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CENTRE FOR
HUMAN RIGHTS
LAW

Antisemitism at Australian Universities

*Answer to Question on Notice to the Federal Parliamentary
Joint Committee on Human Rights*

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Clarification on opening remarks

1. In her evidence before the Parliamentary Joint Committee on Human Rights (**Committee** or **PJCHR**) on 22 January 2025, Professor Melissa Castan referred to a 1991 report on racism. This is the 1991 [*Report of the National Inquiry into Racist Violence in Australia*](#) which was chaired by former Federal Race Discrimination Commissioner Irene Moss and Commissioner Ron Castan QC, after whom the Castan Centre for Human Rights Law is named.¹
2. This report recommended and led to significant amendments to the *Racial Discrimination Act 1975* (Cth).² Some of these recommendations, such as Federal protection against religious discrimination remain to be enacted.
3. We draw the Committee's attention to the following section of the report, which details evidence on seven ways in which antisemitism manifests. The multifaceted nature of antisemitism discussed in 1991 continues to be relevant today:

In Australia, it makes sense to distinguish between at least seven categories of anti-Semitic behaviour:

- (1) Physically violent acts of threats directed against Jews, Jewish institutions and Jewish property;
- (2) Verbal abuse against Jews in Jewish neighbourhoods;
- (3) Political agitation on the fringe by extremist groups accompanied by the dissemination of propaganda literature material of the racist (anti-Black, anti-Asian) and classic anti-Semitic variety;
- (4) Public expression of hostility against Jews in the mainstream, church and ethnic media or in the mainstream ideas marketplace;
- (5) Private or casual prejudicial statements against Jews, sometimes described as 'ritual anti-Semitism';
- (6) Acts of discrimination against Jews in the work-place;
- (7) Acts of terrorism against Jews or Jewish property by anti-Israel elements.³

This may be useful for the Committee's work. We observe that this identifies and categorises the sorts of conduct that constitute antisemitic behaviour, rather than seeking to ascribe a technical definition of antisemitism.

The interpretation, application and balancing of human rights

3. At our appearance before the PJCHR during its hearing into the Inquiry into Antisemitism at Australian Universities, the Chair of the Committee Mr Josh Burns MP posed a wide-ranging

¹ Australian Human Rights and Equal Opportunity Commission, *Report of the National Inquiry into Racist Violence in Australia* (Report, 1991).

² Ibid 389-390.

³ Ibid 142, quoting, Sam Lipski's evidence before Inquiry.

question about the balancing of the right to freedom of expression and the right to freedom of assembly and the right to freedom from racism, vilification, and hate speech.

4. Before responding to the balancing question, it is useful to highlight that academic freedom is related to and part of freedom of expression and freedom of conscience. As the United Nations (UN) Special Rapporteur on the right to education stated in 2024:

Academic freedom is “the human right to acquire, develop, transmit, apply, and engage with a diversity of knowledge and ideas through research, teaching, learning and discourse”. In 2020, the Special Rapporteur on freedom of opinion and expression that “academic freedom should be understood to include the freedom of individuals, as members of academic communities (e.g., faculty, students, staff, scholars, administrators and community participants) or in their own pursuits, to conduct activities involving the discovery and transmission of information and ideas, and to do so with the full protection of human rights law”.⁴

In an Australian context, we consider a useful starting point for defining academic freedom (at least non-exhaustively) to be the *Model Code for the Protection of Freedom of Speech and Academic Freedom in Higher Education Providers* which has been adopted on a voluntary working basis following the 2019 *Review of Freedom of Speech in Australian Higher Education Providers* conducted by the Hon Robert French AC.

