

NSW cabinet must make inciting violence a crime

A man carries a poster during a violent protest in Sydney's Hyde Park in 2012. Picture: Mitch Cameron

JANET ALBRECHTSEN THE AUSTRALIAN 12:00AM March 3, 2018

Picture this poster. A Nazi holds a gun to the head of a man on his knees wearing the Star of David. "Legalise the execution of Jews," it says across the top. "Join your local Nazis," it says along the bottom.

This poster, which appeared on the school sign outside Maroochydore High School in Queensland last week, incites violence against Jews. The same posters were plastered on walls at Melbourne Grammar School and Melbourne High School in August last year, and they are the work of Antipodean Resistance. The group, which started as a handful of neo-Nazis in Melbourne, has been ramping up its numbers and activities across Australia in recent days and weeks.

The neo-Nazis are trying to recruit schoolchildren. Stickers imploring "white Australian youth" to "Join the Fight" were at Gordon train station on Sydney's north shore last week, and across Sydney, including near Jewish sites.

Here is another poster that incites violence. "Join your fellow faggots," it says. The poster says that "16% of sodomites have attempted suicide" and "up to 50% of trans 'people' have attempted suicide". There's a black silhouette picture of a man shooting himself in the head. This poster appeared at the University of Tasmania last September.

Another poster inciting violence features a gun pointed at the head of a man wearing a "gay and proud" T-shirt. The bullet has entered his head. The poster blares: "Get the sodomite filth off our streets". It was at Swinburne University in Melbourne on October 9, 2016.

These neo-Nazis are cowards, their names hidden behind the Antipodean Resistance logo. Some of their posters are hate speech. Like the poster featuring a large swastika saying "REJECT JEWISH POISON". That poster appeared this week glued to the window of federal Labor MP Mike Kelly's electorate office in the federal seat of Eden-Monaro in NSW. Kelly's wife is Jewish. It's offensive and vile.

Other posters are more dangerous because they plainly incite violence against people on the basis of their sexuality, race or religion. And plenty of these have appeared across Australia for more than 18 months, from Castle Hill to Bathurst, from Launceston to Rundle Mall in Adelaide, from Ballarat to Brisbane, from the Gold Coast and the Sunshine Coast to Townsville.

Now for more disturbing news. The NSW Liberal government has refused to take steps so that these neo-Nazi thugs will be prosecuted, and convicted, for inciting violence. A law, section 20D, has been on the books for almost 30 years. It prohibits the incitement to violence. But there hasn't been a single conviction since the Anti-Discrimination Act was enacted by the Greiner government in 1989. Not even a single prosecution.

Speaking to Inquirer this week, Vic Alhadeff, chief executive of the NSW Jewish Board of Deputies, said that either we're living in Camelot or this law is not working.

We're not living in Camelot. There was no prosecution of Ismail al-Wahwah, the extremist imam and head of Hizb ut-Tahrir in Australia, when he called for "jihad against Jews" in 2015 during a sermon at a mosque in Lakemba. Nor when he described Jews as a "cancerous tumour — it must be uprooted and thrown back to where it came from".

Instead, his violent incitement was freely distributed online to young men who have murder on their minds and hatred in their hearts.

When Gladys Berejiklian became Liberal Premier of NSW just over a year ago, there was new hope that finally something would be done, that protecting people from those who incite violence would be a priority in a state that has had the highest number of planned terrorist attacks.

Yet, on November 20 last year, the NSW cabinet knocked back an attempt by new Attorney-General Mark Speakman, who was determined to bring in effective incitement laws.

Speakman must have been stunned and disappointed when the fiercest opposition came from conservative cabinet members: Treasurer Dominic Perrottet; David Elliott, whose portfolios include being Counter-Terrorism Minister; and Anthony Roberts, the Planning and Housing Minister, who is also Special Minister of State and Leader of the House in the Legislative Assembly.

Inquirer understands that these no-voting members of cabinet thought turning an ineffective incitement-to-violence law into an effective one was a bit of politically correct nonsense. They were and remain worried about kicking off another section 18C-style brawl, when we hotly debated whether the federal Racial Discrimination Act should prohibit words that hurt someone's feelings.

What baloney. These senior ministers are treating voters like dopes when it's they who are the dummies. This is not a free-speech issue. This is not about hate speech, a term that is not always easy to objectively define and apply. It's not about protecting snowflakes who don't like a Palestine Liberation Organisation protest or get upset by words that hurt their feelings. It's not about insults that bruise an ego or words that merely offend or harass or intimidate. This is about stopping people who are determined to incite physical violence. This is about the safety of Australians, especially those who live in NSW without protection from people who incite violence.

