

**Submission
No 92**

MEASURES TO PROHIBIT SLOGANS THAT INCITE HATRED

Organisation: Freedom for Faith

Date Received: 12 January 2026



12 January 2026

NSW Legislative Assembly Committee on Law and Safety

Submission on Measures to Prohibit Slogans that Incite Hatred

Who are we?

1. This submission is written by Freedom for Faith, a Christian legal think tank that exists to see religious freedom for all faiths protected and promoted in Australia and beyond. Freedom for Faith is led by people drawn from a range of denominational churches including the Anglican Church Diocese of Sydney, The Catholic Church, the Australian Christian Churches, Australian Baptist Churches, the Presbyterian Church of Australia, and the Seventh-day Adventist Church in Australia. It has strong links with, and works co-operatively with, a range of other faith groups in Australia.
2. We welcome the opportunity to make this submission and we give consent for this submission to be published. Our contact details are as follows.

Freedom for Faith

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3. This submission responds to an invitation to make a submission to the inquiry of the NSW Legislative Assembly Committee on Law and Safety into measures to prohibit slogans that are directed at certain communities to incite hatred and threaten community safety. A number of experts on the subject matter of freedom of speech and religious freedom sit on the board of Freedom for Faith. Given the short timeline within which submissions are due, the following comments do not address each and every part of the Inquiry terms of reference, but it is hoped that they may prove useful to the Committee members in their consideration.
4. The major issue being considered by the Committee may be stated as being whether the NSW Parliament ought to make unlawful in some way “the use of slogans that are directed at certain communities to intimidate those communities and instil fear of violence.” This submission will not rehearse the context in any detail, other than to note that suggestions as to change of the law in this way have been raised in the aftermath of the terrible events of December 14, 2025 when 15 people involved in celebration of a Jewish Hanukkah festival at Bondi Beach were slaughtered by two perpetrators who seem to have been motivated by links with Islamic terrorist organisation ISIS.
5. In particular, many have suggested that at a number of public protests following the Hamas murders and assaults committed against Israeli citizens on October 7, 2023, the crowd were encouraged to chant the slogan “globalise the intifada”. Whatever the formal Arabic translation of the word “intifada”, it seems clear that many using it would see it as a reference to previous violent clashes between Palestinian and Israeli citizens, in the second phase of which:

“Palestinians ambushed soldiers and settlers in the West Bank, making roads a risky venture, especially at night, and terrorised Israel by sending suicide bombers across its border to attack bus stops, cafes, hotels and anywhere else that was crowded.”¹
6. In short, one meaning of the slogan is that violent attacks on Jewish people ought to be rolled out across the world. In the context that is easily seen as a call for violence against Jews.
7. Is there a need to enact any further laws to ensure the use of this specific phrase, or other such phrases, would be unlawful? To answer that question, we need to consider the current NSW laws on incitement to violence.
8. Before doing so, we should make some things clear. While the very purpose of Freedom for Faith is to support and protect religious freedom in Australia, we are of the view tht the right to religious freedom **cannot** include the right to advocate for physical violence against other members of the community, nor of course a right to actually commit such violence, or issue direct threats of violence. The word “violence” should not, however, be extended in metaphorical directions to refer to “criticising someone’s moral choices” or “upsetting someone”. 'These matters are appropriately outside the scope of legislation.

¹ “What does ‘globalise the intifada’ mean, and why does NSW want to ban the chant?” quoted in *The Guardian*, 23 Dec 2025.

But no community can tolerate physical violence or threats against other members of the community justified by religious beliefs.

9. There are two separate ways that incitement to violence based on race or religion may be dealt with under the current law- under criminal law and under civil law. As for the criminal law, s 93Z of the Crimes Act 1900 (NSW) relevantly 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...

10. There is also a specific prohibition against the public display of Nazi symbols without reasonable excuse in s 93ZA (with a higher penalty for display near Jewish schools and centres.) Section 93ZB also prohibits public display of a “prohibited terrorist organisation symbol” (defined by reference to s 80.2E(3) of the *Commonwealth Criminal Code* as, in general, being a symbol used by terrorist organisations.) There is also an offence of publicly inciting hatred on racial grounds under s 93ZAA, which includes a requirement that the 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.” (To be clear, being Jewish is regarded by the law as both a “racial” identity and also a “religious” one.)
11. Would leading a crowd in a chant of “globalise the intifada” fall foul of s 93Z as “intentionally or recklessly threaten[ing] or incit[ing] violence towards another person or a group of persons...” on the grounds of race or religion? Or be seen as inciting hatred against Jewish persons under s 93ZAA? The answer will depend very much, it seems, on the context. If carried out in a context where clear hateful things were said about Jewish people in general, it may well be seen as an incitement to violence. But it has to be said that at the moment this may not be clear. The fact that there can be some debate about what members of a crowd may understand by the phrase will add to the complications.
12. In terms of **civil actions**, it is possible that someone leading a chant of “globalise the intifada” may already be in breach of existing “racial vilification” laws. In NSW we have s 20C of the *Anti-Discrimination Act 1977* (NSW). Relevant provisions are:

20C Racial Vilification Unlawful

(1) It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group.

(2) Nothing in this section renders unlawful-- ...

(c) a public act, done reasonably and in good faith, 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.

