

**Executive
Council of
Australian
Jewry Inc.**

**הוועד הפועל של
יהודי אוסטרליה**

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8 May 2017

Committee Secretary
Select Committee on Strengthening Multiculturalism
Department of the Senate
PO Box 6100
Canberra ACT 2600

Email: multiculturalism.sen@aph.gov.au

Dear Sir/Madam

**Re: Inquiry into protecting and strengthening Australia's multiculturalism
and social inclusion**

The Executive Council of Australian Jewry (ECAJ), the elected representative organisation of the Jewish community in Australia, presents the following submission on behalf of the Australian Jewish community, in response to the invitation of the Select Committee on Strengthening Multiculturalism to provide a submission on some or all of the terms of reference of the above Inquiry. We consent to the Submission being made public.

The ECAJ is the elected national body representing the Australian Jewish community. This Submission is also made on behalf of the ECAJ's Constituent and Affiliate organisations throughout Australia.

As well as representing the Jewish community to the Federal government and to the general public, the ECAJ is a partner of other ethnic communities and other faith communities in Australia with which it engages in regular dialogue. It also participates in human rights consultations hosted by the Department of Foreign Affairs and the Department of the Attorney-General and the community consultations on Australia's Humanitarian Program conducted by the Minister for Immigration and Citizenship. Further, the ECAJ also represents the Australian Jewish community internationally, most notably as an affiliate of the World Jewish Congress, which represents Jewish communities in more than 100 countries.

Complete lists of the ECAJ's Constituent and Affiliate organisations, the inter-faith and inter-communal partnerships and dialogues in which it is involved and the international organisations with which it is affiliated are accessible on the

ECAJ's website.¹ Also accessible on the ECAJ's website is its policy platform which expressly calls for government and community action to support social inclusion, aboriginal reconciliation and multiculturalism and to oppose and prevent all forms of racism.

OUTLINE OF SUBMISSION

This submission is divided into sections as follows:

1. The views and experiences of people from culturally and linguistically diverse, and new and emerging communities (Item a in the Terms of Reference)
2. The impact of discrimination, vilification and other forms of exclusion and bigotry on the basis of 'race', colour, national or ethnic origin, culture or religious belief (Item d in the Terms of Reference)
3. The impact of political leadership and media representation on the prevalence of vilification and other forms of exclusion and bigotry on the basis of 'race', colour, national or ethnic origin, culture or religious belief (Item e in the Terms of Reference)
 - (a) Political leadership
 - Australian Multiculturalism
 - Public and school education
 - Political discourse
 - Racial vilification laws
 - Offences of urging of violence on the basis of race or religion
 - Government funding assistance for community security costs
 - (b) Media representation
4. How to improve the expected standards of public discourse about matters of 'race', colour, national or ethnic origin, culture or religious belief (Item f in the Terms of Reference)
5. The adequacy of existing data collection and social research on racially motivated crimes (Item c in the Terms of Reference)
6. The potential benefits and disadvantages of enshrining principles of multiculturalism in legislation (Item h in the Terms of Reference)
7. The potential benefits and disadvantages of establishing a legislative basis for the Multicultural Advisory Council, or for an ongoing Multicultural Commission (Item i in the Terms of Reference)

Appendix – Summary of recommendations

All online references are as accessed on 4 May 2017

¹ See <http://www.ecaj.org.au/about/partners/>

1. **The views and experiences of people from culturally and linguistically diverse, and new and emerging communities (Item a in the Terms of Reference)**

The 120,000 strong Jewish community in Australia makes up about 0.5% of the Australian population.² Australian Jews are generally seen, and see themselves, as well-integrated into the wider community. They include the descendants of British Jews who formed the core of the Jewish community in colonial times; the descendants of immigrants who arrived in Australia from all over the world in the late nineteenth and early twentieth centuries, often fleeing from persecution; Holocaust survivors from Europe who immigrated to Australia after World War II, and their descendants; and more recent immigrants from South Africa and the former Soviet Union. The overall experience of the Jewish community in Australia is summarized on the ECAJ website:

Tracing its origins to the Jews who arrived in Australia aboard the First Fleet on 26 January 1788, the Australian Jewish community is unique among Diaspora communities in having a clear date of commencement. Australian Jewry has played a prominent and recognised part in Australia's history and has made positive contributions, out of proportion to its numbers, to the development of Australian society.

For the Jewish community, Australia has indeed been the lucky country bestowing upon us the blessings of freedom and respect for human life and dignity. Quite simply we are at home here, something that sadly has not always been the Jewish experience in other parts of the world.

We celebrate the efforts and accomplishments of talented and hardworking individuals and groups from within the Australian Jewish community, and are proud of the part they have played in the many cultural, sporting, scientific, political, social and economic achievements of this great diverse country. Not least among our number have been Jewish men and women, many of whom paid the ultimate price, who have served at home and abroad in times of war to defend Australia and the principles of freedom and justice which our country cherishes.

2. **The impact of discrimination, vilification and other forms of exclusion and bigotry on the basis of 'race', colour, national or ethnic origin, culture or religious belief (Item d in the Terms of Reference)**

Australian Jews have experienced far lower levels of antisemitism than have historically been experienced, and continue to be experienced, by Jewish communities in other parts of the world. There is no history of government persecution of Jews in Australia. There have been no mass murders, expulsions, Inquisitions, *autos da fé*, pogroms, and deportations of Jews. Australia is not Europe or the Middle East or North Africa. Nevertheless, antisemitism persists in Australia. Acts of violence against people which are motivated by antisemitism are

² David Graham, *The Jewish population of Australia: key findings from the 2011 census*, Australian Centre for the Study of Jewish Civilisation, Monash University, 2014, ISBN 978-0-9874195-7-6:
<http://artsonline.monash.edu.au/wp-content/arts-files/gen08/Australian-Census-2011.pdf>

relatively rare in Australia but public expressions of antisemitism including harassment of Jewish people in public places have grown in frequency.

The annual reports on Antisemitism in Australia published by the ECAJ since 1989 have identified some persistent themes in contemporary anti-Jewish vilification including the myth of an international Jewish conspiracy and attacks on the "Jewish lobby"; Holocaust denial as a form of harassment and vilification, often accompanied by Nazi-Jewish analogies and assertions that the history of the Holocaust is a Jewish invention; anti-Israel propaganda as a vehicle for denigrating the Jewish people; and more traditional anti-Jewish stereotypes and religious misrepresentations of Jewish beliefs and practices. The incidence of vilification of Jews in Australia varies markedly from year to year. Spikes tend to occur in times of economic and social instability or in reaction to events overseas, especially in the Middle East.³

Nominally, antisemitism and other forms of racism are considered to be unacceptable by most Australians, including Federal, State and municipal governments, political parties, the business sector, learning institutions, religious institutions, civil society organisations and the media. Yet ignorance of what constitutes racism, and antisemitism in particular, is widespread, extending to most parts of society regardless of levels of educational attainment. Indeed, racism and bigotry are rarely the product of any kind of purely cognitive process. People who propound racist or bigoted prejudices are almost always motivated by emotional or psychological factors born of their own failures, or by a supervening interest, and will therefore persist in such prejudices even when there is overwhelming evidence to the contrary. The so-called "reasons" proffered for racist and bigoted attitudes towards entire ethnic or religious groups are necessarily no more than rationalisations.⁴

Antisemitism has both ethnic and religious dimensions and differs from other forms of racism and bigotry. Over time it has mutated in order to adapt to changing circumstances. In pre-Christian and pre-Islamic pagan societies, Jews were berated for their cultural differences, such as nurturing, rather than killing, those of their children who fell ill, and for mandating a day of rest each week.

With the advent of rival forms of monotheism, Christianity and Islam, this cultural prejudice gave way to religiously based hatred. The Jews' refusal to accept the theological claims of Jesus or Mohammed elicited indignation and demonization from their respective followers. Christian doctrine held Jews collectively to be eternally guilty of Deicide, a belief not officially abandoned until the second half of the twentieth century. Muslim doctrine ascribed collective guilt to Jews for the only slightly less heinous allegation that they were "killers of prophets", a doctrine still widely adhered to by Muslims.

