

**Submission
No 126**

MEASURES TO PROHIBIT SLOGANS THAT INCITE HATRED

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NSW Legislative Assembly
Committee on Law and Safety

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

Dear Committee Members,

**Submission to NSW Legislative Assembly Committee on Law and Safety:
Measures to Prohibit Slogans that Incite Hatred**

We write this submission in our capacity as academics at the Faculty of Law, University of Technology Sydney, who teach and research in the areas of criminal law and sentencing, and the interrelationship between law and language.

Terms of reference

The enclosed submission relates to the following terms of reference:

- 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
- 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
- Australian and international examples of best practice to combat the use of such slogans, including measures and approaches taken in the United Kingdom
- The Australian Constitution and the implied freedom of political communication

- Existing offences and other measures in New South Wales and Commonwealth legislation, including offences and measures that have been announced.

Recommendations

We recommend that the NSW Government should:

- Await the findings of the Federal Royal Commission on Antisemitism and Social Cohesion, and release for public consideration and comment, the NSW Review of Criminal Law Protections Against the Incitement of Hatred, before instituting further legislative responses to hate speech.
- Review criminal laws and police powers that unduly restrict protest, free speech, and free assembly with a view to winding back the excessive criminalisation of public protest.
- Adopt a rights-based legislative framework that protects free expression.
- Not enact criminal offences that restrict or ban Palestinian political slogans.
- Prioritise investment in education, non-criminal anti-racism and justice reinvestment strategies.
- Institute measures to stamp out existing biases and prejudices within the NSW Police Force that contribute to racialized and uneven policing.
- Encourage government and community leaders to promote tolerance and acceptance, denounce prejudice, and promote international human rights principles and standards.
- Consider a standalone police unit to deal with hate crime, and an independent body to monitor police responses to hate crime.
- Improve the collection and publication of data on hate crimes when criminal offences are charged for hate-related incidents. In particular, collect and publish data on the use of ss 93Z, 93ZA and 93ZAA of the *Crimes Act 1900*, offensive language/ behaviour, assault, affray, intimidation and other provisions to police and prosecute allegedly racist or hateful speech/conduct.
- Repeal the crime of offensive language/behaviour in ss 4A and 4 of the *Summary Offences Act 1988* or restrict the scope of these offences so that they cannot be used to target legitimate political expression, and only capture situations where there is intimidation and/or an actual threat of harm.

The enclosed submission explains the rationale behind these recommendations. Should you have any questions in relation to our submission, please contact the corresponding author, Dr Elyse Methven, by email to Elyse.Methven@uts.edu.au.

Yours sincerely,

Dr Elyse Methven, Senior Lecturer

Derick Luong, Lecturer

Dr Thalia Anthony, Professor

Encl.

Submission to the NSW Legislative Assembly Committee on Law and Safety: Measures to Prohibit Slogans that Incite Hatred

i. Introduction

At the outset, we note that the rushed nature of this inquiry risks undermining the careful legislative deliberation, meaningful consultation with affected communities, and proper consideration of expert evidence that is needed for laws of this kind. The inquiry is also premature, given that the Royal Commission on Antisemitism and Social Cohesion, recently announced by the Federal Government, has not yet commenced or delivered its findings. We further note that, at the time of writing this submission, the Government has not released the recommendations of the Honourable John Sackar AM KC, which were received in November 2025, concerning the Review of Criminal Law Protections Against the Incitement of Hatred. It would be appropriate for the findings of this Review to be available for public consideration and comment before introducing any further measures to combat hate speech.

It is also important to preface that *associations made between citizens exercising their right to protest and the horrific violence perpetrated in Bondi are dangerous and unfounded*.¹ This is important to recognise, as this inquiry follows the horrific killing of fifteen people at a Hanukkah festival in Bondi on 14 December 2025. We resolutely condemn the mass shooting at Bondi Beach, and we support Australian NSW and Federal governments taking appropriate, evidence-based measures to prevent violence and reduce the incidence of Antisemitism as well as other forms of racism and prejudice in the community.

