

**Submission
No 88**

MEASURES TO PROHIBIT SLOGANS THAT INCITE HATRED

Organisation: Anglican Church Diocese of Sydney

Date Received: 12 January 2026

ACDS Submission to NSW Legislative Assembly Committee on Law and Safety Inquiry on Measures to Prohibit Slogans that Incite Hatred

1. This submission is on behalf of the Anglican Church Diocese of Sydney (ACDS). The ACDS is one of twenty three dioceses that comprise the Anglican church of Australia.
2. We give consent for this submission to be published. Our contact details are as follows.

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3. The ACDS notes that this Inquiry is in response to the terrible acts of violence at Bondi on 14 December, 2025 and seeks to address the concerns of the Jewish community regarding hateful speech which incites violence. The ACDS supports our Jewish friends and the wider community and stands with them in seeking to eradicate antisemitism.
4. The ACDS acknowledges the desire of the NSW Parliament to respond appropriately to reduce the incidence of antisemitism, however hastily composed legislation drafted on the basis of limited consultation may result in unintended consequences for people of faith, including the Jewish community in its impact on free speech and the practice of religion.
5. The ACDS notes that there are currently two NSW reviews or inquiries on matters relating to similar issues of hate speech:

- a) The Sackar Review of criminal law protections against the incitement of hatred, the Report for which was due on 5 November, 2025 and which has not yet been released, and to which the ACDS has made submissions; and
 - b) The Legislative Assembly Committee on Law and Safety Inquiry on Measures to Combat Right-wing Extremism, and the proposed Crimes Summary Offences Amendment Bill 2025 which seeks to regulate the display of Nazi symbols and engaging in conduct that indicates support for Nazi ideology. Submissions for that Inquiry are due on 3 February 2026.
6. The ACDS also notes that if it is Parliament's intent to prohibit slogans which incites violence against or hatred toward a section of the community, there are already criminal provisions in the *Crimes Act 1900* (NSW) regarding incitement of violence (s93Z, incitement of racial hatred (s93ZAA) and civil provisions regarding racial vilification in s20C of the *Anti-Discrimination Act 1977* (NSW). The ACDS believes that the slogans the subject of this inquiry would be captured by existing legislation and the community would be better served through enforcement of that legislation; and through education and other measures to improve social cohesion, rather than the introduction of additional legislation which will have unwarranted restrictions on free speech.
7. It is the view of the ACDS that in the light of the above Inquiries not yet having completed their reviews, and Parliament not yet having debated the relevant legislation, it is premature to engage in an additional inquiry on the same issue of hate speech. This is especially the case in the absence of draft legislation to which we can respond in reference to the current inquiry. However, we make the following submission in principle based on the current Terms of Reference noting our concerns regarding implications for free speech and broader religious freedom issues.

Purpose of the Inquiry & Paragraph (a) Prohibiting Specific Slogans

8. The purpose of the inquiry is drawn widely, and the Committee is asked 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'*. Despite paragraph (a) of the terms of reference referring to phrases like 'globalise the intifada' and their threat to community cohesion and safety, the breadth of the purpose of the inquiry and vagueness of paragraph (b) in the Terms of Reference invites submissions by groups seeking to limit free speech especially religious teaching on orthodox Biblical views including those on sexual ethics. Proof that this is likely, can be seen from public discussion regarding a

Federal Bill prohibiting ‘aggravated hate speech’ which has already canvassed the possibility of this extending to LGBTIQ+ people.¹

9. If any legislation is drafted which is similarly broad this will have a chilling effect on free speech with the unintended consequence that this may impact Jewish teaching as well.
10. If it is the intention of the NSW Parliament to limit antisemitic hatred, then that should be the clear focus of the Inquiry and any subsequent legislation, with specified slogans or phrases being regulated which are directed towards the Jewish community or members of that faith. However it is the ACDS submission (below) that existing laws provide adequate protection for hate speech which incites violence or hatred, and it is a question of enforcing these existing laws that is at issue.
11. If the Inquiry were to recommend regulating the ‘*use of slogans that are directed at certain communities to intimidate those communities and instil fear of violence*’ (as the purpose of the Inquiry is currently drafted in its Terms of Reference, available [here](#)), this would have the potential to allow an unwarranted restriction on orthodox Christian teaching in accordance with our doctrines, tenets and beliefs especially in regard to sexual ethics. This is because the Inquiry is not limited to Jewish communities, but instead encompasses undefined ‘certain communities’. Our concern is formed in light of the following examples:
 - a) Previous submissions by Equality Australia (for example to the INSLM Review on the Definition of Terrorism) have argued that traditional Christian teaching on sexual ethics are ‘directed towards certain communities’ and instil fear of violence (including psychological harm).

