

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Parliament House
Canberra ACT 2600

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23 August 2024

Dear Committee Secretary

Re: Commission of Inquiry into Antisemitism at Australian Universities Bill 2024

We are an informal alliance of Australian university academics, workers, students and community members based at a number of Australian universities. We are committed to principles of anti-racism and to combating settler colonial violence and racism in all their forms. Our expertise and activities span the disciplines of politics, law, philosophy, history, ethnicity and race, Indigenous studies, settler colonialism, migration, criminology, health, and more

We write in strong opposition to the proposed Bill. As we set out in our below **Detailed Submission**, our key concerns with the Bill's proposal to establish a Commission of Inquiry into Antisemitism at Australian Universities are:

- **Examining antisemitism in isolation from other forms of racism will do more harm than good.** Combatting racism requires a comprehensive approach and analysis that opposes all forms of racism, including racially-based hate speech, rather than segregating and reifying different forms of racism from one another. Antiracist work includes understanding the social, legal and institutional structures that enable such racism, and working to undo historically-entrenched power and patterns of racial discrimination. Understanding and combating contemporary expressions of antisemitism is vitally important. This antisemitism however should not be considered in isolation from other forms of oppression and racially-based hatred, including anti-Palestinian racism, Islamophobia, anti-Arab racism or anti-Indigenous racism towards First Nations peoples in Australia.
- **Establishing a separate Commission of Inquiry into Antisemitism at Australian Universities will undermine the important anti-racism work of the Australian Human Rights Commission (AHRC). It will also fly in the face of a key recommendation of the University Accord process that called for a “comprehensive” approach to developing a long-term anti-racist strategy for Australian universities.** The AHRC has already begun its historic Commonwealth-funded study into racism in all its forms at Australian universities, and has the requisite expertise in anti-discrimination law and practice in order to undertake such a study. The AHRC study is based on a key

recommendation of the University Accord and will be done through extensive consultation with affected communities.

- **The Commission of Inquiry may be based on and perpetuate a harmful definition of antisemitism**, one that equates antisemitism (as a hatred towards Jewish people) with anti-Zionism (the legitimate opposition to political Zionism as a settler colonial project manifested in the State of Israel). Opposition to and criticism of the State of Israel and of Zionism per se should not be regarded as antisemitism. We are particularly concerned that the Commission of Inquiry may adopt the widely-criticised definition of antisemitism drafted by the International Holocaust Remembrance Alliance (IHRA). There is now extensive evidence and scholarship that demonstrates that the IHRA definition of antisemitism poses an unacceptable threat to academic freedom.
- **The Commission of Inquiry may be used to stigmatise and vilify legitimate expressions of support for and solidarity with the Palestinian people’s struggle for self-determination, and the right of the Palestinian people to live free from genocide, apartheid, settler colonialism and illegal foreign occupation.** As we set out below, university-based campaigns and actions in support of the Palestinian people are grounded in and supported by fundamental principles of international law, and should not be smeared as antisemitic per se. We submit that to treat such action as antisemitic is in fact a form of anti-Palestinian racism. We are concerned that the proposed Commission of Inquiry will create an irresponsible platform for reinforcing and amplifying anti-Palestinian racism.

Please see our **Detailed Submission** below for further explanation and evidence of our concerns.

We submit that the Bill should be rejected in full.

Kind regards

Academic Alliance against Settler Colonialism, Racism and Censorship in Australia

DETAILED SUBMISSION

TO THE SENATE INQUIRY INTO A COMMISSION OF INQUIRY INTO ANTISEMITISM AT AUSTRALIAN UNIVERSITIES

Submitted by
Academic Alliance against Settler Colonialism, Racism and Censorship in Australia

August 2024

SUBMISSION OVERVIEW

- I. Examining antisemitism in isolation from other forms of racism may do more harm than good. Establishing a separate Commission of Inquiry into Antisemitism at Australian Universities will undermine the important anti-racism work of the Australian Human Rights Commission (AHRC).
- II. The Commission of Inquiry may be based on and perpetuate a harmful definition of antisemitism
 - The IHRA Definition of Antisemitism as a Threat to Academic Freedom
- III. The Commission of Inquiry may be used to vilify legitimate expressions of support for and solidarity with the Palestinian people's struggle for self-determination, and to live free from genocide, apartheid, settler colonialism and illegal foreign occupation.
 - Palestine Activism and Solidarity as a Movement for Self-Determination
 - Palestine Self-Determination, the Prohibition on Genocide and International Law
 - Ongoing Stigmatisation of and Policing of Palestine Solidarity at Australian Universities

