

Executive Council of Australian Jewry Inc.

הוועד הפועל של
יהודי אוסטרליה

The Representative Organisation of Australian Jewry

Level 2, 80 William Street
Sydney NSW 2000

Address all correspondence to:
PO Box 1114, Edgecliff NSW 2027

Tel (+61 2) 8353 8500
Fax (+61 2) 9361 5888
Web: www.ecaj.org.au
E-mail info@ecaj.org.au

PRESIDENT
Anton Block

DEPUTY PRESIDENT
Jillian Segal AM

HON. TREASURER
Eugene Berkovic

HON. SECRETARY
David Knoll AM

EXECUTIVE DIRECTOR
Peter Wertheim AM

VICE PRESIDENTS
Jeremy Spinak (NSW)
Jennifer Huppert (VIC)
David Denver (WA)
Jason Steinberg (QLD)
Norman Schueler (SA)
Jordana Schmidt (TAS)
Yael Cass (ACT)

IMM. PAST PRESIDENT
Robert M Goot AM, SC

CONSTITUENTS
NSW Jewish Board of Deputies
Jewish Community Council
of Victoria Inc
Jewish Community Council of
Western Australia Inc
Queensland Jewish Board of
Deputies
Jewish Community Council
of South Australia
Hobart Hebrew Congregation
ACT Jewish Community Inc

AFFILIATES

Australasian Union of Jewish
Students
Australian Federation of WIZO
Union for Progressive Judaism
Federation of Jewish Aged
Care Services
Maccabi Australia Inc
National Council of Jewish Women
of Australia
B'nai B'rith District 21 of Australia
and New Zealand
Jewish National Fund of Australia Inc
Joint Distribution Committee Australia

OBSERVERS

Zionist Federation of Australia
Council of Progressive Rabbis
Federation of Australian Jewish
Ex-Service Associations
New Zealand Jewish Council
Council of Orthodox Synagogues of
Australia



EXPRESS POST

10 February 2017

Committee Secretary
Joint Standing Committee on Foreign Affairs, Defence and Trade
PO Box 6021
Parliament House
Canberra ACT 2600

And by email: religionorbelief@aph.gov.au

Dear Sir/Madam

Parliamentary Inquiry into the status of the human right to freedom of religion or belief

The Executive Council of Australian Jewry (ECAJ) makes the following submission to the Parliamentary Inquiry into the status of the human right to freedom of religion or belief. This Submission will address the Terms of Reference, insofar as they relate to the Australian Jewish community and Jewish communities overseas. We consent to the Submission being made public.

The ECAJ is the elected national body representing the Australian Jewish community. This Submission is also made on behalf of the ECAJ's Constituent and Affiliate organisations throughout Australia.

As well as representing the Jewish community to the Federal government and to the general public, the ECAJ is a partner of other ethnic communities and other faith communities in Australia with which it engages in regular dialogue. It also participates in human rights consultations hosted by the Department of Foreign Affairs and the Department of the Attorney-General and the community consultations on Australia's Humanitarian Program conducted by the Minister for Immigration and Citizenship. Further, the ECAJ also represents the Australian Jewish community internationally, most notably as an affiliate of the World Jewish Congress, which represents Jewish communities in more than 100 countries.

Complete lists of the ECAJ's Constituent and Affiliate organisations, the interfaith and inter-communal partnerships and dialogues in which it is in-

involved and the international organisations with which it is affiliated are accessible on the ECAJ's website.¹ Also accessible on the ECAJ's website is its policy platform which expressly calls for government and community action to support social inclusion, aboriginal reconciliation and multiculturalism and to oppose and prevent all forms of racism.

A **Summary of the ECAJ's recommendations** appears in the Appendix at the end of this Submission.

OUTLINE OF SUBMISSION

This submission is divided into sections as follows:

1. Key Issues of Religious Freedom for Jewish communities
2. International legal framework
3. Freedom of religion or belief for Jews in Australia
 - Constitutional protections
 - Religious freedom and anti-discrimination laws
 - Employment
 - Participation in the electoral process
 - Freedom of Jewish divorcees to remarry under Jewish religious law
 - Education
 - Religious slaughter of animals
 - Infant male circumcision
 - Burial practices and autopsies
 - Strata title legislation
 - Racial and religious vilification
 - Offences of urging of violence on the basis of race or religion
 - Government funding assistance for community security costs
4. Freedom of religion or belief for Jews in other countries
 - Europe
 - Iran
 - Egypt
 - Turkey
 - Ukraine
5. Protecting freedom of religion or belief in Australia and around the world

Appendix – Summary of recommendations

¹ See <http://www.ecaj.org.au/about/partners/>

1. Key Issues of Religious Freedom for Jewish communities

Freedom of religion or belief in the Jewish context means freedom of conscience, belief and practice, including freedom from coercion or discrimination on the grounds of religious belief. It also means the right of Jewish Australians to identify openly as Jews, to express their beliefs, to move freely and congregate peaceably with fellow Jews in safety, to practise the Jewish faith (Judaism) and to partake in Jewish traditions and customs, subject only to those limitations that are reasonably necessary for the protection of the Australian community as a whole and in the interests of social order, or to protect the fundamental rights and freedom of others.

The freedom to practise Judaism and Jewish traditions and customs includes:

- (i) the freedom to gather in safety for prayer and study with fellow Jews at Jewish places of worship;
- (ii) the freedom to observe the laws and customs of the Jewish faith around major life cycle events, including infant male circumcision or ‘*brit mila*’ and the solemnising of marriages according to Jewish religious law;
- (iii) the freedom to observe religious and ceremonial obligations, including religious holidays, without incurring discriminatory treatment in employment, education or the provision of goods, services and facilities;
- (iv) the freedom to practise ritual slaughter of animals (*shechita*) according to Jewish religious law;
- (v) the freedom to observe Jewish dietary laws (*kashrut*);
- (vi) the freedom of a divorced Jewish woman to remarry according to Jewish law if her former husband has refused to consent to the divorce; and
- (vii) freedom to observe the religious requirement for prompt burial in a permanent gravesite of the Jewish dead (cremation being strictly forbidden by Jewish religious law).

The freedom to identify openly as Jewish includes:

- (i) the freedom to give expression to one’s beliefs about any matter that specially affects the Jewish community;
- (ii) the freedom to wear and move about publicly in safety with traditional Jewish clothing and identifiers such as the head-covering for men (known as the ‘*kippa*’) and for observant Jewish men to grow side-locks or side-curls (known as ‘*payot*’), and
- (iii) the freedom to affix a ‘*mezuzah*’ (small cylinder containing specified verses from the Hebrew Bible) to the doorpost of the front door of the home, as required by Jewish religious law.

For Jews, religious freedom also includes the freedom to impart Jewish learning and values through formal and informal education, and the freedom to establish and operate private Jewish day schools, and places of worship. This is considered essential to the viability of Jewish life.

In addition to these positive freedoms, religious freedom also entails the right to live free from persecution, violence, harassment and exclusion on the basis of ones’ faith or one’s religious affiliation, beliefs or practices. Therefore, as it applies to the Jewish people, the absence of antisemitism is a necessary condition for the exercise of freedom of religion or belief. For reasons which will be obvious to anyone familiar with the history of the Jewish people, the

Jewish community has a special interest in, and commitment to, combating racism in all its forms, including antisemitism.

Antisemitism is a persistent, albeit limited, problem in Australia. Its adverse impacts on the religious freedom of members of the Australian Jewish community are described in Section 3 of this submission, under the headings “Racial and religious vilification” and “Offences of urging of violence on the basis of race or religion”. The problem is far more serious for Jewish communities in certain other countries. In recent years, there have been frequent terrorist attacks targeting Jewish communities carried out by Iran-linked operatives or fighters affiliated with the Islamic State. These deadly attacks, in places such as Mumbai, Copenhagen, Toulouse, Brussels, Paris and Kansas, have targeted Jewish places of worship, schools, community centers and shops. The long-term effect of these attacks is to make Jews fearful about exercising basic religious freedoms including attending Synagogue services, wearing recognisably Jewish clothing or symbols, sending children to Jewish day schools, and in some cases, continuing to reside in the country at all. A detailed analysis is provided in Section 4 of this submission.

2. International legal framework

The provisions of relevant international conventions to which most States, including Australia, are parties include Article 18 of the Universal Declaration of Human Rights which provides that everyone ‘*has the right to freedom of thought, conscience and religion*’² and Article 18.1 of the International Covenant on Civil and Political Rights, (ICCPR), which provides:

*Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*³

According to the UN Human Rights Committee (a body of 18 legal and other experts, not to be confused with the UN Human Rights Council), the fundamental character of freedom of thought, conscience and religion is reflected in the fact that this provision cannot be derogated from, even in time of public emergency. The right to freedom of thought, conscience and religion is ‘far-reaching and profound’ and ‘encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others’.⁴

Other relevant aspects of Article 18 of the ICCPR include:

- Under article 18.4, the parties to the ICCPR also ‘*undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and*

² Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3rd Sess, 183rd Plen Mtg, UN Doc A/810 (10 December 1948) art 18.

³ International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 18.1.

⁴ United Nations Human Rights Committee, General Comment 22 on Article 18 of the ICCPR on the Right to Freedom of Thought, Conscience and Religion, CCPR/C/21/Rev.1 (30 July 1993) [para.1].

moral education of their children in conformity with their own convictions'. Public education that includes instruction in a particular religion or belief is considered to be inconsistent with article 18.4, unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.⁵

- Infringement of a person's rights under article 18 may also infringe other rights and freedoms protected in the ICCPR, including the right to privacy,⁶ the rights to hold opinions and freedom of expression,⁷ the right of peaceful assembly,⁸ and liberty of movement.⁹

The provisions of international treaties to which Australia is a party do not become part of the domestic law of Australia unless (and only to the extent that) they are enacted into law by the Australian parliament.¹⁰ Where a statute is ambiguous, Australian courts will generally favour a construction that accords with Australia's international obligations.¹¹

3. Freedom of religion or belief for Jews in Australia

All Australians enjoy the freedom to worship and observe religion, and the freedom not to be coerced into engaging in religious practices. There are very few, if any, statutory provisions in Commonwealth, State or Territory laws that interfere with religious freedom in these ways. However, some laws and official practices can have the effect of impacting adversely on the exercise of freedom to practise one's religion outside the strictly religious sphere of liturgy and worship.

