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The Hon. Michael Kirby AC CMG

20 December 2024

Committee Secretary  
Parliamentary Joint Committee on Human Rights  
Parliament House  
Canberra ACT 2600

Dear Committee,

### **Inquiry into Antisemitism at Australian Universities**

1. Liberty Victoria is a peak civil liberties organisation in Australia that has worked to defend and extend human rights and freedoms in Victoria since 1936. For more than eighty years we have advocated for civil liberties and human rights. We seek to promote Australia's compliance with the human rights recognised by international law and in Victoria under the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*. We are a frequent contributor to federal and state committees of inquiry, and we campaign extensively for better protection of human rights in the community.
2. We welcome the opportunity to provide a submission to the Inquiry into Antisemitism at Australian Universities. We support actions of government and universities to address antisemitism on university campuses and in Australia generally. We are very concerned by increasing racial and religious intolerance, and have made submissions and given evidence, at both State and Federal inquiries, on the worrying re-emergence of far-right extremism, an issue which of course is unpinned by antisemitism.<sup>1</sup>

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<sup>1</sup> See, eg, our 2024 submission to the Commonwealth Senate Legal and Constitutional Affairs Committee's Inquiry into Right Wing Extremist Movements in Australia, <<https://libertyvictoria.org.au/sites/default/files/Sub25.pdf>> and our evidence

3. We consider that access to education without fear of discrimination or persecution should be the right of all persons and an important feature of a healthy democratic society.
4. We acknowledge that the tragic history of the Jewish people is marked by discrimination and persecution, including the Holocaust, and that such a history creates a legitimate fear of the threat of continuing persecution.
5. In that context, it is appropriate to be vigilant when responding to a rise in incidents of antisemitism. As the purpose of this inquiry is to consider the prevalence, nature and experience of antisemitism at universities, we do not wish to pre-empt the findings. However, the widespread reports of a significant increase in antisemitic incidents is plainly concerning.
6. This submission will seek to address some key points relating to the principles of protecting people from discrimination and vilification as well as the protection of freedom of speech and political expression. The discussion of these issues is sensitive. We consider that it is important for Australian society, and in particular for the role that universities play in or society, that all perspectives are explored in good faith, in the spirit of openness, honesty and compassion with a view to reducing the future incidence of harm and hurt.

### ***Definition of antisemitism***

7. There is an intersection of racial and religious identity specific to the Jewish community which can result in a confluence of racial and religious discrimination. We consider this provides a basis for seeking an appropriate definition of antisemitism that encompasses this special identity and ensures protection from discrimination on the basis of a person's Jewish identity.
8. However, there is an important debate about how far the definition of antisemitism should extend.<sup>2</sup>

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<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommsen%2F28084%2F0000%22>; and our 2022 submission to the Victorian Legal and Social Issues Committee's Inquiry into Extremism in Victoria, <https://libertyvictoria.org.au/sites/default/files/220513%20LV%20Submission%20to%20the%20Extremism%20Inquiry.pdf> and our evidence <https://www.parliament.vic.gov.au/4af734/contentassets/45187de44daf4abaa1fe6395059e237a/1.-final-liberty-victoria.pdf>

<sup>2</sup> See, eg Caitlin Cassidy, "Australian universities split on decision to adopt controversial definition of antisemitism", *The Guardian*, 6 Feb 2023 <https://www.theguardian.com/australia-news/2023/feb/06/australian-universities-split-on-decision-to-adopt-controversial-definition-of-antisemitism>

9. A definition of antisemitism should not include any reference to the State of Israel or conflate criticism or even condemnation of the actions taken by Israel with antisemitism.
10. Criticism of the State of Israel, in particular the actions of its government, are not inherently antisemitic. Importantly, Jewish people do not and should not be presumed to hold a single uniform set of beliefs on any issue. To make such a presumption is of itself simplistic, patronising and prejudiced. It raises the spectre of accusations of antisemitism for making criticism of the Israeli government, including for people who identify as Jewish. There are many important Jewish civil society groups that are appalled by the actions of the Netanyahu government, such as the Jewish Council of Australia. That includes not only the actions of the Netanyahu government in Gaza and the West Bank, but the weakening of the rule of law and the separation of powers in Israel including the attempted diminution of the judiciary. There have been significant concerns raised by Jewish civil society groups about authoritarian politics in Israel.
11. There is a real danger that accusations of antisemitism are being weaponised by supporters of the current government to attempt to invalidate legitimate criticism and shame critics into silence. History demonstrates that the consequences of antisemitism are so extreme that it is rightly considered deeply immoral and unacceptable in Australian society. Consequently, the mere accusation, let alone a legal conclusion, of antisemitism carries significant opprobrium.
12. For that reason, any attempt to define antisemitism must be undertaken with great care, not only because of the serious consequences to those who offend the definition, but because an extreme or arbitrary definition could operate counterproductively to weaken the significance that should be placed on it.