From the late 1800's onwards, religious antisemitism in Europe was eclipsed by the anti-Jewish racial theories eventually embraced by the Nazis. These theories were put forward in the name of genetic "science", but without the slightest evidentiary foundation. After World

³ The ECAJ's Annual Reports on Antisemitism in Australia for the last ten years can be accessed via: <http://www.ecaj.org.au/annual-reports/>. The most recent report was issued in November 2016.

⁴ See Polycarp A. Ikuenobe, 'Conceptualizing Racism and Its Subtle Forms', *Journal for the Theory of Social Behaviour*, Volume 41, Issue 2, June 2011, pp 161–181

War II, Nazi racial doctrine was discredited and antisemitism went underground for several decades. It has now returned with a vengeance.

Contemporary antisemitism often takes the form of a denial of Jewish peoplehood and basic rights. To try to redefine the Jewish people as a non-people so as to suit the interests or convenience of others is not only dishonest but also an assault on the human dignity of every Jew. This is quintessential antisemitism.

It is therefore a mistake to equate antisemitism only with yellow badges, concentration camps and gas chambers, and to dismiss other forms of antisemitism as “lesser” manifestations or not as “genuine” antisemitism.

The foregoing also goes some way to explaining why antiracism programs can positively influence attitudes towards minority racial groups, but only have a positive influence on attitudes towards Jewish people when antisemitism is specifically addressed. This much was tested over decade ago in the schools environment. Professor Suzanne Rutland conducted a study of Antisemitism in government schools in south western Sydney.⁵ Teachers and families spoke to them in confidence. The teachers all reported a veneration of Hitler and antipathy to Jews among the students manifested by statements such as “Hitler did the right thing”, “Hitler did not go far enough”. One student asked: “Why do all the teachers hate Hitler. After all, he only killed Jews?”⁶ Common behaviour included drawing swastikas on their desks. Racism was seen as wrong conduct, but anti-Jewish prejudice was not. In research by Benjamin Kunde, a student from an Islamic high school in western Sydney is quoted as saying: “Hitler was great! He is an excellent example of how change [for the good] can occur. That’s why I’m using *Mein Kampf* as a related text for the HSC.”⁷

Although Australia remains a stable, vibrant and tolerant democracy, where Jews face no official discrimination, and are free to observe their faith and traditions, antisemitism persists. There are segments of Australian society which are not only hostile towards Jews, but actively and publicly express that hatred with words and threatened or actual violent acts, often denying that this constitutes antisemitism.

⁵ Suzanne Rutland, ‘Racism in Australia: different streams, different responses’, *New Racisms: New Anti-Racisms*, University of Sydney: Sydney University Press, 2006. “*The Department of Education and Training’s annual report on “Language Background other than English” for Term 1 2006 showed 25,946 students with Arabic-speaking background, some 12.6% of the total. 17,095 of them are enrolled in schools in South Western Sydney*”.

⁶ Suzanne Rutland, ‘Jews and Muslims "Downunder": Emerging Dialogue and Challenges’, in Michael M. Laskier and Yaacov Lev (Eds.), *The Divergence of Judaism and Islam: Interdependence, Modernity, and Political Turmoil*, (pp. 97-121). Gainesville, Florida: University Press of Florida, 2011. Note interview with a Sydney high school teacher, June 2006. Name withheld on request. In one all boys’ school, the teacher said the boys’ favourite video-clip that they watch on their phones is of American journalist Daniel Pearl saying “I am a Jew, my mother is a Jew...” and then watching him being decapitated. In an all girls’ school, a student came to the teacher saying, “My friend pulled her mobile phone apart yesterday and when I asked her why, she said that the Jews control all the communications and that they could listen in to her conversations – is that true Miss?” These students also expressed the belief common throughout the Muslim world that “the Jews” were responsible for September 11.

⁷ Benjamin Kunde, *The Children of Abraham living apart: The psychology and sources of Muslim Youth antisemitism in Sydney*, Paper delivered to Australian Association of Jewish Studies, Monash University, Melbourne, 17-18 February 2008.

Both the 1983 Human Rights Commission Inquiry into the possible need for amendments to the Racial Discrimination Act 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.⁸ The most serious outbreaks of anti-semitic violence occurred in 1982, when bombs were 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.

There was a further spate of violent antisemitic incidents, especially in Sydney, in the first four months of 2002. Most of these occurred immediately following false media reports⁹ of a ‘massacre’ of 500 Palestinians allegedly committed by the Israel Defence Forces in an operation in the West Bank town of Jenin in April. (It was only in August that a report by the UN Secretary General, Kofi Anan, confirmed that some 52 Palestinians, the majority of them armed gunmen, and 23 Israeli soldiers, died in heavy fighting and concluded: “*Allegations by Palestinian Authority officials in mid-April that 500 or more persons were killed in Jenin camp were not substantiated by the evidence that subsequently emerged*”.¹⁰)

Another spike in antisemitism occurred in the second half of 2014 following similarly skewed media coverage of the war between Israel and Hamas. Mostly this took the form of antisemitic discourse, although there was also a marked increase in antisemitic acts of violence and threats.¹¹

The ECAJ’s annual reports on Antisemitism in Australia have recorded antisemitic incidents separately from antisemitic discourse. 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.¹²

Yet long-term fluctuations in the number of antisemitic incidents from year to year have reflected fluctuations in the level of antisemitic discourse. In both cases spikes have occurred in

⁸ Human Rights Commission, *Report No. 7. Proposal For Amendments To The Racial Discrimination Act To Cover Incitement To Racial Hatred And Racial Defamation*, Australian Government Publishing Service Canberra, November 1983, Commonwealth of Australia ISBN 0 644 03076 3, paras 20-22, p. 6:

https://www.humanrights.gov.au/sites/default/files/HRC_report7_0.pdf; Human Rights and Equal Opportunity Commission, *Report of the National Inquiry into Racist Violence in Australia*, Australian Government Publishing Service Canberra, 1991, Commonwealth of Australia ISBN 0644 13891 2, see especially pp. 142-144 and Table No. 4 ‘Alleged Incidents of Racist Violence against Jewish People, as reported to the Inquiry’:

<http://www.humanrights.gov.au/sites/default/files/document/publication/NIRV.pdf>

⁹ For example, *Jenin Massacre Uncovering*, AM Program, ABC Radio, 19 April 2002:

<http://www.abc.net.au/am/stories/s535310.htm>

¹⁰ *Report of Secretary-General On Recent Events in Jenin, Other Palestinian Cities*, Press Release SG 2077, 1 August 2002: <https://www.un.org/press/en/2002/SG2077.doc.htm>

¹¹ ECAJ, *Report On Antisemitism In Australia, 2014*, at p. 15: https://www.ecaj.org.au/wp-content/uploads/2012/08/2014_antisemitism_report.pdf

¹² ECAJ Report on Antisemitism in Australia for year ending 30 September 2016, pp. 20-22: <http://www.ecaj.org.au/wp-content/uploads/2012/08/ECAJ-Antisemitism-Report-2016d-WEB.pdf>

times of economic and social instability or in reaction to events overseas, especially in the Middle East.

The advent of the internet, including social media, has greatly facilitated the proliferation of racist messages and produced a burgeoning of public expressions of antisemitism and other forms of racism online.¹³ The proliferation of online antisemitism has also coincided with the growing convergence between the extremes of the political left and right in embracing anti-semitic tropes and themes.¹⁴

As a result of all of these developments, and by necessity, physical security remains a prime concern for the Jewish community. The Jewish community is the only community in Australia whose places of worship, schools, communal organisations and community centres need, for security reasons, to operate under the protection of high fences, armed guards, metal detectors, CCTV cameras and the like. The necessity is recognised by Australia's law enforcement agencies and arises from the entrenched and protean nature of antisemitism in western and Muslim culture, resulting in a high incidence of physical attacks against Jews and Jewish communal buildings over the last three decades, and continuing threats, as recorded in the ECAJ's Annual Reports on Antisemitism in Australia.

