

**Submission
No 125**

MEASURES TO PROHIBIT SLOGANS THAT INCITE HATRED

Name: Ms Sheryn Omeri KC

Date Received: 12 January 2026

IN THE MATTER OF:

**THE INQUIRY INTO PROPOSED MEASURES TO PROHIBIT SLOGANS THAT INCITE
HATRED
OF THE
NEW SOUTH WALES LEGISLATIVE ASSEMBLY COMMITTEE ON LAW AND SAFETY**

RESPONSE TO PUBLIC CALL FOR SUBMISSIONS

(1) Introduction

1. The instant submission is provided to the New South Wales Legislative Assembly's Committee on Law and Safety ('The Committee') in response to its public invitation to make submissions on its inquiry into measures to prohibit slogans that incite hatred and threaten community safety ('The Inquiry'). The instant submission is provided prior to the deadline of 5pm on 12 January 2026.
2. Its author is a dual-qualified barrister, practising in England & Wales and Australia (NSW). She was appointed King's Counsel in London. Her practice includes appearance and advisory work in the areas of employment and discrimination law, administrative law, human rights (including as formulated in international instruments such as the European Convention on Human Rights and the International Covenant on Civil and Political Rights) and public international law. She has previously worked at the Office of the Prosecutor of the International Criminal Court in The Hague, under former Prosecutor of the International Criminal Court, Dr Fatou Bensouda, currently Gambian High Commissioner to the United Kingdom. The author presently appears in the Australian cases, touching on the right to freedom of expression, and discrimination, of *Gillham v Melbourne Symphony Orchestra & Ross* and *Cassuto v Kostakidis* pending before the Federal Court of Australia. She has advised numerous other parties to disputes touching upon the right to freedom of expression.
3. Other than the phrase "Globalise the intifada" ('the Intifada phrase') the Inquiry's Terms of Reference do not specify which other 'slogans' the Committee is tasked with considering. It is unclear what is meant by the expression "**phrases like**

‘globalise the intifada’” in paragraph a) of the Terms of Reference (emphasis added). It is respectfully suggested that more helpful evidence and submissions may be gathered by the Committee in response to a more specifically-framed call for the same.

4. From recent, related, press reports of comments made by the NSW Premier, it is understood that the NSW Government considers the phrase “From the River to the Sea, Palestine will be Free” (‘the River phrase’) also to fall within the remit of the Committee’s Inquiry. Accordingly, the instant submission will address certain paragraphs a) – g) of the Terms of Reference by reference to both the Intifada phrase and the River phrase.
5. Before doing so, the author notes that the way in which the Terms of Reference have been drafted suggests (at least impliedly), from the outset, that the Intifada phrase *necessarily* poses a threat to “community cohesion” (which is not defined) and safety, and is inherently hateful.
6. Two points must be made about such framing, before addressing on individual paragraphs of the Terms of Reference. First, any “measures” proposed to be taken by government which seek to restrict the right to freedom of expression (in Australia: the implied constitutional right to freedom of political communication) must be considered extremely carefully before they are imposed. The need for them must be considered on the basis of *fact* rather than of populism or emotion, or a desire to appease any one sector of society at the expense of the fundamental freedoms of the whole of NSW society and indeed at the expense of democracy itself. Accordingly, rather than *proceeding* on the basis that the Intifada and River phrases are a threat to community cohesion and safety or are necessarily inherently hateful (of Jewish Australians?), the Committee must consider whether they are *in fact* any of those things. Importantly, in considering this matter, the Committee must of course bear in mind that the feelings of affection of certain individuals toward a foreign country cannot, in a democratic society, stifle discussion about, criticism (even of the strident variety)¹ of, or peaceful protest against, the actions of that country.
7. In relation to whether the Intifada phrase or the River phrase in fact pose a threat to community cohesion or safety, it is worthy of note that it has not been suggested that either Sajid or Naveed Akram were motivated to behave as it is alleged they did at Bondi on 14 December 2025 by either the Intifada or River phrases. Nor has it been suggested, as far as the author is aware, that any other

¹¹As Lord Justice Sedley (as he then was) held in *Redmond-Bate v DPP* [2000] HRLR 249 at [20]: “Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having.”

alleged acts of so-called Antisemitism² which have taken place in Australia either involved the use of those phrases or were inspired by them.

