

**Submission  
No 144**

## **MEASURES TO PROHIBIT SLOGANS THAT INCITE HATRED**

**Organisation:** Australia's Special Envoy to Combat Antisemitism (ASECA)

**Date Received:** 16 January 2026

16 January 2026

Legislative Assembly Committee on Law and Safety  
Parliament of New South Wales  
Macquarie Street  
Sydney NSW 2000  
by email: [lawsafety@parliament.nsw.gov.au](mailto:lawsafety@parliament.nsw.gov.au)

Dear Committee

***'Measures to prohibit slogans that incite hatred'***

Thank you for the opportunity to make a submission to the inquiry into *'Measures to prohibit slogans that incite hatred'* inquiry (the **Inquiry**).

On 9 July 2024, Jillian Segal AO was appointed as Australia's Special Envoy to Combat Antisemitism (**ASECA**). The [Terms of Reference](#) of her appointment include providing advice to the Prime Minister and to the Minister for Home Affairs to inform policy development, legislation and other measures that will go to combat antisemitism, and social cohesion factors that drive the behaviour.

The ASECA Office has had the benefit of reviewing in draft the submission made by the Executive Council of Australian Jewry (the **ECAJ**) and endorses that submission. In addition, the ASECA Office makes the following further remarks and recommendations.

The below recommendations refer to, and build upon, analysis of these issues set out in:

- ❖ ASECA's submission to the New South Wales *'Review of criminal law protections against the incitement of hatred'* conducted by the Hon John Sackar AM KC (**Sackar review**);<sup>1</sup> and
- ❖ The ECAJ's submission to the Parliamentary Joint Committee on Intelligence and Security *'Review of the Exposure Draft Legislation: Combatting Antisemitism, Hate and Extremism Bill 2026 (Cth)'* (**PJCIS Review**), into which ASECA had substantial input, and which ASECA endorsed.<sup>2</sup>

The ASECA Office commends these submissions to the Inquiry for its close consideration.

<sup>1</sup> The submission is available at: NSW Department of Communities and Justice, ['Review of criminal law protections against the incitement of hatred'](#).

<sup>2</sup> The submission is available at: Parliament of Australia, Parliamentary Joint Committee on Intelligence and Security ['Review of the Exposure Draft Legislation: Combatting Antisemitism, Hate and Extremism Bill 2026 \(Cth\)'](#).

## **1. Introduction**

In the two years following the October 7 terrorist attacks, there has been a significant escalation of antisemitic hatred, and anti-Jewish incidents, in Australia, including in New South Wales.<sup>3</sup> At the same time, there has been a proliferation of hateful, violent and intimidatory slogans, including as part of sustained protest activity. This has included reprehensible chants, such as “*globalise the intifada*”, “*death to the IDF*” and “*all Zionists are terrorists*”.

These phrases are reprehensible, and must not be countenanced under Australian law. However, they are but a few examples of conduct which promotes violence against Jewish people, including the Australian Jewish community.

All conduct which promotes violence or hatred directly contradicts and undermines the Australian values of peaceful co-existence, mutual respect and common decency. The threat posed by conduct of this kind, and the failure of existing offence provisions to address it adequately, has been addressed by submissions made on behalf of the Australian Jewish community for some time.<sup>4</sup>

The failure to address these deficiencies in the law, and the consequential absence of enforcement of existing provisions, has for decades facilitated an environment of permissive tolerance of violent and hateful rhetoric in our nation, which has inevitably led to violence and ultimately, mass murder. This must be addressed. The boundaries of acceptable conduct must be set clearly, and unequivocally, to restore the safety of all Australians, and to assist us to rebuild the community cohesion and the vibrancy of our democracy.

Importantly, it must be understood that prohibiting the promotion of violence or hatred does not unduly circumscribe freedom of expression, or the implied freedom of political communication. Robust debate is foundational to the vibrancy of our democracy, and must be safeguarded. However, so too are our Australian values of peaceful co-existence, mutual respect and common decency.

The Envoy’s recommendations to the New South Wales Government are set out in Section (3) below, and addressed in detail in Section (4) below.

Before turning to those recommendations, it is important to address the place of violent, intimidatory and hateful chants amidst the broader escalation of hatred and violent rhetoric in our nation, and the role of those chants in propagating hatred and extremist views, disrupting social cohesion and undermining the sense of safety and security of the Australian Jewish community.

## **2. The growth of hatred and violent rhetoric amidst sustained protest activity**

### **The tenor of hate: 7, 8 October 2023**

The surge in antisemitism began during, and immediately following the October 7 terrorist attacks, which involved the murder of the largest number of Jewish people since the Holocaust,<sup>5</sup> and horrific acts, including systematic gang rape, sexual mutilation and assaults on the living and deceased.<sup>6</sup>

On 7 October 2023 at 8.04pm AEDT, less than five hours after the Hamas rape and murder of Jews began, and whilst it was still underway, the Palestine Action Group planned and publicly advertised a

---

<sup>3</sup> See, Julie Nathan, Executive Council of Australian Jewry, ‘[ECAJ Report on Anti-Jewish Incidents in Australia 2024](#)’ (ECAJ, 2024 Anti-Jewish Incidents Report); Julie Nathan, Executive Council of Australian Jewry, ‘[ECAJ Report on Anti-Jewish Incidents in Australia 2025](#)’ (ECAJ, 2025 Anti-Jewish Incidents Report).

<sup>4</sup> See, eg:

NSW Law Reform Commission, ‘[Serious racial and religious vilification](#)’ (Bathurst review), [Submission](#) by NSW Jewish Board of Deputies dated 19 April 2024, and [Supplementary submission](#) by NSW Jewish Board of Deputies dated 28 June 2024; Senate Legal and Constitutional Affairs Legislation Committee, ‘[Inquiry into the Criminal Code Amendment \(Hate Crimes\) Bill 2024](#)’, [Submission](#) by the Executive Council of Australian Jewry dated 29 October 2024; [Response to Questions on Notice](#) by the Executive Council of Australian Jewry dated 12 December 2024.

NSW Communities and Justice, ‘[Review of criminal law protections against the incitement of hatred](#)’, [Submission](#) by Australia’s Special Envoy to Combat Antisemitism; [Submission](#) by Executive Council of Australian Jewry; [Supplementary Submission](#) by Australia’s Special Envoy to Combat Antisemitism.

<sup>5</sup> See, eg, All Party UK-Israel Parliamentary Group, ‘[7 October Parliamentary Commission Report](#)’, Chaired by Lord Roberts of Belgravia, March 2025 (APPG, 7 October Parliamentary Commission Report), p 8.

<sup>6</sup> See, eg, APPG, [7 October Parliamentary Commission Report](#), pp 5, 9.

protest.<sup>7</sup> The protest took place on 9 October, and set the tenor of hateful, violent and intimidatory activity over the two succeeding years.

Meanwhile, reports of the terrorist attacks were met with celebration, and hateful, intimidatory conduct elsewhere across Sydney. On 8 October, at a rally in Lakemba, an individual proclaimed to a crowd “*I'm smiling and I'm happy... I'm elated, it's a day of courage, it's a day of pride, it's a day of victory. This is the day we've been waiting for.*”<sup>8</sup> The ASECA Office is not aware of any report of a prosecution in respect of this conduct.

### Sydney Opera House, 9 October 2023

On 9 October, the Sydney Opera House was illuminated in white and blue in solidarity with victims of the terrorist attack, as were various famous landmarks across the world.<sup>9</sup> This was met with a protest involving the display of banners such as “*Israel is a terrorist state*”, and hateful chants, including “*F\*\*\* the Jews*”, “*F\*\*k the Zionist pigs*” “*F\*\*\* Israel*”, “*Where's the Jews*”, and the burning of an Israeli flag.<sup>10</sup>

New South Wales Police warned the Sydney Jewish community to stay away from Sydney CBD for their own safety,<sup>11</sup> and as a result, they were unable to attend the site to express solidarity with victims of the terrorist attack.

Further, New South Wales police have since confirmed that they were not empowered to take action with respect to certain hateful chants.<sup>12</sup> This inaction was seen to permit, and effectively give licence to antisemitic conduct, including hateful chants, in New South Wales.

The events of 9 October marked a critical turning point in the escalation of antisemitism in New South Wales. They exemplify how hateful and violent chants are intimidatory, undermine the safety and security of the Australian Jewish community, and hinder their ability to participate fully in community life.

### Continuing escalation of antisemitism

In the period following October 8 and 9, 2023, antisemitism has surged across Australia. In the two months after 7 October 2023, there was a 738 per cent rise in anti-Jewish incidents (excluding online antisemitism).<sup>13</sup> In the year ending October 2024, there was a 316 per cent rise compared to the year prior.<sup>14</sup> In 2024, 27 per cent of “*hate incidents*” reported to NSW Police were antisemitic.<sup>15</sup> In the year ending October 2025, there were 1,654 recorded antisemitic incidents.<sup>16</sup> Given Jews make up less than 0.5% of the population of NSW, this is a 54 times disproportionate overrepresentation. Whilst a slight decrease from the year prior, the overall total remains at three times the total of any year prior to October 7, 2023.<sup>17</sup>

<sup>7</sup> ECAJ, [2024 Anti-Jewish Incidents Report](#), p 2.

<sup>8</sup> ABC, [‘Pro-Palestinian rally at Lakemba in Sydney criticised for ‘celebration’ of attacks on Israel’](#), 9 October 2023.

<sup>9</sup> This included the Palace of Westminster and 10 Downing St in London, the White House in Washington DC and New York’s Empire State Building, the Brandenburg Gate in Berlin and the Eiffel Tower in France. See, eg, The Jewish Chronicle, [‘Landmarks across the world light up in support of Israel’](#), 10 October 2023.

<sup>10</sup> See, The Australian, [‘Cops’ audio expert: no ‘gas Jews’ chant at Sydney Opera House’](#), 2 February 2024; ABC, [‘AUDIO: No antisemitic phrase chanted in Sydney Opera House protest’](#); ABC [‘Video analysis finds no evidence of ‘gas the Jews’ being chanted at Sydney Opera House protest, despite witness statements’](#), 2 February 2024.

<sup>11</sup> The Australian, [‘NSW Police say ‘no’ to Jewish community: yes to Palestinian rally’](#), 9 October 2023.

<sup>12</sup> See, eg, Transcript of Proceedings before Portfolio Committee No 5 – Justice and Communities, [‘Antisemitism in New South Wales’](#), 4 July 2025, uncorrected, pp 44-45. See also, ABC, [‘Video analysis finds no evidence of ‘gas the Jews’ being chanted at Sydney Opera House protest, despite witness statements’](#), 2 February 2024; The Australian, [‘Police urged to prosecute pro-Palestine Opera House protesters’](#), 10 November 2023.

<sup>13</sup> That is, in the period October – November 2023, as compared to the same period the year prior. See, Julie Nathan, Executive Council of Australian Jewry, [‘Preliminary statistics concerning surge in antisemitic incidents following Hamas atrocities in Israel on 7 October 2023’](#), p 2.

<sup>14</sup> See, ECAJ, [2024 Anti-Jewish Incidents Report](#), p 1.

<sup>15</sup> Transcript of Proceedings before Portfolio Committee No 5 – Justice and Communities, [‘Antisemitism in New South Wales’](#), 4 July 2025, uncorrected, p 41.

<sup>16</sup> See, ECAJ, [2025 Anti-Jewish Incidents Report](#), p 1. This comprises only antisemitic assaults, vandalism, abuse, messages (which convey hatred, menace or violence), graffiti and posters, in accordance with the narrow criteria adopted by the Executive Council of Australian Jewry (ECAJ). See, ECAJ, [2025 Anti-Jewish Incidents Report](#), pp 4-5.

<sup>17</sup> See, ECAJ, [2025 Anti-Jewish Incidents Report](#), p 1.