In addition to the effect of antisemitism on the Jewish community as a whole, individual acts of antisemitism have the same kinds of physical, psychological, social, economic and other impacts on the Jewish Australians at whom such acts are directed as are experienced by the targets of other forms of racism. These include:

- (a) Social exclusion and limitations on personal liberty
- (b) Internalisation of racist messages
- (c) Desensitisation of society as a precursor to violence
- (d) Silencing of target individuals and groups
- (e) Damage to health of targets¹⁵

Issues of particular concern to the Jewish community have included recent signs of an increasingly hostile atmosphere for Jewish university students on campus.¹⁶

¹³ See for example Andrew Jakubowicz, 'Cyber-racism' in Helen Sykes (ed), *Free Speech, Democracy and New Media*, Future Leaders, 2012: https://andrewjakubowicz.com/publications/cyber-racism_freedom/

¹⁴ Julie Nathan, *We're not racist, we just hate Jews*, 4 July 2012: <http://www.jpost.com/Opinion/OpEdContributors/Article.aspx?id=276273>; and *Antisemitism in left-wing online media*, 3 October 2012: <http://www.jpost.com/Opinion/Columnists/Article.aspx?id=286494>

¹⁵ For further detail about these impacts and the supporting research and expert literature, see ECAJ, *Submission to Parliamentary Inquiry into Freedom of Speech*, 6 December 2016, (Submission number 11), pp. 8-11: <http://www.aph.gov.au/DocumentStore.ashx?id=314bfc12-1581-4fc8-a475-da1309461195&subId=461225>

¹⁶ For a recent example, see Julie Hare, 'Holocaust deniers leave leaflets target students at two universities', *The Australian*, April 18, 2017: <http://www.theaustralian.com.au/higher-education/holocaust-deniers-leave-leaflets-target-students-at-two-universities/news-story/99afef08bcfea8aaf85621bb0be89d1a>

3. **The impact of political leadership and media representation on the prevalence of vilification and other forms of exclusion and bigotry on the basis of ‘race’, colour, national or ethnic origin, culture or religious belief (Item e in the Terms of Reference)**

For a diverse society such as Australia’s to be socially cohesive, it is imperative that those in positions of influence within Australia publicly condemn antisemitism and other forms of racism, and support educational, legal and other measures to counter all forms of racism. In our view this can only be effective if it is done in conjunction with an affirmation of the positive values that define contemporary multicultural Australia.

(a) **Political leadership**

Political leaders have an impact on social cohesion in the words that they use in public, the programs they agree to fund, the school curricula they approve, and in the laws that they pass. It is essential that the major parties show moral leadership and use best endeavours to achieve and maintain consensus on multiculturalism and immigration. Partisan divisions over these policy areas are open to exploitation by fringe groups seeking to promote racism, which works against any social inclusion agenda.

• **Australian Multiculturalism**

Despite the re-appearance in Australian politics of groups which propound racist policies in the name of ‘free speech’, there continues to be a strong cross-partisan consensus in support of Australia’s unique model of multiculturalism, which gives equal emphasis to rights and responsibilities. The ECAJ’s policy platform calls for a multiculturalism which “*respects the right of all Australians to express their individual cultural identity, and to maintain and share their cultural heritage, within an overriding commitment to Australia and the basic values of Australian democracy and the rule of law*”. This includes the responsibility to accept Australia’s Constitution, rule of law, democracy, freedom of speech and religion, English as the national language and sexual equality. In any conflict between ethnic culture and Australian values then these traditional Australian values prevail. To the extent of any inconsistency, Australian law trumps all other law. New arrivals have a readily attainable pathway to full partnership in Australian society on the basis of citizenship.

Personal freedom, which includes freedom to make one’s own choices in life and freedom of expression, is not a value that always sits comfortably with other cultures. Newcomers to Australia from many backgrounds may be accustomed to social rules in which any sense of personal freedom is superseded by the over-riding requirements of family, community, religion or ideology. Integration into Australian society may require a reversal of the traditional cultural order of priorities to which newcomers are accustomed.

Another strongly ingrained value in Australia is the ethic of social egalitarianism, especially in the workplace. Again, this might clash with traditional notions of hierarchy and allegiance that are a part of other cultures.

Successive Australian governments, rightly in our view, have rejected the UK and European models of multiculturalism because they insufficiently emphasise the responsibilities of new arrivals to their new country, and its system of ethics and law, as the essential pre-requisite for their acceptance by, and successful integration into, the wider community.

Governments in the UK and Europe have passively tolerated members of cultural and religious minority groups living separate lives from the rest of society and have failed to confront immigrant groups who openly denigrate the values and laws of their host society. These include extremist Islamist ideologues, misogynists, homophobes and preachers of hate and forced marriages. The “anything goes” model of multiculturalism has been a demonstrable failure, as successive leaders of the UK and the German Chancellor have openly acknowledged.

We therefore welcome the recent announcement by the Federal government to strengthen the requirements for citizenship by requiring applicants for citizenship to pass an English language proficiency test and to demonstrate their integration into Australian society, for example by obtaining employment, enrolling their children in school and joining a community organisation.¹⁷ However, requiring applicants to reach the equivalent of Band 6 proficiency under the International English Language Testing System (IELTS) may not be the best way to implement the requirement. IELTS was designed and is used to measure English language proficiency primarily for the purposes of entry into academic institutions and professional associations, rather than for confirming basic language proficiency. We recommend that further community consultation occur in relation to the best approach to implementation.

The proposals (which will go out to community consultation) to expand the current 20 question citizenship test to include questions about "Australian values", and to include these values in a more robust loyalty oath, would also in our view send a positive signal to new arrivals about possible cultural adjustments they will have to make in order to adapt to the Australian way of life and integrate successfully.

Of course, it is not difficult for new arrivals who do not come to Australia with a genuine intention to integrate, to feign loyalty and to contrive to provide the “correct” answers to questions asked in any citizenship test, when those answers do not reflect their actual views. It is therefore far more important in our view to ensure that the values that Australia seeks to affirm be carried through in other policy areas, especially in public and school education, and in political discourse by political and community leaders.

- **Public and school education**

The values underpinning Australia’s democracy should be taught at school as a part of the National Education Curriculum and should not be confined to the non-core subject of Civics and Citizenship. The teaching of these values, and Enlightenment values more generally, should also be integrated into the curricula for English, History, the sciences and Geography.

¹⁷ Simon Benson, ‘Turnbull toughens citizenship test’, *The Australian*, April 20, 2017: <http://www.theaustralian.com.au/national-affairs/immigration/turnbull-toughens-citizenship-test/news-story/e2f1dd321eab8e80e7b96bc6800e279e>

Critical thinking is another educative tool for preventing and overcoming prejudice. Preparing students for a lifetime of learning should be more than just a *cliché*. Critical thinking is an essential skill which should be integrated in the curriculum beginning in primary school and reinforced in courses in English, History, the natural and social sciences and Geography in secondary school. Again, the academic literature supports the concept of embedding skills like critical thinking and problem-solving within the relevant course content. This would be the antithesis of the current disastrous emphasis on rote learning, memorisation and recitation in our primary and secondary educational systems driven by the need to prepare for examinations that prioritise memorisation over critical analysis.

Knowing how to research and adopting a sceptical and analytical approach to all information, especially from online sources, should be so deeply instilled in students that it becomes second nature. Questioning assumptions and seeking and weighing alternative views should become a habit. This would provide a framework for giving students an insight into the validity of Enlightenment values and undermine the potential appeal of simplistic, extremist ideologies. It would also provide much-needed inoculation against racism and ideas of racial or religious supremacism.

