

# TRANSCRIPT

## LEGISLATIVE ASSEMBLY LEGAL AND SOCIAL ISSUES COMMITTEE

### Inquiry into Anti-Vilification Protections

Melbourne—Wednesday, 27 May 2020

#### MEMBERS

Ms Natalie Suleyman—Chair

Mr James Newbury—Deputy Chair

Ms Christine Couzens

Ms Emma Kealy

Ms Michaela Settle

Mr David Southwick

Mr Meng Heang Tak

#### WITNESSES

Dr David Adler, President, and

Mr Ted Lapkin, Executive Director, Australian Jewish Association (*both via  
videoconference*).

**The CHAIR:** Good afternoon. Welcome to the Legal and Social Issues Committee Inquiry into Anti-vilification Protections public hearing. I would like to begin this hearing by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the various lands each of us is gathered on today, and pay my respects to their ancestors, elders and families. I particularly welcome any elders or community members who may be here today that may be impacted by knowledge of this issue to the committee or who are watching the live broadcast of these proceedings. All evidence taken at this hearing is protected by parliamentary privilege, as provided by the *Constitution Act 1975* and further subject to the provisions of the Legislative Assembly standing orders. Therefore the information you provide during the hearing is protected by law. However, any comment repeated outside this hearing may not be protected. Any deliberate false evidence or misleading evidence to the committee may be considered to be contempt of Parliament.

All evidence is being recorded today. You will be provided with a proof version of the transcript following the hearing. Transcripts will ultimately be made public and posted on the committee's website.

Can I welcome here today from the Australian Jewish Association Dr David Adler, the President, and Ted Lapkin, the Executive Director. You have a brief introduction of 10 minutes followed by questions from the committee members. Thank you.

**Dr ADLER:** Thank you very much for the opportunity to talk to the committee on this subject, albeit in rather unusual circumstances. The Australian Jewish Association is a national body. It is hard to measure the different segments of the Jewish community, but on social media AJA is the largest in the country. If you wanted to look at our news and views, the AJA Facebook page is our most up-to-date forum, and I will actually during the next few minutes refer you to one item that has just gone up this morning.

I am going to start with our conclusion, which is that we are asking the committee to recommend the adoption of the International Holocaust Remembrance Alliance, IHRA, definition of antisemitism. It is the most widely accepted international standard for what constitutes antisemitism, and we think that is a really useful action that the committee could consider.

We did submit two documents to your committee. The first was a more substantive submission, dated 12 February. If anyone is not familiar with the IHRA definition, it appears on page 6 of that submission. Because of the coronavirus and the change of circumstances and the question of vilification arising as a result of the coronavirus, we were invited to make a supplementary submission, and we did that, dated 18 May. It is essentially a pictorial submission, our second one, because we decided to present to the committee a selection of things that have become prominent on social media that relate coronavirus to antisemitism.

Now, this is highly symbolic because when you consider the subject of antisemitism, a seminal speech by the former chief rabbi of the commonwealth, Rabbi Lord Jonathan Sacks, characterised antisemitism as like a virus that morphs. And you can see this through history. For example, during the Crusades the expression of antisemitism was against the Jewish religion, with forced conversions under torture. Under the Soviet Union, the old Soviet bloc, there was a suppression of Jewish culture that seemed to be the target. The Nazis of course took a racial approach and tried to eliminate the Jewish race, and more recently we have seen a lot of antisemitism focused on the Jewish state against Israel, and lines have been crossed between political commentary and antisemitism.

I hope the committee members have our recent submission on the coronavirus issues in front of you. If you have a look at page 3—it takes a lot to shock me on this subject, but this particular example did—where it refers to the ‘holocough’, which is obviously a play on words from Holocaust: ‘If you have the bug, give a hug, spread the flu to every Jew’. So there is blatant antisemitism—an example—arising. If you look at page 8 of that document, you will see another interesting example at the top of page 8: ‘It’s not Chinese. It’s the Jew flu!’. There are a number of examples in this presentation that use #Covid1948, and where you see that [**Zoom dropout**] the state of Israel. So you can see that the COVID-related antisemitism in those examples starts to be brought out as anti-Zionism against anti-Israel expressions.

