

**Submission  
No 45**

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

**Organisation:** Australian Democracy Network

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12 January 2026

Committee Secretary  
Submission to the Legislative Assembly Committee on Law and Safety  
NSW Parliament House

Dear Committee Members,

Australian Democracy Network is grateful for the opportunity to make a submission to the Legislative Assembly Committee on Law and Safety regarding measures to prohibit slogans that incite racial hatred.

Australian Democracy Network (ADN) brings people and organisations together to campaign for the changes that make our democracy more fair, clean, transparent, accountable, accessible, and participatory. Together, we work towards a healthy Australian democracy which puts people and planet first.

Our submission addresses itself to the following terms of reference.

**Protecting community safety and cohesion**

- 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;
- f) Existing offences and other measures in New South Wales and Commonwealth legislation, including offences and measures that have been announced

In a healthy democracy, we should all feel and be safe in our identities. Everyone has a right to live in peace and safety. We recognise the deep hurt and fear across the community in the wake of the horrific antisemitic terror attack at Bondi. Right now, it is more important than ever that we build trust, connection, and mutual respect across the many diversities that make up Australian communities.

While preventing further community harm is a necessary objective for the government, restrictions on specific terms commonly used in protest and political expression are not an appropriate way to achieve this objective.

NSW and Australia have existing laws which target speech that is likely to cause incitement and harm.<sup>1</sup> These laws were specifically designed to strike an appropriate balance between freedom of expression and protecting community safety, including through multi-level tests for determining where speech is likely to cause harm. The importance of context in relation to hate speech is widely-recognised, for example by the Victorian Court of Appeal in *Catch the Fires*<sup>2</sup> and internationally in the UN Human Rights Committee case of *Faurisson v France*<sup>3</sup> and the widely-cited and utilised UN Rabat Plan of Action.<sup>4</sup> The Plan proposes a six-part threshold test that takes into account the context of the speech, the speaker, the intent, the content and the form of the speech, the extent of the speech and the likelihood of the speech to produce immediate actions against its targets.

The existing s93Z of the NSW Crimes Act could be used to assess the use of such slogans contextually to determine their meaning and whether they can be associated with calls for violence. This is especially the case given the fact that the slogan referred to in the terms of reference, 'globalise the intifada', is used in a variety of contexts, including to oppose the genocide in Gaza and express the Palestinian desire for statehood.<sup>5</sup>

There is no evidence that banning the use of specific slogans, which have a number of meanings and are used in a variety of contexts, would have an impact on addressing the risk of extremist violence due to the lack of links between the use of these slogans and extremist violence and the difficulty of evaluating the risk of a person engaging in extremist violence. The Independent National Security Legislation Monitor, Mr Grant Donaldson SC, has expressed doubt that there could ever be a valid quantitative method to evaluate the risk of a person engaging in extremist violence because 'within the pool of offenders, the variety of extremist violence and its causes is so diffuse that prediction of future acts is impossible'.<sup>6</sup>

## Constitutionality

e) The Australian Constitution and the implied freedom of political communication;

Laws banning specific slogans, rather than addressing them via existing hate speech legislations, risks legal challenge on the basis of it being incompatible with the implied freedom of political communication.

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<sup>1</sup> s93Z of the *NSW Crimes Act 1900*, Division 80 of the *Criminal Code Act 1995*

<sup>2</sup> *Catch the Fire Ministries Inc and Others v Islamic Council of Victoria Inc and Another* (2006) 15 VR 207

<sup>3</sup> Communication No. 550/93, views adopted on 8 November 1996

<sup>4</sup> Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred (2012)

<sup>5</sup> See for example the summary of views on the phrase in *University of Toronto (Governing Council) v. Doe et al* 2024 ONSC 3755 at [100]

<sup>6</sup> Independent National Security Legislation Monitor (INSLM) 2023 Review into Division 105A (and related provisions) of the *Criminal Code Act 1995* (Cth), 74

Laws which prohibit certain types of speech, such as hate speech, are not inherently unconstitutional. State Courts have found<sup>7</sup> that while hate speech laws may burden the implied freedom of political communication, they do so with a legitimate purpose and are reasonably appropriate and adapted to advance that legitimate purpose. In *Owen v Menzies*, McMurdo P reasoned that such laws actually enhance communications about political matters. The incitement of hatred towards people on the grounds of race, religion, sexuality or gender could not amount to political communication 'of the kind contemplated by the implied freedom under a diverse, modern democracy.'

However, this conclusion has been made on the basis of laws that were content-neutral and allowed for consideration of context in determining whether the speech was likely to incite hatred. The blanket prohibition of specific phrases which are commonly used to communicate about political matters is less likely to meet the threshold of being reasonably appropriate and adapted.

### **Australia's international legal obligations**

g) Any other related matters.

The right to freedom of opinion and expression is contained in articles 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR), to which Australia is party. Under article 19(3) freedom of expression may be limited as provided for by law and when necessary to protect the rights or reputations of others, national security, public order, or public health or morals. Limitations must be prescribed by legislation necessary to achieve the desired purpose and proportionate to the need on which the limitation is predicated.

'Public order' is understood to mean the rules which ensure the peaceful and effective functioning of society. The limitation in article 19(3) would justify prohibitions on speech that may incite crime, violence or mass panic, provided the prohibition is reasonable, is effective to protect public order, and restricts freedom of expression no more than is necessary to protect public order.

Although not directly about the referred symbols, guidance from the UN Human Rights Committee 71 General Comment 37 on the Right to Peaceful Assembly in the ICCPR<sup>8</sup> is important to note for what it says about the use of signs/banners and symbols:

Generally, the use of flags, uniforms, signs and banners is to be regarded as a legitimate form of expression that should not be restricted, even if such symbols are reminders of a painful past. In exceptional cases, where such symbols are directly and predominantly associated with incitement to discrimination, hostility or violence, appropriate restrictions should apply.

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<sup>7</sup> *Sunol v Collier (No 2)* (2012) 81 NSWLR 619, *Owen v Menzies* [2014] QCAT 661

<sup>8</sup> UN Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21) (2020)