

**Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967**

Ref.: AL AUS 2/2026  
(Please use this reference in your reply)

27 February 2026

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, pursuant to Human Rights Council resolutions 58/14, 52/9, 59/4, 52/4 and 1993/2A.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning restrictions on the right to protest under recent amendments to the laws of New South Wales following the Bondi terrorist attack of 14 December 2025, and the application of those laws to restrict protest since 24 December 2025. We are concerned that the laws and their operation are not consistent with Australia's obligations to respect the rights to freedom of peaceful assembly, freedom of expression, freedom of association, the right to take part in public affairs, and non-discrimination under articles 19, 21, 22, 25 and 2 and 26 of the International Covenant on Civil and Political Rights. As a State party to the ICCPR all Australian public authorities, including the state of New South Wales and its component parts such as the police, Police Minister, and the judiciary, are required by international law to respect and protect the rights under the ICCPR.

According to the information received:

Following the Bondi terrorist attack of 24 December 2025, the New South Wales Parliament amended various New South Wales laws to restrict the right to protest. Section 23B of the Terrorism (Police Powers) Act (NSW) authorises the NSW Commissioner of Police or a Deputy Commissioner of Police to make a "public assembly restriction declaration" (PARD) to restrict the holding of public assemblies in declared areas, where satisfied that the holding of public assemblies in the area to which the declaration applies would be likely to cause:

- (i) a reasonable person to fear—
  - (A) harassment, intimidation or violence, or
  - (B) for the person's safety, or

- (ii) a risk to community safety, including the safety of participants in public assemblies in the area.

A PARD ends after 14 days but may be further extended for 14-day periods to a maximum of 90 days (s 23C).

Under the new s 27A of the Summary Offences Act 1988 (NSW), a public assembly cannot be authorised under ss 23 or 26 of the Act in an area covered by a PARD. This has the effect of depriving individuals of the protection of s 24 of the Act concerning participation in authorised public assemblies. Under s 24, individuals cannot be guilty of any offence relating to participating in an unlawful assembly or the obstruction of any person, vehicle or vessel in a public place, in relation to their conduct for the purpose only of participating in that public assembly.

The necessarily unauthorised nature of assemblies in declared areas exposes protesters to police “move on” directions for obstructing traffic under s 200(4) of the Law Enforcement (Powers and Responsibilities) Act (NSW), which are not available where protests are authorised. In addition, under the new section 200(5) of the same Act, a PARD deprives protesters of the protection under s 200(2) of the Act against other police “move on” directions to individuals or groups under the Act. These include (s 197(1)) where a police officer believes on reasonable grounds that a person’s behaviour or presence in a public place, inter alia, (a) is obstructing another person or persons or traffic, (b) constitutes harassment or intimidation of another person or persons, or (c) is causing or likely to cause fear to another person or persons, so long as the relevant conduct would be such as to cause fear to a person of reasonable firmness. But for s 200(5), move on directions can be given in relation to an apparently genuine demonstration or protest, a procession, or an organised assembly principally only where a police officer believes on reasonable grounds that the direction is necessary to deal with a serious risk to the safety of the person to whom the direction is given or to any other person (s 200(3)), the assembly is unauthorised (s 200(4)), or a place of worship is concerned under the new s 200AA.

A PARD was made on 24 December 2025 and extended on 6 January 2026, 20 January 2026, 29 January 2026 and 3 February 2026,<sup>1</sup> on the grounds of “community safety, including the safety of participants in public assemblies in the areas”. The other grounds under s 23B have thus far not been invoked. The PARD applies to all protests, irrespective of the cause. The PARD was terminated on 17 February 2026.

From 24 December 2025 to 20 January 2026 – a period of about one month – the PARD applied to the Central, Northwest and Southwest Metropolitan Police Regions, covering the majority of the population of 5.5 million people in Australia’s largest city. The area to which the PARD applied was narrowed to central Sydney and part of the eastern suburbs from 20 January 2026.

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<sup>1</sup> [https://www.police.nsw.gov.au/about\\_us/information\\_of\\_interest\\_to\\_the\\_community/public\\_assembly\\_restriction\\_declarations](https://www.police.nsw.gov.au/about_us/information_of_interest_to_the_community/public_assembly_restriction_declarations).

The Commissioner is not required to provide evidence or reasons substantiating his belief that s 23B is satisfied. In public statements the Commissioner has explained that the PARD is justified “in consideration of the ongoing community safety impacts of further protests in the wake of the Bondi attack – which was declared a terrorist-incident at the time”, and to “enhance community safety and reduce community tension following the Bondi terror attack”, including because “further protest activity at this time is likely to heighten tension, generate division in the community and present a risk to community safety”.<sup>2</sup> The Commissioner has also referred to “the potential for counterprotest” and that “a number of people will be absolutely upset” if protests are held. The extension on 3 February 2026 was in part justified by reference to the official visit to Australia of the President of Israel in the week of 9 February 2026.