## Addressing hateful, intimidatory and violent rhetoric (including at protest activity) & rising antisemitism

The link between sustained, hateful, intimidatory and violent rhetoric (including at protest activity, and the escalation of hatred, violence and violent extremism, has been identified in repeated warnings by the senior leadership of law enforcement and intelligence agencies. For instance:

- In February 2025, the Director General of ASIO identified antisemitism as ASIO's highest priority "*in terms of threats to life*".<sup>18</sup> The Director-General explained how the conflict in the Middle East has "*given oxygen*" to antisemitism in Australia, and "*the normalisation of violent protest and intimidating behaviour has lowered the threshold for provocative and potentially violent acts*".<sup>19</sup>
- In November 2025, the Director General emphasised "*I fear anti-Israel rhetoric is fuelling and normalising wider anti-Semitic narratives.*"<sup>20</sup>
- On 19 December 2025, Australian Federal Police Commissioner Krissy Barrett said "*Hate speech and the weaponisation of words can have serious national security consequences. History has taught us, and recent events have reinforced, that hatred creates a permissive environment that can lead to violent extremism and terrorism. There are groups and individuals across Australia who are eroding the country's social fabric by advocating hatred, fear, and humiliation.*"<sup>21</sup>
- Most recently, this week, Jonathan Hall, KC, the Independent Reviewer of Terrorism Legislation in the United Kingdom, has warned that "*Hatred of Jews has become normalised in Western countries through endless anti-Israel demonstrations*" and called for a "*rethink*" to address the threat of violence and extremism arising from the display of Hamas imagery and violent chants, such as "*globalise the intifada*" and "*death to the IDF [Israel Defence Forces]*".<sup>22</sup>

On 15 December 2024, Premier Minns acknowledged that hateful chants have been part of the escalation of antisemitic hatred in New South Wales, which has undermined community cohesion and safety:

*"one of the things about antisemitism is that it begins with hate speech, then it might be a chant at a rally, then it moves online, then it becomes graffiti on a Jewish building, then it's malicious damage, then arson, and then it escalates to the kind of horrific violence that we saw yesterday. We have to combat it across the board."* (emphasis added)<sup>23</sup>

The Envoy welcomes the Premier's resolve to address antisemitic hatred "*across the board*", including hateful, intimidatory and violent chants. The Envoy recommends that these chants be addressed by the following priority recommendations.

<sup>18</sup> Director-General of Security, Mike Burgess AM, '[ASIO Annual Threat Assessment 2025](#)' (19 February 2025). See also, Australian Financial Review, '[Why antisemitism has become spy chief's No. 1 worry](#)' (25 February 2025).

<sup>19</sup> Director-General of Security, Mike Burgess AM, '[ASIO Annual Threat Assessment 2025](#)' (19 February 2025). See also, Australian Financial Review, '[Why antisemitism has become spy chief's No. 1 worry](#)' (25 February 2025).

<sup>20</sup> [ASIO 2025 Lowy Lecture | National Intelligence Community](#)

<sup>21</sup> Australian Federal Police, '[AFP Commissioner Krissy Barrett: Op Arques media conference statement](#)' (19 December 2025).

<sup>22</sup> See, Australian Financial Review, '[Bondi terror attack: UK terror watchdog says Jew hatred normalised, free speech rethink needed](#)', 14 January 2026.

<sup>23</sup> Prime Minister of Australia, [Transcript of Press Conference 16 December 2025](#), p 13.

### 3. Summary of recommendations

#### Priority reforms to the offences of 'inciting violence' and 'inciting hatred'

1. Implement priority reforms to the existing offences of 'inciting violence' and 'inciting hatred' to ensure those offences effectively fulfil their objective, and encompass the implicit promotion of violence or hatred.
2. Provide for NSW Police, with the oversight of the Attorney General, to publish authoritative guidance concerning the *kinds* of conduct that *may* promote violence or hatred (explicitly, implicitly or in coded form), to illustrate the scope of the provisions.

Note: Whilst the guidance might provide an indication of the *kinds* of conduct that *may* incite violence or incite hatred, proof of the offences would still require proof that the individual *intentionally* or *recklessly* incited violence or hatred in the particular circumstances of the case.

If the Government were minded to address the promotion of violence or hatred on the basis of a protected attribute, irrespective of proof of intention or recklessness, it may introduce a strict liability offence, which would not require proof of the fault element.

3. Within the offences of inciting violence and inciting hatred, consider the introduction of strict liability offences, with lesser penalties, following the Western Australian model.

#### New offence of promoting, advocating or glorifying violence and similar conduct

4. Introduce a new strict liability offence which prohibits conduct that promotes, advocates or glorifies violence, destruction or death (hereafter, **promotes violence**). This offence should not be confined to protected attributes, and should specifically include conduct which promotes violence explicitly or *implicitly* (including in coded form), including by:
  - a. the use of phrases which can reasonably be interpreted as promoting violence; and
  - b. symbols, including:
    - i. prohibited organisation symbols (including Nazi, terrorist and 'prohibited hate organisation' symbols); and
    - ii. other symbols or gestures that are so closely connected with a prohibited organisation that they are customarily used to identify the group or any part of the group or its ideology.

#### Clarify and strengthen powers of enforcement

5. Clarify and strengthen police powers' to enforce these offences, including by ensuring police have, and use, a power to issue directions where an individual/s commit the above offences during a protest or demonstration.

#### **4. Questions posed by the Inquiry**

##### **Section (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.**

Addressing the threat that "*globalise the intifada*" and similar phrases poses to community cohesion and safety requires an understanding of:

1. *The promotion of violence:*
  - 1.1 The explicit promotion of violence.
  - 1.2 The implicit promotion of violence, including the phrase "*globalise the intifada*".
  - 1.3. The threat posed by conduct which promotes violence.
2. *The promotion of hatred:*
  - 2.1 The implicit promotion of hatred, including the phrase "*all Zionists are terrorists*".
  - 2.2 The harm caused by promoting hatred.

##### **1. Promotion of violence**

The phrase "*globalise the intifada*" is an example of conduct which *implicitly* promotes violence against Jewish people, including the Australian Jewish community. The threat posed by conduct which promotes violence and/or hatred, and the failure of existing offence provisions to address it adequately, has been addressed by submissions made on behalf of the Australian Jewish community for several years.<sup>24</sup>

For some years, there has been a permissive tolerance of conduct which promotes violence in the context of protest activity. This may involve the *explicit* or *implicit* promotion of violence. All conduct which promotes violence against a particular group poses a significant threat to community cohesion and safety, and should be addressed unequivocally.

##### **1.1 The explicit promotion of violence**

Two recent examples of the *explicit* promotion of violence during protests are:

- In 2021, following an outbreak of hostilities overseas by Hamas on Israel, Hizb ut-Tahrir Australia held a demonstration at Lakemba which attracted about 200 people. During the demonstration, a prayer leader shouted "'O Allah, give us control over the necks of Jews!... Destroy, destroy the Jews! Destroy, destroy the Jews!"<sup>25</sup> The conduct was referred to authorities, however no prosecution eventuated.<sup>26</sup>
- On 29 July 2025, an individual participating in an anti-Israel protest in Melbourne shouted toward a counter-protest supporting Israel "*In a free world, you have no hope. You have no hope. Every child in Palestine born (was) born to come and kill you. I'll kill you, I'll kill you*".<sup>27</sup> The ASECA Office is not aware of any prosecution in respect of this conduct.

Conduct of this kind inspires violence. It poses a threat to community safety and cohesion, and must not be tolerated.

---

<sup>24</sup> For the most recent submissions, see:

Bathurst review, [Submission](#) by NSW Jewish Board of Deputies dated 19 April 2024, and [Supplementary submission](#) by NSW Jewish Board of Deputies dated 28 June 2024;

Senate Legal and Constitutional Affairs Legislation Committee, '*Inquiry into the Criminal Code Amendment (Hate Crimes) Bill 2024*', Submission by the Executive Council of Australian Jewry dated 29 October 2024; Response to Questions on Notice by the Executive Council of Australian Jewry dated 12 December 2024.

NSW Communities and Justice, '*Review of criminal law protections against the incitement of hatred*', Submission by Australia's Special Envoy to Combat Antisemitism; Submission Executive Council of Australian Jewry; Supplementary Submission by Australia's Special Envoy to Combat Antisemitism.

<sup>25</sup> Bathurst review, [Submission](#) by NSW Jewish Board of Deputies, pp 3-4.

<sup>26</sup> Bathurst review, [Submission](#) by NSW Jewish Board of Deputies, pp 3-4.

<sup>27</sup> ECAJ, [2025 Anti-Jewish Incidents Report](#), p 18.

## 1.2 The implicit promotion of violence

An individual may *implicitly* promote violence by various means. Some examples include:

- words or phrases which may have a literal meaning, and a separate commonly understood meaning (such as calls for a “*jihad*”, “*intifada*”, “*resistance*” or “*from the river to the sea*”);
- verbal signals, including “*dog whistles*” (for example, calls to “*Abolish the Jewish lobby*”<sup>28</sup>);
- symbolism, or imagery (such as a picture of a paraglider in the colours of the Palestinian flag posted to social media on October 8, 2023, being a reference to the Hamas fighters who flew over the border to kill, mutilate and rape Jews);<sup>29</sup> or
- allusions to a particular cultural, religious or ideological context (such as a chant which references the massacre of the Jews at the 7th-century Battle of Khaybar,<sup>30</sup> or other historic acts of repression or violence against the Jewish people).

Terms such as “*jihad*”, “*intifada*” and “*resistance*” have been used alongside chants such as “*globalise the intifada*”, “*death to the IDF*” and “*from the river to the sea*”. These terms and phrases have a literal meaning, and a separate commonly understood meaning, which is discussed in **Appendix I**. The terms and phrases *implicitly* promote violence, that is, by their *understood* (rather than literal) meaning.

### “Globalise the intifada”

The phrase “*globalise the intifada*” provides an illustrative example. The literal meaning of the Arabic word “*intifada*” is “*shaking off*”.<sup>31</sup>

However, the word (and associated phrases) have been used to refer to two periods of intense Palestinian protest (or violent “*uprising*”) against Israel – the first intifada (1987-1990) and second intifada (2000-2005).<sup>32</sup> These periods were characterised by acts of violent terrorism against Israeli civilians, including regular suicide bombings during the second intifada.<sup>33</sup>

For example, on 9 August 2001, a 22 year-old male entered a pizzeria in Jerusalem, carrying a guitar case which concealed a bomb.<sup>34</sup> The explosion killed a 15 year-old Australian girl, Malki Roth, and 13 others, including a pregnant woman and eight children.<sup>35</sup> A further 130 civilians were injured.<sup>36</sup>

Over one thousand Israelis were murdered during the second intifada,<sup>37</sup> including 135 people in one month alone (March 2001).<sup>38</sup> The terror inflicted across broader Israeli society has been described as follows:

*“This harrowing period fundamentally altered Israeli society because it impacted everyone. No one, regardless of their political opinions, level of religious observance or ethnicity, was left unaffected.”*<sup>39</sup>

The terrorising impact of the first and second intifadas extended internationally, including to the Australian Jewish community, many of whom had family and friends murdered during the terrorist attacks.

<sup>28</sup> [Unmasking the men who attended a Neo-Nazi protest outside NSW parliament - ABC News](#).

<sup>29</sup> [Randa Abdel-Fattah feels the sting of cancellation from Adelaide Writers Festival | The Australian](#).

<sup>30</sup> Antisemitism Policy Trust (UK), ‘[Glossary of Antisemitic Terms](#)’. See also, Anti-Defamation League, ‘[Chant: Khaybar, Khaybar, oh Jews, the Army of Mohammed will Return](#)’. See also Greg Bouwer, ‘[Khaybar, Khaybar, O Jews: The Message of Hate Echoing Through Modern Protests](#)’ (Web Page, 7 July 2025).

<sup>31</sup> See, eg, The Washington Post, ‘[Transcript: State of Antisemitism with Deborah Lipstadt](#)’ (Web Page, 11 June 2024).

<sup>32</sup> [What Does “Globalize the Intifada” Mean and How Can it Lead to Targeting Jews with Violence? | AJC](#).

<sup>33</sup> See, eg, [What Does “Globalize the Intifada” Mean and How Can it Lead to Targeting Jews with Violence? | AJC](#); [Myth: The phrase “globalize the Intifada” is not a call for violence - CIJA - The Centre for Israel and Jewish Affairs](#).

<sup>34</sup> [Malki went to eat pizza with a friend. Then she was murdered - Zionist Federation of Australia](#).

<sup>35</sup> [Malki went to eat pizza with a friend. Then she was murdered - Zionist Federation of Australia](#).

<sup>36</sup> [Malki went to eat pizza with a friend. Then she was murdered - Zionist Federation of Australia](#).