I. **Examining antisemitism in isolation from other forms of racism may do more harm than good. Establishing a separate Commission of Inquiry into Antisemitism at Australian Universities will undermine the important anti-racism work of the Australian Human Rights Commission (AHRC).**

Antisemitism, like other forms of racism, is real and must be addressed as a matter of urgency. How we address antisemitism and racism matters. Combating racism requires a comprehensive approach and analysis that opposes all forms of racism, including racially-based hate speech, rather than segregating and reifying different forms of racism from one another. Antiracist work includes understanding the social, legal and institutional structures that enable such racism, and working to undo historically-entrenched power and patterns of racial discrimination. While understanding and combating contemporary expressions of antisemitism is vitally important, antisemitism should not be considered in isolation from other forms of oppression and racially-based hatred, including anti-Palestinian racism, Islamophobia, anti-Arab racism or anti-Indigenous racism towards First Nations peoples in Australia.

A key recommendation of the consultative University Accord's process was the creation of a comprehensive Tertiary Education Racism Study that engages a wide range of stakeholder groups. **Recommendation 33 of the University Accord Final Report recommends:**

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.¹

The AHRC has now begun this important work, drawing on its expertise in antiracism and intersectional coalition-building.² The AHRC Study will set up a legitimate process for staff and students who encounter antisemitism at Australian universities to contribute to their landmark findings. In contrast, establishing a separate Commission of Inquiry risks privileging certain students and staff that may be facing racism at Australian universities over other students and staff such as Palestinian staff and students. There are clear dangers of examining specific forms of racism in isolation, with the exception of the unique position of First Nations peoples in Australia. We therefore submit that the proposed Commission of Inquiry - in examining antisemitism in isolation from other forms of racism - will do more harm than good.

¹ University Accord, Final Report 2024, <https://www.education.gov.au/australian-universities-accord/resources/final-report>

² AHRC, 'Commission to lead historic anti-racism study into universities' (May 2024) <https://humanrights.gov.au/about/news/commission-lead-historic-anti-racism-study-universities>.

II. The Commission of Inquiry may be based on and perpetuate a harmful definition of antisemitism

The IHRA Definition of Antisemitism as a Threat to Academic Freedom

We are concerned that one of the proposed functions of the Commission of Inquiry under the Bill is to inquire into whether Australian universities have “adopted and implemented an appropriate definition of antisemitism for all purposes such as the International Holocaust Remembrance Alliance definition”, known as the IHRA definition.³ Australian universities are already governed by and subject to section 18C of the *Racial Discrimination Act 1975* (Cth) (RDA) that prohibits a person to act in public in a manner that is ‘reasonably likely in all the circumstances to offend, insult, humiliate or intimidate another person or a group of people’; and it must be done ‘because of the race, colour or national or ethnic origin of the other person or some or all of the people in the group’.

The legal test under section 18C for whether an act is ‘reasonably likely’ to cause such offence, insult, humiliation or intimidation is an **objective** one. This means that, as the Federal Court of Australia recently held, whether an act violates section 18C turns on an ‘objective assessment of the **nature and effects** of those remarks, in all the **circumstances** in which they were made’, rather than on ‘the **subjective reactions of some listeners** to allegedly offensive remarks’.⁴ Australian courts have held that, in order to contravene section 18C, acts must have ‘**profound and serious effects**’ and ‘not be likened to mere slights’.⁵ This means an act will not necessarily breach section 18C if it only causes discomfort, unease or even strong disagreement.

Additionally, an act will only breach section 18C if it is done ‘because of the **race, colour or national or ethnic origin**’ of another person or group. Here, it is important to note that a person’s political opinion (such as a commitment to the State of Israel or Zionism as a political ideology) is not included in this list of ground or protected characteristics under the RDA. Importantly, Zionism as a political ideology connected to the modern State of Israel is not inherent in Judaism as a diverse and pluralist religion that long predates the establishment of the modern State of Israel. As Nadia Abu El-Haj, who is the Ann Whitney Olin Professor in the Departments of Anthropology at Barnard College and Columbia University, writes:

‘Anti-Semitism, Islamophobia, and anti-Palestinian racism are directed against persons for who they are—or, perhaps more accurately, for who they are assumed to be. As speech acts, they constitute racist and hate speech. Anti-Zionism, by way of contrast, is directed at a state-building project and a political regime. To render anti-Zionism

³ Commission of Inquiry into Antisemitism at Australian Universities Bill 2024, section 6(3)(b).

⁴ *Kaplan v State of Victoria* (No 8) [2023] FCA 1092, [515].

⁵ See, eg, *Creek v Cairns Post Pty Ltd* [2001] FCA 1007; *Eatock v Bolt* [2011] FCA 1103, [268].

equivalent to the first three is to commit a fundamental category mistake that is not sustainable on any serious intellectual grounds'.⁶

The RDA also provides a clear exemption for acts '**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' (section 18D(b), our emphasis).