5. We underscore that academic freedom and the human rights that it engages in a university context is to be applied, and balanced where it conflicts with other rights, in the same way as any other right. Academic freedom is *not* a special right which is to be prioritised *a priori* over any other human right. It is not a shield for unlawful discrimination, hate speech, or vilification, or any other unlawful conduct.
6. In interpreting and applying human rights (including limiting human rights in the case of a conflict), decisions of courts and other extrajudicial writing provides helpful guidance for the steps to be followed.⁵ We describe this as the ‘application of human rights law’. What follows is a heavily simplified process designed to assist the Committee’s understanding of how these questions are approached by judges and decision-makers. In providing this summary, we hope that it underscores to the Committee that human rights are not abstract or esoteric concepts, but concrete rights able to be applied in a given situation.
7. In order to understand how specific rights are engaged on a set of facts, we must first understand the meaning and scope of the right in question.⁶ This first step of interpretation requires that the decision-maker ‘ascertain and understand’ the ‘meaning and content of the right in a purposive way by reference to the values and interests that it represents and

⁴ Farida Shaheed, *Report of the Special Rapporteur on Freedom of Education: Academic Freedom*, UN Doc A/HRC/56/58 (27 June 2024) para 9.

⁵ We here draw on insights from Adj Professor the Hon Kevin H Bell AO KC. See especially, Kevin H Bell, ‘Certainty and coherence in the *Charter of Human Rights and Responsibilities Act 2006* (Vic)’ (Working Paper, 9 August 2021) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3899704>.

⁶ *PBU & NJE v Mental Health Tribunal* (2018) 56 VR 141, 172 [105] (Bell J) (‘PBU’).

protects'.⁷ Where multiple rights are engaged, as is often the case, this step must be repeated for each of the engaged rights.

8. The second step is to consider whether and how the right is engaged. This is 'not a purely formal step', rather having already ascertained the scope and purpose of the right, the process of engagement is the process whereby the 'boundaries of the protective arena' provided by the right are assessed against the alleged interference with the right.⁸
9. The third stage is justification. While the precise analysis to be undertaken at the justification stage will depend upon the particular right in question and whether the right has an internal limitations provision and the *derogability* of the right,⁹ the features of the justification analysis are lawfulness, necessity and proportionality.¹⁰ Here part of the analysis focuses on 'whether there is a proper relationship between the limitation (the means) and the purpose (the end). The means must be seen to be appropriate for achieving the end. The means must be rationally connected to and carefully designed to achieve the legitimate end' for which the limitation on the right was purportedly imposed.¹¹ Those means chosen 'should be the least restrictive which are reasonably available'.¹² Lawfulness has its own specific requirements, which are essentially the accessibility of the public to understand the existence and operation of the limitation on the right and the foreseeability of the consequences of the law with a reasonable degree of certainty.¹³ It is important to note that these stages are separate stages: it is impermissible if the question of justification intrudes upon interpretation and engagement.¹⁴
10. If an impermissible limitation on the right is found, one then proceeds to consider an appropriate remedy for that breach.
11. Another way of looking at this process is to conceive of five interrelated stages which may be summarised as follows.

1. Identification

- What possible human rights might be relevant on the facts before us?
- What avenues might be used to pursue a remedy for any possible limitation or restriction with the identified right?

2. Interpretation

- Having identified the relevant right, ask:
 - What is the *meaning* of the right?
 - In turn, this requires that we ask:
 - What is the *purpose* of the right and the *values* and *interests* that the right protects?

⁷ Ibid.

⁸ Ibid 173 [108] (Bell J).

⁹ The ability of certain rights to be departed from in certain circumstances.

¹⁰ *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 35 [107], [109] (Bell J).

¹¹ *PBJ v Melbourne Health* (2011) 39 VR 373, 451 [347] (Bell J).

¹² Ibid 452 [352] (Bell J).

¹³ *Sunday Times v United Kingdom* (1979) (European Court of Human Rights Law) [49]. See also, Nihal Jayawickrama, *The Judicial Application of Human Rights Law* (Cambridge University Press, 2nd ed 2017) 153-4.

¹⁴ *PBU* (n 3) 172 [105] (Bell J).

- What is the *scope* of the right?
 - In turn, this requires that we ask:
 - o *Who* does the right protect?
 - o In *what circumstances* is the right properly relevant?

3. Engagement

- Is the exercise and enjoyment of the right (with reference to the scope of its protection) *limited* or *restricted*?