Without prejudging the accuracy of these allegations, we are concerned that the laws and their operation are not consistent with the rights to freedom of peaceful assembly, freedom of expression, freedom of association, the right to take part in public affairs, and non-discrimination under the ICCPR.

#### *The right of peaceful assembly*

Article 21 of the ICCPR protects only “peaceful” assembly, meaning an absence of “widespread and serious violence” involving “physical force against others that is likely to result in injury or death, or serious damage to property” (general comment No. 37, para. 15). Mere pushing and shoving or disruption of vehicular or pedestrian movement or daily activities do not amount to “violence” (ibid). Non-violent civil disobedience and direct-action campaigns are also peaceful assemblies (para. 16). In issuing the PARD, the NSW authorities have not provided any evidence that the potential protests to which the PARD in force since 24 December 2025 is directed would not be considered “peaceful” assemblies under the high threshold outlined above. Rather, the key question is whether restrictions on peaceful protests could nonetheless be justified under the second sentence of article 21 of the ICCPR.

#### *Restrictions on the right of peaceful assembly*

Restrictions on the right of peaceful assembly may only be imposed in accordance with the grounds specified in the second sentence of article 21, and these must be “narrowly drawn” (general comment No. 37, para. 8). The NSW laws, and their application since 24 December 2025, undoubtedly constitute a restriction on the right of peaceful assembly. Individuals and groups are deprived of the ordinary protections available for authorised protests, including protections against certain criminal liabilities and police move on directions. These protections under NSW law in turn reflect the protected scope of the right of peaceful assembly under article 21 of the ICCPR, which recognises that a considerable level of obstruction of persons and traffic and disruption of ordinary life are both commonplace and tolerable in the legitimate exercise of democratic protest, subject to certain recognised limits (see e.g. general comment No. 37, paras. 7, 44, and 47). The issue is whether restrictions are justified by the requirements of the second sentence of article 21 of the ICCPR, namely legality,

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<sup>2</sup> [https://www.police.nsw.gov.au/news/news\\_article?sq\\_content\\_src=%2BdXJsPWh0dHBzJTnBJTJGJTJGZtWJpenByZC5wb2xpY2UubnN3Lmdvdi5hdSUyRm1lZGhJTJGMTIyODAzLmh0bWwmYWxsPTE%3D](https://www.police.nsw.gov.au/news/news_article?sq_content_src=%2BdXJsPWh0dHBzJTnBJTJGJTJGZtWJpenByZC5wb2xpY2UubnN3Lmdvdi5hdSUyRm1lZGhJTJGMTIyODAzLmh0bWwmYWxsPTE%3D).

legitimate aim and necessity and proportionality. The requirement of non-discrimination under article 2 of the ICCPR complements these requirements.

### *Legitimate aim*

Article 21 specifies six permissible grounds for restricting the right of peaceful assembly where it is necessary in a democratic society. Two of these – “the protection of public health or morals” – are irrelevant to any justification of the grounds for a Public Assembly Restriction Declaration under s 23B of the Terrorism (Police Powers) Act or the making of such Declaration since 24 December 2025.

The “interests of national security” would not support s 23B, despite its location in a counter-terrorism law and its enactment coming in response to the Bondi attack. The threshold for national security under article 21 of the ICCPR concerns exceptional restrictions that are “necessary to preserve the State’s capacity to protect the existence of the nation, its territorial integrity or political independence against a credible threat or use of force” (general comment No. 37, para. 42). A risk to community safety, including at the place of an assembly – at issue in these proceedings – or fears of harassment, intimidation or violence, or of personal safety under s 23B come nowhere near this high threshold.

The grounds in s 23B could potentially come within the legitimate aims of “public safety”, “public order”, and/or the protection of the rights and freedoms of others. To fall within the ground of “public safety”, it “must be established that the assembly creates a real and significant risk to the safety of persons (to life or security of person) or a similar risk of serious damage to property” (general comment No. 37, para. 43). Speculative, hypothetical, minor or remote risks are not sufficient. The focus must foremost be on the specific assembly or assemblies concerned. Evidence as to the conduct of recent comparable protests, such as the pro-Palestine protests on the Harbour Bridge and protests in relation to Australia Day may be relevant in assessing the likelihood and severity of the risks of future like protests, but generalized extrapolations from past protests cannot be determinative given that each protest is contextually distinct.

The threshold of a mere “risk to community safety” under s 23B falls short of the more demanding standard under article 21 of the ICCPR, which requires a “real and significant risk” to the safety of persons (to life or security of person) or a similar risk of serious damage to property”. Section 23B could accordingly authorise restrictions that are not in pursuit of a legitimate aim and thus unjustifiably restrict the right of peaceful assembly. The Commissioner of Police has indicated that the PARD has been applied not only “to ensure community safety, but also to ensure the community *feels safe*”<sup>3</sup> (emphasis added), which appears to not only exceed statutory authority under s 23B but also goes well beyond the lawful grounds of restriction under article 21 of the ICCPR.