There is no evidence of any purported connection between these killings and Palestinian solidarity movements, protests and specific protest chants. The impact of making such a connection has the effect of racially vilifying Palestinian people and other Middle Eastern groups. Exploitation of the Bondi Attack to silence opposition to the genocide in Gaza, orchestrated by the Israeli Government and the oppression of the Palestinian people is

¹ See, for example, the NSW Ministerial media release by the Premier and the NSW Attorney General published 20 December 2025, which makes such an association when it states: ‘Horrible recent events also show that the chant “globalise the intifada” is hate speech and encouraging of violence in our community. This chant will be banned alongside other hateful statements used to vilify and intimidate our community.’ NSW Government, ‘NSW Government to crack down further on hateful symbols and slogans’ (December 2025) <<https://www.nsw.gov.au/ministerial-releases/nsw-government-to-crack-down-further-on-hateful-symbols-and-slogans>> accessed on 12 January 2026.

irresponsible, dangerous and unjustified. At this stage, Australian law enforcement has linked the killings to support for the Islamic State (ISIS).² Rhetoric that links pro-Palestinian protest to the Bondi Attack stigmatises Palestinians, Arab communities, and Muslim Australians who form an integral part of the Australian community. This rhetoric increases Islamophobia and frays Australia's social cohesion. It is part of a broader pattern of conflating legitimate criticism of the state of Israel and Zionist movements with Antisemitism or extremism. This has the effect of distorting legitimate public debate and risks sanitising Israel's violence and unjust oppression of, and human rights and humanitarian law violations against, the Palestinian people.

ISIS is a transnational movement that seeks to establish a global Islamic caliphate, transcending all existing national borders. It views nationalism, including Palestinian nationalism, as contrary to Islamic ideology.³ ISIS is fundamentally opposed to the creation of an independent Palestinian state.⁴ It is not just dangerous to connect the ISIS-inspired Bondi Beach massacre with Palestinian solidarity movements. *It is plainly wrong.*

ii. 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

A pluralistic, democratic society must permit the robust discussion of ideas and beliefs, including those that challenge the status quo.

The phrase 'Globalise the Intifada' is imbued with historical and political meaning, which is nuanced and context-dependent. It is important to understand the history behind the phrase *Globalise the Intifada*, and other phrases used in protests that express support for Palestinian independence and call for resistance against the ongoing oppression of the Palestinian people. The meanings of the word *Intifada* and the phrase *Globalise the Intifada* are nuanced and context-dependent. They are not inevitably associated with violence or hatred. The Arabic term

² Peter Beaumont, 'What is the status of Islamic State, the group linked to the Bondi attacks?' *The Guardian* (22 December 2025) <<https://www.theguardian.com/world/2025/dec/22/could-the-bondi-terror-suspects-be-linked-to-islamic-state>> accessed 12 January 2026.

³ Mohamed-Ali Adraoui, 'Borders and sovereignty in Islamist and jihadist thought: past and present' (2017) 93(4) *International Affairs* 917. See also: John Esposito, *Unholy war: terror in the name of Islam* (Oxford University Press, 2004).

⁴ *Ibid.*

Intifada, which translates to mean “shaking off”, for Palestinians has been used to express resistance to the oppression of their people by the state of Israel. Citing Yezid Sayigh, Annika Drego writes: ‘The Arabic word “intifada” refers to a resistance movement, uprising or rebellion. Translated to mean ‘shake-off’, intifada connotes an uprising against an oppressive political force.’⁵ The term *Intifada* has also been used by Arabic speakers more generally to describe historical social uprisings aimed at shaking off an oppressive system.⁶

The singling out of a pro-Palestine chant as worthy of criminal punishment results in the unequal treatment of people under the law. This unequal treatment – rather than increasing social cohesion – fuels resentment among those whose inherent dignity is devalued.

iii. 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

This statement contains presuppositions that require unpacking. First, the idea that a phrase has an “inherent” meaning is inconsistent with how language works. *There is no such thing as an inherently hateful phrase.* Renowned British linguist Norman Fairclough acknowledges the fallacy of the idea that we can interpret texts in a neutral or objective fashion. We cannot simply describe ‘what is “there” in the text’, as interpretations are biased by our own subjectivity.⁷ The meanings of words are socially, historically, and culturally contingent, and dependent on the context in which they are used, and are subject to change. They are not fixed or stable.

In addition, *NSW already has sufficient legislation to criminalise incitement to violence, vilification and hate speech.* If the phrase *Globalise the Intifada* were inherently hateful (which, we contend, is a baseless proposition), there would be no need to enact further legislation to ban its use. This is because both the NSW and Federal jurisdictions already have a suite of criminal legislation that provides for the criminal punishment of hate speech, offensive language/behaviour, intimidation and vilification.⁸ This legislation includes the new

⁵ Annika Drego, ‘Rousseau, Hallward and the Israel-Palestine Conflict: How has the Palestinian Diaspora Asserted its General Will’ [2023] *UNSW Law Journal Student Series* No 23-2, citing Yezid Sayigh, ‘Redefining the Basics: Sovereignty and security of the Palestinian State’ (1995) 24(4) *University of California Press* 5, 7.

