

**Submission
No 153**

MEASURES TO PROHIBIT SLOGANS THAT INCITE HATRED

Organisation: Hizb ut-Tahrir Australia

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Our Ref: 00071-90-Hizb ut-Tahrir Australia

Legislative Assembly Committee on Law and Society
Parliament of New South Wales
Sydney NSW 2000

OPEN LETTER
By Online Form and Post

Dear Committee Members,

Inquiry into ‘Measures to prohibit slogans that incite hatred’

1. Introduction

- 1.1. We act for Hizb ut-Tahrir Australia (**HTA**). HTA is a not-for-profit, non-incorporated organisation, which describes itself as:¹

... a global Islamic political party ... In the West, Hizb ut-Tahrir works to cultivate a Muslim community that lives by Islam in thought and deed, preserving a strong Islamic identity and remaining connected to the global struggle of the Muslim *Ummah* as one *Ummah*. Whilst we do not work in the West to change the system of government, we do carry Islam intellectually as the only way of life mandated by the Creator, Allah (swt), and in turn as the solution to the malaise of secular liberalism which has led humanity for three centuries now and failed her miserably.

- 1.2. On 22 December 2025, following an alleged ‘ISIS-inspired ... terror attack’² on 14 December 2025 at Bondi Beach, the Legislative Assembly Committee on Law and Society was asked to:³

... inquire into and report on the use of slogans that are directed at certain communities to intimidate those communities and instil fear of violence.

The Committee should consider:

- 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;
- 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;
- c) The need to protect communities from hatred, intimidation and violence;

¹ <https://www.hizb-australia.org/2016/02/faqs-hizb-ut-tahrir/>.

² <https://ministers.ag.gov.au/media-centre/transcripts/press-conference-canberra-22-12-2025>.

³ <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=3167#tab-timeline>.

- d) Australian and international examples of best practice to combat the use of such slogans, including measures and approaches taken in the United Kingdom;
- e) The Australian Constitution and the implied freedom of political communication;
- f) Existing offences and other measures in New South Wales and Commonwealth legislation, including offences and measures that have been announced; and
- g) Any other related matters.

1.3. This letter sets out, in short form, the likely principal legal, political, practical, and human rights consequences and risks of the NSW Government proceeding to prohibit slogans that targets pro-Palestinian political speech and ideology rather than conduct (**Proposed Prohibition**).

2. Factual context

2.1. There is no identifiable link between the incident in Bondi and the Proposed Prohibition. To date, pro-Palestinian activists have not been convicted in Australia of any terrorism or hate offences. Pro-Palestinian activists have not engaged in or advocated terrorist acts in Australia. While several jurisdictions have proscribed or restricted pro-Palestinian activist groups in recent years, those foreign decisions and the factual bases for them vary and are not determinative of Australian legal validity. We note that while the United Kingdom in 2025 proscribed Palestine Action, there are multiple key issues relating to the Proposed Listing:

- (a) Palestine Action was proscribed under the *Terrorism Act 2000 (UK)*, which is a different statutory context.⁴ There is no suggestion or evidence that any pro-Palestinian groups meet the threshold for a terror organisation listing in Australia.
- (b) To our knowledge, the listing of Palestine Action as a terror organisation in the UK is currently being reviewed by the Courts, and a final determination is yet to be made.
- (c) The factual, and constitutional context is different in Australia.

2.2. The NSW Government appears to be contemplating a new category of ‘hate speech’ or an expansion of proscription powers that would permit listing and criminal sanctions where an individual’s speech or ideology is characterised as ‘hate’, ‘extremist’ or ‘vilifying’, even in the absence of domestic violence, incitement to violence, or operational activity. That is a materially different legal regime from the existing Division 102 terrorist-organisation regime in the *Criminal Code Act 1995 (Cth)*, which is expressly tied to engagement in or advocacy of terrorist acts.

3. Constitutional analysis – implied freedom of political communication

3.1. The High Court has long recognised an implied freedom of political communication as a structural limitation on Commonwealth and State legislative power necessary for representative and responsible government. Applying the modern structured proportionality approach⁵ to the proposed ‘hate speech’ proscription of phrases like ‘globalise the intifada’ shows that the Proposed Prohibition would likely violate the constitutionally implied freedom because:

⁴ <https://www.gov.uk/government/news/home-secretary-declares-hizb-ut-tahrir-as-terrorists>.

⁵ *Brown v Tasmania* [2017] HCA 43.

- (a) **Burden:** Pro-Palestinian speech and activism in Australia, are primarily political, religious and ideological. A law that criminalises speech, support, or public activism will plainly burden political communication. The High Court treats restrictions on political association and advocacy as core instances of the implied freedom’s protection.⁶
- (b) **Legitimate purpose:** The NSW Government will likely assert legitimate aims such as preventing violence, protecting public order, and preventing radicalisation.⁷ Those aims may be legitimate in principle. However, the Court examines the real-world purpose and effect; if the law’s practical operation is to suppress an unpopular political view or ideology rather than to prevent concrete harm, the purpose may be characterised as illegitimate for the purposes of the implied freedom.⁸
- (c) **Proportionality:** Even if the purpose is accepted as legitimate, a blanket ban that targets ideology and speech rather than conduct is unlikely to be necessary or adequately balanced.⁹ Existing criminal offences already target incitement, threats, recruitment for terrorism, and material support. The High Court has struck down laws that disproportionately burden political communication where the connection to public order was not sufficiently tight, and has required close tailoring where political speech is affected.¹⁰