The ground of “public order” concerns “the sum of the rules that ensure the proper functioning of society, or the set of fundamental principles on which society is founded, which also entails respect for human rights, including the right of peaceful

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<sup>3</sup> “Public Assembly Restriction Declaration extended for parts of Sydney”, NSW Police News, 3 February 2026.

assembly” (general comment No. 37, para. 44). The Human Rights Committee has indicated that State parties “should not rely on a vague definition of “public order” to justify overbroad restrictions”, emphasised that “[p]eaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration, and noted “public order” is a higher threshold than mere “law and order” (ibid). Since the focus of the PARD at issue in these proceedings is based on a risk of community “safety”, rather than public order, it appears to align more closely with the “public safety” ground in article 21, and should be assessed accordingly, although there is overlap between the categories.

Restrictions to protect “the rights and freedoms of others”, including of victims of terrorism, concerns rights recognised under the ICCPR, including of those not participating in the assembly (para. 47). This includes the hate speech prohibition on “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” under article 20(2) of the ICCPR. Again, the Committee has emphasised that “assemblies are a legitimate use of public and other spaces, and since they may entail by their very nature a certain level of disruption to ordinary life, such disruptions must be accommodated, unless they impose a disproportionate burden, in which case the authorities must be able to provide detailed justification for any restrictions” (ibid).

#### *Hate speech and incitement to violence*

To the extent that any risk to community safety justifying the PARD is considered based on risks of hate speech, the applicable international legal standards must define the scope of such risks and thus identify the permissibility of restrictions. The hate speech prohibition in article 20(2) of the ICCPR (“advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”) is additionally subject to the general requirements for restrictions on freedom of expression under article 19(3), including legitimate aim and legality, necessity and proportionality, including least intrusive means (general comment No. 34, para. 34; see also Annex to this letter) – all similar to the test in the second sentence of article 21 concerning freedom of peaceful assembly. Article 20(2) requires a high threshold because, as a matter of fundamental principle, limitation of speech must remain an exception (*Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*, A/HRC/22/17/Add.4, annex, para. 18). Article 20(2) cumulatively requires advocacy of hatred; advocacy which constitutes incitement; and incitement likely to result in discrimination, hostilities or violence (A/67/357, para. 43).

Authoritative international guidance on the interpretation of article 20(2) is the Rabat Plan of Action. Since overbroad definitions of terms such as hatred, hostility, advocacy and incitement can lead to arbitrary application, States should narrowly define each term (ibid. para. 21, such as based on the *Camden Principles on Freedom of Expression and Equality 2009*, principle 12 – see Annex to this letter). The Rabat Plan of Action recommends a six-part test for assessing whether expression constitutes criminal incitement to ethnic, racial or religious hatred, with reference to context, speaker, intent, content and form, extent, and likelihood of imminent harm occurring. These require careful assessment to support any determination by the NSW authorities

that assemblies as a whole pose such a serious risk of hate speech that they could be justifiably restricted by the PARD for threatening the rights of others.

#### *Incitement to terrorism*

Any restrictions on expression to prevent incitement to terrorism must likewise satisfy the requirements of article 19(3) of the ICCPR mentioned above.

Best practice international guidance has been provided by the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Professor Martin Scheinin, and consistently followed by his successors and other UN experts. Thus, any offence of incitement to terrorism:

- a. Must be limited to the incitement to conduct that is truly terrorist in nature, as properly defined according to best practice international standards.
- b. Must restrict the freedom of expression no more than is necessary for the protection of national security, public order and safety or public health or morals.
- c. Must be prescribed by law in precise language, including by avoiding reference to vague terms such as “glorifying” or “promoting” terrorism.
- d. Must include an actual (objective) risk that the act incited will be committed.
- e. Should expressly refer to two elements of intent, namely intent to communicate a message and intent that this message incite the commission of a terrorist act.
- f. Should preserve the application of legal defences or principles leading to the exclusion of criminal liability by referring to “unlawful” incitement to terrorism.<sup>4</sup>

#### *Grounds of restriction are exhaustive*

The grounds of restriction under article 21 of the ICCPR are exhaustive. Protests cannot be lawfully restricted on other bases, such as the mere fact that a terrorist attack has occurred; that protests could offend or hurt the feelings of parts of the community, be “divisive”, create “tensions”, or undermine “cultural safety or sensitivity”; or that protests would simply inconvenience the authorities or the public or be a burden on the resources of law enforcement.

In this regard, international human rights law accepts that the right of peaceful assembly may involve the legitimate and protected expression of contentious ideas or goals, including those that shock, offend and disturb or that are disagreeable to the authorities or even to majority opinion (general comment No. 37, para. 7). Restrictions should be content neutral and not relate to the message conveyed by the assembly,

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<sup>4</sup> A/HRC/16/51, para. 31. See also A/HRC/40/52, para. 37.

including “explicitly or implicitly, to stifle expression of political opposition to a government, challenges to authority, including calls for democratic changes of government, the constitution or the political system, or the pursuit of self-determination” (paras. 48 and 49). All forms of expression at an assembly are protected, including speech, flags, uniforms, signs and banners, and any other equipment or structure needed to convey their message (paras. 51 and 58).

