

**Submission
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MEASURES TO PROHIBIT SLOGANS THAT INCITE HATRED

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Inquiry into Measures to prohibit slogans that incite hatred.

Submission

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Table of Contents

<i>Executive Summary</i>	3
<i>Q1. The threat posed by slogans such as “Globalise the Intifada” to community cohesion and public safety</i>	5
<i>Q2. Preventing the use of inherently hateful slogans that incite hostility and threaten community safety</i>	8
<i>Q3. The obligation to protect communities from hatred, intimidation, and violence</i>	10
<i>Q4. International approaches and best practice</i>	11
<i>Q5. The implied freedom of political communication</i>	12
<i>Q6. Existing NSW and Commonwealth frameworks</i>	13

Executive Summary

Q1. Threat to community cohesion and public safety

1. This section argues that while protest and political expression are essential in a democracy, that protection does not extend to language that glorifies violence or predictably intimidates targeted communities. Slogans such as “Globalise the Intifada” cannot be assessed in isolation from their historical meaning. In contemporary political usage, this term is closely associated with violence against civilians, and when used in Australia alongside expressions celebrating and supportive of international terrorist attacks, it reasonably functions as a threat rather than abstract political speech.
2. The section situates this, and other slogans within a broader pattern of rhetorical and symbolic practices, including antisemitic chants, coded language, and the use of symbols such as the inverted red triangle. Together, these operate to normalise hostility and exclusion, particularly toward Jewish Australians, shrinking their sense of safety in public life. The cumulative effect is not just offence, but a tangible erosion of civic trust and community cohesion.

Q2. Preventing the use of inherently hateful and violent slogans

3. This section sets out a framework for responding to slogans that incite hostility or legitimise violence, without suppressing lawful dissent. It emphasises that effective regulation must be proportionate, evidence-based, and attentive to context. Three guiding principles are identified: historical meaning, foreseeable impact, and the deliberate use of strategic ambiguity by extremist actors.
4. The section explains that contemporary extremist movements across the political and religious spectrum routinely rely on deniable but evocative language to evade legal thresholds while still signalling violence to in-group audiences. Because of this, regulation should focus on foreseeable harm rather than subjective intent. Practical measures are proposed, including clearer operational guidance, context-sensitive legal thresholds, proportionate civil responses, independent oversight, and consultation with affected communities.

Q3. Obligation to protect communities from hatred and intimidation

5. This section frames protection from hatred and intimidation as a positive obligation of democratic government, particularly where historically targeted communities experience renewed insecurity. Jewish Australians are identified as currently facing a multi-directional threat environment, including from extreme-right Nazi groups and from rhetoric within some protest and academic spaces that moves beyond criticism of Israeli policy into the delegitimation of Jewish identity.
6. The section also situates this immediate problem within a wider pattern affecting other vulnerable communities, including LGBTIQ+ Australians, migrants, and First Nations peoples. It argues that the normalisation of hostile rhetoric just below criminal thresholds contributes to real-world harm and degrades civic trust. Effective protection must therefore be proactive, ideologically neutral, and grounded in an understanding of how rhetoric shapes norms and behaviour over time.

Q4. International approaches and best practice

7. This section surveys how comparable democracies balance freedom of expression with harm prevention. In the United Kingdom, police rely on public order and hate crime laws to intervene where protest rhetoric becomes threatening or abusive, using contextual assessments rather than blanket bans. Germany adopts a more restrictive approach, combining criminal prohibitions on incitement with administrative obligations on digital platforms.
8. Across the European Union and in Canada, best practice increasingly recognises the cumulative and ecosystem-level effects of hostile rhetoric, particularly online. International human rights law reinforces these approaches, making clear that freedom of expression is not absolute where advocacy of hatred creates a real and foreseeable risk of discrimination, hostility, or violence.

Q5. The implied freedom of political communication

9. This section explains that Australia's implied freedom of political communication protects speech necessary for democratic governance but is not a personal right and is subject to proportionate limitation. High Court jurisprudence permits laws that burden political communication where they pursue a legitimate purpose and are appropriately tailored.
10. Measures addressing slogans with documented associations to violence, particularly when used in celebratory or intimidating contexts, are likely to be constitutionally valid if they are evidence-based and narrowly framed. The implied freedom does not extend to incitement, intimidation, or the exploitation of historical trauma to legitimise harm.

