



Submission to the Royal Commission on Antisemitism and Social Cohesion

Discriminatory antisemitism guidance works against social cohesion

30 May 2026

Jewish Voices of Inner Sydney

Formed in 2024 on Gadigal and Wangal lands, Jewish Voices of Inner Sydney (JVOIS) provides community and avenues for collective advocacy to local Jewish people who have not felt represented by the old Jewish organisations. We are committed to universal human rights and democratic freedoms.

Members of JVOIS range in age, background and Jewish religious observance. Many of us are the children and grandchildren of Holocaust survivors and refugees who were given shelter here, on unceded Aboriginal and Torres Strait Islander lands.

In solidarity with many other groups, Jewish and non-Jewish, members of JVOIS campaign for justice for the Palestinian people and call on the Australian Government to end its political support of, and trade with, Israel. As part of this effort, JVOIS members have attended numerous rallies and protests. We have not experienced antisemitism within the Palestine justice movement, where we have made many friends.

The struggle against racism in this country has always been led by First Nations peoples, resisting all forms of oppression. During the twentieth century, when antisemitism was much more prevalent in Australia, Aboriginal activists were among the fiercest voices against it. We acknowledge that in Australia, racism against Aboriginal and Torres Strait Islander peoples is structural and foundational. We strongly support their calls for truth telling, justice and treaty.

This submission should be read in conjunction with JVOIS's earlier submissions to the Commission, specifically *Defining antisemitism: a critique of the International Holocaust Remembrance Alliance's non-legally binding working definition of antisemitism and recommendations for reliable identification of antisemitism in Australia*.

Terms of Reference addressed

This submission addresses the Commission's first term of reference, which requires the Commissioner to understand and tackle antisemitism and address social cohesion.

Specific matters addressed from the Letters Patent include a. i.-iii., and d.

Executive Summary

This submission is made to draw the Commission's attention to the handbook *Understanding Antisemitism in Australia* (the handbook), published in April 2026 by Australia's Special Envoy to Combat Antisemitism (ASECA).¹

This submission argues that the handbook, in its current form, has discriminatory effects on Palestinian Australians and anti-Zionist Jewish Australians and should be withdrawn. Those effects are sufficiently serious that, as has been argued in recent published legal commentary,² the publication of the handbook may engage several heads of liability under the Racial Discrimination Act 1975 (Cth) (RDA), including sections 9, 17, 18A and 18C.

Any such proceedings would be a matter for the affected communities and their legal advisers, but the existence of credible legal exposure is itself relevant to the Commission's assessment of whether the handbook is consistent with Australia's anti-racism framework and is, or is not, consistent with combating antisemitism and promoting social cohesion.

The ASECA handbook is presented as an educational resource intended to combat antisemitism. JVOIS submits that, in its current form, the handbook does not achieve that purpose. Instead, the handbook:

- characterises core elements of Palestinian historical narrative, including settler-colonial framings of Zionism, apartheid characterisations of Israeli policy and laws, and ethnic-cleansing framings of the Nakba, as antisemitic, without engaging with the major human rights organisations and scholars who use those same characterisations
- characterises anti-Zionist political positions held by a substantial number of Jewish Australians as expressions of hatred of Jews, in language more categorical than the IHRA Working Definition itself
- was prepared through a consultation process that did not include Palestinian Australian community organisations or anti-Zionist Jewish community organisations, despite those being the groups whose speech and identity the handbook most directly affects
- is intended for operational use by workplaces, universities, government agencies, law enforcement and the legal sector, creating a regulatory environment in which the speech most at risk of being characterised as racial hatred is the speech of Palestinian Australians and anti-Zionist Jewish Australians about their own history and identity.

JVOIS makes this submission as an Australian Jewish organisation. We do not speak for Palestinian Australians and we do not purport to. We speak as Jews who reject the framing the handbook makes in our name, who recognise the harms it will cause to Palestinian Australians, and who consider that the appropriate Australian response to antisemitism is undermined by the suppression of Palestinian voices and historical narratives.

¹ Australia's Special Envoy to Combat Antisemitism, *Understanding Antisemitism in Australia*, Department of Home Affairs, April 2026 (hereafter "Handbook").

² Rita Jabri Markwell, 'The Antisemitism envoy has published a manual on how to racially discriminate against Palestinians, and our Government could be held liable', 3 May 2026, <<https://ritajabrimarkwell.substack.com/p/the-antisemitism-envoy-has-published>>.

