

28 January 2024

President  
Australian Human Rights Commission  
3/175 Pitt Street  
Sydney NSW 2000

CC: Leanne Smith, Darren Dick, Diana Baker, Tracey Young, Merle Mendonca and Miguel Artiles

**Re: Inadequacy of the AHRC's response to the ongoing apartheid, occupation and genocide in the Occupied Palestinian Territories**

Dear Rosalind,

We write to you, as a collective of concerned staff across eight teams at the Australian Human Rights Commission (Commission), to express our frustration at the Commission's failure to fulfil its mandate as an accredited national human rights institution in regard to Israeli war crimes and crimes against humanity perpetrated against Palestinians in Gaza and the West Bank.

We have chosen to remain anonymous due to the culture of silence at the Commission. We have witnessed staff who take a rights-based approach to this issue be cautioned and disciplined. We also note the lack of safe channels for concerns to be discussed without fear of adverse action and the impact this has had on our wellbeing and psychosocial safety.

As an independent institution, the Commission must remain non-partisan but it is an abrogation of its responsibility to remain 'neutral' in cases of human rights abuses. The Commission's functions outlined in section 11 of the *Australian Human Rights Commission Act 1986* (Cth) include:

- Promoting understanding, acceptance, and public discussion of human rights
- Inquiring into any act or practise inconsistent with or contrary to any human right
- Reporting any action that needs to be taken by Australia in order to comply with international human rights instruments

Criticism of Israel and its settler-colonial practices is often deliberately misrepresented as antisemitic, which only serves to censor human rights-based dissent. The Commission has given into a fear of criticising the Australian Government and Zionists for fear of losing funding over independently performing its purpose of advancing human rights internationally and domestically.

The Commission has failed to hold the Australian Government accountable for its involvement in human rights violations in Palestine, and repressive rhetoric and practices directed towards, and actively harming, communities in Australia. Due to a lack of leadership, the Commission has become complicit in the erosion of human rights.

At the time of writing, Israel has killed more than 25,000 Palestinians, including thousands of children. As staff, we feel ethically, morally and professionally obligated to uphold human

rights and justice for oppressed peoples, and demand that the Commission act in accordance with its mandate. We call upon the Commission to:

1. Acknowledge that it cannot meaningfully engage with affected Palestinian, Arab, Muslim and Jewish communities if it does not acknowledge Israel's occupation of Palestine as the source of the violence, and embed an acknowledgement of Israel's apartheid, occupation and genocide in all communications concerning this matter.
2. Use all channels to call for an immediate, permanent ceasefire, and an end to Israeli apartheid and occupation, including the complete withdrawal of illegal Israeli settlers and occupation soldiers from the Occupied Palestinian Territories.
3. Use all channels to ensure Australia upholds its obligations under the Convention for the Prevention of Genocide (Genocide Convention) in light of the United Nations International Court of Justice (ICJ) ruling that Israel is plausibly committing genocide in Gaza.
4. Immediately call for an inquiry into the military actions of the Australian Government that are contrary to international human rights, including arms exports that could be aiding and abetting the genocide Israel is plausibly committing in Gaza.
5. Acknowledge publicly that the Commission rejects the International Holocaust Remembrance Alliance's (IHRA) unsound definition of antisemitism.
6. Support the right to peaceful assembly as codified in Article 21 of the International Covenant on Civil and Political Rights (ICCPR) and call out infringements of this right.
7. Audit present and future contractual agreements between the Commission and goods and supplier services to avoid complicity in human rights violations and genocide.
8. Assess psychosocial risks in the workplace to address factors distressing staff in relation to Israel's crimes against humanity and war crimes.
9. Cease suppressive and intimidating treatment towards staff who have spoken out about human rights abuses and war crimes in the workplace and offline.

Please refer to the document entitled "Full Demands" and its Appendices for further clarification on our demands. We ask that you respond to each of these calls **via an email to all Commission staff, with this letter and the "Full demands" document attached, by COB 5 February 2024**. Within the response email, the Commission should create and promote safe channels for all staff to have the opportunity to support and endorse this letter, without fear of reprimand.

We look forward to your response.

