

**Submission
No 98**

MEASURES TO PROHIBIT SLOGANS THAT INCITE HATRED

Organisation: LRSJ Protest Hub

Date Received: 12 January 2026

12 January 2026

Dear Officer,

RE: Measures to prohibit slogans that incite hatred

The Australian National University Law School Protest Hub (LRSJ Protest Hub) welcomes the opportunity to provide this submission to the Committee on Law and Safety's inquiry into measures to prohibit slogans that incite hatred.

LRSJ Protest Hub is a research, community legal education and legal observer initiative based within the Law Reform and Social Justice (LRSJ) program at the Australian National University Law School. LRSJ Protest Hub was formed in response to the lack of a legal observer network in the ACT region and the rise of restrictive protest legislation across Australian jurisdictions, including in New South Wales.

We write this submission as law students and legal observers who have not only researched but also observed directly the relationship between community protest action and policing. In our submission, responding to the terms of reference provided, we express our deep concern with the implications of the proposed changes on the constitutionally implied freedom of political communication, and the bases on which the changes are ostensibly founded. LRSJ Protest Hub does not support the designation of particular phrases, such as "globalise the intifada", as a threat to "social harmony and cohesion". LRSJ Protest Hub rejects the claim that the prohibition of these protest slogans are an appropriate or effective measure to "protect communities from hatred, intimidation and violence".

We also wish to raise our concern over the impact of these proposed changes already evident in policing behaviour. We refer specifically to the arrest of a woman who attended a Sydney rally on Sunday, January 4th who was allegedly arrested on the basis of her displaying a protest slogan on her jacket.¹ The woman was released without charge. We take the view that this demonstrates that merely displaying such a slogan was not "so inherently hateful" that police had reasonable belief that it would lead to violence. Rather, we argue that this instance demonstrates how the criminalisation of such slogans is more likely to empower authorities to engage in unnecessary and harmful overpolicing of community actions.

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<https://www.theguardian.com/australia-news/2026/jan/06/protester-detained-in-sydney-for-wearing-globalise-the-intifada-jacket-says-she-should-never-have-been-arrested-ntwnfb>

Summary of Recommendations:

1. The proposed changes impose a significant burden on the IFPC.
2. 'Social harmony and cohesion' is an ill-defined aim which does not constitute a legitimate purpose.
3. There is no rational connection between the proposed changes and the purposes they seek to fulfil: protecting communities from hatred, intimidation and violence and maintaining social harmony and cohesion.
4. The proposed changes are not reasonably appropriate and adapted to these purposes.
5. There are less burdensome means to achieve the stated purpose.
6. On balance, the proposed changes are excessively restrictive and therefore not justified.



LRSJ Protest Hub.

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1. Introduction

The freedom to communicate on political matters lies at the heart of Australia's democracy. Not only does it empower citizens to make informed choices during state and federal elections, but the principle is widely considered a constitutive element of democracy itself.² From a legal perspective, the right to political expression is partially protected by the implied freedom of political communication (IFPC). In *Nationwide News Ltd v Wills*, the High Court found that the implied freedom is a necessary incident of the doctrine of representative government, guaranteed by the text and structure of our Constitution.³ Whilst limitations on this freedom are permissible, they must be reasonably appropriate and adapted to a legitimate purpose.⁴

By unduly infringing upon the freedom of political expression, LRSJ Protest Hub is concerned that the proposed measures to prohibit protest slogans in NSW violate the IFPC. Beyond the practical issues that a High Court challenge would pose for the government, undermining the principles central to Australia's democracy sets a dangerous precedent for our rights as citizens. Following the structured proportionality test introduced in *McCloy v NSW*,⁵ this submission posits that the proposed measure violate the IFPC as it:

(1) burdens the implied freedom in its terms, operation or effect;

² <https://plato.stanford.edu/entries/freedom-speech/#DemoTheo>.

³ *Nationwide News Pty Ltd v Wills* [1992] HCA 46 ('*Nationwide News*').

⁴ *Ibid*; *Lange v Australian Broadcasting Corporation* [1997] HCA 25 ('*Lange*').

⁵ *McCloy v New South Wales* [2015] HCA 35 ('*McCloy*').

(2) does not serve a legitimate purpose; and

(3) is not reasonably proportionate and adapted to that purpose.⁶

2. Burden imposed by the proposed changes on the IFPC

A law effectively burdens the IFPC if it has the effect of limiting or prohibiting the production or dissemination of communication of a political nature.⁷ The High Court has found on numerous occasions that limiting the right to protest burdens the IFPC.⁸

In relation to the measures proposed by the NSW government, banning slogans such as “globalise the intifada” unnecessarily prevents people from making political statements. This clearly constitutes communication, as the concept has been broadly defined to include even non-verbal forms of protest.⁹ Since the phrase “globalise the intifada” is closely connected to government policies on foreign affairs, and protests invariably relate to political matters, it is clear that the proposed measure would burden the implied freedom of political communication in its terms, operation or effect.