1 Recommendations

- 1.1 The Commission should find that the ASECA handbook, in its current form, has discriminatory effects on Palestinian Australians and anti-Zionist Jewish Australians that are inconsistent with the provisions of the Racial Discrimination Act 1975 (Cth) and Australia's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination.
- 1.2 The Commission should recommend that the Australian Government withdraw the handbook pending substantial revision following genuine consultation with Palestinian Australian community organisations and the full spectrum of Jewish Australian community organisations, including those that hold anti-Zionist and non-Zionist positions.

2 The handbook's treatment of Palestinian historical narrative

- 2.1 The Nakba, the displacement of approximately 750,000 Palestinians from their homes during the establishment of the State of Israel in 1948, is to Palestinian collective memory what the Holocaust is to Jewish collective memory, with the important difference that the Holocaust is acknowledged as historical fact by every credible authority and the Nakba is still routinely contested in public discourse.
- 2.2 The handbook does not mention the Nakba. It does not acknowledge the Palestinian historical experience. It treats the speech that Palestinian Australians use to describe their own history (settler-colonial, apartheid, ethnic cleansing, Nakba) as evidence of antisemitism without engaging with the substantive scholarly and human rights debates that have produced this language.
- 2.3 The “apartheid” characterisation of Israeli policy is the most direct example. The handbook treats this characterisation as antisemitic by implication in IHRA Example 9 and explicitly in Appendix E. Yet this same characterisation is made in published reports by peak international authorities:
 - Amnesty International (Israel's Apartheid against Palestinians, 2022)³
 - Human Rights Watch (A Threshold Crossed, 2021)⁴
 - the United Nations Economic and Social Commission for Western Asia (Israeli Practices Towards the Palestinian People, 2017)⁵
 - B'Tselem, Israel's leading human rights organisation (A Regime of Jewish Supremacy, 2021)⁶
 - the UN Special Rapporteur on the situation of human rights in the Palestinian territories (2025).⁷
- 2.4 The handbook does not engage with any of these sources. It does not explain why the same language, when used by someone (who could be a Palestinian Australian or an ally) in a workplace WhatsApp group (as in Appendix E of the handbook), constitutes antisemitism, but when used by Amnesty International in a published report, presumably does not. The omission is not a minor editorial choice. It is a systemic failure to engage with the most authoritative contrary scholarship on a question central to the document's operation.
- 2.5 The “settler-colonial” framing of Zionism is similarly treated. The handbook describes this framing as antisemitic when it concludes that Jews are ‘labelled and libelled as

³ Amnesty International, *Israel's Apartheid against Palestinians: Cruel System of Domination and Crime against Humanity* (2022), <<https://www.amnesty.org/en/documents/mde15/5141/2022/en/>>.

⁴ Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* (2021), <<https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>>.

⁵ United Nations Economic and Social Commission for Western Asia (UNESCWA), *Israeli Practices Towards the Palestinian People and the Question of Apartheid* (2017), E/ESCWA/ECRI/2017/1, accessed at <<https://aardi.org/wp-content/uploads/2020/04/ESCWA-2017-Richard-Falk-Apartheid.pdf>>.

⁶ B'Tselem, *A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid* (January 2021), <https://www.btselem.org/publications/fulltext/202101_this_is_apartheid>.

⁷ From economy of occupation to economy of genocide: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, UN Doc A/HRC/59/23 (2025), <<https://docs.un.org/en/A/HRC/59/23>>.

“settler-colonialists”, “oppressors”, and a symbol of a global system of domination’.⁸ Yet the settler-colonial framing of Zionism has been developed by serious scholars including Patrick Wolfe, Lorenzo Veracini and, within Israeli historiography itself, Ilan Pappé and the New Historians.⁹ It is a contested but academically respectable position. Treating it as racial hatred is a contestable choice the handbook does not defend.

- 2.6 The suppression extends beyond the “apartheid” characterisation to the characterisation of Israel’s military occupation itself as unlawful. On 19 July 2024, the International Court of Justice delivered an Advisory Opinion finding that Israel’s continued presence in the Occupied Palestinian Territory is contrary to international law and that all states are obliged not to recognise the illegal situation resulting from Israel’s policies and practices.¹⁰ When a Palestinian Australian characterises the Israeli occupation as unlawful, or its policies as racially discriminatory, they are accurately restating conclusions of the world’s principal judicial body. The significance of this for Australia’s obligations under the RDA is addressed in Section 5 below.
- 2.7 The effect of these characterisations on Palestinian Australians is operational, not just rhetorical. The handbook’s practical guidance sections for workplaces, schools, universities, law enforcement and government agencies is explicitly aimed at shaping regulatory environments in ways in which a Palestinian Australian who speaks about their own family history in the language Palestinian historians, Palestinian community organisations and major human rights bodies use is at risk of being characterised as having engaged in racial hatred.