In its submission to the INSLM Review, under the heading: ‘Issue 1: Defining anti-LGBTIQ+ views as an ideology’, Equality Australia submitted that the definition of extremist ideology should be drafted to include the following scenarios (emphasis added)²:

“• [where] The beliefs may prescribe the idea of an ‘ideal’ society composed solely of people who are cisgender and/or heterosexual, and “*traditional*” mother/father parented families.

¹ Coalition doesn’t ‘need to see’ sexuality protections in hate speech reforms, says Ley, [Nick Newling](https://www.smh.com.au/politics/federal/coalition-doesn-t-need-to-see-sexuality-protections-in-hate-speech-reforms-says-ley-20260107-p5nsa0.html). Sydney Morning Herald, 8 January, 2026. <https://www.smh.com.au/politics/federal/coalition-doesn-t-need-to-see-sexuality-protections-in-hate-speech-reforms-says-ley-20260107-p5nsa0.html>

² Equality Australia submission to the INSLM Review of the definition of a ‘terrorist act’ in section 100.1 of the Criminal Code Act 1995 https://www.inslm.gov.au/system/files/2025-10/equality_australia_dtreview.pdf

- [where] The beliefs may be aimed at being propagated across and influencing broader society, *causing fear* amongst LGBTIQ+ people.”

Their submission further argued that harm should be extended to psychological harm, to which ACDS has disagreed in its own submissions to the same review.

- b) Current public debate on possible Federal regulation of aggravated hate speech is already canvassing the possibility that legislation introduced following the attack at Bondi on the Jewish community, ought to be extended to LGBTIQ+ people. This indicates that this concern is a valid one. Indeed Allegra Spender has made clear that the Federal Government is consulting with her about proposed amendments to Federal hate speech laws. The amendment she proposed in February 2025 extended to LGBTIQ+ people and was opposed by religious leaders at that time for its potential impact on religious practices and expressions.³
 - c) ACDS is therefore concerned that the Inquiry’s Terms of Reference are drawn so widely that it is likely to invite submissions that argue in favour of restrictions on speech that go beyond phrases such as ‘globalise the intifada’ and ‘from the river to the sea’ and include traditional teaching by Christians and other religions on Biblical sexual ethics and other matters. This would be an inappropriate restriction on free speech and freedom of religion.
12. As noted in paragraph 4 above, the *Crimes Act 1900* (NSW) already prohibits the incitement of violence and racial hatred and there is a civil prohibition of racial vilification in s20C of the *Anti-Discrimination Act 1977* (NSW).⁴ As outlined below, equivalent provisions are also found in Commonwealth law.⁵ The ACDS submits that if Parliament is concerned that ‘globalise the intifada’ incites violence against the Jewish community, this will already be captured by s93Z of the *Crimes Act, 1900*, because it ‘threatens or incites violence towards another person or a group of persons’. The community would be better served through enforcement of that legislation and through enhanced resourcing and training of police as to when intervention is necessary. We also submit that education and other measures to improve social cohesion be employed rather than

³ Rhiannon Down and Dennis Shanahan ‘Labor’s hate speech bill a risk to religious speech, faith leaders’ *The Australian* (04 February 2025) <https://www.theaustralian.com.au/nation/politics/labors-hate-speech-bill-a-risk-to-religious-speech-faith-leaders/news-story/2ad66d31f54a68438d5e771e3aa3d369#:~:text=Faith%20leaders%20have%20warned%20Labor's,be%20captured%20by%20the%20bill>. The amendment proposed by Allegra Spender is available here: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7240

⁴ See also *Anti-Discrimination Act 1977* (NSW) ss 20B, 20C, 38R, 38S, 49ZD, 49ZE, 49ZS, 49ZT, 49ZXA, 49ZXB; *Crimes Act 1900* (NSW) ss 93Z, 93ZAA, 93ZAB.