<sup>37</sup> [The Second Intifada: A defining event that reshaped the nation | The Jerusalem Post](#).

<sup>38</sup> <https://www.jpost.com/israel-news/politics-and-diplomacy/article-702901>.

<sup>39</sup> [The Second Intifada: A defining event that reshaped the nation | The Jerusalem Post](#).

Further, in 2015–2016, Israel experienced a “*knife intifada*”, during which almost daily lone-wolf attackers stabbed, shot or rammed their cars into groups of Israelis.<sup>40</sup>

In light of this history, the term “*intifada*”, and calls for an “*intifada*”, are widely understood as a call to participate in an “*uprising*”, involving violent acts of terrorism and murder of Israeli and Jewish civilians.

The *understood* meaning of the term “*intifada*” is further reflected in the use of this term to describe other periods of violent terrorism. For instance, in 2018, a French parliamentarian said France was experiencing a “*knife intifada*” following several knife attacks in France by Islamic extremists.<sup>41</sup>

Whilst the *understood* meaning of the term “*intifada*” and associated phrases are reprehensible, the term appears to have fallen beyond the scope of existing legislative provisions. The difficulty in addressing terms of this kind (and indeed, all conduct which implicitly promotes violence by an *understood* rather than literal meaning) lies in proof of the individual’s intention – namely, that the individual intended the violent, rather than benign meaning.

### 1.3. The threat posed by conduct which promotes violence

The threat posed by implied calls to violence was recognised in the context of terrorism over a decade ago. The Senate Standing Committee Report, published in 2014, stated:

*“It is no longer the case that explicit statements (which would provide evidence to meet the threshold of intention) are required to inspire others to take potentially devastating action in Australia or overseas. The cumulative effect of more generalised statements when made by a person in a position of influence and authority can still have the impact of directly encouraging others to go overseas and fight or commit terrorist acts domestically.”*<sup>42</sup> (emphasis added)

In the decade following 2014, implied calls for violence have become prolific. The threat that inspiration will turn to action is no longer limited to circumstances where violence is promoted by persons of influence or authority.

As recognised by the Director-General of ASIO in his 2025 Annual Threat Assessment, the conflict in the Middle East has “*given oxygen*” to antisemitism in Australia, and lowered the threshold for provocative and potentially violent acts:

*“The war in the Middle East has not yet directly inspired terrorism in Australia, but it is prompting protest, exacerbating division, undermining social cohesion and elevating intolerance. This, in turn, is making acts of politically motivated violence more likely.*

...

*Anti-Semitism festered in Australia before the tragic events in the Middle East, but the drawn-out conflict gave it oxygen – and gave some anti-Semites an excuse. Jewish Australians were also increasingly conflated with the state of Israel, leading to an increase in anti-Semitic incidents. The normalisation of violent protest and intimidating behaviour lowered the threshold for provocative and potentially violent acts. Narratives originally centred on “freeing Palestine” expanded to include incitements to “kill the Jews”.*<sup>43</sup> (emphasis added)

Antisemitism is now ASIO’s highest priority “*in terms of threats to life*”.<sup>44</sup> All conduct which calls for, promotes or glorifies violence (whether expressly or implicitly) presents a threat to community safety, and community cohesion, and must be prohibited.

<sup>40</sup> [Israel has overcome past waves of terror and will do so again | The Jerusalem Post](#).

<sup>41</sup> [France suffering ‘intifada,’ says Jewish lawmaker after fatal stabbing in Paris | The Times of Israel](#).

<sup>42</sup> Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, Fourteenth Report of 2014, (October 2014), p.796. See also, ECAJ Submission to PJCS Review, p 3.

<sup>43</sup> Director-General of Security, Mike Burgess AM, ‘[Director-General’s Annual Threat Assessment 2025](#)’, 19 February 2025.

<sup>44</sup> Director-General of Security, Mike Burgess AM, ‘[ASIO Annual Threat Assessment 2025](#)’ (19 February 2025). See also, Australian Financial Review, ‘[Why antisemitism has become spy chief’s No. 1 worry](#)’ (25 February 2025).

## 2. Promotion of hatred

In addition to conduct which promotes violence, conduct which promotes hatred (expressly or implicitly) undermines social cohesion, and ultimately, social safety, and must be addressed across the board – including in the context of protest activity.

The promotion of hatred involves expressions of “*detestation, enmity, ill-will, revulsion, serious contempt and/or malevolence*”.<sup>45</sup> It both denigrates and dehumanises an individual or group based on an inherent attribute – an immutable part of their identity. It undermines the individual and the group’s sense of belonging, assurance and security.

### 2.1 The implicit promotion of hatred, including conduct which promotes hatred against “Zionists”

During the last two years, there has been a proliferation of hateful, intimidatory slogans. These include slogans and other hateful or intimidatory conduct directed to “Zionism”, as well as “Zionists” or “Zios”.

The term “Zionist” may be used to promote hatred of the Australian Jewish community in “*coded form*” that is, by substituting the term “Zionist” in place of the term “Jew”.<sup>46</sup> The intention to *in fact* promote hatred against Jewish people may be disclosed by the contextual use of traditional antisemitic tropes. For example, a reference to how the “*zionists are controlling the narrative online*” picks up the antisemitic narrative of “*Jews controlling media*”, however substitutes “Zionist” for “Jew”.<sup>47</sup>

An individual may also use the term “Zionist” or “Zionism” as a coded form of demonisation, or dehumanisation of the Australian Jewish community, because an overwhelming majority of the Australian Jewish community (and international Jewish community) identify as Zionist in that they believe the State of Israel has a right to exist and live in peace.

This coded form of hatred has also been used in the form of slogans. Some examples are:

- In October 2024, a 7-10 year old-girl shouted “*Say it loud, say it clear, we don’t want no Zionists here*” using a microphone, Hyde Park, Sydney;<sup>48</sup>
- In November 2024, the phrases “*F\*\*\* off Zionists*”, “*F\*\*\* off Zionist scum*” and “*F\*\*\* you, Zionist dogs*”, Deakin University, Melbourne;<sup>49</sup>
- In December 2024, the phrase “*All Zionists are Terrorists*”, Melbourne’s CBD;<sup>50</sup>
- In August 2025, there was a placard stating “*Never again meant never again! Ass holes. Zio’s are psycho’s*”, march across the Sydney Harbour Bridge.<sup>51</sup>

Whilst the phrases do not explicitly use the term “Jews”, in substance, they promote hatred against the Australian Jewish community, because they demonise, dehumanise and call for the exclusion of an overwhelming majority of that community from society. Hateful slogans of this kind extend far beyond legitimate political discourse.

### The assessment of hatred: The Supreme Court of Canada in R v Krymowski

The above analysis accords with the tenor of the reasoning of the Supreme Court of Canada in 2005. In *R v Krymowski*,<sup>52</sup> the Court found that the respondents wilfully promoted hatred against the Roma people, by reason of their conduct during a demonstration concerning the entry of Roma refugee claimants into Canada.<sup>53</sup>

The Court found that there was no need to prove any “*interchangeability*” between the specific hateful terms used during the protest and the name by which the target group was identified in the

<sup>45</sup> See also, [Response to Questions on Notice](#) by the Executive Council of Australian Jewry dated 12 December 2024.

<sup>46</sup> See, eg, Antisemitism Policy Trust, “[Glossary of Antisemitic terms](#)”.

<sup>47</sup> “[Zionist\(s\) as an antisemitic code word - Online Hate Prevention Institute](#)”. This myth was propounded by the notorious publication ‘the *Protocols of the Elders of Zion*’, see [notorious antisemitic publication](#).

<sup>48</sup> ECAJ, [2025 Anti-Jewish Incidents Report](#), p 19.

<sup>49</sup> ECAJ, [2025 Anti-Jewish Incidents Report](#), p 20.

<sup>50</sup> ECAJ, [2025 Anti-Jewish Incidents Report](#), p 20.

<sup>51</sup> ECAJ, [2025 Anti-Jewish Incidents Report](#), p 21.

<sup>52</sup> [R v Krymowski, 2005 SCC 7](#).

<sup>53</sup> *R v Krymowski*, 2005 SCC 7 at [1].

information.<sup>54</sup> Rather, the relevant questions to be asked were whether the respondents made the alleged statements, and whether the statements, *as a matter of fact*, promoted hatred of the Roma.<sup>55</sup>

## 2.2 The harm caused by promoting hatred

The harm inflicted by the promotion of hatred, and the threat posed to social safety, has also been recognised in the international arena for some time. For example, in 1990, the Chief Justice of the Supreme Court of Canada Chief Justice Dickson acknowledged that ‘hate propaganda’ impacts both the targeted group and broader society:

- first, it may be of “*grave psychological and social consequence*” to members of the targeted group, and yield a severely negative impact on their sense of self-worth and acceptance – causing them to take drastic measures, including avoiding contact with the broader community;<sup>56</sup> and
- second, it can “*create serious discord between various cultural groups*”,<sup>57</sup> threaten society’s value for equality, and the connection of target group members to their community.<sup>58</sup>

Chief Justice Dickson described the progression from hatred to violence as follows:

*“The threat to the self-dignity of target group members is thus matched by the possibility that prejudiced messages will gain some credence, with the attendant result of discrimination, and perhaps even violence, against minority groups.”*<sup>59</sup>

More recently, Justice Lonergan of the Supreme Court of New South Wales described the harm caused by hateful slogans in the context of a graffiti and fire-bombing incident in Woollahra in November 2024 as follows:<sup>60</sup>

*“...Racially-motivated attacks on property make the community unsafe. Hate slogans directed to a group of people dehumanises that target group and labels them worthy of hate. Targeted attacks of this kind against any person or group of people promotes fear and loathing, states of mind that destabilise, damage and render unsafe our community as a whole”.* (emphasis added)<sup>61</sup>

## The harm caused to the Australian Jewish community

The promotion of antisemitic hatred, including the implicit promotion of hatred against “*Zionists*”, has had a profound impact upon the lives of Jewish Australians – undermining their sense of security and wellbeing. This does not only occur during protests, but has extended to every sector. For example:

- In schools, children have reported experiencing bullying on the basis of their faith, which has affected their spiritual, mental, emotional and physical health.<sup>62</sup> If enrolled in Jewish schools, students have been instructed not to wear their uniforms in the CBD and outside of school, generally, due to fear of abuse, or worse.<sup>63</sup>
- Jewish businesses have closed after “*ceaseless antisemitic harassment*” and in recognition that “*it is no longer possible to make outwardly, publicly, proudly Jewish places and events safe in Australia*”.<sup>64</sup>
- In Universities, Jewish students were instructed to study remotely, that is, not attend campus in person.<sup>65</sup>

<sup>54</sup> *R v Krymowski*, 2005 SCC 7 at [18].

<sup>55</sup> *R v Krymowski*, 2005 SCC 7 at [18].

<sup>56</sup> *R v Keegstra* [1990] 3 SCR 697, 746-747.

<sup>57</sup> *R v Keegstra* [1990] 3 SCR 697, 746-747.

<sup>58</sup> *R v Keegstra* [1990] 3 SCR 697, 757.

<sup>59</sup> *R v Keegstra* [1990] 3 SCR 697, 746-747.

<sup>60</sup> *R v Stojanovski* [2025] NSWSC 149 at [1] (Lonergan J).

<sup>61</sup> *R v Stojanovski* [2025] NSWSC 149 at [19] (Lonergan J).

<sup>62</sup> [School bullying rampant – The Australian Jewish News](#)

<sup>63</sup> [Jewish students ordered not to wear uniforms amid antisemitic attacks](#)

<sup>64</sup> [‘Our world has changed’: Sydney Jewish bakery closes after Bondi beach terror attack | Bondi beach terror attack | The Guardian](#)

<sup>65</sup> The Australian Financial Review [Jewish university students ‘shunned and told to study at home’](#) 6 September 2024

- Increasing numbers of Jewish Australians are migrating to Israel due to both short term and long term concerns for their safety and security, notwithstanding that Israel was subjected to repeated missile and rocket attacks from Iran in 2024 and 2025.<sup>66</sup>

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

**Recommendation 1**

**Implement priority reforms to the existing offences of ‘inciting violence’ and ‘inciting hatred’ to ensure those offences effectively fulfil their objective, and encompass the implicit promotion of violence or hatred.**

The New South Wales Government should implement, as a matter of urgency, reforms to the existing offences of *‘inciting violence’* and *‘inciting hatred’* to ensure those offences operate effectively, and encompass conduct which *implicitly* promotes violence or hatred.