We are concerned that the Bill and its proposed Commission of Inquiry is not based on this racial vilification legal framework and jurisprudence. To be clear, should specific incidents of anti-Palestinian racism, Islamophobia or antisemitism occur on Australian university campuses, these incidents of hate speech must be addressed pursuant to the legal framework offered by the RDA and as implemented within Australian universities through university policies and procedures.

In contrast, we submit that the Bill's reference to the IHRA definition of antisemitism is problematic, as the IHRA definition is an inappropriate, highly contested and controversial definition that is not suitable in a university context or beyond. It was adopted by the International Holocaust Remembrance Alliance in 2016, and developed as part of the 'new antisemitism movement' which expands the definition of antisemitism to include anti-Zionism and critique of the Israeli state. It draws on deliberate conflation between Judaism (religion) and Zionism (political ideology) and on the conflation between anti-Zionism (a political position against a political ideology) and antisemitism (a form of racism) in order to censor public debates and criticism of Israel's violations of international law.

Since its introduction, this IHRA definition has been used against academics and students to censor speech on Palestine and Israel, rather than to protect the safety of Jewish staff and students. Even Kenneth S. Stern, the original drafter of the IHRA definition, has taken a stand against universities adopting it, saying that 'rightwing Jewish groups took the "working definition" ... and decided to weaponize it ... complain[ing] about speakers, assigned texts and protests they said violated the definition'. In practice, the IHRA is a political tool that is more concerned with criticism of Israel than, as Antony Lerman, former head of the Jewish Congress's Institute of Jewish Affairs, argues, with 'virulent forms of antisemitism now on the rise' and white supremacy.

The focus on criticism of Israel as the barometer for antisemitism is evident in the IHRA's eleven illustrative examples of antisemitism, of which seven focus on Israel with the aim to shield Israel from criticism by narrowing the space of what constitutes permissible speech. According to the IHRA, 'claiming that the existence of a State of Israel is a racist endeavour' is antisemitic, so is 'applying double standards [to Israel] by requiring of it a behavior not expected or demanded of any other democratic nation'. This, Human Rights Watch points out, renders it 'antisemitic to evaluate Israel as anything but a democracy'. For example, any suggestion that Israel is an

⁶ Nadia Abu El-Haj, 'Palestine is the Exception to Free Speech and Academic Freedom at Barnard', *Mondoweiss* (30 October 2023) <https://mondoweiss.net/2023/10/palestine-is-the-exception-to-free-speech-and-academic-freedom-at-barnard/>.

apartheid racial state is thus deemed antisemitic — despite the consensus in the human rights community that Israel is practicing the crime of apartheid as determined by several UN Special Rapporteurs and a host of human rights organisations.

In the context of universities, the IHRA has limited freedom of speech and academic freedom by interfering in hiring processes, firing academics, suspending staff and students, and suppressing student activism. A report by the European Legal Support Center (ELSC) and the BRISMES on the impact of the IHRA on higher education in the UK has found that out of 40 cases reported to the ELSC, in all cases, except for two cases that are yet-to-be-determined, accusations of antisemitism were rejected. The report also documents ‘the cancellation of events or the imposition of spurious conditions on the formats of events’. Scholars have identified a similar trend in Australian universities, where Zionists regularly complain against scholars critical of Israel and events on Palestine and student activism.

We have a duty to ensure all students are protected from racism and that academic freedom is maintained for everyone. Therefore, instead of adopting a separate definition of antisemitism and a definition that undermines these core universal principles, universities should instead be encouraged to uphold and strengthen their existing policies in antiracism and discrimination of all kinds – in tandem with the Racial Discrimination Act 1975 (Cth) and the Equal Opportunity acts that exist in most states and territories - and to ensure that they protect all staff and students without exceptions. Being confronted by opposing political views is not the same as putting students at risk or making them unsafe. Silencing critique would pose a real danger to the crucial role universities play in facilitating challenging, yet vital, discourse.

The IHRA definition of antisemitism is highly contested, not only among scholars and academics working on antisemitism, race and racism, and anti colonialism, but also in the Jewish community. Its implications on questions of antiracism, academic freedom, teaching and learning, and staff and student well-being are serious. **For these reasons, we are concerned that the proposed Commission of Inquiry may be based on and perpetuate a harmful definition of antisemitism that is an unacceptable threat to academic freedom.**

III. The Commission of Inquiry may be used to vilify legitimate expressions of support for and solidarity with the Palestinian people’s struggle for self-determination, and to live free from genocide, apartheid, settler colonialism and illegal foreign occupation.

