

**Anti-العنصرية
Palestinian ضد
Racism الفلسطينيين**



18 September 2026

The Portfolio Committee No. 5 - Justice and Communities
NSW Legislative Council
Parliament House
Sydney, NSW, 2000

APAN Statement on Submission to the Inquiry into the Review of Division 8A of Part 3A of the Crimes Act 1900 (Inciting racial hatred)

1. Introduction

The Australia Palestine Advocacy Network (APAN) welcomes the opportunity to issue a statement on the Submission to the Inquiry into the Review of Division 8A of Part 3A of the Crimes Act 1900 (Inciting racial hatred).

APAN is a national civil society organisation advocating for the human rights, dignity and self-determination of the Palestinian people in accordance with international law. Our work includes policy advocacy, anti-racism initiatives, community education, and engagement with governments and institutions.

This response focuses on the interaction between criminal law protections against hatred for vulnerable groups and existing rights and freedom, including the implied freedom of political communication and freedom of religion.

2. NSW Legislative and Policy Context

(a) Existing NSW Hate Speech and Incitement Laws

New South Wales already possesses a comprehensive legal framework addressing genuine threats to public safety.

Under recent amendments to the *Crimes Act 1900 (NSW)*, it is an offence to intentionally incite hatred against a person or group on the basis of race, where such conduct would reasonably cause fear of harassment, intimidation, violence, or fear for the reasonable person's safety. In addition, it is an offence to intentionally or recklessly threaten or incite violence towards another person or group on the basis of racial or other protected characteristics. These provisions build on longstanding anti-discrimination and vilification laws now embedded in criminal and civil law.

Anti-العنصرية
Palestinian ضد
Racism الفلسطينيين



These offences are conduct-based and subject to judicial oversight. They have been drafted to incorporate mental elements to target behaviour that intentionally or recklessly causes harm.

On 6 February 2026, the Federal Parliament also passed the Criminal Code Amendment (Hate Crimes) Act 2025 (Cth). The new laws are widely seen as a response to the recent surge in antisemitic violence and speech in Australia.

Existing criminal law provides a sufficient legal basis from which to address genuine threats of violence or intimidation.

(b) Policy objectives of Division 8A

The policy objectives of Division 8A — to combat racial hatred and protect vulnerable communities from the serious harm occasioned by racial hatred and discrimination — remain valid.

However, APAN is of the view that the terms of Division 8A are not currently appropriate for securing those objectives, as there is a lack of an appropriate balance between protecting against the incitement of hatred towards vulnerable groups and protecting other important freedoms.

At present the lack of imprecision and subjectivity in Division 8A creates a real risk of selective and disproportionate enforcement, reflecting political overreach. It reinforces that such offenses could have dire consequences disproportionately impacting the Palestinian community in Australia and upsetting a 'balance' of rights.

APAN notes that the same policy approach being canvassed would likely extend to Palestinian political slogans, symbols, narratives and expressions of solidarity used in Australia. Any such expansion would deepen the discriminatory impact identified in this statement and further burden protected political communication.

Measures to limit and criminalise political expression are incompatible with democratic freedoms, are unnecessary given existing criminal law, and, critically, operate in practice as a form of racism.

From the outset, APAN submits that the policing of Palestinian political slogans, symbols, and narratives constitutes racial discrimination. These measures single out the political expression of one people - Palestinians - and treat their language, identity and resistance as inherently suspect or dangerous, culminating in egregious anti-Palestinian racism. We are also alarmed at the conflation of antisemitism with legitimate criticism of Israel or the political ideology of Zionism.

Furthermore, as the [Human Rights Law Centre suggests](#), with the dramatic rise in anti-Palestinian racism, islamophobia and anti-LGBTIQ+ prejudice, hate speech and vilification, there is a risk that selective protection of such hatred will further entrench existing inadequate and inconsistent legal protections against discrimination, hate speech, and vilification. Framing these restrictions as “neutral” responses to community safety obscures their discriminatory impact and risks entrenching unequal treatment under the law.

