Executive Council
of Australian Jewry Inc.

ECAJ SUBMISSION TO PARLIAMENTARY INQUIRY INTO FREEDOM OF SPEECH – PART IIA OF THE *RACIAL DISCRIMINATION ACT 1975* (Cth) (RDA) AND THE AUSTRALIAN HUMAN RIGHTS COMMISSION – 6 DECEMBER 2016

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SUMMARY

The ECAJ submits that Part IIA of the RDA strikes an appropriate balance between freedom of expression and freedom from the harms of racial vilification. This is borne out by the actual results of cases that have been decided by the courts since Part IIA was enacted 21 years ago, including the recent case of *Prior v Queensland University of Technology & others* (the QUT Case). Any amendment to Part IIA of the RDA would substantially risk upsetting that carefully-achieved balance and would send a strong and dangerous message from Australia's political leaders that a degree of racism in public discourse is to be considered acceptable.

The damage this could do to the overall cohesiveness, peace and order of our society is obvious, especially in light of the findings in the Scanlon Foundation's report on 'Mapping Social Cohesion' in 2016.

As regards the specific provisions of Part IIA of the RDA:

- Section 18C is directed only at conduct which, as objectively assessed by a court, is likely to produce the harms outlined in the section headed, "The Harms of Racist Hate Speech", in section 3 of Part 1 of this Submission.

- The proposal to delete the words "offend" and "insult" from section 18C of the RDA, is based on the erroneous view that those words set up a "subjective test" based on "hurt feelings", which establishes too low a threshold for the operation of the section and therefore impinges excessively on freedom of expression. Section 18C was not intended to operate in that way when it was enacted and has not been interpreted or given effect to in that way by the courts. In every decided case under section 18C, without exception, the court has made its own assessment by applying an **objective test** based on a community standard, regardless of the subjective perceptions of the complainant. This is the way the courts have consistently interpreted the words "reasonably likely to", which appear in section 18C immediately prior to the words "offend" and "insult".

- The removal of any of the words, "offend" and "insult," would therefore leave severe gaps in the protections provided compared to those provided by the current legislation. For example, in certain cases there would be no remedy, as is available under the current legislation, for victims of gross negative stereotyping and serious instances or repetitions of verbal abuse on the basis of race or ethnicity.

- Further, there is no contravention unless the offence, insult, humiliation or intimidation is found to have "*profound and serious effects, not to be likened to mere slights*".

Accordingly, we are strongly of the view that the provisions of Part IIA of the RDA should be left in their present form. The need for an effective civil law to counter the promotion of racial hatred is reinforced by the ineffectiveness of the existing criminal laws, State and Federal, in proscribing incitement of racially motivated violence.

We are aware of no evidence that the percentage of vexatious or unmeritorious cases that are commenced under section 18C of the RDA is higher than under any other statutory regime for relief, such as the law of defamation, copyright, consumer protection and trade practiced.

Nevertheless, the ECAJ would welcome any reforms to the *Australian Human Rights Act 1986* (Cth) or to the practices and procedures of the Australian Human Rights Commission ("the Commission") which would have the effect of minimising the incidence of claims brought in bad faith or which would have no reasonable prospects of success before a court. In the interests of maintaining public confidence in the operation of the legislation and in the Commission's handling of Part IIA complaints, the complaints handling process within the Commission should be refined so as to (i) screen out manifestly unmeritorious complaints before conciliation occurs, and (ii) strongly discourage such complaints from proceeding to court.

THE SUBMISSION

Introduction

The Executive Council of Australian Jewry (ECAJ) makes the following submission (Submission) to the Parliamentary Inquiry into Freedom of Speech. We consent to the Submission being made public. This Submission will address the Terms of Reference released by the Attorney-General on 8 November 2016, insofar as they relate to the Australian Jewish community.

The ECAJ is the national representative body of Australian Jewry. It is constituted by its Councillors who are elected by, and accountable to, the representative roof bodies of the Jewish communities in each of the States and the ACT, as well as representatives from other national Jewish organisations in Australia which are affiliated to the ECAJ. This Submission is unanimously endorsed by each of the ECAJ's Constituents and Affiliates.

All complaints that have been brought under Part IIA of the RDA on behalf of the Australian Jewish community, have been lodged and pursued with the Commission by the ECAJ. Most complaints have been resolved at, or prior to, conciliation. All complaints that have not been resolved, and which have proceeded to litigation, have been pursued on behalf of the Australian Jewish community by the ECAJ.[1] A list of these cases appears on the ECAJ website at http://www.ecaj.org.au/case_study/.

The ECAJ also publishes an Annual Report entitled "Antisemitism in Australia" and has done so since 1989. These reports continue to provide the most comprehensive available data and analyses of antisemitism in Australia, year on year.

Part 1 – Response to First Term of Reference

Whether the operation of Part IIA of the Racial Discrimination Act 1975 (Cth) imposes unreasonable restrictions upon freedom of speech, and in particular, whether, and if so, how ss. 18C and 18D should be reformed.

1. Freedom of expression and freedom from hate

Freedom of expression is fundamental to a democratic society and indispensable for human progress. However, it has never been regarded as absolute and unlimited. In his famous *Essay on Liberty* the English philosopher, John Stuart Mill, drew a distinction between liberty and licence. He recognised that liberty does not mean the licence of individuals to do just as they please, because that would mean the absence of law and of order, and ultimately the destruction of liberty. The limits of freedom are reached when its exercise causes harm to others.

To denigrate people because of the colour of their skin or their national or ethnic origin can be as harmful in its effect on its targets and on society as a whole, as statements which defame individuals, breach copyright, promote obscenity, breach official secrecy, demonstrate

[1] *Prior to 2006, the ECAJ was an unincorporated association and its complaints to the Commission and cases in the Federal Court of Australia were brought in the name of a senior office-bearer, and later President, of the ECAJ, Jeremy Jones.*

contempt of court and parliament, and mislead or deceive consumers, all of which are prohibited, and widely accepted as rightfully prohibited, by law.

Australia is, and has chosen to be, a multicultural society. Its viability as such demands that the ethnic communities that make up Australian society can live together in peace and harmony. Denigrating individuals or groups because of their race is inimical to that goal, and necessarily undermines Australia's fabric as a multicultural community, in a way that denigrating on the basis of other immutable factors might not do. The whole community has an interest in preventing egregious public denigration of individuals and communities on the basis of race, or at least minimising it, and in counteracting it when it occurs. Any amendment to Part IIA of the RDA would substantially risk upsetting that carefully-achieved balance and would send a strong and dangerous message from Australia's political leaders that a degree of racism in public discourse is to be considered acceptable.

The damage this could do to the overall cohesiveness, peace and order of our society is obvious, especially in light of the findings in the Scanlon Foundation's report on 'Mapping Social Cohesion' in 2016. Reported incidents of discrimination on the basis of 'skin colour, ethnic background or religion' have increased markedly in the last 10 years. Such discrimination was reported by 9%-10% of respondents between 2007-09, 12%-14% between 2010-12, and 15%-20% between 2013-2016. The highest proportion across the nine surveys was in 2016 .[2] This is therefore not the time for the government to be signaling a more permissive attitude to racism, whether on the basis of free speech or any other basis.

The threat to public peace and order posed by home-grown and imported forms of racism are of an entirely different order to the dangers posed by bad policy ideas. It is naïve to suggest that racism can always simply be left to sort itself out through public debate. Racist attitudes are rarely amenable to correction through a process of reasoned rebuttal. Further, experience suggests that racist abusers will not give time or space to the arguments of their victims. Clear and consistent leadership is required, but if leadership is lacking, the targets of racism should at least have a private legal remedy with which to defend and vindicate themselves as a last resort, using their own resources.

The following forms of behaviour have been found by a court to contravene section 18C of the RDA

- Holocaust denial and other forms of antisemitism;
- A mainstream media story describing Aboriginal youths killed in a car accident as "criminal trash" and "scum" that should be used as "land fill";
- Subjecting an Aboriginal woman and her family to a torrent of abuse, including calling them "niggers", "coons", "black mole", "black " and "lying black mole c***";
- Shouting "Singaporean prick!" at a man who was simply doing his job as a security officer at a public building, followed by "Go back to Singapore!"

Section 18C is thus directed only at conduct which, as objectively assessed by a court, is likely to produce the harms outlined in the section headed, "The Harms of Racist Hate

[2] Andrew Markus, Mapping Social Cohesion: The Scanlon Foundation surveys 2016, p.25: http://scanlonfoundation.org.au/wp-content/uploads/2016/11/2016-Mapping-Social-Cohesion-Report-FINAL-with-covers.pdf

Speech", in section 3 of Part 1 of this Submission. For that reason we believe that no case has been made out for repealing or altering Part IIA of the RDA and that the legislation does not unreasonably restrict freedom of speech.

2. Proposal to remove "offend" and "insult" from s.18C

Without in any way qualifying that view, and for the sake completeness, we also make the following submissions about the proposal introduced into the parliament by Senator Cory Bernardi to remove the words, "offend" and "insult" from section 18C[3]. We note from Senator Bernardi's public comments that the removal of "offend" and "insult" would only be a preliminary step towards the wholesale repeal of section 18C and related sections of the Act.[4] In our view the idea that vulnerable people should be left without any legal remedy to defend themselves against the most serious cases of racist denigration is repugnant to the principle of a fair go.

The proposal to delete the words "offend" and "insult" from section 18C of the RDA, is based on the view that those words set up a "subjective test" based on "hurt feelings", which establishes too low a threshold for the operation of the section and therefore impinges excessively on freedom of expression. That view is erroneous.