We are concerned that the proposed Commission of Inquiry will be used to vilify legitimate expressions of support for and solidarity with the Palestinian people’s struggle for self-determination, and to live free from genocide, apartheid and racial segregation, settler colonialism and illegal foreign occupation. As we set out below, university-based campaigns and actions in support of the Palestinian people are grounded in and supported by fundamental principles of international law, and should not be smeared as antisemitic per se. We submit that to treat such action as antisemitic is in fact a form of anti-Palestinian racism. We are concerned that the proposed Commission of Inquiry will create an irresponsible platform for reinforcing and amplifying anti-Palestinian racism.⁷

Palestine Activism and Solidarity as a Movement for Self-Determination

We are particularly concerned that the Commission of Inquiry will be used to stigmatise common protest slogans and terminology that is part of the Palestinian liberation struggle and global solidarity movement in support of the Palestinian people, such as:

- “From the River to the Sea, Palestine will be free”
- “Intifada” (eg “Globalise the Intifada”)

These slogans are not racist or antisemitic. As we set out below, labelling them as such is premised upon the racist idea that Palestinians are inherently violent and that calling for Palestinian self-determination and freedom is a threat to Jewish communal life. Such assumptions perpetuate anti-Palestinian racism, and have been used in order to attempt to shield the State of Israel from legitimate criticism.

(i) From the River to the Sea, Palestine Will be Free

The phrase “From the river to the sea, Palestine will be free” is a common slogan used by protestors to express opposition to Israel’s occupation of Palestine, to call for the ending of Israel’s regime of racial apartheid within historic Palestine and to demonstrate support for the Palestinian people’s right to self-determination, as recognised under international law.⁸ It is an

⁷ On anti-Palestinian racism, see the important report released by the Australia Palestine Advocacy Network (APAN) and the Australian Muslim Advocacy Network (AMAN), *Observations of Anti-Palestinian and Anti-Muslim Racism* (August 2024), <https://apan.org.au/wp-content/uploads/AMAN-APAN-Anti-Racism-Report.pdf>.

⁸ In addition to the findings of the International Court of Justice in July 2024 (discussed below), there is a growing consensus in the international human rights community that Israel’s regime of control over Palestinians meets the definition of apartheid under international law. See UN Human Rights Experts, ‘Israel’s 55-year occupation of

antiracist slogan that calls for the liberation of Palestine as an inclusive project that guarantees equality, dignity and rights to all inhabitants, including Jews. It has historically been understood as such, and remains so now.

The phrase “From the river to the sea” that makes up part of the slogan denotes the territory between the Jordan River and the Mediterranean Sea that constituted historic Palestine. Indeed, many Palestinians today consider the entirety of this territory to denote the boundaries of Palestine and the homeland of the Palestinian people. This is expressed through the two Arabic phrases: *min al-bahr ila al-nahr* (from the Sea to the River) and *al-mayyah ila al-mayyah* (the water to the water).

Associate Professor Maha Nasser at the University of Arizona, an expert in the twentieth-century Arab world with a focus on Palestinian history, has detailed that the phrase “from the river to the sea” is based on Palestinians’ long-held opposition to the division of their homeland that has resulted in Palestinian past and ongoing expulsions from their lands, homes, and communities, and present-day Palestinian oppression and inequality within historic Palestine:

‘What Palestinians do want is equal rights. They want to be able to work hard to achieve their dreams without being discriminated against. They want to be able to live where they choose without being told they can’t because of their ethnicity or religion. They want to be able to choose the leaders who control their lives. **In other words, they want freedom.** ... Most troubling for me, the belief that a “free Palestine” would necessarily lead to the mass annihilation of Jewish Israelis is rooted in deeply racist and Islamophobic assumptions about who the Palestinians are and what they want’.⁹

Similarly, the Hearing Palestine Initiative at the University of Toronto explains in its Primer on the slogan that:

‘Historians who have carefully considered the origins of the phrase, and later the political slogan, in Palestinian movements note that the historical meanings are complex and have shifted [over time]. However, all are in agreement that for Palestinian movements the slogan is not primarily a political program (e.g., two-state solution, one-state solution,

Palestinian Territory is Apartheid’ (22 March 2022) <https://www.ohchr.org/en/press-releases/2022/03/israels-55-year-occupation-palestinian-territory-apartheid-un-human-rights>; Al-Haq, *Israeli Apartheid: Tool of Zionist Settler Colonialism* (Report 2022) <https://www.alhaq.org/advocacy/20931.html>; Amnesty International, *Israel’s Apartheid against Palestinians: Cruel System of Domination and Crime against Humanity* (Report, 2022), <https://www.amnesty.org.au/israels-apartheid-against-palestinians-a-look-into-decades-of-oppression-report/>; B’Tselem, *This is Apartheid: The Israeli regime promotes and perpetuates Jewish supremacy between the Mediterranean Sea and the Jordan River* (Report, 2022), https://m.btselem.org/press_releases/20210112_this_is_apartheid; Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crime of Apartheid and Persecution* (2021), <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>.