**Priority reforms to the offences of ‘inciting violence’ and ‘inciting hatred’**

- 1.1** Amend the term ‘*incite*’ to ‘*promote*’.

**Rationale for Recommendation [1.1]**

The requirement to prove ‘incitement’ (whether intentional or reckless), has hamstrung enforcement of the offence provision for decades. This has been repeatedly pointed out by the Jewish community and prosecutorial authorities (see discussion in **Appendix II** below).

This amendment would redirect the focus of the inquiry to the conduct (rather than its effect upon an audience), and so significantly improve the prospects that individuals promoting violence and hatred would be held to account.

- 1.2** Within each offence provision, add a statutory note that a person may promote violence or hatred explicitly or implicitly (including in coded form).

**Rationale for Recommendation [1.2]**

This is an important point of clarification and emphasis that the offence provision encompasses the *implicit* promotion of violence, such as an exhortation to carry out a “*jihad against the jews*” which to date has been afforded impunity (see Appendix II). Proof of the offence would still require proof of the relevant fault element and other elements (such as the conduct occurring in public).

- 1.3** Within each offence provision, add a statutory note which sets out a brief, non-exhaustive list of ‘*indicators*’, or *kinds* of conduct that *may* promote violence or hatred explicitly, implicitly or in coded form, and a notation that NSW Police will publish authoritative guidance, overseen by the Attorney General, which includes examples to illustrate those *kinds* of conduct.

**Rationale for Recommendation [1.3]**

A **non-exhaustive** list within the statutory provision would provide clear legislative imprimatur, and aid clarity and public understanding of the scope of the offence provision. Importantly, the examples would not be proscriptive. Proof of the offences would still require proof that the individual *intentionally* or *recklessly* promoted

<sup>66</sup> Sydney Morning Herald [Bondi shooting funerals: Coroner warns Jewish community bodies will take “days” to be ready for burial](#) 17 December 2025.

violence or hatred in the particular circumstances of the case, and would also require proof of other relevant elements.

Further, it would reflect the approach taken with respect to other criminal offences. For example:

- With respect to the offence of ‘*intimidation*’,<sup>67</sup> ‘*intimidation*’ is defined to include “*conduct (including cyberbullying) amounting to harassment or molestation*”, and provides examples, including disclosing a person’s sexual orientation without their consent.<sup>68</sup>
- The offence of ‘*coercive control*’ provides examples of “*behaviour that is economically or financially abusive*”, including withholding financial support and preventing a person having employment or access to their income.<sup>69</sup>

- 1.4** Amend the definition of ‘*public act*’ to specifically include “*any physical place or cyberspace to which the public have access as of right or by invitation, whether express or implied, and whether or not a charge is made for admission.*”<sup>70</sup>

*Rationale for Recommendation [1.4]*

This would ensure that conduct which promotes violence or hatred amongst a limited number of persons is not artificially excluded from the scope of the provision.<sup>71</sup>

- 1.5** Insert a new provision into Part 3A of the *Crimes Act 1900* (NSW), which includes a specific power, for a court to make an interim order requiring an accused to remove material posted online, where that material is alleged by police to constitute an offence (in particular, an offence of promoting violence or hatred, display of Nazi or prohibited terrorist organisation symbols, or support for Nazi ideology).<sup>72</sup> Failure to comply with the order should result in a *presumed* revocation of bail, and repeated failure to comply with the order should constitute an offence.

*Rationale for Recommendation [1.5]*

Importantly, a provision of this kind would address the amplified impact of hatred and violent rhetoric in the online arena, which has significant ‘reach’, and may “*have a detonating effect on a vulnerable person who is likely to commit an illegal act.*”<sup>73</sup> The provision would provide an effective encouragement for an accused to remove online content which promotes violence, hatred or extremism, as they would be immediately brought back before the court to justify their non-compliance. The provision might be modelled on those recently introduced in Western Australia.<sup>74</sup>

- 1.6** Increase the penalty for each offence.

*Rationale for Recommendation [1.6]*

This would reflect the seriousness of the intentional or reckless promotion of violence or hatred, and assist to ensure that the offences are charged in appropriate cases in preference to general law provisions.

<sup>67</sup> *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 13.

<sup>68</sup> *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 7.

<sup>69</sup> *Crimes Act 1900* (NSW), s 54F.

<sup>70</sup> This proposed amendment reflects community views set out in the NSW Jewish Board of Deputies submission of 28 June 2024 to the NSW Law Reform Inquiry ‘*Serious racial and religious vilification*’.

<sup>71</sup> See, eg, *Wertheim v Haddad* [2025] FCA 720 and *R v Damien Richardson* (Moorabbin Magistrates’ Court proceedings, 2025).

<sup>72</sup> Division 8 (threatening/promoting violence), Division 8A (promoting hatred), Division 9 (display of Nazi symbol) and Division 10 (display of prohibited terrorist organisation symbols) and associated offences (including the forthcoming offence of indicating support for Nazi ideology).

<sup>73</sup> *R v Huot* 2018 QCCQ 4650 at [28].

<sup>74</sup> See, *Criminal Code Amendment (Post and Boast Offence) Bill 2025* (WA).

This measure might also reflect the Western Australian model. Pursuant to legislation proposed in Western Australia, once an individual is charged with a ‘*post and boast*’ offence, a court will be empowered, on application of a prosecutor or its own motion, to make a rectification order requiring a person to take reasonable steps to remove or delete the material. Failure to comply with the order will be an offence punishable by 12 months’ imprisonment and a fine of \$12,000, as well as a daily penalty of a fine of \$200 for each day or part day of non-compliance.

## **Priority reforms to the offence of ‘inciting hatred’**

In addition to the above, the Envoy recommends the following priority reforms to the offence of ‘inciting hatred’:

- 1.7 Broaden the fault element to include alternative elements of intention and recklessness.

### Rationale for Recommendation [1.7]

This would circumvent one of the critical issues, which hindered enforcement of the offence of ‘inciting violence’ for decades. A detailed analysis of this issue appears at **Appendix II**.

- 1.8 Define ‘hatred’ to expressly include “*detestation, enmity, ill-will, revulsion, serious contempt and/or malevolence*”. This definition should directly precede the statutory note referenced at [1.3] above.

### Rationale for Recommendation [1.8]

A statutory definition would provide additional clarity concerning the scope and operation of the provision. The proposed definition reflects the Oxford and Macquarie Dictionary definitions of “*hatred*”.<sup>75</sup>

- 1.9 Remove the following requirements, which significantly undermine the effectiveness of the offence of ‘inciting hatred’:

- a. The requirement to prove a reasonable person would fear harassment, intimidation or violence, or fear for their safety; and
- b. The “*religious purpose*” exemption, to ensure that the intentional incitement, or promotion of hatred, is not exempted from liability merely because it occurs in the context of religious teaching or discussion. At a minimum the words “*or otherwise referencing*” must be removed.

### Rationale for Recommendation [1.9(a)]

The requirement to prove a reasonable person would fear harassment, intimidation or violence, or fear for their safety, significantly narrows the scope of the offence provision, and does not reflect the requirements of Article 4(a) of the ICERD, which requires state signatories (including Australia) to “*declare an offence punishable by law...all dissemination of ideas based on racial superiority or hatred*”, without any narrowing requirement.<sup>76</sup>

This excludes scope from the offence provision, conduct which plainly promotes hatred, but may not be proven – to the criminal standard – to cause the targeted group to fear future reprisal. This undermines the purpose and intended effect of the prohibition. See further, the analysis in: ASECA’s submission to the Sackar review at [2.1.5] and ECAJ’s submission to the PJCIS review (pp 27-29).

### Rationale for Recommendation [1.9(b)]

The “*religious purpose*” exemption must be removed to ensure that religious texts cannot be used as to “*shield*” communications which otherwise promote hatred.<sup>77</sup> Otherwise, religious texts may be used to promote hatred with impunity,<sup>78</sup> including in

<sup>75</sup> See, [Second Reading of Inciting Racial Hatred Bill 2025 \(NSW\)](#), p 14. This proposed definition reflects the views of the Australian Jewish community set out in the Executive Council of Australian Jewry Response to Questions on Notice, of 12 December 2024, submitted to the Senate Legal and Constitutional Affairs Committee Inquiry into the *Criminal Code Amendment (Hate Crimes) Bill 2024* (Cth).

<sup>76</sup> See, *International Convention on the Elimination of All Forms of Racial Discrimination*.

<sup>77</sup> [R v Harding \[2001\] OJ 4953](#) at [49] (see [44]-[49]); [R v Harding \[2001\] OJ 325](#) at [42]; [R v Harding \[1998\] OJ 2603](#).

<sup>78</sup> [R v Harding \[1998\] OJ 2603](#) per Linden J.

the form of hateful slogans which refer to Jewish people as “*descendants of apes and pigs*”.<sup>79</sup> See further, the analysis in: ASECA’s submission to the Sackar review at [2.1.7] and ECAJ’s submission to the PJCIS review (pp 30-32).

## **Recommendation 2**

**Provide for NSW Police, with the oversight of the Attorney General, to publish authoritative guidance concerning the *kinds* of conduct that may promote violence or hatred (respectively) explicitly, implicitly or in coded form, to illustrate the scope of the provisions.**

The guidance would supplement the statutory provision, which would include a brief, non-exhaustive list of ‘*indicators*’, or *kinds* of conduct that *may* promote violence or hatred (respectively) explicitly, implicitly or in coded form (see **Recommendation 1.3** above).

### Guidance concerning kinds of conduct

The guidance should include a broader description of the *kinds* of conduct which may promote violence or hatred within the meaning of the offence provisions (including examples of words, phrases or symbols), and second, examples of conduct found to constitute these offences by the court.

The guidance might include examples such as:

- The term “*intifada*”, and the phrase “*globalise the intifada*”, “*jihad*”, and “*from the river to the sea*”, which promote violence (see above at ‘1.2 *The implicit promotion of violence*’); and
- Phrases which denigrate an entire group (such as “*F\*\*\* Zionists*”), or make negative generalisations (such as “*all Zionists are terrorists*”) which promote hatred (see above at ‘2.1 *The implicit promotion of hatred*’).

The meaning of “*jihad*” and “*from the river to the sea*” are discussed further in **Appendix I**.

The guidance should be indicative, rather than prescriptive, as proof of the offences would still require proof that the individual *intentionally* or *recklessly* incited/promoted violence or hatred in the particular circumstances of the case, and also require proof of other relevant elements.

Importantly, the guidance should not be confined to particular phrases, as the legislative intent to capture those forms of conduct could be easily circumvented by deliberate, albeit slight mis-spelling of the particular phrase; replacing certain words with symbols; using an alternative phrase which implies the same meaning, or using the phrase in another language.

The guidance might also be updated by NSW Police from time to time, as appropriate, with a clear public education campaign and training of law enforcement, legal professionals and the judiciary.

The United Kingdom Metropolitan Police and Greater Manchester Police have taken a similar model by publishing guidance with respect to the phrase “*globalise the intifada*”, and circumstances in which it may amount to a public order offence.<sup>80</sup>

### Guidance concerning kinds of hatred

With respect to the offence of promoting hatred, the guidance might include an overview of the expressions of hatred against various protected groups. With respect to the Jewish community, this explanation should include the International Holocaust Remembrance Alliance (IHRA) Working Definition of Antisemitism, including the illustrative examples,<sup>81</sup> which has been adopted in full by the Australian Government.<sup>82</sup>

<sup>79</sup> [Wertheim v Haddad \[2025\] FCA 720](#) at [150].

<sup>80</sup> Metropolitan Police, ‘[Joint Statement from the Commissioner of the Metropolitan Police and the Chief Constable of Greater Manchester Police](#)’, 17 December 2025.

<sup>81</sup> See, [IHRA working definition](#).

<sup>82</sup> See, Australian Government, ‘[Australian Government response to the Special Envoy’s Plan to Combat Antisemitism](#)’, p 5, which states “The Australian Government’s official definition of antisemitism is the International Holocaust Remembrance Alliance’s working definition”.

