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Submission to the inquiry into antisemitism at Australian universities | Human Rights Law Centre

Parliamentary Joint Committee on Human Rights

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Human Rights Law Centre.

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Human Rights Law Centre

The Human Rights Law Centre uses strategic legal action, policy solutions and advocacy to support people and communities to eliminate inequality and injustice and build a fairer, more compassionate Australia. We work in coalition with key partners, including community organisations, law firms and barristers, academics and experts, and international and domestic human rights organisations.

The Human Rights Law Centre acknowledges the people of the Kulin and Eora Nations, the traditional owners of the unceded land on which our offices sit, and the ongoing work of Aboriginal and Torres Strait Islander peoples, communities and organisations to unravel the injustices imposed on First Nations people since colonisation. We support the self-determination of Aboriginal and Torres Strait Islander peoples.

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1. Executive summary

Everyone has the right to live free of racial or religious discrimination, hatred and vilification. Acts of antisemitism prevent Jewish people from being able to freely practice their religion and culture and equally enjoy their human rights.

Australia has obligations, as a signatory to the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, to prohibit racial and religious hatred that incites discrimination, hostility, or violence.

The Human Rights Law Centre is extremely concerned about the rise of antisemitism and other forms of racism on university campuses and throughout society more broadly. The persistence of antisemitism and other forms of racism highlights the urgent need for robust legal and policy measures to ensure full compliance with our obligations under international law. As highlighted by the Australian Human Rights Commission's *National Anti-Racism Framework*, it is important to recognise both the interconnectedness and difference between various forms of racism and to adopt a coherent and principled anti-racism approach.

The Human Rights Law Centre is also concerned about measures which have been taken by various universities in Australia to repress legitimate forms of political expression in support of Palestinian human rights under the guise of combatting racism. The United Nations Special Rapporteur on the rights to freedom of assembly and association, Gina Romero, warned in October 2024 that “the brutal repression of the university-based protest movement is a profound threat to democratic systems and institutions.”¹

Australia has obligations, under international law, to respect the rights to freedom of expression and freedom of assembly. These rights, of course, have limits. International law specifies that freedom of expression and assembly can be limited if speech is being used for the advocacy of racial or religious hatred. Any limits to these rights must be lawful, necessary, proportionate, and justifiable in a democratic society.

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.

The Human Rights Law Centre recommends that the Parliamentary Joint Committee on Human Rights (**PJCHR**) take a careful, considered, consultative approach that is grounded in human rights law and principles when balancing the rights to be free of racial and religious discrimination with the rights to freedom of expression, assembly and academic freedom.

This submission outlines key areas of human rights law applicable to the issue of addressing antisemitism on university campuses, including the right to live free from discrimination, freedom of expression, peaceful assembly and academic freedom. This submission also identifies gaps in Australia's current legal framework, provides an analysis grounded in international human rights law, and offers legal recommendations to strengthen protections while balancing the rights and freedoms of all people.

¹ Gina Romero, ‘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’, 2 October 2024 <<https://www.ohchr.org/sites/default/files/documents/issues/association/statements/20241004-stm-sr-association.pdf>>

2. Summary of recommendations

This submission calls on the PJCHR to champion reforms that uphold Australia's commitment to international human rights standards, fostering a society that respects equality, freedom, and justice for all.

The following recommendations are presented to guide legislative and policy changes that protect and promote the fundamental human rights of all people:

