



28 November 2024

Committee Secretary
Parliamentary Joint Committee on Human Rights
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Canberra ACT 2600

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Dear Committee Secretary

Inquiry into antisemitism at Australian Universities

Thank you for the opportunity to make a submission to your Committee's inquiry into antisemitism at Australian universities. The Executive Council of Australian Jewry (**the ECAJ**) is the peak, elected, representative body of the Australian Jewish community. It was established for that purpose in 1944 by Australian Jewish organisations and their elected leaders. The ECAJ's constituent organisations are the roof bodies of the Jewish community in each State and the ACT.¹ Other Jewish organisations which operate nationally are Affiliates of the ECAJ, and these include the Australasian Union of Jewish Students (**AUJS**).² We also have a close working relationship with the 5A group, a recently-formed organisation representing Jewish and non-Jewish academics nationally.

Over the years, and especially in the last 12 months, the ECAJ has been in regular dialogue with the leadership of universities across Australia in order to advocate for an educational environment that is free of racial and religious discrimination and offers all Jewish and Israeli students and academics the same opportunities to learn and to teach respectively that are offered to all other students and academics.

¹ Namely, the NSW Jewish Board of Deputies, the Jewish Community Council of Victoria Inc, the Jewish Community Council of Western Australia Inc, the Queensland Jewish Board of Deputies, the Jewish Community Council of South Australia, the Hobart Hebrew Congregation and the ACT Jewish Community Inc.

² The other national affiliates are the Union for Progressive Judaism, Australian Federation of WIZO, Maccabi Australia Inc, National Council of Jewish Women of Australia, B'nai B'rith District 21 of Australia and New Zealand, Jewish National Fund of Australia Inc, Joint Distribution Committee Australia.



On 22 August 2024, the ECAJ made a submission to the *Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No 2)*³ (**Senate Inquiry**), which forms the background to this submission and is referenced throughout it. We understand that a copy of that submission has been made available to your Committee. We remain of the view that a judicial inquiry into antisemitism at Australian universities is necessary and urgent for all the reasons set out in our submission to the Senate Inquiry. However, in the interim we seek to improve the circumstances of Jewish staff and students at universities by assisting your Committee with practical recommendations for immediate adoption.

This submission is divided into the following sections:

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- 2. University frameworks for preventing and responding to, antisemitism at universities, including laws, rules, policies and other measures to protect the safety and wellbeing of students, staff and academics – pp. 6-11**
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1. The contemporary reality of antisemitic activity at universities

Section 2 of the ECAJ submission to the Senate Inquiry ('Universities: Ground Zero for Antisemitism') outlined the prevalence, nature and experiences of antisemitic activity at Australian universities.

³ Executive Council of Australian Jewry, submission to the *Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No 2)*, 22 August 2024, available at: <https://www.aph.gov.au/DocumentStore.ashx?id=27302e1f-21ca-4821-8faf-5c04d669452b&subId=762155>

*Patterns of response prior to the Senate Inquiry*

Prior to the Senate Inquiry, universities had typically responded to the increased levels of anti-Israel and anti-Jewish activism on their campuses by encouraging Jewish and Israeli students and staff to stay away and do their courses or work online, even when their units of study or the nature of their work did not lend themselves to remote participation.⁴

Other typical responses included:

- minimising or delegitimising complaints by characterising them as mere discomfort in response to the exercise of free speech
- offering ineffective and haphazard security and wellbeing support not as an adjunct to resolving the cause of the problem but rather as the ‘solution’, for instance building lockdowns or referrals to counselling
- tolerating disruptions from protestors in classrooms and lecture halls even when the content of the discourse was antisemitic
- stifling the free speech of Jewish and Israeli students and staff through the spreading of misinformation and disinformation by those in positions of power, and through often subtle and difficult-to-prove but insidious types of ‘retribution’ or disincentives. For example:
 - the termination of staff contracts or the decision not to award promotions to those who spoke out against offensive conduct;
 - the failing of a subject or the awarding of a low grade (outside of the usual range of performance for the student), sometimes followed by the student being investigated for plagiarism or the use of artificial intelligence technology when they sought to challenge the grade; and
 - social ostracization.
- partial or ineffective responses to complaints and even deliberate attempts to prevent complaints from being escalated or formalised in writing
- unreasonable refusals to grant special accommodations
- failure to moderate online university spaces including class chat groups and university-wide intranet, and to remove antisemitic discourse from those fora

⁴ See page 1, Segal AO, Jillian, Special Envoy to Combat Antisemitism, Submission to the *Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No 2)*, 6 September 2024, available at: <https://www.aph.gov.au/DocumentStore.ashx?id=74878e42-2c56-4517-9b1e-cfa7a30ec76c&subId=763089>



- failure to intervene or impose adequate measures to combat antisemitic conduct at university events or in the context of ‘student general meetings’ that passed motions condoning the atrocities perpetrated by a listed terrorist organisation, namely Hamas, in southern Israel on 7 October 2023.⁵

Developments since the Senate Inquiry

Since the Senate Inquiry concluded on 4 October 2024, the ECAJ and many of our constituents and affiliates have observed some modest but nevertheless important shifts in the way Australian universities are responding to and handling complaints about antisemitism, which have the potential to have a positive impact in reducing antisemitic conduct at universities. On the other hand, the ECAJ continues to receive frequent notifications of antisemitic incidents and discourse taking place at universities, and anecdotal accounts of students and staff indicate that there has been an escalation in the use of violent rhetoric on campuses.