⁶ Adrian Florido, ‘Chants of ‘intifada’ ring out from pro-Palestinian protests. But what’s it mean?’ (NPR, 4 June 2024) <<https://www.npr.org/2024/06/04/nx-s1-4958278/>> accessed 12 January 2026.

⁷ Norman Fairclough, *Analysing Discourse* (Routledge, 2003) 14-15.

⁸ See e.g. ss 93Z-93ZAA of the Crimes Act and ss 4 and 4A of the Summary Offences Act. See also the legislation referred to in NSW Law Reform Commission, Report 151 Serious Racial and Religious Vilification (*NSW Law Reform Commission*, 2024) 53.

NSW offence of publicly inciting hatred on ground of race (*Crimes Act 1900* s 93ZAA), which was introduced last year as a direct response to rising incidents of Antisemitism. The offence makes it a crime for a person, by a public act (which includes word or conduct), to intentionally incite hatred towards another person or group on the grounds of race. It supplements s 93Z, which contains the offence of publicly threatening or inciting violence on the grounds of race, religion, and other specified grounds.

As noted above, the NSW Government has not published the findings of the NSW Review of Criminal Law Protections Against the Incitement of Hatred, which the Government received in November 2025. It has been reported that two individuals have been charged with the s 93ZAA offence of inciting racial hatred since its introduction last year.⁹ The Review considered whether NSW criminal law protections against hate speech adequately protect vulnerable members of the community. One would assume its findings to be relevant to the present inquiry.

Banning specific phrases sets a dangerous, anti-democratic precedent that will damage social cohesion. NSW Premier Chris Minns and the NSW Attorney-General have signalled an intention to ban or restrict the use of ‘specific’ protest phrases.¹⁰ It would be ill-considered, unwise, and potentially constitutionally invalid, to single out a phrase or designate political phrases as criminally punishable.

Take, for instance, the phrase referred to in this inquiry - *Globalise the Intifada*. The very notion of banning this phrase raises questions relating to its implementation, surveillance and enforcement that underscore its Orwellian nature.

Would the Government only outlaw the use of this specific phrase, or, would variations (like, for example, *Globalise the Resistance*) be added to the list? Noting that language is in a constant state of flux, would the list of prohibited words and phrases be regularly adapted with inevitable shifts in language and political opinion on what constitutes hate speech? Who would

⁹ Jessica McSweeney and Patrick Begley, ‘Hate speech offence leads to just two charges as government keeps review secret’ (28 December 2025) <<https://www.smh.com.au/politics/nsw/hate-speech-constitutionally-ch-offence-leads-to-just-two-charges-as-government-keeps-review-secret-20251223-p5nptb.html>> accessed 11 January 2026.

¹⁰ ‘NSW Government to crack down further on hateful symbols and slogans’ (December 2025) <<https://www.nsw.gov.au/ministerial-releases/nsw-government-to-crack-down-further-on-hateful-symbols-and-slogans>> accessed on 12 January 2026.

be charged with determining which words were “inherently hateful”? And what criteria would they use to determine this?

There are also questions that arise specifically from the question of how to draft an appropriate criminal offence. Would the Government attach to any hypothetical criminal prohibition that bans slogans an element of intention to provoke or incite hatred, violence or intimidation? Or would the offence be one of absolute or strict liability? The latter approach would, concerningly, ban speech regardless of the intention of the speaker and the actual meaning of the words in their context of use. Such an approach would also undoubtedly capture legitimate political expression. Would “speech” be defined broadly as incorporating, but not limited to, verbal expression? In what forums or settings might the use or publication of slogans be banned – would the law’s reach be restricted to protest settings, or might legislation also capture other uses of the banned phrases(s)?

Further questions relate to surveillance and enforcement. Would police be charged with monitoring activists’ conversations, and in what forums? And how might the policing of banned phrases divert the attention and resources of NSW Police from other, more pressing duties (for example, preventing violence in our community)?

Related to these questions is a concern that the banning of protest slogans will create a “new normal”, setting a disturbing precedent for the clamping down on politically unpopular rhetoric or commercially inconvenient causes (for example, expressions used by First Nations activists such as *Fuck the Crown* or *Burn the Flag*). These questions are pertinent to ask when considering such an illiberal and illogical proposal.

