

## An Open Letter to University Vice-Chancellors

Dear Vice-Chancellor,

### Opposing the Adoption of the International Holocaust Remembrance Alliance (IHRA) Guidelines on Antisemitism in Australian Universities.

We, Jewish and non-Jewish current and former academic and university staff, graduates, and educators write to you concerned for the preservation of research autonomy, teaching and free speech in Australian higher education.

The campaign<sup>1</sup> by the recently convened federal Parliamentary Friends of the International Holocaust Remembrance Alliance (IHRA)<sup>2</sup> for Australian universities to adopt the *Working Definition on Antisemitism*<sup>3</sup> is regrettable. The IHRA definition, if adopted by universities, as demanded by the Parliamentary Friends group in their letter to you of 30 November last, will have far-reaching implications for academic teaching, research and publications, and will interfere in student politics. The claim in their letter that adoption of the definition will not interfere with free-speech in higher education is either disingenuous or naive. *The IHRA Definition at Work*<sup>4</sup> report of 4 March 2022 reports on the negative effects adoption of the definition has had on universities, amongst other institutions, internationally. Significant other criticism of the international IHRA campaign is presented below.

The term “antisemitic” is over-generalized and when applied to opinions on the Israel-Palestine issue may be akin to claims by the Chinese government about academic articles from the internationally respected journal *Nature* being used in an Information Technology class to: “slander the Chinese government, spread rumours, sow discontent between ethnicities, and have a strong anti-China sentiment.”<sup>5</sup> The attempt to adopt a politicized speech code like the IHRA definition is like the pressure brought to bear on universities by Chinese interests and government in this country. In our view the two campaigns are similar in that foreign government interests are being served by mobilising local community perceptions that can be highly subjective.

There are other countries which may at some point choose to bring similar complaints about what is said about their politics in Australian universities. University autonomy and the commitment to reason and free speech can be threatened if a low bar, like the IHRA definition and its attendant examples are used to police speech in universities. Professor Ruth Gould, of the University of Birmingham noted of the IHRA definition in the peer-reviewed *Political Quarterly* in 2020 that:

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<sup>1</sup> Australian Jewish News, 9 December, 2022. <https://www.australianjewishnews.com/parliamentary-friends-of-ihra-engage-universities/>

<sup>2</sup> Australian Jewish News, 3 November, 2022. <https://www.australianjewishnews.com/parliamentary-friends-of-ihra-officially-launched-in-canberra/>

<sup>3</sup> IHRA Non-legally binding Working Definition of Antisemitism. <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>

<sup>4</sup> <https://www.ijvcanada.org/ihra-definition-at-work/>.

<sup>5</sup> <https://www.hrw.org/report/2021/06/30/they-dont-understand-fear-we-have/how-chinas-long-reach-repression-undermines>

the working definition appears in many respects to be a document that is uniquely suited to generate misunderstanding, misapplications and, ultimately, abuses of its stated intent. In brief the IHRA definition intervenes in public discourse by way of obfuscation.<sup>6</sup>

In her more recent study, *Legal Form and Legal Legitimacy: The IHRA Definition of Antisemitism as a Case Study in Censored Speech*, Professor Gould evidences:

The IHRA] document reaches beyond its self-described status as a “non-legally binding working definition” and comes to function as what I call a quasi-law, in which capacity it exercises the *de facto* authority of the law, without having acquired legal legitimacy. Broadly, this work elucidates the role of speech codes in restricting freedom of expression within liberal states.<sup>7</sup>

The umbrella body of Australian Jewry, the Executive Council of Australia Jewry, and the Zionist Federation of Australia, and the private Australian Israel Affairs Council take an aggressive stance against criticism of Israel, even though many of these criticisms are similar to those made by Israeli politicians and civil society actors. These Australian organisations pursue a partisan position on what they claim are ‘Jewish’ interests for Australian politicians.