### **Recommendation 3**

**Within the offences of inciting violence and inciting hatred, consider the introduction of strict liability offences, with lesser penalties.**

#### **Rationale for Recommendation 3**

Within the offences of inciting violence and inciting hatred, the New South Wales Government should also consider introducing strict liability offences with a lesser penalty, following the Western Australian model.

These offences should be complemented by clear legislative guidance concerning the kinds of conduct captured by the offence provisions. This is especially important, as the offences would not require proof of intention or recklessness.

Further, the intention or recklessness-based offences should still be charged in appropriate circumstances, with the strict liability offences charged in the alternative.

#### **The Western Australian model**

The strict liability offences vilification offences in Western Australia have proven an effective model, and importantly, have not 'opened the floodgates', nor led to misuse of the provisions. In the two decades following commencement of the provisions, there were 52 charges proven, including 23 charges under the intention-based provisions and 30 charges under the strict liability provisions.<sup>83</sup>

The Western Australian provisions were introduced in 2004, following the firebombing of Chinese restaurants and a spike in antisemitic and racist incidents. For instance, Perth Hebrew Congregation was defaced with the slogan "6 million more please with fries",<sup>84</sup> and various buildings were defaced with racist graffiti, such as "Asians out".<sup>85</sup>

An overview of the Western Australian provisions, and their application by the Court of Appeal in *O'Connell v The State of Western Australia*,<sup>86</sup> is at **Appendix III**. The case provides a helpful illustration of the strict liability offences and the defence of conduct that is '*legitimate political discourse...in the public interest*'.<sup>87</sup>

---

<sup>83</sup> NSW Law Reform Commission, '[Serious racial and religious vilification](#)', Final Report, September 2024, p 49 [4.19].

<sup>84</sup> Cleveland Jewish News, '[Latest news briefs from the Jewish Telegraphic Agency - Australian synagogue defaced](#)', 19 July 2004.

<sup>85</sup> See also, SMH, '[Graffiti accused linked to neo-Nazis](#)', 21 July 2004; ABC, '[Synagogue attack is 'unacceptable'](#)', 17 July 2004.

<sup>86</sup> *O'Connell v The State of Western Australia* [2012] WASCA 96 (O'Connell).

<sup>87</sup> *Criminal Code Act 1913* (WA), s 80G.

## **New offence of promoting, advocating or glorifying violence and similar conduct**

### **Recommendation 4**

Introduce a new strict liability offence which prohibits conduct that promotes, advocates or glorifies violence, destruction or death (hereafter, promotes violence).

This offence should not be confined to protected attributes, and should specifically include conduct which promotes violence explicitly or *implicitly* (including in coded form), including by:

- a. the use of phrases which can reasonably be interpreted as promoting violence; and
- b. symbols, including:
  - i. prohibited organisation symbols (including Nazi, terrorist and ‘prohibited hate organisation’ symbols); and
  - ii. symbols or gestures that are so closely connected with a prohibited organisation that they are customarily used to identify the group or any part of the group or its ideology.

The offence should be supported by authoritative guidance which illustrates the scope of the offence provision (see, Recommendation 2 above).

### **Rationale for Recommendation 4**

Conduct that promotes, advocates or glorifies violence, destruction or death must not be countenanced under Australian law. There can be no justification – of any kind – for conduct which promotes violence. A clear, unequivocal prohibition is necessary to restore this boundary, which is fundamental to the safety and wellbeing of all Australians, and our Australian way of life.

This offence should not be confined to promoting violence against protected groups. It should specifically include conduct which *implicitly* promotes violence, including by:

- References to nation-states or their entities (such as “*Death to Israel*”, “*Death to Australia*” “*Death to the Zionist entity*” etc);
- Prohibited organisation symbols (including Nazi, terrorist and ‘prohibited hate organisation’ symbols),<sup>88</sup> and symbols or gestures that are so closely connected with a prohibited organisation that they are customarily used to identify the group or any part of the group or its ideology (including the inverted red triangle, discussed below); and
- Phrases which can reasonably be interpreted as promoting violence.

The offence should be a strict liability offence.

The offence should be supported by authoritative guidance which illustrates the scope of the offence provision (see, Recommendation 2 above). As discussed above, this might be included as a non-statutory list of examples (including a pictorial list of symbols), and in addition, more detailed guidance might be published by NSW Police, endorsed by the Attorney General.

### **(a) Phrases which can reasonably be interpreted as promoting violence**

In particular, this offence should include phrases which can reasonably be interpreted as promoting violence, including against nation-states (such as “*Death to Australia*”, “*Death to Israel*”, “*Death to the Zionist entity*”, “*Put Australia up in flames*” etc).

Whilst vilification offences have traditionally been confined to conduct directed at a person or group on the basis of a protected attribute, these measures are warranted to address the flagrant promotion of violence, terrorism and extremist ideology in Australia.

---

<sup>88</sup> Defined in accordance with the *Combating Antisemitism, Hate and Extremism Bill* (Cth), and *Crimes Act 1900* (NSW), s 93Za, s 93ZB.

Further, they are necessary and appropriate to heed the sustained warnings of the Director General of ASIO that antisemitism as ASIO's highest priority "*in terms of threats to life*",<sup>89</sup> and *anti-Israel rhetoric is fuelling and normalising wider anti-Semitic narratives*.<sup>90</sup> Just this week, Jonathan Hall, KC, the Independent Reviewer of Terrorism Legislation in the United Kingdom, has warned that "*Hatred of Jews has become normalised in Western countries through endless anti-Israel demonstrations*" and called for a "*rethink*".<sup>91</sup>

In this area, it is particularly important that legislation retain scope for robust debate, including concerning political issues and the conflict in the Middle East. However, there is never any justification for conduct which promotes violence or calls for death or destruction.

The apparent inability of law enforcement to address the flagrant chants "*Death to the IDF*" illustrates the need for reform to ensure reprehensible conduct of this kind is unequivocally beyond the scope of the law. Foremost, this may occur by the preparation of clear guidance, and if required, a broader interpretation of the offences of inciting/promoting violence and inciting hatred (see, discussion of "*Death to the IDF*" below). However, it would also be beneficial to introduce a broader, lower-level offence for all conduct that promotes violence.

### The phrase "Death to IDF"

In June 2025, Bob Vylan led a Glastonbury festival crowd in chanting "*Death, death to the IDF*".<sup>92</sup> The phrase has since been used in protests in New York,<sup>93</sup> Melbourne<sup>94</sup> and Sydney.<sup>95</sup> The phrase is reprehensible, and a further example of conduct which *implicitly* promotes (or incites) violence against Israelis.

To date, law enforcement authorities have stated they would not take action in respect of the phrase.<sup>96</sup> Recently, Victorian Police Commissioner Mike Bush confirmed that Victoria Police received independent legal advice that the chant was not an offence under Victorian legislation.<sup>97</sup>

The phrase "*Death to the IDF*" implicitly promotes violence against Israelis *by reason of* their nationality, because every Israeli citizen over the age of 18 who is Jewish, Druze or Circassian, is required to serve in the IDF (subject to exceptions).<sup>98</sup> In this respect, *in substance*, the phrase incites violence against Israelis on the basis of their nationality (see discussion of *R v Krymowski*, above).

A narrower view may seek to distinguish between the nationality and service in the IDF, but the result is anomalous in view of the universal conscription model.<sup>99</sup>

Irrespective of the view taken above, conduct promoting violence should not be met with tolerance in Australia. For this reason, the New South Wales Government should introduce the broader offence at (4) above.

A prohibition of conduct promoting violence would not unduly infringe on the implied freedom of political communication. For example, Bob Vylan later stated on Instagram, "*we are not for the death of Jews, Arabs or any other race or group of people. We are for the dismantling of a violent military machine.*"<sup>100</sup> Mr Vylan might have expressed this same sentiment by a phrase which does not promote violence or death, such as "*Stop the IDF*".

<sup>89</sup> Director-General of Security, Mike Burgess AM, '[ASIO Annual Threat Assessment 2025](#)' (19 February 2025). See also, Australian Financial Review, '[Why antisemitism has become spy chief's No. 1 worry](#)' (25 February 2025).

<sup>90</sup> [ASIO 2025 Lowy Lecture | National Intelligence Community](#).

<sup>91</sup> See, Australian Financial Review, '[Bondi terror attack: UK terror watchdog says Jew hatred normalised, free speech rethink needed](#)', 14 January 2026.

<sup>92</sup> [Bobby Vylan leads Glastonbury crowd in 'Death to the IDF' chant | National Post](#).

<sup>93</sup> [Mamdani Condemns Slurs and Pro-Hamas Chant at Heated Queens Protest - The New York Times](#).

<sup>94</sup> [Melbourne synagogue attack: Pro-Palestinian protesters chant "Death to the IDF" two days after alleged arson at synagogue](#).

<sup>95</sup> [Mass Sydney Anti-Israel Demonstration Rife With Antisemitic Slogans, Terror Glorification, and Incitement to Violence | Combat Antisemitism Movement](#).

<sup>96</sup> [Bob Vylan won't be prosecuted over 'Death to the IDF' chant: UK police | National Post](#).

<sup>97</sup> ABC, '[New Victorian police chief Mike Bush says people should be free to protest without permits](#)', 28 July 2026.

<sup>98</sup> [Our Soldiers: the Men and Women of the Israeli Defense Forces | IDF | IDF](#).

<sup>99</sup> UK Culture Secretary Lisa Nandy stated that chanting "Death to the IDF" effectively calls for the death of every Israeli Jew, given Israel's universal conscription model. Lisa Nandy, 'Death to the IDF' Chants Are a Call for the Death of 'Every Single Israeli Jew' (Web Page, 1 July 2025) <<https://www.theic.com/news/politics/death-to-the-idf-chants-are-a-call-for-the-death-of-every-single-israeli-jew-1.123456>>.

<sup>100</sup> National Post, '[Bob Vylan rappers won't be prosecuted over 'Death to the IDF' chant: U.K. police](#)', 23 December 2025.

*Cottrell v Ross* is an illustrative case on this point.<sup>101</sup> The individual participated in an ‘Islamic style’ mock-beheading of a mannequin outside the Bendigo City Council,<sup>102</sup> and published a video of the mock execution online, to promote a protest against the council’s proposal to build a mosque.<sup>103</sup>

Chief Judge Kidd reasoned that the individual was free to communicate (and protest) about the council’s proposal, however engaged in serious vilification by his *manner* of communication, namely, by participating in the ‘Islamic style’ mock-beheading of a mannequin and publishing the video online.<sup>104</sup>

### The legislative gap

An offence of promoting violence (etc) would address a significant legislative gap, where conduct cannot be proven (under a narrow interpretation) to be directed to a person or group on the basis of a protected attribute.

As discussed above, reprehensible chants such as “*Globalise the intifada*” and “*Death to the IDF*” incite violence against Jewish Australians, and are best addressed by the existing offence of ‘*inciting violence*’, with clear, authoritative guidance concerning the scope of that provision, and potentially the introduction of a lesser strict liability offence.

In addition, an offence of promoting violence in the form of (4) above would capture conduct of this kind, as well as conduct which promotes violence against other groups. For example, over 12 years ago, in December 2014, protestors in New York chanted “*What do we want?*” “*Dead cops.*” “*When do we want them?*” “*Now.*” in protest of the death of black men at the hands of police, including Eric Garner.<sup>105</sup>

### (b) Symbols

The offence at (4) above should also include prohibited organisation symbols (as defined in the *Combating Antisemitism, Hate and Extremism Bill 2026* (Cth)), and other symbols or gestures that are so closely connected with a prohibited organisation that they are customarily used to identify the group or any part of the group or its ideology. This should include the portraits of identifiable leaders of these groups, the hand gestures associated with support for these organisations, and symbology, including symbols used by the organisations to threaten intimidation or violence, such as the Hamas inverted red triangle. Individuals cannot be permitted to promote violent and extremist ideology with impunity.