- **Amend section 18C of the Racial Discrimination Act:** The PJCHR should recommend amendments to prohibit offending, insulting, or humiliating conduct based on race, religious belief, sexual orientation, gender identity, and disability.
- **Consolidate anti-discrimination laws:** The PJCHR should advocate for the Commonwealth Government to consolidate federal anti-discrimination laws into a single, uniform, and modern Anti-Discrimination Act.
- **Enact a federal Human Rights Act:** The Commonwealth Government should enact a federal Human Rights Act to incorporate enforceable elements of international human rights treaties, ensuring comprehensive and transparent protections for all people.
- **Adopt a balanced approach:** The PJCHR should recommend the Commonwealth government pursue a cautious, consultative, and evidence-based approach to address issues related to the restrictions of rights as is required by international human rights law.
- **Clarify legislative frameworks:** Clear guidelines should be developed to distinguish permissible expression from incitement to hatred.
- **Protect the right to peaceful assembly and freedom of expression:** The PJCHR should recommend a review of laws and policies regulating public assemblies and freedom of expression in educational institutions to ensure compliance with international law.
- **Adopt the Rabat Plan's six-part test:** The PJCHR should recommend the adoption of guidelines informed by the *Rabat Plan* to help distinguish between legitimate expression and prohibited hate speech.

3. Right to live free from discrimination, hate speech and vilification

Everyone has the right to live their life free of racial discrimination, hate speech and vilification.

3.1 Australia's international human rights obligations

Australia has committed to upholding international obligations to protect individuals from discrimination, hate speech, and vilification by ratifying key international human rights treaties, including the International Covenant on Civil and Political Rights (**ICCPR**), the International Covenant on Economic, Social and Cultural Rights (**ICESCR**), and the International Convention on the Elimination of All Forms of Racial Discrimination (**ICERD**).

Article 26 of the ICCPR provides that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground.”²

In the context of the ICCPR, the United Nations Human Rights Committee, which monitors the implementation of the ICCPR by signatory nations, in *General Comment No.18*, stated that references to discrimination should “be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment of exercise by all persons, on an equal footing, of all rights and freedoms”.³

In addition, Article 2 of the ICCPR provides that the rights it sets out are to be guaranteed to everyone within the nation’s jurisdiction, whether citizen or not, and without any discrimination of any kind.

Articles 2 and 4 of the ICERD place an obligation on the Australian government to pursue “all appropriate means and without delay a policy of eliminating racial discrimination in all its forms.”⁴ Similarly, Australia is obliged to deal with “all propaganda and all organizations which are based on ideas of theories of superiorities of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form.”⁵ This obligation also includes the criminalisation of the “dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof”.⁶

The treaties outlined above, which Australia is a signatory to, require the Australian government to ensure equality before the law for all, and to protect everyone from discrimination, hate speech, and vilification while simultaneously balancing these protections with all other human rights, including the freedom of expression.

² International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 26.

³ UN Human Rights Committee, *General Comment No. 18: Non-Discrimination*, 37th session, UN Doc HRI/GEN/1/Rev.1 (1989) at 7.

⁴ International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 16 February 2005) art 2.

⁵ *Ibid* art 4.

⁶ *Ibid* art 4(a).

3.2 Challenges in Australia's Current Legal Framework

The Human Rights Law Centre has previously stated that Australia's current anti-discrimination laws, once world-leading, are no longer fit for purpose.⁷ 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.

Experiences of discrimination, hate speech, and vilification have a profound impact on individuals and communities, and can lead to anxiety, isolation, and serious mental and physical harm. The negative impacts also reduce the likelihood of reporting this harm.⁸ More broadly, such experiences can lead to diminished trust in institutions, reduced participation in civil society, and a diminished sense of belonging, ultimately fraying the social fabric of our communities.

3.3 The need for a unified approach to addressing discrimination

The issues caused by the piecemeal nature of Australia's current anti-discrimination laws demonstrate the need to avoid the continued siloisation of anti-discrimination approaches. The past year has seen documented rises in antisemitism, as well as other forms of racism, including Islamophobia and anti-Palestinian racism. We would urge the PJCHR to recommend approaches which aim to combat all forms of racism and discrimination, whilst also recognising the unique experiences and needs of different communities.