The National Anti-Racism Strategy should include a fully-funded process for engaging school educators as part of a review of existing school curricula, including the National Education Curriculum. The review should assess the effectiveness of current curricula in developing:

- Awareness of the nature, prevalence and effects of racism, including self-awareness of learnt prejudices;
- Awareness of the benefits of a multicultural society and of the contributions to Australia's development made by indigenous Australians and migrants;
- Education about the values of democracy, human rights and the rule of law, and the rejection of values which are inconsistent with them;
- Peer-to-peer engagement between students of different cultural backgrounds; and
- Critical thinking techniques particularly in response to racial stereotyping and theories of racial superiority or inferiority.

The assessment should be followed by recommendations as to how these outcomes might be achieved to the extent that they are not currently being achieved.

The teaching of Australian and Enlightenment values should also be included in English language programs for adult new arrivals. These values should be contrasted with the values of totalitarian and extremist ideologies whose socially destructive effects need to be highlighted. The more explicit the message, the more likely it is to be heeded.

This is not to suggest that the values of personal freedom and egalitarianism must be rammed down the throats of new arrivals, or that they should be coerced into adopting them. On the contrary, that would negate the whole philosophy of personal freedom and choice.

But they should not be soft-pedalled either. It is imperative that new arrivals be made aware of how robust a sense of personal freedom and social equality most Australians possess, and

the thinking and history behind those values, so that they are not caught by surprise when they first encounter them at work, school, university or socially.

Language programs provide an ideal vehicle for teaching about these concepts and for preparing new arrivals to navigate their way through an unfamiliar social terrain. Educational programs should unashamedly emphasise that adherence to these values, and the rejection of values which are inconsistent with them, have made Australia one of the world's most stable, just and peaceful democracies and one of the most desirable countries to live in.

- **Political discourse**

There is a concomitant responsibility on the part of political leaders and other persons of influence to exercise a high degree of rhetorical virtue by avoiding language that is likely to inflame overt or latent hatreds and prejudices within the community.

It is rare to encounter overt expressions of antisemitism from political or community leaders in Australia. However, there has been an increase in the frequency of rhetoric that evokes or appeals to traditional racist tropes about Jews (eg as being inherently malevolent or inordinately powerful) or which makes wildly inaccurate analogies between contemporary political issues on the one hand and the Holocaust and Nazi tyranny on the other, and thereby belittles or minimises the latter. This phenomenon has been well described by author Howard Jacobson:

“Extermination centres? Gas ovens? Laboratories charged with the extinction of the enemy gene?”

It is important that we know what we mean. We do not serve the present by misdescribing it, and even worse we obliterate the past. Once everything is a war crime, nothing is. Turn every abomination into a whatever-takes-your-fancy holocaust, and there never really was one. This is the trickle-down effect of continuous verbal and syntactical diminishment. Little by little, the thing itself is washed away.”¹⁸

Thus, although high-profile figures who make these sorts of analogies may not see themselves as, and may not intend to be, Holocaust-deniers or Holocaust-minimisers, this is what they have effectively become.

Recently there has been much international media coverage of inept historical analogies made by the White House Press Secretary, Sean Spicer, and the former mayor of London, Ken Livingstone.¹⁹ From time to time inappropriate Holocaust analogies have been made by Australian politicians of the right (with terrorist groups) and the left (with the State of Israel), business leaders (with government taxation policies) and opinion writers (with Australia's

¹⁸ Howard Jacobson, ‘Guilty of carrying out atrocities against language’, *Independent*, 12 July 2002: <http://www.independent.co.uk/voices/commentators/howard-jacobson/guilty-of-carrying-out-atrocities-against-language-184060.html>

¹⁹ See, for example, Deborah Lipstadt, ‘End the Misuse of Holocaust History’, *The Atlantic*, 14 April 2017: https://www.theatlantic.com/international/archive/2017/04/holocaust-history-spicer-lepen/523005/?utm_source=fbb

current policy of incarcerating asylum seekers in offshore detention centres). Examples are provided in the ECAJ's Annual Reports on Antisemitism in Australia.²⁰

As is noted in the ECAJ Policy Platform, the Holocaust is generally recognised as the benchmark of the most extreme case of human evil. For the reasons articulated by Howard Jacobson, the inappropriate use of analogies to the Nazi genocide and Nazi tyranny in Australian public debate is to be deplored. Political and community leaders should make an effort to avoid such analogies and other overt or subtle forms of racist rhetoric.

- **Racial vilification laws**

In any model of multiculturalism that commits to fairness, equality and inclusion for all people in Australia based on a balancing of rights and responsibilities, there must be zero tolerance for racial discrimination and incitement of racial hatred. Political leaders can have significant and lasting impact in the laws which they enact. Whilst legislation alone cannot change people's attitudes, and public and school education have a key role to play in preventing and combating racism and other forms of prejudice, it must also be acknowledged that education and legislation are not mutually exclusive. Anti-racism legislation has an important educative role to play by establishing a clear community standard that differentiates between acceptable and unacceptable conduct and discourse, thereby dissuading people from engaging in racist acts and changing attitudes over time.

Legislation has been enacted by the Commonwealth and by each of the States and the ACT to prohibit both discrimination and vilification on the basis of race. The protections afforded by this legislation extend to ethno-religious communities, specifically the Jewish and Sikh communities. Those protections do not include protections against vilification solely on the basis of religion.

Only Victoria²¹, Queensland²², the ACT²³ and Tasmania²⁴ have enacted additional legislative provisions imposing liability for religious vilification, which in the media is often, and erroneously, conflated with racial vilification. The liability imposed for religious vilification in these jurisdictions is both civil and criminal, except in the case of Tasmania, which imposes civil liability only. Overall, these legislative provisions make it unlawful to incite hatred toward, serious contempt for, or severe ridicule of a person or group on the ground of their religious belief or affiliation or religious activity. However, there is some variation between these jurisdictions in the words used to describe the prohibited conduct²⁵ and the prohibited ground.²⁶

The State and Territory laws directed against racial vilification remain relatively uncontroversial, at least to the extent that they impose a civil liability. To the extent that they impose

²⁰ See also Julie Nathan, 'False analogies to the Nazis dishonour their victims and the truth', *JWire*, 23 May 2016: <http://www.jwire.com.au/false-analogies-nazis-dishonour-victims-truth/>

²¹ Racial and Religious Tolerance Act 2001, s.8 and s.25.

²² Anti-Discrimination Act 1991, s.124A and s.131A

²³ Discrimination Act 1991, s.67A; Criminal Code 2002, s.750

²⁴ Anti-Discrimination Act 1998, s.19

²⁵ For example, the ACT includes inciting "revulsion for" a person or group – s. 67A, Discrimination Act 1991.

²⁶ For example, the ACT describes the ground as "religious conviction" – s. 67A, Discrimination Act 1991.

criminal sanctions, they have - with one exception - been completely ineffective, if not unworkable, because of the unrealistic way in which the elements of the offence are formulated.²⁷ The exception has been in Western Australia. The criminal liability regime in Chapter XI of Western Australia's Criminal Code (racist harassment and incitement to racial hatred) differs significantly from that contained in the legislation of other jurisdictions, which require proof to the criminal standard of incitement to commit physical harm. It is only in Western Australia that the criminal proscription of racial vilification has been tested (successfully) in an actual prosecution²⁸ and been the subject of judicial interpretation.²⁹

In contrast to the State and Territory civil laws directed against racial vilification, the corresponding Commonwealth legislation - as set out in Part IIA of the Racial Discrimination Act 1975 (Cth) ('RDA') - has in recent years been the target of a concerted campaign aimed at repealing or watering down its provisions. The two most critical provisions of Part IIA of the RDA are sections 18C and 18D. Section 18C makes it:

“unlawful for a person to do an act, otherwise than in private, if:

(a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and

(b) the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.”

Section 18D sets out a series of exemptions for certain types of conduct that would otherwise be rendered unlawful by section 18C. To paraphrase, academic and artistic works, scientific debate and fair reports or fair comment on matters of public interest are exempt from liability under section 18C, provided that they are said or done reasonably and in good faith.