- **Constitutional protections**

Religious freedom receives some constitutional protection in Australia. Section 116 of the *Australian Constitution* prohibits the making of Commonwealth laws for (i) establishing any religion (ii) imposing any religious observance (iii) prohibiting the free exercise of any religion or (iv) requiring a religious test as a qualification for any office or public trust under the Commonwealth. The High Court has interpreted section 116 as being directed only at laws that explicitly have any one or more of these prohibited aims, rather than just the indirect effect.¹² Section 116 does not explicitly create a personal or individual right to religious freedom.¹³

⁵ *Ibid.* [para.6]

⁶ International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), article 17

⁷ *Ibid.*, article 19

⁸ *Ibid.*, article 21

⁹ *Ibid.*, article 12

¹⁰ *Koowarta v Bjelke-Petersen and Ors* (1982) 153 CLR 168 at 224 *et seq* - *per* Mason J.

¹¹ *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273 (*per* Mason CJ) and 287 (*per* Deane J).

¹² *Kruger v Commonwealth* (1997) 190 CLR 1 at 40 (*per* Brennan CJ), 86 (*per* Toohey J); *Attorney-General (Vict.) v Ex rel. Black v The Commonwealth* (1981) 146 CLR 559 at 579 (*per* Barwick CJ); *Adelaide Company of Jehovah's Witnesses Inc v The Commonwealth* (1943) 67 CLR 116 at 132 (*per* Latham CJ); *Krygger v Williams* (1912) 15 CLR 366 at 369 (*per* Griffith CJ).

¹³ *Attorney-General (Vict.) v ex rel Black v The Commonwealth* (1981) 146 CLR 559 at 605 (Stephen J).

In a democracy, by definition, the values enshrined in the religion of the majority may readily be enforced or protected by the civil law. Section 116 therefore has particular importance for minority religious communities such as the Australian Jewish community. *Adelaide Company of Jehovah's Witnesses Inc v The Commonwealth*¹⁴ concerned the ejection of a Christian sect from their premises by the Commonwealth government during World War II. There was evidence that the sect believed and preached that the British Commonwealth is an instrument of Satan. The High Court found that the law authorising the Commonwealth's action was not a law explicitly "for" prohibiting the free exercise of any religion and could not have been such a law because it was concerned with the over-riding necessity of protecting the community in time of war. Nevertheless, Latham CJ observed:

*"It should not be forgotten that such a provision as s.116 is not required for the protection of the religion of a majority. The religion of the majority of the people can look after itself. Section 116 is required to protect the religion (or absence of religion) of minorities, and in particular, of unpopular minorities."*¹⁵

- **Religious freedom and anti-discrimination laws**

The exemptions that exist for religious organisations in current Federal, State and Territory anti-discrimination legislation have for some years been the subject of official inquiries and public debates in Australia.¹⁶ In essence, some conduct which is considered as giving effect to religious beliefs may constitute unlawful discrimination in Australia, whereas other such conduct is exempted. Understandably, Australians in good faith can and do have divergent views about whether the existing exemptions for religious organisations from anti-discrimination legislation should be removed, narrowed or widened and, more broadly, whether the law should in general deem religious practice or observance to be lawful, and the prohibitions against discriminatory conduct that apply to them to be the specified exceptions.

Overall, the Jewish community has no major difficulties with the balance presently struck in Australian law between religious freedom and anti-discrimination laws. The ECAJ does not consider that the practice of the Jewish faith is in any way incompatible with current Australian law or public policies.

Indeed, central to Jewish practice is the general principle that the civil law has primacy over religious law. This principle is known in Jewish law as the rule of *dina demalchuta dina* - "The law of the land is the law". There are exceptions to this principle in Jewish religious law, but in a free and democratic society such as that which exists in Australia, those exceptions have limited if any application.

¹⁴ (1943) 67 CLR 116.

¹⁵ *Ibid*, at 124.

¹⁶ There is a useful survey of the current state of the debate in Australia and of the reports and recommendations of previous official inquiries (particularly *Article 18 Freedom of religion and belief*, Human Rights and Equal Opportunity Commission, 1998, and *Freedom of Religion and Belief in the 21st Century*, Australian Human Rights Commission, 2008) in The Australian Law Reform Commission's final report into *Traditional Rights and Freedoms* (ALRC Report 129), December 2015, Chapter 5, 'Freedom of Religion', at pp. 142-153: <https://www.alrc.gov.au/publications/freedoms-alrc129>.

Current anti-discrimination laws in Australia include important protections for members of the Jewish community. Discrimination on the basis of religious affiliation (or, in some States and the ACT, religious practice or belief) in employment, education or the provision of goods, services and facilities, is unlawful in the ACT, Western Australia, Queensland, the Northern Territory, Tasmania and Victoria. In NSW, the Jewish community (and the Sikh community and possibly others) are protected against such discrimination on the ground of ethno-religious origin. In South Australia there are protections against discrimination on the ground of “religious appearance or dress”, but not religious affiliation, practice or belief. There is no protection specifically against religious discrimination under Commonwealth law. However it is settled law that Jews in Australia are included in the definition of “race”, and are thus protected against discrimination under Federal law on that basis.¹⁷

It has long been the position of the ECAJ that governments and private enterprise should make reasonable efforts to accommodate the requirements of religious practice in the areas of education, employment and the provision of services. Certain aspects of current law and official practice, apart from anti-discriminations laws, have operated in a manner that impacts adversely on the freedom of Jews to practise their faith or which are not in keeping with officially-professed standards of inclusiveness and mutual respect and acceptance. These are dealt with in the remainder of this Section of the submission.

- **Employment**

For Jews, employment and workplace issues may arise in connection with observance of the Jewish Sabbath (from nightfall each Friday until nightfall on Saturday) and key religious holidays, when Jews are precluded by religious law from working. This includes a prohibition against accessing the internet, including emails and social media, using a telephone, keyboard or other equipment, or writing or travelling. The same prohibitions apply during the seven day mourning period following the death of an immediate family member, although compassionate leave is now almost always available in the latter circumstances.

We believe that the flexibility to accommodate peaceful religious observance is currently allowed for under employment legislation so that in exchange for an employer allowing an employee time necessary for religious observance, the employee will make up the time to do the work which would otherwise have been performed, or take the time off as annual leave. Such accommodations exist in many workplaces, even though not legally required. Even then, the absence of an employee at critical work times can sometimes lead to friction with fellow employees. Laws against bullying and harassment in the workplace, especially on the basis of religious practice or belief, are especially important in this context.

The *Fair Work Act 2009* (Cth) contains certain protections for employees and prospective employees against “adverse action” (as defined in section 342) based on “religion” in hiring, employment conditions, promotion, or termination of employment. There are exceptions if the action is:

- (a) *not unlawful under any anti-discrimination law in force in the place where the action is taken; or*

¹⁷ *Miller v Wertheim* [2002] FCAFC 156

- (b) taken because of the inherent requirements of the particular position concerned; or
- (c) if the action is taken against a staff member of an institution conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed – taken
- (i) in good faith; and
 - (ii) to avoid injury to the religious susceptibilities of adherents of that religion or creed.¹⁸

There are analogous protections for employees (and analogous exceptions) in the prohibition against the inclusion in awards or enterprise agreements of terms that discriminate against an employee because of, or for reasons including, the employee's religion.¹⁹ The prohibition seems to extend to both direct and indirect forms of discrimination.²⁰ If that is the case, the omission of any provision in an award or enterprise agreement that has the effect of discriminating against an employee on the basis of religion would also *prima facie* be prohibited.

Most of the difficulties encountered by Jewish employees in balancing work with religious observance arise out of the practical requirements of the job itself, rather than discriminatory practices by employers or fellow employees. More flexible workplace laws have allowed employers and employees wide scope to agree on arrangements that are satisfactory to all parties. We therefore do not seek any changes to the Act. We would only seek changes to applicable State laws, awards and other industrial instruments to the extent that they do not provide similar protections to those provided under the *Fair Work Act*.

- **Participation in the electoral process**

For many decades Federal, State and Territory elections in Australia have taken place on Saturdays, the Jewish Sabbath, when under Jewish religious law, Jews may not do any form of writing, including marking their voting choices on a ballot paper. Observant Jewish voters overcome this difficulty by using pre-polling and postal voting facilities. However, Saturday voting precludes observant Jewish members of political parties and candidates for election from handing out how to vote cards and other literature, or using a phone and driving between polling booths to keep in touch with other activists of the same political allegiance.

Matters came to a head in early 2013 when the then government announced that a Federal election would be held on a Saturday that coincided with Yom Kippur (the Day of Atonement), the holiest day in the Jewish calendar. At least one Jewish MP announced that in accordance with his religious convictions he would not participate in any kind of electioneering or candidate-related election activity on the day.²¹ Ultimately, the election was held earlier than announced.

The problem is not so dire as to require a change in the long standing practice of holding elections on Saturdays, and the ECAJ does not seek such a change. Holding elections on another day of the week could also result in an election coinciding with another Jewish holy day.

¹⁸ *Fair Work Act 2009* (Cth), section 351.

¹⁹ *Fair Work Act 2009* (Cth), section 153.

²⁰ *Fair Work Act 2009* (Cth), section 195.

²¹ Jonathan Swan, 'Jewish MP to put Religion before Politics', *Sydney Morning Herald*, 30 January 2013: <http://www.smh.com.au/federal-politics/political-news/jewish-mp-to-put--religion-before-politics-20130130-2dkmr.html>

Overall, however, Saturday voting is sub-optimal from the perspective of the religious freedom of Jewish candidates, party workers and political activists.