Section 18C was not intended to operate in that way when it was enacted and has not been interpreted or given effect to in that way by the courts. In every decided case under section 18C, without exception, the court has made its own assessment by applying an **objective test** based on a community standard, regardless of the subjective perceptions of the complainant. This is the way the courts have consistently interpreted the words "reasonably likely to", which appear in section 18C immediately prior to the words "offend" and "insult".

Further, there is no contravention unless the offence, insult, humiliation or intimidation is found to have "*profound and serious effects, not to be likened to mere slights*".[5] In effect this means that the conduct complained of must have impugned the dignity of the person or group at whom the conduct was directed and impacted adversely on some aspect of the quality of life of that person or group.

Finally, section 18C is qualified by the requirement that the offence, insult, humiliation or intimidation must have occurred "*because of the race, colour or national or ethnic origin*" of the complainant, rather than the complainant's (or anyone else's) ideas, opinions or beliefs.

To offend or insult a person or group merely by confronting them with ideas or opinions which they perhaps find incompatible with their own belief systems, might hurt their sensibilities, but does not in any way impugn their human dignity. In a free society, ideas of any kind - religious, political, ideological or philosophical - are and should be capable of being debated and defended. Robust critiques of ideas of any kind, no matter how passionately adhered to, do not constitute a form of social exclusion of those who adhere to them.

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[3] 'Support grows for Cory Bernardi's change to section 18C', *The Australian*, 30 August 2016.

[4] "Jewish community leader says removing 18C would send 'worst possible message'", *The Guardian Australia*, 17 August 2016

[5] *Creek v Cairns Post Pty Ltd* [2001] FCA 1007 at [16] *per* Kieffel J

In contrast, to offend or insult a person or group because of their "*race, colour or national or ethnic origin*", necessarily sends a message that such people, by virtue of who they are, and regardless of how they behave or what they believe, are not members of society in good standing. This cannot but vitiate the sense of belonging of members of the group and their sense of assurance and security as citizens. To offend or insult a person or group because of their "*race, colour or national or ethnic origin*" thus constitutes an assault upon their human dignity. In our view, this is the evil which the legislation was enacted to address.

The case law (including the QUT case) therefore contradicts the contention that the use of the word "offend" in s.18C sets the bar too low. Further, the word "offend" or "offensive" appears in a variety of other laws, including the criminal law, yet the effect is not considered to be controversial. Indeed, the words "offend", "humiliate" and intimidate" in section 18C were copied from the definition of sexual harassment in sub-section 28A(1) of the *Sex Discrimination Act 1984 (Cth)*. The word "offensive" is also used in sections 471.12 and 474.17 of the *Criminal Code 1995 (Cth)*, which make it unlawful to use a postal service or a carriage service to menace, harass or cause "offence". State criminal laws also proscribe certain types of "offensive" behaviour.

The removal of any of the words, "offend" and "insult," would therefore leave severe gaps in the protections provided compared to those provided by the current legislation. For example, in certain cases there would be no remedy, as is available under the current legislation, for victims of gross negative stereotyping and serious instances or repetitions of written or verbal abuse on the basis of race or ethnicity. In Appendix A we have set out examples drawn from the ECAJ's 2016 and 2015 annual reports on Antisemitism in Australia, which are published in November each year.
Each of the examples in Appendix A involved a calculated attempt to demean members of the Jewish community at large based solely on their Jewish ethnicity, an immutable aspect of their identity. Each example therefore involved a direct assault on the dignity of Jewish Australians or Jews generally as a group. More than that, some examples involved targeting members of the Jewish community at the places where they work or study and must be understood as an attempt at the very least to make members of the Jewish community feel excluded from these places. These incidents strike at the freedom of members of the Jewish community to engage in work and study with their fellow Australians.

In our view, it is highly likely that the conduct involved in each example would, at present, necessarily contravene Part IIA of the RDA through the operation of the words "offend" and "insult" in section 18C. We would be significantly less confident that the conduct would contravene s.18C if the section did not include the words "offend" and "insult". Depending on the overall circumstances, the conduct might not fall within the definitions of "humiliate" or "intimidate", as interpreted in the case law, or other possible words such as "vilify".

This could deny the victims the protection currently offered by the legislation. From a public policy perspective, it would signal to the Australian public that the impact on the victims and the wider community is insufficient to warrant legal protection and that the conduct is now to be tolerated.

3. The Harms of Racist Hate Speech

There is extensive literature by researchers concerning the harms of racist hate speech, whether it consists of words or conduct or both. As was noted in the Commission's report following its *National Inquiry into Racist Violence in Australia* in 1991, these harms go well beyond hurt feelings or injured sensibilities and consist instead of "*adverse effects on the quality of life and well-being of individuals or groups who have been targeted because of their race*".[6] Racism deprives its targets of equal treatment and a fair go, disempowering them and excluding them from society, either wholly or in part, often intimidating them into silence. A brief summary of the adverse effects of racist hate speech follows.

(a) ***Social exclusion and limitations on personal liberty***

To be the target of expressions of racism is to be portrayed negatively because of one's skin colour, ethnicity or national origin, which are factors which one cannot change. This can impact negatively on one's relationships with neighbours, work-mates, friends, acquaintances and others with whom one needs to interact.

Belonging to a racial or ethnic group which is the target of public expressions of racism can undermine and ultimately destroy the sense of safety and security with which members of the group go about their daily lives. Such targeting can thus deny its victims personal security and the liberty to pursue their daily lives because of the fear, even in the absence of provable threats of physical harm, that violent acts of racial hatred are more likely to occur in a social climate in which speech-acts of racism are free to proliferate.[7] As three national inquiries in Australia have concluded, such a fear is well-founded (see Section 3 below).

The desire to avoid being continually confronted with speech of this nature, or by actual or potential perpetrators, places limits on the target's freedom to maintain broad support networks, limiting social harmony and circumscribing possibilities to form and maintain personal relationships. Left unchecked, this may lead the target to resign from a job, leave an educational institution, move house and avoid public places.[8] There may also be knock-on effects upon sympathetic non-target group members, whose liberties to associate with those who are targeted by racist hate speech are also constricted by a desire to avoid becoming targets themselves.[9]

(b) Internalisation of racist messages

Despite conscious attempts to resist the messages of racist speech, the public repetition of racist themes and stereotyping results in individual victims, the perpetrators, and society as a whole subconsciously learning, internalising and institutionalising the messages

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[6] Human Rights and Equal Opportunity Commission, *Report of National Inquiry into Racist Violence in Australia* (1991) p 299. At http://www.humanrights.gov.au/publications/racist-violence-1991

[7] Mari Matsuda, 1993. "Public Response to Racist Speech: Considering the Victim's Story". In *Words that Wound: Critical Race Theory, Assaultive Speech, and the First Amendment*, M. Matsuda, C. Lawrence, R. Delgado and K. Crenshaw (eds.), pp. 17-52. Colorado: Westview Press, at pp.17 and 22.

[8] *Ibid*, at 24-25.

[9] *Ibid*, at 25.

conveyed.[10] Left unchecked, speech which communicates inferiority and negative characteristics based on race tends to produce in its victim the very characteristics of 'inferiority' that the speaker intends to ascribe to the victim, as the victim internalises and comes to believe, and then perform, the dehumanising characterisations attributed to him or her.[11]

Shaming and degrading a group of people by labelling them inferior ('stigmatising') can inflict psychological injury by assaulting self-respect and dignity. Because self-esteem and the respect of others are important for participation in society, racist stigmatising corrodes the self-respect of targeted individuals and groups and thus becomes self-perpetuating; it tends to reproduce in its target group those qualities attributed to the group by the stigmatisers.[12] One researcher has described this process as 'spirit-murder', and has argued that it is as 'devastating', 'costly' and 'psychically obliterating' in its effects as assault.[13]

(c) Desensitisation of society as a precursor to violence

Historically, in other countries and to a limited degree in Australia, particularly in relation to the Indigenous population, public expressions of racism have had the effect, often intended, of desensitising the general population to the humanity, dignity and human rights of members of the targeted group. This has been a precursor to discrimination, persecution, violence and, ultimately, genocide and other crimes against humanity.[14]

For this reason targeted group members are typically subject to fears of racially motivated violence, experience fear of ongoing subordination and are made aware of a denial on the part of hate speakers of the premise of political equality.[15]

It is of particular importance that Part IIA has had the effect of setting the tone of civil discourse in Australia, acting as a powerful prophylactic against the tendency to racial violence that might otherwise arise in the absence of Part IIA.

(d) Silencing of target individuals and groups

Speaking back against expressions of racism is often not possible for its targets, or even appropriate. A verbal attack based on the target's skin colour or ethnic background, which are immutable factors, is a denial of the target's humanity. Such

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[10] Richard Delgado, 1993. "Words that Wound: A Tort Action for Racial Insults, Epithets and Name Calling". In *Words that Wound: Critical Race Theory, Assaultive Speech, and the First Amendment*, M. Matsuda, C. Lawrence, R. Delgado and K. Crenshaw (eds.), pp. 89-110. Colorado: Westview Press, at pp. 90-94.

[11] *Ibid*, at pp. 94-95.

[12] Charles R. Lawrence III, 1987. 'The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism', *Stanford Law Review*, Vol. 39, pp. 317-388 at p. 351; Cass Sunstein, 1993. "Words, Conduct, Caste", *The University of Chicago Law Review*, Vol.60, Nos. 3 and 4, pp. 795-844 at pp. p.802.

