

**Submission
No 69**

MEASURES TO PROHIBIT SLOGANS THAT INCITE HATRED

Organisation: Free Speech Union of Australia Limited

Date Received: 12 January 2026

NSW Legislative Assembly Committee on Law and Safety
Via Online Portal Only

12 January 2026

Submission to Legislative Assembly Committee on Law and Safety on 'Measures to prohibit slogans that incite hatred'.

Dear Committee Secretary,

The Free Speech Union of Australia is a non-partisan organization whose focus is on the protection of Free Speech in Australia.¹ As a community organisation with expertise in the subject matter we write to make a submission to the committee concerning its consideration of 'Measures to prohibit slogans that incite hatred'.

The Free Speech Union opposes the introduction of any 'hate speech laws' in response to the terms of reference which are under consideration. Hate speech laws are well recognised to have the real-world effect of targeting minorities. This is unsurprising, given that they have documented Stalinist origins and have a long and unhappy history of being abused by authoritarian regimes for the 'persecution of critics' and to 'criminalise ... political dissent'.² It is perhaps unsurprising that these proposals are opposed by various Jewish groups across the political spectrum, albeit for different reasons.³

We respond in detail to each item in the Committee's terms of reference below.

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

What is unclear is how this would be effectively criminalised. The proposals are vague in this regard. That is perhaps inevitable, given the nature of 'hate speech' laws.

The difficulty with a precise definition of 'hate speech' which does not restrict other speech is a long-standing problem with hate speech laws. These laws were originally conceived by the Soviet Union under Josef Stalin, who had no such qualms.⁴ As Noam Chomsky once commented: 'it is a poor service to the memory of the victims of the Holocaust to adopt a central doctrine of their murderers'.⁵ The same point applies with even greater force in the

¹ <https://freespeechunion.au/aboutus.html>

² Nadine Strossen: *Hate, Why We Should Resist It with Free Speech, Not Censorship*; Oxford University Press, Incorporated 2018 ('Strossen'), pp 82-83.

³ For example the Australian Jewish Association has expressed concern in multiple [public statements](#).

⁴ Jacob Mchangama, 'The sordid origin of hate-speech laws.' *Policy Review* 170 (2011): 45.

⁵ Noam Chomsky, 'His Right to Say It', *The Nation*, February 28, 1981.

present case, because this committee has been convened as a purported response to the Bondi terrorist attack against the Jewish community.

Renowned international free speech expert and former ACLU president Nadine Strossen has observed that such a law is said to be unduly vague “when the person of common intelligence must necessarily guess at its meaning”.⁶ She also noted that existing proposals for ‘hate speech’ laws have thus far ‘insurmountable vagueness and overbreadth problems’.⁷ The only solution is ‘to replace open- textured, malleable criteria with specific, inflexible ones’, but this presents the problem of being inherently ineffective.⁸ These types of problems have been recognised in Europe and by the United Nations too.⁹

Given the practical difficulties, we doubt that an Act will be constantly updated by Parliament itself: the approach taken for the Queensland hate *symbol* legislation was to use regulations.¹⁰ The other approach has been to leave it to the judiciary to decide in individual cases as they arise.¹¹

Either way, we presume that any legislation will functionally allow a government official, a minister, the police or a judicial officer (after the event) to determine what words or phrases are deemed to constitute this threshold (and presumably in which contexts).

The reality is that people and groups will simply continue to generate new slogans designed to achieve the same rhetorical purpose, while avoiding the wording that is prohibited. A stark illustration of this is China, where a 2021 article estimated that the list of blocked words and phrases aimed at preventing social unrest sat at 63,000 terms¹². After all, the truth is that most ‘hate speech’ is covert or camouflaged.¹³

Hate speech laws are not about protecting people. Rather, they will likely also be used to target groups across the political spectrum that are deemed antithetical to ‘social cohesion’, depending on the views of the government of the day. This is consistent with the unhappy history of other hate speech laws internationally.¹⁴

⁶ Strossen p 69.