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."⁹

3.4 Recommendations

To address the inadequacies of legal protection, and to address discrimination, hate speech and vilification, we recommend:

1. As a starting point, and at a minimum, the PJCHR should recommend that section 18C of the *Racial Discrimination Act* be amended to prohibit offending, insulting or humiliating on the basis

⁷ See, for example, Human Rights Law Centre, 'Submission to the Inquiry into the Criminal Code Amendment (Hate Crimes) Bill 2024 (Cth)', 7 November 2024 <www.hrlc.org.au/submissions/hate-crimes-legislation>.

⁸ United Nations Department of Economic and Social Affairs, *Promoting Non-Discrimination in Public Administration: Some Entry Points*, Policy Brief No. 136 (2022) 1 <<https://www.un.org/development/desa/dpad/publication/un-desa-policy-brief-no-136-promoting-non-discrimination-in-public-administration-some-entry-points>>.

⁹ Australian Human Rights Commission, 'The National Anti-Racism Framework: A roadmap to eliminating racism in Australia' <<http://humanrights.gov.au/anti-racism-framework>>.

of race, religious belief, sexual orientation, gender identity, and disability.

2. The PJCHR should recommend that the Commonwealth Government consolidate federal anti-discrimination laws into a single, uniform and modern Anti-Discrimination Act so that it is simple, consistent and deals with the intersecting nature of discrimination.
3. The Commonwealth Government should enact a federal Human Rights Act. Such an Act would bring into our domestic laws the full array of human rights protections which we have agreed to implement under international law. This should capture the key, enforceable elements of all the human rights treaties that Australia has ratified including not only the permissible scope of the right to freedom of expression under the ICCPR, but also the ICESCR, ICERD, the Convention on the Elimination of All Forms of Discrimination Against Women (**CEDAW**), and the Convention on the Rights of Persons with Disability (**CRPD**). A Human Rights Act would also ensure that our laws, policies, and government service delivery are grounded in a set of transparent and comprehensive minimum human rights standards.

4. Freedom of expression and opinion

The right to freedom of expression and freedom of opinion are the cornerstones of a democratic society and are protected under Article 19 of the ICCPR. These two rights are interrelated, with freedom of expression providing the vehicle for the freedom of opinion.

4.1 Scope of the freedom of expression

Under international law, freedom of expression protects the right to "seek, receive, and impart information and ideas of all kinds, regardless of frontiers."¹⁰ The importance of this right is reinforced by the Human Rights Committee in *General Comment No. 34*, where it stated that the freedom of expression is indispensable for the full development of the individual, and as the foundation stone of every free and democratic society. The freedom is also essential for the promotion and protection of other human rights.¹¹

This right extends to political discourse, commentary on public and personal affairs, and canvassing on human rights issues. It cannot be limited merely because an idea is offensive or even disturbing. The Human Rights Committee has emphasised that the right covers the expression of opinions which some may find offensive, shocking, or disturbing.¹²

4.2 The legal limits of freedom of expression

The freedom of expression is not absolute. According to Article 19(3) of the ICCPR, restrictions are permissible only if they:

- Are provided by law or an administrative decision based on law;
- Pursue a legitimate aim, such as protecting public order, national security, or the rights and reputations of others; and
- Are necessary and proportionate to that aim.

Relevantly, international law permits limitations to freedom of expression where this expression involves "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence."¹³

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 or groups from offence but to protect the open exchange of ideas essential to a democratic society.¹⁴ 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.

General Comment No. 34 emphasises that limitations cannot be invoked to suppress political discourse or silence dissent.¹⁵ Furthermore, restrictions should not serve as a pretext to discriminate against particular groups or views.¹⁶

¹⁰ ICCPR art 19(2).

¹¹ UN Human Rights Committee, *General Comment No 34: Article 19: Freedoms of Opinion and Expression*, UN Doc CCPR/C/GC/34 (12 September 2011) [3]-[5].

¹² *Ibid* [11].

¹³ ICCPR art 20(2).

¹⁴ *Ibid* [1]- [5].

¹⁵ *Ibid* [23], [34].

