Serious racial and religious vilification: Options Paper

Submission by Shia Muslim Council of Australia

25th June 2024

About SMCA

The Shia Muslim Council of Australia (SMCA) is an organisation that brings together Shia Muslim communities across Australia and currently has 30 member organisations. Established in 2024, SMCA aims to foster positive engagement, mutual respect, and harmony between the Muslim community and the broader Australian society. It advocates for the rights of Australian Muslims to practice their faith freely and provides a unified voice in dealings with government and media. With members spanning all eight states and territories, SMCA is dedicated to coordinated efforts for shared goals, ensuring effective representation and advocacy. For more information visit www.smca.net.au

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Option 4	*SMCA considers the current provisions fit for purpose.*
Option 5	*SMCA recommends the current maximum penalty remain unchanged.*
Option 6	*SMCA considers the current provisions fit for purpose.*
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Ancillary issues

Issue	***Recommendation***
DPA approval	SMCA recommends that the amendment to s 93Z be repealed, and the requirement that a prosecution under the section be approved by the DPP be reinstated.
Hate Crimes Unit	*SMCA recommends the Hate Crimes Unit sit independent from the Counter-terrorism command.*

Written submissions regarding serious racial and religious vilification options paper (Options Paper): Section 93Z of the *Crimes Act 1900* (NSW)

SMCA welcomes the opportunity to provide this submission on the NSW Law Reform Commission's (NSWLRC) 'Serious Racial and Religious Vilification' Options Paper June 2024 (Options Paper). The Options Paper considers options for reforming s 93Z of the Crimes Act 1900 (NSW) (s 93Z) in addressing serious racial and religious vilification in NSW. With the unacceptably rising rate of islamophobia in Australia, we acknowledge the importance of such laws in not only protecting our own community, but all individuals and communities in Australia.

Our feedback on the seven options presented in the Options Paper are based on concerns raised by our community. We provide an introduction and general observations before turning to our recommendations on each of the seven options.

1. Introduction

SMCA, as a body representing members of the Shia Muslim community, considers serious racial and religious vilification a grave concern for all Australians, its members and the communities it represents. Islamophobia and anti-Muslim bigotry remain a serious threat impacting the quality of life of Muslims in Australia and one that threatens the social fabric of Australia's multicultural complexion. The Christchurch massacre in New Zealand was a sombre reminder of the risks faced by the Muslim community and the role of hate speech in perpetuating violence and terror. Hate speech can lay the foundation for violence,[i] including fatal violence. The terrorist attack serves as a striking example of how hate speech can be amplified through social media, leading to real-world violence.[ii]

We provide our comments on the Options Paper amidst an exponential increase in Islamophobic incidents. Hate crimes in Australia are rarely reported.[iii] Despite this, the Islamophobia register[iv] ('the Register') reports a 1300% increase in Islamophobic incidents since October 2023.[v] This surge is particularly significant given the already high rates of such incidents prior to October 2023. The Register's 2014-2021 report documents 930 verified Islamophobic incidents.[vi] The Register's methodology utilises a high threshold for defining and identifying an Islamophobic incident,[1] and excludes random sampling from its data.[vii] In other words, the Register's data is only an indicative

[1] The register defines Islamophobia as 'a form of racism that includes various forms of violence, violations, discrimination and subordination that occur across multiple sites in response to the problematisation of Muslim identity'; and defines an incident as 'An event or occurrence of an Islamophobic nature that is a either physical or online event or occurrence characterised as Islamophobia/ Islamophobic, including physical attacks, assault, damage to property, offensive graffiti, non-verbal harassment, intimidation and online threats'. See: Islamophobia 2021 report, pp. v.

sample of some of the most significant incidents experienced by the Australian Muslim community.

This data reflects the broader findings of the research on Islamophobia and anti-Muslim bigotry, and of particular note here, that there is a normalisation of anti-Muslim violence in media and social media.[viii] Islamophobia reflects broader trends in gendered violence in Australia too, with Australian Muslim women enduring most Islamophobia in Australia.[ix] This forms part of the broader direct and indirect discrimination experienced by Australian Muslims in various domains of life, such as employment.[2]

We note that despite this prevalence of Islamophobia and anti-Muslim bigotry, it has been largely side-lined or ignored in the public discourse and political commentary on the present inquiry. In this way, Muslim marginalisation is experienced in political and legislative processes too.[x]

Below, we provide the general framework that informs our submissions on each of the options. Part 2 provides an empirical review of media reporting and political commentary that has driven the recent inquiry. Part 3 examines the previous amendment to s 93Z and concerns about over-policing. Part 4 presents our submissions on the role of criminal law within the broader 'regulatory toolkit' available to counter discrimination. Part 5 underscores the protection of political and religious speech while combatting hate speech by reference to Australia's international obligations and the regulation of hate speech in other jurisdictions.

2. Muslim marginalisation and victimisation in law-making and enforcement: the section 93Z narrative

2.1. Narratives as legal meaning

1. Yale University's Professor Robert Cover explains that legal concepts exist within narratives that assign them meaning: "Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live."[xi]

2. The media narrative and public commentary on the present inquiry, along with the impetus for legal reform, are likely to have a tangible effect on how laws are interpreted, constituted, and enforced.

[2] Recent research from Monash University found that people with ethnic names were 60% less likely to get a call back, with those with Arabic names (often associated with Muslims) least likely to get a call back, see: Julie Hare, 'Why Smith beats Singh and Habib when going for a job' (Australian Financial Review, Online, Jul 4, 2023) https://www.afr.com/work-and-careers/careers/why-smith-beats-singh-and-habib-when-going-for-a-job-20230704-p5dllc

3. Despite forming a protected group under the provisions of s 93z and notwithstanding the specific threat of religious vilification faced by the Muslim community, Muslims have been marginalised from the discourse surrounding the laws and identified as perpetrators rather than victims. It is to the narrative that we turn to below.

2.2. Review of media reporting

4. In the context of the present Options Paper and broader inquiry, we examined media reporting and statements by government officials before and after October 2023.

5. We utilised Factiva to conduct keyword searches of reporting on s 93Z. Factiva is a business intelligence platform that includes content from 33,000 news, data and information sources from 200 countries and 32 languages.[xii]

6. Searches in Factiva can be limited to publications from specific regions. Australian publications included within Factiva's include the Sydney Morning Herald, the Australian, Daily Telegraph and the ABC.