4. Justification

- Having identified that the right has been limited and/or restricted, ask:
 - Is the limitation and/or restriction on the right *justified*?
 - In turn, this requires that we ask:
 - Is the limitation/restriction:
 - Lawful
 - Necessary
 - Proportionate?
 - Consider here:
 - Is the identified human right *derogable* or *non-derogable*?
 - Does the identified human right have an *internal limitations provision*?
 - The onus of *justifying* the limitation/restriction is on the party that seeks to rely upon the limitation/restriction (ie, the government).
 - If the limitation/restriction on the right is *justified*, then the analysis does not proceed to step 5.

5. Remedy

- What *effective remedy* should be awarded for the *unjustifiable* limitation/restriction on the exercise and enjoyment of the human right?

12. We undertake this human rights analysis in tandem with analysis of conduct under relevant anti-discrimination law, including the *Racial Discrimination Act 1975* (Cth) and applicable state law such as the *Equal Opportunity Act 2010* (Vic) and criminal law. some conduct 'clearly cross[es] a line into harm ... there's no real debate about that'.¹⁵ The hardest questions arise in the grey area where lines are difficult to draw.¹⁶ Nevertheless, universities are empowered under this existing law to consider the human rights implications of policies and to address civil and criminal conduct, where the conduct is the most serious. These laws are proportionate limitations on human rights to freedom of expression and assembly, which are not absolute rights or able to be used as a shield for antisemitism, or other forms of vilification, hate speech and discrimination.¹⁷

¹⁵ Ibid.

¹⁶ Commonwealth, *Parliamentary Debates*, Parliamentary Joint Committee on Human Rights, 12 December 2025 (Katharine Gelber).

¹⁷ *Cottrell v Ross* [2019] VCC 2142 [240] (Kidd CJ).

Universities best practice

13. The Deputy Chair of the Committee, Mr Henry Pike MP, also asked a question on notice concerning international best practice in responding to antisemitism and broader questions of racism and social cohesion on university campuses.
14. The Castan Centre is a human rights research, education and policy centre in the area of human rights law. We therefore have a limited ability to assess the effectiveness or impact of a range of educational and other measures undertaken by universities to address antisemitism, racism, and social cohesion on campuses. However, we highlight the below as relevant examples that the Committee may wish to look into further.
15. In May 2024, the Vice-Chancellor and President of Monash University, Professor Sharon Pickering announced that Monash University would implement four major initiatives to build social cohesion, strengthen dialogue and help to reduce tensions:
 - a. Monash University has committed \$1M over a two-year period to support an action based research program led by Associate Professor David Slucki (Director, Australian Centre for Jewish Civilisation) and Dr Susan Carland. The project is tasked with investigating the nature and experience of antisemitism, islamophobia and related prejudice and to develop and test programs and initiatives that support social cohesion on campus. The project will make rolling recommendations so that Monash University can respond promptly. We refer to Associate Professor Slucki's evidence before this Committee.
 - b. Monash University has initiated and facilitated a dialogue between students to achieve a better understanding of different perspectives and contribute to peace-building within campus. This will inform and enable co-design with students of guidelines to create safe, inclusive and supportive learning environments for all students. This will be lead by Professor Jacqui True (Professor of International Relations and Director of the Australian Research Council Centre of Excellence for the Elimination of Violence against Women) and Yorta Yorta/Boon Wurrung men Mr Jamil Tye and Mr Josef Tye, along with Monash University students.
 - c. Monash University has committed to doubling the offering of humanitarian scholarships offered by Monash University, with a specific focus on students affected by current conflicts.
 - d. Monash University has also committed to consulting with representative registered student associations on the forthcoming review of the Environmental Social and Governance Statement that will include Monash University's Investment Policy.
16. In terms of best practice, we highlight that Monash University has adopted a deliberately consultative approach with elements of co-design by students and those most affected by issues of antisemitism, and other issues affecting social cohesion and safety on campus. This is central to a human rights-based approach.
17. There is no universal definition of a human rights-based approach, however such an approach places the human experience at the core of analysis. Human rights approaches have a number

of common elements, namely: the participation of rights-holders in decision-making processes; clear links to human rights; accountability for duty-bearers with respect to human rights; respect for principles of equality and non-discrimination of rights-holders to understand and enjoy their human rights, and participate in decision-making and the formation of laws, policies, and practices that impact upon them; and transparency for all stakeholders involved.¹⁸ The participation of rights-holders in decision-making processes, which can be achieved through the co-design of policies and practices, is a central component of a human rights-based approach which can itself contribute to fostering social cohesion. Australian best practice has involved careful consultation, dialogue and co-design of responses alongside Jewish students and other students most affected by these issues.¹⁹