(c) The threshold for criminal liability should not be lowered

APAN strongly opposes proposals to make section 93ZAA easier to prove by introducing a recklessness standard and removing the requirement to show that a reasonable member of the targeted group would fear harassment, intimidation or violence.

These changes would substantially lower the threshold for a serious criminal offence. That is neither necessary nor appropriate. Laws carrying criminal penalties should require a clear and high threshold, particularly where they regulate speech and political expression.

Palestinian, Arab and Muslim communities are already subject to intense scrutiny when speaking publicly about Palestine, and political speech is too often conflated with racial or religious hatred. Lowering the threshold would increase the risk that lawful protest, slogans and forceful criticism of Israel or Zionism are drawn into criminal processes.

As well as the disproportionate criminalising and punishment effects of this proposed standard, it would additionally have a clear chilling effect. People are likely to self-censor. People are likely to self-censor not because their speech is hateful or unlawful, but because the boundaries of the offence have become broader and less certain.

Legal Aid NSW has also raised serious concerns about the breadth of section 93ZAA and its impact on political communication. APAN submits that the Committee should reject any proposal that lowers the existing threshold for criminal liability.

(d) Recommendations

APAN considers that Division 8A requires clearer safeguards to ensure that the offence targets intentional racial hatred without capturing, or creating a chilling effect on, legitimate political advocacy. This is particularly important for Palestinian communities and their allies, whose political speech, slogans, symbols and criticism of Israel and Zionism have increasingly been characterised as threatening or antisemitic.

Anti-العنصرية Palestinian ضد Racism الفلسطينيين



APAN's concern is not that genuine racial hatred should be protected, but that the legislation should distinguish clearly between hatred directed at people because of their race or ethno-religious identity and criticism directed at a State, government, political ideology or political movement and/or people who express or enact discriminatory ideologies.

APAN therefore recommends:

- That Division 8A includes an express provision making clear that criticism of a State, government, political ideology, institution or political movement, or advocacy concerning human rights, international law or self-determination, does not of itself constitute incitement of hatred on the ground of race.
- That the legislation provides an express safeguard for political, academic, journalistic, artistic, educational and other public-interest expression undertaken reasonably and in good faith. Division 8A currently provides a specific exception for the quotation or referencing of religious texts for religious teaching or discussion, but contains no equivalent express protection for legitimate political or public-interest expression.
- That clear public guidance on the interpretation and enforcement of Division 8A, including examples distinguishing racial hatred from legitimate political advocacy. Particular attention should be given to circumstances in which criticism of Israel, Zionism, Israeli government conduct, occupation or other questions of international law is alleged to constitute racial or antisemitic hatred. Transparent reporting on complaints, investigations, charges and prosecutions would also assist Parliament in assessing whether the provision is being applied consistently and whether particular communities or forms of political expression are being disproportionately affected.

3. Anti-Palestinian Racism - Unrecognised hate within Australian systems

Since October 2023, we have witnessed an alarming increase in anti-Palestinian racism, an egregious form of racism that silences, excludes, erases, stereotypes, defames or dehumanises Palestinians and/or their narratives.

Anti-Palestinian Racism refers to conduct, policies, or institutional practices that, by intent or effect, produce unequal, exclusionary, or harmful outcomes for Palestinians, Palestinian Australians, and those perceived as Palestinian. Anti-Palestinian racism also impacts those that support and/or advocate for human rights, justice and liberation/freedom for the Palestinian people ('allies').

Anti-العنصرية Palestinian ضد Racism الفلسطينيين



Anti-Palestinian Racism may be indicated by one or more of the following patterns:

- **Racial Vilification and Dehumanisation:** The toleration or normalisation of language, conduct, or associations that portray Palestinians as inherently violent, extremist, deceptive, or collectively responsible for acts of violence, resulting in loss of dignity or safety.
- **Suppression of Political, Cultural, or Community Expression:** The restriction, removal, cancellation, or disproportionate scrutiny of Palestinian expression, participation, or representation—cultural, political, or communal—on grounds such as “divisiveness,” “security,” “reputational risk,” “cultural sensitivity,” “community safety,” or “appropriate timing” without equivalent standards applied to other racialised or protected groups.
- **Denial of Peoplehood, Identity, or Equal Participation:** The refusal to recognise, support, or resource Palestinian identity, community activity, or cultural expression on the basis that such identity is inherently illegitimate, political, or uniquely problematic, including the denial that Palestinians are a group as such and/or denial that they are indigenous.
- **Differential Standards and Selective Enforcement:** The application of institutional rules, codes of conduct, or safety policies in a manner that treats Palestinian-related speech, symbols, or assembly as more threatening, disruptive, or unacceptable than functionally comparable expression by other groups.