Q6. Existing NSW and Commonwealth frameworks

11. This section reviews current NSW and Commonwealth laws dealing with incitement and hate speech, noting that while relevant provisions exist, they are often ill-suited to addressing coded or historically referential rhetoric. Criminal offences typically require proof of direct incitement or advocacy, while civil mechanisms are slow and reactive.
12. Recent reforms, including bans on Nazi symbols and proposals addressing online harms, represent important progress but remain fragmented. The section concludes that there is no coherent national strategy focused on the rhetorical techniques used by contemporary extremists, and that addressing this gap will require legal refinement, operational guidance, and coordination across jurisdictions.

Q1. The threat posed by slogans such as “Globalise the Intifada” to community cohesion and public safety

1. Democratic societies are rightly committed to protecting protest, dissent, and robust political expression, including speech that challenges prevailing norms or state policy. Indeed, this is an essential dimension of liberal democratic politics and must be extended to protests across the political spectrum, even where the messaging may be rejected by the majority. That commitment, however, does not extend to tolerance of language that crosses a threshold from legitimate dissent to the glorification of violence, or that predictably undermines social cohesion by normalising hostility toward specific communities.
2. The slogan “Globalise the Intifada,” now widely used at protests in Australia following the 07 October Hamas terror attack, has become a focal point of public concern and political contention. While some proponents argue that the phrase simply denotes resistance or political uprising (‘shaking off’), its dominant meaning in contemporary political discourse is historically anchored in the First and Second Intifadas (1987–1993; 2000–2005). Those episodes involved not only confrontation with Israeli security forces but sustained campaigns of violence against civilians, including suicide bombings, stabbings, and mass-casualty attacks carried out by organisations such as Hamas and Palestinian Islamic Jihad. In contemporary Australian contexts, particularly where the slogan is deployed alongside expressions of support that celebrate or legitimise terrorist violence, its meaning cannot reasonably be treated as abstract or indeterminate.¹
3. This was evident with other slogans during demonstrations immediately following the 07 October attacks, including events at the Sydney Opera House forecourt on 9 October, where chants such as “*Khaybar Khaybar Ya Yahud jaish Muhammad soufa ya’oud*” (“Khaybar, Khaybar, Oh Jews, the army of Muhammad will return”) refers to a Muslim attack and slaughter of Jews in 628AD, and explicitly antisemitic abuse including ‘Fuck the Jews’ was openly expressed.² In such settings, these slogans operate within a broader discursive environment that links them to a longer lineage of antisemitic hostility and violence, rather than to generic political dissent.
4. The use of visual and symbolic references by some at protests since October 07 further reinforces this interpretive context. A key example of the propagation of ideology through symbols is the inverted red triangle visible at numerous protests since the October 07 attack. It was first used in videos made by the *al-Qassam* Brigades, the military wing of Hamas and utilised in propaganda videos marking the location Israeli positions as they were attacked.³ The inverted red triangle has become synonymous with support for Hamas

¹ See for example Students Against War ‘Globalise the Intifada! One Palestinian State! Support the Right to resist! Cut ties now! (31 July 2024) *Honi Salt* <<https://honisoit.com/2024/07/globalise-the-intifada-one-palestinian-state-support-the-right-to-resist-cut-ties-now/>>

² Daniel Hurst, Paul Karp and Tasmin Rose, ‘Australia’s leaders condemn ‘abhorrent’ scenes after anti-Jewish chants filmed at Sydney rally’, *The Guardian* (online, 10 October 2023) <<https://www.theguardian.com/australia-news/2023/oct/10/pro-palestine-rally-sydney-opera-house-protest-australia-leaders-condemn-anti-jewish-chants>>.