- **Freedom of Jewish divorcees to remarry under Jewish religious law**

The problem sometimes faced by Jewish divorcees who wish to remarry according to Jewish religious law has been well summarised as follows (omitting references):

Under Jewish law a marriage can only be dissolved upon the presentation of a Jewish divorce document, known as a gett. A gett is generally drawn up by a Beth Din (Rabbinical council) and can only be presented by a husband to a wife. The gett needs to be accepted by the wife for it to be recognised. Without the presentation or acceptance of the gett, the religious divorce is not recognised and the other party is prevented from marrying in a subsequent religious ceremony. Only the husband can grant the gett, and it must be granted voluntarily. A wife must accept the gett for it to be valid, but she can also refuse the gett — if she does so, though, she becomes an agunah (see below). If the granting of the gett is influenced by coercion in any way, it is deemed to be invalid. Thus, it is a formalised (and, it must also be noted, non-religious) procedure requiring the signing and presentation of certain documents, at the free will of the parties, at a specified time and place.

It is the woman who is vulnerable under this system as men can receive special dispensation to remarry without a gett. The wife becomes chained to her husband, and is thereafter referred to as an agunah (literally meaning a 'chained woman'). A Beth Din can order that a gett be granted under certain circumstances; however, such orders cannot be enforced civilly. This often leaves the weaker spouse at the mercy of the other spouse. Recalcitrant spouses (usually husbands) are placed in a great position of power, and can withhold the gett from the agunah to induce property settlements and increase contact with children.

... Chained wives cannot seek to remarry under the Jewish faith, as without a gett, a subsequent marriage is viewed as adulterous. Additionally, any offspring that are born of subsequent unions are labelled 'mamsers', illegitimate, and subsequently only able to marry other mamsers or converts themselves.²²

It has to be acknowledged that the problem of Gett refusal (or Gett recalcitrance) arises by virtue of the operation of Jewish religious law, not Australian civil law. Nevertheless, given Australia's commitment, in various international conventions to which it is a party, to uphold freedom of religion and belief, if it is within the capacity of Australia to provide a remedy via the civil law - as has been done in Canada, the State of New York, South Africa and Britain - then we believe it should do so.

Other reasons for intervention by the civil courts include:

²² Amanda Williamson, 'An Examination of Jewish Divorce Under the Family Law Act 1975 (Cth)', (2004) 11 *James Cook University Law Review* 132: <http://www.austlii.edu.au/au/journals/JCULawRw/2004/7.html>

- (i) the protection of future children of the wife from the religious and social consequences of being designated *mamserim*, as described in the passage quoted above; and
- (ii) the protection of the parties against the use of Gett refusal as a means of financial blackmail or psychological abuse.

The present number of Gett refusal cases in Australia is unknown. Because of the potential religious and social consequences of Gett refusal, and the accompanying stigma, it is a subject which the affected parties are often reluctant to report or discuss publicly. Two contemporary examples were described in detail (with the identities of the parties suppressed) in a written submission to the Royal Commission Into Family Violence in Victoria in 2015.²³ The submission was endorsed by the National Council of Jewish Women of Australia (Victoria), the ECAJ, the Jewish Community Council of Victoria and the Rabbinical Council of Victoria.

Gett refusal or recalcitrance was considered in depth by the Australian Law Reform Commission in Discussion Paper 46, *Multiculturalism: Family Law*, (1991), Chapter 3. Paragraphs 3.55-3.70 and in Report No 57, *Multiculturalism and the Law* (1992), Chapter 5, paragraphs 5.31 – 5.42. In essence, the Australian Law Reform Commission recommended that if a party to a broken down marriage had not done everything within his or her power to remove any religious barriers to the spouse's remarriage the Family Court would have a discretion either to adjourn proceedings (effectively delaying final relief to both parties in property and maintenance matters) or order that a decree nisi not become absolute until the court is satisfied of certain matters. The Commission's reports and recommendations did not result in any legislative reform.

In October 2000, the matter was taken up by the Family Law Council. It published an Issues Paper on the subject of cultural community divorce and sought submissions from affected communities. Its final report to the Federal Attorney General was published in August 2001.²⁴

The ECAJ, together with the Organisation of Rabbis of Australasia (ORA - representing Orthodox Jewish clergy), put forward a detailed submission which, in the words of the Family Law Council "*reflects extensive research about and analysis of legislation adopted in several overseas countries*" and "*is also the culmination of extensive consultations within the Jewish community*".²⁵ The ECAJ/ORA submission included a package of four proposals for legislative reform, which was the model ultimately adopted by the Family Law Council. The proposals, which the Family Law Council described as "*punctiliously drafted so as to successfully negotiate the complexities of duress and compulsion, which might otherwise invalidate a Gett*",²⁶ are set out in paragraph 5.9 of the Report. The proposal essentially provides for the Family Court to have a discretion to make:

²³ Talya Faigenbaum and Ann Wollner, *Gett-Recalcitrance, Jewish Divorce And Family Violence*, SUBM.0484.001.0002, 29 May 2015, pp. 6-8: <http://www.rcfv.com.au/Submission-Review> (listed under 'F')

²⁴ Family Law Council, *Cultural-community Divorce and the Family Law Act 1975: A Proposal to Clarify the Law, Report to the Attorney-General prepared by the Family Law Council*, August 2001: <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Cultural%20community%20Divorce%20and%20the%20Family%20Law%20Act%201975.pdf>.

²⁵ *Ibid*, para [2.39]

²⁶ *Ibid*, [para. 5.7]

- (1) An Order that the Decree Nisi shall not become absolute until the Court is satisfied that both parties have taken all steps reasonably within their power to remove barriers to remarriage.
- (2) An Order requiring a party to appear before a recognised tribunal of the religious or cultural group, and a further Order that parties follow the recommendations of the relevant tribunal provided to the court.
- (3) An Order that any application, defence, pleading or affidavit by a party in respect of an application for the payment of maintenance by or to that party be adjourned or struck out, if the party has wilfully refused to remove any barriers to remarriage.
- (4) An Order enforcing a prenuptial agreement that encourages the removal of barriers to remarriage in a form approved by the religious / cultural group.

In addition to being adopted by the Family Law Council, the proposals have been critically reviewed by, and found substantial support from, at least one legal academic.²⁷ Despite this, there has still been no legislative reform to date. In January 2004, the then Federal Attorney General declared that the proposals would not be implemented,²⁸ claiming that they would not be constitutional and would also violate the principle of separating religion and the state and threaten the system of no-fault divorce. More considered analysis indicates that these perceived constitutional and other difficulties are either unfounded or readily surmountable.²⁹

The ECAJ believes that implementation of the foregoing proposals would be a long-overdue reform to protect in particular Australian women and children in minority religious communities who are currently adversely affected financially, socially and psychologically by the consequences of one party's refusal to grant the other a religious divorce. We urge the Federal government to give effect to these proposals without further delay.

- **Education**

The scheduling of examinations and, less frequently, classes on the Jewish Sabbath or holy days has sometimes caused difficulties for observant Jewish students at all levels of education. Seldom is this unavoidable. Usually, alternative arrangements are made for the students affected, but it would be desirable if educational institutions made greater efforts to avoid scheduling examinations on religious holidays. Governments and leaders in the education sector when appropriate should make statements affirming the desirability of such efforts.

In the government school sector, sporting or other extra-curricular activities are frequently held on Saturdays, thereby excluding observant Jewish students from participation, and the important social benefits that flow from it. Observant Jewish teachers are similarly excluded from working with students and other teachers in a coaching or team relationship.

²⁷ Amanda Williamson, 'An Examination of Jewish Divorce Under the Family Law Act 1975 (Cth)', (2004) 11 *James Cook University Law Review* 132: <http://www.austlii.edu.au/au/journals/JCULawRw/2004/7.html>

²⁸ V. Walker and M. McKinnon, 'Divorce Will Stay Secular: Ruddock', *The Australian*, 19 January 2004, p.4.

²⁹ Amanda Williamson, 'An Examination of Jewish Divorce Under the Family Law Act 1975 (Cth)', (2004) 11 *James Cook University Law Review* 132: <http://www.austlii.edu.au/au/journals/JCULawRw/2004/7.html>. See section headed 'Evaluation of Proposals for Reform'.

The use of Christian liturgy and the practice of Christian rituals and traditions in public schools was once common-place in Australia, but now occurs less frequently. When it does occur, non-Christian students and their parents have the right to opt out. For many students, who are keenly sensitive to strong peer-group pressure to conform, this is a less than ideal solution. Whilst we favour the availability of Studies in Religion as an elective subject in public schools, and also classes in which students belonging to a religious community or denomination can study their own religion together, we believe that religion should otherwise be kept out of public schools.

- **Religious slaughter of animals**

From time to time, the slaughter of animals for human consumption according to Jewish religious law (*shechita*) has been challenged in Australia on animal welfare grounds. An ABC television Four Corners program in June 2011 highlighted the mistreatment of animals in Indonesian slaughterhouses. Whilst the program understandably provoked an indignant public reaction against cruelty to animals in Indonesia, it was also used by some as a pretext for unwarranted and misinformed public criticism of kosher slaughter (*shechita*) in Australia. Slaughter practices in Indonesia have nothing whatsoever to do with kosher slaughter. The ECAJ responded with articles in the media, and a *Myths and Facts* document on *shechita* which was distributed to Federal and State politicians throughout Australia.³⁰ Fortunately, reason ultimately prevailed over ignorance and emotion.

Professor Temple Grandin of Colorado State University is arguably the world's foremost authority on the humane treatment of livestock, and she has affirmed the humaneness of *shechita*.³¹ Similar backing has come from other recognised experts such as Dr Stuart Rosen of Imperial College London and Dr Flemming Bager, head of the Danish Veterinary Laboratory.