Whereas the grounds under s 23B must be consistent with article 21 of the ICCPR, any PARD issued under the Act must also satisfy the legitimate aim criteria in the factual circumstances, which is a question of evidence.

### *The legality of restrictions*

The legality requirement under article 21 of the ICCPR, that restrictions must be “in conformity with the law”, is not a purely formal requirement of statutory authority and administrative decisions based on it, but further requires that the laws “must be sufficiently precise to allow members of society to decide how to regulate their conduct and may not confer unfettered or sweeping discretion on those charged with their enforcement” (general comment No. 37, para. 39).

In this respect, the reference in s 23B of the Terrorism (Police Powers) Act to a “risk to community safety”, insofar as it extends beyond the concrete case of “the safety of participants” in the assembly, is vague and overbroad and does not satisfy the requirement of legality. The terms “risk” and “community safety” are nebulous and not defined by reference to any specific offences or other concrete harms identified under other legislation.

This deficiency is further evident in the practical operation of s 23B. The Commissioner is not required to provide evidence or reasons substantiating his belief that a ground under s 23B is satisfied. Public statements by the Commissioner justifying the PARD have been limited to sweeping assertions about highly general and indeterminate risks to “community safety”, the need to reduce “community tension” and “division”, “the potential for a counterprotest” of an unspecified nature, and the danger that “a number of people will be absolutely upset” if protests are held,<sup>5</sup> or that the visit of a foreign head of State might attract “much animosity”.<sup>6</sup>

### *The necessity and proportionality of restrictions*

Authorities must show that any restrictions are both necessary for and proportionate to at least one permissible ground for restrictions (general comment No. 37, para. 36). An assembly may only be prohibited “as a measure of last resort”, after first seeking “to apply the least intrusive measures” (paras. 37 and 40). States should ordinarily allow an assembly to take place and decide afterwards whether measures should be taken regarding possible transgressions during the event, rather than imposing prior restraints in an attempt to eliminate all risks (para. 36). Any restrictions on participation in peaceful assemblies should be based on a differentiated or individualized assessment of the conduct of the participants and the assembly

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<sup>5</sup> Press Conference of the NSW Police Commissioner, 6 January 2026.

<sup>6</sup> Press Conference of the NSW Police Commissioner, 3 February 2026.

concerned; and blanket restrictions on peaceful assemblies are presumptively disproportionate (para. 38).

Since restrictions must be “necessary in a democratic society”, the assessment must consider what is necessary and proportionate in response to “a pressing social need” and “in the context of a society based on democracy, the rule of law, political pluralism and human rights, as opposed to being merely reasonable or expedient”: (para. 40). Proportionality “requires a value assessment, weighing the nature and detrimental impact of the interference on the exercise of the right against the resultant benefit to one of the grounds for interfering. If the detriment outweighs the benefit, the restriction is disproportionate and thus not permissible” (ibid). As mentioned, assemblies with a political message enjoy heightened protection (para. 32) and this necessarily affects the assessment of proportionality.

#### *Application of the right to peaceful assembly to the laws*

The PARD issued on 24 December, as extended and amended since, does not satisfy the requirements of necessity and proportionality under article 21 of the ICCPR outlined above.

First, the PARD involves a blanket restriction on all protests, not limited to any rational connection to the Bondi terrorist attack invoked to justify it and any risks to community safety that could be plausibly associated with the aftermath, causes or context of that attack. It accordingly restricts protests on entirely unrelated issues, such as Indigenous rights and deaths in custody, climate change, foreign aggression, or serious human rights violations in other countries, where there is likely little or no out-of-the-ordinary risk to individuals or sections of the community. It would even restrict protests that advocate enhancing community safety against terrorism – for instance, calls for a Royal Commission into the Bondi attack, criticisms of law enforcement and intelligence failures by the NSW or Commonwealth authorities in preventing the Bondi attack, or the need to strengthen measures against antisemitism or to provide greater support to victims of the attack. This manifest overbreadth alone is sufficient to establish that the PARD is an unnecessary and disproportionate restriction on the right of peaceful assembly.

Second, as a blanket restriction on all protests, the PARD cannot possibly be based on an individual, evidence-based assessment of the characteristics of particular protests, planned protests, or likely protests as required by article 21 of the ICCPR, but makes acontextual assumptions about the inherent dangerousness of any and all protests in Australia’s largest city over protracted periods. The size, place and route, timing, organisers, objective, methods, risk mitigation measures and other critical factors pertaining to a protest vary from protest to protest, whereas the PARD indiscriminately restricts all protests regardless of their specific risk profiles. Only in exceptional cases, such as widespread civil unrest, could such blanket restrictions conceivably be proportionate.