Critics of section 18C portray it as an intolerable limitation upon freedom of expression, and assert that the words “offend” and “insult” in section 18C are not directed at authentic harms, but rather, mere “hurt feelings”. Yet that view ignores all of the evidence to the contrary from studies (in Australia and overseas) and public inquiries going back several decades,³⁰ and also misrepresents the way section 18C has been interpreted and applied by the courts in real cases over more than 20 years. The courts have consistently found that section 18C will apply only if the offence and insult occurs because of the complainant's racial, ethnic or national background, and only if it has “*profound and serious effects, not to be likened to trivial*

²⁷ An example is s.20D of the Anti-Discrimination Act 1977 (NSW), which has been the subject of sustained calls by community groups for reform, and which is currently under review by an official Inquiry, for the second time since 2013.

²⁸ Perth District Court, *DPP v Brendan Lee O'Connell*. On 31 January 2011, the Defendant was convicted by a 12-person jury on 6 counts of racial incitement and harassment under sections 77 and 79 of the WA Criminal Code. He was sentenced to 3 years imprisonment. His appeal was dismissed in 2012.

²⁹ *Mulhall v Barker* [2010] WASC 359

³⁰ This evidence is reviewed in detail in the ECAJ submission dated 6 December 2016 to the Inquiry into Freedom of Speech in Australia that was recently conducted by the Parliamentary Joint Committee on Human Rights, Submission no. 11, pp. 6-13: <http://www.aph.gov.au/DocumentStore.ashx?id=314bfc12-1581-4fc8-a475-da1309461195&subId=461225>

slights".³¹ The harms against which s.18C is directed therefore involve an adverse impact on the complainant's quality of life. Even then, the conduct might be exempted under section 18D, something which critics of section 18C frequently overlook or downplay.

Two legislative attempts in the last three years to repeal or weaken the effect of section 18C have failed. The Freedom of Speech (Repeal of s.18C) Bill 2014 was withdrawn in the face of massive public criticism.³² Schedule 1 of the Human Rights Legislation Amendment Bill 2017 was introduced, and then defeated, in the Senate. Nevertheless, the fact that these legislative proposals were even put forward by the Federal government, and the political campaign that produced them, were seen by many in our region as a signal that Australia's anti-racism standards and commitment to social cohesion have weakened. It is therefore heartening to note that at the time of the Senate vote on the 2017 Bill, a Fairfax-Ipsos poll showed that 78 per cent of Australians opposed the proposals in Schedule 1 and believed that it should continue to be unlawful to offend, insult or humiliate someone on the basis of their race or ethnicity.³³

Part IIA of the RDA provides an avenue of redress and vindication against both local and imported strains of racism. 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.

For the Jewish community, redress has only rarely been pursued through litigation and has mostly been sought by way of direct negotiations with publishers of antisemitic content. For the most part, we have been able to use the RDA to negotiate a resolution. Publishers are aware that there is a law against racist hate speech and most publishers do not identify or wish to be identified as racists. This is sufficient in most cases to resolve a potential complaint to the satisfaction of both parties.

For example, a complaint brought by the ECAJ against a global social media platform provider in 2012-2013 resulted in the provider removing or making inaccessible from Australia hundreds of grossly antisemitic images and accompanying written content (mostly involving Holocaust denial and minimization). The complaint was made only after online complaints to the provider by users had not been responded to. A parallel complaint was brought by an American Jewish organization in the US, where anti-vilification laws do not exist and are prohibited by the First Amendment to the US Constitution. The complaint failed to result in the provider removing any of the content, or making it inaccessible in the US.

³¹ *Creek v Cairns Post Pty Ltd* [2001] FCA 1007 at [16] *per* Kieffel, J.

³² Heath Aston, 'Tony Abbott dumps controversial changes to 18C racial discrimination laws', *Sydney Morning Herald*, 5 August 2014: <http://www.smh.com.au/federal-politics/political-news/tony-abbott-dumpscontroversial-changes-to-18c-racial-discrimination-laws-20140805-3d651.html>

³³ Matthew Knott, 'Fairfax-Ipsos poll: Eight in 10 voters oppose Turnbull government's 18C race hate law changes', *Sydney Morning Herald*, 28 March 2017: <http://www.smh.com.au/federal-politics/political-news/fairfaxipsos-poll-eight-in-10-voters-oppose-turnbull-governments-18c-race-hate-law-changes-20170327-gv7dlq.html>

When negotiation does not work, the RDA gives the community the right to issue proceedings against the perpetrators. The cases brought by the ECAJ in *Jones v Scully*³⁴ and *Jones v Toben*³⁵ were landmark cases which established the unlawfulness under Part IIA of the RDA of gross forms of antisemitic discourse, including Holocaust denial and both traditional and contemporary forms of negative stereotyping of Jews. The ECAJ is the only Jewish organisation to have brought such cases.

If section 18C is abolished or weakened, the Australian Jewish community stands to lose one of the most powerful tools at our disposal for combatting antisemitism, and the manner in which antisemitism constrains our freedom to live openly as Jews. We would need to re-litigate issues that have already been dealt with by the courts under the current provisions of Part IIA of the RDA in order to establish the parameters for the interpretation and application of any new or amended provisions. This would impose an enormous cost on us in time, effort and resources. Accordingly, the overall view of the ECAJ concerning Part IIA of the RDA is that the provisions of Part IIA of the RDA should be left in their present form.

On the other hand, it will be recognised that the prohibition of offensive behaviour on the ground of religious belief alone presents more difficult problems in reconciling competing rights. In a free society, beliefs and ideas of any kind - religious, political, ideological or philosophical - are and should be capable of being debated and defended. Robust critiques of beliefs and ideas, no matter how passionately adhered to, do not constitute a form of social exclusion of those who adhere to them. Certainly, the right to engage in robust debate about the merits of any religion, or any other kind of belief system, is central to our democracy, and anything in the nature of blasphemy laws would be intolerable.

The ECAJ therefore does not advocate legislation prohibiting religious vilification *per se*. Nevertheless, in a free and just society members of faith communities which are not ethno-religious groups are entitled to be protected against being intimidated, harassed or subjected to gross verbal abuse simply because of their religious affiliation. In our view, this kind of behaviour is best dealt with by the creation of criminal offences which are defined in terms of the intimidation, harassment or abuse, rather than by religious vilification laws. This is considered more fully under “Offences of urging of violence on the basis of race or religion” below.

- **Offences of urging of violence on the basis of race or religion**

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.

Many of the incidents recorded in the ECAJ’s annual reports on Antisemitism in Australia (as described in section 2 of this Submission) constitute criminal conduct in which antisemitism is a factor.

³⁴ [2002] FCA 1080

³⁵ [2002] FCA 1150

The ineffectiveness of State and Territory laws which ostensibly criminalise racially inflammatory speech has already been noted (see Section 3a of this Submission under the sub-heading ‘Racial vilification laws’). The corresponding Commonwealth legislative provisions are sections 80.2A and 80.2B of the Criminal Code, which create offences of urging of violence against groups or members of groups on the basis of race or religion or nationality, national or ethnic origin or political opinion.

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. 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 necessarily laying bare the urger’s own intentions. Even in history’s most extreme and paradigmatic examples of the evil of incitement to racially-or religiously-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”. The defences in existing section 80.3 were in large part carried over from the repealed section 24F of the Crimes Act 1914 (Cth) and 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 supposed members of such groups. Indeed, the existence of such defences might well be seen as formally justifying the advocacy of racially-motivated violence, including terrorism, 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 publishing of the report or commentary be done in “good faith”.

It follows that in respect of an offence under either s.80.2A or s.80.2B, 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, which the ECAJ has recommend be comprehensively reviewed.

- **Government funding assistance for community security costs**

Given the persistence of antisemitism in Australia, 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. Protecting the physical safety of citizens is a prime responsibility of government. Despite this, the rising financial cost to our community of ensuring that Jewish people and communal property are physically secure has become a major burden.