7. We compared reporting in Australian publications before October 2023 and after October 2023.

8. Given the prevalence of Islamophobic incidents described earlier, we also compared references to Muslims, Islam and Islamophobia in the context of s 93z.

9. Prior to October 2023, as between 2018 and 2022 there were 40 articles (including 9 duplicates) in Factiva's database referencing s 93z. In comparison, we identified 148 articles (including 70 duplicates) between October 2023 to 20 June 2024 in Factiva's database.[3]

2.3. Pre-October 2023

10. Of the 31 unique articles prior to October 2023, 8 contained references to Muslims. 6 of these articles were in relation to the attack on Rana Elasmar.

11. Rana was heavily pregnant when she was attacked by a man while yelling anti-Muslim slurs.[xiii]

[3] Duplicates in Factiva refer to articles that are either identical or similar to other articles. They are typically articles that have been republished in other mastheads under the same beneficial owner.

12. Reporting on the incident involved questions about the decision by the DPP not to charge the alleged offender under s 93Z.

13. The articles report that Attorney-General Mark Speakman said the ODPP deemed it more appropriate to charge Lozina, the alleged offender, with intimidation because it has a higher maximum penalty than under s 93Z. “These offences covered the same conduct,” he said.[xiv]

14. We identified no subsequent inquiry on the effectiveness of the laws, the appropriateness of the DPP safeguard, and any particular concern on the protections it affords to members of the Muslim community.

2.4. Post-October 2023

15. Following October 2023 there was a surge in reporting on s 93Z. There was almost a four-fold increase in media articles on s 93Z in the 9 months following October 2023, as compared to the previous four years.

16. We examined the articles to understand what propelled increased scrutiny of s 93Z.

17. Media and government scrutiny of s 93Z emerged following reporting by local media publications on alleged chants at a protest in Sydney against the *Nakba*[4] inflicted on Palestinians.

18. The reports referred to alleged chants in footage that was circulated online directed at members of the Jewish community. These were particularly egregious, with reports alleging that protestors had chanted “gas the Jews”.[xv] As victims of racial and religion-based violence themselves, members of the Muslim community were shocked by the reporting. Such rhetoric directed at religious communities in Sydney scarred our collective conscience.

19. Deputy Commissioner Mal Lanyon later confirmed with "overwhelming certainty" that the protestors did not use the chant heard in the circulated footage.[xvi] It remains unclear who was responsible for the doctored footage.

[4] We utilise the word ‘Nakba’ as a ‘legal concept’ as introduced by legal scholar Rabea Eghbariah in a recent article in the Columbia Law Review. ‘It positions displacement as the Nakba’s foundational violence, fragmentation as its structure, and the denial of self-determination as its purpose.’: Rabea Eghbariah, ‘Toward Nakba as a legal concept’ *Columbia Law Review* (2024) 124: 887.

20. According to the Sydney Morning Herald, these reports are what "prompted the Minns government to introduce a bill on November 21 that it said would "improve the prosecution process" for the offence of publicly threatening or inciting violence against a person or group based on attributes including race and religion.'[xvii]

21. On 13 November 2023, the Daily Telegraph reported "An urgent review of laws that outlaw threatening or inciting violence based on race or religion will be undertaken by the NSW Government following heated protests over the Israeli-Palestine conflict in Sydney, with Premier Chris Minns saying "something has got to change".[xviii]

22. The review resulted in an amendment which removed the requirement that prosecutions be approved by the Director of Public Prosecution. We comment on this amendment in Part 3.

23. As noted, our review of Factiva's database found an upsurge in reporting on s 93Z following October 2023. Our review noted that since-corrected reports of these chants acted as an impetus to expedite amendments to the section. Below we consider subsequent reporting and the public discourse on s 93Z.

2.5. Muslims as perpetrators, not victims

24. In the reporting reviewed for the purposes of this submission, we found that media reporting and statements by public officials routinely referred to the Muslim community as perpetrators, rather than potential victims of incitement. On 14 October 2023, an article published by the Australian read:

> 'Monday evening is a test for law enforcement in NSW. Those Muslim protesters who yelled "Gas the Jews" or other words that incited violence need to be identified and prosecuted. If others incite violence in coming days and weeks, they need to be prosecuted and jailed to demonstrate that we take incitement seriously.'[xix]

25. It is unclear how The Australian's Janet Albrechtsen was able to verify the religious identity of the protestors. We recall that Deputy Commissioner Mal Lanyon confirmed no such chants appeared in the footage circulated.

26. On 10 November 2023, in a subsequent article on s 93Z again published in The Australian, Chris Merritt who is vice-president of the Rule of Law Institute of Australia, wrote:

‘No officer of the state should arbitrarily decide that the criminal law should not be enforced against supporters of Palestinians; nor should officers of the state determine that Jews should be denied the benefit of the law championed by Alhadeff.’

‘More incitement to kill Jews is blighting the streets of Sydney and parts of the Islamic community.’[xx]

27. Although Merritt initially refers to 'supporters of Palestine' in a broad sense, encompassing individuals from various racial and religious backgrounds in Australia, he later specifically mentions the Islamic community.

28. In the same article, Merritt quotes English jurist Lord Scarman, who told the House of Lords in 1983: ‘Every person within the jurisdiction enjoys the equal protection of our laws.’ This sentiment aligns with our own principles, and the Recommendations in this submission are designed to ensure equal protections for all. All victims deserve equal protection under the law, and no individual should be exempt from its enforcement. Yet, Merritt’s article on s 93Z singles out in particular hate speech emanating *from* the Muslim community as against other religious minorities, in this case members of the Jewish community. No mention was made to hate speech and incitement directed at or targeting the Muslim community.

29. We reviewed 20 additional articles in Factiva’s database on reporting and public discourse by officials on s 93Z and each unveiled a similar pattern. References to s 93Z made no reference to Muslims as victims of hate crimes and incitement, and instead would describe Muslims as inciting violence. For example, we read articles titled ‘Anti-Semitism ‘unchecked’ amid radical sermons’,[xxi] ‘Sheik hate rants must stop: Burke’,[xxii] ‘Clerics trigger hate-speech probe’.[xxiii]

30. During the same period, there were documented hate incidents against Muslims, including spitting at women, threats of gun violence, threats to mosques, threats to Muslim schools, graffiti, property damage, hate mail and verbal abuse.[xxiv] The articles reviewed made no reference to s 93Z.

