

**Submission
No 104**

MEASURES TO PROHIBIT SLOGANS THAT INCITE HATRED

Organisation: Aboriginal Legal Service (NSW/ACT) Limited

Date Received: 13 January 2026



**Aboriginal
Legal Service**
(NSW/ACT) Limited

12 January 2026

Mr Edmond Atalla, MP
Chair, Legislative Assembly Committee on Law and Safety
By email: lawsafety@parliament.nsw.gov.au

Re: Measures to prohibit slogans that incite hatred

Dear Mr Atalla,

I write to you on behalf of the Aboriginal Legal Service (NSW/ACT) Limited (**ALS**). Thank you for the invitation to make a submission on measures to prohibit slogans that incite hatred.

The ALS is a proud Aboriginal Community-Controlled Organisation (**ACCO**) and the primary legal services provider for Aboriginal and Torres Strait Islander adults and children in NSW and the ACT. Our vision is to achieve social justice and equity for Aboriginal and Torres Strait Islander people, families and communities.

More than 400 ALS staff members based at offices in 21 communities support Aboriginal and Torres Strait Islander people through the provision of high quality and culturally safe legal assistance, including court representation in criminal law, children's care and protection law, and family law. We also deliver a variety of wrap-around programs including bail support, family violence prevention, and child and family advocacy and support. We provide a Visiting Legal Service for Aboriginal children in youth prisons, represent families of people who have died in custody in the NSW Coroner's Court, and deliver a variety of discrete civil law services including tenants' advocacy, assistance with fines and fine-related debt, discrimination and employment law.

The ALS is the Justice Peak on the NSW Coalition of Aboriginal Peak Organisations and a key partner in Closing the Gap. As an ACCO, we represent community interests in our advocacy for the transformation of systems which impact the lives of Aboriginal and Torres Strait Islander people.

Adequacy of consultation and timeframe for submissions

The ALS holds concerns about the short timeframe for consultation. We note that the invitation to make a submission was distributed on 23 December 2025, after the commencement of the end-of-year shutdown period for many organisations, with a deadline for submissions of 5pm on Monday 12 January. This allowed very few working days for stakeholders to respond.

We also note the capacity challenges faced by many ACCOs and other under-resourced, non-government and community organisations, especially at a time when most employees will have been on leave over the holiday period.

We consider that the short timeframe for consultation over the Christmas and New Year period is likely to have limited the range of stakeholders who were able to meaningfully participate in this process, thereby potentially limiting the diversity of perspectives, evidence and community interests represented in submissions.

Criminalisation responses to speech

The ALS strongly opposes all forms of hatred directed towards minorities and vulnerable groups. We recognise that Australia is bound by the *International Convention on the Elimination of All Forms of*

Racial Discrimination and the International Covenant on Civil and Political Rights (ICCPR) to prohibit certain hate speech and incitement without unduly infringing upon freedom of expression.¹

As an ACCO, we take extremely seriously the impacts of racial vilification and racism on Aboriginal and Torres Strait Islander people in NSW. We acknowledge the symbolic importance of prohibitions on hate speech for members of communities who disproportionately experience racism, including the communities we serve.

As we have previously advised the NSW Government, however, we are fundamentally opposed to the expansion of criminalisation responses to speech due to the unacceptable and disproportionate impact of criminalisation on Aboriginal and Torres Strait Islander people in NSW, and because we do not consider that criminalisation responses are effective in reducing the incitement of hatred.²

The NSW Law Reform Commission, in concluding that reform of s 93Z of the *Crimes Act 1900* was not warranted in 2024, recognised that “[e]xpanded criminalisation comes with risks and is not always the best tool to achieve social policy aims. In particular, we are aware that extending the criminal law can have unintended consequences, especially for those groups already overrepresented in the criminal justice system.”³

We are unaware of any evidence demonstrating that criminalising speech effectively reduces the incitement of hatred and produces positive societal change, whether in NSW or in other jurisdictions.

On the contrary: in our experience as a legal assistance provider, overreliance on expanding criminal laws and police powers serves to increase mistrust of government and government agencies within over-policed and over-criminalised communities, and exacerbates the marginalisation, social exclusion and stigmatisation of minority groups.

We recommend that the NSW Government refrain from enacting law and policy reform which is not grounded in a robust evidence base showing that the proposed reform is capable of achieving its intended objectives, especially where measures under contemplation may:

- expand the already extraordinary powers available to NSW Police to regulate the use of public places by civilians;
- increase the risk that vulnerable minorities will be subjected to a disproportionate burden of criminalisation in the form of fines, charges, arrest and imprisonment;
- restrict the right to peaceful public assembly; and/or
- unduly burden freedom of political communication.

Instead, we urge prioritisation of measures with demonstrated capacity to reduce and prevent the incitement of hatred. Investment should be redirected away from criminalisation and into research to support evidence-based and effective policy responses, public education, and strategies to reduce and prevent discrimination, social exclusion and violence of all kinds on the basis of protected attributes under federal and state anti-discrimination frameworks. In particular, attention should be directed at strengthening regulation of media and social media channels which enable and amplify the incitement of hatred.

We draw the Committee’s attention to the existing offence created by s 93ZAA of the *Crimes Act 1900*, which came into effect on 15 August 2025. Section 93ZAA criminalises the intentional incitement of hatred against people because of their race (which may include their nationality, ethnicity, descent,

¹ ICCPR, Article 19.