In Australia cattle which are slaughtered according to *shechita* are stunned immediately (within a few seconds) after the moment of slaughter. There is no stunning of sheep, as sheep typically lose consciousness within 4 seconds after slaughter. Studies in New Zealand concluded that an apparently insensible sheep is in fact sensible for somewhat longer after slaughter than was previously believed to be the case, although the import of this in terms of actual pain is uncertain. However, these studies did not accurately replicate *shechita* slaughter or involve sheep (at least in some instances), and the results are contestable to that extent at least.

On 21 October 2011, the Australian government announced changes to the live animal export industry. The new guidelines announced by the Agriculture Minister relate to live animal exports and require all livestock exporters to ensure animals sent overseas are treated according to internationally-accepted welfare standards. There is no requirement, either for live exports or for animals slaughtered in Australia, that the animal be stunned before or after slaughter.

A meeting of the Primary Industries Ministerial Council was held in Melbourne on 28 October 2011 and decided to “*continue discussions with the religious groups in order to settle an*

³⁰ ‘Shechita – ECAJ responds’, *JWire*, 27 June 2011: <http://www.jwire.com.au/shechita-ecaj-responds/>

³¹ Temple Grandin, ‘Getting Religious with Slaughter’, *Meat and Poultry*, 1 April 2010: <http://www.meatpoultry.com/Writers/Dr-Temple-Grandin/Getting-religious-with-slaughter.aspx?cck=1>

applicable risk management framework". No changes to the law were suggested. This has effectively maintained the *status quo* regarding *shechita* in Australia. Nevertheless, those involved in administering *shechita* in Victoria and New South Wales, which are the only States in Australia in which *shechita* is practised, have implemented a range of measures, other than stunning, to improve animal welfare and are supportive of ideas from animal welfare groups to make further improvements.

The issue is revived periodically in the media which often wrongly conflates the question of religious slaughter in Australia (and *shechita* in particular) with the much more vexed issue of cruelty to animals that are exported live from Australia.

- **Infant male circumcision**

In Judaism the practice of ritual circumcision (*brit milah*) involves removal of the foreskin of the penis of infant boys, usually when they are 8 days old. It is now almost universally accepted that circumcised men and boys generally have a lower risk of urinary tract infections, penile cancer, and sexually transmitted diseases, and that circumcision makes genital hygiene easier, with little to no loss in sexual pleasure, and no impairment at all in the function of the penis. The procedure is therefore in no way comparable to female genital mutilation with which it is sometimes wrongly conflated. Male circumcision can also help protect women against HPV, herpes, cervical cancer, bacterial vaginosis and infertility.

Guidelines issued by the Centers for Disease Control and Prevention in the US in late 2014 encourage parents of newborn children as well as teenagers and adults with intact foreskin, to have a discussion with a doctor about the benefits of the operation.³² The therapeutic benefits are in addition to the cultural and religious value of this millenia-old tradition, and the psychological benefits of having a clear, time-honoured sense of identity.

In Australia, unlike overseas, there has been no move by any government to outlaw *brit milah*, despite occasional populist calls to that effect.³³ However, elective circumcision is no longer available in public hospitals. One medical expert has called on the federal government to increase the Medicare rebate for the procedure and reduce barriers to uptake, and has urged State governments to restore elective circumcision to public hospitals.³⁴

- **Burial practices and autopsies**

The Jewish faith requires prompt burial, and burial in perpetuity; that is permanently. In Western Australia and South Australia state laws mandate renewable tenure for burial plots after a certain period and, unlike other jurisdictions, make no exceptions for permanent tenure in order to meet religious requirements. We submit that these Western Australia and South Aus-

³² Roni Caryn Rabin, 'Circumcision Guidelines Target Teenagers', *New York Times*, 2 December 2014: http://well.blogs.nytimes.com/2014/12/02/circumcision-guidelines-target-teenagers/?_r=0

³³ Eg. Rita Panahi, 'It's time to axe the unkindest cut of all for baby boys — circumcision', *Herald Sun*, 20 June 2016: <http://www.heraldsun.com.au/news/opinion/rita-panahi/its-time-to-axe-the-unkindest-cut-of-all-for-baby-boys--circumcision/news-story/465c509814e9c8b6f87cde190e435c63>

³⁴ Professor Brian Morris, 'The announcement of a review of paediatric surgery has sparked a debate on the circumcision of baby boys', *Sydney Morning Herald*, 12 May 2012: <http://www.smh.com.au/federal-politics/the-question/should-elective-circumcision-continue-to-be-covered-by-medicare-20120511-1yhqb.html>

tralia state laws should be amended to provide such exceptions in line with the existing laws in other Australian jurisdictions.

Jewish law allows surgical autopsy only for the purpose of saving another life. Australia does not have a uniform system of laws governing a coroner's power to order an autopsy, but consideration of religious objections to autopsy are relevant to the exercise of the discretion, at least in NSW.³⁵ Radiological alternatives to surgical autopsy now exist, and the NSW coroner at least, avoids invasive autopsy and uses CAT scanners where possible.³⁶

- **Strata title legislation**

A mezuzah is typically 7.5 to 15 cm long, 1 to 2 cm wide and 1 to 2 cm thick. It is affixed to the doorpost of the front door of the home by two small nails, one at each end of the mezuzah. This is an ancient and very widespread practice among Jews of all levels of religious observance. Because of its small size and location on the inside of a doorpost, a mezuzah usually goes unnoticed.

Strata title legislation in the States and Territories prescribe By-laws applicable to blocks of home units. These By-laws typically prohibit damage of any kind to any part of the common property. The front door of a home unit and the doorpost around it are usually designated as common property. In a small number of cases a Jewish resident in a block of home units has been told by the Owners Corporation to remove the mezuzah because it is allegedly causing damage to common property. Yet the affixing of a mezuzah by a Jewish resident at the front entrance of his or her home unit clearly does not impact in any way on the rights or freedoms of others.

We therefore recommend that the By-laws prescribed by Strata title laws in all States and Territories concerning damage to common property be amended so as to allow a resident to affix a single object for bona fide religious purposes, up to a specified length, width and thickness, on the inside of the external door-frame at the front of the resident's strata lot, subject to the obligation of the resident to:

- (i) remove the object when the residence ceases; and
- (ii) make good any damage caused by the installation or removal of the object.

- **Racial and religious vilification**

The annual reports on Antisemitism in Australia published by the ECAJ since 1989 have identified some persistent themes in contemporary anti-Jewish vilification including the myth of an international Jewish conspiracy and attacks on the "Jewish lobby"; Holocaust denial as a form of harassment and vilification, often accompanied by Nazi-Jewish analogies and assertions that the history of the Holocaust is a Jewish invention; anti-Israel propaganda as a vehicle for denigrating the Jewish people; and more traditional anti-Jewish stereotypes and religious misrepresentations of Jewish beliefs and practices. The incidence of vilification of Jews in Australia

³⁵ *Abernethy v Deitz* (1996) 39 NSWLR 701

³⁶ See e.g., *Krantz v Hand* [1999] NSWSC 432.

varies markedly from year to year. Spikes tend to occur in times of economic and social instability or in reaction to events overseas, especially in the Middle East.³⁷

Legislation has been enacted by the Commonwealth and by each of the States and the ACT to prohibit both discrimination and vilification on the basis of race. As already noted, the protections afforded by this legislation extend to ethno-religious communities, specifically the Jewish and Sikh communities. However, even for the Jewish and Sikh communities those protections do not include protections against vilification solely on the basis of religion.

Only Victoria³⁸, Queensland³⁹, the ACT⁴⁰ and Tasmania⁴¹ have enacted additional legislative provisions imposing liability for religious vilification, which in the media is often, and erroneously, conflated with racial vilification. The liability imposed for religious vilification in these jurisdictions is both civil and criminal, except in the case of Tasmania, which imposes civil liability only. Overall, these legislative provisions make it unlawful to incite hatred toward, serious contempt for, or severe ridicule of a person or group on the ground of their religious belief or affiliation or religious activity. However, there is some variation between these jurisdictions in the words used to describe the prohibited conduct⁴² and the prohibited ground.⁴³

The State and Territory laws directed against racial vilification remain relatively uncontroversial, at least to the extent that they impose a civil liability. To the extent that they impose criminal sanctions, they have - with one exception - been completely ineffective, if not unworkable, because of the unrealistic way in which the elements of the offence are formulated.⁴⁴ The exception has been in Western Australia. The criminal liability regime in Chapter XI of Western Australia's *Criminal Code* (racist harassment and incitement to racial hatred) differs significantly from that contained in the legislation of other jurisdictions, which require proof to the criminal standard of incitement to commit physical harm. It is only in Western Australia that the criminal proscription of racial vilification has been tested (successfully) in an actual prosecution⁴⁵ and been the subject of judicial interpretation.⁴⁶

In contrast to the State and Territory civil laws directed against racial vilification, the corresponding Commonwealth legislation – as set out in Part IIA of the *Racial Discrimination Act 1975* (Cth) ('RDA') - has in recent years been the target of a concerted campaign aimed at repealing or watering down its provisions. That legislation is currently the subject of a Federal

³⁷ The ECAJ's Annual Reports on Antisemitism in Australia for the last ten years can be accessed via: <http://www.ecaj.org.au/annual-reports/>. The most recent report was issued in November 2016.

³⁸ *Racial and Religious Tolerance Act 2001*, s.8 and s.25.

³⁹ *Anti-Discrimination Act 1991*, s.124A and s.131A

⁴⁰ *Discrimination Act 1991*, s.67A; *Criminal Code 2002*, s.750

⁴¹ *Anti-Discrimination Act 1998*, s.19,

⁴² For example, the ACT includes inciting "revulsion for" a person or group –s. 67A, *Discrimination Act 1991*

⁴³ For example, the ACT describes the ground as "religious conviction" – s. 67A, *Discrimination Act 1991*

⁴⁴ An example is s.20D of the *Anti-Discrimination Act 1977* (NSW), which has been the subject of sustained calls by community groups for reform, and which is currently under review by an official Inquiry, for the second time since 2013.