31. Moreover, the religious or racial identities and affiliations of those alleged offenders of said racially/religiously motivated violence and/or violent speech is absent from reporting.

32. For example, another report in the same period on serious Islamophobic incidents documented how a woman had the words "Get out Muslim c***" spray painted all

over her driveway, and "Death to Palestine and [several] swastikas" painted on her driveway. No references were made to s 93Z.[xxv]

33. In another example, when a resident of the Sydney suburb of Botany had a homemade bomb planted on his car after flying a Palestinian flag, there were no references to s 93Z in the reporting we reviewed. This incident involved a note being attached to the improvised bomb which read, 'Enough! Take down flag! One chance!!!!'. There were also no references to the offender's (David) religious identity in the articles reviewed.[xxvi]

34. Separate questions were raised at the time concerning the decision not to charge under terror offences. Magistrate Greenwood noted that David's actions were politically motivated. She noted that David told police he was "supportive of the actions of the Israeli government in relation to … Gaza", and "That is why the offences are alleged to have occurred'.[xxvii] We do not address this choice not to charge terror offences here as it is beyond the scope of this submission. We do note however a trend of selective enforcement of terror provisions against Muslims as compared to politically motivated violence by other groups.

35. We note that these two incidents involved a conflation of political positions with racial or religious identities. Both individuals who were targets of the aforementioned attacks were not Muslims. In the first example, Rita Mannessis was targeted or identified as a Muslim as 'she's shown open support for the Palestinian cause'.[xxviii] This is similar to the targeting of a 12 year old Christian Palestinian boy, who was targeted with a 'terrorist slur'.[xxix] While the school incident involved a Christian boy, the Islamophobia Register Australia executive director, Sharara Attai, considered it an example of Islamophobia due to a likely perception of "Muslimness" in the perpetrator's mind.[xxx]

36. This example highlights the importance of avoiding conflations between political ideology and racial identities, or religious beliefs discussed in Part 5 of our submissions.

37. Taken together we make the following observations:

    37.1. When Muslims were targets of racial and religious vilifications, this was followed by little media interest or government scrutiny. The position of the then Attorney General was that the DPP's choice not to charge Rana's offender under s 93Z was sufficient because intimidation involved "the same conduct".

37.2. We further note that despite the prolific rise of Islamophobic incidents, media and political commentary has excluded the Muslim community from the discourse as potential victims of religious vilification or as a community that ought to be protected against incitement. Instead, the references to Muslims in the context of the section has been primarily as perpetrators rather than victims. This is reflected in political statements too.

37.3. Moreover, we note a discrepancy in reporting between Muslim Australians, and other Australians. The religious identity of Muslims is made salient, whereas no reference to the religious identity of offenders are made when perpetrators are from other Australian communities. This leads to skewed public perception and an impact on policy and legislation.

38. The aforementioned summarises the narrative surrounding the present inquiry, and Options Paper before us. If narrative gives law its meaning, then this ought to cause concern. Muslims have been marginalised from the narrative: their victimhood is ignored, and they are caricatured as perpetrators.

39. And it is in this context that the current Options Paper ought to be examined. The particular experience of Muslims, as a group disproportionately victims of hate speech and incitement, ought to be included in the narrative that informs the law, and due attention given to this community, as all other communities in the protections the law affords.

3. Crimes Amendment (Prosecution of Certain Offences) Act 2023

40. On 11 December 2023, sub-section 4 of s 93Z was amended by the Crimes Amendment (Prosecution of Certain Offences) Act 2023 to provide that:

> ‘A prosecution for an offence against this section may be commenced only by— (a) the Director of Public Prosecutions, or (b) a police officer.’

41. In the Second Reading Speech to the Crimes Amendment (Prosecution of Certain Offences) Bill, the Attorney General stated that the amendment was necessary because:

> ‘concerns have been raised about the operational effects of this requirement [for DPP approval]. The time taken to refer matters to the DPP and obtain approval to charge may act as a disincentive for laying charges under s 93Z that relate to conduct otherwise appropriate to be prosecuted under this provision.[37]’

42. We echo concerns by the New South Wales Council of Civil Liberties that the amendments were hastily adopted, without proper consideration given to submissions by affected communities.[xxxi]

43. One of the concerns associated with removing DPP consent are issues with over-policing of racial minorities in Australia. These were highlighted in a submission to the review on the effectiveness of s 93Z of the *Crimes Act 1900* (NSW) by the Criminal Justice Cluster at the Faculty of Law, University of Technology Sydney.[xxxii] We echo these comments here too.

44. As the submission explained in some detail, the literature on policing hate speech highlights how police have been responsible for over-policing targeted racialised communities.[xxxiii] As a result, discretion with individual officers in the NSW Police Force, particularly absent appropriate training, can result in the *criminalisation* of the groups the law seeks to protect.[xxxiv]

45. This is to be understood in light of the fact that distrust of statutory authorities significantly contributes to the underreporting of hate crimes in Australia.[xxxv]

46. Distrust is exacerbated by policing practices. In the United States, Muslim community outreach programs served as 'Trojan horses for intelligence gathering'.[xxxvi]

47. In Australia, recent reporting unveiled that in a counter-terrorism operation, police encouraged an autistic 13-year-old boy in his fixation on so-called 'Islamic State' ('IS'). The facts surrounding this case are of particular relevance.

    47.1. On 17 April 2021, the parents of an autistic child ('Thomas' – pseudonym) went to a police station and asked for help because Thomas was watching IS related videos on his computer. Thomas was later charged with terror offences after "an undercover officer "fed his fixation" and "doomed" the rehabilitation efforts Thomas and his parents had engaged in."[xxxvii]

    47.2. Magistrate Lesley Fleming said in the decision:

> "The community would not expect law enforcement officers to encourage a 13-14 year old child towards racial hatred, distrust of police and violent extremism, encouraging the child's fixation on ISIS,"
>
> "The community would not expect law enforcement to use the guise of a rehabilitation service to entice the parents of a troubled child to engage in a process that results in potential harm to the child.

> The conduct engaged in by the JCTT and the AFP falls so profoundly short of the minimum standards expected of law enforcement offices [sic] that to refuse this [stay] application would be to condone and encourage further instances of such conduct."[xxxviii]

48. It is not without note that the parents of the child approached law enforcement for assistance. The case highlights how policing practices, particularly in a counter-terrorism context, can foster distrust and as a result prevent reporting of hate crimes.

