

**Submission
No 105**

MEASURES TO PROHIBIT SLOGANS THAT INCITE HATRED

Organisation: Legal Aid NSW

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Legislative Assembly Committee on Law and Safety
Parliament of New South Wales

By email: lawsafety@parliament.nsw.gov.au

Dear 

Measures to prohibit slogans that incite hatred

Legal Aid NSW thanks the Committee for the opportunity to make a submission to this inquiry into measures to prohibit slogans that incite hatred, intimidate targeted communities and instil fear of violence.

However, the limited opportunity to respond to this inquiry is of concern to Legal Aid NSW. We note that this inquiry was referred to this Committee on 22 December 2025 and that we were invited to provide a submission the following day with an expectation that any submission would be provided by 12 January 2026. Given that the inquiry commenced only three days before Christmas Day, we would suggest most agencies, including ours, would have limited or no resources to respond.

This submission draws on the experience of Legal Aid NSW lawyers across our criminal and civil law practices, including our experience representing defendants in criminal proceedings and assisting people who have experienced public harassment and vilification. Our focus is on the practical operation and impact of legal frameworks, particularly on vulnerable and over-policed communities.

Legal Aid NSW recognises that hate speech can cause serious harm to individuals and communities. We also acknowledge Australia's international obligations under the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) and the *International Covenant on Civil and Political Rights* (ICCPR) to

prohibit certain forms of hate speech and incitement, while preserving freedom of expression in accordance with article 19 of the ICCPR.

Terms of Reference (a) The threat that the use of phrases like "globalise the intifada" poses to community cohesion and safety and the importance of maintaining social harmony and cohesion;

Legal Aid NSW acknowledges the importance of social harmony and cohesion, but questions whether the criminalisation of specific phrases is more likely to undermine social cohesion and safety than preserve it. This is especially so given that many in the community will consider it political censorship.

We accept that certain statements and actions may promote hatred or discrimination (for example, the use of Nazi slogans). However, existing laws sufficiently protect against these kinds of acts (as discussed below). Phrases like "globalise the intifada" are not typically used to promote hatred or discrimination and criminalising them would constitute an extreme and concerning extension of the suite of offences and powers that already exist to manage legitimate risks. As Legal Aid NSW has previously argued with respect to similar proposals, any attempt to curtail this kind of conduct is likely to breach the implied freedom of political communication.

Such slogans are often adopted by communities to represent or embody specific causes or political views which are, in and of themselves, neither dangerous nor grounded in hate. To criminalise them would disproportionately impact vulnerable groups, particularly young people and the culturally and linguistically diverse, who would be particularly susceptible due to their immaturity, lack of education and/or reduced familiarity with the potential connotations of phrases. The ambiguity inherent in such slogans would lead to the inconsistent interpretation and application of any proposed law. We are not aware of an evidence base which would support the establishment of a legal framework to outlaw these slogans.

Other strategies would better support social cohesion and safety. We discuss some of these below.

Terms of Reference (b) How best to prevent the use of phrases that are so inherently hateful by their nature that they lead to incitement of hatred and threaten community safety

While criminal prohibitions play an important role in maintaining community safety, criminal law is a blunt instrument for addressing conduct underpinned by complex historical, social and political factors. In our experience, conduct that incites hatred against vulnerable groups is more effectively addressed through existing civil laws and non-legal measures than through the creation or expansion of criminal offences.

Strengthening criminal prohibitions in this area risks unintended consequences, including the further criminalisation of groups already over-represented in the criminal justice system, such as young people, Aboriginal and Torres Strait Islander

people, and people with mental illness or cognitive disability. Legal Aid NSW has seen similar outcomes arising from offensive language provisions, which were identified by the *Royal Commission into Aboriginal Deaths in Custody* as contributing to the incarceration of Aboriginal and Torres Strait Islander people.¹

Criminalising slogans that incite hatred risks similar outcomes, including deprivation of liberty and incarceration of marginalised communities. Such responses may entrench radical views² and disengagement, and may increase, rather than reduce, risks to community safety, particularly where rehabilitative and support services are limited.³

Legal Aid NSW supports community education, engagement and collaborative service approaches as the most effective means of promoting social cohesion within the existing legal framework. Where current laws are underutilised by vulnerable or disadvantaged communities, targeted community legal education can empower people to identify and respond to law-related issues.