[13] Patricia Williams. 1987. 'Spirit-Murdering the Messenger: The Discourse of Fingerpointing as the Law's Response to Racism', *University of Miami Review*, Vol. 42, pp. 127-157 at p.129.

[14] Alexander Tsesis, *Destructive Messages: How Hate Speech Paves the Way for Harmful Social Movements* (New York: New York University Press, 2002).

[15] Cass Sunstein, "Words, Conduct, Caste", (1993),*The University of Chicago Law Review*, Vol.60, Nos. 3 and 4, pp. 795-844 at p.814.

an attack should not be dignified with a response in circumstances where a response would imply that the target's humanity is a legitimate matter for 'debate'.

Speaking back will rarely change a racist's basic attitudes. Although racism is said to spring from a belief that human races have distinctive characteristics which determine the moral and other qualities of their individual members, the belief has no scientific basis and is rarely the product of any kind of purely cognitive process, whether evidence-based or otherwise. People who propound racist beliefs are almost always motivated by emotional or psychological factors or by a supervening interest and will therefore persist in such beliefs even when there is overwhelming evidence to the contrary. The "reasons" proffered for racist attitudes are rationalisations, usually *ex post facto*.[16]

The targets of expressions of racism tend to curtail their own speech as a protective measure for a range of reasons.

- The target fears that a response may provoke further abuse.[17]

- In many cases the speaker is in a position of authority over the target, which further restricts the target's belief in his or her ability to respond in a meaningful way, as the target may fear victimisation, or lack the confidence to challenge a person in a position of authority over the target.[18]

- Ongoing public, negative, stereotypical portrayals of a target group have been described as 'incessant and cumulative assaults' on the self-esteem of members of the group. The 'micro-aggression' enacted via racism also produces 'deference' in the victim persona, that is to say, conformity to the expectations is placed on the victim group,[19] and a conviction, usually well-founded, that counter-speech will not be given a fair hearing and taken seriously.[20]

- Members of the majority or dominant group in society 'get a lot more speech than others'. Members of relatively less powerful groups within the community do not operate from a level playing field.[21]

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[16] See, for example, Polycarp Ikuenobe, 'Conceptualizing Racism and Its Subtle Forms', *Journal for the Theory of Social Behaviour*', Volume 41, Issue 2, June 2011, pp 161–181.

[17] Richard Delgado, "Words that Wound: A Tort Action for Racial Insults, Epithets and Name Calling" (1993) in M. Matsuda, C. Lawrence, R. Delgado and K. Crenshaw (eds.), *Words that Wound: Critical Race Theory, Assaultive Speech, and the First Amendment* (Colorado: Westview Press, 1993) pp. 89-110 at p. 95; and also Mari Matsuda, "Public Response to Racist Speech: Considering the Victim's Story" (1993) in M. Matsuda, C. Lawrence, R. Delgado and K. Crenshaw (eds.), *Words that Wound: Critical Race Theory, Assaultive Speech, and the First Amendment* (Colorado: Westview Press, 1993) pp. 17-52 at pp. 24-25.

[18] *Ibid*.

[19] Peggy Davis, "Law as Microaggression" (1989) *Yale Law Journal*, Vol. 98, pp. 1559-1577, at pp. 1585, 1567.

[20] Rae Langton, "Speech Acts and Unspeakable Acts" (1993) *Philosophy and Public Affairs*, Vol. 22, No. 4, pp. 293-330, at pp. 314-316.

[21] Catharine A. MacKinnon, *Only Words* (Cambridge, Massachusetts: Harvard University Press,1993).

(e) Damage to health of targets

There is a growing body of research that highlights the serious health effects racism can have on individuals, similar to other stress-induced disorders. Repeated exposure to it contributes to conditions such as hypertension, nightmares, post-traumatic stress disorder, even psychosis and suicide.[22]

4. The Australian Experience

The conclusions of researchers concerning the harms of racism were borne out in Australia by the findings and recommendations of three national inquiries in the early 1990's, immediately preceding the enactment of Part IIA of the RDA, and a lesser known inquiry in the early 1980's.

(a) The ***National Inquiry into Racist Violence*** conducted by the Commission in 1991, concluded that "the evidence presented to the Inquiry also supports the observation that there is a connection between inflammatory words and violent action".[23] The Commission's Report recommended the introduction of new Federal criminal offences to proscribe behaviour involving racist violence or intimidation and also incitement to racist violence and to racial hatred likely to lead to violence.[24]

The Report also recommended the introduction of civil remedies for racial harassment and for incitement of racial hostility. With regard to the former it concluded:

> "*It is desirable that there be a clear statement of the unlawfulness of conduct which is so* ***abusive,*** *threatening or intimidatory as to constitute harassment on the ground of race, colour, descent or national or ethnic origin. It is also desirable that individuals who have been the victims of such* ***words or conduct*** *be given a clear civil remedy under the Racial Discrimination Act in the same terms as those subjected to other forms of racial discrimination covered by the Act.*"[25] (Emphases added).

The Report noted the need for the proposed civil remedies "*to set an appropriate threshold on prohibited conduct in order to avoid trivialisation*"[26], stating that: "*No prohibition or penalty is recommended for the simple holding of racist opinions without* ***public expression or promotion*** *of them or in the absence of conduct motivated by them.*"[27] (Emphases added). Further, the civil remedies should not extend to mere "*hurt feelings or injured sensibilities*", but only to public "*conduct with adverse effects*

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[22] Mari Matsuda, "Public Response to Racist Speech: Considering the Victim's Story" (1989) *Michigan Law Review* 87(8), pp. 2320-2381 at p. 2336; and see also Cosima Marriner, *Weaker laws may legitimise racist behaviour, The Age*, April 27, 2014: http://m.theage.com.au/federal-politics/political-news/weaker-laws-may-legitimise-racist-behaviour-20140426-37avs.html

[23] Human Rights and Equal Opportunity Commission, *Report of National Inquiry into Racist Violence in Australia* (1991), p. 144: http://www.humanrights.gov.au/publications/racist-violence-1991

[24] *Ibid*, pp. 297-298.

[25] *Ibid*, pp. 298-299.

[26] *Ibid*, p.296

[27] *Ibid*, p.297

on the quality of life and well-being of individuals or groups who have been targeted because of their race".[28]

(b) The ***Royal Commission into Aboriginal Deaths in Custody*** (1991) also concluded that there is a clear nexus between racist language and violence. The Royal Commission's Report concluded that expressions of racism are both a 'form of violence' and a promoter of subsequent violence against Aboriginal people.[29] The Report noted that even in the United States, where a guarantee of free speech is enshrined in the First Amendment to the American Constitution, an exception applies with respect to:

> *"insulting or fighting words, which by their very utterance inflict injury or tend to incite to immediate breach of the peace, these utterances have no essential value as a step to the truth. Any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.*
>
> *Wilful purveyors of falsehood concerning racial and religious groups promote strife and tend powerfully to obstruct the manifold adjustments required for free ordered life in a metropolitan polyglot community.*"[30]

The Royal Commission's Report recommended that governments that had not already done so should legislate to provide civil remedies to victims of racist behaviour and provide a conciliation mechanism for complaints, with exclusions for "*demonstrations against the behaviour of particular countries, publication or performance of works of art and the serious and non-inflammatory discussion of issues of public policy*".[31] It noted that legislation alone could not change people's attitudes and emphasised the important role of education, but also observed that education and legislation are not mutually exclusive. It emphasised that anti-racism legislation has an important educative role to play by dissuading people from performing racist acts and changing attitudes over time.[32]

(c) The Australian Law Reform Commission, in its ***Multiculturalism and the Law*** report (1992) concluded (with one dissenter) that prohibition of "racist abuse" is consistent with existing limits on freedom of expression, and that public expressions of racism are damaging to the whole community, not only minority groups, undermining the tolerance required for Australia to survive as a multicultural society.

> "*In a tolerant society people are entitled to be protected against serious attempts to undermine tolerance by stirring up hatred between groups. Laws prohibiting incitement of racist hatred and hostility protect the inherent dignity of the human person. In a multicultural society, values such as equality of status, tolerance of a wide variety of beliefs, respect for cultural and group identity and equal*

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[28] *Ibid*, p. 299

[29] Royal Commission into Aboriginal Deaths in Custody, National Report Volume 4 (1991), at 28.3.34: http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol4/26.html

[30] Unanimous decision of the US Supreme Court in *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942), *per* Justice Frank Murphy.