Banning words will not achieve the desired result of increasing social cohesion. It will also not expunge the impugned words from social use. In fact, history and linguistic research have shown how language is resilient and adaptable. In addition, the censorship of words can lead to unintended consequences, including by increasing their potency, increasing the stigmatisation of out-groups and driving sentiments underground.¹¹

¹¹ See, eg, Keith Allan, Kate Burridge, *Forbidden Words: Taboo and the Censoring of Language* (Cambridge University Press, 2006); Geoffrey Hughes, *An Encyclopedia of Swearing: The Social History of Oaths, Profanity, Foul Language, and Ethnic Slurs in the English-Speaking World* (ME Sharpe, 2006); Tony McEnery, *Swearing in English: Bad Language, Purity and Power from 1586 to the Present* (Routledge, 2004).

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

In our submission to the NSW Independent Review of Hate Speech Laws, we foreshadowed the possibility of NSW following the lead of other countries, whose police have acted to quash pro-Palestine chants.¹² We submitted that the broadening of hate laws will open the gates to the policing of criticism of the Israeli state, at a time when Israel was blockading aid leading to the mass starvation of the Palestinian people, as recognised by the NSW Supreme Court.¹³ We wrote then that criticism of the inhumane actions of the Israeli Government was not only legitimate but, we believe, necessary.¹⁴

There is a recognised global trend towards the criminalisation of political dissent and activism. In particular, there is a growing censure movement towards pro-Palestine activists, which has included the violent suppression of activists by police. This punitive turn – where increasingly pre-emptive and coercive responses are deemed appropriate, legitimate, and necessary ways in which to ‘manage’ or suppress dissent – has been seen in both Australia and the UK. The recent arrest of a protester by NSW Police for wearing a jacket inscribed with the phrase *Globalise the Intifada* signals how the police are not neutral arbiters of public order laws. It was reported that police made the arrest despite being unable to pinpoint the relevant legislation banning the phrase and later released the protester without charge.¹⁵ This demonstrates the propensity of police to go beyond what is lawful to stifle Palestinian activism. They above all serve to protect the existing social order, which coincides with protecting powerful interests and dominant social ideologies.

¹² Al Jazeera, ‘UK police investigate Glastonbury performers who led pro-Palestine chants’ *Al Jazeera* (London, 29 June 2025) <<https://www.aljazeera.com/video/newsfeed/2025/6/29/uk-police-investigate-glastonbury-performers-who-led-pro-palestine-chants>> accessed 10 January 2026.

¹³ *Commissioner of Police (NSW Police Force) v Joshua Lees* [2025] NSWSC 858, [26],

¹⁴ Elyse Methven, Derick Luong and Thalia Anthony, *Submission: NSW Independent Review: Criminal Hate Speech* (6 August 2025).

¹⁵ See Caitlin Cassidy, ‘Protester detained in Sydney for wearing ‘globalise the intifada’ jacket says she should never have been arrested’ *Guardian* (6 January 2026) <<https://www.theguardian.com/australia-news/2026/jan/06/protester-detained-in-sydney-for-wearing-globalise-the-intifada-jacket-says-she-should-never-have-been-arrested-ntwnfb>> accessed 11 January 2026.

The UK provides a stark comparative example of how not to respond to contested political slogans. In recent years and particularly following the Hamas attacks on 7 October 2023 and Israel's subsequent military assault on Gaza, the UK Government has adopted an increasingly repressive and anti-democratic approach to pro-Palestinian activism. This has included the use of counterterrorism laws, public order offences and policing directives to criminalise protest and to delegitimise expressions of solidarity with Palestine. These measures have been widely criticised for exacerbating social division and fuelling resentment, especially as they have been argued to have operated in a highly racialised manner.¹⁶

Of concern is the UK Government's recent decision to proscribe the direct-action group Palestine Action as a terrorist organisation in July 2025. Palestine Action, founded in 2020, describes its purpose as taking direct action against Israel's arms trade in Britain.¹⁷ While the UK Home Secretary has justified the decision by arguing that 'Palestine Action has committed acts of serious damage to property with the aim of progressing its political cause and influencing the Government', expert advice previously provided to the UK Government warned that proscribing a direct-action protest group would be unprecedented.¹⁸ Although interim relief was refused, the courts have granted permission for a substantive legal challenge, including arguments that the proscription violates Articles 10 and 11 of the European Convention on Human Rights and principles of procedural fairness.¹⁹ In *Ammori v Secretary of State for the Home Department*, the High Court of England and Wales acknowledged that such policing practices are liable to have a chilling effect on those wishing to express legitimate political views, and that this chilling effect may properly be regarded as an indirect consequence of the proscription regime itself.²⁰

The consequences of this proscription have extended well beyond the organisation itself. British media have documented the arrest and investigation of individuals protesting Israel's actions in Gaza, under s 13 of the *Terrorism Act 2000* (UK). For example, following a peaceful

¹⁶ See Brendan Browne, Elian Weizman, and Jennifer Matchain, 'Unpacking the crackdown on Palestine solidarity activism in the UK in a post-7 October reality' [2025] *Third World Quarterly* 1.

