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# Parliamentary Joint Committee on Human Rights

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Inquiry into antisemitism at Australian universities

February 2025

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# Members

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# Terms of reference

- 1.1 On 29 October 2024, pursuant to subsection 7(c) of the *Human Rights (Parliamentary Scrutiny) Act 2011*, the Attorney-General wrote to the Parliamentary Joint Committee on Human Rights (the committee) to request that the committee inquire into and report on, antisemitism at Australian universities, and to consider:
- the prevalence, nature and experiences of antisemitic activity at universities;
  - university frameworks for the prevention of, and response to, antisemitism at universities, including rules, policies and other measures introduced to ensure the safety and wellbeing of students, staff and academics;
  - the effectiveness and adequacy of those frameworks;
  - the support provided to students, staff and academics experiencing antisemitism at universities;
  - international experiences and best practices in dealing with antisemitic activity at universities;
  - what policy or regulatory changes are required to better address and prevent antisemitism at universities; and
  - any other relevant matters.
- 1.2 The Attorney-General requested that the committee report to both Houses of Parliament by 31 March 2025.





# Foreword

- 1.1 Over the past few months, the Parliamentary Joint Committee on Human Rights (the committee) has inquired into antisemitism on university campuses.
- 1.2 What the committee found was a disturbing prevalence of antisemitism that has left Jewish students and staff feeling unsafe, hiding their identity on campus and even avoiding campus all together.
- 1.3 The committee witnessed brazen incidents of antisemitism go without consequence or leadership by some of our university vice-chancellors.
- 1.4 This needs to be addressed, with urgency. We are now at a pivotal point where universities must implement the committee's recommendations to ensure Jewish students and staff go back to campus in semester one knowing that their safety is taken seriously, and if there are incidents on campus, they will be addressed in a timely and transparent way.
- 1.5 Throughout the summer, the committee held four hearings and received 49 submissions, in addition to the 669 submissions recently provided to the Senate Standing Committee on Legal and Constitutional Affairs' inquiry into the Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2).
- 1.6 What was evident is there is a lack of consistency across the country. We heard from a range of universities, with some universities having clear policies on antisemitism and others without an adequate understanding or commitment to stamp out antisemitism on campus.
- 1.7 The committee's inquiry highlighted the importance of listening to the lived experiences of Jewish students and staff. There was a stark difference between universities who engaged proactively with the Jewish community and who let their experiences guide the university's response, and those who did not.
- 1.8 Overall, the current situation of Jewish students and staff feeling unsafe is unacceptable.
- 1.9 The committee has made ten recommendations, most of which relate to policies that universities can put into place for the beginning of this academic year – including direct engagement with Jewish students and staff, implementing a definition of antisemitism, introducing antisemitism training for staff, simplifying the complaints process to encourage student reporting and publishing de-identified complaints reports to improve transparency.
- 1.10 There is a cultural shift which is needed, and for that to occur university responses to antisemitism must be informed by an understanding of the experiences of Jewish students and staff, and those Jewish students and staff must feel that their concerns are heard and valued.

- 1.11 For the past 16 months, Jewish Australians have faced an unprecedented rise in antisemitism across the country. However, as several vice-chancellors said during our inquiry - the rise in antisemitic incidents on campus did not start on 7 October 2023.
- 1.12 It should not have taken a parliamentary inquiry and a national antisemitism crisis for universities to listen to the Jewish community and recognise their responsibility in addressing antisemitism on campus.
- 1.13 Universities have the potential to reflect the best of multicultural Australia. Campus must be a place of collaboration, education, and new experiences, both inside and outside of the classroom. Addressing antisemitism on campus is a step towards ensuring exactly that. Everyone has a right to be who they are, free from vilification and bigotry.
- 1.14 I want to thank the entire committee for contributing and for aiming to reach consensus in the recommendations. The multi-partisan work we have completed together over the summer will mean Jewish students and staff are able to go back to university this year with greater protections and an acknowledgement of their experiences, and for that I am very grateful for everyone's contributions.
- 1.15 I would like to thank the Senate Standing Committee on Legal and Constitutional Affairs for their previous work on the inquiry into the Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No.2).
- 1.16 I would also like to thank the committee secretariat for their tireless work of compiling the report, recommendations and public hearings throughout the summer.
- 1.17 Finally, I want to thank the Jewish students and staff who gave their testimony to both our inquiry and the Senate Standing Committee on Legal and Constitutional Affairs' inquiry into the Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2). Their advocacy on behalf of their fellow students and staff, as well as their desire to work with universities to ensure campus is a safe and welcoming place for all is greatly appreciated.

# List of recommendations

## Recommendation 1

- 4.65 The committee recommends that university Vice Chancellors hold a formal meeting with Jewish student bodies and Jewish staff during semester one of 2025 to engage directly on their observations regarding antisemitism on their campuses. The committee recommends that Vice Chancellors should subsequently make a public comment on their work to combat antisemitism and regarding those meetings with Jewish students and staff.

## Recommendation 2

- 4.66 The committee recommends that Australian universities should review their complaints procedures with a view to their simplification, including giving particular consideration to: establishing a single central office to receive and process all complaints; adopting a clear definition of antisemitism that aligns closely with the International Holocaust Remembrance Alliance definition; and providing for alternative dispute resolution mechanisms.

## Recommendation 3

- 4.67 The committee recommends that Australian universities should report on the outcome of complaints in a more transparent manner while maintaining the privacy of the complaints process. The committee recommends that such reports should include, where relevant, comment by the Vice Chancellor regarding their work to address antisemitism on campus.

## Recommendation 4

- 4.68 The committee recommends that the government give consideration as to whether it is necessary to amend the Fair Work Act 2009 to enable disciplinary or other action to be taken in relation to an employee (or a grant recipient where the Australian Research Council Act 2001 and related legislation applies), where that person is found to have engaged in conduct which would breach Part 5.1 of the Criminal Code Act 1995, or section 18C of the Racial Discrimination Act 1975.

## Recommendation 5

- 4.69 The committee recommends that Australian universities should publish regular de-identified reports setting out the number of complaints received, the nature of the complaints, the number of complaints resolved since the last report and the timeframe for the resolution of outstanding complaints.

## **Recommendation 6**

**4.70 The committee recommends that universities consider increased investment in research into antisemitism and opportunities for collaboration regarding current projects, having close regard to the work being undertaken by the Monash University Australian Centre for Jewish Civilisation as an appropriate model.**

## **Recommendation 7**

**4.71 The committee recommends that universities deliver ongoing training to students, staff and leadership on recognising and addressing antisemitism.**

## **Recommendation 8**

**4.72 The committee recommends that the government give consideration to amending the Tertiary Education Quality and Standards Agency Act 2011 to provide TEQSA with enhanced powers to enforce compliance with the higher education threshold standards relating to student wellbeing and safety, as those standards are applied in practice by universities (e.g. through Codes of Conduct).**

## **Recommendation 9**

**4.73 The committee recommends that government monitor the implementation of these recommendations and further recommends that the National Student Ombudsman review university practices to reduce antisemitism on campuses within twelve months of the tabling of this report.**

## **Recommendation 10**

**4.74 The committee recommends that if, following a review of the implementation of these recommendations in consultation with the Special Envoy to Combat Antisemitism, it is apparent that the response by universities has been insufficient, the government should give consideration to the establishment of a judicial inquiry.**





# Chapter 1

## Introduction

### Initiation of the inquiry

1.1 On 29 October 2024, pursuant to subsection 7(c) of the *Human Rights (Parliamentary Scrutiny) Act 2011*, the Attorney-General wrote to the Parliamentary Joint Committee on Human Rights (the committee) to request that the committee inquire into and report on, antisemitism at Australian universities, and to consider:

- the prevalence, nature and experiences of antisemitic activity at universities;
- university frameworks for the prevention of, and responses to, antisemitism at universities, including rules, policies and other measures introduced to ensure the safety and wellbeing of students, staff and academics;
- the effectiveness and adequacy of these frameworks;
- the support provided to students, staff and academics experiencing antisemitism at universities;
- international experiences and best practices in dealing with antisemitic activity at universities;
- what policy or regulatory changes are required to better address and prevent antisemitism at universities; and
- any other relevant matters.

1.2 The Attorney-General requested that the committee report to both Houses of Parliament by 31 March 2025.

1.3 Subsection 7(c) of the *Human Rights (Parliamentary Scrutiny) Act 2011* empowers the committee to inquire into any matter relating to human rights which is referred to it by the Attorney-General.

### Conduct of the inquiry

1.4 The Chair of the committee, Mr Josh Burns MP, issued a media release on 7 November 2024 to call for submissions. The committee wrote to 115 stakeholders inviting them to make a submission to the inquiry by 20 December 2024, and advertised the inquiry on its website.

1.5 The committee received 47 public submissions, which were published on the committee website, and two confidential submissions. A list of submissions received is included at Appendix 1.

1.6 The committee held four public hearings in relation to this inquiry. These hearings took place on 29 November and 12 December 2024, and 22 January and 5 February 2025, in Canberra. The committee heard evidence from a range of universities, community groups, student peak bodies, academics, and several government departments and agencies. A list of witnesses for the public

hearings are included at Appendix 2, and the Hansard transcripts are available on the committee website.<sup>1</sup>

### **Structure of the report**

1.7 The report contains 4 chapters, as follows:

- Chapter 1 sets out the details of the inquiry;
- Chapter 2 sets out the background to the inquiry, and the legislation relevant to the regulation of universities in Australia;
- Chapter 3 discusses the key issues raised by submitters and witnesses to the inquiry; and
- Chapter 4 sets out the relevant international human rights law, and the committee's views and recommendations.

### **Acknowledgements**

1.8 The committee acknowledges and thanks the organisations and individuals who contributed to the inquiry by making submissions, giving evidence at the public hearing and providing additional information.

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<sup>1</sup> References to the Committee Hansard are to the proof transcript. Page numbers may vary between proof and official transcripts.



# Chapter 2

## Background

2.1 This chapter provides an overview of recent inquiries examining the prevalence of antisemitism in Australia, as well as the legislative framework which regulates universities in Australia.

### **Recent inquiries examining the prevalence of antisemitism in Australia**

2.2 In referring these matters to the Parliamentary Joint Committee on Human Rights, the Attorney-General stated that:

On 1 October 2024, the Legal and Constitutional Affairs Committee...found there has been a rise in antisemitism in Australia, including on Australian university campuses. It also found the university response to incidents of antisemitism was inadequate, and that further action is needed to address the tensions on university campuses and protect the safety of students and staff. The Legal and Constitutional Affairs Committee was deeply troubled by the experiences of hostility, abuse and discrimination it heard from Jewish students and staff at Australian universities, and their concerns about the lack of support that they received from their university when reporting incidents.<sup>1</sup>

2.3 There have also been numerous public reports outlining instances of anti-Jewish violence, graffiti, and attacks on synagogues.<sup>2</sup>

2.4 On 4 July 2024, the Senate referred the Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2) to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 4 October 2024.<sup>3</sup> This private Senator's bill sought to establish a commission of inquiry, with Royal Commission-like powers, to inquire into antisemitism at Australian universities, led by a current or former Judge.<sup>4</sup>

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<sup>1</sup> Attorney-General the Hon Mark Dreyfus KC MP, *inquiry referral to the Parliamentary Joint Committee on Human Rights*, 29 October 2024.

<sup>2</sup> See, for example, 'Second synagogue in Sydney, Australia defaced with anti-Semitic graffiti', *Al Jazeera News*, 11 January 2025; Rachael Knowles and Nicola McCaskill, 'Australia is facing unprecedented anti-Jewish violence. But what is antisemitism?', *SBS News*, 13 December 2024.

<sup>3</sup> Legal and Constitutional Affairs Legislation Committee, *Inquiry into the Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2)*, October 2024 (Legal and Constitutional Affairs Inquiry Report).

<sup>4</sup> Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2), explanatory memorandum, p. 1.

- 2.5 The Legal and Constitutional Affairs Legislation Committee received 669 submissions, as well as short statements and form letters. The committee held two hearings in Canberra on 17 September 2024 and 20 September 2024.
- 2.6 The report set out a number of key issues raised by submitters and witnesses, including: experiences of antisemitism on campus; concerns regarding the responses of universities to complaints of antisemitism; the actions of regulators; and alternative mechanisms for addressing antisemitism.<sup>5</sup>
- 2.7 Many submitters and witnesses indicated they had personal experiences of antisemitism. Some submitters and witnesses highlighted either a significant rise in antisemitism or its long-term presence, resulting in a systemic and embedded culture.<sup>6</sup> Others considered that Islamophobia was present at an equivalent level,<sup>7</sup> or that antisemitism had not become endemic.<sup>8</sup> Some argued that discomfort regarding engagement with the Israeli-Palestinian conflict may be incorrectly equated with antisemitism.<sup>9</sup>
- 2.8 Some submitters stated that their mental health had been poorly affected by the campus environment.<sup>10</sup> Some submitters expressed that they had felt fear on campus of being approached and confronted by other university students over being identified as Jewish through their attire such as wearing a yarmulkes or jewellery containing a Star of David.<sup>11</sup>
- 2.9 Universities and university bodies referred to their roles in maintaining or promoting academic freedom and freedom of speech to openly discuss and debate ideas of popular and unpopular nature. Almost all universities noted either reiterating or updating their policies relevant to tackling antisemitism, such as the University of New South Wales' Anti-Racism Policy which was updated to include Anti-Religious Vilification in compliance with changes to state anti-discrimination legislation,<sup>12</sup> or the University of Melbourne's re-

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<sup>5</sup> Legal and Constitutional Affairs Inquiry Report, chapter 2.

<sup>6</sup> Legal and Constitutional Affairs Inquiry Report, pp. 10–14.

<sup>7</sup> Muslim Votes Matter, *Submission 141*, p. 1 (Legal and Constitutional Affairs Inquiry Report).

<sup>8</sup> Legal and Constitutional Affairs Inquiry Report, p.13.

<sup>9</sup> Legal and Constitutional Affairs Inquiry Report, pp. 9 and 13. See, Melbourne University Liberal Club, *Submission 154*, p. 1; Mx Sarah Lucy, *Submission 170*, p. 1; and Ms Tian Zhang, *Submission 173*, p. 1 (submissions to Legal and Constitutional Affairs Inquiry).

<sup>10</sup> Legal and Constitutional Affairs Inquiry Report, p. 8.

<sup>11</sup> Union for Progressive Judaism, *Submission 105*, p. 2; Miss Eden Gringart, *Submission 172*, p. 2; and Miss Mia Rom, *Submission 187*, p. 1 (submissions to Legal and Constitutional Affairs Inquiry).

<sup>12</sup> Legal and Constitutional Affairs Inquiry Report, p. 16.

communication of relevant policies which also handle other forms of racist behaviour.<sup>13</sup>

2.10 The report also noted that universities had highlighted further actions they had taken to address antisemitism on their campuses, including:

- University of Melbourne provided a physical space for Jewish students, alongside consistent contact with Jewish student representatives and the implementation of a safety app which reported offensive stickers and graffiti for campus security to manage;
- University of Technology Sydney provided a physical space, and regularly engaged with student leaders from the Australasian Union for Jewish Students (AUJS), the Palestinian Society and Student Representative Council;
- Deakin University and the University of Adelaide noted that they had taken action under their existing student misconduct procedure or rules; and
- The University of Sydney advised that it was in constant contact with NSW Police during the encampment and regularly communicated to students and staff the University's expectations in accordance with their code of conduct and other policies and guidelines.<sup>14</sup>

2.11 A number of senior university leaders noted their efforts to balance the right to protest and the protection of academic freedom with the rights of staff and students to conduct their work and study in a safe environment when responding to student encampments on campus.<sup>15</sup>

2.12 Many assessments of the response to antisemitism by universities were negative. Many examples provided in the report argued that university responses were lacking, uncoordinated, or dismissive. For example, the Australasian Union of Jewish Students (AUJS) Vice-President Mr Zachary Morris argued that universities are hesitant to engage, and maintain engagement, with certain issues:

One [systemic gap] that we've noticed is, if an incident is significant enough to be reported to the police, then in that case universities will be reluctant to investigate because they don't want to compromise a police investigation. But, if the police don't follow up because they don't perceive it as serious enough, then you almost have this issue where the higher the gravity of the incident, the less likely it is to get reported on or followed up.<sup>16</sup>

2.13 The Executive Council of Australia Jewry and AUJS argued that the failure of universities stemmed from inaction, often due to an inability to distinguish 'free

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<sup>13</sup> Legal and Constitutional Affairs Inquiry Report, p. 16.

<sup>14</sup> Legal and Constitutional Affairs Inquiry Report, p. 17.

<sup>15</sup> Legal and Constitutional Affairs Inquiry Report, p. 17.

<sup>16</sup> Legal and Constitutional Affairs Inquiry Report, p. 52.

speech’ and ‘academic freedom’ from antisemitic or discriminatory language, and the conflation of antiracist mechanisms with antisemitic responses, rather than providing a response focused on antisemitism.<sup>17</sup>

- 2.14 The Tertiary Education Quality and Standards Agency (TEQSA)—the independent national quality assurance and regulatory agency for higher education—expressed concern that education providers had not applied what they had learnt with regard to developing trauma-informed policies, procedures and grievance procedures in cases of sexual assault and sexual harassment to complaints of antisemitism.<sup>18</sup>
- 2.15 The committee recommended that, in collaboration with TEQSA and the Special Envoy to Combat Antisemitism, all Australian universities urgently review their complaints processes and give effect to any and all changes necessary to ensure these processes are known to and understood by students and staff, and deliver real and meaningful outcomes for complainants.<sup>19</sup> It also recommended the referral of an inquiry into antisemitism to this committee.

### **Regulation of universities**

- 2.16 Universities in Australia are subject to both Commonwealth legislation, as well as to the operation of various state or territory laws depending on their location.
- 2.17 The *Higher Education Support Act 2003* is the primary legislation governing universities. It imposes obligations on universities in order to remain eligible for public funding, and in particular:
- the objects of the Act include to support a higher education system that ‘promotes and protects freedom of speech and academic freedom’;<sup>20</sup>
  - defines ‘academic freedom’ to include: the freedom of academic staff and students to engage in intellectual inquiry, to express their opinions and beliefs, and to contribute to public debate, in relation to their subjects of study and research;<sup>21</sup>
  - requires a complaints mechanism to exist for both academic and non-academic purposes;<sup>22</sup> and

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<sup>17</sup> Executive Council of Australian Jewry, *Submission 97*, and Australasian Union of Jewish Students, *Submission 134* (submissions to Legal and Constitutional Affairs Inquiry).

<sup>18</sup> Legal and Constitutional Affairs Inquiry Report, p. 52. See, Ms Adrienne Nieuwenhuis, Acting Chief Commissioner, TEQSA, *Committee Hansard*, 20 September 2024, p. 72.

<sup>19</sup> Legal and Constitutional Affairs Inquiry Report, p. 55.

<sup>20</sup> *Higher Education Support Act 2003*, sub-paragraph 2-1(1)(a)(iv).

<sup>21</sup> Schedule 1, section 1.

<sup>22</sup> Section 19-45.

- requires that universities have a policy that upholds freedom of speech and academic freedom.<sup>23</sup>
- 2.18 It incorporates monitoring, investigation and enforcement powers under the *Regulatory Powers (Standard Provisions) Act 2014* to provide mechanisms for these provisions to be enforced.<sup>24</sup>
- 2.19 Universities are subject to oversight by TEQSA. TEQSA is responsible for regulating and assuring the quality of all providers of higher education in Australia pursuant to the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act). This Act provides for the administrative and quality evaluation of universities and provides for the creation of higher education standards by legislative instrument. These standards are used to regulate universities and courses of study.
- 2.20 The Higher Education Standards Framework (Threshold Standards) 2021, made pursuant to the TEQSA Act, include requirements that:
- access to support services and the promotion and fostering of a safe environment; as well as a critical-incident policy together with readily accessible procedures that cover the immediate actions to be taken in the event of a critical incident and any follow-up required;<sup>25</sup>
  - access to mechanisms that are capable of resolving grievances; policies and processes that deliver timely resolution of formal complaints; and their consistent and fair application;<sup>26</sup> and
  - the governing body takes steps to develop and maintain an institutional environment in which freedom of speech and academic freedom are upheld and protected; students and staff are treated equitably; the wellbeing of students and staff is fostered; informed decision making by students is supported and students have opportunities to participate in the deliberative and decision-making processes of the higher education provider.<sup>27</sup>
- 2.21 TEQSA does not have the legislative authority to issue standardised requirements on higher education providers. Rather, it issues guidance and statements of regulatory expectations about specific actions which it expects universities to take.<sup>28</sup>

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<sup>23</sup> Section 19-115.

<sup>24</sup> *Higher Education Support Act 2003*, part 5-8.

<sup>25</sup> Standard 2.3.

<sup>26</sup> Standard 2.4.

<sup>27</sup> Standard 6.1(4).

<sup>28</sup> Dr Mary Russell, Chief Executive Officer, TEQSA, *Committee Hansard*, 12 December 2024, p. 36.

- 2.22 On 10 December 2024, the *Universities Accord (National Student Ombudsman) Act 2024* received Royal Assent. This established the National Student Ombudsman as a new statutory function of the Commonwealth Ombudsman to deal with complaints about, and conduct investigations into, *any* action of higher education providers (aside from excluded actions).<sup>29</sup> The National Student Ombudsman will also provide universities with training and advice on handling complaints.
- 2.23 In addition, universities have obligations arising under other laws. For example, the *Racial Discrimination Act 1975* makes it unlawful to discriminate against a person based on their race, country or origin or ethnic origin.<sup>30</sup> It is also unlawful to do a public act that is reasonably likely to offend, insult, humiliate or intimidate a person because of their race, colour or national or ethnic origins.<sup>31</sup> The Australian Human Rights Commission can investigate complaints regarding alleged breaches of the Racial Discrimination Act. Further obligations may also apply to universities under state or territory law, depending on the state or territory in which it is located.<sup>32</sup>
- 2.24 Of broader relevance, the *Criminal Code Act 1995* criminalises:
- the urging of violence against groups or members of groups (which are distinguished by race, religion, nationality, national or ethnic origin or political opinion);<sup>33</sup>
  - the advocacy of genocide;<sup>34</sup> and
  - the public display of a prohibited Nazi symbol or prohibited terrorist organisation symbol, or the making of a gesture that is the Nazi salute.<sup>35</sup>

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<sup>29</sup> The Ombudsman will not be able to consider complaints regarding any action taken: regarding a person's employment, the appointment of a person to an office of a university; an action to the extent that it involves academic judgement; or any other kind of action prescribed by legislative instrument. *Universities Accord (National Student Ombudsman) Act 2024*, subsection 21AD(3).

<sup>30</sup> *Racial Discrimination Act 1975*, section 9.

<sup>31</sup> *Racial Discrimination Act 1975*, section 18C. This does not extend to things said or done reasonably and in good faith in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest.

<sup>32</sup> For example, *Human Rights Act 2004* (ACT), *Charter of Human Rights and Responsibilities Act 2006* (Vic), *Human Rights Act 2019* (Qld), and *Anti-Discrimination Act 1977* (NSW).

<sup>33</sup> Criminal Code, sections 80.2A and 80.2B. Of note, the Criminal Code Amendment (Hate Crimes) Act 2025 amends these provisions to provide that a person may be guilty of an offence where they are reckless as to whether the force or violence will occur. See further, Parliamentary Joint Committee on Human Rights, *Report 9 of 2024* (10 October 2024) pp. 93-102.

<sup>34</sup> Section 80.2D.

<sup>35</sup> Sections 80.2H and 80.2HA.

2.25 On Thursday, 6 February 2025, the Criminal Code Amendment (Hate Crimes) Bill 2024 passed both Houses of Parliament.<sup>36</sup> This bill (now Act) expands existing offences and introduces new offences for displaying prohibited hate symbols and urging or *threatening* violence against groups or members of groups with protected attributes. It also removed the existing defence of taking an action in good faith, and introduced mandatory minimum terms of imprisonment for several offences, including:

- public display of prohibited Nazi symbol or giving Nazi salute;<sup>37</sup>
- public display of prohibited terrorist organisation symbols;<sup>38</sup> and
- advocating force or violence through causing damage to property.<sup>39</sup>

### **Current studies examining racism at universities**

2.26 On 25 February 2024, the Australian Universities Accord recommended:

That to contribute to making the tertiary education system as safe as possible for students and staff, the Australian Government conduct a study into the prevalence and impact of racism across the tertiary education system, on campus and online, guided by an expert committee with representation from a wide range of stakeholder groups, with the Australian Tertiary Education Commission tasked with leading the response and acting on the outcomes.<sup>40</sup>

2.27 In response, the government stated that it would undertake a study into antisemitism, Islamophobia, racism and the experience of First Nations people in the university sector.<sup>41</sup> This study, being undertaken by the Australian Human Rights Commission (AHRC), is being led by the Race Discrimination Commissioner, Mr Giridharan Sivaraman. An interim report was published in December 2024, and noted that:

- Indigenous participants report enduring structural and interpersonal racism;
- Jewish students and staff cited a rise in antisemitism since October 2023, including extremist propaganda, intimidation, and exclusion. Concerns over safety were compounded by insufficient university responses;

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<sup>36</sup> The committee commented on the human rights compatibility of the measures in the bill as introduced into the House of Representatives on 12 September 2024 in its scrutiny [Report 9 of 2024](#) (10 October 2024). The committee raised concerns regarding the compatibility of the measure with the rights to freedom of expression and freedom of religion.

<sup>37</sup> *Criminal Code*, section 80.2H. Subject to a minimum sentence of 12 months imprisonment.

<sup>38</sup> *Criminal Code*, section 80.2HA. Subject to a minimum sentence of 12 months imprisonment.

<sup>39</sup> *Criminal Code*, section 80.2BE. Subject to a minimum sentence of 12 months imprisonment.

<sup>40</sup> Australian Universities Accord, *Final Report*, recommendation 33.

<sup>41</sup> The Hon Jason Clare MP, Minister for Education, *Responding to the Australian Universities Accord*, Media Release, 15 May 2024.

- Palestinian, Arab, and Muslim Students and Staff described hostility, threats, and discriminatory practices, including restrictions on cultural expression and prayer spaces;
- African students and staff frequently encountered severe racism and Asian participants reported being stereotyped; and
- reports of exclusion, social isolation, and fears of visa repercussions were common among international students.<sup>42</sup>

2.28 The next phase of the study will include a comprehensive survey of students and staff. The final report is due in June 2025.

2.29 In addition, the AHRC launched a national Anti-Racism Framework in November 2024, which ‘provides a roadmap for governments, business and community organisations to address all forms of racism in Australia’.<sup>43</sup>

### **French Model Code Review**

2.30 In 2019, former Chief Justice of the High Court of Australia the Hon Mr Robert French AC undertook an extensive review of the effectiveness of higher education standards, policies and practices to promote and protect freedom of expression and freedom of intellectual inquiry in higher education.<sup>44</sup>

2.31 The report included an extensive and comprehensive analysis of the legislative and regulatory framework regulating the operation of Australian universities. It also considered, in detail, permissible limits on freedom of speech and the application of definitions:

Constraints upon freedom of speech under the general law often require difficult judgments about which reasonable minds may differ. Laws affecting freedom of speech, both by way of protection and qualification of the freedom, often use rather general language. Its application can create challenges for administrators and law enforcement agencies and ultimately by courts. In the case of the domestic rules and policies of higher education providers the broader the terminology used to describe the circumstances in which expressive conduct can be constrained, the wider the potential application of constraints and the greater the risk of overreach even if resulting from ad hoc decisions short of a systemic approach. Its general conclusions draw attention to broad terminology utilised by universities within their own policies and rules.<sup>45</sup>

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<sup>42</sup> Australian Human Rights Commission (AHRC), *Interim Report on Racism at Australian Universities* (December 2024).

<sup>43</sup> AHRC, *The National Anti-Racism Framework: A roadmap to eliminating racism in Australia* (November 2024).

<sup>44</sup> The Hon Robert French AC, [Report of the Independent Review of Freedom of Speech in Australian Higher Education Providers](#) (March 2019) (Freedom of Speech Review) p. 137.

<sup>45</sup> The Hon Robert French AC, Freedom of Speech Review, p. 217.



2.32 The review recommend that higher education providers adopt at least umbrella principles operationalised in a code applicable to cases in which freedom of speech and academic freedom may be in issue.<sup>46</sup> It cautioned that:

There are cases in which there may be strong ‘harm’ arguments for not providing a platform for the lawful expression of an opinion. As a matter of general principle, the class of speech to be characterised as ‘harmful’ for the purpose of a model code should be as small as possible and, by its very definition, offer justification for the imposition of a restriction.<sup>47</sup>

2.33 As to the appropriate role of regulators, it stated:

Arming a regulator with a detailed statutory prescription would probably require additional compliance resourcing for the regulator. It would impose on the regulator the burden of contestable evaluative and normative judgments. It would diminish institutional autonomy. A statutory standard, beyond the level of generality presently reflected in the HE Standards made under the TEQSA Act, is at risk of being disproportionate to any threat to freedom of expression which exists or is likely to exist on Australian university campuses for the foreseeable future.

Effective statutory standards can and should be confined to broadly expressed requirements that higher education providers have in place policies reflected in their domestic rules or principles and applicable to student representative bodies, the objectives of which are the protection of freedom of speech as a free-standing value and academic freedom which encompasses freedom of expression peculiar to the distinctive character of higher education institutions and their academic staff in particular.<sup>48</sup>

2.34 As to the potential relevance of human rights legislation, the review stated:

A more far-reaching measure, in relation to freedom of speech generally, would be the imposition of a statutory duty on higher education providers in relation to freedom of expression which is modelled on the duty imposed on public authorities under the human rights legislation of Victoria, the ACT and now Queensland and in the United Kingdom under the Human Rights Act 1998 (UK). Freedom of speech and expression in that statutory context are terms which are the subject of an extensive body of domestic and international law which has worked out their application and limits case-by-case over many years. The imposition of such a statutory mandate would not involve the application of a novel legal standard although it would be necessary to ensure that its application to the decision-making of higher education providers covered the exercise of statutory discretions and the application of domestic rules and policies. The proposed Model Code should provide a way of responding to such a statutory duty in those places in which it already applies.

Some might say — if a law of the Commonwealth were to create a statutory mandate along the lines of the existing Victorian, Queensland or ACT

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<sup>46</sup> The Hon Robert French AC, Freedom of Speech Review, p. 219.

<sup>47</sup> The Hon Robert French AC, Freedom of Speech Review, p. 221.

<sup>48</sup> The Hon Robert French AC, Freedom of Speech Review, p. 222.

provisions applicable to higher education providers – why should it not apply to all public authorities throughout Australia? Such an application would appear to be within the constitutional authority of the Commonwealth Parliament to make laws with respect to external affairs, given the inclusion of freedom of expression in the International Covenant on Civil and Political Rights to which Australia is a party. This Review does not propose a general statutory duty of the kind imposed in Victoria, Queensland and the ACT as one of its recommendations. Such a proposal would have policy implications with which it is not necessary to engage for present purposes. The recommendation of a Model Code, operationalising umbrella principles, coupled with cognate amendments to the HES Act and the HE Standards should be sufficient unto the day.<sup>49</sup>

2.35 In relation to ‘hate speech’ and freedom of speech, the review examined the definition of hate speech across other jurisdictions, noting:

[I]t is desirable that if the term ‘hate speech’ is used in university rules or policies it should be defined at a level that is relatable to ordinary usage, rather than at a level which widens the range of constraints which may be imposed on expressive conduct well beyond that which ordinary people would understand as involving ‘hate’ or incitement to ‘hate’.<sup>50</sup>

2.36 The Hon Robert French AC developed a Model Code for the Protection of Freedom of Speech and Academic Freedom in Australian Higher Education Providers (the code). The objects of the code are:

- (a) to ensure that the freedom of lawful speech of staff and students of the university and visitors to the university is treated as a paramount value and therefore is not restricted nor its exercise unnecessarily burdened by restrictions or burdens other than those imposed by law and set out in the principles of the code;
- (b) to ensure that academic freedom is treated as a defining value by the university and therefore not restricted nor its exercise unnecessarily burdened by restrictions or burdens other than those imposed by law and set out in the principles of the code; and
- (c) to affirm the importance of the university’s institutional autonomy under law in the regulation of its affairs, including in the protection of freedom of speech and academic freedom.