[31] Royal Commission into Aboriginal Deaths in Custody, National Report Volume 4 (1991), at 28.3.49: http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol4/26.html

[32] *Ibid*, at 28.3.46 and 28.3.47

> *opportunity for everyone to participate in social processes must be respected and protected by the law. Laws prohibiting incitement to racist hatred and hostility indicate a commitment to tolerance, help prevent the harm caused by the spread of racism and foster harmonious social relations. Australia is a multicultural society. Its survival as a multicultural society demands that the communities that make up the Australian community can live in peace and harmony. Inciting hatred and hostility against sections of the community is an offence against the whole community and the whole community has an interest in ensuring that it does not happen.*"[33]

All but one of the eight members of the Law Reform Commission thus recommended that the Federal government introduce civil remedies against incitement of racist hatred and hostility for targeted individuals and groups.[34] Six members concurred with the view expressed in the Report of the Royal Commission into Aboriginal Deaths in Custody, that "*conciliation, backed up by civil remedies when conciliation fails, is the more appropriate way to deal with it and opposes the creation of a criminal offence.*"[35]

However, a minority of two of the members also favoured the introduction of a new criminal offence of incitement to racial hatred and hostility, reasoning that:

> "*In many cases there may be only a fine line between stirring up hatred and hostility on the one hand and incitement to violence on the other. Where proof of intention to cause violence falls short, the existence of intent to cause hatred may be quite clear. To offer no more than conciliation in such cases would add to the trauma of the victim.*"[36]

Drawing on the provisions of Article 4(a) of the International Convention on the Elimination of All Forms of Racial Discrimination, to which Australia has been a State party since 1975, the precise offence which the two members recommended be introduced was:

> "*A person must not publish, by any means, anything that is based on ideas or theories of superiority of any race or group of persons of one colour or ethnic origin over another, or promotes hatred or hostility between such races or groups, if the person intends that the publication will incite hatred or hostility towards an identifiable group and is likely to have that effect.*"[37]

(d) In 1983, the Human Rights Commission (as it was then known), conducted an Inquiry chaired by Dame Roma Mitchell, into the possible need for amendments to the RDA to cover **incitement to racial hatred** and **racial defamation**. The Inquiry was prompted by the fact that: "*Even though it is widely known that racist statements are not*

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[33] Australian Law Reform Commission, *Multiculturalism and the Law, Report No 57* (1992), para 7.44: http://www.austlii.edu.au/au/other/alrc/publications/reports/57/

[34] *Ibid*, para 7.45

[35] *Ibid*, para 7.47

[36] *Ibid*, para 7.48

[37] *Ibid*

covered by the existing legislation, fully one-quarter of all complaints [received by the Commission under the RDA] *concern racist statements*".[38]

It is worth pausing here to note that even at a time when Australia had no anti-racism laws at all, State or Federal, members of the public nonetheless directed a large volume of complaints about racist hate speech to the Commission, looking for a remedy. Nothing could better illustrate the need for anti-racism legislation, and the danger that would be posed to social peace and cohesion if such legislation did not exist.

Whilst some of the complaints of racism were minor, others involved "*gross racist propaganda and powerful attacks on the equal opportunities of minority groups. In two cases where there had been prior complaints to the Commissioner, tension resulted in violence and the death of one of the protagonists*".[39]

Prior to the commencement of the Inquiry into possible remedies for racist statements/propaganda and racial defamation and the call for submissions, the Commission had publicly circulated four papers:

(a) *Incitement to Racial Hatred: Issues and Analysis* (Occasional Paper No. 1) October 1982

(b) *Incitement to Racial Hatred: The International Experience* (Occasional Paper No 2) October 1982

(c) *Words that Wound: Proceedings of the Conference on Freedom of Expression and Racist Propaganda* (Occasional Paper No. 3) February 1983

(d) *Proposed Amendments to the Racial Discrimination Act concerning Racial Defamation* (Discussion Paper No. 3) September 1983

The Report drew a distinction between recalcitrant racists and "*a much larger group of persons whose racism was unthinking or less deeply entrenched*", and concluded that complaints against the latter group were more appropriately dealt with by conciliation and, as a last resort, civil remedies.[40] This conclusion was in keeping with the Report's emphasis on the educative role of the law.

> "*The simple fact that an act is known to be unlawful will dissuade most citizens from performing that act unless they have a strong economic or personal interest in so doing. Laws can also change attitudes over time and it is not necessarily the case that an overall attitudinal change has to precede a change in the law. Indeed often when the major proportion of the population accepts that a particular behaviour … is not acceptable, a law restraining the practice will then be highly effective in convincing the remainder of the population to conform to the new social standard.*"[41]

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[38] Human Rights Commission. Report No. 7. *Proposal For Amendments To The Racial Discrimination Act To Cover Incitement To Racial Hatred And Racial Defamation* (1983) p. 7: https://www.humanrights.gov.au/sites/default/files/HRC_report7.doc

[39] *Ibid*

[40] *Ibid*, pp.12-13

[41] *Ibid*, p. 13

Uniquely, the Inquiry's report explored the concept of **group defamation** based on race. It noted that in 1952, the US Supreme Court dismissed a challenge under the First Amendment to a State statute which made it unlawful '*to make or sell a publication exposing the citizens of any race, colour, creed or religion to contempt, derision, or obloquy, or which is productive of a breach of the peace or riots'*, because of its defamation of the group. The Supreme Court dismissed the challenge on a five to four vote, with the majority concluding that the First Amendment does not protect group libel any more than individual libel.[42]

Accordingly, in addition to recommending that the RDA be amended to include a civil prohibition against incitement to racial hatred, the Report recommended that a further civil prohibition be introduced "*to make it unlawful publicly to threaten, insult or abuse an individual or group, or hold that individual or group up to contempt or slander, by reason of race, colour, descent or national or ethnic origin*."[43] The scope of this further prohibition was outlined as follows:

> "*The second provision is intended to cover racial defamation: i.e. forms of racist statement which in effect defame a person by virtue of his or her membership of a racial group or defame the group itself. Statements which detract from the humanity of people, often by means of unfavourable stereotypes, are as damaging when they slander groups as when the reputations of individuals are attacked. Examples would include 'no X has ever done an honest day's work'; or. 'Ys in this town are a mob of alcoholics with prison records'.*
>
> *It should be noted that the unlawfulness of the actions covered by the provisions would depend upon the likely impact of the actions and not upon the intentions of the perpetrators. In this way, the Commission's proposals would fit within the civil concept of unlawfulness on which the Racial Discrimination Act is based rather than within the criminal law tradition.*"[44]

5. <u>The Experience of the Australian Jewish Community</u>

The specific experience of the Jewish community in Australia has for the most part been a happy one, with far lower levels of antisemitism than have historically been experienced, and continue to be experienced, by Jewish communities in other parts of the world. Nevertheless, antisemitism persists in Australia. Acts of violence against people which are motivated by antisemitism are relatively rare in Australia but, as the ECAJ's Annual Antisemitism Reports have demonstrated, expressions of antisemitism do occur and have grown in frequency.

In the 12 month period ending 30 September 2016, 210 antisemitic incidents were reported to Jewish communal organisations, a 10% increase over the previous year. These incidents included physical assaults, abuse and harassment, vandalism and graffiti, hate and threats communicated directly by email, letters, telephone calls, and leaflets.

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[42] *Beauharnais v. Illinois*, 343 U.S. 250 (1952).

[43] Human Rights Commission. Report No. 7. *Proposal For Amendments To The Racial Discrimination Act To Cover Incitement To Racial Hatred And Racial Defamation* (1983) p. 14:

[44] *Ibid*, p.15

Both the 1983 Human Rights Commission Inquiry into the possible need for amendments to the RDA to cover incitement to racial hatred and racial defamation and the 1991 National Inquiry into Racist Violence, contained sections analysing the data then available on the incidence of antisemitism in Australia. The most serious outbreaks of antisemitic violence occurred in 1982, when bombs detonated in the Hakoah Club and the Israeli Consulate in Sydney and during the 1991 Gulf War, when there were arson attacks against Jewish kindergartens in Sydney and Melbourne and against three synagogues in Sydney. Fortunately there were no injuries. However, no-one has been prosecuted for these crimes.

Since the early 1990's, three major changes have somewhat altered the pattern of antisemitic behavior in Australia, viz:

(i) the advent of the internet including social media;
(ii) the growing convergence between the extremes of the political left and right in embracing antisemitic tropes and themes[45] and
(iii) the introduction of Part IIA of the RDA.

The first two changes have produced a burgeoning of public expressions of antisemitism and other forms of racism online[46] and the third has provided the Jewish community with a valuable counter-measure.

Synagogues, Jewish schools and other communal Jewish buildings continue to require armed guards and other security facilities as a precaution against antisemitic threats of widely varying severity from sources based locally and overseas.

Acts of violence begin with words. Part IIA of the RDA has provided all Australians, including our community, with an avenue of redress and vindication against both local and imported strains of racism. For our community, this has mostly been by way of direct negotiations with publishers of antisemitic content. The fact that publishers are aware that there is "a law against racist hate speech" and that most publishers do not identify, or wish to be identified, as racists is sufficient in most cases to resolve a potential complaint. Only if negotiations fail is the incident escalated into a formal complaint with the Commission. It has been even rarer for our organisation to proceed to litigation under Part IIA of the RDA, but when we have done so we have usually been successful.

The cases brought by the ECAJ of *Jones v Scully*[47] and *Jones v Toben*[48] were landmark cases which established the unlawfulness, under Part IIA of the RDA, of gross forms of antisemitic discourse, including Holocaust denial. Both of these cases were fought over a period of approximately 10 years at a great cost in time and money, thus demonstrating that the current legislation is not at all weighted in favour of complainants as some have alleged. The benchmarks established by these cases would have to be re-established with fresh litigation by the ECAJ if section 18C were to be amended by the removal of "offend" and "insult".

The ECAJ has successfully resolved many more cases at conciliation or by direct negotiations with publishers. A complaint under Part IIA of the RDA which was brought to the Commission by our organisation against Facebook in 2012, went to compulsory conciliation.