¹⁷ *The King (on the Application of Huda Ammori) v Secretary of State for the Home Department* [2025] EWHC 2013 at [8].

¹⁸ See e.g. John McEvoy, 'Revealed: How Palestine Action Was Banned' *Declassified UK* (London, 24 July 2025) <<https://www.declassifieduk.org/revealed-how-palestine-action-was-banned/>> accessed 10 January 2026.

¹⁹ *The King (on the Application of Huda Ammori) v Secretary of State for the Home Department* [2025] EWCA Civ 848; *The King (on the Application of Huda Ammori) v Secretary of State for the Home Department* [2025] EWHC 2013.

²⁰ *ibid* at [41] (Chamberlain J).

demonstration at Parliament Square in Westminster, London, 474 protesters were arrested for holding signs stating: ‘I oppose genocide, I support Palestine Action’, under s 13 of the *Terrorism Act*.²¹ According to British media reports, most of the protesters and those arrested, notably, were retired pensioners, with a significant number over the age of 60. Several activists associated with Palestine Action have subsequently been charged for terrorism-related offences under the *Terrorism Act*.²²

Further illustrating the dangers of the UK approach, the Metropolitan Police announced in December 2025 that they would arrest individuals chanting ‘Globalise the Intifada’ or displaying placards bearing that phrase, notwithstanding earlier advice from the Crown Prosecution Service that the phrase did not meet the threshold for prosecution.²³ Subsequent arrests in London underscore how vague and discretionary enforcement practices invite overreach and suppress political expression.

These developments demonstrate that the UK approach does not represent international best practice. Rather than reducing harm or promoting social cohesion, the expansion of criminal frameworks into the realm of political speech, which has included counterterrorism laws, has entrenched mistrust, polarisation, and democratic regression. Australia should resist adopting similar models. Best practice responses to contested political slogans lie not in criminalisation, but in narrowly tailored, proportionate measures that distinguish between genuine incitement to violence and robust, even confronting, political expression. Best practice responses also preserve protest and dissent as central features of a democratic society governed by the rule of law.

²¹ Emma Rossiter, Adam Hale, and Frankie McCamley, ‘Police arrest 474 at Palestine Action ban protest’ *The BBC* (London, 10 August 2025) <<https://www.bbc.com/news/articles/c8de6rq37v5o>> accessed 10 January 2026.

²² Laura Sharman, ‘Seven people charged with terrorism ahead of London demonstration for banned Palestine Action group’ *CNN* (New York, 4 September 2025) <<https://edition.cnn.com/2025/09/04/europe/palestine-action-london-terrorism-arrests-intl-hnk>> accessed 10 January 2026.

²³ Paul Godfrey, ‘British police announce crackdown on “globalize the intifada” displays’ *UPI* (London, 17 December 2025) <https://www.upi.com/Top_News/World-News/2025/12/17/antisemitism-crackdown/8961765977553/> accessed 10 January 2026.

v. The Australian Constitution and the implied freedom of political communication

As is well known, there is no federal bill of rights in Australia. Nor is there an explicit constitutional recognition of the right to free speech analogous to the US First Amendment. Rather, a ‘weak’ freedom of political communication, which acts as a constraint on government, has been implied by the High Court of Australia into the Australian Constitution. As such, freedom of speech is not guaranteed as a matter of substantive law in Australia, with the constitutionally implied freedom of political communication merely serving as a means to challenge the validity of laws that may impermissibly burden political communication, provided the contested law does not burden political communication for a legitimate, proportionate purpose. At the constitutional level, the implied freedom of political communication is tested through a structured proportionality analysis, as developed in *Lange v ABC* and refined in *McCloy v New South Wales*. Under this framework, a law that burdens political communication will be invalid unless it:

1. Serves a legitimate purpose compatible with the system of representative and responsible government;
2. Is suitable (i.e., rationally connected to that purpose);
3. Is necessary (i.e., there are no obvious, less restrictive means of achieving the same purpose); and
4. Is adequate in balance, meaning the law’s effect on the freedom is proportionate to the importance of the law’s objective.