⁵ *Racial Discrimination Act 1975* (Cth) s 18C; *Criminal Code 1995* (Cth) ss 80.2A, 80.2B, 80.2BA, 80.2BB.

the introduction of additional legislation which will have unwarranted restrictions on free speech. Any laws that are enacted on an impulse will ultimately not solve the mischief they are intended to address if those charged with their execution are not adequately resourced to enforce them.

13. Section 93Z of the *Crimes Act 1900* (NSW) provides:

93Z (1) A person who, by a public act, intentionally or recklessly threatens or incites violence towards another person or a group of persons on any of the following grounds is guilty of an offence--

(a) the race of the other person or one or more of the members of the group,

(b) that the other person has, or one or more of the members of the group have, a specific religious belief or affiliation...

14. We note in this regard that in the past, members of the Jewish community have had to take action under the Federal civil provisions of s18C of the *Racial Discrimination Act 1975* (Cth) in *Wertheim v Haddad*⁶ when police did not prosecute a preacher Mr Haddad for comments made urging violence against Jews. A summary of Mr Haddad's comments by Stewart J were provided at [158] point (3):

*There is an eternal conflict between Jews and Muslims for which Jews are responsible and which will only end towards the end of time when Muslims should and will kill Jews (imputations 3, 15 and 19)... (emphasis added).*⁷

It is difficult to fathom how such claims do not amount to, at the least, a reckless incitement of violence under s93Z of the NSW *Crimes Act*, or likely an intentional incitement to violence under that provision. It should not have been necessary the Jewish community to initiate civil proceedings to address this. It is our submission therefore that prosecution of existing provisions rather than the introduction of additional hate speech legislation is required.

Paragraph (b) Phrases that are inherently hateful

15. Paragraph (b) of the Terms of Reference is broadly drafted and may result in legislation that will inappropriately impact religious freedom. Paragraph (b) reads:

‘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*’

⁶ [2025] FCA 720 (1 July 2025)

⁷ *Ibid.*

- a) ACDS is concerned that any phrase that is criminalised ought to be clearly defined. It should not be up to the courts or a bureaucrat to determine whether a phrase is ‘so inherently hateful by their nature’ that its use is a criminal offence.
- b) However, the Terms of Reference do not specify the proposed slogans that are proposed to be the subject of a ban. This is a severe impediment to proper consultation on the reforms. We cannot assess the impact of any particular ban on traditional religious teaching if we cannot apprehend its precise target.
- c) ACDS submits that the kinds of statements that are *inherently hateful by their nature* are those which advocate (i.e., incite) violence, and therefore are already covered by s93Z of the *Crimes Act 1900* (NSW).
- d) The ACDS does not agree with the proposal that the test for whether a phrase is inherently hateful should be determined by a ‘reasonable person’ of the target group. As argued above, traditional Biblical teaching on sexual ethics might be viewed by a member of the LGBTQI+ community as ‘inherently hateful’ but this does not therefore make it appropriate to restrict free speech or the ability of a Christian church, school or parents from teaching or preaching in accordance with their doctrines, tenets and beliefs.
- e) We refer to our submission to the Sackar Review in regard to this and note, as we did in that Submission, that (emphasis added):
 - 1. ‘As highlighted by the Issues Paper,² a myriad of existing offences and sentencing considerations provide criminal law remedies against hatred towards vulnerable groups. We are of the view that the promotion of social cohesion and the protection of vulnerable groups will not be advanced by the expansion of the attributes listed at section 93ZAA. We follow the NSWLRC’s finding in its September 2024 Report Serious Racial and Religious Vilification (‘the NSWLRC Bathurst Review’) *that the protection of vulnerable groups would be better served by the enforcement of existing criminal offences rather than the creation of new ones* (we address such measures in our reply to question 6). Further, we believe that the 93ZAA offence as drafted risks infringing upon fundamental religious freedoms.’⁸

⁸ ACDS Submission to Sackar Review, paragraph 7
<https://lpab.nsw.gov.au/content/dam/dcj/dcj-website/documents/legal-and-justice/laws-and-legislation/review-of-criminal-law-protections-against-incitement-of-hate/24-anglican-church-diocese-of-sydney.pdf>