***Freedom of speech, political expression and peaceful assembly***

13. The human rights of freedom of expression and peaceful assembly are well-recognised under international law. These rights are not absolute, but as the United Nations Human Rights Committee has recognised, freedom of opinion and expression are “the foundation stone for every free and democratic society”.<sup>3</sup> Any limitation to those rights must be necessary and proportionate.
14. In Australia, we of course also have the implied freedom of political expression under our Constitution.

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<sup>3</sup> General Comment No 29, Article 19, Freedoms of Opinion and Expression.

15. A definition of antisemitism should not extend to criticism of the policies and actions of the State of Israel. It should not extend to legitimate debate about the proper borders of the State of Israel.
16. Where questions or comments are raised in a manner that questions the inherent right of Jewish people to exist, to have a sovereign state or to freely practise their religion or culture it can and should be called out as antisemitic and condemned. As too should the use of antisemitic tropes used by the Third Reich.
17. These issues should not be confused with questions as to the history and founding of Israel or any other matter relating to its actions as sovereign state. We would raise the same concern with any suggestion that the history of any other state or government should not be subject to deep and critical analysis, including Australia.
18. Universities are places of particular importance as crucibles of learning. Students should be encouraged to be highly critical and to question the world around them. This requires both safety and freedom. Universities have a unique challenge in helping students learn to understand and embrace respectful, if impassioned, debate and difference of views without accepting discrimination or vilification.
19. Universities may also be the first true “immersion” in broader society for many students. In particular, students will often be drawn from communities that may be internally homogeneous – where most people look, speak, think and behave like them or in a way that is predictable and familiar. That may include students that have grown up in communities with significant racial and religious conformity.
20. We need to be able to have robust debate at our universities, including about topics that may be difficult, uncomfortable and challenging. Of course that should not extend to people having to endure vilification or hate speech. However, when done in good-faith, people should be free to express themselves robustly and critically without fear of allegations of racism being made against them.

### ***The importance of peaceful protest***

21. Protest is critical in a functioning democracy, and we strongly oppose limits on the right to peaceful protest on university campuses, or more broadly. Any limitations on the right to freedom of expression and peaceful assembly must be necessary and proportionate.

22. It is regularly the case that students bear the brunt of authoritarian politics, and that history ultimately demonstrates that students have been at the vanguard of meaningful and ultimately constructive social change.
23. We acknowledge the need for universities to protect their students, their access to education and their freedom to safe movement on campus. There is a concurrent obligation to foster freedom, including freedom of thought and expression.
24. It should not be ignored that many of those calling to “break up” students protests are sympathetic to a more authoritarian form of politics and more oppressive policies, and regularly include those who identify with, or wish to court, the far-right. Those actors have a long-standing political desire to weaken freedom of expression and peaceful assembly, whether that extends to other protest movements such as the anti-racism movement including Black Lives Matter and the environmental movement. These actors often have a deep-seated animosity towards institutions of higher learning.
25. We must be vigilant to ensure that those calling for greater restrictions on student protests are not, in fact, seeking to weaponise this issue for other, authoritarian ends, and that bad-faith actors do not seek to shoehorn the legitimate concern about rising incidents of antisemitism into weakening protest rights and the foundations of our democracy.
26. As we have previously submitted to this Committee, both in writing and when giving evidence, the best way to protect the human rights of all people, including students at universities, would be to have robust federal human rights legislation designed to balance competing rights, which would of course include freedom of expression, freedom of assembly, freedom of religion and freedom from vilification.<sup>4</sup>
27. Thank you for the opportunity to make this submission. Please do not hesitate to contact Michelle Bennett, President of Liberty Victoria, through the Liberty Victoria office at [info@libertyvictoria.org.au](mailto:info@libertyvictoria.org.au).

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<sup>4</sup> See our submission to the Parliamentary Joint Committee on Human Rights Inquiry into Australia’s Human Rights Framework, <<https://libertyvictoria.org.au/sites/default/files/Submission%20155.pdf>>, and our evidence <[https://parlinfo.aph.gov.au/parlInfo/download/committees/commjnt/27260/toc\\_pdf/Human%20Rights%20Joint%20Committee%202023%2008%2025%20Official.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/commjnt/27260/toc_pdf/Human%20Rights%20Joint%20Committee%202023%2008%2025%20Official.pdf;fileType=application%2Fpdf)>.