⁸ ASECA Handbook, p. 15.

⁹ Patrick Wolfe, ‘Settler Colonialism and the Elimination of the Native’, *Journal of Genocide Research* 8(4) (2006); Lorenzo Veracini, *Israel and Settler Society* (Pluto, 2006); Ilan Pappé, *The Ethnic Cleansing of Palestine* (Oneworld, 2006).

¹⁰ International Court of Justice, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, 19 July 2024, paras 244, 261, 267 and operative paragraphs 1–4; see especially the Court’s finding that Israel’s policies violate the International Convention on the Elimination of All Forms of Racial Discrimination, available at <<https://www.icj-cij.org/index.php/node/204160>>.

3 The handbook's treatment of anti-Zionist Jewish Australians

- 3.1 Anti-Zionism is a recognised position within Jewish tradition, history and contemporary practice. Anti-Zionism is as old as Zionism. Important Jewish thinkers including Hannah Arendt, Martin Buber, Hermann Cohen, Yeshayahu Leibowitz, Judith Butler and Shaul Magid have articulated anti-Zionist or critically Zionist positions from within Jewish thought.¹¹ Anti-Zionist Jewish organisations exist in countries all over the world including in Australia, the United States, the United Kingdom, Canada, France, Germany and Israel itself.
- 3.2 The proportion of Australian Jews who identify as anti-Zionist or non-Zionist is significant and growing. The research report *Not in Our Name: Jewish Australians Speak Out* (Greenslade and Briskman) documents this.¹² Generational shift, intensified by the events since October 2023, has produced an unprecedented level of public Jewish dissent from Zionism in Australia – most notably with the establishment of the Jewish Council of Australia. See JVOIS's separate submission.
- 3.3 The handbook treats anti-Zionism as antisemitism. Appendix E concludes: 'Antisemitism and antizionism are both expressions of hatred towards Jews.'¹³ This statement is unqualified. It is not framed as context-dependent. It is presented as a general proposition.
- 3.4 This statement goes further than the IHRA Definition itself, which characterises certain forms of speech about Israel as potentially antisemitic depending on context. The handbook's closing sentence in Appendix E removes the contextual qualification entirely.
- 3.5 For an anti-Zionist Jewish Australian, this means an official government publication, prepared by an officer appointed by the Prime Minister and presented as authoritative guidance to workplaces, universities and government agencies, asserts that their political and ethical position is hatred of their own ethnic community. The harm of this assertion is not merely symbolic. The handbook is intended to inform institutional decisions about whether speech in workplaces, schools and universities is acceptable.
- 3.6 JVOIS notes that the handbook's approach is internally inconsistent. The handbook elsewhere states that applying the IHRA Working Definition to identify antisemitism 'involves a nuanced, fact-driven, context-dependent process' and is 'not a tick-a-box'.¹⁴ Appendix E does not apply that standard. It pronounces a categorical verdict on the third hypothetical message without conducting the contextual analysis the handbook elsewhere says is required.

¹¹ Hannah Arendt, 'Zionism Reconsidered' (1944), reprinted in *The Jewish Writings* (Schocken, 2007); Yeshayahu Leibowitz, *Judaism, Human Values, and the Jewish State* (Harvard University Press, 1992); Judith Butler, *Parting Ways: Jewishness and the Critique of Zionism* (Columbia University Press, 2012); Shaul Magid, *The Necessity of Exile: Essays from a Distance* (Ayin Press, 2023).

¹² Leia Greenslade and Linda Briskman, *Not in Our Name: Jewish Australians Speak Out*, Research Report, available at <https://drive.google.com/file/d/15pPgldlxjX9326fMkKhKGtD5XZEWPWo/view>.

¹³ ASECA Handbook, Appendix E, 'Case Study: The Professional WhatsApp Chat', concluding statement in the 'Analysis' column, p. 76.

¹⁴ ASECA Handbook, 'IHRA fast facts', p.28, 'The IHRA Working Definition of Antisemitism is not a "tick-a-box". Whether something is antisemitic depends on the language and context. Applying the IHRA definition involves a nuanced, fact-driven, context-dependent process.'