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[45] Julie Nathan, *We're not racist, we just hate Jews*, 4 July 2012: http://www.jpost.com/Opinion/Op-EdContributors/Article.aspx?id=276273; and *Antisemitism in left-wing online media*, 3 October 2012: http://www.jpost.com/Opinion/Columnists/Article.aspx?id=286494

[46] Peter Wertheim, *We can tame the cyber racism beast*, 18 November 2010: http://www.smh.com.au/federal-politics/political-opinion/we-can-tame-the-cyber-racism-beast-20101118-17yxu.html

[47] [2002] FCA 1080

[48] [2002] FCA 1150

The complaint was made only after online complaints from Facebook users had not been responded to. Facebook ultimately removed or made inaccessible hundreds of crudely antisemitic racist images and comments that had appeared on 51 Facebook pages. In the US, efforts by Jewish organisations to have Facebook take similar action failed.[49]

Both redress and public vindication have been important to the ECAJ as a means of providing people in the Jewish community with reassurance about the essential fairness, tolerance and civility of Australian society and thus of preventing or counteracting the harms that public expressions of antisemitism would otherwise cause them. Also, by informing those who may have been influenced by racist content that has been removed, a successful outcome to a complaint can help to negate the dissemination of racial prejudice. Nevertheless, the ECAJ treats the option of making a complaint under Part IIA as a last resort. We also recognise that the principle means of counteracting racism in the long term is through public and school education. We consider legal and educative tools to be mutually complementary, not mutually exclusive.

6. Australia's International Obligations

The recommendations made by the national inquiries are in accordance with Australia's obligations under international treaties. Any substantive weakening of the protections in Part IIA of the RDA would make Australia substantially less compliant with those obligations, and with the commitment given by Australia in the final sentence of its reservation to Article 4a of the International Convention for the Elimination of all Forms of Racial Discrimination (CERD).[50]

CERD was the instrument by which an internationally agreed legal framework for redressing racial discrimination, including the promotion of racial hatred, was first created. On 13 October 1966 Australia became one of the first countries to sign CERD, but it was not until 30 September 1975 that Australia ratified CERD and became legally bound by its provisions. At present, 177 of the world's 193 States are parties to CERD. The RDA was enacted in 1975 in pursuance of Australia's obligations under CERD and the whole of CERD is a schedule to the RDA.

A key provision of CERD is Article 4, paragraph (a) of which requires States parties to make "*all dissemination of ideas based on racial superiority or hatred*" a criminal offence:

> "*States Parties condemn all propaganda and all organisations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the universal declaration of human rights…*
>
> *a) Shall declare an offense punishable by law all dissemination of ideas based on racial superiority or hatred…"*

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[49] See http://www.israelhayom.com/site/newsletter_opinion.php?id=7823

[50] 660 United Nations Treaty Series 195 (entered into force Jan. 4, 1969)

The CERD, in common with other aspects of international human rights law and humanitarian law, draws its lessons from the cataclysmic events of the 1930's and 1940's and is aimed at eliminating anything resembling a recrudescence of Nazi ideology or practice. Nevertheless, the treaty is in generic terms. It is aimed at eliminating ***all*** forms of racial discrimination ***and racial prejudice***, and seeks to prohibit the dissemination of ***any*** "ideas based on racial superiority ***or hatred***". (Emphases added).

The rationale for the conclusion of CERD in the 1960's is admirably summarised in the following passage:

> "*By this time in the twentieth century, the nations of the world had experienced a century stained by, amongst other catastrophes, racial slaughter, pogroms, forced removal and relocations of whole peoples, religious and ethnic genocide, and were undergoing the trauma involved in the break-up and disintegration of colonial empires and national and regional political structures based on racial characteristics. The unexpected recrudescence, in the winter of 1959-60, of some of the most recent and horrific manifestations of racist behaviour enlivened the world community to act swiftly and (with an inevitable degree of variation in political perspective) unanimously, to take steps towards the elimination of the perceived evil. The perceived evil was all forms of racial discrimination and racial prejudice, the manifestation of which had been, in recent generations, at times horrifically violent and strident, at times overt, and at times less overt and less brutal, but nevertheless insidiously pervasive. In any form, it was recognised, by all nations in the international community, to strike at the dignity and equality of all human beings.*"[51]

At the time of ratifying the convention in 1975, Australia reserved its position in relation to Article 4(a), stating that "*Australia is not at present in a position specifically to treat as offences all the matters covered by Article 4(a) of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing criminal law dealing with such matters as the maintenance of public order, public mischief, assault, riot, criminal libel, conspiracy and attempts. It is the intention of the Australian government, at the first suitable moment, to seek from parliament legislation specifically implementing the terms of Article 4(a).*"[52]

Australia has never enacted a Federal criminal offence or offences in terms of Article 4(a) and the reservation remains in place. The UN's Committee on the Elimination of Racial Discrimination does not consider the enactment of the civil prohibitions in Part IIA of the RDA, to constitute compliance with Article 4(a) (and the commitment given in the final sentence of the reservation) and has called on Australia to withdraw its reservation.[53]

The other relevant international instrument bearing on Australia's obligations to combat racism, is the International Covenant on Civil and Political Rights (ICCPR),[54] which entered into force for Australia on 13 November 1980. The ICCPR highlights the interaction between freedom of expression and freedom from expressions of racism. Article 19 affirms that "*[e]veryone shall have the right to freedom of expression; this right shall include freedom to*

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[51] *Toben v Jones* [2003] FCAFC 137 (27 June 2003) at [98] *per* Allsop J

[52] https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en (viewed 28 April 2014)

[53] CERD/C/AUS/CO/15-17, 27 August 2010, para [17]

[54] 999 *United Nations Treaty Series* 171 (entered into force 23 March 1976)

seek, receive and impart information and ideas of all kinds." Article 19 also recognizes that freedom of expression is not absolute: it "*carries with it special duties and responsibilities*" and "*may therefore be subject to certain restrictions*" as are provided by law and are necessary for "*respect of the rights or reputations of others*" or "*the protection of national security or of public order*". One of the exceptions is enshrined in Article 20, which states that, "*[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law*".

7. Public Policy Underlying Part IIA of the RDA

The conclusions of the three national inquiries, referred to in Section 4(a), (b) and (c) of Part 1 of this Submission, as to the existence of a causal nexus between racist hate speech and racist violence, and Australia's international obligations under CERD, were invoked in the second reading speech introducing the Racial Hatred Bill 1994 (Cth), the civil remedy provisions of which were ultimately enacted in 1995 as Part IIA of the RDA.

In addition to the civil remedy provisions, the Racial Hatred Bill included provisions to introduce new criminal offences of incitement to racial hatred, which were rejected in the Senate and not proceeded with. The Bill also reflected the input of public comment on an earlier draft in 1992.

In speaking to the civil prohibitions in the course of the Second Reading speech, the then Attorney-General stated that their basic purpose was to fill the gaps in protections against the harms of racisthate speech identified in the three national inquiries.[55] Referring to the nexus that these inquiries had found to exist between racist hate speech and racially-motivated violence, the Attorney-General compared the harms of racist hate speech to those dealt with by other areas of the law:

> "*Laws dealing with defamation, copyright, obscenity, incitement, official secrecy, contempt of court and parliament, censorship and consumer protection all qualify what can be expressed. These laws recognise the need to legislate where words can cause serious economic damage, prejudice a fair trial or unfairly damage a person's reputation. In this bill, free speech has been balanced against the rights of Australians to live free of fear and racial harassment.* ***Surely the promotion of racial hatred and its inevitable link to violence is as damaging to our community as issuing a misleading prospectus, or breaching the Trade Practices Act.*** [56] (Emphasis added).

The Bill was intended to provide a safety net for racial harmony in Australia and send a clear warning to those who might attack the principle of tolerance.

The Attorney-General was at pains to emphasise that the Bill's provisions, and those of the RDA as a whole, "*do not seek to eliminate racist attitudes, for a law cannot change what people think*". The target is behaviour and the harms caused by that behaviour.[57]

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[55] Commonwealth of Australia, Parliamentary Debates, House of Representatives, Tuesday 15 November 1994, pp 3336-3337, (The Hon Michael Lavarch MP, Attorney-General): http://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/1994-11-15/toc_pdf/H%201994-11-15.pdf;fileType=application%2Fpdf#search=%221990s%201994%22

[56] *Ibid*, 3337

[57] *Ibid*, 3336.

As to the role of education and legislation as tools for countering racism, the Attorney-General said:

> "*Racism should be responded to by education and by confronting the expression of racist ideas. But legislation is not mutually exclusive of these responses. It is not a choice between legislation or education. Rather, it is, in the government's view, a case of using both.*
>
> *There is no doubt that the Racial Discrimination Act has been a powerful influence on the rejection of racist attitudes over the past two decades. It has forced many people to confront racist views and have them debunked*."[58]

Rejecting the proposition that the legislation would limit free expression, the Attorney-General argued:

> "*The bill places no new limits on genuine public debate. Australians must be free to speak their minds, to criticise actions and policies of others and to share a joke. The bill does not prohibit people from expressing ideas or having beliefs, no matter how unpopular the views may be to many other people. The law has no application to private conversations. Nothing which is said or done reasonably and in good faith in the course of any statement, publication, discussion or debate made or held for an academic, artistic or scientific purpose or any other purpose in the public interest will be prohibited by the law.*"[59]

It was noted that the specific terms of the civil prohibition – "*reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate a person or group because of their race*" – differ from the equivalent provisions in State jurisdictions, which require proof of "incitement" of others to hatred on the grounds of race. The Bill's approach was preferred over the State models because it:

- was said to represent "*the sum of experiences in these jurisdictions*"[60] which had revealed deficiencies in the State legislation; and
- "*is the same as that used to establish sexual harassment in the Sex Discrimination Act. The commission is familiar with the scope of such language and has applied it in a way that deals with serious incidents only*"[61].