³ Anti-Defamation League, *Inverted Red Triangle* (Web Page, 2024) <<https://extremismterms.adl.org/glossary/inverted-red-triangle>>.

and has been used offline to mark Jewish businesses and homes, marking them as future targets of attack.⁴ As with other contemporary symbols, users attempt to deny the true meaning of the triangle, obscuring the inherent violence embedded in its use. Others may not be aware of its violent underpinning and merely seeking to demonstrate their political beliefs. Jurisdictions such as Berlin and platforms such as Meta have treated the symbol as prohibited Hamas associated content.⁵ However, the red triangle remains visible at protests in Australian capital cities, combining with slogans such as those mentioned above to reveal a multilayered violent message. This pattern reflects a broader and historically familiar strategy of deliberate obfuscation, whereby violent or exclusionary intent is embedded within language that is framed as political or rhetorical rather than overtly violent.

5. The Nazi regime's reliance on euphemistic formulations such as "the Jewish Question" illustrates how abstract or bureaucratic phrasing can be used to sanitise and normalise profoundly violent objectives. Contemporary extremist movements, across ideological spectra, continue to employ analogous techniques. Phrases on banners by the hate-based Nazi groups such as the 'National Socialist Network' include those such as "Abolish the Jewish lobby," for instance, invoke longstanding conspiratorial tropes of Jewish control while masking their eliminationist implications behind the language of political reform.⁶ The word 'Abolish' is defined by the Oxford English Dictionary as 'To put an end to, to do away with; to eradicate, destroy'⁷ - language that is annihilationist at its core, and understood by Jews as such.
6. Slogans such as "From the River to the Sea" and "Globalise the Intifada," when deployed in celebratory contexts following terrorist attacks, exemplify this mode of rhetorical obfuscation. The issue is not whether all individuals using these slogans consciously endorse mass violence – many do not. Rather, it is that the slogans draw upon historically violent referents whose meanings are well established and whose foreseeable effects include intimidation, exclusion, and the erosion of inter-communal trust. Recognising this dynamic does not require equating protestors with historical perpetrators of atrocity; it requires acknowledging the risks inherent in rhetorical strategies that obscure their own violent implications.
7. For Jewish Australians, the impact of this language is not theoretical. It resonates with both a long historical record of targeted violence and a contemporary security environment in which Jews are framed as enemies by actors from multiple ideological directions. The cumulative effect is a contraction of civic space, where members of a minority community reasonably perceive participation in public life as carrying increased personal risk.

⁴ Chip Le Grand, 'Calls to Outlaw Hamas Symbol after Jewish-Owned Businesses Targeted', *The Sydney Morning Herald* (online, 14 September 2024) <<https://www.smh.com.au/national/calls-to-outlaw-hamas-symbol-after-jewish-owned-business-targeted-20240913-p5kafa.html>>.

⁵ Caterina DiBenedetto, 'Meta Deems Red Triangle a Proxy for Hamas Support, Will Enforce Removal' *Mashable* (online, 4 October 2024) <<https://mashable.com/article/meta-facebook-instagram-red-triangle-hamas-ban>>.

⁶ Farid Farid, 'Animals: neo-Nazi stunt condemned as response divides', *The Canberra Times* (08 November 2025) <<https://www.canberratimes.com.au/story/9107342/animals-neo-nazi-stunt-condemned-as-response-divides/>>.

⁷ Oxford English Dictionary 'Abolish' Oxford University Press (2009).