2. Consistent with our submissions to the Sackar Review and the NSWLRC Bathurst Review, an offence of inciting hatred needs strong protections for religious activity and statements of religious belief.⁹
3. Again, as noted in our submission to the Sackar Review, social cohesion is not promoted through additional legislation. Vilification provisions based on the incitement of hatred can become a ‘blasphemy law’ by another name, criminalising criticism of one religion against another. We fear that the insertion of the criminal law as an arbiter of inter-religious or sectarian disputes can only inflame tensions that fuel the erosion of social cohesion.¹⁰

Paragraph (c) Protecting communities from hatred, intimidation and violence

16. Whilst we agree that communities should be protected from hatred, intimidation and violence as noted in paragraph (c) of the Terms of Reference, these must be carefully defined in any proposed legislation. We reiterate again, that there are existing provisions which prohibit speech which incites violence.

Specifically, in determining whether a phrase is likely to incite hatred and threaten community safety, ‘violence’ ought not to extend to psychological harm but should be limited to physical violence. As noted in the ACDS submission to the INSLM Review into the definition of Terrorism:¹¹

‘If the ambiguity of what constitutes ‘intimidating’ remains while the definition of ‘harm’ is changed to include ‘mental harm’ this could affect the preaching, teaching and proselytising of orthodox religious views on contentious social issues by providing the ability for antagonistic groups to argue that these orthodox scriptural views were communicated in order to intimidate a section of the public’...

A member of the LGBTQ+ community could interpret legitimate, good-faith teaching of scripture as being done with the intention of ‘intimidating the public or a section of the public’ even though that teaching is in accordance with the doctrines, tenets and beliefs of the religion in question. This is a valid concern because judicial interpretation of ‘actual bodily harm’ in NSW has been

⁹ Ibid paragraph 16

¹⁰ Ibid paragraph 18

¹¹ ACDS Submission to the INSLM review of the definition of a ‘terrorist act’ in section 100.1 of the Criminal Code Act 1995 [https://www.inslm.gov.au/publications/anglican-church-diocese-sydney/Paragraphs 14 & 31](https://www.inslm.gov.au/publications/anglican-church-diocese-sydney/Paragraphs%2014%20&%2031), 33

extended to include psychological injury in the NSW Court of Criminal Appeal in *Shu Qiang Li v R*.¹²...

The famous concept of the 'eggshell skull' is directly relevant to this issue. Sections of the community who are mentally disturbed to the point of significant mental suffering because of their subjective experience of someone else's views or beliefs should not be the cause of triggering terrorist offences or investigatory powers. These significant offences and powers exist to proscribe activities that the community feels are sufficient to invite especial force and serious reprisal by the State, and they should not be brought to bear on the expression of legitimate religious or philosophical views that cause significant disagreement in the community, but are not communicated with the intent to cause terrorist violence.

17. The inclusion of psychological harm in the definition of 'violence' could impact the ability of people to make exclusive truth claims about their religion. Suppose a Christian states that Jesus is the only path to salvation, and that any person who does not believe in Jesus is headed for Hell. Arguably, someone hearing this might be upset and fearful as a result. It would be overreach for the law to prohibit speech of this nature.. The law must not limit claims that a religion offers the ultimate and exclusive form of truth. As Justice Morris stated in *Fletcher v Salvation Army (Fletcher)* a 'genuine religious purpose may include asserting that a particular religion is the true way, and that any way but the true way is false.'¹³ As His Honour recognised, 'criticism of a religion or religious practice is not a breach of the Act; the Act is concerned with inciting hatred of people on the basis of race or religion.'¹⁴ The following comments from Justices in the *Catch the Fire Ministries* litigation are also apposite to this concern:

'[t]he legislation aims to strike a balance between protecting freedom of speech and protecting people from vilification on the grounds of their ... religious belief. It would be inconsistent with this aim to interpret the legislation so as to make it impossible for people to proselytise for their own faith or to criticise the religious beliefs of others.'¹⁵

¹² [2005] NSWCCA 442 [45]

¹³ *Fletcher v Salvation Army* [2005] VCAT 1523 [9].

¹⁴ *Ibid* [14].

¹⁵ *Catch the Fire Ministries Inc v Islamic Council of Victoria Inc* [2006] VCA 284 (14 December 2006) [173] (Neave JA).