Yours sincerely,

A collective of Commission staff

## Full Demands

1. **Acknowledge that the Commission cannot meaningfully engage with affected Palestinian (including Palestinian Christian), Arab, Muslim and Jewish communities in Australia if it does not acknowledge the source of the violence as the occupation of Palestine.** The Commission must **embed an acknowledgment of apartheid, occupation and genocide perpetrated by Israel in all communications concerning Occupied Palestine and Israel (internal, external and private).** See Appendix "A" for further guidance on language use in all messaging.

Simultaneously, the Commission should consistently acknowledge the historic and ongoing restriction of human rights in the Occupied Palestinian Territories as a key point of difference in comparison to the experience of Israelis who have full and unimpeded access to their human rights in the settler colony. This challenges the framing of the current genocide as incited by Hamas and of equal harm to Israelis and Palestinians as it would acknowledge the 17 years of Israeli blockade and military siege on Gaza. This should naturally involve a commitment by the Commission's Executive and Senior Management Group to highlight the many contemporary ways in which human rights are weaponised by the Israeli settler colony to this present day. A list of the relevant rights is provided at Appendix "B".

2. **Use all available channels to the Australian Government to continuously call for an immediate, permanent ceasefire in those clear, exact terms, the cessation of hostilities in both Gaza and the West Bank, a permanent end to Israeli apartheid and occupation, including the complete withdrawal of illegal Israeli settlers and occupation soldiers from the Occupied Palestinian Territories.**
3. **Use all available channels to the Australian Government to call for Australia to uphold its obligations under the 1948 Genocide Convention.** Australia ratified the Genocide Convention on 8 July 1949 and has obligations to uphold the Convention internationally.
  - a. **The Commission should call on the Australian Government to publicly intervene in support of [South Africa's case against Israel in the International Court of Justice \(ICJ\)](#).** In its initial court filing, South Africa acknowledges it has a responsibility, as a State party to the Genocide Convention, to prevent and punish genocide under its terms. The [ICJ order dated 26 January 2024](#) has since found that Israel is plausibly committing genocide in Gaza.
  - b. Under section 11(k) of the *Australian Human Rights Commission Act 1986* (Cth), **the Commission should, as a matter of urgency, report to the Minister as to the action that needs to be taken by Australia in order to comply with the provisions of the Genocide Convention as a relevant international instrument.** This includes by enacting relevant

legislation and punishing perpetrators, “whether they are constitutionally responsible rulers, public officials or private individuals” (Article IV). Australia has an obligation to sanction Israel’s rulers, public officials and private individuals for their genocidal actions in relation to the Occupied Palestinian Territories, and the Commission has a clear legal mandate to communicate this obligation directly to the Australian Government.

- c. The Commission should remind the Australian Government of its responsibility to investigate any Australian citizens travelling to Israel to serve in the Israeli Occupation Forces (IOF) in recent months.** Under Articles III and IV of the Genocide Convention, attempted, conspiracy to commit, and complicity in genocide are punishable whether they are displayed by leaders, public officials or private individuals.
  - d.** In respect to preventing the crime of genocide, the Commission has an obligation under section 11 of its mandate, to **call for an inquiry into the military actions of the Australian Government that are contrary to international human rights**, including arms exports that could be aiding and abetting the genocide Israel is plausibly committing in Gaza. There is strong evidence that Australia has exported weapons to Israel [with little transparency or accountability](#). The Commission should report to the Minister(s) any action that, in the opinion of the Commission, needs to be taken by Australia to comply with provisions of the Genocide Convention as a relevant international instrument in this regard.
- 4. Acknowledge publicly, and consistently in ongoing work, that the Commission does not accept the International Holocaust Remembrance Alliance’s (IHRA) deeply problematic definition of antisemitism.** The Commission should use its educative function to explicitly decouple criticism of Zionism and the State of Israel from experiences of antisemitism, in an attempt to correct the misinformation characterising public discussions in Australia and causing significant harm to communities.
  - 5. Reiterate the right to peaceful assembly as invoked by Article 21 of the International Covenant on Civil and Political Rights (ICCPR), to which Australia is a party and consistently call out any infringements of this right.** The Commission should look to the clear and consistent advocacy of the Human Rights Law Centre and the NSW Council of Civil Liberties when messaging to governments about the right to peaceful assembly.
  - 6. Conduct an audit of present and future contractual agreements between the Commission and goods and supplier services** to ensure they comply with the strict procurement rules and regulations around funding and investing in organisations that enable breaches of human rights. **This involves an assessment of companies and contracts which support, benefit financially, or are otherwise complicit in Israel’s system of apartheid and occupation that continuously violates the human rights of Palestinians.** An update on

this audit should be provided to staff and consideration should be given to how this can become embedded in procurement processes as a matter of human rights-informed best practice. Guidance on businesses with anti-human rights practices are provided at Appendix "C".