Interestingly, the Zionist Federation of Australia issued a statement on 7 October, 2022 welcoming the creation of the federal Parliamentary Friends of the IHRA, three weeks before the launch of the group was announced.<sup>8</sup> The campaign by this lobby to stigmatize criticism of Israel has been effective over many years in limiting reporting and criticism about Israel’s treatment of its Palestinian citizens and subjects in the Occupied West Bank.<sup>9</sup> The demand that the IHRA definition be adopted by Australian universities follows campaigns in the UK, the US, Canada and Europe that have resulted in the definition having the *de facto*, albeit mistaken, authority of law thereby stifling free speech about Israel and Palestine.<sup>10</sup> This is especially so when the Commonwealth Racial Discrimination Act 1975 already provides a legal remedy for complaints about racist speech.

Of course, these organizations are entitled to lobby for Israeli interests and reflect Israel government policy, notwithstanding, in our view, the tragic outcomes for Palestinians, Jewish Israelis and the Jewish diaspora. However, they cannot claim to speak for *all* Jews<sup>11</sup>, nor to police free speech in Australia. Since 2018 the IHRA definition has been opposed by more than 40 Jewish groups worldwide.<sup>12</sup>

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<sup>6</sup> Gould, R.R. (2020). *The IHRA Definition of Antisemitism: Defining Antisemitism by Erasing Palestinians*. The Political Quarterly. 2020. Vol. 91, Issues 4, pp829. <https://onlinelibrary.wiley.com/doi/full/10.1111/1467-923X.12883>

<sup>7</sup> Gould, R.R. (2022). *Legal Form and Legal Legitimacy: The IHRA Definition of Antisemitism as a Case Study in Censored Speech*. Law, Culture and the Humanities, 18(1), 153–186.

<https://doi.org/10.1177/1743872118780660>

<sup>8</sup> <http://www.zfa.com.au/statement-on-the-creation-of-the-parliamentary-friends-of-ihra/>

<sup>9</sup> Lyons, John (2017) *Balcony Over Jerusalem. A Middle East Memoir*, Harper Collins Australia. Lyons, John (2021). *Dateline Jerusalem : Journalism's Toughest Assignment* Clayton, VIC: Monash University Press.

<sup>10</sup> Gould, R. R. (2022). *Legal Form and Legal Legitimacy: The IHRA Definition of Antisemitism as a Case Study in Censored Speech*. Law, Culture and the Humanities, op. cit.

<sup>11</sup> <https://www.abc.net.au/religion/the-divisiveness-of-the-state-of-israel-for-jews/14119182>

<sup>12</sup> <https://www.jewishvoiceforpeace.org/2018/07/first-ever-40-jewish-groups-worldwide-oppose-equating-antisemitism-with-criticism-of-israel/>

Critics of the IHRA definition point out that it both defines legitimate criticism of Israel too narrowly and demonization of it too broadly, that it trivializes the meaning of antisemitism, and that the definition is used in practice to silence political debate and freedom of speech regarding Israel/Palestine. It is far too prescriptive.

In fact, some of the definitional material would result in the speech of Israeli opponents of the actions of the Israeli state and government being deemed antisemitic. This is a ridiculous situation, and one with which universities should not engage. Reasonable people can have different opinions about when antisemitism is reflected in anti-Zionism. But is demanding Australian universities use a partisan definition of antisemitism to stigmatise anti-Zionism or criticism of Israel as antisemitism *per se* the way to fight it?

Geoffrey Robertson AO. KC. advised in his legal opinion of 3 September, 2018 that the IHRA definition is not fit for purpose as an instrument for dealing with antisemitism and that it also is a restriction of free speech with regards to Palestine/Israel.<sup>13</sup> There are other effective, less controversial definitions of antisemitism that can be used in addressing this ancient form of racism, including the Jerusalem Declaration on Antisemitism<sup>14</sup> and that of UK philosopher Brian Klug,<sup>15</sup> amongst others.