Third, to the extent that there is sufficient evidence of risks to community safety, proportionality requires the application of the least intrusive restrictions to address the risk, particularly by focusing on the risks of individual behaviour and dealing with transgressions during an assembly rather than imposing prior restraints in an attempt to

eliminate all risks. Yet, the Terrorism (Police Powers) Act does not require any such assessment of alternative means for addressing and mitigating the risks, but permits a PARD to be issued merely where the authorities are satisfied that a bare risk exists. In practice, in issuing the PARD, the Commissioner of Police has given no indication or explanation that less invasive means would be insufficient, or even that alternative measures were considered. The Commissioner has admitted that “[o]verwhelmingly, we are pleased with the actions and behaviours of protesters, however, [only a] few continue to incite violence and cause fear and harm”.<sup>7</sup>

In this regard, the PARD’s preclusion of authorisation of protests itself impedes the likelihood of a proportionate response. The Human Rights Committee has indicated that notification regimes “are permissible to the extent necessary to assist the authorities in facilitating the smooth conduct of peaceful assemblies and protecting the rights of others” (general comment No. 37, para. 70). Precluding notification through a Form 1 notice thus prevents the authorities from working as cooperatively as possible with protest organisers to address any safety concerns in a proportionate manner. In addition, notification regimes “must not in practice function as authorization systems” and must not be used as a basis for dispersal of an assembly, including through unjustified “move on” directions for merely impeding pedestrians or traffic, including where such obstructions are ordinarily incidental to many protests (para. 73).

Fourth, the operative assumption underlying the PARD appears to be that the continuation of protests in favour of Palestinian rights, or critical of alleged Israeli violations of international law in Palestine, would entail risks to “community safety”. As mentioned, a mere risk to community safety is not a legitimate ground for restrictions under article 21 of the ICCPR; there must be a “real and significant risk” to the safety of life or personal security or of serious property damage. Further, where restrictions otherwise aim to protect the rights of others, they must be grounded, for example, in the stringent test for hate speech under article 20(2) of the ICCPR, which concerns incitement to violence or racial or religious hatred and does not capture, for instance, legitimate expression critical of Israel or other governments.

We are not aware of any evidence which substantiates the existence of any systematic, repeated threat to life or bodily integrity, or incitement to violence or hatred against Jewish people by assemblies as a whole that would warrant blanket restrictions in the nature of the PARD. To the extent that individuals within protests that have taken place relating to Israel and Palestine since 7 October 2023 have posed such threats, a proportionate response under article 21 of the ICCPR would involve taking appropriate law enforcement action against those individuals, utilizing the range of ample powers available, rather than indiscriminately restricting whole assemblies, and every assembly, when the PARD is in force. Blanket restrictions unjustifiably stigmatise all protesters as risks to community safety, thereby also potentially infringing the right to reputation under article 17 of the ICCPR – particularly where the power is situated in a counter-terrorism law, the immediate context is the asserted connection with the Bondi terrorist attack, and the wider context is Israel’s response to Hamas’ terrorist attack on Israel on 7 October 2023.

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<sup>7</sup> “Public Assembly Restriction Declaration extended for parts of Sydney”, NSW Police News, 3 February 2026.

In respect of the risk of counter-protest, the Human Rights Committee has emphasised that “[t]he fact that an assembly provokes or may provoke a hostile reaction from members of the public against participants, as a general rule, does not justify restriction”, and it is incumbent upon the authorities to take the necessary measures to protect the protest (general comment No. 37, para. 52). Only “in the exceptional case where the State is manifestly unable to protect the participants from a severe threat to their safety, restrictions on participation in the assembly may be imposed” (para. 52). Further, “[a]n unspecified risk of violence, or the mere possibility that the authorities will not have the capacity to prevent or neutralize the violence emanating from those opposed to the assembly, is not enough; the State must be able to show, based on a concrete risk assessment, that it would not be able to contain the situation, even if significant law enforcement capability were to be deployed” (ibid). From the evidence available, the PARD is not a justifiable restriction in the light of the extent and degree of community safety concerns arising from the pattern of protests, and very limited and peaceful counter-protests, in Sydney since 7 October 2023.

Fifth, the geographical scope of application of the PARD has been impermissibly excessive and has rendered it a disproportionate restriction. From 24 December 2025 to 20 January 2026 – a period of about one month – the PARD applied to the Central, Northwest and Southwest Metropolitan Police Regions, covering the majority of the population of 5.5 million people in Australia’s largest city. The area to which the PARD applied was narrowed to central Sydney and part of the eastern suburbs from 20 January 2026.

According to the Human Rights Committee, under article 21 of the ICCPR, any restrictions on the place of assemblies must “as far as possible, allow participants to assemble within sight and sound of their target audience, or at whatever site is otherwise important to their purpose” and any restrictions must be justified on a case-by-case basis (general comment No. 37, para. 53). Further, “[p]eaceful assemblies should not be relegated to remote areas where they cannot effectively capture the attention of those who are being addressed, or the general public. As a general rule, there can be no blanket ban on all assemblies in the capital city in all public places except one specific location within a city or outside the city centre, or on all the streets in a city”; restrictions may be only permitted in specific locations, such as particular parks or buildings (para. 55).

