



UNION FOR PROGRESSIVE JUDAISM

Friday, 19 April 2024

NSW Law Reform Commission
Locked Bag 5000
Parramatta NSW 2124

Attention: Tom Bathurst AC KC

Copy by email: nsw-lrc@dcj.nsw.gov.au

Dear Sirs and Madams,

Serious Racial and Religious Vilification

The Union for Progressive Judaism is the roof body that resources 26 congregations, schools, youth groups and communal organisations across Australia, New Zealand and Asia, resourcing around one-fifth of the affiliated Jewish community.

In NSW, members of our community are located not only in the Sydney metropolitan area but also in the regions, including, in particular, the South Coast, Blue Mountains, Northern Rivers and Central Coast areas.

The Progressive Jewish community has taken the lead in interfaith relations on a great many fronts. Anecdotal evidence from within our communities and our friends informs us that even where anti-racism programs have been implemented, racism was seen as wrong conduct but Jew-hatred was not.

We have formed the view that while education programs are needed to specifically address Jew-hatred (more usually referred to as Antisemitism) effective criminal laws are very much needed. They serve both deterrent and enforcement purposes. Recent experience is demonstrating that section 93Z of the NSW Crimes Act needs substantial revision and there also is need to overcome prosecutorial reluctance.

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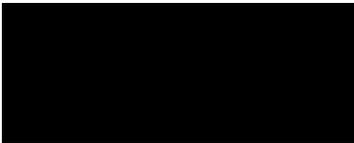
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Ours is not the only community that would benefit. Indigenous Australians would benefit. Other racial and ethnic minorities would benefit. Three national inquiries conducted in the early 1990s all concluded that there is a connection between inflammatory words and violent action, and, in particular, between racist language and violence.¹

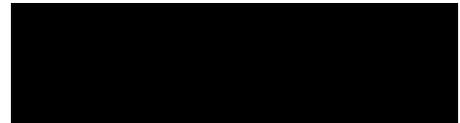
We are conscious that Western Australia has enacted effective provisions in Chapter XI of the *WA Criminal Code Act*. On 31 January 2011, in the Perth District Court, Brendon Lee O'Connell was convicted by a 12 person jury on 6 counts of racial incitement and harassment under sections 77 and 79 of that Code. He was sentenced to three years imprisonment. His appeal was dismissed by the Supreme Court of Western Australia on 4 May 2012. In Chapter XI, section 77 deals with intentional promotion of animosity towards, or harassment of, for example, a racial group. Section 79 addresses the publication of material for the purpose of creating or promoting or increasing such animosity or harassment. These are effective laws, which have been enforced.

We have had the benefit of reading and reviewing the submission to the Commission made by the NSW Jewish Board of Deputies, which is the elected representative roof body of the overall Jewish community in NSW. We support that submission.

Yours faithfully,



Danny Hochberg
Co-President



Larry Lockshin
Co-President

¹ The *National Inquiry into Racist Violence* conducted by the Human Rights and Equal Opportunity Commission (the predecessor of the present Australian Human Rights commission) in 1991, concluded that “*the evidence presented to the Inquiry also supports the observation that there is a connection between inflammatory words and violent action*”: Human Rights and Equal Opportunity Commission, *Report of National Inquiry into Racist Violence in Australia* (1991), p. 144: <http://www.humanrights.gov.au/publications/racist-violence-1991>. The *Royal Commission into Aboriginal Deaths in Custody* (1991) also concluded that there is a clear nexus between racist language and violence and that expressions of racism are both a ‘*form of violence*’ and a promoter of subsequent violence against Aboriginal people. Like the report of the National Inquiry into Racist Violence, it recommended that the government legislate to provide civil remedies to victims of racial vilification and also provide a conciliation mechanism for complaints, with exemptions for “*publication or performance of works of art and the serious and non-inflammatory discussion of issues of public policy*”: Royal Commission into Aboriginal Deaths in Custody, National Report Vol 4 (1991), at 28.3.34 and 28.3.49 <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol4/26.html>. The Australian Law Reform Commission, in its *Multiculturalism and the Law* report (1992) concluded (with one dissenter) that prohibition of “*racist abuse*” is consistent with existing limits on freedom of expression, and that public expressions of racism are damaging to the whole community, not only minority groups, undermining the tolerance required for Australia to survive as a multicultural society: Australian Law Reform Commission, *Multiculturalism and the Law, Report No 57* (1992), para 7.44: <http://www.austlii.edu.au/au/other/lawreform/ALRC/1992/57.html> **Two of the eight members of the Commission also favoured the introduction of a new criminal offence of incitement to racial hatred and hostility.**