Paradoxically, this escalation may suggest success rather than failure, as the more moderate elements of the protest movement recede and leave the more radical elements unchecked. This is the moment in time when universities must become steadfast and consistent in their responses to antisemitism, and not give way to intimidation, if there is to be any lasting change.

The ECAJ continues to advocate for several Jewish staff and students impacted by antisemitism on campuses, acting as a support party in active complaints that are currently under review by universities. These complaints range from the doxing of Jewish staff and students by fellow staff and students, to the dissemination of published materials calling for the elimination of Jews or ‘Zionists’.⁶

⁵ Many of these trends in response were highlighted in Executive Council of Australian Jewry, submission to the *Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No 2)*, 22 August 2024, available at: <https://www.aph.gov.au/DocumentStore.ashx?id=27302e1f-21ca-4821-8faf-5c04d669452b&subId=762155> and Segal AO, Jillian, Special Envoy to Combat Antisemitism, Submission to the *Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No 2)*, 6 September 2024, available at: <https://www.aph.gov.au/DocumentStore.ashx?id=74878e42-2c56-4517-9b1e-cfa7a30ec76c&subId=763089>

⁶ For example, organisations such as [Rot Shop](#) have been promoted at university events. This organisation’s website states “no hell is deep enough for the genocidal Zionist entity and its collaborators, F*ck you forever in the absolute strongest f*cking terms”. This language can be read as endorsing sexual violence of the kind perpetrated by Hamas in southern Israel on 7 October 2023, which was documented by the United Nations: [Reasonable Grounds to Believe Conflict-Related Sexual Violence Occurred in Israel During 7 October Attacks, Senior UN Official Tells Security](#)



The ECAJ has observed greater responsiveness and less defensiveness on the part of several universities in addressing reported instances of antisemitic conduct. We have found engagement to be increasingly constructive and substantive. There remains a very significant gap in understanding on the part of universities as to what constitutes antisemitism, and what levers may be utilised to address it effectively, but there appear to have been some attitudinal shifts.

Yet even when universities take what may be appropriate action in response to antisemitic conduct, they still tend not to have the appetite for righting the public record by acknowledging to staff and students who experienced the offending conduct that such conduct was antisemitic and unacceptable.

An example of the flaws in this type of limited response was the case which formed the subject of a complaint by the ECAJ to the University of Sydney on 30 May 2024. We complained that a professor during the course of a lecture had told students that the widely reported rapes and other atrocities committed by Hamas on 7 October 2023 were “fake news” and in two other lectures borrowed on the antisemitic Global Domination / Power trope, by alleging that Israel had control of Western media and governments.⁷ Three months after the complaint was lodged, the University informed the ECAJ by letter that “*a determination that [the] conduct fell below the University’s expectations*” had been made, and that “*The University will be implementing Disciplinary Action under the relevant clauses of the Enterprise Agreement, together with appropriate steps to mitigate the risk of recurrence*”. The University could have published the disciplinary action it had taken, without identifying the offending academic, or other identifying information, but it refused to do so. It is unclear what action, if any, the University will take to:

- prevent a recurrence of such conduct;
- set the record straight with students who attended the lectures in which the offending conduct occurred; or

[Council | Meetings Coverage and Press Releases](#). The image of convicted PFLP terrorist Leila Khaled who was responsible for taking hostages and hijacking planes (Ms Khaled was convicted and imprisoned for her role in two infamous plane hijackings, including a 1969 flight from Rome to Tel Aviv which was falsely believed to be carrying then Israeli ambassador to the US, Yitzhak Rabin; and the Dawson’s Field hijackings in 1970, which targeted four planes headed for New York City and one for London), and who was recently denied a visitor’s visa to Australia, appears prominently on this website.

⁷ Godsell, Oscar, ‘Sydney University Professor claims Hamas rape of women and baby beheadings “fake news” in student lecture’, *Sky News Australia*, 31 May 2024: [Sydney University professor claims Hamas rape of women and baby beheadings ‘fake news’ in student lecture | Sky News Australia](#)



- ensure that other academics do not engage in similar conduct.

By its refusal to publish the basic details of the complaint, the determination and disciplinary action it has taken, not only has the University failed to disclose the level of seriousness with which it views the conduct but it has also failed to take the opportunity to create a deterrent to mitigate the risk of others engaging in similar conduct in the future, which is fundamental to the effectiveness of any disciplinary action taken by a University. It is also unclear whether the University understands why such conduct was antisemitic, or whether a complaint by an individual student would have led to the same outcome.⁸ The ECAJ has seen a similar failure by other universities to derive broader educative and deterrent benefit from complaints about antisemitic conduct which have been upheld.

Recommendation 1:

- That universities mitigate the risk of recurrence of complaints and show accountability for instances of antisemitic conduct by publishing de-identified periodic reports of actions taken in response to complaints about racism, including antisemitism.

2. University frameworks for preventing and responding to, antisemitism at universities, including laws, rules, policies and other measures to protect the safety and wellbeing of students, staff and academics

The definitional deficit

A fundamental gap in almost all Australian universities' frameworks for the prevention of, and response to, antisemitic conduct, is the failure to grapple with what constitutes antisemitic conduct in the first place. If a problem is undiagnosed then it cannot be adequately treated.

To date, most universities have refused to adopt the International Holocaust Remembrance Alliance's Working Definition of Antisemitism (**IHRA Working Definition**)⁹ – the gold standard

⁸ Please refer to the ECAJ's submission to the Hodgkinson Inquiry for a more fulsome analysis of limited university responses that do not publicly rectify the harm caused. Available at: <https://www.ecaj.org.au/ecaj-to-hodgkinson-inquiry-words-must-be-accompanied-by-actions/>, 25 September 2024.