‘[n]o doubt the purpose of the Act is to promote religious tolerance. But the Act cannot and does not purport to mandate religious tolerance. People are free to follow the religion of their choice, even if it is averse to other codes.’¹⁶

18. In addition, we refer to our submission on the Commonwealth Crimes Legislation Amendment (Serious Vilification and Other Hates Crimes) Bill 2024, regarding the incitement of hatred and the need for an appropriate high bar to be set for criminal offences. We also refer to our concerns regarding the *UK Public Order Act 1986* (below) in this regard.

a) Inciting or promoting hatred, severe ridicule or serious contempt absent a threat or incitement to physical harm should not be a criminal offence under the Law.¹⁷ It was noted in our submission that where:

1. the test for determining breach is whether ‘a reasonable member of the targeted group would fear that the threat will be carried out’; and
2. where ‘fear’ is defined to include ‘apprehension’; and
3. there is no good faith or religious purpose defence;

this will have an unwarranted restriction on religious teaching in accordance with our doctrines, tenets and beliefs.¹⁸

b) In addition our Submission noted that where vilification provisions relating to ‘intentionally urging force or violence’ against groups (section 80.2A) and members of groups (section 80.2B) were extended to include a test that the urger be *reckless* as to whether violence or force will occur; and protected attributes or groups were to include sex, sexual orientation, gender identity, intersex status and disability; *and* there was no good faith defence to these prohibitions, this has a significant restriction on religious freedom in relation to the teaching of sexual ethics:

‘Why is this a cause for concern for religious institutions? Our concerns for religious practices and teachings are best illustrated by example. Suppose a minister of religion preaches that families should raise their children according to Scriptural teaching on gender identity. It is argued by some (which we contest) that raising a child according to these

¹⁶ Ibid [34] (Nettle JA).

¹⁷ ACDS Submission to the Legal and Constitutional Affairs Legislation Committee inquiry into the Criminal Code Amendment (Hate Crimes) Bill 2024 paragraph 33
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/HateCrimes47/Submissions

¹⁸ Ibid paragraph 15

Scriptural teachings is harmful for that child. On this view, the minister is urging 'violence or force' against such children by encouraging the parents to act in this way. The concern is escalated because the standard has dropped from intending harm to recklessness. However, even if the standard is kept in its current form, such a minister is still at risk of a finding that they had urged the application of force or violence, given that he or she had intended that "harm" (defined expansively) would occur...

We are deeply concerned that the breadth of this offence and the absence of a defence will have the unintended consequence of criminalising religious speech that expresses traditional understandings of human sexuality and criminalising criticism of, and debate between, different religions.¹⁹

19. We also refer to our previous submission to the Sackar Review on this point which noted the concern that incitement of hatred not be defined by a subjective definition of hate:

‘34. There is a lack of clarity around what might constitute the incitement of hatred under section 93ZAA because this is based on the emotional response of a reasonable person of the target group. This imports subjective definitions of hate, making the criminal laws something which can be readily weaponised and misused. This would be the only Australian criminal offence for inciting hatred without any accompanying violence, apart from WA and the Victorian provisions which are yet to commence.¹⁰

35. The offence requires a public act that could encourage or spur others to harbour the emotion of hatred, and was intended to do so. It also requires that this public act would cause a reasonable person of the target group to fear harassment, intimidation or violence, or fear for their personal safety. That is, the focus is not on whether the public act itself was perceived as ‘harassment, intimidation or violence’, but whether that person would fear that they would be subject to ‘harassment, intimidation or violence’ by third parties as a result of the public act.

36. The breadth of ‘harassment, intimidation or violence’ needs to be clarified, to ensure that this does not include subjective psychological states or feelings – e.g., ‘I felt intimidated’ or ‘I felt harassed’.