In October 2016, two teenage boys were arrested outside an Islamic prayer room in Bankstown, in southwest Sydney, for planning a terrorist attack. One of those boys, when he was 14, joined a protest in Sydney's Hyde Park in 2012 wearing a T-shirt that said: "Behead all those who insult the Prophet." Insulting the prophet is a free-speech issue. But telling people to behead those who insult him is a violence issue. We can and do discuss the limits of freedom of expression.

Should we have blasphemy laws? Should a few university students be hauled before a federal court for making a few jokes on Facebook? Should a complaint against the late and great Bill Leak have gone as far as it did when all he did was point to the sad family dysfunction in some indigenous communities? Should there be trigger warnings and safe spaces to protect fragile students? Was former Australian Human Rights Commission boss Gillian Triggs right to bemoan the fact we can say what we want around the kitchen table? Those who understand that free speech is the best mechanism for testing ideas, including unpopular ideas, will say no to each of these questions. But still we routinely and robustly debate these questions, as we should.

Inciting physical violence is where we should all draw a thick black line. No discussion required.

This is not just about physical threats against Jews or gays. When incitement to violence goes unpunished, we are all at risk.

The Berejiklian government wanted to know there was cross-cultural support before strengthening the incitement laws. And they got it, in spades.

First, a coalition of 29 ethnic groups brought together under the banner of KeepNSWSafe, expressed their support for stronger incitement laws. Then, last May, the Berejiklian government was handed a report by Stepan Kerkyasharian, former president of the NSW Anti-Discrimination Board, who was previously chairman of the Community Relations Commission. He asked a broad cross-section of the community, from ethnic and LGBTI groups to churches, whether incitement laws in NSW should be made more effective, so prosecutions and convictions could rise above the present rate of zero.

Given the Premier and the Attorney-General took a proposal to cabinet last year, it's safe to assume there was community consensus.

Speaking to Inquirer from Yerevan in Armenia this week, Kerkyasharian said he also supported effective laws to prosecute those who incite physical violence against others.

Alas, reforming NSW incitement laws was spectacularly derailed on three fronts.

First by former attorney-general Gabrielle Upton, who promised to reform section 20D only to run from the issue. Upton, who holds a safe NSW state Liberal seat with the country's highest proportion of Jews, was worse than all talk and no action.

As attorney-general she complicated a simple and important reform when she said section 20D was about “hate speech”. That immediately derailed reform by confusing free speech with words that incite violence. Either Upton was out of her depth or she deliberately dodged reform that would have allowed law-enforcement authorities to prosecute those who incite violence.

Even worse, when the matter came to cabinet last year, *The Daily Telegraph* reported that Upton, who had been demoted, suggested it wasn't the right time politically to reform incitement laws because the government was in a jam over decisions to build sports stadiums and a shambolic bottle-recycling policy. Upton's final retreat from reform confirmed 2GB broadcaster Alan Jones's description of her as “gutless”. Politicians should stop wondering why voters have become disconnected from, and disillusioned with, self-serving politicians.

The second snare came from the KeepNSWSafe coalition. Led by Alhadeff, who is a terrific warrior against anti-Semitism, the coalition's submission to the NSW government went further than seeking to strengthen incitement laws. It also tried to include a prohibition on those who “harass” or “intimidate” someone on the basis of race, religion and so on. This fed directly into Upton's tangle over hate speech. The overreach by the coalition of community groups propagated the confusion between violence and free speech, squandering an important opportunity to strengthen incitement laws.

In a dreadful own-goal, the failure of the NSW cabinet to do the right thing here has handed political correctness on a platter to the NSW Labor Opposition Leader.

Luke Foley saw a gap and took it, promising to enact hate speech laws within 100 days of being elected. The NSW Liberal government has bequeathed a new batch of politically correct laws that will limit free speech in NSW because Foley plans to go much further than strengthening incitement-to-violence laws.

The ultimate blame for this mess rests with the NSW Premier and her government's craven capitulation last year. Under her leadership, cabinet could have said: “We will not be sidetracked. We will not confuse free speech with personal safety. We will fix 30 years of inaction and immediately enact a new law in the Crimes Act so people who incite violence can be prosecuted, convicted and jailed.”

This is the easy stuff compared with dealing with hospital stuff-ups, education funding, infrastructure blowouts, train strikes, recycling fiascos and so on.

Instead, the Premier and her most senior ministers walked away from reform, leaving NSW with no effective law to prosecute and convict neo-Nazi thugs or Islamist extremists who advocate violence. Those ministers hiding behind false concerns of political correctness have chosen the usual pattern of politics where a government feels political pressure to “do something” only after a shocking disaster occurs.