As yet, no claim made under the implied freedom of political communication has succeeded in invalidating Australia’s hate speech and anti-vilification laws, and it is unlikely that current anti-vilification laws would fall afoul of the implied freedom of political communication on the current jurisprudence. This is because such laws have been carefully drafted to pursue the legitimate aim of protecting individuals and communities from harm, without unnecessarily encroaching upon political discourse. Regardless, a democratic society like Australia must remain vigilant against laws that, even in pursuit of laudable goals, risk silencing dissent or deterring legitimate debate. As the UN Special Rapporteur has cautioned, criminalisation should be a measure of last resort, not a default response to offensive or disturbing speech. For the promotion and protection of the right to freedom of opinion and expression, criminalisation

should be reserved for serious instances of hate speech.²⁴ This is especially the case when such criminalisation might interfere with fundamental democratic rights, such as the rights to freedom of speech and free assembly.

It is also worthwhile noting that free speech is also recognised, in part, from Australia's common law tradition. There is the common law notion that 'everybody is free to do anything, subject only to the provisions of the law.' The common law principle of legality also requires courts to presume legislatures do not possess an intention to interfere with fundamental rights and freedoms, including freedom of speech, unless such contrary intention is clearly manifest by way of unmistakable and unambiguous language. The human rights charters of the ACT, Victoria and Queensland can also be argued to be another form of free speech safeguard in Australia, where these charters require legislation to be construed in a manner which is compatible with recognised human rights (i.e. the rights found in the ICCPR) – to the extent it is possible to do so consistently with the purpose of the legislation. Notably, no such human rights charter exists in NSW.

Constraints on protest and speech narrow opportunities for critical debate and disagreement, and the free and open cultural exchange of ideas. Protest and political expression are vital means by which members of the public can collectively challenge hegemonic orders. In a robust democracy, which Australia purports to be (noting that recent measures to suppress public expression, and an absence of a federal bill of rights, undermine this), members of the public should be able to express their opposition to genocidal and violent acts, unfettered by the threat of arrest, the use of police force or other coercive actions.

It is important for Australian leaders to inculcate a political culture that celebrates free speech and recognises its importance. This includes acknowledging that we cannot shut ourselves off from global conflicts while we also contribute to and profit from them. The Israel-Palestine conflict is global. Francesca Albanese, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, writes of the complicity of third-party states in the atrocities committed in Gaza by Israel:

²⁴ David Kaye, *Report of the Special Rapporteur on the Promotion of the Right to Freedom of Opinion and Expression*, Un Doc A/74/486 (9 October 2019) <https://www.ohchr.org/sites/default/files/Documents/Issues/Opinion/A_74_486.pdf>.

Without the direct participation, aid and assistance of other States, the prolonged unlawful Israeli occupation of the Palestinian territory, which has now escalated into a full-fledged genocide, could not have been sustained. The military, political and economic support of some Third States and the unwillingness to hold Israel accountable has enabled Israel to embed its regime of settler-colonial apartheid in the occupied Palestinian territory (oPt), with more colonies, home demolitions, restrictions on movement and loss and erasure of Palestinian life.

... the ongoing genocide of the Palestinians must be understood as an internationally enabled crime. Many States, primarily Western ones, have facilitated, legitimized and eventually normalized the genocidal campaign perpetrated by Israel. By portraying Palestinian civilians as “human shields” and the broader onslaught in Gaza as a battle of civilization against barbarism, they have reproduced the Israeli distortions of international law and colonial tropes, seeking to justify their own complicity in genocide.²⁵

Notably, Australia supplies component parts for arms used by Israel in its genocidal destruction of Gaza, namely for the F-35 stealth strike fighter programme.²⁶ Australia has also maintained trade relations with Israel despite its international human rights and humanitarian violations. Such trade relations have helped to sustain these violations.²⁷ These are legitimate concerns of citizens in Australia. By criminalising speech used to oppose Israel’s actions, Australia risks further complicity in its oppression of Palestinian people and the Gaza genocide.

We detected a broader pattern of speech suppression in a previous submission:

Allegations of Antisemitism on university campuses have been weaponised to silence student expressions of opposition to the continuing occupation and unfolding

²⁵ Report: “Gaza Genocide: a collective crime” by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (A/80/492).

²⁶ *ibid.*

²⁷ Human Rights Law Centre, ‘Statement: Australia’s support for Israel’s ongoing illegal occupation and blockade of humanitarian aid to Gaza must end’ (Sydney, 2025) <<https://www.hrlc.org.au/news/statement-blockade-of-humanitarian-aid-gaza/>> accessed 10 January 2026.

genocide²⁸ of Palestinians by the state of Israel under President Netanyahu.²⁹ University staff have been investigated for misconduct³⁰ and had research funding suspended.³¹ Students have been investigated by university management and police due to peaceful involvement in pro-Palestinian campus protests.³²