13. If indeed the phrase calls for violence against Jewish people, then it would arguably either incite hatred or serious contempt on the basis of race. None of the exempted purposes in s 20C(2) would seem to apply. Even more clearly the provisions of s 18C of the *Racial Discrimination Act 1975* (Cth) would be breached. This makes it unlawful on the basis of race to “offend, insult, humiliate or intimidate another person or a group of people”.
14. A successful action for breach of this provision was run in the Federal Court in *Wertheim v Haddad* [2025] FCA 720 (1 July 2025), where Muslim preacher Mr Haddad, in a series of talks broadcast over the internet entitled *The Jews of Al Madina*, linked comments from the Qur’an to current Jewish folk, and made a number of comments which were not only derogatory and offensive, but urged violence against Jews. Stewart J provided the following summary of the comments 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)²

15. So there would be a possible civil action available, but again the issue will be: what does the “slogan” mean to those using it?
16. There is some doubt, then, as to whether the current law would prohibit the use of the slogan “globalise the intifada”, or other slogans which could incite hatred and threaten community safety but may not be direct or clear. Should the law be changed to make such slogans unlawful?
17. In our view this is a very difficult question. On the one hand we as an organisation strongly support religious freedom and free speech, clearly recognised human rights supported by international conventions to which Australia has subscribed.³ On the other hand, incitement to violence clearly crosses a line which cannot be protected by these general rights. The High Court in *Adelaide Company of Jehovah’s Witnesses Inc v Commonwealth* (1943) 67 CLR 116, noted that the limits of religious freedom would be reached where it was necessary to protect the safety of the country from war. A similar analysis would apply to statement urging physical violence on others, even if religiously motivated.

² For more detailed comment on this case, and other issues around “hate speech”, see a blog post by FFF Board Member Associate Professor Neil Foster, and linked paper, at <https://lawandreligionaustralia.blog/2025/07/16/vilification-laws-and-religious-free-speech/> (July 16, 2025.) The *Haddad* case is discussed at pp 5, 14-21 of the linked paper.

³ See articles 18 (freedom of religion) and 19 (freedom of speech) of the United Nations *Declaration of Human Rights*, and the *International Covenant on Civil and Political Rights* (ICCPR) (same article numbers in both documents).

18. On balance our view is that it would **not** be wise to select specific phrases to be banned. For one thing, at least for some involved in some of these demonstrations, they may have genuinely not understood that the history and context of “globalise the intifada” was in fact a call for widespread violence against Jews. It also would seem to be a law that would be easy to avoid by changing the wording slightly and creating litigation problems. It seems that the best approach would be to continue to support current laws that ban incitement of violence, when it will be necessary to present evidence as to likely meaning, in any case where what was said is not “blatant”. It may be appropriate, however, for governments to provide clearer guidance to police as to the approach to enforcement of the laws and examples of when police intervention may be needed.
19. One option that might be suggested would be, rather than setting out a banned slogan in an Act of Parliament, to allow regulations to prescribe such slogans. This would allow for quick changes to the law. But we would urge **against** such an expedient. It would be far too easy for regulations not debated in Parliament to start to criminalise, not calls for physical violence, but statements that are seen to “upset” or “offend” or “insult”. And placing the decisions about such phrases purely in the hands of public servants or the government of the day will create many inroads into free speech and potentially, religious freedom.
20. We would encourage the Committee to not extend the scope of “vilification” laws in NSW in ways that further impair free speech and religious freedom. We support laws that make unlawful incitement to violence against persons because those people have (or do not have) a particular religion or race. But on balance we do not support making specific “slogans” unlawful.
21. The terms of reference refer to the possible effect of Constitution and the implied freedom of political communication. It seems clear that s 116 of the Constitution, which prevents Commonwealth legislation unduly impairing free exercise of religion, would not have any effect on a law of NSW. However, it is true that the implied freedom does impact State laws.⁴ It is possible that a law banning use of specific slogans that are “directed at certain communities to intimidate those communities and instil fear of violence” would be found to impair the freedom of political communication if those slogans have become part of political discourse around a topic.
22. To adopt the approach taken in the *Lees* case⁵ (supported of course by recent High Court authority) we would need to consider the following issues:
 - whether the purpose of the law is legitimate in the sense of being compatible with the maintenance of the constitutionally prescribed system of representative and responsible government- here a purpose of suppressing violence meets this criterion;

⁴ As seen, for example, in the related context of a law forbidding protests near places of public worship, held invalid in *Lees v State of New South Wales* [2025] NSWSC 1209 (16 October 2025).

⁵ See above n 4.

- whether the law is reasonably appropriate and adapted to advance that purpose in a manner that is compatible with maintenance of the constitutionally prescribed system of government- taking into account a “structured proportionality” approach. Here one could argue that targeting specific phrases goes beyond what is necessary to achieve the goals of Parliament, when a general law against comments that incite violence would be sufficient.
23. On this very brief analysis, then, it is arguable that a law of NSW outlawing specific phrases that have become part of a political discourse, may indeed unduly impair the implied freedom of political communication.
 24. Freedom for Faith does believe that there are positive changes that can be made to the current regime that will restrict the use of violence-inciting slogans while keeping the focus in the prohibition on conduct which threatens or incites violence based on race or religion, without unduly limiting key freedoms.
 25. However, the timing and the understandably short notice of this request for submissions has limited our ability to fully assess alternative approaches. We would value the opportunity for continued engagement with the Committee to assist in finding an appropriate balance.
 26. We thank the Committee for the opportunity to submit and look forward to further conversations.