49. In this context, we note that the NSW police force has a dedicated Engagement & Hate Crime Unit. However, we also note that the group sits under the Counter Terrorism & Special Tactics Command.[xxxix]

50. Given (a) the research problematising the approach of counter-terrorism policing on Muslims,[xl] (b) the record of counter-terrorism officers and its impact on trust building, (c) the broader literature on the policing of racial and religious minorities and hate speech, and (d) the need to create trust between victims of hate crimes and investigating units (where distrust prevents the reporting of hate crimes): we recommend that the Hate Crimes Unit be either a stand-alone unit or report to a different branch of the NSW Police.

51. We also make the following recommendations:

    51.1. police officers more broadly, and police officers in the hate crime unit receive additional training, in particular on racial and religious bias, to ensure that they are adequately prepared for enforcing the provisions of the section and other offences, while protecting victims of racial and religious vilification.
    51.2. that DPP approval be reinstated, which provided a rational safeguard against over-policing.
    51.3. Given the importance of generating trust between protected communities and enforcement officials, we recommend a statutory authority and/or body be appointed to advise the DPP on the appropriateness of any charges. Such a body should include members from each of the protected communities, to the extent possible, which can help facilitate the reporting of hate crimes to the relevant authorities.
    51.4. To facilitate greater cohesion between civil and criminal law, such a body may be facilitated through an expansion of the current Anti-Discrimination Board established under the Anti-Discrimination Act. This could facilitate better interactions between civil and criminal law, and offer a bridge between communities and police when reporting hate crimes.

While much has been said about the lack of prosecutions under the section (which we comment on in Part 4), little has been said about the ancillary risk of over-policing and unequal enforcement. Given the narrative surrounding the section described in the introduction, history of racialized policing and the need to encourage and remove barriers to hate crime reporting, due consideration ought to be given to safeguards that protect against over-policing, and the integration of trust-building measures to remove potential barriers between victims and enforcement authorities.

4. Anti-discrimination: regulatory toolkit

Criminalisation as a 'last resort'

52. Hate speech has no universal definition under international human rights law.[xli] It has been variably defined to refer to speech used to express hatred of, or encourage violence against, an individual or individuals on the basis of a particular feature or set of features.[xlii]

53. s 93Z criminalises a narrower form of conduct than this common language definition. It is restricted to public acts that threaten or incite violence against individuals or groups based on their perceived membership of a list of categories.

54. We consider this appropriate, as criminalisation should be reserved for serious instances of vilification. This reflects the view of UN experts who have stated that criminalisation should be reserved for serious instances of vilification. They have also considered that discrimination is better addressed by:

> 'public statements by leaders in society that counter hate speech and foster tolerance and intercommunity respect; education and intercultural dialogue; expanding access to information and ideas that counter hateful messages; and the promotion of and training in human rights principles and standards'.[xliii]

55. While it is true that to date, the provisions have resulted in only one successful conviction,[xliv] there are other acts that might constitute serious vilification which may have been charged under more established offences in the NSW and Commonwealth criminal law (see para 57 below).

56. We note that this was the choice made by the DPA in the case of Rana Elasmar (see para 14), even though the underlying conduct likely would have satisfied the s 93Z threshold. More research is needed to determine whether this has been the

case more broadly, and how often other offences are used to charge hate speech crimes. It may be that hate speech crimes have been prosecuted under other ancillary provisions, and it is suggested that the NSWLRC investigates such dual use provisions. Moreover, the fact that there have been no convictions under s 93Z in and of itself does not negate, and may in fact suggest it is fulfilling its purpose.

57. Some of these offences at the state and federal levels include: offensive language and offensive conduct (*Summary Offences Act* 1988 (NSW) ss 4 and 4A), common assault (*Crimes Act 1900* (NSW) s 61), intimidation or annoyance by violence or otherwise (*Crimes Act 1900* (NSW) s 545B), 'Urging violence against groups' (*Criminal Code Act* 1995 (Cth) s 80.2A). If an offence is motivated by hatred or prejudice against a group of people to which an offender believes any victim belongs, that is an aggravating factor for the purpose of sentencing (*Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)(h)).

58. Moreover, there exists protections afforded by civil provisions in the *Anti-Discrimination Act 1977* (NSW) ('*ADA*') which prohibits incitement of hatred, contempt and ridicule of people on a number of grounds, including race (s20C) and religious belief/affiliation (s49ZE). Similar provisions exist in the Commonwealth's *Racial Discrimination Act 1975* (Cth).[xlv]

59. There remains some uncertainty on the elements and scope of the civil provisions in New South Wales under the ADA. The civil prohibition of religious vilification does not impact upon the teaching of religious institutions, due to the operation of section 56 of the ADA.[5] The ADA also excludes public acts "*done reasonably and in good faith, for academic, artistic, scientific, research or religious discussion or instruction purposes or for other purposes in the public interest, including discussion or debate about and expositions of an act or matter*."[xlvi] Recent judicial consideration of the exception (and similar provision in *Racial and Religious Tolerance Act 2008* (Vic) s 8 has provided some clarity on the application of the relevant test, but questions remain. Addressing these are beyond the scope of this submission.

60. Another element that informs New South Wales' regulatory environment are Australia's international obligations. It has, for example, ratified the International Covenant on Civil and Political Rights ('ICCPR') which requires State parties to prohibit advocacy of racial and religious hatred that constitutes incitement to

[5] "Nothing in this Act affects…(d) any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

discrimination, hostility or violence. The ICCPR qualifies its position by stating that these laws should only be implemented as 'are necessary'.[xlvii]

Comparable jurisdictions

61. NSW's laws are largely consistent with other states and territories, which utilise both civil and criminal law to address hate speech. Some jurisdictions like Western Australia appear to go further and have the lowest threshold for its criminal vilification offences,[xlviii] while some like the Northern Territory and Tasmania do not have criminal offences for racial and religious vilification.[xlix] Victoria, South Australia and Queensland, have a higher threshold in that the threat/incitement is required to also "incite hatred".[6] Each of these jurisdiction vary in terms of the required *mens rea*.[l]

62. Other jurisdictions, like the UK's *Public Order Act 1986* (UK) includes a wide scope for prohibited conduct, and include the terms "threaten", "abusive", "harassment", "alarm" and "distress". It has seen police arrest and charge members of the public for statements confirming traditional beliefs of marriage, gender and sexuality and in respect of Biblical claims to exclusive truth.[li] We make some general observations on subjective tests, and freedom of religious and political communication, in part 5 below, which inform our recommendations to Option 7 on 'harm-based' tests.