¹⁹ Ibid paragraphs 10 and 12

Paragraph (d) Best Practice including in the United Kingdom

20. Paragraph (d) of the Terms of Reference seeks Australian and international examples of best practice to combat the use of such slogans, including measures and approaches taken in the United Kingdom:
- a) Police in the United Kingdom have recently begun arresting those using the slogan ‘globalise the intifada’ on the grounds that it is threatening or abusive and racially directed thereby in breach of Section 6(4) of the *Public Order Act 1986* and Section 31(1)(c) of the *Crime and Disorder Act 1998*. This change in enforcement practice has occurred since the Bondi attack on 14 December 2025.
 - b) Whilst we agree that the use of the phrase ‘globalise the intifada’ is repugnant, we submit that any new hate speech legislation should not adopt the broader provisions of the UK ‘hate speech’ laws which have given rise to prosecutions where traditional truth claims concerning marriage or the exclusivity of religious beliefs were made.²⁰ The same has occurred in relation to the Scotland's *Hate Crime and Public Order Act (2024)*.
 - c) The UK legislation defines the offense as a person either using abusive or threatening words or behaviour or displaying any writing, sign or other visible representation which is abusive or threatening, within hearing or sight of person likely to cause harassment, alarm or distress. The suspect must either intend or be aware conduct is threatening, abusive or disorderly. The racial ‘uplift’ provisions apply if the offender either intended to ‘stir up hatred against a group of persons based on the group being defined by reference to race, colour, nationality, or ethnic or national origins’ or ‘a reasonable person would consider the behaviour or the communication of the material to be likely to result in hatred being stirred up against such a group.’²¹
 - d) Dave McConnell, a street preacher from Wakefield (UK), was arrested and convicted under section 6(4) of the *Public Order Act* over ‘misgendering’ a member of the public that he was preaching to, on the grounds that he caused harassment, alarm or distress. Dave was made to pay costs of £620, forced to do 80 hours of community service and reported to Prevent, the government’s counter-terrorism

²⁰ See, for eg, <https://christianconcern.com/news/another-street-preacher-victory-after-police-arrest-for-hate-speech/>; <https://christianconcern.com/comment/as-long-as-i-breathe-i-will-tell-the-world-the-glorious-gospel/>; <https://christianconcern.com/ccpressreleases/police-drop-case-against-tory-councillor-arrested-for-hate-crime-for-supporting-christian-free-speech/>; <https://www.dailymail.co.uk/news/article-7293257/Police-arrest-preacher-64-grab-Bible-promoting-Christianity.html>

²¹ https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/disclosure_2024/may_2024/two-documents-mo6-relation-gaza-protest-october2023.pdf

watchdog, all despite there being no legal obligation in the UK to use anyone's preferred pronouns. His conviction was later overturned.

'In the witness box, McConnell said: "In my view, I wasn't misgendering and I was gendering correctly." He told the court: "I think people could have been offended but that's not the intention. My intention was to simply stay faithful to my beliefs, stay faithful to God and to stay faithful to my conscience." He said: "I wasn't being transphobic; I was expressing what I believe."²²

- e) Mr McConnell's case is not an isolated one. Many Christians have been investigated for hate crimes for expressing orthodox Biblical views of sexual ethics, or anthropology.²³ The scope of the terms 'threaten', 'abusive', 'harassment', 'alarm' and 'distress' accompanied with the vague tests of 'reasonableness' and 'proportionality' have created a plethora of litigation in the UK (including the recent charges laid against Sam Kerr). This litigation has arisen under the offences that don't require incitement to violence or require threats of violence, but regulate threatening or abusive words that cause harassment, alarm or distress. It has seen police arrest and charge members of the public for statements confirming traditional beliefs of marriage, gender and sexuality and in respect of Biblical claims to exclusive truth. We do not consider that this law provides an acceptable model for reform.
- f) In addition to the *Public Order Act 1986*, UK police are reported to be making 30 arrests per day (about 12,000 arrests per year) for online speech offences,²⁴ under section 127 of the *Communications Act 2003* and section 1 of the *Malicious Communications Act 1988*. many of these would appear to fall far short of the standard one would expect for criminal sanction. In one case 6 police officers attended to arrest a couple over a WhatsApp post and email complaints regarding the recruitment process for a replacement head teacher at their child's school. The couple were held in a jail cell for 8 hours before being released.²⁵ The matter is now under review.