¹⁶ *Ibid* [26].

4.3 The freedom of expression and the right to peaceful assembly and association

The freedoms of expression, peaceful assembly, and association are deeply interconnected and mutually reinforcing.

As noted in *General Comment No. 34*, the "freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association."¹⁷ These rights collectively underpin democratic participation, enabling individuals and groups to express their views, mobilise support, and advocate for change.

The ability for all people to articulate ideas, assemble to amplify those ideas, and associate to sustain collective advocacy forms the backbone of meaningful civic engagement.

5. The right to peaceful assembly

The right to peaceful assembly is also a cornerstone of democratic participation and is protected under Article 21 of the ICCPR. The right ensures that individuals and groups can come together peacefully to express ideas, advocate for change, and engage in public dialogue.

Assemblies, including protests and demonstrations, are vital for fostering civic engagement, particularly in environments like university campuses, where the exchange of ideas is central to the institution's purpose.

5.1 Scope of the right to peaceful 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.¹⁸ This includes protests, demonstrations, sit-ins, marches, vigils, civil disobedience tactics, direct action campaigns, encampments, pickets, and other forms of non-traditional protest, provided they remain peaceful.

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.¹⁹

Protests are often used to draw attention to important social or political issues, such as the plight of marginalised groups or international conflicts, making them especially relevant on university campuses.

5.2 Violence and offensiveness in the context of the right to peaceful assembly

An assembly is considered peaceful if its organisers and participants do not intend to incite or engage in violence.

The Human Rights Committee in *General Comment No. 37* clarifies that the term "violence" in this context refers to physical force against others that is likely to result in injury, death, or serious property damage. Mere pushing and shoving or disruption of vehicular or pedestrian traffic or the interruption of daily activities do not on their own amount to violence.²⁰

The Committee further emphasises 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 an

¹⁷ UN Human Rights Committee, *General Comment No 34: Article 19: Freedoms of Opinion and Expression*, UN Doc CCPR/C/GC/34 (12 September 2011) [4].

¹⁸ *Ibid* [4].

¹⁹ *Ibid* [6].

²⁰ *Ibid* [15].

assembly. This distinction ensures that assemblies addressing topics that some might find contentious, or polarising remain protected.²¹

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.

5.3 The legal limits of the right to peaceful assembly

While peaceful assembly is a fundamental right, it is not absolute. According to Article 21 of the ICCPR, restrictions are permissible only if they:

- Are provided by law or administrative decision based on law;
- Pursue a legitimate aim, such as protecting public safety, public order, or the rights and freedoms of others; and
- Are necessary and proportionate to that aim.

The Human Rights Committee has stressed that blanket restrictions on assemblies, such as prohibiting all encampments or campus protests, are presumptively disproportionate.²² Human rights law requires that decision makers consider all less restrictive measures before prohibiting or restricting an assembly, as prohibitions should only be imposed as a last resort.²³

Restrictions on the right to peacefully assemble may also be justified when they are necessary to protect the rights and freedoms of others, such as their privacy, dignity or equality.

Relevantly, under international law, the right to protest can be limited if it is being used as propaganda for war or if it is used for the advocacy of national, racial or religious hatred that incites people to discrimination, hostility, or violence.²⁴ State parties are under an obligation to prohibit such acts.

Other limitations on the right to protest are discussed in our report, *Protest in Peril: Our Shrinking Democracy*.²⁵

General Comment No. 37 emphasises that any limitations on the right to peaceful assembly, must be narrowly construed, ensuring they do not disproportionately restrict the broader right.²⁶

5.4 States' obligations to facilitate and protect peaceful assemblies

Australia, as a signatory to the ICCPR, has dual obligations regarding peaceful assemblies; to refrain from undue interference, and to actively facilitate them. This includes providing an enabling environment for assemblies, such as blocking off traffic, maintaining public order, and ensuring that assembly participants are protected from violence including from police, counter-demonstrators or private actors.²⁷

On university campuses, this means that authorities must accommodate the specific nature of campus protests, including extended demonstrations, ensuring they can occur peacefully without disproportionate

²¹ Ibid [27].