The Jewish community is grateful to successive Federal governments, Coalition and Labor, for the funding assistance that has been provided to Jewish schools to assist them to meet their security needs, including the last round of funding in 2015 in which more than \$7.5 million was allocated over four years to 17 of Australia’s 23 Jewish day schools.

We also appreciate the grant in 2007 of tax deductibility for donations for security purposes through the Council for Jewish Community Security (CJCS). CJCS is our community’s national security body, and operates as an organ of the ECAJ. The CJCS commenced a pilot program in NSW in 2008-9, in consultation with recognised security expert advisers. The NSW program has raised several million dollars by of a capital appeal within the NSW Jewish community, and managed to leverage the funds raised so as to embark on security capital works worth more than \$15 million.

The challenge is underlined by the fact that capital works is only one part of the funding requirements. The recurring costs of providing an operating security structure is the heaviest financial burden we bear as a community and the costs will only increase going forward. It is vital that in every State, and nationally, our community has the organisational and fundraising structure needed to address this challenge.

Our community has developed a very constructive and effective close working relationship with Australia’s law enforcement and intelligence agencies at both Federal and State levels. State governments in NSW and Victoria have previously granted or pledged several hundred thousand dollars for CCTV cameras and other security equipment and infrastructure.

Even with existing government assistance, we are unable on our own to bear the whole of the growing burden of keeping our communal members and institutions safe. We will continue to do our part, but we have an urgent need for additional funds. In addition to Jewish schools

covered by the secure schools program, there are 180 other Jewish communal institutions that we need to secure. These include synagogues, community centres, museums and the like.

Later this year, the Jewish community, through the ECAJ, will need to apply for government funding for security under the new Safer Communities Program. This will be for all our communal institutions including the day schools, due to the abolition of the Secure Schools program. It remains to be seen whether the overall funding assistance we receive from the Federal government for our security needs will increase, decrease or stay the same.

The ECAJ recommends that the levels of funding to be provided to vulnerable ethnic and religious communities be kept under close review to ensure that no community is left worse off by the introduction of the Safer Communities Program and the winding up of the Secure Schools program. Additional funding should be made available to enable vulnerable communities to provide essential security for their key institutions (such as schools, places of worship, aged care facilities and community centres), to the extent that such funding is not being made available from existing government programs. The overall funding assistance to be made available by the Federal government to the Jewish community for its security needs should be increased in accordance with the ECAJ's previous detailed application to the government.

(b) Media representation

As noted in section 2 of this Submission, both traditional and online media play a significant role in disseminating antisemitic discourse and promoting antisemitic incidents, including incidents of a criminal nature, and these have been recorded, year on year, in the ECAJ's Annual Reports on Antisemitism in Australia.

Whilst the mainstream media is subject to stringent editorial oversight, professional standards, publishing guidelines and civil and criminal law, and generally act within clear parameters, inaccuracies, bias, and lack of context within reporting are nevertheless frequent occurrences. Sometimes this is due simply to the pressures of contemporary news reporting and media articles, with the competitive need to get the stories into the public domain as quickly as possible. As well, objectivity in reporting is not always present. 'News' stories are often given a particular slant, with misleading headlines, and particular issues are given disproportionate or inadequate coverage.

As already noted, the internet makes possible an enormous volume of public commentary on media articles. The 'Letters to the Editor' pages still exist in the print media, but most public comments appear online, on newspaper websites, television and radio websites, news video channels, and posted comments on social media. In many cases, these comments are moderated, either before or after posting, to remove comments that are racist, sexist, homophobic, or use foul language or are defamatory. Even with moderation, many offensive, particularly anti-semitic, comments remain online for inordinately lengthy periods, sometimes days or weeks, or even indefinitely.

Some online media have a policy of allowing fairly unfettered speech, including racist and other abusive comments. The articles themselves may tend to be devoid of racist content, but

not the comments which are posted under many of the articles. These comments are often not removed or moderated even if they express overtly racist sentiments.

The fact that antisemitic comments are frequently allowed to remain online demonstrates the online media's tolerance for antisemitic comments, and/or a lack of knowledge, insight or capacity to identify antisemitism. The content of the comments reveals the extent of antisemitic hatreds that exist even in a relatively tolerant society like Australia.

The expression of antisemitic hatreds in the mainstream media or in other public contexts, if not publicly contradicted and condemned by political and community leaders, has the effect of lending legitimacy and acceptability to such hatreds. This can lead to an emboldening of those who are hostile to Jews to go further in acting against Jews, and thus creates an atmosphere of intolerance, bigotry, fear and violence.

Of particular concern has been the volume and intensity of antisemitic comments on the Facebook pages of the ABC, which is publicly funded, particularly on the Q&A and News Facebook pages.³⁶ Whilst many of the comments have subsequently been removed, this has only occurred after persistent complaints from readers, including repeated complaints from the ECAJ, and only after many weeks in the case of some of the comments. The ABC should not be relying on the public to police the reader comments on its Facebook pages. It should be doing this job itself.

For its own sake, the ABC needs a new and effective system of oversight to guarantee its integrity. Its internal complaints unit is not independent of the organisation, nor is it sufficiently insulated from the influence of those who work there. The Australian Communications and Media Authority (the ACMA) lacks the time, resources and expertise to do the job properly. The ACMA has responsibilities under a variety of Acts and several hundred other legislative instruments dealing with a wide range of matters. It does not have any specialist expertise in identifying racist, sexist, homophobic content.

We need a completely independent Ombudsman outside the ABC, appointed on a cross-partisan basis by parliament through a public selection process, to monitor public broadcasting, assess complaints about news, current affairs programs, documentaries and online standards and report regularly to the Australian people.

³⁶ Numerous examples are provided in the ECAJ's Annual Antisemitism Reports over the last 6 years. For examples of antisemitic discourse on the ABC and other media for the year ending 30 September 2016, see ECAJ, *Report On Antisemitism In Australia 2016*, at pp. 48-71: <http://www.ecaj.org.au/wp-content/uploads/2012/08/ECAJ-Antisemitism-Report-2016d-WEB.pdf>. See also Julie Nathan, 'Antisemitism Goes Mainstream: What is the Media's Culpability?', *ABC Religion and Ethics Report*, 20 September 2016 and the self-exculpatory statement from ABC News Digital that was appended at the end of the article in April 2017: <http://www.abc.net.au/religion/articles/2016/09/20/4542248.htm>

4. **How to improve the expected standards of public discourse about matters of ‘race’, colour, national or ethnic origin, culture or religious belief (Item f in the Terms of Reference)**

This is covered in section 3(a) above (“Political leadership”) and in section 3(b) above (“Media representation”).

5. **The adequacy of existing data collection and social research on racially motivated crimes (Item c in the Terms of Reference)**

Crime statistics for various kinds of hate-motivated crimes are readily available in some countries such as the UK, the US and Canada.

In the UK, hate crime is defined as ‘*any criminal offence which is perceived, by the victim or any other person, to be motivated by hostility or prejudice towards someone based on a personal characteristic.*’³⁷ This common definition was agreed upon in 2007 by the police, Crown Prosecution Service, Prison Service (now the National Offender Management Service) and other agencies that make up the UK criminal justice system.

The total recorded hate crimes from each of the regional police forces in England, Wales and Northern Ireland has been published annually since 2008.³⁸ The published figures are broken down between the five categories of personal characteristics which are recognised as motivating hate crime:

- race or ethnicity;
- religion or beliefs;
- sexual orientation;
- disability; and
- transgender identity.

Included in the total figure for hate crimes motivated by race or ethnicity, and by religion or belief, but shown as a separate (disaggregated) figure each year, is the total of crimes motivated by antisemitism.

Hate crimes are not recorded as being in addition to the general crime. All hate crimes are also recorded in the figures for the relevant general crime types such as robbery and assault.

Since 1 April, 2011, regional police forces in the UK have been required to report hate crime data to the Home Office for inclusion in the UK’s centralised National Crime Statistics.