Now, even since we have made the submission there have been some further developments, and I am just going to, in a few seconds each, update the committee on a few significant ones. A study was published by Oxford

University on 22 May and one of the questions in that study was to get reactions to the proposition as follows:

Jews have created the virus to collapse the economy for financial gain.

Classic blood libel, classic relation of Jews to a disease. The surprising thing is that the Oxford University study had just under 20 per cent of respondents, to a greater or lesser extent, expressing some agreement with that proposition—that the virus was due to Jews, to collapse the economy.

In last week's *Australian Jewish News* on page 3 is an article by Dr Ran Porat, who is a researcher at Monash University and also accredited to the institute of counterterrorism in Herzliya in Israel. He is an Arabic speaker and has monitored some of the local Arabic media for anti-Semitic content, and he has reported on publications like *El-Telegraph* and Farah News. A few days ago the Ayatollah Khamenei in Iran, and you would expect such statements perhaps coming from such a source but unfortunately it is influential down the track: 'Zionism was invented by Jewish masters of gold', 'is a dangerous cancerous tumour', 'jihad against it is an Islamic obligation'—and he compares Judaism and Israel to the coronavirus.

I do not know if anyone at the moment has access to Facebook, but if you choose to have a look at the Australian Jewish Association Facebook page, that is quick and easy. We have put up there about an hour ago—and it was scheduled to be the top post when this committee hearing commenced—that the Chinese embassy in Paris has published, or rather republished, a classic neo-Nazi, anti-Semitic cartoon that shows the Angel of Death with the scythe, and on it is both the American flag and the Israeli flag dripping in blood.

So we just wanted to show you some of these examples. The status of Australia with the International Holocaust Remembrance Alliance is that Australia became a full member of that organisation in the middle of last year. About half the countries who have joined that have formally adopted the definition; Australia has not yet done so. The US has. The UK has. And while it is not a cure for this problem, it is possibly the most effective tool we have, and that is why we are commending it to the committee today. It needs to be accompanied, obviously, by political leadership and education and other tools. But we thought we would come to you with something tangible, something that does not cost money, and hope that it will receive the favourable consideration of committee. That is the conclusion of the introduction. Thank you again.

**The CHAIR:** Thank you very much for your presentation today, David.

**Mr SOUTHWICK:** Thank you for that presentation, David, and welcome, Ted. I have got to say that I am absolutely disgusted by what we have just seen in some of that material that you have shared with us, particularly the second submission that you presented today. I thought that I had seen a lot of stuff around this space on antisemitism but some of those cartoons and the graphics that have been developed through COVID around this and targeting Jews as being to blame for this kind of thing are just absolutely disgusting.

I wanted to ask you, in terms of the IHRA definition that has been adopted—and I note in your presentation you also show the executive order that the President of the United States signed, I think in December 2019, which adopts the definition. So we have seen a number of countries that have adopted it—a number of jurisdictions that have adopted it. For somebody that would be arguing against adopting it, what would be their reasons? Because to me it seems pretty straightforward, particularly when you are taking something that dates back, if you like, to some of the historical things that you have mentioned, particularly linking and blaming Jews for a whole range of different things and linking that to Israel. Why would people argue against it?

**Dr ADLER:** Well, I do not know that there is much of an argument against it except perhaps how it is implemented. The reason we showed you both the US and the UK examples is because they have targeted its application primarily in educational facilities. And that is where we have seen it, apart from graffiti around the place, which is not our major concern. Our major concern is the educational facilities, and Victoria has had some examples, of course, of bullying in schools that have gotten a lot of prominence.

Interestingly, when it was discussed with regard to application in US college campuses, Professor Alan Dershowitz, who is a former Oxford professor of law—and a lifelong Democrat, I should say—in his

assessment of President Trump's executive order described it as a game changer. They have linked federal funding to the US colleges to compliance with the IHRA definition. The UK is doing a similar thing, and we have also included at the back of our first submission, appendices 6 and 7, how the UK is handling it.