⁹ The internationally-accepted definition of antisemitism is set out by the International Holocaust Remembrance Alliance at: <https://holocaustremembrance.com/resources/working-definition-antisemitism>



definition of antisemitism that has been adopted by the Australian Government, endorsed by the Federal Opposition¹⁰, and adopted by many other governments and tertiary institutions around the world. Decisions about such matters have been made by the universities' Academic Boards or their supreme governing bodies. Despite well-intentioned efforts by these bodies to arrive at their own working definition, they are ill-equipped to do so, relying as they do on the subjective and at times capricious personal opinions of the members of these bodies who have not themselves had any lived experience of antisemitism. They have also at times been influenced by a concerted political campaign from some quarters aimed at smearing the IHRA Working Definition by misrepresenting and mischaracterising its meaning and effect.

An illustration of the flaws in the current approach taken by universities with respect to the definitional issue, can be found in documents of the University of Sydney's Academic Board dated 27 June 2023, which were obtained under the *Government Information (Public Access) Act 2009 (NSW)*. The documents record a discussion about the IHRA Working Definition in which key qualifiers and exceptions are either omitted or mischaracterised. The discussion focused on the reference in the IHRA Working Definition to "*denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor*". What is omitted is the subtlety of referring to "a" State of Israel rather than "the" State of Israel, and the qualification that discourse of this nature *may* constitute antisemitism "*taking into account the overall context*", noting that "*criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic*". It should be obvious that this formulation does *not* automatically characterise as antisemitic any criticism of Israeli laws, policies and actions, whether on the grounds of alleged racism or otherwise. Under the IHRA Working Definition, criticism of Israel can only be characterised as antisemitic if the criticism amounts to a denial of the collective right of the Jewish people to self-determination, which is a basic right of all peoples. It is ironic that anti-Israel groups do not hesitate to denounce as *racist* any denial of the collective right of the Palestinian people to self-determination, but apply a double standard when denying that same collective right to the Jewish people.

As the Special Envoy to Combat Antisemitism noted in her recent submission to the Senate Inquiry:

¹⁰ See statement by then Opposition leader Anthony Albanese to Executive Council of Australian Jewry on 14 July 2021: » [ECAJ hosts meeting between Federal Opposition leader Anthony Albanese and national Jewish community leadership](#) and statement of the shadow Minister for Foreign Affairs Senator Penny Wong at Zionist Federation of Australia conference, 22 November 2020: <https://www.youtube.com/watch?v=exaC2wvaZCQ>.

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Union for Progressive Judaism
Federation of Jewish Aged Car Services
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Jewish National Fund of Australia
Joint Distribution Committee Australia

OBSERVERS
Council of Progressive Rabbis
Federation of Australian Jewish
Ex-Service Associations
New Zealand Jewish Council
Zionist Federation of Australia
Council of Orthodox Synagogues
of Australia



“Antisemitism is a unique type of racial hatred that is not broadly understood. It is an ancient hatred based on disinformation and misinformation, and its building blocks are antisemitic tropes¹¹ that can be subtle yet extremely pervasive. History has shown that in times of economic insecurity, antisemitism bubbles to the surface and becomes socially acceptable. Antisemitism has always been stubborn and shape-shifting, and it is not sufficiently responsive to policies instituted to deal with racism more broadly.”

While similar patterns of behaviour identified in the *Change the Course* report¹² are exhibited with respect to the way that universities have been managing reported incidents of antisemitism, and there are no doubt transferable lessons with regard to how universities generally approach different types of abuse or discrimination, it is essential that University frameworks for the prevention of, and response to, antisemitism, and the office of the Ombudsman¹³ are informed by an appropriate framework, sufficient expertise and training, to be able to handle complaints concerning antisemitic conduct.

Part of the necessary framework will be understanding at a definitional level what constitutes the various types of racism, abuse or other issues. For this reason we continue to urge Australian universities and the Ombudsman to adopt the IHRA Working Definition in relation to any complaints concerning antisemitic conduct at universities. The Canadian government recently published a Handbook on the IHRA Working Definition of Antisemitism, which carefully works through the various examples in the definition and explains what they mean and what they don't mean.¹⁴ It dispels the falsehoods and mischaracterisations that have been advanced about the definition. It is a most useful guide for universities seeking to anchor their policies against antisemitism in a credible definition, with guardrails against possible misuse. There are other resources available that should be drawn upon to help universities to understand when the IHRA Working Definition applies and how to apply it within existing policy and legal frameworks.

¹¹ [ADL Publishes New Guide to Antisemitic Tropes | ADL; and Antisemitic Tropes Chart \(facinghistory.org\)](#)

¹² [Change The Course: National Report on Sexual Assault and Harassment | Australian Human Rights Commission](#)

and *Change the Course: National report on sexual assault and sexual harassment at Australian universities 2017*, Australian Human Rights Commission, 2017:

https://humanrights.gov.au/sites/default/files/document/publication/AHRC_2017_ChangeTheCourse_UniversityReport.pdf

¹³ Please see Explanatory Memorandum, Universities Accord (National Student Ombudsman) Bill 2024, *The Parliament of the Commonwealth of Australia*, [JC014050.pdf;fileType=application/pdf \(aph.gov.au\)](#), and the ECAJ's submission to the Universities Accord (National Student Ombudsman) Bill (2024), 1 October 2024, available at: <https://www.aph.gov.au/DocumentStore.ashx?id=25629005-21a9-4589-8d47-c331e6bd7630&subId=767710>

¹⁴ See [Canadian Handbook on the IHRA Working Definition of Antisemitism - Canada.ca](#).

