



13 December 2024

The Hon Josh Burns MP
Chair
Parliamentary Joint Committee on Human Rights
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Dear Mr Burns

Further to my appearance before the Joint Committee on 12 December 2024 and answers to questions from the Committee, I would add the following observations which might be of assistance:

1. *Definition of antisemitism.*

An example of an operational definition of antisemitic conduct suitable for use in a law or an enforceable rule of conduct might be along the following lines:

‘Antisemitic conduct’ is conduct which by speech or action expresses hostility towards Jewish persons or groups of persons or Jewish people generally because they are Jewish or otherwise discriminates against them.

2. *The International Convention on the Elimination of all Forms of Racial Discrimination*

A law proscribing or prohibiting antisemitic conduct thus defined would seem to accord with the International Convention on the Elimination of all Forms of Racial Discrimination to which Australia is a party.

Particular reference in this connection can be made to Art 2(1). Under that Article:

States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races ...

The Article goes on:

- (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.

Racial discrimination is itself defined in Art 1(1) as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

3. *Constitutional support for Commonwealth legislation*

The external affairs power may be invoked to make laws giving effect to Australia's obligations under the Convention. Even apart from the Convention, it would not be difficult to characterise antisemitism as a matter of global concern affecting Australia's relations with other countries and thus a subject of the exercise of the power of the Commonwealth Parliament to make laws with respect to external affairs.

In the alternative, universities today would appear to be trading and financial corporations subject to the power of the Commonwealth to make laws with respect to such corporations.¹ A further alternative source although probably the least desirable is the race power.

4. *Alternative definitions – IHRA and Go8*

The preceding proposal accepts that the use of more discursive definitions may provide guidance in education and training within the university sector in Australia and more generally.

I hope these remarks may be of assistance.

Yours sincerely

The Hon Robert French AC
Chancellor

¹ *Quickenden v O'Connor* (2001) 109 FCR 243.