⁷ Strossen p 72.

⁸ Strossen p 74.

⁹ Strossen pp 82-83.

¹⁰ *Criminal Code (Prohibited Symbols) Regulation 2024* (Qld).

¹¹ There will always be an element of this, given the constitutional nature of the implied freedom of political communication.

¹² Zachary Weinberg, Diogo Barradas, and Nicolas Christin: *Chinese Wall or Swiss Cheese? Keyword filtering in the Great Firewall of China*, 2021. In Proceedings of the Web Conference 2021 (WWW '21). Association for Computing Machinery, New York, NY, USA, 472–483.

¹³ Fabienne Baider, ‘Accountability issues, online covert hate speech, and the efficacy of counter-speech.’ *Politics and Governance* 11.2 (2023), p 249.

¹⁴ See e.g. Jacob Mchangama, ‘The problem with hate speech laws.’ *The Review of Faith & International Affairs* 13.1 (2015) 75; Cindy Cohn, ‘Bad Facts Make Bad Law: How Platform Censorship Has Failed So Far and How to Ensure that the Response to Neo-Nazis Doesn’t Make It Worse.’ *Georgetown Law Technology Review*. 2 (2018) 432.

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

There is no evidence that the kinds of phrases within the terms of reference contributed to or incited the Bondi terror attack, which was instead has been found by the authorities to have been motivated by ISIS.¹⁵ Nor is there evidence that banning those phrases will have the intended effect: censorship often has the opposite impact to what censors intend, through what is known as the 'forbidden fruit' effect.¹⁶

Although the attack that took place against the Jewish community represents the most extreme manifestation of the kinds of harm that the terms of reference countenance, existing laws are adequate both to deal with what did happen and a wide range of other "less severe" actions such as assault, vandalism of property, arson and other offences. We are concerned that tacit choices not to enforce existing laws and serious failures in intelligence are now being used to try and further pass censorship laws.

Conflating words with violence risks overlooking the real problem. Isolating people with racial supremacist and other undesirable views is likely to make the situation worse.¹⁷ Shifting such speech underground will also make it harder to track who is potentially involved in extremist activity and thus further increasing the real-world risk.

c) The need to protect communities from hatred, intimidation and violence

Hate speech laws are notorious in being used for targeting minorities, even when ostensibly passed to support them.

As well as being misused by authoritarian regimes, they have also been misused in liberal democracies. For example, Canadian Customs treated a book by the African American scholar, bell hooks, as being hate speech and banned it from the country.¹⁸ Hate speech policies of social media providers are regularly used to censor minorities, with this having been of particular concern with Facebook.¹⁹ Even the European Commission against Racism and Intolerance has been concerned that European "hate speech" laws can be

¹⁵ Michael Read, Nicola Smith and Trudy Harris, 'Mounting evidence terror group inspired by ISIS: PM', *Australian Financial Review*, 19 December 2025.

¹⁶ See e.g. Dwight Filley, 'Forbidden fruit: when prohibition increases the harm it is supposed to reduce' *Independent Review* 3.3 (1999): 441-451; William R. Hobbs and Margaret E. Roberts. 2018. "How Sudden Censorship Can Increase Access to Information." *American Political Science Review* 112 (3): 621-3.

¹⁷ See e.g. Denise Meyerson "'No Platform for Racists': What Should the View of Those on the Left Be?' (1990) 6 SAJHR 394, p 397.