Nevertheless, the Attorney-General emphasised that the Part IIA of the RDA:

- "*requires an objective test to be applied … so that community standards to behaviour rather than the subjective views of the complainant are taken into account.*"[62]

8. <u>Case Law Under Part IIA of the RDA</u>

The case law has borne out the claims that were made in the Second Reading speech about the way Part IIA would operate, and have demonstrated that criticisms of its provisions were, and continue to be, based on a mis-characterisation of their legal effect. In particular:

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[58] *Ibid*, 3337
[59] *Ibid*.
[60] *Ibid*, 3341
[61] *Ibid.*
[62] *Ibid.*

- Section 18C does not enforce the subjective, and possibly capricious, perspectives of complainants about perceived harm. Not a single judgment has interpreted the section in that way. To the contrary, the courts have consistently held that the question of whether a publication is "reasonably likely" in all the circumstances to offend, insult, humiliate or intimidate because of race is to be decided by the court according to an objective test, and not according to the subjective perceptions of the complainant or witnesses. It is not necessary for a complainant to adduce evidence that anyone has in fact been offended, insulted, humiliated or intimidated. Such evidence, if led, is admissible but not determinative. The Court must make an objective assessment of the position itself, so that community standards of behaviour rather than the subjective views of the complainant are the decisive consideration.[63]

- Claims that the words "offend" and "insult" are excessively broad and vague and prohibit too wide a range of expressions[64], have not been borne out by the case law. Section 18C(1)(b) itself provides that the alleged contravention must have occurred "*because of the race, colour or national or ethnic origin*" of the complainant. The section does not apply if the alleged offence, insult, humiliation or intimidation arises because a publication deals with a particular subject matter, even if that subject matter is racially-related and controversial, Accordingly, no topic, or side of the argument on any topic, is placed "off-limits" for discussion in any context. No case under Part IIA has been decided against a respondent simply because of the subject matter dealt with, or solely because the thesis presented has reflected negatively on a group of people because of their race.[65]

  Although the judgment of Bromberg J in *Eatock v Bolt* [2011] FCA 1103, has been the focus of much of the criticisms of Part IIA of the RDA, it too confirmed expressly that the contravention of section 18C that was found to have occurred was not due to the subject matter of the respondents' publications:

  > "*nothing in the orders I make should suggest that it is unlawful for a publication to deal with racial identification,* ***including by challenging the genuineness of the identification of a group of people****. I have not found Mr Bolt and the Herald & Weekly Times to have contravened section 18C, simply because the newspaper articles dealt with subject matter of that kind. I have found a contravention of the Racial Discrimination Act because of the* ***manner*** *in which that subject matter was dealt with.*"[66] (Emphases added).

  The "manner" to which the court referred included the finding that the publications in question "*contained errors of fact, distortions of the truth and inflammatory and provocative language*".[67] The findings of the court concerning the publications'

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[63] *Hagan v Trustees of the Toowoomba Sports Ground Trust* [2000] FCA 1615 at [15]; *Creek v Cairns Post Pty Ltd* [2001] FCA 1007 at [12]*; Jones v Scully* [2002] FCA 1080 at [98]-[101].

[64] See, for example, Commonwealth of Australia, Parliamentary Debates, House of Representatives, Tuesday 15 November 1994, p 3347 (The Hon Philip Ruddock)

[65] See, for example, *Walsh v Hanson* (2000) HREOCA 8 (2 March 2000) concerning a complaint against Australian politician, Pauline Hanson, who co-wrote a book contending that Aboriginal people were getting welfare payments undeservedly for which other Australians were not eligible. Regardless of factual and methodological flaws in the book, Ms Hanson was found to have a complete defence under section 18D and the complaint was dismissed.

[66] *Eatock v Bolt* [2011] FCA 1103, Summary of Judgment, para [30].

[67] *Ibid*, para [23].

"*deficiencies in truth*" precluded the respondents from establishing that the 'fair comment' exception in section 18D(c)(ii) applied,[68] but did not necessarily rule out the application of other exceptions in section 18D.

What was ultimately decisive was the finding against the respondents of a lack of good faith, good faith being a threshold requirement for any of the exceptions in section 18D to apply.[69] The finding of a lack of good faith was in turn based on a combination of findings as to "*the lack of care and diligence*" involved in the "*untruthful facts and the distortion of the truth*" which the court found had occurred, and as to "*the derisive tone, the provocative and inflammatory language and the inclusion of gratuitous asides*".[70]

In the course of ordinary political debate a combination of "errors of fact, distortions of the truth and inflammatory and provocative language" would be unremarkable, and would of course not require legislative intervention. However, to suggest that the situation is no different when the errors of fact, distortions of the truth and inflammatory and provocative language are based on race flies in the face of the findings made by the three national inquiries previously referred to. These findings established a nexus between inflammatory words based on race and acts of violence. If those who are the targets of errors of fact, distortions of the truth and inflammatory and provocative language on the basis of their race cannot have their voices heard and do not have some possibility of legal redress, using their own resources, violence will tend to occur – perpetrated by one side or the other – and has in fact occurred on several notorious occasions. That is why sections 18C and 18D treat debate about race differently – and rightly so in our view, albeit only to the minimum extent necessary.

- As already noted, the case law has also demonstrated the falsity of claims that the words "offend" and "insult" provide a remedy for mere hurt feelings and trivial slights. The prohibition in s.18C has been found by the courts to be limited to those circumstances in which the offence, insult, humiliation or intimidation has "*profound and serious effects, not to be likened to mere slights*".[71] This means that section 18C of the RDA has been interpreted by the courts as applying only to authentic harms as outlined in Section 3 of this submission. Any concerns in that regard could be readily overcome by the courts' interpretation being codified in the RDA.

- Legal challenges to the validity of the provisions of Part IIA of the RDA as an exercise of the external affairs power conferred by s 51(xxix) of the Constitution have been unsuccessful. The fact that Part IIA provides for civil remedies only, rather than the criminal sanctions called for by the treaty on which it is based (Article 4(a) of CERD), and does not deal with "racial hatred" in express terms as referred to in CERD, has been found not to render Part IIA deficient in implementing that treaty. In *Toben v Jones* in 2003, the Full Court of the Federal Court held that "*it is clearly consistent with the provisions of CERD and the ICCPR that a State Party should legislate to "nip in the bud" the doing of offensive, insulting, humiliating or intimidating public acts which are done because of race, colour or national or ethnic origin before such acts can grow into incitement or promotion of racial hatred or discrimination*".[72] The law need not

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68 *Ibid*, Reasons for Judgment, paras [384]-[386]
69 *Ibid*, para [425].
70 *Ibid*.
71 *Creek v Cairns Post Pty Ltd* [2001] FCA 1007 at [16] *per* Kieffel, J.
72 *Toben v Jones* [2003] FCAFC 137 (27 June 2003) at [19]-[20] *per* Carr J

be a full and complete implementation of the treaty, nor does the need to implement obligations under the treaty, provide the outer limit of Parliament's legislative power.[73]

It is notable that the Commonwealth - which was then under a Coalition government headed by Prime Minister John Howard – intervened in *Toben v Jones* to defend the validity of Part IIA of the RDA and specifically the use of the words "offend, insult, humiliate and intimidate" in section 18C. The Commonwealth argued "*that acts done in public which are objectively likely to offend, insult, humiliate or intimidate and which are done because of race, colour or national or ethnic origin are likely to incite other persons to racial hatred or discrimination or to constitute acts of racial hatred or discrimination*", and the court accepted that submission.[74] We respectfully urge the current Coalition government to adopt the same approach.

- Part IIA has also been found to be consistent with the implied constitutional freedom of communication about government and political matters, having regard to the exceptions from unlawful conduct contained in Section 18D of anything that is said or done 'reasonably and in good faith' which falls within the criteria set out in subsections (a)-(c). The Federal Court has found that "*those exemptions provide an appropriate balance between the legitimate end of eliminating racial discrimination and the requirement of freedom of communication about government and political matters required by the Constitution*."[75]

- The courts have interpreted Part IIA in accordance with the public policy purposes outlined in the Second Reading speech which introduced it.[76]

9. <u>The ineffectiveness of the Criminal Code prohibitions against incitement of violence based on race</u>

Although it is not strictly within the Terms of Reference of this Inquiry, the ineffectiveness of criminal provisions which are intended to address racially inflammatory speech provides relevant context, in our view, to the need for strong and effective civil remedies.

Sections 80.2A and 80.2B of the *Criminal Code* create offences of urging of violence against groups or members of groups on the basis of race (among other factors).

Both offences require proof *inter alia* of two *mens rea* elements, namely that the accused:

(i) intentionally urged another person, or a group, to use force or violence against the targeted group or supposed member of the targeted group; and
(ii) did so intending that force or violence will occur.

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[73] *Ibid*, at [141]-[142] *per* Allsop J
[74] *Ibid*, at [19]
[75] *Jones v Scully* [2002] FCA 1080 at [239]-[240], *per* Hely, J. Justice Hely's reasoning has been followed in all subsequent cases where the issue of the constitutionality of section 18C of the RDA has been raised. That reasoning remains binding and authoritative, and most persuasive. It was cited with approval by the Full Court of the Federal Court in *Toben v Jones* [2003] FCAFC 137.
[76] The case law is conveniently summarised in the Reasons for Judgment of Bromberg J in *Eatock v Bolt* [2011] FCA 1103, paras [207]-[210]

Intention is therefore an essential component of both elements. In practice it is virtually impossible for a prosecutor to prove the second element to the criminal standard. A person who urges other persons to commit acts of violence focuses on influencing the state of mind and behaviour of those other persons without laying bare the urger's own intentions. Even in history's most extreme and paradigmatic examples of the evil of incitement to racially-motivated violence, evidence of the second element, to the criminal standard, has usually been missing. If the legislation is to be effective, it needs to be re-formulated in a way that will allow a prosecutor the practical prospect of success in the circumstances that the legislation seeks to address.