8. Second, the term “social cohesion” (or its variant “community cohesion”) is frequently repeated in media soundbites but never defined. Whatever it may mean, it cannot be understood as requiring that every NSW resident share the same views about politics or world events nor that every citizen express him- or herself in the same way. Neither can it be understood as requiring citizens to remain silent when they wish to speak (or assemble) publicly about an issue of concern to them simply because others may disagree (even strongly) with, or be upset by, their views.

(2) Response to Terms of Reference

9. This submission does not propose to address each and every paragraph of the Terms of Reference, but rather, will limit itself to responding to paragraphs a), b), d) and g).

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; and g) Any other related matters [International Law]*

10. As alluded to above, in inquiring into paragraph a) of the Terms of Reference, it is submitted that the Committee must first determine, on the basis of *evidence*, whether the Intifada phrase or the River phrase is a threat to ‘community cohesion,’ safety and ‘social harmony and cohesion’ and whether either is “directed at certain communities to intimidate those communities and instil fear of violence” [taken from the chapeau provision of the Terms of Reference]. The Terms of Reference appear, unfairly, simply to assume these things to be true.
11. For the reasons set out at paragraph 7 above, it is submitted that there is simply no evidence that the Intifada phrase or the River phrase poses any threat to physical safety or to property.
12. Whether they pose a threat to ‘community cohesion’ or ‘social harmony and cohesion’ will depend upon how these concepts are defined by the Committee. It is submitted that the Committee must be cautious not to adopt too broad a definition of these terms so as to give rise to the difficulties mentioned at paragraph 8 above. Arguably the values that cohere residents of NSW are (or ought to be) those of democracy, equality and respect for fundamental human

² The term “Antisemitism” is commonly understood to refer to hatred of Jewish people because of their very identity as Jewish people. However, such understanding reflects a corruption of the meaning of “Semite” which includes members of the Palestinian race.

rights including, but not limited to, freedom of expression and assembly and non-discrimination. Such values understand that public spaces in NSW must be available to all peacefully to express their feelings of concern, disempowerment, empowerment, victimhood, and resistance equally as they choose and in the peaceful manner of their choosing.

13. The same is vital in order to preserve democracy, which requires pluralism, and in order that positive social change be effected. Arguably, if “measures” in the form of prohibition and criminalisation had been taken in relation to certain phrases promoting women’s rights or the rights of Aboriginal Australians in earlier times less progress would have been made toward equality than has been made to date. Similarly, if it had been unlawful to criticise apartheid South Africa for fear of White South Africans being offended, or inequality between African-Americans and White Americans for fear of White Americans being offended, significant social change may have taken much longer to have been effected if effected at all.
14. The Committee must also consider whether the Intifada phrase, or the River phrase, is “directed at certain communities” and separately, if so, whether it is so directed “to intimidate [them] and instil fear of violence.” For the reasons given below, it is submitted that there is no evidence of either of these states of affairs.

The Intifada phrase

15. The author does not propose to engage in an extensive analysis of the meaning of the term “Intifada.” It suffices to note that it is a word of the Arabic language meaning variously: “uprising,” “shaking off” or “rebellion” and, in Arabic, has been applied to various protest movements that do not rise to the level of a revolutionary movement. In English, the term was first borrowed from Arabic to name the Palestinian uprising in the late 1980s and early 1990s, aimed at ending the occupation by the State of Israel of the West Bank and Gaza Strip and creating an independent Palestinian State and it has since been used primarily within the context of the conflict between the State of Israel and Palestinians.³ Importantly, while violence (in both directions) may have characterised the uprising of Palestinians in the late 1980s to the early 1990s (and during the subsequent, second intifada), the Committee must determine whether there is evidence that it provokes or inspires violence (that is, a threat to safety of people or property) when spoken, in an otherwise English-language phrase, during protests in NSW.
16. If “measures” were to be adopted in relation to the Intifada phrase (ie if it were effectively ‘banned’) and it were replaced, in English-language protests, by the wholly English phrase “Globalise the uprising” or “Globalise the struggle” it would

³ Encyclopaedia Britannica at <https://www.britannica.com/topic/intifada>.

be difficult to see how protesters could be prevented from uttering these given that they comprise ordinary English words which have a perfectly peaceful meaning. Accordingly, banning the Intifada phrase simply because it contains an Arabic word, or a word situated in the particular modern history of Palestinians, risks amounting to race discrimination, about which more is said below.