7. **Undertake a comprehensive and independent psychosocial risk assessment within the workplace to identify and address factors contributing to the distress felt by staff and compounded significantly by the current lack of safe and/or adequate supports in relation to the human rights breaches and war crimes currently, and historically, perpetrated by Israel.** This work must be led by an acknowledgement, to staff, of the distress already caused to them stemming from the shocking lack of Commission leadership on the ongoing human rights violations and war crimes perpetrated by Israel. Referrals to use the Employee Assistance Program have been insufficient as a sole measure.
  
8. **Acknowledge, and take steps to correct, the suppressive and intimidating treatment towards staff who have spoken out about human rights abuses and war crimes in the workplace and offline.** The Commission should not reprimand staff for advocating for the respect of human rights in the context of the current genocide in Palestine, or ever. Rather, the Commission should support and encourage the active participation of staff as it relates to human rights.

## Appendix A

### Importance of language

The principal judicial organ of the United Nations (UN), the International Court of Justice (ICJ) has ruled that [Israel is plausibly committing genocide in Gaza](#). As a matter of urgency, the Commission must use language in line with this ruling and further official United Nations communications, as outlined below.

The United Nations Human Rights Office (OHCHR) has [repeatedly highlighted Israel's "recurring failures to uphold the fundamental principles of international humanitarian law"](#). Israel's actions in Gaza have been described by a number of UN Special Rapporteurs as ["crimes against humanity"](#) and by the UN Secretary-General as ["clear violations of international humanitarian law"](#). UN Special Rapporteur Francesca

Albanese has warned of [ethnic cleansing](#). Israeli Holocaust scholars have articulated this as a “[textbook case of genocide](#)”. Raz Segal, an Israeli historian and genocide expert [describes](#) Israel’s “genocidal assault on Gaza” as “quite explicit, open, and unashamed.” For instance, [multiple Israeli politicians have explicitly called for a second Nakba](#). Israel’s own Defence Minister has described his targets as “[human animals](#)”, showing a systematic, destructive intent.

A [2022 OHCHR report](#) states that an “institutionalised regime of systematic racial oppression and discrimination has been established [in Palestine]. Second, this system of alien rule had been established with the intent to maintain the domination of one racial-national-ethnic group over another. Third, the imposition of this system of institutionalised discrimination with the intent of permanent domination had been built upon the regular practice of inhuman(e) acts. This was apartheid. With the eyes of the international community wide open, Israel had imposed upon Palestine an apartheid reality in a post-apartheid world.” The [United Nations, Human Rights Watch, Amnesty International](#), and Israel’s own human rights organisations – [B’tselem](#) and [Yesh Din](#) – among others, have also called it apartheid. The Commission must follow suit.

Misrepresenting, or watering down, the nature of these atrocities being committed by the state of Israel against Palestinians functions to uphold racist and dehumanising attitudes towards Palestinians and enables the atrocities. Simultaneously, this prevents the Commission from fulfilling its mandate to uphold human rights, significantly damaging our reputation and in turn, our ability to support and protect affected communities in Australia.

The Commission has a responsibility, as an NHRI, to accurately represent the reality of Israel’s violence against Gaza and the West Bank to political leaders and broader communities in Australia in all of its internal and external messaging. Not one of the Commission’s public statements, emails to staff and its letter to the Prime Minister dated 2 November 2023 have, for example:

- accurately represented the historical context of October 7. The violence in the last few months was not “triggered” or provoked by the Hamas attack on that date. Rather, the occupation, colonisation and land-theft are the root cause of the ‘conflict’. Further, use of the terms “crisis”, “conflict”, and “Israel-Hamas war” obfuscates the reality of Israel’s ongoing settler colonial violence in both Gaza and the West Bank;
- clearly attributed accountability for much of the violence towards Israel;
- mentioned the right of Palestinian people to self-determination or return; and
- called for a permanent ceasefire in explicit terms.