Subjective tests

63. We do not endorse subjective or harm-based tests that might operate to unduly restrict religious debate. Accordingly, we do not consider the UK law an acceptable model for reform, or desirable. We are strongly opposed to tests that facilitate claims that a person might take offense to a religious teaching that describes conduct as immoral, or intimidation by religious teachings about the metaphysical consequences of their conduct, for example. To do so would undermine the basic premise of many religious teachings, which is each religion's claim to exclusive truths that may invariably cause offense to other beliefs. Members of the Islamic and Jewish faiths, for example, differ from members of the Christian faith on the divinity of Jesus. Members of each group may find the other's view offensive. This is the spirit of public debate and religion's claims to truths, which ought to be protected.

64. As Justice Morris stated in *Fletcher v Salvation Army* – a case that concerned, amongst other issues, the Victorian *Racial and Religious Tolerance Act 2001* – a

[6] And/or revulsion/serious contempt/severe ridicule.

"genuine religious purpose may include asserting that a particular religion is the true way, and that any way but the true way is false."[lii] His Honour recognised, "criticism of a religion or religious practice is not a breach of the Act; the Act is concerned with inciting hatred of people on the basis of race or religion."[liii]

65. Overall, we consider that the NSW provisions use of both civil and criminal law, with criminal law appropriately narrowed and targeted towards incitement of violence appropriate:
    65.1. The *mens rea* is broader than other jurisdictions and includes both reckless and intentional acts. We consider this appropriate.
    65.2. These provisions operate alongside, and complement, other criminal offences recounted in paragraph 54, for which prejudice or hatred is an aggravating factor for the purposes of sentencing.
    65.3. The ADA includes civil provisions for conduct that does not meet the criminal standard. We consider this appropriate and echo the view of UN experts that criminalisation be limited to the most serious instances of vilification.
    65.4. The relevant tests under the ADA continue to be clarified and we will monitor judicial consideration carefully. We emphasise that religion's claims to 'exclusive truths' may invariably offend members of other religions or other protected groups. Such speech ought to be protected. As Hayne J stated in *Monis v The Queen*: "*The very purpose of the freedom [of implied political communication] is to permit the expression of unpopular or minority points of view. Adoption of some quantitative test inevitably leads to reference to the "mainstream" of political discourse. This in turn rapidly merges into, and becomes indistinguishable from, the identification of what is an "orthodox" view held by the "right-thinking" members of society*."[liv] When secular views are mainstream, religious views may be unpopular such that they are viewed as offensive by some. The same might be the case for religious views. And some views by members of one religion, may offend those of another religion. These expressions ought to be protected and form part of the spirit of healthy social debate and discourse.

5. Protected speech: freedom of political communication

66. Given that reporting earlier noted that the review undertaken follows "heated protests over the Israeli-Palestine conflict in Sydney" (para 21), it is of relevance to note a statement by UN experts on protecting speech precisely in this context. In a joint statement by multiple UN experts. The experts include *Challis Chair of International law* at the University of Sydney and UN Special Rapporteur on Counterterrorism and Human Rights, Professor Benjamin Saul. They warn against

measures that criminalise peaceful assemblies and expressions in support of Palestinians' rights. The experts' state:

> Concerns related to risks of potential anti-Semitism have also been used as a justification by some States to ban and criminalise peaceful assemblies and expressions in support of Palestinians' rights. Protesters have been [arbitrarily] arrested for the use of slogans allegedly for constituting "hate speech" or "anti-Semitism". These measures create a hostile environment for pro-Palestinian expressions and activists.
>
> It is further concerning that freedom of expression and peaceful assembly is being limited in academic settings where it often takes the form of unjustified expulsions or dismissals, arrests and persecution of academics and students for expressing support for Palestinians' rights in Gaza. Universities, natural incubators of free thought, must not devolve into havens of obscurantism.
>
> Under international human rights law, States have an obligation to respect and create an enabling environment for the exercise of the rights to freedom of peaceful assembly, of association and of expression of all individuals, without discrimination.[lv]

67. Relevantly, the UN experts further addresses state obligations on the prohibition of advocacy of racial or religious hatred/vilification under the ICCPR:

> Although States have the obligation to prohibit "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence" under Article 20 of the Covenant, they should do so with due respect to the right to freedom of expression. Any restrictions must be precisely defined by law and be necessary and proportionate in pursuit of a legitimate aim. In order for a statement to amount to a criminal offence, it should meet the six-part threshold established by the Rabat Plan of Action.[lvi]

68. Recalling the examples of attacks on members of various faiths and beliefs for expressing "pro-Palestinian views" in Part 2 and measures cited above by the UN experts aimed at suppressing speech, it is important to recall both Australia's international obligations, and Australia's constitutionally implied guarantee of freedom of political communication. Laws that burden political communication must be for a legitimate, proportionate purpose, and must not impermissibly burden political communication.
69. Moreover, in paragraphs 27-32, we cited examples of incitement to violence directed at pro-Palestinian activists, or individuals who expressed sentiments in support of Palestinian rights. We noted at least two incidents where such views were conflated

with Muslim identity. There is risk that the opposite may also be true, whereby Jewish identity is conflated with the state of Israel. Given that this forms the political environment that forms part of the background to the current inquiry, we emphasise the importance of caution in ambiguously worded statutes that may facilitate conflations between religious identity and political communication. Protections against serious racial and religious vilification ought not impede on the right of individuals to political communication and/or political statements against states. This is particularly salient in light of Australia's international obligations pursuant to the rulings and arrest warrants issued by the International Court of Justice[lvii] and the International Criminal Court,[lviii] respectively.