Further, there are defences in section 80.3 if the defendant has acted in "good faith". These defences were in large part carried over from the repealed section 24F of the *Crimes Act 1914* (Cth) which had been drafted specifically to apply to the offence of sedition. Such defences are fundamentally misconceived in relation to offences based on the urging of violence against groups distinguished by race, religion, nationality, national or ethnic origin or political opinion, or members of such groups. Indeed the existence of such defences might well be seen as formally justifying the advocacy of racially-motivated violence, as legitimate free speech.

The intention that "force or violence will occur" in the context of urging force or violence against a group distinguished by race, religion, nationality, national or ethnic origin or political opinion, or against a supposed member of that group, denotes both ill-will and an anti-social motive. An intention that "force or violence will occur" in that context is simply incompatible with the requirement that the act be done in "good faith".

It follows that in respect of an offence under either of proposed sections 80.2A and 80, the good faith defence is not needed because, in the circumstances in which it could be established, the elements of the offence could not have been made out in the first place.

The ineffectiveness of these provisions was highlighted following the delivery of a violent, public diatribe against Jews by Hizb ut-Tahrir's "Sheikh Ismail al-Wahwah on 25 July 2014. Footage of the event was uploaded to YouTube at the time, and again on 3 March 2015. Al-Wahwah repeated a range of shop-worn racist tropes about Jews. He accused "the Jews" of corrupting the world "in every respect", describing them as "the most evil creature of Allah" and threatening that "the ember of jihad against the Jews will continue to burn. Judgment Day will not come until the Muslims fight the Jews ... tomorrow you Jews will see what will become of you — an eye for an eye, blood for blood, destruction for destruction. There is only one solution for this cancerous tumour: it must be uprooted and thrown back to where it came from." Wahwah subsequently protested that he was referring only to Israel. But his numerous references to "the Jews" as a people belie this excuse. The matter was referred to Federal Police for investigation with a view to Wahwah being prosecuted under sections 80.2A or 8.2B of the *Criminal Code*. No prosecution eventuated. This is hardly surprising given the unworkable nature of those provisions.

Part 2 – Response to Second Term of Reference

Whether the handling of complaints made to the Australian Human Rights Commission ('the Commission") under the Australian Human Rights Act 1986 (Cth) should be reformed.

Currently, complaints are lodged with the President of the Commission[77] who is obliged to inquire into and attempt to resolve the complaint by direct conciliation between the parties.[78] No complaint can come before a court until this process has been exhausted and the President has issued a certificate that the complaint before him or her has been terminated.[79] The President may terminate a complaint "if the President is satisfied that the complaint was trivial, vexatious, misconceived or lacking in substance."[80]

A complainant who proceeds to litigation in the Federal Court of Australia or the Federal Circuit Court and is unsuccessful, is virtually always ordered to pay the Respondent's costs. This is a powerful disincentive against bringing complaints to court which are manifestly unmeritorious.

We are aware of no evidence that the percentage of vexatious or unmeritorious cases that are commenced under section 18C of the RDA is higher than under any other statutory regime for relief, such as the law of defamation, copyright, consumer protection and trade practiced.

Nevertheless, the ECAJ would welcome any reforms to the *Australian Human Rights Act 1986* (Cth) or to the practices and procedures of the Commission which have the effect of minimising the incidence of claims brought in bad faith or which would have no reasonable prospects of success before a court. This would enable the Commission to operate with greater efficiency in processing genuine claims and in delivering justice to the parties. It would also swiftly absolve respondents whose conduct is highly unlikely to be found unlawful. It is critical that the process be neutral and scrupulously fair to both complainants and respondents, and this requirement should be made explicit.

In our view, this can be achieved in several steps. The *Australian Human Rights Act 1986* (Cth) should be amended so that the President is **required** to express an opinion as soon as is reasonably practicable following receipt of a complaint under section 18C of the RDA, and all supporting information, as to whether the complaint has reasonable prospects of being upheld. Complaints deemed to have little prospect of succeeding having regard to the provisions of section 18C and the exemptions contained in section 18D of the RDA would be terminated before the Commission immediately, and would not proceed to conciliation. Judicial review of the decision to terminate a complaint before the Commission in this way would be possible only on grounds limited to jurisdictional error.

Termination of the complaint before the Commission would still permit a complainant to proceed with a court action, as is currently the case. (A purported termination of the complaint altogether would amount to a final determination of the matter. This would be an exercise of judicial power by the Commission, which the Constitution prohibits[81]).

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[77] *Australian Human Rights Commission Act, 1986* (Cth), Section 46P
[78] *Ibid*, Subsection 46PF(1)
[79] *Ibid*, Section 46PO
[80] *Ibid*, Subsection 46PH(1)(c)
[81] See *Brandy v Human Rights & Equal Opportunity Commission* [1995] HCA 10

In our view, if the President has expressed an opinion that a complaint is unlikely to succeed, and has terminated the complaint before the Commission, a further step should be introduced into the process before the complainant can commence court proceedings. A judicial member, acting independently of the President of the Commission, could be appointed for the purposes of making a preliminary determination as to the likelihood of the complaint being upheld by the court. This practice is common in other tribunals such as the Administrative Appeals Tribunal.

If the judicial member makes a preliminary determination that the complaint has no reasonable prospects of being upheld by a court, and the complainant nevertheless wishes to proceed to court, the preliminary determination could be grounds for the court, in its discretion, to order the complainant to provide security for costs to the respondent.

We believe that this combination of measures would be effective in minimising the number of spurious complaints proceeding to conciliation or to court, and in shielding respondents from unwarranted complaints.

Part 3 – Response to Third Term of Reference

Whether the practice of soliciting complaints to the Commission (whether by officers of the Commission or by third parties) has had an adverse impact upon freedom of speech or constituted an abuse of the powers and functions of the Commission, and whether any such practice should be prohibited or limited.

The ECAJ has brought numerous complaints under Part IIA of the RDA on behalf of the Australian Jewish community. We have never experienced any acts of solicitation (whether by officers of the Commission or by third parties), nor are we aware of any such practices occurring. In our experience, the conduct of successive Presidents of the Commission and Race Discrimination Commissioners with whom we have dealt, as well as case officers, has been exemplary.

Part 4 – Response to Fourth Term of Reference

Whether the operation of the Commission should be otherwise reformed in order better to protect freedom of speech and, if so, what those reforms should be.

We do not recommend any reforms to the Commission beyond those contained in Section 2 of this Submission.

Summary of Conclusions and Recommendations

Given the foregoing, it is our submission that no case has been made for repealing or revising the provisions of Part IIA of the RDA. The assertion that those provisions constitute an unjustified limitation on freedom of expression has not been demonstrated. On the contrary, this assertion is disproven by voluminous evidence to the contrary in the form of research in Australia and overseas as to the harms of racist hate speech; the conclusions of three national

inquiries as to the nexus between racist discourse and racially-motivated violence and other forms of social dysfunction; and the significant body of jurisprudence that has given effect to Part IIA.

The campaign to reform Part IIA of the RDA, has ostensibly been revived in light of the high-profile QUT Case and the withdrawal of complaints made under section 18C of the RDA against political cartoonist Bill Leak.

Yet the outcomes of these cases demonstrate the robustness of section 18C and the extent of the protections for free speech contained in section 18D. The withdrawal of the complaint against Bill Leak, likely on the basis that the complaint had no reasonable prospect of being upheld, , especially having regard to section 18D, demonstrates that political satire, no matter how subjectively offensive or controversial, does not infringe Part IIA of the RDA merely because the subject matter it seeks to address is racially-related and controversial. The QUT Case shows that public statements made on social media also do not contravene Part IIA of the RDA simply because the statements are about race and have a critical or controversial import. These cases show that the legislation in its current form achieves the correct balance between freedom from racist hate speech and freedom of expression, and should therefore be retained in their present form.

However, we recognise that there are legitimate public concerns about the complaints handling process. Those concerns focus especially on the incidence and consequences for respondents of unmeritorious complaints. It is in the public interest and in the interests of future claimants and respondents that weak or capricious claims are terminated fairly, quickly and inexpensively and the Commission's resources are devoted solely to delivering justice for victims of the more serious incidents of public racism. The process must fair to both complainants and respondents.

For these reasons, it is our submission that the provisions of Part IIA of the RDA be left in their present form and that the improvements to the complaints process that we have described be adopted. We also urge the government to review the presently unworkable provisions of sections 80.2A and 80.2B of the *Criminal Code*.