3.2. While the Court has shown deference in some national-security contexts (e.g. upholding certain control orders where risk of violent harm was demonstrated), that deference depends on a demonstrable, evidence-based risk of violence.¹¹ It does not permit overzealous bans of political or ideological speech that has no link with or domestic history of violence. The more the law targets political advocacy, the more intense the scrutiny the Court will apply.¹²

4. Federal-state interaction and statutory design concerns

- 4.1. The States and Territories already operate racial and religious vilification laws and public-order offences that target incitement, threats and serious vilification.¹³ A State proscription that duplicates or displaces these regimes risks inconsistency under s109 of the *Constitution* and may supplant more tailored mechanisms. To our knowledge, pro-Palestinian activists has never been convicted of any racial, incitement, or vilification provisions previously.
- 4.2. Terms such as ‘hate’, ‘extremism’ or ‘vilification’ are inherently value-laden. If the NSW legislative regime uses broad or vague language to define ‘hate speech’ or confers wide executive discretion to list phrases without clear criteria, the law will be open to challenge for uncertainty, overbreadth and arbitrary enforcement – all of which undermine the rule of law.
- 4.3. To prevent circumvention, proscription regimes commonly include successor, alias and related speech provisions. The broader those provisions are, the greater the constitutional risk; a provision that permits listing of any phrase that ‘advocates similar ideas’ risks capturing loose ideas and lawful political speech.

5. International obligations and human rights

⁶ *Ibid*, [193].

⁷ See paragraph 1.2 above.

⁸ *Brown v Tasmania* [2017] HCA 43, [204] – [207].

⁹ *Ibid*, [139] – [146].

¹⁰ *Ibid*, [152].

¹¹ *Thomas v Mowbray* [2007] HCA 33.

¹² *Brown v Tasmania* [2017] HCA 43, [130].

¹³ *Crimes Act 1900* (NSW), s93Z; *Anti-Discrimination Act 1977* (NSW); *Racial Discrimination Act 1975* (Cth).

- 5.1. Australia is internationally bound by the ICCPR treaty.¹⁴ Articles 18 (religion), 19 (expression) and 22 (association) protect freedoms that may be lawfully restricted only for legitimate aims and in a manner that is necessary and proportionate. Article 20(2) requires prohibition of advocacy of ‘hatred that constitutes incitement to discrimination, hostility or violence’ – a narrow category directed at incitement, not at mere advocacy of controversial political or religious ideas.
- 5.2. UN human-rights bodies and independent experts have repeatedly cautioned against overbroad ‘extremism’ laws that suppress legitimate political and religious expression.¹⁵ A NSW proscription that targets ideology and speech without a clear link to incitement or violence risks adverse findings in international forums and reputational costs.

6. Practical risks and political polarisation

- 6.1. A proscription regime that targets ideology and speech rather than conduct invites circumvention and creates long-term precedents that may be used against other political views and speech. This may reduce effective enforcement while chilling lawful speech, leading to inconsistent applications.
- 6.2. To many members of the public, the proposed measures appear to be applied disproportionately to pro-Palestinian and Muslim activism, as compared with other political movements, such as Zionism, and March for Australia.¹⁶ Recently, government and public bodies have adopted measures suppressing free speech¹⁷ and criminalising pro-Palestinian activism.¹⁸ Some of these measures have already been determined to be constitutionally invalid due to their impact on political freedoms.¹⁹ The NSW Government risks inflaming tensions, suppressing freedoms, further dividing the public, and political polarisation by introducing legislation that targets ideology and speech, rather than violent conduct, and linking non-violent political movements and speech to terror incidents.

7. Next steps

- 7.1. For these reasons, we respectfully urge the NSW Government to pause any legislative or proscription process until:
 - (a) The evidentiary basis for the Proposed Prohibition of phrases like ‘globalise the intifada’ is published and provided to us. The public should be provided with a clear statement of the factual and intelligence basis for any proposed listing, subject to narrowly tailored national-security redactions, and explaining why existing laws are insufficient. An opportunity to respond should be provided.
 - (b) A public review or inquiry is undertaken into the existing Federal and State legislative regimes, and their applicability and efficacy.
 - (c) Any new proscription regime is referred to a comprehensive joint parliamentary committee for public hearings, expert submissions and scrutiny.

¹⁴ *International Convention on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

¹⁵ <https://www.ohchr.org/en/press-releases/2025/07/un-experts-urge-united-kingdom-not-misuse-terrorism-laws-against-protest>.

¹⁶ <https://www.zfa.com.au/>; <https://marchforaustralia.org/>.

¹⁷ <https://www.jewishcouncil.com.au/2025/02/jewish-council-of-australia-slams-universities-adoption-of-dangerous-politicised-and-unworkable-antisemitism-definition>.

¹⁸ <https://www.sbs.com.au/news/article/protest-laws-palestine-action-group/7aufdkhtt>.

¹⁹ *Lees v State of New South Wales* [2025] NSWSC 1209.

- (d) Statutory safeguards are included, including requiring judicial oversight before speech is listed.
- (e) Narrow, conduct-based definitions are adopted, defining offences to target conduct such as incitement, rather than ideology and non-violent speech, and avoiding vague terms such as ‘extremism’.
- (f) Sunset and review clauses are included, with mandatory independent reviews to prevent permanent entrenchment of broad powers and listings.
- (g) Independent legal advice is obtained and published, covering all potential legal and human rights issues including those identified above.
- (h) Community engagement and transparency is undertaken, with civil society, faith leaders, and civil liberty organisations to build consensus on targeted measures that protect safety without suppressing lawful political and religious expression.
- (i) To prevent polarisation, all members of the public are statutorily protected, regardless of their characteristics or political beliefs, rather than targeting a specific political ideology, group, or phrase.

7.2. If you require additional information, please contact us.

Yours faithfully



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Director

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