²² Ibid [36]-[38].

²³ Ibid [37].

²⁴ Human Rights Committee, General comment No. 22 (1993) on the right to freedom of thought, conscience and religion, 30; Human Rights Committee, General comment No. 11 (1983) Article 20 Prohibition of Propaganda for War and Inciting National, Racial or Religious Hatred.

²⁵ The Human Rights Law Centre, 'Protest in Peril: Our Shrinking Democracy', 2 June 2024 <www.hrlc.org.au/reports-news-commentary/protest-peril> at 8-13.

²⁶ Ibid 56.

²⁷ Ibid [24].

interference. Security measures must also be content-neutral and proportionate to the specific circumstances of the protest.²⁸

5.5 The connection between peaceful assembly and the freedom of expression

Peaceful assemblies are used as a platform for collective expression, underscoring their connection to the freedom of expression under Article 19 of the ICCPR. Assemblies amplify individual and collective voices, enabling participants to draw attention to causes and issues that might otherwise be overlooked.

As *General Comment No. 37* explains, the full protection of the right to peaceful assembly depends on the protection of other rights, particularly the freedom of expression and the right to freedom of association.²⁹

Protests on university campuses are legitimate and lawful forms of peaceful assembly, provided they remain peaceful and do not advocate racial or religious hatred. The framework in *General Comment No. 37* makes clear that behaviour or speech perceived as offensive or in poor taste does not on its own constitute violence and does not on its own justify restrictions on assemblies. Universities must approach such protests with a presumption of protection, balancing the need to maintain order with the obligation to respect and facilitate assemblies.

Efforts to limit peaceful assemblies must meet the strict criteria of legality, necessity, and proportionality, and such restrictions should remain an option of last resort.

Upholding these principles ensures that peaceful assemblies are not suppressed merely because they challenge dominant perspectives or provoke controversy. In the context of combating hatred and discrimination, protecting peaceful assembly is essential to maintaining an inclusive and participatory society.

5.6 The freedom of political communication

The High Court of Australia has interpreted the Constitution to imply a freedom of political communication. The High Court reasoned that the free exchange of political communication is fundamental to our system of representative and accountable government, which the Constitution explicitly establishes, and it must therefore be protected from undue interference. The implied freedom applies at State, Territory and Commonwealth level.

In its 2017 decision in *Brown v Tasmania* [2017] HCA 43 (**Brown**), the High Court considered the freedom's application to laws restricting protest rights. In *Brown*, the Court stated that "The 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."

Unlike freedom of speech, assembly and association under international law, the freedom of political communication under the Australian Constitution is not a personal right held by individuals. Rather, it is a limit on the laws that can be passed by state and federal governments. 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.

5.7 Recommendations

To address challenges related to the rights to peaceful assembly and freedom of expression:

²⁸ Ibid [25].

²⁹ Ibid [9].

1. The PJCHR should recommend that laws, regulations or rules regulating public assemblies and freedom of expression in educational institutions are reviewed to ensure compliance with international law, safeguarding against undue interference or overly broad restrictions.

6. Academic freedom

Academic freedom is integral to the realisation of the rights to freedom of expression and education, both of which are protected by international law.

6.1 International legal frameworks protecting academic freedom

Academic freedom encompasses the freedom to engage in academic research, teaching, and the dissemination of knowledge without undue interference.

Article 13 of the ICESCR recognises the critical role of education in fostering individual and societal progress, highlighting the importance of academic institutions as spaces for free inquiry and expression.³⁰

The United Nations Educational, Scientific and Cultural Organisation (**UNESCO**) explicitly affirms the significance of academic freedom in its 1997 *Recommendation Concerning the Status of Higher-Education Teaching Personnel* (**The UNESCO Recommendation**).