4 The asymmetry of consultation

- 4.1 The handbook's preface lists the groups consulted in its preparation: 'Jewish community leaders, rabbis, academics and teachers, lawyers, parliamentarians, civil servants and political staff, law enforcement agencies, and the National Student Ombudsman. Numerous experts on antisemitism were included in the consultations, as well as the independent experts appointed as members of the Australian Government's delegation to IHRA.'¹⁵
- 4.2 Palestinian Australian community organisations are not listed. There is no indication that the Australia Palestine Advocacy Network or any other Palestinian people were consulted in the preparation of a document that has direct operational consequences for Palestinian Australians.
- 4.3 Anti-Zionist Jewish community organisations are not listed. The Jewish Council of Australia, Tzedek Collective, Loud Jew Collective, JAO'48 and other Jewish community organisations that hold anti-Zionist or non-Zionist positions appear not to have been consulted in the preparation of a document that characterises their political and ethical positions as expressions of hatred of Jews.
- 4.4 The Jewish lived experience section relies on the National Council of Jewish Women Australia survey conducted in July 2025.¹⁶ That survey is presented as evidence of Jewish lived experience of antisemitism. No equivalent documentation of Palestinian Australian lived experience of being characterised in the document's terms is presented or, so far as appears from the document, was sought. No equivalent documentation of anti-Zionist Jewish lived experience of communal exclusion is presented or was sought.
- 4.5 The handbook's treatment of Kenneth Stern, the lead drafter of the IHRA Working Definition, illustrates the same pattern. Stern has publicly stated that the definition he helped draft was intended as a data-collection tool and has been weaponised to suppress political speech, particularly in university settings.¹⁷ The handbook dismisses his critique as a 'simple factual inaccuracy' in Appendix C, mischaracterising his position and avoiding engagement with the substance of his concerns.¹⁸
- 4.6 This asymmetry of consultation matters legally and substantively. Legally, it is directly relevant to whether the publication of the handbook was undertaken 'reasonably' within the meaning of section 18D of the RDA. Substantively, it explains why the handbook reads as a partisan document in a contested debate rather than as an educational resource. A genuine educational resource on a contested topic would document and engage with the full range of relevant lived experience and scholarly positions.

¹⁵ ASECA Handbook, 'Preface', p. 7: list of consultees in preparation of the handbook.

¹⁶ ASECA Handbook, 'Historical and cultural context of antisemitism in Australia', pp. 12–14, and the survey extracts at pp. 22–23 (drawn from the National Council of Jewish Women Australia lived experience survey, July 2025).

¹⁷ Kenneth Stern, 'I drafted the definition of antisemitism. Rightwing Jews are weaponizing it', *The Guardian*, 13 December 2019; Kenneth Stern, *The Conflict over the Conflict: The Israel/Palestine Campus Debate* (University of Toronto Press, 2020).

¹⁸ ASECA Handbook, 'Misconception #4: The lead drafter of the IHRA definition now opposes it', p. 65.

5 The potential action under the Racial Discrimination Act

- 5.1 JVOIS understands that Palestinian Australians are considering whether the publication of the handbook in its current form constitutes an act made unlawful by the Racial Discrimination Act 1975 (Cth).
- 5.2 JVOIS is not in a position to speak to the prospects of any such complaint, which is a matter for Palestinian Australians and their legal advisers. JVOIS does, however, draw the Commission's attention to distinct heads of potential liability that have been identified in the public legal commentary on the handbook, because each is directly relevant to the Commission's assessment of whether the current institutional response to antisemitism is consistent with Australia's anti-racism architecture.

Section 9 of the Racial Discrimination Act: impairment of human rights

- 5.3 Section 9 of the Act makes it:
- unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.¹⁹
- 5.4 The handbook, in operation, restricts the public expression by Palestinian Australians of speech concerning their own people's history, dispossession and continuing dispossession. The freedoms most directly impaired are the freedoms of expression, opinion and political participation guaranteed by Articles 19, 25 and 27 of the International Covenant on Civil and Political Rights.²⁰ The impairment operates through the regulatory environment the handbook is expressly designed to produce in workplaces, universities, government agencies, law enforcement and civic life, and falls predictably and disproportionately on speakers whose national or ethnic origin connects them to the events the handbook's prohibited speech describes.
- 5.5 Section 9 is, in JVOIS's respectful submission, the most analytically obvious cause of action available. It does not require the complainant to demonstrate that the conduct was reasonably likely to 'offend, insult, humiliate or intimidate' in the sense required by section 18C. It requires only that the conduct, by reason of its connection to race, colour, descent or national or ethnic origin, has the purpose or effect of impairing the equal enjoyment of human rights. The handbook's effect on Palestinian Australian freedom of expression about Palestinian history, on the face of it, would very likely meet that test.
- 5.6 The scale of harm under section 9 extends well beyond cases that are formally disciplined, contested or become publicly known. As Markwell has observed in published legal commentary on the handbook, 'the discriminatory impacts on Palestinians will be significant, as not all discrimination will be contested or known.'²¹

¹⁹ Racial Discrimination Act 1975 (Cth), s 9.

²⁰ International Covenant on Civil and Political Rights, arts 18, 19, 27; ratified by Australia 13 August 1980.