⁴⁵ Perth District Court, *DPP v Brendan Lee O'Connell*. On 31 January 2011, the Defendant was convicted by a 12-person jury on 6 counts of racial incitement and harassment under sections 77 and 79 of the WA *Criminal Code*. He was sentenced to 3 years imprisonment. His appeal was dismissed in 2012.

⁴⁶ *Mulhall v Barker* [2010] WASC 359

parliamentary Inquiry - the Inquiry into Freedom of Speech in Australia being conducted by the Parliamentary Joint Committee on Human Rights. The ECAJ's views on the subject are set out in detail in its written submission to the Inquiry dated 6 December 2016, which has been published on the parliamentary website.⁴⁷

The two most critical provisions of Part IIA of the RDA are sections 18C and 18D. Section 18C makes it:

“unlawful for a person to do an act, otherwise than in private, if:

- (a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and*
- (b) the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.”*

Section 18D sets out a series of exemptions for certain types of conduct that would otherwise be rendered unlawful by section 18C. To paraphrase, academic and artistic works, scientific debate and fair reports or fair comment on matters of public interest are exempt from liability under section 18C, provided that they are said or done reasonably and in good faith.

Although Part IIA of the RDA operated with little if any controversy between the time it was enacted in 1995 and the decision in the case of *Eatock v Bolt* in 2011⁴⁸, the findings in that case against Andrew Bolt, a journalist who is highly popular with political conservatives, triggered the current campaign against the legislation which he was found to have contravened. Last year the campaign gained further impetus after the failure of section 18C complaints against several students at the Queensland University of Technology and against the political cartoonist, Bill Leak.

Critics of section 18C portray it as an intolerable limitation upon freedom of expression. Although freedom of expression is regarded almost universally as a fundamental freedom which is indispensable for human progress, critics of section 18C assign to it a near-absolute and unqualified status. Classical liberal theory holds that the limits of any freedom are reached at the point at which its exercise causes harm to others. Critics of Part IIA of the RDA point to the words “offend” and “insult” in section 18C in support of their view that the harms at which the section is directed are not authentic harms, but rather, mere “hurt feelings”.

Yet that view ignores all the evidence to the contrary from studies (in Australia and overseas) and public inquiries going back several decades⁴⁹, and also misrepresents the way section 18C has been interpreted and applied by the courts in real cases over more than 20 years. The

⁴⁷ The ECAJ submission can be accessed at: <http://www.aph.gov.au/DocumentStore.ashx?id=9c8b2774-7607-4ff0-8f28-28cd7e944fab&subId=461225>

⁴⁸ [2011] FCA 1103

⁴⁹ This evidence is reviewed in detail in the ECAJ submission dated 6 December 2016 to the Inquiry into Freedom of Speech in Australia currently being conducted by the Parliamentary Joint Committee on Human Rights at pp. 6-13: <http://www.aph.gov.au/DocumentStore.ashx?id=9c8b2774-7607-4ff0-8f28-28cd7e944fab&subId=461225>

courts have consistently found that section 18C will apply only if the offence and insult occurs because of the complainant's racial, ethnic or national background, and only if it has "*profound and serious effects, not to be likened to trivial slights*".⁵⁰ The harms against which s.18C is directed involve an adverse impact on the complainant's quality of life.⁵¹ Even then, the conduct might be exempted under section 18D, something which critics of section 18C frequently overlook or downplay.

The contentions about political theory which are put forward by critics of section 18C do not resonate with the lived experience of most members of communities like ours. Acts of racially-motivated violence begin with racist words. Part IIA of the RDA provides an avenue of redress and vindication against both local and imported strains of racism. For our community, this redress has mostly been by way of direct negotiations with publishers of antisemitic content. For the most part, we have been able to use the RDA to negotiate a resolution. Publishers are aware that there is a law against racist hate speech and most publishers do not identify or wish to be identified as racists. This is sufficient in most cases to resolve a potential complaint to the satisfaction of both parties.

However, when negotiation does not work, the RDA gives the community the right to issue proceedings against the perpetrators. The cases brought by the ECAJ *in Jones v Scully*⁵² and *Jones v Toben*⁵³ were landmark cases which established the unlawfulness under Part IIA of the RDA of gross forms of antisemitic discourse including Holocaust denial. The ECAJ is the only Jewish organisation to have brought such cases. If section 18C is abolished or weakened, we as a community stand to lose one of the most powerful tools at our disposal for combatting antisemitism, and the manner in which antisemitism constrains our freedom to live openly as Jews. We would need to re-litigate issues that have already been dealt with by the courts under the current provisions of Part IIA of the RDA in order to establish the parameters for the interpretation and application of any new or amended provisions. This would impose an enormous cost on us in time, effort and resources.

The overall view of the ECAJ concerning Part IIA of the RDA is that:

...the provisions of Part IIA of the RDA should be left in their present form. The need for an effective civil law to counter the promotion of racial hatred is reinforced by the ineffectiveness of the existing criminal laws, State and Federal, in proscribing incitement of racially motivated violence.

We are aware of no evidence that the percentage of vexatious or unmeritorious cases that are commenced under section 18C of the RDA is higher than under any other statutory regime for relief, such as the law of defamation, copyright, consumer protection and trade practices.

Nevertheless, the ECAJ would welcome any reforms to the Australian Human Rights Act

⁵⁰ *Creek v Cairns Post Pty Ltd* [2001] FCA 1007 at [16] per Kieffel, J.

⁵¹ Human Rights and Equal Opportunity Commission, *Report of National Inquiry into Racist Violence in Australia* (1991) p 299: <http://www.humanrights.gov.au/publications/racist-violence-1991>.

⁵² [2002] FCA 1080

⁵³ [2002] FCA 1150

*1986 (Cth) or to the practices and procedures of the Australian Human Rights Commission (“the Commission”) which would have the effect of minimising the incidence of claims brought in bad faith or which would have no reasonable prospects of success before a court. In the interests of maintaining public confidence in the operation of the legislation and in the Commission’s handling of Part IIA complaints, the complaints handling process within the Commission should be refined so as to (i) screen out manifestly unmeritorious complaints before conciliation occurs, and (ii) strongly discourage such complaints from proceeding to court.*⁵⁴

Instead of looking at weakening the prohibitions in Part IIA of the RDA, the ECAJ believes that the government should, if anything, be looking to strengthen them to enable affected communities to deal more effectively with determined racist agitators who are not ashamed to identify themselves as racists. One way this could be achieved would be to create interim remedies in the nature of “*cease and desist*” orders, pending the outcome of court action.

Consideration should also be given to the appropriateness of the fact that the RDA fails to criminalise racial vilification, as required by Article 4(a) of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), and that Australia has relied upon its reservation to that Article for this failure. The UN’s ICERD Committee has for some years recommended that Australia withdraw its reservation and enact legislation to give full effect to Article 4(a) of the ICERD, especially serious acts of racial hatred, incitement to such acts and incitement to racial hatred.⁵⁵

The ECAJ endorses the ICERD Committee’s recommendation and concurs with the Committee’s reasons and supports the submissions concerning Article 4 of the ICERD which were made to the Australian Government in June 2010 by the National Association of Community Legal Centres and the Human Rights Resource Centre, and endorsed by more than 100 NGO’s across Australia.⁵⁶ We believe the provisions of Chapter XI of the *Criminal Code* of Western Australia deal with the matter of serious and intentional racial vilification in an appropriate and effective manner.

On the other hand, it will be recognised that the prohibition of offensive behaviour on the ground of religious belief presents more difficult problems in reconciling competing rights. In a free society, beliefs and ideas of any kind - religious, political, ideological or philosophical - are and should be capable of being debated and defended. Robust critiques of beliefs and ideas, no matter how passionately adhered to, do not constitute a form of social exclusion of those who adhere to them. Certainly the right to engage in robust debate about the merits of any religion, or any other kind of belief system, is central to our democracy, and anything in the nature of blasphemy laws would be intolerable.

⁵⁴ ECAJ submission dated 6 December 2016, pp. 2-3:

<http://www.aph.gov.au/DocumentStore.ashx?id=9c8b2774-7607-4ff0-8f28-28cd7e944fab&subId=461225>

⁵⁵ CERD Committee, *Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia*, [14] CERD/C/304/Add.101, (April 2000); CERD Committee, *Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia*, [12], CERD/C/AUS/CO/14, (14 April 2005).

⁵⁶ http://www.naclc.org.au/resources/UNCERD_Submission.pdf

The ECAJ therefore does not advocate legislation prohibiting religious vilification *per se*. Nevertheless, in a free and just society members of faith communities which are not ethno-religious groups are entitled to be protected against being intimidated, harassed or subjected to gross verbal abuse simply because of their religious affiliation. In our view, this kind of behaviour is best dealt with by the creation of criminal offences which are defined in terms of the intimidation, harassment or abuse, rather than by religious vilification laws. This is considered more fully under “Offences of urging of violence on the basis of race or religion” below.

- **Offences of urging of violence on the basis of race or religion**

Both the 1983 Human Rights Commission Inquiry into the possible need for amendments to the RDA to cover incitement to racial hatred and racial defamation and the 1991 National Inquiry into Racist Violence, contained sections analysing the data then available on the incidence of antisemitism in Australia. The most serious outbreaks of antisemitic violence occurred in 1982, when bombs detonated in the Hakoah Club and the Israeli Consulate in Sydney and during the 1991 Gulf War, when there were arson attacks against Jewish kindergartens in Sydney and Melbourne and against three synagogues in Sydney. Fortunately there were no injuries. However, no-one has been prosecuted for these crimes.

In the last 25 years, the advent of the internet, including social media, and the growing convergence between the extremes of the political left and right in embracing antisemitic tropes and themes⁵⁷ have produced a burgeoning of public expressions of antisemitism and other forms of racism online.⁵⁸ As recorded in the ECAJ’s annual reports on Antisemitism in Australia,⁵⁹ fluctuations in the volume and intensity of public antisemitic discourse, including the urging of violence, are reflected in fluctuations in the number of antisemitic incidents, including criminal conduct in which antisemitism is a factor.