**Recommendation 2:**

- That all Australian universities adopt the IHRA Working Definition of Antisemitism.
- That the Australian Government task the Special Envoy to Combat Antisemitism with creating a domestic equivalent of the [Canadian Handbook on the IHRA Working Definition of Antisemitism](#) in order to assist the tertiary education sector and other sectors to understand what antisemitism is and how to address and combat it within existing policy and legal frameworks.

Lack of clarity about exceptions to freedom of expression and academic freedom

Related to the definitional issue, is the dearth of criteria for identifying forms of public statements that should be deemed as exceptions to contrary to universities' codes of conduct.

Universities continue to position academic freedom and freedom of speech as being in tension with freedom from discrimination, rather than affirming that instances of hate speech are not protected examples of academic freedom.

This is not an issue which is unique to the university sector. It has arisen, for example, in the context of debates about the limits that should apply to the freedom to make statements of belief about or against religion. The *Religious Discrimination Bill 2021* was passed in the House of Representatives on 10 February 2022 with bipartisan support. Section 12 of the Bill provides a possible model for setting out the principles for defining the proper limits to freedom of expression in the academic context.

To that end, the ECAJ makes the following recommendation.

Recommendation 3:

That the following statement of principle be adopted by all universities.
Freedom of expression does not apply to:

1. Statements which are likely to contravene any Commonwealth, State or Territory law;
2. Statements which:



- a) are malicious; or
- b) advocate, promote or glorify any group or organisation that is listed by Australia as a terrorist organisation; or
- c) a reasonable person would conclude:
 - i. threaten, intimidate, harass or vilify a person or group [where the words “threaten, intimidate, harass or vilify” are each given their ordinary dictionary meaning]; or
 - ii. counsel, promote, encourage or urge conduct that would constitute a serious offence [being an offence that is punishable by imprisonment for 2 years or more under any law of the Commonwealth, a State or a Territory].

Rules, policies and other measures

In her submission to the Senate Inquiry, the Special Envoy to Combat Antisemitism stated:

“Many universities’ policies regarding student and staff conduct are a patchwork quilt of at times conflicting ideas which depart from domestic and international legal obligations or misstate the boundaries between academic freedom and hate speech. Some universities have strong policies in place in respect of conduct, including in the areas of freedom from discrimination and racial vilification – some of which were introduced post October 7 - while others do not.”¹⁵

We draw the Committee’s attention to the detailed analysis provided by Bruce Hodgkinson AM SC in the University of Sydney External Review Report.¹⁶ This report identified the necessity of the University of Sydney conducting a review of its complaints procedures with a view to a complete overhaul and simplification of every aspect of it.¹⁷

In our experience, the rules, policies and other measures available to guide universities’ responses to antisemitism are complex and lack clarity with respect to how they interact with other policies, rules or measures. They tend to focus on individual harm but tend not to contemplate harms inflicted on protected groups. For this reason, they provide no real

¹⁵ Segal AO, Jillian, Special Envoy to Combat Antisemitism, Submission to the *Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No 2)*, 6 September 2024, available at:

<https://www.aph.gov.au/DocumentStore.ashx?id=74878e42-2c56-4517-9b1e-cfa7a30ec76c&subId=763089>

¹⁶ Hodgkinson AM SC, Bruce, University of Sydney External Review Report, 27 November 2024: [University receives Hodgkinson External Review report - The University of Sydney](#)

¹⁷ *Ibid*



complaints pathways for organisations representative of protected groups, even when a member of that group has been the victim of antisemitic conduct but wants their representative body to take forward the complaint so as to preserve their anonymity.

There is a serious issue with respect to the application of the rules, policies and measures in this area, because there is legislation in place to address racial vilification and discrimination, but no judicial clarity as to what constitutes the bounds of academic freedom or freedom of speech. In this false dichotomy, it is natural for the universities to approach instances of antisemitic conduct as though they are applying legislative definitions, which invariably results in determinations that prioritise ‘academic freedom’. When only one of two concepts are clearly defined, then it is easier to apply the rigorous standard, but universities are not courts, and policies are not laws. What may constitute impermissible conduct in a university may not be unlawful. It is essential that universities work harder to simplify all rules, policies and measures, to make them accessible for staff and students, and to train those who are responsible for applying them so that they understand clearly what is required of them and what frameworks will be used in their decision-making. The ECAJ has also called for the overhaul of the complaints process and a charter of conduct for students.¹⁸ This is something that universities could jointly formulate such that there are consistent expectations across the university landscape.

In addition, the ECAJ proposes that some uniformity and oversight is achieved with respect to universities’ rules, policies and other measures in this area. The ECAJ would like to see a system instituted whereby universities submit policies and procedures that touch on identifying and responding to antisemitism for independent expert review and appraisal, with the appraisal report to be provided to the Special Envoy to Combat Antisemitism, and the Tertiary Education Quality and Standards Agency (**TEQSA**).

Recommendation 4:

- That universities submit their antisemitism policies and procedures for independent expert review and appraisal, with the appraisal report to be provided to the Special Envoy to Combat Antisemitism and the TEQSA.