The UNESCO Recommendation defines academic freedom as "the right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship, and freedom to participate in professional or representative academic bodies."³¹

Furthermore, the UNESCO Recommendation underscores that academic freedom is essential for the advancement of knowledge, the protection of democratic principles, and the promotion of societal progress. It places obligations on states like Australia to ensure that higher-education institutions operate free from interference, allowing academic staff to pursue knowledge and disseminate findings without fear of reprisal.³²

6.2 Academic freedom under Australian law

In November 2020, in response to the *Report of the Independent Review of Freedom of Speech in Australian Higher Education Providers*, conducted by former High Court Justice, Robert French (**the French Review**), the Federal Parliament amended the *Higher Education Support Act 2003* (Cth), to repeal and replace references to "free intellectual inquiry" with references to "freedom of speech and academic freedom", and to insert a definition of academic freedom. Under the Act, higher education providers are obliged to create a policy which protects academic freedom and freedom of expression.

6.3 Balancing academic freedom with other human rights obligations

Academic freedom operates within the broader framework of human rights and must be balanced with the obligation to prevent discrimination and hate speech.

Article 20(2) of the ICCPR requires states to prohibit "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence."³³ The *Rabat Plan of Action*, discussed

³⁰ ICESCR art 13.

³¹ UNESCO, *Recommendation concerning the Status of Higher-Education Teaching Personnel*, adopted 11 November 1997, 27.

³² *Ibid* 26–28.

³³ ICCPR art 20(2).

below, provides a detailed framework for distinguishing hate speech from protected expression by emphasising that restrictions on speech must target *intentional* advocacy of hatred that incites violence, discrimination, or hostility while safeguarding legitimate academic and political discourse.³⁴

Educational institutions, as spaces for intellectual exploration and debate, must navigate this balance by fostering environments that encourage diverse viewpoints while ensuring that incitements to hatred or discrimination are not tolerated.

The 2023 revised *UNESCO Recommendation on Education for Peace* further reinforces the importance of academic freedom as central to promoting international understanding, co-operation, peace, and respect for human rights and fundamental freedoms further (**the Revised Recommendation**) underscores that academic environments must promote respect for diversity, critical thinking, and peaceful conflict resolution while ensuring safety and inclusivity for all learners.³⁵

The Revised Recommendation further expands this framework by emphasising the role of education in combating all forms of intolerance, including antisemitism and racial hatred, while maintaining that academic freedom must not be curtailed merely for expressing controversial or discomfiting ideas that do not incite harm.³⁶

The French Review made clear that limitations on the right to academic freedom should not be imposed to shield anyone from feeling offended or shocked by lawful speech.

In the case of *Ridd v James Cook University* [2021] HCA 32, the High Court of Australia discussed the limits and scope of the right to intellectual freedom. Relevantly, it stated that academic freedom must allow speech that challenges “civil norms” and cannot be limited by a supposed “right” to respect or courtesy.

In addressing antisemitism on university campuses, international human rights law requires that antisemitism and incitement to racial hatred must always be combatted.³⁷ Human rights law also establishes that the threshold for restricting expression be high, ensuring that mere discomfort, offence, or views that challenge established doctrine do not on their own meet the threshold for limitation.

7. Distinguishing hate speech from legitimate political expression

The *Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred* (**the Rabat Plan**) offers a detailed framework for distinguishing prohibited hate speech from protected expression. The *Rabat Plan* was developed through a series of expert workshops convened by the United Nations.

The *Rabat Plan* is designed to help nations balance their obligations to prohibit advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, as mandated by Article 20(2) of the ICCPR, with the protection of the freedom of expression under Article 19.

³⁴ OHCHR, *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*, A/HRC/22/17/Add.4 (11 January 2013), 18–22.

³⁵ UNESCO, *Recommendation on Education for Peace*, ED/REV-1974REC/2023/4, April 2023, para 8.