Consistent with this approach, the Australian Institute of Criminology has noted that addressing grievance-fuelled violence may be better achieved through adequate mental health and social care for people experiencing emotional vulnerability or unstable living conditions.⁴

Legal Aid NSW supports the following non-criminal measures to address hatred and promote community safety:

- sustained government investment in anti-racism strategies;
- enhanced police training on hate crime, vilification and the operation of section 93Z of the *Crimes Act 1900* (NSW);
- structural reforms within NSW Police, such as a dedicated vilification unit, independent oversight of police responses to hate crime, and/or hate crime scrutiny panels; and
- the development of judicial bench books on vilification and hate crime.

NSW Police already possess extensive powers under the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) and the common law, including powers to prevent an imminent breach of the peace. The creation of new offences or expanded police powers risks being perceived as suppressive, particularly in the context of protest and political expression. Such measures may erode public confidence in government commitment to fundamental freedoms and may, counter-productively,

¹ *Royal Commission into Aboriginal Deaths in Custody* (Report, April 1991) vol 5 [86]

² See, eg, Adrian Cherney, 'Prison Radicalisation and Deradicalisation in Australia' (2020) *Counterterrorism Yearbook 2020 23*, 24

³ Inspector of Custodial Services, *The management of radicalised inmates in NSW* (Report, May 2018) 81

⁴ Australian Institute of Criminology, *Grievance-fuelled violence: Modelling the process of grievance development* (Report, No 47, 2023) 43



encourage some individuals or groups to test the limits of those powers through further protest activity.

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

There is already a broad suite of NSW and Commonwealth laws capable of responding to criminal conduct motivated by hatred.⁵ These include targeted offences such as section 93Z of the *Crimes Act*, general criminal offences (including intimidation and offensive conduct), and civil anti-vilification provisions under the *Anti-Discrimination Act 1977* (NSW).

The NSW Law Reform Commission's 2024 review of vilification and hate speech laws, undertaken after extensive consultation, recommended against the creation of new vilification offences or the expansion of section 93Z.⁶ Legal Aid NSW supports that conclusion.

Where an offence is wholly or partly motivated by hatred or prejudice against a protected group, this is already treated as an aggravating factor at sentencing.⁷ This framework allows courts to impose proportionate penalties while avoiding unnecessary expansion of criminal liability.

Terms of reference (g) Any other related matters: International human rights law

The right to peaceful assembly and protest is protected under international human rights law, including the ICCPR, and is widely recognised as a core form of political expression in a democratic society. It is particularly important for marginalised groups, including many clients represented by Legal Aid NSW who may otherwise lack access to public platforms, to express dissent or advocate for reform.

While the right to protest is not absolute, international human rights law requires that any restrictions be lawful, necessary and proportionate. Article 21 of the ICCPR permits limitations only where necessary in the interests of public safety, public order, or the protection of the rights of others.

Legal Aid NSW regularly represents Aboriginal and Torres Strait Islander clients who engage in peaceful protest on issues such as deaths in custody, land rights and Closing the Gap reforms. Our experience, including in coronial proceedings,

⁵ See Issues Paper Summary of Issues for Consultation *Review of criminal law protections against the incitement of hatred* NSWLRC (June 2025) 6 -7

⁶ NSW Law Reform Commission, *Serious Racial and Religious Vilification* (Final Report, September 2024)

⁷ *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)(h)

demonstrates that public advocacy and protest can play an important role in shaping public understanding and institutional responses to systemic issues.

International guidance supports a cautious approach to criminalisation. The Rabat Plan of Action emphasises a high threshold for restricting freedom of expression and states that criminal sanctions should be a measure of last resort. It recommends that “hatred” be understood as intense and irrational hostility, and that “incitement” be limited to expression creating an imminent risk of discrimination, hostility or violence.⁸

Consistent with article 7 of ICERD, any criminal law response to incitement should be accompanied by robust community education and preventative strategies. Legal Aid NSW submits that such measures, rather than expanded criminal prohibitions, offer the most effective and proportionate response to hateful expression while safeguarding fundamental rights.

Thank you for the opportunity to provide feedback. If you have any questions or would like to discuss this matter further, please contact [REDACTED]
[REDACTED]

Yours sincerely

[REDACTED]
Monique Hitter
Chief Executive Officer

⁸ Human Rights Council, *Annual Report of the United Nations High Commissioner for Human Rights*, Addendum Report of the United Nations High Commissioner for Human Rights on the Expert Workshops on the Prohibition of Incitement to National, Racial or Religious Hatred, UN Doc A/HRC/22/17/Add.4 (11 January 2013), Appendix, Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence.