

Fighting Antisemitism and Keeping Guns out of the Hands of Terrorists and Criminals Amendment Bill 2026

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Submission By: Maria O'Sullivan

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Queensland Justice, Integrity and Community Safety Committee

**Inquiry: Fighting Antisemitism and Keeping Guns Out of the
Hands of Terrorists and Criminals Amendment Bill 2026**

Submission by

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Submission author information

I am providing this submission to the Committee in my capacity as a legal academic with particular expertise on the law of protest. I have set out my biography below.

Biography

Maria O'Sullivan is an Associate Professor in the Deakin Law School in Melbourne, Australia and was previously a Deputy Director of the Castan Centre for Human Rights Law at Monash University in Australia. She holds an LLB/BA from the Australian National University, an LLM in International Human Rights Law from the University of Essex in the UK and a PhD in Law from Monash University.

She has particular expertise in the interaction between national security and protest. She is the author of a number of international and national commentaries on the law of protest including a forthcoming book on the law of protest¹ and she has also published articles on the rule of law and national security.²

Her work on protest and countering extremism has been presented at a number of leading international conferences, including:

- a symposium on protest law at the Max Planck Institute for Comparative Public and International Law in Germany; and
- a Workshop on Countering Terrorism and Violent Extremism at the TMC Asser Institute, Centre for International and European Law in The Hague, Netherlands.³

¹ A. Dastyari and M. O'Sullivan (eds), *International Law and the Regulation of Protest* (Routledge, forthcoming 2026). See also: P Emerton and M O'Sullivan, 'Private Rights, Protest and Place in *Brown v State of Tasmania*' (2018) 44(2) *Monash University Law Review* 458-490.

² M O'Sullivan, 'The Rule of Law' in *Elgar Concise Encyclopedia of Terrorism Law* (Edward Elgar, forthcoming 2026); M O'Sullivan, 'Anti Vaccination Movements, Conspiracy Theories and Countering Extremism in the Public Interest' in James Sexton (eds) in *Countering Terrorism and Violent Extremism in the Public Interest* (T.M.C. Asser Press/Springer, forthcoming 2026); M O'Sullivan 'National Security and Human Rights' in Danielle Ireland-Piper (ed) *National Security Law in Australia* (Federation Press, 2024).

³ 'Climate Protest and the Right of Resistance in International Law: What is necessary and proportionate', Workshop on Protest Movements and International Law, Max Planck Institute for Comparative Public and International Law, Heidelberg, Germany, 2 November 2023; 'Anti Vaccination Movements, Sovereign Citizens and Extremism', Workshop on Countering Terrorism and Violent Extremism in the Public Interest, TMC Asser Institute, Centre for International and European Law, The Hague, Netherlands, 31 October 2023.

Executive Summary

- My submission focuses on the banning of political slogans which the Bill facilitates through its regulation-making power.
- I refer throughout this submission to the term '**prohibited slogans**' to encompass the two slogans which are proposed to be prohibited under the Bill (via the regulation-making powers set out in the Bill). These are:
 - Globalise the Intifada; and
 - 'From the river to the sea' and the fuller version, 'From the river to the sea, Palestine will be Free'.⁴
- The introduction of legislation permitting the banning of these slogans risks **legal challenge** on a number of grounds. In particular, there is a constitutional validity question arising from the implied freedom of political communication due to the direct burden placed on the implied freedom and the content-specific nature of the prohibition (that is, such a ban would seek to prohibit a specific political message and would therefore **not be content-neutral**).
- Whilst certain symbols (such as Nazi symbols) have been banned in Australia and elsewhere, such laws have been carefully calibrated and represent a special case. This is because there is strong community sentiment that such symbols represent such an egregious message/symbol of history that they should be banned. The most pertinent example of this is the ban in Australia of the swastika. These laws have, by and large, been supported and accepted by the Australian community. *However*, some caution is warranted when seeking to apply bans to **other symbols** used by protestors or other groups in Australia. This is so for important legal and social reasons.
- There are a number of questions that need to be considered about the **scope** of any prohibition.

First, will protestors be liable if they chant words **similar** to the banned slogans eg 'students for intifada' or 'Globalise the Palestinian resistance'?

Is the perceived problem with 'Globalise the Intifada' the fact that it indicates support in Australia for an 'intifada' which some interpret as being violent in nature? If so, it is important to note that there is a difference between the first and second intifadas. As I have

⁴ I note that there is a difference between these two versions of 'From the river to the sea'. For instance, Canadian scholars who have prepared a comprehensive article ('primer') on the term/s, note that the aim of their document was to analyse the history of the slogan in light of both a regional history of the conflict, and how it takes shape in Canadian contexts. They state that '[d]oing so will require distinguishing between the phrase "from the River to the Sea" and the political slogan "from the River to the Sea, Palestine will be free." The phrase and the slogan have distinct histories, but those histories overlap in the use of the slogan today.': Esmat Elhalaby (Department of History, University of Toronto) Anver M. Emon (Faculty of Law/Department of History, University of Toronto) Alejandro Paz (Department of Anthropology, University of Toronto) Kent Roach, (Faculty of Law, University of Toronto) and Jillian Rogin (Faculty of Law, University of Windsor), *From the River to the Sea: Palestine Will Be Free a Primer on History, Context and Legalities in Canada* (2023), 3. This is available for free at <https://palestinestudies.artsci.utoronto.ca/wp-content/uploads/2023/12/2023-12-20-FRTS-Primer.pdf>.

discussed in my submission below, the UN General Assembly – comprised of 193 Member States – in its Resolution 43/21 in 1988 during the First Intifada utilised the term ‘intifada’ in that resolution and expressed deep concern at the ‘continued occupation by Israel’ of the Palestinian territories and Israel’s ‘persistent policies and practices against the Palestinian people.⁵ If there was international support for the First Intifada, upon what basis can a reference to ‘Globalise the Intifada’ be seen as inciting violence or hate without examining the context in which such a slogan is used?

Second, would the term apply only to protests or also on social media and other areas such as the workplace? For instance, would a person who reposts a post on social media that said ‘Globalise the Intifada’ be guilty of an offence and charged? Would social media companies be obliged under law to take down any material which used this slogan or similar slogans (noting that the Meta Oversight Board has found that ‘From the River to the Sea’ does not violate its content moderation policies).

What workplace and other consequences would this involve? This is important as the employment of some journalists overseas have been terminated for using terms such as ‘From the River to the Sea’.⁶ In Australia, there has been litigation relating to the workplace consequences of expressing opinions online.⁷ Thus any ban of slogans will have to consider important workplace law, the application of the slogan to existing workplace codes of conduct and other consequences which may result in the loss of a person’s livelihood.

- The Committee should be aware of the complexities of using symbol bans. This is illustrated by a **recent Canadian decision** relating to alleged antisemitic incidents carried out as part of student protests at the University of Toronto. One of the allegations made against the protestors was that they projected the flag of the Al Qassam Brigade (the military wing of Hamas) onto the exterior wall of one of the University buildings.⁸ However, the protesters explain that they did not project the flag. The Court notes:

‘Rather, they were projecting an Al Jazeera newscast which momentarily showed the flag. This is an important nuance. The simple suggestion that the flag was projected by the protesters suggests that they endorsed the conduct and objectives of Hamas (including the murder of Israeli civilians on October 7). The projection of a newscast is different. The protesters have no control over the content of the newscast.’⁹

⁵ UNGA 43/21 ‘The uprising (intifadah) of the Palestinian people’ set out in Appendix 2 to this submission [emphasis added].

⁶ See eg in the USA where journalist Marc Lamont Hill was fired from CNN because of a speech he made at the UN where he reportedly said: “We have an opportunity to not just offer solidarity in words but to commit to political action, grass-roots action, local action and international action that will give us what justice requires and that is a **free Palestine from the river to the sea**” see: <https://www.nbcnews.com/news/us-news/marc-lamont-hill-fired-cnn-after-his-speech-israel-draws-n942151> [emphasis added].

⁷ See eg *Lattouf v Australian Broadcasting Corporation (No 2) [2025] FCA 669* where the Federal Court held that the Australian Broadcasting Corporation contravened s 772(1) of the *Fair Work Act 2009* (Cth) by terminating the employment of the applicant, Antoinette Lattouf, for reasons including that she held a political opinion opposing the Israeli military campaign in Gaza.

⁸ *University of Toronto (Governing Council) v. Doe et al. 2024 ONSC 3755*, [62].

⁹ *University of Toronto (Governing Council) v. Doe et al. 2024 ONSC 3755*, [64].

If we consider how this type of issue would play out in relation to a ban of the slogans, would an individual be liable if a video or other news-story/image was projected onto a screen or otherwise shown as part of a protest? (that is, would an individual still be held liable for an offence if they themselves did not state the slogan, but they showed footage where someone else did?).

- These **legal complications** are borne out by my analysis of case law from other jurisdictions (see Issue 2 discussion below) where there has been litigation on the use of the phrase ‘From the River to the Sea’ in protests. As my detailed analysis of this shows, there has been significant divergence in views of the courts in these cases, therefore showing that banning such slogans can lead to confusion and further legal challenges. The **resources utilised** to respond and process such challenges could be better utilised in community education and de-radicalisation programs.
- In addition to the above legal complexities and problems, there are significant dangers for **social cohesion** in seeking to ban a phrase specifically targeting the expression of a religious/ethnic group in Australia – that is, to ban a phrase which **utilises Arabic** (‘intifada’) and those seeking to raise public consciousness about what they perceive to be a genocide occurring in Gaza. Such a ban may lead to **unintended consequences**, namely further polarisation in society further worsening in social cohesion.
- Finally, I have undertaken significant research on the two prohibited slogans and wish to highlight some of the documents that have assisted me in understanding these issues in order to assist the Committee in its deliberations:
 - A paper by a group of Canadian university scholars on the meaning of ‘From the River to the Sea’: Esmat Elhalaby (Department of History, University of Toronto) Anver M. Emon (Faculty of Law/Department of History, University of Toronto) Alejandro Paz (Department of Anthropology, University of Toronto) Kent Roach, (Faculty of Law, University of Toronto) and Jillian Rogin (Faculty of Law, University of Windsor), *From the River to the Sea: Palestine Will Be Free a Primer on History, Context and Legalities in Canada* (2023). This is available for free at <https://palestinestudies.artsci.utoronto.ca/wp-content/uploads/2023/12/2023-12-20-FRTS-Primer.pdf>. A 2024 decision of the Ontario Superior Court of Justice noted below draws heavily from this paper.
 - A decision of the Ontario Superior Court of Justice in *University of Toronto (Governing Council) v. Doe et al.* 2024 ONSC 3755 (available here: www.canlii.org/en/on/onsc/doc/2024/2024onsc3755/2024onsc3755.pdf).
 - A report by leading freedom of speech international organisation Article 19 <https://www.article19.org/wp-content/uploads/2024/05/From-the-River-to-the-Sea-analysis-1.pdf>

- A Meta Oversight Board Decision on From the River to the Sea: <https://www.oversightboard.com/decision/bun-86tj0rk5/>.¹⁰ The Meta Oversight Board is an independent body comprised of experts from law and journalism (including civil society). Although this relates to social media posts rather than physical protests, I think it is a very good summary of the key legal issues.

¹⁰ Posts That Include "From the River to the Sea" 2024-004-FB-UA, 2024-005-FB-UA, 2024-006-FB-UA

Issue 1: Contests about the phrases ‘globalise the intifada’ and ‘from the river to the sea

It is legally difficult to prohibit a slogan where the meaning of it is contested. I set out below some examples of this in relation to the prohibited slogans:

Contested Slogans Example 1: Globalise the Intifada

The first thing to note about this term is that the term ‘intifada’ is a commonly-utilised term to describe the uprising/resistance by the Palestinian people against the actions of Israel.

The best example of this is the reference to it by the UN General Assembly (which represent 193 countries) after the first intifada in 1987 where it stated:

Aware of the uprising (intifadah) of the Palestinian people since 9 December 1987 against Israeli occupation, which has received significant attention and sympathy from world public opinion,

Deeply concerned at the alarming situation in the Palestinian territories occupied since 1967, including Jerusalem, as well as in the other occupied Arab territories, as a result of the continued occupation by Israel, the occupying Power, and of its persistent policies and practices against the Palestinian people.¹¹

This raises the question as to whether the issue of concern with ‘Globalise the Intifada’ is the ‘intifada’ aspect (which is questionable given that this term is the Arabic word for shaking off or uprising and has been used by many organisations, including the Member States of the United Nations).

And does this raise a question as to *which* Intifada is problematic in terms of a prohibition of that slogan.

- If the UN GA – representing UN Member States – noted that the 1987 Intifada – interpreted as an **uprising** – was against Israeli occupation and its ‘persistent policies and practices against the Palestinian people’, then is it legally correct to ban a reference to this by protestors?
- Will protestors be able to delineate the reference to intifada by having signs or chanting slogans which specify ‘Globalise the First Intifada’ or ‘Globalise the 1987 Intifada’?
- Following on from this, if one accepts that the Arabic term ‘Intifada’ is not problematic in of itself, this raises the issue as to whether the addition of ‘Globalise’ renders the slogan impermissible as hate speech. Is it permissible to use to communicate that protestors wish to act or speak in solidarity with the Palestinian people and join them in the intifada.

The 2024 Canadian case of *University of Toronto (Governing Council) v. Doe et al* provides a good summary of the contested interpretation of this slogan. As is common in Canadian public

¹¹ UNGA Resolution 43/21, ‘The uprising (intifadah) of the Palestinian people, 1988, set out in Appendix 2 [emphasis added].

interest litigation, third-party intervenors were permitted to make submissions as part of the litigation. Thus, the court was able to summarise those differing viewpoints:

‘… contrasting submissions have been made about the word “intifada” with some Intervenors arguing that it refers to violence against Jews. Other Intervenors submit the word “intifada” is an Arabic noun that is derived from the word “nafada,” which literally means “shaking off,” and is popularly used by Palestinians to refer to an uprising against oppression. They note that there are dozens of “intifadas” which have occurred throughout history in the Arab world. They say that the expression “globalize the intifada” is not a call for global violence against Jews but is a call for international support “to end the oppression of the Palestinian people.” These Intervenors note that an uprising need not be violent and can take the form of peaceful protests. They submit further that the automatic attribution of violence and antisemitism to Palestinians who protest is a further example of antiPalestinian racism and Islamophobia’.¹²

¹² *University of Toronto (Governing Council) v. Doe et al.* 2024 ONSC 3755, [100] www.canlii.org/en/on/onsc/doc/2024/2024onsc3755/2024onsc3755.pdf

Contested Slogans Example 2: 'From the River to the Sea'

This slogan has been used during pro-Palestinian/anti-genocide protests in Australia and overseas.

The 'river' and 'sea' in the phrase refer to the Jordan River, which runs north to south from the Syrian-Lebanese border to the Dead Sea, and the Mediterranean Sea which is 70 kilometres to the west. Israel and the Palestinian territories are located between those two bodies of water.

The first significant point to note about this term is that parties from both sides of the Israeli/Palestine conflict (the Israeli Likud party and Hamas) have used the term in the past:

Israel Likud party and other Israeli politicians:	Hamas used the phrase in its 2017 Principles and Policies charter:
<p>The 1977 election manifesto of the Israeli Likud party said: 'Between the sea and the Jordan there will only be Israeli sovereignty.'¹³</p> <p>In 2020, Israeli politician Gideon Sa'ar stated that: 'Between the Jordan River and the (Mediterranean) Sea there cannot be another state'¹⁴</p>	<p>'Hamas rejects any alternative to the full and complete liberation of Palestine, from the river to the sea. However, without compromising its rejection of the Zionist entity and without relinquishing any Palestinian rights, Hamas considers the establishment of a fully sovereign and independent Palestinian state, with Jerusalem as its capital along the lines of the 4th of June 1967, with the return of the refugees and the displaced to their homes from which they were expelled, to be a formula of national consensus'¹⁵</p>

Thus, as the Ontario Supreme Court noted in a 2024 decision on the use of such slogans:

‘... the phrase appears to have been used by both Israeli and Palestinian politicians on the far ends of their respective political spectrums to claim the land “from the river to the sea” as belonging exclusively to either Jews or Palestinians and by more moderate camps amongst both Israelis and Palestinians as reflecting

¹³ <https://www.jewishvirtuallibrary.org/original-party-platform-of-the-likud-party>

¹⁴ Reported in The Times of Israel <https://www.timesofisrael.com/likud-hopeful-saar-says-two-state-solution-with-palestinians-is-an-illusion/>

¹⁵ Hamas Principles and Policies, May 2017 [ii], extracted on Wilson Centre website: <https://www.wilsoncenter.org/article/doctrine-hamas>

a desire for a political solution that would allow both groups to live in freedom in either one or two states.¹⁶

The second point is that organisations and academics have also taken different views of its meaning. In the tables below, I outline the differing interpretations taken of this phrase to illustrate its contested nature:

Those that state it IS inherently hatred or threatening/constitutes incitement to violence and/or terrorism
<p>U.S.-based Anti-Defamation League, have labelled the phrase ‘antisemitic’ and stated that ‘Usage of this phrase has the effect of making members of the Jewish and pro-Israel community feel unsafe and ostracized. It is important to note that demanding justice for Palestinians, or calling for a Palestinian state, should not mean, as this hateful phrase posits, denying the right of the State of Israel to exist’.¹⁷</p>
<p>Centre for Israel and Jewish Affairs, Canada is a violent term, calling for the destruction of Israel and a ‘rallying cry for terrorist groups’:</p> <p>‘The phrase “from the river to the sea, Palestine will be free” rejects the right to self-determination for Jewish people and calls for the destruction of Israel. This is hateful toward the Jewish community...’¹⁸</p> <p>“From the River to the Sea, Palestine Will Be Free” is a common call-to-arms for pro-Palestinian activists. It calls for the establishment of a State of Palestine from the Jordan River to the Mediterranean Sea, erasing the State of Israel and its people. It is also a rallying cry for terrorist groups and their sympathizers, from the Popular Front for the Liberation of Palestine (PFLP) to Hamas, which called for Israel’s destruction in its original governing charter in 1988.’</p>
<p>The Australia/Israel & Jewish Affairs Council (AIJAC), 2023 have stated that ‘From the River to the Sea’ and ‘Intifada’ should be recognised as incitement to genocidal violence:</p> <p>‘The “River to the Sea” chant, which is also used by Hamas, and sometimes mindlessly repeated by well-meaning people who don’t think deeply about anything, is genocidal. It simply means that all territory from the Jordan River to the Mediterranean Sea must become exclusively Palestinian and cleared of Jews by violent means. October 7 was a vision of how those who originated this phrase meant it.</p> <p>The phrase “Free Palestine”, often chanted as “Free free Palestine”, falls under the same category. What these people – those who are not simply chanting mindlessly – are calling for is “freeing” all of the territory that was part of Mandatory Palestine of Jews. Some, however, disingenuously argue they are using the phrase to mean establishing a Palestinian state in the West Bank and Gaza Strip with east Jerusalem as its capital. Few</p>

¹⁶ Ontario Superior Court of Justice, *University of Toronto (Governing Council) v. Doe et al.* 2024 ONSC 3755 [98] www.canlii.org/en/on/onsc/doc/2024/2024onsc3755/2024onsc3755.pdf

¹⁷ ADL, www.adl.org/resources/backgrounder/allegation-river-sea-palestine-will-be-free

¹⁸ Centre for Israel and Jewish Affairs

https://www.cija.ca/cija_is_deeply_concerned_by_antisemitic_slogans_at_tdsb_school

of them mean anything of the sort, of course, and given how most people use the phrase, those who do actually want a two-state solution need to find a new chant.¹⁹

....

Any public calls for Jihad or Intifada – common variations include “globalise the Intifada” and “There is only one solution: Intifada, Revolution!” – must be recognised as incitement to genocidal violence. These words in the context of Israel need no further explanation.’

In addition, the AIJAC states that the term “Resistance” is a form of ‘terrorism advocacy’:

‘This euphemism is a form of terrorism advocacy. When someone says, “I support Palestinian [or Lebanese] resistance”, they are invariably substituting the word “resistance” for what the rest of the world defines as “terrorism” or war crimes, such as firing rockets into Israeli towns or shooting and stabbing attacks against Israelis. Supporting “resistance” implies support for listed terrorist organisations like Hamas and their attacks against Israelis and Jews. This includes the common slogan “Resistance is justified when Palestine is occupied” and variations thereof.²⁰

Those that state it is NOT inherently hatred or threatening

Max Kaiser, the executive officer of the Jewish Council of Australia, a group of Jewish academics, teachers, writers and lawyers, told the Guardian newspaper that it should *not* be construed as a threat to Jewish people or Israeli citizens:

“In our interpretation, and as it’s explained by Palestinian people the world over, is it’s a call for freedom and equality for all people, Jewish and Palestinian. Palestinian leaders in Australia have been very clear when they say freedom from the river to the sea, it extends to all people... It’s definitely not something that should be construed as a threat to Jewish people or Israelis.”²¹

UK Metropolitan Police

¹⁹ Australia/Israel & Jewish Affairs Council (AIJAC) ‘Pro-Palestinian’ slogans often amount to advocating terrorism or calling for genocide’, November 2023

[“Pro-Palestinian” slogans often amount to advocating terrorism or calling for genocide - AIJAC](#)

²⁰ Australia/Israel & Jewish Affairs Council (AIJAC) ‘Pro-Palestinian’ slogans often amount to advocating terrorism or calling for genocide’, November 2023

[“Pro-Palestinian” slogans often amount to advocating terrorism or calling for genocide - AIJAC](#)

²¹ https://www.theguardian.com/australia-news/article/2024/may/09/peter-dutton-compares-pro-palestine-university-protests-to-hitler-in-deeply-offensive-comments?CMP=Share_AndroidApp_Other

In 2024, the UK Metropolitan Police said it was legal when activists projected the phrase onto the side of the Houses of Parliament in February 2024.

Also, Met Police Commissioner Sir Mark Rowley said in 2025 re: From the River to the Sea that:

“Legally the judgment is it not over the line. I know that’s not popular, I just need to say as the law is. We have looked at it at length, we have taken legal advice and we spoke to the Crown Prosecution Service. There’s no reassurance in that. That’s just fact.”²²

The Future of Free Speech at Vanderbilt University, USA:

‘Even though this is a phrase that could be potentially used, in certain cases and contexts, to advocate incitement to antisemitic hatred or violence, an assessment of the phrase as such, and without any other contextual element does not meet the Rabat Plan of Action threshold regarding hate speech. Only in a context where the phrase is accompanied by explicit references to acts such as ethnic cleansing or endangering the existence of the current state of Israel could it potentially fall under the scope of article 20.2 ICCPR or fulfil the requirements of necessity and proportionality under article 19.3 ICCPR.’²³

Dov Waxman, Professor and director of the Nazarian Center for Israel Studies at the University of California, Los Angeles:

- does not perceive the slogan to be ‘inherently threatening’
- ‘It’s an expression of Palestinian nationalism and it’s an expression of a demand for Palestinian freedom or self-determination’
- ‘I think Palestinian self-determination need not come at the expense of Jewish self-determination. Nor do I think Palestinian freedom has to be considered a threat to Jewish rights.’²⁴

Maha Nassar, Associate Professor in the School of Middle Eastern and North African Studies, University of Arizona:

“From the river to the sea”... seeks to reaffirm Palestinians’ national rights over their homeland and a desire for a unified Palestine to form the basis of an independent state.²⁵

²² [Lawyers tell us 'From the river to the sea' chant not an offence, says Met Police chief - Jewish News](#)

²³ [The Future of Free Speech Submission to Meta's Oversight Board on "From the River to the Sea" - The Future of Free Speech](#) at 1 [2]. It concluded ‘...the phrase “From the river to the sea” has long been used by various actors around the globe in political debates and protests related to the Israel-Palestine conflict, including the current tensions. This is a phrase that indeed could be potentially used, in certain cases and contexts, to advocate incitement to antisemitic hatred or violence. However, an assessment of the phrase as such, and without any other contextual element with a clear incitement component, does not meet the Rabat Plan of Action threshold regarding hate speech.’ (at 5).

²⁴ Quoted in [What does 'From the river to the sea, Palestine will be free' mean? | CBC News](#)

²⁵ <https://theconversation.com/from-the-river-to-the-sea-a-palestinian-historian-explores-the-meaning-and-intent-of-scrutinized-slogan-217491>

US Congresswoman, Rashida Tlaib, representing Michigan's 12th Congressional District

'From the river to the sea is an aspirational call for freedom, human rights, and peaceful coexistence, not death, destruction, or hate....'²⁶

Esmat Elhalaby, Anver M. Emon, Alejandro Paz, Kent Roach and Jillian Rogin, *From the River to the Sea: Palestine Will Be Free a Primer on History, Context and Legalities in Canada* (2023):

'the complex history of the slogan precludes a simplistic reduction of this phrase to one meaning or another. The robust history of the phrase and the slogan suggest that these 10 words cannot be understood as inherently hateful or hate-promoting. Rather, that history, as examined in this Primer, demonstrates that those using this 10-word slogan generally understand it as a call for recognition and change, deeply rooted in the quest for justice and freedom'.²⁷

On the interpretation by some groups that the slogan implies the complete elimination of Israel and Jewish Israelis:

'... the eliminationist interpretation generally involves focusing on such statements about ethnic cleansing, as well as its justifications for targeting and killing Israeli civilians, especially in light of the horrific Hamas attacks on October 7, 2023. The logic implied is that because Hamas can be considered to call for ethnic cleansing, then any use of the slogan in Canada must necessarily draw on Hamas' ideology. The logic here also implies that it is not necessary to consider the history and current use of the slogan in Canada, despite the uniqueness of the Canadian context that gives nuance to how it is used domestically.'²⁸

²⁶ <https://x.com/RashidaTlaib/status/1720574880557539763>

²⁷ Esmat Elhalaby, Anver M. Emon, Alejandro Paz, Kent Roach and Jillian Rogin, *From the River to the Sea: Palestine Will Be Free a Primer on History, Context and Legalities in Canada* (2023) 12 <https://palestinestudies.artsci.utoronto.ca/wp-content/uploads/2023/12/2023-12-20-FRTS-Primer.pdf>.

²⁸ Esmat Elhalaby, Anver M. Emon, Alejandro Paz, Kent Roach and Jillian Rogin, *From the River to the Sea: Palestine Will Be Free a Primer on History, Context and Legalities in Canada* (2023), 15 <https://palestinestudies.artsci.utoronto.ca/wp-content/uploads/2023/12/2023-12-20-FRTS-Primer.pdf>.

Issue 2: Comparisons with other jurisdictions

The discuss below demonstrates that there is no clear line of authority from international jurisprudence or other policies on this issue. However, my reading of international comparisons is that most of the case law in other jurisdictions has decided that a ban on the prohibited slogans **cannot not substantiated/justified**.

Relevant common law countries where the proposed prohibited slogans have been considered	
UK	<p>There is no specific case law on the prohibited slogans as yet. However, I note that Met Police Commissioner Sir Mark Rowley said in 2025 re: From the River to the Sea that:</p> <p>“Legally the judgment is it not over the line. I know that’s not popular, I just need to say as the law is. We have looked at it at length, we have taken legal advice and we spoke to the Crown Prosecution Service. There’s no reassurance in that. That’s just fact.”²⁹</p>
Canada	<p>A recent Canadian decision is of relevance - Ontario Superior Court of Justice in <i>University of Toronto (Governing Council) v. Doe et al.</i> 2024 ONSC 3755.³⁰</p> <p>The fundamental issue in this case was whether a protest encampment that had been set up at the University of Toronto could remain or whether it had to be dismantled. The University argued that the encampment was violent, was associated with antisemitic language and slogans and had appropriated University property.³¹ The Court held that the University had not made out a strong <i>prima facie</i> case to show that the encampment was violent³² and that the University had not made out a strong <i>prima facie</i> case to show that the encampment was antisemitic.³³</p> <p>The Court was also asked to find that certain slogans used at the encampment such as “From the River to the Sea, Palestine shall be Free” and other slogans are antisemitic. On this point, the Court found as follows:</p>

²⁹ [Lawyers tell us 'From the river to the sea' chant not an offence, says Met Police chief - Jewish News](#)

³⁰ University of Toronto (Governing Council) v. Doe et al. 2024 ONSC 3755, www.canlii.org/en/on/onsc/doc/2024/2024onsc3755/2024onsc3755.pdf

³¹ University of Toronto (Governing Council) v. Doe et al. 2024 ONSC 3755, [6] www.canlii.org/en/on/onsc/doc/2024/2024onsc3755/2024onsc3755.pdf

³² University of Toronto (Governing Council) v. Doe et al. 2024 ONSC 3755, [7] www.canlii.org/en/on/onsc/doc/2024/2024onsc3755/2024onsc3755.pdf

³³ University of Toronto (Governing Council) v. Doe et al. 2024 ONSC 3755, [8] www.canlii.org/en/on/onsc/doc/2024/2024onsc3755/2024onsc3755.pdf

	<p>Overview of judgement:</p> <p>‘The record does not establish a strong <i>prima facie</i> case to demonstrate that the slogans are antisemitic. The record before me shows that the slogan and a similar one used by Jewish Israelis, convey a variety of meanings ranging from a call for a uniquely Jewish or uniquely Palestinian state in the area between the Jordan River and the Mediterranean Sea, to a single state in which Jews and Palestinians are equal, to a two state solution. The record suggests that the precise meaning depends on the circumstances in which it is used. There is no evidence that the named respondents or occupants of the encampment were using any of the slogans with antisemitic intentions’.³⁴</p> <p>Reasons in more detail:</p> <p>‘I accept that these expressions are perceived as hurtful and threatening to many Jews. There appears, however, to be considerable variation, nuance and context around the meaning of these terms which, in my mind, would make it improper to automatically assume that they are antisemitic, especially on an interlocutory motion’.³⁵</p>
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³⁴ University of Toronto (Governing Council) v. Doe et al. 2024 ONSC 3755, [9] www.canlii.org/en/on/onsc/doc/2024/2024onsc3755/2024onsc3755.pdf

³⁵ University of Toronto (Governing Council) v. Doe et al. 2024 ONSC 3755, [88] www.canlii.org/en/on/onsc/doc/2024/2024onsc3755/2024onsc3755.pdf

Canada	<p>In 2023, Calgary police arrested Wesam Cooley for causing a disturbance by using an ‘antisemitic phrase’ (‘from the river to the sea, Palestine will be free’) during a protest. He was charged with causing a disturbance, with hate motivation also being applied to that charge. However, upon review, the Alberta Crown prosecutor dropped all charges against the protestor.</p> <p>The Calgary Police Service explained the dropping of the charges as follows:</p> <p>‘We recognize that as police, we operate considering reasonable and probable grounds, whereas the Crown’s threshold is higher at reasonable likelihood of conviction...The circumstances and full context of the behaviour of the individual involved was considered in laying the charge of causing a disturbance and in applying hate motivation to that charge. The behaviour that led to charges was considered in the context of the specific situation, all of which is broader than a single phrase, gesture, sign or symbol in isolation.’³⁶</p> <p><i>Commentary from Canadian legal scholars on this case:</i></p> <p>Richard Moon, a professor in the Faculty of Law at the University of Windsor, who researches freedom of expression is reported to have said that the charge of causing a disturbance with hate motivation applied was ‘surprising’³⁷:</p> <p>‘It seems like a way of trying to bring about charges in a case like this where it seems unlikely that the requirements of the hate speech law could be satisfied... Because the speech does not, clearly or obviously, count as sufficiently extreme to be regarded as hate speech under the Criminal Code, it appears the police may have used this roundabout way to bring charges against this individual.’³⁸</p> <p>When asked by the media if the phrase in question meets the definition of hate speech, Professor Moon stated: ‘Certainly not. Its meaning is far too open-ended.’³⁹</p> <p>Doug King, a professor of criminal law at Calgary’s Mount Royal University, is reported to have said that the phrase in and of itself does not meet the threshold for a causing-a-disturbance conviction. He said it must also be proven that what was said caused a risk to public safety or property:</p>
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³⁶ Calgary Police Service statement – emailed to CBC News Canada and reported in <https://www.cbc.ca/news/canada/calgary/calgary-protester-charges-stayed-palestinian-chant-1.7032080> [emphasis added]

³⁷ <https://www.cbc.ca/news/canada/calgary/calgary-protest-arrest-palestinian-chant-1.7024279>

³⁸ <https://www.cbc.ca/news/canada/calgary/calgary-protest-arrest-palestinian-chant-1.7024279>

³⁹ <https://www.cbc.ca/news/canada/calgary/calgary-protest-arrest-palestinian-chant-1.7024279>