⁹ Maha Nasser, ‘From The River To The Sea’ Doesn’t Mean What You Think It Means’, *The Jewish Daily Forward* (3 December 2018) <https://forward.com/opinion/415250/from-the-river-to-the-sea-doesnt-mean-what-you-think-it-means/>.

confederation, etc.), but rather a Palestinian expression for liberation, freedom, and equality given the on-going context of colonization and military occupation'.¹⁰

The claim that the slogan “From the river to the sea” amounts to hate speech against Jewish people is a perversion of its actual meaning. This construction of Palestinian and Arab speech is premised on a pro-Israel ideology that deems state violence in the name of Jewish supremacy as acceptable or necessary. As the 1977 election manifesto of the Israeli political party, Likud, states: ‘between the sea and the Jordan there will be only Israeli sovereignty’.¹¹ As Yousef Munayyeh, Head of the Palestine/Israel Program and Senior Fellow at Arab Center Washington DC, explains:

‘The claim that the phrase “from the river to the sea” carries a genocidal intent relies not on the historical record, but rather on racism and Islamophobia. These Palestinians, the logic goes, cannot be trusted—even if they are calling for equality, their real intention is extermination. In order to justify unending violence against Palestinians, this logic seeks to caricature us as irrational savages hell-bent on killing Jews’.¹²

Munayyeh further explains why the slogan is such a powerful and necessary call for Palestinian liberation and freedom in the context of Israel’s regime of racial apartheid:

‘The phrase “from the river to the sea” captures this future as no other can, because it encompasses the entire space in which Palestinian rights are denied. It is in this space that Palestinians seek to live freely. It is across this space—and across the political and geographic divisions that Israeli rule has imposed—that Palestinians must unite to create change. It is this space that Palestinians call home, regardless of what anyone else calls it.

“From the river to the sea” is a rejoinder to the fragmentation of Palestinian land and people by Israeli occupation and discrimination. Palestinians have been divided in a myriad of ways by Israeli policy. There are Palestinian refugees denied repatriation because of discriminatory Israeli laws. There are Palestinians denied equal rights living within Israel’s internationally recognized territory as second-class citizens. There are Palestinians living with no citizenship rights under Israeli military occupation in the West Bank. There are Palestinians in legal limbo in occupied Jerusalem and facing expulsion. There are Palestinians in Gaza living under an Israeli siege. All of them suffer from a range of policies in a singular system of discrimination and apartheid—a system that can only be challenged by their unified opposition. **All of them have a right to live freely in the land from the river to the sea.**¹³

¹⁰ From the River To the Sea: Palestine Will Be Free: A Primer on History, Context, and Legalities in Canada, Hearing Palestine (University of Toronto) <https://palestinestudies.artsci.utoronto.ca/wp-content/uploads/2023/12/2023-12-20-FRTS-Primer.pdf>.

¹¹ The Right of the Jewish People to the Land of Israel (Eretz Israel), *Jewish Virtual Library* <https://www.jewishvirtuallibrary.org/original-party-platform-of-the-likud-party>.

¹² Yousef Munayyeh, ‘What Does “From the River to the Sea” Really Mean?’, *Jewish Currents* (11 June 2021) <https://jewishcurrents.org/what-does-from-the-river-to-the-sea-really-mean>.

¹³ *Ibid.*

In the Australian context, a coalition of peak Palestinian, Muslim, Christian and Jewish organisations have issued a joint statement confirming that:

'the phrase has been associated with the Palestinian cause for self-determination and statehood. The phrase is rooted in an aspiration for freedom for all people, irrespective of their background, faith or nationality. **It is a vision that encompasses the right of all individuals to live in peace and dignity within the lands stretching from the Jordan River to the Mediterranean Sea.** It should not be controversial that Palestinians reject their oppression or aspire to their own liberation and life in their homeland, free from Israel's racist systems and laws of control'.¹⁴

In addition, Indigenous writers have expressed their firm solidarity with Palestinians on the basis of their shared experience of colonisation and mutual recognition of Indigenous sovereignty on their respective homelands. For example, Karen Wyld argues that:

'We're frequently hearing *From the river to the sea, Palestine will be free* in the streets, reading it on social media, and seeing it in the news. This is not a call for a fictional genocide, from the people enduring an actual genocide. This is an aspiration for all peoples in that region, and the land itself, to be free from the state of Israel's acts of apartheid, state violence, wanton destruction, ethnic cleansing, and genocide. It is a call for Palestinian liberation and self-determination. *From the river to the sea, Palestine will be free* imagines the liberation of ancestral land. These are sovereign peoples' words, similar to *Always was, always will be Aboriginal land*. Neither of these chants are harmful'.¹⁵

Given this expert opinion, an objective assessment of the nature of this phrase, its history and its political uses and connotations, must construe it as properly located within the Palestinian people's struggle for equality, justice and freedom within the territory of historic Palestine.