8. Accordingly, slogans such as “Globalise the Intifada” and “Khaybar Khaybar Ya Yahud” cannot be treated as neutral political expressions (nor can the red triangle). They belong to a lexicon shaped by histories of violence and are frequently used in contexts that celebrate or legitimate harm. Their increasing normalisation undermines community cohesion and challenges the capacity of democratic societies to maintain a shared civic environment grounded in mutual respect, recognition, and security.
9. In a similar vein, the substitution of ‘Zionist’ for Jew is an important element tactic deployed by protesters at anti-Israel demonstrations. The significant majority of Australian Jews define themselves as Zionist,⁸ with this lowest strictly Orthodox Jews on the one hand, and non-practicing or secular Jews on the other. Similarly, on the question of responsibility to ensure that the state of Israel continues to exist, there was universal majority support, even amongst secular Jews of whom 75% agreed or strongly agreed that they felt a sense of personal responsibility to ensure that the state of Israel continues to exist.⁹
10. Phrases such as “all Zionists are terrorists”, a common slogan at the protests deliberately conflate Jewish identity and terrorist violence, suggesting that violent resistance is morally justified against all Jews. A strong case can be made that a reasonable person would anticipate that members of the Jewish community would find it not only insulting, but as inciting hatred. It should be noted that small non-representative bodies of secular or ultra-orthodox ‘anti-Zionist’ Jews who reject the concept of a Jewish state, have been cited as evidence that such attacks are not antisemitic. The support of a small percentage of outspoken activists, does not negate the deep harms to the wider community caused by these slogans when chanted in public space.
11. From a governance perspective, this raises a central dilemma. Freedom of expression is a foundational democratic value, but it is not absolute. Democratic systems have long recognised the need to balance expressive freedom against the protection of communities from language whose intent or foreseeable effect is to intimidate, marginalise, or incite violence. The threat posed by such slogans lies not only in individual utterances, but in their cumulative contribution to an environment in which hostility toward minority groups becomes routinised and politically defensible.
12. Allowing such slogans, which are inherently violent, to be stated in public space and deliberately targeted at the Jewish community, undermines both the legitimacy of the state in protecting all members of the community from threats, and ultimately, violence. This is not about hurt feelings. It is about safeguarding communities subject to relentless, often cloaked, threats that have normalised hatred and the possibility of violent acts.

⁸ David Graham and Andrew Markus, ‘Gen17 Australian Jewish Preliminary Findings’, Monash University (2018), 61, 62.

⁹ Ibid, 66.

Q2. Preventing the use of inherently hateful slogans that incite hostility and threaten community safety

13. Preventing the normalisation of slogans that function as vehicles for hatred or incitement requires a framework that is principled, evidence-based, and narrowly tailored. It must be proportionate and abide by the principles of the Rule of Law. The objective is not to suppress dissent or political mobilisation, but to address forms of expression that draw upon established histories of violence and whose foreseeable effects include intimidation, exclusion, or the legitimisation of harm.
14. Three interrelated principles should guide policy and legal responses: historical context, foreseeable impact, and strategic ambiguity.
15. First, assessment must extend beyond surface meaning to historical and political context. As outlined above, some slogans acquire their force not from literal translation, but from the histories to which they explicitly or implicitly refer. “Globalise the Intifada” is illustrative. While the term *intifada* is sometimes translated as “uprising,” or “shaking off”, its dominant association in contemporary political usage is with campaigns marked by systematic attacks on civilians, including suicide bombings and mass-casualty violence. Identifying this does not preclude the possibility of lawful criticism of the Israeli government or armed forces.
16. In the Australian context, where attacks on civilians are widely recognised as terrorism, the invocation of this history renders the slogan inherently threatening, particularly when used in proximity to celebrations of real-world violence. Similarly, the phrase “There’s only one solution, intifada revolution”¹⁰ used on the streets of Sydney and Melbourne is not linguistically neutral. The concern does not arise from syntax alone, but from how the phrase operates when a formulation historically associated with annihilationist violence is combined with a term overwhelmingly linked to campaigns of terrorism. Its structures closely mirror the language of the “Final Solution,” a formulation utilised by Nazi Germany that is inseparable from the historical reality of genocide.¹¹ When combined with a term overwhelmingly associated with political violence, the slogan operates as a compressed reference to annihilationist outcomes, regardless of whether individual speakers articulate that intent explicitly.
17. The phrase “From the River to the Sea,” commonly used in pro-Palestinian protests and encampments¹² provides another example of this. The phrase references the territory between the Jordan River and the Mediterranean Sea and has historically been used to advocate the elimination of Israel as a political entity. In practical terms, and in light of regional history, this entails the foreseeable displacement, subjugation, or

¹⁰ Rachael Dexter, ‘We can close a city’: Fierce comments at first Free Palestine rally since Bondi attack’, *The Age* (11 January 2026) <<https://www.smh.com.au/politics/victoria/we-can-close-a-city-fierce-first-free-palestine-rally-since-bondi-attack-20260111-p5nt4w.html>>

¹¹ Ian Kershaw, *Hitler, the Germans, and the Final Solution* (Yale University Press, 2008).