Sixth, the PARD has a substantial “chilling effect” on all protest causes and human rights defenders in Sydney and beyond, beyond those already engaging or intending to engage in protest. Restrictions must not be “aimed at discouraging participation in assemblies or causing a chilling effect” (general comment No. 37, para. 36). In considering the proportionality of a restriction on freedom of assembly, account must be taken of its chilling effect (*Christian Democratic People’s Party v. Moldova*, application No. 28793/02, European Court of Human Rights (2006), para. 77). The chilling effect is particularly pronounced where restrictions on protest emanate from counter-terrorism legislation, given the highly stigmatizing and deterrence effects of counter-terrorism powers and narratives.

### *Non-discrimination*

The right of peaceful assembly must be protected with full respect for non-discrimination and equality (general comment No. 37, paras. 8, 11, 24, 25 and 36). Restrictions must be “content neutral” and not related to the message conveyed by the assembly (paras. 22, 48 and 53). Thus, to the extent that the PARD is implicitly aimed largely at the perceived or assumed risks to community safety of protests critical of Israel or in favour of Palestinian rights, these restrictions may involve indirect discrimination on the basis of political opinion contrary to article 2 of the ICCPR. The targeting of such protests to prevent “division”, “tension”, “upset” or “hurt” does nothing to change that result. Such grounds are not legitimate aims the pursuit of which can justify discriminatory targeting of assembly and expression that is critical of Israel where it does not present a genuine risk to public safety or of hate speech under international law. The unjustified suppression of peaceful assembly and expression, including the right to freely criticise foreign governments and visiting foreign leaders, itself stimulates social division, hurt and exclusion and unjustifiably privileges the feelings of one group in society over another. The Human Rights Committee has emphasized that by airing grievances, “peaceful assemblies may create opportunities for the inclusive, participatory and peaceful resolution of differences” (general comment No. 37, para. 1).

Further, “particular efforts must be made to ensure the equal and effective facilitation and protection of the right of peaceful assembly of individuals who are members of groups that are or have been subjected to discrimination” (para. 11). In this regard, protesters in relation to Palestine include Palestinians legitimately protesting violations of their collective and individual human rights, including in respect of:

- a. The findings of the International Court of Justice that Israeli laws and practices in the occupied Palestinian territory involve violations of the right of self-determination of the Palestinian people, the prohibition on the forcible annexation of foreign territory, fundamental rules of international humanitarian law and international human rights law, and the prohibition on racial segregation and apartheid.<sup>8</sup>
- b. The findings of the International Court of Justice that there exist plausible allegations of genocide and incitement to genocide in relation to Israel’s conduct towards Gaza,<sup>9</sup> including in relation to statements by Israel’s President, whose scheduled visit to Australia has been given as a reason by the Commissioner of Police for extending the PARD on 3 February 2026.
- c. The issuing of arrest warrants by the International Criminal Court in relation to senior Israeli political and military leaders for war crimes and crimes against humanity; Australia is a State party to the 1998 Rome Statute of the Court.

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<sup>8</sup> International Court of Justice, *Advisory opinion on the Legal Consequences of a Wall in the Occupied Palestinian Territory* (9 July 2004); International Court of Justice, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (19 July 2024).

<sup>9</sup> International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel) – Provisional Measures* (26 January 2024).

- d. Numerous findings of fact by United Nations human rights mechanisms, including multiple expert human rights treaty bodies, the Human Rights Council's independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, and numerous United Nations Special Procedures mandate holders.

*Further issues*

The United Nations Security Council, General Assembly, Human Rights Council, and the Global Counter-Terrorism Strategy (adopted by consensus of the General Assembly in 2006 and continuously reaffirmed since then) emphasize that all State counter-terrorism measures must respect human rights; that violations of human rights while countering terrorism may be conducive to the spread of more terrorism; and that ensuring security and respecting human rights are complementary and reinforcing and not in competition. The PARD regime does not meet the requirements of international human rights law and as a result may counterproductively fuel the social divisions and tensions it aims to prevent. Such negative effect is further reason why the regime is likely to be disproportionate, since an ineffective or counter-productive restriction cannot be considered necessary or rationally connected in pursuit of a legitimate public safety aim.

While our concerns have focused on the right of peaceful assembly, we emphasize that similar considerations apply to establish that the NSW laws and their application would also violate the right to freedom of expression, freedom of association, and the right to take part in public affairs. The right of peaceful assembly protects the non-violent gathering by persons for "principally expressive" purposes: general comment No. 37, para. 4). It is an individual right that is exercised collectively, thus having an associative element (*ibid*). Its full protection is thus only possible when other overlapping rights are protected, notably freedom of expression (ICCPR, article 19), freedom of association (ICCPR, article 22) and the right to take part in public affairs (ICCPR, article 25) (general comment No. 37, para. 9).

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate whether the laws will be reviewed and amended to ensure their consistency with international human rights law, particularly as regards legality, legitimate aim, and ensuring consideration of necessity and proportionality.