²¹ Markwell, n 2.

This is not a peripheral observation. It describes the primary mechanism through which the handbook will operate.

- 5.7 The most significant discriminatory effect of the handbook is not the Palestinian Australian who is disciplined for their speech and files a complaint. It is the far larger cohort who encounters the handbook's practical guidance in a workplace, educational or community setting, understands what it means for speech about their family history and their people's dispossession, and moderates or silences their speech accordingly – without formal action ever being taken. That person is discriminated against in the “impairment of human rights” sense even though no disciplinary proceeding is ever commenced.
- 5.8 This chilling effect is directly documented in the evidentiary base provided by the European Legal Support Center's analysis of 53 cases in which the IHRA Working Definition was invoked against Palestinian rights advocates in Europe found that in most cases the significant harm (loss of employment, reputational damage, withdrawal from public and civic life) was accomplished before any allegation was formally dismissed.²² A related study by the British Society for Middle Eastern Studies and the European Legal Support Center, examining 40 cases in UK universities between 2017 and 2022, found that of those 40 cases, not one allegation of antisemitism was ultimately substantiated. Despite clearance in every case, those accused suffered harm to their mental health, career prospects and institutional reputation. The report found that this pattern was ‘creating a chilling effect among staff and students, deterring individuals from speaking about or organising events that discuss Palestine out of fear that they will be subject to complaints’, and that academics on temporary contracts and students are ‘particularly susceptible to self-censorship out of fear that any sort of accusation, even if not upheld, could jeopardise their future ability to obtain permanent employment’.²³ There is no basis for assuming Australian workplaces and universities will respond differently to the handbook's guidance.
- 5.9 Section 9's 'purpose or effect' standard is precisely calibrated to capture this invisible harm: it does not require formal sanction, only that the act creates an environment in which Palestinian speech about Palestinian history carries institutional risk. The anticipatory effect is the discrimination. The evidence base already before the Commission demonstrates that it will not, in most cases, materialise in a formal proceeding – and section 9 does not require it to.

²² European Legal Support Center (ELSC), *Suppressing Palestinian Rights Advocacy through the IHRA Working Definition of Antisemitism – Violating the Rights to Freedom of Expression and Assembly in the European Union and the UK* (June 2023), available at <<https://elsc.support/resource/suppressing-palestinian-rights-advocacy/>>.

²³ British Society for Middle Eastern Studies (BRISMES) and European Legal Support Center (ELSC), *Freedom of Speech and Academic Freedom in UK Higher Education: The Adverse Impact of the IHRA Definition of Antisemitism* (September 2023), available at <<https://elsc.support/resource/academic-freedom-and-freedom-of-speech-in-uk-higher-education-the-adverse-impact-of-the-ihra-definition-of-antisemitism/>>.

Section 17: incitement to do an unlawful act

- 5.10 Section 17 of the Act makes it 'unlawful for a person: (a) to incite the doing of an act that is unlawful by reason of a provision of this Part', being Part II of the Act, or '(b) to assist or promote whether by financial assistance or otherwise the doing of such an act.'²⁴
- 5.11 The handbook does more than describe antisemitism. It contains extensive practical guidance for workplaces, educational and academic institutions, law enforcement, the legal sector, government agencies, arts organisations, civil society, health services, sport, media and online platforms.²⁵ That guidance directs institutions to treat the category of speech identified in the handbook's Appendix E and Part 3 examples as antisemitism, and to take disciplinary, regulatory and other operational consequences accordingly.
- 5.12 To the extent that those operational consequences themselves involve unlawful racial discrimination against Palestinian Australians (or against anti-Zionist Jewish Australians), the handbook constitutes an incitement to that conduct within the meaning of section 17.
- 5.13 Markwell's legal framing is worth adopting directly.²⁶ She identifies the government as 'liable for unlawful discrimination against Palestinians in Australia through advocating for the infringement of their freedom of expression.' That framing captures the discriminatory effects: the practical guidance sections of the handbook are not a passive description of what antisemitism looks like. They are an active advocacy, issued with governmental authority, resourced by the Department of Home Affairs, and addressed to specific institutions, for the infringement of a defined category of speech. The publisher of those directives is not merely predicting that institutions will act against Palestinian speakers. It is urging them to do so, providing them with the operational framework to do so, and doing so in the exercise of a function created by the Government.
- 5.14 Section 17 is engaged not only at the point where a downstream institution disciplines a Palestinian employee or student. It is engaged at the point of publication. The incitement is the handbook. The doing of an unlawful act that is incited is the institutional action that follows when workplaces, universities, law enforcement and government agencies implement the practical guidance that constitutes most of the handbook's operational content. The Commonwealth cannot disclaim responsibility for those downstream acts by pointing to the institutional independence of the bodies implementing its guidance. The guidance is the incitement; the section 18A vicarious liability analysis makes clear that it is also the Commonwealth's own act.