17. Putting to one side the nebulous concepts of ‘community cohesion’ and ‘social harmony and cohesion,’ it is far from obvious that when uttered in the context of peaceful organised public protest, the Intifada phrase is “directed at certain communities.” More obviously, when used in such a setting, the phrase appears directed at anyone, of any community, race, religion, ethnicity, who is outside of Palestine (hence “Globalise”) and who is not part of the protest, to join it. It may also be reasonably understood to mean that those who are protesting and who are uttering it in NSW are “Globalising” (since they are outside of Palestine) the uprising as they too are ‘rising up’ against Israeli occupation. Accordingly, the Intifada phrase is not reasonably able to be construed as being directed at “certain communities.” In circumstances where the public protest at which it is uttered is peaceful, equally, it is not reasonably able to be construed as intending to intimidate any particular community or to instil fear of violence.

The River phrase

18. Again, the author does not propose to engage in a detailed analysis of the meaning, or history of the River phrase. Insofar as the same may be helpful to the Committee, the author leaves that task to those more learned on the subject.⁴
19. However, on its face, the phrase implies that Palestine is not free and asserts that it will be. The implication is uncontroversial given, among other evidence, the content of the Advisory Opinion of the International Court of Justice of 19 July 2024 on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*.⁵ The assertion may reflect the will that the State of Palestine (recognised as such by the Government of the Commonwealth of Australia on 21 September 2025), will be free from occupation by forces controlled by the State of Israel. On its face, it reflects the will of a people to self-determination and freedom which cannot possibly,

⁴⁴ See also, the Canadian case (of the Ontario Superior Court of Justice) of *University of Toronto v Doe* 2024 ONSC 3755 at [89] – [98]. At [98], the Court held: “Thus, the [River] phrase appears to have been used by both Israeli and Palestinian politicians on the far ends of their respective political spectrums to claim the land ‘from the river to the sea’ as belonging exclusively to either Jews or Palestinians and by more moderate camps amongst both Israelis and Palestinians as reflecting a desire for a political solution that would allow both groups to live in freedom in either one or two states...” and at [106]: “For purposes of this motion, I do not have to determine how these phrases and symbols are being used. I review this history and analysis merely to point out that **the automatic conclusion that those phrases are antisemitic is not justified...**” (emphasis added).

⁵ <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf>

reasonably, be construed as a threat to the safety of any Australian person or community or their property. Moreover, it does not offer up any means by which Palestine will be free from occupation and accordingly, cannot be construed as intending to intimidate any Australian community or to instil fear of violence. Arguably it signals a long(er) road to the said “free[dom]” which is akin to the sentiment expressed in the phrase “The arc of the moral universe is long, but it bends toward justice” (ie while justice may be slow and delayed, humanity’s long-term progress inevitably leads to fairness).

20. It is understood that some choose to construe the River phrase as implying the absence of the State of Israel in its current form. Even if the River phrase may reasonably be construed as carrying this meaning, as upsetting as this notion may be to some, it is not inherently threatening, hateful, intimidatory or violent. Indeed, the view that the State of Israel in its current form ought not to exist has been expressed by (Jewish) scholars including Noam Chomsky and Ilan Pappé.⁶ Given that the existence and non-existence of nation states (the former USSR, the former Yugoslavia and ‘Somaliland’ recognised by Israel, to take three examples) is a matter of legitimate geo-political discussion, that the River phrase *may* bear this implication cannot be a reason to render it unlawful.
21. Anecdotally, the author attended, as an observer, an event at which the River phrase was uttered, after an acknowledgment of (Aboriginal) country, first by a panel speaker as a part of a broader poetic statement, and then by the audience in response (in the nature of the African-American tradition of ‘call and response’). The event was open to all, regardless of race, religion or ethnicity and was attended by those of Palestinian and non-Palestinian ethnicities. There was no sense in which it appeared that anyone at the event understood the River phrase to be a threat to safety, hateful, directed at any particular community, or intending to intimidate or instil a fear of violence. The event, and everyone present at the event, was entirely peaceful, welcoming and respectful. It was clear that all attendees understood the River phrase to form a part of an attempt to give some hope of a more just future for Palestinians in the context of a discussion about the desperate situation in which they currently are (which was to be discussed), in the nature of “the arc of the moral universe is long, but it bends toward justice.”
22. The special guest panel speaker at the event was Palestinian-British-Australian doctor, Mohammed Mustafa (“Dr Mo”) who spoke of his experiences working in hospitals in Gaza following 8 October 2023. When the panel chair invited questions, a Muslim woman informed Dr Mustafa that she was a midwife and then proceeded to ask him about the conditions for childbirth in Gaza. Another woman