3. Do the proposed measures have a legitimate purpose?

In IFPC jurisprudence, the purpose of a law is legitimate if it is compatible with the constitutionally prescribed system of representative government.¹⁰ This will arise where a law promotes effective political communication, enables individuals to live in peace and dignity, or otherwise furthers the public interest.¹¹ From the terms of reference, it appears the measures proposed by the NSW government are motivated by the purposes of promoting “social harmony and cohesion” and protecting “communities from hatred, intimidation and violence”.¹² LRSJ Protest Hub is concerned that the former does not constitute a legitimate purpose.

3.1. The stated purpose of ‘social harmony and cohesion’

Firstly, we consider that ‘social harmony and cohesion’, which we will hereby refer to as social cohesion, is not a legitimate purpose because its content is ill-defined. Despite the significant attention garnered by social cohesion in the past twenty years, scholars have widely criticised its lack of conceptual clarity.¹³ Political figures have used social cohesion as a “catch-word” for a

⁶ McCloy (n 5).

⁷ *Monis v The Queen* [2013] HCA 4 (‘*Monis*’).

⁸ See e.g. *Brown v Tasmania* [2017] HCA 43 (‘*Brown*’).

⁹ *Levy v Victoria* (1997) 189 CLR 579.

¹⁰ *McCloy* (n 5).

¹¹ *Nationwide News* (n 3).

¹² <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=3167#tab-terms-ofreference>.

¹³ David Schiefer and Jolanda van der Noll, ‘The Essentials of Social Cohesion: A Literature Review’ (2017) 132(2) *Social Indicators Research* 579.

wide array of societal challenges,¹⁴ often in an inflammatory manner. This is epitomised by the contradictory use of the concept as both a justification for and against increased immigration and cultural diversity. As a result, Barnard has described social cohesion as a “quasi-concept” which both indicates and artificially constructs consensus.¹⁵ Consequently, using ‘social cohesion’ as a justification for banning protest slogans is not only misleading, but could lead to disproportionate responses as the scope of this objective is poorly defined.

Even if the content of social cohesion is sufficiently clear, the dominant understanding of the concept does not constitute a legitimate purpose. The dominant understanding of social cohesion privileges the minimisation of political debate and the emotional discomfort it legitimately creates over structural changes to unequal power structures. In Australia, Indigenous people, people of colour and other marginalised groups continue to face barriers to equal treatment and respect. Progressive reforms have almost always been motivated by disruptive protests, from the suffragettes to the Freedom Rides and marriage equality demonstrations. As argued by Helly (2003), this undermines important democratic precepts and entrenches the injustices faced by marginalised groups.¹⁶ Accordingly, it is not compatible with Australia’s system of representative government as required in *McCloy*.¹⁷

3.2. The stated purpose of ‘protecting communities from hatred, intimidation and violence’

Protecting communities from hatred and violence are important public policy objectives which must be addressed by lawmaking that effectively and meaningfully balances freedom from hatred and violence against the imperative to protect free speech and association rights. Such a purpose is compatible with the system of representative government provided for by the Constitution.¹⁸

3.3. Other Possible Purposes

The proposed measures may be understood as being driven by other purposes beyond the terms of reference. In particular, a court may find that the proposed measures are motivated by the object of preventing criticism of government policies surrounding Israel’s actions in Palestine, or the insufficiency of measures to combat antisemitism. These purposes would almost certainly be deemed illegitimate. In *Unions NSW v New South Wales*, the court

¹⁴ Joseph Chan, Ho-Pong To and Elaine Chan, ‘Reconsidering Social Cohesion: Developing a Definition and Analytical Framework for Empirical Research’ (2006) 75(2) *Social Indicators Research* 273.

¹⁵ Catherine Barnard, Simon Deakin and Richard Hobbs, ‘Capabilities and Rights: An Emerging Agenda for Social Policy?’ (2001) 32(5) *Industrial Relations Journal* 464.

¹⁶ Denise Helly, ‘Social Cohesion and Cultural Plurality: Social Cohesion in Canada’ (2003) 28(1) *Canadian Journal of Sociology* 19.

¹⁷ *McCloy* (n 5).