¹⁸ Peter Wertheim at the ECAJ recently said that universities such as the University of Sydney need ‘to go further and introduce five new measures that would protect Jewish students in the future. They include adopting a new definition of antisemitism “that has credibility with the majority of Jewish students and staff”; the overhaul of the complaints process; professional development for staff processing complaints; independent oversight of the complaints handling process and a charter of conduct for students” in Hare, Julie, ‘Jewish group rejects calls for Sydney uni’s Scott to resign’, *Australian Financial Review*, 27 September 2024: [Israel Palestine: Jewish group rejects calls for Sydney University boss Mark Scott to resign \(afr.com\)](https://www.afr.com/news/politics/Israel-Palestine/Jewish-group-rejects-calls-for-Sydney-University-boss-Mark-Scott-to-resign-20240927)



3. The effectiveness and adequacy of those frameworks

In addition to the limitations noted in section 2 above, university frameworks for the prevention of, and response to, antisemitism, are often positioned as being in conflict with the Model Code on Freedom of Speech and Academic Freedom. They also contain other limitations that do not translate to real world scenarios, thereby inhibiting their effectiveness.

Misuse of Model Code on Freedom of Speech and Academic Freedom

Universities continue to use the Model Code on Freedom of Speech and Academic Freedom (often referred to as the French Model Code) as a justification for tolerating discourse or incidents that cannot be properly classified as warranting freedom of speech protection.

While the French Model Code (**the Code**) provides a bedrock for protecting freedom of speech at universities, the Code also protects students and staff from discrimination according to the law including on the basis of race, and from threatening or intimidating behaviour in the course of others exercising freedom of speech. According to former Justice Ronald Sackville, responding to the Go8 submission to a recent Inquiry by the Senate Standing Committees on Legal and Constitutional Affairs:

“The Go8 submission takes refuge in the difficulty of drawing the boundaries between freedom of expression and justifiable constraints on that freedom. It is not necessary for universities to attempt a definitive analysis of where the line should be drawn... It is enough for universities to identify speech and conduct which, on any view, is antisemitic, for example chants of ‘All Zionists are racist’ or ‘Zionists [or Jews] are not welcome here [at the university]’...The emphasis in the Go8 submission on the difficulty of drawing boundaries for legal purposes overlooks the Go8’s own Principles on Demonstrations on Campus, which expressly state that the Go8 rejects all forms of antisemitism. It must follow that if speech or conduct on campus is plainly antisemitic, whatever the difficulty of formulating a comprehensive definition, tertiary institutions should take appropriate measures to curb the speech or conduct, for example by invoking disciplinary sanctions. It is entirely irrelevant whether or not the antisemitic speech or conduct on campus contravenes the criminal law or anti-discrimination legislation.”¹⁹

¹⁹ Sackville, Ronald, ‘How Australia’s top universities misunderstand antisemitism’, The Jewish Independent, 16 September 2024: [How Australia’s top universities misunderstand antisemitism - The Jewish Independent](https://www.jewishindependent.com.au/how-australia-s-top-universities-misunderstand-antisemitism/).



As noted in the ECAJ's submission to the Hodgkinson Inquiry:

*'It is no wonder that Jewish students and staff do not wish to identify themselves or come forward to make complaints, because they do not feel that the same 'free speech protections' invoked by the protestors and those engaging in antisemitic discourse would protect them sufficiently if they spoke out. They fear consequences to their grades, livelihoods and standing, and this is indicative of a deep issue that cannot be easily brushed off as free speech causing mere offence. If there were genuine free speech at the University, then Jews and Israelis would feel comfortable to articulate their perspective, and there would be more balance afforded to critical discussion at events or in lectures or tutorials, engaging with the topic of the Israel-Gaza war. Instead, there is chilling silence, which signifies that some people's speech has been prioritised over others, and that such speech has had the effect of intimidating and threatening Jewish and Israeli students and staff.'*²⁰

Other limitations on university frameworks for the prevention of, and response to, antisemitism

Another limitation of universities' frameworks for the prevention of, and response to, antisemitism (and other types of racism) is that they do not encompass content published by university staff on social media. In bygone days, the public footprint of academics would be their peer-reviewed research, whereas nowadays, academics not only publish academic content in books and scholarly articles, but many are also prolific self-publishers on social media. In all of the ECAJ's discussions with universities to date concerning reported instances of antisemitic conduct by academics, the universities have disavowed themselves of any responsibility with respect to what they see as content generated outside the workplace, even when such content is generated within work hours and has tangible impacts within the workplace. This approach is at odds with the approach taken by many employers, who recognise the blurring of boundaries between the professional and personal, and the damage that individuals can inflict on their workplaces through their social media postings. Where the actions of academics on social media result in antisemitic harm to staff or students at their university, university frameworks for the prevention of, and response to, antisemitism at universities, need to be sufficiently agile to address such harms.

²⁰ Please refer to the ECAJ's submission to the Hodgkinson Inquiry. Available at: <https://www.ecaj.org.au/ecaj-to-hodgkinson-inquiry-words-must-be-accompanied-by-actions/>, 25 September 2024.

**Recommendation 5:**

- That universities' policies provide for/include:
 - (a) a standalone process for students to have their work independently assessed if they have reason to believe their lecturer/tutor is biased against them. The integrity of the process to select the alternative assessor will be critical.
 - (b) the review of any complaints whose handling was subsequently found to be tarnished by bias.
 - (c) A charter of conduct for students.²¹
 - (d) Complaints pathways for organisations representative of protected groups to assist individuals of those groups who have been impacted by antisemitic or other racist conduct.
 - (e) An overriding principle that if speech or conduct on campus is antisemitic (or otherwise racist), then action will be taken under the policy irrespective of whether or not the speech is said to be academic speech.
 - (f) A means of addressing the impact of antisemitic conduct by university personnel on social media.