Yours sincerely

Anton Block
President

Peter Wertheim AM
Executive Director

APPENDIX A

SUBMISSION BY EXECUTIVE COUNCIL OF AUSTRALIAN JEWRY TO PARLIAMENTARY INQUIRY INTO FREEDOM OF SPEECH – PART IIA OF THE *RACIAL DISCRIMINATION ACT 1975* (CTH) AND THE AUSTRALIAN HUMAN RIGHTS COMMISSION

EXAMPLES OF ANTISEMITIC LEAFLETS AND ONLINE ANTISEMITIC WEBSITES WITH CONTENT MEETING THE CRITERIA OF "OFFEND" AND "INSULT"

Extracts from ECAJ Report on Antisemitism in Australia 2016 - pp.39-40

- Leaflets titled "The Greatest Swindle of All Time" denying the Holocaust, were distributed in 2016 at Monash University (26 February), Melbourne University (29 February), ANU (15 August), UNSW (18 August) and University of Sydney (24 August). Leaflets placed in various places including on car windscreens.

- Leaflet by neo-Nazi website, Daily Stormer titled "White Man" were distributed via printer to multiple recipients, including at least three medical centres, with Jewish doctors, in Sydney and surrounds, and elsewhere in Melbourne (29 March 2016). The fliers read:

  "*White man are you sick and tired of the Jews destroying your country through mass immigration and degeneracy? Join us in the struggle for global white supremacy at The Daily Stormer www.dailystormer.com*" and bears two large swastikas.

Extracts from ECAJ Report on Antisemitism in Australia 2016 – p.93 *et seq*

https://thechosenites.wordpress.com/about/

- What exactly is the message I mentioned above?

  Here it is:

  "Die Juden sind unser Unglueck!"
  The Jews are our misfortune!
  Yours, mine and everybody else's!
  Let's do something about it before they destroy all life on the planet!

https://thechosenites.wordpress.com/2015/10/06/the-noahide-laws/

- […] The moral and intellectual superiority of the Jew is a narcissistic fantasy! He is a con artist, a fraud! Deep down he knows it and his greatest fear is that we will find out that he is an impostor! He is too stupid to realize that he has already been found out! […] He is also too stupid to understand that there will be a high price to pay for his hubris, his anti-Gentile genocidal racism, his criminally insane conduct – a

price unlike any he has ever had to pay before! And this time there is nowhere to run to!

https://thechosenites.wordpress.com/2015/10/30/the-american-jew/

- The two leading lusts of the Jew's life are lechery and money. […] the perpetual cry of money, money, money, the Jew revels with all the intoxicated rapture of a voluptuary plunging to the ears into some licentious debauch. And as he plots and plans, and intrigues, and cheats […] The Jew is not a desirable citizen. That he is alien to us in religion […] He takes no part in the production of wealth, and contributes nothing in labor of brawn or brain necessary to its production; nor does he by any spark of intelligence facilitate its production. […] But the Jew has special aptitudes for parasitism, and has been prepared for a parasitic life by centuries of training. He has the advantage, that he has but one object in life, - the acquisition of wealth, and the enjoyment of the display and power which its possession gives him; and the further advantage that he has no moral principles, no regard for truth, no sentiment of honor […]

http://expeltheparasite.com/2015/11/18/the-delivery-man-and-his-snakes/

- **The Delivery Man And His Snakes**
  The Moslem problem is a result of "middlemen" (TRAITORS!) who have sold themselves as prostitutes for the JEWISH AGENDA, which is to destroy us, the White race, wherever we dwell on earth. This is EXACTLY what groups like **Reclaim Australia** and their equivalents in other countries should be focusing on, rather than just the Moslems who are merely symptomatic of the JEWISH ELITE responsible for fomenting this entire situation using their control of INTERNATIONAL FINANCE AND MASS-MEDIA! It's high time the world woke up to this….. **– BDL1983**

http://expeltheparasite.com/2016/01/25/why-i-stand-for-what-i-stand-for/

- **Why I Stand For What I Stand For! Adolf Hitler – we need another one!** […]**White Aryans create the civilization and it flourishes. Then the Jews worm their way in and corrupt everything. Next, they start bringing in other non-whites as slave labour. Finally, we are left with a racially mixed decaying civilization.** Hitler explains this in Mein Kampf and it's true, whether fashionable to say so or not! (*it will be fashionable a few years down the track, trust me!*) […] Multicultural (*multiracial*) societies run by Jews always turn into Marxist cesspits of competing ethnic groups. […] **– BDL1983**

http://www.jewworldorder.org/about-us/

- **The truth has no agenda**
  This website was created by a group of concerned individuals, who wish to spread the truth to the people of the world about the criminal murderous Khazars, that fraudulently call themselves Jews.

  We have so many haters of this website. All of them are Zionist Jews. So don't be surprised to see fabricated stories about any of our team members on the internet. Zionist Jews are brilliant at deception and defaming the innocent. This is the sole reason

why the Jews own the Media News Networks all over the world, to tell you how to think, and who to hate, for their evil global agendas. (Divide and Conquer) it's how they brought down many ancient civilizations in the past and modern ones today. […] I am a truth seeker and a truth teller. This personal website functions as a beacon to those searching for the truth, to those sick of listening to the Jewish owned Media Networks and their fraudulent journalism to benefit their evil agendas.

Extracts from ECAJ Report on Antisemitism in Australia 2015 – p.82 *et seq*

http://isolatebutpreserve.blogspot.com.au/2014/10/my-email-to-department-of-corrective.html

- A "personal fiefdom" run by a combination of Jewish Power and Masonic interests - or "goat molesters" as I like to call them. […] Until that bond is exposed - until its ideological foundation in Jewish Power is revealed - we will have no peace. We will have no justice. We will not have Truth.

http://isolatebutpreserve.blogspot.com.au/2014/11/my-mate-louiss-latest-chomsky-treatise.html

- To be honest; nothing was surprising or new to me as I understand the extent and the dimensions of Jewish influence and the despicable servility that Australian political figures exhibit to the Jewish people.

http://expeltheparasite.com/2014/10/29/never-forget-the-holohoax/

- A strong supporter of Israel (*Edomitistan*)? What a surprise! A Jew with loyalty to the fraudulent Jewish state, no doubt above any loyalty he feels toward his host country (Australia), which his blood sucking parasitic people have all but destroyed.

http://expeltheparasite.com/2014/11/08/purple-sabbath-beer-parasites/

- **The end result for every parasite.** This piece of mistletoe has gotten what it deserved! For a life of nutrient sucking, it has finally exhausted its host until it could take no more and it subsequently died. If you get enough mistletoe on any tree it will drain it till it dies – it's exactly the same type of behaviour exhibited by Jewry. Surprise surprise eh…I just don't like parasites.- BDL1983

http://expeltheparasite.com/2015/03/04/king-jew-netanyahus-full-speech-to-the-us-congress-plus-transcript/

- "The Great Satan" is certainly an accurate description of Jewry, that's for sure! After reading that, if you can't work out that Israel, i.e. Jews, control the US, then you are of very small intellect. Furthermore, if you acknowledge the first part that Jews control the US, but you can't see that they control 95% of the rest of the world, barring a few Islamic enemies, then you are even dumber!

- *It's now time to wake up to the Eternal Parasite and give him the boot!* - **BDL1983**

http://expeltheparasite.com/2015/05/24/radio-stormer-jewsury-and-how-to-defeat-it/

- The Jew truly is the international trickster and swindler, capable of 'Jewing' pretty much anyone out of their money somehow. You've gotta hand it to 'em – their genius

at parasitism is second to none, an inbuilt skill entrenched in their DNA which no-one else can rival. To live off of other people rather than land itself is not a particularly endearing attribute, that's why the Jews natural defense mechanism is spending amazing amounts of time and money trying to convince his host that he isn't doing what he is doing. **– BDL1983**

http://nordicwisdom.com/2014/12/19/the-jews-and-misery/

- If you have been watching the news (not always a good idea as 99.99999%) of media companies are owned and controlled by Jews to destroy the white race. We'll then you know we have had a minor terrorist attack here in australia but thankfully only 3 people killed. […] on the jewish news I saw a jew with his jew hat and suit – jewish uniform on, throwing flowers in, I wonder if the millions of white people he has slaughtered and continues to slaughter will ever get flowers?

  The point also being that the Jews are responsible for every form of human misery that we know of, and since most white people view them as white because they look white superficially, even though they are a completely different race to white Europeans with a strong hatred for us, they will continue to drill white people into a hell hole deeper than you could ever imagine just like they are doing to the Palestinians. Trent.

http://nordicwisdom.com/2015/03/11/anti-jewish-public-service-announcement/

- The jewish race is a demon spawn in human form, the degree Of misery and starvation that this parasitic species has caused Not only to nordic people, but countless other races as well, is Truly barbaric and mindblowing in terms of it's astounding malevolence. White males in particular have suffered under jewish tyranny like no Other social group, the filthy hooked nosed monsters have had their Teeth drawn deeply into the roots of European manhood for quite some Time now and have brainwashed European women into thinking that they Are oppressed and that their role in life is to be like men, which goes against Nature, just like the Jews themselves, everything they do goes against normality. The parasite is a serious infection for white nations, and it need be dealt with by The community as a whole, acting in the interests of the entire white community. Trent.

http://www.localterror.com/jews-the-synagogue-of-satan/
July 12th, 2015

- Jews have always defamed and killed their opponents, in every country they have controlled. Millions have been slaughtered in every country, in every nation, by the Jews. Jews wear many masks, To hide the blame. They use puppet regimes to hide themselves ordering the killings. They even invent labels to blame others, instead of themselves e.g. Zionism. […]

  The Star of David (Moloch, Remphan) has 6 outwards points, 6 lines, 6 inward points (hexagon) – which forms a hexagram and is the most powerful symbol in the occult. This is also where the term to "put a hex on someone" comes from. These Jews today truly belong to the synagogue of Satan.
  Star of David OR Star of Lucifer