In other sectors, including the media and legal professions, staff have lost their jobs³³ and been issued with warnings³⁴ due to voicing opposition to Israeli atrocities committed in Gaza and wearing the keffiyeh.³⁵ Artists and writers have had their contracts rescinded on this same basis.³⁶ This backdrop of speech being silenced is significant; it is in this context that there are calls for further restrictions on speech, and a dangerous conflation of opposition to the policies and actions of the Israeli government with Antisemitism. It is integral that peaceful debate and robust criticism

²⁸ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* (ICJ, Order of 26 January 2024).<https://www.icj-cij.org/case/192/orders>

²⁹ Erin Morley, 'Staff, students 'silenced' about Palestine, inquiry reports' *Campus Review* (Sydney, 15 August 2025) <<https://www.campusreview.com.au/2025/06/talking-about-palestine-a-career-killer-report/>> accessed 10 January 2025.

³⁰ Maram Susli, 'Israeli lobby silencing anti-Zionist academics at Australian university' *Al Mayadeen English* (Sydney, 6 June 2024) <<https://www.arabobserver.com/israeli-lobby-silencing-anti-zionist-academics-at-australian-university/>> accessed 10 January 2025.

³¹ Caitlin Cassidy, 'ARC suspends \$870,000 grant to pro-Palestine academic Randa Abdel-Fattah, senators told' *The Guardian* (Sydney, 28 February 2025) <<https://www.theguardian.com/australia-news/2025/feb/28/arc-suspends-870000-grant-to-pro-palestine-academic-randa-abdel-fattah-senators-told>> accessed 10 January 2025.

³² Stephanie Convery and Cait Kelly, 'Student protesters face expulsion from University of Melbourne over pro-Palestine office occupation' *The Guardian* (Sydney, 2 June 2025) <<https://www.theguardian.com/australia-news/2025/jun/02/students-recommended-for-expulsion-university-of-melbourne-pro-palestine-office-protest-ntwnfb>> accessed 10 January 2025;

³³ Lana Lam, 'Australian journalist wins unfair dismissal case over Gaza post' *BBC* (Sydney, 25 June 2025) <<https://www.bbc.com/news/articles/cj4exrwj8pjo>> accessed 10 January 2026; Adeshola Ore, 'Melbourne Black Star Pastry employees sacked after wearing the keffiyeh at work' *The Guardian* (Sydney, 17 June 2024) <<https://www.theguardian.com/australia-news/article/2024/jun/17/melbourne-black-star-pastry-employees-sacked-wearing-keffiyeh-work-discrimination-case>> accessed 10 January 2026.

³⁴ Alex McKinnon, 'Legal Aid NSW bans staff from discussing "war in Israel, Palestine" at work' *Deepcut News* (Sydney, 17 July 2025) <<https://www.deepcutnews.com/p/legal-aid-nsw-bans-staff-from-discussing>> accessed 10 January 2026.

³⁵ Adeshola Ore, 'Melbourne Black Star Pastry employees sacked after wearing the keffiyeh at work' *The Guardian* (Sydney, 17 June 2024) <<https://www.theguardian.com/australia-news/article/2024/jun/17/melbourne-black-star-pastry-employees-sacked-wearing-keffiyeh-work-discrimination-case>> accessed 10 January 2026.

³⁶ Kerrie O'Brien, 'Emails reveal State Library discussed political, religious views of writers' *SMH* (Sydney, 16 July 2024) <<https://www.smh.com.au/culture/books/state-library-probed-writers-political-religious-views-before-cancellations-20240715-p5jttd.html>> accessed 10 January 2026; Kate Ashton, 'Melbourne Symphony Orchestra cancels pianist Jayson Gillham's next performance over recital comments' *ABC* (Sydney, 14 August 2024) <<https://www.abc.net.au/news/2024-08-14/mso-cancel-jayson-gillham-concert-gaza-comments/104220344>> accessed 10 January 2026; Kelly Burke, 'Court greenlights trial of pianist's discrimination claim after Melbourne orchestra cancelled concert' *The Guardian* (Sydney, 8 May 2025) <<https://www.theguardian.com/australia-news/2025/may/08/court-greenlights-trial-of-pianists-discrimination-claim-after-melbourne-orchestra-cancelled-concert-ntwnfb>> accessed 10 January 2026.

of such policies in the media, universities and public spaces remain free from government interference.

The foregoing analysis underscores a deep structural problem in Australian public law: the absence of a comprehensive, rights-based framework capable of affirmatively protecting freedom of expression, including protest and political dissent, rather than merely constraining the outer limits of legislative power. The implied freedom of political communication, while doctrinally significant, is an insufficient substitute for a substantive right. It operates reactively, is narrowly tethered to electoral democracy, and offers no direct protection to individuals against executive overreach, institutional censorship, or the cumulative chilling effects of criminal, administrative, and private regulatory regimes.