2.37 The code provides that staff and students at the relevant university enjoy freedom of speech exercised on university land or in connection with the university subject only to specific restraints or burdens.<sup>51</sup> It provides that universities should have regard to the principles of the code when drafting, reviewing, amending or interpreting policies, rules, or delegated legislation. It

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<sup>49</sup> The Hon Robert French AC, Freedom of Speech Review, pp. 217-223.

<sup>50</sup> The Hon Robert French AC, Freedom of Speech Review, p. 61.

<sup>51</sup> The Hon Robert French AC, Freedom of Speech Review, p. 230.

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provides that universities' duty to foster the wellbeing of staff and students does not extend to a duty to protect any person from feeling offended or shocked or insulted by the lawful speech of another.

### **Adoption of the Model Code**

- 2.38 Following the review, the federal government asked Professor Sally Walker AM to review the implementation of the voluntary code by universities, to provide institutions with advice and suggestions on options to address any evident gaps in policies and to provide the minister with advice on the overall alignment of relevant policies across the university sector with the principles of the code. Professor Walker provided her report in November 2020.<sup>52</sup> At this time, 33 of 42 universities had implemented the code – nine were assessed as fully aligning, 14 were mostly aligned, four were partly aligned and six were not aligned.
- 2.39 Professor Walker made several recommendations, including that universities should adopt a single, overarching code or policy dealing with freedom of speech and academic freedom and there should be some amendments to the code, and a complaints process to be included in the code. The government endorsed and agreed to all those recommendations.<sup>53</sup> Amendments were subsequently made to the *Higher Education Support Act 2003* to remove a requirement for universities to have a policy on the undefined concept of 'free intellectual inquiry' and instead must have 'a policy that upholds freedom of speech and academic freedom'.<sup>54</sup>

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<sup>52</sup> Professor (Emeritus) Sally Walker, [Review of the Adoption of the Model Code on Freedom of Speech and Academic Freedom](#), 2020.

<sup>53</sup> Australian Government, [Review of Adoption of the Model Code on Freedom of Speech and Academic Freedom in Higher Education Australian Government Response](#) (2021).

<sup>54</sup> *Higher Education Support Act 2003*, section 19-115.



## Chapter 3

### Issues raised by submitters and witnesses

- 3.1 This chapter outlines the key issues raised by submitters and witnesses during the inquiry.
- 3.2 Submitters and witnesses universally agreed that antisemitism is unlawful and unconscionable, and that its manifestation in the community and at universities must be addressed. Submitters expressed some differing views as to the extent of antisemitism in Australian universities in practice, and the most appropriate responses to such conduct or sentiment.

#### Prevalence of antisemitism on campuses

- 3.3 The committee heard a range of evidence regarding complaints of, or concerns regarding, the existence of antisemitism and/or instances of antisemitism, on university campuses, and in Australian society more broadly.<sup>1</sup>
- 3.4 The Legal and Constitutional Affairs, inquiry into the Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2) report outlined a range of evidence received from university students expressing concern of antisemitism on campus.<sup>2</sup> For example, the Australasian Union of Jewish Students (AUJS) submitted that ‘Jewish students face an unprecedented increase in fear, intimidation, and harassment from both members of the university community and non-student external actors entering campus’.<sup>3</sup> Mr Noah Loven, President of AUJS further stated that since that inquiry, ‘the types of incidents we are seeing have become increasingly extreme’ on university campuses.<sup>4</sup>
- 3.5 Both Mr Hugh de Kretser, President of the Australian Human Rights Commission (AHRC), and Race Discrimination Commissioner Mr Giridharan Sivaraman agreed that there is a rise in antisemitism, which is intensifying.<sup>5</sup> Mr de Kretser stated that the AHRC has seen a rise in the number of complaints about antisemitism, as well as Islamophobia ‘and other forms of racism

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<sup>1</sup> See, for example, Northern Rivers Jewish Community Association, *Submission 31*.

<sup>2</sup> Legal and Constitutional Affairs, inquiry into the Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2) report, pp. 7–10.

<sup>3</sup> Australasian Union of Jewish Students, *Submission 134*, p. 4, *Submission 664*, p. 1, (submission to Legal and Constitutional Affairs, inquiry into the Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2), October 2024).

<sup>4</sup> Mr Noah Loven, Australasian Union of Jewish Students, *Committee Hansard*, 29 November 2024, p. 34.

<sup>5</sup> Mr Hugh de Kretser, President, Australian Human Rights Commission (AHRC), *Committee Hansard*, 22 January 2025, p. 33.

connected to the violence in the Middle East'. He also noted that complaints numbers to the AHRC 'will only be a tiny subset of the broader antisemitism', stating that law enforcement data also provides information as to hate crimes being committed.<sup>6</sup>

3.6 The Special Envoy to Combat Antisemitism, Ms Jillian Segal, stated that antisemitism has become an embedded part of the culture of universities.<sup>7</sup> The Zionist Federation of Australia stated that there has been 'an explosion of antisemitic incidents' since 7 October 2023.<sup>8</sup> AUJS provided examples of rises in extremism on university campuses:

- the display of posters advocating for the release of 24 Palestinian prisoners, many identified as members of terrorist organisations, at the University of Sydney; and
- a protest at Western Sydney University organised by the WSU 4 Palestine Collective, during which participants displayed a banner stating 'Haniyeh's Building', referencing former Hamas leader Ismail Haniyeh.<sup>9</sup>

3.7 It stated that these incidents raise serious concerns about the explicit support for terrorist organisations on Australian university campuses, contributing to a hostile climate that threatens the safety of all students and creates a particularly uncomfortable environment for Jewish students, and which reflects a disturbing rise in extremism on campus.<sup>10</sup>

3.8 Dr David Slucki, Director of the Australian Centre for Jewish Civilisation at Monash University, stated that, while antisemitism has always been present in Australia, it appears to be 'the most public and visible it's been'.<sup>11</sup> He also noted that increases in antisemitism appear to be linked with increases in other racial prejudice:

We do see the phenomena of antisemitism and Islamophobia as somehow interlinked, and that partly goes to the fact that they've both spiked at the same time, when there's been violence and conflict in the Middle East. We're trying to better understand why that's the case and how we can create a university environment that mitigates some of that tension and makes students—all students—feel safer. All this work won't benefit only Jewish,

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<sup>6</sup> Mr Hugh de Kretser, President, AHRC, *Committee Hansard*, 22 January 2025, p. 33.

<sup>7</sup> Ms Jillian Segal, Special Envoy to Combat Antisemitism, *Committee Hansard*, 29 November 2024, p. 41.

<sup>8</sup> Zionist Federation of Australia, *Submission 15*, p. 2.

<sup>9</sup> AUJS, *Submission 2*, p. 2.

<sup>10</sup> AUJS, *Submission 2*, p. 2.

<sup>11</sup> Dr David Slucki, Director, Australian Centre for Jewish Civilisation, *Committee Hansard*, 22 January 2025, p. 28.

Muslim and Palestinian students. This work will benefit all students across all campuses.<sup>12</sup>

- 3.9 The Australia/Israel and Jewish Affairs Council noted that the Australian Jewish University Experience Survey, published in July 2023, indicated that two-thirds of Jewish students had experienced antisemitism on campus:

According to the survey, 85% of Jewish students didn't submit a complaint after the most impactful incident of antisemitism in the previous 12 months. Asked why they didn't submit a complaint, 61% responded that it wouldn't make a difference, and 48% said that the university wouldn't take it seriously. Smaller numbers reflected worries about confidentiality (13%), that they wouldn't be believed (12%) or concerns their grades would be affected (10%).<sup>13</sup>

- 3.10 However, it argued that complaints data should not solely be relied on given the reasons why students may not wish to submit formal complaints. In this regard, Mr Zachary Morris, Vice-President of AUJS, stated that students had approached AUJS representatives after their appearance before the Senate Standing Committee on Legal and Constitutional Affairs in October 2024 to disclose further stories which had affected them.<sup>14</sup>

- 3.11 Group of Eight Australia (which represents eight of Australia's research-intensive universities) submitted that research undertaken by the Scanlon Foundation Research Institute notes that, while social cohesion has remained steady over the last 12 months, it is sitting around six points lower than its average during the 2010s and at its equal lowest since the first such survey in 2007.<sup>15</sup> The National Tertiary Education Union, similarly, highlighted the results of that research:

34% of Australians have a somewhat or very negative attitude to Muslims, an increase from 27% before the October attacks on Israel but still better than in the period 2018-2020. Negative attitudes to Jewish people also increased in the past year from 9% to 13% with positive views declining by 8%. In the same period positive attitudes to Buddhists, Hindus and Sikhs also declined by 6-8%. The percentage of people having a negative view of religions other than their own rose by 10% to 48% leading to the observation that "while attitudes to Australia's Muslim and Jewish communities is a particular area of concern, relations towards and across all faiths appear to be under pressure".<sup>16</sup>

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<sup>12</sup> Dr David Slucki, Director, Australian Centre for Jewish Civilisation, *Committee Hansard*, 22 January 2025, p. 27.

<sup>13</sup> Australia/Israel and Jewish Affairs Council, *Submission 16*, p. 3.

<sup>14</sup> Mr Zachary Morris, Vice-President, AUJS, *Committee Hansard*, 29 November 2024, p. 36.

<sup>15</sup> Group of Eight Australia, *Submission 19*, p. 2. In reference to James O'Donnell, Qing Guan and Trish Prentice, *Mapping Social Cohesion*, Scanlon Foundation Research Institute (2024).

<sup>16</sup> National Tertiary Education Union, *Submission 17*, p. 2.

3.12 Universities Australia commented that, more broadly, there have been many reports ‘that university campuses are places of protest, intensively in the last 12 months, that we haven’t seen really since the Vietnam War protests’.<sup>17</sup>

3.13 Numerous universities gave evidence regarding incidents of and complaints of antisemitism on their campuses. The Australian National University stated:

In 2024 there were 34 disclosures of racism through the online disclosure tool, 10 of which were determined to be related to antisemitism. This does not necessarily mean there have been 10 separate incidents of antisemitic behaviour, as a single incident may receive multiple disclosures, as bystanders and those directly impacted can make a disclosure and access support.

A separate reporting tool (Figtree) is available for ANU staff to report workplace safety incidents and hazards. Since October 2023, there have been four total incidents of antisemitism lodged in Figtree, by two staff members...

Since October 2023, ANU has received and investigated 11 discipline cases related to the Middle East protests and encampment. There have been findings of misconduct in three of these cases, which resulted in two exclusions (one subsequently overturned at appeal), and one reprimand/partial denial of access to ANU facilities.<sup>18</sup>

3.14 Monash University stated that prior to 2024, there were no recorded reports by students regarding antisemitic behaviour by university staff. It stated that during an on-campus encampment protest, three reports about staff conduct were raised.<sup>19</sup> It noted that formal reports do not capture the full extent of the prevalence of nature of antisemitic behaviour, stating that discussions with student leaders and Jewish staff had been an important source of information for the university. It further stated that during these protests, university regulations were invoked to temporarily exclude members of the public (who were not associated with the university) from the premises, permanently withdraw permission to be on campus for a small number of people, and then to issue a general directive to withdraw the permission of *all* members of the public to be on Monash premises ‘if their purpose [was] to engage in protest activity’.<sup>20</sup> As to the prevalence of antisemitism more broadly, Professor Sharon Pickering (Vice Chancellor and President) posited, ‘I believe antisemitism is systemic in Australian society, of which universities are a part. It is impossible

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<sup>17</sup> Mr Luke Sheehy, Chief Executive Officer, Universities Australia, *Committee Hansard*, 29 November 2024, p. 7.

<sup>18</sup> The Australian National University, *Submission 33*, p. 5.

<sup>19</sup> Monash University, *Submission 21*, p. 3.

<sup>20</sup> Monash University, *Submission 21*, p. 5.



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we would have seen a synagogue burned and cars burned in the past week if it was not systemic'.<sup>21</sup>

3.15 The University of Melbourne stated that since 1 January 2024, it has received a total of 479 formal complaints about all matters relating to student experience, of which 39 related to the conflict in the Middle East, and 12 related directly to allegations of antisemitism.<sup>22</sup> It stated that most of the 12 formal complaints related to posters and stickers on campus. For the same period, the University has a total of 112 reports related to the Middle East conflict, of which 24 related directly to allegations of antisemitism. It stated that complaints and reports alleging antisemitism also related to complaints of bias in the curriculum, as well as feelings of being excluded from participating in university life 'because of the presence of protest activity, or what they felt was anti-Israeli and/or antisemitic sentiment'.<sup>23</sup> Professor Roberts, Provost and Interim Vice Chancellor, stated that the university is seeing a reduction in the number of incidents being reported by staff on campus.<sup>24</sup>

3.16 Professor Mark Scott AO, Vice Chancellor and President of the University of Sydney, stated:

Since October 7 we have seen a significant increase in reports of antisemitism in the broader community and certainly on campus, but there have been incidents prior to that. I would say if you're looking at the trend line—and we've been reflecting on this significantly—complaints around antisemitism at the university were significantly higher in the first semester, significantly higher while the encampment was taking place and immediately in the aftermath of that, but significantly reduced in the second semester—around 10 per cent of the volume of complaints.<sup>25</sup>

3.17 He further stated that the kinds of issues which gave rise to those earlier complaints in the first semester were largely driven by activities in and around an on-campus encampment, namely 'concern at the encampment's presence, concern at some protests and chants that happened on the back of the encampment and other activities in and around the encampment'.<sup>26</sup> He stated that many were 'generalised environmental kinds of complaints rather than

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<sup>21</sup> Professor Sharon Pickering, Vice Chancellor and President, Monash University, *Committee Hansard*, 12 December 2024, p. 19.

<sup>22</sup> University of Melbourne, *Submission 37*, p. 3.

<sup>23</sup> University of Melbourne, *Submission 37*, p. 3.

<sup>24</sup> Professor Nicola Phillips, Provost and Interim Vice Chancellor, University of Melbourne, *Committee Hansard*, 12 December 2024, p. 10.

<sup>25</sup> Professor Mark Scott AO, Vice Chancellor and President, University of Sydney, *Committee Hansard*, 29 November 2024, p. 14.

<sup>26</sup> Professor Mark Scott AO, Vice Chancellor and President, University of Sydney, *Committee Hansard*, 29 November 2024, p. 23.

specific personal experiences'. In this regard, one submitter described the encampment as a 'hostile space', in which they observed the use of derogatory language including 'descriptions of Israel as a genocidal colonial apartheid'.<sup>27</sup> They stated that this made them feel alienated and anxious, and expressed concern regarding the lock down of campus buildings posed by the encampment to the university Chancellor, which meant that students were locked out of campus buildings and unable to access their personal belongings.<sup>28</sup>

- 3.18 Mr Amit Chakma, Vice-Chancellor of the University of Western Australia, stated that the university has received 44 formal complaints, the majority of which related to positions taken and statements made during debate at a special general meeting of the student guild in October 2024.<sup>29</sup>
- 3.19 The University of Newcastle stated that in 2023, more than 9,700 students responded to the Student Feedback on the University of Newcastle Survey, with 92.8 per cent indicating that they felt safe in the campus environment. The University of Queensland indicated that during a period where an encampment was present on campus, the university received 43 complaints relating to 31 separate incidents, 15 of which involved allegations of antisemitism and six of which related to protests on campus, with the remaining concerns relating to a range of issues associated with the encampments.<sup>30</sup> Western Sydney University noted that in 2024 it had received 62 complaints relating to a range of matters, of which '12 were substantiated with regard to antisemitism'.<sup>31</sup>
- 3.20 Queensland University of Technology advised that from October 2023 until 29 November 2024, the university had received 27 complaints regarding behaviour on campus, none of which related specifically to antisemitism.<sup>32</sup> Professor Margaret Sheil, Vice Chancellor and President, also noted complaints regarding a set of slides which had been shown at a National Symposium on Unifying Anti-Racist Research And Action organised by a research institute from the university (but not held on university campus) in January 2025.<sup>33</sup> The Vice Chancellor apologies for the hurt and concern that this had caused, and

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<sup>27</sup> Name Withheld, *Submission 47*, p. 1.

<sup>28</sup> Name Withheld, *Submission 47*, p. 2.

<sup>29</sup> Mr Amit Chakma, Vice-Chancellor, University of Western Australia, *Committee Hansard*, 12 December 2024, p. 25.

<sup>30</sup> Professor Deborah Tery, Vice Chancellor and President, University of Queensland, *Committee Hansard*, 22 January 2025, p. 8.

<sup>31</sup> Professor George Williams, Vice Chancellor and President, Western Sydney University, *Committee Hansard*, 22 January 2025, p. 9.

<sup>32</sup> Queensland University of Technology, *Submission 12*, p. 1.

<sup>33</sup> Professor Margaret Sheil, Vice Chancellor and President, Queensland University of Technology, *Committee Hansard*, 5 February 2025, pp. 10, 14.

expressed sadness that this had overshadowed the symposium. She noted that the university has commissioned an independent review to establish the facts of those events and the extent to which they may have aligned with the university's policies and code of conduct.<sup>34</sup> She also advised that the university had received a large volume of written correspondence regarding the symposium expressing a range of views.<sup>35</sup>

- 3.21 Professor S. Bruce Dowton, Vice Chancellor and President of Macquarie University, stated that complaints of antisemitism and related activities at Macquarie University were limited:

We have received a limited number of complaints about antisemitism within our community. We have had no attempts at encampment. We had a small number of small, peaceful pro-Palestinian protests in 2023 and 2024. We had one student complaint about a classroom statement, which was addressed. We had an antisemitic graffiti campaign in February 2024 on the campus, which was swiftly dealt with in collaboration with the New South Wales police leading to successful prosecution. An Israeli flag was removed from a student's stall during orientation week and discarded by a Jewish student opposing the Israeli government's actions. This matter was managed by the dean of students. One academic staff member's activity has attracted significant attention and complaint to the university.<sup>36</sup>

- 3.22 With respect to complaints regarding the conduct of an individual research fellow associated with the university (but not involved in regular teaching activities), Professor Dowton stated that the university did not endorse the person's comments, and the matter had been addressed through the worker's supervisor:

The university maintains its position in solidarity with statements I've already made around racism, vilification and discrimination. We are beholden to, as you pointed out, our policy framework and ultimately contractual obligations with that staff member, as embodied in the enterprise agreement. This is the dilemma and the conundrum that my university and every university in Australia finds itself in: the intersection between a range of things which are essentially about social norms and social values—stopping short of the law and what the law demands—and our employment and contractual arrangements.<sup>37</sup>

- 3.23 He stated that the university's enterprise agreement prescribes steps that must be taken to address accusations that have a reasonable level of concern:

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<sup>34</sup> Professor Margaret Sheil, Vice Chancellor and President, Queensland University of Technology, *Committee Hansard*, 5 February 2025, p. 11.

<sup>35</sup> Queensland University of Technology, answer to question on notice (received 7 February 2025).

<sup>36</sup> Professor S. Bruce Dowton, Vice Chancellor and President, Macquarie University, *Committee Hansard*, 5 February 2025, p. 1.

<sup>37</sup> Professor S. Bruce Dowton, Vice Chancellor and President, Macquarie University, *Committee Hansard*, 5 February 2025, p. 3.

Those steps include putting the allegation to the academic staff member in writing and having them have a chance to respond to that. The university then has available to it a range of steps beyond that that it can go through under the enterprise agreement. Those include impanelling a so-called misconduct investigation committee, which has one member appointed by the university, one member appointed by the union and a third member agreed to by both parties. That misconduct investigation committee proceeds forward with its investigation and reports back to the university. Then, based upon the findings of that misconduct investigation committee, the university can decide to sanction the individual in a variety of different ways...<sup>38</sup>

- 3.24 Professor Andrew Parfitt, Vice Chancellor and President of University of Technology Sydney, stated that the university has received a small number of complaints from Jewish staff and students 'who've felt unsafe or unwelcome on our campus'.<sup>39</sup>
- 3.25 The University of Adelaide stated that it is not aware of Jewish students or staff being directly targeted by protesters since 7 October 2023, but 'we are aware that protest activity may have likely caused distress and discomfort to a number of staff and students, including Jewish students'.<sup>40</sup> The university advised that since November 2022, it had received 18 complaints referring to allegations of antisemitism (including eight complaints made while the encampment was present), none of which were substantiated following investigation by the university's Integrity Unit.<sup>41</sup> It stated that during the encampment in May 2024, the University received reports relating to the use of contested phrases and disruption, however 'there were no reports of activity that the University found to be discriminatory, inciting hatred or engaging in racial vilification'.<sup>42</sup> It stated that 'misconduct matters related to the encampment period' led to two members of the public being indefinitely excluded from the University, and one student was issued an interim exclusion with a referral made to the Student Misconduct Tribunal to consider their conduct.<sup>43</sup> Professor Peter Hoj AC, Vice Chancellor and President of the university, stated that, to his knowledge, in the complaints

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<sup>38</sup> Professor S. Bruce Dowton, Vice Chancellor and President, Macquarie University, *Committee Hansard*, 5 February 2025, p. 7.

<sup>39</sup> Professor Andrew Parfitt, Vice Chancellor and President, University of Technology Sydney, *Committee Hansard*, 29 November 2024, p. 12.

<sup>40</sup> University of Adelaide, *Submission 32*, p. 5.

<sup>41</sup> University of Adelaide, answer to question on notice (received 20 December 2024).

<sup>42</sup> University of Adelaide, *Submission 32*, p. 5.

<sup>43</sup> University of Adelaide, *Submission 32*, p. 7.

that have been made to the university, no direct findings of antisemitic behaviour were found.<sup>44</sup>

- 3.26 Several submitters expressed concern that complaints of antisemitism (or responses to alleged antisemitism) may misidentify legitimate statements and/or protests regarding activity in the Middle East as being antisemitic.<sup>45</sup> For example, a group of 15 academic and honorary staff from the University of Melbourne submitted that while attempts to quantify instances of antisemitism typically rely on the numbers of complaints from different groups, many such complaints 'arise from a misapprehension that criticism of Israel and Zionism, and in turn recognition of Palestinian self-determination and sovereignty, is antisemitic'.<sup>46</sup> Similarly, the Australian Jewish Democratic Society submitted that, while ethnic racial or political stereotyping is unacceptable:

it is unavoidable that public debate and protest will disturb and challenge supporters of Israel but policing this debate cannot be put onto universities and simply classified as "antisemitism" or "hate speech.

For example, the use of the term "genocide" to label Israeli actions in Gaza is considered by many Jews as reprehensible. Likewise, the slogan "from the river to the sea Palestine will be free" is considered as calling for the destruction of Israel or the genocide of Jews. These issues are fought out daily in the letters pages of the dailies and in other media. Debate over all these issues is also current in Israel.

The International Court of Justice...is also considering whether genocide has been committed in Gaza. Whether or not one thinks the case has merit, the question of genocide and related issues is one that is part of public and legal debate in a free society, disturbing as it may be.<sup>47</sup>

- 3.27 Jews Against the Occupation '48 denied that students and staff at universities are subject to 'an objectively significant level of antisemitic attacks', arguing that 'the overwhelming majority of allegedly antisemitic incidents are in fact legitimate critique of Israel and Zionism'.<sup>48</sup> It stated that 'Pro-Palestine activism may be uncomfortable for Jews whose identity is enmeshed with Israel and Zionism, but they are not objectively unsafe'.<sup>49</sup>
- 3.28 Dr Noam Peleg argued that 'there is no compelling, independently verified, evidence to suggest that antisemitism is prevailing over other forms of racism

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<sup>44</sup> Professor Peter Hoj AC, Vice Chancellor and President, University of Adelaide, *Committee Hansard*, 12 December 2024, p. 21.

<sup>45</sup> See, for example, Name Withheld, *Submission 8*, p. 1; Academics for Palestine (WA), *Submission 34* p. 3; Amnesty International, *Submission 39*.

<sup>46</sup> Group of academic staff and honorary faculty at the University of Melbourne, *Submission 24*, p. 2.

<sup>47</sup> Australian Jewish Democratic Society, *Submission 18*, p. 2.

<sup>48</sup> Jews Against the Occupation '48, *Submission 41*, p. 1.

<sup>49</sup> Jews Against the Occupation '48, *Submission 41*, p. 2.

on campuses, especially not when it comes to racism against Aboriginal and Torres Strait Islander students and staff'.<sup>50</sup> He argued that some data gathered by 'biased groups' such as the Executive Council of Australian Jewry include statements that Israel is committing war crimes as antisemitic, which he said are not accurate examples of antisemitism.<sup>51</sup> He argued that, while racism is a problem in Australia and is not acceptable:

[A]nti-Zionism and criticism of Israel are not antisemitic events or speech, but rather it is the opposite; it is an anti-racist and anti-colonial stand. Speaking for human rights and Palestinian liberation, against Zionism and Israeli settler colonialism, apartheid, and genocide is not antisemitic. None of these views make anyone inherently unsafe; at most, it can make someone uncomfortable. The two are not the same, and their intentional conflation is dangerous. Feeling discomfort, being challenged, and facing opinions that you don't agree with are all part of democratic life and public debate, of being in an education setting like a university campus.<sup>52</sup>

### **The legal and regulatory framework**

3.29 As set out in Chapter 2, Australian universities are subject to a legal and regulatory framework governing their operations, as well as being subject to general anti-discrimination laws.

3.30 The Tertiary Education Quality and Standards Agency (TEQSA), the national higher education regulator, noted that it ensures that registered universities meet their obligations under the *Higher Education Standards Framework (Threshold Standards) 2021* (the Threshold Standards):

TEQSA's response to the recent rise in antisemitism in the context of student protests and encampments has focused on directly engaging providers and offering guidance to ensure they are meeting their obligations under the Threshold Standards. We have also directly engaged students and other stakeholders to better understand their experiences and inform our future guidance.<sup>53</sup>

3.31 It noted that TEQSA's regulatory approach is determined by legislation and 'the legislated principles of necessity, risk and proportionality':

Providers are responsible for managing their own risk and are expected to demonstrate self-assurance consistent with the expectations set out in the Threshold Standards. In addition to cyclical re-registration assessments, TEQSA monitors providers based on insights from the providers' assessed risk profile, environmental scanning of providers' activities, complaints and emerging sector risks.

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<sup>50</sup> Dr Noam Peleg, *Submission 48*, p. 2.

<sup>51</sup> Dr Noam Peleg, *Submission 48*, p. 3.

<sup>52</sup> Dr Noam Peleg, *Submission 48*, p. 4. Similar concerns were raised by Dr Lana Tatour and Dr Andrew Brooks, *Submission 49*.

<sup>53</sup> Tertiary Education Quality and Standards Agency (TEQSA), *Submission 20*, p. 1.

TEQSA's regulatory approach focuses on ensuring providers meet their obligations under the Threshold Standards, which set minimum requirements for entering and operating within Australia's higher education sector. Recognising the diversity of providers across the sector, these standards emphasise high-level principles over detailed prescriptive measures.<sup>54</sup>

- 3.32 It noted that the Threshold Standards relevantly require providers to comply with all legislation relevant to their operations, and to ensure that institutional policies and procedures appropriately enact those obligations. In the context of antisemitism, it stated that 'providers must adhere to relevant equal opportunity, anti-discrimination, and anti-vilification legislation while fostering an environment free from all forms of racism and discrimination', as well as fostering the wellbeing of staff and students while protecting academic freedom and freedom of speech.<sup>55</sup> It noted that it does not have the authority to make a legal determination about a provider's compliance with anti-vilification laws, or to make findings about an individual person's compliance with anti-discrimination laws.
- 3.33 TEQSA explained that where it is concerned that a provider may not be meeting the Threshold Standards, it may request relevant information from the provider, and may then seek assurance from the provider that they are responding adequately to an issue, taking corrective action, or undertaking review and improvement activities to better manage the risks.<sup>56</sup> Should TEQSA consider that the provider's response is insufficient, or if there is a lack of corrective action, it may impose administrative sanctions on the provider, including: conditions on their registration; shortening their registration period; or cancelling their registration. It stated that TEQSA may apply for financial penalties if a provider breaches a condition of registration.<sup>57</sup>
- 3.34 As to its actions concerning instances of antisemitism after 7 October 2023, TEQSA advised that it has: collected complaints data from universities; established a regulatory group to coordinate monitoring activities; directly engaged with providers experiencing heightened risks and sought assurances from those providers about how they are managing those risks; directly engaged with students; issued sector alerts and interim advice; and engaged with the Australian Human rights Commission's 'Respect at Uni study'.<sup>58</sup> It stated that

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<sup>54</sup> TEQSA, *Submission 20*, p. 1.

<sup>55</sup> TEQSA, *Submission 20*, p. 2.

<sup>56</sup> TEQSA, *Submission 20*, p. 2.

<sup>57</sup> TEQSA, *Submission 20*, p. 2.

<sup>58</sup> TEQSA, *Submission 20*, p. 3.

its work during and following student protests and encampments led to preliminary findings, including:

- some universities' Acts of establishment, statutes and by-laws appeared to constrain their ability to respond to protests and encampments, limit access to campus, and respond to unacceptable behaviour, including antisemitism;
- some universities' policies and procedures were not fit for purpose;
- universities that maintained a close operational liaison with state police were better able to prepare for protests, manage escalations and respond effectively when issues arose; and
- universities that established timely processes to determine unacceptable behaviour appear to have had the most success in maintaining a safe environment for students and staff.<sup>59</sup>

3.35 The Commonwealth Ombudsman noted that the National Student Ombudsman (which took effect from 1 February 2025) would 'aim to work constructively with universities with respect to any complaints to the NSO or investigations by the NSO about how universities are addressing antisemitism on campuses'.<sup>60</sup> It noted that it will have the power to: investigate complaints regarding the way in which universities have engaged with a student's complaint (including on its own motion);<sup>61</sup> collect and analyse complaints data; make public statements about the findings of an investigation; and provide reports to the Minister for Education.<sup>62</sup> Mr Iain Anderson, the Commonwealth Ombudsman, stated that ombudsmen drive a strong improvement culture in institutions and leads to those institutions taking complaints more seriously.<sup>63</sup>

3.36 As to the complaints function of the National Student Ombudsman, Mr Anderson stated:

It's not merits review as such. We're not trying to second-guess the decision. We do actually still have to have regard to whether the student's concern has been properly addressed. One of the things I'll be looking at, and that the power to make a recommendation is conditioned by, is whether I think that the student has been treated unjustly, improperly, in a discriminatory way, unlawfully or in a way that's otherwise wrong in all the circumstances. While we're not doing merits review, we're still concerned with whether the

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<sup>59</sup> TEQSA, *Submission 20*, p. 7.

<sup>60</sup> Commonwealth Ombudsman, *Submission 14*, p. 1.

<sup>61</sup> This aspect of the National Student Ombudsman's remit was clarified by the Commonwealth Ombudsman, who stated 'we're not necessarily looking at the student's complaint itself'. Mr Iain Anderson, Commonwealth Ombudsman, *Committee Hansard*, 29 November 2024, p. 49.

<sup>62</sup> Commonwealth Ombudsman, *Submission 14*, pp. 3-4.

<sup>63</sup> Mr Iain Anderson, Commonwealth Ombudsman, *Committee Hansard*, 29 November 2024, p. 48.



university has properly engaged with the underlying concern of the student, and not just the process by which they've done it.<sup>64</sup>

- 3.37 Further, Dr Terri Macdonald, Director of Public Policy and Strategic Research with the National Tertiary Education Union, noted that many university enterprise agreements contain clauses related to ensuring academic freedom:

[W]hile universities have in place robust protections for academic freedom via NTEU negotiated collective agreements, responses by university managements to discourse around the war in Gaza has varied...[A]ll NTEU negotiated agreements have clauses around expressions of academic freedom and...every one of those agreements expressly states that vilification [is] not protected by academic freedom.<sup>65</sup>

### **University policies and processes, and views as to responses to antisemitism**

- 3.38 The committee heard a range of evidence regarding the processes and policies which universities have in place relating to complaints of antisemitism and student/staff safety more generally, and views as to the sufficiency of universities' responses to complaints of antisemitism. The evidence largely raised concerns as to the extent to which those policies, processes and frameworks were responding effectively to an escalation in antisemitism and decline in social cohesion more generally.