This would include, for example, the portraits of identifiable leaders of these groups, the hand gestures associated with support for these organisations, and symbology. For example, in Germany, symbols which are closely associated with Hamas (such as the inverted red triangle) have been banned since 2024, and all phrases related to the Nazi regime are prohibited. Just this week Jonathan Hall, KC, the Independent Reviewer of Terrorism Legislation in the United Kingdom, has called for a “*rethink*” in view of the display of Hamas imagery and violent chants during protests.<sup>106</sup>

### The inverted red triangle

The inverted red triangle was used by the Nazis to identify political prisoners in concentration camps.<sup>107</sup> More recently, it has been used by Hamas and others to mark Israeli or Jewish premises as a target for violence.<sup>108</sup>

<sup>101</sup> *Cottrell v Ross* [2019] VCC 2142 at [3]-[4], [158]-[159].

<sup>102</sup> *Cottrell v Ross* [2019] VCC 2142 at [3].

<sup>103</sup> *Cottrell v Ross* [2019] VCC 2142 at [4].

<sup>104</sup> *Cottrell v Ross* [2019] VCC 2142 at [158].

<sup>105</sup> [Video Shows NYC Protesters Chanting for “Dead Cops” – NBC New York.](#)

<sup>106</sup> See, Australian Financial Review, [‘Bondi terror attack: UK terror watchdog says Jew hatred normalised, free speech rethink needed’](#), 14 January 2026.

<sup>107</sup> See, eg, “Classification System in Nazi Concentration Camps,” [Holocaust Encyclopedia.](#)

<sup>108</sup> [The Inverted Red Triangle: A Symbol of Hate.](#)

The symbol has also been used as a means of intimidation of Jewish Australians. For example, on 13 October 2024, the front windows of a Jewish-owned bakery “Avner’s” were graffitied with large red inverted triangles together with a handwritten note “Be careful”.<sup>109</sup>

The symbol has also been used in the context of protest activity. For example, on 6 October 2024, a placard was displayed with an Israeli flag with an inverted red triangle over the Star of David, and “F\*\*\* Israel”.<sup>110</sup> In light of its history, the superimposing of the triangle over an Israeli flag implies that the State of Israel is a target for violence.

### Conclusion

The above would give effect to the Premier’s recent remarks that “There is no place in NSW for slogans or symbols that incite hatred, glorify violence or intimidate communities.”<sup>111</sup> It also reflects the position taken by the Jewish community for some time, namely that “In common parlance, any speech which on its face includes a call to violence, or to harassment or intimidation of the target group should fall within the reach of our criminal law.”<sup>112</sup>

### Clarify and strengthen powers of enforcement

#### Recommendation 5

**Clarify and strengthen police powers’ to enforce these offences, including by ensuring police have, and use, a power to issue directions where an individual/s commit an offence during a protest or demonstration.**

The above provisions must be supported by appropriately robust powers of enforcement, including a specific power to move on individuals, and disperse demonstrations or protests, where individuals engage in criminal conduct, including the promotion of violence or hatred.

At present, there are inadequate powers for police to address hateful, intimidatory or violent chants, even where they (reasonably) appear to constitute a criminal offence.

Further, there must be clear and robust police powers to seize symbols of Nazi and prescribed terrorist organisations, which constitute, or may constitute, the commission of an offence.

---

<sup>109</sup> ECAJ, [2025 Anti-Jewish Incidents Report](#), p 15.

<sup>110</sup> ECAJ, [2025 Anti-Jewish Incidents Report](#), p 19.

<sup>111</sup> [NSW Government to crack down further on hateful symbols and slogans | Communities and Justice](#).

<sup>112</sup> NSW Law Reform Commission, ‘[Serious racial and religious vilification](#)’ Submission by NSW Jewish Board of Deputies dated 19 April 2024.

### **Section (c): The need to protect communities from hatred, intimidation and violence**

In the two years following the October 7 terrorist attacks, there has been a dramatic escalation of antisemitic hatred, and intimidatory and violent anti-Jewish incidents, in Australia, including in New South Wales (see further, Section (2) above, '*The growth of hatred and violent rhetoric amidst sustained protest activity*').<sup>113</sup> This has undermined the safety and security of the Australian Jewish community, in every sector of life (see, e.g., the examples at [2.2] '*The harm caused by promoting hatred*').

The significant and urgent need to protect the community, in particular the Australian Jewish community, from this hatred, intimidation and violence, is further highlighted by repeated warnings by law enforcement agencies (see, above, Section (2), '*Addressing hateful, intimidatory protest activity & rising antisemitism*'). The New South Wales Government must now move decisively to protect the entire community, in particular the Jewish community, from the further escalation of hatred, intimidation and violence.

### **Section(d): Australian and international examples of best practice to combat the use of such slogans, including measures and approaches taken in the United Kingdom.**

The ASECA Office understands that there are varying international approaches to combat the use of hateful and intimidatory slogans, however would not recommend any particular model as '*best practice*'. Rather, ASECA recommends that the New South Wales Government develop a best practice model by the above measures.

In particular, the ASECA would recommend the following as hallmarks of best practice:

1. Robust and effective offences of '*promoting violence*' and '*promoting hatred*' on the basis of a protected attribute. These offences should:
  - a. Contain alternative fault elements of intention and recklessness (Recommendation [1.7]), and possibly also strict liability offences in alignment with the Western Australian model (Recommendation [3]);
  - b. Specifically include implicit and coded conduct (Recommendation [1.2]);
  - c. Include a brief, non-exhaustive list of '*indicators*', or '*kinds*' of conduct that *may* promote violence or hatred, which will be further illustrated in guidance published by NSW Police, with the endorsement of the NSW Attorney General (Recommendation [1.3]).
2. A strict liability offence for conduct that promotes, advocates or glorifies violence, destruction or death (hereafter, promotes violence), irrespective of the particular group (Recommendation 4). This is essential to address violent and extremist rhetoric, which has to date fallen beyond the scope of existing offence provisions.
3. The above accompanied by guidance published by NSW Police which indicates the *kinds* of conduct that may promote violence or hatred (respectively) explicitly, implicitly or in coded form, to illustrate the scope of the provisions (Recommendation 2). This aids public understanding of the scope of the offence provision. In this respect, the United Kingdom appears to be demonstrating a best practice model.
4. An indicative model, rather than prescriptive model, to ensure that the framework may be updated (as appropriate), and that the legislative intent cannot be circumvented by development of new hateful, intimidatory and violent slogans.

---

<sup>113</sup> See, Julie Nathan, Executive Council of Australian Jewry, '[ECAJ Report on Anti-Jewish Incidents in Australia 2024](#)' (ECAJ, 2024 Anti-Jewish Incidents Report); Julie Nathan, Executive Council of Australian Jewry, '[ECAJ Report on Anti-Jewish Incidents in Australia 2025](#)' (ECAJ, 2025 Anti-Jewish Incidents Report).

## **Section (e): The Australian Constitution and the implied freedom of political communication.**

In Australia, freedom of expression is rightly regarded as fundamental. In a free society, ideas of any kind—religious, political, ideological or philosophical—are and should be capable of being debated and defended. Robust critiques of ideas, no matter how passionately adhered to, are a core tenet of Australian democracy.

In contrast, the vilification of individuals or groups of people on the basis of their race or other inherent attribute, especially if the vilification is intentional, can have nothing to do with freedom of expression. Such vilification is not about ideas, opinions or beliefs. It is about an immutable part of a person's identity, which is not amenable to change through discussion or debate. It is a denial of the target's humanity. It necessarily sends a message that the people who are targeted, by virtue of who they are, and regardless of how they behave or what they believe, are not members of society in good standing. This cannot but vitiate their sense of belonging and their sense of assurance and security as citizens.

The implied freedom of political communication restricts the powers of the executive and legislature and is not a personal right granted to individuals.<sup>114</sup> Its purpose is to safeguard freedom of communication concerning political or government matters, which enables Australians to exercise a free and informed choice as electors.<sup>115</sup> This is entirely compatible with criminal law protections against the incitement of hatred which safeguard respect and tolerance for all Australians with respect to their inherent attributes and which, as noted, have nothing to do with ideas. Hence, the rationale for the implied freedom to communicate about political matters (which is to inform political change via the democratic process) is not capable of realisation in such cases. In giving effect to this distinction, lessons can be learned from the operation of the serious vilification offences recently enacted by the New South Wales and Victorian governments, and the Victorian offence of serious religious vilification.<sup>116</sup>

Importantly, these reforms should not be directed to censure protest activity, nor the legitimate expression of ideas. Rather, they should recalibrate the bounds of acceptable conduct, such that protest activity is not a shield to promote violence and hatred against particular individuals or groups. This is illustrated by the cases of *Cottrell v Ross and O'Connell v State of Western Australia*, which both concerned vilification in the context of a demonstration.

### **Cottrell v Ross**

*Cottrell v Ross*<sup>117</sup> concerned proceedings pursuant to the Victorian offence of serious religious vilification, which prohibited knowingly engaging in conduct with the intention of inciting serious contempt for, or revulsion or severe ridicule of, that other person or class of persons, on the ground of their religious belief or activity.<sup>118</sup> The case concerned an individual who had participated in an 'Islamic style' mock-beheading of a mannequin outside the Bendigo City Council,<sup>119</sup> and published a video of the mock execution online to promote a protest against the council's proposal to build a mosque.<sup>120</sup>

Chief Judge Kidd considered an argument that the offence provision impermissibly burdened the implied freedom of political communication, because it was akin to the proscription of a "*mere insult*", which was addressed by the High Court in *Coleman v Power*.<sup>121</sup> His Honour considered the offence provision captured only a "*slender field*" of discourse,<sup>122</sup> and that *if* it imposed any burden on the implied freedom of political communication, that burden was "*incidental, insubstantial and not meaningful*".<sup>123</sup> His Honour further observed that the facts of the case were "*illuminating*" – the

<sup>114</sup> *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.

<sup>115</sup> *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 560.

<sup>116</sup> [Racial and Religious Tolerance Act 2001 \(VIC\)](#), s 25(2).

<sup>117</sup> [\[2019\] VCC 2142](#).

<sup>118</sup> [Racial and Religious Tolerance Act 2001 \(VIC\)](#), s 25(2).

<sup>119</sup> *Cottrell v Ross* [\[2019\] VCC 2142](#) at [3].

<sup>120</sup> *Cottrell v Ross* [\[2019\] VCC 2142](#) at [4].

<sup>121</sup> *Coleman v Power* (2004) 220 CLR 1. See, *Cottrell v Ross* [\[2019\] VCC 2142](#) at [125]-[250].

<sup>122</sup> Compare *Cottrell v Ross* [\[2019\] VCC 2142](#) at [229] per Kidd CJ.

<sup>123</sup> *Cottrell v Ross* [\[2019\] VCC 2142](#) at [159] per Kidd CJ.

individual was free to communicate about the local government proposal concerning the Bendigo mosque; the offence provision burdened only the extent to which the conduct seriously vilified others based on their religion.<sup>124</sup>

The terms of the offence provision considered in *Cottrell v Ross* differ slightly from the terms of the offence provisions recently enacted in Victoria and New South Wales. However, the reasoning remains illustrative and helpful to demonstrate how criminal law protections against the incitement of hatred strike an appropriate balance with the implied freedom of political communication.

### O'Connell v The State of Western Australia

*O'Connell v The State of Western Australia*<sup>125</sup> concerned proceedings pursuant to sections 77 and 80B of the Western Australian *Criminal Code*. Section 77 proscribes conduct that is done “*otherwise than in private*” which is intended “*to create, promote or increase animosity towards, or harassment of, a racial group, or a person as a member of a racial group*” (where *animosity towards* is defined as “*hatred of or serious contempt for*”).<sup>126</sup> It carries a maximum penalty of imprisonment for 14 years. Section 80B proscribes conduct that is done “*otherwise than in private*” which is “*likely to harass a racial group, or a person as a member of a racial group*”, and the offence carries a maximum penalty of imprisonment for 3 years.<sup>127</sup>

In that case, an individual repeatedly verbally abused a Jewish student outside a protest at an IGA store in South Perth,<sup>128</sup> and uploaded footage of the incident online with additional commentary and blogs.<sup>129</sup> The statements included “*'You are a racist homicidal maniac,' 'You are a racist Jew,'... it is in your religion and race' and 'You kill little Palestinian children and you support it'*”.<sup>130</sup> Amongst other things, the online content described “*the modus operandi of Jewish cryptocracies... using deception, blasphemy, bribery and homicide*” and claimed that “*the Jew runs, owns and dominates the internet*”.<sup>131</sup>

The individual was convicted of the offences, and sentenced to a total effective sentence of 3 years' imprisonment.<sup>132</sup> In convicting the individual, the jury rejected a defence that the statements were made reasonably and in good faith in the course of a statement, discussion or debate made or held in the public interest.<sup>133</sup>

The Western Australian Court of Appeal agreed, and dismissed an appeal against the conviction and sentence.<sup>134</sup> Mazza JA (with whom Martin CJ and Buss JA agreed) described the statements as “*...well beyond any legitimate political discourse*”.<sup>135</sup> His Honour also described the blogs as “*intended to imbue others*” with the individual's deep hatred towards Judaism, Jews and the nation of Israel.<sup>136</sup>

Although the offence provisions in Western Australia differ from section 93ZAA of the Act, the case is significant because the jury's verdict reflects public acceptance that certain hateful conduct extends beyond “*legitimate political discourse*” and amounts to a criminal offence.