While we understand that this proposal is outside the scope of the current review, legal commentators have long argued for a federal Human Rights Act that entrenches freedom of expression and peaceful assembly as positive legal rights, subject to carefully circumscribed limitations. Such an instrument should explicitly recognise the heightened protection afforded to political speech, protest and advocacy. It should also incorporate robust safeguards against the misuse of hate speech, vilification and Antisemitism frameworks to suppress legitimate criticism of state policies or to conflate political opposition with racial or religious hatred. This distinction is not merely semantic; it is essential to preserving both freedom of expression and the integrity of anti-discrimination law.

A rights-based model would ultimately reframe freedom of expression not as a residual liberty tolerated at the sufferance of Parliament, but as a foundational democratic right grounded in human dignity, equality and political agency. Such a model would align Australia more closely with its international legal obligations under the ICCPR, particularly articles 19 and 21, which protect freedom of expression and peaceful assembly subject only to strictly necessary and proportionate limitations. Importantly, international human rights law does not treat political speech, especially speech critical of state violence, militarism or foreign policy, as peripheral or expendable. Rather, such speech lies at the core of democratic accountability.

More fundamentally, a rights-based model would acknowledge that suppressing dissent in relation to internationally enabled violence carries democratic and legal consequences of its own. Where a state is economically, militarily or diplomatically implicated in alleged breaches

of international humanitarian law, the silencing of domestic opposition to those actions risks compounding that complicity. In such circumstances, protest and political speech perform a critical accountability function, enabling citizens to contest not only the morality but the legality of their government's conduct on the global stage.

Ultimately, the question is not whether freedom of expression admits of limits – it plainly does – but who bears the burden of justification when those limits are imposed. Australia's current framework places that burden overwhelmingly on speakers and protesters. A rights-based model would reverse that presumption, requiring the state to demonstrate, clearly and convincingly, why the suppression of dissent is necessary in a democratic society committed to the rule of law, human rights and genuine political pluralism.

vi. Conclusion

Ultimately, legislative responses to Antisemitism and racism, like responses to all forms of vilification and prejudice, must be grounded in evidence, precision and a clear understanding of the harms they seek to address. The criminal law undoubtedly performs an important expressive function: it signals that conduct involving violence, intimidation or the incitement of hatred has no place in a democratic society and affirms the equal dignity of all people. However, criminalisation is a blunt instrument. It should be reserved for conduct that causes serious harm and should not be deployed reflexively in response to political controversy or public anxiety.

We have serious concerns that the proposed measures to prohibit specific slogans risk collapsing the distinction between hateful conduct and lawful political expression. There is no evidentiary basis for concluding that the use of phrases such as 'Globalise the Intifada', in and of themselves, causes violence or threatens public safety. To legislate on the basis of assumed meanings, stripped of context and intent, would represent a profound departure from established principles of criminal responsibility and freedom of expression. ***Such an approach would create a dangerous precedent, opening the door to the selective suppression of politically unpopular views and movements.***

Critically, any assessment of the necessity or proportionality of new offences must grapple with the realities of enforcement. Experience in NSW and comparable jurisdictions,

particularly the UK, demonstrates that expansive public order, hate speech and police powers are not applied evenly. Rather, they are frequently exercised in ways that disproportionately target racialised and already stigmatised groups, including pro-Palestine activists. Further criminalisation of protest slogans would predictably exacerbate these patterns, entrench mistrust between communities and the state, and undermine, rather than strengthen, social cohesion.

A democratic society committed to the rule of law must be capable of tolerating robust, uncomfortable and even confronting political speech. Protest and dissent are not pathologies to be managed through coercion; they are essential mechanisms of accountability, particularly where citizens seek to challenge state violence, foreign policy or complicity in international human rights violations. Suppressing such speech does not promote harmony. Instead, it risks deepening polarisation, silencing marginalised voices and eroding the very democratic values that anti-vilification laws are intended to protect.

For these reasons, we urge the NSW Government to resist calls for slogan-based criminal prohibitions and instead to pursue a principled, rights-based approach. This includes relying on existing criminal laws to address genuine incitement to violence; investing in non-criminal, community-led strategies to combat racism and Antisemitism; addressing bias and disproportionate policing practices; and strengthening legal frameworks that affirm freedom of expression and peaceful assembly as foundational democratic rights. Only through such measures can the state both combat hatred effectively and preserve the conditions for meaningful political participation and social cohesion.