	<p>‘It really will come down to, in my mind, what did the officer see in the event itself. Just hearing it doesn't give you all the information you would need to say it's a reasonable charge or it isn't a reasonable charge.’⁴⁰</p> <p>He also said that a statement that is innocuous on paper could rise to the level of causing a disturbance, ‘depending on how it is delivered and the effect it has on the people who are hearing it’.⁴¹</p>
Other countries where the prohibited slogans have been considered	
Czech Republic	<p>According to media reports, on 30 November 2023, Prague City Hall banned a protest due to the use of the phrase ‘From the River to the Sea’. The case went to the Municipal Court in Prague and the court found that the disputed slogan can have multiple meanings. It cannot be said that it carries a clearly violent or even genocidal message.⁴²</p> <p>In November 2023, the Supreme Public Prosecutor's Office issued an opinion on the “legal assessment of hate speech in connection with the Hamas terrorist attack on Israel and the subsequent Israeli-Palestinian armed conflict”. The document highlighted the need for careful evaluation of individual cases, with consideration of the specific circumstances and the context of each act, to determine whether it constitutes a criminal offence⁴³</p>
Germany	<p>On 13 October, Berlin’s public prosecutor said the slogan “from river to the sea, Palestine will be free” chanted during protests would be deemed a criminal offence On 13 October, Berlin’s public prosecutor said the slogan “from river to the sea, Palestine will be free” chanted during protests would be deemed a criminal offence⁴⁴</p>
The Netherlands	<p>Thomas Hofland, a pro-Palestine activist used the slogan in a rally in May 2021. But the Dutch court held that he should not be prosecuted as the phrase is ‘subject to various interpretations’ and ‘relates to the state of Israel and possibly to people with Israeli citizenship, but not to Jews because of their race or religion’.⁴⁵</p>

⁴⁰ <https://www.cbc.ca/news/canada/calgary/calgary-protest-arrest-palestinian-chant-1.7024279>

⁴¹ <https://www.cbc.ca/news/canada/calgary/calgary-protest-arrest-palestinian-chant-1.7024279>

⁴² <https://www.ceska-justice.cz/2023/12/zruseni-prosincove-demonstrace-na-podporu-palestiny-bylo-nezakonne-rozhodl-soud/> [read utilising Google Translate].

⁴³ <https://civic-forum.eu/wp-content/uploads/2024/04/ECF-Rule-of-Law-Submission-Repeated-repressions-of-Palestine-solidarity.pdf>

⁴⁴ <https://www.article19.org/resources/western-europe-time-of-war-protect-right-to-protest/>

⁴⁵ <https://www.euractiv.com/news/czechia-mulls-penalising-from-the-river-to-the-sea-palestine-will-be-free-slogan/>

Other International bodies

In a September 2024 decision, the Meta Oversight Board considered different pieces of Facebook content containing the phrase “From the River to the Sea.” The Board found that they did not break Meta’s rules on Hate Speech, Violence and Incitement or Dangerous Organizations and Individuals. Notably excerpts from the Board’s decision are as follows:

‘… the majority of the Board notes the phrase has multiple meanings and is used by people in various ways and with different intentions’⁴⁶

‘The phrase does not have a single meaning. It has been adopted by various groups and individuals and its significance depends on the speaker, the listener and the context. For some, it is an antisemitic charge denying Jewish people the right to life, self-determination and to stay in their own state, established in 1948, including through forced removal of Jewish people from Israel. As a rallying cry, enshrined in Hamas’s charter, it has been used by the head of the Hamas political bureau Ghazi Hamad, anti-Israel voices, and supporters of terrorist organizations that seek Israel’s destruction through violent means. It is also a call for a Palestinian state encompassing the entire territory, which would mean the dismantling of the Jewish state. When heard by members of the Jewish and pro-Israel community, it may evoke fear and be understood by them as a legitimization or defense of the unprecedented scale of killings, abductions, slaughter and atrocities committed during the October 7 attacks, when Jewish people witnessed an attempted enactment of the aim to annihilate them.’⁴⁷

I note that a minority of the Board decided differently: that because the phrase appears in the 2017 Hamas charter and given the October 7 attacks, its use in a post should be presumed to constitute glorification of a designated entity, unless there are clear signals to the contrary.

Conclusion: The exact meaning of ‘from the river to sea’ is contested and unclear. On that basis, prohibiting its use would be difficult legally (as I would query whether a ban would be seen as necessary and proportionate to the impact on freedom of expression).

⁴⁶ Meta Oversight Board Decision: <https://www.oversightboard.com/decision/bun-86tj0rk5/>

⁴⁷ Meta Oversight Board Decision: <https://www.oversightboard.com/decision/bun-86tj0rk5/>.

Issue 3: Queensland's Human Rights Obligations

I have not had sufficient time to engage in a detailed analysis of the compliance of the Bill with the Queensland Human Rights Act.

However, I would like to highlight Australia's international human rights law obligations in this part of the submission as this will affect the way that Queensland should approach the prohibited slogans issue.

Australia's international human rights obligations which are most relevant to this Inquiry are from the International Covenant on Civil and Political Rights (ICCPR)⁴⁸ and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)⁴⁹, namely:

- the right to freedom of expression (Article 19 ICCPR) and right to peaceful assembly (Article 22 ICCPR) and
- obligations on states to prohibit 'advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence' (Article 20(2) ICCPR)⁵⁰ and to take 'immediate and positive measures' to eradicate incitement to racial hatred and discrimination (Article 4 CERD).

It is important to note the following about how these rights will interact in relation to the prohibition of slogans:

First, UN treaty bodies have recognised that the requirement to prohibit *incitement to violence* is compatible with the right to freedom of expression.⁵¹ However, other measures which do not incite violence will need to be weighed against the rights to freedom of expression and assembly.

Australia has an obligation under these treaties to positively provide for these rights. This is recognised by the CERD Committee which recommended the following positive measures by states in its

The Committee recommends that the States parties declare and effectively sanction as offences punishable by law:

- (a) All dissemination of ideas based on racial or ethnic superiority or hatred, by whatever means;
- (b) Incitement to hatred, contempt or discrimination against members of a group on grounds of their race, colour, descent, or national or ethnic origin;

⁴⁸ International Covenant on Civil and Political Rights, 999 UNTS 171 (entered into force 23 March 1976).

⁴⁹ International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195 (entered into force 4 January 1969)

⁵⁰ Article 20(2) ICCPR 'Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.'

⁵¹ See treaty bodies listed in NSW Law Reform Commission Report 151, September 2024, 25, footnote 86. See eg Committee on the Elimination of Racial Discrimination, General Recommendation No 35, Combating Racist Hate Speech, UN Doc CERD/C/GC/35 (26 September 2013) at [28]: 'The protection of persons from racist hate speech is not simply one of opposition between the right to freedom of expression and its restriction for the benefit of protected groups; the persons and groups entitled to the protection of the Convention also enjoy the right to freedom of expression and freedom from racial discrimination in the exercise of that right. Racist hate speech potentially silences the free speech of its victims.'

- (c) Threats or incitement to violence against persons or groups on the grounds in (b) above;
- (d) Expression of insults, ridicule or slander of persons or groups or justification of hatred, contempt or discrimination on the grounds in (b) above, when it clearly amounts to incitement to hatred or discrimination;
- (e) Participation in organizations and activities which promote and incite racial discrimination.⁵²

UN Treaty Body guidance and related documents on hate speech

UN guidance suggests that criminalisation should not be the primary response to hate speech:

- The Rabat Plan of Action states that criminal sanction should be a ‘last resort’ and only applied in ‘strictly justifiable situations’⁵³
- Committee on the Elimination of Racial Discrimination:

The Committee recommends that the criminalization of forms of racist expression should be reserved for serious cases, to be proven beyond reasonable doubt, while less serious cases should be addressed by means other than criminal law, taking into account, *inter alia*, the nature and extent of the impact on targeted persons and groups. The application of criminal sanctions should be governed by principles of **legality, proportionality and necessity**.⁵⁴

UN Guidance on the use of symbols, signs and banners – ‘predominantly associated’ with incitement

Although not directly about the prohibited slogans, guidance from the UN Human Rights Committee⁵⁵ General Comment 37 on the Right to Peaceful Assembly in the ICCPR is important to note for what it says about the use of signs/banners and symbols:

Generally, the use of flags, uniforms, signs and banners is to be regarded as a legitimate form of expression that **should not be restricted**, even if such symbols are reminders of a painful past. In exceptional cases, where such

⁵² Committee on the Elimination of Racial Discrimination, General Recommendation No 35, Combating Racist Hate Speech, UN Doc CERD/C/GC/35 (26 September 2013) [13].

⁵³ ‘Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence’ in Human Rights Committee, Annual Report of the United Nations High Commissioner for Human Rights, UN Doc A/HRC/22/17/Add 4 (11 January 2013).

⁵⁴ Committee on the Elimination of Racial Discrimination, General Recommendation No 35, Combating Racist Hate Speech, UN Doc CERD/C/GC/35 (26 September 2013) [12].