- 3.39 The committee received submissions from 15 universities regarding complaints of antisemitism on their campuses (particularly since 7 October 2023), and the processes they have in place for complaints handling, campus safety and academic freedom. These universities universally condemned antisemitism and many highlighted the operation of their various student codes of conduct and other related policies.<sup>66</sup>

- 3.40 Monash University stated that its actions to respond to and prevent antisemitism has been based on: deep listening and open dialogue; clear communication about the expectations of rights and responsibilities in the university; an effective working relationship with police; and the consistent and timely application of policies and regulations.<sup>67</sup> It stated that Monash University has existing consultation mechanisms between senior staff and students, including the Vice-Chancellor's Student Presidents' Advisory Forum, which meets three times a year and reports annually to the University Council.<sup>68</sup> It also noted that the university models a trauma-informed approach to safe learning

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<sup>64</sup> Mr Iain Anderson, Commonwealth Ombudsman, *Committee Hansard*, 29 November 2024, p. 52.

<sup>65</sup> Dr Terri Macdonald, Director of Public Policy and Strategic Research, National Tertiary Education Union, *Committee Hansard*, 22 January 2025, p. 19.

<sup>66</sup> See, for example, University of Melbourne, *Submission 37*, p. 4.

<sup>67</sup> Monash University, *Submission 21*, p. 1.

<sup>68</sup> Monash University, *Submission 21*, p. 4.

environments, including by providing sensitive content warnings when discussing subjects in the classroom that ‘might produce strong emotions’.

3.41 It noted that the university is supporting the ‘Monash Initiative for Rapid Research into Antisemitism’, a project involving a series of discrete research projects designed to establish best practices in how to identify, counteract and prevent antisemitism.<sup>69</sup> It also highlighted a ‘Campus Cohesion Project’ announced in May 2024, which would be an action-based research program to develop practical solutions to support campus cohesion and student/staff safety.<sup>70</sup>

3.42 As to the response to an encampment on the university campus from 1 to 17 May, Professor Sharon Pickering (Vice Chancellor and President) noted:

[W]e did not dismantle the encampment; the students who were encamped there decided to pack up. I think it's important to note that none of our registered student societies were engaged in the encampment at Monash; they were different configurations of students that were there. We were very clear that the first few days of that encampment were deeply unpleasant and we saw some unacceptable and unpleasant behaviour. We took a series of steps in relation to that, and that included two key groups: student actors, so students of Monash that were involved in behaviour that we believe crossed the line, and then non-student actors, so members that weren't part of our community.

For members that weren't part of our community, we formally excluded seven of those people from our campus and they are not permitted to ever come back onto our campus. We temporarily excluded at least another 20 actors that came onto our campus during that period. In addition to that, 11 students were subject to misconduct proceedings. While those proceedings were underway, they were not permitted to return to the encampment site of the university without further penalty.<sup>71</sup>

3.43 TEQSA identified Monash University as ‘a leader in the way they deal with student concerns and trauma informed approaches’.<sup>72</sup>

3.44 The Australian National University (ANU) stated that its policies are designed to facilitate an inclusive, respectful, and diverse campus and community, and prohibit all forms of discrimination, vilification, intimidation, violence, and other oppressive and disrespectful behaviour towards anyone, regardless of cultural background, religion, or political conviction’.<sup>73</sup> It stated that senior staff meet regularly with Jewish students to understand their concerns, and noted

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<sup>69</sup> Monash University, *Submission 21*, p. 2.

<sup>70</sup> Monash University, *Submission 21*, p. 3.

<sup>71</sup> Professor Sharon Pickering, Vice Chancellor and President, Monash University, *Committee Hansard*, 12 December 2024, p. 12.

<sup>72</sup> Dr Mary Russell, Chief Executive Officer, TEQSA, *Committee Hansard*, 12 December 2024, p. 32.

<sup>73</sup> The Australian National University, *Submission 33*, p. 2.

that senior staff have met a number of times with AUJS representatives since 7 October 2023. It noted that pursuant to this engagement it has implemented additional supports for students, such as academic special consideration, the removal of ‘inappropriate posters and graffiti’, and provision of a confidential safe space for Jewish students to study and practice religious activities.<sup>74</sup> Vice Chancellor and President, Professor Geneveive Bell, stated

Our policies and procedures prohibit all forms of discrimination, vilification, intimidation, violence and other repressive and disrespectful behaviours towards anyone, regardless of cultural background, religion or political conviction. When people fall short of these expectations, we will and do act. We know these experiences have profound impacts on individuals. We have created multiple mechanisms and pathways for disclosures and reporting inappropriate conduct.<sup>75</sup>

3.45 The ANU also stated that since managing on-campus encampments in 2024, it has reviewed several policies, including those related to physical security (to ban sleeping on campus other than in a residence), and posters (to establish a process for addressing content that ‘may impact people’s wellbeing’).<sup>76</sup>

3.46 The University of Melbourne provided an overview of its policies and procedures in addressing antisemitism and other forms of racism:

The University is committed to addressing these issues through comprehensive policies and actions. This commitment is part of our broader Anti-Racism Action Plan, which was developed in consultation with staff and students to ensure it addresses the specific needs and experiences of our community. The plan, which builds on the Anti-Racism Commitment published in January 2023, is structured around four pillars – acknowledging, understanding, preventing and responding to racism. The Commitment also included the adoption of the International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism. The University is working with Go8 counterparts on the development of a sector definition of antisemitism in line with the work of the Special Envoy.

The University is bound by the law and its obligations under the *Victorian Charter of Human Rights and Responsibilities Act 2006* and the *Equal Opportunity Act 2010* (Vic) in shaping its policies and its responses.<sup>77</sup>

3.47 It stated that it has proactively addressed reports of racism including antisemitism, noting that it has developed a system for transparent reporting on the action it will take in response, as well as complaints data.<sup>78</sup> It also indicated

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<sup>74</sup> The Australian National University, *Submission 33*, p. 3.

<sup>75</sup> Professor Geneveive Bell, Vice Chancellor and President, Australian National University, *Committee Hansard*, 22 January 2025, p. 7.

<sup>76</sup> The Australian National University, *Submission 33*, p. 4.

<sup>77</sup> University of Melbourne, *Submission 37*, p. 2.

<sup>78</sup> University of Melbourne, *Submission 37*, p. 3.

that it has updated guidance documents to assist teachers in managing issues in the classroom (including managing difficult and polarising conversations).<sup>79</sup> In addition, the University of Melbourne has provided a range of specific supports to Jewish and Palestinian Students.<sup>80</sup>

3.48 Professor Nicola Phillips, Provost and Interim Vice Chancellor, stated that the university would conduct a comprehensive review of its policies and procedures in 2025.<sup>81</sup> With respect to protest activities in campus, Professor Phillips advised that the university had received four complaints regarding four incursions into university classrooms, as well as an encampment which then ‘translated into the occupation of a building’, lasting ten days.<sup>82</sup> She stated that the occupation of a university building ‘had crossed the line’, stating that ‘this kind of protest was unacceptable’.<sup>83</sup>

3.49 The University of Melbourne also noted that:

The University is required to comply with the Charter of Human Rights under Victorian law. Accordingly, any actions of the University that limit rights to peaceful assembly need to be proportionate, reasonably necessary and justified in the circumstances. The University is also bound by a requirement to observe due process and comply with its relevant privacy and confidentiality obligations at all times.<sup>84</sup>

3.50 As to how the university had responded to the occupation of a university building (and associated occupation of one employee’s office), the university noted that it is currently being investigated by the Office of the Victorian Information Commissioner for the way it collected or used some evidence as part of its response to this encampment and occupation.<sup>85</sup> Specifically, Professor Roberts stated that this relates to the steps the university had taken to identify a person involved in the protest.<sup>86</sup>

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<sup>79</sup> University of Melbourne, *Submission 37*, p. 6.

<sup>80</sup> University of Melbourne, *Submission 37*, p. 7.

<sup>81</sup> Professor Nicola Phillips, Provost and Interim Vice Chancellor, University of Melbourne, *Committee Hansard*, 12 December 2024, p. 4.

<sup>82</sup> Professor Nicola Phillips, Provost and Interim Vice Chancellor, University of Melbourne, *Committee Hansard*, 12 December 2024, pp. 6-7.

<sup>83</sup> Professor Nicola Phillips, Provost and Interim Vice Chancellor, University of Melbourne, *Committee Hansard*, 12 December 2024, p. 7.

<sup>84</sup> University of Melbourne, *Submission 37*, p. 5.

<sup>85</sup> University of Melbourne, *Submission 37*, p. 5. Amnesty International expressed concern regarding the alleged use of CCTV footage and Wi-Fi location data by the university as evidence in misconduct hearings (*Submission 39*, p. 2).

<sup>86</sup> Professor Nicola Phillips, Provost and Interim Vice Chancellor, University of Melbourne, *Committee Hansard*, 12 December 2024, p. 9.

3.51 However, a group of 15 academic and honorary staff from the University of Melbourne expressed concern regarding this response to student encampments, stating:

When staff and students peacefully camped inside a building at the University of Melbourne drawing attention to the actions of the Israeli state, it was their actions that were identified as presenting a danger. Staff and students were advised that safety concerns meant they should avoid the area. To characterize a peaceful demonstration in this way perpetuated racist Palestinian/Arab/Islamophobic tropes.<sup>87</sup>

3.52 The University of New South Wales (UNSW) stated that, in recognition of the rise of antisemitism across Australia, it has taken a range of measures to ensure Jewish students and staff feel safe on campus. It highlighted: an increase in and promotion of pathways to make complaints; increased resourcing of staff to handle complaints; improved risk assessments of all UNSW events; additional physical security measures on campus; consultation to update and extent the university's anti-racism policy; as well as regular communications from senior leaders.<sup>88</sup> It stated that in November 2024 it introduced online training for all staff, which aims to cover all forms of discrimination, and links to resources that deal with antisemitism and islamophobia. Professor the Hon Verity Firth AM, (Vice President of Societal Impact, Equity and Engagement) stated that UNSW has revised its code of conduct to 'better spell out what sort of behaviour we expect in the context of free speech and how free speech should actually be exercised at the university'.<sup>89</sup>

3.53 Mr Mark Sheldon and Mr Daniel Szekely submitted that UNSW had failed to respond appropriately to one example of alleged misconduct by a then-staff member of the university.<sup>90</sup> UNSW noted that it produces an annual report on student conduct and complaints, and has done so since 2021.<sup>91</sup>

3.54 However, Dr Noam Peleg, a UNSW staff member, argued that some UNSW frameworks were used to bully staff and students:

Frameworks such as cultural safety and psychosocial safety are also used to attack, harass and bully staff and students, Palestinians and their allies, including Jewish staff who oppose Israel's actions. This is done in the name of combating antisemitism. I was personally subject to complaints, threats and bullying attempts, including by colleagues, who have tried to

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<sup>87</sup> Group of academic staff and honorary faculty at the University of Melbourne, *Submission 24*, p. 3.

<sup>88</sup> University of New South Wales, *Submission 22* pp. 1-2.

<sup>89</sup> Professor the Hon. Verity Firth AM, Vice President, Societal Impact, Equity and Engagement, University of New South Wales, *Committee Hansard*, 12 December 2024, p. 13.

<sup>90</sup> Mr Mark Sheldon and Mr Daniel Szekely, *Submission 46*.

<sup>91</sup> University of New South Wales, answer to question on notice, 12 December 2024 (received 19 December 2024).

undermine my Jewish identity because I oppose the actions of the state of Israel. They either accused me of being antisemitic or of putting Jewish staff and students at risk, due to my academic activities about the human rights of children in Palestine.<sup>92</sup>

- 3.55 The University of Sydney noted that in July 2024, it engaged Mr Bruce Hodgkinson AM SC, to conduct an independent review of the university's processes and policies to ensure they are 'appropriate and accord with applicable standards'.<sup>93</sup> It noted that the university Senate has resolved to accept the report's recommendations in principle. As to the recommendation in that review relating to 'civility', and how such a rule may operate, Vice Chancellor and President Professor Mark Scott AO stated that context would be important in terms of the use of 'contested terms'.<sup>94</sup>
- 3.56 It noted that the university is delivering a number of community programs and activities encouraging respectful discourse and cultural competency, including an 'Engaging with Civility module', and a series of seminars designed to equip student leaders to navigate difficult conversations with empathy and civility.<sup>95</sup> It also noted that the university has introduced a 'Campus Access Policy', specifying activities that require prior approval or notification and those that are unacceptable at any time, and providing for the safe and orderly conduct of demonstrations.<sup>96</sup>
- 3.57 Dr David Kearns and Associate Professor Ryan Walter of the University of Queensland argued that the University of Sydney's handling of complaints regarding antisemitism demonstrated that 'the leading issue is not university policy but the judgement of Vice Chancellors and other senior university authorities'.<sup>97</sup> They argued that the introduction of the university's Campus Access Policy is 'an overreaction that neglects the role of judgement and instead seeks to suppress the very activities of public debate that [Vice Chancellor] Mark Scott had formerly invoked as a defining value of the University of Sydney'.<sup>98</sup>
- 3.58 The National Tertiary Education Union similarly criticised the University of Sydney's adoption of recommendations by Mr Hodgkinson:

[B]y adopting the recommendations of the University of Sydney External Review Report authored by Bruce Hodgkinson SC AM, the University of

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<sup>92</sup> Dr Noam Peleg, *Submission 48*, p. 5.

<sup>93</sup> University of Sydney, *Submission 36*, p. 2.

<sup>94</sup> Professor Mark Scott AO, Vice Chancellor and President, University of Sydney, *Committee Hansard*, 29 November 2024, p. 19.

<sup>95</sup> University of Sydney, *Submission 36*, pp. 3-4.

<sup>96</sup> University of Sydney, *Submission 36*, p. 2.

<sup>97</sup> Dr David Kearns and Associate Professor Ryan Walter, *Submission 38*, p. 1.

<sup>98</sup> Dr David Kearns and Associate Professor Ryan Walter, *Submission 38*, p. 2.

Sydney has engaged in significant over-reach that has the potential to undermine both free speech and academic freedom on their campuses. Some of the proposals they adopted run directly counter to the recommendations of the Walker Review of the Model Code.<sup>99</sup>

- 3.59 Dr Terri Macdonald, Director of Public Policy and Strategic Research with the National Tertiary Education Union, stated:

[W]e have an understanding that it's going to be very problematic, because essentially any lecture, tutorial or seminar, or anything which is conducted, which is not in accordance with the civility rule could potentially be taken as misconduct, so there are actually industrial ramifications there. It's very difficult, though, to determine how the civility rule applies and what is contextually fine and what isn't. That's a very subjective thing. So we are deeply concerned about this.<sup>100</sup>

- 3.60 The University of Sydney also indicated that it had met with, or otherwise contacted or corresponded directly or indirectly, with Jewish student organisation and Jewish representative bodies, on numerous occasions since 9 October 2023.<sup>101</sup>

- 3.61 The Swinburne University of Technology stated that since the events of 7 October 2023, it has offered a range of services and supports to students and staff.<sup>102</sup> It noted, for example, that the university provides a 'Safer Community' team to offer advice, support, intervention and risk management for students who have experienced or witnessed inappropriate, concerning or threatening behaviour. It stated that the university had contacted AUJS after the events of 7 October 2023, offering support for the members and special consideration for that upcoming assessment period.<sup>103</sup>

- 3.62 Western Sydney University stated that the university leadership has taken a 'principled, non-partisan, clear and consistent approach' to the issue of antisemitism on university campuses:

As a leading university, we support freedom of speech but draw the line at hate speech. Our campuses are no place for antisemitism, Islamophobia, racism, hate speech, intimidation, or violence. We are guided by our Freedom of Speech Policy, which is based on the Model Code for Protection

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<sup>99</sup> National Tertiary Education Union, *Submission 17*, p. 4. See also, Academics for Palestine (WA), *Submission 34*, p. 3.

<sup>100</sup> Dr Terri Macdonald, Director of Public Policy and Strategic Research, National Tertiary Education Union, *Committee Hansard*, 22 January 2025, p. 23.

<sup>101</sup> University of Sydney, answer to question on notice (received 13 December 2024).

<sup>102</sup> Swinburne University of Technology, *Submission 3*, p. 1.

<sup>103</sup> Swinburne University of Technology, *Submission 3*, p. 2.

of Freedom of Speech and Academic Freedom in Australian Higher Education Providers.<sup>104</sup>

- 3.63 It stated that it provides a range of support services including free counselling and welfare services for students, and access to professional counselling for staff. It further noted that in November 2024, Western Sydney University announced that it would expand its humanitarian efforts to support people fleeing conflict and seeking refuge in Australia, including: providing personalised support to develop education plans; help to build the skills to transition to university life and Australian society successfully; wrap-around supports including assistance with employment, accommodation and resettlement resources; and scholarship increases.<sup>105</sup> Vice Chancellor and President, Professor George Williams, also noted that the university has hosted a major national social cohesion conference.<sup>106</sup>
- 3.64 However, Dr Lana Tatour and Dr Andrew Brooks characterised aspects of the response by the Western Sydney University to protests as inappropriate:
- Western Sydney University called-in police and riot police to dismantle a student sit-in in solidarity with Palestine resulting in the use of undue force on students and staff and in the arrest and suspension of several students. Western Sydney University placed police, campus security, private security, and metal detectors at a recent graduation ceremony in a move that turned students, their families and the community in Western Sydney – many of whom are Arabs, Muslims, and people of colour – into a threat.<sup>107</sup>
- 3.65 Professor Dowton of Macquarie University indicated that the university had taken several steps in response to rising antisemitic incidents, including ‘reviewing and amending our policies as needed, enhancing communication with our students and staff along with the support available to them, maintaining close collaboration with the New South Wales police as we need it, ensuring adherence to our policies around academic gatherings and conferences and enhancing our security services where that is indicated’.<sup>108</sup>
- 3.66 The University of Newcastle highlighted the presence of physical security services on campuses, monitoring of social media channels to remove inappropriate content, and the monitoring of the effectiveness of these and other measures through student surveys.<sup>109</sup> Deakin University, similarly, noted that

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<sup>104</sup> Western Sydney University, *Submission 5*, p. 1.

<sup>105</sup> Western Sydney University, *Submission 5*, pp. 1-2.

<sup>106</sup> Professor George Williams, Vice Chancellor and President, Western Sydney University, *Committee Hansard*, 22 January 2025, p. 9.

<sup>107</sup> Dr Lana Tatour and Dr Andrew Brooks, *Submission 49*, p. 7.

<sup>108</sup> Professor S. Bruce Dowton, Vice Chancellor and President, Macquarie University, *Committee Hansard*, 5 February 2025, p. 1.

<sup>109</sup> University of Newcastle, *Submission 11*, pp. 2-3.



when a student encampment arose on campus, it erected a barrier and provided alternative pathways for students to take.<sup>110</sup>

- 3.67 RMIT University outlined a number of steps it has taken to protect the health and wellbeing of staff and students, including: executive staff discussions with Jewish staff members and engagement with AUJS; promotion of support services; reinforcement of behavioural expectations; enhancement of security measures; and implementation of a new complaints system.<sup>111</sup>
- 3.68 The University of Adelaide outlined the operation of its codes of conduct regarding misconduct by students, and behaviours on campus more generally.<sup>112</sup> It noted that these codes of conduct operate in conjunction with the university's enterprise agreement, and related policies, procedures, consultancy or services contracts, and the relevant legislation.<sup>113</sup> It noted that complaints are assessed by the university 'Integrity Unit', which will then typically manage complaints about complex and sensitive issues including antisemitism. It stated that staff in this unit have specialist expertise, including regarding issues of discrimination.
- 3.69 The University of the Sunshine Coast similarly stated that it has a comprehensive suite of policies addressing staff and student conduct and supporting diversity and inclusion.<sup>114</sup> It stated that in 2025, staff will also have access to the Australian Human Rights Commission Anti-Racism Training e-module, and noted that it is developing a 'Student Political Activity Procedure' to outline the university's expectations should such an event be planned.<sup>115</sup>
- 3.70 Queensland University of Technology highlighted its spiritual support and inclusion plan as part of its response to the attack on 7 October 2023:

The University's response to the attacks and the ongoing conflict that has followed was greatly aided by the QUT Spiritual Support and Inclusion Action Plan, an existing framework established in February 2023 that renewed the University's commitment to diversity and inclusion for students and staff from all faiths, spiritual beliefs and traditions, including those with no religious affiliation. The Action Plan ensures that all QUT services, culture, and facilities embrace, respect and make room for religious and spiritual beliefs and observances for all, including the recognition of holy days. With the Action Plan already in place, QUT staff were better able to support Jewish and Islamic colleagues and students when the acute need

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<sup>110</sup> Professor Iain Martin, Vice Chancellor, Deakin University, *Committee Hansard*, 12 December 2024, p. 22.

<sup>111</sup> RMIT University, *Submission 25*, p. 2.

<sup>112</sup> University of Adelaide, *Submission 32*, p. 4.

<sup>113</sup> University of Adelaide, *Submission 32*, p. 5.

<sup>114</sup> University of the Sunshine Coast, *Submission 28*, p. 1.

<sup>115</sup> University of the Sunshine Coast, *Submission 28*, pp. 1-2.

arose, and to continue to do so as the ensuing conflict has deepened and expanded.<sup>116</sup>

- 3.71 Professor Margaret Sheil of Queensland University of Technology stated that the independent review commissioned to establish the facts relating to a recent symposium held at the university would provide a learning opportunity and will inform any amendments required to relevant processes or procedures.<sup>117</sup>
- 3.72 The University of Technology Sydney (UTS) stated that it has a strong track record in addressing racism and promoting inclusion, including through awareness raising campaigns, a complaints mechanism, and the provision of support services.<sup>118</sup> It noted that since 7 October 2023, it has met with leaders of AUJS, the Palestinian Society and representative students, and stated that it has continued to reach out to such groups since antisemitic attacks in the community.<sup>119</sup> It also noted that the university has engaged with the Race Discrimination Commissioner Mr Giridharan Sivaraman regarding the current study of the prevalence of racism at universities.<sup>120</sup>
- 3.73 University of Queensland stated that it has reviewed its existing policies and process frameworks, and implemented measures to help prevent antisemitism on campus, including: providing that encampments are not permitted on university land and that permission is needed for events such as public forums and film screenings; engaging with the Special Envoy to Combat Antisemitism and other community groups; and nominating staff to participate in the Group of Eight working groups examining international best practices for addressing antisemitism.<sup>121</sup> Professor Deborah Terry, Vice Chancellor and President, stated:

The University of Queensland does not tolerate any form of racism, including antisemitism, discrimination or hate speech. And I have been very clear with staff and students that there is no place for these behaviours on any of our campuses. I have repeatedly communicated that the core principles of freedom of speech and academic freedom come with both limitations and responsibilities. We have also been clear that discourse and debate must be civil and respectful so that our campuses remain inclusive and cohesive places where all members of the community feel supported and safe to engage in their studies, research, work or other activities.<sup>122</sup>

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<sup>116</sup> Queensland University of Technology, *Submission 12*, p. 2.

<sup>117</sup> Professor Margaret Sheil, Vice Chancellor and President, Queensland University of Technology, *Committee Hansard*, 5 February 2025, p. 11.

<sup>118</sup> University of Technology Sydney, *Submission 13*, p. 3.

<sup>119</sup> University of Technology Sydney, *Submission 13*, p. 3.

<sup>120</sup> University of Technology Sydney, *Submission 13*, p. 3.

<sup>121</sup> University of Queensland, *Submission 26*, p. 2.

<sup>122</sup> Professor Deborah Terry, Vice Chancellor and President, University of Queensland, *Committee Hansard*, 22 January 2025, p. 8.

- 3.74 The Australian Catholic University stated that it remains vigilant in ensuring its campuses are inclusive for all, and stated that it will ‘act swiftly and decisively against any threats to student or staff safety or welfare’.<sup>123</sup> It also stated that it has examined its policies to ensure effective responses to any incidents of alleged antisemitism. It further noted that, while the ACU is a catholic institution, it actively promotes respectful interfaith dialogue.<sup>124</sup>
- 3.75 Peak bodies in the university sector also provided evidence as to the operation of existing policies and processes in response to increases of incidents involving antisemitism, and additional efforts to address the issue. Universities Australia stated that since 7 October 2023, it has worked with its members and student groups to address antisemitism on campuses:
- Our members have cooperated with the Government, keeping the Minister for Education and the Tertiary Education Quality and Standards Agency informed about steps taken to protect students and staff in the wake of this event, and we are fully supportive of recent government actions.<sup>125</sup>
- 3.76 In summarising the responses by universities to antisemitism, Mr Luke Sheehy, the Chief Executive Officer (CEO) of Universities Australia, argued ‘Mistakes, of course, have been made, but the response has been excellent from our universities’.<sup>126</sup> He stated that overall, university campus experiences in Australia have been ‘relatively safe’ when compared with other jurisdictions such as the United States of America.<sup>127</sup> Universities Australia also noted that it has worked closely with Special Envoy Segal, including establishing a ‘sector-wide working group of experts, co-convened by Ms Segal, to support her important work’.
- 3.77 Group of Eight Australia stated that, while the universities it represents ‘have long had policies, procedures and other instruments in place to make clear our values and manage incidents of discrimination, vilification, racism and other unacceptable behaviours’, ‘the context in which these instruments operate has shifted’.<sup>128</sup> It disagreed with evidence suggesting that ‘universities have not taken any or only minimal action to address incidents of antisemitism on campus’, stating that ‘this is not to say that we consider it job done – we

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<sup>123</sup> Australian Catholic University, *Submission 23*, p. 2.

<sup>124</sup> Australian Catholic University, *Submission 23*, p. 3.

<sup>125</sup> Universities Australia, *Submission 10*, p. 1.

<sup>126</sup> Mr Luke Sheehy, Chief Executive Officer, Universities Australia, *Committee Hansard*, 29 November 2024, p. 3.

<sup>127</sup> Mr Luke Sheehy, Chief Executive Officer, Universities Australia, *Committee Hansard*, 29 November 2024, p. 3.

<sup>128</sup> Group of Eight Australia, *Submission 19*, p. 3.

recognise this to be a complex issue that will take ongoing effort to address – but do not believe this to be an accurate representation’.<sup>129</sup>

3.78 The Executive Council of Australian Jewry (ECAJ) stated that the October 2024 Senate Standing Committee on Legal and Constitutional Affairs inquiry into the Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2) had led to changes in the way in which universities respond to ‘increased levels of anti-Israel and anti-Jewish activism’.<sup>130</sup> However, AUJS argued that there are still significant deficiencies within the current regime when it comes to addressing antisemitism,<sup>131</sup> and that the types of incidents have been increasingly extreme on campuses.<sup>132</sup> Mr Noah Loven, AUJS President, stated that in his experience, meetings with senior university leadership had been broadly positive:

There are differences in how universities engage with this issue. I would say that overall, in my experience in many meetings with vice-chancellors and senior university administrations, those who have taken proactive steps and have generally dealt with the situation better than other universities, from a relative point of view, have seen Jewish students as an active part of the solution to fighting antisemitism and other forms of hate on campus, instead of just viewing Jewish students as another stakeholder to manage and to make the most politically expedient choices and decisions when it comes to antisemitism on campus. I can talk about my own experience at my campus, Monash University, where I have a very proactive and robust relationship with the administration. And I think it comes down to listening. We feel that we are respected when we go into those conversations and that our concerns are taken seriously.<sup>133</sup>

3.79 AUJS also raised particular concerns regarding student unions, stating:

Universities frequently cite the autonomy of student unions as a barrier to addressing problematic antisemitic incidents. Most universities have expressed reluctance to intervene when confronted with antisemitic behaviour due to the unions' independence. This hands-off approach creates a vacuum in accountability, leaving antisemitic incidents insufficiently addressed and Jewish students vulnerable to discrimination and hostility.

While we appreciate student union independence, universities must ensure that all campus-affiliated organisations, including student unions, are held accountable for undermining safety, respect, and inclusion on campus.<sup>134</sup>

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<sup>129</sup> Group of Eight Australia, *Submission 19*, p. 3.

<sup>130</sup> Executive Council of Australian Jewry (ECAJ), *Submission 1*, p. 2.

<sup>131</sup> AUJS, *Submission 2*, p. 3.

<sup>132</sup> Mr Noah Loven, President, AUJS, *Committee Hansard*, 29 November 2024, p. 34.

<sup>133</sup> Mr Noah Loven, President, AUJS, *Committee Hansard*, 29 November 2024, p. 34.

<sup>134</sup> AUJS, *Submission 2*, p. 3.

### *Academic freedom and freedom of speech obligations*

- 3.80 Several universities highlighted their obligations to uphold and protect academic freedom and freedom of speech. Some witnesses and submitters argued that universities had failed to achieve the appropriate balance between protecting staff and students and upholding academic freedom and freedom of speech.
- 3.81 The Queensland University of Technology stated that, while unlawful speech and ‘speech that violates the duty to foster wellbeing of staff and students’ are not protected, its policy framework ‘supports academic freedom and freedom of expression as central values of an open, modern, curiosity-driven, evidence-based educational and research institution’.<sup>135</sup> It stated that, as a result, ‘there is a place for peaceful and respectful student activism on QUT campuses’. It emphasised the challenge associated with attempting to anticipate what may be said at a public event on campus while still seeking to ensure an event is safe for all attendees.<sup>136</sup> Ms Leanne Harvey, Vice President of Administration and University Registrar, stated that she had not felt it would be appropriate to uninvite certain speakers to its recent National Symposium on the basis of what they *may* say because of concerns about this potentially impacting on freedom of expression.<sup>137</sup> In this regard, Professor Sheil (Vice Chancellor and President) stated that the university was complying with the academic freedom of speech policy introduced in 2019.<sup>138</sup>
- 3.82 Monash University noted that its policies regarding the protection of academic freedom and freedom of speech were consistent with the Model Code on Freedom of Speech and Academic Freedom.<sup>139</sup> It stated that the policy ‘supports reasonable and proportionate measures to prevent any person from using lawful speech which a reasonable person would regard, in the circumstances, as likely to humiliate or intimidate other persons and which is intended to have either or both of those effects’.<sup>140</sup>
- 3.83 The ANU stated that while it has been clear ‘freedom of speech [does] not necessarily equal freedom from consequences’, academic freedom and freedom of speech policies, ‘reflect the legislative requirements enacted by the Parliament

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<sup>135</sup> Queensland University of Technology, *Submission 12*, p. 2.

<sup>136</sup> Ms Leanne Harvey, Vice President of Administration and University Registrar, Queensland University of Technology, *Committee Hansard*, 5 February 2025, p. 12.

<sup>137</sup> Ms Leanne Harvey, Vice President of Administration and University Registrar, Queensland University of Technology, *Committee Hansard*, 5 February 2025, p. 12.

<sup>138</sup> Professor Margaret Sheil, Vice Chancellor and President, Queensland University of Technology, *Committee Hansard*, 5 February 2025, p. 12.

<sup>139</sup> Monash University, *Submission 21*, p. 1.

<sup>140</sup> Monash University, *Submission 21*, p. 6.

through the Higher Education Support Act, as well as the Higher Education Standards Framework.<sup>141</sup> Similarly, Universities Australia highlighted that to be recognised as a university under the Higher Education Threshold Standards, ‘institutions must be committed to academic freedom and freedom of speech – freedoms that do not, and must not, extend to hate speech’.<sup>142</sup>

- 3.84 Dr Lana Tatour and Andrew Brooks, both academics at UNSW, stated that academic freedom is guaranteed in Australia and is protected in legislation and some collective enterprise bargaining agreements, as well as being a core principle of higher education.<sup>143</sup> They highlighted its importance in universities, stating:

It encompasses the rights of scholars, researchers and students to engage in the pursuit of knowledge, research, teaching and dissemination of knowledge without undue interference, censorship or reprisal. Academic freedom ensures that individuals have the autonomy to explore diverse perspectives, challenge established paradigms, and contribute to the advancement of society through critical inquiry and scholarship. This fundamental freedom is not only integral to the flourishing of intellectual environments but is also deeply inter-twined with broader human rights principles.<sup>144</sup>

- 3.85 They argued there has been ‘a sharp rise in misconduct charges being brought against students and staff critical of Israel and Zionism’, stating that academics have also been called to meetings with their Deans, Heads of Schools, and line managers over their involvement with Palestine activism:

Other limitations placed on academic freedom include altering law exam questions on International Court of Justice rulings and advisory opinions on Palestine in the name of psychosocial safety, scrutinising or censoring reading groups, cancelling academic events featuring Palestinians or that are critical of Israel, subjecting events on Palestine to extensive risk assessment procedures, and instructing students not to speak about Palestine in classrooms.<sup>145</sup>

- 3.86 The University of Sydney stated that it is providing guidance and training to students and staff ‘on the appropriate exercise of their rights to free speech and academic freedom’, as well as the university’s expectations regarding behaviour and policies regarding bullying, harassment and discrimination.<sup>146</sup> However, Dr Kearns and Associate Professor Walter (of the University of Queensland) argued

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<sup>141</sup> The Australian National University, *Submission 33*, p. 6.

