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WHAT IS WRONG WITH THE GO8 DEFINITION OF ANTISEMITISM?

It's not too late to get it right

DAVID KNOLL &
ANDRE OBOLER

THE Australian Academic Alliance Against Antisemitism (5A) is deeply concerned about the university Group of 8's rejection of the International Holocaust Remembrance Alliance's (IHRA's) Working Definition of Antisemitism.

The federal government has adopted the IHRA definition, yet our most powerful universities want to impose an alternative definition. Go8 chief executive Vicki Thomson has relied on an assertion that the IHRA definition "is not workable without adaptation to Australian conditions and context". How so? This is sophistry at its worst. There is nothing unique about Australian conditions compared to the UK where the IHRA definition is widely adopted by leading universities – Oxford, Cambridge, the London School of Economics and 110 other universities in England alone.

The Canadian government itself has recently issued a handbook on applying the IHRA definition.

Harvard has just settled a lawsuit against it for failing to protect the civil rights of Jewish students and has agreed belatedly to adopt the IHRA definition "for purposes of discipline". It also agreed, among other actions, to create a dedicated position for antisemitism complaints and reporting, engage mandatory outside training for staff reviewing antisemitism complaints and issue annual public reports on antisemitism-related cases and their outcomes for at least five years (including retrospective to October 1, 2023).

The IHRA definition is practical. Importantly, IHRA does not set a high threshold requiring proof of a particular adverse impact. For that matter, neither does the Commonwealth Racial Discrimination Act.

The Go8 definition does, however, set a high bar which will be used to determine what is and is not



The pro-Palestinian/anti-Israel encampment at the University of Melbourne in May 2024. Photo: Peter Haskin

antisemitism, and therefore what will not and will be allowed on campus. It refers to antisemitism as something which "impedes" Jews' ability to participate as equals in educational, political, religious, cultural, economic or social life.

There was no consultation with the ... Jewish community.

It seems obvious that conduct or accusations, such as Israelis/Zionists are the new Nazis, which are intimidatory, but which do not actually impede a Jewish student's ability to attend classes or a Jewish academic's ability to attend a staff meeting, can easily be antisemitic yet still pass muster under the Go8 definition.

Would thinly veiled calls for violence against Jews, such as "globalise the intifada" cross the line? What about the singling out of individuals who want to continue to collaborate with colleagues in Israel? Or ongoing social media harassment of selected identifiable Jewish academics?

Also, the Go8 alternative definition creates ambiguity in its emphasis on equality. There are decades of legal and jurisprudential debates about whether that means equality

of opportunity or equality of treatment. They are not the same. There is also the unanswered question of equal with whom? None of this difficulty need arise were the IHRA definition adopted.

One would be forgiven for thinking that the Go8 definition is designed to minimise the risk that antisemitism complaints might succeed. Many examples of unacceptable conduct were brought to the attention of the Parliamentary Commission of Inquiry into antisemitism at Australian Universities. We have seen copious evidence of intimidation, harassment and threats against Jewish and non-Jewish academics and students who stand up for Israel and the Jewish people within the Go8 universities. The cancer is deep and pervasive, and it would seem that the Go8 wish to only apply a topical ointment.

There was no consultation with the elected leadership of the Australian Jewish community, the Executive Council of Australian Jewry, nor with key experts in the field of antisemitism, who are leaders and members of the 5A. Imagine not consulting Indigenous Australian leaders and experts when preparing guidelines to ensure that they are treated fairly by our universities.

The universities are right, how-

ever, to require that any definition of discrimination regarding universities be applied in keeping with the principles of academic freedom. Australia has a long history of doing this. The Racial Discrimination Act has an exception to protect academic freedom in Section 18D, provided the act that would otherwise be racist was part of academic research and engaged in reasonably and in good faith. Universities could and should adapt to that which the law already provides for.

And the Go8 may wish to acknowledge that which Professor Kathleen Mahoney explained in the first issue of the *Australian Journal of Human Rights* 30 years ago – that free speech is enhanced when vulnerable groups are protected from serious harm through racial hate speech.

The Go8 can do better at tackling antisemitism on Australian university campuses. However, taking a lead from "recommendations of antisemitism taskforces at some leading American universities" is problematic. The attempt of these universities to come up with a definition that is not nationally or internationally accepted has fed into lawsuits against them and ongoing controversy. These are environments where antisemitism spiralled out of control. They include Harvard, which as noted above has now agreed to adopt the IHRA definition. Further, under US law, government agencies must consider the IHRA definition, including its examples, when assessing breaches of the Civil Rights Act.

We understand that the Go8 definition is to be introduced this month, but it is not too late to get this right.

David Knoll AM is a barrister and adjunct associate professor, UNSW Faculty of Law, and a director of the Australian Academic Alliance Against Antisemitism. Andre Oboler is CEO, Online Hate Prevention Institute, an honorary associate, La Trobe Law School, and member of the alliance.

Postscript: Since writing, a positive development has occurred. The new Commonwealth student ombudsman has explicitly adopted the IHRA definition to assist students who have been let down by university processes.

Message to the family of an unknown Jewish man

I am writing this to thank the family of the old Jewish man I picked up in my taxi in the 1970's. I was just married and did not have much and I picked up this old man near Leichardt and took him towards the city. I think he might have been a jeweller, I cannot remember exactly where I took him but it happened twice. The kindly old man could see I was just a battler and he gave me some pieces of jewellery for my wife and kids, probably not a lot of value but what I have never forgotten is the kindness of this man. I am almost 80 now and before I go I want to thank the family as I know the old man is probably still not with us. I often think of his kindness over all the past years. The family probably might be able to work out that he is their relative, so to that family, "Thank You."

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