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19 October 2024
Ms. Sophie Dunstone
Committee Secretary
The Senate Legal and Constitutional Affairs Committee

By email: LegCon.Sen@aph.gov.au

Re: Inquiry into the Commission of Inquiry into Antisemitism at Australian Universities
Bill 2024 (No. 2)

Dear Ms. Dunstone

Please find attached the NTEU response to questions on notice. We apologise for the prolonged delay in providing these to the Committee.

We trust that these responses have clarified the issues for the Committee and, once again, we thank the Committee for the opportunity to respond and note that we would be happy to provide further elaboration if required.

A handwritten signature in black ink, appearing to read "Gabe Gooding". The signature is stylized with large loops and a long horizontal stroke.

Gabe Gooding
National Assistant Secretary

NTEU Response to Questions on Notice

Question from Senator Henderson

For how long was he (Dr. Nick Reimer) Nick Reimer President of Sydney uni Branch?

Dr Reimer was President of the University of Sydney Branch for 2 years and 4 months. Dr. Reimer is now a member of the Branch Committee by virtue of being elected to one of two Vice-President positions of the University of Sydney Branch. His term expires on 16 October 2026.

Question from Senator Henderson

Were there any representations or concerns raised that Mr Nick Riemer should not continue as an official of NTEU?

After a search of the Complaints email system and requests to relevant national and NSW officers to search their records, we have been unable to find any emails specifically calling for Dr. Reimer to be removed from the position he occupied as NTEU Branch President at the University of Sydney. However, I have located the following emails that we have received that specifically referenced Dr. Riemer some of which can be read as inferring that he should not continue to hold his position:

9 October 2023

The General Secretary of the NTEU received an email from a non-member that objected to a post on X by Dr. Riemer.

9 October 2023

A resignation which included: "I cannot be a member of a union under the leadership of Nick Reimer. It is my hope and intention to rejoin in the future."

12 Oct 2023

Resignation by a member which included: I am a supporter of the Palestinian cause, but not of Riemer's emphatically mandated resistance to recognising human suffering on both sides of this recent conflict. I am deeply ashamed of his response, and no longer want to be part of a union under his leadership."

8 November 2023

A long resignation letter that contained the following two statements: "Support by the USyd Branch President for pro-Palestinian anti-Israel demonstrations on campus, have, in my view, contributed to an atmosphere of fear and intimidation for many students and staff, including NTEU members"... and "I believe that the recent statements by the Usyd chapter president, Nick Reimer, undermine the Union's mission and demonstrate astonishing ignorance and a lack of focus."

Question from Senator Scarr

“Okay. Ms Gooding, I have two quick follow-up questions. I understand the point around academic freedom. We had a very good discussion with representatives from Muslim Votes Matter in relation to this topic, and I pointed them to page 4 of the submission from the Executive Council of Australian Jewry, which gave their interpretation of the International Holocaust Remembrance Alliance definition. It listed a whole range of matters which they considered were legitimate points of discussion or political criticism that could be made within the ambit of that definition. I'm interested to get, on notice, your views with respect to their interpretation of the definition, given the position you put in relation to the union. Could you take it on notice?”

The submission of the Executive Council of Australian Jewry at page 4 contains the following which may be their interpretation of the IHRA:

‘This is not to suggest that it is antisemitic to criticise Israeli government policies or practices or the statements and conduct of Israeli political figures, in the same way that criticisms are levelled against other governments and political figures. Nor is it antisemitic to hold particular views about the borders of Israel, settlements, refugees, the legal status of Jerusalem or the viability of a two State outcome to the Israel-Palestinian conflict. Among Israelis, the Jewish people and others who support Israel there is a wide range of views about these issues.’

NTEU would refer the Committee to an analysis of the IHRA definition by Dekkers and Coulter¹ (also cited in submission 659) which shares much of the concerns of NTEU as outlined in our submission. Specifically, Dekkers and Coulter note that “pro-Israel activists can and have mobilised the IHRA document for political goals unrelated to tackling antisemitism, notably to stigmatise and silence critics of the Israeli government. This causes widespread self-censorship, has an adverse impact on freedom of speech, and impedes action against the unjust treatment of Palestinians”. The reason that this has occurred is that the definition is loose and problematically vague, and the examples of what is antisemitism ignores other reasons why those listed actions may be legitimate and not founded in antisemitism or the impossibility of complying. Some examples cited by Dekker and Coulter are:

‘In its sixth example, the IHRA also mentions ‘accusing Jewish citizens of being more loyal to Israel ... than to the interests of their own nations’. The IHRA is right that this is not necessarily antisemitic. It would be antisemitic to say that all Jews, or Jews in general, are more loyal to Israel. However, those who argue that some Jews are more loyal to Israel, and who take issue with this, are not necessarily wrong. The persistent and determined lobbying activity of many Zionist Jews in Western nations might stem from their greater loyalty to the state of Israel. By the same token, it could be argued that there are UK and USA citizens of Irish origin or descent who have been more loyal to the Republic of Ireland than to the UK or the USA and who have shown this by their willingness to finance or organise violence

¹ Dekker, J. and Coulter, J. Res Publica. 2022 May 11;28(4):733–752

in Great Britain and Northern Ireland. In today's world, with millions of people living far from their ancestral homes, many citizens feel conflicting loyalties.'