¹⁸ Archie Loss, 'The Censor Swings: Joyce's Work and the New Censorship.' *James Joyce Quarterly* 33.3 (1996): 369, p373. Closer to home, the eSafety Commissioner has sought to abuse such policies using their 'informal notice' scheme, which we successfully challenged in the case of *Baumgarten and eSafety Commissioner (Guidance and Appeals Panel)* [2025] ARTA 59. We understand the Commissioner uses the informal notice scheme to target speech that she disagrees with, whilst also attempting to fob off genuine complainants to her office by purporting not to make decisions on them: *Kirkham and eSafety Commissioner (Practice and procedure)* [2025] ARTA 1231. The *Baumgarten* and *Kirkham* decisions are presently being considered by the Full Bench of the Federal Court in their deliberations on the Commissioner's appeal in *Baumgarten*.

¹⁹ Strossen p 93.

enforced “to silence minorities and to suppress criticism, political opposition and religious beliefs.”²⁰

Perhaps the most vulnerable group in respect of these laws are people with disabilities. Minister Tony Burke has reportedly stripped someone with a mental impairment of their Permanent Residence, merely because of some social media posts and having bought a plastic sword which he did not notice had a swastika on it.²¹ Laws that are being used to target some of the most vulnerable in our society by the State are a curious means for protecting minorities.

The recent Victorian provisions barring Nazi salutes have been capitalised on by the National Socialist Network in Australia, who have used the publicity for being prosecuted under it to grow their own organisation and cause.²² It therefore follows that there is a similar risk in respect of any criminal law imposed on other forms of gestures and speech.

Imposing restrictions on the entirety of civil society for the stated aim of ostensibly protecting subsets of the NSW population will likely have the opposite effect. In this case, it risks further increasing resentment or division by being seen to grant special rights and protections to particular communities.

Whilst they might be superficially attractive, the simple truth is that hate speech laws do not work, and in many cases make the community less cohesive, or safe.

d) Australian and international examples of best practice to combat the use of such slogans, including measures and approaches taken in the United Kingdom;

The evidence from abroad all points one way: hate speech laws do not work. Ironically, the Western countries with the strongest hate speech laws are those which are viewed to be less hospitable by the Jewish community, with Eastern Bloc countries and the United States being seen as safer and less antisemitic, compared to Western European countries.²³ The reason for the distinction has been governments being genuinely supportive of Jewish inclusion, whilst the United Kingdom’s Jewish community was undermined by widespread antisemitism within the Labour Party (as found by the UK’s Equality and Human Rights Commission), something which seems to mirror the present situation in Australia.²⁴

²⁰ Strossen p 76.

²¹ ‘Unmasked: The British NEO-NAZI dad being kicked out of Australia after living here for almost two decades - as cops find his vile stash of swastika weapons’, *Daily Mail*, 24 December 2025.

²² *Summary Offences Act 1966* (Vic) s.41K. For a recent real-world example, see e.g. Tara Cosoleto, ‘Neo-Nazi found guilty on appeal of performing salute’. *Nine News*, 19 December 2025. For international examples, see also Jacob Mchangama, ‘The problem with hate speech laws.’ *The Review of Faith & International Affairs* 13.1 (2015), 75, p81.

²³ See e.g. Robert Kuttner, ‘Are Jews Safe in America’, *American Prospect*, 12 March 2024; Nissan Shtrauchler, ‘What is the Safest European Country for Jews?’ *Israel Hayom*, 16 December 2024; Evelyn Gordon ‘Jews Feel Safer in Europe’s Conservative East Than Its Liberal West’. *Commentary*, 26 November 2018. ‘

²⁴ Equality and Human Rights Commission (UK), *An Investigation into Antisemitism in the Labour Party*: Report, October 2020. For recent Australian commentary by a former senior member of the Australian Labor Party, see Henry Pinski, ‘I’m a Jewish life member of the ALP. For so many years, the party was like an extended family. In the end, I’m ashamed.’, *Herald Sun*, 30 December 2025.

The UK legal framework does not contain legislation prohibiting particular slogans or phrases. Instead, prosecutions have been launched under Part 3 and 3A of the *Public Order Act 1986* which criminalises ‘stir up hatred’ on the grounds of race, religion or sexual orientation.²⁵ These were all provisions that existed prior to social media being widely used but have been repurposed in the modern era, illustrating the risk of unintended consequences.