⁵⁵ The UN Human Rights Committee is the treaty body which monitors the implementation of the *ICCPR* in states which are parties to the Covenant. The Committee has analysed the interpreted the nature and scope of the right of peaceful assembly via General Comments, Concluding Observations and Individual Communications.

symbols are directly and **predominantly associated** with incitement to discrimination, hostility or violence, appropriate restrictions should apply.⁵⁶

The UN Human Rights Committee has also stated that ‘The recognition of the right of peaceful assembly imposes a corresponding obligation on States parties to respect and ensure its exercise **without discrimination.**’⁵⁷ The prohibition of a certain political slogan risks being challenged on the basis that it is made in a way which discriminates against certain racial and/or religious groups.

Other symbol-ban case law:

Case law by the European Court of Human Rights (EcHR) has noted that utmost care must be observed in applying any restrictions to symbols, **especially when the case involves symbols which have multiple meanings.**

This is directly relevant to the proposal to ban the slogans permitted under the present Bill as the two prohibited slogans have multiple and contested meanings.

As an example of European human rights law jurisprudence on this issue: In *Vajnai v Hungary*⁵⁸ and *Fratanolo v Hungary*⁵⁹ the European Court of Human Rights considered a national criminal ban on the public display of communist (and other totalitarian regimes') symbols in Hungary.

In one of these cases - *Vajnai v Hungary* - the applicant who was Vice-President of the Workers' Party – a registered political party - was a speaker at a lawful demonstration in the centre of Budapest in 2003. The demonstration took place at the former location of a statue of Karl Marx, which had been removed by the authorities. The applicant wore a five-pointed red star on his jacket (5 cm in diameter) as a symbol of the international workers' movement. A police patrol utilised Article 269/B § 1 of the Criminal Code to request the applicant to remove the star, which he did. However, subsequently, criminal proceedings were instituted against the applicant for having worn a totalitarian symbol in public.

Article 269/B dealing with the use of totalitarian symbols provides as follows:

1. A person who (a) disseminates, (b) uses in public, or (c) exhibits a swastika, an SS-badge, an arrow-cross, a symbol of the sickle and hammer or a red star, or a symbol depicting any of them, commits a misdemeanour – unless a more

⁵⁶ UN Human Rights Committee, *General Comment No. 37 on the Right of Peaceful Assembly (Article 21)*, 129th sess, UN Doc CCPR/C/GC/37 (17 September 2020) [51].

Note: General Comments contain interpretations of treaty provisions and provide guidance on states' obligations and relevant issues: see 'Glossary of Technical Terms Related to Treaty Bodies', *UN Office of the High Commissioner for Human Rights* (Web Page) <<https://www.ohchr.org/en/treaty-bodies/glossary-technical-terms-related-treaty-bodies#individualcom>>

⁵⁷ UN Human Rights Committee, *General Comment No. 37 on the Right of Peaceful Assembly (Article 21)*, 129th sess, UN Doc CCPR/C/GC/37 (17 September 2020) [8].

⁵⁸ *Vajnai v. Hungary*, App. no. 33629/06 (ECtHR 8 July 2008).

⁵⁹ *Fratanolo v. Hungary*, App no. 29459/10 (ECtHR 3 November 2011)

serious crime is committed – and shall be sentenced to a criminal fine (*pénzbüntetés*).

2. The conduct proscribed under paragraph 1 is not punishable, if it is done for the purposes of education, science, art or in order to provide information about history or contemporary events.

3. Paragraphs 1 and 2 do not apply to the insignia of States which are in force

The applicant argued that the fact that he had been prosecuted for having worn a red star infringed his right to freedom of expression guaranteed by Article 10 of the European Convention.

The ECtHR acknowledged that the red star represents historical trauma for some people, but held that it has also acquired multiple historical meanings for others:

51. In the Court's view, when freedom of expression is exercised as political speech – as in the present case – limitations are justified only in so far as there exists a clear, pressing and specific social need. Consequently, utmost care must be observed in applying any restrictions, **especially when the case involves symbols which have multiple meanings**. In such situations, the Court perceives a risk that a blanket ban on such symbols may also restrict their use in contexts in which no restriction would be justified.

52. The Court is mindful of the fact that the well-known mass violations of human rights committed under communism discredited the symbolic value of the red star. However, in the Court's view, it cannot be understood as representing exclusively communist totalitarian rule, as the Government have implicitly conceded... It is clear that this star also still symbolises the international workers' movement, struggling for a fairer society, as well certain lawful political parties active in different member States.

53. Moreover, the Court notes that the Government have not shown that wearing the red star **exclusively means an identification with totalitarian ideas**, especially when seen in the light of the fact that the applicant did so at a **lawfully organised, peaceful demonstration** in his capacity as the vice-president of a registered left-wing political party, with no known intention of participating in Hungarian political life in defiance of the rule of law. In this connection, the Court emphasises that it is only by a careful examination of the **context** in which the offending words appear that one can draw a meaningful distinction between shocking and offensive language which is protected by Article 10 of the Convention and that which forfeits its right to tolerance in a democratic society.

54. **The Court therefore considers that the ban in question is too broad in view of the multiple meanings of the red star.** The ban can encompass activities and ideas which clearly belong to those protected by Article 10, and there is no satisfactory way to sever the different meanings of the incriminated symbol. Indeed, the relevant Hungarian law does not attempt to do so. Moreover, even if such distinctions had existed, uncertainties might have arisen entailing a chilling effect on freedom of expression and self-censorship....

56. As to the link between the prohibition of the red star and its offensive, underlying, totalitarian ideology, the Court stresses that the potential propagation of that ideology, obnoxious as it may be, cannot be the sole reason to limit it by way of a criminal sanction. A symbol which may have several meanings in the context of the present case, where it was displayed by a leader of a registered political party with no known totalitarian ambitions, cannot be equated with dangerous propaganda. However, Article 269/B of the Hungarian Criminal Code does not require proof that the actual display amounted to totalitarian propaganda. Instead, the mere display is irrefutably considered to do so unless it serves scientific, artistic, informational or educational purposes (see paragraph 41 above *in fine*). For the Court, this indiscriminate feature of the prohibition corroborates the finding that it is unacceptably broad.⁶⁰

Therefore the EctHR held that there had been a **violation of Article 10 of the Convention.**

⁶⁰ *Vajnai v. Hungary*, App. no. 33629/06 (ECtHR 8 July 2008) [51]-[56] [emphasis added].

Issue 4: The Australian Constitution and the implied freedom of political communication

The rule of law and the Australian Constitution

First, I highlight that rule of law principles underpinning the Australian Constitution are relevant. The rule of law is relevant to assessing the Australian Constitution because the High Court has stated on a number of occasions that the rule of law ‘forms an assumption’ of the Australian Constitution.⁶¹

One particular problem with banning specific political slogans is that such laws are aimed at a particular message or group – they are **not** laws of general application targeting particular harm (such as current hate speech/vilification legislation). This is problematic as a fundamental issue as one of the principles of the rule of law is that laws apply equally to all (apart from where, ‘objective differences justify differentiation’⁶²).

Adherence to the rule of law is also particularly important in the drafting and implementation of any laws prohibiting certain symbols so that the credibility and legitimacy of those laws can be maintained. Second, it is well-recognised that rule of law principles are important in ensuring that hate speech and related prohibitions are lawful and operate in a way which do not result in an arbitrary, unjust or discriminatory application of the law.

The implied freedom of political communication

I believe there are significant impediments to the proposal to ban the specific slogans proposed under this Bill for the following reasons:

(a) The case law on the implied freedom has distinguished between legislation which has as a *direct purpose* the restriction of political communication and that which only incidentally restricts such communication.⁶³ A prohibition of the slogans would fall squarely within the ‘direct purpose’ category as such a ban would directly restrict the use of such slogans and such slogans are clearly political in nature.

(b) The case law has placed reliance on whether the laws are *content-neutral*. See eg the recent High Court judgement in *Farmer v Minister for Home Affairs* regarding the visa cancellation powers in the Migration Act where various members discussed whether the Migration Act provisions in question were content neutral.

Chief Justice Gageler, Justice Gordon and Justice Beech-Jones held that:

‘In its legal operation, the provision is viewpoint-neutral. However, in its practical operation the provision is likely to impact differentially on persons expressing “non-mainstream” political views, those being views that are more

⁶¹ Lisa Burton-Crawford, Janina Boughey, Maria O’Sullivan and Melissa Castan, *Public Law and Statutory Interpretation* (Federation Press, 3rd ed, forthcoming 2026) 15. See eg Dixon J in the Communist Party Case (1951) 83 CLR 1, 193

⁶² Tom Bingham, *The Rule of Law* (Penguin, 2011), 55.