(ii) Intifada (eg "Globalise the Intifada")

The term 'intifada' is an Arabic word for "uprising" or "shaking off" and has a long history of usage in relation to the Palestinian people's struggle for freedom, liberation and self-determination. It is commonly used to designate an uprising against oppression, such as the Iraqi Intifada 1952 (a series of strikes and protest against the Iraqi monarchy at the time), the Palestinian First and Second Intifadas of the 1980s and early 2000s (against the Israeli occupation) or the uprisings and revolutions against repressive Arab governments during the 2011 Arab Spring.

Importantly, just like the English word *resistance* does not necessarily connote violence (and indeed has been used to refer to a range of non-violent resistance practices and movements), the word *intifada* is similarly pluralistic. The First Palestinian Intifada (1987-1993), for example,

¹⁴ Statement of the Australian National Imams Council, 'From the River to the Sea, Palestine Will Be Free' (17 May 2024) https://www.instagram.com/p/C7F_Zorhjee/.

¹⁵ Karen Wyld, Indigenous Writers in Solidarity with Palestine, IndigenousX (15 November 2023) <https://indigenoux.com.au/solidarity-with-palestine/>.

occurred after two decades of Israeli occupation of the West Bank and Gaza and largely consisted of mass demonstrations, strikes and popular mobilisations. As historian Rashid Khalili, the Edward Said Professor of Modern Arab Studies at Columbia University, has explained:

The [First] intifada was a spontaneous, bottom-up campaign of resistance, born of an accumulation of frustration and initially with no connection to the formal political Palestinian leadership. As with the 1936–39 revolt, the intifada’s length and extensive support was proof of the broad popular backing that it enjoyed. The uprising was also flexible and innovative, developing a coordinated leadership while remaining locally driven and controlled. Among its activists were men and women, elite professionals and businesspeople, farmers, villagers, the urban poor, students, small shopkeepers, and members of virtually every other sector of society. Women played a central role, taking more and more leadership positions as many of the men were jailed and mobilizing people who were often left out of conventional male-dominated politics. Along with demonstrations, the intifada involved tactics ranging from strikes, boycotts, and withholding taxes to other ingenious forms of civil disobedience. Protests sometimes turned violent, often ignited by soldiers inflicting heavy casualties with live ammunition and rubber bullets used against unarmed demonstrators or youths throwing stones. Nevertheless, the uprising was predominantly nonviolent and unarmed, a crucially important factor that helped mobilize sectors of society in addition to the young people protesting in the streets while showing that the entirety of Palestinian society under occupation opposed the status quo and supported the intifada.’¹⁶

Indeed, six Cornell University experts who work with Arabic sources and teach the history and politics of the Middle East recently stated in an open letter that to conflate the term ‘intifada’ with violence is a ‘failure to understand the literal and historical meaning of an Arabic word, *intifada*’:

The word “intifada,” which means “uprising,” comes from the root word “nafd,” which means “to shake off,” and is about resistance to occupation. In other words, intifada means “shaking off” occupation. Thus, when students chant, “Intifada, revolution,” it is a call for revolution and an uprising. We find that the assumption that an Arabic language word implies violence (without even attempting to learn what it means) is often a racist trope and, in the context of what is taking place on campus, a dangerous one.’¹⁷

Current student usage of the term ‘intifada’ at Australian university campuses can be read as invoking this longer, complex and multifaceted history of the Palestinian struggle against oppression and occupation.

¹⁶ Rashid Khalili, *The Hundred Years’ War on Palestine: A History of Settler Colonial Conquest and Resistance, 1917-2017* (Metropolitan Books, 2020).

¹⁷ Letter to the Editor: On Language, Misinformation and Divisiveness (Cornell Daily Sun) 29 April 2024 <https://cornellsun.com/2024/04/29/letter-to-the-editor-on-language-misinformation-and-divisiveness/>.