In the 12 month period ending 30 September 2016, which was not the worst on record, 210 antisemitic incidents were reported to Jewish communal organisations, a 10% increase over the previous year. These incidents included physical assaults, abuse and harassment, vandalism and graffiti, hate and threats communicated directly by email, letters, telephone calls, and leaflets.⁶⁰ Much of this conduct is criminally proscribed.

The ineffectiveness of State and Territory laws which ostensibly criminalise racially inflammatory speech has already been noted (see above under ‘Racial and religious vilification’). The corresponding Commonwealth legislative provisions are sections 80.2A and 80.2B of the *Criminal Code*, which create offences of urging of violence against groups or members of groups on the basis of race or religion or nationality, national or ethnic origin or political opinion.

⁵⁷ Julie Nathan, *We’re not racist, we just hate Jews*, 4 July 2012: <http://www.jpost.com/Opinion/Op-EdContributors/Article.aspx?id=276273>; and *Antisemitism in left-wing online media*, 3 October 2012: <http://www.jpost.com/Opinion/Columnists/Article.aspx?id=286494>

⁵⁸ Peter Wertheim, *We can tame the cyber racism beast*, 18 November 2010: <http://www.smh.com.au/federal-politics/political-opinion/we-can-tame-the-cyber-racism-beast-20101118-17yxu.html>

⁵⁹ <http://www.ecaj.org.au/annual-reports>

⁶⁰ ECAJ, *REPORT on ANTISEMITISM in AUSTRALIA 2016*, pp. 20-26: <http://www.ecaj.org.au/wp-content/uploads/2012/08/ECAJ-Antisemitism-Report-2016d-WEB.pdf>

Both offences require proof *inter alia* of two *mens rea* elements, namely that the accused:

- (i) intentionally urged another person, or a group, to use force or violence against the targeted group or supposed member of the targeted group; and
- (ii) did so intending that force or violence will occur.

Intention is therefore an essential component of both elements. In practice it is virtually impossible for a prosecutor to prove the second element to the criminal standard. A person who urges other persons to commit acts of violence focuses on influencing the state of mind and behaviour of those other persons without laying bare the urger's own intentions. Even in history's most extreme and paradigmatic examples of the evil of incitement to racially-or religiously-motivated violence, evidence of the second element, to the criminal standard, has usually been missing. If the legislation is to be effective, it needs to be re-formulated in a way that will allow a prosecutor the practical prospect of success in the circumstances that the legislation seeks to address.

Further, there are defences in section 80.3 if the defendant has acted in "good faith". The defences in existing section 80.3 were in large part carried over from the repealed section 24F of the *Crimes Act 1914* (Cth) and drafted specifically to apply to the offence of sedition. Such defences are fundamentally misconceived in relation to offences based on the urging of violence against groups distinguished by race, religion, nationality, national or ethnic origin or political opinion, or supposed members of such groups. Indeed the existence of such defences might well be seen as formally justifying the advocacy of racially-motivated violence, including terrorism, as legitimate free speech.

The intention that "force or violence will occur" in the context of urging force or violence against a group distinguished by race, religion, nationality, national or ethnic origin or political opinion, or against a supposed member of that group, denotes both ill-will and an anti-social motive. An intention that "force or violence will occur" in that context is simply incompatible with the requirement that the publishing of the report or commentary be done in "good faith".

It follows that in respect of an offence under either s.80.2A or s.80.2B, the good faith defence is not needed because, in the circumstances in which it could be established, the elements of the offence could not have been made out in the first place.

The ineffectiveness of these provisions was highlighted following the delivery of a violent, public diatribe against Jews by Hizb ut-Tahrir's "Sheikh Ismail al-Wahwah on 25 July 2014. Footage of the event was uploaded to YouTube at the time, and again on 3 March 2015. Al-Wahwah repeated a range of shop-worn racist tropes about Jews. He accused "the Jews" of corrupting the world "in every respect", describing them as "the most evil creature of Allah" and threatening that "the ember of jihad against the Jews will continue to burn. Judgment Day will not come until the Muslims fight the Jews ... tomorrow you Jews will see what will become of you — an eye for an eye, blood for blood, destruction for destruction. There is only one solution for this cancerous tumour: it must be uprooted and thrown back to where it came from." Wahwah subsequently protested that he was referring only to Israel. But his numerous references to "the Jews" as a people belie this excuse. The matter was referred to Federal

Police for investigation with a view to Wahwah being prosecuted under sections 80.2A or 8.2B of the *Criminal Code*. No prosecution eventuated. This is hardly surprising given the unworkable nature of those provisions, which the ECAJ has recommend be comprehensively reviewed.

- **Government funding assistance for community security costs**

Given the persistence of antisemitism in Australia, synagogues, Jewish schools and other communal Jewish buildings continue to require armed guards and other security facilities as a precaution against antisemitic threats of widely varying severity from sources based locally and overseas. Protecting the physical safety of citizens is a prime responsibility of government. Despite this, the rising financial cost to our community of ensuring that Jewish people and communal property are physically secure has become a major burden.

The Jewish community is grateful to successive Federal governments, Coalition and Labor, for the funding assistance that has been provided to Jewish schools to assist them to meet their security needs, including the last round of funding in 2015 in which more than \$7.5 million was allocated over four years to 17 of Australia's 23 Jewish day schools.

We also appreciate the grant in 2007 of tax deductibility for donations for security purposes through the Council for Jewish Community Security (CJCS). CJCS is our community's national security body, and operates as an organ of the ECAJ. The CJCS commenced a pilot program in NSW in 2008-9, in consultation with recognised security expert advisers. The NSW program has raised several million dollars by of a capital appeal within the NSW Jewish community, and managed to leverage the funds raised so as to embark on security capital works worth more than \$15 million.

The challenge is underlined by the fact that capital works is only one part of the funding requirements. The recurring costs of providing an operating security structure is the heaviest financial burden we bear as a community and the costs will only increase going forward. It is vital that in every State, and nationally, our community has the organisational and fundraising structure needed to address this challenge.

Our community has developed a very constructive and effective close working relationship with Australia's law enforcement and intelligence agencies at both Federal and State levels. State governments in NSW and Victoria have previously granted or pledged several hundred thousand dollars for CCTV cameras and other security equipment and infrastructure.

Even with existing government assistance, we are unable on our own to bear the whole of the growing burden of keeping our communal members and institutions safe. We will continue to do our part, but we have an urgent need for additional funds. In addition to Jewish schools covered by the secure schools program, there are 180 other Jewish communal institutions that we need to secure. These include synagogues, community centres, museums and the like.

Later this year, the Jewish community, through the ECAJ, will need to apply for government funding for security under the new Safer Communities Program. This will be for all our communal institutions including the day schools, due to the abolition of the Secure Schools

program. It remains to be seen whether the overall funding assistance we receive from the Federal government for our security needs will increase, decrease or stay the same.

The ECAJ recommends that the levels of funding to be provided to vulnerable ethnic and religious communities be kept under close review to ensure that no community is left worse off by the introduction of the Safer Communities Program and the abolition of the Secure Schools program. The overall funding assistance to be made available by the Federal government to the Jewish community for its security needs should be increased in accordance with the ECAJ's previous detailed application to the government.

4. Freedom of religion or belief for Jews in other countries

Outside of Israel, which is the country with the highest numbers of Jews and is the global centre of Jewish life, the largest Jewish population centres are located in North America, Western Europe, South America, South Africa and Australia.⁶¹ Generally, Jews in all of these communities enjoy a high degree of freedom of religion.

The marked increase in antisemitism in violent and other forms, particularly the rise of jihadism, poses a critical threat to the physical security and therefore the religious freedoms of many Jewish communities, even in supposedly enlightened societies:

*“Antisemitism is one of the most alarming examples of how prejudice can endure, lingering on for centuries, curbing Jewish people’s chances to enjoy their legally guaranteed rights to human dignity, freedom of thought, conscience and religion or non-discrimination. Despite European Union (EU) and Member States’ best efforts, many Jews across the EU continue to face insults, discrimination, harassment and physical violence that may keep them from living their lives openly as Jews.”*⁶²

We are also concerned by periodic attacks on specific Jewish customs including ritual slaughter of animals (*shechita*) and male circumcision (*brit mila*), frequently and baselessly⁶³ presented as animal welfare and human rights issues respectively. The withdrawal or erosion of such rights constitutes a fundamental threat to Jewish religious freedom and the continuity of Jewish life in these countries.

- **Europe**

Since 2006, Jews have been targeted and murdered in terrorist attacks in France, Belgium and Denmark. There has been a corresponding rise in the number of racially or religiously motivated assaults against Jews, and fire-bombings and other instances of malicious

⁶¹ Information from demographer, Professor Sergio Della Pergola, chairman of the Harman Institute of Contemporary Jewry at the Hebrew University in Jerusalem, cited in http://www.simpletoremember.com/vitals/world-jewish-population.htm#_ftn3

⁶² European Union Agency for Fundamental Rights, *Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism*, November 2013, p.3: http://fra.europa.eu/sites/default/files/fra-2013-discrimination-hate-crime-against-jews-eu-member-states-0_en.pdf

⁶³ See under the heading “Infant Male Circumcision” in section 3 of this Submission.

damage to Jewish property, in those countries and throughout Europe. Among the more notorious examples:

- In March 2012, four Jews (three of them young children) were murdered by an Islamist terrorist at a Jewish school in Toulouse in France;
- In Belgium, the Jewish Museum in Brussels was attacked and four people murdered in May 2014;
- In January 2015, Jews in France were targeted and four were murdered at the Hyper Cacher Jewish supermarket in Paris;
- In February 2015, a Jewish man was murdered by an Islamist gunman outside a synagogue in Denmark.

There is no suggestion that the recrudescence of violent manifestations of antisemitism in Europe has been sanctioned in any way by governments, although there have been notorious antisemitic pronouncements by a small number of well-known political figures on both the mainstream Right and Left of politics in Europe and the UK.