The International *Statement by Scholars* of 3 November 2022 identifies fundamental problems with the IHRA definition and its associated campaigns.<sup>16</sup> That statement was signed by 128 noted scholars of Antisemitism, Holocaust Studies, Modern Jewish History and related fields including more than a dozen Israeli professors, most from the Hebrew University, Jerusalem. It is only the latest in a long line of informed criticism of the IHRA definition.<sup>17</sup> Among those denouncing misuse of the IHRA definition is Kenneth Stern, the lead author of the definition who has said that he never intended the definition to be a “campus hate speech code”.<sup>18</sup> However, its wording suits the political role of false allegations, as documented in the reports: *The IHRA Definition at Work*<sup>19</sup> and *Unveiling the Chilly Climate – The Suppression of Speech on Palestine in Canada*.<sup>20</sup>

Free speech is a complex issue as the recent decision of the Federal Court in the case brought by Sydney University academic Tim Anderson and the NTEU demonstrates. The Court overruled the University of Sydney in its attempts to dismiss Anderson for abusive and antisemitic speech acts.<sup>21</sup>

The President of the Sydney University branch of the NTEU noted:

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<sup>13</sup> Geoffrey Robertson AO KC. *Anti-semitism: The IHRA Definition and its Consequences for Freedom of Expression*. Legal Opinion, 3 September, 2018 <https://www.doughtystreet.co.uk/news/ihra-definition-antisemitism-not-fit-purpose>

<sup>14</sup> <https://jerusalemdeclaration.org/>

<sup>15</sup> Brian Klug, *The collective Jew: Israel and the new antisemitism*, *Patterns of Prejudice* 37(2) (2003), 117– 38.

<sup>16</sup> Statement by Scholars: 128 scholars warn: ‘Don’t trap the United Nations in a vague and weaponized definition of antisemitism’ 3 November 2022.

<https://media.euobserver.com/9e86df02ddf67c6046d190b65e4380df.pdf>

<sup>17</sup> Peter Slezak, *How should antisemitism be defined? A reply to Peter Wertheim - ABC Religion & Ethics*

<sup>18</sup> <https://www.theguardian.com/commentisfree/2019/dec/13/antisemitism-executive-order-trump-chilling-effect>.

<sup>19</sup> <https://www.ijvcanada.org/ihra-definition-at-work/>.

<sup>20</sup> Palestine, Academic Freedom, and the International Holocaust Remembrance Alliance Working Definition of Antisemitism in *Unveiling-the-Chilly-Climate\_Final-compressed.pdf* (ijvcanada.org) pp13-17.

<sup>21</sup> <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2022/2022fca1265>

The principle of academic freedom is always going to be hardest to uphold with controversial positions, especially given the pressure universities are under from the Israel lobby. Regardless of your views on Anderson, everyone who is serious about universities should welcome this decision.<sup>22</sup>

The Institute of Public Affairs' policy director Gideon Rozner said about the Anderson case that:

In a liberal democracy, the price of free speech is that the worst of human thought has as much a chance of being expressed as the best," Mr Rozner said. "We cannot make intellectual freedom contingent on whether we like the speech being aired.

In conclusion, antisemitism and racism are real and damaging and they occur in universities. Universities have in the past, been reluctant to respond to real instances of intolerance and racism towards members of minority groups, including Indigenous Australians. Our universities can do better for example by active engagement with Federal and State Human Rights Commissions. But Australia's universities should not be relying on a partisan definition as a means of determining what is proscribed political speech. The independence of universities and their commitments to free thought and speech, research and teaching should be paramount.

Universities Australia should independently develop an enhanced policy for combatting racism (including antisemitism) so that there is consistency between institutions. Given the evidence against the IHRA definition, Vice-Chancellors must consult about the implications of a stand-alone antisemitic speech policy for university autonomy in research, teaching and free speech.

Sincerely etc.

***To endorse this letter, please sign at <https://form.jotform.com/223502626239049> before January 15, 2023. Queries? Please send an email to: [unifreespeech@postpro.net](mailto:unifreespeech@postpro.net)***

Signatories received in order of receipt (more to be added)

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<sup>22</sup> <https://honisoit.com/2022/10/federal-court-rules-tim-anderson-termination-violated-academic-freedom/>.

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