I think there are some free speech advocates that if it was applied in a way that prevented expression, that would possibly be the argument against it. But we are not saying that. It has been applied in the US in a way consistent with the first amendment. It does not offend the first amendment. There are all sorts of standards required for funding, and this becomes another standard.

**Mr LAPKIN:** If I could just pipe up or interject, we think that in the Victorian educational environment a useful hook on which you might be able to hang this—if you look at the Victorian Department of Education and Training, they have an anti-bullying regulation. Amidst all the various types of bullying—you have racial or ethnic or gender bigotry and intimidation—if you accept the proposition, as we do and we hope the committee will as well, that antisemitism per the IHRA definition is a form of bigotry, then it would be very easily sheeted home under the anti-bullying regulations that are already part of the Victorian department of education. That would be done if it were done in that kind of format.

I am sure you have seen from our submission we take a more robust free speech orientation than many of the other Jewish communal organisations, but as David said, with the Trump regulation, and also there have been almost 30 US states that have passed anti-BDS legislation in that you are free to engage in boycotting of Israel if you want but if you do, you will not be able to contract with the state government of Ohio or whatever. I think there were 28 states when I last checked. They have a much more robust guarantee of free speech of course—the first amendment, as David said is in the constitution, but these are consistent. This is carrot rather than stick.

**Mr SOUTHWICK:** Just following from that, Ted, we have seen it done at the President level, but also a number of states in the US have adopted something similar, and what you are suggesting as a way of actually being able to implement it would be in terms of being able to look at a funding scenario. So, for instance, we have lots of this kind of stuff happening in our universities and we have heard many, many times all the way from the top, from vice-chancellors down, saying, 'Oh, well, universities are a place of free speech, there's not much we can do'. And yet we are seeing students that are too fearful to even attend because of some of the vilification and targets that they have had. So would you see that potentially working in some of our universities?

**Mr LAPKIN:** Well, yes, because we are talking about time, place and manner. If you want to go stand on Swanston Street and start whatever bigoted comments you want, that is one thing, but if you are on campus, no educational institution is a forum for absolute freedom of speech. If you are in high school and you are disruptive in the class, you are going to be sent to the principal's office. An educational environment is not a pure democracy, and therefore on that basis, that kind of—I mean, nobody is saying you cannot be critical of Israel. There are certain things. After three elections within the space of a single year, no-one is more critical of the Israeli Knesset and Israeli election system than I am, but if you are talking about a form of criticism that is so extreme that the logical result of it is that you are denying the right of Israel as a Jewish state to exist, then, yes, that is antisemitism. If one of the universities wants to guarantee this activity on campus they are free to do so, but then they will not be able to access federal money. That is the framework. So you are not infringing upon anybody's free speech rights but you are saying, 'Look, there is a whole slew of different requirements that must be met in order to receive government money—state money or federal money,' and you would just add this to the mix: 'If you want to discriminate, be my guest, but you will not have access to federal funding or state funding'.

**Mr SOUTHWICK:** Or state, yes.

**Ms COUZENS:** Thank you both for your presentation today. We really appreciate it, particularly the information around social media. What do you think the answer is for Victoria to address what is happening on social media? Do you have any ideas around that that you can share with the committee?

**Mr LAPKIN:** Look, our orientation is more kind of John Stuart Mill free speech. We believe that the best antidote to bad speech is more and better speech, which is basically how John Stuart Mill laid it out in his famous essay, *On Liberty*. We think that our ideas are better. We do not need the coercive arm of government

to come in and protect us. I personally feel that that is insulting. I feel that that infantilises me. I can fight my own battles, thank you very much. But it is an educational issue. I believe in the good common sense of the Australian people, and I think that our arguments are better than their arguments and will ultimately win the day in the public arena.

**Mr SOUTHWICK:** In your opening letter on 12 February you talk about the ACHPER scenario—the year 12 ACHPER examination which crossed the anti-Semitic line, targeting Israel and people that live in Israel. It was used as part of an example in VCE materials, and the government subsequently came out and there was work in terms of correcting the record on that. I am just wondering again: if the definition was adopted as you are suggesting in the state of Victoria, how would that help in a situation practically like we saw in the ACHPER where you had an examiner that clearly crossed the line? How would that help in ensuring that kind of thing does not happen in the future?