³⁷ Hannah Corcoran and Kevin Smith, *Hate Crime, England and Wales, 2015/16*, UK Home Office, Statistical Bulletin 11/16, 13 October 2016, p.2: <http://report-it.org.uk/files/hate-crime-1516-hosb1116.pdf>

³⁸ For example, Association of Chief Police Officers (UK), ‘Total of recorded hate crime from regional forces in England, Wales and Northern Ireland during the calendar year 2014-2015’: http://www.report-it.org.uk/files/hate_crime_data_npcc_2014-15.pdf

In the United States, the recording of hate crimes has since 1990 been governed by the *Hate Crime Statistics Act*. Corresponding legislation exists at the state level. The purpose of this legislation is to ensure that hate crime statistics are collected across America. Prior to the passage of this Act, there were no national criminal justice statistics on the incidence of hate-motivated crimes in the United States.

Currently in the US, law enforcement agencies are assisted by the publication of the Hate Crime Data Collection Guidelines and Training Manual by the Criminal Justice Information Services Division of the FBI. This publication, which is periodically refined and updated, is integral to a hate crime training program for law enforcement personnel to help them identify hate crimes and collect and submit hate crime data to the FBI Uniform Crime Reporting Program.³⁹

The categories of hate crime recognised under the US Uniform Crime Reporting Program are virtually identical to the five categories recognised by the UK Home Office, save that the US also recognises a sixth category, namely hate crimes committed because of the gender of the victim (ie anti-male and anti-female crime).⁴⁰

One significant difference between the US and the UK is that the perception by victims or witnesses of a hate motivation on the part of a perpetrator is, of itself, sufficient in the UK, but not in the US, to result in the crime being considered a hate crime. In the US:

*“Due to the difficulty of ascertaining the offender’s subjective motivation, bias is to be reported only if investigation reveals sufficient objective facts to lead a reasonable and prudent person to conclude that the offender’s actions were motivated, in whole or in part, by bias”.*⁴¹

A possible weakness of this formulation is that it would not include a situation in which bias was not a motivation in initiating the crime but became a motivation during the commission of the crime and influenced the manner in which the crime was carried out.

In Canada, four specific offences are listed as hate propaganda offences or hate crimes in the *Criminal Code of Canada*: advocating genocide, public incitement of hatred, willful promotion of hatred and mischief motivated by hate in relation to religious property.⁴² In addition, subparagraph 718.2(a)(i) of the *Criminal Code* allows for increased penalties when sentencing any criminal offence (such as assault or mischief) where there is evidence that the offence was motivated by bias, prejudice or hatred toward a particular group as listed in the *Criminal Code*. These are also considered hate crimes.

Statistics on police-reported hate crime in Canada consist of data from the incident-based Uniform Crime Reporting Survey, which collects information from police services. The Survey

³⁹ Criminal Justice Information Services Division, FBI, *Hate Crime Data Collection Guidelines And Training Manual*, Version 2.0, February 27, 2015: <https://ucr.fbi.gov/hate-crime-data-collection-guidelines-and-training-manual.pdf>

⁴⁰ *Ibid*, p.5

⁴¹ *Ibid*, p.4

⁴² These are offences under sub-sections 318(1), 319(1), 319(2), and 430(4.1) of Canada’s *Criminal Code*.

defines a hate crime as a criminal offence committed against a person or property, where there is evidence that the offence was motivated by hate, based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor.⁴³

The methods by which data is collected and classified in Canada are instructive and could well be emulated in Australia:

“The collection of police-reported hate crime data occurs at the time the incident is reported. Depending on the level of evidence at the time of the incident, police can record it as either a 'suspected' or 'confirmed' hate-motivated crime. As more information is gathered, incidents are reviewed and verified and their status may be reclassified. This analysis includes crimes that have been confirmed to be or are strongly suspected to be motivated by hate. Suspected hate crimes may include criminal incidents that cannot be confirmed as hate crimes, but for which there is sufficient evidence to suspect that they are motivated by hate (e.g., hate graffiti where no accused has been identified). It is important to note that victims of hate crimes targeting specific populations are not necessarily members of those specific populations...The hate crime is classified by the perception of the accused (even if this perception is inaccurate), not by the victim's characteristics.”⁴⁴

In Australia, in stark contrast to the UK, the US and Canada, there is no definition of ‘hate crime’, ‘bias-motivated crime’ or even of ‘racially-motivated crime’ that is officially recognised throughout the country, and no official, centralised, nation-wide recording of such crimes, or system to do so. Each state has a different legislative regime for proscribing hate crimes, and therefore a different methodology and classification process for recording these crimes. The absence of any consistency of approach between different jurisdictions makes it very difficult to compare rates of hate crime in different parts of Australia and to draw any conclusions about hate crimes in Australia overall. The Australian Bureau of Statistics does provide some general, comparative breakdowns of crime for the whole of Australia, but not by motivation.

Proper research into and analysis of the nature, incidence and long-term trends of hate crimes in Australia is severely constrained by the unavailability of data based on a uniform national system for classifying and recording hate crimes. The quality of any government policies aimed at addressing hate crimes in Australia will necessarily be compromised by these limitations.

While a uniform definition of what constitutes a hate crime is obviously going to be useful, it is critical that police officers also be provided with the skills and training to correctly identify and classify reports of hate crimes. The integrity of any hate crime data system will be dependent on both a consistent definition as well as consistent application of the definition by police services across Australia. Nevertheless, the experience in the UK, US and Canada sug-

⁴³ Mary Allen, ‘Police-reported hate crime in Canada, 2013’, *Canadian Centre for Justice Statistics*, June 9, 2015, Catalogue no. 85-002-X, ISSN 1209-6393, p.4: <http://www.statcan.gc.ca/pub/85-002-x/2015001/article/14191-eng.pdf>

⁴⁴ *Ibid*, p.6

gests that the additional investment of resources in training police and implementing a national system in place of the existing State or Territory systems would not be excessive and would have positive practical and symbolic significance in signaling a determination by government to address hate crimes. Overseas experience suggests that this helps reduce the incidence of such offences, and also promotes more cohesive communities, in which various groups that have traditionally been the target of hate crimes feel that their needs have been addressed. Although the police response is a critical component in the effort to address the problem of hate crimes, the promotion of public awareness of the problem, and public confidence in the system's response, are also important in overcoming the traditional reluctance of members of affected groups to report such crimes for fear of reprisals or not being taken seriously.

6. The potential benefits and disadvantages of enshrining principles of multiculturalism in legislation (Item h in the Terms of Reference)

The ECAJ would support the introduction of legislation enshrining the principles of Australian multiculturalism, and its underpinning values. The main advantage of such legislation is that it would give specific expression to the community standards and values that are often referred to vaguely and generically as “Australian values”, and would establish or confirm the parameters within which multiculturalism plays out in a wide range of policy areas, including immigration and citizenship.

Enshrining the principles of multiculturalism in legislation would highlight any disconnect between those principles and the policies and practices of government from time to time. We do not see this as a disadvantage.

The content of the Principles of Multiculturalism and the Australian and Enlightenment values on which the principles are based are dealt with in section 3(a) of this submission (“Political leadership”) under the sub-headings “Australian multiculturalism” and “Public and school education”.

To give the principles greater utility we recommend an adaptation of the NSW Government’s Multicultural Policies and Services Program (MPSP), which would enable Commonwealth Government instrumentalities to show how they are planning effectively for people of culturally and linguistically diverse backgrounds, and to report on progress.