²⁴ Racial Discrimination Act 1975 (Cth), s 17 (a) and (b).

²⁵ ASECA Handbook, 'Practical use of the IHRA definition in the Australian context', pp. 50-57.

²⁶ Markwell, n 2.

Section 18A: vicarious liability of the Commonwealth

- 5.15 Section 18A of the Act provides that conduct done by an employee or agent in connection with their duties is taken also to have been done by the employer or principal, unless the employer or principal took all reasonable steps to prevent the conduct.²⁷
- 5.16 The Special Envoy was appointed by the Prime Minister, is supported by the Department of Home Affairs, and produced the handbook in the express performance of her statutory function. The Commonwealth is, on the face of section 18A, vicariously liable for the publication. The handbook's very institutional standing as official government guidance (which is the source of much of its operational power) is also the basis on which liability for its discriminatory effects attaches to the Australian Government as a whole.

Section 18C and section 18D

- 5.17 In addition to sections 9, 17 and 18A, the handbook may engage section 18C of the Act, which prohibits acts reasonably likely to offend, insult, humiliate or intimidate a person or group because of their race, colour or national or ethnic origin.²⁸
- 5.18 Palestinians are recognised as a national or ethnic group for the purposes of the Act. The harm to Palestinian Australians of having their family history and identity-constitutive speech characterised, in an official government publication, as evidence of racial hatred is materially more substantial than the harm to those who merely hold contested political views. The "because of" test in section 18C(1)(b) is satisfied in the indirect-discrimination sense: the handbook is directed at a category of speech that is, in practical effect, Palestinian speech about Palestinian experience. The line of authority following *Eatock v Bolt* supports the proposition that conduct directed at a category of expression can satisfy the "because of" element where the expression is constitutive of the racial or ethnic identity of those expressing it.²⁹
- 5.19 The defence available under section 18D requires the act to have been done 'reasonably and in good faith' for purposes including academic discussion and fair comment on matters of public interest.³⁰ JVOIS submits that the asymmetry of consultation documented in Section 4 of this submission, together with the systematic failure to engage with authoritative human rights scholarship documented in Section 2, are factors that significantly weaken the reasonableness limb of the section 18D defence. The *Bolt* litigation establishes that careless engagement with the underlying facts is a basis for finding section 18D not satisfied.

²⁷ Racial Discrimination Act 1975 (Cth), s 18A: vicarious liability of an employer or principal for acts done by an employee or agent in connection with their duties unless the employer or principal took all reasonable steps to prevent the conduct.

²⁸ Racial Discrimination Act 1975 (Cth), s 18C.

²⁹ *Eatock v Bolt* [2011] FCA 1103.

³⁰ Racial Discrimination Act 1975 (Cth), s 18D.

The handbook is inconsistent with *Wertheim v Haddad*

- 5.20 JVOIS draws the Commission's particular attention to the recent decision of the Federal Court in *Wertheim v Haddad*.³¹ The handbook itself relies on the case at several points, citing it as authority for the proposition that the IHRA Working Definition of Antisemitism is consistent with the RDA. The handbook does not, however, engage with the central reasoning of the decision, which is that criticism of Israel, Zionists or Zionism does not constitute racial vilification of Jews. The handbook's Appendix E and its categorical equation of anti-Zionism with antisemitism are therefore in direct tension with the legal authority the handbook itself cites.
- 5.21 That tension matters not only for the legal status of the handbook but for any institutional reliance on it. Public bodies that follow the handbook's practical guidance, by treating apartheid characterisations, settler-colonial framings or anti-Zionist political positions as antisemitic in workplace, educational or regulatory contexts, risk acting inconsistently with the Federal Court's reasoning in *Wertheim* and exposing themselves to discrimination proceedings of their own.