4. The support provided to students, staff and academics experiencing antisemitism at universities

Jewish students, staff and academics who report instances of antisemitic conduct at universities to the ECAJ frequently voice frustration that the overwhelming focus of universities' responses has been on wellbeing and counselling. Often, universities assess their response times to complaints about antisemitic conduct based on how long it took the university to offer psychological support to the impacted student, staff member or academic. Looked at through this lens, complaints about antisemitism are treated as being symptomatic of 'discomfort' on the part of staff, students and academics to the exercise of academic freedom, and the universities' responses are centred on providing psychological support to

²¹ Peter Wertheim at the ECAJ recently said that universities such as the University of Sydney need 'to go further and introduce five new measures that would protect Jewish students in the future. They include adopting a new definition of antisemitism "that has credibility with the majority of Jewish students and staff"; the overhaul of the complaints process; professional development for staff processing complaints; independent oversight of the complaints handling process and a charter of conduct for students"' in Hare, Julie, 'Jewish group rejects calls for Sydney uni's Scott to resign', *Australian Financial Review*, 27 September 2024: [Israel Palestine: Jewish group rejects calls for Sydney University boss Mark Scott to resign \(afr.com\)](https://www.afr.com/news/politics/jewish-group-rejects-calls-for-sydney-university-boss-mark-scott-to-resign-20240927)



help impacted individuals manage their trauma, rather than appropriate interventions to address the original wrong. The famous dictum of Lord Hewart²² is highly applicable here, as it is the failure of universities to demonstrate that justice is being done in response to antisemitic conduct that causes at least as much trauma and suffering for Jewish staff, students and academics as the original offending conduct itself.

While it is entirely appropriate and necessary for support to be provided to students, staff and academics experiencing antisemitism, the ECAJ would encourage the universities to frame any communications outlining such support to include a message about what actions the university intends to take in response to the complaint. At the initial stage, when the complaint is still being assessed, a communication could outline what actions are available to the university to take in accordance with its rules, policies and measures, in the event that the conduct that is the subject of the complaint is determined to have taken place. A 'holding' communication of this nature would help to minimise the distress of those impacted by the conduct, and to manage their expectations about what the possible consequences of their complaint may be.

Recommendation 6:

- That while a complaint about academic conduct is being assessed, any 'wellbeing' communication by the university with the complainant should also include information on the complaints handling process and the possible actions available to the university under its rules, policies and measures in order to resolve the complaint.

5. International experiences and best practices in dealing with antisemitic activity at universities

While the tendency of many universities grappling with how to best respond to antisemitic activity on campus has been to look to the US universities and some of the reports and recommendations originating there, we note as follows:

- The American Jewish student community is far larger than its Australian equivalent, and antisemitic conduct can be more severe in environments where there are fewer Jews. Reporting of antisemitic conduct is much more likely to occur if there is a

²² Lord Hewart, the then Lord Chief Justice of England in the case of *Rex v. Sussex Justices*, [1924] 1 KB 256.



sizeable Jewish student and staff body at a university, because in that instance complainants are less likely to be identifiable or to face targeted retribution. Therefore, while there are many similarities between the experiences of Jewish students and staff at universities abroad facing antisemitism and the experiences of Jewish staff and students in Australia, what constitutes best practice abroad must be adapted to a uniquely Australian context.

- Australian universities are funded by the federal government to a much larger extent than many private US universities, and it is therefore feasible and necessary that the Australian Government demands they put in place best practice policies.²³

Education and training

As international experiences demonstrate, a core component of addressing antisemitic activity at universities is education about what constitutes antisemitism, and how it has evolved historically. The training programs should be devised by experts coming from a broad range of political perspectives and academic disciplines, who are not captive to the subjective views of any one person or marginal group with an ulterior agenda. They need to have the expertise and objectivity necessary to formulate and deliver credible and targeted training to those who handle complaints about how to recognise and deal with antisemitism at universities. We would also recommend that such training be extended to senior university executives and senior academics.

We also refer to our comments in our submission to the *Universities Accord Bill*²⁴ with respect to empowering the National Student Ombudsman to manage complaints about antisemitism through the provision of qualified resources.

A national database and hotline for racist incidents and discourse

The ECAJ has long advocated for a national database and hotline for racist incidents and discourse, and the adoption of such a platform would also assist with uniformity in data collection of hate incidents and hate crimes occurring in Australia, including on university campuses. This would be beneficial not only to the Jewish community but also to all other

²³ See page 9, Segal AO, Jillian, Special Envoy to Combat Antisemitism, Submission to the *Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No 2)*, 6 September 2024, available at:

<https://www.aph.gov.au/DocumentStore.ashx?id=74878e42-2c56-4517-9b1e-cfa7a30ec76c&subId=763089>

²⁴ The ECAJ's submission to the *Universities Accord (National Student Ombudsman) Bill* (2024), 1 October 2024, available at: <https://www.aph.gov.au/DocumentStore.ashx?id=25629005-21a9-4589-8d47-c331e6bd7630&subId=767710>, p. 9.



protected groups that suffer from racism. There are various best practice models already operating in other jurisdictions, including in the United Kingdom, the United States and Canada. In some instances, police or other government agencies receive reports, and in other instances, such as in the UK, a system of third-party reporting is deployed.²⁵ Understanding the scope of the problem and how it is manifesting is key to addressing it effectively, not only in the tertiary sector, but also more broadly.