<sup>142</sup> Universities Australia, *Submission 10*, p. 2.

<sup>143</sup> Dr Lana Tatour and Dr Andrew Brooks, *Submission 49*, p. 1.

<sup>144</sup> Dr Lana Tatour and Dr Andrew Brooks, *Submission 49*, p. 1.

<sup>145</sup> Dr Lana Tatour and Dr Andrew Brooks, *Submission 49*, p. 6.

<sup>146</sup> University of Sydney, *Submission 36*, p. 1.

that the University of Sydney had failed to operate consistently with its Charter of Freedom of Speech and Academic Freedom:

[T]he *Charter* states that maintaining safety on campus and the proper functioning of the University supplies the justification for regulating protests without regard to the balancing of rights. Indicative of the University's misrepresentation of its own policy is the 26 March statement that the *Charter* "balances the right to free speech with the need for reasonable limits to allow teaching, research and other University activities to continue safely..."

The attempted fix – *CAP* – looks to manage future protests by enhancing the power of proscription. Under *CAP*, staff and students have "freedom to disagree and to protest, within the limits set out in this policy and the *Charter*." These limits are extensive: all protest activities must be declared to the University in advance, and a wide range of activities, including using stalls, projectors, and heaters, require prior approval. Along with increasing University authority over protests, *CAP* replicates and confuses the *Charter*. Under the *Charter*, reasonable and proportionate regulation of protest is justified to ensure safety on campus. Under *CAP*, demonstrations cannot interfere with safety. It is unclear what addition *CAP* provides here.

*CAP* further states that protests cannot "unreasonably disrupt" University operations nor "unreasonably impede" people and vehicles. It is not specified how this intersects with the *Charter*'s requirement that protests are subject to "reasonable and proportionate regulation of conduct necessary to the discharge of the University's education and research activities." "Unreasonable," "reasonable", and "proportionate" are all undefined, and are to be applied in different ways. Under the *Charter*, the scale of regulation is to be assessed by the standards of reasonability and proportionality; under *CAP*, the disruption and impedance caused by protest is subject to scrutiny in terms of whether it is "unreasonable".<sup>147</sup>

- 3.87 The University of Sydney's proposed policies regarding protests on campus has also been subject to broader criticisms, including arguments that the proposed limits on such forms of expression would exceed permissible limits under existing Australian laws.<sup>148</sup>
- 3.88 The Australian Catholic University noted that from May-June 2024, TEQSA sought fortnightly reports from all Australian universities on complaints concerning student or staff conduct relating to academic freedom and freedom of speech or protest action, or related allegations of misconduct concerning the Middle East conflict on university campuses.<sup>149</sup> It stated that while the university participated, it received no report of any such harassment or threats occurring

<sup>147</sup> Dr David Kearns and Associate Professor Ryan Walter, *Submission 38*, pp. 2-3.

<sup>148</sup> Caitlin Cassidy, University of Sydney criticised for plan to ban protest banners being displayed without permission, *The Guardian* (21 January 2025).

<sup>149</sup> Australian Catholic University, *Submission 23*, p. 2.

towards students or staff, nor any encampments related to the conflict on its campuses.

3.89 RMIT University stated that ‘as a public institution, it is not RMIT’s role to make political statements that favour one perspective over another, but rather to provide an environment where respectful debate and discussion of complex and sensitive issues is supported’.<sup>150</sup> It stated that it will continue to work proactively with state and federal governments as it seeks ‘greater clarity on the definition of hate speech and measures under the relevant laws’.<sup>151</sup>

3.90 The University of Melbourne, similarly stated:

[T]here is no doubt that at times we have been challenged in balancing our legal and ethical responsibilities to protect freedom of speech, the right to peaceful protest and the values of academic freedom with the duty of care that we have to all students and staff to provide a safe and welcoming environment for them. We will continue learning, but our resolve is firm: the University of Melbourne will leave no stone unturned in our efforts to eradicate antisemitism and all forms of racism from our campuses.<sup>152</sup>

3.91 A group of 15 academic and honorary staff from the University of Melbourne expressed concern regarding a lack of consultation by the university regarding the adoption of the International Holocaust Remembrance Alliance definition of antisemitism without any open consultation process.<sup>153</sup> They argued that this led to a chilling effect on campus:

While assurances of academic freedom were given, the adoption of the IHRA definition had an immediate chilling effect at the University of Melbourne as staff felt unclear as to the extent to which their writings and actions would be scrutinised. Subsequently staff have been asked to take down posters which included a Palestinian Flag, events have been surveilled or overly securitised, and colleagues report that they are nervous to speak up for fear of the repercussions they will face. When coupled with the problem of employment precarity, this is a significant concern across universities.<sup>154</sup>

3.92 The University of Queensland stated that:

While the University is committed to upholding the principles of academic freedom and freedom of speech, the Vice-Chancellor has also clearly stated in communication that discourse must be civil so that our campuses remain respectful and inclusive places – where all members of our community are

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<sup>150</sup> RMIT University, *Submission 25*, p. 1.

<sup>151</sup> RMIT University, *Submission 25*, p. 2.

<sup>152</sup> Professor Nicola Phillips, Provost and Interim Vice Chancellor, University of Melbourne, *Committee Hansard*, 12 December 2024, p. 4.

<sup>153</sup> Group of academic staff and honorary faculty at the University of Melbourne, *Submission 24*, p. 3.

<sup>154</sup> Group of academic staff and honorary faculty at the University of Melbourne, *Submission 24*, p. 3.



safe to engage in their studies, research, work or other activities, and to access buildings and other facilities.<sup>155</sup>

3.93 It noted that during encampments on campus in 2024, there were some incidents ‘that crossed a line’, and stated that the university sought advice from a freedom of speech expert regarding contested slogans and images.<sup>156</sup> It stated that the university will adopt a definition of antisemitism, ‘which will be considered in conjunction with our free speech and academic freedom policy and our staff and student conduct policies’.<sup>157</sup>

3.94 University of Adelaide stated that

To date, where concerns have been raised with the University about conduct that may amount to antisemitism, the University is guided by the legal bounds to freedom of speech, as reflected in a range of legislation, including the *Race Discrimination Act 1975 (Cth)* and the *Racial Vilification Act 1996 (SA)*. The University has also looked to case law to inform its interpretation of relevant legislation. Where appropriate and instructive the University has considered, and will continue to consider, emerging and established definitions of antisemitism.<sup>158</sup>

3.95 For example, it stated that notices which were placed at entrances to the university campus in November 2024 (which remain in force) state:

The University of Adelaide supports lawful freedom of expression and allows peaceful protests by its students that do not reasonably cause others to feel threatened.

Any member of the public who engages or intends to engage in demonstration or protest activities is directed not to enter, access or otherwise be present on University grounds. Any contravention of this direction may be referred to the South Australian Police.

Any demonstration or protest activity undertaken on campus by students must not:

- occur inside buildings
- cause unreasonable disruption
- involve camping

Students engaging in this conduct while demonstrating or protesting will be in breach of this direction and the University’s *Student Code of Conduct*, and their actions will be managed in accordance with the *Student Misconduct Policy*.<sup>159</sup>

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<sup>155</sup> University of Queensland, *Submission 26*, p. 1.

<sup>156</sup> University of Queensland, *Submission 26*, p. 1.

<sup>157</sup> University of Queensland, *Submission 26*, p. 2.

<sup>158</sup> University of Adelaide, *Submission 32*, p. 4.

<sup>159</sup> University of Adelaide, *Submission 32*, p. 6.

3.96 Universities Australia stated that most universities ‘are considered public space by the Australian community’ and noted that ‘[w]e have an obligation to uphold freedom of speech, and we have to make sure that that doesn’t turn into hate speech’.<sup>160</sup> CEO, Mr Luke Sheehy, also stated that ‘a healthy democracy has healthy universities which have healthy and peaceful protests’, being ones which do not turn into hate speech or vilification, and which are conducted in accordance with the law.<sup>161</sup>

3.97 Students of Palestine expressed concern about freedom of speech, arguing that much of this was occurring under the guise of combatting antisemitism:

Multiple other students and student groups expressed that they had been subject to serious threats from their universities regarding campus speech, but had been told that if they revealed the content of these threats to any other party, including to the media or a lawyer, they could be suspended or expelled.<sup>162</sup>

3.98 Liberty Victoria emphasised that universities ‘are places of particular importance as crucibles of learning’.<sup>163</sup> It stated that students should be encouraged to be highly critical and to question the world around them in both safety and freedom:

Universities have a unique challenge in helping students learn to understand and embrace respectful, if impassioned, debate and difference of views without accepting discrimination or vilification.

Universities may also be the first true “immersion” in broader society for many students. In particular, students will often be drawn from communities that may be internally homogeneous – where most people look, speak, think and behave like them or in a way that is predictable and familiar. That may include students that have grown up in communities with significant racial and religious conformity.

We need to be able to have robust debate at our universities, including about topics that may be difficult, uncomfortable and challenging. Of course that should not extend to people having to endure vilification or hate speech. However, when done in good faith, people should be free to express themselves robustly and critically without fear of allegations of racism being made against them.<sup>164</sup>

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<sup>160</sup> Mr Luke Sheehy, Chief Executive Officer, Universities Australia, *Committee Hansard*, 29 November 2024, p. 3.

<sup>161</sup> Mr Luke Sheehy, Chief Executive Officer, Universities Australia, *Committee Hansard*, 29 November 2024, p. 9.

<sup>162</sup> Students for Palestine, *Submission 42*, p. 5.

<sup>163</sup> Liberty Victoria, *Submission 29*, p. 4.

<sup>164</sup> Liberty Victoria, *Submission 29*, p. 4.

### *Defining antisemitism*

- 3.99 Several witnesses and submitters expressed views as to how the term ‘antisemitism’ should be defined, or otherwise noted the ways in which antisemitism was already defined for the purposes of university regulations.
- 3.100 Dr David Slucki, Director of the Australian Centre for Jewish Civilisation, stated that defining antisemitism will always be a challenge because ‘definitions are imperfect, imprecise and change over time’.<sup>165</sup>
- 3.101 A number of witnesses and submitters made reference to the International Holocaust Remembrance Alliance (IHRA) definition of antisemitism. This non-legally binding working definition provides that ‘Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities’.<sup>166</sup> It includes several examples which it states ‘may serve as illustrations’ to guide the IHRA in its work.<sup>167</sup> It also states that ‘Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic’.
- 3.102 The Commonwealth Ombudsman noted that it has adopted the IHRA working definition of antisemitism ‘in line with the position of the Australian government’.<sup>168</sup> However, Mr Iain Anderson (the Commonwealth Ombudsman) stated that if Australian universities were to develop a slightly different version of that definition ‘we would be very willing to consider that as well’.<sup>169</sup>
- 3.103 AUJS argued in favour of the adoption of IHRA in its present form.<sup>170</sup> AUJS President, Mr Noah Loven, stated that AUJS recommends ‘the IHRA definition of antisemitism, but it must be noted that, at this point, the priority must be to

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<sup>165</sup> Dr David Slucki, Director, Australian Centre for Jewish Civilisation, *Committee Hansard*, 22 January 2025, p. 28.

<sup>166</sup> International Holocaust Remembrance Alliance, [working definition of antisemitism](#) (26 May 2016).

<sup>167</sup> These examples include: accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews; drawing comparisons of contemporary Israeli policy to that of the Nazis; or holding Jews collectively responsible for actions of the state of Israel.

<sup>168</sup> Commonwealth Ombudsman, *Submission 14*, p. 1.

<sup>169</sup> Mr Iain Anderson, Commonwealth Ombudsman, *Committee Hansard*, 29 November 2024, p. 49.

<sup>170</sup> AUJS, *Submission 2*, p. 5. See also, Australia/Israel & Jewish Affairs Council, *Submission 16*, p. 1; and Name Withheld, *Submission 9*, p. 2; Mr Alon Cassuto, Chief Executive Officer, Zionist Federation of Australia, *Committee Hansard*, 29 November 2024, p. 28. See further, Youth HEAR, *Submission 111*, p. 4, (submission to Legal and Constitutional Affairs, inquiry into the Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No 2) October 2024).

adopt a definition of antisemitism rather than none at all...many university senates and other bodies have already rejected IHRA which is very disappointing.<sup>171</sup> The Executive Council of Australian Jewry stated that the IHRA definition 'deals specifically with the denial of the collective right of the Jewish people to self-determination, which is a very different thing from Israeli government policies and actions'.<sup>172</sup> Ms Jillian Segal, Special Envoy to Combat Antisemitism, similarly endorsed the IHRA definition.<sup>173</sup>

3.104 Several submitters and witnesses argued that the IHRA definition of antisemitism is not an appropriate definition.<sup>174</sup> A group of 15 academic and honorary staff from the University of Melbourne argued that the IHRA definition (which the university adopted in January 2023) raised concerns because it 'has arguably encouraged additional complaints as it implies that statements might be considered antisemitic when expressing legitimate concerns about the actions of the Israeli state'.<sup>175</sup> They stated that a contribution to the drafting of the definition, Mr Kenneth Stern, had previously cautioned against its widespread use on university campuses on the basis that it has been used to suppress pro-Palestinian political speech, and argued that:

[F]rameworks that rely on definitions of specific forms of racism or vilification do little to raise awareness of racism, and arguably exacerbate tensions through prompting debate as to the legitimacy of the definitions.<sup>176</sup>

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<sup>171</sup> Mr Noah Loven, Australasian Union of Jewish Students, *Committee Hansard*, 29 November 2024, p. 34; AUJS, *Submission 2*, p. 5.

<sup>172</sup> Mr Peter Wertheim, Co-Chief Executive Officer, Executive Council of Australian Jewry, *Committee Hansard*, 29 November 2024, p. 28.

<sup>173</sup> Ms Jillian Segal, Special Envoy to Combat Antisemitism, *Committee Hansard*, 29 November 2024, p. 42.

<sup>174</sup> The National Tertiary Education Union indicated that it does not support the IHRA definition because it does not regard criticism of the state of Israel and its leaders is itself antisemitic (*Submission 17*, p. 3). The Australian Jewish Democratic Society argued that it is wrong to apply the IHRA Guidelines to universities (*Submission 18*, p. 2). See also, Academics for Palestine (WA), *Submission 34*, and Jews Against the Occupation '48, *Submission 41*, Ms Ashlyn Horton, National President, National Union of Students, *Committee Hansard*, 22 January 2025, p. 19, and Tzedek Collective, *Submission 127*, p. 2, (submission to Legal and Constitutional Affairs, inquiry into the Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No 2) October 2024. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has cautioned that the IHRA definition does not meet the international legal standards for restriction or prohibition of speech laid out in the International Covenant on Civil and Political Rights (*Global threats to freedom of expression arising from the conflict in Gaza* (23 August 2024) A/79/319 [80]).

<sup>175</sup> Group of academic staff and honorary faculty at the University of Melbourne, *Submission 24*, p. 2.

<sup>176</sup> Group of academic staff and honorary faculty at the University of Melbourne, *Submission 24*, pp. 3-4.

- 3.105 Dr Noam Peleg similarly cautioned against the adoption of the IHRA definition of antisemitism, arguing that it poses a threat to academic freedom and freedom of speech on campuses.<sup>177</sup> Dr Lana Tatour and Andrew Brooks also expressed concern regarding ‘political pressures on universities to adopt’ the IHRA definition.<sup>178</sup> They argued that, ‘[w]hile presenting itself as an antiracist instrument that aims to protect Jewish academics and students on campuses from antisemitism, in practice the IHRA is a political tool leveraged to censor critical voices and knowledge on Palestine’.<sup>179</sup>
- 3.106 Loud Jew Collective, a group which includes members who work and study at various universities, posited the IHRA working definition of antisemitism as being used ‘primarily to shut down legitimate and necessary criticism of Israel and Zionism’.<sup>180</sup> This position is echoed similarly by Students for Palestine.<sup>181</sup> Both organisations have raised concerns over the pressures faced by universities to adopt the IHRA definition, in a university context in part to ‘stifle speech and political expression critical of Israel’.<sup>182</sup>
- 3.107 Liberty Victoria stated that ‘a definition of antisemitism should not include any reference to the State of Israel or conflate criticism or even condemnation of the actions taken by Israel with antisemitism’.<sup>183</sup> It stated that criticism of the State of Israel, or the actions of its government, are not inherently antisemitic, and cautioned that there is ‘a real danger that accusations of antisemitism are being weaponised by supporters of the current government to attempt to invalidate legitimate criticism and shame critics into silence’.<sup>184</sup>
- 3.108 The Special Envoy to Combat Antisemitism, Ms Jillian Segal, stated that universities have previously considered the IHRA definition of antisemitism and rejected it:

The issue of the definition of antisemitism is a fraught one. I endorse the IHRA definition of antisemitism as the gold standard...It is the internationally accepted definition adopted by the government and the

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<sup>177</sup> Dr Noam Peleg, *Submission 48*, p. 1.

<sup>178</sup> Dr Lana Tatour and Andrew Brooks, *Submission 49*, p. 2.

<sup>179</sup> Dr Lana Tatour and Andrew Brooks, *Submission 49*, p. 2.

<sup>180</sup> Loud Jew Collective, *Submission 96*, p. 1, (submission to Legal and Constitutional Affairs, inquiry into the Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2) October 2024.

<sup>181</sup> Students for Palestine, *Submission 42*, p. 3–4.

<sup>182</sup> Students for Palestine, *Submission 42*, p. 4, and Loud Jew Collective, *Submission 96*, p. 1, (submission to Legal and Constitutional Affairs, inquiry into the Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2) October 2024.

<sup>183</sup> Liberty Victoria, *Submission 29*, p. 3. See also, Academics for Palestine (WA), *Submission 34*, p. 2.

<sup>184</sup> Liberty Victoria, *Submission 29*, p. 3.

opposition, by 45 other countries, by the European Commission and by hundreds of tertiary institutions around the world et cetera. We are, unfortunately, in a difficult situation in Australia where many universities, in response to a letter from the previous government encouraging all universities to adopt the IHRA definition, took the IHRA definition through their academic boards—academic boards are, by definition, made up of the academics in a university—and in most cases those boards specifically rejected the definition. It was not as if they hadn't thought about it; there was strong debate and that definition was rejected. I worked with the universities before I was appointed envoy, and I have certainly worked with them since. In my opinion, that definition is just not going to easily fly with universities.<sup>185</sup>

3.109 Dr David Slucki stated:

That's where we have this challenge in taking a definition and applying it writ large. The IHRA definition is a useful guide. We had this challenge in, 'How do you take that and apply it to a university context?' There was certainly a feeling, talking to members of the Group of Eight, that it wasn't actionable because there were areas where it was vague or it would be difficult to implement. The Group of Eight—and I worked on this as well—developed a working definition that they could encourage universities to use in a guide that aimed to be a bit more precise for the context in which it was operating and to recognise the ways in which antisemitism was manifesting at campuses specifically. Like all definitions, it's imperfect—and that's where that's inevitably going to be a challenge in defining a really difficult, complex and contested concept like antisemitism.<sup>186</sup>

3.110 Monash University stated that the university's 'anti-racism statement' affirms the university's commitment to rejecting all forms of racism, and 'incorporates the IHRA definition of antisemitism as a guide to understanding antisemitism, noting the clarifications recommended by the UK Home Affairs Select Committee'.<sup>187</sup>

3.111 The ANU noted that there is no international consensus on the definition internationally, nor does a formally enshrined definition exist in Australia.<sup>188</sup> It stated that 'Historically Australia's general criminal, antidiscrimination and anti-vilification laws have been considered sufficiently effective in prohibiting and punishing acts of ethnically, racially, or religiously oriented violence and harm, including antisemitic acts'. It stated that the ANU's Academic Freedom Expert Reference Group considered this issue in 2023 and found that:

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<sup>185</sup> Ms Jillian Segal, Special Envoy to Combat Antisemitism, *Committee Hansard*, 29 November 2024, p. 42.

<sup>186</sup> Dr David Slucki, Director, Australian Centre for Jewish Civilisation, *Committee Hansard*, 22 January 2025, p. 29.

<sup>187</sup> Monash University, *Submission 21*, p. 1.

<sup>188</sup> The Australian National University, *Submission 33*, p. 5.

- Adopting a specific definition of antisemitism, and enshrining it in ANU policy and procedures would be complex, and potentially divisive.
- Existing arrangements were consistent with Commonwealth law and policy and struck the right balance between supporting student and staff wellbeing, and academic freedom and freedom of speech.
- Were ANU to explicitly reference antisemitism in policy and procedures, it would likely also be necessary to define and enshrine other forms of discriminatory behaviours (e.g. other race or ethnicity-based discrimination, misogyny, homophobia etc).
- This process and outcome could negatively impact individual students and staff –including Jewish students – as well as undermine broader social cohesion within the University community.<sup>189</sup>

3.112 It advised that Jewish students were not consulted regarding the decision to not adopt the IHRA definition.<sup>190</sup>

3.113 Universities Australia, similarly, stated that there are ‘some legal complications’ around the adoption of the IHRA definition in the Australian context.<sup>191</sup> Professor Downton of Macquarie University likewise posited that ‘at the moment we have inadequate help from the law in defining what antisemitism really is’.<sup>192</sup>

3.114 Group of Eight Australia stated that by establishing a definition of antisemitism ‘that can be adopted across our membership, supported by targeted training, we can increase awareness and strategies to manage antisemitism when it occurs on campus’.<sup>193</sup> It stated that, as part of this process, it consulted with a range of community groups and leaders, including the Jewish Council of Australia, AUJS, and the Australian Palestinian Advocacy Network.<sup>194</sup> It advised that the Group of Eight Board has endorsed a ‘working definition’ of antisemitism that is ‘potentially suitable for use in an Australian University context’,<sup>195</sup> which may then be progressed by member universities through their own approvals processes.<sup>196</sup>

3.115 With respect to the adoption of that working definition, it stated:

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<sup>189</sup> The Australian National University, *Submission 33*, pp. 5-6.

<sup>190</sup> Professor Anthony Connolly, Chair, Academic Board, Australian National University, *Committee Hansard*, 22 January 2025, p. 13.

<sup>191</sup> Mr Luke Sheehy, Chief Executive Officer, Universities Australia, *Committee Hansard*, 29 November 2024, p. 4.

<sup>192</sup> Professor S. Bruce Downton, Vice Chancellor and President, Macquarie University, *Committee Hansard*, 5 February 2025, p. 6.

<sup>193</sup> Group of Eight Australia, *Submission 19*, p. 3.

<sup>194</sup> Group of Eight Australia, answer to question on notice (received 21 January 2025).

<sup>195</sup> Group of Eight Australia, answer to question on notice (received 21 January 2025).

<sup>196</sup> Group of Eight Australia, *Submission 19*, p. 4.

The development of this working definition has been challenging and complex. We recognise there are a diversity of views across the community. Any definition – in and of itself – can only work as a tool to assist in developing a shared and common understanding of how antisemitism can manifest on a 21st century Australian campus, and as such, will need to be flexible to accommodate changing circumstances. This is why we are calling it a working definition – it is not a case of ‘set and forget’.

We acknowledge that the preferred position of the Special Envoy is for universities to adopt the International Holocaust Remembrance Alliance (IHRA) working definition; however, a number of our members raised concerns regarding the implications of IHRA for academic freedom. Instead, we have taken the approach...of consulting widely with experts in hate speech and discrimination law, and with select eminent members of the Jewish community. The definition we have crafted is both guided by the IHRA definition and captures the essence of IHRA while addressing the practical concerns of our member universities. We have heard the calls from our Jewish students and staff for urgent action, and have chosen to take an approach of not letting the perfect be the enemy of the good.

The Go8 working definition represents our best efforts to achieve the delicate balance between adopting a definition that captures the essence of IHRA and can be operationalised in a university setting, while upholding academic freedom and associated obligations.<sup>197</sup>

3.116 Group of Eight Australia further stated that this definition has been developed ‘to provide guidance in education and training within a university setting’.<sup>198</sup> Ms Vicki Thomson, CEO, clarified that ‘criticism of policies and practices of the Israeli government or state is not in and of itself antisemitic’, but stated that ‘criticism of Israel can be antisemitic when it is grounded in harmful tropes and stereotypes or assumptions’.<sup>199</sup>

3.117 The University of Adelaide advised that it is working on a definition of antisemitism in collaboration with Group of Eight and Special Envoy Segal, stating:

Our goal is to create a working definition of antisemitism that is suitable for use at Australian universities drawing on existing published definitions. The Go8 in its work has considered the International Holocaust Remembrance Alliance (IHRA) and recommendations of Antisemitism Taskforces at Columbia University, Stanford University, Harvard University and New York University. The definition being developed will reflect language and considerations relevant to Australian universities, while also respecting lawful freedom of speech and academic freedom.

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<sup>197</sup> Group of Eight Australia, *Submission 19*, pp. 4-5.

<sup>198</sup> Group of Eight Australia, *Submission 19*, p. 5.

<sup>199</sup> Ms Vicki Thomson, CEO, Group of Eight Australia, *Committee Hansard*, 29 November 2024, p. 8.



When a working definition of antisemitism has been established, it will be put to the University Council for its consideration.<sup>200</sup>

3.118 In this regard, Ms Segal described this work as an attempt to ‘come up with an acceptable, shortened, Australianised, ‘university-ised’ IHRA version, our Australian IHRA, where the essence of IHRA is in the definition—it’s much shorter, it doesn’t have the case studies and it deals specifically, obviously, with antisemitism’.<sup>201</sup>

3.119 Academics for Palestine (WA) submitted that existing statutory definitions regarding racism, hate speech and discrimination should be relied on.<sup>202</sup>

3.120 Mr Robert French AC (Chancellor of the University of Western Australia and formerly Chief Justice of the High Court of Australia) argued that consensus regarding a definition of antisemitism which could be then operationalised would be of assistance:

When it comes to operationalising constraints based antisemitism, it would help if we could have a consensus around the nation of what constitutes antisemitism, which we can put into a rule of conduct, perhaps a specific higher education standard directed against antisemitism or even a law which is a specific application of section 18C. You always have to be careful, of course, with those definitions. It’s a bit of a minefield. If it’s fuzzy at the edges, then you start running into the area of implied freedom of political communication and so forth. But I do think that a rigorous look at a operationalisable definition by government would assist.<sup>203</sup>

3.121 In this regard, Mr French stated:

The expression of hostility towards Jewish people may take many manifestations, including the sorts of examples that are set out in the definition I mentioned earlier, that can be readily categorised as a species of harm, not just because of the effect on individuals but because of the wider societal effects. It unleashes what I call ‘the coiled snake,’ which we’ve found being unleashed in recent times. Then you get into the question of what’s antisemitic at the boundaries. There may be boundaries where you get people wanting to characterise as antisemitic that which can also be characterised as, for example, legitimate criticism of state policies

There are judgement calls there, and sometimes the two things get mixed up. I think the only way that that can be dealt with is to have a rule which allows case-by-case determination, because you’ll never nail it all down in words. And with the more words you write—I’ve often said this about laws—every new word is an argument waiting to be had... I would prefer a

<sup>200</sup> University of Adelaide, *Submission 32*, p. 4.

<sup>201</sup> Ms Jillian Segal, Special Envoy to Combat Antisemitism, *Committee Hansard*, 29 November 2024, p. 42.

<sup>202</sup> Academics for Palestine (WA), *Submission 34*, p. 1.

<sup>203</sup> Mr Robert French AC, Chancellor, University of Western Australia, *Committee Hansard*, 12 December 2024, p. 29.

simple, inclusive definition, perhaps derived from the traditional definition, which has a clear, core meaning but can then be unpacked, case by case, on individual meanings.<sup>204</sup>

3.122 Mr French stated that an example of an operational definition of antisemitic conduct which may be of use in a law, or an enforcement rule of conduct, could be:

‘Antisemitic conduct’ is conduct which by speech or action expresses hostility towards Jewish persons or groups of persons or Jewish people generally because they are Jewish or otherwise discriminates against them.<sup>205</sup>

3.123 As to the relevance of the Model Code to these considerations, Mr French stated:

[T]he code does not set out a code of conduct itself. What it sets out are the categories of constraint that can legitimately be imposed on freedom of speech and academic freedom. I can't comment on the extent to which it has been relied upon by universities in framing their codes of conduct insofar as they relate to antisemitic conduct. The impression I get...is that they are relying upon existing codes of conduct which target things like racial vilification and discriminatory, insulting, intimidating, harassing and threatening conduct and so forth, all of which can be accommodated within the model code on freedom of speech and academic freedom.<sup>206</sup>

3.124 Mr French stated that if there is to be a rule which universities are required to incorporate into their codes of conduct, then a legally ‘workable’ definition of the term antisemitism would be required, arguing that ‘[t]he easier thing is just to make a law which covers antisemitism right across the board, and then it applies to universities and everybody else in the community’.<sup>207</sup>

### *International experiences and best practices*

3.125 Some witnesses and submitters noted international practices to which they had had regard.

3.126 Group of Eight Australia stated that it is a member of the Global Research-Intensive Universities Network (GRIUN), a collaboration between leading research-intensive universities from the United Kingdom, United States of America, Japan, Germany, Canada and across Europe. It advised that when the GRIUN met in Germany in June 2024, ‘it was clear that the issues confronting

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<sup>204</sup> Mr Robert French AC, Chancellor, University of Western Australia, *Committee Hansard*, 12 December 2024, p. 26.

<sup>205</sup> Mr Robert French AC, Chancellor, University of Western Australia, correspondence received 13 December 2024.

<sup>206</sup> Mr Robert French AC, Chancellor, University of Western Australia, *Committee Hansard*, 12 December 2024, p. 28.

<sup>207</sup> Mr Robert French AC, Chancellor, University of Western Australia, *Committee Hansard*, 12 December 2024, p. 29-30.

Australian campuses in 2024 have not occurred in isolation'.<sup>208</sup> Following this meeting, 168 research bodies associated with GRIUN signed the 'Berlin Statement', which 'confirms the commitment of global research-intensive universities...to be places where the principles of freedom of speech and academic freedom are cherished and upheld, but where racism in any of its forms, including antisemitism, are never tolerated'.<sup>209</sup>

3.127 The Executive Council of Australian Jewry cited the Canadian Handbook on the IHRA Working Definition of Antisemitism as a useful guide to its application.<sup>210</sup> The Zionist Federation of Australia highlighted responses by New York University in response to antisemitism as being effective.<sup>211</sup>

3.128 However, Professor Katharine Gelber, an expert in vilification law, cautioned that:

There is an important caveat on drawing from international practices. One of Australia's strengths, in my opinion, is the vilification laws that operate in Australia, in particular the way the civil vilification laws operate in Australia. They're almost unique internationally. There are only some provinces in Canada that have something similar. Those laws allow us to intervene at a lower level of vilification than the types of things that you can intervene against with the criminal laws. For example, in the United Kingdom, their racial hatred provisions are in the criminal law only, and in the United States, of course, they have the first amendment. The context is very different in those other countries. There's no other country that has the experience of the civil vilification provisions and the commensurate expectations and responsibilities on universities to comply with those provisions. No-one else has those, and, therefore, drawing from international best practice needs to take that context into account.<sup>212</sup>

### **Views as to necessary policy or regulatory changes**

3.129 Several witnesses and submitters offered suggestions as to whether, and in what respect, policy or regulatory changes are required to better address and prevent antisemitism at universities.

3.130 TEQSA made a number of preliminary recommendations, including:

- (a) state and territory ministers engage universities to review and amend legislation and bylaws 'to ensure future protest activities can be managed effectively';

<sup>208</sup> Group of Eight Australia, *Submission 19*, p. 8.

<sup>209</sup> Group of Eight Australia, *Submission 19*, p. 6.

<sup>210</sup> Executive Council of Australian Jewry, *Submission 1*, p. 8.

<sup>211</sup> Mr Alon Cassuto, Chief Executive Officer, Zionist Federation of Australia, *Committee Hansard*, 29 November 2024, p. 26.

<sup>212</sup> Professor Katharine Gelber, private capacity, *Committee Hansard*, 12 December 2024, p. 3.