### Conclusion

As has been said, freedom of speech is not a license to engage in hate speech, which denigrates and dehumanises another group based on an inherent attribute, such as race or religion. In this respect, it is imperative that the New South Wales Government move unequivocally to address hateful, intimidatory and violent conduct, including in the context of protest activity.

---

<sup>124</sup> *Cottrell v Ross* [2019] VCC 2142 at [158].

<sup>125</sup> [2012] WASCA 96.

<sup>126</sup> *Criminal Code Act 1913* (WA), ss 76, 77.

<sup>127</sup> *Criminal Code Act 1913* (WA), s 80B.

<sup>128</sup> *O'Connell* [2012] WASCA 96 at [13].

<sup>129</sup> *O'Connell* [2012] WASCA 96 at [17]-[19].

<sup>130</sup> *O'Connell* [2012] WASCA 96 at [13].

<sup>131</sup> *O'Connell* [2012] WASCA 96 at [22].

<sup>132</sup> *O'Connell* [2012] WASCA 96 at [5].

<sup>133</sup> *O'Connell* [2012] WASCA 96 at [50], [196].

<sup>134</sup> *O'Connell* [2012] WASCA 96 at [1], [2], [215]-[216].

<sup>135</sup> *O'Connell* [2012] WASCA 96 at [197].

<sup>136</sup> *O'Connell* [2012] WASCA 96 at [201].

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

There is a significant patchwork of legislation at Commonwealth, State and Territory level addressing various expressions of hatred, violence and extremism, as well as general law offences of intimidation and assault. Regrettably, these offences have to date proven inadequate to address the proliferation of hateful, violent rhetoric, including in the context of protest activity.

Having examined the Government's objective in light of the legislative patchwork, the ASECA repeats the recommendations in Section 3 (above) as the most effective means to address hateful, violent and intimidatory slogans.

## Appendix I

### Terms used to implicitly promote violence

#### The term “jihad”

The term “jihad” is a further term used to promote violence *implicitly*.

The literal meaning of the Arabic word “jihad” is “*struggle or effort*”.<sup>137</sup> However, it is understood as a call for a “*holy war*”, and has incited violence in historical and contemporary contexts.

For example, in 1914, a *fatwa* (judicial opinion or ruling) was issued by the Ottoman Empire declaring a *jihad* (or “*holy war*”) against “*all enemies of the Ottoman Empire, except the Central Powers*”.<sup>138</sup> The proclamation has been described as “*calculated to rouse Muslims in the British, French and Russian empires to rebellion*”,<sup>139</sup> and inspired at least one terrorist attack in Broken Hill, NSW, in which two assailants fatally shot four civilian passengers within a moving train.<sup>140</sup>

More recently, in 1998, Osama bin Laden called for jihad and in doing so stated “*The ruling to kill the Americans and their allies -- civilians and military -- is an individual duty for every Muslim who can do it in any country in which it is possible to do it*”.<sup>141</sup>

Further, there have been many calls for “jihad” against Jewish people, including in Australia. For example, in 2014 an extremist preacher described Jewish people as “*the hidden evil*” and called for “*a jihad against the Jews*”.<sup>142</sup> The conduct was reported to authorities,<sup>143</sup> however no prosecution eventuated.<sup>144</sup>

Individuals have continued to promote “jihad”, including directly following the October 7 terrorist attacks. For example, on 27 October 2023, Ismail, an imam from Al Madina Dawah Center in Bankstown, declared: “*Whether the Australian government likes it or not, jihad is the solution for the Ummah [collective Muslim nation]*”.<sup>145</sup> He further claimed that the black flag associated with ISIS and al-Qaeda “*is the flag of the Muslims*”.<sup>146</sup>

#### The phrase “From the river to the sea”

A further prominent example is the phrase “*from the river to the sea*”, and its Arabic equivalent (“*from water to water, Palestine is Arab*”). This phrase is purportedly used with reference to self-determination of the Palestinian people.<sup>147</sup>

However, it is understood to be a call for ethnic cleansing of Jewish persons from the entirety of the land of Israel (from the Jordan River to the Mediterranean Sea), in that it calls for whole land to be Arab or free (of Jews).<sup>148</sup>

Perhaps most prominently, the phrase has been used by Hamas – a listed terrorist organisation in Australia, EU, the United States, Germany, the United Kingdom, Canada and Japan.<sup>149</sup>

For instance, in 2012, Khaled Mashal, then leader of Hamas, declared in a speech to mark the 25th anniversary of the foundation of the group: “*Palestine is ours, from the river to the sea and from the south to the north*”.<sup>150</sup> In 2017, Hamas published a revised charter, which states “*Hamas rejects any alternative to the full and complete liberation of Palestine, from the river to the sea*” and also explicitly

<sup>137</sup>

<sup>138</sup> [Jihad, Holy War \(Ottoman Empire\)](#)

<sup>139</sup> [01\\_Rogan\\_1825.pdf](#)

<sup>140</sup> [01\\_Rogan\\_1825.pdf](#)

<sup>141</sup> See, World Islamic Front Statement, ‘[World Islamic Front Statement Urging Jihad Against Jews and Crusaders](#)’, 23 February 1998.

<sup>142</sup> [‘Advocating genocide’ to be crime under proposed new national security laws | Australian security and counter-terrorism | The Guardian](#)

<sup>143</sup> [Radical Muslim leader’s anti-Semitic rants referred for criminal charges](#)

<sup>144</sup> ESee, ECAJ submission dated 29 October 2024, p 4.

<sup>145</sup> [Jihadist incitement is driving attacks on Jews worldwide | The Jerusalem Post](#)

<sup>146</sup> [Jihadist incitement is driving attacks on Jews worldwide | The Jerusalem Post](#)

<sup>147</sup>

<sup>148</sup>

<sup>149</sup> <https://www.atlanticcouncil.org/blogs/econographics/global-sanctions-dashboard-how-hamas-raises-uses-and-moves-money/>

<sup>150</sup> [Why ‘river to sea’ pro-Palestinian slogan is controversial – DW – 11/19/2023](#)

calls for the violent destruction of the state of Israel.<sup>151</sup> In December 2022, Hamas published the slogan along with a map of the region depicting a Palestinian state and no Israel.<sup>152</sup>

For this reason, the German Interior Ministry has prohibited the slogan as an indication of support for Hamas and a call for violence against Jews and against the state of Israel.<sup>153</sup>

---

<sup>151</sup> Hamas Charter, Article 20. Available at <[Hamas in 2017: The document in full | Middle East Eye](#)>.

<sup>152</sup> [Why 'river to sea' pro-Palestinian slogan is controversial – DW – 11/19/2023](#)

<sup>153</sup> See,

<https://www.bundesanzeiger.de/pub/publication/M0JVrk5Qop55DhqscjE/content/M0JVrk5Qop55DhqscjE/BAnz%20AT%2002.11.2023%20B10.pdf>.

## Appendix II

### Recommendation 1.1: The term ‘*incite*’ must be amended to ‘*promote*’

#### The requirement to prove ‘*incitement*’

Foremost, the requirement to prove ‘*incitement*’ hamstrung the offence provision for decades. No prosecutions were brought under the offence, or its predecessor, for the first forty years of operation.<sup>154</sup> The Jewish community has repeatedly addressed this issue in submissions to Government,<sup>155</sup> including the ASECA Office in its submission to the Sackar review (at [2.1.3]).<sup>156</sup>

#### The term ‘*incite*’ & the plagued history of the offence provision

By way of brief overview, the requirement to prove ‘*incitement*’ has been repeatedly identified as a significant impediment to use of the predecessor provision, including:

- In 2009, by Mr Cowdery AM QC, then Director of the Office of Public Prosecutions (ODPP), who explained “*The most common reason why prosecutions have not been commenced has been the inability of the prosecution to adduce evidence to prove to the necessary standard either incitement or incitement by the specific means...*”;<sup>157</sup> and
- In 2013, by the ODPP who expressed the same view during a Legislative Council inquiry.<sup>158</sup>

Meanwhile, extremists have continued to promote and exhort others toward violence with impunity. For example, in 2014 an extremist preacher described Jewish people as “*the hidden evil*” and called for “*a jihad against the Jews*”.<sup>159</sup> The conduct was reported to authorities,<sup>160</sup> however no prosecution eventuated,<sup>161</sup> presumably as incitement could not be proven to the criminal standard.

This caused some controversy, because the term “*jihad*” is understood as a call for a “*holy war*”, and has been repeatedly used to incite violence, including by the Ottoman Empire in 1914 (inspiring a terrorist attack which killed four civilians in Australia),<sup>162</sup> and more recently by Osama bin Laden in 1998<sup>163</sup> (the meaning of “*jihad*” is discussed further at Appendix I). The (then) Government provided assurances that it would reform the legislation to “*disarm*” hate preachers and violent extremists.<sup>164</sup>

Four years later, in 2018, the New South Wales Government broadened the offence of inciting violence to include alternative fault elements of intention and recklessness, in recognition that “*procedural impediments*”, including the requirement to prove intention, had hindered the practical application and overall effectiveness of the provision.<sup>165</sup>

However, the requirement to prove ‘*incitement*’ continued to hinder use of the provision. For example, on 15 December 2023, a self-described preacher said the following during a sermon that was posted online “*This is the barbarity, this is the inhumane nature of this Israeli-Zionist state ... [The Israel-Palestine conflict] has to be a spark for the umma (Muslim community) and a spark to the final solution...*”.<sup>166</sup>

<sup>154</sup> [Second Reading Speech](#) to the *Crimes Amendment (Publicly Threatening and Inciting Violence) Bill 2018* (NSW), in New South Wales, Legislative Assembly, Parliamentary Debates, 5 June 2018 (The Hon Mark Speakman MP), p 42.

<sup>155</sup>

<sup>156</sup> ASECA’s Submission at [2.1.1].

<sup>157</sup> Nicholas Cowdery, ‘*Review of Law of Vilification: Criminal Aspects, Roundtable on Hate Crime and Vilification Law: Developments and Directions*’, Law School, University of Sydney, August 2009, p 4, quoted in New South Wales Legislative Council, Standing Committee on Law and Justice, ‘*Racial Vilification Law in New South Wales*’, Report 50, December 2013 (NSW LC Standing Committee Report 2013), p 17 [2.72].

<sup>158</sup> NSW LC Standing Committee Report, ‘*Racial Vilification Law in New South Wales*’, 2013, pp 31 [4.4] and 35 [4.20].

<sup>159</sup> The Guardian, ‘*Advocating genocide to be crime under proposed new national security laws*’, 4 September 2015.

<sup>160</sup> SMH, ‘*Radical Muslim leader’s anti-Semitic rants referred for criminal charges*’, 1 April 2015.

<sup>161</sup> The Guardian, ‘*New South Wales hate speech laws to clamp down on ‘violent extremists’*’.

See also, [ECAJ 2024 Submission](#), p 4.

<sup>162</sup> [01 Rogan 1825.pdf](#)

<sup>163</sup> See, World Islamic Front Statement, ‘*World Islamic Front Statement Urging Jihad Against Jews and Crusaders*’, 23 February 1998.

<sup>164</sup> The Guardian, ‘*New South Wales hate speech laws to clamp down on ‘violent extremists’*’.

<sup>165</sup> [Second Reading Speech](#) to the *Crimes Amendment (Publicly Threatening and Inciting Violence) Bill 2018* (NSW), in New South Wales, Legislative Assembly, Parliamentary Debates, 5 June 2018 (The Hon Mark Speakman MP), pp 42-44. The predecessor offence was section 20D of the *Anti-Discrimination Act 1977* (NSW).