¹² Editorial, ‘Students ordered to dismantle pro-Palestinian encampment as tensions flare over university protests’, *ABC News* (online, 14 May 2024) <<https://www.abc.net.au/news/2024-05-14/albanese-condemns-university-protest-israel-palestine/103843220>>.

exclusion of Jewish inhabitants of that territory, and cessation of the state of Israel, originally conceived of by the Palestinian Liberation Organisation.¹³

18. Second, regulatory approaches must attend to foreseeable impact rather than requiring proof of subjective intent. Contemporary extremist movements routinely exploit legal thresholds by using language that is deniable yet evocative. This phenomenon relies on repeated exposure to violent or exclusionary rhetoric to shift norms and lower inhibitions against harm. The use of phrases by the NSN such as “Abolish the Jewish lobby,” “mass deportations,” or “Australia for the white man” exemplifies this strategy, as do other examples above. These expressions are framed as political demands but function as threats grounded in historical patterns of genocidal violence.
19. The prosecution of Nazi Joel Davis for an alleged call for the “rhetorical rape” of a female politician¹⁴ demonstrates that, whilst materially different in subject matter, Australian authorities already recognise this principle in practice. Enforcement did not hinge on proof of literal intent, but on the understanding that invoking sexual violence carries an intrinsic threat due to its real-world resonance. A comparable analytical approach is warranted where rhetoric invokes terrorism, ethnic cleansing, or genocide, particularly in contexts of heightened tension or following mass-casualty attacks.
20. Third, effective prevention requires recognition of strategic ambiguity as a deliberate tactic. Extremist actors across ideological traditions employ slogans, chants, and symbols that communicate violent ideology to in-group audiences while maintaining plausible deniability in legal and media settings. This tactic is deliberately designed to exploit gaps between literal meaning and understood significance. Failure to address this dynamic does not reflect restraint, but rather a significant misalignment between law and contemporary extremist practice.
21. To prevent such slogans from becoming normalised, several measures are warranted:
 - a. Clear operational guidance should be issued to police, prosecutors, and courts on identifying historically violent, coded, or dog-whistle rhetoric, with reference to established research in extremism and hate studies.
 - b. Legal thresholds should be clarified to permit consideration of cumulative factors, including historical meaning, context of use, proximity to violence, and impact on targeted communities, rather than relying solely on dictionary definitions.

¹³ Gavin Butler, “From the river to the sea: What does the pro-Palestinian chant mean, and why is it divisive?”, *SBS News* (online, 13 November 2023) < <https://www.sbs.com.au/news/article/from-the-river-to-the-sea-what-does-the-pro-palestinian-chant-mean-and-why-is-it-divisive/hrdrq9jul>>.

¹⁴ Anton Rose, “Neo-Nazi figure Joel Davis among three arrested over alleged threats made to politicians, PM”, *ABC News* (online, 21 November 2025) < <https://www.abc.net.au/news/2025-11-21/nsw-neo-nazi-men-arrested-threats-joel-davis-mps/106036268>>.

- c. Proportionate civil or administrative responses, such as protest conditions or targeted penalties, subject to appropriate avenues of review, should be available where slogans with violent referents are repeatedly used, without criminalising protest as a whole.
- d. Independent oversight mechanisms should monitor enforcement to ensure consistency, proportionality, and insulation from political pressure whether arising from executive government, activist movements, or other interest groups.
- e. Ongoing consultation with affected communities should inform policy refinement, ensuring that regulatory approaches reflect lived experience and empirically grounded harms.
- f. The aim is not to eliminate strong, or even extreme, political language, but to draw a clear boundary around language that has a demonstrable and foreseeable association with violence.