⁶ Chomsky, N. and Pappé, I. *On Palestine*. Penguin, 2015 at p.178. (“It is essential to set the goal of establishing one state for all inhabitants and refugees of the country.”). See also: <https://www.youtube.com/shorts/SGW7aAoBU8I>.

asked Dr Mustafa how she could 'just go and help' though she was not medically trained. A further woman, of Anglo-Saxon-Celtic ethnicity, asked Dr Mustafa how she could raise with 'white women' in her circle, who purported to be feminists, the fact of their silence in relation to the rights of Palestinian women in Gaza. These were all perfectly rational, reasonable questions to be asked and were asked in the spirit of humanitarianism and non-violence. There would have been no legitimate reason to prevent or prohibit the use of the River phrase, or to impose criminal sanctions upon the panel speaker (and audience) for using the River phrase.

International Law

23. In considering the matters raised above, in particular, whether the Terms of Reference fairly characterise the Intifada phrase, and whether it would be appropriate to take "measures" (especially to prohibit its use) in relation to it and the River phrase (or any other phrase), the Committee must also have squarely in mind Australia's obligations at International Law. In particular, the Committee must consider Australia's obligations pursuant to the International Covenant on Civil and Political Rights ('ICCPR') and the International Convention on the Elimination of All Forms of Racial Discrimination ('CERD').
24. As the Committee will be aware, Australia is a signatory to the ICCPR.⁷ Its Article 19 states:

"1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals."

⁷ And has been since 1972. See: <https://indicators.ohchr.org/>.

25. As is plain on its face, paragraph 3 of Article 19 only permits restriction of the right to freedom of expression, set out in paragraph 2, in very limited circumstances. Importantly any restriction must be provided by law (relevant to a point developed below in response to paragraph d) of the Terms of Reference) and is necessary. Necessity requires the Committee to consider, prior to the Government passing any relevant legislation, the matters set out above (ie whether the Intifada phrase in fact poses a threat to safety, is directed at certain communities to intimidate them or instil fear of violence). If the Intifada phrase and the River phrase do not pose any relevant threat, it would not be *necessary* for them to be prohibited and prohibiting them would place Australia in breach of Article 19 of the ICCPR, at least on its territory of NSW.
26. Of further relevance to Australia’s international law-based obligation to uphold the right to freedom expression throughout its jurisdiction(s), and relevant to the present political context are the conclusions and recommendations of the United Nations Special Rapporteur on Freedom of Opinion and Expression, Irene Khan, in her report, promulgated on 23 August 2024 entitled “*Global Threats to Freedom of Expression arising from the Conflict in Gaza.*”⁸ On the basis of well-recognised principles of international law, from [85] of her report, Special Rapporteur Khan relevantly concludes (and recommends) that:

*“85. People have the right to express their views and to protest peacefully. States have a duty to respect, protect and facilitate those rights on an equal basis **for all persons...***

*86....**Blanket prohibition of Palestinian protests, slogans or symbols is inherently incompatible with international human rights law.** Any restriction of freedom of expression must respect scrupulously the requirements of legality, legitimate aims and the necessity and proportionality of measures to achieve those aims, as set out in international law.*

....

*88. ...The genocide in Gaza, the violation of human rights in the occupied Palestinian Territory, and the failure of Israel to respect its international legal obligations, including the occupation of the Palestinian territory, are matters of global public interest. **There is no scope for restricting freedom of expression on such matters.***

...

90. Not only States, but also organs of society, such as companies, universities and cultural and philanthropic

⁸ <https://www.ohchr.org/en/documents/thematic-reports/a79319-global-threats-freedom-expression-arising-conflict-gaza-report>.

organizations, have reneged on their responsibility to respect freedom of opinion and expression on a non-discriminatory basis...

...

A. Recommendations for States

92. States must respect, protect and fulfil the right to freedom of opinion and expression without discrimination against any individual or groups on the grounds of race, religion, political beliefs, or other protected characteristics. Any restriction of expression, including in relation to counter-terrorism laws or anti-semitism, must follow strictly the criteria set out in articles 19(3) and 20(2) of the International Covenant on Civil and Political Rights.