Concluding comment

70. Any reforms to New South Wales serious racial and religious vilification laws ought to give due consideration to the broader criminal and civil offences already available to statutory authorities to address discrimination. Criminalisation ought to be reserved to the most egregious conduct. Criminalising also incurs risks of over-policing, particularly for racialised communities, and in particular for the Islamic community. Moreover, both civil and criminal law ought to ensure that free speech guarantees are not impeded. These include the implied constitutional protection of political speech. Religious claims to exclusive truths might invariably offend other groups. Using broad, harm-based, or subjective based tests in this context, could result in unduly curbing religious debate. Moreover, the current political environment risks conflating religious and political identities. Reforms must be minded to avoid such conflations. Given that discrimination is better addressed by broader initiatives that raise awareness, governments should consider 'soft' measures rather than 'hard law' to address concerns relating to hate speech. Where criminal enforcement is appropriate, police officers should be provided with training to assess the appropriateness of charges in any given instance, and the NSWLRC ought to consider recommendations that facilitate community-trust building. Some of these recommendations appear in paragraph 51 and include separating the Hate Crimes Unit from the Counter-terrorism and Special Tactics Command and reinstating the DPP safeguard.

ii. Summary of Recommendations

Option 1: Definition of "public act"

Option 1: Definition of "public act"
Should the definition of "public act" be changed in s 93Z? If so, should it incorporate the approach of the definitions of "public place" in the *Summary Offences Act 1988* (NSW) and the *Criminal Code* (Cth) to capture communications made to limited numbers of people? Are there any other changes that should be made?

We object to the expansion of the existing definition of "public act". We additionally oppose incorporating "public place" into the definition. The existing definition is sufficiently broad to capture conduct committed in public or conduct observable by the public. S 93Z defines public act to include:

> (a) any form of communication (including speaking, writing, displaying notices, playing of recorded material, broadcasting and communicating through social media and other electronic methods) to the public, and
>
> (b) any conduct (including actions and gestures and the wearing or display of clothing signs, flags, emblems and insignia) observable by the public, and
>
> (c) the distribution or dissemination of any matter to the public.
>
> For the avoidance of doubt, an act may be a public act even if it occurs on private land.[7]

The proposed amendment will likely have the unintended consequence of capturing private conversations, in places of worship and other places considered 'public places' but where genuinely private statements are being made. This may have a "chilling" effect on legitimate speech and create a culture of fear. This would also likely fundamentally change the nature of the offence. The current provision requires a public communication. Where the communication is *not* a public communication, but instead said in a private conversation such as at a Church, Synagogue, Community Centre, or Mosque, this could then potentially be captured under s 93Z. This change would include private communications in a context where the public may have access to the premises. This reverses s 93Z's underlying purpose in preventing genuinely public acts, and not private acts.

[7] *Crimes Act 1900* (NSW), s 93Z (5).

Option 2: Mental element of recklessness

Option 2: Mental element of recklessness
Should the mental element of recklessness be removed from s 93Z?

We oppose the removal of 'recklessly' from s 93, and note that removing it may complicate or limit potential prosecutions under s 93Z.

Option 3: Incitement to violence
Should the term "incite" in s 93Z be replaced with terms such as "promote", "advocate", "glorify", "stir up" or "urge"? Should s 93Z be amended to provide that the meaning of "incite incorporate these terms? Should any other amendments be made to address this issue?

Option 3: Incitement to violence

We oppose the replacement of 'incite' in s 93Z as the proposed alternatives are too broad. As indicated in the introduction to our submissions, any laws criminalising speech 'must be precisely defined by law'. The term 'incite' adequately captures the seriousness of conduct under s 93Z, has a specific legal meaning, and has already been the subject of judicial interpretation.[8] s 93Z creates a criminal offence which can deprive the alleged offender of their liberties, so the offending conduct must be sufficiently serious and the type of conduct captured by the provisions sufficiently clear. The proposed alternatives may unintentionally capture conduct that either does not meet the intended threshold of the section or lacks the severity required for criminal law.

Option 4: An offence of inciting hatred

Option 4: An offence of inciting hatred
Should an offence of inciting hatred on the ground of a protected attribute be introduced?

We oppose the proposed expansion of s 93Z on the basis that such conduct is adequately covered by the availability of civil vilification provisions in the *Anti-Discrimination Act 1977* (NSW) (**ADA**). The ADA is a more appropriate avenue for

[8] See for example: *Sunol v Collier (No.2)* [2012] NSWCA 44, [26].

dealing with such conduct, given s 93Z creates a criminal offence which can deprive the alleged offender of their liberties, so the offending conduct must be sufficiently serious. The proposed expansion may have the unintended consequence of capturing conduct that is not sufficiently serious to warrant the consequence of breaching s 93Z. There is also a lack of specificity about the proposed expansion and what the underlying effect will be on freedom of speech.

Option 5: Increase maximum penalty for s 93Z

Option 5: Increase maximum penalty for s 93Z
Should the maximum penalty for s 93Z be increased? If so, what should be the new maximum penalty?

We do not support increasing the maximum penalty under s 93Z. The existing penalties are sufficiently serious, particularly in circumstances where there have been limited prosecutions. If conduct is sufficiently serious to warrant greater penalties, there are alternative methods for prosecuting such conduct. This includes penalties for offensive conduct, offensive language, and stalking or intimidation with an intention to cause fear of physical or mental harm.

Option 6: Introduce aggravated offences

Option 6: Introduce aggravated offences
Should there be aggravated version of offences where the offence is motivated by hatred, which attract a higher penalty?

We do not support the introduction of ‘aggravated’ versions of offences. If conduct is sufficiently serious to warrant greater penalties, there are alternative methods for prosecuting such conduct. This includes penalties for offensive conduct, offensive language, and stalking or intimidation with an intention to cause fear of physical or mental harm.

Option 7: Introduce a harm-based test

Option 7: Introduce a harm-based test
Should an objective harm-based test be introduced into s 93Z

We strongly oppose the introduction of a harm-based test under s 93Z. We addressed the risks that a harm-based test might create in the introduction to these submissions. A

harm-based test inherently reduces the evidentiary burden required to meet the threshold of a s 93Z offence. This is because the alleged victim will no longer be required to identify the audience being incited and instead focuses on whether it is reasonably likely to cause harm. This goes against the intended purpose of s 93Z. This threshold should not be reduced for a criminal offence which may deprive the public of their liberties. The ADA creates a lesser threshold for liability (balance of probabilities) than that under s 93Z (beyond reasonable doubt) and therefore is an appropriate alternative where conduct is not sufficiently serious to be captured by the criminal law.

We appreciate the opportunity to make submissions on the above options and look forward to hearing further from you throughout the process of this review of the legislation.