The Commission’s public statements on this issue to date have done little to advance understandings of human rights as they relate to Palestine and Palestinian people, as well as allied communities. [Tepid and directionless calls](#) for ‘all levels of discussion [to] adhere to the laws and principles which underpin our approach to human rights’ obfuscate the violence of Australian media and political actors intent on denying the

settler-colonial logic of Israeli occupation and the impacts of this on Palestinians both in Australia and abroad. Far from promoting an understanding and acceptance of human rights in Australia, the Commission's relative silence on these issues has allowed for the mobilisation of false narratives that seek to undermine the rights of Palestinian people. The United Nations Committee on the Elimination of Racial Discrimination ([CERD statement of 27 October 2023](#)) has stated it was "[h]ighly concerned about the sharp increase in racist hate speech and dehumanization directed at Palestinians since 7 October".

[ICJ 86.\(3\) orders Israel to](#) "take all measures within its power to prevent and punish the direct and public incitement to commit genocide in relation to members of the Palestinian group in the Gaza Strip." In accordance with this order, the Commission should call on the Australian Government, elected officials, media representatives and organisations to refrain from using dehumanising language in relation to Palestinian, Arab and Muslim people and communities. Grounding the Commission's leadership in human rights-based principles will in turn, actively prevent the incitement of hatred against communities in Australia and abroad.

As an independent institution, it is the Commission's role to remain non-partisan, but it should not use this as an excuse to obfuscate clear human rights abuses. Naming what is occurring using accurate language, in line with human rights and international law, is critical to contributing to informed public discourse and in preventing genocide.

## **Appendix B**

### **Israel's violation of human rights in Palestine**

For decades, Israel's illegal occupation of Palestine has restricted the following human rights for Palestinian people in historic Palestine, including Palestinians in Gaza, Occupied East Jerusalem, the West Bank, and Palestinians with citizenship in Israel:

- Right to rights and freedoms without distinction of any kind, such as race, national or birth (Article 2, UDHR)
- Right to life (Article 3, UDHR)
- Right to recognition (Article 6, UDHR)
- Right to equal protection of the law (Article 7, UDHR)
- Right to be free from arbitrary detention (Article 9, UDHR)
- Right to water (Article 11(1), ICESCR)
- Right to safety: privacy, family, home or correspondence (Article 12, UDHR)
- Right to freedom of movement & right of return (Article 13, UDHR)
- Right to food and health (Article 25, UDHR)

Israel also actively restricts the following human rights of Palestinians in the diaspora:

- Right to rights and freedoms without distinction of any kind, such as race, national or birth (Article 2, UDHR)
- Right to recognition (Article 6, UDHR)
- Right to equal protection of the law (Article 7, UDHR)
- Right to be free from arbitrary detention (Article 9, UDHR)
- Right to safety: privacy, family, home or correspondence (Article 12, UDHR)
- Right to freedom of movement & right of return (Article 13, UDHR)

Australia cannot meaningfully engage with affected communities in Australia without engaging with the substance of the issue. Failing to confront it openly only leads to further distrust and scepticism towards the Commission as an NHRI and overall harm to communities who are left to fend for themselves without active leadership from the NHRI in respect to its mandate to advocate for the protection and promotion of human rights, from the NHRI.



## Appendix C

### **Businesses complicit in human rights abuses in Palestine**

In February 2020, the office of the United Nations High Commissioner for Human Rights (OHCHR) produced a [report and list of a business enterprises](#) involved in the activities of the illegal Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem and in the occupied Syrian Golan.

We note the Commission intends to use HP products following its office relocation in mid-2024. Although the above list does not include HP and its subsidiaries, HP-branded companies continue to play a key role in the oppression of Palestinians.

For example, the Boycott, Divestment and Sanctions Movement have [found](#):

“HP-branded corporations provide and operate technology that Israel uses to maintain its system of apartheid, occupation and settler colonialism over the Palestinian people. Hewlett Packard’s violations of Palestinian human rights have been well documented. Aside from providing services and technology to the Israeli army and police that maintain Israel’s illegal occupation and siege of Gaza, HP provides Israel’s Population and Immigration Authority with the exclusive Itanium servers for its Aviv System. This system enables the government to control and enforce its system of racial segregation and apartheid against Palestinian citizens of Israel, and is directly involved in Israel’s settler colonialism through its “Yesha database”, which compiles information on Israeli citizens in illegal settlements in the occupied Palestinian West Bank.”

The Commission must take an active human-rights based stance on those it intends to enter into contracts with.