*The main difference between 1930s antisemitism and the 21st century strain is that in the 1930s it was governments and politicians which incited the hatred and perpetrated the murder. Today, the perpetrators are a combination of the far Right, the anti-Zionist Left, and major segments of Europe's Muslim population.*⁶⁴

However, the response of European governments to violent antisemitism has often been weak. On occasions they have even capitulated to antisemitism.

- In Denmark in 2009, a school refused to enrol Jewish students as it could not protect them from harassment and assault. Other Danish school principals supported the move;
- In Holland, in late 2010, Frits Bolkestein, a prominent Dutch politician, advised Jews to leave Holland as it is no longer safe for Jews to live there;
- In Sweden since 2008, the Mayor of Malmö, where many Swedish Jews live, has on several occasions blamed the Jews themselves for assaults on Jews and fire-bombings of synagogues;
- In 2014, a planned city walk by Jews and non-Jews to protest antisemitism in Sweden had to be cancelled due to security threats and the inability of police to ensure their safety.⁶⁵

In 2013 the European Union Agency for Fundamental Rights (FRA) conducted a survey of antisemitic hate crimes in nine countries in Europe, specifically in Belgium, France, Germany, Hungary, Italy, Latvia, Sweden and the United Kingdom. Its findings reveal a

⁶⁴ Julie Nathan, 'Antisemitism in the 21st century', *Times of Israel blog*, 19 February 2015: <http://blogs.timesofisrael.com/antisemitism-in-the-21st-century/>

⁶⁵ *Ibid.*

worrying level of discrimination, particularly in employment and education, a widespread fear of victimisation and heightening concern about antisemitism online. Specifically, the study found that:

“26% of Jews have suffered from antisemitic harassment at least once in the past year, 34% experienced such harassment in the past five years, 5% reported that their property was intentionally vandalized because they are Jewish, about 7% were physically hurt or threatened in the past five years.”⁶⁶

These figures do not include acts of terrorist and other organised violence directed against Jews and Jewish institutions.

In November 2016, the FRA published an overview of the available data from governments, international organisations and NGOs on antisemitism in the 28 member States of the EU, country by country, covering the period 2005 to 2015.⁶⁷ It concluded:

“Despite the serious negative consequences of antisemitism for Jewish populations in particular, as [the 2013] FRA survey showed, and also for society at large, evidence collected by FRA consistently shows that few EU Member States record antisemitic incidents in a way that allows them to collect adequate official data. The inadequate recording of hate crime incidents, including those of an antisemitic nature, coupled with victims’ hesitance to report incidents to the authorities, contributes to the gross under-reporting of the extent, nature and characteristics of the antisemitic incidents that occur in the EU. It also limits the ability of policymakers and other relevant stakeholders at national and international levels to take measures and implement courses of action to combat antisemitism effectively and decisively, and to assess the effectiveness of existing policies. Incidents that are not reported are also not investigated or prosecuted, allowing offenders to think that they can carry out such attacks with relative impunity.

...Nevertheless, the comprehensive data that do exist show that antisemitism remains an issue of serious concern and that decisive and targeted policy responses are needed to tackle this phenomenon.”⁶⁸

In France, which has the largest Jewish population of any country other than Israel and the US, the spate of antisemitic acts of violence, especially terrorist incidents directed against Jews, has been followed by a sharp rise in the number of Jews leaving France, mostly for Israel. Until 2012, fewer than 2,000 immigrants came from France to Israel each year. In

⁶⁶ European Union Agency for Fundamental Rights, *Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism*, Luxembourg, November 2013, pp.12-13: http://fra.europa.eu/sites/default/files/fra-2013-discrimination-hate-crime-against-jews-eu-member-states-0_en.pdf

⁶⁷ European Union Agency for Fundamental Rights, *Antisemitism: Overview of data available in the European Union 2005-2015*, Luxembourg, November 2016: http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-antisemitism-update-2005-2015_en.pdf

⁶⁸ *Ibid.* p.6 (references omitted)

2014, the figure was 6,658. In 2015, the number was 7,469. The rate of immigration slowed slightly in 2016.⁶⁹

In Sweden, the rise in antisemitism, including violent attacks, has significantly impacted on Jewish religious freedoms. Following a 38% increase in antisemitism in Sweden in 2014 (Swedish National Council for Crime Prevention), the Swedish-Jewish journalist Johan Schreiber made these remarks about the abrogation of Jewish religious freedoms in Sweden due to antisemitism:

*“Right now, a lot of Jews in Sweden are scared. Parents are scared to drop off their kids at the Jewish preschool. People of all ages are scared of going to synagogue, there are many people who are taking off their Stars of David because they are too scared to wear it.”*⁷⁰

For Jews who remain in Europe, the growing climate of fear impacts directly on their freedom to live openly as Jews. For example, in 2013, the last remaining Jewish school in Brussels instructed its students to remove their kippot (Jewish religious head covering) on their way to and from school, and only wear it safely within the confines of the fortress-like school building, due to the threat of physical attack.⁷¹

On matters that impact on specific aspects of Jewish religious observance, EU members Denmark, Luxembourg, and Sweden and non-EU members Switzerland, Norway, and Iceland continue to ban all slaughter without stunning, including kosher and halal slaughter.

In 2014, Poland briefly banned kosher slaughter until the decision was deemed unconstitutional by the Polish Constitutional Court on the basis that it impacted on the constitutional right to practice religion freely, and was overturned. In spite of the eventual legal victory for religious freedom in this case, the political will to challenge the right of the Jews to practise an essential and humane custom caused profound distress to the Polish Jewish community.

Organisations such as the Swedish Medical Association, the Danish College of General Practitioners, and the Norwegian Ombudsman for Children have spoken out against the practice of male circumcision as abusive. In 2013, in what Jewish and Muslim groups viewed with alarm as a call to ban the practice, the Parliamentary Assembly of the Council of Europe (PACE) adopted a resolution on children’s rights that deemed religious circumcision of young boys a violation of children’s physical integrity and appeared to equate it with female genital mutilation.

⁶⁹ Jewish Telegraphic Agency, ‘*Jewish Agency 2016 interim report shows 32-point drop in French Aliyah*’, 29 July 2016: <http://www.jta.org/2016/07/29/news-opinion/israel-middle-east/jewish-agency-2016-interim-report-shows-32-point-drop-in-french-aliyah>

⁷⁰ Josefin Dolsten, ‘Facing death chants and hate crimes, Sweden’s Jews live in a climate of fear’ *Times of Israel*, 22 December 2015: <http://www.timesofisrael.com/facing-death-chants-and-hate-crimes-swedens-jews-live-in-a-climate-of-fear/>

⁷¹ Julie Nathan, ‘Antisemitism in the 21st century’, *Times of Israel blog*, 19 February 2015: <http://blogs.timesofisrael.com/antisemitism-in-the-21st-century/>

- **Iran**

The Jews of Iran, an ancient and established community currently numbering an estimated 20,000 people, continue to suffer from extensive state-sanctioned antisemitism:

“Although not as pronounced as in previous years, the [Iranian] government continued to propagate anti-Semitism and target members of the Jewish community on the basis of real or perceived “ties to Israel.” In 2015, high-level clerics continued to make anti-Semitic remarks in mosques. Numerous programs broadcast on state-run television advance anti-Semitic messages. Official discrimination against Jews continues to be pervasive, fostering a threatening atmosphere for the Jewish community. In a positive development, the government no longer requires Jewish students to attend classes on the Sabbath.”⁷²

The “*threatening atmosphere for the Jewish community*” has been accentuated by the holding of government-sanctioned “International Holocaust cartoon competitions” in 2006 and 2016. Entries are encouraged from all over the world. The message of the “cartoons” is to deny the historical truth of the genocide of one-third of the world’s Jewish population by the Nazi regime in the early 1940’s, or alternatively to relativise and trivialise the genocide by likening it to other events of immeasurably less gravity. The 2006 competition was conducted by the *Hamshari* newspaper, which is owned by the Municipality of Iran. The 2016 competition was conducted by two state-sponsored Iranian cultural organizations, the Owj Media & Art Institute and the Sarcheshmeh Cultural Complex. The winner of each competition was awarded US\$12,000.

In such circumstances, Jews in Iran are not free to hold religious services and communal commemorations in memory of the 6 million Jews who were murdered by the Nazis, as is now customary in Jewish communities around the world. Such services and commemorations would almost certainly be regarded by the Iranian regime as an act of political opposition and would thus result in reprisals against and persecution of Iran’s Jewish community. This was pointedly illustrated in January 2016 when Ayatollah Ali Khamenei, the Supreme Leader of Iran, marked Holocaust Memorial Day by publishing a Holocaust-denying video on his official website. While Jewish communities and nations all over the world remembered the millions of people who were killed in the extermination camps at Auschwitz and elsewhere, Khamenei asserted that “*it is not clear whether [the Holocaust] is a reality or not*”.⁷³

There is also systematic religious persecution by the Iranian regime of Christian and Zoroastrian communities in Iran. Religious services are periodically broken up by the

⁷² United States Commission on International Religious Freedom, *2016 Annual Report*, April 2016, p.47: <http://www.uscirf.gov/reports-briefs/annual-report/2016-annual-report>

⁷³ Camilla Turner, ‘Supreme leader of Iran marks Holocaust Memorial Day by publishing Holocaust denying video’, *The Telegraph* (UK), 28 January 2016: <http://www.telegraph.co.uk/news/worldnews/middleeast/iran/12126576/Supreme-leader-of-Iran-marks-Holocaust-Memorial-Day-by-publishing-Holocaust-denying-video.html>

authorities, and followers of these faiths are arrested and imprisoned for propaganda of their faith, blasphemy, and other trumped-up charges.⁷⁴ This is despite the fact that under Article 13 of Iran’s Constitution, Zoroastrian, Jewish, and Christian Iranians are recognised as religious minorities who are supposed to be guaranteed the freedom “*to perform their religious rites and ceremonies, and to act according to their own canon in matters of personal affairs and religious education.*”

No such recognition or guarantees are extended to Iran’s 350,000 Baha’i followers. We wish to express particular concern for the appalling subjugation of the Baha’i people of Iran, including the continuing incarceration of families without legal basis or charge, the officially-sanctioned denigration of followers of Baha’i in Iran as “unclean”, “apostates” and “heretics”, punitive measures against private businesses owned by followers of Baha’i, and the systematic exclusion of the Bahais from education and employment. We see strong parallels between the treatment of the Baha’i community in Iran and the state-orchestrated persecution of Jews in the former Soviet Union.