¹⁸ *Ibid*; see also *Coleman v Power* [2004] HCA 39, Gleeson CJ at [31]-[33] on the legitimate purpose of ‘the preservation of order in public places in the interests of the amenity and security of citizens, and so that they may exercise, without undue disturbance, the rights and freedoms involved in the use and enjoyment of such places’.

suggested that the objective of keeping the government power is not a valid purpose under the IFPC.

4. Are the laws reasonably appropriate and adapted to their stated purpose?

Even if the proposed measure to ban protest slogans was found to serve a legitimate purpose, LRSJ Protest Hub believes that it would not be reasonably appropriate and adapted to that purpose. Following the structured proportionality test affirmed in *McCloy*, a court would consider whether the measure is suitable, necessary and adequate in its balance.¹⁹

4.1. There is no rational connection between the proposed changes and the purpose they seek to fulfil

4.1.1. No rational connection to combatting hate

LRSJ Protest Hub is concerned that the present inquiry countenances dubious logical linkages between the use of protest slogans and growing community violence. Of particular note is the Premier's express characterisation of the phrase 'globalise the intifada' as hate speech 'encouraging of violence', and linkage of the use of the phrase to the antisemitic terrorist attack at Bondi Beach.²⁰

The logic of banning or otherwise preventing the use of certain phrases to enhance community safety rests on the suggestion that such phrases are 'so inherently hateful by their nature that they lead to incitement of hatred and threaten community safety', as noted in this inquiry's terms of reference. This submission rejects the suggestion that the phrase 'globalise the intifada', or other phrases commonly used by pro-Palestine protestors, are 'inherently hateful by their nature'. Neither the historical nor contemporary use of such phrases support that characterisation.

'Intifada' is an Arabic term derived from the verb 'nafada', translating to 'shaking off'. The term is, today, commonly associated with Palestinian resistance movements in historical Palestine, including the First and Second Intifada, as well as with pro-Palestine activism across the world to refer to international efforts towards rights, equality and democracy for Palestinians. However, intifada is also a word spoken in common Arabic parlance to refer to a range of movements, rebellions and uprisings across contexts. These include:

- the 1952 uprising in Iraq;
- the 1977 bread riots in Egypt;

¹⁹ *McCloy* (n 5).

²⁰

<https://www.nsw.gov.au/ministerial-releases/nsw-government-to-crack-down-further-on-hateful-symbols-and-slogans>

- the Warsaw Ghetto Uprising, by the US Holocaust Memorial Museum;
- the 2005 ‘Cedar Revolution’ or ‘Independence Intifada’ in Lebanon;
- the Sahrawi Intifadas against Moroccan occupation in Western Sahara; and
- a range of uprisings during the Arab Spring.

Intifada is a word which is given meaning by the context in which it is used, including who speaks and hears it, what event it refers to, and the language which surrounds it. For many Jewish Australians, the phrase may understandably evoke fear or discomfort, due to its associations with the Intifadas (1987–1993 and 2000–2005) during which acts of violence were committed against Israeli civilians and military in Israel and Israeli-occupied Palestinian territories.²¹ This is not to mention the significant non-violent acts undertaken by Palestinian civilians which are arguably more representative of the resistance to occupation and oppression, and which were often condemned by the movement itself. For Palestinians, the same term connotes struggles against Israeli repression and occupation, representing ‘moments of hope and expression of dignity by the Palestinian people’.²²

For protestors today, the word refers to global activist efforts to pressure governments to uphold international legal obligations in relation to plausible genocide and war crimes in occupied Palestine. For other Arabic-speaking communities in Australia, the term may refer to a diversity of historical rebellions across the Arabic-speaking world. In the context of escalated violence post-October 2023, the term means to ‘globalise’ political resistance to the normalisation or acceptance in international communities (including Australia) of Israel’s violent conduct against Palestinian civilians. It follows that comments made by the NSW Premier on 22 December about the meaning of ‘intifada’ are misleading.²³ ‘Globalise the intifada’ does not necessarily mean globalising the ‘violent uprising’ he described in relation to the Intifadas (1987–1993 and 2000–2005), since the phrase’s meaning is both older and broader than violent acts which took place on those isolated events.

In the Canadian case of *University of Toronto (Governing Council) v. Doe (2024)*, the Superior Court of Justice of Ontario was asked to consider whether the University of Toronto had grounds for the eviction of student-protestors from a protest encampment on the basis that the camp was associated with ‘violent’ ‘antisemitic language and slogans’.²⁴ In doing so, the Court was tasked with deciding whether the use of phrases including ‘intifada’ and associated slogans, were antisemitic. While the Court acknowledged that ‘some of the speech on the exterior of the encampment rises to the level of hate speech’,²⁵ providing specific examples, in relation to the protest phrases including ‘intifada’, it concluded that the ‘considerable variation, nuance and context around the meaning of these terms... make it improper to automatically assume that

²¹ https://ips-dc.org/the_arab_worlds_intifada/

²² Zaynab El Bernoussi, ‘The Postcolonial Politics of Dignity: From the 1956 Suez Nationalization to the 2011 Revolution in Egypt’ (2015) 30(4) *International Sociology* 367.