3. Please explain whether the PARD in force will be lifted or amended to ensure its consistency with international human rights law, particularly as regards legitimate aim, necessity and proportionality, and non-discrimination.
4. Please explain what measures will be taken to prevent further unjustified repression and stigmatization of legitimate protest concerning Israel and Palestine.
5. Please explain what measures have been taken to ensure that human rights defenders and civil society, including students, are able to carry out their legitimate and peaceful human rights work without any undue restrictions, in an enabling environment.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Ben Saul

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Irene Khan

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Gina Romero

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Francesca Albanese

Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967

## Annex

### Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government to the following provisions of international human rights law.

#### *Rights of peaceful assembly and association*

Article 21 of the ICCPR states that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”.

The right of peaceful assembly “enables individuals to express themselves collectively and to participate in shaping their societies”, “protects the ability of people to exercise individual autonomy in solidarity with others”, and “with other related rights, it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism” (general comment No. 37, para. 1). By airing grievances, “peaceful assemblies may create opportunities for the inclusive, participatory and peaceful resolution of differences” (ibid). It is “of particular importance to marginalized individuals and groups” (para. 2). According to the Committee, “[g]iven that peaceful assemblies often have expressive functions, and that political speech enjoys particular protection as a form of expression, it follows that assemblies with a political message should enjoy a heightened level of accommodation and protection” (para. 32).

The right protects the non-violent gathering by persons for “principally expressive” purposes (para. 4). It is an individual right that is exercised collectively, thus having an associative element (ibid). Its full protection is thus only possible when other overlapping rights are protected, notably freedom of expression (ICCPR, article 19), freedom of association (ICCPR, article 22) and the right to take part in public affairs (ICCPR, article 25) (para. 9). The right of peaceful assembly requires States parties to respect and ensure its exercise without discrimination, including by allowing assemblies to take place without unwarranted interference and to facilitate the exercise of the right and to protect the participants (para. 8).

Article 22 of the ICCPR protects the right to freedom of association with others. States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards (A/HRC/17/27, para. 66 and A/HRC/29/25/Add.1). Freedom of association is closely linked to the rights to freedom of expression and to peaceful assembly and is of fundamental importance to the functioning of democratic societies. These rights can only be restricted in very specific circumstances, where the restrictions serve a

legitimate public purpose as recognized by international standards and are necessary and proportionate for achieving that purpose.

The Human Rights Committee stated that “the imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it. Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect” (general comment No. 37, para. 36). In addition, the Special Rapporteur on the rights to freedom of peaceful assembly and of association highlighted that “negative and hostile narratives increasingly used to vilify and criminalize civil society and activists deepen the stigmatization of those exercising their rights to peaceful assembly and association. Stigmatization, whether intentional or not, especially when propagated by authorities, effectively denies these fundamental rights. It misrepresents legitimate exercises of freedom as illegal and those involved as criminals or threats to national security, public order or morals. This fuels harmful stereotypes, fosters hostility, justifies punitive measures and triggers undue restrictions on these rights” (A/79/263, para. 11). The Special Rapporteur emphasized the weaponization of unjustified accusations of terrorism, facilitated by broad anti-terrorism laws, to stifle civic activism and civil society critical of government policies (paras. 32-35).

#### *Right to freedom of expression and opinion*

Article 19 of the ICCPR guarantees the right to freedom of opinion and the right to freedom of expression, which includes the right “to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media”. This right applies online as well as offline, and includes not only the exchange of information that is favourable, but also that which may criticize, shock, or offend.

In general comment No. 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including “political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse” (para. 11). The Committee further noted that States parties to the ICCPR “shall put in place effective measures to protect against attacks aimed at silencing those who exercise their right to freedom of expression” (para. 23).

Any restriction on the right to freedom of expression must be compatible with the requirements set out in article 19(3) of the ICCPR. Restrictions must (i) be provided by law; (ii) pursue one of the legitimate aims for restriction, which are the respect of the rights or reputations of others and the protection of national security or of public order (*ordre public*), or of public health or morals; and (iii) be necessary and proportionate for those objectives. To be provided by law, a restriction must be formulated with sufficient precision to enable individuals to regulate their conduct accordingly, must not confer unfettered discretion, and must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not (para. 25).

The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant, proving “in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat” (general comment No. 34, para. 35). The relation between right and restriction and between norm and exception must not be reversed. Any restriction must be “the least intrusive instrument among those which might achieve their protective function” (para. 34). Any restriction on expression or information that a government seeks to justify on grounds of national security and counter-terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (general comment No. 34).

Article 20(2) ICCPR prescribes that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. Yet, this prohibition, that may entail restrictions of free expression, has a high threshold as it requires the fulfilment of three components: (a) advocacy of hatred; (b) advocacy which constitutes incitement and (c) incitement likely to result in discrimination, hostility or violence (A/67/357, para. 43).