Q3. The obligation to protect communities from hatred, intimidation, and violence

- 22. A democratic society bears a positive obligation to protect its members from hatred, intimidation, and violence, whether manifested physically, rhetorically, or symbolically. This obligation is especially acute where historically targeted communities experience renewed insecurity in public, educational, and civic spaces.
- 23. Jewish Australians currently face a multi-directional threat environment. Far-right extremist groups, including the National Socialist Network (NSN), and their offshoot the ‘European Australian Movement’ (EAM) openly promote Nazi ideology and employ slogans advocating mass deportation, conspiratorial notions supporting the ‘abolition’ of Jewish influence, and the creation of a racially exclusive state. These are ideologically grounded expressions rooted in historical projects of persecution and extermination.
- 24. Concurrently, segments of hard-left activism, including within some protest movements and academic settings, have increasingly adopted language extending well beyond lawful criticism of the State of Israel and the policies of its government, and which, in effect treats mainstream Jewish identity as uniquely illegitimate or morally suspect. While criticism of Israeli government policy is entirely legitimate, it frequently merges into rhetoric that denies Jewish peoplehood, collapses Jewish identity into a caricatured political category, or frames Jewish presence as a problem to be resolved. Slogans such as “From the River to the Sea” and “Globalise the Intifada” exemplify this slippage, particularly where their historical and political associations with violence or exclusion are minimised, denied, or dismissed.

25. This phenomenon is not currently confined to Jewish communities, although in the context of the Bondi terror attack it necessarily requires primary attention. LGBTIQ+ Australians, migrant communities, and First Nations peoples have likewise experienced the normalisation of hostile rhetoric that remains just below criminal thresholds, and which frequently coexists with or precedes real-world violence.¹⁵ This requires urgent attention. Far-right actors increasingly target transgender people, indigenous rights, refugees, and non-white Australians using language crafted to evade enforcement while signalling exclusionary and violent intent, for example the NSN deploying a banner stating ‘Destroy Pedo freaks’ targeting Trans communities.¹⁶ At the same time, some progressive spaces have tolerated rhetoric that minimises the lived experiences of targeted groups or that implicitly or explicitly rationalises violence under the rubric of ‘resistance’ or ‘decolonisation’.
26. The cumulative effect is a degradation of civic trust and social cohesion. Religious institutions are forced to operate under heightened security, individuals conceal markers of identity, and self-censorship becomes a rational response to perceived risk. The Bondi attack, which targeted Jewish civilians (noting that non-Jewish Australians were also killed and wounded), did not emerge in a vacuum. It occurred within an environment in which extremist narratives and violent rhetoric had circulated with limited (or no) institutional or social challenge. Protection cannot be reactive or selectively applied. It must be proactive, principled, and ideologically neutral. This requires acknowledging that rhetoric does more than signal intent. It helps shape norms, set the limits of what is acceptable, and influences behaviour over time. That logic holds regardless of whether the source of incitement is extreme right, extreme left, or framed in religious terms.

Q4. International approaches and best practice

27. Comparable democracies have adopted a range of measures that balance expressive freedom with harm prevention.
28. In the United Kingdom, police have increasingly relied on public order and hate crime legislation¹⁷ to intervene where protest rhetoric crosses into incitement or intimidation. This includes arrests at demonstrations where slogans such as “globalise the intifada” were assessed as contextually abusive or threatening.¹⁸ The focus has been on situational assessment rather than blanket bans, with enforcement

¹⁵ Hon. Malamdirri McCarthy, ‘Senate Statement – Camp Sovereignty’, *Australian Government Prime Minister and Cabinet Portfolio*, (online) 4 September 2025) <<https://ministers.pmc.gov.au/mccarthy/2025/senate-statement-camp-sovereignty>>; Patrick Bell, ‘In Australia, the threat of homophobic violence lingers, and the danger is proving to be even more pernicious’, *ABC News* (online, 3 August 2024) <<https://www.abc.net.au/news/2024-08-03/threat-of-homophobic-violence-lingers-stubbornly-in-australia/104178206>>.

¹⁶ Editorial, ‘Neo-Nazi group marches into pro and anti-transgender protest in Melbourne’s CBD’, *Herlad Sun* (online, 20 March 2023)

¹⁷ *Racial and Religious Hatred Act 2006* (UK).