**Dr ADLER:** David, like any other standard, it would need to be followed up by some education. People would need to understand what it means, particularly those that are managing organisations. Whoever is supervising the setting of exams, principals and deputy principals of schools, vice-chancellors and deputy vice-chancellors and faculty heads at universities would need to be brought up to speed. It is not something where you can just introduce a document, it gathers dust and it will have no effect, which really is the implication of what you are saying. So it would need to have a bit of a follow-up education program, and there are lots of resources to help with that because there are 18 countries that have committed to it so far.

I should add that we were in Canberra in March, just before the lockdown, and we had about a dozen meetings with members of Parliament and senators there. Both sides of the fence, so to speak, expressed support for the IHRA definition. I think it will be adopted federally, but of course the advent of coronavirus and the economic washout as a result of the lockdowns has overwhelmed everyone at the federal level. It is fortuitous that the Victorian inquiry is underway at the moment, albeit that it was postponed as well and you are having virtual hearings rather than face to face, but as soon as the opportunity resumes in Canberra we will take it up again there. I am sure on this committee are representatives of both Labor and Liberal and you will find federal colleagues who have already given the nod to this, although actioning it will be delayed for some time now.

**Mr SOUTHWICK:** Just following, a question on notice: if you could provide the committee, David or Ted, just an exhaustive list—I could not find it in the materials—of all the jurisdictions that have signed the IHRA agreement, that would be great.

**Dr ADLER:** We did provide a list, David, as of December. Give me a second, I will find it. It is in one of the appendices of our submission, the 18 countries that have signed up. I will call out the page number when I find it.

**Mr SOUTHWICK:** All right, thank you. If you have got it, that is fine; I was looking through and I could not find it. That is great.

**The CHAIR:** Just a final question. You recommend in your submission that if Victoria retains the RRTA, it should embrace the New South Wales legislation as a more free speech-friendly model. Could you just elaborate a little bit more about some of the benefits of the New South Wales approach?

**Dr ADLER:** To be honest, it has been a little while since I have looked at it, but—do you want to take that, Ted?

**Mr LAPKIN:** Yes. Well, if you look at section 93Z the New South Wales *Crimes Act*, it confines criminal sanctions to acts that threaten or incite violence. To quote from a seminal US Supreme Court decision, those are fighting words. So if I am on the street and I say, ‘There he is, let’s get him’ and physical violence ensues, then obviously that would not be protected speech and that would be illegal. Whereas the Victorian legislation has a much broader approach that we find troubling from a civil liberties perspective, particularly section 9 which says motive is irrelevant but section 11 exempts public conduct that is done in good faith. Well, I mean, what is good faith if not a form of motive?

And we would make the same criticism of section 18C on the Commonwealth level, that there is an element of subjectivity there that lends itself to, I guess, overreach by judicial authority. I think you saw that in the Bolt case. Regardless of what you think about Andrew Bolt as a journalist, the judge in that case was talking about

tone. Judge Mordecai Bromberg said that Bolt's articles were unlawful by virtue of their divisive tone and inflammatory language. Those are subjective judgements, and we think that you need to be very, very careful about that when you are talking about civil liberties and freedom of speech. That is why we think the New South Wales legislation, which links it to an approximate act of violence, a threat of violence, is better, is preferable.

**Dr ADLER:** If I can give David Southwick his answer, I have found the list now. It is on page 21 of our initial document, David, but that excludes the United States—the US came on during December last year.

**The CHAIR:** Thank you, David, for providing that answer. I take it that there are no further questions. I will now conclude.

On behalf of the committee can I thank the Australian Jewish Association, in particular David and Ted, for presenting and for your extensive submission to the committee. Our next steps will be we have a number of further public hearings and submissions and presentations to consider. At the end of that process we will deliberate on all the submissions, including your submission, hopefully concluding with a very, very strong report back to government on this important matter. Thank you again.

**Mr LAPKIN:** Thank you for the opportunity.

**Dr ADLER:** Thank you so much.

**Witnesses withdrew.**