- (b) universities review and where necessary amend their policies and procedures relevant to responding to protest activities, encampments and occupation of buildings, as well as their misconduct policies;
- (c) universities develop mechanisms and expertise to enable timely and effective decision making about conduct, statements, images and slogans that may be unacceptable. Effective decision making needs to be considered in relation to definitions of antisemitism, policies, such as civility and freedom of speech policies, staff and student codes of conduct and, misconduct procedures;
- (d) universities publicly report aggregate complaints data, analysis and outcomes;
- (e) senior and front-line staff receive training and support in trauma-informed and student-centred engagement to effectively respond to antisemitic conduct and its impact.<sup>213</sup>

3.131 Ms Segal stated that universities need to revise and strengthen their complaints processes; provide for complaints resolutions to be made public in a de-identified way; and provide for training about antisemitism.<sup>214</sup> With regards to complaints mechanisms, she argued:

The head of the complaint scheme should sit down with vice-chancellors every month and take the vice-chancellor through the complaints. That's important governance, and it will be a way to ensure that people know that the vice-chancellor is aware. There should be deidentified reports, as mentioned, about the complaints and how they were resolved. It is a matter of saying not just that student was satisfied but also what discipline was applied, so that it becomes a learning experience of the boundaries. Those reports should come to TEQSA and to my office. They shouldn't just be made internally; there should be transparency and we should see that the universities are lodging those reports.<sup>215</sup>

3.132 Monash University submitted that, for the most part, its regulations and policies were 'found to be sufficient to manage the tensions and conflict on campus, to enforce legal behaviours and take action against behaviours that were considered likely to be unlawful or to contravene conduct policies'.<sup>216</sup> It stated that, regulations and policies 'provide important legal requirements and moral norms to promote good behaviour and respond to bad behaviour, but they can

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<sup>213</sup> TEQSA, *Submission 20*, pp. 7-8.

<sup>214</sup> Ms Jillian Segal, Special Envoy to Combat Antisemitism, *Committee Hansard*, 29 November 2024, p. 43.

<sup>215</sup> Ms Jillian Segal, Special Envoy to Combat Antisemitism, *Committee Hansard*, 29 November 2024, p. 44.

<sup>216</sup> Monash University, *Submission 21*, p. 8.

only do so much'. It argued that culture, relationships and trust are essential foundations of social cohesion, and require clear leadership.<sup>217</sup>

3.133 Professor Mark Scott AO, Vice Chancellor and President of The University of Sydney noted advice from Special Envoy Segal regarding how complaints to the university could be classified:

Another important piece of feedback we had from Jillian Segal was that we have a lot to learn about how the university system has dealt with complaints of sexual assault and sexual harm. One of the things that I think has been a frustration in the complaints system is that some of the complaints that are made are quite general. They're not often about a specific incident. They're not often about a specific person. They are notifications of broad concern. But they aren't complaint processes per se that can work their way through and find that somebody misbehaved or something specifically wrong happened in a circumstance. One of the things that the envoy said...was whether we need different classifications where issues are brought to the university's attention so that we are aware of something that someone wants to notify us of but that are perhaps separate to going through a pathway around a complaints process...<sup>218</sup>

3.134 Professor George Williams from Western Sydney University expressed hope the establishment of a National Student Ombudsman would assist in developing benchmarks for university complaints management and some standardisation.<sup>219</sup>

3.135 Dr David Slucki, Director of the Australian Centre for Jewish Civilisation at Monash University, emphasised the importance of research to inform efforts to combat antisemitism:

I cannot overemphasise the need for a robust evidence base to inform laws, public policies, institutional policies and education and training initiatives designed to counter antisemitism. Without a detailed understanding of the causes, nature, extent and impact of antisemitism, we cannot confidently design measures intended to prevent it. The fact is that, at the moment, we do not have a sufficient understanding of the recent and shocking increase in antisemitism in Australia. We need to better understand why it's so persistent in Australian society. We need to understand where it fits in the global proliferation of antisemitism. We need to understand the impact of online antisemitism and how best to deal with that. We need to examine further the relationship between antisemitism and other forms of racism, prejudice, hate and unjust discrimination. We need to understand what the best ways to combat these pernicious phenomena are and develop methods that are sustainable to make this country a safer and more just place to live,

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<sup>217</sup> Monash University, *Submission 21*, p. 8.

<sup>218</sup> Professor Mark Scott AO, Vice Chancellor and President, University of Sydney, *Committee Hansard*, 29 November 2024, pp. 15-16.

<sup>219</sup> Professor George Williams, Vice Chancellor and President, Western Sydney University, *Committee Hansard*, 22 January 2025, p. 18.

not only for Jews but for people of all backgrounds. Rigorous research is needed to develop an evidence base upon which policymakers and organisational leaders can rely. Centres of excellence such as ours have the knowledge and the expertise to design effective and efficient research projects to build the evidence base.<sup>220</sup>

3.136 He stated that the federal government can ‘supercharge’ research initiatives underway by making a substantial investment in the research and in scaling up the associated programs across the country.<sup>221</sup>

3.137 The Zionist Federation of Australia argue that the establishment of a judicial inquiry into antisemitism on campuses ‘remains the most comprehensive mechanism to address the root causes and systemic issues enabling this crisis’.<sup>222</sup> It also recommended:

- mandatory racial vilification for all university staff and students;
- prohibiting encampments and protest activities within university buildings;
- the creation of an ‘emergency power’ for universities by which they can ‘require students to identify themselves in order to participate in protests and restrict protest participation to enrolled students’;
- requiring protest organisations to register with student bodies; and
- address ‘coded antisemitism’ (by updating university policies to prevent ‘Zionist’ being used as a substitute or codeword).<sup>223</sup>

3.138 The Australia/Israel & Jewish Affairs Council made several recommendations, including that the remit of the National Student Ombudsman should be expanded, a uniform complaints policy should be adopted by all universities, and that such complaints processes should include antisemitism as an example of banned discriminatory behaviour.<sup>224</sup>

3.139 The Executive Council of Australian Jewry noted that it has long advocated for a national database and hotline for racist incidents and discourse, noting that other models already operate in the United Kingdom, United States of America and Canada.<sup>225</sup>

3.140 Professor Philip Mendes stated that anti-racist education and training may assist in educating students and academics regarding the history of antisemitism, the

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<sup>220</sup> Dr David Slucki, Director, Australian Centre for Jewish Civilisation, *Committee Hansard*, 22 January 2025, p. 26.

<sup>221</sup> Dr David Slucki, Director, Australian Centre for Jewish Civilisation, *Committee Hansard*, 22 January 2025, p. 27.

<sup>222</sup> Zionist Federation of Australia, *Submission 15*, p. 1. See also Ms Simone Abel, Head of Legal, Executive Council of Australian Jewry, *Committee Hansard*, 29 November 2024, p. 30.

<sup>223</sup> Zionist Federation of Australia, *Submission 15*, pp. 1-2.

<sup>224</sup> Australia/Israel & Jewish Affairs Council, *Submission 16*, p. 1.

<sup>225</sup> Executive Council of Australian Jewry, *Submission 1*, p. 17.

persistence of antisemitic tropes, the traumatic impact of antisemitism; and ‘the differences between legitimate criticism of Israeli government actions and the essentialising of all Israeli and other pro-Israel Jews as an evil collective’.<sup>226</sup>

3.141 The Archdiocese of Brisbane stated that universities must implement ‘robust and multifaceted support systems’ to address the challenges of antisemitism, including accessible mental health resources, pastoral care, and effective reporting mechanisms.<sup>227</sup> It also highlighted the importance of ‘visible leadership’ from university administrators, and outlined the importance of building trust and understanding across religious and cultural groups in order to combat discrimination.<sup>228</sup>

3.142 Dr Kearns and Associate Professor Walter posited that the ‘underspecification’ of the duties of the office of Vice Chancellor contributed to a misunderstanding and misapplication of policies by office holders.<sup>229</sup> They stated that, alternatively, legislation could be amended ‘to make Vice Chancellors answerable to Ministers for Education, thereby subordinating the judgement of university officers to that of politicians’.

3.143 Dr Noam Peleg argued that potential responses such as the introduction of a national complaint mechanism, or adoption of the IHRA definition of antisemitism should not occur, including because they ‘are not pedagogical solutions to an issue that ought to be handled via education, and not by sanctions or political intervention’.<sup>230</sup>

3.144 The Australian Jewish Democratic Society argued that a change in culture is required:

Collegiality, tolerance and pluralism appear to have gone missing in student political activity in the era of polarization. Faculty also need to be reminded of the principles of collegiality, tolerance and pluralism when touching on sensitive political issues. Permission for holding events should be tied to written commitment by student organizations to behavioural standards and sanctions. Likewise, it needs to be made clear to students that being at university also involves challenges to core beliefs and assumption and at times, discomfort, whether in the classroom or in on-campus encounters.<sup>231</sup>

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<sup>226</sup> Professor Philip Mendes, *Submission 45*, p. 10.

<sup>227</sup> Archdiocese of Brisbane, *Submission 27*, p. 6.

<sup>228</sup> The Zionist Federation of Australia similarly highlighted the importance of university leadership. See, Mr Alon Cassuto, Chief Executive Officer, Zionist Federation of Australia, *Committee Hansard*, 29 November 2024, p. 26.

<sup>229</sup> Dr David Kearns and Associate Professor Ryan Walter, *Submission 38*, p. 3.

<sup>230</sup> Dr Noam Peleg, *Submission 48*, p. 5.

<sup>231</sup> Australian Jewish Democratic Society, *Submission 18*, p. 3.

3.145 It also posited that high level, independent research such as that being conducted at Monash University into the nature of antisemitism and Islamophobia and subsequent strategies ‘could be a model for other universities’, but such work requires ongoing funding by government.<sup>232</sup>

3.146 The National Union of Students emphasised the importance of universities consulting with students in responding to antisemitism and other forms of discrimination:

[U]niversities have consistently demonstrated that they are unable to properly handle antisemitism and other forms of discrimination in any regard. We believe that universities should instead adopt an approach where they consider what is appropriate for that university in consultation with students, where they do not violate academic freedom or free speech, where they encourage students to speak out strongly and promptly against bigotry including antisemitism, where they punish racist and antisemitic conduct according to procedures developed transparently which do not overstep the principles of our liberal democracy, and where they engage more proactively with students regarding their perception of the culture on campus. We believe that student voices should be at the centre of university policymaking in order to ensure that our campuses can be a safe space for all to learn and express their views freely.<sup>233</sup>

3.147 The Australian Human Rights Commission and Human Rights Law Centre recommended the enactment of a federal Human Rights Act (which the committee recommended in 2024).<sup>234</sup> The Human Rights Law Centre also recommended that Australia’s anti-discrimination legislative framework be consolidated and amended.<sup>235</sup>

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<sup>232</sup> Australian Jewish Democratic Society, *Submission 18*, p. 4.

<sup>233</sup> Ms Ashlyn Horton, National President, National Union of Students, *Committee Hansard*, 22 January 2025, pp. 19-20.

<sup>234</sup> See, Mr Hugh de Kretser, President, AHRC, *Committee Hansard*, 22 January 2025, p. 38; and Human Rights Law Centre, *Submission 40*, p. 5. See further, Parliamentary Joint Committee on Human Rights, *Inquiry into Australia’s Human Rights Framework* (30 May 2024).

<sup>235</sup> Human Rights Law Centre, *Submission 40*.



# Chapter 4

## Relevant International Human Rights Law

4.1 This chapter sets out the key human rights (as recognised under international human rights law) which are engaged by the matters being considered in this inquiry. Finally, this chapter sets out the committee's views and recommendations.

### Relevant human rights

4.2 Australia has voluntarily assumed binding obligations to respect, protect and fulfil human rights under international human rights law. The United Nations has also emphasised the role of business in respecting human rights.<sup>1</sup>

4.3 The human rights which are directly engaged by antisemitism at university campuses, and related protests and responses to such protests or the making of statements, include the rights to:

- (a) equality and non-discrimination;
- (b) freedom of religion;
- (c) education;
- (d) freedom of expression; and
- (e) freedom of assembly.

4.4 A small number of submitters and witnesses provided expert evidence regarding Australia's existing legal protections and human rights law obligations.

### The right to equality and non-discrimination

4.5 This right provides that everyone is entitled to enjoy their rights without discrimination of any kind and that all people are equal before the law and entitled without discrimination to equal and non-discriminatory protection of the law.<sup>2</sup> The prohibited grounds of discrimination are race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (which includes nationality).

4.6 The right to equality encompasses both 'direct' discrimination (where measures have a discriminatory intent) and 'indirect' discrimination (where measures

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<sup>1</sup> See, for example, *UN Guiding Principles on business and human rights*.

<sup>2</sup> International Covenant on Civil and Political Rights, articles 2 and 26. Article 2(2) of the International Covenant on Economic, Social and Cultural Rights also prohibits discrimination specifically in relation to the human rights contained in the International Covenant on Economic, Social and Cultural Rights.

have a discriminatory effect on the enjoyment of rights).<sup>3</sup> Indirect discrimination occurs where 'a rule or measure that is neutral at face value or without intent to discriminate' exclusively or disproportionately affects people with a particular protected attribute.<sup>4</sup>

4.7 Article 1 of the United Nations (UN) International Convention on the Elimination of All Forms of Racial Discrimination provides that 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

4.8 The UN Committee on Economic, Social and Cultural Rights has emphasised that non-discrimination is 'an immediate and cross-cutting obligation' on States parties, and one which requires them to eliminate discrimination both formally and substantively:

Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination.<sup>5</sup>

4.9 It also obliges states to adopt measures to ensure that persons in the private sphere do not discriminate on prohibited grounds.<sup>6</sup>

4.10 Differential treatment will be permissible 'if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the International Covenant on Civil and Political Rights'.<sup>7</sup>

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<sup>3</sup> United Nations (UN) Human Rights Committee, *General Comment 18: Non-discrimination* (1989).

<sup>4</sup> *Althammer v Austria*, UN Human Rights Committee Communication no. 998/01 (2003) [10.2]. The prohibited grounds of discrimination are often described as 'personal attributes'. See, Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary*, 3<sup>rd</sup> edition, Oxford University Press, Oxford, 2013, [23.39].

<sup>5</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 20 Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)* (2009) [7]–[8].

<sup>6</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 20 Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)* (2009) [11].

<sup>7</sup> See, UN Human Rights Committee, *General Comment No 18: Non-discrimination* (1989) [13].

### The right to freedom of religion

- 4.11 The right to freedom of religion is the right of all persons to think freely, and to entertain ideas and hold positions based on conscientious or religious or other beliefs.<sup>8</sup> The right to *hold* a religious or other belief or opinion is an absolute right which may not be subject to any limitations.
- 4.12 Persons have the right to demonstrate or manifest religious or other beliefs, by way of worship, observance, practice and teaching.<sup>9</sup> Restrictions on the freedom to *manifest* religion or belief will be permissible only if they are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. Such measures must also be rationally connected (that is, effective to achieve) and proportionate to a legitimate objective.<sup>10</sup> Such restrictions may not be imposed for a discriminatory purpose or applied in a discriminatory manner.<sup>11</sup>
- 4.13 While the right to hold a religious or other belief or opinion is an absolute right,<sup>12</sup> the right to exercise one's belief can be limited given its potential impact on others. The right to exercise one's belief can be limited as long as it can be demonstrated that the limitation is proportionate and is necessary to protect public safety, order, health or morals or the rights of others.<sup>13</sup>
- 4.14 The Special Rapporteur on freedom of religion or belief, Mr Ahmed Shaheed, has identified violence, discrimination and expressions of hostility motivated by antisemitism as a serious obstacle to the enjoyment of the right to freedom of religion or belief.<sup>14</sup>

### The right to education

- 4.15 The right to education provides that education should be accessible to all.<sup>15</sup> This requires that State parties recognise the right of everyone to education, and agree that education shall be directed to the full development of the human

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<sup>8</sup> International Covenant on Civil and Political Rights, article 18.

<sup>9</sup> International Covenant on Civil and Political Rights, article 18.

<sup>10</sup> UN Human Rights Committee, *General Comment No 22: Article 18 of the ICCPR on the Right to Freedom of Thought, Conscience and Religion* (1993) [8].

<sup>11</sup> UN Human Rights Committee, *General Comment No 22: Article 18 of the ICCPR on the Right to Freedom of Thought, Conscience and Religion* (1993) [8].

<sup>12</sup> UN Human Rights Committee, *General Comment No. 22: Article 18 (Freedom of thought, conscience or religion)* (1993) [1].

<sup>13</sup> UN Human Rights Committee, *General Comment No. 22: Article 18 (Freedom of thought, conscience or religion)* (1993) [8].

<sup>14</sup> UN Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, *Elimination of all forms of religious intolerance* (20 September 2019) A/75/358.

<sup>15</sup> International Covenant on Economic, Social and Cultural Rights, article 13.

personality and sense of dignity, and shall strengthen the respect for human rights and fundamental freedoms.

- 4.16 The right to education includes a right to academic freedom. The Special Rapporteur on the right to education, Farida Shaheed, explains that:

Academic freedom comprises the freedom of individuals to access, disseminate and produce information, to think freely and to develop, express, apply and engage with a diversity of knowledge within or related to their fields of expertise or of study, whether inside (“intramural expression”) or outside the academic community, including with the public (“extramural expression”). It is a human right, the exercise of which carries special duties to seek the truth and to impart information according to ethical and professional standards and to respond to contemporary problems and needs of all members of society.<sup>16</sup>

- 4.17 The Special Rapporteur emphasised that the right carries responsibilities, and *does not* protect the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.<sup>17</sup>

- 4.18 The Special Rapporteur noted that threats to academic freedom globally include, attacks on institutional autonomy; interventions of security forces on university campuses; and political tensions affecting the content and conduct of teaching and research. They highlighted, in particular, information they had received regarding responses to the Israel/Palestine conflict:

On 23 November 2023, four Special Rapporteurs raised concerns about the suspension and expulsion of students from universities, the dismissal of academics, calls for their deportation, threats to dissolve student unions and associations and restrictions on campus meetings to express solidarity with the suffering civilians in Gaza and denounce the ongoing Israeli military response. In some universities, students have been blacklisted as supporters of terrorism, with accompanying threats to their prospects for future employment. It is reported that about 120 universities in the United Kingdom have adopted the working definition of antisemitism adopted by the International Holocaust Remembrance Alliance, which conflates criticisms of Israel with antisemitism, to silence lawful speech supportive of Palestinian human rights and the right to self-determination. University staff and students have been subjected to unreasonable investigations and disciplinary proceedings based on this definition and harmed by false allegations of antisemitism. Academic freedom has also been curtailed as a result of measures to prevent terrorism, particularly in relation to expressions of solidarity with the Palestinian people since 7 October 2023. The Special Rapporteur is equally concerned at the reported increase of antisemitism in universities following the 7 October massacre and regrets that the definition used by the International Holocaust Remembrance

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<sup>16</sup> Special Rapporteur on the right to education, Ms Farida Shaheed, *Academic freedom* (27 June 2024) A/HRC/56/58, p. 1.

<sup>17</sup> Special Rapporteur on the right to education, Ms Farida Shaheed, *Academic freedom* (27 June 2024) A/HRC/56/58, [28] and [44].

Alliance creates confusion about such an important issue. The right to academic freedom does not protect the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.<sup>18</sup>

- 4.19 The Special Rapporteur recommended the implementation of the Principles for Implementing the Right to Academic Freedom, which articulates nine aspects for substantially protecting the right.<sup>19</sup>
- 4.20 The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ms Irene Khan, has similarly reported specifically on global threats to freedom of expression arising from the conflict in Palestine,<sup>20</sup> cautioning that private actors including universities, 'have played a disturbing role, intimidating, isolating and silencing voices that differ from theirs', and highlighted the undermining of academic freedom as a distinct challenge to freedom of expression emanating from the conflict.<sup>21</sup>

### **The right to freedom of expression**

- 4.21 The right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds, either orally, in writing or print, including written and oral communications, the media, public protest, broadcasting, artistic works and commercial advertising.<sup>22</sup> The UN Human Rights Committee has noted the important status of this right under international human rights law.<sup>23</sup>

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<sup>18</sup> Special Rapporteur on the right to education, Ms Farida Shaheed, *Academic freedom* (27 June 2024) A/HRC/56/58, p. [44].

<sup>19</sup> Special Rapporteur on the right to education, Ms Farida Shaheed, *Academic freedom* (27 June 2024) A/HRC/56/58, [82]. In reference to UN Human Rights Council, *Principles for implementing the right to academic freedom* (31 May 2024) A/HRC/56/CRP.2.

<sup>20</sup> Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ms Irene Khan, *Global threats to freedom of expression arising from the conflict in Gaza* (23 August 2024) A/79/319.

<sup>21</sup> Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ms Irene Khan, *Global threats to freedom of expression arising from the conflict in Gaza* (23 August 2024) A/79/319 [6].

<sup>22</sup> International Covenant on Civil and Political Rights, article 19(2).

<sup>23</sup> UN Human Rights Committee, *General comment No. 34: Article 19: Freedoms of opinion and expression*, CCPR/C/GC/34 (2011) [2]–[3]. The UN Human Rights Committee stated that: 'Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society. The two freedoms are closely related, with freedom of expression providing the vehicle for the exchange and development of opinions. Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights'.

- 4.22 This human right is broad in scope. It embraces expression that may be regarded as deeply offensive, and includes expression of views and opinions that offend, shock or disturb.<sup>24</sup> The UN Human Rights Committee has also stated that the right to freedom of expression encompasses expression that may be regarded as deeply offensive and insulting.<sup>25</sup>
- 4.23 The right to freedom of expression may be permissibly limited. The International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, place obligations on states in relation to the right to freedom of expression and the right to be free from racial discrimination, including racial 'hate speech' or serious forms of racially discriminatory speech.<sup>26</sup> States parties are required to have legal prohibitions on the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.<sup>27</sup> As the Australian Human Rights Commission noted, there is a high threshold for expression that falls under this requirement.<sup>28</sup>
- 4.24 Further, the right to freedom of expression may be subject only to limitations that are necessary to: protect the rights or reputations of others;<sup>29</sup> or for the protection of national security,<sup>30</sup> public order, or public health or morals.<sup>31</sup> Such

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<sup>24</sup> UN Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue*, A/HRC/17/27 (2011) [37].

<sup>25</sup> UN Human Rights Committee, *General comment No. 34: Article 19: Freedoms of opinion and expression*, CCPR/C/GC/34 (2011) [11] and [38].

<sup>26</sup> International Covenant on Civil and Political Rights, articles 19, 20 and 26; and International Convention on the Elimination of All Forms of Racial Discrimination, article 4.

<sup>27</sup> International Covenant on Civil and Political Rights, article 20(2).

<sup>28</sup> AHRC, *Submission 30*, p. 9.

<sup>29</sup> Restrictions on this ground must be constructed with care. For example, while it may be permissible to protect voters from forms of expression that constitute intimidation or coercion, such restrictions must not impede political debate. See UN Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression* (2011) [28].

<sup>30</sup> Extreme care must be taken by State parties to ensure that treason laws and similar provisions relating to national security are crafted and applied in a manner that conforms to the strict requirements of paragraph 12(3) of the International Covenant on Civil and Political Rights. It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information. See UN Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression* (2011) [30].

<sup>31</sup> The concept of 'morals' here derives from myriad social, philosophical and religious traditions. This means that limitations for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. See UN Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression* (2011) [32].

limitations (including one which is justified on the basis that it gives effect to a State's obligations relating to the prohibition of hate speech) must be prescribed by law, be rationally connected to the objective of the measures and be proportionate.<sup>32</sup>

- 4.25 In determining whether limitations on the freedom of expression are proportionate, the United Nations Human Rights Committee has noted that restrictions on the freedom of expression must not be overly broad.<sup>33</sup> In particular, it has observed that:

When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.<sup>34</sup>

- 4.26 The UN Committee on the Elimination of Racial Discrimination has recommended that certain factors be considered in determining whether particular conduct should be declared an offence punishable by law (pursuant to a State's obligations arising under the UN Convention on the Elimination of Racial Discrimination):

- (a) the content and form of speech (e.g. provocative, directness, construction and dissemination, style of delivery);
- (b) the economic, social and political climate at the time the speech was made and disseminated;
- (c) the position or status of the speaker, and the audience to which the speech is directed;
- (d) the reach of the speech, including means of transmission; and
- (e) the objectives of speech (e.g. protecting or defending the human rights of individuals and groups should not be subject to criminal or other sanctions).<sup>35</sup>

- 4.27 The Australian Human Rights Commission (AHRC) noted that several UN bodies and Special Rapporteurs 'have expressed deep concern about the reported increase of antisemitism in universities following 7 October 2023'.<sup>36</sup> The

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<sup>32</sup> UN Human Rights Committee, *General Comment No.34: Article 19: Freedoms of Opinion and Expression* (2011) [21]-[36].

<sup>33</sup> UN Human Rights Committee, *General Comment No.34: Article 19: Freedoms of Opinion and Expression* (2011) [34]. See also, UN Committee on the Elimination of Racial Discrimination, *General recommendation No. 35: combating racist hate speech* (26 September 2013) CERD/C/GC/35 [20].

<sup>34</sup> UN Human Rights Committee, *General Comment No.34: Article 19: Freedoms of Opinion and Expression* (2011) [35].

<sup>35</sup> UN Committee on the Elimination of Racial Discrimination, *General Recommendation No 35: Combating racist hate speech*, (26 September 2013) CERD/C/GC/35 [15].

<sup>36</sup> Australian Human Rights Commission (AHRC), *Submission 30*, p. 13.

AHRC also noted that UN authorities have also raised concern about some responses to this increase, including:

...the suspension and expulsion of students, dismissal of academics, and threats towards students, academics, student unions and associations for 'expressing solidarity with suffering civilians in Gaza and denounce[ing] the ongoing Israeli military response'.<sup>37</sup>

4.28 The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ms Irene Khan, has reported specifically on global threats to freedom of expression arising from the conflict in Palestine.<sup>38</sup> The Special Rapporteur has stated that instances of antisemitic, Islamophobic, and anti-Palestinian racism has increased dramatically since 7 October 2023, and has expressed concern regarding confusion over what constitutes antisemitism.<sup>39</sup>

4.29 The Special Rapporteur has also commented on the banning of certain symbols or slogans related to Palestine, stating:

Some States have banned and criminalized the display of Palestinian symbols, such as the national flag and the *keffiyeh* (traditional black and white scarf) as signs of antisemitism and support for Hamas. Such general bans do not meet the requirements of necessity and proportionality under article 19 (3) and therefore violate the right to freedom of expression. As general symbols of Palestinian identity, they should be regarded as legitimate forms of expression. Whether or not they are being used in a specific situation to signify intolerance or hatred against Jews or to incite violence or to indicate support for terrorism must be assessed on case-by-case basis, with careful contextual analysis to determine if they should be restricted.<sup>40</sup>

...

"From the River to the Sea, Palestine Will Be Free", the most recognizable chant in many Palestinian marches, has been the subject of blanket restrictions by some States and private actors on the grounds that it is a sign of support for Hamas and shows genocidal intent or incitement to violence against Jews. That interpretation of the slogan has been challenged by scholars, human rights experts and Palestinian advocates, including many Jewish groups and scholars who see it as a call for the right to self-determination of Palestinians. Over the past year, the slogan has been used

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<sup>37</sup> AHRC, *Submission 30*, p. 13.

<sup>38</sup> Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ms Irene Khan, *Global threats to freedom of expression arising from the conflict in Gaza* (23 August 2024) A/79/319.

<sup>39</sup> Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ms Irene Khan, *Global threats to freedom of expression arising from the conflict in Gaza* (23 August 2024) A/79/319 [4].

<sup>40</sup> Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ms Irene Khan, *Global threats to freedom of expression arising from the conflict in Gaza* (23 August 2024) A/79/319 [71].



widely during protests in solidarity with Palestinians. In some Western countries, the use of the slogan has been criminalized or otherwise sanctioned. In some others, the courts and law enforcement agencies have recognized the different meanings of the slogan and have refused to impose blanket bans on it.

A general ban or criminalization for the mere utterance of the slogan in all circumstances is disproportionate and not in line with international human rights law. Incitement requires credible proof of intent to incite, as well as the likelihood that it would lead to the intended objective, rather than just arousing feelings of fear, offence or insult. Whether or not in certain specific situations such intent and likelihood exists and prohibition of the slogan is justified should be assessed in accordance with international standards and contextual analysis outlined in the Rabat Plan of Action.<sup>41</sup>

4.30 The Human Rights Law Centre likewise emphasised the relevance of the Rabat Plan of Action in assessing the appropriateness of prohibiting certain speech:

The Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred, developed through a series of expert workshops convened by the United Nations, provides a detailed framework for distinguishing hate speech from protected expression. It emphasises that restrictions on speech must target intentional advocacy of hatred that incites violence, discrimination, or hostility while safeguarding legitimate academic and political discourse.<sup>42</sup>

4.31 It recommended the adoption of the six-part test set out in that plan to help distinguish between protected expression and prohibited hate speech, namely an assessment of: context; speaker; intent; content and form; extent; and likelihood and imminence of harm as a direct consequence of the expression or act.<sup>43</sup> The Human Rights Law Centre stated that the application of these criteria to an assessment of particular speech ‘safeguard against arbitrary or overly broad limitations on expression’, stating:

Protecting the freedom of expression, even for unpopular or dissenting views, is essential for fostering robust democratic debate and the exchange of ideas.

Combating antisemitism and other forms of racial or religious hatred that constitutes incitement to discrimination, hostility or violence is essential, and indeed mandated under Article 20(2) of the ICCPR. Such efforts, however, must not come at the cost of silencing critical or dissenting voices. This is particularly so given that suppressing legitimate political expression risks diluting the focus of combating hate speech. This, in turn, weakens

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<sup>41</sup> Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ms Irene Khan, *Global threats to freedom of expression arising from the conflict in Gaza* (23 August 2024) A/79/319 [73] – [74].

<sup>42</sup> Human Rights Law Centre, *Submission 40*, p. 4.

<sup>43</sup> Human Rights Law Centre, *Submission 40*, p. 15. This approach has also been endorsed by the UN Committee on the Elimination of Racial Discrimination. See, *General recommendation No. 35: combating racist hate speech* (26 September 2013) CERD/C/GC/35 [15].

broader efforts to address discrimination and hatred effectively and inclusively.<sup>44</sup>

- 4.32 Professor Katharine Gelber, an expert in vilification law, stated that the threshold at which legitimate freedom of expression ends and hate speech begins, stating that the threshold is, in theory ‘substantive harm... that happens through your expression that is equivalent to the harm that would happen, for example, if you were to deny somebody a job on a discriminatory ground. It’s more than offending somebody or hurting their feelings’.<sup>45</sup> She also stated that ‘the acts that lead to it need to be public and the expressive conduct needs to rank people as inferior, legitimise discrimination against them and deprive them of powers in a context in which those people are vulnerable to that harm’. Professor Gelber agreed that, in practice, ‘delineating whether or not an instance of expression has crossed that line is complex and depends very much on the context within which it occurs and the other things that happen alongside the expression’.<sup>46</sup> With respect to the current context, she stated that while there is a concerning rise in antisemitism and antisemitic expression, there is also debate and differences of opinion as to ‘whether or not a particular slogan or particular phrase amounts to being antisemitic’.<sup>47</sup>
- 4.33 The AHRC emphasised that ‘[c]entral to ensuring the protection of Jewish students and staff, as well as protecting the rights of others on university campuses, is clarifying the kinds of speech that are protected under international human rights law, and those that are not’.<sup>48</sup> In this regard, it highlighted recent comments by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression regarding ‘a tendency to confuse and conflate criticism of the policies of Israel, which is a legitimate exercise of freedom of expression, with antisemitism, which is racial and religious hatred against Jews’.<sup>49</sup>
- 4.34 The Human Rights Law Centre stated that:

In the context of protests on university campuses, particularly the anti-war protests in support of Palestine and Palestinians, expressions of dissent may provoke strong reactions amongst some students. However, the mere fact that such views may offend some does not, on its own, justify limitations to this right. The freedom of expression is not intended to shield individuals

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<sup>44</sup> Human Rights Law Centre, *Submission 40*, p. 15.

<sup>45</sup> Professor Katharine Gelber, private capacity, *Committee Hansard*, 12 December 2024, p. 1.

<sup>46</sup> Professor Katharine Gelber, private capacity, *Committee Hansard*, 12 December 2024, p. 1.

<sup>47</sup> Professor Katharine Gelber, private capacity, *Committee Hansard*, 12 December 2024, p. 2.