The ICJ genocide context as a compound aggravating consideration

- 5.22 The handbook was published in April 2026 (released in May) against the background of two distinct but related sets of proceedings before the International Court of Justice, both bearing directly on the question of Palestinian speech about Palestinian experience.
- 5.23 The first is the genocide proceedings brought by South Africa under the Genocide Convention, in which the ICJ issued Orders on Provisional Measures in January, March and May 2024.³² Those Orders found it plausible that Palestinian rights under the Genocide Convention were at risk and imposed provisional measures on Israel accordingly. For Palestinian Australians, the events in Gaza are not an abstract political dispute. They are a matter of family, community and identity, unfolding against the background of an international judicial finding of plausible genocidal harm to the Palestinian people. The handbook, published against this background, treats speech about those events as a category of racial hatred. An act that impairs Palestinian Australians' freedom to speak about events that the world's highest court has found plausibly engage the Genocide Convention takes on a gravity qualitatively different from a restriction on ordinary political speech.
- 5.24 The second is the Advisory Opinion on the occupation, delivered by the ICJ on 19 July 2024, more than a year before the handbook was published.³³ As noted in Section 2, the Court found that Israel's continued presence in the Occupied Palestinian Territory is unlawful and that Israel's policies violate the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) – the treaty that the RDA was enacted to give domestic effect to in Australia. The Advisory

³¹ *Wertheim v Haddad* [2025] FCA 720, in which the Federal Court accepted that criticism of Israel, Zionists or Zionism does not, without more, constitute racial vilification of Jews under the Racial Discrimination Act.

³² United Nations General Assembly, Resolution ES-10/24, 18 September 2024, adopted by 124 votes in favour, 14 against, 43 abstentions, demanding that Israel comply with the Advisory Opinion of the International Court of Justice of 19 July 2024 and end its unlawful presence in the Occupied Palestinian Territory no later than 12 months from the date of the resolution.

³³ International Court of Justice, *Legal Consequences*, n 10.

Opinion's findings carry specific legal weight for this submission beyond their status as rulings on Israel's international obligations: when Palestinian Australians characterise the occupation as unlawful or its policies as racially discriminatory, they are accurately restating findings of the ICJ about the treaty the RDA implements.

- 5.25 The legal tension this creates is direct and unresolved in the handbook. The ICJ has found that Israel's policies in the Occupied Palestinian Territory violate CERD. The handbook, in its practical guidance sections, creates a regulatory environment in which Australian institutions treat speech accurately characterising those policies as antisemitism, and take disciplinary and regulatory consequences accordingly. A document that suppresses accurate speech about CERD violations, violations identified by the ICJ, under the treaty the RDA implements, by characterising that speech as racial hatred cannot be reconciled with Australia's obligations under CERD, and is extraordinarily difficult to characterise as having been published "reasonably and in good faith" within the meaning of section 18D of the Act.
- 5.26 The General Assembly's non-binding resolution of 18 September 2024, adopted by 124 countries in favour with only 14 opposed, requiring Israel to comply with the Advisory Opinion, demonstrates that the ICJ's findings have been accepted by the overwhelming majority of the international community. Australia abstained. The handbook was published more than a year after Australia's abstention, without addressing either the Advisory Opinion or its implications for how Palestinian speech about the occupation should be understood in the Australian legal context. The absence of any engagement with the Advisory Opinion in a document expressly designed to shape Australian institutional responses to Israel-related speech is not a minor omission. It is a fundamental failure of the good faith the section 18D defence requires.
- 5.27 A reasonable assessment of whether the handbook's publication was undertaken in good faith for protected purposes under section 18D must therefore take into account not one but two ICJ proceedings: the genocide proceedings, which established the gravity of the harm to which Palestinian Australians are personally connected, and the Advisory Opinion, which established that speech characterising Israel's occupation and policies as unlawful and racially discriminatory is legally accurate speech, not racial hatred.

The relevance to the Commission's work

- 5.28 JVOIS draws the Commission's attention to the fact that the legal question of whether the handbook constitutes racial discrimination against Palestinians is now being actively contemplated within Palestinian communities and in published legal commentary. This is itself a matter the Commission should take into account in its assessment of whether the current approach to combating antisemitism is supporting or undermining social cohesion.
- 5.29 If the Commission's recommendations are to support social cohesion, they should not endorse, or recommend further institutional adoption of, a document whose effects on a significant Australian community are sufficiently serious that the community may contemplate racial discrimination proceedings against the

Commonwealth, and whose institutional reliance exposes downstream public bodies to liability of their own.

- 5.30 JVOIS notes that the position of anti-Zionist Jewish Australians strengthens any such Palestinian complaint in two ways. First, it demonstrates that the handbook's characterisation of anti-Zionist speech as antisemitism does not reflect a settled or consensus position within the Jewish community itself. The handbook cannot defend its characterisation by invoking universal Jewish lived experience because a significant body of Jewish Australians is on the record rejecting that characterisation. Second, it demonstrates that the harms identified by Palestinian complainants are not merely political disagreements but operational consequences of a regulatory regime that falls on identity-constitutive speech across multiple communities.