²² <https://www.independent.co.uk/news/uk/crime/preacher-harassment-trans-woman-conviction-quashed-b2297563.html>

²³ <https://www.churchtimes.co.uk/articles/2020/4-december/news/uk/anti-living-in-love-and-faith-video-investigated-as-a-hate-crime>

²⁴ Charlie Parker, Yennah Smart & George Willoughby, The Times, April 04 2025, [Police make 30 arrests a day for offensive online messages](#); cited 8 Jan 2026

²⁵ Ibid. Police review couple's arrest in school WhatsApp row. Louise Parry, BBC News 31 March 2025. <https://www.bbc.com/news/articles/c9dj1zlvxglo>; 8 January 2026

21. The ACDS submits that the UK hate speech laws ought not to be used as a model for legislation in Australia. They are too broad, too vague and have led to inappropriate regulation of speech incurring criminal sanctions. Moreover, they would appear to have utilised police resources out of all proportion to the severity of the alleged offences.

The Times report noted above quoted Jake Hurfurt, the head of research and investigations at Big Brother Watch, a civil liberties group, who said:

‘the increase of arrests for communications offences is “seriously concerning”. He said: “Police look to be wasting countless hours on arresting people for posting things online that, while offensive, are not illegal. Heavy-handed use of vague communications offences is a threat to everyone’s freedom to express themselves online. “Police must remember that free speech is a right, and only intervene when absolutely necessary, because needless arrests for social media posts have a chilling effect that will cause the decline of our democratic culture.’²⁶

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

22. Any proposed law will need to survive a challenge to its validity relying upon the implied freedom of political communication. The Australian Law Reform Commission has published a helpful summary on Freedom of Speech particularly its protection in relation to political expression.²⁷ A similar helpful summary of the Constitutional implications for free speech are also found in the Issues Paper to the Sackar Review.²⁸

As former Chief Justice Anthony Mason has commented, protection of free speech is a necessary underpinning of our democratic political system:

‘Freedom of communication in relation to public affairs and political discussion cannot be confined to communications between elected representatives and candidates for election on the one hand and the electorate on the other. The efficacy of representative government depends also upon free communication on such matters between all persons, groups and other bodies in the community.’²⁹

²⁶ Parker, Smart & Willoughby, *The Times Op Cit.*

²⁷ https://www.alrc.gov.au/wp-content/uploads/2019/08/fr_129ch_4_freedom_of_speech.pdf

²⁸ <https://www.nsw.gov.au/sites/default/files/2025-06/issues-paper-for-independent-review-of-criminal-law-protections-against-the-incitement-of-hatred.pdf>

²⁹ *Australian Capital Television v Commonwealth* (1992) 177 CLR 106, 139 (Mason CJ). See also *Nationwide News v Wills* (1992) 177 CLR 1, 74 (Brennan J)

As recently demonstrated by the judgement of Mitchelmore J in *Lees v State of New South Wales*,³⁰ the implied freedom confers wide discretion on judges to invalidate the will of the elected legislature. In light of that judgement, there are real concerns that a blanket ban on certain phrases will not satisfy the third limb of the test set out by the High Court in *McCloy v State of New South Wales* ('*McCloy*').³¹ Of particular relevance is the fact that the legislation does not propose any exception for 'academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter' (to cite the current exceptions for racial vilification in the *Anti-Discrimination Act 1977* (NSW)). As a result, for example, an academic would be prevented from researching the factors that lead to radicalisation, in so far as they relate to the banned slogan. A theatre troupe that offers a performance critical of the banned slogan would be acting unlawfully, as would a speaker at a public rally who articulates the phrase in condemning its use.

This could call into question the legitimacy of the law, under the second of the tests employed in *McCloy*, being whether the purpose of the law is *legitimate*, in the sense that it is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government. If the law bans criticism of a slogan, can it have as its purpose the banning of the slogan? This will be relevant for the determination of the purpose of the law. As Gagelar J stated in *Brown v State of Tasmania*,³² "[w]here determination of the purpose of a law is controversial, resolution of that controversy can be assisted by considering how closely the legal operation of the law conforms to the asserted purpose". His Honour stated that in an "extreme case", the disconformity "might be so great as to admit of the conclusion that the law cannot be explained as having the asserted purpose".³³ This could well be the case where the law that bans a certain slogan itself frustrates criticism or analysis of that slogan.

Further, the absence of such limitations on the ban could substantiate a finding that the law had not adopted the least restrictive means under the third limb of the *McCloy* test, under which a law must be held to be *reasonably appropriate and adapted to advance the legitimate object* in a manner that is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government. As Mitchelmore J recently concluded in respect of the ban on protests in or near places of worship on account of its overreach,³⁴ a court could well hold that a ban of a slogan that limits academic and other forms of criticism of that slogan is not necessary to achieve

³⁰ [2025] NSWSC 1209 ('*Lees*').