Palestine Self-Determination, the Prohibition on Genocide and International Law

We also submit that university-based campaigns and actions in support of the Palestinian people are grounded in and supported by fundamental principles of international law, and should not be smeared as antisemitic per se. This year, the International Court of Justice (ICJ) issued a series of important decisions in two cases concerning Israel's conduct in Palestine. This includes in relation to Israel's lethal decades-long occupation of Palestine, as well as Israel's more recent military assault on Gaza since October 2023 that has killed over 40,000 Palestinians and potentially as many as 186,000 Palestinians, according to an academic study published in June 2024 in the prestigious medical journal, *The Lancet*.¹⁸

University-based campaigns naming Israel's conduct in Gaza as genocide are based on legitimate, authoritative and common interpretations of international law. In relation to the fundamental prohibition on genocide under international law, in January 2024, the ICJ found that Israel's military campaign in Gaza since October 2023 was plausibly genocidal, and issued a provisional order obliging Israel to stop such genocidal acts.¹⁹ The Court found that Israel's conduct in Gaza posed an urgent "real and imminent risk" of irreparable prejudice to the Palestinian people's right to not be subjected to genocidal acts, which put simply means, that Israel is "plausibly" committing genocide in Gaza. The Court noted that as a result of Israel's military attacks:

- Gaza to become "uninhabitable" and a "place of death and despair"
- Gaza's population to be forcibly "constantly uprooted" and that "nowhere in Gaza is safe"
- Gaza's "healthcare system [to be] collapsing"
- 93% of Gaza's population faces "crisis levels of hunger"

Since then, in light of Israel's continued military attacks on Gaza, the humanitarian situation in Gaza had become so catastrophic, with looming famine, that the ICJ was prepared to issue two further Provisional Measures Orders, in March and May 2024. Each reiterate Israel's obligation not to commit genocide in Gaza, and oblige Israel to allow for "unhindered provision at scale ... of necessary basic services and humanitarian assistance including food, water, electricity, fuel, shelter, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care to Palestinians throughout Gaza".²⁰ The Provisional Measures Order of May 2024 went as far as to order Israel to "immediately halt its military offensive, and any other action in the Rafah Governorate, which may inflict on the Palestinian group in Gaza conditions of life that could bring about its physical destruction in whole or in part" (with the Court's language reflecting a core element of the crime of genocide).²¹ In addition to these clear and binding ICJ

¹⁸ Rasha Khatib, Martin McKee and Salim Yusuf, 'Counting the Dead in Gaza: Difficult but Essential' (June 2024), [https://doi.org/10.1016/S0140-6736\(24\)01169-3](https://doi.org/10.1016/S0140-6736(24)01169-3).

¹⁹ International Court of Justice Provisional Measures Order, *South Africa v Israel* (26 January 2024) <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>.

²⁰ International Court of Justice Provisional Measures Order, *South Africa v Israel* (28 March 2024) <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240524-ord-01-00-en.pdf>.

²¹ International Court of Justice Provisional Measures Order, *South Africa v Israel* (24 May 2024) <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240524-ord-01-00-en.pdf>.

determinations, numerous scholars of genocide studies and international law have now written that Israel is committing genocide in Gaza.²²

Similarly, university-based campaigns naming Israel's occupation as illegal and a violation of the Palestinian people's right to self-determination is based in long-standing and authoritative international legal determinations. Already in 2004, the ICJ found that Israel's construction of a security wall in occupied Palestine was unlawful and a serious violation of the Palestinian people's right to self-determination, a core peremptory principle of international law. More recently, in its recent landmark *Advisory Opinion on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, the ICJ found that that Israel's entire regime of occupation in Palestine is **unlawful**, and that Israel had **violated and continues to violate the fundamental right of the Palestinian people to exercise self-determination**.²³ The Court also found that Israel's regime of control over Palestinians violated the **prohibition on apartheid and racial segregation** in international law.

As a consequence, the Court advised that all States, including Australia, have obligations to:

- 'to abstain from treaty relations with Israel in all cases in which it purports to act on behalf of the Occupied Palestinian Territory or a part thereof on matters concerning the Occupied Palestinian Territory or a part of its territory';
- 'to abstain from entering into **economic or trade dealings with Israel** concerning the Occupied Palestinian Territory or parts thereof which may entrench its unlawful presence in the territory';
- 'to abstain, in the establishment and maintenance of diplomatic missions in Israel, from any recognition of its illegal presence in the Occupied Palestinian Territory'; and
- 'to take **steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory**'.²⁴

The Court also found that all States, including Australia, are 'under an obligation not to render aid or assistance in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory'. This means acting to 'ensure that any impediment resulting from the illegal presence of Israel in the Occupied Palestinian Territory to the exercise of the Palestinian people of its right to self-determination is brought to an end'.²⁵