The Human Rights Committee also states that “States parties should ensure that counter-terrorism measures are compatible with paragraph 3. Such offences as “encouragement of terrorism” and “extremist activity” as well as offences of “praising”, “glorifying”, or “justifying” terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression” (para. 46).

The Human Rights Council has called on States to refrain from imposing restrictions that are not consistent with article 19(3), including: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups ([A/HRC/RES/12/26](#)).

#### *Incitement to national, racial or religious hatred*

In the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, as prohibited under article 20(2) of the ICCPR, key terms are defined as follows: “Hatred” and “hostility” refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group; the term “advocacy” is to be understood as requiring an intention to promote hatred publicly towards the target group; and the term “incitement” refers to statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups (A/HRC/22/17/Add.4, appendix, footnote 5). The Rabat Plan of Action identifies six factors to determine the severity necessary to criminalize incitement (ibid, para. 29):

- (a) The “social and political context prevalent at the time the speech was made and disseminated”.

- (b) The status of the speaker, “specifically the individual’s or organization’s standing in the context of the audience to whom the speech is directed”.
- (c) Intent, meaning that “negligence and recklessness are not sufficient for an offence under article 20 of the Covenant”, which provides that mere distribution or circulation does not amount to advocacy or incitement.
- (d) Content and form of the speech, in particular “the degree to which the speech was provocative and direct, as well as the form, style, nature of arguments deployed”.
- (e) Extent or reach of the speech act, such as the “magnitude and size of its audience”, including whether it was “a single leaflet or broadcast in the mainstream media or via the Internet, the frequency, the quantity and the extent of the communications, whether the audience had the means to act on the incitement”.
- (f) Its likelihood, including imminence, meaning that “some degree of risk of harm must be identified”, including through the determination (by courts, as suggested in the Plan of Action) of a “reasonable probability that the speech would succeed in inciting actual action against the target group”.

*Incitement to terrorism*

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has recommended that, in order to comply with international human rights law, any offence of incitement to terrorism (A/HRC/16/51, para. 31. See also A/HRC/40/52, para. 37):

- a. Must be limited to the incitement to conduct that is truly terrorist in nature, as properly defined according to best practice international standards.
- b. Must restrict the freedom of expression no more than is necessary for the protection of national security, public order and safety or public health or morals.
- c. Must be prescribed by law in precise language, including by avoiding reference to vague terms such as “glorifying” or “promoting” terrorism.
- d. Must include an actual (objective) risk that the act incited will be committed.
- e. Should expressly refer to two elements of intent, namely intent to communicate a message and intent that this message incite the commission of a terrorist act.
- f. Should preserve the application of legal defences or principles leading to the exclusion of criminal liability by referring to “unlawful”

incitement to terrorism.<sup>10</sup>

### *Right to take part in public affairs*

Article 25(a) of the ICCPR provides that: “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions... [t]o take part in the conduct of public affairs”. The Human Rights Committee noted that “[c]itizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association” (general comment No. 25, para. 8).

### *Non-discrimination*

Article 2 of the ICCPR requires that States respect and ensure to all individuals within their territory and jurisdiction the rights protected under the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 of the ICCPR further provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. It requires that the law “prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

### *Human rights defenders*

The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in articles 1 and 2, states that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. In addition:

- article 5(a) provides for the right to meet or assemble peacefully;
- article 5(b) provides for the right to form, join and participate in non-governmental organizations, associations or groups;
- article 6(a) provides for the right, individually and in association with others, to “know, seek, obtain, receive and hold information about all human rights and fundamental freedoms”;
- article 6(b) provides for the right “to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms”;

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<sup>10</sup> A/HRC/16/51, para. 31. See also A/HRC/40/52, para. 37.

- article 9(1) provides for the right to benefit from an effective remedy and to be protected in the event of the violation of those rights; and
- article 12(2)-(3) provide that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

*Respect for human rights while countering terrorism*

Many resolutions of the United Nations General Assembly, Security Council and Human Rights Council reaffirm that any measures taken to combat terrorism and violent extremism must comply with the obligations of States under international law, in particular international human rights law, refugee law and international humanitarian law.<sup>11</sup> Counter-terrorism measures must conform to fundamental requirements of legality, proportionality, necessity and non-discrimination. Disregard for these principles can have exceptionally harmful effects on the protection of fundamental rights, particularly for minorities, historically marginalized communities, and civil society. States must ensure that measures to combat terrorism do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights (A/HRC/RES/22/6, para. 10(a)).

An effective counter-terrorism strategy requires sustained effort to address the conditions conducive to terrorism, in line with pillar I of the United Nations Global Counter-terrorism Strategy. These are stated to include prolonged unresolved conflicts, lack of the rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization and lack of good governance. Effective measures to counter terrorism and violent extremism conducive to terrorism and respect for human rights, fundamental freedoms, and the rule of law are complementary and mutually reinforcing.<sup>12</sup>

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<sup>11</sup> Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); Human Rights Council resolution 35/34; and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, among others

<sup>12</sup> See e.g., UN Security Council Resolution 2617, S/RES/2617 (2021).