The result of the misapplication of the UK laws has been around 30 people arrested per day for something that they said online.²⁶ One example was comedian and commentator Graham Linehan, now resident in the United States, was arrested for a post made on X while in the US, upon his return to the UK. The resulting furore has led to reform of the UK police and a move away from this type of censorship.²⁷

Despite this, there has been no benefit in respect of tackling antisemitism: there was a terrorist attack in Manchester against a synagogue very recently where some Jewish worshipers were killed²⁸, and antisemitism remains prominent.

Another rather different consequence has been steps taken by the United States against the United Kingdom, for the UK’s perceived lack of respect of Free Speech.²⁹ A similar occurrence in Australia can hardly be said to be in our national interest.

The best approach is counter speech, which has been long advocated for by experts on Freedom of Expression. This involves “more speech not less” (i.e. counter-speech) and when done appropriately, can be highly effective.³⁰

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

Laws of this nature would undeniably burden the implied freedom of political communication contained in the Commonwealth constitution, as the terms of reference clearly countenance.³¹

²⁵ See Parts 3 and 3A.

²⁶ Chadwick Moore, ‘UK free speech crackdown sees up to 30 people a day arrested for petty offenses such as retweets and cartoons’, *New York Post*, 19 August 2025.

²⁷ ‘No more investigations into ‘non-crime hate incidents’ after Linehan case, Met Police says’, *Sky News*, 20 October 2025.

²⁸ Ewan Gawne, ‘Terror charges for man known to synagogue attacker’, *British Broadcasting Corporation*, 5 December 2025.

²⁹ See e.g. David Collins, ‘Canada be forewarned. The U.S. is taking free speech seriously’, *National Post*, 09 January 2026; Connor Stringer and James Titcomb, ‘Trump pulled UK trade deal over AI clash’, *The Telegraph (UK)*, 16 December 2025.

³⁰ See e.g. Stephen L. Newman, ‘Finding the harm in hate speech: An argument against censorship.’ *Canadian Journal of Political Science/Revue canadienne de science politique* 50.3 (2017): 679; Susan Benesch, Derek Ruths, Kelly P. Dillon, Haji Mohammad Saleem, and Lucas Wright. ‘Counterspeech on Twitter: A field study.’ *A report for Public Safety Canada under the Kanishka Project* (2016).

³¹ This seems to be implicitly recognised in the terms of reference. The standard for a legislative measure to burden the implied freedom is generally a low one: see e.g. *Monis v The Queen* [2013] HCA 4 at [108].

The real question is therefore whether proposed prohibitions on particular hate slogans in pursuit of the (presumably) legitimate goal of community safety could possibly be appropriate and reasonably adapted to that end under the final limb of the implied freedom.

Given the stated goal of protecting minority communities (and the fact that hate speech laws ultimately penalise them) within the broader Australian community, it is difficult to see how such provisions could be 'reasonably appropriate and adapted' as required under the implied freedom.³²

This point is reinforced when the unsuitability of the burdensome processes imposed by the criminal and civil law is considered: rather, sincere apologies are the most desirable and tend to be the initially desired outcome by people who are victimised.³³ The risk of vexatious litigation where the process is the punishment is another concern. The empirical truth is that the American model works far more effectively than the Western European one.

The more broadly any such provisions are worded, the more problematic they are. This is especially concerning where proposed phrases or slogans are decided after the event by a Court or Tribunal.

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

The existing criminal threshold of intentional or reckless incitement to violence generally in NSW³⁴, along with the new Commonwealth Criminal Code provisions that prohibit urging violence, or threatening violence against members of a group based on characteristics such as race and/or religion³⁵ are more than adequate to deal with a wide range of the conduct that the inquiry is direct to consider.