² See, eg, ALS [submission](#) to the [Independent Review of Criminal Law Protections Against the Incitement of Hatred](#) (7 August 2025); ALS [submission](#) to the NSW Law Reform Commission [Review of Serious Racial and Religious Vilification](#) (28 June 2024).

³ NSW Law Reform Commission, [Serious Racial and Religious Vilification](#) (Report No 151, September 2024) 8 [1.43].

or ethno-religious background). The NSW Government's Department of Communities and Justice website explains that the s 93ZAA offence may be charged in relation to incitement of hatred where:

1. *It happens in public.*
This means anything that can be seen or heard by others—like a speech, a social media post, graffiti, or chants at a rally.
2. *It's done intentional[ly] to stir up hate.*
3. *The person must intend to encourage others to hate someone or a group because of their race.*
 - *Hatred means strong dislike, hostility, or rejection.*
 - *Race includes things like colour, nationality, ethnicity, descent, or ethno-religious background.*
4. *It would cause a reasonable person targeted by the hatred to feel fear.*
The action must be serious enough that a reasonable person targeted by it, or a reasonable member of a targeted group, would fear harassment, intimidation, violence or worry about their safety.⁴

This offence carries heavy penalties in the form of fines up to \$11,000 and/or 2 years imprisonment. It is a tool that is already available to NSW Police and would adequately cover the circumstances in which a slogan used by participants in a public protest is used to incite hatred.

We also acknowledge the well-documented history of Aboriginal–Palestinian solidarity in Australia,⁵ and hold concerns that – in a context where, statistically, police discretion is routinely exercised adversely against Aboriginal people in NSW at every stage of the criminal process – introducing additional offences which criminalise the use of political slogans at protests in support of Palestine risks a disproportionate burden of criminalisation on Aboriginal participants in these events.

Limitations on peaceful protest and freedom of political communication

Protest and Aboriginal political activism have been integral to the long and proud history of the ALS. The establishment of the ALS more than 50 years ago was an act of resistance and self-determination by Aboriginal activists seeking to document and address the police brutality and harassment of Aboriginal people which was endemic in NSW in the 1960s.⁶ The ALS was the first free shopfront legal assistance service of its kind on the continent,⁷ and was soon followed by the establishment of Aboriginal Legal Services in all jurisdictions, as well as legal aid commissions and community legal centres, which now make up the network of legal assistance providers enabling access to justice for all members of Australian communities today.

Freedom of public assembly and political communication remain important to our stakeholders and the communities we serve. The ALS supports protests led by Aboriginal organisers to raise awareness about issues of community concern, including annual Survival Day demonstrations on January 26, and rallies organised by families who have lost loved ones to deaths in custody. These protests aim to celebrate the strength of Aboriginal and Torres Strait Islander people and communities, who have resisted and thrived despite the ongoing impacts of colonisation and dispossession; to raise public awareness of issues impacting Aboriginal communities; and to advocate for systemic change. Participants often use chants and political slogans at these events.

⁴ <https://dcj.nsw.gov.au/legal-and-justice/laws-and-legislation/new-law-against-racial-hatred.html>

⁵ See University of Melbourne, *Black-Palestinian Solidarity* (Conference Program, 6-8 November 2019) and Suzanna Henty and Gary Foley (eds), *Indigenous Solidarity: Testimony and Narratives* (28 Magazine, August 2021), cited in Aboriginal Legal Service (NSW/ACT) Limited, 'Statement in Solidarity with the People of Palestine' (Media Release, 25 January 2024).

⁶ See Gary Foley, *White Police and Black Power* (essay, 2021) published on the ALS website to coincide with the 50th anniversary of the ALS.

⁷ See '\$20,000 for Aboriginal Legal Aid Service', *The Australian* (29 December 1970).

In a context where NSW recently recorded its highest ever number of Aboriginal deaths in custody and is imprisoning Aboriginal people at the highest numbers and rates on record,⁸ freedom to speak out publicly and engage in robust and effective political communication about these issues is likely to remain important to the communities we serve.

We note that the present matter has been referred to the Committee in a context where the NSW Government has simultaneously passed extraordinary legislation conferring almost unfettered power on the Police Commissioner to prohibit all authorised public assemblies (within the meaning of Part 4 of the *Summary Offences Act 1988*) following the declaration of a terrorist incident. The exercise of this power following the tragic, antisemitic terrorist attack at Bondi on 14 December 2025 has already impacted previously authorised public assemblies led by Aboriginal organisers commemorating the anniversary of the Aboriginal deaths in custody, and may impact upcoming Survival Day or Invasion Day rallies led by Aboriginal organisers on January 26.

In combination with these laws, which restrict the right to peaceful public assembly by exposing protest participants to coercive police powers and criminal liability from which they would otherwise be immune, measures that the Committee may recommend which prohibit the use of particular political slogans or chants have the potential to create a significant chilling effect on protest in NSW by directly targeting specific forms of political communication. We strongly urge against this outcome.

Thank you for the opportunity to provide a submission.

Please contact [REDACTED] if you would like to discuss our submission further.

Yours faithfully,

[REDACTED]

Lauren Stefanou
Acting Principal Legal Officer
Aboriginal Legal Service (NSW/ACT) Limited

⁸ Anton Rose, Isabella Ross and Charles Ruthforth, 'Coroner makes rare public statement as NSW records most Indigenous deaths in custody in a year', *ABC News* (online, 15 October 2025); NSW Bureau of Crime Statistics and Research, 'NSW prison population reaches five-year high due to rise in Aboriginal incarceration' (Media Release, 19 May 2025).