<sup>48</sup> AHRC, *Submission 30*, p. 13.

<sup>49</sup> AHRC, *Submission 30*, pp. 13-14 in reference to Special Rapporteur the promotion and protection of the right to freedom of opinion and expression, Irene Khan, *Global Threats to Freedom of Expression Arising from the Conflict in Gaza*, A/79/319 (23 August 2024).

or groups from offence but to protect the open exchange of ideas essential to a democratic society. The Human Rights Committee makes clear that penalising opinions about historical facts, controversial political subjects, or criticising public figures is generally inconsistent with the Covenant's protections.<sup>50</sup>

### **The right to freedom of assembly**

4.35 The right to freedom of assembly provides that all people have the right to peaceful assembly.<sup>51</sup> This is the right of people to gather as a group for a specific purpose. It protects the right of individuals and groups to meet and engage in peaceful protest and other forms of collective activity in public, whether spontaneously or having given advanced notice.<sup>52</sup> It is strongly linked to the right to freedom of expression, as it is a means for people together to express their views. It protects participants while and where an assembly is ongoing, and '[a]ssociated activities conducted by an individual or by a group, outside the immediate context of the gathering but which are integral to making the exercise meaningful'.<sup>53</sup>

4.36 The right to freedom of assembly protects peaceful assemblies wherever they take place:

...outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches.<sup>54</sup>

4.37 The right protects assemblies that pursue controversial or contentious ideas or goals, noting that '[t]heir scale or nature can cause disruption, for example of vehicular or pedestrian movement or economic activity'. The UN Human Rights Committee has stated that such consequences 'whether intended or unintended, do not call into question the protection such assemblies enjoy. To the extent that an event may create such disruptions or risks, these must be managed within

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<sup>50</sup> Human Rights Law Centre, *Submission 40*, p. 9.

<sup>51</sup> International Covenant on Civil and Political Rights, article 21.

<sup>52</sup> International Covenant on Civil and Political Rights, article 21, UN Human Rights Committee, *General Comment No. 25: Article 25 (Participation in public affairs and the right to vote)* (1996) [8]. The Committee notes that citizens take part in the conduct of public affairs, including through the capacity to organise themselves.

<sup>53</sup> UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)* (2020) [33].

<sup>54</sup> UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)* (2020) [6].

the framework of the Covenant'.<sup>55</sup> States parties are obliged to respect this right and ensure its exercise without discrimination.

4.38 As to the scope of the right, the UN Human Rights Committee has guided that:

Establishing whether or not someone's participation in an assembly is protected under article 21 entails a two-stage process. It must first be established whether or not the conduct of the person in question falls within the scope of the protection offered by the right, in that it amounts to participation in a "peaceful assembly"...If so, the State must respect and ensure the rights of the participants...Second, it must be established whether or not any restrictions applied to the exercise of the right are legitimate in that context.<sup>56</sup>

4.39 The UN Human Rights Committee has clarified that a 'peaceful' assembly 'stands in contradistinction to one characterized by widespread and serious violence' (violence meaning 'the use by participants of physical force against others that is likely to result in injury or death, or serious damage to property').<sup>57</sup> It confirms that 'mere pushing and shoving or disruption of vehicular or pedestrian movement or daily activities do not amount to "violence"'. It notes that there may not always be a clear distinction between peaceful and non-peaceful assemblies, but cautions that there should be a presumption in favour of regarding assemblies as peaceful, stating that isolated acts of violence by some participants should not be attributed to others, to the organisers or to the assembly as such', and that '[i]solated instances of such conduct will not suffice to taint an entire assembly as non-peaceful'. As such, some participants in an assembly may not be protected by article 21, whereas others may. If the conduct of participants in an assembly is peaceful, the fact that certain domestic legal requirements pertaining to an assembly have not been met by its organisers or participants *does not*, on its own, place the participants outside the scope of the protection of article 21.<sup>58</sup>

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<sup>55</sup> UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)* (2020) [7].

<sup>56</sup> UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)* (2020) [11].

<sup>57</sup> In reference to the approach taken by the Organization for Security and Co-operation in Europe and Venice Commission in interpreting the European Convention for the Protection of Human Rights and Fundamental Freedoms. See, *Guidelines on Freedom of Peaceful Assembly* (2019), [51].

<sup>58</sup> UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)* (2020) [16].

- 4.40 While States parties bear the primary responsibilities for realising the right to peaceful assembly, private entities and broader society 'may also be expected to accept some level of disruption as a result of the exercise of the right'.<sup>59</sup>
- 4.41 The right to freedom of assembly may be limited for certain prescribed purposes. That is, that the limitation is necessary to respect the rights of others, to protect national security, public safety, public order, public health or morals. Additionally, such limitations must be prescribed by law, be rationally connected (that is, effective to achieve) and proportionate to achieving the prescribed purpose. The UN Human Rights Committee has guided that such restrictions must be 'narrowly drawn', and that the approach of authorities to restricting peaceful assemblies must be content neutral and not based on the identity of participants.<sup>60</sup> It has stated that the possibility that a peaceful assembly may provoke adverse or even violent reactions from some members of the public is not sufficient grounds to prohibit or restrict the assembly.<sup>61</sup>
- 4.42 As to the prohibition of a specific assembly, the UN Human Rights Committee has stated that this:

...can be considered only as a measure of last resort. Where the imposition of restrictions on an assembly is deemed necessary, the authorities should first seek to apply the least intrusive measures. States should also consider allowing an assembly to take place and deciding afterwards whether measures should be taken regarding possible transgressions during the event, rather than imposing prior restraints in an attempt to eliminate all risks.

Any restrictions on participation in peaceful assemblies should be based on a differentiated or individualized assessment of the conduct of the participants and the assembly concerned. Blanket restrictions on peaceful assemblies are presumptively disproportionate.<sup>62</sup>

- 4.43 As to the holding of peaceful assemblies in private spaces, the UN Human Rights Committee has guided:

While gatherings in private spaces fall within the scope of the right of peaceful assembly, the interests of others with rights in the property must be given due weight. The extent to which restrictions may be imposed on such a gathering depends on considerations such as whether the space is routinely publicly accessible, the nature and extent of the potential

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<sup>59</sup> UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)* (2020) [31].

<sup>60</sup> UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)* (2020) [7] and [22].

<sup>61</sup> UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)* (2020) [27].

<sup>62</sup> UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)* (2020) [37]-[38].

interference caused by the gathering with the interests of others with rights in the property, whether those holding rights in the property approve of such use, whether the ownership of the space is contested through the gathering and whether participants have other reasonable means to achieve the purpose of the assembly, in accordance with the sight and sound principle. Access to private property may not be denied on a discriminatory basis.<sup>63</sup>

4.44 Liberty Victoria emphasised the importance of the right to freedom of assembly and the ability to engage in peaceful protest, stating that protest is critical to a functioning democracy.<sup>64</sup> It argued that vigilance is required to ensure that people calling for greater restrictions on student protests are not 'seeking to weaponise this issue for other, authoritarian ends, and that bad-faith actors do not seek to shoehorn the legitimate concern about rising incidents of antisemitism into weakening protest rights and the foundations of our democracy'.<sup>65</sup>

4.45 The Human Rights Law Centre, similarly, emphasised the breadth of the right to freedom of assembly:

An assembly, as defined by the Human Rights Committee in General Comment No. 37, is an intentional and temporary gathering of people for a specific purpose, primarily expressive, and it may take place in public or private spaces, as well as online...General Comment No. 37 states that the right applies irrespective of the duration of the assembly or whether it temporarily disrupts normal activities such as vehicular traffic or economic operations, provided the assembly remains peaceful.<sup>66</sup>

4.46 It stated that university protests, including encampments, 'often challenge institutional or societal norms in ways that may be disruptive or controversial. However, disruption and causing offense alone are not sufficient grounds to deny protection of these assemblies under international law'.<sup>67</sup> Blanket restrictions on assemblies, such as prohibiting all encampments or campus protests, are presumptively disproportionate.<sup>68</sup>

4.47 Dr Lana Tatour and Dr Andrew Brooks highlighted recent comments by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in response to protests on universities campuses globally:

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<sup>63</sup> UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)* (2020) [57].

<sup>64</sup> Liberty Victoria, *Submission 29*, p. 4.

<sup>65</sup> Liberty Victoria, *Submission 29*, p. 5.

<sup>66</sup> Human Rights Law Centre, *Submission 40*, p. 10.

<sup>67</sup> Human Rights Law Centre, *Submission 40*, p. 11.

<sup>68</sup> UN Human Rights Committee, *General Comment No 34: Article 19: Freedoms of Opinion and Expression*, CCPR/C/GC/34 (12 September 2011) [36]–[38].

[The] Special Rapporteur...urged universities to act immediately to ensure and protect the right to protest peacefully on campuses in the context of international solidarity with the Palestinian people. Romero's report examined campuses across thirty different countries, concluding that "the brutal repression of the university-based protest movement is posing a profound threat to democratic systems and institutions." Some of the concrete recommendations included in the report include calling on universities to:

actively facilitate and protect peaceful assemblies;...refrain from and cease any surveillance and retributions against students and staff for expressing their views or participating in peaceful assemblies;...ensure transparent and independent investigation into human rights violations that occurred in the context of the camps and other peaceful assemblies, revoke sanctions related to the exercise of fundamental freedoms, and provide effective and full remedies to affected students and staff.<sup>69</sup>

### Relevant domestic laws

- 4.48 The Castan Centre for Human Rights Law noted that, while there is no federal Human Rights Act or express protection of human rights in the Australian Constitution, two states and one territory have legislation expressly protecting human rights: *Human Rights Act 2004* (ACT); *Charter of Human Rights and Responsibilities Act 2006* (Vic); and *Human Rights Act 2019* (Qld).<sup>70</sup>
- 4.49 The Castan Centre for Human Rights Law noted that domestic legislation also protects against hate speech and vilification, including the *Racial Discrimination Act 1975*, and noted evidence that Jewish groups have successfully invoked this legislation 'on a number of occasions to obtain remedies against individuals engaging in antisemitic conduct or speech, including Holocaust denial and publication of material promoting hatred of Jews'.<sup>71</sup>
- 4.50 The Human Rights Law Centre highlighted the case of *Ridd v James Cook University*, which involved the consideration of the scope of 'intellectual freedom'. In this case, the High Court of Australia concluded that academic freedom must allow speech that challenges 'civil norms' and cannot be limited by a supposed 'right' to respect or courtesy.<sup>72</sup>

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<sup>69</sup> Dr Lana Tatour and Dr Andrew Brooks, *Submission 49*, p. 7. In reference to Ms Gina Romero, UN Special Rapporteur on the rights of freedom of peaceful assembly and association, [Recommendations for universities worldwide for the second semester of 2024: Safeguarding the right to freedom of peaceful assembly and association on campuses in the context of international solidarity with the Palestinian people and victims](#), (October 2024).

<sup>70</sup> Castan Centre for Human Rights Law, *Submission 35*, p. 9.

<sup>71</sup> Castan Centre for Human Rights Law, *Submission 35*, p. 14. In reference to Ronald Sackville, 'Not all Zionists: blanket attacks are antisemitic', *The Jewish Independent* (20 August 2024).

<sup>72</sup> See, Human Rights Law Centre, *Submission 40*, p. 14.

- 4.51 In its 2017 decision in *Brown v Tasmania*, the High Court considered the application of the implied constitutional right to freedom of political expression to laws restricting protest rights. The court stated that '[t]he implied freedom protects the free expression of political opinion, including peaceful protest, which is indispensable to the exercise of political sovereignty by the people of the Commonwealth. It operates as a limit on the exercise of legislative power to impede that freedom of expression'. That is, it is a limit on the laws that can be passed by state and federal governments. In this regard, the Human Rights Law Centre stated that laws that prevent or deter political communication will limit the implied freedom and must be justified and proportionate to achieve a legitimate objective to be constitutionally valid.<sup>73</sup>
- 4.52 Several witnesses supported the committee's prior recommendation that a federal Human Rights Act be legislated for.<sup>74</sup>

### **Balancing human rights**

- 4.53 The Castan Centre for Human Rights Law noted that human rights often conflict, in which case 'there is a need to balance human rights against each other, or to limit one human right to facilitate the enjoyment of another'.<sup>75</sup> In the context of universities responding to antisemitic speech and conduct, it stated that:

Laws, policies, and practices addressing vilification do not breach freedoms of the individual and group who are vilifying another person or group. Laws, policies, and practices which appropriately define vilification, and which do not impose carte blanche restrictions on such activity are likely to be human rights-compliant, given the significant social ill sought to be addressed by these laws. Responses seeking to address vilification and hate speech must be adequately balanced so as not to inadvertently or arbitrarily infringe the human rights of others. Broad or vague restrictions, for instance, are particularly at risk of violating human rights in a way which is neither proportionate nor legitimate. The issue of vilification and hate speech cannot be used to suppress expression and conduct which is not violent and does not incite others.<sup>76</sup>

- 4.54 It posited that:

...where universities have sought to limit the expression of certain phrases understood to be incitement to physical violence and violent threats, such action is likely human rights-compliant because these phrases likely infringe

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<sup>73</sup> Human Rights Law Centre, *Submission 40*, p. 14.

<sup>74</sup> Castan Centre for Human Rights Law, *Submission 35*; Mr Hugh de Kretser, President, AHRC, *Committee Hansard*, 22 January 2025, p. 37; Human Rights Law Centre, *Submission 40*.

<sup>75</sup> Castan Centre for Human Rights Law, *Submission 35*, p. 6.

<sup>76</sup> Castan Centre for Human Rights Law, *Submission 35*, p. 6.



either Article 19(3) or Article 20 of the ICCPR or Article 4 of the CERD and are therefore not covered by the right to freedom of expression.<sup>77</sup>

4.55 Mr Hugh de Kretser, President of the AHRC, stated:

Issues around the intersection between freedom from discrimination and vilification and freedom of expression and peaceful assembly are at the heart of this inquiry into antisemitism at universities. Human rights principles provide practical guidance on how to balance human rights when they intersect and how to maximise intersecting rights to the greatest extent possible. They require that any limitation on a human right must be for a legitimate purpose and must be no wider than is necessary to achieve that purpose. Applying these principles will help universities to address antisemitism and promote the human rights of all students and staff.<sup>78</sup>

4.56 He stated further:

This issue is the hardest part of this inquiry. The issue that is playing out in universities is playing out to a different degree and with different dimensions in workplaces across the country...[H]uman rights principles can help. There is a plethora of opinion through courts and international bodies about how to draw that line between freedom from discrimination, safety for students and staff in the present context, and freedom of expression. In a sense, it is easy to say that freedom of expression can be lawfully restricted to prevent hate speech and incitement to violence. There are very clear examples of where things are controversial and unpopular but permissible and where things are clearly racist hate speech and incitement to violence, which should be prohibited. Then there are areas in the middle where it becomes much harder. When you look at the material that I am looking at that is before this committee, you see those examples coming up time and time again. A human rights approach would say: 'If you're trying to restrict speech, what is the purpose for it? Is it a legitimate purpose? Is the thing you are doing to restrict it connected rationally to that purpose? And is there a less restrictive means of achieving that purpose?' That simple test in human rights speak, or the proportionality test, is, I have found through my career when looking at difficult policy positions or issues, to be a powerful way of stepping through to check the reasonableness of action, in this case by a university administration or by a government or another policy maker.<sup>79</sup>

4.57 Mr de Kretser posited that a legislation protecting human rights would assist in ensuring the comprehensive application of international human rights law principles in Australia:

You can take a practical example like: should protests be permitted on university campuses, and in what circumstances? If you're going to try and limit protests, you're going to engage the rights to freedom of peaceful assembly and freedom of expression. If you're saying you can't have protests

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<sup>77</sup> Castan Centre for Human Rights Law, *Submission 35*, p. 6.

<sup>78</sup> Mr Hugh de Kretser, President, AHRC, *Committee Hansard*, 22 January 2025, p. 33.

<sup>79</sup> Mr Hugh de Kretser, President, AHRC, *Committee Hansard*, 22 January 2025, p. 37.

in university buildings, for example, you ask: why are you doing that? The answer may be: because you don't [want] to disrupt classes and the work of academics and the like. I understand that this is an issue that Sydney uni has looked at in terms of its policies. You'd ask: is that limiting freedom of expression and peaceful assembly? Yes, it is. Is it a reasonable limitation? Sydney uni would say: yes, it is a reasonable limitation because people can protest outside in public spaces on the university campus. Is there a less restrictive way of achieving that attempt to minimise disruption to classes and things like that? I assume they would argue: no, there isn't.

So there is a process that you step through in applying that obligation to properly consider an act compatibly with each of those relevant rights to arrive at a good, human-focused human rights outcome in terms of the policies that a university would be applying. If they get it wrong, people have the ability to complain about it and seek some kind of resolution.<sup>80</sup>

- 4.58 Mr de Kretser argued that the application of a positive duty on public authorities to act in a manner which is compatible with human rights has a preventative function:

...you need that legal obligation taken seriously—you see the decision-makers, the public servants and the administrators thinking about the human impact of their actions. That is the benefit, or the power, if you like, of human rights legislation in the sense that it helps to get good, human focused laws, policies, decisions and actions, and it helps to prevent human rights abuses from occurring in the first place. In a situation like this, it helps people who are required to develop policies and laws to get the balance right between those issues when rights like freedom of expression and freedom from discrimination and racial vilification are intersecting.<sup>81</sup>

### **Committee view**

- 4.59 This inquiry has been a very useful exercise to draw attention to the serious issues at universities in Australia. The committee is grateful to all those individuals and organisations who have given their time to contribute to the inquiry.
- 4.60 The committee has found that there has been an alarming and abhorrent rise in antisemitism amongst students and staff at Australian universities.
- 4.61 This rise in antisemitism has been exacerbated by the reluctance of many university administrations to enforce meaningful consequences for misconduct, allowing a toxic environment to escalate.
- 4.62 The committee noted that universities have been varied in their approach to a rise in antisemitism on campuses. Some have taken the issue more seriously than others. There have been notable efforts by some to address these issues,

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<sup>80</sup> Mr Hugh de Kretser, President, AHRC, *Committee Hansard*, 22 January 2025, p. 38.

<sup>81</sup> Mr Hugh de Kretser, President, AHRC, *Committee Hansard*, 22 January 2025, pp. 38-39.

while noting that universities cannot entirely prevent all misconduct, they can control how they respond to allegations of such conduct.

- 4.63 The committee considers that there needs to be improved engagement between student bodies and university leadership as part of efforts to further develop complaints management policies and other university policies. Further, university policies should be informed by a deep understanding of antisemitism, which should consistently inform how universities respond, with an emphasis on proactive management of issues, and a rights-based approach.
- 4.64 In seeking to ensure that its recommendations are available to universities prior the commencement of Semester 1 2025, the committee has determined to issue its inquiry report early.

### **Recommendation 1**

- 4.65 **The committee recommends that university Vice Chancellors hold a formal meeting with Jewish student bodies and Jewish staff during semester one of 2025 to engage directly on their observations regarding antisemitism on their campuses. The committee recommends that Vice Chancellors should subsequently make a public comment on their work to combat antisemitism and regarding those meetings with Jewish students and staff.**

### **Recommendation 2**

- 4.66 **The committee recommends that Australian universities should review their complaints procedures with a view to their simplification, including giving particular consideration to: establishing a single central office to receive and process all complaints; adopting a clear definition of antisemitism that aligns closely with the International Holocaust Remembrance Alliance definition; and providing for alternative dispute resolution mechanisms.**

### **Recommendation 3**

- 4.67 **The committee recommends that Australian universities should report on the outcome of complaints in a more transparent manner while maintaining the privacy of the complaints process. The committee recommends that such reports should include, where relevant, comment by the Vice Chancellor regarding their work to address antisemitism on campus.**

### **Recommendation 4**

- 4.68 **The committee recommends that the government give consideration as to whether it is necessary to amend the *Fair Work Act 2009* to enable disciplinary or other action to be taken in relation to an employee (or a grant recipient where the *Australian Research Council Act 2001* and related legislation applies), where that person is found to have engaged in conduct which would**

breach Part 5.1 of the *Criminal Code Act 1995*, or section 18C of the *Racial Discrimination Act 1975*.

#### **Recommendation 5**

**4.69** The committee recommends that Australian universities should publish regular de-identified reports setting out the number of complaints received, the nature of the complaints, the number of complaints resolved since the last report and the timeframe for the resolution of outstanding complaints.

#### **Recommendation 6**

**4.70** The committee recommends that universities consider increased investment in research into antisemitism and opportunities for collaboration regarding current projects, having close regard to the work being undertaken by the Monash University Australian Centre for Jewish Civilisation as an appropriate model.

#### **Recommendation 7**

**4.71** The committee recommends that universities deliver ongoing training to students, staff and leadership on recognising and addressing antisemitism.

#### **Recommendation 8**

**4.72** The committee recommends that the government give consideration to amending the *Tertiary Education Quality and Standards Agency Act 2011* to provide TEQSA with enhanced powers to enforce compliance with the higher education threshold standards relating to student wellbeing and safety, as those standards are applied in practice by universities (e.g. through Codes of Conduct).

#### **Recommendation 9**

**4.73** The committee recommends that government monitor the implementation of these recommendations and further recommends that the National Student Ombudsman review university practices to reduce antisemitism on campuses within twelve months of the tabling of this report.

**Recommendation 10**

**4.74 The committee recommends that if, following a review of the implementation of these recommendations in consultation with the Special Envoy to Combat Antisemitism, it is apparent that the response by universities has been insufficient, the government should give consideration to the establishment of a judicial inquiry.**

**Mr Josh Burns MP  
Chair  
Labor Member for Macnamara**

## Coalition Members Additional Comments

- 1.1 Coalition members consider the evidence overwhelming that there has been an alarming and abhorrent rise in antisemitism amongst students and staff at Australian universities.
- 1.2 Ancient hatreds like antisemitism should have no place in Australia.
- 1.3 In the last century, nearly 40,000 Australians sacrificed their lives to bring an end to the evils of Nazism. A generation earlier, over 109,000 Australians served proudly under Sir John Monash, a Jew considered by my Coalition members - and many others - as our greatest Australian.
- 1.4 Antisemitism is inherently un-Australian. It is anathema to Australian values.
- 1.5 Coalition members hold deep concern, based on the balance of evidence presented to the committee inquiry, that Australian universities have become incubators of antisemitic thought in our country.
- 1.6 Coalition members concur with the government's Special Envoy to Combat Antisemitism, Ms Jillian Segal AO, that 'there is systemic, embedded antisemitism within our university campuses'.
- 1.7 While many vice-chancellors presented to the committee that their institutions are merely subject to broader societal pressures and are a 'microcosm' of broader Australian society, Coalition members consider that the evidence demonstrates that Australian universities have instead become sanctuaries of antisemitic thought.
- 1.8 Coalition members have been particularly alarmed at the numerous examples of university academics who have espoused antisemitic tropes, the inability of university leaders to appropriately deal with the spread of such rhetoric, the impact of this antisemitism on Jewish students, and the broader failure to uphold a safe and respectful learning environment.
- 1.9 Coalition members consider that the rise in antisemitism on campuses has been exacerbated by the reluctance of many university administrations to enforce meaningful and just consequences for misconduct.
- 1.10 The hesitation of certain universities to adopt the International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism highlights a concerning lack of moral clarity among academic leaders. This definition, endorsed by the Australian Government, should be universally accepted and uncontroversial.
- 1.11 The committee's inquiry has demonstrated the limits of a parliamentary inquiry into such an important topic. Despite the best efforts of members to get to the

truth and secure answers to our questions, our hearings were a masterclass in obfuscation from university leaders.

- 1.12 Coalition members maintain that a properly constituted full-time judicial inquiry, led by a respected and eminent jurist, is the only way to ensure the necessary powers, confidentiality, and expertise required to forensically examine and address the crisis.
- 1.13 Coalition members support the call of Ms Jillian Segal AO, and representatives of every major Jewish organisation across the nation, who strongly support the establishment of an independent judicial inquiry.
- 1.14 Coalition members disagree with the position of the majority of committee members that the government should wait even further to see if Australian universities take appropriate action before establishing a judicial inquiry.
- 1.15 After extended inaction, despite escalating instances of antisemitic violence across our cities, Jewish Australians deserve immediate and concrete measures from this Federal Government rather than continued delays that allow antisemitism to continue to fester within our universities.

#### **Recommendation 1**

- 1.16 That the government establish an independent judicial inquiry into antisemitism at Australian universities immediately.**

#### **Recommendation 2**

- 1.17 That the Australian Government amends the law so that all public universities are required to adopt the International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism.**

#### **Recommendation 3**

- 1.18 That Australian universities review and amend their hiring policies and policies relating to employee conduct to prevent and address antisemitic behaviour among academic staff.**

**Mr Henry Pike MP**

Member for Bowman

**Senator Matt O'Sullivan**

Senator for Western Australia

**Senator Ross Cadell**

Senator for New South Wales





## Australian Greens Additional Comments

- 1.1 The Greens strongly oppose antisemitism and fully support evidence-based measures that will keep members of the Jewish community safe. We will always do so.
- 1.2 We have joined with other political players to implement hate speech laws that target harmful conduct in a principled and effective way. We will continue to critique laws and approaches that are unproductive, divisive and driven more by politics than principle.
- 1.3 We are disappointed by the politicisation of this committee, including the addition to the final report of recommendations seeking to uncritically impose the IHRA definition, to restrict legitimate academic freedom of Australian Research Council (ARC) recipients, and for a putative judicial review. These were not the obvious conclusions from the evidence received in written form or the balance of the evidence presented in public hearings.
- 1.4 What is also worth noting is that none of the evidence received, or indeed none of the recommendations of this report, recommended mandatory criminal sentencing as a way forward. Yet in the days before this report was delivered that is exactly what the Government and Opposition colluded on to ram through the Parliament.
- 1.5 Mandatory sentencing is clearly contrary to human rights and, as the Parliamentary Joint Committee on Human Rights, it should be the subject of comment in this report. It would have been appropriate for the committee to highlight its continuing concerns about the human rights implications of mandatory sentencing.
- 1.6 It would have also been appropriate for the committee, which is tasked with protecting human rights, to reference the large body of evidence that we have received demonstrating how mandatory sentencing fails even in its purported objective of providing deterrence and punishment. It does neither and indeed it makes prosecutions harder, convictions less likely and as a result, deterrence less effective. All the while undermining the independence of the judiciary; an institution that is an essential bulwark for human rights in our society.
- 1.7 The recommendation that universities adopt 'a clear definition of antisemitism that aligns closely with the International Holocaust Remembrance Alliance definition' is divisive and does not reflect the balance of the evidence before the committee. It is a matter of public record that the author of the definition, Kenneth Stern, has publicly argued against its use for restricting what is said on campus. As he recently said in the Boston Globe:

There's a desperate need for more classes and first-year orientations about both free speech and academic freedom. Too many students believe that ideas they find disturbing are indistinguishable from actual violence. They should absolutely be protected from harassment, threats, intimidation, and discrimination. But they should also know they are on campus to be disturbed by ideas, even ones that cut them to their core.<sup>1</sup>

- 1.8 Multiple witnesses outlined how the definition was contested and confirmed that there were significant concerns with uncritically adopting the IHRA definition, especially concerning the examples used. Arguments have been made by both Jewish and Palestinian academics against the uncritical adoption of the definition particularly insofar as it is not grounded in contemporary anti-racism scholarship or practice.
- 1.9 The committee, and ultimately this report, would have benefited from giving greater weight to those witnesses who told us that treating antisemitism as if it occurs in an isolated manner away from other forms of racism is ultimately counterproductive. Recommendations that linked the struggle against antisemitism with society wide moves against racism, exclusion and discrimination are sadly missing from this report.
- 1.10 We also have serious concerns about the recommendation to the Government to amend the *Fair Work Act 2009* to allow disciplinary action to be taken against employees or ARC grant recipients who are *found to have engaged in conduct which would breach Part 5.1 of the Criminal Code Act 1995, or section 18C of the Racial Discrimination Act 1975*.
- 1.11 Given there are already legal protections to ensure that ARC grant conditions are complied with, and in fact all persons are obliged to comply with the Criminal Code and the Racial Discrimination Act, the committee has not explained how this recommendation would work in practice, and it most certainly was not grounded in a cogent body of evidence or critical thought.
- 1.12 Finally, the inclusion of a recommendation presuming that measures universities take after the delivery of this report will not be sufficient and will require a judicial review is highly speculative. It is not the task of this committee to speculate about future conduct but rather to respond to actual evidence.

**Senator David Shoebridge**  
**Australian Greens**

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<sup>1</sup> Kenneth S. Stern, 'I wrote a definition of antisemitism. It was never meant to chill free speech on campus', *The Boston Globe*, 15 February 2024, <https://www.bostonglobe.com/2024/02/15/opinion/kenneth-stern-antisemitism-ihra-free-speech/>.

# Ms Tink MP Additional Comments

1.1 I thank all those who supplied evidence to this inquiry. The testimony from many witnesses was immensely powerful and the sincerity and frankness they brought to the discussion was invaluable. While I support the majority of the committee's report and recommendations, I have some key concerns with particular recommendations, as set out below.

## Definition of antisemitism

1.2 The committee's recommendation two states that the committee recommends that Australian universities adopt a clear definition of antisemitism 'that aligns closely with the International Holocaust Remembrance Alliance definition'.

1.3 I support the adoption of a definition of antisemitism to identify speech and conduct which constitutes antisemitism (having regard to permissible limits on the right to freedom of expression under international human rights law). Testimony from the Group of Eight indicated that such a definition is currently being developed. In that context, and given the substantial concern expressed to the Committee regarding the International Holocaust Remembrance Alliance (IHRA) definition, I do not agree that universities should be forced to adopt a definition of antisemitism that aligns closely with the IHRA definition.

1.4 The IHRA definition provides that 'Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities'.<sup>1</sup> It includes several examples which it states 'may serve as illustrations' to guide the IHRA in its work. These examples include:

- accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews;
- drawing comparisons of contemporary Israeli policy to that of the Nazis; or
- holding Jews collectively responsible for actions of the state of Israel.

1.5 As the committee's report notes, numerous witnesses and submitters expressed concern regarding the appropriateness of the IHRA definition of antisemitism particularly positing that it inappropriately captures expression, which is legitimate, and does not constitute antisemitism.<sup>2</sup>

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<sup>1</sup> International Holocaust Remembrance Alliance, [working definition of antisemitism](#) (26 May 2016).

<sup>2</sup> The National Tertiary Education Union indicated that it does not support the IHRA definition because it does not regard that criticism of the state of Israel and its leaders is itself antisemitic (*Submission 17*, p. 3). The Australian Jewish Democratic Society argued that it is wrong to apply the

- 1.6 A group of 15 academic and honorary staff from the University of Melbourne argued that the IHRA definition (which the university adopted in January 2023) raised concerns because it ‘has arguably encouraged additional complaints as it implies that statements might be considered antisemitic when expressing legitimate concerns about the actions of the Israeli state’.<sup>3</sup>
- 1.7 Dr Noam Peleg similarly cautioned against the adoption of the IHRA definition of antisemitism, arguing that it poses a threat to academic freedom and freedom of speech on campuses.<sup>4</sup> Dr Lana Tatour and Andrew Brooks also expressed concern regarding ‘political pressures on universities to adopt’ the IHRA definition.<sup>5</sup> They argued that, ‘[w]hile presenting itself as an antiracist instrument that aims to protect Jewish academics and students on campuses from antisemitism, in practice the IHRA is a political tool leveraged to censor critical voices and knowledge on Palestine’.<sup>6</sup>
- 1.8 Loud Jew Collective, a group which includes members who work and study at various universities, posited the IHRA working definition of antisemitism as being used ‘primarily to shut down legitimate and necessary criticism of Israel and Zionism’.<sup>7</sup> This position was echoed similarly by Students for Palestine.<sup>8</sup> Both organisations have raised concerns over the pressures faced by universities to adopt the IHRA definition, in a university context in part to ‘stifle speech and political expression critical of Israel’.<sup>9</sup>
- 1.9 Furthermore, several submitters raised concerns regarding the conflation of legitimate statements or protests as being antisemitic – including criticism of the Government of Israel and Zionism. In this regard, Jews Against the Occupation ‘48 argued that:

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IHRA Guidelines to universities (*Submission 18*, p. 2). See also, Academics for Palestine (WA), *Submission 34*, and Jews Against the Occupation ‘48, *Submission 41*, Ms Ashlyn Horton, National President, National Union of Students, *Committee Hansard*, 22 January 2025, p. 19, and Tzedek Collective, *Submission 127*, p. 2, (submission to Legal and Constitutional Affairs, inquiry into the Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2) October 2024.