The promotion and advocacy of terrorism is separately prohibited by expansive provisions.³⁶ There are other laws too: for example, vandalism can be dealt with under s.195 of the *Crimes Act 1900* (NSW), but apparently was not enforced in relation to Avner's Bakery (which closed due to systematic antisemitism, persistent antisemitic vandalism, with the Bondi terror attack aftermath being the final straw).³⁷

Further legislation is at best a performative distraction and at worst risks serious unintended consequences. Rather the issue is that existing provisions are rarely and selectively

³² *McCloy v New South Wales* [2015] HCA 34 at [2].

³³ Katharine Gelber and Luke McNamara, 'The Effects of Civil Hate Speech Laws: Lessons from Australia', (2015) 49(3) *Law and Society Review*, 631, p 647.

³⁴ *Crimes Act 1900* (NSW) s 93Z.

³⁵ See *Criminal Code Act 1995* (Cth), sch 1, ch 5, pt 1 and the provisions brought into force by the *Criminal Code Amendment (Hate Crimes) Bill 2025* (Cth), which commenced on 08 February 2025 (less than one year ago).

³⁶ *Criminal Code Act 1995* (Cth) s80.2C.

³⁷ Nick Visser, "Our world has changed": Sydney Jewish bakery closes after Bondi beach terror attack', *The Guardian*, 17 December 2025.

enforced: perhaps this is for political reasons, or it could be due to the lack of police resourcing (which is not going to be helped if they also have to investigate 'hate speech').

It also gives the unfortunate impression of trying to capitalise upon a crisis to advance censorship, when what is actually needed is more accountability for the failures of the Australian government.

Getting the response to the Bondi terrorist attack right should be the focus, not distractions such as 'hate speech' laws and censorship. We owe the victims of that terror attack and wider the Jewish community a proper consideration of the real issues, such as failures in policing and intelligence, as well as the institutional antisemitism of the Australian Labor Party.

When the Australian government instead proposes censorship and only agrees to a Royal Commission after a long public campaign, this perhaps begs the question: what does the Australian Government have to hide?³⁸

g) Any other related matters.

The FSU is concerned by the exclusionary approach being adopted by this inquiry, including that it 'will only publish submissions from subject matter experts and organisations (including community organisations)'.³⁹ This evinces an unfortunate disrespect for the concerns of individual citizens living in New South Wales.

The terms of reference also seem to unquestioningly accept fundamental premises that themselves should be the subject of proper debate, further creating the unfortunate impression that the Committee intends to take a performative approach towards consultation.

Hate speech laws are a fool's errand. The focus should be upon other steps, such as improving civic education and spending more resources on effective counter extremism measures (which Australia lags behind in).⁴⁰

Issuing new censorship laws on the ostensible basis of protecting Jews will make this worse. It does no more than fuel the 'old trope that the Jews are responsible for whatever', which Alan Garber, the (Jewish) President of Harvard University, recently said is the main issue with antisemitism.⁴¹ Just as one cannot fight fascism with fascism, one cannot successfully

³⁸ This was the immediate reaction to the Bondi terror attack, where the Minister of Communications response was to say that 'the eSafety Commissioner stood up their on-call team to monitor what is being shared online': see Dan Frieth, '[Australia Expands Online Censorship and Antisemitism Controls After Bondi Beach Terror Attack](#)', *Reclaim the Net*, 16 December 2025.

³⁹ <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=3167#tab-termsofreference>

⁴⁰ Keiran Hardy and George Williams, 'Free speech and counter-terrorism in Australia' in Ian Cram (ed), *Extremism, Free Speech and Counter-Terrorism Law and Policy* (Routledge, 2019) p 181.

⁴¹ '[Live at Vilna Shul: Harvard, Leadership, and Free Speech](#)', *Shalom Hartman Institute*, 30 December 2025.



Free Speech Union
of Australia

fight antisemitism by using another form of discrimination directed towards the Jewish community.

Yours sincerely,



Dr R Kirkham

Free Speech Union of Australia