...” (emphasis added)

27. In addition to the foregoing, the Committee must have in mind the relevant provisions of CERD⁹ which state:

“Article 1

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life...

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

...

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and

⁹ To which Australia became signatory on 13 October 1966 and which it ratified on 30 September 1975.

regulations which have the effect of creating or perpetuating racial discrimination wherever it exists...

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

...

(viii) The right to freedom of opinion and expression..."

28. Given that the Intifada phrase contains an Arabic word, and has been deployed to refer to the uprisings of Palestinians against Israeli occupation, its prohibition on the basis of anything other than the most compelling evidence that it causes a risk to public order or safety, would amount to direct race discrimination. That is, it would amount to less favourable treatment of Palestinians compared to people of any other race by preventing Palestinians from expressing themselves in a linguistically and culturally meaningful way about matters of concern to them. Alternatively, it would amount, at least, to indirect race discrimination. Indirect discrimination is prohibited by CERD given the Convention's use of the word "effect" and the expression "in all its forms." That is, a law may be drafted in terms which are facially neutral but which disproportionately disadvantage people of a particular race. That must be the case in respect of a prohibition on the use of the Intifada phrase and the River phrase. While many non-Palestinians also utter these phrases, they are predominantly uttered by Palestinian people, or in the context of protests supportive of Palestinians who would, therefore, be disproportionately disadvantaged by any legislation prohibiting their utterance.

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 standards

29. It is submitted that the best, and indeed the *only* lawful means of preventing the use of phrases that are so inherently hateful by their nature that they lead to incitement of hatred, is to ensure the existence of content-neutral,¹⁰ precise and public laws which do not unnecessarily curtail the right to freedom of expression by only going as far as is necessary to meet the legitimate objects of ensuring respect for the rights or reputation of others, or for protecting national security, public order, public health or public morals.

¹⁰ That is, laws which do not seek to prohibit the use of *particular* words or phrases.

30. It is submitted that Australian Federal and NSW civil and criminal laws already achieve this and no further “measures” are required. It is noted that s.18C of the *Racial Discrimination Act 1975* (Cth) prohibits offensive behaviour because of race, colour or national or ethnic origin and has been deployed successfully by a number of applicants: see, for example: *Faruqi v Hanson* [2024] FCA 1264 and *Wertheim v Haddad* [2025] FCA 720.
31. Similarly the *Anti-Discrimination Act 1977* (NSW) protects against public acts that incite hatred, serious contempt or severe ridicule towards a person or group, based on specific protected attributes.
32. In the context of the criminal law, s.93Z of the *Crimes Act 1900* (NSW) makes it an offence publicly to threaten or incite violence based on specific protected attributes and the new s.93ZAA renders it an offence publicly to incite hatred towards another person or group of persons on the ground of race.

d) Australian and international examples of best practice to combat the use of such slogans including measures and approaches taken in the United Kingdom

33. Media reporting of comments made by the NSW Premier suggest that he has indicated that in banning the Intifada phrase NSW would be following the example of the United Kingdom. This is not an accurate reflection of the situation prevailing in the United Kingdom. It is submitted that the situation prevailing in the United Kingdom in respect of the Intifada phrase falls far short of “best practice” and in fact, does not meet the requirements of United Kingdom’s domestic law in the form of its Human Rights Act 1998, nor its obligations pursuant to the above-mentioned international instruments.
34. On or about 17 December 2025, the Commissioner of the Metropolitan Police (responsible for the policing of London) and the Chief Constable of the Greater Manchester Police published a joint statement¹¹ declaring that those using the Intifada phrase “at future protest or in a targeted way should expect the Met[tropolitan Police] and GMP [Greater Manchester Police] to take action.” The same demonstrates that the suggested ‘ban’ on the Intifada phrase in the UK is merely a matter of police policy and not of law. The same violates Article 19(3) of the ICCPR which requires that any restriction on the right to freedom of expression

¹¹ <https://www.gmp.police.uk/news/greater-manchester/news/news/2025/december/joint-statement-from-the-commissioner-of-the-metropolitan-police-and-the-chief-constable-of-greater-manchester-police/>.

be provided by law.¹² It also breaches the principle of legality in that, unlike legislation, police policies are not made available to the public and are therefore not transparent.