7. The potential benefits and disadvantages of establishing a legislative basis for the Multicultural Advisory Council, or for an ongoing Multicultural Commission (Item i in the Terms of Reference)

As was the case with its predecessor body, the Australian Multicultural Advisory Council, the current Australian Multicultural Council, is a ministerially-appointed body that provides advice to the Government on multicultural affairs policy and programs. Its remit is presently described in the following terms:

- *Harnessing the economic and social benefits of Australia's culturally diverse population.*
- *Celebrating diversity, promoting social acceptance and fostering engagement with Australian values, identity and citizenship, within the framework of Australian law.*
- *Building stronger and more cohesive communities and addressing barriers to participation, including racism and discrimination.*
- *Promoting greater intercultural and interfaith understanding and dialogue.*
- *Empowering civil society through partnerships with the business sector and harnessing the experience of established communities in developing the capacity of newer communities.*

*The Government may request the Council take on specific additional responsibilities in response to emerging multicultural policy issues.*⁴⁵

In our view, the status of the Council as either a legislative or ministerially-appointed body is a less important consideration than the resources that are made available to it and the expertise, knowledge and experience of the persons appointed to it. Providing a legislative basis for such a body would not guarantee that it is allocated adequate resources to fulfil its functions or that the persons appointed to it are the best qualified for the role.

The effectiveness of multiculturalism policy and of the strategies and programs that are adopted to put it into effect need to be tested periodically in the light of ongoing monitoring and research into which communities continue to manifest the greatest signs of social isolation, including unemployment, open promulgation of anti-democratic and other alien values and non-participation in Australian society.

It is therefore imperative that the Australian Multicultural Council, or any similar body, be in a position to fulfil its announced role by being fully briefed about, and having the opportunity to have an input into, all research that is being undertaken in Australia into the issues within its purview, and by being made privy to the results.

Indeed, the results should be made publicly available. Public confidence in the government's multicultural policies, strategies and programs can only be enhanced if there is an independent and rigorous process in operation to conduct periodic assessments of their effectiveness on the basis of high quality data produced by well-focused research, and for making any adjustments that are called for.

⁴⁵ Department of Social Services, Settlement and Multicultural Affairs, *Australian Multicultural Council*: <https://www.dss.gov.au/our-responsibilities/settlement-and-multicultural-affairs/programs-policy/a-multicultural-australia/australian-multicultural-council>

Conclusion

We look forward to working with the Select Committee and the Australian Government to assist them to devise and deliver specific strategies and programs that will enable the full potential of Australia's policies in connection with multiculturalism to be realised.

Yours sincerely

Peter Wertheim AM
Executive Director

APPENDIX

ECAJ SUBMISSION TO PARLIAMENTARY INQUIRY INTO PROTECTING AND STRENGTHENING AUSTRALIA'S MULTICULTURALISM AND SOCIAL INCLUSION

SUMMARY OF RECOMMENDATIONS

1. It is essential that the major parties show moral leadership and use best endeavours to achieve and maintain consensus on multiculturalism and immigration. Partisan divisions over these policy areas are open to exploitation by fringe groups seeking to promote racism, which works against any social inclusion agenda.
2. The major parties should affirm that Australian multiculturalism balances rights with responsibilities. It respects the right of all Australians to express their individual cultural identity, and to maintain and share their cultural heritage, within an overriding commitment to Australia and the basic values of Australian democracy and the rule of law. This includes the responsibility to accept Australia's Constitution, rule of law, democracy, freedom of speech and religion, English as the national language and sexual equality. In any conflict between ethnic culture and Australian values then these traditional Australian values prevail. To the extent of any inconsistency, Australian law trumps all other law. New arrivals have a readily attainable pathway to full partnership in Australian society on the basis of citizenship.
3. The values underpinning Australia's democracy should be taught at school as a part of the National Education Curriculum and should not be confined to the non-core subject of Civics and Citizenship. The teaching of these values, and Enlightenment values more generally, should also be integrated into the curricula for English, History, the natural and social sciences and Geography.
4. Critical thinking, as an educative tool for preventing and overcoming prejudice, and as an essential life skill, should be integrated in the National Education Curriculum beginning in primary school and reinforced in courses in English, History, the natural and social sciences and Geography in secondary school.
5. The National Anti-Racism Strategy should include a fully-funded process for engaging school educators as part of a review of existing school curricula, including the National Education Curriculum. The review should assess the effectiveness of current curricula in developing:
 - Awareness of the nature, prevalence and effects of racism, including self-awareness of learnt prejudices;
 - Awareness of the benefits of a multicultural society and of the contributions to Australia's development made by indigenous Australians and migrants;

- Education about the values of democracy, human rights and the rule of law, and the rejection of values which are inconsistent with them;
- Peer-to-peer engagement between students of different cultural backgrounds; and
- Critical thinking techniques particularly in response to racial stereotyping and theories of racial superiority or inferiority.

The assessment should be followed by recommendations as to how these outcomes might be achieved to the extent that they are not currently being achieved.

6. The teaching of Australian and Enlightenment values should also be included in English language programs for adult new arrivals. These values should be contrasted with the values of totalitarian and extremist ideologies whose socially destructive effects need to be highlighted. The more explicit the message, the more likely it is to be heeded. There should be community consultation about the best way of testing both adherence to these values and English language proficiency.
7. Members of parliament and other persons of influence should show moral leadership and use best endeavours to exercise a high degree of rhetorical virtue by avoiding language that is likely to inflame overt or latent hatreds and prejudices within the community. This includes language that evokes or appeals to traditional racist tropes about Jews (eg as being inherently malevolent or inordinately powerful) or which constitutes Holocaust denial or minimisation.
8. Members of Parliament who have supported the campaign to repeal or weaken the provisions of Party IIA of the *Racial Discrimination Act* should announce that they will no longer participate in pursuing that campaign.
9. Additional legislative measures should be introduced by the States and the Territories, and further amendments and additions should be introduced to the Commonwealth *Criminal Code*, that will be more effective against incitement of racially-motivated violence, especially on the internet.
10. The levels of funding to be provided to vulnerable ethnic and religious communities should be kept under close review to ensure that no community is left worse off by the introduction of the Safer Communities Program and the winding up of the Secure Schools program. Additional funding should be made available to enable vulnerable communities to provide essential security for their key institutions (such as schools, places of worship, aged care facilities and community centres), to the extent that such funding is not being made available from existing government programs. The overall funding assistance to be made available by the Federal government to the Jewish community for its security needs should be increased in accordance with the ECAJ's previous detailed application to the government.
11. For its own sake, the ABC needs a new system of oversight to guarantee its integrity. Its internal complaints unit is not independent of the organisation, nor is it sufficiently insulated from the influence of those who work there. The Australian Communications and Media Authority lacks the time, resources and expertise to do the job properly. We need a completely independent Ombudsman outside the ABC, appointed on a cross-partisan basis by parliament through a

public selection process, to monitor public broadcasting, assess complaints about news, current affairs programs, documentaries and online standards and report regularly to the Australian people.

12. Federal, State and Territory governments should agree upon a definition of ‘bias-motivated crime’ that is officially recognised throughout Australia and establish an official, centralised, system for the nation-wide recording of such crimes and their classification according to agreed categories, including race, national or ethnic origin, language, colour, religion, gender, age, mental or physical disability, sexual orientation, or any other similar factor. Law enforcement officers should be provided with the skills and training necessary to correctly identify and classify reports of bias-motivated crimes. The methods by which data concerning bias-motivated crimes is collected and classified in Canada should be emulated in Australia.
13. Any legislation intended to enshrine the Principles of Multiculturalism in Australia should specify the Australian and Enlightenment values on which the principles are based. We recommend an adaptation of the NSW Government’s Multicultural Policies and Services Program, which would enable Commonwealth Government instrumentalities to show how they are planning effectively for people of culturally and linguistically diverse backgrounds, and to report on progress.
14. The Australian Multicultural Council, or any similar body, should be provided with the resources necessary to carry out all of its existing functions, and the persons appointed to it should have the requisite expertise, knowledge and experience. The effectiveness of multiculturalism policy and of the strategies and programs that are adopted to put it into effect should be tested periodically in the light of ongoing monitoring and research. The Council should be in a position to fulfil its announced role by being fully briefed about, and having the opportunity to have an input into, all research that is being undertaken in Australia into the issues within its purview, and by being made privy to the results. The results should also be made available to the general public.