³¹ (2015) 257 CLR 178.

³² (2017) 261 CLR 328.

³³ *Ibid* [215].

³⁴ *Lees* (n 29) [150] ff.

the stated purpose. These considerations accentuate the need to avoid rushed measures that are likely to fail in the face of a constitutional challenge, resulting in the law's invalidity.

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

23. As noted above, there are already two NSW inquiries regarding hate speech and vilification currently in process:
 - a) The Sackar Review of criminal law protections against the incitement of hatred, the Report for which was due on 5 November, 2025 and which has not yet been released; and
 - b) The Legislative Assembly Committee on Law and Safety Inquiry on Measures to Combat Right-wing Extremism, and the proposed Crimes Summary Offences Amendment Bill 2025 which seeks to regulate the display of Nazi symbols and engaging in conduct that indicates support for Nazi ideology. Submissions for that Inquiry are due on 3 February 2026.
24. It is the ACDS view that before additional hate speech provisions are enacted the results of those Reviews and Inquiry should be received and considered.
25. It is our view that social cohesion is not best served by the passing of additional laws, but rather the enforcement of criminal offences already in existence. As noted above, this is affirmed by the recent finding of the NSWLRC Bathurst Review *that the protection of vulnerable groups would be better served by the enforcement of existing criminal offences rather than the creation of new ones.*

We reiterate our submission to the Sackar Review that:

‘There is also a serious concern that legislation is not going to address the underlying issue. As noted by the NSWLRC Bathurst Review, the criminal law is not an effective, nor desirable, tool to achieve social policy objectives. Instead, the focus should be on education, awareness and organisations working collaboratively and with their respective communities.’³⁵

³⁵ Op cit paragraph 19

26. There are already numerous laws at both a Federal and State level covering hate speech and vilification. A summary of such laws is included in the Sackar Review Issues Paper on pages 4-7.³⁶

Commonwealth Provisions

- a) *Racial Discrimination Act 1975* (Cth), s18C:

covers public acts which are done, in whole or in part, because of the race, colour, or national or ethnic origin of a person or group; and are reasonably likely in all the circumstances to offend, insult, humiliate or intimidate that person or group.

- b) *Criminal Code Act 1995* (Cth):

Sections 80.2A, 80.2B, 80.2BA, 80.2BB and 80.2BE make it a criminal offence to advocate or threaten violence against groups, members of groups or their close associates. This includes whether a person intentionally advocates the use of force or violence against a group, a member of a group or their close associate, or they are reckless as to whether the force or violence would occur against a targeted person or group distinguished by race, religion, sex, sexual orientation, gender identity, intersex status, disability, nationality, national or ethnic origin or political opinion, (or was a close associate of a person distinguished by any of those attributes). A person advocates force or violence if they counsel, promote, encourage or urge force or violence.

NSW Provisions

- c) *Anti-Discrimination Act 1977*:

protects against racial vilification (ss20B & 20C), transgender vilification (s38R, 38S), religious vilification (s49ZD, 49ZE), homosexual vilification (49ZS, 49ZT), HIV/AIDS vilification (s49ZXA, 49ZXB).

- d) *Crimes Act 1900* s93Z, s93ZA, s93ZAA, s93ZB:

These provisions create offences for

- publicly threatening or inciting violence on grounds of race, religion, sexual orientation, gender identity, intersex or HIV/AIDS status (s93Z);
- publicly inciting hatred on ground of race (s93ZAA);
- displaying Nazi symbols (s93ZA); and

³⁶ <https://www.nsw.gov.au/sites/default/files/2025-06/issues-paper-for-independent-review-of-criminal-law-protections-against-the-incitement-of-hatred.pdf>

- displaying prohibited terrorist organisation symbols (s93ZAB).
- e) Crimes Summary Offences Amendment Bill 2025:
- extends the provisions of the current section 93ZA by the creation of a new offence of conduct by a public act that indicates support for Nazi ideology by involving imagery or characteristics that a reasonable person would consider to be associated with Nazi ideology. There are two offences, either on or near a Jewish place subsection (3) or other than near a Jewish place subsection (4).

Bishop Michael Stead

12 January 2026