Tightening of the existing regulatory framework and better engagement by universities in order to identify and examine foreign interference in the university sector

International experiences have also cast a light on the extent to which interference by foreign authoritarian regimes is a factor in antisemitic activity at universities. There are at least three ways in which foreign funding can be misused as a means of asserting foreign political influence:

- (a) Foreign government grants which are ostensibly for Research & Development, but the grant money is used to fund political advocacy in academic guise;
- (b) Foreign endowments and gifts to establish Centres, Chairs or Units of Study which become focal points for political, ideological or religious advocacy; and
- (c) Foreign government funding of fees for a proportion of foreign students who study in Australia and who may be sent with a dual purpose of gaining qualifications and agitating/organising, or potentially, money laundering.

This whole area of concern requires extensive investigation but goes beyond the scope of the terms of reference of this Committee. Universities are largely self-regulated multi-billion dollar business with very little accountability that are proving highly penetrable by forces that seek to disrupt democracies.

Freedom of information requests and heavily redacted returns that the ECAJ has sighted demonstrate that efforts to obtain information regarding the source and nature of foreign funding of universities will be extremely slow and will meet with resistance. These inquiries also demonstrate that the Guidelines to counter foreign interference in the Australian

²⁵ Nathan, Julie, 'It's time Australia set up a national hate crime database', Executive Council of Australian Jewry, 8 September 2020. Please also see: Schiappapietra, Davide, 'Australia has no national hate crime database, but here's how to build one', *SBS*, 19 March 2019: [Australia has no national hate crime database, but here's how to build one](https://www.sbs.com.au/news/article/2019/03/19/australia-has-no-national-hate-crime-database-but-here-s-how-to-build-one) | [SBS Italian](https://www.sbs.com.au/news/article/2019/03/19/australia-has-no-national-hate-crime-database-but-here-s-how-to-build-one).



university sector²⁶ are not being properly implemented, for if they were, it is questionable whether universities would be, for example, obfuscating funding links in some instances between their staff and centres and arms of foreign authoritarian regimes.

The role that foreign interference has had in the uptick in campus antisemitism was perhaps best illustrated recently when the presence of Hizb'ut Tahrir Australia became a very visible feature of the University of Sydney's encampment. Hizb ut-Tahrir is an organisation that is banned from operating in the United Kingdom, Germany, Russia, most of the Middle East, central Asia and parts of South Asia because of its terrorist designation.²⁷ The Jewish community reacted with alarm to the announcement that the University of Sydney had entered into an agreement with a group acting in concert with Hizb ut-Tahrir, to participate in a working group to review the University's investments and defence and security-related research activities.²⁸ This pandering to radicalised factions is just one example of the sidelining of the values that ought to imbue the approach universities take to the provision of tertiary education. It followed written and verbal assurances from Vice Chancellor Mark Scott that no further offers would be made by the University to the group. These assurances were not honoured.

As this example illustrates, the Australian Government has, to date, failed to properly take up the Parliamentary Joint Committee for Intelligence and Security (PJICIS) recommendations in this area, and we would encourage it to do so promptly. Unsurprisingly, this included recommendations to address intimidation on campuses and to provide universities with more security risk management information.

We refer the Committee to a recent article by Brendan Walker-Munro, titled 'Why universities are still at risk for foreign interference' and the gaps he highlights²⁹ which are also gaps that are exploited by antisemitic and authoritarian regimes such as the Islamic Republic of Iran. Walker-Munro argues that:

²⁶ [Guidelines to counter foreign interference in the Australian university sector - Department of Education, Australian Government](#)

²⁷ Juanola, Marta and McKenzie, Nick, 'From caliphate to the classroom: how hardline group courts the young', *The Age*, 17 June 2024: <https://www.theage.com.au/national/from-caliphate-to-the-classroom-how-hardline-group-courts-the-young-20240614-p5jlsb.html>.

²⁸ [Joint statement on the University of Sydney - ECAJ, 26 June 2024.](#)

²⁹ Walker-Munro, Brendan, 'Why universities are still at risk for foreign interference', *The Interpreter, The Lowy Institute*, 7 August 2023: *So, what's needed must be a recalibration of our legal and policy settings when it comes to sensitive research in our universities. But it makes no sense to do that in a vacuum – universities will need to fully engage with the process of rewriting Australia's national security legislation to better recognise how universities will operate in the future.*



‘What’s needed must be a recalibration of our legal and policy settings when it comes to sensitive research in our universities. But it makes no sense to do that in a vacuum – universities will need to fully engage with the process of rewriting Australia’s national security legislation to better recognise how universities will operate in the future.’

The ECAJ is consulting experts in this area and will be working with Parliamentarians and the intelligence community to seek reform and transparency, but we continue to believe that a judicial inquiry is the only means of exposing this issue and compelling the Australian Government and universities to take appropriate actions.

Recommendation 7:

- That universities introduce training on antisemitism and roll this out to all faculties and departments. Such training should be formulated with the input of experts coming from a broad range of political perspectives and academic disciplines,
- That the remit of the Ombudsman be expanded and resources provided to it so that it is empowered and resourced to manage complaints about antisemitism specifically. This includes appropriate training to enable it to identify instances of antisemitism.

Recommendation 8:

- That a national database and hotline for racist incidents and discourse is established by the Federal Government, which provides a pathway for reporting antisemitic incidents and discourse at universities.