35. Interestingly, the joint statement also noted that: *“We have consistently been advised by the CPS [Crown Prosecution Service] that many of the phrases causing fear in Jewish communities don’t meet prosecution thresholds.”* One interpretation of this is that English police have been arresting protesters for matters which do not amount to prosecutable offences, thereby unlawfully depriving them of their liberty during arrest and any related detention.
36. Such policing in the UK has been criticised by the courts of that country, most recently, in the case of *Green v Chief Constable of Nottinghamshire Police* (Nottingham County Court, 27 June 2025, unreported, Judge Jonathan Owen). In that case police officers had simply accepted the complainant’s characterisation of slogans uttered and written in a protest in which the Claimant was involved (including “Zionism is racism” and “Free Palestine”) as Antisemitic and therefore amounting to a criminal offence. Accordingly, police arrested, handcuffed and detained the Claimant. The Judge held, at [63] – [64] of his Honour’s judgment on the Claimant’s claim for false imprisonment and compensation, that:

“...I am bound also to say, that I was of the view that PC Hawkins demonstrated serious misunderstanding of his role and duties as a police constable in respect of policing this kind of offence. Fundamentally, although at one point he said that he appreciated the difference between something being abusive and merely offensive, the tenor of his evidence was that it was his role simply to accept the personal offence which a complainant may manifest rather than objectively himself to determine whether a true criminal offence had been committed... Being offensive is not a crime without more and it is not simply a case of complainants finding something to be criminal: the officer has to make an objective judgment...

64. I have also to say that grave misunderstandings as to the role of the police in a free and democratic society are revealed by some of the things asked by PC Hawkins in the interview of the Claimant, such as ‘will you continue to say them if they are offending members of the public, if you are made aware that members of the public are being offended, will you continue to say them’. It is not the role of the police in a free and democratic society to seek to ‘re-educate’ (my words) a suspect about how they must or should seek to avoid ‘offending’ people in the future. It may be that in other, less democratic and free, societies this is seen as part of the role of the police. Happily, that is, or at least should not be, the case in England and Wales.”

¹² The same amounts to the commensurate provision in Article 10 of the European Convention on Human Rights, incorporated into English domestic law by the Human Rights Act 1998.

And concerning police ‘policies,’ His Honour said, at [83]:

“It is clear to me that the Defendant [Chief Constable] has caused or permitted circumstances to be such that even an experienced, honest and apparently competent and diligent police constable (PC Hawkins) and his Sergeant (to whom the same observations apply) (Sgt. Whitt) badly misunderstand, in an entirely unconstitutional and significantly harmful way, to the detriment of the freedom of expression and liberty of the subject, the principles relating to public order policing. Whatever may be the paper policies and procedures mandated by the Defendant, as to which I have heard little, it is clear to me that, on the ground, proper practices and standards are not being enforced...”

37. That case took some 5 years to get to trial. If a similar police- and/or ‘victim’-led approach were to be taken to the policing of alleged hateful slogans in NSW, it is likely that this would fill criminal court lists with many unmeritorious prosecutions, and civil court lists with many *meritorious* claims for compensation. This would be far from “best practice.”
38. Separately from the above, the Home Secretary has ordered an *independent* review of the UK’s public order and hate crime legislation to be conducted by former Director of Public Prosecutions and experienced barrister, Lord Ken MacDonald KC.¹³ That review has yet to report on its findings so no lessons as to “best practice” or otherwise are yet able to be learned from the UK experience.
39. In relation to the UK’s proscription of protest group Palestine Action, the very same is the subject of a court challenge, presently before the High Court of England and Wales (heard on 25 November 2025, judgment awaited). The proscription itself has ostensibly resulted in further protests, against the proscription, and the arrest of some 3000 protesters who have expressed public support for Palestine Action. The English criminal justice system, already badly under strain, must now, accordingly, accommodate 3000 further trials. It is submitted that if the Intifada or River phrases were criminalised, similar additional protests would occur in NSW, causing a similar spike in prosecutions which the courts will be forced to accommodate. This would likely impose a significant cost on the public purse and for little benefit given that, as suggested above, the relevant phrases are not inherently threatening, hateful, intimidatory or instilling of fear of violence.
40. It is hoped that the instant submission is found to be helpful to the Committee. Its author is prepared to provide any further assistance requested by the Committee in relation to the matters set out herein.

¹³ <https://www.gov.uk/government/news/review-of-public-order-and-hate-crime-legislation>

Sheryn Omeri KC

12.1.26