Students and staff at Australian universities calling Israel's occupation of Palestine illegal, naming Israel's control over Palestinians as a violation of the prohibition on apartheid and racial segregation, or condemning Israel's conduct in Gaza as genocide are supported by fundamental principles of international law, and should not be smeared as antisemitic per se. We are concerned that the proposed Commission of Inquiry will not be grounded in international legal

²² There are too many to comprehensively list individual scholarship here, but see, for eg: Raz Segal 'A Textbook Case of Genocide', Jewish Currents (13 October 2023) <https://jewishcurrents.org/a-textbook-case-of-genocide>; Amos Goldberg, 'Yes, it is Genocide', Medium (18 April 2024) <https://thepalestineproject.medium.com/yes-it-is-genocide-634a07ea27d4>; Jake Johnston, '800+ Legal Scholars Say Israel May Be Perpetrating 'Crime of Genocide' in Gaza' (18 October 2023) <https://www.commondreams.org/news/legal-scholars-israel-genocide>.

²³ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, International Court of Justice, Advisory Opinion (24 July 2024) <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf>.

²⁴ Ibid para 278 (our emphasis).

²⁵ Ibid para 279.

frameworks and principles in order to appropriately characterise the actions of students and staff as grounded in fundamental principles of international law.

Ongoing Stigmatisation of and Policing of Palestine Solidarity at Australian Universities

Between April and June 2024, university students across a range of Australian university campuses established 'encampments' in support of the Palestinian people's right to self determination and to live free from genocide, apartheid and illegal occupation. These encampments specifically have urged Australian university managers and academics to fulfil their international obligation to not conduct research that supports the risk of genocide of Palestinian civilians, and to cut ties with Israel in light of Israel's state regime of illegal occupation and apartheid (discussed above). Such encampments have been successful in raising awareness of university relations with weapons manufacturers that contribute to the Israel Defence Forces. To date, the encampments at the University of Queensland, the University of Sydney, the University of Melbourne and the Australian National University have contributed to university managements making commitments to disclosure and potentially review such relationships, or change their financial investment policies. While student protesters disbanded several encampments as a result of agreements with their universities, many others across Australia were disbanded due to threats from university management and with no resolution of their demands.

Of concern is that several student encampments received verbal warnings or written notices from university management that inform the students that they may not use certain pro-Palestine slogans, and that, if they do so, they may be in violation of racial discrimination laws (as well as university codes of student conduct).²⁶ The University of Queensland Vice Chancellor, for example, emailed students involved in pro-Palestine encampment and protests on campus to warn them against using the Arabic word 'intifada' in their protests, reportedly on the basis that it would be considered 'threatening, intimidating or harassing to some people'.²⁷ Similarly, appearing before an Australian Senate Committee on 6 June 2024, the Vice Chancellor of the Australian National University (ANU), Professor Genevieve Bell, stated that:

Academic freedom and freedom of speech are not absolute. They are moderated by Australian law and by codes of conduct, at least for us inside our university. At this moment in time, Australian law does not regard 'global intifada' and 'from the river to sea' as hate speech. In our university we have continued to argue that they are hurtful. We have asked our student organisations and students at various moments in time to take down signs that say those things. For the most part, students have complied with that.²⁸

²⁶ See, eg, 'UOW issues pro-Palestine protesters warnings over chants and graffiti', *Illawarra Mercury* (21 May 2024) <https://www.illawarramercury.com.au/story/8636197/uow-issues-pro-palestine-protesters-warnings-overchants-and-graffiti/>.

²⁷ Adeshola Ore and Caitlin Cassidy, 'University of Queensland bans chants as pro-Palestine camp in Melbourne threatened over fire safety rules', *Guardian Australia* (20 May 2024) <https://www.theguardian.com/australia-news/article/2024/may/20/university-pro-palestine-protest-campsqueensland-chants-banned-melbourne>

²⁸ Parliament of Australia, Senate Estimates (6 June 2024) https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/28116/toc_pdf/Education%20and%20Employment%20Legislation%20Committee_2024_06_06.pdf

This remark is particularly instructive, as it demonstrates that university management may acknowledge that certain pro-Palestine slogans do not breach the letter of the law per se (in particular section 18C of the *Racial Discrimination Act 1975* (Cth)), but they nonetheless require students to refrain from using such slogans on the basis of their potential to cause 'hurt' or discomfort to certain other students. As a result, such actions rely upon and perpetuate stigmatising narratives of pro-Palestine protests and create environments of heightened surveillance and censorship that monitors and limits pro-Palestine speech, including through the use of university penalties and sanctions against students. **We are concerned that the proposed Commission of Inquiry will create an irresponsible platform for further stigmatising protests in support of the Palestinian people, and for reinforcing and amplifying anti-Palestinian racism.**