

**Submission
No 109**

MEASURES TO PROHIBIT SLOGANS THAT INCITE HATRED

Name: Professor David Heilpern

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Submission

A. INTRODUCTION

1. My name and title are Professor David Heilpern. I am Dean of Law at Southern Cross University. Prior to that I was a Magistrate in NSW for 22 years. Prior to that, and currently, I am a practicing solicitor in NSW.
2. The submission is not made on behalf of Southern Cross University.
3. I am Jewish by birth, and my father is and my paternal grandparents were Holocaust survivors.
4. I am an expert on summary offences, particularly offensive language, having published a leading judgment on the issue in NSW, and since writing and speaking prolifically on criminalising words.
5. There is ample evidence that offensive language charges are and were exploited by police adversely to certain communities, particularly Aboriginal people in NSW. Indeed, in the entire time I was a Magistrate, I only had one non-aboriginal person before me for the alleged offence of saying "fuck". I have seen how language laws can be utilised as tools of oppression and racism.
6. I am principally making submissions on the futility of banning phrases. In doing so I do not wish to minimise the impact of violence in the Middle East or at Bondi, or trivialise the importance of the protection of the freedom of expression.

B. GENERAL SUBMISSIONS

7. I am aware that others will be submitting on further matters in the terms of reference, and I endorse the position that:
 - a. Criminalising the use of the phrase "Globalise the Intifada" is likely to be unconstitutional.
 - b. The existing laws relating to offensive language, hate speech and anti-discrimination provisions are sufficient to prohibit any phrases that are offensive, inciting or discriminatory. I fully support the conclusions and recommendations of the 2024 NSW Law Reform Commission Report chaired by The Hon Tom Bathurst AC KC, titled "Serious Racial and Religious Vilification". I note that none of the public submissions to that review suggested the criminalisation of particular phrases.
 - c. There is absolutely no evidence that this phrase was causally connected to the horrific events at Bondi Beach.
 - d. This phrase is not of itself antisemitic. It most certainly is not in a category of phrases "so inherently hateful by their nature that they lead to incitement of hatred and threaten community safety". An example of an antisemitic and inherently hateful phrase would be "gas the Jews". That can and should be prosecuted under existing laws.
 - e. There is no evidence worldwide that banning particular phrases has reduced the likelihood of terrorist attacks against Jewish people, or antisemitic property damage or personal injury.
 - f. Banning phrases to protect one community or religious group is a dangerous and slippery slope. Should the phrase "a land without people for a people without land" which is deeply offensive to many Palestinian Australians also be banned? And what

of language that defends genocide by degrading the victims? And what of words like “nigger”?

- g. We now have the Bell Royal Commission which is best place to determine these matters.
- h. Conflating criticism of Israel or calls for action against Israel with antisemitism creates a harmful public narrative that makes the Jewish people a proxy for the actions of the Israeli government, potentially encouraging people to blame Jewish individuals for Israel’s policies. Jews ought not be held responsible for Israel’s crimes any more than Muslims should be blamed for ISIS.
- i. Criticism of Israel is permissible. Even calling for the destruction of Israel ought not be banned. Robust, wrongheaded even adversarial criticism by allegations of occupation, apartheid, ethnic cleansing, settlements, deliberate starvation and genocide, is not inherently antisemitic but a matter of freedom of speech and expression.

C. FUTILITY and COUNTERPRODUCTIVENESS

- 8. There has been no finding of any inquest, inquiry or Royal Commission into a terrorist act anywhere in the world that has recommended banning specific phrases. I have not been able to locate even a single submission that suggests such a ban. That is because such bans are futile and counterproductive.
- 9. In the United Kingdom, the pairing “Palestinian Action” in banners or spoken word has been banned in public, since a group of that name was proscribed as a terrorist organisation.
- 10. There have been more than 2500 arrests for breaching that ban. It has demonstrably not increased community safety or cohesion. Very few people would have used the phrase prior to the ban.
- 11. Banning phrases is futile and counterproductive because:
 - a. The words then become used by those who are opposed to limitations of free speech, or who wish to highlight the ban. This is the so-called “forbidden fruit” factor or “Streisand effect” that results in the phrase becoming even more used than before the ban.
 - b. The phrase may be simply acronymized to GTI. This has occurred in the UK with PA being common. The letters GTI or GTi are on millions of motor vehicles as an acronym for Grand Tourer Injection – like VW Golf GTi. It is impossible to ban the acronym. Everyone would know what is really being said when the acronym is repeated. Ironically, GTI is also the acronym for the Global Terrorism Index. We can hardly ban that.
 - c. A few letters or punctuation changes and the ban is both circumvented and ridiculed. Examples from the UK include:
 - i. I support Palestine, Action is needed now.
 - ii. Plasticine Action
 - iii. Palestine actions (Private Eye)
 - d. This would likely be mimicked in NSW by words (deleting the crude examples) such as
 - i. Globalise the Uprising
 - ii. Globalise Antifa
 - iii. Globalise the Intuitive-Further
 - iv. Internationalise the uprising

- v. Internationalise the intifada
- e. There is also the use of asterisks or dashes to disguise words. Newspapers habitually print f-ck, and c-nt. There is nothing to stop similar alternates being utilised should that phrase be banned. Phonetic or orthographic mutations could occur – small spelling changes or spacings could circumvent the ban. Danny Lim’s case is an example.
- f. Words could be replaced by symbols such as an image of a globe. Social media posts are already prolific with “Globalise the Empanada” replete with pictures of food and Palestinian flags.
- g. Multiple visual displays could be utilised to break up the phrase – three people marching with separate banners displaying one word each or more with one letter, or similarly three chanters making syllabic sounds that collectively produce the phrase. You can hardly arrest a person for saying “ah” or carrying an “i” banner.

D. CONCLUSION

12. In a democracy it is permissible for people to be hurt by words without those words being banned. I personally find some slogans and pictures at anti-immigration rallies and anti-abortion protests hurtful, frightening and offensive. However, I would not want to see them banned - I am grateful to live in a society where they can be spoken.
13. There is no doubt that this proposed ban may provide temporary succour to a community that is hurting after the Bondi Beach terrorism act. However, any such comfort would be short-lived, and given the matters I have raised, any ban would quickly be counter-productive.
14. Finally, for some in the Jewish community, banning some phrases will never be enough, as they see incitement to antisemitism in every criticism of Israel. To accuse Israel of genocide is seen as a blood libel, to call for peace is seen as supporting Hamas. I urge the Committee not to feed an insatiable catchcry.

Professor David Heilpern

Dean of Law

Southern Cross University