The working framework of Anti-Palestinian Racism does not, in and of itself, treat the following as racist:

- Criticism of governments, states, or political movements
- Advocacy for International Law, human rights, or accountability
- Lawful protest or peaceful political advocacy
- Academic, journalistic, or historical analysis
- Expression that does not produce discriminatory effects or unequal treatment

Since the launch of the Anti-Palestinian Racism Register in November 2025, some 450 incidents of anti-Palestinian racism have been reported impacting Palestinians, Palestinian-Australians, those perceived to be Palestinian, and the wider Australian community who advocate for Palestinian human rights. Incidents reported on the Anti-Palestinian Racism register span across day-to-day life, schools and universities, the workplace, and the media, and include:

- Calling for, aiding, or justifying the killing or harming of Palestinians in the name of a radical ideology (Zionism) or an extremist view of religion that endorses Israel’s state practices of genocide, ethnic cleansing, and apartheid. Rationalising the use of violence

Anti-العنصرية Palestinian ضد Racism الفلسطينيين



against Palestinians applies to those within historic Palestine, the West Bank, the Gaza Strip, and the diaspora.

- Making defamatory, dehumanising, demonising, racist, stereotypes about Palestinians in such a way that it aims to 'other' Palestinians, Palestinian-Australians, those perceived to be Palestinian, and members of the Australian community advocating for Palestinian human rights.
- Discrediting and/or defaming Palestinians and their allies, including anti-Zionist Jewish members of the community, by utilising anti-Palestinian stereotypes that include, but are not limited to, "terrorist sympathisers," or are "antisemitic" for holding pro-Palestine views.
- Failing to acknowledge indigeneity of Palestinians, including denying the existence of Palestine and Palestinians as a people, denying the settler-colonisation of Palestine, and appropriating Palestinian heritage and culture.
- Denial and erasure of Palestinian connections to land across emotional, ancestral, cultural, economic, and historical lenses, including the denial of the mass displacement and dispossession of Palestinians in 1948, widely known as the Nakba.
- Selective crisis responses by institutions through public statements and targeted action plans in response to a documented rise in antisemitism but a refusal to issue similar statements of actions addressing a contemporaneous rise in anti-Palestinian racism, despite community requests and evidence of harm.
- Workplace harassment and identity-based association should an individual display Palestinian symbols (such as a Palestinian flag pin, watermelon, kuffiyeh, etc..) and be associated with terrorism and violence for doing so, with such harassment and conduct being tolerated by management and human resources, whilst comparable expression by other employees is not treated similarly.
- Loss of work or work opportunities for being Palestinian, Palestinian-Australian, those perceived to be Palestinian, or those advocating for Palestinian human rights, justice and liberation.
- Accusing Palestinians, Palestinian-Australians, or non-Palestinians of being responsible for real or imagined harm or wrongdoing by a single person or group.
- Denying Palestinians their right to self-determination.

Anti- [REDACTED] العنصرية
Palestinian [REDACTED] ضد
Racism [REDACTED] الفلسطينيين



Conclusion

APAN wishes to be unequivocal. Conflating Palestinian political expression, culture, narratives, advocacy, and protest rights with genuinely hateful symbols constitutes a form of anti-Palestinian racism. It singles out one people's political language, identity and resistance for restriction. This differential treatment is discriminatory in both effect and operation. True cohesion is built through equality before the law, not through the silencing of one people's political voice.

APAN thanks the committee for the opportunity to respond.

Sincerely,
Australia Palestine Advocacy Network

Nasser Mashni
President