³⁶ Ibid 26–28.

³⁷ Ibid para 14.

The *Rabat Plan* affirms that for an expression which advocates hatred to be limited, the expression must be intentional and aimed at inciting violence, discrimination, or hostility. It underscores that negligence, or recklessness is insufficient to meet the threshold for incitement; rather, the expression or act must involve deliberate advocacy or incitement that reflects a clear intention to provoke harm.³⁸

To operationalise this principle, the *Rabat Plan* introduces a six-part threshold test for determining whether a specific expression or act constitutes incitement to hatred. The test requires an assessment of:

1. **Context:** The social, historical, or political circumstances surrounding the expression or act should be analysed to assess its potential to incite harm.
2. **Speaker:** The role and status of the speaker should be evaluated to determine their influence over the audience.
3. **Intent:** Evidence must show that the speaker aimed to incite discrimination, hostility, or violence, as intent is a critical factor.
4. **Content and form:** The tone, style, and arguments used in the expression or act should be examined to evaluate their capacity to provoke harmful outcomes.
5. **Extent:** The reach, frequency, and audience size of the expression or act are also to be considered to understand its potential impact and extent.
6. **Likelihood and imminence:** The probability and immediacy of harm occurring as a direct consequence of the expression or act should also be assessed.³⁹

Political speech, even when it may be considered offensive or in poor taste, does not, on its own, meet the threshold for incitement to hatred as established in the *Rabat Plan*.

The six-part test in the *Rabat Plan* ensures that any restrictions on speech are rigorously assessed based on context, speaker, intent, content and form, extent, and likelihood and imminence of harm. These criteria safeguard against arbitrary or overly broad limitations on expression.

The *Rabat Plan* also emphasises that the restriction of speech must be an option of last resort, employed only where all other less intrusive measures are insufficient. Specifically, it states that “limitations must remain an exception,” underscoring the necessity of balancing the prohibition of harmful advocacy with the fundamental right of freedom of expression.⁴⁰

These safeguards are vital to ensuring that speech is not suppressed merely because it is controversial, offensive, or in poor taste. 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.

7.1 Recommendations

1. The PJCHR should recommend that existing laws regulating hate speech be reviewed to ensure they align with the threshold set under Article 20(2) of the ICCPR, targeting only intentional advocacy of hatred that incites violence, hostility, or discrimination.

³⁸ United Nations Office of the High Commissioner for Human Rights, *Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence* (2012) [29(c)]

<https://www.ohchr.org/sites/default/files/Rabat_draft_outcome.pdf>

³⁹ Ibid [29].

⁴⁰ Ibid [18].

2. The PJCHR should recommend the adoption of clear guidelines, informed by the *Rabat Plan*'s six-part test, to help distinguish between legitimate political expression and prohibited hate speech.

8. Conclusion

In addressing antisemitism on campuses, the PJCHR has a unique opportunity to reinforce Australia's commitment to international human rights law and recommend measures aimed at combatting all forms of racial hatred and discrimination, while upholding the fundamental democratic rights to free speech, freedom of assembly and academic freedom.

The frameworks provided by international human rights law are carefully designed to uphold human dignity, prevent suffering, and ensure non-discrimination for all. They offer a structured, principled approach to tackling the complex intersection of rights on university campuses, where issues such as antisemitism, academic freedom, freedom of expression, and peaceful assembly converge.

We urge the PJCHR to adopt a careful, considered, and consultative approach that centres on these established frameworks. This approach will ensure that any recommendations are firmly grounded in human rights principles and strike the necessary balance between protecting individuals from harm and preserving the freedoms that are the cornerstone of democratic societies.

By using human rights law as a backbone for its recommendations, the PJCHR can ensure that the measures proposed are not only effective in addressing antisemitism but also meaningful, just, and inclusive. These frameworks were designed to navigate precisely these challenges, offering safeguards that uphold equality, freedom, and justice while preventing overreach or unintended harm.