6 The handbook's effects on social cohesion

- 6.1 The Commission's fourth term of reference concerns social cohesion. JVOIS submits that the handbook, in its current form, undermines social cohesion in three distinct ways.
- 6.2 First, it sets up a framework in which the speech of two significant Australian communities – Palestinian Australians and anti-Zionist Jewish Australians – about their own histories and identities is treated as evidence of racial hatred. Communities whose lived experience is officially characterised as hatred do not become more cohesive with the surrounding society. They become more alienated. The Australian Human Rights Commission's *National Anti-Racism Framework* identifies a community-centred approach as fundamental to building cohesion; the handbook fails this test.³⁴
- 6.3 Second, the handbook's framing creates antagonism between Jewish and Palestinian Australian communities rather than reducing it. By presenting the Palestinian historical narrative as a form of hatred of Jews, the handbook makes coexistence and mutual recognition between the two communities more difficult, not less. The most effective response to communal antagonism is mutual recognition of competing narratives, not the official endorsement of one and the prohibition of the other.
- 6.4 Third, the handbook's framing makes it harder, not easier, to address actual antisemitism. By labelling a wide range of political and historical speech as antisemitic, the handbook dilutes the analytical and moral force of the term. When everything is antisemitism, nothing is. The serious work of recognising and confronting real antisemitism, including the antisemitism that produced the Bondi attack, is made harder by a framework that treats settled human rights scholarship and Jewish dissenting traditions as evidence of racial hatred.
- 6.5 The handbook also misrepresents the state of the international debate about antisemitism. It treats the IHRA Working Definition as the settled global standard while ignoring or minimising the Jerusalem Declaration on Antisemitism, signed by over 350 scholars in Holocaust history, Jewish studies and Middle East studies.³⁵ It claims that the IHRA Working Definition 'reflects the lived experience of antisemitism of Jewish Australians',³⁶ when the survey and qualitative evidence on which it relies documents the lived experience of a subset of Jewish Australians while excluding others. A handbook intended to build cohesion across the Australian community cannot do so by misrepresenting the diversity of views within the Jewish community whose protection it claims to advance.

³⁴ Australian Human Rights Commission, *National Anti-Racism Framework*, 2024, principles relating to community-centred approach and intersectionality.

³⁵ Jerusalem Declaration on Antisemitism (March 2021), with over 350 signatories drawn from Holocaust history, Jewish studies and Middle East studies, available at <<https://jerusalemdeclaration.org/>>.

³⁶ ASECA Handbook, 'Preface', p. 6: 'the IHRA definition has widespread support from Jewish communal organisations in Australia, and reflects the lived experience of antisemitism of Jewish Australians'.

- 6.6 Independent scholarly literature on the IHRA Working Definition further supports the view that the handbook's operational use will produce the suppressive effects JVOIS identifies. Gordon's analysis of the internal operations of the IHRA Working Definition, and the European Legal Support Center's documentation of cases in which it has been used to discipline political speech, both indicate that the definition does not function neutrally in practice.³⁷ The handbook's Example 7, in particular, treats the proposition that the existence of a Jewish state may itself be inconsistent with anti-racism as antisemitic per se.³⁸ That proposition forecloses, by definition, the very debate the Commission has been asked to assess.

³⁷ Neve Gordon, 'Antisemitism and Zionism: The Internal Operations of the IHRA Definition', *Middle East Critique* 33(3) (2024); European Legal Support Center (ELSC), *Suppressing Palestinian Rights Advocacy through the IHRA Working Definition of Antisemitism – Violating the Rights to Freedom of Expression and Assembly in the European Union and the UK* (June 2023), available at <<https://elsc.support/resource/suppressing-palestinian-rights-advocacy/>>.

³⁸ ASECA Handbook, Part 3, Example 7: 'Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor'; see commentary on pp. 42–43.

7 Conclusion

- 7.1 JVOIS submits that the ASECA handbook, in its current form, is not a sound foundation for Australia's response to antisemitism. It is a partisan intervention in a contested political debate, dressed in the form of an educational resource and backed by the institutional authority of a Government appointment.
- 7.2 The discriminatory effects of the handbook on Palestinian Australians and anti-Zionist Jewish Australians are serious, operational, and potentially actionable. The Commission has the opportunity to identify these effects and recommend remedies before the handbook is further embedded in Australian institutional practice.
- 7.3 The most effective response to antisemitism, including the most extreme forms exemplified by the Bondi attack, is one that addresses real antisemitism with clarity and seriousness while leaving political debate alone, including criticism of Israel and Zionism. The current handbook does the opposite. It conflates political debate with racial hatred and, in doing so, weakens both the response to genuine antisemitism and the foundations of Australian democracy and social cohesion.
- 7.4 JVOIS respectfully invites the Commission to act on the recommendations set out in Section 1 of this submission.

ENDS