¹⁸ NBC News ‘U.K. police arrest pro-Palestinian protesters as authorities toughen hate speech law enforcement’ NBC News (18 December 2025).

decisions turning on context, surrounding conduct, and the perceived impact on targeted communities rather than the mere utterance of particular words.

29. Germany provides a more restrictive model. Its Criminal Code¹⁹ prohibits incitement to hatred and the approval of serious crimes, while the *Network Enforcement Act* imposes obligations on digital platforms to remove clearly unlawful content. Although criticised for potential overreach, including by civil liberties groups, the German approach demonstrates the value of legal clarity, platform accountability, and administrative enforcement as complements to criminal law rather than substitutes for it.
30. Across the European Union, best practice emphasises a combination of legal enforcement, education, victim empowerment, and research into hate narratives. EU frameworks increasingly recognise the cumulative and ecosystem-level effects of hostile rhetoric, particularly online, rather than treating incidents in isolation.²⁰ Canada has similarly expanded hate propaganda offences and pursued online harms regulation, recognising the centrality of digital spaces to contemporary radicalisation.²¹
31. International human rights law reinforces these approaches. Article 20 of the ICCPR obliges states to prohibit advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence.²² Freedom of expression, while fundamental, is expressly subject to limitation where such advocacy creates a real and foreseeable risk of harm and international jurisprudence makes clear that states may, and in some circumstances must, act preventively rather than waiting for violence to occur.

Q5. The implied freedom of political communication

32. Australia's implied freedom of political communication protects speech necessary for representative and responsible government, but it is not a personal right and is subject to proportional limitation. High Court jurisprudence makes clear that laws may validly burden political communication where they pursue a legitimate purpose and are proportionate.²³
33. Measures addressing slogans with documented associations to violence, particularly when used in celebratory contexts following terrorist attacks, are likely to satisfy this test if they are narrowly tailored and evidence-based. The implied freedom does not protect incitement, intimidation, or the weaponisation of historical trauma. As the Court has repeatedly emphasised, the freedom is not a licence to cause harm.

¹⁹ *Strafgesetzbuch* [German Criminal Code] (Germany) 13 November 1998.

²⁰ EU Think Tank 'Criminalisation of Hate Speech and Hate Crime in EU Countries' European Parliament (04 November 2024) [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2024\)766226](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2024)766226).

²¹ *Criminal Code*, RSC 1985, c C-46 pt VIII ss 318–320 (Canada).

²² *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 20.

²³ *McCloy v New South Wales* (2015) 257 CLR 178; *Brown v Tasmania* (2017) 261 CLR 328; *Clubb v Edwards* (2019) 267 CLR 171; *Comcare v Banerji* (2019) 267 CLR 373.

Q6. Existing NSW and Commonwealth frameworks

34. New South Wales and Commonwealth law contain provisions addressing incitement and hate speech, but these frameworks are often poorly suited to capturing coded or historically referential rhetoric. Section 93Z of the *Crimes Act* requires proof of incitement to violence,²⁴ including demonstrable connection between the conduct and the encouragement of violent acts, while Commonwealth terrorism offences focus on direct advocacy or material support for a terrorist act or organisation.²⁵ Civil provisions under the *Racial Discrimination Act*, whilst important, are primarily complaint driven and remedial, lacking immediacy and deterrence effect in the context of rapidly evolving public order contexts.²⁶
35. Recent reforms, including bans on Nazi symbols²⁷ at both federal and state levels, and proposals addressing online hate, represent important steps but remain fragmented. The measures focus primarily on addressing overt symbolism or specific categories of unlawful content rather than the broad communicative strategies and tactics used by contemporary extremist organisation often embed normalise or amplify violent or exclusionary narratives within otherwise lawful protest activity. There is currently no coherent national strategy addressing the rhetorical techniques used by contemporary extremists. Bridging this gap requires legal refinement, operational guidance, and coordination across jurisdictions.

²⁴ *Crimes Act 1900* (NSW) s 93Z.

²⁵ *Criminal Code Act 1995* (Cth) s 80.2C.

²⁶ *Racial Discrimination Act 1975* (Cth) s 18C.

²⁷ *Criminal Code Amendment (Prohibition of Nazi Symbols) Act 2023* (Cth).