18. A number of universities have also instituted educational and training initiatives for students and staff of universities to educate them about antisemitism and other forms of racism. Internationally, these included initiatives at various universities in the United States of America to institute additional research and training on antisemitism such as Michigan State University,²⁰ New York University,²¹ and the University of Michigan.²² The Brandeis Center for Human Rights Under Law is well-known for adopting the strategy of using litigation in response to issues of antisemitism.²³ Vanderbilt University is one university that has taken a number of measures in response to university protests and encampments in 2024. These include updates on Vanderbilt's freedom of expression policies and civil discourse programming.²⁴ Changes to student policies include:
 - a. excluding members of the general public from participation in campus demonstrations and protests;
 - b. requiring that demonstrations and protests not occur at times which require students to sleep or gather overnight;
 - c. require that installations can only be displayed during daylight hours;
 - d. banning camping, sleeping, preparing to sleep or gathering overnight on campus spaces.
19. Vanderbilt also has stated a strong commitment to open discourse, requiring students to commit to a code of conduct (The Vanderbilt Community Creed) which includes which includes the following commitments:

¹⁸ See, eg, 'Human Rights Based Approach', *Swedish International Development Cooperation Agency* (Web Page) <<https://www.sida.se/en/for-partners/methods-materials/human-rights-based-approach>>.

¹⁹ 'Best and Worst Australian Uni Responses to Antisemitism', *The Jewish Independent* (online, 2 September 2024) <<https://thejewishindependent.com.au/best-and-worst-australian-uni-responses-to-antisemitism/>>.

²⁰ 'Supporting Our Israeli, Jewish and All Impacted Communities', *Michigan State University* (Web Page) <<https://president.msu.edu/communications/actions-resources/supporting-israeli-jewish-palestinian-arab-muslim-impacted-communities/>>.

²¹ 'NYU Launches Its Center for the Study of Antisemitism', *New York University* (Web Page)

<<https://www.nyu.edu/about/news-publications/news/2024/may/nyu-launches-its-center-for-the-study-of-antisemitism.html>>.

²² Adam Fisher, 'University to Launch Institute to Address Antisemitism', *The University Record* (online, 7 December 2023) <<https://record.umich.edu/articles/university-to-launch-institute-to-address-antisemitism/>>.

²³ 'Our Work', *Brandeis Center for Human Rights Under Law* (Web Page) <<https://brandeiscenter.com/our-work/>>.

²⁴ 'Vanderbilt Updates Freedom of Expression Policies and Expands Civil Discoursing Programming', *Vanderbilt University* (Web Page) <<https://news.vanderbilt.edu/2024/08/12/vanderbilt-updates-freedom-of-expression-policies-and-expands-civil-discourse-programming/>>.

Open - We strive to openly engage with ideas, experiences, and with one another. We welcome every background and story through celebration of diversity that enriches our common experience and active participation in constructive consultations about our differences.

Respectful - We strive to promote a culture of civility grounded in enquiry, inclusivity, and respect. We hold each other's passions and perspectives in high regard, endeavouring to live a life of personal growth and service.²⁵

20. An important part of these initiatives is that it was done in consultation with staff and students, including its student advisory board.²⁶ We raise this as an illustration, but we have no further information about the co-design process of these initiatives, or its impacts. We also note that the socio-legal context in the US is quite distinct from Australia and these considerations are worth further investigation by the Committee.

We trust that this answer is of assistance and look forward to reading the report when it is tabled in Parliament.

²⁵ 'The Vanderbilt Community Creed', *Vanderbilt University* (Web Page) <<https://studenthandbook.vanderbilt.edu/the-vanderbilt-community-creed/>>.

²⁶ 'Vanderbilt Updates Freedom of Expression Policies and Expands Civil Discourging Programming', *Vanderbilt University* (Web Page) <<https://news.vanderbilt.edu/2024/08/12/vanderbilt-updates-freedom-of-expression-policies-and-expands-civil-discourse-programming/>>.