²³ <https://www.youtube.com/shorts/OhEBMv4cX2s>.

²⁴ *University of Toronto (Governing Council) v. Doe et al.* 2024 ONSC 3755

²⁵ *Ibid* at [80].

they are antisemitic'.²⁶ The Court acknowledged that while hearing or seeing these phrases may result in genuine pain on the part of some members of the community, this arises as the result of 'attributing malevolent intentions to the speakers when there is no such intention... [and] to speakers using certain phrases in potentially insensitive ways which cause pain to others when that is not intended'.²⁷ Indeed, in the context of the student protest in which the phrases had been used, the Court was not persuaded by the suggestion that the use of any slogan had 'any intention of violence, antisemitism or hatred'.²⁸

The phrase 'intifada', or any other phrase, including their use at protests, may be used in ways that are racist or antisemitic, including rising to the level of inciting violence or hatred. In such cases, hateful or violent conduct is an incident of the phrase; it does not automatically derive from the phrase itself. The Premier has himself acknowledged that the phrase is not necessarily violent. On 22 December 2025, the Premier said at a press conference in Sydney,

I strongly believe that we have to do everything we can to ensure words that are said at a rally are not used by somebody **at a later point** for violent retribution on Sydney streets and that means drawing a line in the sand and saying that **this phrase used in this context can lead to violence**. I think that in many cases, the organisers of these protests, despite their sincerely held views, are unleashing forces that they can't control.²⁹

The diversity of contexts, interpretations, and applications of these phrases in political and everyday communications indicates that there is no 'inherently hateful' quality within them. The capacity of such phrases to constitute antisemitism or racism, or to encourage violence or discord, depends on the context in which they are used, including the speaker, the setting, and the surrounding language. Because words such as 'intifada' and associated phrases do not inherently inspire hatred, intimidation and violence, a blanket criminalisation of such words or phrases, regardless of context, is thus not rationally connected to preventing such phenomena in the community, and is excessively restrictive of free political communication.

4.1.2. No rational connection to promoting community cohesion

The criminalisation of protest slogans such as "globalise the intifada" undermines social cohesion – in our view, directly contradicting the government's stated motivations for this proposal. Schiefer and van der Noll define social cohesion as "a descriptive attribute of a collective, indicating the quality of collective togetherness". This encompasses the dimensions of social relations, identification with the geographical unit, and orientation towards common good. Accordingly, a 'cohesive' community is one where political differences can be canvassed freely, except in the instance where they are deliberately intended to or inherently occasion hatred or violence. As detailed below, the phrase 'globalise the intifada' lacks such an inherently hateful or violent character such that all instances of the phrase lead to hatred or violence.

²⁶ Ibid at [88].

²⁷ University of Toronto v Doe (n 25) at [107].

²⁸ Ibid [109].

²⁹ <https://www.youtube.com/shorts/OhEBMv4cX2s>.

It follows that community ‘cohesion’ should not be confused with a notion of political homogeneity, where perspectives which are contrary to a perceived mainstream are automatically understood as threatening or hostile. That is, a cohesive community is not one in which all members are necessarily ‘unified’ around a given norm, such that those who express disagreement or opposition to that norm are characterised as promoting a harmful ‘disunity’. Such communities are not made more cohesive by criminalising speech which manifests those perspectives, especially when it is made peacefully.

Accordingly, targeting a particular protest movement and, by extension, related communities (e.g. Palestinian Australians, Arab Australians) undermines community ties and national identification. This targeting may aggravate existing issues related to racial profiling and discriminatory policing that have been strongly evidenced across Australia. For example, the Centre Against Racial Profiling has identified “consistent racial profiling against people police perceive to be African, Middle-Eastern/Mediterranean, Indian and Asian” based on analyses of Victoria Police data from 2018-2024³⁰. In NSW, the covert Suspect Targeting Management Plan was only recently ceased, after a five-year investigation by the Law Enforcement Conduct Commission (LECC) and allegations of these authorised police activities targeting Aboriginal children.³¹ Police targeting of particular groups who already face marginalisation erodes community safety and trust in law enforcement. It also compromises participation and civic participation, described as an “important component” of social cohesion.³² Therefore, the objective of social cohesion does not justify any policy seeking to restrict the use of particular protest slogans which are, of themselves, neither hateful nor violent. Rather, this criminalisation may exacerbate and enable further marginalisation and harm – again undermining the government’s key objectives.