⁶³ *Levy v The State of Victoria* [1997] HCA 32; (1997) 189 CLR 579 at 619 per Gaudron J: ‘If the direct purpose of the law is to restrict political communication, it is valid only if necessary for the attainment of some overriding public purpose. If, on the other hand, it has some other purpose, connected with a subject matter within power and only incidentally restricts political communication, it is valid if it is reasonably appropriate and adapted to that other purpose.’

likely to incite "discord" which is of a kind or to a degree that causes the requisite harm.⁶⁴

Justice Jagot held that:

'... the legislation is indifferent to the content of any political communication other than by reference to its effect of harm by creating or exacerbating material antagonisms or enmities between a material number of people in the Australian community or a segment of it.... The legislation is therefore properly seen to be **content neutral**, concerned not with the communication of any specific idea or class of ideas, political or otherwise, but only with the objective consequences of the presence of the person in Australia being the risk of harm of the required kind. These features of the provision, if anything, tend to enhance rather than undermine the form of representative and responsible government which the *Constitution* entrenches. In such a case, it should be recognised that the implied freedom of political communication enables a genuine "margin of choice" by which the Commonwealth Parliament can achieve its legitimate ends or objects.'⁶⁵

Justice Jagot held that:

'... given that the impugned provision is not directed to the restriction of political communications, is **content neutral**, has an incidental and consequential effect on one mode of political communication only (in-person communications), and leaves entirely unaffected all other modes of political communication when such modes are known to be available, practical and convenient, s 501(6)(d)(iv) is reasonably necessary to achieve its objective. It is undoubtedly within the available margins of legislative choice which the concept of "reasonable necessity" leaves open, recognising that, in this context, "necessary" does not mean "essential" or "unavoidable". But this is far from saying, as the plaintiff would have it, that the reality of s 501(6)(d)(iv) is that the Minister can apply the provision "to curb political communication that has no real risk of causing the requisite states, but is simply political communication that enough of the public will not like". The provision is not engaged by any such circumstance. The threshold of "risk" does not bring the urging of any kind of discourse about any issue within the provision merely because it can be said possibly to cause debate or disagreement.'⁶⁶

Discussion of protest/dissent by minorities by High Court

Although this case pre-dates the explicit formulation of the implied freedom of political communication, the judgement of the High Court in *Davis v Commonwealth*⁶⁷ is important to consider as indicative of how the High Court has considered restrictions on freedom of speech. I have extracted the comments of Brennan J as follows:

⁶⁴ *Farmer v Minister for Home Affairs* [2025] HCA 38 at 20 [57].

⁶⁵ *Farmer v Minister for Home Affairs* [2025] HCA 38 at 88 [249]-[250], citing *Coleman v Power* (2004) 220 CLR 1 at 52-53 [100] [emphasis added].

⁶⁶ *Farmer v Minister for Home Affairs* [2025] HCA 38 at 90-91 [258], citing *Mulholland v Australian Electoral Commission* (2004) 220 CLR 181 at 199-200 [39].

⁶⁷ *Davis v Commonwealth* (1988) 166 CLR 79.

Freedom of speech may sometimes be a casualty of a law of the Commonwealth made under a specific head of legislative power — e.g., wartime censorship — or of a law designed to protect the nation — e.g., a law against seditious utterances — but freedom of speech can hardly be an incidental casualty of an activity undertaken by the Executive Government to advance a nation which boasts of its freedom. If a special provision were necessary to suppress fraud, deceit or the misapplication of Commonwealth funds in the commemoration of the Bicentenary, an appropriate offence-creating provision may have been supportable as a protection of the organization which the Executive Government had set up. But a **prohibition on the use of symbols and expressions of communication** relating to the Bicentenary in the several ways specified in s. 22(1) is not a law with respect to a matter incidental to the execution of a power to organize the commemoration; it is not a law which protects the efficacy of what the Executive Government has done or may do in organizing the commemoration. It is a law with respect to the subject-matter of the executive power: the commemoration itself. Such a law purports to control the commemoration in a manner which is beyond the executive power of the Commonwealth and which is not incidental to the execution of that power. Sections 22 and 23 are not saved from invalidity by conferring an unconfined discretion upon the Authority to consent to a particular use of prescribed symbols and expressions. The discretion does not change the character of those sections. Nor is freedom of speech restored by creating a discretionary authority to allow it.⁶⁸

The limits on the legislative power to enact penal laws under s. 51(xxxix) is of especial importance when the relevant activity undertaken in execution of an executive power is the commemoration of an historical event. Such a commemoration may take many forms, according to the significance placed upon it. The form of national commemorations of historical events usually reflects the significance which the majority of people place upon the event. **But there may well be minority views which place a different significance on the same event**, as the present case illustrates. **It is of the essence of a free and mature nation that minorities are entitled to equality in the enjoyment of human rights. Minorities are thus entitled to freedom in the peaceful expression of dissident views.** In this case, the plaintiffs wish to raise a voice of protest against the celebratory commemoration of the Bicentenary, and the defendants contend that ss. 22 and 23 are effective to muffle the intended protest. As a matter of construction, ss. 22 and 23 do muffle the intended protest. But **it cannot be incidental to the organization of the commemoration of the Bicentenary to prohibit, under criminal sanctions, the peaceful expression of opinions about the significance of the events of 1788.** By prohibiting the use of the symbols and expressions apt to express such opinions, ss. 22 and 23 forfeit any support which s. 51(xxxix) might otherwise afford.⁶⁹

⁶⁸ *Davis v Commonwealth* (1988) 166 CLR 79, 116.

⁶⁹ *Davis v Commonwealth* (1988) 166 CLR 79, 116-117 (Brennan J) [emphasis added].

APPENDICES

Appendix 1 – Excerpt from Article 19 Organisation on from The River to the Sea

ARTICLE 19: ‘From the River to the Sea’: Protecting freedom of expression in public discourse and protest during the conflict in Israel and Palestine:

ARTICLE 19 recalls that although states can restrict freedom of expression that amounts to incitement to discrimination, hostility, or violence (as per Article 20 para 2 of the ICCPR), all incitement cases should be assessed under a uniform six-part incitement test highlighted earlier (the six-part test of the Rabat Plan of Action).

As we pointed out in our analysis on the scope of incitement to genocide ... this test cannot be satisfied by looking at words alone, but necessarily requires an analysis of several other factors. Again, without being able to weigh factors – including the context of the particular expression, the intent of the speakers, or the likelihood of violence, discrimination or hostility against the targeted group occurring – there is no way to possibly ‘measure’ incitement.

For example, if law enforcement authorities want to sanction the chanting of the slogan in protest, they would have to assess whether the chants were likely to lead to violence against Jewish people in a particular situation and the likelihood of such violence was imminent. The subjective feelings of Jewish or other persons offended or insulted by the chants should not be pertinent in the assessment. The focus of the restrictions should not be to protect the feelings; instead, restrictions should aim at prevent specific likelihood violence that may be incited by the expression. On the other hand, the incitement standard would be met if there was credible proof of intent to incite violence, discrimination, or hostility in a particular context, and likelihood of such prohibited action occurring (e.g. if the slogan was shouted directly at a specific group of people and caused an immediate and credible risk of violence targeted at them). This case would be clearly distinguished from the use of slogan as a general call for solidarity with Palestine, which would not qualify as incitement. Last but not least, even where the high threshold for incitement is reached, international standards mandate that criminal sanctions should only be used as a last resort measure, considering the principles of necessity and proportionality.¹

¹ Article 19, ‘From the River to the Sea’: Protecting freedom of expression in public discourse and protest during the conflict in Israel and Palestine, p 9. <https://www.article19.org/wp-content/uploads/2024/05/From-the-River-to-the-Sea-analysis-1.pdf>

3. *Calls for the scrupulous respect for and faithful implementation of the Agreements by all parties concerned who should fully abide by their letter and spirit;*

4. *Notes the continuing process of withdrawal of foreign troops from Afghanistan and expresses its expectation that the withdrawal will be completed in accordance with the relevant provisions of the Agreements;*

5. *Reiterates that the preservation of the sovereignty, territorial integrity, political independence and non-aligned character of Afghanistan is essential for a peaceful solution of the Afghanistan problem;*

6. *Reaffirms the right of the Afghan people to determine their own form of government and to choose their economic, political and social system free from outside intervention, subversion, coercion or constraint of any kind whatsoever;*

7. *Calls upon all parties concerned to work for the urgent achievement of a comprehensive political solution and the creation of the necessary conditions of peace and normalcy that would enable the Afghan refugees to return voluntarily to their homeland in safety and honour;*

8. *Emphasizes the need for an intra-Afghan dialogue for the establishment of a broad-based government to ensure the broadest support and immediate participation of all segments of the Afghan people;*

