuses” for why a Nazi symbol, or prohibited terrorist organisation symbol, may be displayed, including displays that are made reasonably and in good faith for academic, artistic or educational purposes. If certain speech or slogans were to be banned or criminalised, then these exceptions may need to be broadly framed to ensure that uses of certain speech or slogans, that should not fall within the remit of the criminal law, are excluded. Legal stakeholders, including the Association, should be consulted on any proposed legislation to help mitigate the risk of potential overreach.

## Conclusion

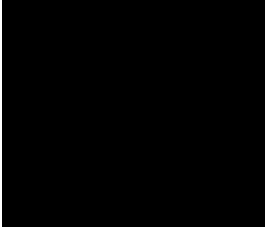
43. Thank you for the opportunity to make a submission to the Committee’s Inquiry and for your consideration of the issues we have raised.

44. If you require any further information, please contact [REDACTED], at [REDACTED] in the first instance.

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<sup>42</sup> See, eg, Tory Shepherd, ‘From rune megaphones to the number 88: Australia’s neo-Nazis have a new look after swastikas banned’, *The Guardian* (online, 13 September 2025) <<https://www.theguardian.com/australia-news/2025/sep/13/rune-megaphone-number-88-australia-neo-nazi-symbols-after-swastikas-banned-ntwnfb>>.

Yours sincerely,



Dominic Toomey SC  
President