- <sup>3</sup> Group of academic staff and honorary faculty at the University of Melbourne, *Submission 24*, p. 2.
- <sup>4</sup> Dr Noam Peleg, *Submission 48*, p. 1.
- <sup>5</sup> Dr Lana Tatour and Andrew Brooks, *Submission 49*, p. 2.
- <sup>6</sup> Dr Lana Tatour and Andrew Brooks, *Submission 49*, p. 2.
- <sup>7</sup> Loud Jew Collective, *Submission 96*, p. 1, (submission to Legal and Constitutional Affairs, inquiry into the Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2) October 2024.
- <sup>8</sup> Students for Palestine, *Submission 42*, p. 3–4.
- <sup>9</sup> Students for Palestine, *Submission 42*, p. 4, and Loud Jew Collective, *Submission 96*, p. 1, (submission to Legal and Constitutional Affairs, inquiry into the Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2) October 2024).

the assertion that pro-Palestine activism on Australian University campuses is inherently antisemitic is fallacious, racist, and politically motivated. It is founded on the false conflation of an ancient religious and cultural identity, Judaism, and a modern political ideology.<sup>10</sup>

- 1.10 They also posited that the conflation of antisemitism and anti-Zionism ‘will inevitably lead to the denial and minimisation of real antisemitism’.<sup>11</sup> Students for Palestine stated that opposition to and critique of Zionism as an ideology is not opposition to Jewish people or their right to be treated as equals:

Jewish Voice for Peace defines opposition to Zionism thus: “Anti-Zionist means opposing the political ideology of Zionism, which resulted in the expulsion of 750,000 Indigenous Palestinians from their land and homes. It means standing against the creation of a nation-state with exclusive rights for Jews above others on the land. Anti-Zionism supports liberation and justice for the Palestinian people, including their right to return to their homes and land. Anti-Zionists believe in a future where all people on the land live in freedom, safety and equality”.<sup>12</sup>

- 1.11 These are significant considerations. Liberty Victoria stated that ‘a definition of antisemitism should not include any reference to the State of Israel or conflate criticism or even condemnation of the actions taken by Israel with antisemitism’.<sup>13</sup> It stated that criticism of the State of Israel, or the actions of its government, are not inherently antisemitic, and cautioned that there is ‘a real danger that accusations of antisemitism are being weaponised by supporters of the current government to attempt to invalidate legitimate criticism and shame critics into silence’.<sup>14</sup> These concerns were also echoed by Amnesty International.<sup>15</sup> Further, Associate Professor David Slucki, Director of the Australian Centre for Jewish Civilization at Monash University, has stated that ‘Criticising Israel is not, in and of itself, anti-Semitic. Imagining different ways of Israel being organised politically ... or a different form of self-determination is not, in and of itself, anti-Semitic’.<sup>16</sup>
- 1.12 Of further significance, the IHRA definition has also been the subject of specific criticism by United Nations (UN) international human rights law mechanisms on the basis that it is incompatible with human rights. The UN Special

<sup>10</sup> Jews Against the Occupation ‘48, *Submission 41*, p. 1. See also, Dr Noam Peleg, *Submission 48*, p. 2, and Dr Lana Tatour and Dr Andrew Brooks, *Submission 49*.

<sup>11</sup> Jews Against the Occupation ‘48, *Submission 41*, p. 4.

<sup>12</sup> Students for Palestine, *Submission 42*, p. 3.

<sup>13</sup> Liberty Victoria, *Submission 29*, p. 3. See also, Academics for Palestine (WA), *Submission 34*, p. 2.

<sup>14</sup> Liberty Victoria, *Submission 29*, p. 3.

<sup>15</sup> Amnesty International, *Submission 39*, p. 1.

<sup>16</sup> Siobhan Marin, ‘What is anti-Zionism? And is it the same thing as antisemitism? It’s a question many are debating’, *ABC News* (15 February 2024).

Rapporteur on the promotion and protection of the right to freedom of opinion and expression has, in writing about the particular risks to freedom of expression associated with the conflict in Gaza, cautioned that the IHRA definition conflates antisemitic expression with legitimate political expression:

As noted by the European Court of Human Rights, antisemitism should be clearly distinguished from political expression. It is of serious concern that the “working definition” of antisemitism of the International Holocaust Remembrance Alliance contravenes this critical international standard of freedom of expression, and yet is being promoted heavily by various entities and Governments. It has been adopted by 43 States and is used in practice as a quasi-legal basis to restrict expression on the grounds of antisemitism. Its adoption across Europe has been a source of serious concern in relation to freedom of expression and other human rights. The previous Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance found the “working definition” to be “divisive” and “politically instrumentalized”. Counter-proposals to “the working definition” have been developed by Jewish scholars and experts on antisemitism.

The “working definition” was never intended to be used as a framework for regulating expression and does not meet the international legal standards for restriction or prohibition of speech laid out in the Covenant. First, it is overly broad, vague and equivocal, and fails the test of legal certainty, required under article 19 (3) of the Covenant. The overly broad and vague definition of antisemitism offered by the “working definition” is harmful because it can lead to wrongful accusations and damage reputations, distort statistics on antisemitic incidents and divert attention from addressing the real causes of antisemitism. Second, it does not include the element of incitement, as required for prohibition of speech under article 20 (2) of the Covenant. Third, its “illustrative examples” deal not only with the impact of speech on individuals but also on Israel, which contravenes international human rights law and in particular the right to freedom of expression, which permits criticism of all States. Fourth, it is unnecessary as there are universally accepted international standards to address racial and religious hatred, including antisemitism.

The central conceptual flaw of the “working definition” is the inherent conflation of Zionism, a political ideology, with antisemitism. The practical consequence is the suppression of legitimate criticism of Israel, not the enhancement of protection of Jews from racial and religious hatred and intolerance. Jewish groups and individuals who engage in anti-Zionist protests have been labelled as antisemitic. When Jews celebrating Jewish festivals in solidarity with Palestinians were attacked by pro-Israel supporters, the incident was not considered to be antisemitic.<sup>17</sup>

1.13 The Special Rapporteur concluded that the IHRA definition is ‘incompatible with international standards on freedom of expression’ and recommended that

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<sup>17</sup> UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *Global threats to freedom of expression arising from the conflict in Gaza* (23 August 2024) A/79/319 [79]-[82].

states rescind their adoption and application of it, and refrain from promoting it.<sup>18</sup>

- 1.14 In view of these concerns, I do not consider it appropriate to recommend its adoption in this context.

## Recommendation 1

- 1.1 Universities should, for the purposes of addressing complaints of antisemitism relating to students or staff, adopt a definition of antisemitism that recognises the distinction between antisemitism and criticism of the Israeli Government and Zionism.**

## Addressing racism more broadly

- 1.15 Many submitters and witnesses highlighted that the increase in antisemitism in Australia and on university campuses has been accompanied by a rise in other forms of racism – particularly Islamophobia following the October 7 attacks.<sup>19</sup> Mr Hugh de Kretser, President of the Australian Human Rights Commission (AHRC) stated that the AHRC has seen a rise in the number of complaints about antisemitism, as well as Islamophobia ‘and other forms of racism connected to the violence in the Middle East’.<sup>20</sup> He also noted that complaints numbers to the AHRC ‘will only be a tiny subset of the broader antisemitism’, stating that law enforcement data also provides information as to hate crimes being committed.<sup>21</sup> In addition, the National Tertiary Education Union highlighted a recent Social Cohesion report, which indicated that 34 per cent of Australians have a ‘somewhat or very negative’ attitude to Muslims, an increase from 27 per cent before the October attacks.<sup>22</sup> The Castan Centre for Human Rights Law likewise noted that, like instances of antisemitism, the experience of Islamophobia on campuses has also been high, with Research from the Islamophobia Register Australia finding in May 2024 that there had been a 39-fold increase in reported incidents on university campuses across the country in the period post 7 October 2023.<sup>23</sup>

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<sup>18</sup> UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *Global threats to freedom of expression arising from the conflict in Gaza* (23 August 2024) A/79/319 [97].

<sup>19</sup> See, for example, Sydney Jewish Museum, *Submission 4*, p. 1; National Tertiary Education Union, *Submission 17*, p. 2; Name Withheld, *Submission 8*, p. 2.

<sup>20</sup> Mr Hugh de Kretser, President, AHRC, *Committee Hansard*, 22 January 2025, p. 33.

<sup>21</sup> Mr Hugh de Kretser, President, AHRC, *Committee Hansard*, 22 January 2025, p. 33.

<sup>22</sup> National Tertiary Education Union, *Submission 17*, p. 2. In reference to Scanlon Institute, *Mapping Social Cohesion Report 2024*.

<sup>23</sup> Castan Centre for Human Rights Law, *Submission 35*, p. 5.

1.16 Submitters also argued that addressing antisemitism in a siloed fashion may not be the best way of addressing the issue, and that dealing with broader racism as a whole may be a better approach. In this regard, the Government recently committed to a study into antisemitism, Islamophobia, racism and the experience of First Nations people in the university sector.<sup>24</sup> This study, being undertaken by the Australian Human Rights Commission (AHRC), is being led by the Race Discrimination Commissioner, Mr Giridharan Sivaraman. An interim report was published in December 2024, and noted that:

- Indigenous participants report enduring structural and interpersonal racism;
- Jewish students and staff cited a rise in antisemitism since October 2023, including extremist propaganda, intimidation, and exclusion. Concerns over safety were compounded by insufficient university responses;
- Palestinian, Arab, and Muslim Students and Staff described hostility, threats, and discriminatory practices, including restrictions on cultural expression and prayer spaces;
- African students and staff frequently encountered severe racism and Asian participants reported being stereotyped; and
- reports of exclusion, social isolation, and fears of visa repercussions were common among international students.<sup>25</sup>

1.17 The next phase of the study will include a comprehensive survey of students and staff, with the final report due in June 2025. Mr de Kretser described this as ‘a landmark national study on the prevalence, nature and impact of racism at universities and how to address it’.<sup>26</sup>

1.18 The committee also heard from the student representative body, the Australasian Union of Jewish Students, at a public hearing, where it noted:

We live in a multicultural society, and that is the beauty of Australia. Unfortunately, we are just not having conversations between people anymore. When you are not having conversations, when people do not talk about issues, especially when it means so much to them, it has a detrimental effect on Australian society. We need to get people back in the room, talking with each other, and we need empathy for people who have, over these 13

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<sup>24</sup> The Hon Jason Clare MP, Minister for Education, *Responding to the Australian Universities Accord*, Media Release, 15 May 2024.

<sup>25</sup> Australian Human Rights Commission (AHRC), *Interim Report on Racism at Australian Universities* (December 2024).

<sup>26</sup> Mr Hugh de Kretser, President, Australian Human Rights Commission, *Committee Hansard*, 22 January 2025, p. 32.



or 14 months, experienced tremendous hardships, and that cannot be taken away from their personal lived experience.<sup>27</sup>

- 1.19 In addition, the AHRC launched a national Anti-Racism Framework in November 2024, which ‘provides a roadmap for governments, business and community organisations to address all forms of racism in Australia’.<sup>28</sup> Mr de Kretser noted that this framework was developed following extensive consultation and engagement ‘to support safety in Jewish, Palestinian, Muslim and Arab communities in Australia’.<sup>29</sup> Mr Sivaraman likewise highlighted its significance in this context, noting in particular that it recommends the establishment of a positive duty to eliminate racism:

It's a very significant piece of work; it's the first time there's ever been a national road map to combat all forms of racism. Of course, that includes antisemitism. And there are certain aspects of that framework that I think are really important in terms of combating antisemitism and trying to inoculate and build in protection before the harm occurs.<sup>30</sup>

- 1.20 Amnesty International recommended the use of this framework.<sup>31</sup> The Human Rights Law Centre likewise noted its significance, stating that this framework highlights the importance of recognising ‘both the interconnectedness and difference between various forms of racism and to adopt a coherent and principled anti-racism approach’.<sup>32</sup> It stated, in particular:

The Australian Human Rights Commission’s *National Anti -Racism Framework*, provides a whole of society roadmap for governments, non-government organisations, businesses and civil society organisations to address issues of racism across sectors. The approach recommended by the Commission is one grounded in an understanding of the systemic and structural nature of racism, as well as being intersectional and community-centric. It also recognises “racism as a complex and shifting phenomenon”.<sup>33</sup>

- 1.21 The AHRC indicated that several of the whole of government recommendations proposed in the framework could address antisemitism:

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<sup>27</sup> Mr Noah Loven, President, Australasian Union of Jewish Students, *Committee Hansard*, 29 November 2024, p. 39.

<sup>28</sup> AHRC, *The National Anti-Racism Framework: A roadmap to eliminating racism in Australia* (November 2024).

<sup>29</sup> Mr Hugh de Kretser, President, Australian Human Rights Commission, *Committee Hansard*, 22 January 2025, p. 32.

<sup>30</sup> Mr Giridharan Sivaraman, Race Discrimination Commissioner, AHRC, *Committee Hansard*, 22 January 2025, p. 39.

<sup>31</sup> Amnesty International, *Submission 39*, p. 1.

<sup>32</sup> Human Rights Law Centre, *Submission 40*, p. 4.

<sup>33</sup> Human Rights Law Centre, *Submission 40*, p. 7.

Recommendations 12 and 49 deal with online racism and hate, recommendations 28 to 31 deal with building racial literacy and understanding of racism in schools and education, recommendation 10 recommends a positive duty to eliminate racism in various aspects of daily life including in workplaces and education settings.

Recommendation 59 calls for a National Data Plan to outline a national approach to collecting, using, and managing data on experiences, reports, and impacts of racism across states and territories and local jurisdictions. Implementation of these recommendations would help address antisemitism. In addition, work done under each these recommendations could be tailored where appropriate to the specific needs in combatting antisemitism.<sup>34</sup>

1.22 In addition, several witnesses recommended that Australia's existing suite of anti-discrimination legislation be amended.<sup>35</sup> The Human Rights Law Centre argue that these laws are no longer fit for purpose:

They are leaving many in our community at risk of the profound (and compounding) harms of discrimination, hate speech, and vilification.

The federal anti-discrimination framework is comprised of a patchwork of inconsistent, issue-specific laws, covering distinct grounds of discrimination such as race, sex, age, and disability. The complexity is compounded by overlapping and inconsistent state and territory regimes. The lack of overarching and cohesive protection under our existing anti-discrimination framework, coupled with a reported rise in discrimination, hate speech and vilification has left many in our community exposed.<sup>36</sup>

## **Recommendation 2**

**1.23 The government should adopt the Australian Human Rights Commission National Anti-Racism Framework.**

## **Recommendation 3**

**1.24 Universities should address antisemitism as part of broader strategies to reduce racism in all its forms.**

## **Recommendation 4**

**1.25 The government should consolidate Australia's anti-discrimination legislative framework into a single, uniform Anti-Discrimination Act.**

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<sup>34</sup> AHRC, answer to question on notice (received 31 January 2025).

<sup>35</sup> Human Rights Law Centre, *Submission 40*, p. 5; Name Withheld, *Submission 9*, p. 1.

<sup>36</sup> Human Rights Law Centre, *Submission 40*, p. 7.

## Disciplinary action by universities

- 1.26 The committee's fourth recommendation recommends that the government give consideration as to whether it is necessary to amend the *Fair Work Act 2009* to enable disciplinary or other action to be taken in relation to an employee (or a grant recipient where the *Australian Research Council Act 2001* and related legislation applies), where that person is found to have engaged in conduct which would breach Part 5.1 of the *Criminal Code Act 1995*, or section 18C of the *Racial Discrimination Act 1975*. I do not support the recommendation.
- 1.27 The committee heard evidence from several universities regarding their existing disciplinary processes, which may include the possibility of employment termination or exclusion from university premises.<sup>37</sup> The committee also heard that some universities are already in the process of reviewing the rules governing their response to reports of misconduct.<sup>38</sup>
- 1.28 However, the legislative framework regulating conditions associated with employment in Australia is complex. While the committee heard some evidence regarding the obligations universities have pursuant to this legislative framework (and correspondingly, the rights of workers at universities), the committee did not receive any evidence proposing specific amendments to the *Fair Work Act 2009* or the *Australian Research Council Act 2001*. No witnesses or submitters raised specific concerns regarding either of these Acts. Furthermore, it appears that the proposal that consideration be given to amending the *Australian Research Council Act 2001* appears to have been proposed solely because of one complaint regarding one worker associated with a single university.<sup>39</sup> This is not a sufficiently persuasive basis on which to base a broad-reaching recommendation.
- 1.29 A broad recommendation to consider amending large and complex laws which apply to a wide range of workplaces because of a limited range of evidence received in a specific context would risk resulting in an overly punitive response, and would likely constitute government overreach.

## A human rights approach to competing rights

- 1.30 Many submitters raised the need for a Human Rights Framework, or human rights-based approach, in order to effectively navigate competing human rights such as the right to equity and non-discrimination with the rights to education

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<sup>37</sup> See, for example, Group of Eight Australia, *Submission 19*, p. 6; University of Newcastle, *Submission 11*, p. 1; Queensland University of Technology, *Submission 12*, p. 1; Monash University, *Submission 21*, p. 14; University of Queensland, *Submission 26*, p. 3; and University of Melbourne, *Submission 37*, p. 3.

<sup>38</sup> See, Australian National University, *Submission 33*, p. 4.

<sup>39</sup> Committee Hansard, 5 February 2025, pp. 2-9.

and freedom of expression, and the obligation on states to have legal prohibitions on the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.<sup>40</sup>

- 1.31 A number of submitters highlighted the direct relevance of the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. This plan, developed by the United Nations, sets out conclusions and recommendations which are intended to ‘guide all stakeholders in implementing the international prohibition of any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence’.<sup>41</sup>
- 1.32 The plan proposes a high threshold for defining restrictions on freedom of expression, incitement to hatred, and for the application of article 20 of the ICCPR. It recommends that, ‘in order to establish severity as the underlying consideration of the thresholds, incitement to hatred must refer to the most severe and deeply felt form of opprobrium’.<sup>42</sup>
- 1.33 It outlines a six-part threshold test for assessing the severity of the hatred taking into account: the social and political context of the speech; the status of the speaker; intent (as opposed to recklessness or negligence) as to whether the speech incites the audience against a target group; the content and form of the speech (including the degree to which the speech was provocative or direct, and having regard to whether the speech was public, the size of the audience and means of its dissemination); and the likelihood of harm, including imminence.<sup>43</sup>
- 1.34 The Human Rights Law Centre endorsed the application of this approach,<sup>44</sup> stating:

The Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred, developed through a series of expert workshops convened by the United Nations, provides a detailed framework for distinguishing hate speech from protected expression. It emphasises that restrictions on speech must target intentional advocacy of hatred that incites

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<sup>40</sup> See, for example, Amnesty International, *Submission 39*, p. 1.

<sup>41</sup> Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, [13].

<sup>42</sup> Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, [29].

<sup>43</sup> Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, [29].

<sup>44</sup> Human Rights Law Centre, *Submission 40*, p. 15. See also, Australian Human Rights Commission, *Submission 30*, p. 11. The Rabat Plan of Action approach has also been endorsed by the UN Committee on the Elimination of Racial Discrimination. See, *General recommendation No. 35: combating racist hate speech* (26 September 2013) CERD/C/GC/35 [15].

violence, discrimination, or hostility while safeguarding legitimate academic and political discourse.<sup>45</sup>

- 1.35 The Human Rights Law Centre stated that the application of these criteria to an assessment of particular speech ‘safeguard against arbitrary or overly broad limitations on expression’, stating:

Protecting the freedom of expression, even for unpopular or dissenting views, is essential for fostering robust democratic debate and the exchange of ideas.

Combating antisemitism and other forms of racial or religious hatred that constitutes incitement to discrimination, hostility or violence is essential, and indeed mandated under Article 20(2) of the ICCPR. Such efforts, however, must not come at the cost of silencing critical or dissenting voices. This is particularly so given that suppressing legitimate political expression risks diluting the focus of combating hate speech. This, in turn, weakens broader efforts to address discrimination and hatred effectively and inclusively.<sup>46</sup>

## Recommendation 5

- 1.36 Universities should adopt the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence six-part threshold test to appropriately distinguish between hate speech and protected expression in practice.**

- 1.37 As noted in the committee’s report, human rights often conflict, in which case there is a need to balance human rights against each other. In the context of universities responding to antisemitic speech and conduct, the Castan Centre for Human Rights Law stated that:

Laws, policies, and practices addressing vilification do not breach freedoms of the individual and group who are vilifying another person or group. Laws, policies, and practices which appropriately define vilification, and which do not impose carte blanche restrictions on such activity are likely to be human rights-compliant, given the significant social ill sought to be addressed by these laws. Responses seeking to address vilification and hate speech must be adequately balanced so as not to inadvertently or arbitrarily infringe the human rights of others. Broad or vague restrictions, for instance, are particularly at risk of violating human rights in a way which is neither proportionate nor legitimate. The issue of vilification and hate speech cannot be used to suppress expression and conduct which is not violent and does not incite others.<sup>47</sup>

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<sup>45</sup> Human Rights Law Centre, *Submission 40*, p. 4.

<sup>46</sup> Human Rights Law Centre, *Submission 40*, p. 15.

<sup>47</sup> Castan Centre for Human Rights Law, *Submission 35*, p. 6.

1.38 Mr Hugh de Kretser, President of the AHRC, stated:

Issues around the intersection between freedom from discrimination and vilification and freedom of expression and peaceful assembly are at the heart of this inquiry into antisemitism at universities. Human rights principles provide practical guidance on how to balance human rights when they intersect and how to maximise intersecting rights to the greatest extent possible. They require that any limitation on a human right must be for a legitimate purpose and must be no wider than is necessary to achieve that purpose. Applying these principles will help universities to address antisemitism and promote the human rights of all students and staff.<sup>48</sup>

1.39 He stated further:

This issue is the hardest part of this inquiry. The issue that is playing out in universities is playing out to a different degree and with different dimensions in workplaces across the country...[H]uman rights principles can help. There is a plethora of opinion through courts and international bodies about how to draw that line between freedom from discrimination, safety for students and staff in the present context, and freedom of expression. In a sense, it is easy to say that freedom of expression can be lawfully restricted to prevent hate speech and incitement to violence. There are very clear examples of where things are controversial and unpopular but permissible and where things are clearly racist hate speech and incitement to violence, which should be prohibited. Then there are areas in the middle where it becomes much harder. When you look at the material that I am looking at that is before this committee, you see those examples coming up time and time again. A human rights approach would say: 'If you're trying to restrict speech, what is the purpose for it? Is it a legitimate purpose? Is the thing you are doing to restrict it connected rationally to that purpose? And is there a less restrictive means of achieving that purpose?' That simple test in human rights speak, or the proportionality test, is, I have found through my career when looking at difficult policy positions or issues, to be a powerful way of stepping through to check the reasonableness of action, in this case by a university administration or by a government or another policy maker.<sup>49</sup>

1.40 In addition, a number of submitters argued in favour of the establishment of a federal Human Rights Act (in order to give effect to a human rights-based approach).<sup>50</sup> Mr de Kretser posited that legislation protecting human rights would assist in ensuring the comprehensive application of international human rights law principles in Australia:

You can take a practical example like: should protests be permitted on university campuses, and in what circumstances? If you're going to try and

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<sup>48</sup> Mr Hugh de Kretser, President, AHRC, *Committee Hansard*, 22 January 2025, p. 33.

<sup>49</sup> Mr Hugh de Kretser, President, AHRC, *Committee Hansard*, 22 January 2025, p. 37.

<sup>50</sup> See, for example, Liberty Victoria, *Submission 29*, p. 5; Castan Centre for Human Rights Law, *Submission 35*; Mr Hugh de Kretser, President, AHRC, *Committee Hansard*, 22 January 2025, p. 37; Human Rights Law Centre, *Submission 40*.

limit protests, you're going to engage the rights to freedom of peaceful assembly and freedom of expression. If you're saying you can't have protests in university buildings, for example, you ask: why are you doing that? The answer may be: because you don't [want] to disrupt classes and the work of academics and the like. I understand that this is an issue that Sydney uni has looked at in terms of its policies. You'd ask: is that limiting freedom of expression and peaceful assembly? Yes, it is. Is it a reasonable limitation? Sydney uni would say: yes, it is a reasonable limitation because people can protest outside in public spaces on the university campus. Is there a less restrictive way of achieving that attempt to minimise disruption to classes and things like that? I assume they would argue: no, there isn't.

So there is a process that you step through in applying that obligation to properly consider an act compatibly with each of those relevant rights to arrive at a good, human-focused human rights outcome in terms of the policies that a university would be applying. If they get it wrong, people have the ability to complain about it and seek some kind of resolution.<sup>51</sup>

- 1.41 Mr de Kretser argued that the application of a positive duty on public authorities to act in a manner which is compatible with human rights has a preventative function:

...you need that legal obligation taken seriously—you see the decision-makers, the public servants and the administrators thinking about the human impact of their actions. That is the benefit, or the power, if you like, of human rights legislation in the sense that it helps to get good, human focused laws, policies, decisions and actions, and it helps to prevent human rights abuses from occurring in the first place. In a situation like this, it helps people who are required to develop policies and laws to get the balance right between those issues when rights like freedom of expression and freedom from discrimination and racial vilification are intersecting.<sup>52</sup>

- 1.42 In May 2024, the committee recommended that the government introduce legislation to establish a Human Rights Act.<sup>53</sup> It follows logically that the same recommendation should be reiterated in relation to the human rights issues raised in this inquiry.

## Recommendation 6

- 1.43 The government should introduce legislation to establish a Human Rights Act, as per the recommendation of the Parliamentary Joint Committee on Human Rights inquiry into Australia's Human Rights Framework**

<sup>51</sup> Mr Hugh de Kretser, President, AHRC, *Committee Hansard*, 22 January 2025, p. 38.

<sup>52</sup> Mr Hugh de Kretser, President, AHRC, *Committee Hansard*, 22 January 2025, pp. 38-39.

<sup>53</sup> Parliamentary Joint Committee on Human Rights, *Inquiry into Australia's Human Rights Framework* (May 2024) recommendation two.

## Judicial inquiry

- 1.44 The committee's tenth recommendation recommends that if, following a review of the implementation of these recommendations in consultation with the Special Envoy to Combat Antisemitism, it is apparent that the response by universities has been insufficient, the government should give consideration to the establishment of a judicial inquiry.
- 1.45 I do not support this recommendation, as it is overly speculative and was not supported by any compelling evidence to demonstrate that a judicial inquiry is either necessary, or of particular specific use in this context.

## Other matters

- 1.46 Finally, I note that the *Criminal Code Act 1995* criminalises:
- the urging of violence against groups or members of groups (which are distinguished by race, religion, nationality, national or ethnic origin or political opinion);<sup>54</sup>
  - the advocacy of genocide;<sup>55</sup> and
  - the public display of a prohibited Nazi symbol or prohibited terrorist organisation symbol, or the making of a gesture that is the Nazi salute.<sup>56</sup>
- 1.47 On Thursday, 6 February 2025, the Criminal Code Amendment (Hate Crimes) Bill 2024 (now Act) passed both Houses of Parliament. This Act expanded existing offences and introduced new offences for displaying prohibited hate symbols and urging or *threatening* violence against groups or members of groups with protected attributes. It also removed the existing defence of taking an action in good faith, and introduced mandatory minimum terms of imprisonment for several offences, including:
- public display of prohibited Nazi symbols or giving Nazi salute;<sup>57</sup>
  - public display of prohibited terrorist organisation symbols;<sup>58</sup> and
  - advocating force or violence through causing damage to property.<sup>59</sup>
- 1.48 The committee commented on the human rights compatibility of the measures in the bill as introduced into the House of Representatives on 12 September 2024

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<sup>54</sup> Criminal Code, sections 80.2A and 80.2B. Of note, the *Criminal Code Amendment (Hate Crimes) Act 2025* amends these provisions to provide that a person may be guilty of an offence where they are reckless as to whether the force or violence will occur. See further, Parliamentary Joint Committee on Human Rights, *Report 9 of 2024* (10 October 2024) pp. 93-102.

<sup>55</sup> Section 80.2D.

<sup>56</sup> Sections 80.2H and 80.2HA.

<sup>57</sup> *Criminal Code*, section 80.2H. Subject to a minimum sentence of 12 months imprisonment.

<sup>58</sup> *Criminal Code*, section 80.2HA. Subject to a minimum sentence of 12 months imprisonment.

<sup>59</sup> *Criminal Code*, section 80.2BE. Subject to a minimum sentence of 12 months imprisonment.



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in its scrutiny [Report 9 of 2024](#) (10 October 2024). The committee raised concerns regarding the compatibility of the measure with the rights to freedom of expression and freedom of religion.

- 1.49 However, the amendments which were made to the bill to impose mandatory minimum sentencing in relation to several offences also raises significant human rights concerns. As the committee has previously observed in relation to similar measures,<sup>60</sup> the imposition of a mandatory minimum sentence of imprisonment engages and limits the right to liberty, which protects the right not to be arbitrarily detained. The UN Human Rights Committee has stated that 'arbitrariness' under international human rights law includes elements of inappropriateness, injustice and lack of predictability. In order for detention not to be considered arbitrary under international human rights law it must be reasonable, necessary and proportionate in the individual case. Detention may be considered arbitrary where it is disproportionate to the crime that has been committed (for example, as a result of a blanket policy). As mandatory sentencing removes judicial discretion to take into account all of the relevant circumstances of a particular case, it may lead to the imposition of disproportionate or unduly harsh sentences of imprisonment.
- 1.50 I call attention to these human rights concerns within the context of this inquiry.

**Ms Kylea Tink MP**  
**Independent Member for North Sydney**

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<sup>60</sup> See, for example, Parliamentary Joint Committee on Human Rights, Migration Amendment (Bridging Visa Conditions) Bill 2023, Migration Amendment and Other Legislation (Bridging Visas, Serious Offenders and Other Measures) Bill 2023 and related instrument ([Report 13 of 2023](#) and [Report 1 of 2024](#)); Migration Amendment Bill 2024 and related instruments ([Report 1 of 2025](#)); and Criminal Code Amendment (Firearms Trafficking) Bill 2022 ([Report 2 of 2022](#)).



# Senator Thorpe Additional Comments

## Ongoing Genocide of Palestinians, Targeted Repression, and Global Solidarity Against Settler-Colonial Genocide

- 1.1 White supremacy, in all its forms—including the foundational racism against First Peoples, anti-Black racism, Antisemitism, Islamophobia, anti-Palestinian and anti-Arab racism, and broader racism against people of colour are abhorrent and must be condemned.
- 1.2 Not only is white supremacy a real and escalating threat, but it is increasingly normalised and concealed through media narratives, political rhetoric and institutional practices that deny, erase, downplay, or justify racial violence and discrimination—manufacturing consent for ongoing atrocities while stripping them of crucial historical and political context.
- 1.3 I make it very clear that I condemn Antisemitism, stand with the Jewish community, and recognise the difficulty of these conversations caused by the profound and ongoing trauma experienced by the Jewish community. My intention here is not to take away from that but to put the inquiry into context of the experiences of various communities, including First Peoples, Jewish communities, Palestinians, due to historical and ongoing acts of genocide and racial discrimination. None of the comments in this report should be used to undermine the harm caused by antisemitism.
- 1.4 When reading this report, it is critical to consider the historical and current context within which this inquiry is taking place. Relevantly, this inquiry is taking place in the settler-colony of so-called Australia whose very foundation is a white supremacist bedrock, the lie of terra nullius, and the ongoing genocide of this continent's First Peoples.<sup>1</sup>
- 1.5 I note that First Peoples have a long history of staunch antiracism and global solidarity with oppressed people. This solidarity was first extended to Jewish people during the Holocaust (as in the well-known 1938 protest against Kristallnacht by the Aborigines Advancement League).<sup>2</sup>
- 1.6 At the time of writing this report, we are witnessing the state of Israel commit what can only be described as mass atrocities, crimes against humanity, and

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<sup>1</sup> Australian Human Rights Commission, [\*Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families\*](#) (1997), accessed February 11, 2025.