9. *Requests the Secretary-General and his Representative to encourage and facilitate the early realization of a comprehensive political settlement in Afghanistan in accordance with the provisions of the Agreements and of the present resolution;*

10. *Renews its appeal to all States and national and international organizations to continue to extend humanitarian relief assistance with a view to alleviating the hardship of the Afghan refugees, in co-ordination with the United Nations High Commissioner for Refugees;*

11. *Welcomes the appointment of a special co-ordinator for channelling economic and humanitarian assistance to the people of Afghanistan;*

12. *Calls upon all States to provide adequate financial and material resources to the Co-ordinator for Humanitarian and Economic Assistance Programmes Relating to Afghanistan for the purposes of achieving the speedy repatriation and rehabilitation of the Afghan refugees, as well as for the economic and social reconstruction of the country;*

13. *Requests the Secretary-General to keep Member States and the Security Council informed of progress towards the implementation of the present resolution and to submit to the General Assembly at its forty-fourth session a report on the situation in Afghanistan, on progress achieved in the implementation of the Agreements and the political settlement relating to Afghanistan;*

14. *Decides to include in the provisional agenda of its forty-fourth session the item entitled "The situation in Afghanistan and its implications for international peace and security".*

45th plenary meeting
3 November 1988

43/21. The uprising (*intifadah*) of the Palestinian people

The General Assembly,

*Aware of the uprising (*intifadah*) of the Palestinian people since 9 December 1987 against Israeli occupation,*

which has received significant attention and sympathy from world public opinion,

Deeply concerned at the alarming situation in the Palestinian territories occupied since 1967, including Jerusalem, as well as in the other occupied Arab territories, as a result of the continued occupation by Israel, the occupying Power, and of its persistent policies and practices against the Palestinian people,

Reaffirming that the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949,⁴⁷ is applicable to all the Palestinian and other Arab territories occupied by Israel since 1967, including Jerusalem,

Recalling its relevant resolutions as well as Security Council resolutions 605 (1987) of 22 December 1987, 607 (1988) of 5 January 1988 and 608 (1988) of 14 January 1988,

Recognizing the need for increased support and aid for, and solidarity with, the Palestinian people under Israeli occupation,

Conscious of the urgent need to resolve the underlying problem through a comprehensive, just and lasting settlement, including a solution to the Palestinian problem in all its aspects,

1. *Condemns Israel's persistent policies and practices violating the human rights of the Palestinian people in the occupied Palestinian territories, including Jerusalem, and, in particular, such acts as the opening of fire by the Israeli army and settlers that result in the killing and wounding of defenceless Palestinian civilians, the beating and breaking of bones, the deportation of Palestinian civilians, the imposition of restrictive economic measures, the demolition of houses, collective punishment and detentions, as well as denial of access to the media;*

2. *Strongly deplores the continuing disregard by Israel, the occupying Power, of the relevant decisions of the Security Council;*

3. *Reaffirms that the occupation by Israel of the Palestinian territories since 1967, including Jerusalem, in no way changes the legal status of those territories;*

4. *Demands that Israel, the occupying Power, abide immediately and scrupulously by the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and desist forthwith from its policies and practices that are in violation of the provisions of the Convention;*

5. *Calls upon all the High Contracting Parties to the Convention to take appropriate measures to ensure respect by Israel, the occupying Power, for the Convention in all circumstances, in conformity with their obligation under article 1 thereof;*

6. *Invites Member States, the organizations of the United Nations system, governmental, intergovernmental and non-governmental organizations, and the mass communications media to continue and enhance their support for the Palestinian people;*

7. *Urges the Security Council to consider the current situation in the occupied Palestinian territories, taking into account the recommendations contained in the report of the Secretary-General;⁴⁸*

8. *Requests the Secretary-General to examine the present situation in the occupied Palestinian territories by all*

⁴⁷ United Nations, *Treaty Series*, vol. 75, No. 973.

⁴⁸ *Official Records of the Security Council, Forty-third Year, Supplement for January, February and March 1988*, document S/19443.

means available to him and to submit periodic reports thereon, the first such report no later than 17 November 1988.

45th plenary meeting
3 November 1988

43/22. Right of peoples to peace

The General Assembly,

Recalling its Declaration on the Right of Peoples to Peace, approved on 12 November 1984,⁴⁹

Referring to its resolutions 40/11 of 11 November 1985 and 41/10 of 24 October 1986,

Having in mind the Universal Declaration on Human Rights⁵⁰ which emphasizes that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing the strong resolve of peoples to strengthen international peace and security and promote economic and social development,

Noting with satisfaction the positive events and trends in the field of disarmament, the resolution of crisis situations and the strengthening of international peace and security,

Reaffirming that the implementation of the right of peoples to peace constitutes a fundamental concern of each State,

Having considered the report of the Secretary-General on the implementation of the Declaration on the Right of Peoples to Peace,⁵¹

1. *Takes note with appreciation* of the report of the Secretary-General;

2. *Reaffirms* the lasting importance and validity of the Declaration on the Right of Peoples to Peace;

3. *Considers* that the efforts of non-governmental organizations and world public opinion play an important role in the implementation of the Declaration;

4. *Invites* all States and international organizations to continue their efforts towards the implementation of the Declaration at the national and international levels;

5. *Calls upon* all States and relevant organizations of the United Nations system, as well as non-governmental organizations, to inform the Secretary-General about the measures taken to implement the Declaration;

6. *Requests* the Secretary-General to submit a report to the General Assembly at its forty-fifth session on the basis of replies received;

7. *Decides* to include in the provisional agenda of its forty-fifth session an item entitled "Implementation of the Declaration on the Right of Peoples to Peace".

46th plenary meeting
11 November 1988

43/23. Zone of peace and co-operation of the South Atlantic

The General Assembly,

Recalling its resolution 41/11 of 27 October 1986, in which it solemnly declared the Atlantic Ocean, in the re-

gion situated between Africa and South America, the "Zone of peace and co-operation of the South Atlantic",

Affirming that the questions of peace and security and those of development are interrelated and inseparable, and considering that co-operation among all States, in particular those of the region, for peace and development is essential to promote the objectives of the zone of peace and co-operation of the South Atlantic,

Recalling also its resolution 42/16 of 10 November 1987, in which it urged States of the region to continue their actions aiming at fulfilling the goals of the declaration, specially through the adoption and implementation of specific programmes for this purpose,

Noting with appreciation the efforts of States of the zone towards fulfilling the goals of the declaration,

1. *Takes note* of the report submitted by the Secretary-General in accordance with resolution 42/16;⁵²

2. *Welcomes* the holding of the first meeting of States of the Zone of Peace and Co-operation of the South Atlantic at Rio de Janeiro, from 25 to 29 July 1988, and takes note of the Final Document of the meeting;⁵³

3. *Commends* initiatives by States of the zone to promote peace and regional co-operation in the South Atlantic;

4. *Calls upon* all States to co-operate in the promotion of the objectives of peace and co-operation established in the declaration of the zone of peace and co-operation of the South Atlantic and to refrain from any action inconsistent with those objectives, particularly actions which aggravate or may create situations of tension and potential conflict in the region;

5. *Requests* the relevant organizations, organs and bodies of the United Nations system to render all necessary assistance that States of the zone may seek in their joint efforts to implement the declaration of the zone of peace and co-operation of the South Atlantic;

6. *Requests* the Secretary-General to keep the implementation of resolution 41/11 under review and to submit a report to the General Assembly at its forty-fourth session, taking into account, *inter alia*, the views expressed by Member States;

7. *Decides* to include in the provisional agenda of its forty-fourth session the item entitled "Zone of peace and co-operation of the South Atlantic".

47th plenary meeting
14 November 1988

43/24. The situation in Central America: threats to international peace and security and peace initiatives

The General Assembly,

Recalling Security Council resolutions 530 (1983) of 19 May 1983 and 562 (1985) of 10 May 1985 and its resolutions 38/10 of 11 November 1983, 39/4 of 26 October 1984, 41/37 of 18 November 1986 and 42/1 of 7 October 1987, as well as the initiative of the Secretaries-General of the United Nations and of the Organization of American States of 18 November 1986,

Taking note of the report of the Secretary-General submitted in pursuance of General Assembly resolution 42/1,⁵⁴

⁴⁹ Resolution 39/11, annex.

⁵⁰ Resolution 217 A (III).

⁵¹ A/43/602.

⁵² A/43/576 and Add.1.

⁵³ A/43/512.

⁵⁴ A/42/127-S/18686. For the printed text, see *Official Records of the*