4.2. There are less burdensome means by which to regulate hateful speech and support community cohesion

It is important to note that incitement to hatred and violence are already criminal offences in the *Crimes Act 1900* (NSW):

- s 93Z *Crimes Act 1900* (NSW) — it is an offence to, by public act, intentionally or recklessly threaten or incite violence towards another person or group on grounds such as race or religious belief;
- s 93ZAA *Crimes Act 1900* (NSW) — it is an offence to, by public act, intentionally incite hatred towards another person or group on the grounds of race if it would cause the reasonable person who was the target of it to fear harassment, intimidation or violence.³³

³⁰ <https://www.racialprofilingresearch.org/keyfindings-2024>

³¹ <https://www.unsw.edu.au/newsroom/news/2023/11/-just-the-tip-of-the-iceberg---more-work-needed-after-end-of-har>

³² See eg Bernard (n ; Chan et al. 2006; Chiesi 2004; Dickes et al. 2010; Jenson 1998; Klein 2013; Rajulton et al. 2007.

³³ This is a new offence introduced in February 2025 by the *Crimes Amendment (Inciting Racial Hatred) Bill 2025* to fortify existing hate crime laws in response to concerns regarding rising antisemitism in NSW.

These offences act as constitutionally permissible constraints on free political communication as they are considered proportionately adapted to the legitimate policy goal of preventing violence and hatred in the community.

To the extent that any phrases alleged by the NSW Government or this Inquiry to be 'so inherently hateful by their nature' that they constitute 'incitement of hatred' or 'threaten community safety' do so, they are likely to be covered by the existing offences prohibiting incitements of violence or hatred. There have been no prosecutions of incitements to violence or hatred under the *Crimes Act* with regard to the use of the slogan/s which are the subject of this inquiry by protestors. Notably, despite the Premier's allegations that the NSW Government had received legal advice that the use of the phrase 'globalise the intifada' may be in breach of existing NSW hate speech laws, a woman arrested for displaying the phrase at a protest against the US military intervention in Venezuela on the 4th of January, 2026, was released without charge after police were unable to point to legislation prohibiting the phrase.³⁴ In this view, we consider that existing offences are capable of appropriately regulating hateful speech.

4.3. On balance, the proposed changes are excessively restrictive *vis à vis* their stated purpose and are not justified

Eliminating racial hatred and incitements to violence are important and valid public policy goals in a time when rising levels of antisemitism, Islamophobia and anti-Arab racism, and xenophobic racism are leaving many members of the community feeling unsafe in their homes, places of worship, and daily lives. We wish to stress that responses must be proportionate and measured in relation to the constitutional imperative to allow free political communication, and the policy imperative to allow constructive political speech and disagreement. Tragedies such as the antisemitic terrorist attacks committed at Bondi Beach should not be instrumentalised to restrict political speech where there is no logical connection between the imposed restriction and the important policy objective of combatting racial violence and hatred. Doing so is harmful to the goal of community cohesion which this inquiry invokes, and the environment of constructive political discussion it requires.

5. Conclusion

In sum, LRSJ Protest Hub is concerned that the proposed measure to ban protest slogans would violate the implied freedom of political communication, as protected by the Commonwealth Constitution. From the perspective of NSW residents, this would have significant implications for their democratic freedoms. From the perspective of the NSW government, any legal challenge would require significant public resources and has the potential to greatly influence public opinion (as well as the government's stated aims).

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<https://www.theguardian.com/australia-news/2026/jan/06/protester-detained-in-sydney-for-wearing-globalise-the-intifada-jacket-says-she-should-never-have-been-arrested-ntwnfb>

Whilst this submission has focused on a prospective challenge under the IFPC, we note the proposed measure is vulnerable to other legal actions. As a party to the Optional Protocol on the *International Covenant on Civil and Political Rights*,³⁵ Australia could be brought to the Human Rights Committee for breach of Article 19, concerning the freedom of expression.³⁶ If the Police Commissioner or another executive official were given unbridled power to declare a slogan invalid, the law could be void for breaching the entrenched minimum of judicial review.³⁷ In the interests of all stakeholders, LRSJ Protest Hub recommends that the proposed measure to ban protest slogans is not adopted.

³⁵ ICCPR optional protocol

³⁶ Art 19(2) ICCPR

³⁷ Kirk v Industrial Relations Commission