Yours faithfully,

Shia Muslim Council of Australia Limited
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[i] Antonio Guterres, 'United Nations Strategy and Plan of Action on Hate Speech' *(UN Office on Genocide Prevention and the Responsibility to Protect, 18 June 2019) ('Strategy and Plan of Action').*
[ii] Cathrine Thorleifsson and Joey Düker 'Lone Actors in Digital Environments' (Luxembourg: Publications Office of the European Union, 2021) https://home-affairs.ec.europa.eu/system/files/2021-10/ran_paper_lone_actors_in_digital_environments_en.pdf
[iii] Wiedlitzka, S., Mazerolle, L., Fay-Ramirez, S., and Miles-Johnson, T, 'Perceptions of Police Legitimacy and Citizen Decisions to Report Hate Crime Incidents in Australia' *International Journal for Crime, Justice and Social Democracy* (2018) https://doi.org/10.5204/IJCJSD.V7I2.489.
[iv] 'The Islamophobia Register Australia was founded on 17 September 2014 in response to the growing anecdotal evidence suggesting a rise in incidents of Islamophobia: https://islamophobia.com.au/about-us/
[v] Zena Chamas and Mazoe Ford*, Islamophobic and anti-Semitic incidents in Australia at unprecedented levels as the Israel-Gaza war rages (*Australian Broadcasting Corporation, Online, 1 Dec 2023*)* *https://www.abc.net.au/news/2023-12-02/rise-in-islamophobia-antisemitism-amid-israel-gaza-war/103088666*
[vi] See Islamophobia in Australia 2014-2021 *https://researchoutput.csu.edu.au/ws/portalfiles/portal/313346505/UPDATED_IslamophobiaInAustralia_ReportIV_digital_lowres_spread_update.pdf ('Islamophobia 2021 report')*
[vii] Islamophobia 2021 report, pp.2.
[viii] *Iner, D. (2023). A "Reasonable" and "Excusable" Violence: The Spread of Anti-Muslim Violence Through the Machinery of Media, Social Media and Trigger Events. In: Bhatia, M., Poynting, S., Tufail, W. (eds) Racism, Violence and Harm. Palgrave Studies in Crime, Media and Culture. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-031-37879-9_7*
[ix] Women endure most Islamophobia in Australia, study finds' (BBC, Online, 10 July 2017) https://www.bbc.com/news/world-australia-40552201
[x] Muslim marginalisation in legislative processes has been documented in the United States, see for example: Nazita Lajevardi, 'Access Denied: Exploring Muslim American Representation and Exclusion by State Legislators' (2020) 8(5) *Politics, Groups, and Identities* 957 ('Access Denied').
[xi] *Robert M. Cover, The Supreme Court, 1982 Term—Foreword: Nomos and Narrative, 97 Harv. L. Rev. 4, 4–5 (1983).").*
[xii] *What is Factiva? Dow Jones Professional (https://www.dowjones.com/professional/factiva/)*
[xiii] The Snitch, Law & Order with Ava Benny-Morrison and Brenden Hills, 'Race Hate' (Daily Telegraph, Online, 22 November 2020).
[xiv] Ibid.
[xv] Janet Albrechtsen, 'Condemnation is our best weapon against vile speech' (The Australian, Online, 14 October 2023).
[xvi] Jessica McSweeney, Michael McGowan and Michaela Whitbourn, 'Police review finds no evidence 'gas the Jews' phrase chanted at Sydney Opera House protest' (Sydney Morning Herald, *Online*, February 2 2024) https://www.smh.com.au/national/nsw/police-review-finds-no-evidence-antisemitic-phrase-chanted-at-sydney-opera-house-protest-20240202-p5f1v7.html
[xvii] Ibid.
[xviii] James O'Doherty and Tamaryn McGregor, 'Toothless': Urgent review after protest vitriol (Daily Telegraph, Online, 13 November 2023)
[xix] Janet Albrechtsen, 'Condemnation is our best weapon against vile speech' (The Australian, Online, 14 October 2023).
[xx] Chris Merritt, 'Legislation should not be selectively enforced' (The Australian, Online, 10 November 2023).
[xxi] Mohammad Alfares, Alexi Demetriadi 'Anti-Semitism 'unchecked' amid radical sermons' (The Australian, Online, 3 January 2024).
[xxii] Alexi Demetriadi 'Sheik hate rants must stop: Burke' (The Australian, Online, 4 January 2024)
[xxiii] Alexi Demetriadi 'Clerics trigger hate-speech probe' (The Australian, Online, 18 January 2024)
[xxiv] Daisy Dumas, 'Islamophobic and antisemitic incidents record large spike in Australia, advocates say' (The Guardian, Online, 9 Nov 2023) https://www.theguardian.com/australia-news/2023/nov/10/islamophobic-and-antisemitic-incidents-rise-in-australia-advocates-say
[xxv] Zena Chamas, 'Anti-Palestinian vandalism in Melbourne comes amid rise in reported Islamophobic attacks' (ABC News, Online, 7 Jun 2024).