'The tenth example is 'drawing comparisons of contemporary Israeli policy to that of the Nazis'. We agree that this is not necessarily antisemitic. Broad unqualified statements treating Nazism and Zionism as similar, or equally bad, are likely to spring from antisemitism and/or gross ignorance. However, historians and others who study these and other ethno-nationalist movements of European origin, for example Serbian nationalism, may quite reasonably identify certain historical parallels along with major dissimilarities.'

'Whilst introducing the 11 examples, the IHRA definition states that 'criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic'.... Firstly, the criticism might not be motivated by hostility or bias against Jews, but simply by a particular government policy. Secondly, if government A has more unjust policies compared to government B, there is good reason to subject it to more criticism. There is good reason, for example, to criticise the Israeli government more than any other government in relation to the plight of Palestinians.... It might be objected that it would not be fair to criticise the Israeli government for this unless one makes similar efforts to criticise other governments that also engage in human rights violations, for example China in relation to the Uighurs, Myanmar in relation to Rohingyas, and Syria in relation to the death and suffering of its own people. Those who thus object are treating any criticism that is dissimilar as morally problematic and, in the case of the Israeli government, suspect of being motivated by antisemitism, as one should only speak out against a particular injustice if one speaks out simultaneously against all injustices. As no person is capable of expressing criticism against all injustices equally, this would lead to the absurd situation where all criticism would be invalid.'

These observations neatly encapsulate the concerns that NTEU has expressed in opposing adoption of the IHRA definition.

Question from Senator Carr

"This is my second and last question. I listened very closely to what you said in relation to the code of conduct and the union's position with respect to antisemitism, and I'm trying to reconcile that with the fact that, as I understand it—and please let me know if I'm incorrect—the union actually supported the court appeals which were made by an academic who was terminated by the University of Sydney for superimposing a swastika on the flag of Israel. Did the university provide support to that academic when the academic was appealing against their dismissal by the University of Sydney—ultimately they were unsuccessful—and, if they did support that academic, how do you reconcile that with the code of conduct and the issues we're talking about today?"

It is not possible to answer this question without providing context. Dr. Anderson was initially charged with bringing the University into disrepute for comments on Syria. The

image issue was raised by the University in October 2018 and at that time the University chose to not pursue it due to the substantial delay between its posting and the issue being raised with him. The image was not made by Dr. Anderson, and he first used it in an infographic in 2015 comparing Israeli and Palestinian casualties in 2014.

The University raised a series of issues with Dr. Anderson from May 2017 onwards which were largely about social media posts regarding journalists who had published articles about him.

In 2018, Dr. Anderson was teaching a unit that included Economic Self-Determination in Venezuela, and he incorporated a session on 'reading controversies', the idea of which was to introduce students to ways in which they could cut through propaganda storms and select more reliable information; that is, to 'read' controversies with more discerning eyes. The techniques had to do with reading both sides, identifying the more independent sources, including 'admissions against interest' and discounting both 'self-serving' statements and facile 'moral equivalence' assertions. This is clearly a valid academic exercise.

As there would be a session lost to Anzac Day he organised two optional make-up seminars, one on the right to water (an essay topic) and one an extension of the reading controversies material to cover Venezuela, Syria and Palestine. The second session was a half day seminar with three speakers that was also open to the public. The infographic was included in the publicity material posted on 23 April 2018 and in the seminar. It is important to note that it was a blurry image that occupied 0.6% of the total area of the infographic slide.

On October 19, 2018 Dr Anderson was issued with a final warning. On October 20, he posted the infographic on social media with the following comment "Revision: how to read colonial media, and untangle false claims of moral equivalence'. The colonial violence of #apartheid #isreal is neither morally nor proportionately equates with resistance of #Palestine."

On 11 February after a review committee process, he was formally dismissed.

NTEU represented Dr. Anderson in the appeals process as the case had important implications for the interpretation of academic and intellectual freedom clauses, especially around the intersection of 'bringing the university into disrepute' and those freedoms. An important element of academic freedom is the right to express controversial views, a right that NTEU believes must be protected. In addition, The Higher Education Support Amendment (Freedom of Speech) Act 2021 contains the following as part of the definition of academic freedom:

'the freedom of academic staff and students to engage in intellectual inquiry, to express their opinions and beliefs, and to contribute to public debate, in relation to their subjects of study and research'

which is a strong statement on the rights of academic staff to express both opinions and beliefs.

On appeal a Full Bench of the Federal Court overturned a previous decision in Dr. Anderson's favour and returned it to the original trial judge. Ultimately the original trial judge reversed the prior decision and Dr. Anderson's dismissal was confirmed.

The Union determines the level of support that will be provided to any member. In this case, protection of academic freedom and interpretation of the University of Sydney clause was of sufficient import to the wider union membership that the Union supported the appeal of Dr. Anderson. We see no conflict between defending the principles of academic and intellectual freedom and our Code of Conduct, which, as stated in evidence does not apply to behaviour of members not associated with union activities.