We would ask the Committee to consider recommending that Australia, in concert with other like-minded countries, take urgent diplomatic and political action on behalf of the persecuted religious communities of Iran.

- ***Egypt***

The ultimate fate of religious minorities in the Middle East is starkly illustrated by the demise of Egypt’s once-thriving Jewish community, which traces its origins to Biblical times. In the late 1950s, Egypt expelled its Jewish population and sequestered Jewish-owned property. The Jewish population of Egypt is now estimated at less than 40, down from between 75,000 and 80,000 in 1948.⁷⁵ Yet even this tiny remnant of the community continues to face persecution:

“In 2015, material vilifying Jews with both historical and new anti-Semitic stereotypes continued to appear in Egypt’s state-controlled and semi-official media; Egyptian authorities have failed to take adequate steps to combat anti-Semitism in the state-controlled media. Egypt’s once-thriving Jewish community of tens of thousands in the mid-20th century is now on the verge of extinction.”⁷⁶

- ***Turkey***

Turkey has had a long tradition of tolerance and acceptance towards Jews. Many of the Jews who were expelled or fled from Spain and Portugal in the 15th century found refuge in Ottoman Turkey. Consequently, Turkey’s Jews, who once numbered about 80,000 and now number about 15,000, have long been known for their intensely loyalty to Turkey and patriotism.

⁷⁴ United States Commission on International Religious Freedom, *2016 Annual Report*, April 2016, p.47: <http://www.uscifr.gov/reports-briefs/annual-report/2016-annual-report>

⁷⁵ Joel Beinin. *The Dispersion of Egyptian Jewry: Culture, Politics, and the Formation of a Modern Diaspora*, (Berkeley: University of California Press, 1998), *Introduction*.

⁷⁶ United States Commission on International Religious Freedom, *2016 Annual Report*, April 2016, p.95: <http://www.uscifr.gov/reports-briefs/annual-report/2016-annual-report>

Under the present quasi-Islamist government headed by Recep Tayyip Erdoğan, relations between Israel and Turkey have deteriorated and this has been followed by a rise in various forms of antisemitism in Turkey, sometimes with official sanction.

“...there continue to be reports that government officials have made anti-Semitic comments. A 2015 report by the Hrant Dink Foundation found 130 examples of hate speech in the Turkish print media that targeted the Jewish community in Turkey or the Jewish community more broadly between May and August 2014. In addition, in January 2016, unknown vandals sprayed “Terrorist Israel, there is Allah” on the outside wall of Istipol Synagoge in Istanbul’s Balat neighborhood.”⁷⁷

Prior to the failed military coup in 2016, there had also been some positive developments:

“In March 2015, the third largest synagogue in Europe, the Great Synagogue of Edirne in Turkey’s northwest region, was reopened and a service held for the first time in nearly 50 years. In December 2015, the first public celebration of Hanukah in the Republic’s history was held in Istanbul’s historic Ortakoy Square; the country’s Chief Rabbi, Izak Haleva, lit a large menorah, the head of the Jewish Community’s foundation delivered a speech, and government officials reportedly attended. In January 2015, the government also sponsored the first-ever Holocaust Remembrance Day ceremony, with the Parliamentary Speaker and Minister of Culture and Tourism participating.”⁷⁸

In the wake of the failed coup, and the subsequent purges of government, business and civil society by the Erdoğan government, antisemitism in Turkey’s public political discourse, rooted in but not confined to anti-Israel sentiment, is once again the biggest problem facing Turkey’s 15,000-strong Jewish community. Jews feel uncomfortable, or even unsafe, due to a political climate in which newspapers and politicians often demonize Jews and some have left Turkey for Israel.⁷⁹

- **Ukraine**

The number of Jews in the Ukraine in 2012 was estimated at 67,000.⁸⁰ There have been anecdotal reports by the Ukrainian Jewish community of a significant rise in the number of violent attacks against Jewish people and property in 2014, 2015 and 2016 compared to the three previous years. The 2014-2016 period coincides with Ukraine’s conflict and war with Russia.

⁷⁷ *Ibid.* p. 204

⁷⁸ *Ibid.*

⁷⁹ Josefín Dolsten, ‘Turkish Jews Proudly Defend Last Sephardic Homeland — Even as Some Flee’, *Forward*, 28 May 2016: <http://forward.com/news/world/340921/turkish-jews-proudly-defend-last-sephardic-homeland-even-as-some-flee/>

⁸⁰ Arnold Dashefsky, Sergio Della Pergola and Ira Sheskin, *World Jewish Population, 2012*, p.50. Reprinted from the *American Jewish Year Book 2012*.
<http://www.jewishdatabank.org/Studies/downloadFile.cfm?FileID=2941>

In 2015, some 7,500 Jewish people left Ukraine for Israel: up from 6,000 in 2014. This followed many years when the numbers of Jews leaving the Ukraine for Israel was no more than 1,000 to 2,000. It has been reported that most have fled from the conflict-ridden east of the country, travelling westwards, and then across the Black Sea to Israel.⁸¹

5. Protecting freedom of religion or belief in Australia and around the world

Jewish Australians are fortunate to be citizens of a country in which liberal-democratic norms are embraced and generally respected. Yet even in Australia, there is room for improvement in respecting freedom of religion and belief for minority communities such as ours.

The depletion of Jewish communities overseas as a result of attacks on Jewish traditions and customs and the inability of government adequately to secure Jews from the threat of violent antisemitism must be seen as issues of national and international concern.

We urge the Australian Government to be forthright in its dealings with other governments, international organisations and NGOs in asserting that the free practice of religion or belief is of fundamental importance to the building of a just and peaceful world and must be a freedom that is honoured and upheld by all societies.

Yours sincerely



Anton Block
President



Peter Wertheim AM
Executive Director

⁸¹ Katie Engelhart, 'Why Record Numbers of Ukrainian Jews Are Fleeing to Israel', *VICE News*, 17 March 2016: <https://news.vice.com/article/why-record-numbers-of-ukrainian-jews-are-fleeing-to-israel>

APPENDIX
ECAJ SUBMISSION TO PARLIAMENTARY INQUIRY INTO THE STATUS OF THE
HUMAN RIGHT TO FREEDOM OF RELIGION OR BELIEF

SUMMARY OF RECOMMENDATIONS

1. The proposals for the removal of barriers to religious re-marriage put forward by the ECAJ and the Organisation of the Rabbis of Australasia, and adopted by the Family Law Council in 2001 (*Cultural-community Divorce and the Family Law Act 1975: A Proposal to Clarify the Law, Report to the Attorney-General, August 2001*) should be given legislative effect without further delay.
2. In the sphere of employment, applicable State laws, awards and other industrial instruments should be aligned with the provisions of the *Fair Work Act* to the extent necessary to ensure that they provide similar protections against direct or indirect forms of discrimination on the basis of race or religion.
3. Subject to the availability of Studies in Religion as an elective subject in public schools, as well as classes in which students belonging to a religious community or denomination can study their own religion together, religion should otherwise be kept out of public schools.
4. State governments should restore elective circumcision to public hospitals.
5. Australia should develop a uniform system of laws governing a coroner's power to order an autopsy which gives due weight to religious objections to autopsy when another life is not at stake, and to the availability of non-invasive alternatives to autopsy.
6. Relevant legislation in Western Australia and South Australia should be amended, and brought into in line with the existing laws in other Australian jurisdictions, so as to provide for exceptions that would permit permanent tenure for burial plots in order to meet religious requirements.
7. The By-laws prescribed by Strata title laws be amended so as to provide an exception to the rule against marking common property by allowing a resident to affix a single object to meet religious requirements, up to a specified length, width and thickness, on the inside of the external door-frame at the front of the resident's strata lot, subject to the obligation of the resident to (i) remove the object when the residence ceases; and (ii) make good any damage caused by the installation or removal of the object.
8. The provisions of Part IIA of the *Racial Discrimination Act 1975* (Cth) should be left in their present form.
9. The ECAJ would be open to any reforms to the *Australian Human Rights Act 1986* (Cth) or to the practices and procedures of the Australian Human Rights Commission ("the Commission") which would have the effect of minimising the incidence of claims brought

in bad faith or which would have no reasonable prospects of success before a court. In the interests of maintaining public confidence in the operation of the legislation and in the Commission's handling of Part IIA complaints, the complaints handling process within the Commission should be refined so as to (i) screen out manifestly unmeritorious complaints before conciliation occurs, and (ii) strongly discourage such complaints from proceeding to court.

10. Legislative provision should be made for interim remedies in the nature of "*cease and desist*" orders, pending the outcome of court action involving Part IIA complaints.
11. The offences in s.80.2A and 80.2B of the *Criminal Code* (Cth) should be re-formulated in a way that will allow a prosecutor the practical prospect of success in the circumstances that the legislation seeks to address. The defences in s.80.3 are inappropriate for, and should not be available in respect of, either offence.
12. The overall funding assistance to be made available by the Federal government to the Jewish community for its security needs should be increased in accordance with the ECAJ's detailed application.
13. Australia, in concert with other like-minded countries, should take urgent diplomatic and political action on behalf of the persecuted religious communities of Iran, specifically the Jewish, Baha'i, Christian and Zoroastrian communities.
14. The Australian Government should be forthright in its dealings with other governments, international organisations and NGOs in asserting that the free practice of religion or belief is of fundamental importance to the building of a just and peaceful world and must be a freedom that is honoured and upheld by all societies.