Recommendation 9:

- That the ECAJ’s six recommendations with respect to the *Universities Accord (National Student Ombudsman) Bill* be adopted in full.³⁰

³⁰ the ECAJ’s submission to the Universities Accord (National Student Ombudsman) Bill (2024), 1 October 2024, available at: <https://www.apf.gov.au/DocumentStore.ashx?id=25629005-21a9-4589-8d47-c331e6bd7630&subId=767710>



**EXECUTIVE
COUNCIL OF
AUSTRALIAN
JEWRY**

הוועד הפועל של יהודי אוסטרליה

The Elected Peak Representative Body of the Australian Jewish Community

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Recommendation 10:

- That a legal requirement be introduced that universities disclose by line all sources of funding.
- That the existing regulatory framework with respect to foreign interference in the tertiary education sector is tightened, the Parliamentary Joint Committee for Intelligence and Security (PJCIS) recommendations in this area are adopted, and
- That Australia's intelligence and law enforcement agencies be conferred with legislative power to access all universities' records of funding from designated foreign governments or designated foreign government controlled organisations, with criminal liability for any failure to comply.

Conclusion

We thank the Committee for reviewing the Executive Council of Australian Jewry's submission and considering the recommendations we set out. The ECAJ urges the Committee to recommend a judicial inquiry into antisemitism on Australian university campuses given the limitations of the terms of reference of this Committee's inquiry, and the seriousness of the issues raised, which pose a threat not only to the Australian Jewish community but also more broadly to the functioning of our democracy and the precious and unique role that universities play in safeguarding democratic values.

We consent to this submission being made public and wish the Committee well in its deliberations.

Yours sincerely

Daniel Aghion KC
President

Peter Wertheim AM
Co-CEO

Simone Abel
Head of Legal

[Appendix follows on next page]

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Jewish Community Council of Victoria
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Union for Progressive Judaism
Federation of Jewish Aged Car Services
Maccabi Australia
National Council of Jewish Women
B'nai B'rith of Australia/ NZ
Jewish National Fund of Australia
Joint Distribution Committee Australia

OBSERVERS
Council of Progressive Rabbis
Federation of Australian Jewish
Ex-Service Associations
New Zealand Jewish Council
Zionist Federation of Australia
Council of Orthodox Synagogues
of Australia



APPENDIX

List of Recommendations

Recommendation 1:

- That universities mitigate the risk of recurrence of complaints and show accountability for instances of antisemitic conduct by publishing de-identified periodic reports of actions taken in response to complaints about racism, including antisemitism.

Recommendation 2:

- That all Australian universities adopt the IHRA Working Definition of Antisemitism.
- That the Australian Government task the Special Envoy to Combat Antisemitism with creating a domestic equivalent of the [Canadian Handbook on the IHRA Working Definition of Antisemitism](#) in order to assist the tertiary education sector and other sectors to understand what antisemitism is and how to address and combat it within existing policy and legal frameworks.

Recommendation 3:

- That the following statement of principle be adopted by all universities.

Freedom of expression does not apply to:

1. Statements which are likely to contravene any Commonwealth, State or Territory law;
2. Statements which:
 - a. are malicious; or
 - b. advocate, promote or glorify any group or organisation that is listed by Australia as a terrorist organisation; or
 - c. a reasonable person would conclude:
 - i. threaten, intimidate, harass or vilify a person or group [where the words “threaten, intimidate, harass or vilify” are



- each given their ordinary dictionary meaning]; or
- ii. counsel, promote, encourage or urge conduct that would constitute a serious offence [being an offence that is punishable by imprisonment for 2 years or more under any law of the Commonwealth, a State or a Territory].

Recommendation 4:

- That universities submit their antisemitism policies and procedures for independent expert review and appraisal, with the appraisal report to be provided to the Special Envoy to Combat Antisemitism and the TEQSA.

Recommendation 5:

- That universities' policies provide for/include:
 - (a) a standalone process for students to have their work independently assessed if they have reason to believe their lecturer/tutor is biased against them. The integrity of the process to select the alternative assessor will be critical.
 - (b) the review of any complaints whose handling was subsequently found to be tarnished by bias.
 - (c) A charter of conduct for students.³¹
 - (d) Complaints pathways for organisations representative of protected groups to assist individuals of those groups who have been impacted by antisemitic or other racist conduct.
 - (e) An overriding principle that if speech or conduct on campus is antisemitic (or otherwise racist), then action will be taken under the

³¹ Peter Wertheim at the ECAJ recently said that universities such as the University of Sydney need 'to go further and introduce five new measures that would protect Jewish students in the future. They include adopting a new definition of antisemitism "that has credibility with the majority of Jewish students and staff"; the overhaul of the complaints process; professional development for staff processing complaints; independent oversight of the complaints handling process and a charter of conduct for students"' in Hare, Julie, 'Jewish group rejects calls for Sydney uni's Scott to resign', *Australian Financial Review*, 27 September 2024: [Israel Palestine: Jewish group rejects calls for Sydney University boss Mark Scott to resign \(afr.com\)](https://www.afr.com/news/politics/jewish-group-rejects-calls-for-sydney-university-boss-mark-scott-to-resign-20240927)



policy irrespective of whether or not the speech is said to be academic speech.

(f) A means of addressing the impact of antisemitic conduct by university personnel on social media.

Recommendation 6:

- That while a complaint about academic conduct is being assessed, any ‘wellbeing’ communication by the university with the complainant should also include information on the complaints handling process and the possible actions available to the university under its rules, policies and measures in order to resolve the complaint.

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