<sup>166</sup> See, eg, Daily Mail Online, ‘*Radical Islamic preacher calls for a ‘final solution’ carried out by a Muslim army in shocking anti-Israel sermon in Sydney*’, 18 December 2023.

The sermon was found not to breach Federal or State laws,<sup>167</sup> presumably because the preacher's exhortation that the conflict in the Middle East "*has to be a spark for the umma (Muslim community) and a spark to the final solution*" was not considered sufficient to establish that the preacher *intentionally or recklessly* incited violence against the Australian Jewish community. This was despite the preacher's borrowing from the Nazis of the term 'final solution', which is well-understood and connotes genocide of the Jews.<sup>168</sup>

#### The difficulty in proving intentional or reckless incitement

The particular difficulty in proving incitement where the inciter directed their conduct to a sympathetic audience (as above) was illustrated by *Australian Macedonian Advisory Council*,<sup>169</sup> a case brought under the Victorian civil vilification provisions.

The case concerned an article published in the Australian Macedonian Weekly (with a broad online and offline audience),<sup>170</sup> which inter alia described Greeks as "*a thieving nation*"<sup>171</sup> and suggested "*...these Greek deranged bastardly monsters took the Macedonian language away from our Macedonian children*".<sup>172</sup> Despite the use of dehumanising language and the attribution of negative characteristics to an entire community on the basis of ethnicity, the Tribunal member considered the article was not likely to incite "*such raw emotion*" as hatred in the relevant audience because the article was published in Macedonian and "*for the average Macedonian reader, this article is probably just "preaching to the converted"*".<sup>173</sup>

The case demonstrates how the term "*incite*" may prevent the offence provisions from addressing conduct which plainly publicly promotes violence or hatred, where the conduct is directed toward a particular audience who shares a similar viewpoint. In this respect, the term "*incite*" is problematic, because it fixes the threshold of liability upon the inciter's intended effect on a particular audience, an element which is inherently difficult to prove to the criminal standard.<sup>174</sup> It would be preferable to replace "*incite*" with "*promote*", to redirect the focus of the analysis to the individual's intention with respect to the conduct itself.

#### Amendment of the term "incite" would assist to ensure individuals who intentionally use the phrase "globalise the intifada" to promote violence are held to account

The above difficulty is further illustrated with respect to terms or phrases with a literal and separate understood meaning. Take, for instance, an individual who chants "*globalise the intifada*" at a protest concerning the conflict in the Middle East, and assume that certain evidence demonstrated that the individual *intended* to use the *understood* meaning (that is, the person intended to call for a "*violent uprising*").

The term "*incite*" may well still hinder prosecution, because the accused could adduce evidence that they intended *their audience* to understand a benign meaning, and that audience members in fact understood that benign meaning, which was not to incite (encourage, or stir them on) toward violence. This would entirely frustrate the legislative intent to proscribe chants such as "*globalise the intifada*" which plainly promote violence.

#### Recommendation & Concluding remarks

The New South Wales Government must now replace the term '*incite*' with '*promote*', to redirect the focus of the inquiry to the conduct itself (rather than its intended effect on a particular audience), and to ensure the provision operates effectively.

In making the above recommendation, the ASECA Office acknowledges that in 2024, the NSW Law Reform Commission reviewed the operation of the offence of '*inciting violence*', acknowledged the

<sup>167</sup> The Australian, '[Political, Jewish leaders: Radical cleric inaction gives 'green light' to incendiary 'final solution' sermon](#)', 18 December 2023.

<sup>168</sup> [Final solution | Definition, Holocaust, & Third Reich | Britannica](#)

<sup>169</sup> [\[2011\] VCAT 1647](#).

<sup>170</sup> *Australian Macedonian Advisory Council* [\[2011\] VCAT 1647](#) at [3].

<sup>171</sup> *Australian Macedonian Advisory Council* [\[2011\] VCAT 1647](#) at [27].

<sup>172</sup> *Australian Macedonian Advisory Council* [\[2011\] VCAT 1647](#) at [10].

<sup>173</sup> *Australian Macedonian Advisory Council* [\[2011\] VCAT 1647](#) at [68].

<sup>174</sup> The difficulty of proving incitement was referenced in the [Second Reading Speech](#) to the *Crimes Amendment (Publicly Threatening and Inciting Violence) Bill 2018* (NSW), in New South Wales, Legislative Assembly, Parliamentary Debates, 5 June 2018 (The Hon Mark Speakman MP), p 43.

history of repeated concerns with respect to the term ‘*incitement*’ (including those of Mr Cowdery, and the ODPP, above),<sup>175</sup> however recommended no change, because no submissions were made that the term “*incite*” should be *replaced* (as opposed to supplemented).<sup>176</sup>

In view of the lengthy history of failed operation, and the current climate which demands that these provisions operate effectively, the ASECA Office urges the Government to implement the above recommendation to *replace* the definition of “*incite*”.

---

<sup>175</sup> NSW Law Reform Commission, ‘[Serious racial and religious vilification](#)’, Final Report, September 2024, p 61 [5.4].

<sup>176</sup> NSW Law Reform Commission, ‘[Serious racial and religious vilification](#)’, Final Report, September 2024, p 62 [5.6]; pp 62-66 [5.8]-[5.66].

## Appendix III

### Western Australia: Strict liability serious vilification offences

#### Introduction

Alternative strict liability offences have been an effective model in Western Australia. These offences were introduced in 2004, following the firebombing of Chinese restaurants and a spike in antisemitic and racist incidents. For instance, Perth Hebrew congregation was defaced with the slogan “6 million more please with fries”,<sup>177</sup> and various buildings were defaced with racist graffiti, such as “Asians out”.<sup>178</sup>

In his second reading speech (then) Premier Gallop acknowledged “prosecuting authorities have not utilised the current Criminal Code provisions” due to difficulties in proving intent and low penalties, which meant other charges were preferred.<sup>179</sup> The Bill would address these deficiencies by a two-tier model, including intention-based offences (with higher penalties) and strict liability offences, with lower penalties and various defences where the conduct is engaged in reasonably and in good faith.<sup>180</sup>

#### Strict liability offences

In addition to the intention-based offences (which need not be duplicated within the NSW legislation), the strict liability offences prohibit conduct, engaged in otherwise than in private:

1. that is likely to create, promote or increase animosity towards, or harassment of, a racial group, or a member of that group;<sup>181</sup> or
2. that is likely to harass a racial group, or member of that group.<sup>182</sup>

Within each of the offences, “animosity towards” means “hatred of or serious contempt for”, and “harass” includes “includes to threaten, seriously and substantially abuse or severely ridicule”.<sup>183</sup>

The offences are subject to several defences, which seek to strike an appropriate balance with the principle of freedom of speech and expression.<sup>184</sup> A defence is available where the conduct was engaged in:

- in the performance, exhibition or distribution of an artistic work; or
- in the course of conduct engaged in for any genuine academic, artistic, religious or scientific purpose, or other purpose in the public interest; or
- in making or publishing a fair and accurate report or analysis of a matter of public interest.<sup>185</sup>

The intention based offences are punishable by between 14 years’ and 5 years’ imprisonment, or lesser terms upon summary conviction.<sup>186</sup> The strict liability offences are punishable by between 5 years’ and 3 years’ imprisonment, or lesser terms upon summary conviction.<sup>187</sup> These penalties were said to reflect the advice of the Office of Director of Public Prosecutions and the “insidious nature of these offences, particularly their potential repercussions”.<sup>188</sup>

#### R v O’Connell<sup>189</sup>

<sup>177</sup> Cleveland Jewish News, ‘[Latest news briefs from the Jewish Telegraphic Agency - Australian synagogue defaced](#)’, 19 July 2004.

<sup>178</sup> See also, SMH, ‘[Graffiti accused linked to neo-Nazis](#)’, 21 July 2004; ABC, ‘[Synagogue attack is ‘unacceptable’](#)’, 17 July 2004.

<sup>179</sup> [Second Reading Speech to the Criminal Code \(Racial Vilification\) Bill 2004 \(WA\)](#), p1.

<sup>180</sup> [Second Reading Speech to the Criminal Code \(Racial Vilification\) Bill 2004 \(WA\)](#), p 1. See also, [Explanatory Memorandum to the Criminal Code \(Racial Vilification\) Bill 2004 \(WA\)](#), cl 5.

<sup>181</sup> [Criminal Code \(WA\)](#), s 78. The offence is punishable by 5 years’ imprisonment, or upon summary conviction, 2 years’ imprisonment and a fine of \$24,000.

<sup>182</sup> [Criminal Code \(WA\)](#), s 80B. The offence is punishable by 3 years’ imprisonment, or upon summary conviction, 12 months’ imprisonment and a fine of \$12,000.

<sup>183</sup> [Criminal Code \(WA\)](#), s 76.

<sup>184</sup> [Explanatory Memorandum to the Criminal Code \(Racial Vilification\) Bill 2004 \(WA\)](#), clause 5.

<sup>185</sup> [Criminal Code \(WA\)](#), s 80G(1), (2).

<sup>186</sup> [Criminal Code \(WA\)](#), s 77. The offence is punishable by 14 years’ imprisonment. [Criminal Code \(WA\)](#), s 80A. The offence is punishable by 5 years’ imprisonment, or upon summary conviction, 2 years’ imprisonment and a fine of \$24,000.

<sup>187</sup> [Criminal Code \(WA\)](#), s 78. The offence is punishable by 5 years’ imprisonment, or upon summary conviction, 2 years’ imprisonment and a fine of \$24,000. [Criminal Code \(WA\)](#), s 80B. The offence is punishable by 3 years’ imprisonment, or upon summary conviction, 12 months’ imprisonment and a fine of \$12,000.

<sup>188</sup> [Second Reading to the Criminal Code Amendment \(Racial Vilification\) Bill 2004 \(WA\)](#), in Parliament of Western Australia, Legislative Assembly Hansard, 18 August 2004 (Dr Geoff Gallop – Premier), p1. See also, [Explanatory Memorandum to the Criminal Code Amendment \(Racial Vilification\) Bill 2004 \(WA\)](#), p 2.

<sup>189</sup> *O’Connell v The State of Western Australia* [2012] WASCA 96 (O’Connell).

Few decisions have been reported under the Western Australian serious vilification offence provisions. However, the landmark case of *R v O'Connell* provides a helpful illustration of the strict liability provisions, and the defence of '*legitimate political discourse*'.

In 2011, Mr O'Connell (hereafter, the **offender**) was convicted of one count of engaging in conduct likely to harass a member of a racial group, and five intention-based vilification offences. The offender confronted a Jewish student at a an IGA store in South Perth, during a protest concerning the sale of Israeli produced Jaffa oranges.<sup>190</sup> The strict liability offence concerned the offender's statements to the victim, including:

*"You are a racist homicidal maniac,' 'You are a racist Jew,' 'You belong to a racist homicidal organisation' 'You are anti goy ... it is in your religion and race' and 'You kill little Palestinian children and you support it'"*<sup>191</sup>

The offender raised a defence that the statements were made in "*good faith*" in the course of a "*vigorous street debate*" on political matters, and on the basis that Mr Keyser was "*defending and supporting the ethnic cleansing of the Palestinian people*".<sup>192</sup> The defence was rejected by the jury, and the Court of Appeal.<sup>193</sup> On Appeal, Mazza JA said:

*"...the appellant went well beyond any legitimate political discourse about Israel and its relationship with Palestinians in the Gaza Strip. Rather, the appellant deliberately and persistently used highly offensive racial language and substantially abused and ridiculed Mr Keyser personally, simply because he was Jewish".*<sup>194</sup>

The case is an important landmark in the application of serious vilification offences in Western Australia, and an illuminating example of where conduct transcends beyond "*legitimate political discourse*" and into the incitement of hatred or harassment (as defined above).

---

<sup>190</sup> *O'Connell* [2012] WASCA 96 at [13].

<sup>191</sup> *O'Connell* [2012] WASCA 96 at [13].

<sup>192</sup> *O'Connell* [2012] WASCA 96 at [49], [50], [196].

<sup>193</sup> *O'Connell* [2012] WASCA 96 at [49], [50], [196].

<sup>194</sup> *O'Connell* [2012] WASCA 96 at [197].