<sup>2</sup> Institute for Collaborative Race Research, *Submission 121*, p. 2 (Legal and Constitutional Affairs Inquiry Report).

'acts of genocide against the Palestinian people'.<sup>3</sup> The International Court of Justice, in a historical statement, has found it is plausible that Israel has committed acts that violate the Genocide Convention. The magnitude of destruction in Gaza has prompted allegations of domicide, urbicide, scholasticide, medicide, cultural genocide and ecocide.<sup>4</sup> The International Criminal Court has issued arrest warrants for Israeli Prime Minister Netanyahu and former Defence Minister Galant in connection with allegations of war crimes and crimes against humanity.<sup>5</sup>

- 1.7 The United Nations issued a statement on 20 June 2024, which called for a halt to arms transfers to Israel by States and companies to prevent human rights violations, or risk State complicity in international crimes, possibly including genocide.<sup>6</sup> To date, there is no evidence that the Australian Government has implemented an arms embargo or sanctions against Israel, while the public record suggests that it instead continues to trade defence exports and provide military aid. Following a referral in March 2024, the ICC is considering whether Prime Minister Albanese and Foreign Minister Wong are an accessory to Israel's documented war crimes.<sup>7</sup>
- 1.8 Submissions pointed out how, 'in the face of Israel's ongoing, catastrophic assault on the Palestinian people, and the Australian government's ongoing complicity in this crime against humanity, a climate of fear and suppression has emerged on university campuses across the country'.<sup>8</sup> This is addressed further below, and outlined in Chapter 3 of the committee report which addresses how criticism of atrocity crimes are mis-identified as Antisemitism. For example, the Executive Council of Australian Jewry references statements that accuse Israel of committing war crimes as being antisemitic, when these are not accurate examples of antisemitism.<sup>9</sup>

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<sup>3</sup> Australia Palestine Advocacy Network, *Submission 131*, p. 2 (Legal and Constitutional Affairs Inquiry Report).

<sup>4</sup> Office of the United Nations High Commissioner for Human Rights, "[Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967](#)," accessed February 11, 2025.

<sup>5</sup> ICC issues arrest warrants for Netanyahu, Gallant and Hamas commander, United Nations News, 21 November 2024.

<sup>6</sup> Office of the United Nations High Commissioner for Human Rights, "[States and companies must end arms transfers to Israel immediately or risk sanctions](#)," Press Release, 20 June 2024.

<sup>7</sup> Birchgrove Legal, [Birchgrove Legal Files Case for Complicity to Genocide to the Hague International Criminal Court](#) – Media Release, March 1, 2024.

<sup>8</sup> Australia Palestine Advocacy Network, *Submission 131*, p. 1 (Legal and Constitutional Affairs Inquiry Report).

<sup>9</sup> Dr Noam Peleg, *Submission 48*, p. 3.

- 1.9 Relevantly, there has been a concerning trend of professional consequences, including misconduct charges against students and staff critical of genocide, racism, the state of Israel and Zionism, especially racialised community members. ‘Many of those protesting against Israel’s ongoing genocide and Australia’s unwillingness to act have been smeared, demonised, silenced, excluded and discriminated against not only in mainstream media and the political arena, but in Australia’s arts and cultural spaces, workplaces, community, and critically for the purposes of this inquiry, in educational settings’.<sup>10</sup>
- 1.10 For First Nations staff and students, this violence has existed since colonisation, and as pointed out by the Institute for Collaborative Race Research, Blackfullas have systemically been denied education and censored by institutions for truth-telling on their own lands.

### **The Escalating Threat of White Supremacy**

- 1.11 The committee heard compelling evidence regarding the rise of all forms of racism directed towards a number of groups. The Australian Human Rights Commission’s (AHRC) *Interim Report on Racism at Australian Universities* noted reports of structural and interpersonal racism among First Nations students; a rise in Antisemitism among Jewish students and staff; hostility and discrimination against Palestinian, Arab and Muslim students and staff; severe racism and stereotyping among African and Asian students; and exclusion, social isolation and fears of visa repercussions among international students.<sup>11</sup>
- 1.12 The National Tertiary Education Union referred to research undertaken by the Scanlon Foundation Research Institute, which found an increase in negative attitudes towards Muslim and Jewish people, as well as people of other religions, observing that ‘while attitudes to Australia’s Muslim and Jewish communities is a particular area of concern, relations towards and across all faiths appear to be under pressure’.<sup>12</sup> Mr Hugh de Kretser, President of the AHRC, presented evidence regarding the rise in Antisemitism as well as Islamophobia and ‘other forms of racism connected to the violence in the Middle East’.<sup>13</sup>
- 1.13 Dr Noam Peleg argued that ‘there is no compelling, independently verified, evidence to suggest that antisemitism is prevailing over other forms of racism

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<sup>10</sup> Australia Palestine Advocacy Network, *Submission 131*, p. 1 (Legal and Constitutional Affairs Inquiry Report).

<sup>11</sup> Australian Human Rights Commission, *Interim Report on Racism at Australian Universities* (December 2024).

<sup>12</sup> National Tertiary Education Union, *Submission 17*, p. 2.

<sup>13</sup> Mr Hugh de Kretser, President, Australian Human Rights Commission, *Committee Hansard*, 22 January 2025, p. 33.

on campuses, especially not when it comes to racism against Aboriginal and Torres Strait Islander students and staff'.<sup>14</sup> The Queensland University of Technology noted that between October 7 and the date of its submission, there had been no complaints relating specifically to Antisemitism, yet 11 complaints about racial discrimination more generally.<sup>15</sup>

- 1.14 Due to the narrow focus of this inquiry, these other forms of racism have not been considered by the committee. At a time where a national holistic approach to racial discrimination is needed, the narrow focus of this inquiry which came at the request of the Attorney-General, Mr. Mark Dreyfus, in response to the Bill introduced by Senator Cash, *Commission of Inquiry into Antisemitism at Australian Universities Bill 2024* (the Bill), is concerning.

### **Risk of the creation of a racialised hierarchy of human rights protections**

- 1.15 Failing to consider all forms of racism equally risks creating a racialised hierarchy of human rights protections and undermining internationally protected human rights obligations. A holistic approach was required to ensure this inquiry itself does not become a platform for expression of other racial discrimination. As stated in the submission of the Institute for Collaborative Race Research, it is vital to expose the dangers of the proposed narrow Commission of Inquiry and how it could function to reinforce rather than challenge racial violence.<sup>16</sup>
- 1.16 Australia has binding obligations under a number of international human rights treaties to respect, protect and fulfil human rights, including obligations to eliminate all forms of racial discrimination and protect the rights to equality and non-discrimination, education and freedom of expression, religion, and association.<sup>17</sup> As outlined in Chapter 4 of this inquiry report, Australia is obliged to eliminate racial discrimination both formally and substantively, with a particular focus on 'groups of individuals which suffer historical or persistent prejudice'.<sup>18</sup> Australia is also obliged to have legal prohibitions on the advocacy

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<sup>14</sup> Dr Noam Peleg, *Submission 48*, p. 2.

<sup>15</sup> Queensland University of Technology, *Submission 12*, p. 1.

<sup>16</sup> Institute for Collaborative Race Research, *Submission 121*, p. 1 (Legal and Constitutional Affairs Inquiry Report).

<sup>17</sup> International Covenant on Civil and Political Rights, articles 2, 18, 19(2), 20(2) and 26; International Covenant on Economic, Social and Cultural Rights, article 2(2) and 13; International Convention on the Elimination of All Forms of Racial Discrimination, article 4.

<sup>18</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 20 Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)* (2009) [7]–[8].

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of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.<sup>19</sup>

- 1.17 All forms of racism and discrimination must therefore be condemned. A siloed approach to combatting different forms of racism risks ignoring the broader geopolitical and societal context in which such racism is occurring, and risks undermining the credibility and impartiality of this inquiry. Further, a siloed approach does not embrace the spirit of the obligation to eliminate *all forms* of racial discrimination.
- 1.18 Indeed, submissions to this inquiry emphasised the urgent need for a national, co-ordinated approach to anti-racism — one that aligns with international human rights obligations, is grounded in best evidence, and is in harmony with broader anti-racism advocacy efforts. This is why the AHRC is conducting a Commonwealth-funded study on racism broadly in Australian universities, covering all forms of racism including Antisemitism, Islamophobia, anti-Palestinian and anti-Arab racism, and the foundational racism against black people, people of colour and First Nations students and staff.<sup>20</sup> The Race Discrimination Commissioner, Giridharan Sivaraman, has stressed that ‘Australia urgently needs a national, coordinated approach to anti-racism that must be legally adhered to and empowers people to take meaningful action’.<sup>21</sup>
- 1.19 If this Parliament is serious about addressing Antisemitism, it must consider racism in all its interconnections, rather than Antisemitism in isolation. Only a broad anti-racist framework can illuminate all forms of racial and colonial discrimination happening at universities, and beyond. Unless the primary focus is anti-racism, it will intensify rather than interrupt racism and colonialism, failing to protect Jewish people from Antisemitism and censoring legitimate criticism of Israel as it continues its genocide against Palestinians.<sup>22</sup>

### **Necessity of a broadened anti-racist approach to the report and recommendations**

- 1.20 I consider that upon hearing the evidence, the committee should have broadened its approach to the report and recommendations to reflect a comprehensive anti-racism framework. The submissions to this inquiry emphasised the urgent need for a national, co-ordinated approach.

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<sup>19</sup> International Covenant on Civil and Political Rights, article 20(2).

<sup>20</sup> Australian Human Rights Commission, *Submission 142*, (Legal and Constitutional Affairs Inquiry Report).

<sup>21</sup> Giridharan Sivaraman, quoted in Australian Human Rights Commission, ‘Giridharan Sivaraman commences as Race Discrimination Commissioner’, [Media Release](#) (4 March 2024).

<sup>22</sup> Institute for Collaborative Race Research, *Submission 121*, p. 1 (Legal and Constitutional Affairs Inquiry Report).

1.21 The AHRC's National Anti-Racism Framework provides a useful guide in this regard. As set out in the AHRC's submission, this Framework:

...recognises that systemic and structural racism is deeply embedded throughout Australia and requires an urgent national response. Its recommendations, grounded in a human rights-based approach, aim to eliminate racism from Australia's institutions and make Australia a more just, equitable and inclusive society where everyone can feel they belong and can thrive. Implementation of the Framework's education and workplace recommendations, in particular, has the capacity to help address antisemitism in university settings.<sup>23</sup>

### **Conflation of Antisemitism with Zionism**

1.22 It is crucial that the government does not participate in this conflation, which puts individuals at risk, but carefully distinguishes between criticism of the Israeli government and hatred of Jewish people as a whole. Understanding the distinction between Zionism (a modern colonial ideology) and Judaism (a 3000 year-old religion) is crucial to be able to target racist Antisemitism.<sup>24</sup>

1.23 This inquiry heard compelling evidence regarding the conflation of Antisemitism with Zionism and criticism of the Israeli government's policies and actions. As outlined in Chapter 3 of this inquiry report, several submissions expressed concern that complaints of Antisemitism (or responses to alleged Antisemitism) may misidentify legitimate statements and/or protests regarding activity in the Middle East as being Antisemitic.<sup>25</sup>

1.24 For example, the Executive Council of Australian Jewry references statements that accuse Israel of committing war crimes as being Antisemitic; these are not accurate examples of Antisemitism<sup>26</sup> and it is important that all States can be held accountable for international human rights law violations. As stated in the submission by Jews Against the Occupation '48:

To conflate the speech and actions of people motivated by deeply held convictions on justice and universal rights with the speech and actions of people motivated by racist hatred is not only wrong but dangerous. (To do so because the interests of a foreign nation, communicated via politically-motivated lobby groups, coincide with the desire by the state to clamp down

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<sup>23</sup> Australian Human Rights Commission, *Submission 30*, p. 15.

<sup>24</sup> Institute for Collaborative Race Research, *Submission 121*, p. 1 (Legal and Constitutional Affairs Inquiry Report).

<sup>25</sup> See, for example, Name Withheld, *Submission 8*, p. 1; Academics for Palestine (WA), *Submission 34* p. 3; Amnesty International, *Submission 39*; Group of academic staff and honorary faculty at the University of Melbourne, *Submission 24*, p. 2; Australian Jewish Democratic Society, *Submission 18*, p. 2; Jews Against the Occupation '48, *Submission 41*, pp. 1 and 2; Dr Noam Peleg, *Submission 48*, pp. 2-4.

<sup>26</sup> Dr Noam Peleg, *Submission 48*, p.3.



on the democratic rights of people in our own country is cynical in the extreme).<sup>27</sup>

- 1.25 This misinterpretation wrongly suggests that any criticism of Israel and Zionism—and by extension, recognition of Palestinian self-determination and sovereignty—is inherently antisemitic. Legitimate, legally protected expressions of support for the Palestinian right to self-determination must be identified and safeguarded.<sup>28</sup>
- 1.26 This includes expression that criticises genocide,<sup>29</sup> Apartheid, and illegal foreign occupation—realities well-documented both domestically and internationally, including by the International Court of Justice. For example, in its Advisory Opinion on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, the International Court of Justice was of the majority opinion that, among other things:
- ‘the State of Israel’s continued presence in the Occupied Palestinian Territory is unlawful’;
  - ‘the State of Israel is under an obligation to bring to an end its unlawful presence in the Occupied Palestinian Territory as rapidly as possible’;
  - ‘the State of Israel is under an obligation to cease immediately all new settlement activities, and to evacuate all settlers from the Occupied Palestinian Territory’; and
  - ‘that the State of Israel has the obligation to make reparation for the damage caused to all the natural or legal persons concerned in the Occupied Palestinian Territory’.<sup>30</sup>
- 1.27 The UN High Commissioner for Human Rights has also criticised the state of Israel’s violations of international law. In an opinion editorial dated 6 January 2025, the Commissioner stated:

Criticism of human rights violations is an essential part of our vigilance against antisemitism. In itself, such criticism cannot be antisemitic.

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<sup>27</sup> Jews Against the Occupation ‘48, *Submission 41*, p. 3.

<sup>28</sup> The right to self-determination is set out in common articles 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. This right is a collective right of peoples to freely determine their political status and to freely pursue their economic, social and cultural development.

<sup>29</sup> The right to life (protected under article 6 of the International Covenant on Civil and Political Rights) includes an obligation on states to ‘prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life’. See UN Human Rights Committee, *General Comment No. 6: article 6 (right to life)* [2]. Australia also has obligations under the Convention on the Prevention and Punishment of the Crime of Genocide.

<sup>30</sup> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* ([Summary of the Advisory Opinion](#)) [2024] p. 20.

However, attempts to apply the label of antisemitism to legitimate human rights concerns have increased significantly since the horrific attacks by Hamas and other armed Palestinian groups on 7 October 2023.

The scale and brutality of the killings on that day, the accounts of torture and sexual violence, and the taking of hostages – many still held captive – shocked us all. These are all grave breaches of international law that I have repeatedly condemned together with the entire United Nations system and countries across the world, and those responsible need to be held to account.

In the 14 months that have followed, according to the Ministry of Health in Gaza, Israeli military operations have killed more than 45,000 Palestinians. My Office has found that a large majority of verified fatalities are children and women, demonstrating an apparent indifference to civilian lives. The Israeli authorities have also failed to fulfil their obligation to meet the massive humanitarian needs in Gaza. As a result, Gaza is suffocated by death and despair, and drowning in raw sewage and disease. Israel's policies in Gaza have been marked by grave breaches of international law – which I have repeatedly condemned.

...

The Israeli policies that have contributed to the catastrophe in Gaza have been strongly criticised, including by many Israelis and Jews around the world. In some cases, such criticism has crossed a line into antisemitism – for example, by holding all Jews responsible for the actions of the Israeli government. It is not difficult to connect this false narrative with recent attacks on synagogues and other Jewish religious and cultural sites, which have been defaced with messages instilling fear and provoking more discrimination and hate. I condemn this unreservedly.

I also reject attempts to conflate all criticism of Israeli government policies and military operations with antisemitism. It is not antisemitic, for example, to deplore military operations that raise grave concerns over violations of international humanitarian and human rights law. Nor is it antisemitic to condemn those violations and urge respect for the law – including the decisions of international courts. Nor is it antisemitic to call Israel to account for the tens of thousands of people in Gaza, including more than 250 of our own UN staff, who have been killed since 7 October 2023.

My Office stands for the human rights and dignity of each and every person. We document human rights violations in the Occupied Palestinian Territory, in Israel, and in many other places, regardless of the identity of perpetrators and victims. We are not pro- or anti- anyone; rather, we are pro-everyone. That is the radical truth of human rights.<sup>31</sup>

- 1.28 UN Special Rapporteurs have highlighted the global threat to freedom of expression arising from the conflict in Palestine and unlawful attempts by States and private actors, such as universities, to silence legitimate protest about the conflict. The Special Rapporteur on the right to education, Ms Farida Shaheed, for example, observed that universities in the United Kingdom have used the

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<sup>31</sup> Volker Türk, UN High Commissioner for Human Rights, '[On Antisemitism](#)', Office of the High Commissioner for Human Rights (6 January 2025).

working definition of Antisemitism adopted by the International Holocaust Remembrance Alliance to ‘silence lawful speech supportive of Palestinian human rights and the right to self-determination’.<sup>32</sup> The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ms Irene Khan, has raised similar concerns, concluding that:

The “working definition” of antisemitism by the International Holocaust Remembrance Association is incompatible with international standards on freedom of expression. States should rescind their adoption and application of it and refrain from promoting it.<sup>33</sup>

- 1.29 Ms Khan emphasised that ‘[a]dvocacy of Palestinians’ human rights, including the right to self-determination, is legitimate expression’ and ‘States must not restrict expression in support of Palestinian self-determination’.<sup>34</sup> Ms Khan recommended that:

States...refrain from blanket prohibitions of demonstrations, slogans, symbols or other forms expression in support of the Palestinian people. Any decision to prohibit such acts or expressions on the grounds of incitement must be done on a case-by-case basis, taking into account international legal standards as well as specific contextual and other factors, as articulated in the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.<sup>35</sup>

- 1.30 The Human Rights Law Centre cautioned that efforts to combat Antisemitism and other forms of racial or religious hatred ‘must not come at the cost of silencing critical or dissenting voices’.<sup>36</sup> The Centre argued that ‘suppressing legitimate political expression risks diluting the focus of combating hate speech’, which ‘in turn, weakens broader efforts to address discrimination and hatred effectively and inclusively’.<sup>37</sup>

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<sup>32</sup> Special Rapporteur on the right to education, Ms Farida Shaheed, *Academic freedom* (27 June 2024) A/HRC/56/58, [44].

<sup>33</sup> Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ms Irene Khan, *Global threats to freedom of expression arising from the conflict in Gaza* (23 August 2024) A/79/319, [97].

<sup>34</sup> Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ms Irene Khan, *Global threats to freedom of expression arising from the conflict in Gaza* (23 August 2024) A/79/319, [95].

<sup>35</sup> Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ms Irene Khan, *Global threats to freedom of expression arising from the conflict in Gaza* (23 August 2024) A/79/319, [93]. See also the recommendations in [92], [94], [96] and [98].

<sup>36</sup> Human Rights Law Centre, *Submission 40*, p. 15.

<sup>37</sup> Human Rights Law Centre, *Submission 40*, p. 15. See also Professor Katharine Gelber, private capacity, *Committee Hansard*, 12 December 2024, pp. 1–2 and Australian Human Rights Commission, *Submission 30*, p. 13.

- 1.31 I also note the 2020 Jerusalem Declaration on Antisemitism, which was developed by a group of leading scholars in the fields of Holocaust history, Jewish studies, and Middle East studies. The Declaration defines Antisemitism as ‘discrimination, prejudice, hostility or violence against Jews as Jews (or Jewish institutions as Jewish)’.<sup>38</sup> The definition is accompanied by 15 guidelines that ‘provide detailed guidance for those seeking to recognize antisemitism in order to craft responses’.<sup>39</sup>
- 1.32 Other submitters also emphasised the relevance of the Rabat Plan of Action in assessing proportionate limitations on the right to freedom of expression. The Human Rights Law Centre, for example, recommended the adoption of the six-part test set out in the Rabat Plan of Action to help distinguish between protected expression and prohibited hate speech. That is, an assessment of: context; speaker; intent; content and form; extent; and likelihood and imminence of harm as a direct consequence of the expression or act.<sup>40</sup>
- 1.33 In light of this evidence and having regard to the expert opinions of UN Special Rapporteurs, I disagree with the committee’s recommendation that Australian universities should consider adopting the International Holocaust Remembrance Alliance’s working definition of Antisemitism. Antisemitism should not be defined in such a way that shields domestic and foreign governments from legitimate scrutiny; rather legitimate political discourse should be safeguarded while combating genuine Antisemitism.
- 1.34 Anything else supports the wrongful weaponising of Antisemitism to silence Palestinian truth-telling, protesters and anti-Zionist Jews in order to restrict discourse about Palestine in so-called Australia. This weaponisation relies on the conflation of Zionism with Judaism in order to characterise criticism of Israel as discrimination against Jews. This conflation has been challenged by many Jewish scholars, activists and organisations.

### **Concerns about the Inquiry Report and Recommendations**

- 1.35 Finally, I wish to state that I am concerned that this inquiry represents a shift toward politicisation of the Parliamentary Joint Committee on Human Rights, an entity that has historically been considered impartial.
- 1.36 Under the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Australia has binding obligations to combat all forms of racial discrimination, promote equality, and ensure protections for all

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<sup>38</sup> [Jerusalem Declaration on Antisemitism](#), definition.

<sup>39</sup> [Jerusalem Declaration on Antisemitism](#).

<sup>40</sup> Human Rights Law Centre, *Submission 40*, p. 15. This approach has also been endorsed by the UN Committee on the Elimination of Racial Discrimination. See, *General recommendation No. 35: combating racist hate speech* (26 September 2013) CERD/C/GC/35 [15].

marginalised communities, condemn all propaganda, not sponsor, defend or support racial discrimination by any persons or organisations. As such, any actual or perceived selective or politically motivated approach to combating racism may contravene these obligations, and undermine the credibility of this inquiry.

- 1.37 The recommendations represent a significant over-reach that has the potential to undermine both free speech and academic freedom on their campuses.
- 1.38 Equally troubling is the manner and context within which the inquiry was established—combined with the Australian government’s refusal to publicly condemn genocide—and its narrowly focused investigation into Antisemitism, which ignores the broader context of ongoing racism, genocide, the suppression of Palestinian right to self-determination, and a climate of fear, discrimination, and censorship in academic settings.
- 1.39 I acknowledge the difficulty of these conversations caused by the profound and ongoing trauma experienced by various communities, including First Peoples, Jewish communities, Palestinians, due to historical and ongoing acts of genocide and racial discrimination and stand in solidarity with oppressed peoples across the world.

#### **Recommendation 1**

- 1.40 **Universities in their approach to racism adopt a holistic anti-racism framework, jointly developed with representatives of all racialised communities.**

#### **Recommendation 2**

- 1.41 **For the Parliamentary Joint Committee on Human Rights to undertake a review of the effectiveness of the *Racial Discrimination Act 1975*, a proposal that is supported by the Race Discrimination Commissioner.**

#### **Recommendation 3**

- 1.42 **Universities should be guided by the 2020 Jerusalem Declaration on Antisemitism in their attempts to identify and fight antisemitism while protecting freedom of expression.**

**Recommendation 4**

**1.43 For the Parliamentary Joint Committee on Human Rights to conduct a review of the Australian Government's compliance with international human rights obligations in relation to the plausible genocide in Palestine, including adherence to orders from United Nations bodies and the findings and opinions of the International Court of Justice.**

**Senator Lidia Thorpe  
Independent Senator for Victoria**

# Appendix 1

## Submissions and additional information

- 1 Executive Council of Australian Jewry
- 2 Australasian Union of Jewish Students
- 3 Swinburne University of Technology
- 4 Sydney Jewish Museum
- 5 Western Sydney University
- 6 Name Withheld
- 7 Name Withheld
- 8 Name Withheld
- 9 Name Withheld
- 10 Universities Australia
- 11 University of Newcastle
- 12 Queensland University of Technology
- 13 University of Technology Sydney
- 14 Office of the Commonwealth Ombudsman
- 15 The Zionist Federation of Australia
  - Attachment 1
- 16 Australia/Israel & Jewish Affairs Council
- 17 NTEU
- 18 Australian Jewish Democratic Society
- 19 Group of Eight
- 20 Tertiary Education Quality and Standards Agency
- 21 Monash University
- 22 UNSW Sydney
- 23 Australian Catholic University
- 24 Group of academic staff and honorary faculty at the University of Melbourne
- 25 RMIT University
- 26 The University of Queensland
- 27 Archdiocese of Brisbane
- 28 University of the Sunshine Coast
- 29 Liberty Victoria
- 30 Australian Human Rights Commission
- 31 Northern Rivers Jewish Community Association
- 32 The University of Adelaide
- 33 The Australian National University
- 34 Academics for Palestine WA
- 35 Castan Centre for Human Rights Law
- 36 The University of Sydney
- 37 The University of Melbourne

- 38 Associate Professor David Kearns and Dr Ryan Walter
- 39 Amnesty International Australia
- 40 Human Rights Law Centre
- 41 Jews Against the Occupation '48
- 42 Students for Palestine
- 43 Confidential
- 44 Confidential
- 45 Dr Philip Mendes
- 46 Mr Mark Sheldon
- 47 Name Withheld
- 48 Dr Noam Peleg
- 49 Dr Lana Tatour and Dr Andrew Brooks

**Additional Information**

- 1 Letter from Mr Robert French AC
- 2 Opening Statement, Professor Heather Zwicker, University of Queensland

**Answer to Question on Notice**

- 1 Australasian Union of Jewish Students - asked by Senator Lisa Darmanin via written question - received 9 December 2024
- 2 Special Envoy to Combat Antisemitism in Australia - asked by Senator Lisa Darmanin via written question - received 9 December 2024
- 3 National Ombudsman - asked by Senator Lisa Darmanin via written question - received 11.12.24
- 4 University of Sydney - asked by Mr Josh Burns MP via written question- received 13.12.24
- 5 University of Sydney - asked by Mr Henry Pike MP- received 13.12.24
- 6 University of New South Wales - asked by Mr Josh Burns MP - received 19.12.24
- 7 Attorney-General's Department - asked by Mr Josh Burns MP - received 20 December 2024
- 8 University of Adelaide - response to QONS - received 20 December 2024
- 9 Group of Eight - asked by Senator David Shoebridge via written question - received 21 January 2025
- 10 University of Sydney - asked by Mr Henry Pike MP - received 31 January 2025
- 11 Castan Centre for Human Rights Law -asked by Mr Burns MP - received 31 January 2025
- 12 NTEU - answer to question from Mr Perrett MP - received 31 January 2025
- 13 NTEU - answer to question from Ms Tink MP - received 31 January 2025
- 14 AHRC - answer to question from Ms Tink MP - received 31 January 2025
- 15 Macquarie University - asked by Mr Josh Burns MP - received 7 February 2025
- 16 Queensland University of Technology - asked by Mr Burns MP - received 7 February 2025



**Media Releases**

- 1 Media release - Inquiry into antisemitism at Australian universities

**Tabled Documents**

- 1 Recommendations to the Parliamentary Joint Committee on Human Rights to combat antisemitism at Australian universities. Tabled on 28 November 2024 in Committee Room 2S3, Australian Parliament House, Canberra ACT 2600.
- 2 Jerusalem Declaration on Antisemitism. Tabled on 5 February 2025 in Committee Room 2S3, Australian Parliament House, Canberra ACT, 2600



# Appendix 2

## Public hearings

*Friday 29 November 2024*

Committee Room 2S3  
Australian Parliament House  
Canberra

*Universities Australia*

- Mr Luke Sheehy, Chief Executive Officer

*Group of 8*

- Ms Vicki Thomson, Chief Executive

*University of Sydney*

- Professor Mark Scott AO, Vice Chancellor and President
- Professor Annamarie Jagose, Provost and Deputy Vice Chancellor

*University of Technology Sydney*

- Professor Andrew Parfitt, Vice Chancellor
- Professor Kylie Readman, Deputy Vice Chancellor (Education and Students)

*Executive Council of Australian Jewry*

- Mr Peter Wetheim, co-CEO (via video conference)
- Ms Simone Abel, Head of Legal (via videoconference)

*Zionist Federation of Australia*

- Mr Alon Cassuto, Chief Executive Officer (via videoconference)

*Australasian Union of Jewish Students*

- Mr Noah Loven, President
- Mr Zachary Morris, Vice-President

*Special Envoy to Combat Antisemitism*

- Ms Jillian Segal AO (via videoconference)

*Commonwealth Ombudsman*

- Mr Iain Anderson, Commonwealth Ombudsman
- Mrs Kate Anderson, Senior Assistant Ombudsman, National Student Ombudsman

*Attorney-General's Department*

- Ms Ayesha Nawaz, Assistant Secretary, Human Rights Branch

*Thursday 12 December 2024*

Committee Room 2S3  
Australian Parliament House  
Canberra

*Professor Katharine Gelber (via videoconference)*

*University of Melbourne*

- Professor Nicola Phillips, Vice-Chancellor

*University of New South Wales (via videoconference)*

- Professor the Hon. Verity Firth AM, Vice President, Societal Impact, Equity and Engagement

*University of New South Wales (via videoconference)*

- Mr David Cross, Chief of Staff

*University of Adelaide (via videoconference)*

- Dr Peter Høj AC, Vice-Chancellor and President

*University of Adelaide (via videoconference)*

- Professor John Williams AM, Provost

*Monash University*

- Professor Sharon Pickering, Vice-Chancellor and President

*Deakin University*

- Professor Iain Martin, Vice-Chancellor

*University of Western Australia (via videoconference)*

- The Hon. Robert French AC, Chancellor

*University of Western Australia (via videoconference)*

- Professor Amit Chakma, Vice-Chancellor

*Department of Education*

- Mr Ben Rimmer, Deputy Secretary, Higher Education, Research and International Group
- Ms Kate Chipperfield, Assistant Secretary, Access, Equity and Social Inclusion Branch

*Tertiary Education Quality and Standards Agency*

- Dr Mary Russell, Chief Executive Officer

*Tertiary Education Quality and Standards Agency*

- Ms Adrienne Nieuwenhuis, Acting Chief Commissioner

Wednesday 22 January 2025

Committee Room 2S3

Australian Parliament House

Canberra

*The University of Sydney (via videoconference)*

- Professor Mark Scott AO, Vice-Chancellor and President

*The University of Sydney (via videoconference)*

- Ms Kirsten Andrews, Vice-President (External Engagement)

*Australian National University*

- Professor Genevieve Bell AO, Vice-Chancellor and President
- Professor Grady Venville, Deputy Vice-Chancellor (Academic)
- Professor Anthony Connolly, Dean of the ANU College of Law
- Ms Lisa Kennedy, Interim Director, University Experience

*University of Queensland*

- Professor Deborah Terry AC, Vice-Chancellor and President

*University of Queensland*

- Professor Heather Zwicker, Pro-Vice-Chancellor (Campus Culture and Leadership)

*Western Sydney University (via videoconference)*

- Professor George Williams AO, Vice-Chancellor and President

*National Tertiary Education Union (via videoconference)*

- Dr Terri Macdonald, Director of Policy and Research

*National Union of Students*

- Ms Ashlyn Horton, National President

*National Union of Students*

- Mr Aidan O'Rourke, General Secretary

*Australian Centre for Jewish Civilisation (via videoconference)*

- Associate Professor David Slucki, Director

*Australian Human Rights Commission*

- Mr Hugh de Kretser, President
- Ms Lorraine Finlay, Human Rights Commissioner
- Mr Giridharan Sivaraman, Race Discrimination Commissioner (via videoconference)

*Castan Centre for Human Rights Law, Monash University (via videoconference)*

- Professor Melissa Castan, Director

*Castan Centre for Human Rights Law, Monash University (via videoconference)*

- Associate Professor Ronli Sifris, Deputy Director

*Liberty Victoria (via videoconference)*

- Ms Michelle Bennett, President

*Wednesday 5 February 2025*

Committee Room 2S3

Australian Parliament House

Canberra

*Macquarie University*

- Professor S. Bruce Downton, Vice Chacellor and President
- Dr Ross McLennan, Pro Vice Chancellor, Research Services

*Queensland University of Technology*

- Professor Margaret Sheil, Vice-Chancellor and President
- Ms Leanne Harvey, Vice-President (Administration) and University Registrar