[xxvi] See for example: Daisy Dumas, 'Homemade bomb planted on car at Sydney home flying Palestinian flag' (The Guardian, Online, 7 January 2024); and Eliza Barr 'Man behind 'fake Molotov cockail' could face more charges (Southern Courier, Online, 26 March 2024).
[xxvii] Aymon Bertah 'Man allegedly left suspicious item for Palestine supporter' (Southern Courier, Online, 8 March 2024).
[xxviii] David Estcourt and Alex Crowe ''It won't silence us': Islamophobic graffiti sprayed in woman's driveway referred to police' (*The Age,* Online, 8 June 2024) https://www.theage.com.au/national/victoria/death-to-palestine-islamophobic-graffiti-sprayed-in-woman-s-driveway-referred-to-police-20240608-p5jk8i.html
[xxix] 'Terrorist slur against Sydney primary school boy prompts 'massive concern' from NSW premier' (The Guardian, Online, 27 November 2023) https://www.theguardian.com/australia-news/2023/nov/27/racism-slur-terrorist-sydney-primary-school-premier-chris-minns-speech
[xxx] Ibid.
[xxxi] New South Wales Council for Civil Liberties, 'Media Statement: S.93Z Amendments Should Be Referred to the Standing Issues Committee' (30 November 2023) https://www.nswccl.org.au/media_statement_s93z_amendments_referred_standing_issues_committee
[xxxii] See: D Luong et al, *Review of the Effectiveness of s 93Z of the Crimes Act 1900 (NSW)* (Report, NSW Law Reform Commission, 19 April 2024) <https://opus.lib.uts.edu.au/handle/10453/178497>.
[xxxiii] Ibid, page 26, specifying 'First Nations, Muslim and Vietnamese communities' and citing: Elyse Methven, 'It might be powerful; but is it offensive? Unpacking judicial views on the c-word' (forthcoming) Current Issues in Criminal Justice.
[xxxiv] Ibid, and citing the following on white supremacist attitudes in the NSW Police Force: Paul Gregoire, Activists Accuse Police of Heavy-Handed Tactics and Signalling White Supremacist Tendencies (Sydney Criminal Lawyers, online 8 June 2021) <https://www.sydneycriminallawyers.com.au/blog/police-once-again-signal-white-supremacist-tendencies/>, Paul Gregoire, 'Calls on Police Minister to Curb Officers Flaunting Insignia Linked to White Supremacy' (Sydney Criminal Lawyers, online, 15 October 2021) https://www.sydneycriminallawyers.com.au/blog/police-once-again-signal-white-supremacist-tendencies/
[xxxv] Wiedlitzka, S., Mazerolle, L., Fay-Ramirez, S., & Miles-Johnson, T. (2018). Perceptions of Police Legitimacy and Citizen Decisions to Report Hate Crime Incidents in Australia. *International Journal for Crime, Justice and Social Democracy*. https://doi.org/10.5204/IJCJSD.V7I2.489
[xxxvi] 'The FBI's Trojan Horse? | ACLU', *American Civil Liberties Union* (20 September 2013) <https://www.aclu.org/news/national-security/fbis-trojan-horse> ('The FBI's Trojan Horse?').
[xxxvii] Nino Bucci, 'How Australian undercover police 'fed' an autistic 13-year-old's fixation with Islamic State' (The Guardian, *Online,* 2 February 2024) https://www.theguardian.com/australia-news/2024/feb/03/australian-undercover-police-autistic-13-year-old-fixation-islamic-state
[xxxviii] Ibid.
[xxxix] "Engagement & Hate Crime Unit, Counter Terrorism & Special Tactics Command" in 'Hate Crime Policy Statement' (NSW Police Force, D/2022/374281) https://www.police.nsw.gov.au/__data/assets/pdf_file/0008/795761/hate-crime-policy-statement.pdf
[xl] See for example: Choudhury, T., & Fenwick, H. (2011). The impact of counter-terrorism measures on Muslim communities. *International Review of Law, Computers & Technology*, 25, 151 - 181. https://doi.org/10.1080/13600869.2011.617491. Conversely, on how procedural justice has a positive correlation with intention to report threats to police: Murphy, K., Cherney, A., & Teston, M. (2019). Promoting Muslims' Willingness to Report Terror Threats to Police: Testing Competing Theories of Procedural Justice. *Justice Quarterly*, 36, 594 - 619. https://doi.org/10.1080/07418825.2018.1437210.
[xli] United Nations, 'What Is Hate Speech?', *United Nations* <https://www.un.org/en/hate-speech/understanding-hate-speech/what-is-hate-speech>.
[xlii] See: 'Hate Speech' in Cambridge Dictionary (accessed on 12 June 2024) <https://dictionary.cambridge.org/us/dictionary/english/hate-speech>. See also: Katharine Gelber, Speech Matters: Getting Free Speech Right (University of Queensland Press, 2011), 83.
[xliii] David Kaye, *Report of the Special Rapporteur on the Promotion of the Right to Freedom of Opinion and Expression*, (9 October 2019, Un Doc A/74/486) https://www.ohchr.org/sites/default/files/Documents/Issues/Opinion/A_74_486.pdf
[xliv] Alexi Demetriadi 'Breakthrough on hate-speech laws' (The Australian, Online, 10 June 2024)

[xlv] Under s 18C of the Racial Discrimination Act 1975 (Cth), it is unlawful for a person to do an act, otherwise than in private, if: (a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and (b) the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.
[xlvi] *Anti-Discrimination Act 1977* (NSW) s 49ZE.
[xlvii] International Covenant on Civil and Political Rights, art 19(3).
[xlviii] *Criminal Code Act 1913* (WA) ss.76-80.
[xlix] For their civil provisions, see: *Anti-Discrimination Act 1992* (NT) s 28 and *Anti-Discrimination Act 1998* (Tas) s17, respectively.
[l] For Victoria, see: Racial and Religious Tolerance Act 2001 (Vic), s25(1): *intentionally engage in conduct that the offender knows is likely to incite hatred against that other person and threaten, or incite others to threaten, physical harm*; and s25(2): *knowingly engage in conduct with the intention of inciting serious contempt for, or revulsion or severe ridicule of.* For Queensland, see: *Anti-Discrimination Act 1991* (Qld) s131A: *knowingly or recklessly incite hatred towards, serious contempt for, or severe ridicule… in a way that includes ... threatening physical harm … or inciting others to threaten physical harm.* For South Australia see: *Racial Vilification Act 1996* (SA) s4: incite hatred towards, serious contempt for, or severe ridicule… in a way that includes ... threatening physical harm … or inciting others to threaten physical harm.
[li] See for example: https://christianconcern.com/ccpressreleases/police-drop-case-against-tory-councillor-arrested-forhate-crime-for-supporting-christian-free-speech/; https://www.dailymail.co.uk/news/article-7293257/Policearrest-preacher-64-grab-Bible-promoting-Christianity.html.
[lii] *Fletcher v Salvation Army Australia* (Anti-Discrimination) [2005] VCAT 1523 [18] (Fletcher) [9].
[liii] Ibid.
[liv] (2013) 249 CLR 92 [122] (Hayne J).
[lv] Full statement available at: 'Israel/oPt: Enabling Human Rights Defenders and Peaceful Protests Vital for Achieving Ceasefire and Lasting Peace, Say UN Experts', *OHCHR* <https://www.ohchr.org/en/statements/2024/02/israelopt-enabling-human-rights-defenders-and-peaceful-protests-vital-achieving> ('*Israel/oPt*').
[lvi] A/HRC/22/17/Add.4, appendix.
[lvii] 'Summary of the Order of 26 January 2024, International Court of Justice <https://www.icj-cij.org/node/203454>.
[lviii] 'Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for Arrest Warrants in the Situation in the State of Palestine | International Criminal Court' <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state> ('*Statement of ICC Prosecutor Karim A.A. Khan KC*').